GIBSON, DUNN & CRUTCHER LLP

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April 26, 2004

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VIA E-MAIL

Mr. Jonathan G. Katz
Secretary
Securities and Exchange Commission
450 Fifth Street, N.W.
Washington, DC 20549-0609

Re: *Proposed Rules Regarding Security Holder Director Nominations, 68 Fed. Reg. 60,784 (Release No. 34-48626, October 23, 2002); File No. S7-19-03*

Dear Mr. Katz:

I am enclosing for inclusion in the rulemaking record in the above-titled proceeding an April 23, 2004 correspondence with the Securities and Exchange Commission's Freedom of Information Act ("FOIA")/Privacy Act Office concerning disclosure of information related to this rulemaking. Attached to that letter is a FOIA appeal decision issued by the Office of General Counsel on April 20, 2004.

Very truly yours,

Ashley Wright
Gibson, Dunn & Crutcher LLP

Attachments

awright@gibsondunn.com

April 23, 2004

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VIA FACSIMILE AND FIRST-CLASS MAIL

Ms. Melody A. Adams
FOIA/Privacy Act Research Specialist
FOIA/Privacy Act Office
Securities and Exchange Commission
Operations Center
6432 General Green Way
Alexandria, VA 22312-2413

Re: ***Freedom of Information Act Request No. 2004-0835***

Dear Ms. Adams:

I am writing on behalf of the firm of Gibson, Dunn & Crutcher LLP to request immediate access to the approximately fifty pages of internal staff research that were identified by your Office in a February 17, 2004 letter denying our Freedom of Information Act ("FOIA") request. Although your Office initially withheld these documents on grounds of Exemption 5 of FOIA, the Office of General Counsel has determined in a FOIA appeal decision dated April 20, 2004 (attached hereto for your convenience) that Exemption 5 does not apply to the research, and that we are entitled to the documents. Accordingly, the Office of General Counsel has remanded that aspect of our FOIA appeal to your Office for processing.

The staff research that we have requested—and which the Office of General Counsel has determined we are entitled to obtain—bears on the public's ability to comment meaningfully in a pending rulemaking. Accordingly, we respectfully request immediate access to these materials. I will contact you by telephone shortly to arrange for their pickup.

Thank you for your prompt attention to this matter.

Very truly yours,

Ashley Wright

Attachment

cc: Brenda L. Fuller

UNITED. STATES
SECURITIES AND EXCHANGE COMMISSION
OFFICE OF THE GENERAL COUNSEL
450 5th Street, N.W.
Washington, D.C. 20549

April 20, 2004

Please deliver the following pages to:

Name: Eugene Scalia, Esq.
Gibson Dunn & Crutcher

Fax Number: 202-530-9606

Subject: FOIA appeal no. 2004-0835

Total number of pages (including this cover sheet): 10
From: Celia Jacoby

Telephone Number: 202/942-0884
Telecopier Number: 202/942-9537

Notes:

letter dated 4-20-04

UNITED STATES
SECURITIES AND EXCHANGE COMMISSION
WASHINGTON, D.C. 20549

Stop 0207 April 20, 2004

U.S. mail and facsimile

Eugene Scalia, Esq.
Gibson, Dunn & Crutcher LLP
1050 Connecticut Avenue, N.W.
Washington, D.C. 20036-5306

Re: Appeal, Freedom of Information Act ("FOIA") Request No-2004-0835

Dear Mr. Scalia:

I am responding to your March 19, 2004, Freedom of Information Act appeal of the response of the FOIA/Privacy Act Officer, Securities and Exchange Commission, to the request of Ashley Wright for "copies of all [non-public] data and studies" that the Commission cited or relied upon in its proposing release file number S7-19-03, including those cited in footnotes 78-85, 114, 187, 189-90, 192, 194-95, and 197-98 of the proposing release.[1]

On February 17, 2004, the FOIA Office found the request did not reasonably describe the records being sought because it was not sufficiently specific as to names, dates, subject matter to permit a search through record indices. Nevertheless, in an effort to reformulate the request so that it could search for potentially responsive documents, the FOIA Office indicated it would interpret the request as "seeking those documents identified in the footnotes in the proposing release" which were specifically listed in the request. However, the FOIA Office found that data cited in those footnotes were "proprietary and subject to contractual prohibitions on public disclosure or redistribution" and, thus, not agency records.[2] The FOIA Office further found that

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[1] Ms. Wright also requested expedited treatment for this request which was denied. On appeal, the Office of the General Counsel affirmed that denial as no compelling need as defined by FOIA or the Commission's regulations was shown.

