



UNITED STATES
NUCLEAR REGULATORY COMMISSION
WASHINGTON, DC 20555 - 0001

DEC 23 2018

IN RESPONSE REFER TO:

NRC-2018-000206 (FOIA-2018-0057)
NRC-2018-000207 (FOIA-2018-0060)
NRC-2018-000208 (FOIA-2018-0061)
NRC-2018-000214 (FOIA-2018-0070)
NRC-2018-000215 (FOIA-2018-0077)
NRC-2018-000216 (FOIA-2018-0015)
NRC-2018-000217 (FOIA-2018-0013)
NRC-2018-000219 (FOIA-2018-0016)
NRC-2018-000220 (FOIA-2018-0017)
NRC-2018-000222 (FOIA-2018-0072)
NRC-2018-000223 (FOIA-2018-0073)
NRC-2018-000224 (FOIA-2018-0075)
NRC-2018-000225 (FOIA-2018-0079)
NRC-2018-000226 (FOIA-2018-0081)
NRC-2018-000233 (NRC-2018-000002)
NRC-2018-000234 (NRC-2018-000022)

Mr. Julian Tarver, DOC 885530
Washington State Penitentiary IMU South H-2
1313 N 13th Avenue
Walla Walla, WA 99362

Dear Mr. Tarver:

On behalf of the U. S. Nuclear Regulatory Commission (NRC), I am responding to your letters to the FOIA Officer, dated between November 30, 2017 and December 22, 2017, in which you appealed the above-referenced multiple agency responses in which your requests for fee waivers were denied.

Acting on your appeals, I have reviewed the record in these cases and have determined that the fee waiver denial in each¹ of them was appropriate. Therefore, I have denied your appeals.

Under the FOIA's administrative appeal provision, requesters have the right to administratively appeal an adverse determination an agency makes on their FOIA requests. A fee waiver denial is one such "adverse determination" under the NRC's FOIA regulations. See 10 C.F.R. 9.29(a). The administrative appeal process is intended to provide an agency with an opportunity to review its initial action taken in response to a request, to determine whether corrective steps are necessary.

¹ Please note that, because the agency's response to FOIA-2018-0017 was issued within ten working days of the NRC's receipt of your request, no acknowledgment letter (in which fee waiver requests are generally addressed) was sent. There were no fees incurred in the processing of this request, so your fee waiver request was moot. Since there was no initial denial of your request for a fee waiver, you have no basis upon which to submit an appeal, NRC-2018-000220, with respect to FOIA-2018-0017.

In your initial request letters asking for a fee waiver, you did not provide any supporting information to justify the requested waiver. In each of your appeal letters, you have included the following representation: "I maintain a blog on reporting my past requests, and the information about the activities of the NRC. As a member of the jailhouse media, I am appealing the denial of my fee waiver."

In previous appeals you have filed regarding initial fee waiver denial determinations, you have based your appeals on representations that you were a "member of the prison media," "a member of a prison media group," or "a member of a prison media group that writes articles and publications." In my decision letters denying those appeals, I stated that it is insufficient for individuals simply to declare themselves members of the media. Rather, the burden is on FOIA requesters to provide substantiation for such claims.

As noted above, your current appeals reiterate that you are "a member of the jailhouse media" and add that you "maintain a blog on reporting [your] past requests and the information about the activities of the NRC." As I have explained in my earlier decisions, 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). The same provision of the statute also provides that the term "news" means information that is about current events or that would be of current interest. Your representation that you are a member of the "jailhouse media" because you "maintain a blog" that reports on NRC activities and your past requests for information on such activities, standing alone, does not demonstrate, with sufficient detail or proof, that the records requested in each of your requests will be the subject of editorial analysis and then shared with either the prisoner population or some other audience.

Further, as I have also informed you in my responses to your previous appeals, 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 by providing, in sufficient detail, information that will allow an agency to make an informed decision whether it can appropriately waive or reduce fees. The eight factors set forth in the NRC's FOIA regulations, at 10 C.F.R. 9.41(b), must be addressed to provide the NRC with sufficient information upon which to make a fee waiver determination. Your initial requests have not addressed these factors at all, and your appeal letters provide only limited information related to some of the factors while leaving several factors completely unaddressed. Accordingly, because you have provided insufficient information to permit me to make the findings necessary to support a fee waiver, I am denying your appeals.

Lastly, because your initial fee waiver requests have consistently not addressed any of the factors that the NRC's FOIA regulations require fee waiver applicants to address, despite repeated communications from the NRC (in responses to initial fee waiver requests and responses to appeals) informing you of these requirements, I have determined that the NRC will no longer treat such requests received from you in the future as perfected fee waiver requests. The FOIA requires that requesters follow an agency's published rules for making FOIA requests, including those pertaining to fees and fee waivers. See 5 U.S.C. 552(a)(3)(A).

Tarver, J.

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Accordingly, except where the NRC can determine from the face of the request, per 10 C.F.R. 9.41(c), that the request is in the public interest because it is likely to contribute significantly to public understanding of the operations or activities of the Federal Government and is not primarily in your commercial interest, the NRC will not process future fee waiver requests from you unless and until the requests address the eight required factors from the NRC's regulation on fee waiver requests.

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.

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
732 North Capitol Street, NW
Washington, D.C. 20401
Email: ogis@nara.gov
Telephone: 202-741-5770
Toll-free: 1-877-684-6448
Fax: 202-741-5769

Sincerely,

A handwritten signature in black ink, appearing to read "David J. Nelson", written over a horizontal line.

David J. Nelson
Chief Information Officer
Office of the Chief Information Officer