

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

In the Matter of	)	
	)	
LEO A. WROBEL, JR.,	)	FOIA Control Nos. 2004-553 and
PREMIERE NETWORK SERVICES, INC.	)	2005-034
	)	
On Requests for Inspection of Records	)	

**MEMORANDUM OPINION AND ORDER**

**Adopted: March 7, 2006**

**Released: March 10, 2006**

By the Commission:

1. The Commission has before it two applications for review filed by Leo W. Wrobel, Jr., of Premiere Network Services, Inc. (Premiere), of the decisions of the Wireline Competition Bureau (WCB or Bureau) and the Office of General Counsel (OGC) responding to his Freedom of Information Act (FOIA) requests. For the reasons stated below, we deny the applications for review.

2. **FOIA No. 2004-553.** Mr. Wrobel's first FOIA request sought correspondence from a former SBC Telecommunications (SBC) employee concerning alleged misconduct by SBC or mentioning Premiere, sent to the Commission on or about July 15, 2004.<sup>1</sup> WCB conducted a search of Bureau files. In addition, the Commissioners' offices were asked to search for the correspondence. Neither the Bureau nor the Commissioners' offices were able to locate any responsive records, and the Bureau so notified Mr. Wrobel.<sup>2</sup> Mr. Wrobel sought review of the Bureau's decision.<sup>3</sup>

3. In his application for review, Mr. Wrobel stated that he had obtained "a draft copy of the *very letter*" he had sought in his FOIA request, attached a copy of the "draft letter," and suggested that the Commission conduct additional searches to find the original correspondence.<sup>4</sup> After searching its files again, the Bureau contacted Mr. Wrobel by telephone, informing him that the letter still had not been found.<sup>5</sup> Mr. Wrobel indicated that the letter had been sent to the Commission by certified mail, and sent copies of the certified mail receipts to the Bureau.<sup>6</sup> WCB continued to search for the letter within its files. WCB also arranged to search the files of the Consumer and Governmental Affairs Bureau (CGB) (the bureau that handles informal complaints), the Enforcement Bureau (EB) (the bureau that handles formal complaints), and the Commissioners' offices (as Mr. Wrobel had indicated that a copy of the letter had

<sup>1</sup> Letter from Leo A. Wrobel, Jr., to FOIA Officer (Aug. 6, 2004) (FOIA 2004-553).

<sup>2</sup> Letter from Joseph T. Hall, Assistant Bureau Chief, Management, WCB, to Leo A. Wrobel (Sept. 2, 2004) (FOIA 2004-553 Decision).

<sup>3</sup> Letter from Leo A. Wrobel to Joseph T. Hall (Sept. 17, 2004) (FOIA 2004-553 Application for Review). We also note that the application for review was not filed in accordance with the Commission's rules. FOIA applications for review are properly directed to the Office of General Counsel, *see* 47 C.F.R. § 0.461(j), not the Bureau responding to the initial FOIA request. *See also* FOIA 2004-553 Decision, at 1 ¶3 (indicating the proper procedure for filing a FOIA application for review).

<sup>4</sup> FOIA 2004-553 Application for Review (emphasis in original).

<sup>5</sup> See letter from Leo A. Wrobel to Joseph T. Hall (Oct. 15, 2004) (FOIA 2004-553 Application for Review Supp.).

<sup>6</sup> Facsimile to Jocelyn Frye, WCB, from Sharon Wrobel, Premiere Network Services, Inc. (Oct. 7, 2004).

been sent to each Commissioner). Following this additional search, WCB informed Mr. Wrobel by telephone that no copies of the letter were located. Based on the telephone conversation with Mr. Wrobel, WCB, EB, CGB, and the Commissioners' offices again searched for the letter sought in FOIA 2004-553. A copy of the letter addressed to Commissioner Adelstein was then located and provided to Mr. Wrobel, along with a request that he indicate whether he wished to pursue his application for review in light of the production of a copy of the letter.<sup>7</sup> Mr. Wrobel replied that he wished to pursue his application for review.<sup>8</sup>

4. **FOIA No. 2005-034.** Mr. Wrobel's second FOIA request sought three pieces of correspondence sent on or about May 14, 2004, by him to Commissioners Copps, Martin, and Adelstein that he stated "were [sent] in response to a request by the Commissioners for informal information about allowing SBC to underwrite 'private commercial agreements.'"<sup>9</sup> The offices of Commissioners Copps, Martin and Adelstein searched their files, but none were able to locate copies of Mr. Wrobel's correspondence. Similarly, WCB, CGB, and EB were unable to locate the correspondence in their files. OGC so informed Mr. Wrobel by letter dated December 2, 2004.<sup>10</sup> Mr. Wrobel filed an application for review of this decision, appending a copy of the correspondence he sought in the initial FOIA request, which he indicated had been sent by FedEx.<sup>11</sup>

5. **Discussion.** Mr. Wrobel's applications for review essentially request that further searches be conducted for the correspondence sought in FOIAs 2004-553 and 2005-034. Ultimately, the basis for both of Mr. Wrobel's applications for review is that the Commission did not adequately search for the letters sent to the agency. The adequacy of a search under the FOIA is determined by a test of reasonableness.<sup>12</sup> A search must be "reasonably calculated to uncover all relevant documents."<sup>13</sup> The reasonableness of a search depends, in part, on how the search was conducted in light of the scope of the request<sup>14</sup> and the requester's description of the records sought.<sup>15</sup>

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<sup>7</sup> Facsimile to Leo A. Wrobel from Jocelyn Frye (Oct. 15, 2004) transmitting letter to Leo A. Wrobel from Joseph Hall (Oct. 15, 2004).

