



BOARD OF GOVERNORS
OF THE
FEDERAL RESERVE SYSTEM
WASHINGTON, D. C. 20551

SARAH BLOOM RASKIN
MEMBER OF THE BOARD

February 1, 2011

Mr. Joseph Carson
10953 Twin Harbour Drive
Knoxville, TN 37934

Dear Mr. Carson:

This is in response to your letter dated December 28, 2010, and received by the Board's Freedom of Information office on January 4, 2011, by which you appeal, pursuant to 12 CFR § 261.13(i), the determination by the Associate Secretary of the Board ("Associate Secretary") on your request under the Freedom of Information Act ("the Act"), 5 U.S.C. § 552.

By letter dated October 18, 2010, and received by the Board's Freedom of Information office on October 26, 2010, you requested records relating to:

1. the definition of the "other merit system" [as described at 5 U.S.C. § 1204(a)(3)] applicable at the Federal Reserve;
2. the definition of "prohibited personnel practices (PPPs)" applicable at the Federal Reserve; and
3. any assessment, conducted by MSPB [Merit Systems Protection Board] or other entity, that evaluated whether Federal Reserve employees are adequately protected from PPPs, as they are defined in the Federal Reserve.

By letter dated December 21, 2010, the Associate Secretary informed you that the Board does not have records responsive to your inquiry. The Associate Secretary provided you, however, with the address of a Board public website that describes policies the Board follows pursuant to federal antidiscrimination and whistleblower protection laws. A determination that no responsive records exist is considered to be an "adverse determination" under the Act and is subject to appeal.

You appealed the Associate Secretary's determination by letter dated December 28, 2010. In your written appeal, you did not provide an explanation of the basis for your appeal, and simply stated "I appeal the denial of my FOIA request." Therefore, in an effort to better understand the nature of your request and appeal, on January 20, 2011, Board appeal staff contacted you by phone and discussed your request with you. Based on this discussion, staff understands that you are interested in "assessments" and, in particular, formal assessments, including any special studies by the MSPB or any other entity, of whether the Board adequately protects its employees from prohibited personnel practices. You stated that you were not seeking specific Board policies on subject areas covered by the phrase "prohibited personnel practices" in 5 U.S.C. § 2302(c). Thus, I interpret your letter as requesting that the Board reevaluate the Associate Secretary's determination that no responsive records exist.

Upon review of your appeal, as discussed below, I have concluded that the determination that no responsive documents exist is correct. As was explained to you in connection with your November 19, 2009, request for records related to the Board's compliance with 5 U.S.C. § 2302(c), a provision addressing "prohibited personnel practices," section 10 of the Federal Reserve Act provides that the "employment, compensation, leave, and expenses" of Federal Reserve Board employees "shall be governed *solely* by the provisions of this chapter and rules and regulations of the Board not inconsistent therewith." 12 U.S.C. § 244. This provision is more specific than the provisions of Title 5 of the United States Code applicable to executive branch agencies generally, and therefore controls those provisions with respect to the Board's employment practices. *Morton v. Mancari*, 417 U.S. 535, 550-551 (1974).

Accordingly, the reference to the "other merit system" described in 5 U.S.C. § 1204(a)(3) does not apply to the Board and thus, the Board has no responsive documents related to "other merit systems." Similarly, as the Board is not subject to Title 5 requirements relating to "prohibited personnel practices," the Board has no records defining "prohibited personnel practices" or records of an "assessment" or special study of the Board by the MSPB or any entity regarding "prohibited personnel practices." Thus, the Board does not have any documents that are responsive to your request.

Based on a de novo review of the Associate Secretary's decision, and on the recommendation of counsel regarding the legal issues involved, I affirm the Associate Secretary's decision that no responsive records exist, for the reasons stated above. Accordingly, your appeal is denied. If you believe that the Board is withholding information from you contrary to your legal rights, you may seek judicial review of my decision in an appropriate United States District Court pursuant to 5 U.S.C. § 552(a)(4)(B).

Sincerely,

Sarah Jean Rastin