

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA**

**WP COMPANY LLC
d/b/a THE WASHINGTON POST, et al.,**

Plaintiffs,

v.

U.S. SMALL BUSINESS ADMINISTRATION,

Defendant.

Case No. 1:20-cv-1240-JEB

PROPOSED BRIEFING SCHEDULE

Pursuant to the Court's June 15, 2020 Minute Order, Plaintiffs WP Company LLC d/b/a The Washington Post, Bloomberg L.P., Dow Jones & Company, Inc., Pro Publica, Inc., The New York Times Company, American Broadcasting Companies, Inc. d/b/a ABC News, American City Business Journals, Cable News Network, Inc., NBCUniversal Media, LLC d/b/a NBC News, The Associated Press, and The Center for Investigative Reporting d/b/a Reveal, and Defendant the U.S. Small Business Administration, submit their proposed briefing schedules.

Plaintiffs' Proposal

The Coronavirus Aid, Relief, and Economic Security ("CARES") Act, passed in March 2020, represents the largest financial stimulus package in American history. Its centerpiece is the Paycheck Protection Program ("PPP"), through which the federal government provides funds to businesses that may be struggling through this period of economic disruption. These funds are provided as loans, but Defendant, which administers the PPP, has pledged to forgive them if the recipients use the money for certain expenses if they adhere to the statutory requirements. To date, Defendant has guaranteed more than half a trillion dollars through the PPP and more than \$100 billion through its Economic Injury Disaster Loan ("EIDL") program.

As the D.C. Circuit has held, “there is a special need for public scrutiny of agency action that distributes extensive amounts of public funds in the form of subsidies and other financial benefits.” *Multi AG Media LLC v. Dep’t of Agric.*, 515 F.3d 1224, 1232 (D.C. Cir. 2008). That is why Plaintiffs filed the Freedom of Information Act (“FOIA”) requests at issue in this lawsuit, which seek basic information about the recipients of this historically “extensive” payout of taxpayer funds. It is also why Plaintiffs respectfully urge the Court to set a briefing schedule to allow for production of these records before the November 2020 general election, so that voters will be able to consider the information released when they cast their ballot for or against the members of Congress who passed the CARES Act and the President who signed it into law and whose Administration has managed the PPP and EIDL programs thus far.

The Defendant’s Proposal below seeks to set the timeline for the resolution of this litigation and the release of public records back even further by starting with a proposed July 17 deadline – three weeks from now – to “issue a final response to all of the FOIA requests described in the Complaint.” That starting point is entirely inappropriate. Defendant already has issued what it purports to be final responses under the FOIA statute, in which Congress provided agencies 20 working days to respond to FOIA requests absent “unusual circumstances” not applicable here. 5 U.S.C. § 552(a)(6). *See, e.g.*, Am. Compl., Ex. 26 (ECF 5-26) (Defendant’s response letter to Associated Press request SBA-2020-000594) and Ex. 25 (ECF 5-25) (Defendant’s description of that letter as a “final disposition”), attached as Plaintiffs’ Exhibits A and B, respectively, to this Proposed Briefing Schedule. The appropriate starting point for this schedule, therefore, is the Defendant’s actual production of records, submission of a Vaughn index, and filing of its motion for summary judgment as to any records it seeks to withhold.

Plaintiffs accordingly propose the following deadlines for production of responsive

records and summary judgment briefing as to any such records that Defendant seeks to withhold:

- **July 13, 2020:** Defendant's production of responsive records and motion for summary judgment as to any responsive records it seeks to withhold;
- **August 3, 2020:** Plaintiffs' cross-motion for summary judgment and opposition to Defendant's motion;
- **August 17, 2020:** Defendant's opposition to Plaintiffs' cross-motion and reply in support of its motion; and
- **August 24, 2020:** Plaintiffs' reply in support of their cross-motion.

Defendant's Proposal

SBA proposes the following schedule:

- On or before **July 17, 2020**, the SBA shall issue a final response to all of the FOIA requests described in the Complaint, listed below by tracking number, and produce any responsive non-exempt records:
 - The Washington Post (SBA-2020-000946, SBA-2020-000947)
 - Bloomberg News (SBA-2020-000555, SBA-2020-000557, SBA-2020-000622, SBA-2020-000620, SBA-2020-000910, SBA-2020-000911, SBA-2020-000995, SBA-2020-001018, SBA-2020-0001019)
 - Dow Jones (SBA-2020-000580, SBA-2020-000666, SBA-2020-000950, SBA-2020-001060, SBA-2020-001071, SBA-2020-001072, SBA-2020-001088)
 - ProPublica (SBA-2020-000914, SBA-2020-001043)
 - The New York Times (SBA-2020-00982)
 - ACBJ (SBA-2020-000628, SBA-2020-000630)
 - ABC News (SBA-2020-000586)
 - CNN (SBA-2020-000626)
 - Associated Press (SBA-2020-000594, SBA-2020-000882)
 - NBC News (SBA-2020-000658, SBA-2020-000660, SBA-2020-001029)
 - Reveal (SBA-2020-000828, SBA-2020-000830)
- No more than seven (7) days after the SBA issues its final response, Plaintiffs

shall inform the SBA of the scope of its challenges to the search and/or any withholdings.

