

24 Nov 2020, 11:09

Date sent: Tue, 24 Nov 2020 11:09:57 -0800 (PST)
From: cer <cer@nara.gov>
To: cer <cer@nara.gov>
Copies to: "edward@hasbrouck.org" <edward@hasbrouck.org>
Subject: Re: NCMNPS FOIA request

Dear Mr. Hasbrouck,

This is a follow-up reply to your FOIA request 20-54033 (ER0566), seeking access to archival records of the National Commission on Military, National, and Public Service (NCMNPS).

We are now able to give a more specific timeframe as to when we expect to complete processing and preserving the archival electronic records in our custody. We hope to finish processing and preserving the remaining NCMNPS archival electronic records, except for the email, by the end of January. We then hope to provide you access to the unrestricted or redacted records several weeks after processing is completed. As processing and review is completed for a set of records, we will notify you.

We hope to complete the work on processing the emails by early spring. At that point, we will work with you to develop search criteria to help identify the emails potentially responsive to your request.

Along these lines, we completed processing and reviewing the 43 records identified as Significant Actions and Decisions (disposition item 1.2) and the 98 records identified as Congressional Correspondence and Communication (disposition item 3.4). With one exception, these records are open in full. In the Significant Actions and Decisions set there is one file that contains information exempt from disclosure under FOIA (b)(6), which relates to personal privacy. We have prepared a redacted version of that file to make available to the public.

We are in the process of making these records available in the National Archives Catalog (<https://catalog.archives.gov/>), but that still may take some weeks. Instead, attached are spreadsheets that lists the narrative title for each file, the file size (bytes), the path of the file as transferred to NARA, and a link to access the file.

Again, the metadata we received with the transfer of the files did not specify which workstation or server the file resided on when in use by the NCMNPS. The transferring official likely pulled the files from the original locations to create a new directory specifically for transferring them to NARA. The transferring official provided the files on a thumbdrive and all the archival files had a date modified of 9/18/2020 or 9/19/2020.

This is an interim response to your FOIA request in order to provide you access with two additional sets of processed and reviewed NCMNPS records. With one exception, these records are open in full. We have prepared a redacted version of the one file that is partly restricted.

If you are not satisfied with our action on your request, you have the right to file an administrative appeal within ninety (90) calendar days from the date of this letter. Appeals must be in writing and may be delivered by regular U.S. mail or by email. By filing an appeal, you preserve your rights under the Freedom of Information Act and present the deciding agency with an opportunity to review your request and reconsider

its decision. If you submit your appeal by regular mail, it should be addressed to the Deputy Archivist of the United States (ND), National Archives and Records Administration, 8601 Adelphi Road, Room 4200, College Park, Maryland 20740-6001. Both the letter and envelope should be clearly marked "FOIA Appeal." If you submit your appeal by email, please send it to foia@nara.gov, addressed to the Deputy Archivist, with the words "FOIA Appeal" in the subject line. Please be certain to explain why you believe this response does not meet the requirements of the Freedom of Information Act. All communications concerning this request should reference your FOIA tracking number 20-54033 (ER0566).

If you would like the opportunity to discuss our response and attempt to resolve your dispute without initiating the appeals process, you may contact our FOIA Public Liaison for assistance:

Accessioned Executive Branch Records – Washington, DC Area
FOIA Requester Service Center: 301-837-3190
FOIA Public Liaison: Michael Marquis
8601 Adelphi Road, Room 5500
College Park, MD 20740-6001
dc.foia.liaison@nara.gov
301-837-3190

If you are unable to resolve your dispute through our Public Liaison, the Office of Government Information Services (OGIS) is the federal FOIA ombudsman. OGIS offers mediation services to help resolve disputes between FOIA requesters and federal agencies. You may contact OGIS at the following address:

Office of Government Information Services (OGIS)
National Archives and Records Administration
8601 Adelphi Road, Room 2510
College Park, MD 20740-6001
ogis@nara.gov
202-741-5770
1-877-684-6448 (toll-free)

