



NATIONAL
ARCHIVES

March 12, 2024

Edward Hasbrouck
1130 Treat Avenue
San Francisco, CA 94110
Via Email: edward@hasbrouck.org

Re: Freedom of Information Act Appeal NGC21-025A

Dear Mr. Hasbrouck:

This is in response to your Freedom of Information Act (FOIA) appeal dated February 5, 2021, 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 NGC21-025A.

In an email dated January 27, 2021, you submitted a FOIA request to our Special Access and FOIA unit in College Park, Md. Because your request is for operational records, it was transferred to NGC and assigned *FOIAonline* number NARA-NGC-2021-000428 and NGC case file number NGC21-238.

Your request seeks “copies of all records of the National Archives and Records Administration (NARA) of or pertaining to the current or past status, holding, transfer, legal custody, or responsibility for responding to FOIA requests with respect to any records previously held by the National Commission on Military, National and Public Service (NCMNPS).” You offered 10 summaries detailing the type of content contained in the records sought in your request. You also identified a wide range of NARA offices where you believe responsive records might be located.

You asked for expedited processing of your request on the grounds that you are primarily engaged in disseminating information and that there exists an urgent need to inform the public about federal government activity. With regards to urgency, you further stated “records of the NCMNPS’s are likely to be highly probative of the credibility that Congress should afford to NCMNPS witnesses and the NCMNPS’s report, and the weight that they should be given in Congressional decision-making.” You believe that without expedited processing, neither you nor other potential FOIA requesters will learn which federal agency has legal custody of or is responsible for responding to FOIA requests for NCMNPS records until after February 15, 2021. You believed that by this date, NARA might have expunged, or authorized the expungement of,

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some or all of these records, forever hiding them from the public and excluding them from consideration by Congress and the U.S. Supreme Court. For this reason, you argued that there is an urgency to inform the public about the activities of the NCMNPS, which are relevant to ongoing and imminent litigation and Congressional debate.

In a letter dated February 5, 2021, an NGC staff member informed you that NARA processes FOIA requests on an expedited basis if it is determined that the request meets criteria, pursuant to FOIA Regulation 36 C.F.R. § 1250.28. Furthermore, our staff concluded that expedited processing was not warranted for your request, because you had not demonstrated that your request met our agency's criteria.

In a letter dated February 5, 2021, you appealed the denial of your request for expedited processing. You stated that as a representative of the media engaged in disseminating information, you had already provided a certified statement that clearly constituted admissible evidence with respect to the existence of an "urgent need to inform the public about an actual or alleged Federal Government activity." You further stated that you had provided evidence that you believe offered *sufficient* evidence to satisfy the requirement of the FOIA statute for expedited processing. You also asserted that our response failed to properly take into account your detailed declaration and appeared to be a boilerplate denial. You concluded, "As such it fails to satisfy the requirements of the FOIA statute for diligent consideration of requests and is compelling evidence of agency bad faith."

After reviewing your initial request and your appeal, I have determined that NGC properly denied your request for expedited processing because it failed to demonstrate an urgent need for the records.

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 have carefully reviewed your initial FOIA request, NGC's response, and your appeal.

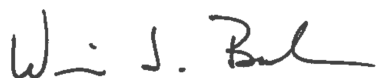
You have not established that NARA accessioning the records of NCMNPS is a matter of current exigency to the American public, nor have you provided any evidence to support your assertions that the subject of your FOIA request is a matter of imminent litigation or Congressional debate. Furthermore, you have failed to demonstrate how failure to receive the records on an expedited basis would compromise a significant, recognized interest. Therefore, I am affirming the decision to deny your request.

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, appearing to read "W. J. Bosanko". The signature is fluid and cursive, with a long horizontal stroke at the end.

WILLIAM J. BOSANKO
Deputy Archivist of the United States