

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

In the Matter of
TODD FEATHERS
On Request for Inspection of Records
FOIA Control No. 2014-514

MEMORANDUM OPINION AND ORDER

Adopted: March 20, 2015

Released: March 20, 2015

By the Commission:

I. INTRODUCTION

1. By this Memorandum Opinion and Order, we deny an application for review filed by Todd Feathers (Feathers). Feathers seeks review of a decision by the Office of General Counsel (OGC) that released certain documents in response to Feathers's Freedom of Information Act (FOIA) Request and withheld others. We find that OGC's Decision properly withheld some material as not responsive to Feathers's Request and some other material as exempt under the FOIA.

II. BACKGROUND

2. Feathers's Request sought communications between 12 named Commission personnel and Kathryn Zachem (Zachem), Senior Vice President, Regulatory and State Legislative Affairs at Comcast Corporation. The 12 named individuals are Chairman Wheeler; Ruth Milkman (Milkman), the chairman's chief of staff; Commissioners Rosenworcel, Pai, and O'Rielly; confidential assistants working in the respective offices of the chairman and commissioners; and William Lake, chief of the Media Bureau. The request sought emails and other forms of communication since September 1, 2013.

3. In response, OGC released numerous email chains reflecting communications between the named individuals and Zachem. OGC redacted from the email chains (1) a copyrighted subscription newsletter, pursuant to FOIA Exemption 4, (2) personal mobile phone numbers and other information that

1 Letter from Todd Feathers to Larry Schecker, Office of General Counsel, Federal Communications Commission (Aug. 25, 2014) (AFR).

2 Letter from Elizabeth Lyle, Assistant General Counsel to Mr. Todd Feathers (Aug. 18, 2014) (Decision).

3 Email from Todd Feathers to FOIA@fcc.gov (Jul. 3, 2014) (Request).

4 See Request at 1.

5 The request did not include Commissioner Clyburn but did include her confidential assistant.

6 See Decision at 1-2.

7 See 5 U.S.C. § 552(b)(4), which covers "trade secrets and commercial or financial information obtained from a person and privileged or confidential."

would constitute an unwarranted invasion of personal privacy, pursuant to FOIA Exemption 6,<sup>8</sup> and (3) nonresponsive portions of records. OGC found no basis to make a discretionary release of this material.

4. In his AFR, Feathers disputes four specific non-disclosures. First, Feathers contends that OGC improperly redacted material as “Not Responsive.” Feather interprets the FOIA as requiring disclosure of all material that is not covered by a specific exemption. He asserts that “Not Responsive” does not constitute one of the nine exemptions listed in the FOIA.<sup>9</sup> Second, Feathers argues that OGC improperly withheld under Exemption 4 the contents of an “Industry Update” issued by Stifel, Nicolaus & Company, Incorporated (Stifel), an investment firm. According to Feathers, such a publication cannot be withheld under Exemption 4, because it does not qualify as a trade secret and cannot be considered privileged or confidential.<sup>10</sup> Third, Feathers contends that OGC improperly withheld under Exemption 6 two emails containing personal communications between Zachem and Milkman. Feathers urges that these emails do not fall within the category of “personnel and medical files and similar files,” as specified in Exemption 6. Further, Feathers argues that the balance between personal privacy and the public’s right to disclosure favors disclosure of “emails that reveal the close personal relationships top FCC employees share with top Comcast executives.”<sup>11</sup> Fourth, Feathers observes that an email from Zachem to Milkman and others indicates that it had as an attachment an “industry contact list,” but that the attachment was not released with the email.

5. After Feathers filed his AFR, OGC made supplemental releases of several documents under its authority to informally resolve outstanding issues raised by an AFR.<sup>12</sup> First, OGC released the Stifel “Industry Update” and the “industry contact list.”<sup>13</sup> Before releasing the “Industry Update,” OGC notified Stifel and learned that Stifel had no objection to disclosure.<sup>14</sup> As to the “industry contact list,” OGC determined that nondisclosure of this document was inadvertent.<sup>15</sup> In addition, OGC released one email from Milkman to Zachem that had been redacted under Exemption 6, after determining that disclosure would not in fact constitute an unwarranted invasion of privacy.<sup>16</sup> Finally, OGC released two emails not involving Zachem that had been redacted as not responsive, but that were in fact responsive because they appeared in the middle of an otherwise responsive email chain.<sup>17</sup>

### III. DISCUSSION

6. Redaction of non-responsive material. We find that Feathers’s objection to the redaction of material as “Not Responsive” is without merit. The FOIA requires disclosure only in response to “any request for records which [] reasonably describes such records.”<sup>18</sup> Thus, the FOIA does not require the

---

<sup>8</sup> See 5 U.S.C. § 552(b)(6), which covers “personnel and medical files and similar files the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.”

<sup>9</sup> See AFR at 1; 5 U.S.C. § 552(b)(1) through (9) (listing the exemptions).

<sup>10</sup> See AFR at 1-2.

<sup>11</sup> See *id.* at 2-3. Feathers points out that the emails were dated approximately one month before Comcast announced its planned merger with Time Warner.

<sup>12</sup> See 47 C.F.R. § 0.461 Note to (i) and (j); email from David S. Senzel to Todd Feathers (Oct. 20, 2014); email from David S. Senzel to Todd Feathers (Dec. 23, 2014).

<sup>13</sup> See email from David Senzel to Todd Feathers (Oct. 20, 2014).