<sup>8</sup> FOIA 2004-553 Application for Review Supp.

<sup>9</sup> Letter from Leo A. Wrobel, Jr., to FOIA Officer (Oct. 15, 2004) (FOIA 2005-034).

<sup>10</sup> Letter from Joel Kaufman, Deputy Associate General Counsel, to Leo A. Wrobel, Jr. (Dec. 2, 2004) (FOIA 2005-034 Decision).

<sup>11</sup> Letter from Leo A. Wrobel to Joel Kaufman (Dec. 10, 2004) (FOIA 2005-034 Application for Review).

<sup>12</sup> See *Zemansky v. EPA*, 767 F.2d 569, 571-73 (9th Cir. 1985) (observing that reasonableness of agency search depends upon facts of each case (citing *Weisberg v. United States Dep't of Justice*, 705 F.2d 1344, 1351 (D.C. Cir. 1983) (*Weisberg*)).

<sup>13</sup> *Weisberg*, 705 F.2d at 1351; see, e.g., *Campbell v. United States Dep't of Justice*, 164 F.3d 20, 27 (D.C. Cir. 1998) (noting that an agency must search "using methods which can be reasonably expected to produce the information requested" (quoting *Oglesby v. United States Dep't of the Army*, 920 F.2d 57, 68 (D.C. Cir. 1990)).

<sup>14</sup> See, e.g., *Meeropol v. Meese*, 790 F.2d 942, 956 (D.C. Cir. 1986) (*Meeropol*) ("[A] search need not be perfect, only adequate, and adequacy is measured by the reasonableness of the effort in light of the specific request.").

<sup>15</sup> See 5 U.S.C. § 552(a)(3)(A) (2000) (statutory provision requiring that a FOIA request "reasonably describe[]" the records sought).

6. In accordance with procedures implemented after September 11, 2001, correspondence sent to a Bureau or the Commissioners is first routed to an off-site location for security screening.<sup>16</sup> It is then forwarded to the headquarters building mail room for distribution to the appropriate office. Depending on the nature of the correspondence, even if it is addressed to a Commissioner, it may also be routed to the Bureau or Office responsible for the subject matter addressed in the correspondence. Therefore, the request for records sought by Mr. Wrobel was directed to several Bureaus in addition to the Commissioners, to ensure that a thorough and adequate search would be conducted. The Commissioners' offices, WCB, EB, and CGB searched more than once for the letter sought in FOIA 2004-553 before one copy, addressed to Commissioner Adelstein, was located and provided to Mr. Wrobel.<sup>17</sup> The fact that an initial search does not produce a particular document does not render the search inadequate.<sup>18</sup> Similarly, repeated searches were conducted by the offices of Commissioners Copps, Martin and Adelstein and by WCB, CGB and EB for the correspondence requested in FOIA 2005-034, but none were able to locate the correspondence. The extensive, thorough search by WCB and others who might have been in possession of the requested records clearly was designed to uncover the relevant documents. We therefore conclude that the Bureaus and the Commissioners' offices conducted a reasonable search under the FOIA for the records sought by Mr. Wrobel in both instances.<sup>19</sup>

7. IT IS ORDERED that Leo A. Wrobel, Jr.'s applications for review ARE DENIED. Mr. Wrobel may seek judicial review of this action pursuant to 5 U.S.C. § 552(a)(4)(b).

8. The officials responsible for this action are the following Commissioners: Chairman Martin, Commissioners Copps, Adelstein and Tate.

FEDERAL COMMUNICATIONS COMMISSION

Marlene H. Dortch  
Secretary

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<sup>16</sup> See *FCC Announces Disposition of Certain Mail, Public Notice* (Mar. 8, 2002) ([http://ftp.fcc.gov/Bureaus/Miscellaneous/Public\\_Notices/2002/pnmc0201.html](http://ftp.fcc.gov/Bureaus/Miscellaneous/Public_Notices/2002/pnmc0201.html)); *Fact Sheet*, <http://ftp.fcc.gov/Bureaus/OMD/Factsheets/030802anthrax.pdf>; and *FCC Announces a New Filing Location for Paper Documents, Public Notice*, DA 01-2919 (Dec. 14, 2001) ([http://hraunfoss.fcc.gov/edocs\\_public/attachmatch/DA-01-2919A1.doc](http://hraunfoss.fcc.gov/edocs_public/attachmatch/DA-01-2919A1.doc)).

<sup>17</sup> See n.7, *supra*.

<sup>18</sup> See *Duenas Iturralde v. Comptroller of the Currency*, 315 F.3d 311, 315 (D.C. Cir. 2003) ("[I]t is long settled that the failure of an agency to turn up one specific document in its search does not alone render a search inadequate . . . . After all, particular documents may have been accidentally lost or destroyed, or a reasonable and thorough search may have missed them."); *Grand Cent. P'ship, Inc. v. Cuomo*, 166 F.3d 473, 489 (2d Cir. 1999) (declaring that the fact that "some documents were not discovered until a second, more exhaustive, search was conducted does not warrant overturning the district court's ruling" that the agency conducted a reasonable search); *Meeropol*, 790 F.2d at 953 (rejecting argument that later produced records rendered initial search unreasonable and recognizing that subsequent searches constituted evidence of agency's cooperation and good faith).

<sup>19</sup> As previously noted, one copy of the letter in FOIA 2004-553 was located and provided to Mr. Wrobel. Because it is in the nature of an informal complaint, it has been forwarded to CGB for handling on the merits. In addition, Mr. Wrobel provided a copy of his May 14, 2004 correspondence to Commissioners Copps, Martin and Adelstein. A copy of this correspondence has also been forwarded to CGB for appropriate handling.