On January 7, 2004, Ms. Wright also appealed the timeliness of the FOIA Officer's response to this request. That appeal was dismissed as moot on February 18, 2004 because the FOIA Officer had issued a determination on the previous day.

[2] The records determined not to be agency records are the sample data and databases provided by Automated Data Processing, Inc., Center for Research in Security, Vickers Stock Research Form 13-F database, Investor Responsibility Research Center and Georgeson Shareholder Communications, Inc.

even assuming that the data and databases are agency records, they would be exempt from disclosure under Exemption 4. Finally, the FOIA Office withheld approximately 50 pages of internal staff research under the deliberative process and attorney-client privileges embodied in Exemption 5.

On appeal, you question these determinations and ask that this appeal be expedited. You disagree that the request as written is ambiguous and assert that third-party data and studies are agency records because the Commission obtained and used them in connection with the rule proposal. You also dispute the application of Exemption 4 to such data and studies and claim that redacting company names should suffice to protect any confidential commercial interest. You further assert that not providing the proprietary data is "in violation of FOIA and the APA." Finally, you ask that this Office review the assertion of Exemption 5 to protect internal staff research. I have considered your appeal and, as discussed below, it is denied in part and granted in part.

1. Request for an Expedited Appeal

Both FOIA and the Commission's implementing rules permit expedited processing of a request under certain circumstances. See 5 U.S.C. 552(a)(6)(E)(ii)(I), 17 CFR 200.80(d)(5)(iii). FOIA also requires "expeditious consideration of administrative appeals of such determinations of whether to provide expedited processing." See 5 U.S.C. 552(a)(6)(E)(ii)(II). However, there is no provision mandating an expedited appeal of a denial of access to documents. Rather, both FOIA and the Commission's rules provide that an agency shall "make a determination with respect to any appeal within twenty days (excepting Saturday, Sunday and legal public holidays) after the receipt of such appeal" or within any permitted extension. See 5 U.S.C. 552(a)(6)(A)(ii), 17 CFR 200.80(d)(6)(v). Further, you have not demonstrated any compelling need, as defined in the FOIA, to have the appeal resolved before those of other FOIA requesters seeking review of initial determinations denying access to records. Accordingly, this request is denied. Nevertheless, your appeal has been timely decided under the FOIA.

2. Reasonableness of the description of the requested records

The FOIA Office found that the request failed to reasonably describe the records as it was not sufficiently specific as to names, dates and subject matter to permit locating non-public records "cited or relied on" by consulting record-keeping systems. Sec 5 U.S.C. 552(a)(3)(A)(ii), 17 CFR 200.80(a)(3). A reasonable description requires some specificity "with respect to names, dates and subject matter" so that the agency may locate records by examining indices to its record-keeping systems or specifically identifiable files. See Marks v. Dept. of Justice, 578 F.2d 261, 263 (9th Cir. 1978) (a reasonable request relates not only to subject area but place of search). Ms. Wright asked for any records "that are not otherwise publicly available" which are "data and studies that the Securities and Exchange Commission cited or relied upon" in the proposing rule release. The only identifiable file was the proposing release no. S7-19-03. Accordingly, the only means to locate records other than those specifically identified in the release, if any exist, was to canvass staff who may have had any involvement with the proposing release or to interpret the request as seeking any record on the topic of the proposing release.

To canvass each staff member would entail significant burden as well as uncertainty in determining what information derived from each individual's past experience, education, knowledge or other basis was conceivably considered or "relied upon." Thus, to determine if a particular Commissioner or staff member "relied" on any particular document not in the public file would require a highly subjective assessment. Moreover, such a description of records does not permit agency staff to "comprehend the nature of any records responsive to that request, as discernible from a general fishing expedition." See Hudgins v. Dept. of IRS, 620 F. Supp. 19, 21 (D.D.C. 1985). Further, if the request were interpreted as any record touching in some manner on the topics expressed in the proposing release, it would entail a far-reaching search without a clear basis to determine if any particular document relates to that release. Such a search is not required. See Massachusetts v, Dept. HHS, 727 F. Supp. 35, 36 n.2 (D. Mass. 1989) (a request for all records "relating to" a particular subject is over broad). Moreover, FOIA does not require an agency to review every document or file in its possession to locate potentially responsive records. Hudgins, 620 F.2d at 21.

