

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

RANDY BENJENK,
1201 Q St. N.W.
Apt. 402
Washington, DC 20009

Plaintiff,

vs.

CONSUMER FINANCIAL
PROTECTION BUREAU,
1700 G Street, N.W.
Washington, DC 20220,

Defendant.

Civ. No. _____

COMPLAINT

1. Plaintiff Randy Benjenk (“Benjenk” or “Plaintiff”) brings this action against Defendant Consumer Financial Protection Bureau (“CFPB” or “Defendant”) under the Freedom of Information Act (“FOIA”), 5 U.S.C. § 552, to compel the production of agency records improperly withheld from Plaintiff.

JURISDICTION AND VENUE

2. This Court has jurisdiction over this action pursuant to 5 U.S.C. § 552(a)(4)(B) and 28 U.S.C. § 1331.

3. Venue is proper in this District pursuant to 5 U.S.C. § 552(a)(4)(B) and 28 U.S.C. § 1391(e).

PARTIES

4. Plaintiff is an individual residing in the District of Columbia.

5. Defendant is an agency of the United States government headquartered at 1700 G Street, N.W., Washington, DC 20220. Defendant has possession, custody, and control of the records to which Plaintiff seeks access.

STATEMENT OF FACTS

6. In February 2015, Defendant published a report entitled “Consumer Voices on Credit Reports and Scores” (the “Report”), which discusses Defendant’s findings from consumer focus groups on credit reports and credit scores. A copy of the Report is attached as Exhibit 1.

7. The Report claims that Defendant’s motivation for conducting the focus groups stems from its mandate under the Dodd-Frank Wall Street Reform and Consumer Protection Act, 12 U.S.C. § 5493(d)(1), to develop initiatives for consumer financial education. According to the Report, focus groups were conducted with 308 consumers during May and June, 2014 in Boston, St. Louis, Atlanta, and Seattle.

8. According to the Report, consumers participating in the focus groups were screened to represent an array of experience with the credit reporting system, but generally included consumers with significant experience with financial products. The Report also asserts that the consumers were demographically diverse.

9. The Report includes conclusions about consumers drawn by Defendant based on participants’ responses during the focus groups. For instance, the Report concludes that consumers: “expressed confusion, frustration, and uncertainty” about

their credit ratings; did not fully understand the impact of credit inquiries; had difficulty understanding information contained in their credit reports; did not use credit information in daily life; and expressed concerns about fraud and identity theft.

10. The Report also includes patterns about consumer credit-checking identified by the Defendant based on participants' responses during the focus groups. For example, the Report identifies consumers' motivations for checking their credit report and reasons why consumers do not check their credit report.

11. By email dated March 2, 2015, Plaintiff filed a FOIA request with Defendant seeking access to all documents and records relating to, or relied upon to prepare, the Report. A copy of Plaintiff's FOIA request is attached as Exhibit 2. Plaintiff's FOIA request was made at the request of a client.

12. By letter dated April 16, 2015, Defendant partially denied Plaintiff's FOIA request. Defendant released 187 pages of responsive records in full and 111 pages of responsive records in part, but withheld 1,196 pages of responsive records, claiming such withheld records were exempt from disclosure under FOIA Exemptions 4, 5, and 6 (5 U.S.C. §§ 552(b)(4)–(6)). A copy of Defendant's partial denial of Plaintiff's FOIA request is attached as Exhibit 3.

13. By letter dated May 6, 2015, Plaintiff timely appealed Defendant's partial denial of Plaintiff's FOIA request. Plaintiff's administrative appeal challenged Defendant's decision with respect to the following documents: (1) records of the process of, and parameters for, selecting focus group participants and focus group

locations; (2) focus group participants' responses; and (3) demographic data of focus group participants. A copy of this administrative appeal is attached as Exhibit 4.

14. By letter dated June 4, 2015, Defendant denied Plaintiff's May 6, 2015 administrative appeal. A copy of Defendant's denial of Plaintiff's administrative appeal is attached as Exhibit 5.

15. Defendant has failed to identify the documents withheld, establish any factual basis for their withholding, or establish that the documents contained no reasonably segregable factual information.

16. Defendant's reliance on Exemptions 4, 5, and 6 to justify its withholding of responsive documents has no basis in law or fact.

17. Because Defendant has denied Plaintiff's May 6, 2015 administrative appeal, Plaintiff has exhausted all administrative remedies with respect to his March 2, 2015 FOIA request pursuant to 5 U.S.C. § 552(a)(6)(A)(ii).

COUNT I
(Violation of FOIA, 5 U.S.C. § 552)

18. Plaintiff realleges paragraphs 1 through 17 as if fully stated herein.

19. Defendant is unlawfully withholding public records requested by Plaintiff pursuant to 5 U.S.C. § 552.

20. Plaintiff is being irreparably harmed by reason of Defendant's unlawful withholding of the requested public records, and Plaintiff will continue to be irreparably harmed unless Defendant is compelled to conform its conduct to the requirements of the law.

WHEREFORE, Plaintiff respectfully requests that the Court:

A. Order Defendant to produce, by a date certain, any and all non-exempt records responsive to Plaintiff's FOIA request, as narrowed by Plaintiff's administrative appeal, and a *Vaughn* index of any responsive records withheld under claim of exemption;

B. Enjoin Defendant from continuing to withhold any and all non-exempt records responsive to Plaintiff's FOIA request, as narrowed by Plaintiff's administrative appeal;

C. Grant Plaintiff an award of attorneys' fees and other litigation costs reasonably incurred in this action pursuant to 5 U.S.C. § 552(a)(4)(E); and

D. Grant Plaintiff other such relief as the Court deems just and proper.

July 14, 2015

Respectfully submitted,

/s/Benjamin C. Block
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Counsel for Plaintiff

Exhibit 1

Consumer voices on credit reports and scores



Consumer Financial
Protection Bureau

February 2015

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1. Introduction

An essential part of the mission of the Consumer Financial Protection Bureau (CFPB or Bureau) is to empower consumers to take control over their financial lives. Since 2011, the CFPB has worked to improve the financial literacy of consumers in the United States and to ensure access to tools and information they need to manage their finances.

