



Arbor Realty - SEC FOIA Appeal Update

An SEC FOIA appeal is rejected citing enforcement actions against Arbor.

PLEASE READ IMPORTANT DISCLAIMER – PAGE 2

September 6, 2024 – On September 4, 2024 the SEC FOIA office responded to a Viceroy-instigated appeal of records withheld under FOIA exemption 7(A). The appeal was denied, and enforcement staff confirmed the existence of responsive records concerning Arbor Realty Trust. A redacted copy of the appeal denial is appended to this report

In responding to your request, FOIA Office reviewed computer indices for investigations and contacted Division of Enforcement staff that perform enforcement functions relevant to the company for which you seek records. Enforcement staff confirmed the existence of responsive records concerning Arbor Realty Trust, Inc. You have not identified any other systems SEC divisions or offices FOIA Office staff should have searched, and I am not aware of any other systems or SEC divisions or offices that would have the investigative records you seek. Accordingly, the search conducted was reasonable and adequate.

Figure 1 – FOIA Appeal Denial dated September 4, 2024

FOIA exemption 7(A) is invoked when the production of records might be expected to interfere with enforcement proceedings.

Exemption 7(A)

The first subpart of Exemption 7, Exemption 7(A), authorizes the withholding of "records or information compiled for law enforcement purposes, but only to the extent that production of such law enforcement records or information . . . could reasonably be expected to interfere with enforcement proceedings."⁽¹⁾ The Freedom of

Figure 2 – Depart of Justice Archives FOIA Guide

Arbor has used undisclosed related party transactions and other value-destructive tactics to artificially inflate the value of its deteriorating loan book. Foreclosures are rising, the company has resorted to reposting auctions, knowing bids will not even cover the loan balance of the foreclosed properties.

Viceroy's research on Arbor can be found at:

<https://viceroyresearch.org/arbor-reealty-research/>



Attention: Whistleblowers

Viceroy encourage any parties with information pertaining to misconduct within Arbor Realty Trust, its affiliates, or any other entity to file a report with the appropriate regulatory body.

We also understand first-hand the retaliation whistleblowers sometimes face for championing these issues. Where possible, Viceroy is happy act as intermediaries in providing information to regulators and reporting information in the public interest in order to protect the identities of whistleblowers.

You can contact the Viceroy team via email on viceroy@viceroyresearch.com.

About Viceroy

Viceroy Research are an investigative financial research group. As global markets become increasingly opaque and complex – and traditional gatekeepers and safeguards often compromised – investors and shareholders are at greater risk than ever of being misled or uninformed by public companies and their promoters and sponsors. Our mission is to sift fact from fiction and encourage greater management accountability through transparency in reporting and disclosure by public companies and overall improve the quality of global capital markets.

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

OFFICE OF THE
GENERAL COUNSEL

September 4, 2024

[REDACTED]

Re: Appeal, Freedom of Information Act Request [REDACTED], designated on appeal as [REDACTED]

Dear [REDACTED]

This responds to your Freedom of Information Act (FOIA) appeal of the FOIA Officer's decision regarding your July 5, 2024 FOIA request for certain investigative records concerning Arbor Realty Trust, Inc. that the Commission may have generated since March 5, 2024.¹ By letter dated August 8, 2024, the FOIA Officer denied your request pursuant to FOIA Exemption 7(A). On August 8, 2024, the FOIA Office received this appeal challenging the adequacy of the FOIA Office's search.² I have considered your appeal, and it is denied.

The question raised by a challenge to the adequacy of a search is "whether the search was reasonably calculated to discover the requested documents, not whether it actually uncovered every document extant."³ "[T]he adequacy of a FOIA search is generally determined not by the

¹ The requested records were described as: (1) correspondence sent to and/or received by the registrant; (2) correspondence sent to and/or received by third parties related to the registrant; (3) Wells notices; (4) subpoenas; (5) orders of formal investigation and any supplemental orders; and (6) opening and closing reports and recommendations, including "case closing recommendation," "matter under inquiry summary," "investigation summary," and/or similar documents and/or reports.

² As you do not question the withholding of information under Exemption 7(A), it is not at issue in this appeal decision.

³ *SafeCard Services, Inc. v. SEC*, 926 F.2d 1197, 1202 (D.C. Cir. 1991); *see also In re: Clinton*, 973 F.3d 106, 116 (D.C. Cir. 2020) ("[A]n agency responding to a FOIA request is simply required to conduct a search *reasonably calculated* to uncover all *relevant documents*." (internal quotations omitted)); *Amadis v. Dep't of State*, 971 F.3d 364, 368 (D.C. Cir. 2020) (a reasonable search is one that is calculated to locate responsive documents); *DiBacco v. Dep't of the Army*, 926 F.3d 827, 832-33 (D.C. Cir. 2019) (agency's "search efforts [must be] reasonable and logically organized to uncover relevant documents but [] need not knock down every search design advanced by every requester") (internal quotations omitted).

fruits of the search, but by the appropriateness of the methods used to carry out the search.”⁴ Further, “there is no requirement that an agency search every record system.”⁵

In responding to your request, FOIA Office reviewed computer indices for investigations and contacted Division of Enforcement staff that perform enforcement functions relevant to the company for which you seek records. Enforcement staff confirmed the existence of responsive records concerning Arbor Realty Trust, Inc. You have not identified any other systems SEC divisions or offices FOIA Office staff should have searched, and I am not aware of any other systems or SEC divisions or offices that would have the investigative records you seek. Accordingly, the search conducted was reasonable and adequate.

You have the right to seek judicial review of my determination by filing a complaint 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.⁶ 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. If you have any questions concerning my determination, please contact Mark Tallarico, Senior Counsel, at 202-551-5132.

For the Commission
by delegated authority,



Melinda Hardy
Assistant General Counsel for
Litigation and Administrative Practice

⁴ *Iturralde v. Comptroller of the Currency*, 315 F.3d 311, 315 (D.C. Cir. 2003).

⁵ *Oglesby v. Dep’t of the Army*, 920 F.2d 57, 68 (D.C. Cir. 1990).

⁶ *See* 5 U.S.C. § 552(a)(4)(B).