

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

_____)	
MARK CUBAN,)	
)	
Plaintiff,)	
)	
v.)	Case: 1:09-cv-00996 RBW
)	Assigned: Walton, Reggie B.
SECURITIES AND EXCHANGE)	Description: FOIA/Privacy Act
COMMISSION,)	
)	
Defendant.)	
_____)	

STATUS REPORT PURSUANT TO COURT ORDER OF DECEMBER 8, 2011

Defendant, the Securities and Exchange Commission (“SEC” or “Commission”), is filing this status report to comply with this Court’s Order of December 8, 2011 requesting a report regarding the SEC’s processing of potentially responsive documents remaining in this case in the Commission’s Freedom of Information Act (“FOIA”) First-In-First-Out (“FIFO”) track. This report provides an update on the SEC’s work in processing responsive documents in its FIFO track.

I. Status of Review of Documents in FIFO Track

Since its last status report, the SEC has continued to diligently process the requests in its FIFO track. In its December 2010 status report (Dk. 37, par. II), the Commission stated that it hoped to begin reviewing documents responsive to Mr. Cuban’s request in September 2011, but that it would likely need additional time if it could not secure funding to hire contractors to review and process documents in its FOIA FIFO track. (*Id.*) Since December 2010, the Commission, like most of the federal government, has been operating under budget constraints, and the

Commission's FOIA Office was not able to hire contractors for its FIFO track processing.

Nonetheless, using its current staff, the FOIA Office staff has made consistent progress in processing documents in its FIFO queue. In January 2010, Mr. Cuban's pending request was the 25th request in the FIFO queue, and some of the requests ahead of his were for hundreds of boxes of documents. (Winter Decl. ¶ 154, Dk.10, Attach. 1). Many of those requests also included third-party requests for confidential treatment as does the Plaintiff's matter. (*Id.* at ¶155). Currently, Mr. Cuban's request is the 3rd request in the FIFO queue.¹ The Commission's FOIA Office anticipates that it will start processing Plaintiff's request by October 2012.

This timing is consistent with the timing approved in another recent FOIA case involving the SEC. *See National Security Archive v. United States Securities and Exchange Commission*, 2011 U.S. Dist. LEXIS 24880 (D.D.C. Mar. 11, 2011) (Leon J.), attached hereto as Exhibit A). In *National Security Archive*, the plaintiff's FOIA request was four places ahead of Mr. Cuban's request in the FIFO queue. In that case, the SEC requested that the court stay proceedings until March 2012, when the SEC anticipated that it would start processing the plaintiff's FOIA request. On March 11, 2011, that court granted the SEC's request, stating that the SEC "satisfied the requirements for an *Open America* stay." *Id.* at *8. In granting the SEC's motion, the court noted that the Commission acted with "due diligence" in responding to a recent "deluge" of new FOIA requests and, furthermore, demonstrated "reasonable progress" in addressing its FOIA backlog. *Id.* at * 6-7. The Commission's FOIA Office is now reviewing the documents at issue in that litigation which were in the FIFO track.

¹ The requests in the FIFO queue do not include the requests that are currently being processed. Currently, 3 requests are being processed, and the FOIA Office anticipates that one of those will soon be complete.

Respectfully submitted,

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