

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of
JEFFREY W. HANSON
On Request for Inspection of
Records
FOIA Control No. 20-254

MEMORANDUM OPINION AND ORDER

Adopted: August 24, 2001

Released: September 5, 2001

By the Commission:

1. The Commission has before it five applications for review filed by Jeffrey W. Hanson (Hanson) concerning the handling of his Freedom of Information Act (FOIA) and Privacy Act (PA) requests for information concerning himself and a complaint he filed with the Commission. Two of the applications for review are dismissed and three others are dismissed in part and otherwise denied.

2. Mr. Hanson's FOIA and Privacy Act request, dated August 11, 2000, sought records concerning Hanson and a complaint he had filed with the Commission concerning the billing practices of AT&T Corporation (AT&T), referred to as Complaint Number IC-2000009671. His PA/FOIA Request provided his name, social security number, and date of birth. On September 13, 2000, when he did not receive a response to his PA/FOIA Request, Mr. Hanson filed an application for review. Although the PA/FOIA Request was received by the Commission's mailroom on August 15, 2000, it did not reach the FOIA Control Office until September 21, 2000, when it was logged in and assigned to the Consumer Information Bureau (Bureau or CIB). On October 19, 2000, the Bureau provided Mr. Hanson with copies of the contents of the informal complaint file for Complaint Number IC-2000009672, the correct number for his complaint against AT&T, but made no reference to the Privacy Act aspects of his request.

3. Subsequently, Mr. Hanson was contacted to determine whether his First Application for Review was moot in light of the FOIA Decision. Mr. Hanson responded with a second application for

1 "Tandem Privacy Act/Freedom of Information Act Request Letter" from Jeffrey W. Hanson to Privacy Act/FOIA Records Officer (Aug. 11, 2000) (PA/FOIA Request).

2 Id. at 2.

3 "Tandum [sic] Freedom of Information Act/Privacy Act Appeal" letter from Jeffrey W. Hanson to Freedom of Information Act/Privacy Act Appeals Officer (Sept. 13, 2000) (First Application for Review) (stating, "[b]ecause I have not received a response in any way or form . . . I consider my FOIA/PA request denied."). Mr. Hanson also requested an "Official FCC Complaint Form" on which to file a complaint concerning the handling of his PA/FOIA Request. See electronic mail (e-mail) from Jeffrey W. Hanson to FOIA@FCC.gov (Sept. 24, 2000); e-mail from Jeffrey W. Hanson to FOIA@FCC.gov (Oct. 8, 2000) (again inquiring about the lack of response to his PA/FOIA request).

4 See 47 C.F.R. § 0.461(e).

5 Letter from Roderick K. Porter, Acting Chief, CIB, to Jeffrey W. Hanson (Oct. 19, 2000) (FOIA Decision).

6 See letter from Laurence H. Schecker, Attorney-Advisor, Office of General Counsel, to Jeffrey W. Hanson (Nov. 28, 2000). The inquiry noted that Mr. Hanson had not filed an application for review of the FOIA Decision within 30 days, as required by 47 C.F.R. § 0.461(j).

review noting that the Bureau had not responded to the Privacy Act aspects of his PA/FOIA Request.<sup>7</sup> The Bureau then responded to the Privacy Act portion of Mr. Hanson's PA/FOIA Request.<sup>8</sup> As required by our rules, Mr. Hanson was informed that information about him arising from his filing of an informal complaint was contained in an FCC system of records.<sup>9</sup> The Bureau informed Mr. Hanson that it had "provided all the documents in his informal complaint file except for the documents [he] had attached to the FOIA request (and therefore already had in [his] possession)."<sup>10</sup> Mr. Hanson was informed of his right to request correction or amendment of the records in the system of records,<sup>11</sup> and his right to seek review of the PA Decision.<sup>12</sup> If he did seek review, Mr. Hanson was requested to specify what records he believed were not provided to him.<sup>13</sup>

4. Mr. Hanson was additionally notified that the Commission had provided him with all documents responsive to his PA/FOIA Request in response to a congressional inquiry on his behalf.<sup>14</sup>

5. On December 28, 2000, Mr. Hanson filed a third application for review indicating his belief that records had been withheld from him.<sup>15</sup> He also sent an e-mail complaining about the "poor responsiveness" he had received regarding his "many letters" to the Commission.<sup>16</sup> In response to this correspondence, it was noted to Mr. Hanson that he had received three letters responsive to his requests tendering him all documents in the Commission's possession responsive to his PA/FOIA Request.<sup>17</sup> He was also informed that reason for the delay in responding to his PA/FOIA Request resulted from the incorrect informal complaint number he had originally provided.<sup>18</sup> Mr. Hanson was requested to inform the Commission what else could be done to satisfy his inquiries.<sup>19</sup>

