



January 30, 2020

Edward Hasbrouck
1130 Treat Avenue
San Francisco, CA 94110

Via Email to edward@hasbrouck.org

Dear Mr. Hasbrouck:

The National Commission on Military, National, and Public Service (the Commission) received your December 31, 2019, appeal related to Freedom of Information Act (FOIA) request 2018-SP-01. For the reasons set forth in this letter, the Commission denies your appeal but agrees to provide you with additional information and records.

Your appeal raised four issues: (1) whether the Commission conducted an adequate search for responsive records; (2) whether the Commission should have released records in their original Microsoft Word format instead of as PDF files; (3) whether the Commission withheld responsive records and substituted newly-created records in their place; and (4) whether the Commission identified all responsive records that were exempt from release.

Before addressing these four issues, the Commission notes that FOIA provides a 90-day window in which to file an appeal after the date of the agency's response letter. 5 U.S.C. § 552(a)(6)(A)(III)(aa); *see also* 1 C.F.R. 426.208(b) (Commission regulations requiring appeals within 90 days). In this case, the Commission responded to your initial FOIA request on June 1, 2018. That response informed you of the requirement to file an appeal within 90 days. Your appeal was filed more than a year later, on December 31, 2019, thus making this appeal untimely.

Notwithstanding the untimeliness of your appeal, the Commission responds to the four issues raised in your letter as follows.

Issue 1: Whether the Commission conducted an adequate search for responsive records. In response to request 2018-SP-01, Commission staff conducted searches, including an email search, for electronic and non-electronic records potentially responsive to the requests contained within 2018-SP-01. The electronic and non-electronic searches covered the period September 2017 through mid-May 2018. The results of those searches are reflected in the list of responsive documents provided to you on June 1, 2018. The June 1, 2018, response and records subsequently released did not include copies of emails transmitting some of those records to members of the Commission because those emails were considered non-responsive to your request. In the interest of transparency, I have directed the staff to retrieve those emails and provide them to you.

In your original FOIA request 2018-SP-01, you also requested electronic calendars and you have challenged the exclusion of calendars in your appeal. I have directed the staff to search for any calendars responsive to your request and provide you with a copy of any such calendars.

Issue 2: Whether the Commission should have released records in their original Microsoft Word format instead of as PDF files. The Commission provided you with responsive records as PDF files because it is Commission practice to use the PDF format to upload all releasable documents on the Commission's public website. If any of those PDF files are saved on the Commission's server as Microsoft Word documents, staff will reproduce and provide them to you as Word files, including the original metadata.

Issue 3: Whether the Commission withheld responsive records and substituted newly-created records in their place. The Commission disputes your claim that the Commission substituted newly-created files for responsive records with respect to the Commission meeting minutes released to you. The Commission has released to you and has made available to the public on its website the public minutes of each Commission meeting. Since it was established, the Commission has created public minutes in order to provide the public with information about the Commission's meetings and has also created internal minutes that contain privileged, FOIA-exempt information. The public minutes, which have been released to you and are available on the Commission website, are records distinct from the internal minutes and were not created in response to any FOIA request. We note, however, that the record log provided to you on June 1, 2018, did not separately identify the Commission's internal minutes as records responsive to your request. To address this issue, I have directed the staff to provide you with an updated list of responsive documents that identifies the internal minutes as responsive records exempt from disclosure under FOIA Exemption 5.

Issue 4: Whether the Commission identified all responsive records that were exempt from release. You appealed the withholding of an unspecified quantity of responsive records for unspecified reasons, arguing that the Commission should have provided given you a list of exempt documents so that you know how much was withheld. As noted above, FOIA requires that it provide a requester with certain information about the action taken on the request. Agencies are required to "make a reasonable effort to estimate the volume" of any information withheld and should inform the requester of that estimate, unless doing so would harm an interest protected by an applied exemption. See [Mobley v. Department of Justice, 845 F. Supp. 2d 120, 123–24 \(D.D.C. 2012\)](#) ("The plain text of the statute does not require agencies to provide a list of withheld documents, but only to make a reasonable effort to estimate the volume of the documents withheld."). I have directed the staff to update the list of responsive records related to FOIA request, 2018-SP-01, with an appropriate designation of the exemption applicable to each record withheld under FOIA, and to provide you with additional records consistent with this letter.

If you have any questions about this response or the FOIA process in general, please contact our FOIA Public Liaison, Katie McSheffrey, at katie.c.mcsheffrey@inspire2serve.gov. You may also seek dispute resolution services, which are offered by the Office of Government Information Services (OGIS) at the National Archives and Records Administration. You can learn more about these services at <https://www.archives.gov/ogis/mediation-program> or by contacting OGIS at:

Address: 8601 Adelphi Road – OGIS, College Park, MD 20740

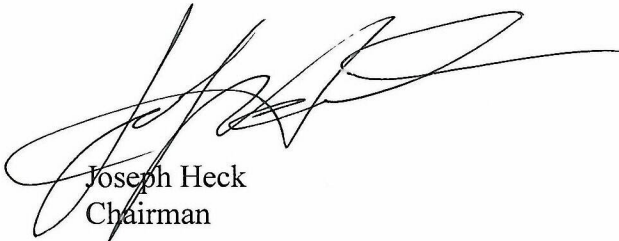
Email: ogis@nara.gov

Telephone: (202) 741-5770

Facsimile: (202) 741-5769

Toll free telephone: (877) 684-6448

Sincerely,

A handwritten signature in black ink, appearing to read 'J. Heck', written over the printed name and title.

Joseph Heck
Chairman