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## **OPERATING BULLETIN NO. 39**

### **Subject: Disclosure of Information**

#### **Table of Contents**

##### General Provisions

- 1.0 Policy Statement
- 2.0 Definitions

##### Records not Subject to Policy

- 3.0 Records not Covered

##### Procedure for Request

- 4.0 Request for Records of the Bank
- 5.0 Appeal Procedure
- 6.0 Fee Waiver

##### Disclosure of Records

- 7.0 Records Subject to Disclosure
- 8.0 Records not Subject to Disclosure
- 9.0 Reasonably Segregable Portions of a Record
- 10.0 Bank's Discretion to Disclose Exempt Records
- 11.0 Employee Disclosure of Records

##### Disclosure of Contract Information

- 12.0 Disclosure of Contract Information

##### Service of Subpoena

- 13.0 Service on Bank
- 14.0 Service on Board
- 15.0 Effect on Previous Bulletin

##### APPENDIX

- 16.0 Fee Schedule

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## **GENERAL PROVISIONS**

### **1.0 Policy Statement**

The Freedom of Information Act (5 U.S.C. § 552) ("Act") requires that agencies of the Federal government make their records available to the public, unless the records are specifically exempted by one or more provisions in the Act.

The Federal Reserve Bank of New York is not an "agency" as that term is defined in the Act and is, therefore, not subject to its provisions. The Bank is a private corporation, whose stock is owned by the member banks within its district. The management of the Bank's business and day-to-day activities is exercised by the Bank's officers and directors. None of the Bank's directors or employees are government officials or employees. Its employees are not within the Federal Civil Service laws. Moreover, the Bank receives no appropriated funds from the Federal government.

However, the Bank has committed to comply with the spirit of the Act. Accordingly, this policy provides for disclosure of Bank information, including, in certain instances, information which would be exempt from disclosure under the Act were the Bank subject to it, when such disclosure does not adversely affect some legitimate public or private interest intended to be protected by law, does not violate other applicable law, and will not impair the effectiveness of the Bank or the Federal Reserve System in the performance of their respective responsibilities.

Nothing contained in this policy is intended to affect the informational services that are routinely provided by the Bank.

## **2.0 Definitions**

2.1 "Bank" means the Federal Reserve Bank of New York, its branches and offices.

2.2 "Board" means the Board of Governors of the Federal Reserve System.

2.3 The word "day" means a business day for the Bank.

2.4 "FOMC" means the Federal Open Market Committee of the Board.

2.5 "Records of the Bank" means rules, written opinions, memoranda, letters, reports, accounts, and other papers or documents, including any such materials stored on microfiche or on a database, that constitute part of the Bank's official files.

Excluded from "Records of the Bank" are: handwritten notes; personal files of employees; intellectual property; documents not in existence or not in the Bank's possession or control (e.g. Records of the Board, defined in Section 3.4, are not under the control of the Bank); documents which have been disposed of in accordance with law or established Bank procedure; and documents of Federal or state agencies.

2.6 "Search" means a search of the Bank's official files which seem reasonably likely to contain documents of the kind requested.

2.7 "Search" does not include research or any other activity which creates rather than retrieves existing documents.

2.8 "Senior officer" means the President, First Vice President, any Executive Vice President, or any Senior Vice President.

[Back to Table of Contents](#)

[Return to Operating Bulletins Listing](#)

[Return to @theBank Home Page](#)

---

## **RECORDS NOT SUBJECT TO POLICY**

### **3.0 Records Not Covered**

This policy does not apply to:

3.1 Personnel Records. Requests for access to or disclosure of personnel records, i.e., records maintained by the Bank about its current and former employees and applicants for employment ([1 endnote](#)).

3.2 Records as Fiscal Agent of the United States. Records maintained by the Bank in its capacity as fiscal agent of the United States.

