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May 9, 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-01

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 of the Commission, pursuant to the Freedom of Information Act, 5 U.S.C. § 552. My request was made by e-mail on May 4, 2018, and assigned Commission reference number 2018-SP-01.

According to an e-mail message from Chief FOIA Officer Rachel Rikleen on May 7, 2018, “In your request, you asked for expedited processing because you are ‘engaged in disseminating information to the public as a writer and journalist’ and “[t]here is an urgency to inform the public about Federal Government activity.’ This request has been denied, because it does not meet any of the statutory or regulatory requirements for an expedited request.”

This denial is in error and should be reversed on appeal. My request for expedited processing satisfies all of the statutory and regulatory requirements for expedited processing.

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 —

“(I) that a failure to obtain requested records on an expedited basis under this paragraph could reasonably be expected to pose an imminent threat to the life or physical safety of an individual; or

“(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.”

This request for expedited processing is made pursuant to clause (II) above, not clause (I). So whether there is “an imminent threat to the life or physical safety of an individual” is irrelevant.

The only issues for whether this request for expedited processing satisfies the statutory criteria are whether I am “a person primarily engaged in disseminating information” (which the FOIA Officer has conceded in granting my request for a fee waiver on that basis) and whether there is “urgency to inform the public concerning actual or alleged Federal Government activity.”

According to the e-mail message denying my request for expedited processing, “The request did not indicate why waiting 20 business days for the requested records would cause any kind of harm.”

The Commission has announced that the Commissioners will be gathered at various locations on dates within the next 20 business days. As noted in my original request, “The statute establishing the Commission provides that, ‘Each meeting of the Commission shall be held in public unless any member objects or classified information is to be considered.’ So any member of the public, including representatives of the news media, is entitled to attend and observe the meetings, deliberations, and decision-making of the Commission unless a member of the Commission objects to a specific meeting being open to the public, or classified information is being discussed.... But in practice, members of the public including representatives of the news media from throughout the country can only exercise the right granted to them by Congress to attend and observe meetings of the Commission if they know when and where the Commission will meet, and know this in time to plan and arrange to attend meetings that may be held anywhere in the country.”

It is likely that the Commission is holding meetings, in conjunction with its advertised events, within the next 20 business days. Whether or not this request is processed on an expedited basis is thus likely to be dispositive of whether members of the public, including representatives of the news media, are able to attend and observe the Commission’s meetings.

Failure to process this request on an expedited basis is thus likely to result in harm to the interest of members of the public, including representatives of the news media, in attending and observing the Commission’s meetings – a public interest expressly recognized by the statute which forms the basis for the Commission’s existence.

With respect to regulatory criteria for expedited processing, the Commission’s Interim Final Rule for FOIA Regulations (85 Federal Register 19417, May 2, 2018) provides that:

“In determining whether processing should be expedited, the Chief FOIA Officer may consider whether:...

“(2) With respect to a request made by a person primarily engaged in disseminating information, there is an urgency to inform the public about actual or alleged Federal Government activity.”

As I stated in my original request, with respect to this criterion:

“Time is of the essence, to enable interested members of the public to attend and observe the Commission’s deliberative and decision-making meetings. There is an urgency to inform the public about the Commission’s future meeting dates, times, and locations, in order for members of the public including representatives of the news media be able to attend and observe those meetings.”

This request fits squarely within both the statutory and regulatory criteria for expedited processing.

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
Wellesley, Massachusetts
May 9, 2018