

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

In the Matter of)
)
AMERICANS FOR LIMITED GOVERNMENT) FOIA Control No. 2011-093
)
On Request for Inspection of Records)

MEMORANDUM OPINION AND ORDER

Adopted: September 29, 2011

Released: September 30, 2011

By the Commission:

I. INTRODUCTION

1. By this memorandum opinion and order, we deny the application for review of Americans for Limited Government (ALG),¹ seeking review of the Office of General Counsel’s (OGC’s)² denial of ALG’s request for a waiver of the fees for processing its Freedom of Information Act (FOIA) request.³ We find that OGC correctly applied the standards for determining ALG’s entitlement to a fee waiver.

II. BACKGROUND

2. In its FOIA request, ALG seeks records that “pertain to communications to or from any Commissioner of the Federal Communications Commission (FCC) or their immediate staff and the following [nine] individuals.”⁴ ALG asserted that it should be granted a waiver of fees for processing its request because the information sought “will be used to better the public’s understanding of how the FCC is spending the taxpayers’ money.”⁵ ALG also indicated that it regularly publishes information on the activities, structure, and operations of the Federal Government and that the request is not in its commercial interest.⁶

3. OGC found⁷ that ALG had not satisfied the statutory test for entitlement to a fee waiver, which permits a waiver only “if disclosure of the information is in the public interest because it is likely to contribute significantly to public understanding of the operations or activities of the government and is

¹ See Appellant Americans for Limited Government’s Freedom of Information Act Appeal Regarding Denial of Request for Fee Waiver, filed January 28, 2011 (AFR).

² See Letter from Joel Kaufman, Associate General Counsel to William Wilson (Dec. 29, 2010) (Decision).

³ See e-mail from William Wilson to FOIA@fcc.gov (Dec. 7, 2010) (Request).

⁴ See Request at 1.

⁵ See *id.* at 4.

⁶ See *id.*

⁷ See Decision at 2.

not primarily in the commercial interest of the requester.”⁸ OGC found that ALG had provided only “broad speculation” that its request would contribute to the public understanding of the operations or activities of the government, rather than demonstrating specifically how its request would contribute to public understanding, as required by the statute.

4. In its application for review, ALG reiterates its claim that its request would contribute significantly to public understanding of the government. ALG provides further details about the information it requests. ALG explains that the nine individuals are affiliated with “internet giant” Google and that records sought relate to how Google has influenced the Commission in writing regulations concerning the Internet.⁹ ALG further explains that its staff will analyze the responsive documents provided and publish its findings in various media.¹⁰ ALG emphasizes that it does not have a commercial interest in the requested information.¹¹

III. DISCUSSION

5. We agree with OGC that ALG failed to meet the statutory standard for entitlement to a fee waiver. The facts of this case resemble those we recently considered in *National Legal and Policy Center*.¹² The requester there sought information about contacts between several individuals and the Commission and asserted that the information requested would show the individuals’ influence on the Commission’s Open Internet website and on media and communications policy. We found that the requester had not provided a reasonably detailed and specific explanation of how the request would contribute significantly to the public’s understanding of the operation or activities of the government, inasmuch as it failed to provide information beyond mere speculation that the information requested would show significant influence on government policy.¹³ We noted that it was not sufficient for the requester to merely restate its organizational mission or rely on speculation.¹⁴

6. If anything, ALG offered less by way of detailed explanation than the requester in *NLPC*. As OGC explained in its Decision:

ALG provides no information as to the affiliations of these [nine listed] individuals, the subject matter of the communications sought, or why these communications have any particular significance that would contribute significantly to public understanding of the operations of activities of the government.[Footnote omitted.] Individuals routinely communicate with the Commission on a wide variety of issues for a wide variety of reasons. Much of this dialog is reflected in the public record associated with the various proceedings pending before the Commission.[Footnote omitted.] ALG attributes no specific significance to communications by these individuals and apparently assumes that any communication between the Commission and an outside party might potentially

⁸ 5 U.S.C. § 552(a)(4)(A)(iii); *see also* 47 C.F.R. § 0.470(e) (criteria for granting a fee waiver).

⁹ *See* AFR at 8.

¹⁰ *See id.* at 10.

¹¹ *See id.* at 11-12.

¹² 26 FCC Rcd 8001 (2011) (*NLPC*).

¹³ *See NLPC*, 26 FCC Rcd at 8004-05 ¶¶ 9-10.

¹⁴ *See id.* at 8004 ¶ 8.

contribute to public understanding of the operations or activities of the government. Such broad speculation is insufficient to support a request for fee waiver.[Footnote omitted.]¹⁵

We give no weight to the additional facts set forth in ALG's application for review but not provided to OGC in ALG's Request. Our rules provide that: "No application for review will be granted if it relies on questions of fact or law upon which the designated authority has been afforded no opportunity to pass."¹⁶ We will therefore not rely on factual justification presented in the application for review that was not before OGC. We accordingly affirm OGC's Decision for the reasons stated by OGC.¹⁷

IV. ORDERING CLAUSE

7. ACCORDINGLY, IT IS ORDERED, that Appellant Americans for Limited Government's Freedom of Information Act Appeal Regarding Denial of Request for Fee Waiver IS DENIED. ALG may seek judicial review of this action, pursuant to 5 U.S.C. § 552(a)(4)(B).¹⁸

8. The officials responsible for this action are the following: Chairman Genachowski and Commissioners Capps, McDowell, and Clyburn.

FEDERAL COMMUNICATIONS COMMISSION

Marlene H. Dortch
Secretary

¹⁵ See Decision at 2.

¹⁶ See 47 C.F.R. § 1.115(c).

¹⁷ Because ALG failed to show how disclosure of the documents it sought would likely contribute significantly to public understanding of the operations or activities of the government, OGC properly declined to reach additional requirements for a fee waiver, such as to whether and how ALG plans to publicize any material it receives or whether it has a commercial interest in its request.

¹⁸ We note that as part of the Open Government Act of 2007, the Office of Government Information Services (OGIS) was created to offer mediation services to resolve disputes between FOIA requesters and Federal agencies as a non-exclusive alternative to litigation. Using OGIS services does not affect ALG's right to pursue litigation. ALG may contact OGIS in any of the following ways:

Office of Government Information Services
National Archives and Records Administration
8601 Adelphi Road - Room 2510
College Park, MD 20740-6001
E-mail: ogis@nara.gov
Telephone: 301-837-1996
Facsimile: 301-837-0348
Toll-free: 877-684-6448.