Sincerely,
Lynn Goodsell
Reference Branch Chief, Electronic Records Division (RRE)
National Archives and Records Administration (NARA)
cer@nara.gov

Attachments:
NCMNPS Congressional Correspondence.xlsx
NCMNPS Significant Actions Decisions.xlsx

On Tuesday, November 10, 2020 at 2:09:40 PM UTC-5 cer wrote:

> Dear Mr. Hasbrouck,
>
> This is in response to your follow-up email of November 5, 2020,
> concerning your FOIA request for archival records of the National
> Commission on Military, National, and Public Service (NCMNPS) (FOIA request
> 20-54033/ER0566 with this office). Please know Ms. Goodsell is out of the
> office until late November, so I am responding to you in her stead.
>
> You requested an "estimated date of *completion* of action" with respect
> to your FOIA request.

>
> As you are aware, records potentially responsive to your FOIA request
> include both temporary and permanent (archival) electronic records.
>
> The portion of your request for temporary NCMNPS records is being handled
> by NARA's Office of General Council (NGC). You will need to contact them
> directly for information on the status of your request in their office.
>
> Our office, the Electronic Records Division (RRE), is handling the portion
> of your request regarding the permanent electronic records. These records
> are currently being processed by our Processing branch and are a priority
> project. As Ms. Goodsell wrote in her recent status update, we hope to have
> most of the records processed within the next few months. The email
> records, however, may take longer to process.
>
> Also, alongside the archival processing, our staff are reviewing the
> records for sensitive information exempt from disclosure under the FOIA so
> that we can provide you access to both the unrestricted and redacted
> records as soon as processing is completed. Specifically, we have found
> that some of the records include personal information of private
> individuals, such as personal email addresses and phone numbers, which must
> be withheld under FOIA(b)(6), which relates to personal privacy.
>
> Unfortunately, we cannot offer any more specific of a timeframe than the
> above estimate regarding the completion of action for your request in
> regards to the permanent electronic records as our office cannot provide
> access to the records until they are processed. We will continue to update
> you as records become available.
>
> In addition, as Ms. Goodsell indicated, once the email records have been
> processed, we will work with you to develop search criteria to identify
> emails potentially responsive to your request. Please keep in mind,
> depending on the volume of emails you request to access, the review process
> for them may take some time.
>
> We hope that this information is useful to you. If you have further
> questions concerning NARA's electronic records holdings, please contact us
> by email at c...@nara.gov.
>
> Sincerely,
>
> Victoria Triplett
> Archives Specialist
> Electronic Records Division Reference Branch (RRER)
> National Archives at College Park
>
>
> On Thursday, November 5, 2020 at 5:27:21 PM UTC-5, Edward Hasbrouck wrote:
>>
>> Thank you for this information. However, this message still does not
>> include the estimated date of *completion* of action with respect either
>> to the portion of my request assigned to your office, or to my request as
>>
>> a whole (including that portion which has not, so far as I have been
>> informed, been assigned to or acted on by any office), both of which I
>> have previously requested.
>>
>> Please provide the estimated dates of completion of action, or let me
>> know
>> what procedure NARA has established by which I can obtain them.

