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Federal Communications Commission  
45 L Street NE  
Washington, D.C. 20554  
[ArkCase FOIA](#)

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Federal Communications Commission  
Washington, D.C. 20554

June 28, 2022

**VIA ELECTRONIC MAIL**

Re: FOIA Control No. 2022-000486

This letter responds to your Freedom of Information Act (FOIA) request for, “[a] copy of each (internal) FOIA Standard Operating Procedure (SOP) at the FCC FOIA Office. Please apply the foreseeable harm test, and discretionary release of what might otherwise be considered records exempt under b(5), and the presumption of openness.”<sup>1</sup> Your request has been assigned FOIA Control No. 2022-000486.

The Office of the Managing Director conducted a search for responsive records. The Commission maintains no records that are formally denominated “Standard Operating Procedures.” However, there are records regarding the Commission’s FOIA processes available on our website at: <https://www.fcc.gov/foia> and <https://www.fcc.gov/sites/default/files/fcc-directive-1179.3.pdf>, specifically including the Commission’s FOIA Reference Guide and FOIA Directive. In addition, we located records on our FOIA Intranet page, consisting of a one-page document regarding the Commission’s multi-track FOIA process, and a three-page document titled “Freedom of Information Act – Things to Remember.” We produce these four pages to you in full without redaction.

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.<sup>2</sup> 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.<sup>3</sup>

Pursuant to section 0.466(a)(8) of the Commission’s rules, you have been classified for fee purposes under category (3) as an “all other requester.”<sup>4</sup> 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.<sup>5</sup> The production in response to your request required less than two hours of search time, and was provided in electronic form. Therefore, you will not be charged any fees.

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<sup>1</sup> FOIA Control No. 2022-000486 (Submitted May 22, 2022).

<sup>2</sup> See 5 U.S.C. § 552(a)(4)(A); 47 CFR § 0.470.

<sup>3</sup> 47 CFR § 0.470.

<sup>4</sup> 47 CFR § 0.466(a)(8).

<sup>5</sup> 47 CFR § 0.470(a)(3)(i).

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.<sup>6</sup> You may file an application for review by mailing the application to Federal Communications Commission, Office of General Counsel, 45 L Street NE, Washington, DC 20554, or you may file your application for review electronically by e-mailing it to [FOIA-Appeal@fcc.gov](mailto: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  
45 L Street NE, Washington, DC 20554  
202-418-0440  
[FOIA-Public-Liaison@fcc.gov](mailto: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. 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](mailto:ogis@nara.gov)  
<https://www.archives.gov/ogis>

Sincerely,

*SK*  
*Vanessa Lamb*

Vanessa Lamb  
Acting Associate Managing Director  
Office of the Managing Director  
Performance Evaluation and Records  
Management

Enclosures

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<sup>6</sup> 47 CFR §§ 0.461(j), 1.115; 47 CFR § 1.7 (documents are considered filed with the Commission upon their receipt at the location designated by the Commission).

The Department of Justice encourages agencies to use multi-track processing in handling their FOIA requests. In multi-track processing, straightforward requests that can be processed relatively easily are placed in the simple track, while more time-consuming or difficult requests are placed in the complex track. The Commission is aiming to increase its use of multitrack processing in 2017.

Using a multitrack process has several benefits, but key to the Commission is that properly categorizing requests as complex will improve the statistics upon which the Department of Justice rates our FOIA performance. The Department of Justice sets a goal that agencies process simple requests within, on average, 20 business days. While most of the Commission's requests are processed in this time, we have a handful of complicated requests that take a very long time (sometimes in excess of 100 days), raising our overall average processing time above 20 business days. By accurately marking this complicated requests as complex, we can readily meet the Department of Justice's processing time goal.