3.3 Records of Certain Entities. Records of the Federal Open Market Committee (including economic studies/ reports prepared for the use of the Bank's President at FOMC meetings), the United States, the Treasury Department, a federal or state agency, or any entity for which the Bank acts as fiscal agent (e.g. international development banks, Sallie Mae, etc.).

3.4 Records of the Board. Records of the Board include applications, rules, statements, opinions, orders, memoranda, letters, reports, accounts, and other written material, as well as magnetic tapes, computer printouts of information obtained through use of existing computer programs, maps, photographs, and other materials in nonwritten or machine-readable form that are under the control of the Board, that contain information of the Board, and that (i) constitute part of the Board's official files, or (ii) are maintained for administrative reasons in the regular course of business in official files, or (iii) are maintained for administrative reasons in the regular course of business in official files in any division or office of the Board or any Federal Reserve Bank in connection with the transaction of any official business.[\(2 endnote\)](#)

## ENDNOTES

1. In addition, note that the Privacy Act (5 U.S.C. § 552a) generally prohibits Government agencies from disclosing information about individuals contained in systems of records absent permission of those individuals. It is the Bank's policy to withhold information of the kind that Government agencies may not disclose under the Privacy Act.

[Return to Document](#)

2. Requests for confidential records of the Board generally must comply with Subpart B of the Board's Rules Regarding Availability of Information. 12 C.F.R. § 261.5 et seq. Non-FOIA requests for confidential supervisory information of the Board should comply with Subpart C of the Board's Rules Regarding Availability of Information. 12 C.F.R. § 261.11 et seq. Unauthorized disclosure of Board confidential information may subject the person disclosing such information to federal criminal penalties. 18 U.S.C. §§ 641, 1906.

[Return to Document](#)

[Back to Table of Contents](#)

[Return to Operating Bulletins Listing](#)

[Return to @theBank Home Page](#)

---

## PROCEDURE FOR REQUEST

### 4.0 Request for Records of the Bank

4.1 Request Must Be in Writing. Any request for Records of the Bank shall be submitted in writing to the Bank's Secretary. The Bank may, in its discretion, honor an oral or telephone request, but if the requester is dissatisfied with the Bank's response and wishes to appeal, the requester must submit a written request which shall be treated as an initial request.

#### 4.2 Form of Request

Each request must contain the following:

4.2.1 The name and address of the person filing the request, and a telephone number at which the requester can be reached during business hours;

4.2.2 A sufficient description of the records requested so that Bank staff can identify and locate the records without undue difficulty;

4.2.3 The name of any pending litigation to which the request relates, and the court and its location; and,

4.2.4 The agreement of the requester to pay the Bank for any fees owed in accordance with the Fee Schedule contained in the Appendix, or a request for waiver of such fees (see Section 6).

4.3 Advance Payment of Fees. The Bank may request that any fees be paid in advance as a condition to further processing of the request.

4.4 Improper Request. Any request which does not comply with the requirements of Section 4.2 need not be handled by the Bank. The Bank will advise the requester if the Bank determines that the request is improper.

4.5 Request for Certain Records Not Covered by Policy. If a person requests a record described in Sections 3.2-3.4, the Bank may, in its sole discretion, either handle the request itself, forward the request to the proper party, or return the request to the requester. If the Bank elects to forward the request to another party, the Bank promptly will so advise the requester.

The Bank will not release information/documents of any party for which it serves as agent unless the principal has expressly authorized the disclosure.

4.6 Determination. Within ten (10) days after receiving a request, the Bank's Secretary, after consulting with other appropriate persons, shall determine whether the information requested will be disclosed. The requester will be promptly notified in writing of the decision. If the request is denied, in whole or in part, the requester shall be advised of the Bank's appeal procedure.

4.7 Time Extension. The Bank's Secretary may extend the time for responding to any request, but the requester shall be notified in writing of any extension and the reason for the same.

4.8 Media Inquiries. In responding to any media inquiry for information or records, Bank employees should adhere to the Bank's current media contact policy, as contained in Operating Bulletin No. 28.