The Bureau's principal financial literacy mandate is set forth in Section 1013(d)(1) of the Dodd-Frank Wall Street Reform and Consumer Protection Act, which mandated establishment of an Office of Financial Education to "be responsible for developing and implementing initiatives intended to educate and empower consumers to make better informed financial decisions." 12 U.S.C. § 5493(d)(1).

To better help consumers make well-informed financial decisions and achieve their financial goals, we at the CFPB have sought to increase our understanding of what consumers know and how they think about key financial topics. Listening to consumers informs how we design our financial education initiatives. And we share our insights with others who have a common interest in improving the field of financial capability and the financial well-being of consumers.

That's why we conducted a series of consumer focus groups around credit reports and credit scores.¹ We wanted to hear from consumers, in their own voices, what they know about credit reporting and how they feel and act related to their own credit reports and scores.

The focus groups yielded rich detail about consumers' experiences and what they know and think about credit reports and scores. From what we learned, financial educators can develop

¹ This work was conducted by Abt Associates under contract with the CFPB.

more effective approaches, tools, and information that a broad set of consumers will find helpful. This issue brief summarizes what we heard from consumers and discusses how these findings could shape financial education approaches for consumers.

2. Background on credit reports and scores

A consumer's credit report is a synthesis of the consumer's credit accounts, payment histories, accounts referred to collections, inquiries into a consumer's credit file and public financial records, like bankruptcies. The credit history documented in a consumer's credit report is collected by a consumer reporting agency. The three largest nationwide consumer reporting agencies are Equifax, Experian, and TransUnion.

Using information contained in credit reports, these agencies also produce credit scores—numbers that signify a consumer's relative likelihood of repaying a debt compared to other consumers.² Credit reports and scores are widely used by lenders to determine consumers' eligibility for credit and to set pricing for loans based on credit risk. Many companies have adopted the use of credit reports for other purposes, including eligibility determinations for homeowners and auto insurance, employment, and tenant screening.³

² Consumers do not have a single credit score, but rather multiple scores, depending on the particular credit bureau, the model used to calculate the score, and practices of the particular lender or other entity requesting the score. While the consumer reporting agencies can produce credit scores using their own scoring models, the most frequently used models used to produce the credit scores provided to lenders are licensed from Fair Isaac Corporation (FICO) and VantageScore.

³ Jeremy Bernerth, "Demographic Variables and Credit Scores: An empirical study of a controversial selection tool," *International Journal of Selection and Assessment* 20, no 2 (June 2012): 242-246; Deana Wilson and C. W. Von Bergen, "Credit Reports in Business: The Good, the Bad, and the Ugly," *Insights to a Changing World Journal* 4:1-16; Patrick L. Brockett, and Linda L. Golden, "Biological and Psychobehavioral Correlates of Credit Scores and Automobile Insurance Losses: Toward and Explication of Why Credit Scoring Works." *The Journal of Risk and Insurance*. 74, no. 1 (2007): 23-63.

Recognizing the far-reaching effects of consumers' credit histories on their lives, the Fair Credit Reporting Act (FCRA) grants consumers free access once each year to their credit report from each major credit bureau. Except in certain limited circumstances, consumers do not have a right to free credit scores.⁴

Credit reports can be valuable sources of information for consumers. A consumer with an accurate perception of his or her credit standing may be better equipped to shop for favorable credit terms. Also, consumers who view their credit reports can identify potential errors in a credit file and obtain corrections, which may improve their credit standing. And consumers who check their credit reports have access to information that may help them focus on and improve how they assume and manage their credit obligations; this in turn can also help them improve their credit standing.

Although there are benefits to checking one's credit report, many consumers do not take advantage of free annual credit reports. The Bureau has estimated that 15.9 million credit-active adults receive a free credit report from one or more of the three largest national credit bureaus through AnnualCreditReport.com⁵ each year, which means that roughly 90 percent of the eligible population does not take advantage of this free benefit in a given year. The Bureau has reported that approximately 26 million consumers buy or receive credit reports from commercial credit monitoring services.⁶

The Bureau encourages consumers to check their credit reports regularly, for free. We are interested in how to make that message more effective. Through focus groups, we listened to consumers describe their motivations for accessing or not accessing their credit reports or scores. We heard about the extent to which consumers feel their reports are relevant to their lives and whether they feel capable of affecting them.⁷

⁴ Pub. L. 108-159.

⁵ AnnualCreditReport.com is the only source for free credit reports authorized under Federal law.

⁶ Consumer Financial Protection Bureau, Key Dimensions and Processes in the U.S. Credit Reporting System: A Review of How the Nation's Largest Credit Bureaus Manage Consumer Data, December 2012.

⁷ Vanessa G. Perry and Marlene Morris, "Who is in Control?: The role of self-perception, knowledge, and income in explaining consumer behavior," *Journal of Consumer Affairs* 39, no. 2 (2005): 299–313.

3. About the focus group approach

Focus groups are a valuable way to understand the common opinions, beliefs, and values that participants hold, as well as how wide their experiences may range. Focus groups are not intended to give us statistically significant data that can be generalized to all consumers. However, this method can give us rich qualitative information about what many consumers think and feel.

In May and June 2014, we conducted a series of focus groups with a total of 308 consumers in Boston, St. Louis, Atlanta, and Seattle.

The consumers were selected to represent a variety of experiences with credit reports and scores, and with financial decisions in general. Though the participants represented a demographically diverse group, they are not statistically representative of the overall population.