In deciding whether a request is simple or complex, you should examine how long it will take to complete and how much work will be required. While there is no single, dispositive element that makes a request complex, here are some factors you should consider:

Issue	More Likely to Be Simple	More Likely to Be Complex
Volume of Records	Relatively small number of records (under 250 pages)	Large number of records (over 250 pages)
Location/Availability of Records	Records are located in the same office that is processing the request	Records need to be gathered from a different office, recalled from storage, or recovered by IT
Need to Consult	No need to consult with outside agencies regarding the request	Need to consult with one or more outside agencies regarding the request
Cross-Cutting Request	Request is limited to a single bureau/office	Request requires multiple bureaus/offices to search for and produce records
Novelty	Request is relatively routine and can be processed similar to prior requests	Request asks for types of records that have not previously been produced or will require a new approach
Sensitivity	Request can be processed routinely, without the need to receive additional management signoff	Request touches on certain equities that require additional management review and signoff
Redaction/Review Difficulty	Records require little review and any necessary redactions can be made easily	Records require substantial review; considerable redactions are necessary, requiring extra time to implement

If you are having difficulty determining whether to treat a request as simple or complex, please contact the FOIA staff in either OMD-PERMS or OGC. Once you decide a request should be marked as complex, it is an easy process of accessing the request in FOIAonline and changing the request track from "Simple" to "Complex." You can make this change at any time – when you receive the request, during processing, or even when you are closing out the request. After you change the request track to complex, you should add a comment to the file noting why you determined the request was categorized as complex.

## *Freedom of Information Act – Things to Remember*

### *FOIAonline*

- Review of Response Letters before Issuance – Forward the draft response letters to PERM (Stephanie Kost and Vanessa Lamb) at least one day before you plan to send out the final letter. Use the following subject line when forwarding the letter to PERM – “IMPORTANT: FOIA RESPONSE LETTER – PLEASE REVIEW APPEALS PARAGRAPH”. The boilerplate Appeals Paragraph, developed by OGC, can be found at: <http://intranet.fcc.gov/omd/perm/foia/FOIATemplates&Boilerplate.html> and must be used for all response letters. Please check any FOIA templates or sample letters your bureau/office uses and make sure the appeals paragraph corresponds to what OGC has developed.
- Once the appeals paragraph has been approved by PERM and the letter has been signed by your office, the response letter should be placed in the correspondence tab. To upload the response letter in FOIAonline, click “Create Correspondence” tab; “Correspondence Type: Other”; click “Select File” and upload your signed response letter.
- Comments Tab - Use this tab to communicate information related to the file that you want to share with others within the Commission.
- Fee Waiver Tab – Only contact OGC after you have determined if there will be billable fees. In the Assigned Tasks tab, after the decision by OGC to grant or deny the fee waiver, include the adjudication start and end dates. If we are not charging the requester, select “non-billable.” If the bureau isn’t charging for the request, you do not need to contact OGC.
- Expedited Processing Requests - DOJ requires agencies to grant or deny an expedited processing request within 10 calendar days of receiving the request. You must respond to the requester within 10 calendar days as to whether expedited processing has been granted or denied, and provide a copy of this response to Stephanie Kost. Responding to an expedited processing request is not optional. When closing an expedited processing request task in FOIAonline, use the date of the expedited response letter as the close out date of the task.
- Extend Due Date Tab - Must be used when the bureau/office is requesting a 10 day extension. This function can be back dated depending on your role in FOIAonline. Notify PERM if there is a need to back date the 10 day extension.
- Close Out all Tasks – All tasks should be closed before notifying PERM that the request is ready to close.
- Admin Cost Tab – Using the Admin Cost Tab will allow us to track costs and time (either billable or non- billable). Both the primary bureau and the coordinating bureaus should include their costs and time. Billable costs vary depending on the fee category. We are allowed to bill news media and educational requesters for duplication costs in excess of 100 pages. If we are late responding to the request, we cannot charge the requester for duplication. We are allowed to bill all others for search time in excess of two hours and duplication costs in excess of 100 pages. If we are late responding to the request, we cannot charge the requester for search time.

