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FOX Business Fights with FOIA

Bringing in bailout documents—and viewers

By Clint Hendler

By September 23, the federal government was already facing ample criticism over inadequate disclosure of basic information on its ballooning financial bailout efforts. On that day, then-Treasury Secretary Henry Paulson appeared before the Senate banking committee with some soothing words: “We need oversight. We need protection. We need transparency. I want it. We all want it.”

Almost three months later, those hollow-sounding words were quoted in an admirable lawsuit filed against Treasury by the Fox Business Network. The lawsuit sought to force compliance with the channel’s November 25 Freedom of Information Act request for data on the AIG and Citi bailouts and the now mostly abandoned TARP contract between the department and Bank of New York Mellon. Along with a separate suit seeking basic information on banks receiving bailout funds from the Federal Reserve Board of Governors, the lawsuit is one of two bailout-related legal actions by the network.

You might not expect Fox Business Network to wage a Freedom of Information Act battle against two of the least transparent arms of the federal government. For one thing, they’ve only been broadcasting since October 2007. They’ve never filed a FOIA request before. They’re not well-stocked, to say the least, with investigative reporters. And the channel’s lawyer on the suit readily admits he’s no FOIA expert.

Despite all that, they are gaining ground.

And they aren’t afraid to tell you about it.

Take Friday afternoon, when a federal district court judge ordered the Treasury Department to respond to Fox’s request. After the one-sentence ruling was made public, Fox’s David Asman broke on air just before two o’clock:

They said it couldn’t be done. They said you can’t fight city hall. But we felt it was very important for our viewers, for all you folks that are paying the bills on all these bailouts... it’s not so much for Fox Business. It’s for you folks, we are doing it for you. We are your eyes. We’re looking out for you. Literally.

Meanwhile, the network issued a press release with a triumphant quote from executive vice president Kevin Magee: "We're thrilled that this information is finally, and rightfully, going to be made available to the American public."

You could be excused for thinking—as CJR, along with others, sort of did on Friday—that the judge is forcing Treasury to wrap up as many as an estimated 15,000 pages in a pretty box and deliver them to 1211 Avenue of the Americas.

Not quite. The judge rebuffed Treasury's request, made in court in early February, for a two- to four-month delay before assembling their response. They now have thirty days to provide all of Fox's requested documents. Or—and here's the key—they can take another fifteen days after the initial thirty to list the documents it wishes to withhold in a "Vaughn Index" (named for a key 1973 FOIA case), explaining why they think the information meets one of FOIA's nine exemptions. According to Steve Mintz, Fox's lawyer, that list, and the denial justifications it gives, will almost certainly become a subject of further adjudication.

"I don't want to be like our former president who announced that the mission had been accomplished on the aircraft carrier when the war was not over—and we're still in it," said Mintz, appearing on-air the evening of the ruling. (He was presented with a black bottle of champagne, covered with Fox bigwigs' golden signatures, in an on-camera gesture of appreciation.)

So it could be some time before all of the requested information on AIG, Citi, and Mellon is handed over to Fox. But a trickle has begun: as of Monday, FOX had received 1,200 documents. According to Mintz, 900 are documents the government has already released. The rest are previously undisclosed, including memos between Treasury and the Fed on the AIG bailout. Fox plans to make all of the documents available on a special section of their Web site.

"This is a victory, and we're moving in the right direction, but the war isn't over," Mintz later told CJR.

FOX, of course, is not alone in asking the courts to enforce FOIA requests for information on the various bailouts. Bloomberg filed a similar suit against the Federal Reserve on November 7.

But one thing that makes FOX's efforts different are the degree to which they've become a populist point of pride. Take, for example, the ads the network bought in *The New York Times* and *The Wall Street Journal* earlier this month. "FED UP WITH THE FEDS?" one asked, in the form of a typewritten red meat memo to the "American People." ("WE ARE!" screamed the ad

in response.)

“That’s all a part of putting out the word that we are trying to operate in the best interest of our audience,” Magee told CJR. “There’s an awful lot of people who aren’t CEOs but who follow the stock market, and who are interested in the US economy. If it comes down to one channel will get all the CEOs and one channel will get everyone else, I’d like to be the channel with everyone else.

“It is not a wild publicity stunt. I will say this: we are new. We are trying to differentiate ourselves from that which is out there. One of the ways that we want to differentiate ourselves is to tell our audience that we are trying to protect their interests. We think that’s a wide-open field. CNBC seems to always be the friend of the CEO and that’s fine, nothing wrong with that. It has served them well,” said Magee. “But we also believe that as journalists, we have to ask difficult questions. And I really think that this is part of that, and if it does differentiate us from our competition, that’s a good thing, and I’m not gonna worry about it.”