



Federal Communications Commission
Washington, D.C. 20554

October 17, 2017

DA 17-1017

Zachary Kopplin
Government Accountability Project
832 Valence St.
New Orleans, LA 70115
Sent via email to zackk@whistleblower.org

Re: FOIA Control No. 2017-001011 (Appeal);
FOIA Control No. 2017-000832 (Initial Decision)

Mr. Kopplin:

We have received your application for review¹ of the Office of General Counsel's decision² addressing your Freedom of Information Act (FOIA) request, numbered FOIA Control No. 2017-000832 (*FOIA Request*).³ Your request sought "personal loyalty pledge[s]" made to the White House by "current and former members of the FCC's leadership team."⁴ As explained below, we dismiss your application for review for failure to articulate specific grounds for review.

In full, your request sought:

"any and all documents, including, but not limited to, notes, e-mails, memos, or any other materials concerning pledges, oaths, requests or agreements, oral or written, not to disclose information or documents, or pledges, oaths, requests or agreements, oral or written, having to do with loyalty, allegiance, or similar concepts, made to the President, the Vice President, the Office of the President or the Office of the Vice President, or any individual working in the White House or the White House Compound by any and all current and former members of the FCC's leadership team according to the FCC's website, including, when applicable, but not limited to, the Chairman and Commissioners, along with the leadership team's senior staff, since Nov. 9, 2016."⁵

You stated that, in sum, you were "looking for analogs in your agency to the memos that former FBI Director James Comey wrote about a personal loyalty pledge that the President asked him to give."⁶

In the *FOIA Initial Decision*, we stated that the offices of the Chairman and commissioners searched for documents responsive to your request.⁷ The Office of General

¹ See *FOIA Decision Appeal* (FOIA Control Number 2017-001011: received August 23, 2017).

² See Letter from Elizabeth Lyle, Assistant General Counsel, Office of General Counsel, FCC, to Zachary Kopplin (August 14, 2017) (*FOIA Initial Decision*).

³ See *FOIA Request* (submitted July 19, 2017, and perfected July 20, 2017).

⁴ *Id.*

⁵ *Id.*

⁶ *Id.*

⁷ See *FOIA Initial Decision* at 1.

Counsel contacted each of these Offices and asked them to search for responsive records. Each Office responded to the Office of General Counsel and stated that they did not have responsive records.

In your application for review of the *FOIA Initial Decision*, you state that you appeal this response “and the integrity of the search because [you] believe there may be responsive records within the FCC.”⁸ You state that you were “skeptical when [you] received a response of no records found.”⁹ As in your initial request, you explain that your “skept[ic]ism” is due to the fact that “[t]he President has suggested that he expects loyalty oaths from his subordinates.”¹⁰

On September 18, 2017, the Office of General Counsel contacted you and reiterated that the Offices of the Chairman and Commissioners had searched for responsive records, and asked you to state the grounds for your appeal.¹¹ Later that day, you responded, in entirety, “What if I don’t trust the political appointees to be completely honest?”¹² On September 19, 2017, we responded to your email and informed you of the legal standard when a requester challenges the validity of a search.¹³ On September 21, 2017, you again explained that you “don’t grant this administration a presumption of good faith” and restated your belief that members of the Commission may have made “loyalty oath[s].”¹⁴

As we explained in our September 19, 2017 email, courts grant government officials a presumption of good faith in conducting FOIA searches.¹⁵ To rebut that presumption, a FOIA requester must present evidence that the search was not made in good faith.¹⁶ Purely speculative claims of an inadequate search are not sufficient to overcome this presumption.¹⁷ Apart from your statement that you “don’t trust the political appointees” and your speculation that the records you request exist, you do not elaborate on how you believe the Commission erred in searching for documents responsive to your request. You have failed to specify, with particularity, a factor that warrants Commission consideration.¹⁸ We dismiss your application for review under section 0.251(j) of the Commission’s rules for failure to articulate specific grounds for review.¹⁹

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.²⁰ We note that as part of the

⁸ *FOIA Decision Appeal* at 1.

⁹ *Id.*

¹⁰ *Id.*

¹¹ September 18, 2017, email of Matthew Collins to Zachary Kopplin.

¹² September 18, 2017, email of Zachary Kopplin to Matthew Collins.

¹³ September 19, 2017, email of Matthew Collins to Zachary Kopplin.

¹⁴ September 21, 2017, email of Zachary Kopplin to Matthew Collins.

¹⁵ *Wadelton v. Dep’t of State*, 106 F. Supp. 3d 139, 149 (D. D.C. 2015).

¹⁶ *Fischer v. Dep’t of Justice*, 723 F. Supp. 2d 104, 108 (D. D.C. 2010).

¹⁷ *SafeCard Servs. v. SEC*, 926 F.2d 1197, 1200 (D.C. Cir. 1991).

¹⁸ See 47 C.F.R. § 1.115(b) (grounds for application for review).

¹⁹ 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”).

²⁰ 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,

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National Archives and Records Administration
8601 Adelphi Road—OGIS
College Park, MD 20740-6001
202-741-5770
877-684-6448
ogis@nara.gov
ogis.archives.gov

Sincerely,

Nicholas Degani
Acting General Counsel
Office of General Counsel

cc: FOIA Officer

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.”)