



Federal Communications Commission
Washington, D.C. 20554

July 25, 2023

VIA ELECTRONIC MAIL

Sarah Clendenon
Idaho Dispatch
1740 East Fairview Avenue
Suite 1050
Meridian, Idaho 83646

Re: FOIA No. 2023-000631

Dear Ms. Clendenon:

This letter responds to your recent Freedom of Information Act (FOIA) request seeking, as subsequently modified, copies of “all FCC records regarding Town Square Media, KIDO & KLIX from January 1, 2023 to June 21, 2023.” Your FOIA request has been assigned the control number 2023-000631.

The FOIA is designed to provide access to records in the custody of an agency that are not routinely available to the public.¹ Certain Commission records pertaining to the broadcast radio stations KIDO and KLIX, such as license applications and authorizations, are publicly available in the Media Bureau’s Licensing and Management System (LMS). You may search LMS by call sign to access a station’s records from the public Facility Search screen (<https://enterprise.filing.fcc.gov/dataentry/public/tv/publicAppSearch.html>). With respect to non-public responsive records, staff in the Media Bureau searched its files and located approximately 155 records responsive to your request, which are withheld in their entirety pursuant to FOIA Exemption 7(A).

Exemption 7(A)² authorizes withholding investigative records or information compiled for law enforcement purposes the production of which could reasonably be expected to interfere with current or future enforcement proceedings. The non-public records responsive to your request were created or compiled as part of the government’s ongoing investigation into possible violations of the Communications Act of 1934, as amended (the Act), and the Commission’s related rules and orders. We conclude it is reasonably foreseeable the release of these records would interfere with, and potentially undermine, this investigation and prospective investigations. Specifically, we have determined that disclosure of these records would: (1) hinder the agency’s ability to control or shape this, and potentially other, investigations; (2) enable persons or entities with relevant information to destroy or alter evidence; and (3) reveal evidence or strategy in the investigation.³

¹ See 5 U.S.C. § 552 (a)(3)(A); 47 CFR § 0.461.

² 5 U.S.C. § 552(b)(7)(A). In connection with ongoing or reasonably anticipated investigations, internal and investigative documents are exempt from disclosure under FOIA Exemption 7(A). See *Ctr. for Media & Democracy*, Memorandum Opinion and Order, 27 FCC Rcd 11503 (2012) (*Center for Media and Democracy*). See also 47 CFR § 0.457(g)(5).

³ See *Center for Media and Democracy*, 27 FCC Rcd at 11504–11506, paras. 5–7.

In addition to Exemption 7(A), we find that the withheld documents or portions thereof may also warrant protection from disclosure pursuant to FOIA Exemption 7(E)⁴ which protects “records or information compiled for law enforcement purposes [the production of which] would disclose techniques and procedures for law enforcement investigations or prosecutions, or would disclose guidelines for law enforcement investigations or prosecutions if such disclosure could reasonably be expected to risk a circumvention of the law.”⁵ We have determined that it is reasonably foreseeable that disclosure would harm the Commission’s or the Federal government’s law enforcement activities, which Exemption 7 is intended to protect.

The FOIA requires that “any reasonably segregable portion of a record” must be released after appropriate application of the Act’s exemptions.⁶ The statutory standard requires the release of any portion of a record that is nonexempt and that is “reasonably segregable” from the exempt portion. However, when nonexempt information is “inextricably intertwined” with exempt information, reasonable segregation is not possible.⁷ The withholdings made are consistent with our responsibility to determine if any segregable portions can be released. To the extent non-exempt material is not released, it is inextricably intertwined with exempt material.

We also reviewed the withheld records to determine if discretionary release is appropriate.⁸ The materials that are protected from disclosure under Exemption 7 are not appropriate for discretionary release in light of the law enforcement sensitivities involved.

We are required by both the FOIA and the Commission’s own rules to charge requesters certain fees associated with the costs of searching for, reviewing, and duplicating the sought-after information.⁹ To calculate the appropriate fee, requesters are classified as: (1) commercial use requesters; (2) educational requesters, non-commercial scientific organizations, or representatives of the news media; or (3) all other requesters.¹⁰

Pursuant to section 0.466(a)(5)-(7) of the Commission’s rules, you have been classified as category (2), “educational requesters, non-commercial scientific organizations, or representatives of the news media.”¹¹ As an “educational requester, non-commercial scientific organization, or representative of the news media,” the Commission assesses charges to recover the cost of reproducing the records requested, excluding the cost of reproducing the first 100 pages. Because the response required no duplication of records, there are no fees associated with your request.

⁴ See 5 U.S.C. § 552(b)(7)(E).

⁵ *Id.* See also See 47 CFR § 0.457(g)(5).

⁶ 5 U.S.C. § 552(b) (sentence immediately following exemptions).

⁷ *Mead Data Cent. Inc. v. Dep’t of the Air Force*, 566 F.2d 242, 260 (D.C. Cir. 1977).

⁸ See President’s Memorandum for the Heads of Executive Departments and Agencies, Freedom of Information Act, 74 Fed. Reg. 4683 (2009).

⁹ See 5 U.S.C. § 552(a)(4)(A); 47 CFR § 0.470.

¹⁰ 47 CFR § 0.470.

¹¹ 47 CFR § 0.466(a)(5)-(7).

If you consider this to be a denial of your FOIA request, you may seek review by filing an application for review with the Office of General Counsel. An application for review must be *received* by the Commission within 90 calendar days of the date of this letter.¹²

You may file an application for review by mailing the application to Federal Communications Commission, Office of General Counsel, 45 L St NE, Washington, DC 20554, or you may file your application for review electronically by e-mailing it to FOIA-Appeal@fcc.gov. Please caption the envelope (or subject line, if via e-mail) and the application itself as “Review of Freedom of Information Action” and the application should refer to FOIA No. 2023-000631.

If you would like to discuss this response before filing an application for review to attempt to resolve your dispute without going through the appeals process, you may contact the Commission’s FOIA Public Liaison for assistance at:

FOIA Public Liaison
Federal Communications Commission, Office of the Managing Director, Performance Evaluation
and Records Management
45 L St. NE
Washington, DC 20554
202-418-0440
FOIA-Public-Liaison@fcc.gov

If you are unable to resolve your FOIA dispute through the Commission’s FOIA Public Liaison, 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. The contact information for OGIS:

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

Sincerely,

Sima Nilsson
Legal Advisor, Media Bureau

cc: FCC FOIA Office

¹² 47 CFR §§ 0.461(j), 1.115; 47 CFR § 1.7 (documents are considered filed with the Commission upon their receipt at the location designated by the Commission).