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FOIA Request
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RE: Freedom of Information Act Request

Dear Freedom of Information Act Officers:

Pursuant to the Freedom of Information Act (FOIA), 5 U.S.C. § 552, I request on behalf of Public Citizen the following:

All records that pertain to the U.S. Department of Justice's decision not to criminally prosecute HSBC Holdings Plc. and HSBC Bank USA N.A. (collectively referred to as "HSBC") for money-laundering and violations of U.S. sanctions law because of concerns that such action could cause financial or economic instability.

Such records would include, but would not be limited to, records detailing the potential effects on financial or economic stability of instituting criminal proceedings against the company or its employees; records detailing other potential penalties to the company and any resulting consequences to the company itself, and to financial and economic stability; communications from senior U.S. Department of Justice officials to junior U.S. Department of Justice officials prescribing the penalties they deemed appropriate, according to the facts and circumstances of the case; and any communications between U.S. Department of Justice officials and anyone outside of the government relating to potential penalties to the company and any resulting consequences to the company, and to financial and economic stability.

If it is your position that records exist that are responsive to this request, but that those records (or portions of those records) are exempt from disclosure, please identify the records that are being withheld and state the basis for the denial for each record being withheld. In addition, please provide the nonexempt portions of the requested records.

I request that any records produced in response to this request be provided in electronic form wherever possible.

Public Citizen requests that all fees in connection with this request be waived in accordance with 5 U.S.C. § 552(a)(4)(A)(iii) because Public Citizen does not seek the records for a commercial purpose, and disclosure "is in the public interest because it is likely to contribute significantly to public understanding of the operations or activities of the government." More than four years after a financial crisis leading to the worst recession since the Great Depression, a crisis in which large, systemically important financial institutions received unprecedented government assistance to avert their failures, it appears that the government continues to endorse the misguided policy that some financial institutions are "too-big-to-fail." It further appears that the government has adopted and enshrined a policy that some financial institutions and their employees are so systemically important that they are immune from criminal prosecution. In other words, it appears that the government has deemed some financial institutions and their employees "too-big-to-indict" and "too-big-to-jail."

HSBC's activities were previously examined by the Senate Homeland Security and Government Affairs Committee's Permanent Subcommittee on Investigations. The subcommittee issued an extensive 330 page report in July 2012 after a year-long investigation, detailing the extent to which the company "exposed the U.S. financial system to a wide array of money laundering, drug trafficking, and terrorist financing risks due to poor anti-money laundering (AML) controls."¹

Subsequently, on December 11, 2012 the Department of Justice entered into a deferred prosecution agreement with HSBC, and the company agreed to pay approximately \$1.9 billion in fines for money laundering and sanctions violations. Neither the bank nor any of its employees were indicted per the agreement. At a press conference announcing the deal, Assistant Attorney General Lanny A. Breuer explained the Department of Justice's decision not to issue criminal indictments. He said, "In trying to reach a result that's fair and just and powerful, you also have to look at the collateral consequences."² Breuer further explained that "our goal is not to bring HSBC down...It's not to cause a systemic effect on the economy."³ These statements seem to indicate that the government considered various penalties and their resulting impacts on the firm and on the broader economy. They also seem to indicate that government officials have made a conscious decision to coddle large, complex financial institutions at the expense of pursuing justice.

Shortly following the announcement of the agreement, there was a swift backlash to the Justice Department's decision. According to the New York Times Editorial Board, "Clearly, the government has bought into the notion that too big to fail is too big to jail. When prosecutors choose not to prosecute to the full extent of the law in a case as egregious as this, the law itself is diminished. The deterrence that comes from the threat of criminal prosecution is weakened, if not lost."⁴

Senator Jeff Merkley (D-OR) echoed and amplified those concerns, stating, "This 'too big to jail' approach to law enforcement, which deeply offends the public's sense of justice, effectively vitiates the law as written by Congress. Had Congress wished to declare that violations of money laundering, terrorist financing, fraud, and a number of other illicit financial actions would *only* constitute civil violations, it could have done so. It did not."⁵

