



Refuse to Register
NO REGISTRAR
CONSCRIPCION NO

*poster by Fred Moore for the
National Resistance Committee*

Resisters.info

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15 September 2020

FOIA Request
National Commission on Military, National, and Public Service (NCMNPS)
2530 Crystal Drive, Suite 1000, Box No. 63
Arlington, VA 22202

(by e-mail to <FOIA@inspire2serve.gov>)

FOIA REQUEST

Expedited processing requested

Fee benefit requested

Fee waiver requested

Dear FOIA Officer:

This is a request pursuant to the Freedom of Information Act, 5 U.S.C. § 552.

I request access to and copies of the following records of the National Commission on Military, National, and Public Service (NCMNPS):

(1) All records of the Commission "VOTE-A-RAMA" conducted approximately 15 July 2019 through 19 July 2019, including any records of the items voted on or otherwise decided, the options on the ballot or considered for decision with respect to each item, the outcome of each vote or decision, the number of votes for each option if recorded, the vote of each Commissioner if recorded, any directives for how these decisions or outcomes of votes were to be carried out or acted on, and any records including e-mail messages describing outcomes of the VOTE-A-RAMA or directing how the decisions made during the VOTE-A-RAMA were to be implemented or carried out, including instructions for writing the Commission's final report or portions thereof based on these decisions.

Edward Hasbrouck, <<https://resisters.info>>
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(2) All instructions for what research was to be conducted or commissioned by, for, or on behalf of the Commission, including any e-mail messages or other communications of decisions regarding what research was to be conducted, the terms of reference for such research, research methodologies, and what issues or questions or policy options were or were not to be included in the scope of research.

(3) All contracts between the Commission and researchers, research firms, or research consultants, including any attachments, addenda, amendments, and items incorporated by reference.

(4) All records of the affiliations, backgrounds, qualifications, or experience of persons or entities who carried out or commissioned research by, for, or on behalf of the Commission, including any c.v.'s, résumés, or profiles of researchers, research entities, contractors, or subcontractors.

(5) All reports of research produced or commissioned by, for, or on behalf of the Commission.

(6) All records of messages, Q & A, comments, or "chat" submitted to or sent or received by the Commission through Facebook, YouTube, or Zoom, including comments, Q & A, and chat associated with livestreamed or posted video or audio recordings of Commission events.

(7) All records of usage by the NCMNPS of Web-based services including but not limited to Facebook, Twitter, YouTube, Instagram, Medium, LinkedIn, Eventbrite, Zoom, and Google Analytics.

(8) All records of Web analytics (such as numbers of visitors, attributes of visitors, dates of visits, pages visited, etc.) to the Commission's Web site at <<https://inspire2serve.gov>>, including but not limited to all records of, or obtainable through, the Google Analytics account associated with the Google Analytics tracking cookies included in the HTML code on pages of the Commission's Web site.

(9) All versions of all files that are, or have at any time, been available from the Commission's Web site at <<https://inspire2serve.gov>>, including all subdirectories, and including any change logs or records of the start and end dates of when each version of each file was available on the site.

(10) All e-mail messages, including attachments, received at <info@inspire2serve.gov>, or <national.commission.on.service.info@mail.mil>, including messages forwarded to those addresses.

(11) All e-mail messages, including attachments, sent or received at <foia@inspire2serve.gov>, including messages forwarded to that address.

(12) All records of a petition, "Don't Force Women to Register for the Draft, Dump the Draft Entirely", handed by me to Brig. Genl. Joseph Heck, Chair of the NCMNPS, at the conclusion of the Commission's public event chaired by Brig. Genl. Heck in the Golden Eagle Ballroom at California State University, 5151 State University Dr., Los Angeles, CA, on 20 September 2018, consisting of three looseleaf binders containing 1699 pages, plus cover pages, of printouts with 25,497 signatures;

(13) All records of a petition, "Pass the new bill to abolish the military draft", submitted by David Swanson of RootsAction.org and WorldBeyondWar.org, consisting of a 371-page PDF file containing 12,611 signatures and individual comments of the signatories.

