

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

In the Matter of)
)
TIMOTHY ALBRITTON) FOIA Control No. 2003-567
)
On Request for Inspection of Records)

MEMORANDUM OPINION AND ORDER

Adopted: March 15, 2004

Released: March 17, 2004

By the Commission:

1. The Commission has before it an application for review filed by Timothy Albritton (Albritton), seeking review of a decision of the Enforcement Bureau (EB) denying his Freedom of Information Act (FOIA) request. The application for review is denied.

2. Albritton sought transcripts of police radio communications between a City of Baton Rouge, Louisiana, police dispatcher and Police Officer Jeffery Wilson on March 18, 2001.¹ EB responded that the Commission did not have these transcripts in its possession and that the Commission had no obligation under the FOIA to obtain records from other entities such as the Baton Rouge Police Department.² Albritton sought review of the Bureau’s decision.³ He complains that “The FCC has not made a reasonable effort to obtain these records nor have they made any investigation of my claims that I was denied constitutional rights via these communications over airwaves regulated by the FCC.”

3. On review, we find no reason to disturb the Bureau’s decision. Albritton’s FOIA request is governed by 5 U.S.C. § 552(a)(3)(A), which provides “[E]ach agency, upon any request for records . . . shall promptly make the records available to any person.” This requirement, however, applies only to records in the agency’s possession. See Tax Analysts v. United States Department of Justice, 845 F.2d 1060, 1067 (D.C. Cir. 1988). The FOIA does not require an agency to obtain records from another agency or entity. See Kissenger v. Reporters Committee for Freedom of the Press, 445 U.S. 136, 151-53 (1980). EB has determined that the

¹ Letter from Timothy Albritton to James C. Hawkins, District Director, Federal Communications Commission (Jul. 22, 2003).

² Letter from Joseph P. Casey, Chief, Spectrum Enforcement Division to Timothy Albritton (Oct. 31, 2003) (Control No. 2003-567).

³ Letter from Timothy Albritton to Office of General Counsel, Federal Communications Commission (Dec. 16, 2003).

Commission does not possess any records responsive to Albritton's request. It therefore fulfilled its obligations under the FOIA and correctly denied Albritton's request.

4. Accordingly, IT IS ORDERED that Timothy Albritton's application for review is DENIED. Albritton may seek judicial review of the denial of his FOIA request pursuant to 5 U.S.C. § 552(a)(4)(B).

5. The following officials are responsible for this action: Chairman Powell, Commissioners Abernathy, Copps, Martin, and Adelstein.

FEDERAL COMMUNICATIONS COMMISSION

Marlene H. Dortch
Secretary