



Federal Communications Commission  
Washington, D.C. 20554

December 6, 2017

DA 17-1178

Jarrold Sharp  
[Address Redacted]

Re: FOIA Control No. 2018-067

Mr. Sharp:

On November 22, 2017, you appealed the denial of your application for a fee waiver in connection with your Freedom of Information Act (FOIA) request, FOIA Control No. 2018-067.<sup>1</sup> By this letter, we dismiss your appeal.

On October 26, 2017, you filed a FOIA request with the Commission, seeking 1) a copy of the “‘Restoring Internet Freedom’ plan,” 2) documents regarding the Commission’s release of the plan, and 3) documents discussing the Commission’s DDOS attack claims. This request was assigned FOIA Control No. 2018-067. Included in your request was an application for a fee waiver, the justification for which stated, in its entirety, “Non-commercial purpose.”

On November 22, 2017, the Office of General Counsel denied your fee waiver, noting that your fee waiver justification lacked any explanation of how the general public would benefit from the production of the requested records.<sup>2</sup> Particularly, the Office of General Counsel concluded that you had not demonstrated that you had the means, ability, or intent to disseminate the information in a manner that would be of general benefit to the public. The Office of the General Counsel also provided you with an estimate of the fees necessary to process your request, which totaled \$343.48.

Your appeal of the denial states, in pertinent part:

The fee assessment appears to be based on nothing more than discriminatory animus. It is not grounded in fact or law. As I previously stated the requested records will be made publicly available via distribution to the media for purposes of edifying the public about the operation of its government.

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<sup>1</sup> E-mail from Jarrod Sharp to FOIA-Appeal@fcc.gov (Nov. 22, 2017).

<sup>2</sup> Letter from Ryan Yates, Attorney Advisor, Office of General Counsel, Federal Communications Commission, to Jarrod Sharp (Nov. 22, 2017).

Regarding your claim that the fee estimate is “based on nothing more than discriminatory animus,” you provide no evidence or argument for this claim. While you state that the estimate was “not grounded in fact or law,” the letter clearly set out the estimated number of hours required to conduct a search for the records you requested, the pay level of the persons who would conduct the search, and the total cost to you for performing that search.

Your claim that you were entitled to a fee waiver because “[you] previously stated the requested records [would] be made publicly available via distribution to the media” is also unavailing.<sup>3</sup> Courts have held that merely providing records to a media outlet is not sufficient to qualify for a fee waiver.<sup>4</sup>

You later supplemented your appeal, arguing that the Commission’s response to your request was untimely, stating that the Commission “failed to respond within the required 20 days.”<sup>5</sup> This is incorrect. The response was timely. You submitted your FOIA request through FOIAonline on October 26, 2017. On the following day, October 27, 2017, the request was perfected by the Office of the Managing Director.<sup>6</sup> The Commission had twenty business days from the date of perfection to respond to the request, which is November 28, 2017.<sup>7</sup> The Office of General Counsel sent you the fee waiver denial and fee estimate letter on November 22, 2017, nearly a week prior to the November 28, 2017 deadline.<sup>8</sup>

Given the above, we conclude that you have not raised any material issues with the denial of your fee waiver that would merit review by the Commission. For these reasons, we

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<sup>3</sup> Your plan to provide these records to media outlets was not included in your initial application for a fee waiver. Fee waivers are reviewed on a case-by-case basis, so any justifications you may have raised with the Commission in connection with other FOIA requests are not automatically incorporated into the fee waiver application under review here. *See, e.g., Media Access Project v. FCC*, 883 F.2d 1063, 1065 (D.C. Cir. 1989) (recognizing case-by-case review of fee waiver applications). *See also* 47 CFR § 0.470(c) (requiring that an applicant for a fee waiver “must include, in his or her *original FOIA request*, a statement explaining with specificity, the reasons demonstrating that he or she qualifies for a fee waiver.” (emphasis added)).

<sup>4</sup> *See Larson v. CIA*, 843 F.2d 1481, 1483 n.5 (D.D.C. 1988) (holding that the granting of fee waivers “does not extend to citizens who intend to release requested information to journalists because such a rule would enable requesters to avoid fees simply by asserting an intention to give the released documents to a newspaper.” (internal quotations omitted)).

<sup>5</sup> E-mail from Jarrod Sharp to FOIA-Appeal@fcc.gov (Nov. 27, 2017).

<sup>6</sup> 47 CFR 0.461(e)(1).

<sup>7</sup> 47 CFR 0.461(g)(1). November 10, 2017, and November 23, 2017, were public holidays and are not counted as business days. Additionally, this calculation does not account for the fact that the response time was tolled starting on October 30, 2017, when Commission staff contacted you to seek clarification of this and other requests. 47 CFR 0.461(e)(2); E-mail from Ryan Yates, Attorney Advisor, Office of General Counsel, to Jarrod Sharp (Oct. 30, 2017).

<sup>8</sup> The request that you authorize additional funds further tolled the response time for your request. 47 CFR 0.461(e)(2).

dismiss your application for review under section 0.251(j) of the Commission's rules for failing to articulate specific grounds for review.<sup>9</sup>

Pursuant to 5 U.S.C. § 552(a)(6)(A)(ii), we notify you of the provisions for judicial review under paragraph (a)(4) of the Freedom of Information Act.<sup>10</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 your right to pursue litigation. You may contact OGIS in any of the following ways:

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)  
[ogis.archives.gov](http://ogis.archives.gov)

Sincerely,

Thomas M. Johnson, Jr.  
General Counsel  
Office of General Counsel

cc: FOIA Officer

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<sup>9</sup> See 47 C.F.R. § 0.251(j) (as the Commission's Chief FOIA Officer, "the General Counsel is delegated authority to dismiss FOIA applications for review that are untimely, repetitious, or fail to articulate specific grounds for review").

<sup>10</sup> See 5 U.S.C. § 552(a)(4)(B) ("On complaint, the district court of the United States in the district in which the complainant resides, or has his principal place of business, or in which the agency records are situated, or in the District of Columbia, has jurisdiction to enjoin the agency from withholding agency records and to order the production of any agency records improperly withheld from the complainant.")