NATIONAL ARCHIVES

October 28, 2020

Edward Hasbrouck
1130 Treat Avenue
San Francisco, CA 94110

Re: Freedom of Information Act Appeal NGC21-001A

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 NGC21-001A.

In an email dated, September 21, 2020, you submitted a FOIA request that was received by our staff on the same day and assigned *FOIAonline* number NARA-NGC-2020-001111 and NGC20-638. 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 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, an NGC staff member informed you that NARA processes FOIA requests on an expedited basis if it is determined that 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;

NATIONAL ARCHIVES *and*
RECORDS ADMINISTRATION
8601 ADELPHI ROAD
COLLEGE PARK, MD 20740-6001
www.archives.gov

(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.

The staff concluded that expedited processing was not warranted, because you had not demonstrated that your request meets the above-referenced criteria.

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. Moreover, 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 in the learning of government activities. 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

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,

Debra Steidel Wall

DEBRA STEIDEL WALL
Deputy Archivist of the United States