



Federal Communications Commission
Washington, DC 20554

August 21, 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. 2026-000624

Mr. Gaffney:

This letter further responds to your Freedom of Information Act (FOIA) request (Request) to the Federal Communications Commission (Commission) for:

1) From April 20, 2026 until the date of search, all records that contain one or more of the following words or phrases (case insensitive):

- a) Disney
- b) ABC
- c) Kimmel
- d) "Expectant widow"
- e) "First lady"

2) From April 20, 2026 until the date of search, all records that reference or pertain to the April 23, 2026 monologue delivered by Jimmy Kimmel on Jimmy Kimmel Live!

3) From April 27, 2026 until the date of search, all records referring to an April 27, 2026 social media post by First Lady Melania Trump concerning Jimmy Kimmel, or an April 27, 2026 social media post by President Donald Trump concerning Jimmy Kimmel.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

¹ Your request has been assigned FOIA Control No. 2026-000624 (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

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 addition, you agreed to “substitute the following search terms for the original search term ‘ABC’ in [the Request]:

- “ABC network”
- “ABC programming”
- “ABC news”
- “ABC license”
- “KFSN”
- “KABC”
- “KGO”
- “WLS”
- “WABC”
- “WTVD”
- “WPVI”
- “KTRK”⁵

On July 6, 2026, we provided an initial production to your request, producing 1,186 pages of records.⁶ On July 20, 2026, we provided a second interim production to your request, producing an additional 773 pages of records.⁷ In this third and final production, we produce to you 426 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. Additionally, Commission staff identified 606 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 5.⁸ Exemption 5 protects certain inter-agency and intra-agency records that are normally considered privileged in the civil discovery context.⁹

Exemption 5 encompasses a deliberative process privilege that generally covers “documents reflecting advisory opinions, recommendations and deliberations comprising part of a process by which

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 (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 (Jun. 5, 2026, 12:25 EDT).

⁵ *Id.*

⁶ Letter from Kristi Thompson, Office of the General Counsel, Federal Communications Commission, to Conor Gaffney, Counsel, Protect Democracy Project (Jul. 6, 2026).

⁷ Letter from Irene Ly, Office of the General Counsel, Federal Communications Commission, to Conor Gaffney, Counsel, Protect Democracy Project (Jul. 20, 2026).

⁸ 5 U.S.C. § 552(b)(5).

⁹ *See id.*

governmental decisions and policies are formulated.”¹⁰ 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.¹¹ 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 the deliberative process privilege. 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.¹² 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.”¹³

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 active litigation matters. These records contained one or more aspects of professional advice such as analysis of relevant case law, the development of litigation strategy, and/or the assessment of the 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 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.¹⁴ Specifically, we identified, and withheld, records that include attorney work product prepared in the course of still active or anticipated litigation.

¹⁰ *NLRB v. Sears Roebuck & Co.*, 421 U.S. 132, 150 (1975).

¹¹ *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).

¹² *NLRB*, 421 U.S. at 151.

¹³ *Mead Data Cent., Inc. v. U.S. Dep’t Air Force*, 466 F.2d 242, 252 (D.C. Cir. 1977).

¹⁴ *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).

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, which protects “personnel and medical files and similar files the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.”¹⁵ Specifically, material consisting of mobile phone numbers, non-public email addresses, personal email addresses of members of the public, and some material regarding personal obligations of FCC employees (in the context of scheduling or availability) has been redacted. 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. 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.

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.”¹⁶ 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.

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.¹⁷ 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.¹⁸

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.”¹⁹ For such requesters, the Commission assesses charges to recover the cost of reproducing the records requested, excluding the cost of reproducing the first 100 pages. The production in response to your request did not meet these thresholds. Therefore, you will not be charged any fees.

¹⁵ 5 U.S.C. § 552(b)(6).

¹⁶ 5 U.S.C. § 552(b)(7)(A).

¹⁷ See 5 U.S.C. § 552(a)(4)(A); 47 CFR § 0.470.

¹⁸ 47 CFR § 0.470.

¹⁹ 47 CFR § 0.466(a)(5)-(7).

You have requested a fee waiver pursuant to section 0.470(e) of the Commission's rules.²⁰ Because you are not required to pay any fees in relation to your FOIA request, the Office of the General Counsel, which reviews such requests, does not make a determination on your request for a fee waiver.²¹

You may seek review of this determination by filing an application for review with the Office of General Counsel within 90 calendar days of the date of this letter.²² Your appeal must articulate specific grounds for review, identify factors warranting further consideration of the issue presented, and specify the relief being sought.²³

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 and Program Management
45 L Street NE, Washington, DC 20554
202-418-1379
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 is:

Office of Government Information Services
National Archives and Records Administration
8601 Adelphi Road—OGIS
College Park, MD 20740-6001
202-741-5770

²⁰ 47 CFR § 0.470(e).

²¹ 47 CFR § 0.470(e)(5).

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

²³ See 47 CFR §§ 0.251(j) (applications for review may be dismissed for failure to articulate specific grounds for review), 1.115(b) (an application for review must specify with particularity the questions presented for review and specify the factor(s) (from an enumerated list) warranting Commission consideration of the questions).

877-684-6448

ogis@nara.gov

<https://www.archives.gov/ogis>

Sincerely,

Irene Ly
Attorney Advisor
Office of the General Counsel

Enclosure(s)

cc: FCC FOIA Office