>>
>> Peace,
>>
>> Edward Hasbrouck
>>
>> On 5 Nov 2020 at 13:28, "cer" <cer <c...@nara.gov>> wrote:
>>
>> > Dear Mr. Hasbrouck,
>> > This is in reply to your follow-up email of October 28, 2020, seeking a
>> > status update on your FOIA request for archival records of the National
>> > Commission on Military, National, and Public Service (NCMNPS) (FOIA
>> request
>> > ER0566 with this office). We received your follow-up email on November
>> 3,
>> > 2020.
>> >
>> > For your information, the new permanent FOIA tracking number for your
>> > request is 20-54033. But you may also continue to reference ER0566.
>> >
>> > As I explained my October 8 email to you, our office needs to process
>> and
>> > preserve the electronic records before we can provide access to the
>> > records. Processing these records is a priority in our office. We
>> hope to
>> > have most of the records processed within the next few months, but
>> > processing the emails may take a little longer. At the same time we
>> are
>> > reviewing the records for any sensitive information exempt from
>> disclosure
>> > under the FOIA so we can provide you access to the unrestricted or
>> redacted
>> > records as soon as possible after they are processed.
>> >
>> > Given the broad scope of your FOIA request, we aim to provide you with
>> > access to almost all of the archival records, both those open in full
>> and
>> > redacted, so you can determine what is most relevant to you. The
>> exception
>> > to this will be the commissioners' emails. Once the commissioners'
>> > emails are processed, we will work with you to develop search criteria
>> to
>> > help identify the emails potentially responsive to your request.
>> >
>> > At the end of last week, we completed processing the seven files
>> associated
>> > with the establishment of the commission. These seven files are
>> > unrestricted. We are in the process of making them available in the
>> > National Archives Catalog (<https://catalog.archives.gov/>), but that
>> still
>> > may take some weeks. Instead, attached is a spreadsheet that lists the
>> > narrative title for each file, the file size (bytes), the path of the
>> file
>> > as transferred to NARA, and a link to access the file. The metadata we
>> > received with the transfer of the files did not specify which
>> workstation
>> > or server the file resided on when in use by the NCMNPS. The
>> transferring
>> > official likely pulled the files from the original locations to create
>> a
>> > new directory specifically for transferring them to NARA. The

>> transferring
>> > official provided the files on a thumbdrive and all the archival files
>> had
>> > a date modified of 9/18/2020 or 9/19/2020.
>> >
>> > This is an interim response to your FOIA request in order to provide
>> you
>> > access with the first set of processed NCMNPS records, which are open
>> in
>> > full.
>> >
>> > If you are not satisfied with our action on your request, you have the
>> > right to file an administrative appeal within ninety (90) calendar days
>> > from the date of this letter. Appeals must be in writing and may be
>> > delivered by regular U.S. mail or by email. By filing an appeal, you
>> > preserve your rights under the Freedom of Information Act and present
>> the
>> > deciding agency with an opportunity to review your request and
>> reconsider
>> > its decision. If you submit your appeal by regular mail, it should be
>> > addressed to the Deputy Archivist of the United States (ND), National
>> > Archives and Records Administration, 8601 Adelphi Road, Room 4200,
>> College
>> > Park, Maryland 20740-6001. Both the letter and envelope should be
>> clearly
>> > marked "FOIA Appeal." If you submit your appeal by email, please send
>> > it to fo...@nara.gov, addressed to the Deputy Archivist, with the
>> words
>> > "FOIA Appeal" in the subject line. Please be certain to explain why you
>> > believe this response does not meet the requirements of the Freedom of
>> > Information Act. All communications concerning this request should
>> > reference your temporary FOIA tracking number ER0566.
>> >
>> > If you would like the opportunity to discuss our response and attempt
>> to
>> > resolve your dispute without initiating the appeals process, you may
>> > contact our FOIA Public Liaison for assistance:
>> >
>> > Accessioned Executive Branch Records - Washington, DC Area
>> > FOIA Requester Service Center: 301-837-3190 <(301)%20837-3190>
>> > FOIA Public Liaison: Michael Marquis
>> > 8601 Adelphi Road, Room 5500
>> > College Park, MD 20740-6001
>> > dc.foia...@nara.gov
>> > 301-837-3190 <(301)%20837-3190>
>> >
>> > If you are unable to resolve your dispute through our Public Liaison,
>> the
>> > Office of Government Information Services (OGIS) is the federal FOIA
>> > ombudsman. OGIS offers mediation services to help resolve disputes
>> between
>> > FOIA requesters and federal agencies. You may contact OGIS at the
>> following
>> > address:
>> >
>> > Office of Government Information Services (OGIS)
>> > National Archives and Records Administration
>> > 8601 Adelphi Road, Room 2510
>> > College Park, MD 20740-6001
>> > og...@nara.gov

