



State of New Jersey
OFFICE OF THE ATTORNEY GENERAL
DEPARTMENT OF LAW AND PUBLIC
SAFETY
PO Box 080
TRENTON, NJ 08625-0080

PHILIP D. MURPHY
Governor

GURBIR S. GREWAL
Attorney General

SHEILA Y. OLIVER
Lt. Governor

June 4, 2018

The Hon. Mick Mulvaney
Acting Director
Consumer Financial Protection Bureau
1700 G Street NW
Washington, DC 20552
Email: FederalRegisterComments@cfpb.gov

Re: Request for Information Regarding Bureau Public Reporting Practices of Consumer Complaint Information [Docket No. CFPB-2018-0006]

Dear Acting Director Mulvaney:

On behalf of the State of New Jersey, I submit this response to the Consumer Financial Protection Bureau's request for information about its public reporting of consumer complaint information.¹

I want to begin by thanking the Bureau and its staff for the work they do to protect New Jersey consumers. The Bureau has been a strong partner for my agency in our consumer protection efforts and a good resource for our State's residents. The Bureau's public reporting of consumer complaint information—through the Consumer Complaint Database on the Bureau's website and its published analyses of consumer complaint data—has assisted my staff in identifying enforcement priorities and in conducting consumer protection investigations, while empowering New Jersey residents to make better-informed financial decisions. Through its public reporting of complaint information, the Bureau has made the markets for consumer financial products and services more fair, transparent, and competitive.

I am therefore concerned by reports that the Bureau might curtail public access to the Bureau's Consumer Complaint Database. Eliminating or restricting public access to the Consumer Complaint Database would not just be bad policy, but would also mark a sharp retreat from the Bureau's statutory mandate and violate its obligations under the Freedom of Information Act ("FOIA"). I encourage the Bureau to maintain or expand public access to consumer complaint information on the Bureau's website, rather than limiting the information that the federal government makes available to American consumers.

¹ *Request for Information Regarding Bureau Public Reporting Practices of Consumer Complaint Information*, 83 Fed. Reg. 9499 (Mar. 6, 2018).



A. State consumer protection agencies and the public at large benefit from access to the Bureau's Consumer Complaint Database.

As I am sure that the Bureau will hear from many others, the public Consumer Complaint Database is an excellent resource for individual consumers and a useful tool for state consumer protection agencies. Consumers and state consumer protection agencies alike would be poorly served by a decision to eliminate or reduce public access to the Consumer Complaint Database.

Since it launched in 2012 and with each expansion since then, the Consumer Complaint Database has improved individual consumers' ability to make well-informed financial choices for themselves and their families.² With data from over one million complaints, the Database offers a wealth of information about consumers' experiences in the markets for consumer financial products and services, including consumers' first-hand accounts. Any consumer can see how many and what kinds of complaints a company generates, as well as whether the company is responsive to consumers' concerns. A consumer can compare companies' track records and consider that information when making choices among competing products and services.

Members of the public cannot get the same data from other sources. Consumer complaint information available on the Bureau's website is readily available nowhere else.

If the Bureau has concerns about whether the Database really offers consumers accurate and useful data, the Bureau should address those concerns through additional disclosures, not by limiting public access. Concerns about unverified complaints containing misinformation, for example, can be mitigated with disclaimers or through additional public disclosure of company responses. Likewise, disclaimers or additional disclosures can adequately address concerns that consumers will draw incorrect inferences about a company from the number of complaints it faces without considering the volume of its business.

State consumer protection agencies also benefit from the public availability of consumer complaint information on the Bureau's website. In New Jersey, we use the Bureau's Consumer Complaint Database and other public reporting to supplement the information we receive directly from consumers who submit complaints to our Division of Consumer Affairs or to other state agencies. These tools help us monitor complaint trends, establish enforcement priorities, and identify possible violations of consumer protection laws.

My agency uses the public Consumer Complaint Database even though we also have access to unredacted, confidential consumer complaint information through the Bureau's Government Portal. The public website is more user-friendly than the Portal in several respects: it allows the user to filter data more quickly, permits the user to export data that does not contain personally identifiable information, and does not require the user to maintain active login credentials. Our work to protect New Jersey consumers would therefore be hindered if we could no longer access consumer complaint information on the public Database.³

Finally, the Consumer Complaint Database empowers consumers to hold companies to account without the State's intervention. Public availability of consumer complaint information adds to companies' incentives to respond to complaints and to take steps to avoid complaints in the first place. This allows my agency to dedicate more of its resources to pursuing the most recalcitrant violators of consumers' rights.

