



Federal Communications Commission  
Washington, D.C. 20554

September 30, 2019

Michael Kaszuba  
2375 University Avenue West  
St. Paul, MN 55114  
[mkaszuba@publicrecordmedia.org](mailto:mkaszuba@publicrecordmedia.org)

RE: FOIA Control No. 2019-000651

Dear Mr. Kaszuba,

This is in reply to your request dated August 6, 2019, in which you invoke the Freedom of Information Act (FOIA) (5 U.S.C. 552), seeking "all records and correspondence, including emails and texts, related to high-altitude balloons being flown by the U.S. military over the Midwest, including but not limited to Iowa, Minnesota, Missouri and Wisconsin, for surveillance purposes to deter narcotic trafficking and homeland security threats. The period covered by this request is Jan. 1, 2017 to the present."

After careful review, the Commission's FOIA office determined that your request should be properly assigned to the Office of Engineering and Technology (OET) as the lead office and requested the Public Safety and Homeland Security Bureau (PSHSB) to search for records as well. The Wireless Telecommunications Bureau (WTB), the Wireline Competition Bureau (WCB) and the Enforcement Bureau (EB) also conducted a search for responsive records as you requested. WCB and EB did not find any records responsive to your request. OET found 14 records responsive to your request. WTB and PSHSB's searches each produced a duplicate record that was also found by OET. We are forwarding eight records with four records having some information redacted under FOIA Exemptions 5<sup>1</sup> and 6.<sup>2</sup> We are withholding six records under Exemption 5.

Records responsive to your request were withheld or redacted under FOIA Exemption 5. 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."<sup>3</sup> To fall within the scope of this privilege the agency records must be both predecisional and deliberative.<sup>4</sup> Predecisional records must have been "prepared in order to assist an agency decision maker in arriving at his decision."<sup>5</sup> Deliberative records must be such that their disclosure "would expose an agency's decisionmaking process in such a way as to discourage candid discussion within the agency and thereby undermine the agency's

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<sup>1</sup> 5 U.S.C. § 552(b)(5).

<sup>2</sup> 5 U.S.C. § 552(b)(6).

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

<sup>4</sup> *Id.* at 151-52.

<sup>5</sup> *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. . .").

ability to perform its functions.”<sup>6</sup> Records withheld or redacted include internal deliberations about filings made by outside parties as well as interagency communications (i.e., frequency coordination with National Telecommunications and Information Administration’s Frequency Assignment Branch). 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.

Records responsive to your request were redacted under FOIA Exemption 6. 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 would constitute a clearly unwarranted invasion of personal privacy. Redacted material includes non-public contact information. We have determined that it is reasonably foreseeable that disclosure would harm the privacy interest of the person mentioned in these records, which Exemption 6 is intended to protect.

The FOIA requires that “any reasonably segregable portion of a record” must be released after appropriate application of the Act’s exemptions.<sup>7</sup> The statutory standard requires the release of any portion of a record that is nonexempt and that is “reasonably segregable” from the exempt portion. However, when nonexempt information is “inextricably intertwined” with exempt information, reasonable segregation is not possible.<sup>8</sup> The redactions and/or withholdings made are consistent with our responsibility to determine if any segregable portions can be released. To the extent non-exempt material is not released, it is inextricably intertwined with exempt material.

Pursuant to section 0.466(a)(5)-(7) of the Commission’s rules, you have been classified as category (2), “educational requesters, non-commercial scientific organizations, or representatives of the news media.”<sup>9</sup> As an “educational requester, non-commercial scientific organization, or representative of the news media,” the Commission assesses charges to recover the cost of reproducing the records requested, excluding the cost of reproducing the first 100 pages. The production in response to your request did not involve more than 100 pages of duplication. 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.<sup>10</sup> You may file an application for review by mailing the application to Federal Communications Commission, Office of General Counsel, 445 12<sup>th</sup> St SW, 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.”

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<sup>6</sup> *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)).

<sup>7</sup> 5 U.S.C. § 552(b) (sentence immediately following exemptions).

<sup>8</sup> *Mead Data Cent. Inc. v. Dep’t of the Air Force*, 566 F.2d 242, 260 (D.C. Cir. 1977).

<sup>9</sup> 47 C.F.R. § 0.466(a)(5)-(7).

<sup>10</sup> 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).

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 12<sup>th</sup> St SW, Washington, DC 20554

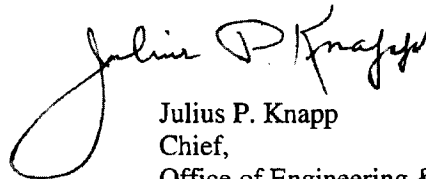
FOIA-Public-Liaison [REDACTED]

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

[REDACTED]  
[REDACTED]  
ogis@ [REDACTED]  
ogis.archives.gov

Sincerely,



Julius P. Knapp  
Chief,  
Office of Engineering & Technology

cc: FOIA Office

Attachments