>> > 202-741-5770 <(202)%20741-5770>
>> > 1-877-684-6448 <(877)%20684-6448> (toll-free)
>> >
>> > Sincerely,
>> > Lynn Goodsell
>> > Reference Branch Chief, Electronic Records Division (RRE)
>> > National Archives and Records Administration (NARA)
>> > c...@nara.gov
>> >
>> > Attachment: NCMNPS Establishment Records.xlsx
>> >
>> >
>> > On Thursday, October 8, 2020 at 3:22:29 PM UTC-4 cer wrote:
>> >
>> > Dear Mr. Hasbrouck,
>> > This is a follow-up to your Freedom of Information Act (FOIA) request
>> of
>> > September 21, 2020, assigned temporary FOIA tracking number ER0566.
>> You
>> > requested access to permanent records of the National Commission on
>> > Military, National, and Public Service (NCMNPS).
>> >
>> > As a reminder, NARA's Office of General Counsel provided you with an
>> > initial reply concerning the temporary NCMNPS records on September
>> 24,
>> > 2020 and a tracking number for that portion of your request. They
>> will
>> > respond to you separately regarding the temporary records.
>> >
>> > Also, on October 1, we sent you a reply regarding your request for
>> > expedited processing.
>> >
>> > NCMNPS transferred the permanent electronic records to the Electronic
>> > Records Division of the National Archives and Records Administration
>> > (NARA) on September 22, 2020. As to your follow-up question about
>> the
>> > legal custody of the records, I misspoke. Since the Commission is no
>> > longer in operation, I have confirmed that NARA has essentially taken
>> > legal custody of the records. In cases where the agency or
>> commission
>> > has ceased operating, there may be a brief period where the
>> electronic
>> > records are not available until NARA has processed and preserved the
>> > records.
>> >
>> > Our office (Electronic Records Division) needs to process and
>> preserve
>> > the electronic records before we can provide access to the records.
>> > Processing the records involves making sure the records match the
>> records
>> > schedule item and align to our technical standards, checking if the
>> > records contain sensitive information that is exempt from release
>> under
>> > FOIA, preserving the records in our digital repository, and creating
>> > descriptions or finding aids for the records so we may serve them to
>> the
>> > public.
>> >
>> > We cannot search the records in response to your FOIA request until
>> the

>> >> records are processed.
>> >>
>> >> As you know, you can review the records disposition authority for the
>> >> NCMNPS records to learn what permanent records were transferred to
>> NARA
>> >> versus what records were appraised as temporary to eventually be
>> >> destroyed. You can view the records disposition authority for the
>> NCMNPS
>> >> records at:
>> >>
>> https://www.archives.gov/files/records-mgmt/rcs/schedules/independent-age-ncies/rg-0220/daa-0220-2020-0001_sf115.pdf .
>> >>
>> >> For your information, we received the following nine sets of
>> permanent
>> >> electronic records from NCMNPS for a total of approximately 2,900
>> files
>> >> (excluding individual emails) and 13 GB.
>> >>
>> >> Commission Records [Establishment of the NCMP] (disposition item
>> 1.1)
>> >> Significant Actions and Decisions (disposition item 1.2)
>> Commissioners'
>> >> Emails (disposition item 1.3) Public Input (disposition item 2)
>> >> Commission Meetings (disposition item 3.1) Commission Findings and
>> >> Recommendations (disposition item 3.2) Commission Correspondence
>> Files
>> >> (disposition item 3.3) Congressional Correspondence and Communication
>> >> (disposition item 3.4) Historically Significant Media (disposition
>> item
>> >> 5.1)
>> >>
>> >> Most of these records can likely be released in full. However, some
>> >> records, especially the commissioners' emails, may have access
>> >> restrictions in that they contain information that is exempt from
>> >> disclosure under FOIA (b)(6), which relates to personal privacy.
>> Since
>> >> you requested access to various sets of emails, those records will
>> need
>> >> to be reviewed by the Special Access/FOIA Program to determine what
>> >> information can be released.
>> >>
>> >> As a result of your FOIA request, processing the NCMNPS permanent
>> >> electronic records is a priority. In spite of the limitations of
>> working
>> >> remotely due to the COVID-19 pandemic, we hope to have most of the
>> >> records processed and legal custody taken within the next few months.
>> >> The processing of the email files may take longer as we do not have
>> the
>> >> resources while teleworking to process and search the emails. This
>> work
>> >> must be conducted on-site. More information about the National
>> Archives'
>> >> response to coronavirus can be found at [archives.gov/coronavirus](https://www.archives.gov/coronavirus).
>> >>
>> >> We plan to have the unrestricted records available online through the
>> >> National Archives Catalog shortly after we complete processing of
>> them.
>> >> Once we have processed the records, you can either order copies of
>> the

