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25 September 2018

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>)

FOIA Appeal of Denial of Expedited Processing
Re: FOIA Request 2018-SP-03

Dear FOIA Appeals Officer (Commission Chair or designee):

This is an appeal of the denial of expedited processing of my request for records pertaining to meetings and decisions of the Commission, pursuant to the Freedom of Information Act, 5 U.S.C. § 552. My request was made by e-mail on 12 September 2018, and assigned Commission reference number 2018-SP-03.

According to an e-mail message from Chief FOIA Officer Rachel Rikleen on 19 September 2018, “In your request, you asked for expedited processing because there is ‘an urgency to inform the public about Federal Government activities.’ You specifically note that the Commission has issued a ‘Request for Information’ in the Federal Register that has a deadline of September 30, 2018, and expressed a concern that if your FOIA request is not expedited then the public will not receive all of the information they need to submit comments. While the Federal Register notice is ending, the email and website will remain open as ways for the public to communicate their concerns and suggestions. Also, as noted in the original Federal Register notice, late comments will be accepted after the deadline. As a result, there is no urgency for your request and the expedited processing request has been denied.”

This denial is plainly in error and should be reversed on appeal, for the following reasons.

First, the announcement by the Commission that “Late comments will be accepted” was, as Ms. Rikleen correctly noted, part of “the *original* Federal Register notice” [emphasis added], which specified that “Comments are due by April 19, 2018.” (National Commission on Military, National, and Public Service, Request for comments, “Request for Information on Improving the Military Selective Service Process and Increasing Participation in Military, National, and Public Service,” NCMNPS

Docket No. 05–2018–01, 83 *Federal Register* 7080-7081.) The reference to acceptance of late comments in this initial notice referred to acceptance of comments after 19 April 2018.

On 20 April 2018, the day after the close of the initial comment period, the Commission published a “Notice of Extension To Comment Period” (83 *Federal Register* 17573). This “Notice of Extension To Comment Period” stated that “The Commission is extending the public comment period until September 30, 2018.” The “Notice of Extension to Comment Period” contained no mention of acceptance of late comments. To the contrary, it stated explicitly, unambiguously, and in the imperative that “Comments must now be received by the Commission on or before 30 September 2018.”

In other words, the initial notice from the Commission made explicit that comments would still be accepted after 19 April 2018. The “Notice of Extension to Comment Period” made equally explicit that no more late comments would be accepted after 30 September 2018.

The comment period, as extended by the Commission, is about to end, and there is thus an urgency to inform members of the public about the Commission’s activities in order for them to be able to submit fully informed and responsive comments before the comment deadline.

Second, even if the Commission were to promulgate another notice again extending or re-opening the comment period or indicating a willingness to accept comments after 30 September 2018, or were willing and authorized to exercise discretion to consider comments after 30 September 2018, later comments would inevitably have less ability to influence the Commission’s deliberations, the more so the later in the Commission’s deliberative and decision-making process they are received.

Third, at the Commission’s meeting on 19-21 September 2017, according to the redacted version of the minutes released in response to my earlier FOIA request 2018-SP-01, “Commissioners decided in favor of the Commission issuing an interim report in approximately twelve months.” (National Commission on Military, National, and Public Service Public, “Minutes Of September 2017 Commission Meeting”, <<https://hasbrouck.org/draft/FOIA/1-NcoSMinutes-SEPTEMBER2017-Final.pdf>>; note that despite an explicit directive from the Commission that these minutes be posted on the Commission’s Web site, that has not been done, and they are available to the public only on my Web site and only because they were released in response to my FOIA request 2018-SP-01).

Twelve months have passed since this decision of the Commission in September 2017. The Commission has not made public any decision to overturn or alter its decision to issue an interim report in approximately twelve months. (Any record of such a decision would be responsive to this request, and knowledge of any such decision would be critical to enable members of the public to know how much time they have to submit comments before the Commission plans to issue an interim report.)

According to all publicly available information, the issuance by the Commission of an interim report is imminent. Time is of the essence to enable members of the public to submit comments in time for them to be taken into consideration by the Commission in formulating its interim report. Comments received after the Commission has formulated and issued an interim report will inevitably have less ability to influence the Commission’s recommendations than comments submitted at an earlier stage of the Commission’s deliberative and decision-making process, before the issuance of any interim report.

For all of these reasons, there is an urgency to inform the public about the Commission's activities, and this FOIA request 2018-SP-03 should be processed on an expedited basis.

Please respond as soon as possible to confirm your receipt of this appeal and to advise the reference number assigned to this appeal and the expected date of completion of Commission action with respect to this request, including action on this appeal.

I note that 5 U.S. Code § 552 (a)(6)(E)(ii) requires that, "Notwithstanding clause (i), regulations under this subparagraph must ensure — ... (II) expeditious consideration of administrative appeals of such determinations of whether to provide expedited processing."

I look forward to your expeditious consideration of this appeal of the denial of my request for expedited processing of my request. To avoid unnecessary delays, please contact me immediately by telephone or e-mail should you have any questions regarding this appeal and/or request.

I certify under penalty of perjury that the statements above and in my original request for expedited processing are true and correct to the best of my knowledge and belief.

Sincerely,

Edward Hasbrouck
San Francisco, CA
25 September 2018