Finally, we are allowed to charge search, review and duplication costs to commercial requesters. If we are late responding to the request, we cannot charge the requester for search time. For each of the categories, please choose yes for billable charges when we are not late responding because the system will back out the search and duplication allowances for news media/educational and all others. Please select no for billable when we are late responding. Also, don't forget to include all of your time. When tracking your time for activities other than search, review and duplication, please use "other" then select "no" for billing. These costs are not billable.

- Stopping and Restarting the Clock – Use this function when obtaining clarification or when fee issues should be resolved. Unfortunately, stopping the clock can't be backdated.
- Closing Requests – PERM will close out all requests in FOIAonline. All records (those sent and withheld) should be sent to Stephanie Kost for saving on the K drive. Ensure the response letter is in the correspondence tab and the Admin Cost Tab is complete. See **Attachment 1** for the Close-out Checklist.

### Other

- For purposes of tracking time in WebTA, use project code P2033 when working on FOIAs.
- We no longer require offices to submit Forms 306 and 393, Computation of FOIA Processing Charges and FOIA Summary Information for Annual Report to Congress. This information is now captured in FOIAonline.
- If you have a news media request, please send your response letter to OMR (Shannon Gilson and Mark Wigfield) as an FYI.
- While there is an option to send records to requesters through the FOIAonline system, the Commission does not use this function. Rather, when responding to the requester, send your response letter and records (if needed) through email or outside of FOIAonline.
- If you believe a request should be assigned to another bureau, contact PERM.
- Consult with PERM before changing due dates on tasks.
- If you receive a new FOIA request, please forward to PERM and we will create new request in FOIAonline.
- Do not change the default choice "No" for requester information to public; description to public and attachments available to the public. FCC policy is to always mask this information in FOIAonline.
- PERM will categorize all MuckRock News requesters as "all others" by default since there is no way of knowing if the requester is a member of the news media. If you believe the requester is commercial or news media, please update the fee category in FOIAonline.
- FOIAonline Helpdesk can be reached at 1-844-238-7744.

## Attachment 1. FOIAonline Close-out Checklist

Below is a checklist which will assist you in beginning to close a FOIA request in FOIAonline.

*Review the following tabs after selecting the Request Details tab:*

**Submission Details:** Review this tab for accuracy and to ensure that no information has been made available to the public.

**Admin Cost tab:** Include copying charges and any search fees/review fees for all staff who worked on the request (including primary and coordinating) bureaus.

**Assigned Tasks Tab** - Are your expedited processing and fee waiver tasks closed? In the Assigned Tasks tab, if you have an expedited processing request or fee waiver you must click "pending" under "outcome." To close an expedited processing request, click "Edit or Close Out Task" and then Decision should be: Deny, Grant or Withdrawn by Requester. If Deny is chosen, please provide a "Denial Reason" and click the close out task tab. Make sure the "Closed Date" is the date the letter went to the requester. If you have a Fee Waiver task open, click pending under "outcome" then "Edit or close Out Task." Check to make sure your dates are accurate and then the "Decision" in the drop down menu is selected (Deny - only used when OGC denies a request; Not Billable is used when you're not charging the requester; Full Grant - when OGC approves the fee waiver; Partial grant - When OGC partially approves; Withdrawn by Requester - When requester withdraws request or fee waiver). You will need to include a "Denial Reason" which is usually in your response to requester.

**Review:** Please ensure that Vanessa Lamb's name is shown as a reviewer.

**Case File** - When you click the Case File tab another set of tabs will appear, please review the following tabs to ensure they are complete.

**Upload Responsive Records** tab; Click "Add Without File Upload" and under Records Title insert the FOIA Control Number; Release Type: Select "UU" or "RU" and click save changes. If you are using an exemption, click the pencil icon and then select the exemption number(s).

**Create Correspondence:** Correspondence Type: Always use "Other" and under "Correspondence Attachment", click "select files." Find the files needed and select create.

**Begin Close Out Process:** PERM will initiate this process.