

8 Oct 2020, 12:22

Date sent: Thu, 8 Oct 2020 12:22:28 -0700 (PDT)
From: cer <cer@nara.gov>
To: cer <cer@nara.gov>
Copies to: edward@hasbrouck.org
Subject: Re: NCMNPS FOIA request - expedited processing requested

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-agencies/rg-0220/daa>

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 NCMPS] (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.

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 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 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
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

On Thursday, October 1, 2020 at 4:58:11 PM UTC-4, Edward Hasbrouck wrote:

>
> On 1 Oct 2020 at 13:23, "cer" <cer@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
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> 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
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> +1-415-824-0214
>
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