>> > > unrestricted records for a cost-recovery fee or access them for free
>> via
>> > > the National Archives Catalog. Details on ordering electronic
>> records
>> > > are at:
>> <http://www.archives.gov/research/order/electronic-records.html>.
>> > > As outlined on the website, the cost-recovery reproduction fee for
>> > > electronic records is a \$17 fee per file when the order contains 10
>> or
>> > > fewer files. For orders of 11 or more files, the fee is \$14 per
>> file.
>> > >
>> > > You asked for a waiver of the fees normally charged for providing
>> > > researchers with copies of archival records. The FOIA's fee and fee
>> > > waiver provisions, however, do not apply to archival records. The
>> FOIA
>> > > states in the section on fees "Nothing in this subparagraph shall
>> > > supersede fees chargeable under a statute specifically providing for
>> > > setting the level of fees for particular types of records". (5 U.S.C.
>> > > § 552 (a)(4)(vi)). The fee statute, 44 U.S.C. 2116(c), does apply.
>> It
>> > > does not authorize NARA to waive reproduction charges for individual
>> > > requesters. Our inability to grant you the requested fee waiver does
>> not
>> > > constitute a denial for the purposes of the FOIA.
>> > >
>> > > I will let you know as we complete processing each set of records,
>> any
>> > > potentially responsive records in each set, your options for
>> accessing
>> > > the open and potentially responsive records, and what records with
>> access
>> > > restrictions require additional review by the Special Access/FOIA
>> > > Program.
>> > >
>> > > If you are not satisfied with our action on your request, you have
>> the
>> > > right to file an administrative appeal within ninety (90) calendar
>> days
>> > > from the date of this letter. Appeals must be in writing and may be
>> > > delivered by regular U.S. mail or by email. By filing an appeal, you
>> > > preserve your rights under the Freedom of Information Act and present
>> the
>> > > deciding agency with an opportunity to review your request and
>> reconsider
>> > > its decision. If you submit your appeal by regular mail, it should be
>> > > addressed to the Deputy Archivist of the United States (ND), National
>> > > Archives and Records Administration, 8601 Adelphi Road, Room 4200,
>> > > College Park, Maryland 20740-6001. Both the letter and envelope
>> should be
>> > > clearly marked "FOIA Appeal." If you submit your appeal by email,
>> > > please send it to fo...@nara.gov, addressed to the Deputy Archivist,
>> with
>> > > the words "FOIA Appeal" in the subject line. Please be certain to
>> > > explain why you believe this response does not meet the requirements
>> of
>> > > the Freedom of Information Act. All communications concerning this
>> > > request should reference your temporary FOIA tracking number ER0566.
>> > >
>> > > If you would like the opportunity to discuss our response and attempt

