

HHS must use its radiation-safety authority

Public Law 90-602, health-based performance standards, and testing phones as people use them

Prepared for the HHS public-comment record • Docket HHS-OASH-2026-0397
October 21, 2026

HHS should immediately exercise its existing authority to establish health-protective performance standards for wireless radiation-emitting products. The record warrants action on both the exposure limits and the conditions under which products are tested.

Public Law 90-602, the Radiation Control for Health and Safety Act of 1968, established a federal program to protect the public from electronic product radiation. Its operative provisions now appear in the Federal Food, Drug, and Cosmetic Act. The definition expressly includes non-ionizing electromagnetic radiation. Wireless products therefore fall within the subject matter of this radiation-control authority. [1, 2]

Congress assigned HHS an active responsibility

Under 21 U.S.C. § 360ii, the Secretary must maintain the radiation-control program, develop and administer performance standards, support research to minimize unnecessary emissions and exposure, study actual exposure conditions, and evaluate exposure-reduction techniques. These are continuing duties. FDA administers this electronic product radiation-control framework within HHS. [2, 4]

Under § 360kk, the Secretary must prescribe performance standards by regulation when the Secretary determines that they are necessary to protect public health and safety. The statute directs consideration of the latest scientific and medical information, feasibility, and reliable testing. Standards can specify testing, measurement, warnings, and operating instructions. [3]

HHS should make that necessity determination now. The cancer and reproductive risk analyses, the FCC's own closer-distance measurements, and Europe's move to contact testing provide a concrete basis for a rulemaking record. HHS should publish its health assessment and proposed protections rather than treat existing certification as the endpoint of its responsibility.

The gap in health protection

The large numerical comparisons address different health endpoints and exposure metrics. Keeping their denominators explicit makes the case stronger and gives HHS calculations it can reproduce.

Ronald Melnick and Joel Moskowitz's 2026 analysis applies established risk-assessment methods to experimental animal evidence. Its cancer calculations use benchmark-dose modeling and linear extrapolation to one excess cancer per 100,000; its reproductive calculations use protective uncertainty factors. The authors apply EPA and related health-agency methods to derive the estimates below. [5, 6]

Comparison	Endpoint and basis	Exposure metric
Up to about 900×	Cancer. Reported range: 15 to more than 900 across 1-8 hours/day.	Current 0.08 W/kg whole-body SAR divided by modeled cancer-risk levels. [5]
Up to 24×	Male reproductive protection. Derived levels: 3.3-10 mW/kg; ratio 8-24.	Current 80 mW/kg whole-body SAR divided by those levels. [5]
About 4,200×	Cancer addendum. Ramazzini-based estimate: 0.238 μW/cm² at 19 hours/day.	FCC 1,000 μW/cm² at the study frequency divided by 0.238. [5]
About 2,400×	Separate 2010 Seletun panel recommendation: 0.000033 W/kg.	$0.08 \div 0.000033 = 2,424$, rounded. This is a panel recommendation. [7]

The 4,200-fold figure is the power-density addendum to Melnick and Moskowitz. The 2,400-fold figure comes from Seletun. They are distinct comparisons. [5, 7]

Require a health-based answer from HHS

A protective standard needs a stated health objective and a transparent derivation. HHS should publish the cancer-risk target it selects, its treatment of reproductive toxicity, the exposure durations it assumes, and the factors used to protect sensitive people. It should show how the resulting limits address the evidence and explain every material departure from established risk-assessment methods.

Whole-body SAR, localized SAR, and incident power density describe different quantities. The comparisons above cannot be substituted into one another or multiplied together. The FCC's 1.6 W/kg one-gram localized limit belongs to the phone-testing question on the next page. Its separate whole-body limit is 0.08 W/kg. [8]

The FCC already measured the gap

The FCC's own records show why test distance belongs at the center of reform. In 2019, its laboratory tested phones at 5 mm and also conducted measurements at 2 mm. Its September 29, 2023 FOIA response acknowledged the closer-distance exceedances. [9, 10]

“We observed that at a 2 mm separation distance, the FCC RF exposure limits were exceeded”