(14) All records released by the Commission in response to any FOIA request.

(15) All records of processing of FOIA requests, appeals, or action on remand following appeals, including all internal or external e-mail correspondence sent or received pertaining to FOIA requests and any records of searches including search tasking instructions, filesystems to be searched, search methodologies, search query terms or algorithms, referrals, consultations, or delegations.

(16) All inbound, outbound, or internal e-mail messages, including any attachments, to or from any e-mail address used by the Commission for official business that include the case-insensitive text string “nara.gov” (without the quotation marks) anywhere in the complete message headers;

(17) The entirety of any document or electronic file containing any records responsive to any portion of this request described in clauses 1-16 above (so that no portion of any document or file containing any responsive portions should be withheld as “unresponsive”).

(18) Any and all records of internal metadata contained in files responsive to any portion of this request described in clauses 1-17 above.

(19) All records of filesystem metadata pertaining to files responsive to any portion of this request described in clauses 1-17 above, including but not limited to records of (a) the filename of each responsive digital record, as it was found on a Commission, contractor, or service provider’s workstation, server, storage device, or media; (b) the size of each file in bytes, KB, MB, or GB; (c) the name or other label or identifier of the workstation, server, storage device, or media on which the file was found; (d) the path to the file in the filesystem on which it was found; and (e) the file date(s) as recorded in the file, in that filesystem, and/or in any label(s) on physical devices or storage media.

I request that all responsive records be provided in text-searchable, unencrypted electronic form.

I request that all records of e-mail messages be produced, in order of preference, in the form and format of “.mbx” files (most preferred), “.pst” files, or “.eml” files (least preferred), with each mailbox as a separate file, preserving all internal folders and sub-folders and including all attachments, in accordance with NARA recommendations for preferred e-mail file formats in *Appendix A to NARA Bulletin 2015-04*, <<https://www.archives.gov/records-mgmt/bulletins/2015/2015-04-appendix-a.html>>.

If e-mail messages are not readily reproducible as “.mbx”, “.pst”, or “.eml” files, or for any other records held in electronic form, I request that each such record be provided in the form of a discrete file with the same name and file format as the file is held by or on behalf of the Commission, as a complete bitwise digital copy of the original word processor file, PDF file, e-mail file, or other digital file, including any file headers, embedded metadata, and all other file content.

I specifically request that you not create new documents or files in response to this request; not create “documents” such as page-view images or print views from digital records; not substitute such newly-created “documents”, images, or views for requested records held by you as digital files; and not split one file into multiple files or combine multiple files into one file.

In reporting on the quantities of records found, produced, and/or withheld, I request that you report quantities of digital data in KB, MG, TB, etc., and/or in counts of ASCII characters for ASCII data, not report files as “documents” if they are not in fact documents, and not report file sizes or quantities of records in “pages” if the records consist of files that are not stored in paginated formats.

If all or any part of this request or searches for responsive records are referred or delegated to other agencies, contractors, offices, or staff, I request that any referral, delegation, or search tasking instructions specifically include my request with respect to the form and format in which records are to be produced, so that records are not inadvertently converted to, or produced in, other forms or formats.

If you believe that you could respond to this request more quickly if responsive records are produced in a different form or format, please call me immediately at +1-415-824-0214 to discuss your proposed form of production and possible modification of this request to expedite your response.

As a representative of the news media I am only required to pay for the direct cost of duplication after the first 100 pages of paper records, or cost equivalent for copies of electronic records. Through this request, I am gathering information on policies, procedures, and practices that is of current interest to the public as part of widespread public interest in the activities of the Commission and the exceptionally controversial subjects of the draft, Selective Service, and compulsory service.