It is therefore necessary to know to what extent government officials considered the "collateral consequences" (as Mr. Breuer so referred) of prosecuting HSBC, and whether government officials indeed decided not to criminally prosecute HSBC because of concerns that such action could cause financial or economic instability. If the Department of Justice abstained from instituting criminal proceedings for wrongdoing because of financial or

¹ <http://www.hsgac.senate.gov/subcommittees/investigations/media/hsbc-exposed-us-finacial-system-to-money-laundering-drug-terrorist-financing-risks>

² <http://www.reuters.com/article/2012/12/11/us-hsbc-probe-idUSBRE8BA05M20121211>

³ <http://articles.latimes.com/2012/dec/11/business/la-fi-hsbc-fine-20121212>

⁴ <http://www.nytimes.com/2012/12/12/opinion/hsbc-too-big-to-indict.html>

⁵ <http://www.merkley.senate.gov/newsroom/press/release/?id=42A606E4-7C45-42ED-8348-C77C508F9281>

economic stability concerns, the public is entitled to an explanation. With a full explanation of what considerations drove the Department of Justice's decision, the public will better appreciate whether prosecutors are making appropriate charging decisions, and if not, whether new legislation should be introduced.

These records are new and are not currently available to the public. We expect that the responsive records will reveal the extent to which the government has decided to immunize large, complex financial institutions from criminal prosecution because of concerns that instituting criminal prosecutions could cause financial or economic instability.

This request for records concerning the Department of Justice's decision not to criminally prosecute HSBC for money-laundering and violations of U.S. sanctions law because of concerns that such action could cause financial or economic instability is logically connected to Public Citizen's mission and our work to determine potentially inappropriate behaviors by participants in the financial industry as well as the government's responses to potentially inappropriate behaviors.⁶

Public Citizen, which has 300,000 members and supporters, is a nonprofit research, litigation, and advocacy organization that represents the public interest before Congress, the executive branch, and the courts. It fights for openness and democratic accountability in government; for social and economic justice in globalization and trade policies; for clean, safe and sustainable energy; for strong health, safety and environmental protections; for safe, effective and affordable medicines and health care; for the right of consumers to seek redress in the courts; and for strong regulations that safeguard U.S. financial stability. Public Citizen does not have a commercial interest in the requested records; it intends to share information received from this request with the public free of charge.

Public Citizen also has a demonstrated capacity to disseminate this information. Public Citizen regularly publishes reports based upon information acquired through FOIA. It disseminates its reports via publication, through its website, and through various newsletters that are distributed to consumers, lawyers, academics, and other interested parties free of charge. Public Citizen staff members also serve as a resource for the media and testify before Congress.

In addition, Public Citizen is entitled to a waiver of all search fees because it is a "representative of the news media." As noted above, it regularly publishes reports based upon information acquired through FOIA and disseminates its reports and other products, such as fact sheets, via publications, its website, and various newsletters. It also contributes to and maintains five active blogs, including its Citizen Vox Blog, available at <http://www.citizenvox.org>. As these facts demonstrate, Public Citizen qualifies as a representative of the news media because it "gathers information of potential interest to a

⁶ See, e.g. Public Citizen's extensive work on financial reform to expose greed and recklessness on Wall Street, hold financial institutions accountable, and end "too-big-to-fail." <http://www.citizen.org/Page.aspx?pid=2554>

segment of the public, uses its editorial skills to turn the raw materials into a distinct work, and distributes that work to an audience.” 5 U.S.C. § 552(a)(4)(A)(ii).

Accordingly, I request that you waive all fees because Public Citizen is entitled to a public interest fee waiver. In the alternative, Public Citizen is entitled to a waiver of search and review fees based on its status as a representative of the news media and the fact that it does not seek the requested records for a commercial purpose. If, however, a waiver is not granted, then please advise me of the amount of any proposed search, review, and reproduction charges before you conduct those activities.

I expect a response within 20 working days as provided by FOIA. If you have any questions regarding this request, please contact me by phone at (202) 546-4996 or by e-mail at mhauptman@citizen.org.

Thank you very much for your attention to this matter.

Sincerely,



Micah Hauptman
Financial Policy Counsel
Congress Watch, Public Citizen