

Before the
Federal Communications Commission
Washington, D.C. 20554

In the matter of)
)
LTC CONSULTING)
) FOIA Control No. 21-111
On Request for Inspection of)
Records)

MEMORANDUM OPINION AND ORDER

Adopted: September 5, 2001

Released: September 13, 2001

By the Commission:

1. The Commission has before it an application for review¹ filed by Thomas Allibone of LTC Consulting (LTC) seeking review of the decision of the Common Carrier Bureau (the Bureau) granting in part his Freedom of Information Act (FOIA) request and otherwise finding no records responsive to his request.² For the reasons discussed below, LTC’s application for review is denied.

2. LTC sought records that would provide answers to five questions; first, “the name and contact number of the Verizon New Jersey supervisor responsible for maintaining a master index of records;”³ and four other questions pertaining to “the record retention information concerning a certain record known as the ‘CSR’ [Customer Service Record].”⁴ Materials responsive to the FOIA request were contained in a submission to the Commission by Verizon that was accompanied by a request for confidential treatment.⁵ In response to LTC’s FOIA request, Verizon indicated it did not oppose release of portions of the submitted information that were responsive to the FOIA request. The Bureau therefore released the answer to the first question, the name of the Verizon employee responsible for supervising Verizon’s preservation of records, and the current record retention period for customer bills in New Jersey. As to the remaining questions, the Bureau stated that it had “no responsive materials to the remaining portions of the request.”⁶

3. LTC seeks review of the Bureau’s decision, maintaining that the questions posed in its FOIA request were not answered and asserting that the Commission may not refuse to provide the information because it does not raise any financial or competitive threat to Verizon.⁷ LTC also clarifies

¹ Letter from Thomas Allibone, LTC Consulting, to Office of General Counsel (May 25, 2001) (App. for Rev.).

² Letter from Joseph T. Hall, Assistant Bureau Chief, Management, Common Carrier Bureau (May 8, 2001) (Bureau Decision).

³ See 47 C.F.R. §§ 42.2 and 42.4.

⁴ Letter from Thomas Allibone, LTC Consulting, to Kenneth P. Moran, Chief, Accounting Safeguards Division, Common Carrier Bureau (Mar. 9, 2001) (FOIA Request). Mr. Allibone’s FOIA request was forwarded to the FOI Office, the proper place for filing a FOIA request, see 47 C.F.R. §§ 0.461(d)(1) and (e), which logged in the request on April 2, 2001.

⁵ See letter from Gerald Asch, Verizon, to Edward Daskin (FCC) (Mar. 9, 2001).

⁶ Id.

⁷ App. for Rev. at 1-2. The Application for Review was served on Verizon, which did not reply.

that, if the answers to the questions are contained in documents in the custody, control, or possession of the Commission, they should be made available, but LTC does not ask the Commission to create documents that do not presently exist or formulate answers to questions not already in its possession.

4. We have reviewed the record in this proceeding and based on the Bureau's decision as clarified herein we deny LTC's application for review because the Bureau has provided all relevant information in the agency's possession. LTC sought information concerning the record retention schedules for Verizon's CSRs. LTC argues that its FOIA request for information concerning Verizon's CSRs was unanswered.⁸ The Bureau's reply provided the following information, drawn from the Verizon records in the Bureau's possession:⁹ the name of Verizon's New Jersey records supervisor, and that Verizon retains customer bills for one year in office files, and then three more years at the company's record retention center.¹⁰ However, the Bureau referred to the record retention period for "customer bills" instead of using the term CSR. We have confirmed that the record retention period referenced in the Bureau Decision applies to Verizon's CSRs. Verizon sets the record retention period pursuant to our Part 42 rules adopted in 1986.¹¹ Finally, contrary to LTC's suggestion, no information it requested was withheld pursuant to any FOIA exemption or on grounds that Verizon had requested confidential treatment.¹²

5. IT IS ORDERED that LTC Consulting's application for review IS DENIED.¹³ LTC Consulting may seek judicial review of the denial in part of its FOIA request pursuant to 5 U.S.C. § 552(a)(4)(B).

6. The officials responsible for this action are the following Commissioners: Chairman Powell, Commissioners Tristani, Abernathy, Copps, and Martin.

FEDERAL COMMUNICATIONS COMMISSION

Magalie Roman Salas
Secretary

⁸ App. for Rev. at 1-2. While we are not required to answer questions posed as FOIA requests, *see, e.g., Zemansky v. EPA*, 767 F.2d 569, 574 (5th Cir. 1985); *DiVaio v. Kelley*, 571 F.2d 538, 542-43 (10th Cir. 1978), in the spirit of the FOIA we strive, as the Bureau did here, to respond where appropriate to requests that seek information drawn from records in the agency's possession.

⁹ LTC did not seek copies of the records. *See* FOIA Request, *supra* n.4; App. for Rev. at 2.

¹⁰ Bureau Decision at 2.

¹¹ Revision of Part 42, Preservation of Records of Communication Common Carriers, CC Docket 84-283, 60 R.R. (P&F) 1529 (1986), corrected, 1 FCC Rcd 525 (1986), adopting 47 C.F.R. Part 42. Previously, the Part 42 rules established various record retention period for CSR records. *See, e.g.*, 47 C.F.R. § 42.9 Item Nos. 71(a)(2), 76(a)(1), (a)(2), and (g). LTC was sent a copy of the old Part 42 rules by the Bureau.

¹² App. for Rev. at 2.

¹³ LTC's electronic mail message of June 22, 2001 containing contentions concerning Verizon's record retention practices has been forwarded to the appropriate bureaus for review.