² The public-facing Consumer Complaint Database originally was limited to credit card complaint data. *See Disclosure of Certain Credit Card Complaint Data*, 77 Fed. Reg. 37,558 (June 22, 2012). The Bureau then expanded the public Database to include other consumer complaint data, *see Disclosure of Consumer Complaint Data*, 78 Fed. Reg. 21,218 (Apr. 10, 2013), and eventually to include consumer complaint narratives, *see Disclosure of Consumer Complaint Narrative Data*, 80 Fed. Reg. 15,572 (Mar. 24, 2015).

³ The Government Portal serves its own useful purpose by fulfilling the Dodd-Frank Act's requirement that the Bureau share confidential complaint information with States. I do not propose any changes to the Portal.

B. Public access to the Consumer Complaint Database advances the Bureau’s statutory mandate.

As you recently noted, the Bureau’s maintenance of the Consumer Complaint Database “is mandated by law.”⁴ At the same time, you have suggested that nothing in the Dodd-Frank Act “says that [you] have to make all of those [complaints] public” or “that [you] have to run a Yelp for financial services.”⁵

The Bureau should consider whether maintaining a public Consumer Complaint Database serves the purposes of the Dodd-Frank Act, not only whether the statute expressly demands it. As discussed above, the public Database helps ensure that the markets for consumer financial products and services are more fair, transparent, and competitive.⁶ The public Database serves those purposes by providing consumers with “timely and understandable information to make responsible decisions about financial transactions,” by protecting consumers from unfair, deceptive, or abusive acts and practices and from discrimination, and by ensuring that “markets for consumer financial products and services operate transparently and efficiently.”⁷ Eliminating or restricting public access, by contrast, would mark a retreat from the Bureau’s mission.

C. Eliminating or reducing public access to the Consumer Complaint Database would conflict with the open-government principles of the Freedom of Information Act.

Even if the Dodd-Frank Act did not mandate public access to the Consumer Complaint Database, Dodd-Frank is not the only statute that speaks to the Bureau’s disclosure obligations. The Bureau also must comply with the Freedom of Information Act (“FOIA”).⁸ And a decision to eliminate or reduce public access to the Consumer Complaint Database likely would violate FOIA’s proactive disclosure requirements.

FOIA mandates that federal agencies proactively disclose frequently requested records—making these records electronically available to the public and updating them continuously.⁹ According to the Department of Justice, this proactive disclosure requirement is triggered whenever an agency receives a request for a category of records and either receives or anticipates receiving at least two more requests for substantially the same records.¹⁰ Agencies are required to index these frequently requested records on their websites,¹¹ organizing the records “from a citizen-centered perspective” in a way that allows members of the public to easily locate the requested information.¹²

⁴ Remarks by Mick Mulvaney, Acting CFPB Director, at the American Bankers Association Annual Conference at 5 (Apr. 24, 2018) (Mulvaney ABA Remarks); *see also* 12 U.S.C. § 5493(b)(3)(A) (contemplating the Bureau’s use of a toll-free number, a website, and a database “to facilitate the centralized collection of, monitoring of, and response to consumer complaints regarding consumer financial products and services”).

⁵ Mulvaney ABA Remarks at 5.

⁶ *See* 12 U.S.C. § 5511(a).

⁷ *Id.* §§ 5511(b)(1), 5511(b)(2), 5511(b)(5).

⁸ 5 U.S.C. § 552.

⁹ *See id.* § 552(a)(2)(D).

¹⁰ *See* OIP, *Proactive Disclosure of Non-Exempt Agency Information: Making Information Available Without the Need to File a FOIA Request* (updated Jan. 11, 2017).

¹¹ 5 U.S.C. § 552(a)(2)(E).

¹² OIP, *Guidance on Submitting Certification of Agency Compliance with FOIA’s Reading Room Requirements* (updated Aug. 22, 2014); *see also* OMB Memorandum M-06-02, *Improving Public Access to and Dissemination of Government Information and Using the Federal Enterprise Architecture Data Reference Model* (Dec. 16, 2005) (requiring agencies to organize information intended for public access in order to “promote a more citizen-centered government”).

The consumer complaint information now publicly available on the Consumer Complaint Database is subject to these proactive disclosure requirements because (1) the information is subject to disclosure under FOIA and (2) the public interest is sufficient to require that the Bureau make its disclosures proactively.

