

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

HISTORY ASSOCIATES INCORPORATED,

Plaintiff,

v.

FEDERAL DEPOSIT INSURANCE  
CORPORATION,

Defendant.

Case No. 1:24-cv-1857-ACR

**REPLY IN SUPPORT OF HISTORY ASSOCIATES’  
CROSS-MOTION FOR SUMMARY JUDGMENT ON COUNT I**

History Associates’ cross-motion for summary judgment concerns only Count I—challenging the FDIC’s overbroad redactions—and the remaining dispute is narrow but important. The FDIC continues to redact two discrete, critical pieces of information from its productions: (1) the percentage of the caps imposed by banks on deposits from crypto companies, and (2) the names of public blockchains the banks proposed (and were barred from) using. That information is highly relevant to understanding the nature of the FDIC’s crypto crackdown. Revealing the amount of the deposit cap could support public reporting that the FDIC *directed* banks to impose a 15% cap on deposits from crypto companies. Banks’ behavior could show that supposedly *sua sponte* self-limitations were (more than) suggestions from above. And disclosing the names of public blockchains would inform the extent of banks’ interest in—and the FDIC’s hostility to—crypto.

Yet the FDIC has utterly failed to overcome its heavy burden under FOIA to explain how disclosing this information would harm the FDIC’s supervisory process. To the contrary, despite asserting that such disclosure would harm its relationships with banks, the FDIC “*admit[s]* that disclosing the percentage of the deposit cap would not foreseeably allow the public to identify the

bank at issue.” ECF 82-1 at 8 (emphasis added). That dooms the agency’s effort to withhold the percentage. If no one could foreseeably tie the percentage to a particular bank, what possible harm to the FDIC’s supervisory process could result from revealing the information? And although the FDIC claims that the names of public blockchains could be used to identify banks, it offers nothing but speculation to support that assertion—which is insufficient under blackletter FOIA case law. The Court should (again) order the FDIC to “make more thoughtful redactions.” Dec. 12, 2024 Minute Order.

## ARGUMENT

### I. The FDIC Has Not Met Its Burden To Justify Its Redactions

The FDIC has the burden to overcome FOIA’s “strong presumption in favor of disclosure.” *U.S. Dep’t of State v. Ray*, 502 U.S. 164, 173 (1991). To carry its burden, the FDIC must “articulate both the nature of the harm [from release] and the link between the specified harm and specific information contained in the material withheld.” *Reps. Comm. For Freedom of the Press v. FBI*, 3 F.4th 350, 369 (D.C. Cir. 2021). And the agency must show that the harm identified “will likely result from disclosure of the particular information the [FDIC] seek[s] to withhold.” *Hum. Rts. Def. Ctr. v. U.S. Park Police*, 126 F.4th 708, 714 (D.C. Cir. 2025). The FDIC has failed to carry that burden here with respect to the deposit cap percentage and the names of public blockchains.

#### A. The FDIC Has Failed To Justify Its Redactions Of The Percentage Of The Deposit Caps

The FDIC’s productions in this case disclosed the *existence* of deposit caps imposed by banks on crypto companies, but the agency withheld the numerical *percentage* of those caps. *See, e.g.*, ECF 48-2 at 51 (bank “placed a cap on digital asset-related deposits to [redacted] of total deposits”). The FDIC’s initial declarations in support of its redactions provided no explanation

for that arbitrary distinction—indeed, they did not mention the deposit caps at all. *See* HAI Br. 41-43. The FDIC’s effort to backfill on reply only further weakens its position.

In the statement of material facts accompanying its reply brief, the FDIC “admit[s] that disclosing the percentage of the deposit cap would not foreseeably allow the public to identify the bank at issue.” ECF 82-1 at 8. Consistent with that admission, the FDIC’s supplemental declarations nowhere assert that revealing the deposit cap percentage would identify any bank. That torpedoes the FDIC’s efforts to withhold this information. Revealing anonymous information about the percentage of already-revealed deposit caps cannot conceivably (let alone foreseeably) “harm an interest protected by” Exemption 8. 5 U.S.C. § 552(a)(8)(A)(i), (b).

The FDIC nevertheless argues that revealing the caps’ percentage would cause foreseeable harm to the FDIC’s supervisory process because the percentage is “confidential, non-public information.” FDIC Reply 4. The agency claims that revealing this information would “disincentivize banks from providing similar information to the FDIC in the first instance” and would make it “less likely that banks will engage with the agency in an open and transparent manner.” *Id.* at 5. But neither the FDIC nor its declarants explain why any of that harm would come to pass *if no one knows whose information the FDIC is disclosing*. The agency claims that disclosure of confidential information is a “textbook” foreseeable harm under Exemption 8, but all the cases it cites involved the disclosure (or potential disclosure) of confidential information tied to a *particular* individual or entity. *Id.* at 4-6. None involved disclosure of anonymized facts.