## **5.0 Appeal Procedure**

Any person whose request for information is denied, in whole or in part, may file an appeal with the Bank's Secretary. Any request for review of a denial must be in writing and must be sent by the requester within ten (10) days after receipt of notification by the Bank's Secretary of the denial. The President of the Bank, or such senior officer as the President may designate, shall make a determination with respect to the appeal within twenty (20) days after the appeal is received. The appealing party shall be notified of the Bank's decision. The determination of the President or his delegee is final.

## **6.0 Fee Waiver**

6.1 Fee Waiver. The Bank, in its discretion, may grant a fee waiver if it determines that the disclosure of the requested information is in the public interest because it contributes significantly to public understanding of the operations or activities of the Bank, and the disclosure is not in the commercial interest of the requester.

6.2 Form of Request for Fee Waiver

A request for a fee waiver must include the following:

6.2.1 A clear statement of the requester's interest in the requested document, and the basis for the requester's claim that a waiver of the fee is appropriate;

6.2.2 The use proposed for the document(s) and whether the requester will derive a benefit, monetary or otherwise, from such use;

6.2.3 A statement of how the public will benefit from the information; and,

6.2.4 If specialized use of the information requested is contemplated, a statement of the requester's relevant qualifications which would justify specialized use.

### 6.3 Minimum Fees Waived

Fees that total less than five dollars (\$5.00) will be automatically waived.

[Back to Table of Contents](#)

[Return to Operating Bulletins Listing](#)

[Return to @theBank Home Page](#)

---

## DISCLOSURE OF RECORDS

### 7.0 Records Subject to Disclosure

7.1 Unless otherwise exempt, information which falls into one of the following classifications will be disclosed upon request:

7.1.1 Information which describes the Bank's organization and the manner in which the public can obtain information, make submittals or requests, and obtain decisions including:

- a. descriptions of the Bank's operations;
- b. procedures and any forms generally available to the public or depository institutions; and,
- c. substantive rules and policy statements adopted by the Bank including any amendments or revisions thereto.

7.1.2 Opinions and orders published by the Bank, policy statements adopted by the Bank, and administrative staff manuals and instructions that affect a member of the public in dealing with the Bank.

7.1.3 Pursuant to the Board's Rules Regarding Availability of Information (12 C.F.R. Part 261), the public portion of applications filed under the Bank Holding Company Act, of notices filed under the Change in Bank Control Act and of other reports filed in connection with the Bank's supervision of depository institutions.

A request for any of the foregoing need not be directed to the Bank's Secretary and may be made to the Public Information Function.

7.2 Notwithstanding anything to the contrary, the Bank may decline to make information available if disclosure would interfere with the Bank's performance of its responsibilities as mandated by statute or regulation.

### 8.0 Records Not Subject to Disclosure

The Bank may, in its sole discretion, decline to make available records concerning matters which are:

8.1 Specifically authorized by an Executive Order to be kept secret in the interest of national defense or foreign policy;

8.2 Specifically exempted from disclosure by statute or regulation of the Board;

8.3 Trade secrets and privileged or confidential commercial or financial information obtained from a person or organization;

8.4 Inter-department or intra-department memoranda, notes or letters consisting of analysis, opinions or recommendations;

8.5 Related to the security procedures of this Bank;

8.6 Personnel and medical files and similar files or information the disclosure of which would constitute a clearly unwarranted invasion of personal privacy;

8.7 Privileged and confidential attorney work product and attorney-client communications;

8.8 Related to specific extensions of credit made by the Bank;

8.9 Contained in statements of account or which reflect entries made to any account maintained at the Bank;

8.10 Data, formulas or other information used by the Bank in determining the prices to be charged for Federal Reserve services;

8.11 Investigatory records compiled for law enforcement or security purposes; and,

8.12 Minutes of meetings of the Bank's Management Committee and the Bank's Board of Directors (and its committees).

## **9.0 Reasonably Segregable Portions of a Record**

Any reasonably segregable portion of a record or item of information not otherwise exempt under Section 8 shall be provided to any person after deletion of portions which are not meant to be disclosed. The term "reasonably segregable portion" means any portion of the record which is not exempt from disclosure and which after deletion of the exempt material still conveys meaningful information which is not misleading.

