



National Archives and Records Administration

700 Pennsylvania Avenue, NW
Washington, DC 20408-0001

December 1, 2011

Amber D. Taylor
Senior Counsel
Freedom Through Justice Foundation
2111 Wilson Blvd, #700
Arlington, VA 22201

Dear Ms. Taylor:

This is in response to your letter of October 3, 2011, to NARA General Counsel Gary M. Stern, which requests the records of the Financial Crisis Inquiry Commission (FCIC) that were transferred by the National Archives and Records Administration (NARA) to the House Committee on Oversight and Government Reform. Mr. Stern referred your request to the Center for Legislative Archives, as we are the archival custodian of the FCIC records. We apologize for the delay in responding to your request.

As you may be aware, the FCIC was a commission that was established within the legislative branch. As such, its records are not subject to the Freedom of Information Act (FOIA), which only applies to executive branch agencies. While NARA is an executive branch agency, we serve as the National Archives for all three branches of the Government in accordance with the Federal Records Act (FRA), 44 U.S.C. Chapters 21, 29, 31, and 33. When federal agencies from the legislative and judicial branches accession their permanent federal records into the National Archives of the United States, those records do not become "agency records" subject to the FOIA. However, they will become available for public access requests under the FRA.

The FCIC records were transferred to NARA on February 11, 2011, and, in accordance with 44 U.S.C. § 2108(a), the Commission established a five-year restriction on public access to its non-public records. Accordingly, NARA will not accept requests for public access until February 11, 2016. Your letter notes that NARA has provided some of the FCIC records to the House Committee on Oversight and Government Reform. NARA did so in response to a formal request from the Committee as part of its ongoing business. It is well established that the provision of records to the Congress does not constitute a public release of that information (see, e.g., *Murphy v. Dep't of Army*, 613 F.2d 1151, 1155 (D.C. Cir. 1979)). The fact that Congress may have subsequently released some of these records to the public does not alter the non-public status of these records at NARA.

Accordingly, we are denying your request because these records are not subject to the FOIA. If you are not satisfied with our action on this request, you have the right to file an administrative appeal. Address your appeal to:

Deputy Archivist (ND)
National Archives and Records Administration
College Park, Maryland 20740

Your appeal should be received within 35 calendar days of the date of this letter and it should explain why you think this response does not meet the requirements of the FOIA. All correspondence should reference the tracking number LL-12-143.

Sincerely,



MATT FULGHAM
Assistant Director
Center for Legislative Archives