Nor has the agency explained what distinguishes the purportedly confidential percentage-cap information from other confidential information the agency itself disclosed in the same productions. Most obviously, the agency revealed the existence of the deposit caps, which presumably were just as confidential as the percentage of those caps. Yet that apparently caused no foreseeable

harm to the FDIC's supervisory process. Indeed, *most* of the documents the FDIC has produced in this case contain confidential information. One of the pause letters, for example, describes a bank's "proposed product" that "will offer bank customers access to Bitcoin and Ethereum through the bank's mobile app." ECF 27-2 at 16. Another discusses a bank's plan "to implement the following crypto-asset services for bank customers: custodian services (end of third quarter 2022); facilitation of buying and selling crypto-assets (after custodian services implementation); and, allowing customer to spend/withdraw bitcoin (no timeline)." *Id.* at 59.

If none of *that* information—which the FDIC already disclosed—caused harm to the FDIC's supervisory process, disclosing the detail of the percentage of already-revealed deposit caps won't either. The FDIC's unelaborated say-so that the percentage information is different fails to overcome FOIA's "strong presumption in favor of disclosure." *Ray*, 502 U.S. at 173.

#### **B. The FDIC Has Failed To Justify Its Redactions Of Public Blockchains**

The FDIC also has impermissibly redacted the names of public blockchains that banks were proposing to use in offering digital-asset products or services. *See, e.g.*, ECF 27-2 at 24-25 (referring to a "public [redacted] blockchain"). The FDIC claims that disclosing the names of those public blockchains "could reveal the underlying bank's identity." FDIC Reply 19. The agency's sole support for that assertion is the following statement from its declarants' supplemental declarations: "I believe that revealing the public blockchains in these instances, when taken in concert with other available information (e.g., the identity of the bank's supervisor, the dates of the records, the regional office from which the records were issued, and details regarding a bank's business activity under consideration) and my understanding of search-related technology advancements could reveal the underlying bank's identity." ECF 82-2 ¶ 8; ECF 82-3 ¶ 7 (identical).

That threadbare, self-serving, and unexplained contention does not suffice under FOIA. The FDIC seems to agree that the names of public blockchains standing alone would have negli-

gible (if any) probative value for guessing a bank's identity. The agency admits that public blockchains are decentralized, open-sourced software products that can be used by anyone with an Internet connection for various purposes. ECF 82-1 at 9. And it does not dispute that revealing that a bank planned to use a specific public blockchain (like Ethereum) is akin to knowing that a bank intended to use a specific web browser (like Google Chrome). *See* HAI Br. 40.

The FDIC instead relies on a “mosaic theory” to justify its withholdings—*i.e.*, that “bits and pieces of data may aid in piecing together bits of other information even when the individual piece is not of obvious importance in itself.” FDIC Reply Br. 7-8. But as the sole decision the FDIC cites explains, only “in cases implicating national security” have courts “permitted the government to rely on the mosaic theory.” *Shapiro v. United States Dep't of Just.*, 239 F. Supp. 3d 100, 115 (D.D.C. 2017). That is because “there is little or no limit to the scope of the mosaic theory—almost anything [an] agency does could form at least a miniscule piece of a massive mosaic that might reveal confidential information.” *Id.*; *see Prop. of the People, Inc. v. Off. of Mgmt. & Budget*, 330 F. Supp. 3d 373, 385 n.4 (D.D.C. 2018) (“applying this theory outside of the national security context” would be “potentially limitless and would grossly undermine the purpose of FOIA”). Nor could the FDIC establish a potential mosaic here in any event. The FDIC acknowledges that the agency “did not redact certain public blockchains (e.g., Bitcoin, Ethereum)” without any bank's identity being uncovered as a result. ECF 82-1 at 9. The agency does not explain—let alone with the specificity FOIA requires—why disclosing the remaining public blockchains would lead to a different result.

Finally, the FDIC briefly posits that artificial intelligence might somehow make the connection between the names of public blockchains and the identities of banks. But its only support for that assertion is the same law-firm webinar it cited in its motion for summary judgment—

which, as History Associate explained and the FDIC does not dispute, provided no proof that the firm actually connected any bank with any pause letter. *See* HAI Br. 42-43. Meanwhile, the FDIC admits that it “lacks the information necessary to evaluate” whether large language models regularly err or frequently hallucinate. ECF 82-1 at 10. Its AI alarmism thus is far too “speculative” a basis for “withhold[ing] information.” *Reps. Comm.*, 3 F.4th at 369 (internal quotation marks omitted).

### CONCLUSION

The Court should grant History Associates summary judgment as to Count I and order the FDIC to release the documents it produced without the improper redactions of the deposit-cap percentage and the names of public blockchains.

Date: September 17, 2025

Respectfully submitted,

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