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*poster by Fred Moore for the
National Resistance Committee*

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14 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 requests: 2020-SP-08
2020-SP-29

FREEDOM OF INFORMATION ACT APPEALS

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 their entirety and with respect to the adequacy of the searches for responsive records and each other adverse decision with respect to all or any portion of either of these requests, the Commission's denials in whole or in part of each of my FOIA requests that have been assigned reference numbers 2020-SP-08 and 2020-SP-29.

On 10 September 2020 (with respect to request 2020-SP-29) and 11 September 2020 (with respect to request 2020-SP-08), I was notified by e-mail messages from the Commission's Chief FOIA Officer that, with respect to each of these requests, "we are closing the request in our FOIA system. As you are aware, if you would like to appeal the handling of your requests, 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 as soon as possible.”

As I have previously brought to your attention in relation to other FOIA appeals, neither the FOIA statute nor the Commission’s FOIA regulations authorize the Commission or its staff unilaterally to derogate from the deadlines specified by law and regulations, or decide appeals without affording appellants the full amount of time to prepare their appeals to which they are entitled by law and regulations. I am entitled, pursuant to both the FOIA statute and the Commission’s FOIA regulations, to submit my appeal of the Commission’s decisions with respect to any FOIA request at any time within 90 days of the final decision on that request.

I was notified today by e-mail by the Commission’s Chief FOIA Officer today that she has “found” some previously “missing” two-year-old records responsive to one or both of these requests (and including 2,000 pages of petitions with lists of *most* of the members of the public who responded to the Commission’s solicitation of public comments) that, for as-yet unexplained reasons, were not previously disclosed to me. The Chief FOIA Officer told me that, “I anticipate being able to send them to you by Wednesday morning at the latest.”

I understand this message to constitute notice that the previous “closing” of these requests was in error, that these requests have been re-opened, and that the 90 days to which I am entitled to prepare and submit appeals with respect to these requests has not yet begun to toll.

I also call to your attention, in your capacity as Chair of the Commission rather than as FOIA Appeals Officer, that these previously “missing” records falsify material statements in the Commission’s final report. The Final Report states that the Commission received “4,300+” public comments, but the previously “missing” petitions include the comments of more than 37,000 members of the public opposed to continuation or expansion of Selective Service registration. One could, I suppose, interpret “4,300+” as meaning “more than 4,300” and thus as consistent with “40,000+”, since 40,000 is indeed “more than 4,300”, but that would be sophistry, contrary to any common-sense interpretation, and grossly misleading. I urge you to immediately correct the final report so as not to allow this *knowingly* inaccurate and materially misleading statement to remain in the permanent record of the Commission’s final report.

In an abundance of caution, however, and to ensure that there is no misunderstanding and that you do not claim that I have waived any of my rights, I hereby give notice (1) that I appeal the denial of each of these FOIA requests, (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 that you are “closing” each of these requests in your system.

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 these requests and this 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 requests 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 requests 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