



November 3, 2020

Edward Hasbrouck
1130 Treat Avenue
San Francisco, CA 94110

Re: Freedom of Information Act Appeal NGC21-002A

Dear Mr. Hasbrouck:

This is in response to your Freedom of Information Act (FOIA) appeal October 4, 2020, in which you appeal the National Archives and Records Administration's (NARA) response provided by the Office of General Counsel (NGC) to your initial request for expedited processing. Your appeal was received in this office on the same day and assigned internal tracking number NGC21-002A.

In an email dated, September 21, 2020, you submitted a FOIA request that was received by NGC. A portion dealing with operational records is being processed under case number NGC20-638 and assigned *FOIAonline* case number NARA-NGC-2020-001111. In your email dated September 25, 2020, a portion of the same FOIA request dealing with permanent electronic records was resubmitted to our Special Access and FOIA unit, where it was assigned case number RF-213. You stated, "I request access to copies of the following temporary and permanent records of the National Commission on Military, National, and Public Service (NCMNPS), custody and control of which was transferred to the National Archives and Records Administration (NARA) on the expiration of the statutory mandate for the existence of the NCMNPS on 18 September 2020."

As a writer and journalist engaged in the public dissemination of information, you asked that we expedite your request, for all records (temporary and permanent), due to an urgency to inform the public about federal government activity. You stated that your request represented a compelling need to inform the public of government activities, pursuant to 5 U.S.C. § 552(a)(6)(E). You further stated that Congress is considering legislative proposals related to two house bills that could require women to register for the armed services. These proposals, you stated, were based on recommendations made by the NCMNPS. As such, you believe records responsive to your FOIA could be critical to Congress and to the public's understanding of the commission's role in the proposed legislation.

In a letter dated October 1, 2020, Special Access staff determined that records were in a different department and referred your request to our Electronic Records Division (RRE) for direct

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8601 ADELPHI ROAD
COLLEGE PARK, MD 20740-6001

www.archives.gov

response to you, and therefore closed its FOIA case RF-312. In a letter also dated October 1, 2020, RRE received your request and assigned it case number ER 0566. You were informed that RRE had not yet assumed legal custody of the permanent electronic NCMNPS records and that we would provide you with a status update in 10 business days. In the same letter, RRE staff also denied your request for expedited processing, and we explained that the National Archives processes FOIA requests on an expedited basis if the request meets one or more of the following criteria, pursuant to FOIA Regulation 36 C.F.R. § 1250.28:

- (1) A reasonable expectation of an imminent threat to an individual's life or physical safety;
- (2) A reasonable expectation of an imminent loss of a substantial due process right;
- (3) An urgent need to inform the public about an actual or alleged Federal Government activity (this criterion applies only to those requests made by a person primarily engaged in disseminating information to the public); or
- (4) A matter of widespread and exceptional media interest in which there exist possible questions that affect public confidence in the Government's integrity.

RRE staff concluded that expedited processing was not warranted, because you had not demonstrated that your request meets the above-referenced criteria. In their response, staff explained that the NCMNPS's final report, issued in March 2020, defined the Commission's mission and methodology, as well as the organization and the individuals consulted. The report also provided information on panelists, speakers, statements received staff background information. We informed you that NCMNPS's website was an important source for documents containing pertinent information also sought in your request and is currently open to the public. Furthermore, we informed you that you failed to explain how specific records sought in your request provided additional information about the activities of the Commission. We determined that your request would be placed in RRE's non-expedited processing queue.

In an email dated October 8, 2020, we confirmed that our agency had already assumed legal custody of NCMNPS's permanent electronic records on September 22, 2020. Due to the recent transfer, our staff informed you that the records would have to be processed and preserved before we can conduct a search and provide access. This process, as we explained, involved reviewing the records for protected information, preservation in our electronic repository and completing other archival tasks. We provided you with an inventory for the nine sets of permanent electronic NCMNPS records, which amounts to approximately 2,900 files (excluding emails). Our staff can process a large share of the records, with the exception of electronic emails, by the end of the year and make them available online through the National Archives Catalog, as we explained. We also agreed to provide you with periodic updates as we process each of the nine sets of records cited in our October 8th letter to you.

In an email dated October 4, 2020, you appealed our staff's determination and claimed that as a representative of the media engaged in disseminating information you had already provided a statement certified to be true and correct to the best of your knowledge and belief, pursuant to 5 U.S.C. § 552(a)(6)(E). You stated that courts have recognized Congressional debate as a reason

for urgency and expedited processing, and you cited two court cases to support your argument. You stated that NARA's decision-makers failed to properly recognize your detailed declaration and that our denial was a boilerplate response issued summarily without reading your request and your declaration. You said we failed to satisfy the requirements of the FOIA statute and that our determination must at a minimum be reversed and remanded, or reviewed *de novo*.

After reviewing your initial request and your appeal, I have determined that your request for expedited processing does not meet any of the four criteria in our regulations. In deciding whether you have demonstrated that there is an "urgent need to inform the public," courts have required agencies to consider three factors: (1) whether the request concerns a matter of current exigency to the American public; (2) whether the consequences of delaying a response would compromise a significant recognized interest; and (3) whether the request concerns federal government activity.

I do not believe you have established that the American public has a current, urgent need for the requested records. Furthermore, you have failed to demonstrate how failure to receive the records on an expedited basis would compromise a significant interest with respect to government activities. And as stated above, a significant portion of the information sought in your request is available on the NCMNPS website and we have already made processing your request a priority, which we will support with periodic status updates to you. Therefore, I am denying your appeal, as your request for expedited processing was properly denied.

For your information, the Office of Government Information Services (OGIS), the Federal FOIA Ombudsman's office offers mediation services to help resolve disputes between FOIA requesters and Federal agencies as a non-exclusive alternative to litigation. Using OGIS services does not affect your right to pursue litigation. You may contact OGIS in any of the following ways:

Office of Government Information Services
National Archives and Records Administration
8601 Adelphi Road – OGIS
College Park, MD 20740-6001
ogis@nara.gov
ogis.archives.gov
202-741-5770
1-877-684-6448

Your administrative remedies are now exhausted. If you are dissatisfied with my action on your appeal, the FOIA permits you to file a lawsuit in federal district court in accordance with 5 U.S.C. § 552(a)(4)(B). You may seek judicial review in the District of Columbia, the judicial district in which you reside or do business, or the judicial district where the records are located – in this instance, the U.S. District Court for Maryland.

Sincerely,

A handwritten signature in black ink that reads "Debra Steidel Wall". The signature is written in a cursive, flowing style.

DEBRA STEIDEL WALL
Deputy Archivist of the United States