

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

In the Matter of)	
)	
SOLOMON ODEN BATTLE)	FOIA Control No. 2007-243
)	
On Request for Inspection of Records)	

MEMORANDUM OPINION AND ORDER

Adopted: March 27, 2008

Released: March 31, 2008

By the Commission: Commissioner Copps issuing a statement.

I. INTRODUCTION

1. By this Memorandum Opinion and Order we deny an application for review, filed May 21, 2007, by Solomon Oden Battle (Battle)¹ seeking review of the Consumer & Governmental Affairs Bureau's (CGB) response to his Freedom of Information Act (FOIA) request. Battle asserts that CGB did not fully respond to his FOIA request. For the reasons set forth below, we find that Battle's arguments are without merit and deny his application for review.

II. BACKGROUND

2. In his FOIA request, Battle sought "copies of the FCC responses/resolutions" to ten informal complaints that Battle had filed against Virgin Mobile USA, LLC (Virgin Mobile), a firm selling prepaid wireless telephone service.² Battle indicates that he is a former customer of Virgin Mobile.³ CGB responded to Battle's request by producing two letters from an official of Virgin Mobile to the Commission.⁴ Each of these letters indicated that a courtesy copy was sent

¹ See Letter from Solomon Oden Battle to Office of General Counsel, Mr. Samuel Feder (dated May 5, 2007, received May 21, 2007) (AFR). We will not follow Battle's convention in the AFR of referring to himself as "SOB."

² Letter from Solomon Oden Battle to Mr. Samuel Feder, General Counsel (Mar. 16, 2007) (FOIA No. 2007-243) (Request) (Emphasis in the original). Battle describes the complaints as being dated: (1) February 21, 2006; (2) March 11, 2006; (3) March 12, 2006; (4) March 30, 2006; (5) April 2, 2006; (6) April 18, 2006; (7) April 28, 2006; (8) June 5, 2006; (9) June 9, 2006; and (10) June 13, 2006. *Id.*; AFR at 1.

³ See AFR at 1.

⁴ See Letter from Jay Keithley, Deputy Bureau Chief, CGB to Solomon Oden Battle (Apr. 18, 2007) (FOIA No. 2007-243).

to Battle at the time).⁵ Each letter purports to address Battle's "concerns," apologizes for the "confusion" Battle has experienced, and states that "[a]t this time, I believe this case is resolved."⁶

III. APPLICATION FOR REVIEW

3. In his application for review, Battle complains that:

[CGB] did not send [Battle] copies of responses/resolutions to all the ten (10) informal complaints listed. The FOIA 2007-243 was partially granted and partially denied. The partially granted parts were defective in that they lack substantive answers to the problems raised in the ten (10) informal complaints v Virgin Mobile USA, LLC. The lack of substantive answers [Battle] considers to be denied responses. In the lack of substantive answers some of the responses thus appear to consist of fabricated imaginary and misleading statements which FCC personnel should have know to be fabricated and false. And [CGB] presented these prevarications to [Battle] in FOIA-243 as facts.⁷

Furthermore, Battle asserts that:

[CGB] responded to only three (3) informal complaints with only two (2) letters from Virgin Mobile USA, LLC. The Virgin Mobile letters do not address the substance[] of the three (3) complaints in full and the FCC denied the FOIA 2007-243 by failing to acknowledge that the letters from Virgin Mobile were deficient and in some instances false and misleading. And [CGB] did not respond to [Battle's] FOIA 2007-243 for answers to informal complaints) which are/were not on the FCC database. . . . Thus, the missing copies of documents requested by [Battle] under FOIA 2007-243 fully demonstrate that FOIA 2007-243 was partially denied and totally denied in seven (7) informal complaints.⁸

⁵ See AFR, Exhibit E (Letter from Rachel Goodreau, Virgin Mobile USA to Federal Communications Commission (May 2, 2006); Letter from Rachel Goodreau, Virgin Mobile USA to Federal Communications Commission (July 31, 2006)).

⁶ *Id.*

⁷ AFR at 2.

⁸ *Id.* at 3.

IV. DISCUSSION

4. Battle has shown no error in CGB's response.⁹ Rather, we find that CGB disclosed to Battle all responsive records known to exist. Under the procedure governing informal complaints specified in the Commission's rules, the Commission forwards informal complaints to the relevant carrier for investigation and requires the carrier to advise the Commission in writing, with a copy to the complainant, of its satisfaction of the complaint or of its refusal or inability to do so.¹⁰ If the Commission considers the complaint satisfied, based on the carrier's response and communications with the parties, the Commission may consider the case closed without responding to the complainant.¹¹

