

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

In the Matter of	)	
	)	
TELETRUTH	)	FOIA Control No. 2007-263
	)	
On Requests for Inspection of Records	)	

**MEMORANDUM OPINION AND ORDER**

**Adopted: September 25, 2008**

**Released: September 30, 2008**

By the Commission:

1. The Commission has before it an application for review filed by Teletruth of the decision of the Wireline Competition Bureau (the Bureau) denying its Freedom of Information Act (FOIA) requests for records related to the Continuing Property Records (CPRs) audits conducted by the Commission in the late 1990s.<sup>1</sup> We deny Teletruth’s application for review.

2. The Bureau denied Teletruth’s FOIA request based on our recent determination in *Herschaft*<sup>2</sup> that precisely the same records sought by Teletruth in its FOIA request were exempt from disclosure under FOIA Exemptions 4 and 5.<sup>3</sup> Although Teletruth asserts that its information request was “unique and enhanced” as compared to the materials presented in *Herschaft*, these facts consist of assertions about inaccuracies in the CPRs and the harms that allegedly resulted from the inaccuracies and the Commission’s treatment of them. The new facts do not go to whether the records at issue are exempt from disclosure.

3. Further, Teletruth offers no arguments warranting a different result from that in *Herschaft*. Teletruth errs when it suggests that FOIA Exemptions 4 and 5 do not apply because it seeks records concerning fraud and violations of our rules.<sup>4</sup> Exemptions 4 and 5 contain no such exceptions, and Teletruth points to no caselaw suggesting otherwise. Indeed, the purposes for which the request for information is made have no bearing on whether information must be disclosed under the FOIA.<sup>5</sup> Moreover, for the same reasons we outlined in *Herschaft*,<sup>6</sup> and contrary to Teletruth’s assertion,<sup>7</sup> in this

<sup>1</sup> See E-mail from Bruce Kushnick, Teletruth, to Laurence Schecker, Office of General Counsel, and FOIA@FCC.gov (June 10, 2007) (AFR).

<sup>2</sup> *Randy R. Herschaft*, *Associated Press*, 22 FCC Rcd 5880 (2007).

<sup>3</sup> 5 U.S.C. §§ 552(b)(4) and (5).

<sup>4</sup> See AFR at 13 (the *Herschaft* decision “did not take into account our claims of Part 32 violations”) and 14 (FOIA exemptions “ha[ve] no relevance as there are no protections if fraudulent materials . . . [were] submitted”). Teletruth calls the rationale of our *Herschaft* decision “legal gobblygook [*sic*]” with “no relevance” to its complaints. *Id.* at 14.

<sup>5</sup> *E.g.*, *United States Dep’t of Defense v. FLRA*, 510 U.S. 487, 496 (1994), (quoting *United States Dep’t of Justice v. Reporters Committee for Freedom of the Press*, 489 U.S. 749, 771 (1989)); see *Daniel A. Edelman, Esq.*, 19 FCC Rcd 12741, 12743 (2004).

<sup>6</sup> See *Herschaft*, 22 FCC Rcd at 5889 (explaining that the public interest in the CPR audits does not require disclosure of these records).

<sup>7</sup> *E.g.*, AFR at 14.

case the public interest does not require release of these records. The Bureau thus acted appropriately in denying Teletruth's request for the CPR audit records.

4. IT IS ORDERED that the application for review by Teletruth IS DENIED. Teletruth may seek judicial review of this action pursuant to 5 U.S.C. § 552(a)(4)(b).

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

FEDERAL COMMUNICATIONS COMMISSION

Marlene H. Dortch  
Secretary