



UNITED STATES
SECURITIES AND EXCHANGE COMMISSION
WASHINGTON, D.C. 20549

OFFICE OF THE
GENERAL COUNSEL

Stop 9613

September 6, 2022

Via electronic mail
conn.hindley@gmail.com

Mr. Connor Hindley
500 Lake Dillon Dr., Unit 1370
Dillon, CO 80435

Re: Appeal, Freedom of Information Act Request No. 22-02530-FOIA, designated on appeal as No. 22-00522-APPS

Dear Mr. Hindley:

This responds to your Freedom of Information Act (FOIA) appeal of the FOIA Office's response to your July 18, 2022 FOIA request for information concerning the "count or count estimation of shares of GameStop held by retail investors." You also submit the following questions pertaining to GameStop shares:

1. Has the sec performed an audit of common retail broker-dealers as to how many shares are held?
 - 1a. If the SEC has performed an audit – how many shares were held?
 - 1b. If the Sec has not performed an audit – why not?
2. Is the sec aware of any times when there were more shares in retail brokerage accounts than there should have been shares outstanding?
3. Has the sec been keeping a list of broker-dealers responsible for the transactions that have failed to deliver? Can this list be made public?

By letter dated August 17, 2022, the FOIA Office informed you that "your request does not satisfy the requirements for making a proper request" because it "improperly seeks to have the Commission conduct research and/or provide answers to interrogatories." The FOIA Office also informed you that "SEC fails to deliver data is publicly available on our website at the following link: <https://www.sec.gov/data/foiadocsfailsdatahtm>."

On August 17, 2022, you filed this appeal objecting to the FOIA Office's response. You state that you are "not looking for new research to be conducted from this request, but as an investor, [you] would appreciate at least knowing that the SEC has this information." You also question whether there is an "better avenue for pursuing this information" and offer that the "questions [you are] asking are not outlandish."

The Freedom of Information Act establishes a statutory scheme for the public to use in making requests for agency records.¹ But that scheme does not obligate agencies to conduct research on behalf of requesters or answer questions disguised as FOIA requests.²

In considering your appeal, I have determined that two parts of your request properly seek SEC records: (1) your request for a “count or count estimates of shares of GameStop held by retail investors;” and (2) your request for “a list of broker-dealers responsible for the transactions that have failed to deliver.” Based on searches conducted by various offices within the SEC, I have determined that there are no SEC records reflecting a “count or count estimates of shares of GameStop held by retail investors.” With regard to second part, although the SEC does not maintain a specific “list of broker-dealers responsible for the transactions that have failed to deliver,” the FOIA Office directed you to a link on the SEC’s website that contains information on fails to deliver in securities data (<https://www.sec.gov/data/foiadocsfailsdatahtm>).

I find that the remaining items of your request (identified as 1, 1a, 1b, and 2) do not satisfy the requirements for making a proper FOIA request. These items of your request do not seek SEC records, but improperly seek to have the SEC answer questions.³ Therefore, the FOIA Office properly determined that Items 1, 1a, 1b, and 2 of your request are not proper FOIA requests.

You have the right to seek judicial review by instituting an action in the United States District Court for the District of Columbia or in the district where you reside or have your principal place of business.⁴ Voluntary mediation services as a non-exclusive alternative to litigation are also available through the National Archives and Records Administration’s Office of Government Information Services (OGIS). For more information, please visit www.archives.gov/ogis or contact OGIS at ogis@nara.gov or 1-877-684-6448.

¹ See 5 U.S.C. § 552(a)(3)(A).

² See, e.g., *Satterlee v. IRS*, No. 05-3181, 2006 WL 3160963, at *3 (W.D. Mo. Oct. 30, 2006) (find that request was improper where it would require agency to “conduct legal research” and answer questions” disguised as ... FOIA request”); *Lamb v. IRS*, 871 F. Supp. 301, 304 (E.D. Mich. 1994) (finding requests outside scope of FOIA when they require legal research, are unspecific, or seek answers to interrogatories); *Trenerry v. Dep’t of the Treasury*, No. 92-5053, 1993 WL 26813, at *3 (10th Cir. Feb. 5, 1993) (holding that agency not required to provide personal services such as legal research); *Jean-Pierre v. Bureau of Prisons*, No. 12-78, 2012 WL 3065377, at *6 (D.D.C. July 30, 2012) (concluding that request for objective pieces of information, such as “who gave the order” and “on what day,” are not “cognizable under FOIA, because they ask questions calling for specific pieces of information rather than records”); *Patton v. U.S. Railroad Retirement Bd.*, No. ST-C-91-04, slip op. at 3 (W.D.N.C. Apr. 26, 1991) (stating that FOIA “provides a means for access to existing documents and is not a way to interrogate an agency”).

³ See, e.g., *Judicial Watch, Inc. v. Dep’t of State*, 177 F. Supp. 3d 450, 456 (D.D.C. 2016) (finding that “[a] question is not a request for records under FOIA and an agency has no duty to answer a question posed as a FOIA request.”), *aff’d* on other grounds, 681 F. App’x 2 (D.C. Cir. 2017); *Rodriguez-Cervantes v. HHS*, 853 F. Supp. 2d 114, 116-17 (D.D.C. 2012) (“As [plaintiff’s] letters merely pose questions . . . or ask for assistance in applying for Social Security benefits, they do not constitute valid FOIA requests.”).

⁴ 5 U.S.C. § 552(a)(4)(B).

If you have any questions concerning my determination, please contact Mark Tallarico, Senior Counsel, at 202-551-5132.

For the Commission
by delegated authority,

A handwritten signature in blue ink that reads "Melinda Hardy". The signature is written in a cursive, flowing style.

Melinda Hardy
Assistant General Counsel for
Litigation and Administrative Practice