Because we also screened for people who had a significant experience with financial products and decisions, the consumers we talked to were generally more likely to be credit-active and have more experience with and knowledge of the credit reporting system than the general population. Thus, these focus groups give us insight into the views of certain types of consumers but should not be seen as representing the thoughts or experiences of all consumers. The findings give us insights into areas of particular confusion for some consumers that could be addressed through financial education.

In summary, the information we have gathered through these focus groups is intended to inform financial education efforts, and not to give us a full picture of consumer interactions with the credit reporting agencies or credit histories. The findings below should be read with that focus in mind.

4. What we heard from consumers

The consumers we talked to were generally very aware of and interested in their credit histories. Most of these consumers were aware of the advice to check their credit report or scores periodically. Many said they were aware that good credit histories were important for better interest rates on loans, to rent an apartment, for better insurance rates,⁸ or (sometimes) to get a job.

4.1 Some consumers were confused about what credit reports and scores are

The consumers in our focus groups expressed confusion, frustration, and uncertainty related to their credit reports and scores. Many of these consumers:

- Found it difficult to disentangle credit reports and credit scores.
- Said they knew about the three largest nationwide credit reporting agencies, but were hard-pressed to name all three.
- Were puzzled when they encountered differences in information across their various reports.

⁸ State law varies, and in some states the use of credit scores in determining insurance rates is not allowed.

- Thought they knew what raises or lowers credit scores, but still felt that their scores were not completely within their control.
- Said they understood that multiple scores exist, but seemed unclear about which ones lenders use or how.

4.2 Consumers described the process of obtaining credit reports and scores

Most consumers who sought to obtain their credit reports or scores did so online. Many found the process confusing, particularly selecting among the many sites that offer reports and scores and knowing whether or not they could obtain a credit report for free. Those who succeeded at obtaining their reports or scores did so:

- **Online at dedicated websites.** Some consumers proactively accessed their credit reports online, primarily through AnnualCreditReport.com, through other sites that provide free credit reports and/or scores,⁹ or through subscriptions to credit monitoring services.
- **On a credit card statement or online from their credit card company.** Some consumers saw the credit scores provided by a financial institution on their credit card statement or at their card issuer's web site. Consumers appreciated the presence of their scores on their statement, but had questions about what actions to take once they had seen their scores.
- **In other ways.** Some consumers received their credit reports in other ways, as a result of a data security breach, being told by a lender, or after being denied credit.

⁹ Examples include CreditKarma.com and CreditSesame.

4.3 Consumer challenges and concerns related to obtaining credit reports and scores

Some consumers discussed difficulties they had faced in using AnnualCreditReport.com. They said that they felt uncomfortable about the security questions required to access reports on AnnualCreditReport.com. A few indicated that they had difficulty navigating or answering the security questions, and several were ultimately unable to access their report online.¹⁰

Additionally, one of the most common barriers to checking credit reports was a lack of understanding of “soft” and “hard” inquiries (also called “pulls”). An inquiry refers to a request to look at a consumer’s credit file, and it generally falls into one of two types:

- **Hard inquiries.** These are typically inquiries by lenders after a consumer applies for credit. These inquiries will impact credit scores because most credit scoring models look at how recently and how frequently a consumer has applied for credit.
- **Soft inquiries.** These are reviews of a consumer’s credit file, including reviews of existing accounts by lenders, pre-screened offers of credit from lenders, and consumer requests for an annual credit report. These will not change credit scores.

Consumers were unsure if requesting a copy of their credit report would be considered a hard inquiry and thus could negatively affect or “ding” their credit scores. This confusion did not seem to stop consumers from checking their credit reports and scores altogether, but appeared to be a major factor in how often they checked.

¹⁰ When consumers pull their credit reports through AnnualCreditReport.com, they must answer security questions designed to verify their identities.

4.4 Some consumers struggle to understand the contents of credit reports

Some of the consumers we talked to felt credit reports were fairly easy to read and digest, but others—particularly first-time users—reported feeling “overwhelmed.” A few consumers were surprised at the amount of information on their report.

Some consumers said that they were confused by the names of financial institutions that appeared on their credit reports, because the financial institution went by a name the consumer wasn’t familiar with. In addition, some consumers indicated that they learned from their credit reports that their loans had been sold or were being serviced by companies other than the lender from which they obtained their loans. This was a source of confusion to consumers in understanding their credit reports.

Consumers in our focus groups generally understood that certain elements of their financial histories are “on” or “off” the credit report. Most often consumers used the phrase “on my credit”—for example, a negative event that was still “on my credit,” often despite efforts or a long lapse of time to get it “off my credit.” In addition, some consumers we talked to said they were familiar with the concept that negative items would eventually “fall off” their credit report after seven years.

4.5 Consumers infrequently apply credit report information in their lives

The consumers we talked to expressed a clear sense of what “good” credit scores are, but had a wide range of ideas of what “bad” credit scores are. Many consumers seemed to have a binary sense of credit scores. They said people with high credit scores received favorable offers, while those with moderate to low scores received unfavorable or high-cost offers. This perception appeared to lead to a sense of discouragement for some consumers, who felt that achieving incremental improvements to their credit scores that did not get them all the way to their perceived “good” credit scores would have no impact on their cost of credit.

The consumers we talked to saw their credit reports as a tool to improve their credit scores and their general financial situation. However, many consumers said they were not sure how to improve their scores and were confused by conflicting advice about what actions to take.

4.6 Consumers worry about errors, identity theft, and fraud

Many of the consumers we talked to expressed concerns about identity theft and fraud. They also knew about the opportunity to dispute errors on credit reports, and many had actually done so. In general, consumers in our focus groups felt that checking their report was a reactive tool that could be useful in identifying fraud after it had already occurred.