6. On June 24, 2001, Mr. Hanson filed a fourth application for review.<sup>20</sup> Mr. Hanson continues to believe the Commission has withheld records in response to his original PA/FOIA Request.<sup>21</sup> He also challenges the "decision not to provide [him his] FOIA/PA records in the time allotted by the [FOIA]," and the Commission's "refusal to contact [him] directly as requested in his many letters regarding [his] informal complaint."<sup>22</sup> Mr. Hanson followed this pleading with a fifth application for

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<sup>7</sup> "Second Tandem Freedom of Information Act/Privacy Act Appeal," from Jeffrey W. Hanson to FOIA/PA Appeal Officer (Dec. 3, 2000) (Second Application for Review).

<sup>8</sup> Letter from Roderick K. Porter, Acting Chief, CIB, to Jeffrey W. Hanson (Dec. 5, 2000) (PA Decision)

<sup>9</sup> Id. at 1, citing 47 C.F.R. § 0.554(a) and FCC/CIB-1, Informal Complaints and Inquiries File (Broadcast, Common Carrier, and Wireless Telecommunications Bureau Radio Services, 65 Fed. Reg. 63468, 63480 (Oct. 23, 2000).

<sup>10</sup> Id. at 1-2.

<sup>11</sup> Id. at 2, citing 47 C.F.R. § 0.556.

<sup>12</sup> Id. citing 47 C.F.R. § 0.555(e)(1) and (2).

<sup>13</sup> Id.

<sup>14</sup> See letter to Senator Trent Lott from Roderick K. Porter, Acting Chief, CIB (Dec. 15, 2000) (Lott Letter).

<sup>15</sup> Letter from Jeffrey W. Hanson to FOIA/PA Appeal Officer (Dec. 28, 2000) (Third Application for Review).

<sup>16</sup> See e-mail from Jeffrey W. Hanson to Laurence H. Schecker (Dec. 28, 2000).

<sup>17</sup> See e-mail from Laurence H. Schecker to Jeffrey W. Hanson (Dec. 28, 2000) (Dec. 28 e-mail).

<sup>18</sup> Id. See paragraph 2, supra.

<sup>19</sup> Id.

<sup>20</sup> Letter from Jeffrey W. Hanson to FOIA/PA Appeals Officer (June 24, 2001) (Fourth Application for Review).

<sup>21</sup> Id. at 1.

<sup>22</sup> Id. at 2.

review that repeated the assertions contained in the Fourth Application for Review.<sup>23</sup>

7. Mr. Hanson's five applications for review are either dismissed or denied, as we now discuss. His First Application for Review was filed when he did not receive a response to his PA/FOIA Request within 20 working days, as required by the FOIA and our regulations.<sup>24</sup> However, the time for responding to his PA/FOIA Request commenced when the request was received and logged in by the FOIA Control Officer on September 21, 2000.<sup>25</sup> The Commission strives to promptly route FOIA requests to the FOIA Control Officer and the custodian of the records, but delays sometimes do occur. As Mr. Hanson was informed, further delays occurred because he had misidentified the control number for his informal complaint against AT&T.<sup>26</sup> In this instance, the Bureau's FOIA Decision of October 19, 2000, was issued within the 20 working days of the receipt of the PA/FOIA Request by the FOIA Control Officer, as prescribed by the FOIA.

8. The Second Application for Review challenged the lack of response to the Privacy Act aspects of his PA/FOIA Request. The Bureau's PA Decision fully responded to that aspect of his PA/FOIA Request. With the issuance of the FOIA Decision and the PA Decision, Mr. Hanson's First and Second Applications for Review are properly dismissed as moot.<sup>27</sup>

9. The Third Application for Review, asserting that he had not been provided with all documents responsive to his PA/FOIA Request, was filed on December 28, 2000.<sup>28</sup> The Third Application for Review is untimely to the extent it seeks review of the FOIA Decision.<sup>29</sup> However, we note that in this instance, the Bureau informed Mr. Hanson that he had been provided with all the records located that were responsive to the FOIA portion of his request. The Third Application for Review is timely as to the PA Decision.<sup>30</sup> Mr. Hanson's sole complaint is that he was not provided with all the records he sought. However, the Bureau informed Mr. Hanson that he had been provided with all the records located<sup>31</sup> and also had requested that Mr. Hanson identify what records he believed had not been provided to him.<sup>32</sup> The Bureau's search for records was also reasonably calculated to uncover all responsive documents in

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<sup>23</sup> Letter from Jeffrey W. Hanson to FOIA/PA Appeals Officer (August 12, 2001) (Fifth Application for Review).