I am an award-winning freelance journalist, and the publisher of an informational Web site at <<https://resisters.info>> which is one of the most comprehensive and widely consulted sources of news, analysis, and background and reference information – including information obtained from the Commission in response to my FOIA requests and reporting, analysis, and commentary based on this information and other sources – about the Commission and the issues of the draft, draft registration, compulsory “service”, and Selective Service. The information obtained in response to this request will be made available to the public through publication of significant records on the Web, along with reporting, analysis, and commentary informed by the records released in response to this request.

Please waive any applicable fees. Release of the information is in the public interest because it will contribute significantly to public understanding of government operations and activities.

Please process this request on an expedited basis. I am a person primarily engaged in disseminating information to the public as a writer and journalist. There is an urgency to inform the public about Federal Government activity.

The statutory criteria for expedited processing are contained in 5 U.S. Code § 552 (a)(6)(E):

“(i) Each agency shall promulgate regulations, pursuant to notice and receipt of public comment, providing for expedited processing of requests for records — (I) in cases in which the person requesting the records demonstrates a compelling need;...

“(v) For purposes of this subparagraph, the term “compelling need” means — ...

“(II) with respect to a request made by a person primarily engaged in disseminating information, urgency to inform the public concerning actual or alleged Federal Government activity.”

The Commission is a temporary agency, and its statutory mandate is scheduled to expire 18 September 2020. The purpose for the creation of the Commission was to carry out or commission research and make recommendations to Congress, the President, and the public, which it has done.

Congress is currently considering legislative proposals related to those recommendations, including H.R. 6415 (which would, *inter alia*, expand the authority of the President to order registration with the Selective Service System to women as well as men) and H.R. 5492 (which would repeal the Military Selective Service Act including Presidential authority to order registration).

These legislative proposals won't be considered by Congress until after the Commission has dissolved. The records of the Commission responsive to this FOIA request will thus be essential to understand the basis for the various recommendations of the Commission, and to assess the weight which should be given to any or all of those recommendations, after the Commission is dissolved.

Records responsive to this request are essential to avoid having the public and Congress be forced to rely on purely conclusionary reports and recommendations by the Commission.

For example, records of research conducted or commissioned by the Commission, including the terms of reference, questions assigned, limitations placed on research, assumptions made as the basis for research, research methodologies, who conducted the research (and what biases or preconceptions they may have had), and the sources consulted will be important to public understanding. None of these Commission's research records have been disclosed to date.

In addition, records of the Commission's activities responsive to this request are likely to be highly probative of the credibility that Congress should afford to Commission witnesses and the Commission's report, and the weight that they should be given in Congressional decision-making.

Time is of the essence, because Congress could consider and act on these proposals at any time. For example, hearings concerning the Commission's recommendations, at which members of the Commission were to testify, were scheduled to have been held 31 March 2020 before the Senate Armed Service Committee. Due to the COVID-19 pandemic, these hearings have been postponed, but could be held any day. See <<https://www.armed-services.senate.gov/hearings/20-03-31-final-recommendations-and-report-of-the-national-commission-on-military-national-and-public-service>>.

There is thus an urgency to inform the public about the activities of the Commission which these records document and which are relevant to ongoing and imminent Congressional debate.

I have no commercial interest in this information. My reporting on this issue, while carried out in my capacity as a professional journalist, has been unpaid and not undertaken for profit.

If this request is denied in whole or part, I ask that you justify all deletions by reference to specific exemptions. I will also expect you to release all segregable portions of otherwise exempt material. I, of course, reserve the right to appeal the adequacy of the search for responsive records or your decision to withhold any information, to deny a waiver of fees, or to deny expedited processing.

Pursuant to the Commission's FOIA regulations and NARA regulations at 36 CFR § 1230.3(b), no responsive or *potentially* responsive records may be destroyed, deleted, or disposed of while this request is pending.