5. Patterns in consumer credit-checking

We identified patterns among focus group participants for when, why, and how they check their credit. We delved into consumer perceptions and motivations behind these patterns. The patterns may help financial educators and others interacting with consumers better tailor information and resources to help consumers in managing their credit reports and scores. Note that because our focus group participants were not representative of the American population as a whole, we are not able to estimate the sizes of groups demonstrating these patterns.

Our focus groups suggest that consumers have a primary habit, but may cycle through other credit monitoring behaviors based on life experiences, specific events, and life stages.

5.1 Active checkers: consumers who are checking their credit now

Current checkers are those who check their credit reports at least once a year, and often more frequently. Compared with consumers who haven't checked their reports recently, current checkers are more financially savvy and more engaged with the financial system. They have more bank accounts and credit cards, shop around for products like auto financing, and spend time online looking for financial information. They believe they know more about credit files, credit terms, and interest rates. Their experiences, good and bad, have taught current checkers that credit is important and has an effect on their lives.

We identified two motivations among those who currently check their credit.

5.1.1 Motivated by potential fraud or error

Some checkers are motivated by the desire to spot financial or credit fraud and credit report errors. These individuals realize the impact fraud and errors can have on everything from credit terms to employment prospects.

This behavior is mostly a reaction to a negative event in the past, such as identity theft, credit card theft, or the persistence of a closed account on credit reports. Although this group is unlikely to be currently experiencing fraud or credit report errors, their past experiences have made them concerned. Because some are uncertain whether they took the appropriate steps to address fraud or errors, frequent checking lets them feel they are on top of things.

5.1.2 Gauging progress

Other current checkers routinely check their credit reports and scores to gauge progress in their financial lives. For those with poor credit scores, checking is a way to determine if they are making progress in fixing credit report errors or improving their creditworthiness. For those with better credit scores, checking lets them congratulate themselves on a job well done.

Seeing the fruits of this hard work is positive reinforcement. It leads these consumers to continue engaging in proactive financial behaviors including checking their credit scores and reports.

5.2 Former checkers: consumers who have checked their credit in the past

Former checkers have not examined their credit reports in years, but have seen them at some point in their lives. There are several types of former checkers. Some of these consumers are older, more established, and plan to make few big purchases in the near future that would involve taking on new credit. Others are less active in the financial system (e.g., are less likely to have multiple bank accounts, and prefer to buy with cash rather than credit) and feel that they know less about credit terms and managing finances.

Many former checkers are pessimistic. Relative to consumers in other segments, they are less confident that they know their credit scores, less likely to believe that they will receive favorable credit terms if they apply, and less likely to see their financial situation as improving.

We identified three motivations behind the former checkers' behavior.

5.2.1 Don't need to know

Some former checkers do not see their credit reports and scores as currently relevant. They are not planning to purchase a home or car. These consumers perceive little benefit from checking their credit reports or scores, seeing it as a waste of time and money. They might not understand the potential far-reaching impact of credit histories on things like auto insurance rates, or they might be unaware of the potential for credit report errors, which could affect large purchases they make in the future.

5.2.2 Expect no change

Some former checkers do not expect to see changes in their credit reports and scores, so they opt not to continue checking. Of these, some feel they have good or adequate credit scores and assume they would receive some signal if their situation changed. However, most consumers we spoke to who fall into this group said they have poor credit and feel hopeless, so they chose to quit checking their credit reports. Some see themselves as taking positive steps, like establishing more of a financial presence or paying off bills, but they are not confident that this good behavior will be reflected in their credit scores and reports.

5.2.3 Tried it and didn't like it

Some former checkers accessed their scores or reports in the past and did not like the process. For many of them, the process was (and is) confusing. Some are uncertain as to which website provides free credit reports, and many were uncomfortable answering the challenging security questions. They often found credit reports difficult to understand. Additionally, some past checkers wonder whether checking their report is a "soft" or "hard" pull and whether it will negatively affect their credit scores.¹¹

¹¹ Requesting a free annual credit report through annualcreditreport.com does not impact a consumer's credit scores.

5.3 Noncheckers: consumers who have never checked their credit

Some consumers have never checked their credit reports. Compared with consumers who check their credit reports, noncheckers tend to be younger. They have lower incomes and are more likely to rent than own their homes. Noncheckers have less experience and presence in the financial world. They use fewer financial institutions and have fewer credit cards. They know less about finances, credit files, and credit terms. Noncheckers report that they are less likely to have experienced a negative financial event, such as being denied credit.

We identified three main motivations among noncheckers.

5.3.1 Don't see the need

Noncheckers have less financial experience than their credit-checking counterparts, so many simply do not see the need to access their credit information. They feel their credit report is not very useful if they are not ready to purchase and finance a house or buy a car. They might believe that their credit is adequate because nothing has signaled otherwise. Their approach is in line with the saying, "what you don't know can't hurt you."

5.3.2 Fear the process

Some noncheckers distrust the sources of their credit reports. For example, they are not sure which website or sites provide free credit reports. Even if they know to use AnnualCreditReport.com, security concerns may prevent these individuals from checking their credit reports. They are reluctant to enter their Social Security number and other private information, because they fear that this may put them at risk of identity theft.¹² They fear being trapped into purchasing unwanted products like an additional report or a credit-monitoring service. Their distrust leads them to rely on their own personal judgments when making financial decisions, and to neglect online information and the advice of family and friends.

¹² Using annualcreditreport.com does not expose consumers to identity theft risk.

5.3.3 Avoid the pain

Some noncheckers purposely avoid looking at their credit reports. They assume their credit scores are poor,¹³ and they want to avoid the pain, embarrassment, and shame of being reminded of their financial situation. Some feel powerless to improve their credit situation, and they feel unable to escape from their past financial mistakes.