FCC Office of Engineering and Technology, September 29, 2023, letter page 2; FOIA Nos. 2023-000281 and 2023-000325. The complete four-page letter follows this brief. [9]

Record	What it establishes
2019 measurements	The released 2 mm table includes a highest measured value of 5.200 W/kg . [9]
Applicable comparison	The FCC general-population localized limit is 1.6 W/kg averaged over 1 gram . $5.2 \div 1.6 = 3.25$ times the limit . [8, 9]
FCC's procedural position	FCC maintained compliance at 5 mm and treated the 2 mm comparison as outside its prescribed testing practice. [9]

That procedural distinction exposes the central policy problem. A device can satisfy a certification protocol at a specified gap while producing a higher measured SAR at a smaller gap. A public-health standard must evaluate foreseeable exposure conditions, including contact with the body. The body does not preserve a laboratory separation distance because a manual specifies one.

These records document a measurement and a regulatory choice. They justify requiring contact testing, public disclosure of test conditions, and a fresh assessment of the underlying limits. HHS should obtain the complete test data and require a contemporary market-surveillance program covering devices actually in use.

Make the test condition visible

Every reported SAR value should identify the separation distance, tissue-averaging mass, transmitting bands, operating configuration, software version, and whether simultaneous transmitters were evaluated. A single number without those conditions does not tell a consumer how the phone was tested.

Europe moves to body-contact testing

The European change makes realistic body proximity an immediate standards issue. CENELEC amendment EN 50566:2017/A2:2025 changes the relevant body-worn, body-supported, and garment-integrated evaluation distance from 5 mm to **0 mm**. The European Commission has now cited that amended standard in its harmonized-standards framework. [11, 12]

Date	Regulatory development
October 2025	EN 50566:2017/A2:2025 was published, revising the body-proximity testing provision. [11]
September 4, 2026	The Commission adopted Implementing Decision (EU) 2026/2003. [12]
September 7, 2026	Publication in the Official Journal brought the decision into force and added the amended reference. [12]
March 7, 2028	The decision withdraws the older reference through the delayed application of Annex point (1). [12]

The new harmonized route is adopted; the older reference remains available during the transition. Harmonized standards provide a presumption of conformity under European product law. The transition date concerns that legal reference and should be stated accurately when describing Europe's change. [12]

A phone should be tested where people carry it

Phones are carried in pockets, held against the body, and used while charging, streaming, navigating, or maintaining network connections. HHS should require testing that represents foreseeable use and the configurations that produce the highest relevant exposure. Product safety should be engineered into those conditions.

The EU change establishes a practical direction for U.S. reform: body-contact evaluation should be a baseline requirement. HHS should coordinate with the FCC to align product standards and equipment authorization around that requirement. The European transition should accelerate the American review, not become a reason to postpone it.

Contact testing and protective limits belong together

A better test geometry answers where exposure is measured. A health-based limit answers what exposure is acceptable. HHS must address both questions in the same public-health program. Updating one while leaving the other unexamined would leave the core task unfinished.

What HHS standards should require

HHS should open a rulemaking with a defined scope, public evidence record, independent technical review, and enforceable manufacturer obligations. The following requirements should guide that work.

1. Derive limits from health outcomes

Evaluate cancer, reproductive toxicity, development, and chronic exposure using explicit risk-assessment methods. Publish model inputs, benchmark responses, uncertainty factors, exposure-duration assumptions, and sensitivity analyses. Address pregnancy, childhood, and differences in susceptibility. Require a scientific explanation of how each proposed limit protects those populations.

2. Require body-contact testing and realistic operation

Test at 0 mm for foreseeable contact use, across relevant device surfaces, bands, and simultaneous-transmission configurations. Include high-transmit-power conditions, proximity-sensor behavior, accessories, and software-controlled power management. Require reproducible test procedures and publish sufficient data for independent replication.

