

**Before the  
Federal Communications Commission  
Washington, D.C. 20554**

In the Matter of	)	
	)	
SHAWN MUSGRAVE, MUCKROCK NEWS	)	FOIA Control No. 2015-019
	)	
On Request for Inspection of Records	)	

**MEMORANDUM OPINION AND ORDER**

**Adopted: April 1, 2015**

**Released: April 1, 2015**

By the Commission:

1. By this Memorandum Opinion and Order, we dismiss as untimely an application for review filed by Shawn Musgrave of MuckRock News.<sup>1</sup> Mr. Musgrave requests review of a Freedom of Information Act (FOIA) decision by the Commission’s Office of Engineering and Technology (OET).<sup>2</sup>

2. Mr. Musgrave filed a FOIA request seeking “[a]ny memos or correspondence between the FCC and FBI regarding the requirement for state and local law enforcement agencies to ‘advance coordinate’ with the FBI before acquiring or using a Harris Corporation cell site simulator, commonly known as a StingRay.”<sup>3</sup> In a written decision dated November 21, 2014, OET advised Mr. Musgrave that OET, the Public Safety and Homeland Security Bureau, and the Wireless Telecommunications Bureau had conducted searches for records responsive to his FOIA request and had found none.<sup>4</sup> OET’s decision stated that any application for review must be filed within 30 days of the date of the decision.<sup>5</sup> On January 12, 2015, Mr. Musgrave filed an application for review.<sup>6</sup>

3. Our rules require that FOIA applications for review be filed within 30 days of the date of the written ruling by the custodian of the records, which means that Mr. Musgrave’s application for review was due on December 22, 2014.<sup>7</sup> A document is considered to be filed on the day the

<sup>1</sup> See letter from Shawn Musgrave to Jonathan Sallet, General Counsel, FCC (dated: Dec. 31, 2014; filed: Jan. 12, 2015) (*FOIA 2015-019 AFR*).

<sup>2</sup> See letter from Julius P. Knapp, Chief, OET, FCC, to Shawn Musgrave (Nov. 21, 2014) (*FOIA 2015-019 Decision*).

<sup>3</sup> See email from Shawn Musgrave to FCC FOIA Liaison (filed Oct. 9, 2014) (*FOIA 2015-019 Request*).

<sup>4</sup> See *FOIA 2015-019 Decision* at 1.

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

<sup>6</sup> See *FOIA 2015-019 AFR* at 1.

<sup>7</sup> See 47 C.F.R. § 0.461(j). The 30 days to be counted in computing the time period began on November 22, 2014, the day after the date appearing on the *FOIA 2015-019 Decision*. See 47 C.F.R. § 0.461(j) (the first day to be counted in computing the time period for filing an application for review is the day after the date of the written ruling). The thirtieth day was Sunday, December 21, so the application for review was due on the next business day, December 22. See 47 C.F.R. § 1.4(j) (if a filing date falls on a holiday, the document shall be filed on the next business day).

4. Commission receives it.<sup>8</sup> The Commission received the application for review on January 12, 2015,<sup>9</sup> 21 days after it was due. We therefore dismiss it as untimely.<sup>10</sup>

5. ACCORDINGLY, IT IS ORDERED that the Application for Review by Shawn Musgrave in FOIA Control No. 2015-019 IS DISMISSED. Mr. Musgrave may seek judicial review of this action pursuant to 5 U.S.C. §552(a)(4)(B).<sup>11</sup>

6. The following officials are responsible for this action: Chairman Wheeler, Commissioners Clyburn, Rosenworcel, Pai, and O’Rielly.

FEDERAL COMMUNICATIONS COMMISSION

Marlene H. Dortch  
Secretary

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<sup>8</sup> See 47 C.F.R. § 1.7.

<sup>9</sup> See FOIA 2015-019 AFR (date stamp).

<sup>10</sup> See *Hamilton Securities Group, Inc. v. Dep’t of Housing & Urban Dev.*, 106 F. Supp. 2d 23, 28 (D.D.C. 2003) (FOIA administrative appeal filed one day after 30-day filing deadline is late-filed, citing *U.S. v. Locke*, 471 U.S. 84, 100 (1985)), *aff’d* 2001 WL 238162 (D.C. Cir. 2001); *BDPCS, Inc. v. FCC*, 351 F.3d 1177, 1184 (D.C. Cir. 2003); *21<sup>st</sup> Century Telesis Joint Venture v. FCC*, 318 F.3d 192, 199-200 (D.C. Cir. 2003). See, e.g., *Michael Flynn, Site Management Solutions*, 28 FCC Rcd 14431 (2013) (dismissing an application for review filed “more than 20 days” late); *The Consumer Law Group*, 28 FCC Rcd 684 ¶ 5 (2013) (dismissing application for review of a FOIA decision filed three days late); *Michael C. Olson*, 13 FCC Rcd 20593 ¶ 1 (1998) (dismissing application for review filed one day late).

<sup>11</sup> We note that as part of the Open Government Act of 2007, the Office of Government Information Services (OGIS) was created to offer mediation services to resolve disputes between FOIA requesters and Federal agencies as a non-exclusive alternative to litigation. Using OGIS services does not affect Mr. Musgrave’s right to pursue litigation. Mr. Musgrave may contact OGIS in any of the following ways:

Office of Government Information Services  
National Archives and Records Administration  
Room 2510  
8601 Adelphi Road  
College Park, MD 20740-6001  
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