¹³ This assumption by consumers may not be based on fact. Research has found that many consumers do not know their scores and, when asked to estimate them, typically underestimate their creditworthiness. B. Levinger, M. Benton, and S. Meier, “The Cost of Not Knowing the Score: Self-Estimated Credit Scores and Financial Outcomes,” *Journal of Family and Economic Issues* 32, no. 4(2011): 566–585; M. Cochrane, A. Gailey, and P. Zorn, “Consumer Credit Literacy: What Price Perception?” *Journal of Economics and Business* 60, no. 1–2(2008): 125-138.

6. Conclusion

The results from our focus groups suggest that many consumers are interested in and concerned about credit reports and scores. We found that some of the consumers we talked to expressed confusion about the best way to access credit reports and scores, what makes up credit reports and scores, and how to improve their scores. Some of the consumers we spoke to often do not feel empowered to take action to improve their credit histories, to use their credit reports and scores to negotiate better credit terms, or, ultimately, to use credit reports and scores as a helpful tool in achieving their financial goals.

The diversity of consumer perceptions, attitudes, and behaviors we heard around credit reports and scores suggests that there is much work to do in helping consumers understand and manage this complicated financial topic. Because consumers have a wide range of knowledge about and perceptions of credit reports and scores, there is no single message or approach to encourage consumers to engage more fully with their credit histories.

However, consumer perspectives on credit reports do suggest that many consumers feel that the credit reports are “hard to get, and hard to read.” Efforts by credit reporting agencies to make it easier for consumers to access and interpret their reports could be a useful contribution to helping consumers navigate their credit histories.

The growing number of financial services companies that provide their customers with regular access to their credit scores on monthly credit card statements or online provides an opportunity to engage consumers around their credit reports. Once consumers see their credit scores, they may be motivated to learn more about their credit histories, check their full credit reports, and take action to improve their credit reports and scores.

Additional information and resources for consumers related to checking their credit reports and scores, making sense of what they find, and taking action to improve their reports and scores, could also empower consumers to be more actively engaged in their financial lives.

These focus group results suggest areas of consumer confusion that could be addressed by financial education approaches. Below are some general messages that could be used to address specific areas of consumer confusion or misinformation. These messages, among others, could be targeted as appropriate to consumers who demonstrate the patterns of credit-checking behavior described above. These messages can be also be further refined by understanding the perceptions and motivations of consumers, such as addressing consumer anxieties about the process of obtaining credit report, concerns about fraud, perceptions that they don't need to know more about their credit histories, or the other issues raised above.

Obtaining credit reports:

- Checking credit reports on a regular schedule can be a valuable part of managing one's financial life
- Annualcreditreport.com is the source for free credit reports that is mandated by federal law
- Checking credit reports once a year through annualcreditreport.com will not impact credit scores
- As mandated by federal law, Annualcreditreport.com provides consumers access to free credit reports once a year (this message could be coupled with more information on how to navigate annualcreditreport.com, including providing information on the security question process and on interpreting the information in the credit report)
- Checking credit reports once a year through annualcreditreport.com will not impact credit scores
- There are multiple types of credit scores created by a range of companies, and lenders may be using different scores than those that consumer typically can access

Monitoring and improving credit reports and scores:

- Seeing credit scores on a credit statement or via a financial institution can be an opportunity for consumers to learn more about their credit histories

- A consumer's financial actions are the main determinants of their credit scores; consumers have some degree of control over most of these factors
- Credit scores fall along a continuum, and even incremental improvements in credit scores may have positive impacts for consumers
- Checking credit reports on a regular schedule can be part of a set of activities to watch out for potential fraud or identity theft

These focus group findings will help the CFPB and others who are engaged in financial education to better understand different consumer segments related to behavior and motivation around credit reports and scores. This will allow us and others concerned about consumer empowerment to develop targeted messages, information, and other approaches designed to encourage consumers to understand and take action to improve credit reports and scores. Ultimately, we will use these focus group findings to better understand what types of financial education and empowerment programs and practices may improve financial decision-making skills and outcomes for consumers.

Exhibit 2

From: [Benjenk, Randy](#)
To: FOIA@cfpb.gov
Subject: FOIA Request - "Consumer voices on credit report and scores" report
Date: Monday, March 02, 2015 9:47:00 AM
Attachments: [image001.png](#)

March 2, 2015

Chief FOIA Officer
1700 G Street, NW
Washington, DC 20552
Re: Freedom of Information Act Request

Dear CFPB FOIA Officer:

This is a request under the Freedom of Information Act (FOIA).

I request that a copy of the following documents be provided to me:

All documents and records relating to, or relied upon to prepare, the Consumer Financial Protection Bureau's report entitled "Consumer voices on credit report and scores" (February 2015) (the "Report"), including, but not limited to:

- agreement with Abt Associates, including without limitation any statement of work, scope of work, purchase order, or work order for the Report and any research or testing relied upon to prepare the Report;
- any other agreements for products or services relating to preparation of the Report and any research or testing relied upon to prepare the Report, including without limitation subcontracts between Abt Associates and any vendors or subcontractors;
- communications between CFPB staff members and Abt Associates including, but not limited to, any directions or suggestions from CFPB staff members to Abt Associates or vice versa, and any communications regarding the questions to be asked of focus group participants, qualifications for prospective focus group participants, or the anticipated results or information to be included in the Report;
- records of the process of, and parameters for, selecting focus group participants and focus group locations;
- communications, solicitations and/or marketing materials sent by CFPB staff or Abt Associates to, or targeted at, prospective focus group participants;
- communications from CFPB staff or Abt Associates to focus groups participants, including, but not limited to, the purpose of the focus group, the sponsor of the focus group, the goals of the focus group the involvement of the CFPB, the potential uses of focus group data, and the questions asked of participants;
- focus group participants' responses;
- focus group demographic data;
- working papers, research memos, and draft Reports; and
- the names and functional roles of the CFPB staff members involved with the development of any research – including without limitation strategies, testing or survey instruments – relied upon to prepare the Report; the drafting, editing, or development of the Report; or the interpretation of any data from the focus group testing or other research relied upon to prepare the Report.

