



Federal Communications Commission
Washington, DC 20554

July 6, 2026

VIA ELECTRONIC MAIL

Conor S. Gaffney
Counsel
Protect Democracy Project
2020 Pennsylvania Ave. NW, Suite #163
Washington, DC 20006
FOIA@protectdemocracy.org

Re: FOIA Control No. 2026-000623

Mr. Gaffney:

This letter is an interim response to your Freedom of Information Act (FOIA) request (Request) to the Federal Communications Commission (Commission) in which you seek:

From November 13, 2025 until the date of search, all records referring to, concerning, or reflecting the Commission's news distortion policy or the Petition for Special Relief captioned "In the Matter of Repeal of the News Distortion Policy" and filed with the Federal Communications Commission (the "Commission") on November 13, 2025.¹

In addition, your Request seeks ". . . records describing the processing of this request, including records sufficient to identify search terms used and locations and custodians searched, and any tracking sheets used to track the processing of this request."²

On May 20, 2026, Commission staff contacted you to seek clarification or narrowing of your request.³ On June 5, 2026, you agreed to "exclude records of daily media digests unless those records have been forwarded, replied to, or otherwise are the basis or part of an additional communication."⁴

In this first interim production, we produce to you 447 pages of records responsive to your Request. Some material on the pages produced has been redacted for one or more of the reasons discussed below.

¹ Your request has been assigned FOIA Control No. 2026-000623 (submitted May 20, 2026).

² *Id.* The Request also states that "[i]f your agency uses FOIA questionnaires or certifications completed by individual custodians or components to determine whether they possess responsive materials or to describe how they conducted searches, we also request any such records prepared in connection with the processing of this request." The Commission does not use such questionnaires or certifications as part of its search process.

³ Email from Kristi Thompson, Office of the General Counsel, Federal Communications Commission, to Conor Gaffney, Counsel, Protect Democracy Project (sent May 20, 2026, 18:14 EDT).

⁴ Email from Conor Gaffney, Counsel, Protect Democracy Project, to Kristi Thompson, Office of the General Counsel, Federal Communications Commission (rec'd Jun. 5, 2026, 12:25 EDT).

Additionally, Commission staff identified 123 records that are withheld in full for one or more of the reasons discussed below.

Redaction and Withholding Under Exemption 5. Records responsive to your request were withheld or redacted under FOIA Exemption 5.⁵ Exemption 5 protects certain inter-agency and intra-agency records that are normally considered privileged in the civil discovery context.⁶

Exemption 5 encompasses a deliberative process privilege that generally covers “documents reflecting advisory opinions, recommendations and deliberations comprising part of a process by which governmental decisions and policies are formulated.”⁷ To fall within the scope of this privilege, the agency records must be both (i) predecisional, meaning generated before the adoption of the agency decision and (ii) deliberative, meaning it reflects the “give-and-take” of the decision-making process.⁸ As applied to the instant matter, email communications and attachments that included pre-decisional, deliberative communications between FCC employees were withheld or redacted pursuant to this exemption. Specifically, communications between subordinates and supervisors providing analysis and evaluating different options for agency action were redacted or withheld. Similarly, candid staff discussions weighing the merits of arguments and making recommendations were redacted or withheld. Such communications are inherently deliberative and pre-decisional in nature.

We have determined that disclosure of these records would cause specific reasonably foreseeable harms to the deliberative process and the quality of agency decisions, both of which Exemption 5 is intended to protect.⁹ Particularly, the release of the withheld or redacted records is likely to inhibit staff candor and frankness in providing advice or recommendations during deliberations; result in premature disclosure of proposals not yet adopted; and cause confusion regarding the ultimate rationale for agency decisions.

Exemption 5 also encompasses the attorney-client privilege. The attorney-client privilege covers “confidential communications between an attorney and [the attorney’s] client relating to a legal matter for which the client has sought professional advice.”¹⁰

The Commission identified and either redacted or withheld records that contained such confidential communications. Specifically, we redacted or withheld certain records that were sent by attorneys in the FCC’s Office of the General Counsel to other Commission staff in the context of answering requests for advice, providing legal analysis, or discussing work in active litigation matters. These records contained one or more aspects of professional advice, such as analysis of relevant case law precedents, assessment of litigation risks, development of litigation strategy, and/or assessing the soundness of legal arguments.

