



Federal Communications Commission
Washington, D.C. 20554

February 25, 2025

VIA ELECTRONIC MAIL

[REDACTED]

Re: FOIA Control Nos. 2024-000658 and 2024-000660

[REDACTED]

This letter responds to two Freedom of Information Act (FOIA) requests you submitted to the Federal Communications Commission (FCC or Commission). These requests were consolidated on September 27, 2024, pursuant to section 0.461(e)(4) of the Commission's rules.¹ Through your first request, you seek, for the period beginning February 1, 2023 and extending through July 18, 2024:

- (1) Emails, text messages, memos, letters, final reports, final legal guidance and final legal opinions, referencing FCC [Chairman] Brendan Carr and Project 2025 and the Heritage Foundation;
- (2) Anonymized complaints filed with the FCC and the Office of Inspector General referencing Project 2025 and the Heritage Foundation and FCC [Chairman] Brendan Carr;
- (3) Emails from the official government account of Brendan Carr referencing Project 2025 and the Heritage Foundation, and
- (4) Ethics waivers granted to Brendan Carr referencing Project 2025 and the Heritage Foundation.²

This request had been assigned FOIA Control No. 2024-000658.

Through your second request, you seek for the period beginning January 1, 2023 and extending through July 19, 2024:

- (1) A copy of the Ethics Officer's Opinion, if one exists, referencing FCC [Chairman] Brendan Carr and the Heritage Foundation and contributions Mr. Carr made to Project 2025; and
- (2) Emails, memos, letter, [and] text messages between Mr. Carr and the Heritage Foundation and the Heritage.org email domain.³

This request had been assigned FOIA Control No. 2024-000660.

¹ See email from Stephanie Kost, Federal Communications Commission to [REDACTED] (Sept. 27, 2024 10:15 AM EDT).

² FOIA Control No. 2024-000658 (submitted July 18, 2024).

³ FOIA Control No. 2024-000660 (submitted July 19, 2024).

In order to provide as transparent of a response as possible, we have searched for, and elected to provide you with, records that extend beyond the date ranges provided in your requests but are nonetheless responsive to the requests' subject matter. To that end, searches undertaken by Commission staff located 36 responsive records. Of the records located, 27 are produced with this response. The remaining nine records are being withheld for the reasons discussed below. Additionally, some material in the records produced herewith has been redacted for the reasons discussed below. To the extent that your requests sought records in the direct possession of the Commission's Office of Inspector General (i.e. the portion of your requests seeking anonymized complaints filed with the Commission and the Office of Inspector General), that office will (or has) respond(ed) to you directly.

Records responsive to your request were withheld or redacted under FOIA Exemption 5 which protects certain inter-agency and intra-agency records that are normally considered privileged in the civil discovery context.⁴ Exemption 5 encompasses the deliberative process privilege intended to "prevent injury to the quality of agency decisions."⁵ To fall within the scope of this privilege the agency records must be both predecisional and deliberative.⁶ Predecisional records must have been "prepared in order to assist an agency decision maker in arriving at his decision."⁷ 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."⁸

As applied here, we have redacted a portion of one record wherein Commission personnel offered advice on how to respond to a media inquiry. In addition, we have also redacted portions of some records and withheld other records in their entirety because they contain deliberation related to pending ethics questions and advice. In all cases, the material withheld reflected deliberation preliminary to making a decision as to either how to respond to a media inquiry or how to resolve an ethics question.

We have determined that disclosure of these records would cause specific reasonably foreseeable harms to the deliberative process, which Exemption 5 is intended to protect. In particular, the withheld or redacted records implicate sensitive matters that require particular candor in the advice given to decision makers, which would be discouraged by the public release of the advice, and

⁴ 5 U.S.C. § 552(b)(5).

⁵ *NLRB v. Sears Roebuck & Co.*, 421 U.S. 132, 151 (1975).

⁶ *Id.* at 151-52.

⁷ *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 . . .").

⁸ *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)).

consist of recent deliberations of staff who are currently still employed by the agency, the public release of which would inhibit future frank communications and the free exchange of ideas that the privilege is designed to protect.

Additionally, records responsive to your request were redacted under FOIA Exemption 6 which protects “personnel and medical files and similar files the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.”⁹ As applied to the instant matter, the redacted information consists of individuals’ personal cell phone numbers and email addresses. 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, inasmuch as it would permit unwanted contact and even harassment of the individuals involved. Accordingly, we have determined that it is reasonably foreseeable that disclosure would harm the privacy interest of the persons 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.¹⁰ 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.¹¹ The redactions and/or withholdings made here 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.

We also reviewed the withheld or redacted records to determine if discretionary release is appropriate.¹² Because of the reasonably foreseeable harm to the agency decision-making process, we decline to make a discretionary release of material subject to Exemption 5. Further, the materials that are protected from disclosure under Exemption 6 are not appropriate for discretionary release in light of the personal privacy interests involved.

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.¹³ 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.¹⁴

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

⁹ 5 U.S.C. § 552(b)(6).

¹⁰ 5 U.S.C. § 552(b) (sentence immediately following exemptions).

¹¹ *Mead Data Cent. Inc. v. Dep’t of the Air Force*, 566 F.2d 242, 260 (D.C. Cir. 1977).

¹² See President’s Memorandum for the Heads of Executive Departments and Agencies, Freedom of Information Act, 74 Fed. Reg. 4683 (2009).

¹³ See 5 U.S.C. § 552(a)(4)(A); 47 CFR § 0.470.

¹⁴ 47 CFR § 0.470.

media.”¹⁵ For 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 was provided in electronic form. Therefore, you will not be charged any fees.

You have requested a fee waiver pursuant to section 0.470(e) of the Commission’s rules.¹⁶ As you are not required to pay any fees in relation to your FOIA request, the Office of General Counsel, which reviews such requests, does not make a determination on your request for a fee waiver.¹⁷

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.¹⁸ 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. 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

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

¹⁵ 47 CFR § 0.466(a)(5)-(7).

¹⁶ 47 CFR § 0.470(e).

¹⁷ 47 CFR § 0.470(e)(5).

¹⁸ 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).

877-684-6448

ogis@nara.gov

<https://www.archives.gov/ogis>

Sincerely,

/s/

Christopher Santini
Special Counsel
Office of General Counsel

Enclosure

cc: FCC FOIA Office