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*poster by Fred Moore for the
National Resistance Committee*

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7 September 2020

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

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

Re: FOIA request 2020-SP-33

FREEDOM OF INFORMATION ACT APPEAL

Dear FOIA Appeals Officer (Commission Chair or designee):

I hereby give notice that, pursuant to the Freedom Of Information Act (FOIA), 5 U.S.C. § 552, and the Commission's FOIA regulations, 1 C.F.R. § 426.208, I appeal, in its entirety and with respect to each adverse decision with respect to all or any portion of my request, the Commission's denial of my FOIA request which I submitted by e-mail on 25 August 2020 and which was assigned Commission reference number 2020-SP-33.

On 4 September 2020 I was notified by attachment to an e-mail message from the Commission's Chief FOIA Officer that "your request for records under the Freedom of Information Act (FOIA), dated August 25, 2020, has been denied.... If you would like to appeal this denial of your request, you must send a written request appealing the decision. Normally, you would have 90 days from the date of this notice to appeal; however, given that the Commission will cease to exist on September 18, 2020, we ask that you submit your appeal no later than September 11."

I can understand that the Commission might prefer to resolve all pending FOIA requests and appeals before the Commission's statutory mandate expires on 18 September 2020, to avoid the inconvenience of preserving potentially responsive records, transferring them intact to the National Archives and Records Administration (NARA), notifying NARA of pending requests and appeals, referring pending requests and appeals to NARA, and notifying requesters of those referrals.

But neither the FOIA statute nor the Commission's FOIA regulations authorize the Commission or its staff unilaterally to (1) derogate from the deadlines specified by law and regulations, (2) impose shorter deadlines on requesters than those in the law and regulations, or (3) decide appeals without affording appellants the full amount of time to prepare their appeals to which they are entitled by law and regulations.

Accordingly, I cannot lawfully be required to agree, and I do not agree, to your "ask" that I submit my appeal of the denial of this FOIA request no later than 11 September 2020.

In an abundance of caution, and to ensure that there is no misunderstanding and that you do not claim that I have accepted your proposed earlier deadline or waived any of my rights, I hereby give notice (1) that I appeal the denial of this FOIA request, (2) that I do not waive any of my rights pursuant to the FOIA statute, the Commission's FOIA regulations, or the FOIA regulations of NARA or any other agency to which custody of potentially responsive records is transferred, and (3) that I specifically assert and do not waive my entitlement to supplement and submit any or all of my arguments in support of this appeal at any time within 90 days of the date you provided me with notice of your final denial of the entirety of my request.

This appeal will remain pending and may not be decided, and no potentially responsive records may be deleted or destroyed, until either 90 days have tolled since your final decision or until I have notified you (or NARA or any other agency to which I am duly notified that this appeal has been transferred) that I have completed my submission of this appeal.

Since this appeal will still be pending when the Commission's mandate expires, you must:

1. Continue to ensure that no records potentially responsive to this request and appeal are deleted or destroyed;
2. Transfer all potentially responsive records to NARA, intact and unaltered, when the Commission's mandate expires;
3. Notify NARA before any records are transferred that all Commission records transferred to NARA are potentially responsive to this pending request and appeal, and may not be deleted or destroyed until all action with respect to this request and appeal, including any litigation and any action on remand following appeal and/or litigation, has been completed;
4. Refer this appeal and the underlying request to NARA when records are transferred; and

5. Notify me of any such referral, including notice of the point of contact for the NARA FOIA office to which the appeal and request have been referred.

Please reply as soon as possible to confirm your receipt of this notice of appeal and to advise the reference number that you have assigned to this appeal.

Peace,

Edward Hasbrouck