

PLAINTIFF
EXHIBIT
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CARTER FULLERTON & HAYES, LLC

ATTORNEYS AT LAW

January 30, 2014

Via e-mail and First Class U.S. Mail

foia@ftc.gov

Consumer Response Center
Dione Jackson Stearns, Esq.
Mark Peterson, Esq.
Federal Trade Commission, # 130
600 Pennsylvania Avenue, N.W.
Washington, D.C. 20580

Re: FOIA – 2014-00237

Dear Ms. Stearns and Mr. Peterson:

More than 2 1/2 months have passed since this law firm filed FOIA-2014-00237. Yesterday, we received the Federal Trade Commission's ("FTC") first delivery of documents consisting of a mere 92 pages of records together with a demand for a second \$1,500.00 escrow payment.

No explanation has been provided why it took the Commission so long to produce so few records and at such a high cost. We do not agree that "exceptional circumstances" exist which relieve the agency of its obligations to timely and fairly process FOIA -2014-00237. These actions create a perception that the Commission is intentionally delaying the processing of the request, including overcharging fees or charging fees in a piecemeal fashion, to deny the requestor timely access to the responsive records. Under the current circumstances, it clear that the Commission has failed to comply with 5 U.S.C. § 552(a)(4)(A)(viii) and that the Commission is now prohibited from assessing any additional search fees.

By letter dated December 4, 2013, the FTC stated that "[w]e will contact you before we reach the \$1,500.00 limit to determine whether you wish to enter a further fee agreement." This did not occur. We have received no estimates of total costs to produce the requested records. 1. No invoice has been provided by the Commission documenting how the agency alleges the initial \$1,500.00 escrow funds were drawn down. No breakdown of Clerical Hours (Review/Excising) and cost has been tendered. No breakdown of Attorney/Economist Hours (Search and Review/Excising) and cost has been submitted. No breakdown of pages reproduced, and at what cost, have been shared with CFH. This type of information was provided by the Commission in the past. In private practice, a

1 16 CFR 4.8 (b) 6 establishes copy fees at \$0.14 per page. Using the Commission's page count of 90 produced this amounts to \$12.60 in total copy charges. What happened to the balance of the \$1,500.00 advanced to the Commission?

Dione Jackson Stearns, Esq.
Mark Peterson, Esq.
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failure to properly account for spent escrow funds would be treated, at a minimum, as an audit violation. Please immediately fax a copy of the missing invoice(s) to our attention.

To date, the only substantive search information provided by the Commission regarding the request is that: "many of the people you identified have completed their search for documents." Once again, the people identified as likely to have responsive records in the FOIA request consists of the universe of people the Commission previously identified as actually having responsive records in the past. The Commission court pleadings were the source of this information. The FOIA request merely summarized prior FTC findings by listing the names of these individuals. This summary of the FTC's representations to the Court was intended to assist the Commission in meeting its December 4, 2013 commitment "to use our best efforts to conduct a search that will be reasonably calculated to uncover all responsive documents." Please also see our letters of November 15, 2013, December 2, 2013 and December 19, 2013 regarding CF&H's ongoing commitment to work with the FTC in its efforts to process FOIA – 2014-00237.

Please find attached a copy of the letter forwarding a second escrow check in the amount of \$1,500.00 to the FTC. This second escrow payment of \$1,500.00 is made under protest. The requestor believes that all future research fees have been waived by the FTC pursuant to 5 U.S.C. § 552(a)(4)(A)(viii) and therefore reserves the right to seek re-imbursement on appeal or in a civil action.

By copy of this letter we also request that Richard Gold, in his capacity as FTC FOIA Public Liaison, independently review and respond to CFH regarding the timeliness of the FTC's actions regarding FOIA – 2014-00237, the billing issues raised in this letter, and whether per the terms of 5 U.S.C. § 552(a)(4)(A)(viii) the Commission has waived remaining fees in this matter. We request a response within ten (10) business days of the date of this letter.

Very truly yours,

Carter Fullerton & Hayes, LLC

By: 
John L. Carter, Esq.

cc: Richard Gold
FTC FOIA Public Liaison



CARTER FULLERTON & HAYES, LLC

ATTORNEYS AT LAW

January 30, 2014

Finance Management Office
H790
Federal Trade Commission
600 Pennsylvania Avenue, N.W.
Washington, DC 20580

Re: FOIA – 2014-00237
Carter Fullerton & Hayes, LLC
Second Advance Payment of \$1,500.00


Dear Sir or Madame:

Pursuant to Dione Jackson Stearns letter of January 23, 2014, enclosed is an escrow check for Fifteen Hundred Dollars (\$1,500.00) made payable to the Federal Trade Commission (“FTC”). This check constitutes the second advance payment of \$1,500.00 made by Carter Fullerton & Hayes, LLC to be used by the FTC to process FOIA-2014-00237.

We request that you confirm receipt of this advance payment.

Very truly yours,

Carter Fullerton & Hayes, LLC

By: 
John Laughlin Carter, Esq.

cc: D.J. Stearns, Esq.