

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

In the Matter of)
)
JOEL HARDING) FOIA Control No. 2007-411
)
On Request for Inspection of Records)

MEMORANDUM OPINION AND ORDER

Adopted: February 28, 2008

Released: March 5, 2008

By the Commission:

1. By this Memorandum Opinion and Order, we grant an application for review by Joel Harding, a prison inmate, seeking review of the response by the Wireless Telecommunications Bureau (WTB)¹ to his Freedom of Information Act (FOIA) request.² We find that WTB erred in redacting the licensee's address from the copy of an amateur radio operator's license released to Harding.

I. BACKGROUND

2. Harding's FOIA request sought, as one of numerous categories of information, "A printout on amateur operator's license and location information of Mr. [Sylvanus] Darrisaw, or Darisaw, operator #N8XNN. (Last know[n] location, Pierson St. Detroit, MI)."³ WTB released a copy of Darrisaw's amateur license, obtained from the Commission's Universal Licensing System (ULS),⁴ with his address redacted pursuant to FOIA Exemption 6.⁵ WTB found that Darrisaw's address was personally identifiable information in which Darrisaw "has some privacy interest."⁶ WTB also found that disclosure of Darrisaw's address could lead to unwanted and unsolicited or other contacts from Harding or others. WTB therefore undertook to balance Darrisaw's privacy interest against any public interest in the disclosure of the address and, in particular, sought to determine whether disclosure had a "nexus" to the "core purpose of the

¹ Letter from Scot Stone, Deputy Chief, Mobility Division, WTB, to Mr. Joel Harding (Jul. 13, 2007) (Response).

² Letter from Joel Harding to Joel Kaufman (Attorney), Associate General Counsel, Administrative Law Division (May 28, 2007) (Request).

³ Request at 2.

⁴ See Amateur Radio License N8XNN, available online at <http://wireless2.fcc.gov/UlsApp/UlsSearch/searchLicense.jsp>

⁵ 5 U.S.C. § 552(b)(6). This exemption covers "personnel and medical files and similar files the disclosure of which would constitute a clearly unwarranted invasion of personal privacy."

⁶ Response at 2.

FOIA,” namely, “the public’s understanding of the Commission’s performance of its duties.”⁷ WTB found no such public interest and, accordingly, redacted Darrisaw’s address.

3. In his application for review,⁸ Harding disputes WTB’s finding that Darrisaw has a privacy interest in his address because Darrisaw’s address is in the public domain. Specifically, Harding observes that the partially-redacted copy of Darrisaw’s license released to him was printed from the public Internet web site for the ULS.⁹ The released copy indicates that it is “a record of public information contained in the FCC’s licensing database. . . .”¹⁰ Harding argues that by making this and other licenses readily available to the public via the Internet, the Commission makes clear that the information in those licenses ordinarily will not be protected from disclosure, that Darrisaw should have foreseen that his address would become publicly known and that he thus waived any privacy interest in the address.¹¹ Harding further asserts that he is acquainted with Darrisaw and denies any improper intent in seeking his address.¹²

II. DISCUSSION

4. We agree with Harding that Darrisaw’s address should not have been withheld under Exemption 6. We are guided in our analysis by the Supreme Court’s discussion of privacy in *Reporters Committee*.¹³ In that case, the Supreme Court held that in applying the exemption, the agency must weigh the personal privacy interest in the material requested against the public interest in disclosure, specifically “the nature of the requested document and its relationship to ‘the basic purpose of the Freedom of Information Act ‘to open agency action to the light of public scrutiny.’”¹⁴ In this regard, we agree with WTB that Harding has shown no public interest at all in the disclosure of Darrisaw’s address, but only his own private interest in contacting Darrisaw. Thus, the question turns on whether Darrisaw has a privacy interest in the information submitted to the Commission with his application and now contained in the license granted as a result.¹⁵

⁷ *Id.*, citing *U.S. Dept. of Justice v. Reporters Committee for Freedom of the Press*, 489 U.S. 749, 773, 775 (1989) (*Reporters Committee*).

⁸ Letter from Joel Harding to Office of General Counsel (Aug. 2, 2007) (AFR).

⁹ AFR at 2.

¹⁰ See note 4, *supra*.

¹¹ AFR at 2-3.

¹² *Id.*

¹³ See note 7, *supra*. *Reporters Committee* dealt with FOIA Exemption 7(C), which covers “records or information compiled for law enforcement purposes, but only to the extent that the production of such law enforcement records or information . . . could reasonably be expected to constitute an unwarranted invasion of personal privacy,” rather than Exemption 6. Although the coverage of Exemption 6 is somewhat narrower than that of Exemption 7(C) (“would constitute a clearly unwarranted invasion” versus “could reasonably be expected to constitute an unwarranted invasion”), the Supreme Court has explained that for purposes of the *Reporters Committee* analysis, the distinction is “of little import.” See *U.S. Dep’t of Defense v. FLRA*, 510 U.S. 487, 496 n.6 (1994).

¹⁴ *Reporters Committee*, 489 U.S. at 771-72.