You argue that a request for records "relied on" is not ambiguous because the proposing release must refer to such records. You cite Bristol-Myers Co. v. FTC, 424 F.2d 935, 938 (D.C. Cir. 1970) and National Cable Television Assn. v. FCC, 479 F.2d 183, 192 (D-C. Cir. 1973), for the proposition that a request for records need only be as specific as an agency's public statement permits. In this case, the agency's public statement is the proposing release and any records identified in that release. Consistent with both Bristol-Myers, and National Cable, the FOIA Office interpreted the request to be "those documents identified in the footnotes in the proposing release that [the requester] specifically listed."[3] Such interpretation was appropriate. Further, as the Bristol-Myers court recognized, "[t]o the extent that the request may be read as seeking additional materials outside that category," i.e., the materials other than those described by the agency in its announcement of a rule proposal, the description of records may be faulty. Id., 424 F.2d at 937.

3. The withheld databases are not agency records for purposes of FOIA.

The FOIA Officer found that in light of contractual limitations on use and dissemination, these third-party databases are not agency records. On appeal, you dispute this determination because Section 24 of the Securities Exchange Act of 1934 defines agency records to include "documents filed with or otherwise obtained by the Commission pursuant to this chapter or otherwise." 15 U.S.C. 78x. You assert that no further interpretation is required to make these databases agency records because under FOIA case law, the databases were "obtained" when the submitters provided them to the Commission. You conclude that the Commission controls these databases because "the data and studies had 'come into the agency's possession in the legitimate conduct of its official duties," citing Dept. of Justice v. Tax Analysts, 492 U.S. 136, 145 (1989). You also claim, without any stated support, that "any alleged 'proprietary' status was waived

[3] These were sample data and databases provided by Automatic Data Processing, Inc., Vickers Stock Research Form 13-F database, investor Responsibility Research Center and Georgeson Shareholder Communications, Inc.

once the Submitters provided their material to the Commission for use" in developing the proposed rules. You further argue that it is a "far-reaching proposition" that restrictive licenses or contractual prohibitions may "divest" a document of agency record status. You conclude that these databases implicate information concerning the Commission's structure, operation or decision-making and must be produced.

Thus, the issue is whether data and databases created by third parties which arc subject to contractual or other limitations on dissemination are agency records for purposes of FOIA. Section 24(a) of the Exchange Act, 15 U.S.C. 78x(a), provides that for purposes of FOIA, the term "records" includes all applications, statements, reports, contracts, correspondence, notices, and other documents filed with or otherwise obtained by the Commission * * *." In assessing the present issue, the relevant portion of that definition is: "documents * * * otherwise obtained by the Commission under this title or otherwise." The legislative history of this provision is generally silent regarding whether Section 24(a) was intended to cover third-party proprietary databases and there are no judicial decisions on whether Section 24(a) covers such third-party databases. Nor is there any guidance in the legislative history or judicial decisions on when a document is "obtained" by the Commission under Section 24(a).[4]

Nor does FOIA define the term "agency records."[5] However, for requested materials to qualify as agency records, two requirements must be satisfied: (1) an agency must "either create or obtain" the requested materials, and (2) "the agency must be in control of [them] at the time the FOIA request is made." Burka v. HHS, 87 F.3d 508, 515 (D.C. Cir. 1996) (finding that both prongs must be satisfied to determine if a document is an agency record); Tax Analysts, 492 U.S. at 144-45, citing Kissinger v. Reporters' Committee, 445 U.S. 136, 156 (1980) (custody and

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[4] The current text of Section 24(a) resulted from an amendment in 1975. Prior to that amendment, it provided that "[n]othing in this chapter shall be construed to require, or to authorize the Commission to require, the revealing of trade secrets or processes in any application, report or document filed with the Commission.* * *" The legislative history is silent on the purpose of the amendment. In McGhee v CIA, 697 F.2d 1095 (D.C. Cir. 1983), the court opined that it is "susceptible to two inconsistent interpretations": (1) that Congress assumed that "records" meant all documents filed with or obtained by the agency; or (2) that Congress wanted to impose an unusually encompassing definition, applicable only to the Commission, to ensure public access to the Commission's files. Id., 697 F.2d at 1106. However, the court did not resolve the interpretative issue it posited.

