



Federal Communications Commission
Washington, D.C. 20554

March 30, 2018

Matt Kasper
MuckRock
DEPT MR 46755
411A Highland Ave
Somerville, MA 02144
47868-39164856@requests.muckrock.com

Re: FOIA Control No. 2018-000334

Mr. Kasper:

This letter responds to your Freedom of Information Act (FOIA) request for “[t]he December 2017 and January 2018 calendars of Chairman Ajit Pai, Commissioner Mignon Clyburn, Commissioner Michael O’Rielly, Commissioner Brendan Carr, and Commissioner Jessica Rosenworcel” Your request has been assigned FOIA Control No. 2018-000334.

The Office of General Counsel and Offices of the Commissioners searched for responsive records. We located 133 pages of records responsive to your request. Some material on the pages produced has been redacted due to the reasons discussed below.

FOIA Exemption 2 protects records that are “related solely to the internal personnel rules and practices of an agency.” To fall under FOIA Exemption 2, the information must be related to “personnel” rules/practices, must relate “solely” to those rules, and the information must be “internal.” Here information relating to FCC employee evaluation practices was redacted. The information related to FCC personnel practices, related solely to those rules, and the rules are internal to the FCC.

Records responsive to your request were redacted under FOIA Exemption 4.¹ Exemption 4 protects matters that are “trade secrets and commercial or financial information obtained from a person and privileged or confidential.” Information we redacted under this exemption included travel confirmation numbers, conference call numbers and access codes, call-in numbers. We have determined that disclosure would harm the commercial interests of the entities involved.

Additional records were redacted under FOIA Exemption 5.² Exemption 5 protects certain inter-agency and intra-agency records that are normally considered privileged in the civil discovery context. Exemption 5 encompasses a deliberative process privilege intended to “prevent injury to the quality of agency decisions.”³ To fall within the scope

¹ 5 U.S.C. § 552(b)(4).

² 5 U.S.C. § 552(b)(5).

³ *NLRB v. Sears Roebuck & Co.*, 421 U.S. 132, 151 (1975).

of this privilege the agency records must be both predecisional and deliberative.⁴ Predecisional records must have been “prepared in order to assist an agency decision maker in arriving at his decision.”⁵ Deliberative records must be such that their disclosure “would expose an agency’s decision-making process in such a way as to discourage candid discussion within the agency and thereby undermine the agency’s ability to perform its functions.”⁶

In the present case, we have redacted information that would reveal non-public intra-agency considerations in decision-making. We have determined that it is reasonably foreseeable that disclosure would harm the Commission’s deliberative processes, which Exemption 5 is intended to protect. Release of this information would chill deliberations within the Commission and impede the candid exchange of ideas.

We have also redacted responsive records under FOIA Exemption 6.⁷ Exemption 6 protects “personnel and medical files and similar files the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.” Balancing the public’s right to disclosure against the individual’s right to privacy, we have determined that release of this information—consisting of private appointments, information about family members, potential job applicants, security information, and private contact information—would constitute a clearly unwarranted invasion of personal privacy.

Records responsive to your request were withheld or redacted under Exemption 7(E), which protects “records or information compiled for law enforcement purposes [the production of which] would disclose techniques and procedures for law enforcement investigations or prosecutions, or would disclose guidelines for law enforcement investigations or prosecutions if such disclosure could reasonably be expected to risk a circumvention of the law.”⁸ In the present case, we have redacted information which would otherwise disclose procedures for law enforcement or national security.

We are required by both the FOIA and the Commission’s own rules to charge requesters certain fees associated with the costs of searching for, reviewing, and duplicating the sought after information.⁹ To calculate the appropriate fee, requesters are classified as: (1) commercial use requesters; (2) educational requesters, non-commercial scientific organizations, or representatives of the news media; or (3) all other requesters.¹⁰

⁴ *Id.* at 151-52.

⁵ *Formaldehyde Inst. v. Dep’t of Health and Human Servs.*, 889 F.2d 1118, 1122 (D.C. Cir. 1989); *see also Coastal States Gas Corp. v. Dep’t of Energy*, 617 F.2d 854, 866 (D.C. Cir. 1980) (“In deciding whether a document should be protected by the privilege we look to whether the document is . . . generated before the adoption of an agency policy and whether . . . it reflects the give-and-take of the consultative process. The exemption thus covers recommendations, draft documents, proposals, suggestions, and other subjective documents. . .”).

⁶ *Formaldehyde Inst.*, 889 F.2d at 1122 (quoting *Dudman Commc’ns Corp. v. Dep’t of the Air Force*, 815 F.2d 1565, 1568 (D.C. Cir. 1987).

⁷ 5 U.S.C. § 552(b)(6).

⁸ 5 U.S.C. § 552(b)(7)(E).

⁹ *See* 5 U.S.C. § 552(a)(4)(A), 47 C.F.R. § 0.470.

¹⁰ 47 C.F.R. § 0.470.

Pursuant to section 0.466(a)(8) of the Commission's rules, you have been classified for fee purposes as category (3), "all other requesters."⁷ As an "all other requester," the Commission assesses charges to recover the full, reasonable direct cost of searching for and reproducing records that are responsive to the request; however, you are entitled to be furnished with the first 100 pages of reproduction and the first two hours of search time without charge under section 0.470(a)(3)(i) of the Commission's rules.⁸ The production did not involve more than 100 pages of duplication and took less than two hours of search time. Therefore, you will not be charged any fees.

If you consider this to be a denial of your FOIA request, you may seek review by filing an application for review with the Office of General Counsel. An application for review must be *received* by the Commission within 90 calendar days of the date of this letter.¹¹ You may file an application for review by mailing the application to Federal Communications Commission, Office of General Counsel, 445 12th St SW, Washington, DC 20554, or you may file your application for review electronically by e-mailing it to FOIA-Appeal@fcc.gov. Please caption the envelope (or subject line, if via e-mail) and the application itself as "Review of Freedom of Information Action."

If you would like to discuss this response before filing an application for review to attempt to resolve your dispute without going through the appeals process, you may contact the Commission's FOIA Public Liaison for assistance at:

FOIA Public Liaison
Federal Communications Commission, Office of the Managing Director,
Performance Evaluation and Records Management
445 12th St SW, Washington, DC 20554
202-418-0440
FOIA-Public-Liaison@fcc.gov

If you are unable to resolve your FOIA dispute through the Commission's FOIA Public Liaison, the Office of Government Information Services (OGIS), the Federal FOIA Ombudsman's office, offers mediation services to help resolve disputes between FOIA requesters and Federal agencies.¹² The contact information for OGIS is:

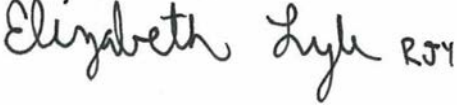
Office of Government Information Services
National Archives and Records Administration
8601 Adelphi Road-OGIS
College Park, MD 20740-6001
202-741-5770
877-684-6448
ogis@nara.gov
ogis.archives.gov

¹¹ 47 C.F.R. §§ 0.461(j), 1.115; 47 C.F.R. § 1.7 (documents are considered filed with the Commission upon their receipt at the location designated by the Commission).

¹² Please note that attempts to resolve your dispute through the FOIA Public Liaison or OGIS do not toll the time for filing an application for review unless an extension is granted by the Office of General Counsel.

If you have any questions, please contact Max Staloff at (202) 418-1764.

Sincerely,

A handwritten signature in black ink that reads "Elizabeth Lyle R. J. Y." The signature is written in a cursive style.

Elizabeth Lyle
Assistant General Counsel

Enclosures
cc: FCC FOIA Office