¹⁵ See *National Ass’n of Retired Federal Employees v. Horner*, 879 F.2d 873, 879 (D.C. Cir. 1989), *cert. denied*, 494 U.S. 1078 (1990) (“even a modest privacy interest outweighs nothing every time”).

5. In this regard, we agree with WTB that courts have found in several contexts that individuals have a significant privacy interest in their address for the reason that WTB cites, namely, that disclosure of an individual's address might subject that person to unwanted contact.¹⁶ We share WTB's concern that disclosure of Darrisaw's address might subject him to harassment or other unwanted contact by Harding or others.

6. We must also consider, however, whether such a privacy interest may be found in this case, where the personal information on the license, including Darrisaw's address, was voluntarily submitted by him and now is routinely available to the public on the Internet via the Commission's ULS system. The Supreme Court's discussion in *Reporters Committee* persuades us that a privacy interest cannot be found under those circumstances. In *Reporters Committee*, the Supreme Court considered a request for the disclosure of "rap sheets," maintained by the Department of Justice (DOJ), which contain descriptive information about individuals, and the history of their arrests, convictions, charges, and incarcerations.¹⁷ In considering the status of the rap sheets, the Supreme Court recognized that to be private, information did not have to be totally secret. The Court explained that "privacy encompasses the individual's control of information concerning his or her person. In an organized society, there are few facts that are not at one time or another divulged to another."¹⁸ The Court further explained "information may be classified as 'private' if it is 'intended for or restricted to the use of a particular person or group or class of person: not freely available to the public'."¹⁹ The Court found that the rap sheets met this definition of private, although they could be disclosed in some circumstances to the extent that such disclosures reflected "a careful and limited pattern . . . involving a restriction of information 'to the use of a particular person or group or class of persons.'"²⁰

7. The Court further found that the private nature of the rap sheets was not lost because the information contained therein was available in other public records. The Court held that "there is a vast difference between the public records that might be found after a diligent search of courthouse files, county archives, and local police stations throughout the country and a computerized summary located in a single clearinghouse of information."²¹ The Court referred to

¹⁶ See *U.S. Dep't of Defense v. FLRA*, 510 U.S. at 500-01 (disclosure of telephone numbers and home addresses of federal employees might lead to influx of union-related telephone calls and mail); *Forest Guardians v. U.S. Federal Emergency Management Agency*, 410 F.3d 1214, 1220-21 (10th Cir. 2005) (disclosure of information that could lead to federal flood policyholders names and addresses might subject them to unwanted contacts and solicitations by private insurance companies); *National Ass'n of Retired Federal Employees v. Horner*, 879 F.2d at 878 (disclosure of retired federal employees names and addresses would result in a "barrage of solicitations"); *Knight v. NASA*, No. 2:04-cv-2054-MCE-GGH (E.D.Cal. Dec. 21, 2006), reported at 2006 WL 3780901 at *6 (disclosure of names and contact information for non-federal employees could be abused through unwanted solicitation and the like).

¹⁷ *Reporters Committee*, 489 U.S. at 751-52.

¹⁸ *Id.* at 763 (footnote omitted).

¹⁹ *Id.* at 763-64 (footnote omitted), citing Webster's Dictionary.

²⁰ *Reporters Committee*, 489 U.S. at 765. The Court found that DOJ generally treated the rap sheets as confidential and, with certain enumerated exceptions, that use of the rap sheets was restricted to governmental purposes. *Id.* at 752.

²¹ *Id.*

this as the “practical obscurity” of the rap sheet information, and held that the subject of the rap sheet had an interest in maintaining the degree of privacy that such practical obscurity provided.²²

8. Here, by contrast, Darrisaw’s license itself, unlike the rap sheets in *Reporters Committee*, is a public document pursuant to a Commission rule that is published in the Code of Federal Regulations.²³ Unlike the rap sheets, the license (and with it the information contained therein) is not merely disclosed for selected purposes, but is routinely available to the public. Any member of the public can obtain an unredacted copy of the Darrisaw license showing Darrisaw’s address by downloading it from the Commission’s Internet website.²⁴

9. Moreover, the treatment of Darrisaw’s license under the Privacy Act²⁵ further underscores its public nature. Under the Privacy Act, records that are contained in a system of records may be routinely disclosed pursuant to “routine uses” published in the Federal Register.²⁶ The Darrisaw license is part of a system of records,²⁷ and one of the routine uses specified is:

Public access--the licensee records will be publicly available and routinely used in accordance with Subsection b. of the Privacy Act; ITIN Numbers²⁸ and material which is afforded confidential treatment pursuant to a request made