In Forsham v. Harris, 445 US 169, 177, 185 (1980), in finding that "reliance on a document does not make it an agency record if it has not been created or obtained," the court noted that Section 78x defines agency records for purposes of FOIA in terms of being "obtained."

[5] As the Court of Appeals for the District of Columbia observed in McGhee, 697 F.2d at 1106, it "has often been remarked, the Freedom of Information Act, for all of its attention to the treatment of 'agency record,' never defines that crucial phrase. A reading of the legislative history yields insignificant insight."

control) and Forsham v. Harris, 445 U.S. 169,182 (1980) (create or obtain); Gallant v. NLRB, 26 F.3d 168, 171 (D.C. Cir. 1994).

As to the first prong, it is undisputed that the Commission did not create the withheld databases. While there is a legitimate issue whether, in view of the contractual limitations, the agency has "obtained" the databases, we need not resolve that issue at this time because the second prong is not met as the agency does not "control" the databases.

As to the second prong of the Tax Analysts test, the circuit Court of Appeals for the District of Columbia "has identified four factors relevant to a determination of whether an agency exercises sufficient control over a document to render it an 'agency record': (1) the intent of the document's creator to retain or relinquish control over the records; (2) the ability of the agency to use and dispose of the record as it sees fit; (3) the extent to which agency personnel have read or relied upon the document; and (4) the degree to which the document was integrated into the agency's record systems or files." Burka, 87 F.3d at 515; Tax Analysts v. Dept. of Justice, 845 F.2d 1060, 1069 (D.C. Cir. 1988). All four factors must be present. Tax Analysts, 845 F.2d at 1069. On appeal, your arguments do not address all four factors a court considers in determining whether an agency "controls" a record for purposes of FOIA; nevertheless, I address them below:

Control is the dominant consideration in determining "agency record" status for records obtained from sources outside the agency, particularly from a government contractor. Where an agency has access but not unrestricted use, the record generally remains a non-record for FOIA purposes. See Goland, 607 F.2d at 347 (the crucial question is whether the document was "subject to the free disposition of the agency"), cert. denied, 445 U.S. 927 (1980); Tax Analysts, 913 F. Supp. at 607 (finding that electronic database held by private company that contracted with agency is not an agency record because licensing provisions specifically limited access and precluded agency control); Tax Analysts, 845 F.2d at 1069; Judicial Watch, Inc. v. Clinton, 880 F. Supp. 1, 11-12 (D.D.C. 1995) (not agency records until document controlled by the agency itself), aff'd on other grounds, 76 F.3d 1232 (D.C. Cir. 1996); Wash. Post v. DOD, 766 F. Supp. 1, 17 (D.D.C. 1991) (finding that transcript of congressional testimony provided "solely for editing purposes," with cover sheet restricting dissemination, is not an agency record); Baizer v. Dept. of the Air Force, 887 F. Supp. 225, 228-29 (N.D. Cal. 1995) (holding that database of Supreme Court decisions used for reference purposes or as research tool is not an agency record); Glimore v. Dept. of Energy, 4 F. Supp. 2d 912, 922 (N.D. Cal. 1998) (finding video conferencing software created by privately owned laboratory is not an agency record); Lewisburg Prison Project. Inc. v. Fed. Bureau of Prisons, No. 86-1339, slip op. at 4-5,(M.D. Pa. Dec. 16, 1986) (holding that training videotape provided by contractor is not an agency record); Rush Franklin Publ'g, Inc. v. NASA, No. 90-CV-2855, slip op. at 10 (E.D.N.Y. April 13, 1993) (finding that computer tape maintained by contractor is not an agency record in the absence of agency control).

Conversely, "agency record" status may apply to a contractor's database if the agency has constructive control, such as, the agency had ordered creation of, plans to take physical possession after the contract period, has indicated that it will later disclose the data, and has read and relied on the data in developing agency policies. Burka, 87 F.3d at 515 (agency contracted out and exercised extensive supervision over the collection and analysis of its research data).