All Commission records existing as of the date of this request are potentially responsive to this request, and no such records may be destroyed or deleted while this request is pending. It is your duty as FOIA officer to immediately notify all Commission staff, contractors, service providers, and other custodians of potentially responsive records that no responsive or potentially responsive records may be destroyed or deleted while this request is pending; to take all necessary affirmative steps to ensure the preservation of all such records until the completion of action with respect to this request, including initial determinations and release of records, any appeals, and any action on remand following appeals; and to notify any other agency to which Commission records are transferred that those records are subject to this pending FOIA request and may not be destroyed or deleted while this request is pending.

I understand that you will almost certain be unable to respond to this request before the end of the Commission's statutory mandate on 18 September 2020, and will have to transfer this request to NARA along with all the potentially responsive records. I am sending a copy of this request to NARA contacts including the Chief FOIA Officer and FOIA Public Liaison, so that NARA will be forewarned that any records potentially responsive to this requests received by NARA from the Commission must be preserved until all action with respect to this request is complete. But this does not relieve you of your duty to ensure the preservation of all records potentially responsive to this request.

It is particularly critical for you to ensure that the online accounts with third-party service providers containing outsourced records responsive or potentially responsive to items 7 and 8 of this request are kept active and that full control of those online accounts is transferred to NARA, to enable the records held by those service providers to be searched and retrieved in response to this request.

I am aware that a statement has recently been posted on the home page of the Commission's Web site at <<https://inspire2serve.gov>>, "The Commission is unable to accept FOIA requests after September 11, 2020." There is no indication on that Web site of any basis for this statement.

The Commission was created as a limited-duration temporary agency with a termination date fixed by statute. If you thought that designation of a different FOIA acceptance address or otherwise different procedures would be necessary for submission and processing of FOIA requests submitted during the final period of the Commission's existence, and if you thought that such provisions were permitted by the FOIA statute, you could have proposed them through rulemaking, either as part of your original FOIA regulations or as a later amendment to those regulations.

Through that rulemaking, members of the public including potential FOIA requesters would have received notice of the proposal, and would have had an opportunity to comment on whether the proposal was consistent with the FOIA statute.

But you neither proposed nor promulgated any such regulations. You and the Commission are, and will remain, bound to comply with both the FOIA statute and your own FOIA regulations, which require continued acceptance of FOIA requests, at the e-mail and postal addresses you have duly designated, until the conclusion of the Commission's statutory mandate on 18 September 2020.

The FOIA statute does not permit the final period of existence of a temporary agency to be a “FOIA-free” window of opportunity for permanently hidden activities not subject to FOIA.

FOIA requests are often an iterative process, in which responses to one request prompt new requests. This iterative process reduces the burden on agencies that comply promptly with requests, since it allows requesters to obtain responses to easier-to-fulfill requests, and use the responses to target follow-up requests, rather than making broader initial requests. Agencies should *expect* that initial responses are likely to be followed by new requests. But if initial responses to requests to a temporary agency are provided only shortly before the end of the agency’s existence, the consequence which should be *expected* is that follow-up requests will be made at the end of the agency’s existence.

For example, although I requested records of the Commission’s votes and decisions during 2019 on 1 January 2020, I only received records disclosing the existence of the Commission’s July 2019 “VOTE-A-RAMA” on 4 September 2020. Once I learned of the VOTE-A-RAMA, you should have expected that I would submit a follow-up request for records about it – as I am doing now.

Similarly, once I received notice on 10 September 2020 that the the Commission’s search for records of public comments had been completed without finding any records of the petitions containing the vast majority of those public comments, I could be expected to submit a follow-up request for records of what had happened to those petitions – as I am doing now.

Because these initial responses were delayed until the final days of the Commission’s existence, they made it even more likely – and you should have anticipated – that you would receive follow-up FOIA requests in the few days remaining to members of the public interested in the Commission.

Transition and shutdown activities of a temporary agency are likely to be of special interest to some FOIA requesters, and should not (and may not) be carried out in a “FOIA gap” between agencies.