We have determined that it is reasonably foreseeable that disclosure would harm the attorney-client relationship, which Exemption 5 is intended to protect. Release of this information would foreseeably

⁵ 5 U.S.C. § 552(b)(5).

⁶ *See id.*

⁷ *NLRB v. Sears Roebuck & Co.*, 421 U.S. 132, 150 (1975).

⁸ *Id.* at 151-52; *Jud. Watch, Inc. v. FDA*, 449 F.3d 141, 151 (D.C. Cir. 2006); *Coastal States Gas Corp. v. Dep’t of Energy*, 617 F.2d 854, 867 (D.C. Cir. 1980).

⁹ *NLRB*, 421 U.S. at 151.

¹⁰ *Mead Data Cent., Inc. v. U.S. Dep’t Air Force*, 466 F.2d 242, 252 (D.C. Cir. 1977).

impair open and frank communication between the agency and its counsel in receiving or giving legal advice.

Finally, Exemption 5 also encompasses the attorney work product privilege. The privilege covers documents and memoranda prepared by an attorney in contemplation of litigation.¹¹ Specifically, we identified and withheld records that include attorney work product prepared in the course of still active litigation.

We have determined that it is reasonably foreseeable that disclosure would harm the adversarial court process, which Exemption 5 is intended to protect. Release of this information would foreseeably reveal attorney thought processes and/or undermine litigation strategy in ongoing matters.

Redaction Under Exemption 6. Records responsive to your request were redacted under FOIA Exemption 6.¹² Exemption 6 protects “personnel and medical files and similar files the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.”¹³ Specifically, material consisting of mobile phone numbers, non-public email addresses, and some material regarding personal obligations of FCC employees (in the context of scheduling or availability) has been redacted. Balancing the public’s right to disclosure against the individual’s right to privacy, we have determined that release of this information would constitute a clearly unwarranted invasion of personal privacy. We have determined that it is reasonably foreseeable that disclosure would harm the privacy interest of the persons mentioned in these records, which Exemption 6 is intended to protect.

Redaction and Withholding Under Exemption 7(A). Records responsive to your request were withheld or redacted under Exemption 7(A), which authorizes the withholding of “records or information compiled for law enforcement purposes [the production of which] . . . could reasonably be expected to interfere with enforcement proceedings.”¹⁴ Specifically, the records in question relate to one or more FCC enforcement investigations that have not yet been resolved. These records were specifically compiled for a law enforcement purpose, and the material relates to one or more law enforcement proceeding(s) that remain(s) pending. Because the law enforcement matter(s) to which the materials relate(s) have not yet been adjudicated, we reasonably expect that premature release of the information will cause harm to the ongoing enforcement proceeding(s). Accordingly, 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.

¹¹ See *Hickman v. Taylor*, 329 U.S. 495, 509-10 (1947); *Nat’l Ass’n of Crim. Def. Laws. v. Dep’t of Just. Exec. Off. for United States Att’ys*, 844 F.3d 246, 250-51 (D.C. Cir. 2016); Fed. R. Civ. P. 26(b)(3).

¹² 5 U.S.C. § 552(b)(6).

¹³ *Id.*

¹⁴ 5 U.S.C. § 552(b)(7)(A).

* * *

Commission staff are continuing to process and review records potentially responsive to the Request and will supplement this initial interim response, as appropriate. If you have any questions or would like to discuss this matter further, please contact the undersigned at kristi.thompson@fcc.gov.

Sincerely,

Kristi Thompson

Digitally signed by Kristi
Thompson
Date: 2026.07.06 18:16:31 -04'00'

Kristi Thompson
Attorney Advisor
Office of the General Counsel

Enclosure(s)

cc: FCC FOIA Office