>> to
>> > > resolve your dispute without initiating the appeals process, you may
>> > > contact our FOIA Public Liaison for assistance:
>> > >
>> > > Accessioned Executive Branch Records – Washington, DC Area
>> > > FOIA Requester Service Center: 301-837-3190 <(301)%20837-3190>
>> <(301)%20837-3190>
>> > > FOIA Public Liaison: Michael Marquis
>> > > 8601 Adelphi Road, Room 5500
>> > > College Park, MD 20740-6001
>> > > dc.foia...@nara.gov
>> > > 301-837-3190 <(301)%20837-3190> <(301)%20837-3190>
>> > >
>> > > If you are unable to resolve your dispute through our Public Liaison,
>> the
>> > > Office of Government Information Services (OGIS) is the federal FOIA
>> > > ombudsman. OGIS offers mediation services to help resolve disputes
>> > > between FOIA requesters and federal agencies. You may contact OGIS at
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>> > > following address:
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>> > > National Archives and Records Administration
>> > > 8601 Adelphi Road, Room 2510
>> > > College Park, MD 20740-6001
>> > > og...@nara.gov
>> > > 202-741-5770 <(202)%20741-5770> <(202)%20741-5770>
>> > > 1-877-684-6448 <(877)%20684-6448> <(877)%20684-6448> (toll-free)
>> > >
>> > > Sincerely,
>> > > Lynn Goodsell
>> > > Reference Branch Chief, Electronic Records Division (RRE)
>> > > National Archives and Records Administration (NARA)
>> > > c...@nara.gov
>> > >
>> > >
>> > > On Thursday, October 1, 2020 at 4:58:11 PM UTC-4, Edward Hasbrouck
>> wrote:
>> > >>
>> > >> On 1 Oct 2020 at 13:23, "cer" <cer <c...@nara.gov>> wrote:
>> > >>
>> > >> > I am writing in response to your Freedom of Information Act (FOIA)
>> > >> request
>> > >> > of September 21, 2020, to the National Archives and Records
>> > >> Administration
>> > >> > (NARA). You requested access to records of the National
>> Commission on
>> > >> > Military, National, and Public Service (NCMNPS).
>> > >> >
>> > >> > NARA's Office of General Counsel provided you with an initial
>> reply
>> > >> > concerning the temporary NCMNPS records on September 24, 2020 and
>> a
>> > >> > tracking number for that portion of your request.
>> > >> >
>> > >> > NARA's Office of General Counsel forwarded your request for the
>> > >> permanent
>> > >> > NCMNPS records to our office, the Reference Branch of the
>> Electronic
>> > >> > Records Division, on September 25, 2020. Our office has assigned

>> your
>> >> > request for the permanent NCMNPS records temporary FOIA tracking
>> >> > number ER0566.
>> >> >
>> >> > The only permanent records NCMNPS transferred to NARA are in
>> >> > electronic format. Our office has not yet taken legal custody of
>> the
>> >> > permanent electronic NCMNPS records. Within the next ten (10)
>> >> > business days, I
>> >> will
>> >> > provide you with a more detailed reply about the status of the
>> >> permanent
>> >> > electronic NCMNPS records and your FOIA request for them.
>> >>
>> >> Thank you for this information.
>> >>
>> >> I am puzzled by your statement that "Our office has not yet taken
>> legal
>> >> custody of the permanent electronic NCMNPS records."
>> >>
>> >> If your office does not now have legal custody of the potentially
>> >> responsive records, what office does?
>> >>
>> >> Has this request been referred to that office?
>> >>
>> >> The main NARA FOIA office, to which we submitted this request, had
>> (and
>> >> has) the responsibility to process and respond to the request, or to
>> >> refer it to whichever office(s) were likely to have responsive
>> records.
>> >>
>> >> If this request or some portion thereof was referred to your office
>> in
>> >> error, and a different office now has legal custody of potentially
>> >> responsive records, please confirm that you have notified the
>> referring
>> >> office of this error and have referred this request, or the portion
>> of
>> >> this request that was erroneously referred to you, to the office(s)
>> that
>> >> now has (or have) legal custody of potentially responsive 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

>> > >> edw...@hasbrouck.org
>> > >> <http://hasbrouck.org>
>> > >> +1-415-824-0214 <(415)%20824-0214> <(415)%20824-0214>
>> > >>
>> > >>
>> > >>
>>
>> -----
>> Draft Registration and Draft Resistance:
>> <https://Resisters.info>
>>
>> "Resistance News" mailing list:
>> <https://resisters.info/newsletter.html>
>>
>> Edward Hasbrouck
>> edw...@hasbrouck.org
>> <https://hasbrouck.org>
>> +1-415-824-0214 <(415)%20824-0214>
>>
>>
>>