There are, of course, good reasons why a FOIA requester, wanting a complete picture of the records of a temporary agency with respect to a particular area of work, would deliberately wait and *plan* to submit FOIA requests during the final days of the agency's existence, after as much as possible of the work of the agency is complete. For example, NARA-approved records schedule DAA-0220-2020-0001 categorizes records of the Commission’s accounts with Facebook, YouTube, Zoom, etc. -- including public comments submitted through messages, online Q & A, and chat -- as "temporary" records which the Commission is to "Delete at termination of the Commission". If a requester such as myself wishes to preserve those records, we have to request them pursuant to FOIA before they are destroyed at the end of the Commission’s existence. How could I, or any FOIA requester, obtain a full record of the Commission’s activities throughout its existence except by making a request for such records as close as possible to the end of the Commission’s statutory mandate?

A temporary agency such as the Commission should *expect* that it may receive significant and substantial FOIA requests during its last days of existence, and should have planned accordingly. This should come as no surprise to you. For my part, I have done everything I could, as I prepared and planned this FOIA request to the Commission, to anticipate and try to avoid any last-minute problems.

As you know, I have been trying diligently but unsuccessfully for months to obtain information about this aspect of your plans, and to confer with you regarding handling of these requests.

I am in no way responsible for the additional work and complications you have created for yourself, the Commission, NARA, and me by (A) dragging your feet on providing even initial responses to FOIA requests for months or years, until the final days of the Commission's existence, and (B) failing to plan and prepare for the end-of-term burst of FOIA requests you should have expected.

I understand that the Commission probably won't be able to do anything more with these final requests except transfer them and the potentially responsive records to NARA, but that should ensure that NARA receives notice, along with the records, that they are potentially responsive to an active FOIA matter, and doesn't destroy them immediately on receipt as "temporary".

Please respond as soon as possible to confirm your receipt of this request, to advise the reference number assigned to this request and the expected date of completion of action with respect to this request, and to confirm that you have taken action to ensure the preservation of all potentially responsive records, including preservation following the expiration of the Commission.

I look forward to your complete reply, or that of NARA or the agency to which the potentially responsive records and this request are transferred when the Commission's statutory mandate expires, within 10 days, as the FOIA statute and the Commission's (and NARA's) FOIA regulations require.

To avoid unnecessary delays, please contact me immediately by telephone at +1-415-824-0214 in San Francisco should you have any questions regarding this request.

I certify under penalty of perjury that the statements above are true and correct to the best of my knowledge and belief.

Executed 15 September 2020 in the City and County of San Francisco, CA

Edward Hasbrouck

cc: Rachel Rikleen, Chief FOIA Officer, NCMNPS, <Rachel.L.Rikleen@inspire2serve.gov>
Peter Morgan, FOIA Public Liaison, NCMNPS, <Peter.M.Morgan@inspire2serve.gov>
Gary M. Stern, Chief FOIA Officer and FOIA Public Liaison, NARA,
<garym.stern@nara.gov>
Janet Kennelly, Archives Specialist, NARA, <Janet.Kennelly@nara.gov>
Agency Permanent Records, NARA, <permanentrecords@nara.gov>

16 Sep 2020, 20:57

From: NCoS FOIA <FOIA@inspire2serve.gov>
To: Edward Hasbrouck <edward@hasbrouck.org>
Copies to: Peter Morgan <Peter.M.Morgan@inspire2serve.gov>, "Gary M. Stern, Chief FOIA Officer and FOIA Public Liaison, NARA" <garym.stern@nara.gov>, "Janet Kennelly, Archives Specialist, NARA" <Janet.Kennelly@nara.gov>, "Agency Permanent Records, NARA" <permanentrecords@nara.gov>
Subject: RE: FOIA request, expedited processing requested
Date sent: Wed, 16 Sep 2020 20:57:01 +0000

As has been posted on our website, the Commission is unable to accept FOIA requests after Friday, September 11. Pursuant to the Commission's records disposition schedule, the Commission's permanent records will be transferred to the National Archives and Records Administration (NARA); you can find information on how to access these records from NARA at <https://www.archives.gov/research> and can submit FOIA requests by email to specialaccess_foia@nara.gov.