²² *Id.* at 780. Other courts have also held that the alternative availability or prior disclosure of private information did not render it public information. See *U.S. Dep’t of Defense v. FLRA*, 510 U.S. at 500-01 (1994) (agency not required to provide employees’ home addresses although they are available through telephone directories and voter registration lists); *Rugiero v. U.S. Dep’t of Justice*, 257 F.3d 534, 544-45 (6th Cir. 2001), *cert. denied*, 534 U.S. 1134 (2002) (Department not required to disclose names of jurors to criminal defendant although names were disclosed to defense attorney in connection with allegations of jury tampering); *Sherman v. U.S. Dep’t of the Army*, 244 F.3d 357, 362-64 (5th Cir. 2001) (social security numbers can be redacted from database of service awards although the Army had previously disclosed social security numbers, for example, in press material about awards); *Abraham & Rose, P.L.C. v. U.S.*, 138 F.3d 1075, 1083 (6th Cir. 1998) (IRS database of tax lien filings not disclosed although information available in publicly recorded filings); *Dayton Newspapers, Inc. v. Dep’t of Veteran Affairs*, 257 F. Supp.2d 988, 1010 (S.D. Ohio 2003), *recon. granted on other grounds, reported at* 2005 WL 2405992 (VA not required to disclose names of claimants who filed lawsuits although computerized search of court records could reveal names). In none of these cases, however, was the record requested itself public, as defined by *Reporters Committee*.

²³ See 47 C.F.R. § 0.453(a)(iii)(E) (indicating public availability of authorizations in wireless radio services).

²⁴ See note 4, *supra*.

²⁵ 5 U.S.C. § 552a. In *Reporters Committee*, the Court cited the Privacy Act as evidence of a congressional concern, relevant to the FOIA, over the privacy of personal information. *Reporters Committee*, 489 U.S. at 766-67.

²⁶ 5 U.S.C. § 552a(b)(3), (e)(4)(d).

²⁷ Wireless Services Licensing Records FCC/WTB-1, 71 Fed. Reg. 17234, 17269-70 (Apr. 5, 2006).

²⁸ In the above quotation from the system of records notice, “ITIN” refers to individual taxpayer identification number, *i.e.*, social security number. Despite the provision quoted above, the licensee’s social security number is not actually entered into the ULS system.

under [47 CFR 0.459](#)²⁹ will not be available for public inspection;

Thus, with the exception of any licensee information for which a request for confidential treatment has been made to the Commission, the Commission has given public notice that the contents of the license are public information. We agree with Harding that having done so, we cannot now represent, in responding to a FOIA request, that such information about Darrisaw and other licensees is private.

10. We find that the fact that Harding himself may not be able to download the unredacted license from the Internet, because he appears to remain incarcerated, without access to the necessary computer facilities, should not weigh against granting his FOIA request.³⁰ We find no basis to differentiate the material provided to Harding under FOIA, on grounds of his incarceration when, in the absence of a privacy interest favoring nondisclosure, we likely would grant an identical FOIA request from another requester.³¹ The identity of the FOIA requester is, in general, irrelevant to the merits of the request.³² Moreover, we find that the principles underlying the FOIA would not be served by denying records to a FOIA requester who could not reasonably be expected to obtain information in the manner it is customarily offered to the public.³³

11. In view of the foregoing, we direct WTB to release to Harding a copy of the Darrisaw license that is unredacted.³⁴ The license should be provided to Harding in care of the appropriate official at the facility in which Harding is incarcerated.

²⁹ The type of material that may be accorded confidential treatment under 47 C.F.R. § 0.459, as referred to in the above quotation from the system of records notice, includes but is not limited to confidential commercial or financial information.

³⁰ See Joel Harding, 22 FCC Rcd 10461 (2007) (noting Mr. Harding is a prisoner at the Alger Maximum Correctional Facility in Munsing, Michigan).

³¹ We would simply inform such other requester that Darrisaw's license records are routinely available for public inspection and explain the requester's options for obtaining those records including having them downloaded from the Commission's ULS website, obtaining copies for a fee from the Commission's duplicating contractor, or securing copies from Commission staff subject to payment of any applicable FOIA fees.

³² See *Reporters Committee*, 489 U.S. at 771 (“[Unless the requesting party can claim a privilege against disclosure], the identity of the requesting party has no bearing on the merits of his or her FOIA request . . . [the requester's] rights are no different from those that might be asserted by any other third party . . .”).

³³ See *Anderson v. Dep't of Health and Human Services*, 907 F.2d 936, 941 (10th Cir. 1990) (“The FOIA is to be broadly construed in favor of disclosure”). See also *Comer v. IRS*, No. 97-CV-76329 (E.D.Mich 1999), reported at 1999 WL 1022210 at *2 and n.2 (although, on the facts of the case, the FOIA did not require the agency to provide documents that the requester could theoretically get himself, the court was “perplexed” that the agency did not simply copy the information and send it to the requester). See also *Improving Agency Disclosure of Information*, E.O. 13392 (Dec. 14, 2005) at § 1(b) (“Moreover, agencies shall provide FOIA requesters, and the public in general, with citizen-centered ways to learn about . . . agency records that are publicly available (e.g., on the agency's website) . . .”).

³⁴ Our decision is, of course, limited to determining Harding's rights under the FOIA. Accordingly, we express no view on whether his receipt of this information would be consistent with applicable regulations regarding the operation of his correctional facility.

III. ORDERING CLAUSES

11. IT IS ORDERED that Joel Harding's application for review IS GRANTED.

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

FEDERAL COMMUNICATIONS COMMISSION

Marlene H. Dortch
Secretary