

United States House of Representatives  
Committee on Financial Services  
Washington, D.C. 20515

June 21, 2017

Mr. Steven R. Ross  
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Ms. Leslie B. Kiernan  
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Dear Mr. Ross and Ms. Kiernan,

We write in response to your letter dated June 8, 2017 in which you assert certain legal protections over the information we requested from Deutsche Bank in our letter dated May 23, 2017. Specifically, you maintain that United States federal law prohibits the disclosure by Deutsche Bank and other financial institutions of details related to its customers. While we appreciate Deutsche Bank's desire to maintain the confidentiality of its customers, we respectfully disagree with your interpretation of the law's application to our inquiry, and therefore reiterate our request for the information enumerated in our original letter.

Though your letter lacks specific citations to legal authority, we must assume your reference to U.S. federal law governing the privacy of customer bank records refers to both the Right to Financial Privacy Act ("RFPA")<sup>1</sup> and the Gramm-Leach-Bliley Act ("GLBA").<sup>2</sup> As a general matter, the RFPA was not intended to apply to requests made by Congress. The RFPA prohibits the disclosure of confidential information held by financial institutions to a "government authority," which it explicitly defines as "any agency or department of the United States, or any officer, employee or agent thereof."<sup>3</sup> The legislative branch has never been considered an "agency or department," and the definition lacks any specific reference to or mention of the legislative branch. Additionally, the GLBA contains several relevant exceptions discussed in detail below.

Interestingly, Mr. Ross, in a 2012 article you and several colleagues wrote,<sup>4</sup> you anticipate that Congress may raise this point with counsel when requesting information from financial institutions, and you state that "[f]ederal statutes, including the Right to Financial Privacy Act (RFPA). . .prescribe procedures for other federal law enforcement, regulatory, and investigatory authorities to access such information, yet these statutes do not clearly address congressional

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<sup>1</sup> 12 U.S.C. § 3402

<sup>2</sup> 15 U.S.C. § 6801

<sup>3</sup> 12 U.S.C. § 3401(3)

<sup>4</sup> Ross, Steven R. et. al, "Preserving Privacy Inside the Beltway: Responding to Congressional Demands for Sensitive Financial and Medical Information." Bloomberg BNA Privacy and Security Law Report. 12 Oct. 2012. Available at:

<https://www.akingump.com/images/content/1/9/v4/19496/agshfrossprobermoyerarticlepvlroct222012pdf.pdf>

requests for such information from private parties.”<sup>5</sup> You specifically state that the GLBA limitation on disclosure to non-affiliated third parties “excludes disclosures permitted by the RFPA,”<sup>6</sup> and you also reference broader case law permitting disclosure of information in the context of congressional requests for “traditionally confidential information,” such as proprietary trade secrets.<sup>7</sup> The positions expressed within this article are inconsistent with Deutsche Bank’s blanket denial of access to the information we requested.

Such a denial is especially inappropriate given that a number of our requests do not require the furnishing of information that would invoke the aforementioned statutes at all. As an example, we asked that Deutsche Bank affirm that it had conducted an internal review of both the 2011 Russian mirror trading scheme and of President Trump’s accounts and those of his family members. Press reports have alluded to these reviews having been conducted, citing “sources familiar with the matter.”<sup>8</sup> However, your client has yet to confirm that these reports are accurate. A review of our letter will indicate a number of additional questions that have no protection under the RFPA or GLBA, as they do not invoke information “identified with or identifiable as being derived from the financial records of a particular customer,”<sup>9</sup> or “nonpublic personal information.”<sup>10</sup>

Importantly, with respect to the requests we made that may yield information indicating potential criminal or fraudulent conduct, both statutes permit disclosure. Even if the RFPA applied to requests made by the legislative branch, which we maintain it does not, neither the RFPA nor the GLBA prohibit disclosure of confidential information in the event of possible violations of law. The RFPA specifically permits financial institutions to provide information to a government authority “which may be relevant to a possible violation of any statute or regulation.”<sup>11</sup> Similarly, the GLBA contains a separate exception which permits disclosure of nonpublic personal information to a nonaffiliated third party “to protect against or prevent actual or potential fraud, unauthorized transactions, claims, or other liability.”<sup>12</sup> It is clear from the text of the statutes that information relating to criminal or fraudulent activity is not entitled to protection from disclosure.

Finally, with respect to the information we sought regarding the accounts of President Trump and his family members, the privacy statutes allow for full disclosure of non-public personal information with the consent of the customers whose information is sought.<sup>13</sup> Should Deutsche Bank continue to assert application of the RFPA and the GLBA, any liability concerns stemming from disclosure of the President’s and his family members’ nonpublic personal information can be alleviated if your client simply asks the President and his relatives for their consent to

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<sup>5</sup> *Id.* at 1.

<sup>6</sup> *Id.* at n.4.

<sup>7</sup> *Id.* at 2.

<sup>8</sup> Harding, Luke, et. al, “Deutsche Bank examined Donald Trump’s accounts for Russia links.” *The Guardian*. 16 Feb. 2017. Available at <https://www.theguardian.com/us-news/2017/feb/16/deutsche-bank-examined-trump-account-for-russia-links>

<sup>9</sup> See 12 U.S.C. § 3413(a)

<sup>10</sup> See 15 U.S.C. § 6809(4)

<sup>11</sup> See 12 U.S.C. § 3403(c)

<sup>12</sup> See 15 U.S.C. § 6802(e)(3)(B)

<sup>13</sup> See 15 U.S.C. § 6802(e)(2) and see 12 U.S.C. § 3402(1)



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disclose. Given President Trump's repeated assertions that he does not have ties to Russia, such disclosure would ostensibly be in his interest.

Given the legal concerns raised in your June 8, 2017 letter do not apply to the inquiry we made for information from Deutsche Bank, and even if they did apply, there are exceptions that permit disclosure of the information sought, we reiterate the requests of our May 23, 2017 letter.

Committee staff remains willing to engage with counsel to discuss the scope of our request and to provide any additional guidance concerning the format of your response. Accordingly, please provide a response to this letter by no later than June 29, 2017.

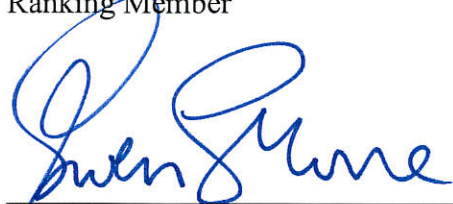
Sincerely,



Honorable Maxine Waters  
Ranking Member



Honorable Daniel Kildee  
Vice Ranking Member



Honorable Gwen Moore  
Ranking Member, Subcommittee on  
Monetary Policy and Trade



Honorable Al Green  
Ranking Member, Subcommittee on  
Oversight and Investigations



Honorable Ed Perlmutter  
Ranking Member, Subcommittee on  
Terrorism & Illicit Finance