-----Original Message-----

From: Edward Hasbrouck <edward@hasbrouck.org>
Sent: Tuesday, September 15, 2020 10:41 PM
To: NCoS FOIA <FOIA@inspire2serve.gov>
Cc: Rachel Rikleen <Rachel.L.Rikleen@inspire2serve.gov>; Peter Morgan <Peter.M.Morgan@inspire2serve.gov>; Gary M. Stern, Chief FOIA Officer and FOIA Public Liaison, NARA <garym.stern@nara.gov>; Janet Kennelly, Archives Specialist, NARA <Janet.Kennelly@nara.gov>; Agency Permanent Records, NARA <permanentrecords@nara.gov>
Subject: FOIA request, expedited processing requested

Attached please find a FOIA request for expedited processing.

Please reply as soon as possible to confirm your receipt of this request and advise the reference number assigned to this request.

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
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16 Sep 2020, 14:33

From: Edward Hasbrouck <edward@hasbrouck.org>
To: NCoS FOIA <FOIA@inspire2serve.gov>
Subject: Re: FOIA request, expedited processing requested
Copies to: Peter Morgan <Peter.M.Morgan@inspire2serve.gov>
Date sent: Wed, 16 Sep 2020 14:33:44 -0700

On 16 Sep 2020 at 20:57, "NCoS FOIA" <NCoS FOIA <FOIA@inspire2serve.gov>>> wrote:

> As has been posted on our website, the Commission is unable to accept FOIA
> requests after Friday, September 11.

As I stated in my request, I am aware of this statement on the Commission's Web site. However, promulgating regulations or amending the FOIA statute requires more than posting a notice on an agency Web site.

If you are denying my request, please provide notice of the denial, identifying the person responsible for the denial, the provisions of the FOIA statute and the Commission's regulations that they believe provide a basis for the denial, and specifying my rights to appeal the denial.

Peace,

Edward Hasbrouck



September 17, 2020

Dear Edward Hasbrouck:

The following is in response to your request for proof of delivery on your item with the tracking number: **EJ32 3218 145U S**.

Item Details

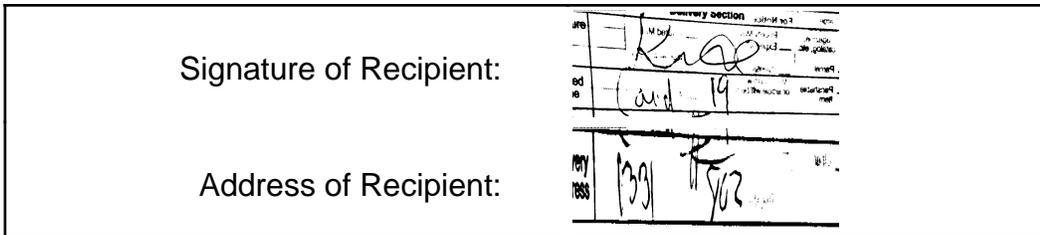
Status: Delivered
Status Date / Time: September 17, 2020, 11:38 am
Location: ARLINGTON, VA 22202
Postal Product: Priority Mail Express 2-Day®
Extra Services: Insured
PO to Addressee
Up to \$100 insurance included
Actual Recipient Name: D KE

Note: Actual Recipient Name may vary if the intended recipient is not available at the time of delivery.

Shipment Details

Weight: 4.0oz

Recipient Signature



Note: Scanned image may reflect a different destination address due to Intended Recipient's delivery instructions on file.

Thank you for selecting the United States Postal Service® for your mailing needs. If you require additional assistance, please contact your local Post Office™ or a Postal representative at 1-800-222-1811.

Sincerely,
United States Postal Service®
475 L'Enfant Plaza SW
Washington, D.C. 20260-0004