

**2 Nov 2020, 16:15**

*From:* Edward Hasbrouck <edward@hasbrouck.org>  
*To:* FOIA <FOIA@nara.gov>  
*Subject:* Re: Response to your Email of October 28, 2020  
*Copies to:* GaryM Stern <garym.stern@nara.gov>  
*Date sent:* Mon, 02 Nov 2020 16:15:48 -0800

On 2 Nov 2020 at 14:21, "FOIA" <FOIA <[FOIA@nara.gov](mailto:FOIA@nara.gov)>> wrote:

> NARA did not receive any pending FOIA requests from the National Commission  
> on Military, National, and Public Service (Commission) upon its termination  
> on September 18, 2020.

Thank you for informing me of this fact. I am duly reporting the unauthorized destruction of this FOIA request by the NCMNPS as a likely violation of Federal law by the NCMNPS and/or its staff.

However, an agency cannot absolve itself or its legal successor(s) of responsibility to respond to a FOIA request by deleting an e-mail copy of the request or shredding or otherwise disposing of a paper copy. The obligation to respond attaches when the request is duly submitted.

Knowing that the shortness of time before the expiration of the NCMNPS made it likely that this request would need to be transferred to NARA for response on the expiration of the NCMNPS, and fearing that the NCMNPS might not properly preserve this request and transfer it to NARA (a fear that now appears to have been justified), I sent a copy of this request to NARA by e-mail at the same time I sent it to the NCMNPS. NARA responded to that e-mail message, so I know that it was received by NARA. I have also sent you confirmation that this request was received by the NCMNPS at the addresses designated by the NCMNPS for submission of FOIA requests, both by e-mail and through the US Postal Service.

So NARA is, and has been, aware of this request and that it was duly submitted to the NCMNPS prior to the expiration of the NCMNPS. Legal responsibility for responding to this request was transferred to NARA, whether or not the NCMNPS properly transferred a copy of the request.

I would \*hope\* that NARA, as the principal custodian of Federal records, would be especially cognizant of the danger (and the temptation to destroy records improperly) that would be posed by claims that Federal agencies could evade responsibility for fulfilling their statutory duties to respond to requests from the public by destroying records of those requests.

NARA is now in possession of the request and the responsive records (to the extent that responsive records have not been improperly destroyed by the NCMNPS and/or NARA), and NARA is the legal successor of the NCMNPS with respect to the duty to respond to this request.

I reiterate my request for the status including the estimated date of completion of NARA action with respect to this request.

> However, the request you submitted to NARA on September 21, 2020 is  
> nearly identical to the September 15, 2020 request you submitted to the  
> Commission before its termination. This September 21, 2020 request is  
> being handled by our office, to the extent it is seeking temporary  
> records of the Commission that are subject to a retention period beyond

> the termination of the Commission pursuant to the General Records  
> Schedule (GRS) for which NARA took legal custody.

Your claim that my later request to NARA is "virtually identical" to my earlier request to the NCMNPS is, at best, disingenuous, given that you have chosen -- as quoted above -- to (improperly) construe my request to NARA as being dramatically narrower than this earlier request to the NCMNPS, through limiting your search to records "that are subject to a retention period beyond the termination of the Commission."

To be clear, neither any of my requests to the NCMNPS nor my later request to NARA contained any such limitation. As I have made clear in my earlier communications, a significant part of my reason for submitting requests to the NCMNPS, \*before\* its termination, was to obtain records that were not designated for retention after the expiration of the NCMNPS.

A search reasonably calculated to retrieve all records responsive to either this request originally made to the NCMNPS, or my subsequent (somewhat broader, including an additional category of records) request to NARA, would necessarily include a search for records \*not\* limited by the retention period designated for those records by NARA. Limiting your search in the manner you propose is not supported by any plausible good-faith reading of my requests, the FOIA statute, or the NCMNPS or NARA FOIA regulations. Such a search would not satisfy your statutory obligations, and would be prima facie evidence of bad faith.

You say that, "This September 21, 2020 request is being handled by our office, to the extent it is seeking temporary records of the Commission that are subject to a retention period beyond the termination of the Commission pursuant to the General Records Schedule (GRS) for which NARA took legal custody."

By what office is this request being handled, to the extent that it is seeking records that are \*not\* "subject to a retention period beyond the termination of the Commission"? I reiterate my request for the status including the estimated date of completion of action with respect to this portion of this request, and of this request in its entirety, including this portion which you have, to date, declined to address.

I am copying this message to NARA's FOIA Public Liaison in the hope that they can assist me in obtaining the status information including the estimated date of completion of action with respect to each of these requests (in its entirety) to which I am entitled.

Peace,

Edward Hasbrouck