3. Make compliance durable and independently verifiable

Use independent laboratory testing and retail market surveillance, with public results linked to device identifiers. Require reassessment after changes that materially affect emissions or exposure controls. Establish corrective-action procedures for products that fail the applicable standard. Section 360kk expressly addresses testing programs and manufacturer certification. [3]

4. Measure the signal and investigate biological fidelity

Record modulation, pulse timing, duty cycle, peaks, and averaging windows alongside SAR or power density. Fund matched-energy comparisons that vary waveform structure and examine calcium timing, mitochondrial function, redox regulation, and recovery after challenge. This directly tests the biological-fidelity framework advanced in RF Safe's comments and supplies evidence for additional performance criteria.

5. Reduce unnecessary exposure through design

Evaluate practical emission-reduction techniques and support accessible wired and optical connectivity. Require clear disclosure of how radio functions can be disabled and how non-RF connections can be used. Public Law 90-602's exposure-reduction mission provides a foundation for this work. [2]

Build protection into the product and its operating conditions. The performance standard must carry the primary burden of protection. [3]

A public timetable for HHS action

HHS should announce an affirmative determination that wireless-product performance standards are necessary, explain the evidence supporting that determination, and begin the statutory rulemaking process. The Department should use the authority Congress already supplied.

Requested milestone	Public deliverable
Within 90 days	Publish a work plan, responsible HHS/FDA officials, an evidence docket, and an interagency testing and risk-assessment schedule.
Within 180 days	Release a technical assessment of the cited risk calculations and a proposed body-contact testing protocol; begin independent retail-device testing.
Within one year	Publish proposed performance standards with health-based limits, testing requirements, disclosure provisions, and compliance obligations.

These are requested policy milestones. Section 360kk supplies the legal process: public rulemaking, consultation with the Technical Electronic Product Radiation Safety Standards Committee, and a generally one-to-two-year period between issuance and effectiveness, unless the Secretary publishes good cause for a different period. [3]

Coordination must produce a decision

The Act preserves other agencies' functions and expressly calls for federal coordination. HHS should lead the health assessment and product-radiation program, seek EPA's risk-assessment expertise, and coordinate implementation with the FCC. Existing FCC functions do not eliminate HHS's independent statutory responsibilities. [1-3]

HHS should answer three questions in a public record: What level of protection is the government selecting? Does that level address cancer, reproductive, developmental, and chronic-exposure evidence? Do the required tests represent the way the public actually uses the product?

The numerical risk analyses demand a health-based response. The FCC's closer-distance measurements demand realistic testing. Europe's amendment demonstrates that standards can change. Public Law 90-602 gives HHS the framework to act.

HHS should use that authority now: establish protective limits, require contact testing, publish the evidence, and make compliance meaningful for the person carrying the phone.

Sources and supporting records

Numbered references support the factual statements above. The policy demands and proposed timetable are the recommendations of this brief. Sources checked October 21, 2026.

[1] 21 U.S.C. § 360hh. Definitions and statutory history; non-ionizing electromagnetic radiation and Public Law 90-602.

<https://www.law.cornell.edu/uscode/text/21/360hh>

[2] 21 U.S.C. § 360ii. Radiation-control program, performance standards, research, exposure assessment, reduction techniques, and agency coordination.

<https://www.law.cornell.edu/uscode/text/21/360ii>

[3] 21 U.S.C. § 360kk. Performance standards, necessity determination, rulemaking, effective dates, advisory committee, testing, and certification.

<https://www.law.cornell.edu/uscode/text/21/360kk>

[4] FDA. Electronic product radiation-control training materials; program scope includes cell phones and wireless devices.

<https://www.fda.gov/media/88417/download>

[5] Melnick RL, Moskowitz JM. Exposure limits to radiofrequency EMF do not account for cancer risk or reproductive toxicity assessed from data in experimental animals. *Environmental Health* 25, 42 (2026). Includes the power-density addendum.

<https://doi.org/10.1186/s12940-026-01288-6>

[6] U.S. EPA. Benchmark Dose Technical Guidance, EPA/100/R-12/001 (2012); and Guidelines for Carcinogen Risk Assessment, EPA/630/P-03/001F (2005).

