



Federal Communications Commission
Washington, D.C. 20554

December 29, 2010

William Wilson
Americans For Limited Government
9900 Main Street
Suite 303
Fairfax, VA 22031

Re: FOIA Control No. 2011-093
Request for Fee Waiver

Dear Mr. Wilson:

This responds to your request on behalf of Americans for Limited Government (ALG) for a waiver of fees for processing the above-referenced Freedom of Information Act (FOIA) request.¹ For the reasons that follow, we deny the fee waiver request.

The FOIA provides that a waiver or reduction of FOIA fees will be granted only "if disclosure of the information is in the public interest because it is likely to contribute significantly to public understanding of the operations or activities of the government and is not primarily in the commercial interest of the requester."² Thus, to qualify for a fee waiver, the requester must demonstrate specifically how disclosure of the materials sought will contribute to the public's understanding of the operations or activities of the government.³ The statutory standard requires a showing both that the information requested would significantly add to public understanding and that the information will actually be disseminated to the public, in addition to a showing that the FOIA request primarily serves a public, not commercial, purpose.⁴

ALG's request seeks records that "pertain to or from any Commissioner of the Federal Communications Commission (FCC) or their immediate staff and the following

¹ See Letter from William Wilson to FOIA Officer (Dec. 7, 2010) (Request).

² 5 U.S.C. § 552(a)(4)(A)(iii); see also 47 C.F.R. § 0.470(e) (criteria for granting a fee waiver).

³ See *McClellan Ecological Seepage Situation v. Carlucci*, 835 F.2d 1282, 1285 (9th Cir. 1987) (*MESS*) (requiring an explanation with "reasonable specificity how disclosure will contribute to public understanding"), citing *National Treasury Employees Union v. Griffin*, 811 F.2d 644, 647 (D.C. Cir. 1987) (burden is on the requester to identify and demonstrate with "reasonable specificity" the public interest to be served).

⁴ See 47 C.F.R. § 0.470(e)(2) (factors relevant to statutory standard).

[nine] individuals.”⁵ The individuals are: 1. Alan Davidson, 2. Frannie Wellings, 3. Harry Wingo, 4. Jennifer Taylor, 5. Johanna Shelton, 6. Pablo Chavez, 7. Richard Whitt, 8. Seth Webb, and 9. Will DeVries.

ALG’s contends that the fees charged for processing this request should be waived or reduced, because the information sought will be used to “better the public’s understanding of how the FCC is spending the taxpayers’ money.”⁶ ALG further states that it regularly publishes information on the activities, structure, and operations of the government through its publications and website and that the information will be disseminated widely to parties interested in the workings of the government. According to ALG, the information will therefore primarily benefit the public and not ALG.⁷

ALG provides no information as to the affiliations of these individuals, the subject matter of the communications sought, or why these communications have any particular significance that would contribute significantly to public understanding of the operations of activities of the government.⁸ Individuals routinely communicate with the Commission on a wide variety of issues for a wide variety of reasons. Much of this dialog is reflected in the public record associated with the various proceedings pending before the Commission.⁹ ALG attributes no specific significance to communications by these individuals and apparently assumes that any communication between the Commission and an outside party might potentially contribute to public understanding of the operations or activities of the government. Such broad speculation is insufficient to support a request for fee waiver.¹⁰

The Office of General Counsel has been assigned to process your request and will be in touch concerning fees for processing the request if ALG decides to proceed without a fee waiver.¹¹ Pursuant to the Commission’s rules, the period for responding to ALG’s FOIA request is tolled pending the resolution of the fee waiver issue and the clarification or any other fee issues.¹²

⁵ See Request at 1.

⁶ See *id.* at 4.

⁷ See *id.*

⁸ See *Brown v. USPTO*, 226 F. Appx. 866, 869 (11th Cir. 2007) (requester failed to provide adequate explanation how requested information was related to the operations and activities of the government).

⁹ See *Judicial Watch, Inc. v. DOJ*, 365 F.3d 1108, 1127 (D.C. Cir. 2004) (requester not entitled to blanket fee waiver where agency indicated that undisclosed documents were in the public record).

¹⁰ See *VoteHemp, Inc. v. DEA*, 237 F.Supp.2d 55, 61 (D.D.C. 2002) (rejecting a fee waiver request based on “rank speculation”).

¹¹ See 47 C.F.R. § 0.470(a)(3) (fees for all others requesters).

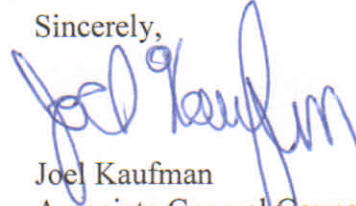
¹² See 47 C.F.R. § 0.461(e)(2)(i)(B).

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ALG may file an application for review of this denial of its FOIA fee waiver request by sending it to the Commission's Office of General Counsel, 445 12th Street, S.W., Washington, DC 20554, within 30 days of the date of this letter, in accordance with 47 C.F.R. §§ 0.461(j) and 0.470(g).

Sincerely,



Joel Kaufman
Associate General Counsel and
Chief, Administrative Law Division
Office of General Counsel

cc: FOIA Officer