On the first point, the Bureau has already determined that none of the information is exempt from disclosure. All of the information in the public Consumer Complaint Database is information that the Bureau is legally obligated to release upon request.¹³

On the second point, the Bureau itself has consistently described its maintenance of the public Consumer Complaint Database in FOIA terms as a “proactive disclosure.”¹⁴ When the Bureau first proposed routine disclosure of credit card complaint data, the agency acknowledged “the possible application of section 552(a)(2)(D) of FOIA.”¹⁵ Due to the “high level of public interest” in its consumer complaint information, the Bureau explained, the agency’s “complaint records may become subject to multiple, overlapping FOIA requests,” which could trigger the proactive-disclosure requirement in section 552(a)(2)(D).¹⁶ The Bureau later finalized its initial disclosure policy without fully addressing the agency’s FOIA obligations.¹⁷ But ever since, the annual reports of the Bureau’s Chief FOIA Officer have pointed to the public Consumer Complaint Database as reflecting the Bureau’s commitment to proactive disclosure under FOIA.¹⁸

The intervening years also have confirmed the Bureau’s prediction that it would receive multiple, overlapping FOIA requests for consumer complaint records. The Bureau has received a substantial number of requests for broad categories of consumer complaint records,¹⁹ not to mention the even higher number of requests for complaint information about particular companies. Meanwhile, the Bureau has referred potential FOIA requesters to the Consumer Complaint Database to see if the information they would otherwise request has already been disclosed there.²⁰ Thus, the number of FOIA requests for consumer complaint information likely would be even higher without the public Consumer Complaint Database.²¹

¹³ See 77 Fed. Reg. at 37,560-61; 78 Fed. Reg. at 21,220; 80 Fed. Reg. at 15,575-76.

¹⁴ *Disclosure of Certain Credit Card Complaint Data*, 76 Fed. Reg. 76,628, 76,628 (Dec. 8, 2011).

¹⁵ *Id.* at 76,630.

¹⁶ *Id.*

¹⁷ See 77 Fed. Reg. at 37,559 & n.4.

¹⁸ See 2014 Chief FOIA Officer Report at 11-12; 2015 Chief FOIA Officer Report at 8, 9; 2016 Chief FOIA Officer Report at 8; 2017 Chief FOIA Officer Report at 8; 2018 Chief FOIA Officer Report at 7.

¹⁹ See, e.g., CFPB-2018-002-F (complaints about 30 banks); CFPB-2018-185-F (discrimination complaints); CFPB-2017-018-F (complaints about student loan servicing); CFPB-2017-093-F (complaints about crowd-funding); CFPB-2017-380-F (complaints about crypto-currency); CFPB-2017-532-F (complaints about debt collection); CFPB-2016-095-F (complaints about virtual currencies); CFPB-2016-249-F (complaint reporting on banks, lenders, credit reporting agencies, debt collection companies, prepaid cards, credit and debt repair services, and title loan companies); CFPB-2016-315-F (complaints about market-linked certificates of deposit); CFPB-2015-003-F (complaints about payday loans or other consumer loans); CFPB-2015-022-F (complaints about debt collection); CFPB-2015-031-F (complaints about college loan debt, repayment, debt servicing, forgiveness, and debt collection firms); CFPB-2015-129-F (complaints about credit reporting); CFPB-2013-003-F (complaints relating to student loans); CFPB-2013-031-F (complaints about mortgages, private student loans, and bank accounts).

²⁰ See CFPB Website, *Submit a FOIA or Privacy Act Request* (last visited May 29, 2018), <https://www.consumerfinance.gov/foia-requests/submit-request>.

²¹ See 2017 Chief FOIA Officer Report at 8 (“Since the proactive posting of the consumer complaint narratives the CFPB FOIA Office has received less FOIA requests concerning consumer complaints.”).

Maintaining or expanding the public Consumer Complaint Database therefore is the most efficient, “citizen-centered” way for the Bureau to meet its legal obligations under FOIA. Eliminating or reducing public access to consumer complaint information on the Bureau’s website likely would result in more individual FOIA requests and more FOIA litigation, all at the expense of the American taxpayer.

* * *

To close, I want to emphasize that my office is largely satisfied with the Bureau’s existing approach to public reporting of consumer complaint information. The Bureau’s work bolsters my office’s consumer protection efforts and helps New Jersey consumers make better financial choices. While I appreciate the opportunity to respond to the Bureau’s request for information on this topic, I do not believe that the Bureau should make any significant changes to its existing practices—such as eliminating or reducing public access to the Consumer Complaint Database—without first considering public comments responsive to a concrete proposal from the agency.

Thank you for your consideration of my views.

Sincerely,

A handwritten signature in blue ink, appearing to read "Gurbir S. Grewal", followed by a period.

Gurbir S. Grewal
Attorney General