SBA further proposes the following schedule for summary judgment briefing, as needed, on the propriety of any withholdings:

- **August 17, 2020:** SBA's motion for summary judgment
- **September 8, 2020:** Plaintiffs' cross-motion and opposition
- **September 22, 2020:** SBA's opposition and reply
- **September 29, 2020:** Plaintiffs' reply

SBA stated in its response to the Plaintiffs' FOIA requests that SBA was providing statistical information on the Paycheck Protection Program (PPP) loans and Economic Injury Disaster Loans (EIDL), and SBA directed each requester to SBA's website, which in turn states: "In the near future, we will be able to turn our efforts to providing loan-specific data to the public, but hope that all understand the need for the Agency to focus its efforts on fulfilling the urgent needs of small businesses." SBA, *FOIA—Frequently requested records*, <https://www.sba.gov/about-sba/open-government/foia> (last visited June 26, 2020). SBA is now turning its efforts to the release of records regarding specific borrowers, and now intends to release information in the next two weeks. SBA's proposed schedule provides an orderly timetable for that information to be released and for the parties to then assess the scope of the dispute, if any, before briefing. Plaintiffs' proposed schedule, by contrast, would not provide sufficient time for that assessment and therefore could result in a waste of party and court resources.

Dated: June 29, 2020

Respectfully submitted,

BALLARD SPAHR LLP

/s/ Charles D. Tobin

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Counsel for Defendant

Plaintiffs' Ex. A



U.S. SMALL BUSINESS ADMINISTRATION
WASHINGTON, DC 20416

OFFICE OF CAPITAL ACCESS

April 20, 2020

Reese Dunklin
4851 LBJ Freeway, Suite 300
Dallas, TX 75244
reesedunklin@yahoo.com

Re: SBA-2020-000594 Request Response

Dear Reese Dunklin,

This letter is in response to your Freedom of Information Act ("FOIA") request No. SBA-2020-000594 in which you have requested the following:

“to request the database that SBA maintains for all loans approved and declined under the Paycheck Protection Program from the start of the program to the date of this request's filing.”

The Small Business Administration ("Agency") is providing statistical information on the Paycheck Protection Program ("PPP") loans and Economic Injury Disaster Loans ("EIDL") in an effort to keep the public informed of the assistance and actions both it and the thousands of lenders across the country are taking at this difficult time. At this time, the Agency is focusing its efforts on assisting small businesses during this unprecedented disruption to the economy due to the coronavirus ("COVID-19") outbreak. The Agency recognizes the need to balance the interests of transparency with the privacy and confidentiality issues release of loan information raises. In the future, we will be able to turn our efforts to providing loan specific data to the public but hope that all understand the need for the Agency to focus its efforts fulfilling the needs of the small businesses. This information will be added to the SBA.gov website as it becomes available.

The statistical information can be found at:

<https://www.sba.gov/about-sba/open-government/foia#section-header-32>. Please select "COVID-19 Information" located under Frequently requested records to obtain the data that is currently available.

SBA does not maintain a database of declined loans, only loan approvals.

Reese Dunklin
Page 2

If you are dissatisfied with the Agency's decision, you may file an administrative appeal within 90 days of the date of this letter to:

Office of Hearings and Appeals
Attention: Delorice Ford, FOIA Officer
409 3rd Avenue, SW – 8th Floor
Washington, DC 20416

If you are unable to resolve your FOIA dispute through our FOIA Public Liaison in the Office of Hearings and Appeals, the Office of Government Information Services ("OGIS"), the Federal FOIA Ombudsman's office, offers mediation services to help resolve disputes between FOIA requesters and Federal agencies. The contact information for OGIS is:

Office of Government Information Services
National Archives and Records Administration
8601 Adelphi Road--OGIS
College Park, MD 20740-6001
ogis@nara.gov
ogis.archives.gov
202-741-5770
877-684-6448

Sincerely,



William Briggs
Deputy Associate Administrator
Office of Capital Access
Small Business Administration