<https://www.epa.gov/risk/benchmark-dose-technical-guidance>

[7] Fragopoulou A et al. Scientific panel on electromagnetic field health risks: consensus points, recommendations, and rationales. *Reviews on Environmental Health* 25(4), 307-317 (2010). Seletun whole-body SAR recommendation; author-hosted full text.

[Read the source document](#)

[8] 47 C.F.R. § 1.1310. FCC general-population whole-body SAR, localized one-gram SAR, and power-density limits.

<https://www.law.cornell.edu/cfr/text/47/1.1310>

[9] FCC OET. September 29, 2023 letter to Theodora Scarato, FOIA Control Nos. 2023-000281 and 2023-000325, with released 2019 two-millimeter SAR table. Reproduced in the appendix from the records included with John Coates's HHS comment. Public archive:

[Read the source document](#)

[10] FCC Laboratory. Report on tests following the Chicago Tribune cellphone SAR investigation (December 10, 2019). The public compliance report and the later FOIA records should be read together.

<https://docs.fcc.gov/public/attachments/DOC-361473A1.pdf>

[11] CENELEC. EN 50566:2017/A2:2025, amendment to the product standard for hand-held and body-mounted devices in close proximity to the body. Published October 2025. Standard listing, amendment description, and preview:

[Read the source document](#)

[12] European Commission. Implementing Decision (EU) 2026/2003, September 4, 2026; Official Journal September 7, 2026. Article 3 and Annex points (1)-(2): revised EN 50566 reference and March 7, 2028 withdrawal of the old reference.

https://eur-lex.europa.eu/eli/dec_impl/2026/2003/oj/eng

EPA cancer-guidelines text: https://www3.epa.gov/airtoxics/cancer_guidelines_final_3-25-05.pdf

Appendix. The following five pages reproduce the released SAR table and the complete four-page FCC response. Original redactions and source annotations are retained. The original table's confidentiality marking predates its public release under FOIA.

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***NOTE: THE FOLLOWING RESULTS ARE FROM SAR TESTS AT A SEPARATION DISTANCE NOT IN ACCORDANCE WITH FCC GUIDANCE**

FCC ID	Manufacturer	Description	Sample Type	SAR Configuration	FCC Lab Measured SAR Value (W/kg)	Serial Number
BCG-E3091A	Apple	iPhone 7 Portable Handset	Provided by Manufacturer	WCDMA Band 4, RMC, 12.2 kbps, Ch 1513, Body, Bottom, 2 mm	1.440	C6K6HD69HG7N
BCG-E3161A	Apple	iPhone X Portable Handset	Provided by Manufacturer	WCDMA Band 2, RMC, 12.2 kbps, Ch 9262, Body, Bottom, 2 mm	1.350	C39VF007JH2Q
BCG-E3218A	Apple	iPhone XS Portable Handset	Purchased by FCC	GPRS 1900, GMSK, 2 Tx Slots, Ch 661, Body, Back, 2 mm	2.340	G0NZ50M7KPF8
A3LSMG960U	Samsung	Galaxy S9 Portable Handset	Provided by Manufacturer	GPRS 1900, GMSK, 2 Tx Slots, Ch 661, Body, Bottom, 2 mm	1.990	R38K6095MYL
A3LSMG960U	Samsung	Galaxy S9 Portable Handset	Purchased by FCC	CDMA BC1, RC3, TD50 32, Ch 600, Body, Back, 2 mm, Connect then Position	4.520	R3M706TT9A
A3LSMJ337A	Samsung	Galaxy J3 Portable Handset	Provided by Manufacturer	CDMA BC1, RC3, TD50 32, Ch 600, Body, Back, 2 mm, Position then Connect	4.380	No Data Yet
IHDT56XC4	Motorola	Moto e5 play Portable Handset	Provided by Manufacturer	CDMA BC1, RC3, TD50 32, Ch 600, Body, Back, 2 mm, Connect then Position	No Data Yet	No Data Yet
IHDT56XB1	Motorola	Moto g6 Play Portable Handset	Provided by Manufacturer	CDMA BC1, RC3, TD50 32, Ch 600, Body, Back, 2 mm, Position then Connect	5.200	RF8KA1J3X6E
IHDT56XB1	Motorola	Moto g6 Play Portable Handset	Purchased by FCC	WCDMA Band 4, RMC, 12.2 kbps, Ch 1312, Body, Back, 2 mm, Connect then Position	5.140	359524090350295
YHLBLUVIVOSMN	BLU	Vivo 5 Mini Portable Handset	Provided by Manufacturer	WCDMA Band 2, RMC, 12.2 kbps, Ch 9262, Body, Back, 2 mm, Position then Connect	1.390	351864090034178
YHLBLUVIVOSMN	BLU	Vivo 5 Mini Portable Handset	Purchased by FCC	WCDMA Band 5, RMC, 12.2 kbps, Ch 4132, Body, Front, 2 mm, Connect then Position	1.980	3518640900300620
				WCDMA Band 5, RMC, 12.2 kbps, Ch 4132, Body, Front, 2 mm, Position then Connect	1.080	1080021018057240
				WCDMA Band 5, RMC, 12.2 kbps, Ch 4132, Body, Front, 2 mm, Connect then Position	1.090	1080021018069900
				GPRS 850, GMSK, 4 Tx Slots, Ch 128, Body, Back, 2 mm	2.200	
				GPRS 850, GMSK, 4 Tx Slots, Ch 128, Body, Back, 2 mm	2.750	

