



Federal Communications Commission
Washington, D.C. 20554

May 6, 2010

Fred Lucas
CNSNews.com
325 S. Patrick Street
Alexandria, VA 22314

Re: FOIA Control No. 2010-343

Dear Mr. Lucas:

This responds to your Freedom of Information Act (FOIA) request filed March 25, 2010, seeking records of communications “generated by for [sic] or sent to or from FCC Chairman Julius Genachowski referring to or relating to 1. Localism or local ownership rules 2. Rush Limbaugh 3. Glenn Beck 4. Sean Hannity 5. Mark Levin 6. Michael Savage 7. Laura Ingraham.”¹ You clarified the scope of your request in a telephone call with Laurence Schecker on or about April 9, 2010, indicating you sought “communications directly to or from the Chairman mentioning or discussing Rush Limbaugh, Sean Hannity, Glenn Beck, Laura Ingraham, Mark Levin, Michael Savage, or ‘media ownership’.” The time for responding to your FOIA request was extended to May 6, 2010.

No records of correspondence responsive to your request were located as a result of a search of the records of the Chairman’s office. We note that correspondence to the Chairman concerning media ownership from members of Congress is assigned to the Office of Legislative Affairs, and responses are sent from that office. We did not interpret your request as including such congressional correspondence. You may view congressional correspondence on our website at <<http://www.fcc.gov/ola/>>.

We did locate internal briefing materials for the Chairman concerning “media ownership” that we are withholding in their entirety pursuant to FOIA Exemption 5, 5 U.S.C. § 552(b)(5).² FOIA Exemption 5 permits the withholding of materials in order to encourage open, frank discussions on matters of policy between subordinates and superiors.³ Documents commonly encompassed by the deliberative process privilege include recommendations that, if released, would likely “stifle honest and frank communication within the agency.”⁴ To fall under the protection of Exemption 5, a document must be predecisional and must be a direct part of the deliberative process.⁵ The briefing papers meet both these criteria.⁶ We have also reviewed the

¹ This FOIA request is similar to your request in FOIA Control No. 2010-159 (see letter from Michael S. Perko, Chief, Office of Communications and Industry Information, Media Bureau (Feb. 12, 2010)).

² See *Rob Evans*, 17 FCC Rcd 15146 (2005).

³ E.g., *Coastal States Gas Corp. v. Department of Energy*, 617 F.2d 854, 866 (D.C. Cir. 1980).

⁴ *Id.*

⁵ *Id.* at 868.

Mr. Fred Lucas

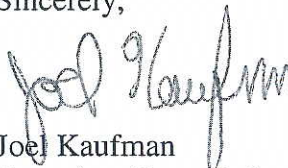
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records to determine if any segregable portions can be released.⁷ We have also reviewed the records to determine if they may be released as a matter of our discretion, in light of our responsibility to withhold only those parts of records that would result in foreseeable harm to an interest protected by FOIA Exemption 5.⁸ We have determined there are no portions of the records that may be segregated and released, or released as a matter of our discretion.

As a representative of the news media, you are not charged for search and review time, and receive 100 pages without being charged for copying costs. 47 C.F.R. § 0.470(a)(2). No fees will be assessed for processing this request.

If you consider this to be a denial of your FOIA request, you may seek review of this decision by filing an application for review with the Office of General Counsel within 30 days of the date of this letter. *See* 47 C.F.R. § 0.461(j).

Sincerely,



Joel Kaufman
Associate General Counsel and
Chief, Administrative Law Division

cc: FOIA Officer

⁶ *E.g., Access Reports v. Department of Justice*, 926 F.2d 1192, 1196-97 (D.C. Cir. 1996); *Hunt v. United States Marine Corps.*, 935 F. Supp. 46, 52 (D.D.C. 1996).

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

⁸ *See Memorandum to Heads of Executive Departments and Agencies, Freedom of Information Act*, 74 FR 4683 (2009) (President Obama's memorandum concerning the FOIA); *The Freedom of Information Act (FOIA)*, available at <<http://www.usdoj.gov/ag/foia-memo-march2009.pdf>> (Attorney General Holder's FOIA Memo).