5. As an initial matter, Battle's application for review understates the degree to which the two letters disclosed by CGB were responsive to his FOIA request. Although Battle characterizes the 10 items listed in his FOIA request¹² as "informal complaints," Exhibit A to the application for review indicates that eight of the items dealt with only two complaints, Nos. 06-I0234416 and 06-I0225740.¹³ The two letters from Virgin Mobile released to Battle referenced those two complaints and constitute the relevant "responses/resolutions" for them.¹⁴ Because the procedure described in the Commission's rules does not contemplate Commission rulings with respect to each complaint filed, and the two letters appear to have been considered adequate satisfaction of the complaints, we have no reason to believe that further "responses/resolutions" exist for those two complaints. The two remaining items of correspondence listed by Battle in his FOIA request do refer to two additional complaints, Nos. 06-B0239549 and 06-B0240352.¹⁵ However, a further search of the Commission's records did not locate any response from Virgin Mobile to those complaints. Thus, no records reflecting "responses/resolutions" exist for those two complaints.¹⁶

⁹ In support of his statements, Battle cites two provisions of the FOIA dealing with the time for responding to FOIA requests. See AFR at 2, citing 5 U.S.C. §§ 552(a)(6)(A)(i) and (a)(6)(B)(i) (providing for response to FOIA requests within 20 working days with 10 working day extensions allowed in some circumstances). Battle's application for review, however, raises no arguments regarding timeliness. Battle also asserts that the FCC did not comply with an executive order concerning FOIA, but does not explain the nature of the alleged lack of compliance. See *Improving Agency Disclosure of Information*, Executive Order No. 13392, 70 Fed. Reg. 75373 (Dec. 14, 2005). In any case, that order was intended to improve the internal management of the government and did not create any substantive or procedural rights in favor of any private party. *Id.* at 75376-77 § 7(b)(iii).

¹⁰ See 47 C.F.R. § 1.717.

¹¹ See *id.*

¹² See note 2, *supra*.

¹³ See AFR, Exh. A at 1-2. The items are: (1) – (7) and (9).

¹⁴ See note 5, *supra*.

¹⁵ See AFR, Exh. A at 1-2. The items are (8) and (10).

¹⁶ The two unanswered complaints have been referred to the Commission's Enforcement Bureau for further investigation.

6. By disclosing the existing responsive records, CGB has complied with its obligations under the FOIA. The FOIA requires that agencies “upon any request for records which (i) reasonably describes such records and (ii) is made in accordance with published rules stating the time, place, fees (if any), and procedures to be followed, shall make the records promptly available to any person.”¹⁷ The FOIA does not require agencies to answer questions, as opposed to providing records.¹⁸ Neither is a FOIA request the proper mechanism for contesting the adequacy or accuracy of a carrier’s response to an informal complaint. CGB therefore had no obligation to address the merits of Battle’s complaints about Virgin Mobile or the adequacy of Virgin Mobile’s response in responding to Battle’s FOIA request, and we have no reason to address such matters here.¹⁹

V. ORDERING CLAUSES

7. IT IS ORDERED that application for review, filed May 21, 2007, by Solomon Oden Battle IS DENIED. Battle 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, Tate, and McDowell.

FEDERAL COMMUNICATIONS COMMISSION

Marlene H. Dortch
Secretary

¹⁷ 5 U.S.C. § 552(a)(3)(A). See *Prof Bill Neill*, 18 FCC Rcd 24643, 24644 ¶ 5 and n.7 (2003), citing *Zemansky v. EPA*, 767 F.2d 569, 574 (9th Cir. 1985).

¹⁸ *Prof Bill Neill*, 18 FCC Rcd at 24644 ¶ 5 and n.8, citing *DiViao v. Kelley*, 571 F.2d 538, 542 (10th Cir. 1978); *Hudgins v. IRS*, 620 F. Supp. 19, 21 (D.D.C. 1985), *aff’d*, 808 F.2d 137 (D.C. Cir. 1987), *cert. denied*, 484 U.S. 803 (1987); and *NLRB v. Sears Roebuck & Co.*, 421 U.S. 132, 161-62 (1975).

¹⁹ A complainant who is unsatisfied with the Commission’s disposition of an informal complaint may file a formal complaint with the Commission within six months of the date of the carrier’s report. If no formal complaint is filed within the six month period, the complainant is deemed to have abandoned the unsatisfied complaint. See 47 C.F.R. §§ 1.717-1.718.

**STATEMENT OF
COMMISSIONER MICHAEL J. COPPS**

Re: Solomon Oden Battle Request for Inspection of Records.

I approve today's *Order*, which affirms our Bureau's conclusion that the FCC has no documents (beyond the two that have already been disclosed) that are responsive to the FOIA request before us. Simply put, the agency cannot turn over documents that it doesn't have.

But as a general matter, I do want to emphasize that the underlying facts in this case illustrate exactly the point that the Government Accountability Office recently made: The FCC does not always keep adequate records on consumer complaints filed with the agency. Here, a consumer filed his complaint over two years ago and the agency apparently has no record of whether the underlying complaint had merit or whether the carrier's partial response to the complaint was satisfactory. We need to do better.