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Description of document:	Federal Communications Commission (FCC) Meeting minutes of the Data Governance Board, 2020-2021
Requested date:	2021
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Posted date:	11-July-2022
Source of document:	Freedom of Information Act Request Federal Communications Commission 45 L Street NE Washington, D.C. 20554 FOIAonline

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Federal Communications Commission
Washington, D.C. 20554

September 7, 2021

VIA ELECTRONIC MAIL

Re: FOIA Control No. 2021-000610

This letter responds to your Freedom of Information Act (FOIA) request seeking the meeting minutes and meeting agendas of the FCC Data Governance Board (Board) during calendar years 2020 and 2021. Your request has been assigned FOIA Control No. 2021-000610.

The Office of Economics and Analytics searched for responsive records. We located and are electronically producing one pdf of the meeting minutes and agendas, subject to the materials we are redacting for the reasons discussed below.

Records responsive to your request were redacted under FOIA Exemption 5.¹ Exemption 5 protects certain inter-agency and intra-agency records that are normally considered privileged in the civil discovery context.

Exemption 5 encompasses a deliberative process privilege intended to “prevent injury to the quality of agency decisions.”² To fall within the scope of this privilege the agency records must be both predecisional and deliberative.³ Predecisional records must have been “prepared in order to assist an agency decision maker in arriving at his decision.”⁴ Deliberative records must be such that their disclosure “would expose an agency’s decisionmaking process in such a way as to

¹ 5 U.S.C. § 552(b)(5).

² *NLRB v. Sears Roebuck & Co.*, 421 U.S. 132, 151 (1975).

³ *Id.* at 151-52.

⁴ *Formaldehyde Inst. v. Dep’t of Health and Human Servs.*, 889 F.2d 1118, 1122 (D.C. Cir. 1989); *see also Coastal States Gas Corp. v. Dep’t of Energy*, 617 F.2d 854, 866 (D.C. Cir. 1980) (“In deciding whether a document should be protected by the privilege we look to whether the document is . . . generated before the adoption of an agency policy and whether . . . it reflects the give-and-take of the consultative process. The exemption thus covers recommendations, draft documents, proposals, suggestions, and other subjective documents . . .”).

discourage candid discussion within the agency and thereby undermine the agency's ability to perform its functions.”⁵

Your request asks for the minutes of the Board meetings. Your request thus encompasses records that are both predecisional – i.e., the topics/issues discussed prior to votes of the Board and/or policy determinations of the Board – and deliberative – i.e., those issues that were intended to be resolved so that they would inform such votes or policy determinations. We have determined that release of the redacted material would impair the ability of Commission staff to deliberate freely, thereby undermining the Commission's deliberative process.

The FOIA requires that “any reasonably segregable portion of a record” must be released after appropriate application of the Act's exemptions.⁶ The statutory standard requires the release of any portion of a record that is nonexempt and that is “reasonably segregable” from the exempt portion. However, when nonexempt information is “inextricably intertwined” with exempt information, reasonable segregation is not possible.⁷ The redactions made are consistent with our responsibility to determine if any segregable portions can be released. To the extent non-exempt material is not released, it is inextricably intertwined with exempt material.

We also reviewed the withheld records to determine if discretionary release is appropriate.⁸ Because of the reasonably foreseeable harm to the agency decision-making process, we decline to make a discretionary release in this instance. Accordingly, we do not believe exercising our authority under section 0.461(f)(4) to be appropriate under these circumstances.

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.⁹ 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.¹⁰

Pursuant to section 0.466(a)(8) of the Commission's rules, you have been classified for fee purposes under category (3) as an “all other requester.”¹¹ As an “all other requester,” the Commission assesses charges to recover the full, reasonable direct cost of searching for and reproducing records that are responsive to the request; however, you are entitled to be furnished

⁵ *Formaldehyde Inst.*, 889 F.2d at 1122 (quoting *Dudman Commc'ns Corp. v. Dep't of the Air Force*, 815 F.2d 1565, 1568 (D.C. Cir. 1987)).

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

⁷ *Mead Data Cent. Inc. v. Dep't of the Air Force*, 566 F.2d 242, 260 (D.C. Cir. 1977).

⁸ See President's Memorandum for the Heads of Executive Departments and Agencies, Freedom of Information Act, 74 Fed. Reg. 4683 (2009).

