

14 Sep 2020, 17:18

From: GaryM Stern <garym.stern@nara.gov>
Date sent: Mon, 14 Sep 2020 17:18:03 -0400
Subject: Re: records of National Commission on Military, National and Public Service (NCMNPS)
To: Edward Hasbrouck <edward@hasbrouck.org>

Dear Mr. Hasbrouck, this is to acknowledge receipt of your email; please note that I have also received your voicemail, and I am aware that you have sent similar messages to other NARA staff. As I believe you are aware, NARA will be receiving the permanently scheduled records of the National Commission on Military, National, and Public Service as archival holdings of the National Archives, which you will be free to access in accordance with our normal research and FOIA processes. In addition, NARA will also be receiving a set of the Commission's temporary records that are subject to a longer retention in accordance with the General Records Schedule, which generally concern administrative housekeeping records and which will be subject to FOIA requests.

I can also confirm that, per the statement in Joseph Heck's September 11, 2020, FOIA appeal response letter to you, NARA is currently in the process of taking interim custody, for a period of approximately 90 days, of the temporary records of the Commission that are appropriately scheduled for disposal upon the termination of the Commission on September 18, 2020. As Mr. Heck's letter states, NARA is doing so "for the purpose of allowing you to address any further legal rights related to this specific FOIA request," which include your right to seek judicial review. Accordingly, NARA will not be accepting any new FOIA requests with respect to this set of records.

Sincerely,

Gary M. Stern
General Counsel
Chief FOIA Officer and FOIA Public Liaison
National Archives and Records Administration
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301-837-3026 (office)
301-837-0293 (fax)
garym.stern@nara.gov

On Sun, Sep 13, 2020 at 11:53 PM Edward Hasbrouck <edward@hasbrouck.org> wrote:

> Dear Mr. Stern --
>
> I was referred to you late last Friday as the FOIA Public Liaison for NARA
> by Brigadier General Joseph Heck, Chair and FOIA Appeals Officer of the
> National Commission on Military, National and Public Service (NCMNPS).
>
> The NCMNPS is a temporary agency scheduled to expire 18 September 2020.
> Time is the essence to ensure that records potentially responsive to
> active FOIA matters are not improperly destroyed just before, or just

> after, custody of those records is transferred from the NCMNPS to NARA.
>
> According to Brig. Genl. Heck's FOIA appeal denial letter (a copy of which
> I have attached along with the original request, denial, and appeal):
>
> "As you are aware, the Commission's permanent records will be transferred
> to the National Archives Records Administration (NARA), and many of the
> Commission's temporary records are subject to destruction under its
> published records schedule at the end of the Commission's existence. Out
> of an abundance of caution, NARA intends to retain these temporary records
> until December 7, 2020 -- 90 days from the date of your appeal of our
> denial of your FOIA request -- for the purpose of allowing you to
> address any further legal rights related to this specific FOIA request.
> Questions about this matter may be addressed to NARA's FOIA Public Liaison
> Gary M. Stern, at garym.stern@nara.gov."
>
> Could you please confirm that Brig. Genl. Heck's statement is correct, and
> that NARA will ensure that all records transferred from the NCMNPS --
> including all "temporary" records -- are retained until 7 December 2020?
>
> Many of the potentially responsive records have been designated by NARA in
> records schedule DAA-0220-2020-0001 (or might be, depending on how that
> records schedule is interpreted) as "temporary" records, and -- unless
> they are recognized to be subject to a pending FOIA request, appeal,
> litigation, or action on remand following appeal or litigation -- would
> have been scheduled for destruction at the termination of the NCMNPS.
>
> And because the adequacy of the searches for responsive records is one of
> the disputed issues in this and several others of my active FOIA appeals
> with the NCMNPS, all NCMNPS records must be retained as potentially
> responsive until all appeals of the adequacy of searches are resolved.
>
> So it is critical for the NARA FOIA office to ensure that all NARA staff
> who are scheduled to receive, or who might receive, any of these records,
> are made aware *before* records are transferred from the NCMNPS that *all*
> of these records are responsive to an active FOIA matter with respect to
> which I as requester have not yet been able to exercise my appeal rights,
> and that NARA has committed to retain until at least 7 December 2020.
>
> Otherwise, NARA staff receiving these records might destroy some of them
> as "temporary" before I have a chance to submit new requests for them to
> NARA and notice of those new requests could reach the custodial staff.
>
> Brig. Genl. Heck's letter to me of 11 September 2002 also states:
>
> "If you have any questions about this response or the FOIA process in
> general, until September 11, 2020, please contact our FOIA Public Liaison,
> Peter Morgan, at peter.n.morgan@inspire2serve.gov. After that date, all
> inquiries should be made to NARA."
>
> This is puzzling to me, since these records should still be in the custody
> of the NCMNPS and subject to FOIA requests through the NCMNPS, even if the
> NCMNPS would not have time to complete action on those requests and would
> have to transfer them to NARA at the termination of the NCMNPS.
>
> The statutory mandate of the NCMNPS continues for another week, through 18
> September 2020, and records schedule DAA-0220-2020-0001 provides that
> records are to be transferred from the NCMNPS to NARA "immediately *after*
> the termination of the Commission" [emphasis added].
>