## **10.0 Bank's Discretion to Disclose Exempt Records**

10.1 If the disclosure of the record is not prohibited by law, certain information which is exempt from disclosure may nonetheless be disclosed if the Bank's Secretary concludes that such action is consistent with the effective performance by the Bank of its statutory responsibilities, and if disclosure will not cause injury to a public or private interest intended to be protected by the exemption.

10.2 The fact that the Bank discloses otherwise exempt information in a specific instance shall not be construed as a waiver of the right to refuse to disclose similar information under the same or substantially similar circumstances in the future.

## **11.0 Employee Disclosure of Records**

Except as provided in Section 7 or in any other policy regarding disclosure of Records of the Bank, no employee of the Bank shall disclose or permit Records of the Bank to be disclosed to any person other than a Bank employee entitled to the information in the performance of his or her duties. This prohibition includes, but is not limited to: giving out or furnishing records or copies of records or allowing anyone to copy or inspect Bank records.

## DISCLOSURE OF CONTRACT INFORMATION

### 12.0 Disclosure of Contract Information

12.1 Upon the awarding of a contract, the Bank will disclose the following information to competing but unsuccessful offerors.

12.1.1 The name, address and bottom line offer amount of the successful offeror, the number of participants in the procurement, and, in general terms, the reason for rejection of the unsuccessful offer.

12.2 In certain instances, subject to the Bank's discretion, information (other than information exempt from disclosure for which the offeror has requested confidentiality) contained in the proposal of the successful offeror may be disclosed to unsuccessful offerors and others.

[Back to Table of Contents](#)

[Return to Operating Bulletins Listing](#)

[Return to @theBank Home Page](#)

---

## SERVICE OF SUBPOENA

### 13.0 Service on Bank

13.1 Service During Business Hours. Any process server who attempts to serve a subpoena on Bank premises must contact the Bank's Secretary (or the senior officer at the branch or offices). If the subpoena involves a suit or action being brought against the Bank, or against any Bank employee arising from the performance of his or her work, or if the subpoena requires the production of Bank records or other Bank information, including testimony by a Bank employee, the Bank's Secretary (or the senior officer at the branch or offices) may accept service of the subpoena. The Legal Department should be notified immediately thereafter. If the subpoena involves a Bank employee in an individual capacity, in a matter not connected with his or her work, the Bank's Secretary (or the senior officer at the branch or offices) should notify and make available the employee to receive process, but in a private area away from the employee's department. The Legal Department does not need to be notified in this instance.

13.2 Service After Hours. Any process server who attempts to serve process on Bank premises after customary business hours shall be asked to return to the Bank during customary business hours.

13.3 Service Through the Mail. Any service of process received through the mail should promptly be referred to the Legal Department.

### 14.0 Service on Board

14.1 Records of Board. A subpoena for Records of the Board must be served on the Board and should not be served on the Bank ([3 endnote](#)). Any attempt to subpoena Records of the Board by serving the Bank is ineffective. The Board's General Counsel should be notified promptly on the receipt of any subpoena seeking Records of the Board. 12 C.F.R.  261.14(a)(1).

### 15.0 Effect on Previous Bulletin

15.1 This Bulletin, together with its Appendix, supersedes Operating Bulletin No. 39, dated September 1, 1978.

## ENDNOTES

3. Service of a subpoena on the Board should comply with the Board's Rules Regarding Availability of Information. 12 C.F.R. § 261.3(c).

[Return to Document](#)

[Back to Table of Contents](#)

[Return to Operating Bulletins Listing](#)

[Return to @theBank Home Page](#)