<sup>24</sup> See 5 U.S.C. § 552(a)(6)(A)(i) and 47 C.F.R. § 0.461(g).

<sup>25</sup> 47 C.F.R. §§ 0.461(e) (FOIA Control Officer logs in and date stamps FOIA requests) and 0.461(g) ("The custodian of the records will make every effort to act on the request within 20 working days after it is received by the FOIA Control Office (emphasis supplied)"). See Church of Scientology of Cal. v. IRS, 792 F.2d 146, 150 (D.C. Cir. 1986) (the time period for responding to a FOIA request does not begin to run until the request is received by the appropriate office and officer in the agency as set forth in the agency's published regulations); Brumley v. United States Dep't of Labor, 767 F.2d 444, 445 (8th Cir.1985) (same).

<sup>26</sup> See Dec. 28 e-mail; paragraph 2, supra.

<sup>27</sup> Cf. Voinche v. FBI, 999 F.2d 962, 963 (5th Cir. 1993) (a challenge to the tardiness of an agency's response to a FOIA request is rendered moot by a response to the request); Fisher v. FBI, 94 F. Supp. 2d 213, 218 and n.3 (D. Conn. 2000) ("Plaintiff has been provided with all relevant materials, and, despite the understandable dismay at the delay, his case is therefore moot.").

<sup>28</sup> See n.15, supra.

<sup>29</sup> See 47 C.F.R. § 0.461(j) (applications for review of initial FOIA decisions must be filed within 30 days of the date of the written decision); Robin Hardin, FOIA Control No. 99-61, FCC 99-312 (1999); Michael C. Olson, 13 FCC Rcd 20593 (1998).

<sup>30</sup> See 47 C.F.R. § 0.555(e)(1) (permitting review of determinations denying individuals access to records pertaining to themselves without setting a time limit for such applications for review).

<sup>31</sup> See FOIA Decision; PA Decision; Lott Letter; Dec. 28 e-mail.

<sup>32</sup> See PA Decision at 2; Dec. 28 e-mail.

light of Mr. Hanson's description of the records he sought.<sup>33</sup> The Third Application for Review is therefore denied.

10. Mr. Hanson's Fourth Application for Review was filed June 24, 2001, and his Fifth Application for Review was filed August 12, 2001, both far more than 30 days after the FOIA Decision of October 19, 2000. They are both therefore dismissed as untimely as to the FOIA Decision.<sup>34</sup> Both the Fourth Application for Review and the Fifth Application for Review raise no new matters regarding the Privacy Act aspects of Mr. Hanson's PA/FOIA Request,<sup>35</sup> and are therefore denied for the same reasons expressed earlier.<sup>36</sup>

11. Accordingly, IT IS ORDERED that Mr. Hanson's First and Second Applications for Review are DISMISSED AS MOOT.

12. IT IS FURTHER ORDERED that Mr. Hanson's Third, Fourth, and Fifth Applications for Review ARE DISMISSED IN PART AS UNTIMELY AND OTHERWISE ARE DENIED. Mr. Hanson may seek review of this decision pursuant to 5 U.S.C. § 552(a)(4)(B).

13. The officials responsible for this action are the following Commissioners: Chairman Powell, Commissioners Tristani, Abernathy, Copps, and Martin.

FEDERAL COMMUNICATIONS COMMISSION

Magalie Roman Salas  
Secretary

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<sup>33</sup> See, e.g., Weisberg v. United States Dep't of Justice, 705 F.2d 1344, 1351 (D.C. Cir. 1983).

<sup>34</sup> See n.29, supra.

<sup>35</sup> As noted above, there is no deadline for filing for administrative review of a request for records under the Privacy Act, see n.30, supra, and therefore we do not dismiss these parts of the Fourth Application for Review and the Fifth Application for Review as untimely.

<sup>36</sup> The complaint in the Fourth Application for Review and the Fifth Application for Review concerning the timing of the processing of Mr. Hanson's PA/FOIA Request is discussed in paragraph 7, supra, and his complaint that he did not receive all the records requested is discussed in paragraph 9, supra.