



Federal Communications Commission
Washington, D.C. 20554

September 19, 2017

DA 17-907

Mr. Jarrod Sharp
19539 Wootton Ave.
Poolesville, MD 20837

Re: FOIA Control No. 2017-000896 (Appeal);
FOIA Control No. 2017-000774 (Initial Decision)

Dear Mr. Sharp:

We have received your application for review¹ of the Office of General Counsel's decision² addressing your Freedom of Information Act (FOIA) request (*FOIA Request*) seeking "a copy of the 2015 Open Internet Order, the 2017 Notice of Proposed Rulemaking demonstrating the FCC's desire to rescind Net Neutrality, and the FCC OGC's legal analysis of said Notice."³ As explained below, we dismiss your application for review.

In the *FOIA Initial Decision*, we stated that we had searched the records of the Commission's Office of General Counsel (OGC) for documents responsive to your request.⁴ We noted that copies of the FCC's *2015 Open Internet Order* and *2017 Notice of Proposed Rulemaking* are available on the Commission's website.⁵ We said that the search located records of OGC attorneys developing and providing advice related to the *2017 Notice of Proposed Rulemaking*.⁶ We stated that we withheld these responsive records under FOIA Exemption 5.⁷

We explained that Exemption 5 protects certain inter-agency and intra-agency records that are normally considered privileged in the civil discovery context.⁸ We stated

¹ See *FOIA Decision Appeal* (FOIA Control Number 2017-000896: submitted August 11, 2017).

² See letter from Elizabeth Lyle, Assistant General Counsel, Office of General Counsel, FCC, to Jarrod Sharp (August 4, 2017) (*FOIA Initial Decision*).

³ See *FOIA Request* (submitted and perfected June 26, 2017); see also *Protecting and Promoting the Open Internet, Report and Order on Remand, Declaratory Ruling, and Order*, 30 FCC Rcd 5601 (2015) (*2015 Open Internet Order*); see also *Restoring Internet Freedom, Notice of Proposed Rulemaking*, FCC 17-60, WC Docket No. 17-108, 2017 WL 2292181 (adopted: May 18, 2017; released: May 23, 2017) (*2017 Notice of Proposed Rulemaking*).

⁴ See *FOIA Initial Decision* at 1.

⁵ See *id.* (citing <https://www.fcc.gov/document/restoring-internet-freedom-notice-proposed-rulemaking> and https://apps.fcc.gov/edocs_public/attachmatch/FCC-15-24A1.pdf).

⁶ See *id.*

⁷ See *id.* (citing 5 U.S.C. § 552(b)(5)).

⁸ See *FOIA Initial Decision* at 1.

that Exemption 5 encompasses a deliberative process privilege intended to “prevent injury to the quality of agency decisions,” as well as an attorney-client privilege.⁹ We said that the withheld records consist of discussions regarding legal advice from OGC to other offices of the Commission and that such legal deliberations are shielded from release under the FOIA.¹⁰ We explained that we had determined that it is reasonably foreseeable that disclosure would harm the Commission’s deliberative and legal processes, which Exemption 5 is intended to protect.¹¹ We stated that release of this information would chill deliberations within the Commission, impede the candid exchange of ideas, and hinder the seeking and giving of legal advice.¹²

In your application for review of the *FOIA Initial Decision*, the entirety of your appeal states:

“Dear Sir or Madam: I hereby appeal the FCC's refusal to provide responsive records related to this abovementioned request. The untimely denial fails to rely on any properly cited legal authority to support its arbitrary contentions. Very truly yours, Jarrod Sharp.”¹³

As outlined above, we explained in detail in the *FOIA Decision* the legal authority supporting our decision to withhold the responsive records at issue. In particular, citing Section 552(b)(5) of the FOIA, we stated that we withheld the documents under the deliberative process privilege of Exemption 5 and that it was reasonably foreseeable that disclosure of the records would harm the Commission’s deliberative and legal processes. Apart from your allegation that we failed to provide any legal authority for our decision to withhold these records, you do not elaborate on the reason for your appeal or how you believe the Commission erred in responding to your request. You have not presented any argument upon which you request that the Commission rule. Therefore, we dismiss your application for review under section 0.251(j) of the Commission’s rules for failure to articulate specific grounds for review.¹⁴

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.¹⁵ 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

⁹ See *id.* (citing *NLRB v. Sears Roebuck & Co.*, 421 U.S. 132, 151 (1975)).

¹⁰ See *FOIA Initial Decision* at 1.

¹¹ See *id.* at 2.

¹² See *id.*

¹³ See *FOIA Decision Appeal*.

¹⁴ 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”).

¹⁵ 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.”)

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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
ogis.archives.gov

Sincerely,

A handwritten signature in blue ink, appearing to read "Nicholas Degani".

Nicholas Degani
Acting General Counsel
Office of General Counsel

cc: FOIA Officer