



UNITED STATES  
NUCLEAR REGULATORY COMMISSION  
WASHINGTON, D.C. 20555-0001

DEC 14 2016

IN RESPONSE REFER TO:  
FOIA-2017-0066A (2017-0050)  
FOIA-2017-0067A (2017-0045)  
FOIA-2017-0068A (2017-0058)  
FOIA-2017-0069A (2017-0047)  
FOIA-2017-0070A (2017-0048)  
FOIA-2017-0071A (2017-0059)  
FOIA-2017-0072A (2017-0051)

Mr. Julian Tarver  
(b) (6)

Dear Mr. Tarver:

On behalf of the U.S. Nuclear Regulatory Commission (NRC), I am responding to your letters dated October 18, 2016, in which you appealed the agency's responses related to your requests for fee waiver included in Freedom of Information Act (FOIA) requests, FOIA-2017-0050, 2017-0045, 2017-0058, 2017-0047, 2017-0048, 2017-0059, and 2017-0051. In each letter you appealed the fee waiver denial on the grounds that you are "a member of the prisoner media," "a member of a prison media group" or "a member of a prison media group that writes articles and publications."

In a letter dated December 1, 2016, I denied your claim that you are a member of the media and, on that basis, ineligible for a fee waiver for the above referenced FOIA requests. In my decision, I pointed out that "it is insufficient for individuals to simply declare themselves members of the media. It is the burden of a FOIA requester to provide substantiation for such a claim, which you had not done."

As I explained in my earlier decision, the FOIA defines a "representative of the news media" to mean "any person or entity that gathers information of potential interest to a segment of the public, uses its editorial skills to turn the raw materials into a distinct work, and distributes that work to an audience." 5 U.S.C. 552(a)(4)(A)(ii)(III). The statute also provides that the term "news" means information that is about current events or that would be of current interest. In earlier correspondence, you said you were "media" or "you were a member of the prisoner media, or a prisoner media group." Adding that this group "writes articles and publications," standing alone, is insufficient because it fails to provide any basis for, or proof of, the means by which the requested records will become the subject of any editorial analysis and then shared with the prisoner population. And, as I also informed you, simply qualifying as a representative of the news media does not automatically entitle you to a fee waiver.

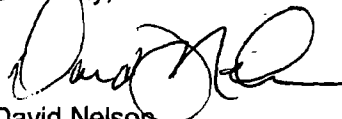
The FOIA provides that fees should be waived or reduced "if disclosure of the information is in the public interest because it is likely to contribute significantly to public understanding of the operations or activities of the government and is not primarily in the commercial interest of the requester." 5 U.S.C. 552(a)(4)(A)(iii). This statutory standard establishes a two-prong test: (1) a public interest requirement and (2) a requirement that a requester's commercial interest in the disclosure, if any, be less than the public interest in disclosure. Requesters bear the burden of establishing how they satisfy both prongs. Further, the eight factors set forth in the NRC's FOIA regulations, at 10 C.F.R. 9.41 (a)(2), must be addressed to provide the NRC with sufficient information upon which to make a fee waiver determination. Since you failed to include any substantiation of your claim to be a representative of the news media, and did not address the eight factors set forth in the NRC's FOIA regulations to support a fee waiver determination, I am denying your appeals.

This is the final agency decision. As set forth in the FOIA (5 U.S.C. 552(a)(4)(B)), you may seek judicial review of this decision in the district court of the United States in the district in which you reside or have your principal place of business. You may also seek judicial review in the district in which the agency's records are situated or in the District of Columbia.

The 2007 FOIA amendments created the Office of Government Information Services (OGIS) to offer mediation services to resolve disputes between FOIA requesters and Federal agencies as a nonexclusive 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  
Email: [ogis@nara.gov](mailto:ogis@nara.gov)  
Telephone: 202-741-5770  
Toll-free: 1-877-684-6448  
Fax: 202-741-5769

Sincerely,



David Nelson  
Chief Information Officer  
Office of the Chief Information Officer