



Exemption 7(A). In addition, during the hearing Mr. Cuban's counsel proposed that, because the SEC has repeatedly emphasized that it is unable to comply with its FOIA obligations because of an enormous backlog of FOIA requests yet to be processed, and because the SEC has already requested and received payment for FOIA processing and has signaled that it would do so again in the future, Mr. Cuban might be able to make additional payments in order to expedite the SEC's extremely delayed processing of his December 2008 FOIA requests. The Court set a briefing schedule under which the SEC was given more than one month to fully respond to Mr. Cuban's proposal, and Mr. Cuban was permitted to submit a reply. The Court's schedule did not allow the SEC to file a sur-reply or supplemental briefing on the issue.

The SEC filed its response to Mr. Cuban's proposal on December 1, 2010. Fewer than two pages of the SEC's brief was dedicated to a discussion of Mr. Cuban's proposal. Also in its response, the SEC stated that there had been no material intervening change in the facts underlying its Exemption 7(A) claim since the filing of the original summary judgment briefs. Yet, even though the matter had been fully briefed and there had been no change in the facts, the SEC proceeded for nearly five pages to re-brief the issue and to provide new case citations in support of its Exemption 7(A) argument.

Now the SEC seeks leave to file yet another submission that constitutes the *third* status report filed in roughly two months, and in effect the SEC's *fourth* substantive brief addressing the applicability of Exemption 7(A), even though the SEC acknowledges that there has been no material change in the facts underlying that issue.

Mr. Cuban respectfully submits that enough is enough. Surely the status of this matter has been sufficiently reported and the Exemption 7(A) issue has been fully briefed. The Court should deny the SEC leave to file yet another supplemental reply in a seemingly ceaseless torrent of submissions and decide all outstanding issues on the extensive briefing that is already part of the record.

In the alternative, if the Court does allow the SEC to file its proposed supplemental report, which contains new arguments as well as new spins on arguments already made, Mr. Cuban respectfully requests that the Court permit him an opportunity to submit a brief response. In particular, with respect to the SEC's rejection of Mr. Cuban's proposal, Mr. Cuban wishes to reply to the SEC's new argument that was not made in its previous status report (although the Court ordered it then to submit a full response to Mr. Cuban's offer) that the offer is somehow *not consistent* with the D.C. Circuit's opinion in *Open America v. Watergate Special Prosecution Force*, 547 F.2d 605 (D.C. Cir. 1976). In addition, with respect to the SEC's evolving arguments for the application of Exemption 7(A), Mr. Cuban wishes to very briefly respond (in no more than one page of text) to the SEC's latest overreaching effort.

While the Court should not be burdened by endless briefing, it is only fair that if the SEC presents new and newly repackaged arguments, Mr. Cuban be allowed a meaningful opportunity to concisely respond. Mr. Cuban is prepared to submit a brief reply within one business day of the issuance by the Court of any Order permitting the submission of such a reply.

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Respectfully submitted,

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