

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

In the Matter of	)	
	)	
MARK HUBENY	)	FOIA Control No. 2009-187
	)	
On Request for Inspection of Records	)	

**MEMORANDUM OPINION AND ORDER**

**Adopted: September 25, 2009**

**Released: September 30, 2009**

By the Commission:

**I. INTRODUCTION**

1. The Commission has before it an application for review (AFR), filed by Mark Hubeny, of the decision of the Enforcement Bureau (EB or Bureau) denying in part his Freedom of Information Act (FOIA) request for a copy of a complaint filed against him. For the reasons stated below, Mr. Hubeny's AFR is denied.

2. Mr. Hubeny filed a FOIA request for "a copy of a complaint filed against [him] concerning [alleged] C.B. radio violations."<sup>1</sup> EB responded to Mr. Hubeny's FOIA, indicating that it had previously provided him with a copy of the complaint redacting the names of the complaining parties and other identifying information.<sup>2</sup> The Bureau explained that the redaction of the names of the complainants and other identifying information was proper under FOIA Exemption 7(C),<sup>3</sup> which protects personal information in law enforcement records. Mr. Hubeny then filed an AFR seeking an unredacted version of the complaint.<sup>4</sup> He indicated he requires the names of the complaining parties "for a criminal damage to property complaint" and also "possible stalking charges against the individual(s) listed in that letter, due in part [to his] fear that they very well could act again in a similar manner."<sup>5</sup>

3. We deny Mr. Hubeny's AFR. The Bureau correctly concluded that the identities of the complaining parties are properly withheld under FOIA Exemption 7(C), which exempts from disclosure law enforcement information that "could reasonably be expected to constitute an unwarranted invasion of personal privacy."<sup>6</sup> Under this FOIA exemption, we weigh the personal privacy interest of individuals against the public interest in disclosure of the information.<sup>7</sup> The only interest expressed by Mr. Hubeny is

<sup>1</sup> Email from Mark Hubeny to FOIA@fcc.gov (Jan. 20, 2009) (FOIA Request).

<sup>2</sup> Letter from Kathryn S. Berthot, Chief, Spectrum Enforcement Division, Enforcement Bureau, to Mark Hubeny (Feb. 18, 2009) (Decision).

<sup>3</sup> 5 U.S.C. § 552(b)(7)(C).

<sup>4</sup> Letter from Mark Hubeny to Acting General Counsel Michele P [sic] Ellison (Mar. 4, 2009) (AFR). Mr. Hubeny's letter was styled as a request for reconsideration of the denial in part of his FOIA request. We will construe his letter as an application for review. See 47 C.F.R. § 0.461(j).

<sup>5</sup> *Id.*

<sup>6</sup> 5 U.S.C. § 552(b)(7)(C).

<sup>7</sup> *Nat'l Archives and Records Admin. v. Favish*, 541 U.S. 157, 171 (2004); *U.S. Dep't of Justice v. Reporters Comm. For Freedom of the Press*, 489 U.S. 749, 773-74 (1989) (*Reporters Committee*).

his desire to learn the identities of the individuals for personal legal proceedings against them.<sup>8</sup> As the Bureau observed, this is not a sufficient *public* interest to outweigh the personal privacy interests of the individuals.<sup>9</sup> Indeed, the names of the complainants would not “shed light on [the Commission’s] performance of its statutory duties.”<sup>10</sup> Moreover, we note that individuals who complain to the government do not forfeit their right to privacy.<sup>11</sup> Therefore, the names and identifying information are properly withheld under FOIA Exemption 7(C).

4. We also find that the Bureau properly withheld the names and identifying information under FOIA Exemption 7(D), which protects “records or information compiled for law enforcement purposes which could reasonably be expected to disclose the identity of a confidential source.”<sup>12</sup> This exemption has long been recognized to provide the most comprehensive protection of all of the FOIA’s law enforcement exemptions,<sup>13</sup> and for good reason: it ensures that “confidential sources are not lost through retaliation against sources for past disclosure or because the sources fear future disclosure.”<sup>14</sup> The complaining parties here indicated in their complaint that they would “prefer” that their “name[s] and call sign[s] don’t get disclosed.”<sup>15</sup> A failure to provide such anonymity would likely cause future potential sources to withhold information that allows the Commission to better enforce its rules.<sup>16</sup> As the complaining parties expressly requested anonymity, it is appropriate to withhold their names and identifying information from Mr. Hubeny.<sup>17</sup>

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

6. The following officials are responsible for this action: Chairman Genachowski, Commissioners Copps, McDowell, Clyburn and Baker.

FEDERAL COMMUNICATIONS COMMISSION

Marlene H. Dortch  
Secretary

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<sup>8</sup> AFR at 1; FOIA Request at 1.

<sup>9</sup> Decision at 1 & n.1, *citing Massey v. FBI*, 3 F.3d 620, 625 (2d Cir. 1993) (“[T]he mere possibility that information may aid an individual in the pursuit of litigation does not give rise to a public interest.”). *See also Horowitz v. Peace Corps*, 428 F.3d 271, 278-79 (D.C. Cir. 2005), *cert. den.*, 547 U.S. 1041 (2006).

<sup>10</sup> *Reporters Committee*, 489 U.S. at 773.

<sup>11</sup> *E.g., Lakin Law Firm, P.C. v. FTC*, 352 F.3d 1222, 1224 (7th Cir. 2003), *cert. den.*, 524 U.S. 904 (2004); *CBS Corp.*, 22 FCC Red 11341 (2007).

<sup>12</sup> 5 U.S.C. § 552(b)(7)(D). *See generally U.S. Dep’t of Justice v. Landano*, 508 U.S. 165, 179-81 (1993).

<sup>13</sup> *Billington v. U.S. Dep’t of Justice*, 301 F.Supp.2d 15, 21 (D.D.C. 2004).

<sup>14</sup> *Brant Constr. Co. v. EPA*, 778 F.2d 1258, 1262 (7th Cir. 1985).

<sup>15</sup> Complaint at 1.

<sup>16</sup> *See Putnam v. U.S. Dep’t of Justice*, 873 F. Supp. 705, 716 (D.D.C. 1995) (revealing confidential sources could “chill the cooperation of other potential sources”).

<sup>17</sup> *See Digital Control Corporation*, 18 FCC Red 15076 (2003); *Gordon R. Lyford*, 17 FCC Red 19902 (2002).