



Federal Communications Commission
Washington, D.C. 20554

March 15, 2018

DA 18-259

Mr. James Chelmowski
6650 N. Northwest Hwy
Chicago, IL 60631
jchelmowski@comcast.net

Re: FOIA Control No. 2018-311

Dear Mr. Chelmowski:

This is in response to your application for review¹ of the Office of the Managing Director's (OMD) response to your Freedom of Information Act (FOIA) request, FOIA Control No. 2018-311. By this letter, we dismiss your application for review for failing to raise grounds meriting Commission review.

In your request, you seek "Electronic copy of the slides, handouts, notes, details, etc. from the following: 1) Joint FCC/Department of Justice FOIA Training (That was Tentatively Scheduled, February 21-22, 2017) – This joint training program covers FOIA procedural requirements, an overview of FOIA exemptions (with a focus on those exemptions most relied on by Commission staff), the use of proactive disclosures, fees and fee waivers, and administrative appeals and dispute resolution. 2) FCC FOIA Improvement Act Meeting (July 20, 2016) – This high-level meeting discusses changes made to the FOIA in the FOIA Improvement Act of 2016, along with how those changes will impact FCC FOIA operations."² On February 6, 2018, OMD staff responded to your request, providing you with 194 pages of responsive records.³ Certain records were redacted under FOIA Exemption 4 and FOIA Exemption 5.

On February 15, 2018, you appealed OMD's FOIA response. You raise five arguments. Each argument is separately addressed and dismissed below.

First, you argue that OMD failed "to provide the total number of responsive pages found in the alleged FOIA search" and you contend the Commission "did not provide the total pages found only the pages released."⁴ The *Response Letter* states that Commission staff

¹ See E-mail from James Chelmowski to FOIA-Appeal@fcc.gov (Feb. 15, 2018) (*Appeal*).

² FOIA 2018-311 (filed Jan. 10, 2018) (*Initial Request*).

³ See Letter from Vanessa Lamb, Acting Associate Managing Director, Federal Communications Commission, to James Chelmowski (Feb. 8, 2018) (*Response Letter*).

⁴ *Appeal* at 3.

“located 194 pages of records responsive to your request.”⁵ Your argument is factually incorrect, and therefore fails to raise grounds meriting Commission review.

Second, you claim that OMD conducted an inadequate search and/or improperly withheld documents⁶ responsive to your request.⁷ Specifically, your argument hinges on the failure to provide “communications and/or e-mails” that were referenced in the responsive documents you received. However, your FOIA request was limited to “slides, handouts, notes, details, etc.”⁸ Your initial request did not seek e-mails or communications and any such communications would be outside the scope of your request. As you did not request these records as an initial matter, you have no grounds to appeal the exclusion of them in the response. This argument is dismissed accordingly.

Third, you argue that certain information was improperly redacted under Exemption 4. In particular, you complain that OMD failed to explain how “the FCC’s handling and training on FOIA are ‘trade secrets and commercial or financial information obtained from a person and privileged or confidential.’”⁹ As stated in the *Response Letter*, the only material redacted under Exemption 4 consisted of “conference call numbers and access codes.”¹⁰ You do not provide any argument as to why you believe the OMD staff erred in redacting this information. Therefore, you have failed to raise any argument suitable for Commission review.

Fourth, you argue that the Commission “must explain how the FCC’s handling and FCC training on compliance of the FOIA are ‘attorney-client privilege.’”¹¹ As stated in OMD’s response to your initial FOIA request, the records consisted of “an attorney in the Commission’s Office of General Counsel providing advice to client bureaus and offices regarding the then newly passed FOIA improvement Act of 2016.”¹² You do not raise any argument as to how this redaction and accompanying reasoning is in error.¹³ Therefore, you have failed to raise any argument suitable for Commission review.

Fifth, you ask a series of questions centered on why the Commission has dismissed your prior appeals of FOIA requests.¹⁴ These questions do not allege any error by OMD, and thus fail to raise grounds for review of OMD’s decision. We refer you to the

⁵ *Response Letter* at 1.

⁶ No documents were withheld in response to your FOIA request.

⁷ *Appeal* at 3.

⁸ *Initial Request*.

⁹ *Appeal* at 3.

¹⁰ *Response Letter* at 1.

¹¹ *Appeal* at 4.

¹² *Response Letter* at 1.

¹³ While the *Appeal* makes vague reference to the crime fraud exception to attorney-client privilege, you make no argument as to how that legal doctrine is applicable here. *Appeal* at 4.

¹⁴ *Appeal* at 4-5.

Commission's prior dismissal letters¹⁵ and the language above, which explain why the Commission reached its conclusions.

As described above, your appeal provides no specific grounds for disputing OMD's response to FOIA 2018-311 that was not already addressed in the *Response Letter*. You do not elaborate on the reason for your appeal or how you believe OMD erred in responding to your request. You have not presented any argument that merits Commission review. 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.¹⁶

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.¹⁷ 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 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,

Thomas M. Johnson, Jr.
General Counsel
Office of General Counsel

cc: FOIA Officer

¹⁵ Letter from Brendan Carr, General Counsel, Federal Communications Commission, to James Chelmowski, 32 FCC Rcd 5804, 5808 (Aug. 3, 2017); Letter from Thomas Johnson, General Counsel, Federal Communications Commission, to James Chelmowski, 32 FCC Rcd 9302, 9305 (Nov. 3, 2017).

¹⁶ 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").

¹⁷ 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.")