In order to help you determine my status for the applicability of any fees, I am requesting these documents for a commercial purpose.

I am willing to pay fees for this request up to a maximum of \$500. If you estimate that the fees will exceed this limit, please contact me.

If you have any questions about processing this request, you may telephone me during business hours at (202) 662-5041.

Sincerely,
Randy Benjenk

Randy Benjenk

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www.cov.com
*Admitted to practice in New York

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Exhibit 3

From: [CFPB FOIA](#)
To: [Benjenk, Randy](#)
Subject: Consumer Financial Protection Bureau FOIA Response (CFPB-2015-118-F)
Date: Thursday, April 16, 2015 2:44:47 PM
Attachments: [CFPB-2015-118 Response Letter.pdf](#)
[CFPB-2015-118 Responsive Records Part 2.pdf](#)
[CFPB-2015-118 Responsive Records Part 1.pdf](#)

Dear Mr. Benjenk,

Attached to this email is our final response to your FOIA request dated March 2, 2015 to the Consumer Financial Protection Bureau (CFPB).

If you have any questions or concerns, please do not hesitate to contact the CFPB FOIA Team at 1-855-444-FOIA (3642) or FOIA@cfpb.gov.

Thank you.

Martin Michalosky
FOIA Manager



RE: FOIA Request #CFPB-2015-118-F

April 16, 2015

Mr. Randy Benjenk
Covington & Burling, LLP
One City Center 850 Tenth Street, NW
Washington, District of Columbia 20001

Dear Mr. Benjenk:

This letter is in final response to your Freedom of Information Act (FOIA) request dated March 2, 2015 to the Consumer Financial Protection Bureau (CFPB). Your request sought for all documents and records relating to, or relied upon to prepare, the CFPB's report entitled "Consumer Voices on Credit Report and Scores" (February 2015) (the "Report"), including, but not limited to:

- 1) Agreement with Abt Associates, including without limitation, any statement of work, scope of work, purchase order, or work order for the Report and any research or testing relied upon to prepare the Report;
- 2) Any other agreements for products or services relating to preparation of the Report and any research or testing relied upon to prepare the Report, including without limitation subcontracts between Abt Associates and any vendors or subcontractors;
- 3) Communications between CFPB staff members and Abt Associates including, but not limited to, any directions or suggestions from CFPB staff members to Abt Associates or vice versa, and any communications regarding the questions to be asked of focus group participants, qualifications for prospective focus group participants, or the anticipated results or information to be included in the Report;
- 4) Records of the process of, and parameters for, selecting focus group participants and focus group locations;
- 5) Communications, solicitations and/or marketing materials sent by CFPB staff or Abt Associates to, or targeted at, prospective focus group participants; and
- 6) Communications from CFPB staff or Abt Associates to focus groups participants, including, but not limited to, the purpose of the focus group, the sponsor of the focus group, the goals of the focus group the involvement of the CFPB, the potential uses of focus group data, and the questions asked of participants;
 - a) Focus group participants' responses;

- b) Focus group demographic data;
- c) Working papers, research memos, and draft Reports; and
- d) The names and functional roles of the CFPB staff members involved with the development of any research – including without limitation strategies, testing or survey instruments – relied upon to prepare the Report; the drafting, editing, or development of the Report; or the interpretation of any data from the focus group testing or other research relied upon to prepare the report.

A search of our Offices of Procurement and Consumer Education and Engagement for documents responsive to your request produced a total of 1,494 pages. Of those pages, I have determined that 187 pages of the records are granted in full, 111 pages are granted in part, and 1,196 pages are withheld in full pursuant to Title 5 U.S.C. § 552 (b)(4), (b)(5), and/or (b)(6).

FOIA Exemption 4 protects trade secrets and commercial or financial information obtained from a person that is privileged or confidential. The courts have held that this subsection protects (a) confidential commercial information, the disclosure of which is likely to cause substantial harm to the competitive position of the person who submitted the information and (b) information that was voluntarily submitted to the government if it is the kind of information that the provider would not customarily make available to the public.

FOIA Exemption 5 protects from disclosure those inter- or intra-agency documents that are normally privileged in the civil discovery context. The three most frequently invoked privileges are the deliberative process privilege, the attorney work-product privilege, and the attorney-client privilege. After carefully reviewing the responsive documents, I determined that [portions of] the responsive documents qualify for protection under the **Deliberative Process Privilege**. This privilege protects the integrity of the deliberative or decision-making processes within the agency by exempting from mandatory disclosure opinions, conclusions, and recommendations included within inter-agency or intra-agency memoranda or letters. The release of this internal information would discourage the expression of candid opinions and inhibit the free and frank exchange of information among agency personnel.

FOIA Exemption 6 exempts from disclosure personnel or medical files and similar files the release of which would cause a clearly unwarranted invasion of personal privacy. This requires a balancing of the public's right to disclosure against the individual's right to privacy. The types of information that we have withheld consist of mobile telephone numbers, email addresses or other information belonging to a third party that are considered personal. The privacy interests of the individuals in the records you have requested outweigh any minimal public interest in disclosure of the information. Any private interest you may have in that information does not factor into the aforementioned balancing test.

You may appeal any of the responses or decisions set forth above. If you choose to file an appeal, you must do so within 45 calendar days from the date of this letter. Your appeal must be in writing, signed by you or your representative, and should contain the rationale for the appeal. You may send your appeal via the mail (address below), email (FOIA@cfpb.gov) or fax (1-855-FAX-FOIA (329-3642)).