Contractor-maintained records may also be "agency records" for FOIA purposes where the contractor acted for the agency and the records were "created on behalf of" (and at the request of) the agency. Chicago Tribune Co v. Dept. of Health and Human Services, Civ. 95-C-3917, 1997 U.S. Dist. Lexis 2308 at *41 (N.D. Ill. Feb. 26, 1997) (as agency controlled contractor's work, resulting study was an agency record); Los Alamos Study Group v. Dept. of Energy, No. 97-1412, slip op. at 4 (D.N.M. July 22, 1998) (determining that records created by contractor are agency records because government contract "establishes [agency] intent to retain control over the records and to use or dispose of them as they see fit" and agency regulation "reinforces the conclusion that [the agency] intends to exercise control over the materials").

As discussed below, in this case the withheld databases were licensed to the Commission under several agreements to use the databases for specific purposes. Those licenses expressly prohibited further use, redistribution or release to any other person. We have previously interpreted the term "agency records" not to include proprietary data that was provided to the Commission pursuant to agreements that limit the Commission's redistribution and use of that data. See, e.g. Financial Data Concepts FOIA Appeal No. 2000-0616 and Global Securities Information FOIA Appeal No. 2000-0030.

Under the CRSP Data Subscription Agreement, the Commission has a license to use CRSP Data Files only under the stated terms (Article 1.1) and further dissemination is excluded (Articles 1.2, 1.3 and 2.1). Further, the Commission acknowledged that the data files "constitute valuable property of CRSP" (Article 5.2) and that "CRSP retains all copyright and other proprietary rights to CRSP data" (Article 5.4). In Appendix B, the Commission acknowledged that no proprietary rights were transferred and that it "shall not publish or distribute in any medium the CRSP Database or any information contained therein."

Similarly, under Article I of the agreement with Vickers Stock Research Corporation, "no information as furnished may be copied, reproduced, repackaged, redistributed, further transmitted, transferred, licensed, sold, leased, disseminated, altered, modified, or stored for subsequent use for any purpose, in whole or in part, in any form or by any means whatsoever." On termination, all "Data, software or programming provided by Vickers" must be returned (Article IV). Further, it was acknowledged that Vickers retained all proprietary rights and interests in the database (Article XII).

The Automatic Data Processing data was annotated as confidential information whose dissemination is strictly prohibited. Both in processing the request -and reviewing this appeal, we contacted ADP. In response, ADP stated that it would not customarily release the information to the public, that it had received assurances of confidentiality from staff, and that this was privately developed information which ADP would distribute commercially.

In applying the Tax Analysts factors, it is evident that these databases never became agency records because the Commission does not exercise sufficient control of them. First, each of the private information distributers who provided commercial data to the Commission expressed an intention to retain control. Nor did the Commission direct or oversee the development of that commercial data. Second, the Commission does not possess the right to use, dispose or disseminate the requested materials; rather any use, possession and dissemination of the requested materials are subject to the rights of those private parties. Third, the Commission's

use and reliance on these databases is restricted; only certain divisions and persons within those divisions may use the databases. Fourth, the databases cannot be integrated generally into the Commission's record systems, but must be maintained separately on limited systems. As the Commission's rights to use and dispose of the materials are limited, the Commission lacks the unrestricted control over the databases to render them "agency records" subject to FOIA. See, e.g. Goland, 607 F.2d at 347 (the usual test for a document not originating in an agency looks to "whether under all the facts of the case the document has passed from the control of [its originator] and become property subject to the free disposition of the agency with which the document resides"). While the Commission is entitled to use these databases, it does not have unrestricted access sufficient to render them agency records when acquired or at this time. Id.; Forsham, 445 U.S. at 186.

4. Exemption 4 applies if these databases are deemed to be agency records.

The FOIA Officer also found that, assuming the data and databases are agency records, they are protected by Exemption 4 as "commercial or financial information obtained from a person [that is] privileged or confidential." 5 U.S.C. 552(b)(4),17 CFR 200.80(b)(4); Gulf & Western Industries, Inc. v. United States, 615 F.2d 5127, 529 (D.C. Cir. 1979). On appeal, you argue that this assertion is unfounded and that redaction should suffice to protect any claim of confidentiality.

Exemption 4 covers (1) trade secrets and commercial or financial information (2) obtained from outside the government (3) that are privileged or confidential. National Parks & Conservation Assn. v. Morton, 498 F.2d 765, 766 (D.C. Cir. 1974). A person under Exemption 4 includes corporate entities, such as the Vickers, ADP and CRSP. See Nadler v. FDIC, 92 F.3d 93, 95 (2d Cir. 1996) (term "person" includes "an individual, partnership, corporation, association, or public or private organization other than an agency").