⁹ See 5 U.S.C. § 552(a)(4)(A); 47 CFR § 0.470.

¹⁰ 47 CFR § 0.470.

¹¹ 47 CFR § 0.466(a)(8).

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with the first 100 pages of reproduction and the first two hours of search time without charge under section 0.470(a)(3)(i) of the Commission's rules.¹² The production in response to your request required less than two hours of search time, and was provided in electronic form. Therefore, you will not be charged any fees.

If you consider this to be a denial of your FOIA request, you may seek review by filing an application for review with the Office of General Counsel. An application for review must be *received* by the Commission within 90 calendar days of the date of this letter.¹³ You may file an application for review by mailing the application to Federal Communications Commission, Office of General Counsel, 45 L Street NE, Washington, DC 20554, or you may file your application for review electronically by e-mailing it to FOIA-Appeal@fcc.gov. Please caption the envelope (or subject line, if via e-mail) and the application itself as "Review of Freedom of Information Action."

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 Evaluation and Records Management
45 L Street NE, Washington, DC 20554
202-418-0440
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
877-684-6448
ogis@nara.gov
<https://www.archives.gov/ogis>

¹² 47 CFR § 0.470(a)(3)(i).

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

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Sincerely,

A handwritten signature in blue ink, appearing to read "ER Kazan", with a long horizontal flourish extending to the right.

E. Rachel Kazan
Chief of Staff
Office of Economics and Analytics

cc: FCC FOIA Office

FCC Data Governance Council
Monthly Meeting Minutes

January, 2020

- **Participants:** No meeting was held. Email was circulated among OCH (Preston Wise), Acting CDO (Steve Rosenberg), CIO (Francisco Salguero), Acting DCDO (Anne Levine), proposing the DGC Charter.
[REDACTED]
- **Agenda:** Establishing the FCC Data Governance Council
- **Votes:** Charter voted by email – approved by unanimous vote

Friday, July 24, 2020

- **Participants:** OCH (Preston Wise), Acting CDO (Steve Rosenberg), CIO (Francisco Salguero), Acting DCDO (Anne Levine)
- **Agenda:**
- **Discussion:**

[REDACTED]

- **Votes:** No votes were taken

❖ **Post-meeting:** [REDACTED]

Friday, August 21, 2020

- **Participants:** OCH (Preston Wise), Acting CDO (Steve Rosenberg), CIO (Francisco Salguero), Acting DCDO (Anne Levine)
- **Agenda:**
- **Discussion:**

[REDACTED]

- **Votes:** No votes were taken

❖ **Note: Friday, August 28, 2020**

- Acting *CDO* Steve Rosenberg named permanent Chief Data and Analytics Officer (CDAO). Acting Deputy CDO Anne Levine named permanent Deputy CDO (DCDO), Chelsea Fallon named Chief, Data Division.

Friday, September 18, 2020

- **Participants:** OCH (Preston Wise), CDAO (Steve Rosenberg), CIO (Francisco Salguero), DCDO (Anne Levine)
- **Agenda:**
- **Discussion:**

[REDACTED]

- **Votes:** No votes were taken

Friday, October 16, 2020

- **Participants:** OCH (Preston Wise), CDAO (Steve Rosenberg), CIO (Francisco Salguero), DCDO (Anne Levine)
- **Agenda:**
- **Discussion:**

[REDACTED]

- **Votes:** No votes were taken

Friday, November 20, 2020

- **Participants:** OCH (Preston Wise), CDAO (Steve Rosenberg), CIO (Francisco Salguero), DCDO (Anne Levine)
- **Agenda:**
- **Discussion:**

[REDACTED]

[REDACTED]

- **Votes:** No votes were taken.

December, 2020

- **No meeting was held in December**

Friday, January 15, 2021

- **Participants:** OCH (Preston Wise), CDAO (Steve Rosenberg), CIO (Francisco Salguero), DCDO (Anne Levine)
- **Agenda:** There was no set agenda for this meeting
- **Discussion:**

[REDACTED]

- **Votes:** No votes were taken.

Format:

- **Participants:** OCH, Acting CDO, CIO, DCDO
- **Agenda:**
- **Discussion:**
- **Votes:**