Your appeal should be addressed to:

Consumer Financial Protection Bureau
Chief FOIA Officer
Freedom of Information Appeal
1700 G Street, NW
Washington, D.C. 20552

Part of this information was previously provided as part of another FOIA request and determined to be appropriate for public release.

Provisions of the FOIA allow us to recover part of the cost of complying with your request. However, since this information was previously provided in response to another FOIA request, there is no charge.

For questions concerning our response, please feel free to contact CFPB's FOIA Service Center by email at FOIA@cfpb.gov or by telephone at 1-855-444-FOIA (3642).

Sincerely,

A handwritten signature in black ink, appearing to read 'M. Michalosky', with a long horizontal stroke extending to the right.

Martin Michalosky
FOIA Manager
Operations Division

Exhibit 5

From: [Coates, Laura](#)
To: [Benjenk, Randy](#)
Subject: FOIA Appeal Determination CFPB-2015-118-A (Final)
Date: Thursday, June 04, 2015 11:40:08 AM
Attachments: [Final Appellate Determination_CFPB-2015-118_06-04-2015.pdf](#)

Dear Mr. Benjenk,

Attached please find the Consumer Financial Protection Bureau's final determination regarding your appeal of the Bureau's response to Freedom of Information Act (FOIA) Request No. CFPB-2015-118-A.

If you have any questions or concerns, please do not hesitate to contact the CFPB FOIA Team at 1-855-444-FOIA (3642) or FOIA@cfpb.gov.

Thank you.

John R. Coleman
Assistant General Counsel for Litigation
Legal Division
Consumer Financial Protection Bureau



1700 G Street NW, Washington, DC 20552

June 4, 2015

VIA EMAIL

Randy Benjenk
Covington & Burling LLP
One CityCenter
850 Tenth Street, NW
Washington, DC 20001
RBenjenk@cov.com

**Re: Final Appellate Determination Denying Appeal of
FOIA Request No. 2015-118-F**

Dear Mr. Benjenk:

This letter constitutes the final determination of the Consumer Financial Protection Bureau (CFPB or Bureau) regarding your appeal dated May 6, 2015 (the Appeal) of the Bureau's response to Freedom of Information Act (FOIA) Request No. 2015-118-F (the Request). For the reasons set forth below, the Appeal is denied.¹

I. Background

On March 2, 2015, you submitted a FOIA request for the following documents and records relating to, or relied upon to prepare, the Bureau's report entitled "Consumer voices on credit report and scores" (the Report), which was issued in February 2015:

1. Agreement with Abt Associates, including without limitation, any statement of work, scope of work, purchase order, or work order for the Report and any research or testing relied upon to prepare the Report;
2. Any other agreements for products or services relating to preparation of the Report and any research or testing relied upon to prepare the Report, including without limitation subcontracts between Abt Associates and any vendors or subcontractors;
3. Communications between CFPB staff members and Abt Associates including, but not limited to, any directions or suggestions from CFPB staff members to Abt Associates or vice versa, and any communications regarding the questions to be asked of focus group participants, qualifications for prospective focus group participants, or the anticipated results or information to be included in the Report;

¹ The Bureau's FOIA regulations are codified at 12 C.F.R. §§ 1070.10 *et seq.* Pursuant to these regulations, the authority to determine FOIA appeals rests with the Bureau's General Counsel or her delegate. *See* 12 C.F.R. § 1070.21(e). The General Counsel has delegated to me the authority to determine the appeal of the Bureau's response to the Request. This letter therefore constitutes the Bureau's final response to the Request.



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4. Records of the process of, and parameters for, selecting focus group participants and focus group locations;
5. Communications, solicitations and/or marketing materials sent by CFPB staff or Abt Associates to, or targeted at, prospective focus group participants; and
6. Communications from CFPB staff or Abt Associates to focus groups participants, including, but not limited to, the purpose of the focus group, the sponsor of the focus group, the goals of the focus group the [sic] involvement of the CFPB, the potential uses of focus group data, and the questions asked of participants;
 - a. Focus group participants' responses;
 - b. Focus group demographic data;
 - c. Working papers, research memos, and draft Reports; and
 - d. The names and functional roles of the CFPB staff members involved with the development of any research – including without limitation strategies, testing or survey instruments – relied upon to prepare the Report; the drafting, editing, or development of the Report; or the interpretation of any data from the focus group testing or other research relied upon to prepare the report.

See Request, at 1.

The Bureau sent its final response to the request on April 16, 2015. The Bureau's search of the Offices of Procurement and Consumer Education and Engagement for documents responsive to your request produced a total of 1,494 pages of responsive records, of which 187 pages were released in full and 111 pages were released in part and withheld in part pursuant to 5 U.S.C. § 552(b)(4), (b)(5) and/or (b)(6). The remaining 1,196 pages were withheld in full pursuant to 5 U.S.C. § 552(b)(4) and/or (b)(5). The Bureau's final response informed you of your right to submit an appeal of the final determination. On May 6, 2015 you submitted a timely appeal of the Bureau's exemption determinations with respect to the following:

1. Records of the process of, and parameters for, selecting focus group participants and focus group locations;
2. Focus group participants' responses; and
3. Demographic data of focus group participants.

Appeal, at 1. You also claimed that the Bureau's response did not satisfy the requirements of *Vaughn v. Rosen*, 484 F.2d 820 (D.C. Cir. 1973), because the response did not provide "a meaningful description of the withheld documents and an explanation of how the claimed exemptions apply to each of the 1,196 withheld documents (or portions of each document)." Appeal, at 1.