In this case, the threshold requirements of Exemption 4 are met. As Vickers, CRSP and ADP are commercial compilers and vendors of information, each is a person outside the government. It also cannot be seriously disputed that the databases contain commercial information. See, e.g., Public Citizen Health Research Group v. FDA, 704 F.2d 1289, 1290 (D.C. Cir. 1983) (records are commercial so long as the submitter has a "commercial interest" in them).

The issue then is whether that information is privileged or confidential within the meaning of FOIA. Information voluntarily provided to the government is confidential for purposes of Exemption 4 if the submitter would not customarily release it to the public. See Critical Mass Energy Project v. NRC, 975 F.2d 871, 879 (D.C. Cir. 1992). For information required to be submitted to the government, such information is confidential if disclosure would impair the government's ability to obtain necessary information in the future, or cause substantial competitive harm to the submitter. See National Parks, 498 F.2d at 770; Critical Mass, 975 F.2d at 879.

The FOIA Officer found that the Critical Mass standard applied as each submitter confirmed that they would not customarily release these databases to the public. In reviewing this appeal, I concur that the Critical Mass standard applies. Each data provider confirmed that it

does not customarily release such information to the public and that release under FOIA would deprive it of substantial commercial value. Accordingly, this confidential commercial information is exempt from disclosure pursuant to Exemption 4.

I further find that all of these databases are properly exempt under the National Parks standard. Under that standard, each of these databases are confidential if "disclosure is likely to have either of the following effects: (1) to impair the Government's ability to obtain necessary information in the future [the "impairment" prong]; or (2) to cause substantial harm to the competitive position of the person from whom the information was obtained (the "competitive harm" prong]." Id. at 770. Releasing the Vickers or CRSP databases would be contrary to contractual limitations and would likely impair the government's ability to obtain similar information at reasonable terms in the future by dissuading persons from contracting with the Commission. Release may also subject the Commission to contractual damages. ADP confirmed that its reluctance to provide information in the future should its commercial information be released. Thus, disclosure is likely to impair the government's ability to obtain information voluntarily or at no or a reasonable cost.

Additionally, substantial competitive harm would accrue to the submitters from disclosing these databases. A likelihood of substantial competitive injury, rather than demonstrated actual competitive harm, is sufficient to meet this test. See, e.g., GC Micro Corp. v. Defense Logistics Agency, 33 F.3d 1109, 1113 (91 Cir. 1994); CNA Financial Corp. v. Donovan, 830 F.2d 1132, 1152 (D.C. Cir. 1987), cert. denied, 485 U.S. 977 (1988). The information contained in the databases is gathered, refined, and sold on the open market. If anyone could obtain this information under FOIA at little or no cost, the submitters would suffer significant economic loss. Access to such databases may also allow competitors to develop similar products without incurring research and other costs. Thus, release of these databases would likely cause the submitters real competitive harm. Nor would redacting company names, as you suggest, suffice to mitigate such competitive harm which would result from releasing these databases. Further, the Trade Secrets Act, 18 U.S.C. 1905, bars disclosure the requested materials.

5. Application of Exemption 5

The FOIA Officer also asserted the deliberative process and attorney client privileges embodied in Exemption 5 to protect "approximately 50 pages of internal staff research." I have reviewed this staff research and find that disclosing it at this time would not adversely affect those interests. Accordingly, this aspect of your appeal is remanded to the FOIA Office for processing as appropriate.

6. Administrative Procedure Act

You also suggest that in light of the proposed rule making, no requested record that is "relied upon" in that rule making, such as these databases, could be exempt under FOIA. However, the Commission is not required to place in a public rule file "any statement or communication which it may withhold from the public in accordance with the provisions of section 552 of title 5, United States Code." Section 23(a)(3) of the Securities Exchange Act of

1934, 15 U.S.C. 78w(a)(3). As the withheld databases are either not agency records or are exempt under FOIA, there is no obligation to place these materials in the public rule file.

* * *

You have the right to seek judicial review of this determination, except as to the remanded materials, by instituting an action in the United States District Court for the District of Columbia or in the district where you reside or have your principal place of business. See 5 U.S.C. 552(a)(4)(B). If you have any questions regarding this determination, please call Celia Jacoby, Senior Counsel, at 202-942-0884.

For the Commission
by delegated authority,

Richard M. Humes
Associate General Counsel

cc: FOIA Officer