<sup>14</sup> See 47 C.F.R. § 0.461(d)(3); email from David Senzel to David M. Minnick, Esq., General Counsel, Stifel Financial Corp. (Sept. 15, 2014); email from David M. Minnick to David Senzel (Oct. 2, 2014).

<sup>15</sup> See *supra* note 13.

<sup>16</sup> See email from David Senzel to Todd Feathers (Dec. 23, 2014).

<sup>17</sup> *Id.*

<sup>18</sup> See 5 U.S.C. § 552(a)(3)(A).

disclosure of material not described by the request. Here, the Request sought communications between Zachem and 12 named individuals. The redacted material consisted of emails that did not meet this description because they did not involve Zachem. The practice of redacting non-responsive material has been judicially approved.<sup>19</sup> Accordingly, OGC correctly redacted non-responsive material.

7. Redaction of personal emails. As an initial matter, we disagree with Feathers's suggestion that the emails that were withheld under Exemption 6 are not comparable to personnel or medical files and are therefore not within the scope of records protected by Exemption 6. Exemption 6 covers "personnel and medical files and similar files the disclosure of which would constitute a clearly unwarranted invasion of personal privacy."<sup>20</sup> Courts have found that Congress intended the phrase "similar files" to have "a broad, rather than a narrow, meaning,"<sup>21</sup> such that Exemption 6 applies to records if those records contain information concerning particular individuals.<sup>22</sup> Emails, in particular, have been held to be within the scope of the exemption.<sup>23</sup> Accordingly, we find that the emails redacted by OGC are within the scope of records properly subject to the exemption.

8. Having found that these emails fall within the scope of Exemption 6, we must balance the privacy interest that would be damaged by disclosure against the public interest that would be served by release of these documents. The one remaining email in question is an email from Zachem to Milkman dated Monday, January 20, 2014.<sup>24</sup> The January 20 email consists entirely of a discussion of the activities and plans of Zachem's and Milkman's respective families. Disclosure of this email would invade and seriously compromise the personal privacy of those families, as well as that of Zachem and Milkman. We reject Feathers's contention that the public's interest in emails that reveal "the close personal relationships" between FCC employees and Comcast executives requires disclosure of this email.<sup>25</sup> We discern no public interest in details of the personal lives of Zachem's and Milkman's families that touches on the purpose of the FOIA, which is to "shed light on an agency's performance of its statutory duties."<sup>26</sup> There is therefore no interest that outweighs the personal privacy interests that would be invaded by disclosure of this particular email. Disclosure of the January 20 email would therefore be a clearly unwarranted invasion of personal privacy, and we find that OGC was justified in withholding that email under Exemption 6.

#### IV. ORDERING CLAUSE

9. IT IS ORDERED that the application for review filed by Todd Feathers IS DENIED. Feathers may seek judicial review of this action pursuant to 5 U.S.C. § 552(a)(4)(B).<sup>27</sup>

---

<sup>19</sup> See *Freedom Watch, Inc. v. NSA*, Case No. 1:12-cv-01088 (CRC) (D.D.C. Jun. 12, 2014), reported at 2014 WL 2768849 at \*4 ("The practice of redacting non-responsive materials from documents produced in response to FOIA requests has been approved by courts in this Circuit."). See also *Michael Ravnitzky*, 16 FCC Rcd 21745, 21747 & n.21 (2001), citing *Public Employees for Environmental Responsibility, Rocky Mountain Chapter v. U.S. EPA*, 978 F. Supp. 955, 965 (D. Colo. 1997) (records not responsive to FOIA request need not be disclosed).

<sup>20</sup> 5 U.S.C. § 552(b)(6).

<sup>21</sup> *Dept. of State v. Wash. Post Co.*, 456 U.S. 595, 600 (1982).

<sup>22</sup> See *id.* at 602; see also *National Ass'n of Home Builders v. Norton*, 309 F.3d 26, 32 (D.C. Cir. 2002).

<sup>23</sup> See *Yonemoto v. Dep't of Veteran's Affairs*, Civ. No. 06-00378 BMK (D. Haw. Dec. 22, 2009), reported at 2009 WL 5033597 at \*6 (intra-agency emails qualify as "similar files" for purposes of Exemption 6).

<sup>24</sup> A second email, Milkman's January 21, 2014 reply, was disclosed to Feathers in a supplemental release. See *supra* paragraph 5.

<sup>25</sup> See AFR at 2-3.

<sup>26</sup> See *Dept. of Justice v. Reporters Committee for Freedom of the Press*, 489 U.S. 749, 773 (1989).

<sup>27</sup> We note that as part of the Open Government Act of 2007, the Office of Government Information Services

(continued....)

10. The officials responsible for this action are the following: Chairman Wheeler and Commissioners Clyburn, Rosenworcel, Pai, and O’Rielly.

FEDERAL COMMUNICATIONS COMMISSION

Marlene H. Dortch  
Secretary

(Continued from previous page) \_\_\_\_\_

(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 Feathers’ right to pursue litigation. Feathers may contact OGIS in any of the following ways:

Office of Government Information Services  
National Archives and Records Administration  
Room 2510  
8601 Adelphi Road  
College Park, MD 20740-6001  
E-mail: [ogis@nara.gov](mailto:ogis@nara.gov)  
Telephone: 301-837-1996  
Facsimile: 301-837-0348  
Toll-free: 1-877-684-6448.