> Have any records or any pending FOIA requests or appeals already been
> transferred by the NCMNPS to NARA?
>
> Does NARA have any policies, procedures, or recommended agency practices
> for handling FOIA requests or appeals made to a temporary agency as its
> expiration approaches, or potentially responsive records, before or after
> transfer from the agency to NARA, when the agency is not likely to be able
> to complete action on those requests or appeals before its expiration??
>
> If I request these records from NARA before NARA has received them, NARA
> can of course say that it has no responsive records. As soon as I learn
> that these records are in NARA's custody, I can make new FOIA requests for
> them to NARA. But I fear that by the time I learn that records are in
> NARA's custody., and can make new requests to NARA for them, potentially
> responsive records may already have been destroyed as "temporary", either
> just before or just after the transfer from the NCMNPS to NARA.
>
> For example, DAA-0220-2020-0001categorizes records of the NCMNPS accounts
> with Facebook, YouTube, etc., including video recordings of NCMNPS
> meetings and events, as "temporary" records which the NCMNPS is to "Delete
> at termination of the Commission". I have requested copies of the NCMNPS
> accounts with Eventbrite and Zoom, which include records of who
> participated in NCMNPS consultations. The NCMNPS official Web site
> includes Google Analytics visitor tracking cookies, and I have requested
> the records of the associated Google Analytics account regarding visits to
> the NCMNPS Web site. All of these responsive records will, or might be,
> deemed temporary, and might be lost unless affirmative steps are taken to
> transfer control of these online accounts from the NCMNPS to NARA..
>
> My concern is to make sure that none of these records are mistakenly
> destroyed as "temporary" either before or after transfer to NARA, until
> either I am able to exercise my right to appeal the NCMNPS determinations
> (if, as I believe is required by FOIA, the pending appeals are referred to
> NARA), or I can make new requests for these records to NARA, and all
> action with respect to such appeals and /or new requests is complete.
>
> I would welcome your suggestions or proposals as to the least burdensome
> way to handle this issue while fully respecting my FOIA rights.
>
> Please reply as soon as possible to confirm receipt of this message, since
> many Federal agencies use aggressive, often outsourced, spam filters that
> make it impossible for senders to know whether e-mail has been delivered
> to the recipient or has been silently deleted or diverted as "spam".
>
> I would be happy to confer by phone. If you or any NARA or NCMNPS FOIA or
> records management staff have any questions, please do not hesitate to
> call me at any time at 415-824-0214 in San Francisco.
>
> I look forward to preservation of, and access to, these records.
>
> Peace,
>
> Edward Hasbrouck
>
>
>
> -----
> Draft Registration and Draft Resistance:
> <http://Resisters.info>
>

> Compulsory National Service:
> <http://NationalService.info>
>
> Health Care Workers and the Draft:
> <http://MedicalDraft.info>
>

> Edward Hasbrouck
> edward@hasbrouck.org
> <http://hasbrouck.org>
> +1-415-824-0214
>
>

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> Date: 25 Aug 2020, 11:37
> Size: 320237 bytes.
> Type: Unknown

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> Date: 7 Sep 2020, 17:04
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> ----- File information -----
> File: NCMNPS-FOIA-2020-SP-33-appeal-7SEP2020-signed.pdf
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> ----- File information -----
> File: OGC-FOIA-2020SP33-AppealResponse-Final.pdf
> Date: 11 Sep 2020, 12:15
> Size: 126063 bytes.
> Type: Unknown
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