II. Appellate Determination

A. A *Vaughn* Index Is Not Required at the Administrative Appeals Stage.

As an initial matter, your assertion that the Bureau is required to produce an index pursuant to *Vaughn v. Rosen* is incorrect. Agencies are not required to produce a *Vaughn* index at the



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administrative appeals stage. See *Bangoura v. U.S. Dep't of the Army*, 607 F. Supp. 2d 134, 143 n.8 (D.D.C. 2009); *Schwarz v. U.S. Dep't of Treasury*, 131 F. Supp. 2d 142, 147 (D.D.C. 2000) (“Plaintiff is advised that there is no requirement that an agency provide a ‘search certificate’ or a ‘Vaughn’ index on an initial request for documents. The requirement for detailed declarations and *Vaughn* indices is imposed in connection with a motion for summary judgment filed by a defendant in a civil action pending in court.”). Accordingly, the Appeal is incorrect that the Bureau was required to provide additional description of the withheld documents and additional justification for their withholding. Although the Appeal does not explicitly request that the Bureau provide such additional information, to the extent such a request is implicit in the Appeal it is denied.

B. The Bureau Properly Withheld Documents Pursuant to Exemption 5.

Exemption 5 protects from disclosure “inter-agency or intra-agency memorandums or letters which would not be available by law to a party other than an agency in litigation with the agency.” 5 U.S.C. § 552(b)(5). Such records are exempt from disclosure if they would be “normally privileged in the civil discovery context.” *Nat'l Labor Relations Bd. v. Sears, Roebuck & Co.*, 421 U.S. 132, 149 (1975). Exemption 5 thus incorporates the privileges that are available to an agency in civil litigation, including the deliberative process privilege. *Loving v. Dep't of Def.*, 550 F.3d 32, 37 (D.C. Cir. 2008).

The deliberative process privilege exempts from the FOIA's disclosure requirements records “reflecting advisory opinions, recommendations and deliberations comprising part of a process by which government decisions and policies are formulated.” *Nat'l Labor Relations Bd.*, 421 U.S. at 150. Materials that are both “predecisional and deliberative” are protected under this privilege. *Mapother v. Dep't of Justice*, 3 F.3d 1533, 1537 (D.C. Cir. 1993). As the Supreme Court has explained:

The deliberative process privilege rests on the obvious realization that officials will not communicate candidly among themselves if each remark is a potential item of discovery and front page news, and its object is to enhance “the quality of agency decisions” by protecting open and frank discussion among those who make them within the Government.

Dep't of the Interior v. Klamath Water Users Protective Ass'n, 532 U.S. 1, 8-9 (2001) (quotations and citation omitted). “[T]he quality of administrative decision-making would be seriously undermined if agencies were forced to operate in a fishbowl.” *Wolfe v. Dep't of Health & Human Servs.*, 839 F.2d 768, 773 (D.C. Cir. 1988).

The Appeal claims that the deliberative process privilege does not apply to certain documents related to the Bureau's use of focus groups because these documents purportedly contain only “‘raw research data’ and methodology information not within the Exemption's purview.” Appeal, at 3 (citing *Sw. Ctr. for Biological Diversity v. U.S.D.A.*, 170 F. Supp. 2d 931, 941 (D. Ariz. 2000)). This characterization of the scope and application of Exemption 5 regarding factual information is inaccurate. Although courts acknowledge the difference between fact and opinion for purposes of Exemption 5, courts cannot “mechanically apply” this distinction and instead “must examine the information requested in light of the policies and goals that underlie the deliberative process privilege.” *Wolfe*, 839 F.2d at 774. In evaluating whether material is deliberative or instead purely factual, a court “should focus on whether the document in question is a part of the



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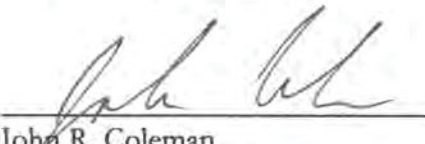
deliberative process.” *Skelton v. U.S. Postal Serv.*, 678 F.2d 35, 39 (5th Cir. 1982). For example, summaries of voluminous factual information used as part of an agency’s deliberative process may be properly withheld under Exemption 5. *Montrone Chem. Corp. of California v. Train*, 491 F.2d 63, 71 (D.C. Cir. 1974).

Although information regarding the Bureau’s use of focus groups and methodology related to their selection may have contained factual material, this information reflected the Bureau’s deliberative process in researching and drafting the Report. Disclosure of such documents “would harm the deliberative process” used in creating the Report, and such documents therefore were properly withheld under Exemption 5. *See Wolfe*, 839 F.2d at 774.

The fact that information responsive to the Request may have been produced by a contractor of the Bureau does not alter this conclusion. The deliberative process privilege extends to temporary consultants and contractors of agencies, as federal agencies often have a “special need for the opinions and recommendations of temporary consultants.” *Soucie v. David*, 448 F.2d 1067, 1078 n.44 (D.C. Cir. 1971). As the Supreme Court has recognized, documents submitted to agencies by such consultants play “essentially the same part in an agency’s process of deliberation as documents prepared by agency personnel might have done.” *Klamath*, 532 U.S. at 10.

I find that the Bureau’s Exemption 5 determinations were proper. Because the documents in question were properly withheld on this basis alone, consideration of other exemptions noted in your Appeal is not necessary. I therefore deny your appeal of the Bureau’s determinations.

If you are dissatisfied with the Bureau’s final appellate determination, you may contact the Office of Government Information Services (OGIS), which offers mediation services to resolve disputes between FOIA requesters and Federal agencies pursuant to 5 U.S.C. § 552(h)(3). Using OGIS services does not affect your right to pursue litigation. Under 5 U.S.C. § 552(a)(4)(B), you may also seek judicial review of this appeal denial in the U.S. District Court where you reside, in the district where the documents are located, or in the District of Columbia.



 John R. Coleman
 Assistant General Counsel for Litigation
 Consumer Financial Protection Bureau