Plaintiffs' Ex. B

SBA-2020-000594 Request Details



Correspondence

Subject	From	Date	Detail
FOIA Request SBA-2020-000594 Submitted	System	04/13/2020	—
<p>This message is to confirm your request submission to the FOIAonline application: View Request . Request information is as follows: Tracking Number: SBA-2020-000594 Requester Name: Reese Dunklin Date Submitted: 04/13/2020 Request Status: Submitted Description: I am a reporter at the Associated Press. I'm writing to request the database that SBA maintains for all loans approved and declined under the Paycheck Protection Program from the start of the program to the date of this request's filing. SBA publicly releases data under two programs (7a and 504) also administered by the same agency office. For the purposes of this request for Paycheck Protection Program data, I request the same fields of information that SBA releases for 7a and 504. Those fields are: AsOfDate Program BorrName BorrStreet BorrCity BorrState BorrZip BankName BankStreet BankCity BankState BankZip GrossApproval SBAGuaranteedApproval ApprovalDate ApprovalFiscalYear FirstDisbursementDate DeliveryMethod subpgmdesc InitialInterestRate TermInMonths NaicsCode NaicsDescription FranchiseCode FranchiseName ProjectCounty ProjectState SBADistrictOffice CongressionalDistrict BusinessType LoanStatus PaidInFullDate ChargeOffDate GrossChargeOffAmount RevolverStatus JobsSupported I would like to get this information in a CSV file, sent by email to me or made available for download through a file-sharing site. I have separately requested the data dictionary for this database, but this request be fulfilled first, I ask that you provide the data dictionary with this data. If you have any questions for me regarding this request, please call 214 577 9124 or email rdunklin@ap.org.</p>			
FOIA Expedited Processing Disposition Reached for SBA-2020-000594	System	04/20/2020	—
<p>Your request for Expedited Processing for the FOIA request SBA-2020-000594 has been denied. Additional details for this request are as follows: Request Created on: 04/13/2020 Request Description: I am a reporter at the Associated Press. I'm writing to request the database that SBA maintains for all loans approved and declined under the Paycheck Protection Program from the start of the program to the date of this request's filing. SBA publicly releases data under two programs (7a and 504) also administered by the same agency office. For the purposes of this request for Paycheck Protection Program data, I request the same fields of information that SBA releases for 7a and 504. Those fields are: AsOfDate Program BorrName BorrStreet BorrCity BorrState BorrZip BankName BankStreet BankCity BankState BankZip GrossApproval SBAGuaranteedApproval ApprovalDate ApprovalFiscalYear FirstDisbursementDate DeliveryMethod subpgmdesc InitialInterestRate TermInMonths NaicsCode NaicsDescription FranchiseCode FranchiseName ProjectCounty ProjectState SBADistrictOffice CongressionalDistrict BusinessType LoanStatus PaidInFullDate ChargeOffDate GrossChargeOffAmount RevolverStatus JobsSupported I would like to get this information in a CSV file, sent by email to me or made available for download through a file-sharing site. I have separately requested the data dictionary for this database, but this request be fulfilled first, I ask that you provide the data dictionary with this data. If you have any questions for me regarding this request, please call 214 577 9124 or email rdunklin@ap.org. Expedited Processing Original Justification: PPP loans are new and receiving money as part of the covid-19 stimulus packages. This program will become a matter of public policy and oversight. Expedited Processing Disposition Reason: Moot; responded timely.</p>			
FOIA Fee Waiver Disposition Reached for SBA-2020-000594	System	04/20/2020	—
<p>Your request for Fee Waiver for the FOIA request SBA-2020-000594 has been determined to be not applicable as the request is not billable. Additional details for this request are as follows: Request Created on: 04/13/2020 Request Description: I am a reporter at the Associated Press. I'm writing to request the database that SBA maintains for all loans approved and declined under the Paycheck Protection Program from the start of the program to the date of this request's filing. SBA publicly releases data under two programs (7a and 504) also administered by the same agency office. For the purposes of this request for Paycheck Protection Program data, I request the same fields of information that SBA releases for 7a and 504. Those fields are: AsOfDate Program BorrName BorrStreet BorrCity BorrState BorrZip BankName BankStreet BankCity BankState BankZip GrossApproval SBAGuaranteedApproval ApprovalDate ApprovalFiscalYear FirstDisbursementDate DeliveryMethod subpgmdesc InitialInterestRate TermInMonths NaicsCode NaicsDescription FranchiseCode FranchiseName ProjectCounty ProjectState SBADistrictOffice CongressionalDistrict BusinessType LoanStatus PaidInFullDate ChargeOffDate GrossChargeOffAmount RevolverStatus JobsSupported I would like to get this information in a CSV file, sent by email to me or made available for download through a file-sharing site. I have separately requested the data dictionary for this database, but this request be fulfilled first, I ask that you provide the data dictionary with this data. If you have any questions for me regarding this request, please call 214 577 9124 or email rdunklin@ap.org. Fee Waiver Original Justification: 1.) PPP loans are new and receiving money as part of the covid-19 stimulus packages, and that money will become a matter of public policy and oversight. 2.) Any reporting done from the data will inform the public and contribute to its understanding of how the agency fulfilled its mission, helped properly steward the public's money. 3.) I am not reselling this information, and my news outlet is a non-profit organization. Fee Waiver Disposition Reason: N/A</p>			
Final Disposition, Request SBA-2020-000594	Niya B Attucks	04/20/2020	—
<p>SBA-2020-000594 has been processed with the following final disposition: Full Grant. FINAL FOIA Response SBA-2020-000594.pdf Reply</p>			