



Federal Communications Commission
Washington, D.C. 20554

March 23, 2018

DA 18-287

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

Re: FOIA Control No. 2018-410

Dear Mr. Chelmowski:

This is in response to your application for review¹ of the Office of General Counsel's (OGC) fee estimate² in response to your Freedom of Information Act (FOIA) request, FOIA Control No. 2018-410. By this letter, we dismiss your application for review for failing to raise grounds meriting Commission review and for being duplicative.

The only argument you raise regarding the estimate contained in the *Fee Estimate Letter* is to state that "[t]he FCC is [sic] inflated search fees to obstruct this FOIA/Privacy Act [request] . . . claiming it will take 15.5 hours to search for these FOIA records" and arguing that the "Commission must detail how . . . [this request] would take 15.5 hours to [sic] search time."³

OGC staff explained how the estimated fee was reached in the *Fee Estimate Letter*:

Based on conversations with Commission staff familiar with the records in question, responding to your FOIA request is likely to take a substantial amount of staff time. Searching for responsive records will require canvassing multiple Commission staff members in different offices. Furthermore, the task of locating responsive records can be expected to be time consuming for individual staff members, given the breadth of the records you have requested.⁴

OGC staff went so far as to explain the precise portion of your request at issue, noting, "In particular, requesting all communications related to the cited FOIA appeal, along with 'all notes [and] all entries,' requires intensive searching by custodians."⁵ Staff then

¹ See E-mail from James Chelmowski to FOIA-Appeal@fcc.gov (Feb. 23, 2018) (*Appeal*).

² Letter from Ryan Yates, Attorney Advisor, Federal Communications Commission, to James Chelmowski (Feb. 20, 2018) (*Fee Estimate Letter*).

³ *Appeal* at 12.

⁴ *Fee Estimate Letter* at 1.

⁵ *Id.* at 1 n.1.

provided a breakdown of estimated search times by GS level, and gave an explanation as to why much of the search time would be performed by GS-15 staff.⁶ Other than an unsupported assertion, you have presented no argument or evidence as to why OGC's fee estimate should be considered in error. Therefore, you have failed to raise any grounds for appeal meriting Commission review, and your appeal is accordingly dismissed.

The remainder of your fifteen-page appeal is similarly dismissed on delegated authority. Many of your arguments center around the Commission's authority to require you to pay fees or respond within a set timeframe.⁷ These arguments are either duplicative of earlier appeals you filed, which we have already addressed,⁸ or are rendered moot by OGC's decision to treat your appeal as an indication that you do not authorize fees.⁹ Your arguments regarding your right to file an appeal regarding a fee estimate are either duplicative of earlier appeals you filed,¹⁰ which we have already addressed,¹¹ or are rendered moot by this letter, addressing your appeal. Your claim that you cannot be charged search fees because your initial request should be treated as a Privacy Act request is duplicative of earlier appeals you filed,¹² which we have already addressed.¹³ Lastly, your arguments regarding the Commission's FOIA appeal process generally¹⁴ do not specifically pertain to OGC's *Fee Estimate Letter*, and thus are dismissed for failing to allege specific grounds for review of the *Fee Estimate Letter*.

As explained above, the arguments raised in your *Appeal* are either duplicative of earlier claims, fail to raise specific grounds meriting Commission review, or have since been rendered moot. On the main point, alleging that OGC erred in its fee estimate, you do not elaborate on the reasoning underlying your argument or how you believe the fee estimate is inaccurate. 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.¹⁵ The remainder

⁶ *Id.* at 1, n.2, & 2.

⁷ *Appeal* at 7-9.

⁸ Letter from Brendan Carr, General Counsel, Federal Communications Commission, to James Chelmowski, 32 FCC Rcd 5804, 5808 (Aug. 3, 2017) (stating that the Commission is "not subject to or otherwise constrained by any prescribed time limitations with respect to requiring a response from a FOIA requester regarding the payment of an estimated fee") (internal quotation omitted) (*August 3 Dismissal*).

⁹ E-mail from Ryan Yates, Attorney Advisor, Federal Communications Commission, to James Chelmowski (Feb. 27, 2018) ("Commission staff interpret your e-mails of Friday, February 23, to indicate that you do not agree to pay the fee estimated in connection with this request.").

¹⁰ *Appeal* at 9-10.

¹¹ Letter from Thomas Johnson, General Counsel, Federal Communications Commission, to James Chelmowski, 32 FCC Rcd 9302, 9305 (Nov. 3, 2017).

¹² *Appeal* at 10-11.

¹³ *August 3 Dismissal* at 5807-08 (stating that the estimated search fee "does not apply to the processing of your request under the Privacy Act, which is being addressed by a separate office, but instead applies only to the separate processing of your request under FOIA") (internal quotations omitted).

¹⁴ *Appeal* at 12-14.

¹⁵ 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").

of your appeal is similarly dismissed under section 0.251(j) for failure to articulate specific grounds for review or for being duplicative.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

¹⁶ *Id.*

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.”)