SAR Test Data Released under FOIA by the FCC

Above is a screensave of the spreadsheet of measurements from FCC cell phone radiation SAR test data using a seperation distance of 2mm between the phone and body phantom.

Note: the FCC limit for body SAR is 1.6 W / kg.

FCC text is in red above the table.

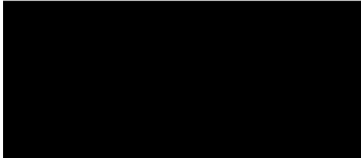


Federal Communications Commission
Washington, D.C. 20554

September 29, 2023

VIA ELECTRONIC MAIL

Theodora Scarato



RE: FOIA Control Nos. 2023-000281 and 2023-000325

Dear Ms. Scarato,

This letter responds to your Freedom of Information Act (FOIA) requests, FOIA Control No. 2023-000281 and FOIA Control No. 2023-000325. Your request FOIA Control No. 2023-000281 seeks “any and all SAR tests or documentation of SAR tests for any cellphones, including but not limited to the BLU phones, that the FCC tested to determine regulatory compliance for SAR. Please send all SAR Reports, as well as all documentation of the SAR test findings. Please also send the emails and attachments between FCC staff related to the findings of the SAR tests for cell phones. Any SAR tests done by the FCC related to cell phones on the US market January 2017 through April 2020.”¹ Your request FOIA 2023-000325 seeks “all SAR tests, the full reports, the measurements, any images and name of staff person doing tests and date done by [the Office of Engineering and Technology (OET)] (not the manufacturer) on cell phones in the year 2019.”²

As a general matter, you can find SAR testing records in the Equipment Authorization Database on our webpage at <https://apps.fcc.gov/oetcf/eas/reports/GenericSearch.cfm>. If you can identify the FCC ID numbers for the equipment you describe, you can look up the details of the grant. Enter the first three characters of the FCC ID Number as the grantee code and the rest including hyphens as the product code. You can also search by the manufacturer. Enter the manufacturer’s name in the Applicant Name field to populate the results.

Specific to your FOIA requests, OET and the Enforcement Bureau (EB) conducted a search and found 18 records responsive to your request. Many of these records relate to an article published by the *Chicago Tribune* on August 21, 2019, claiming several popular cell phones exceed the FCC’s guidelines for RF exposure. The *Chicago Tribune*, through an independent accredited lab, RF Exposure Lab, LLC, had tested devices manufactured by Apple, BLU Products, Motorola, and Samsung to arrive at the conclusion in the article. Because we take seriously any claims of non-compliance with RF exposure standards, the FCC tested the same device models at our Lab. The FCC’s tests confirm that all tested sample devices comply with the FCC’s strict RF exposure guidelines.

¹ FOIA Control No. 2023-000281 (submitted January 30, 2023).

² FOIA Control No. 2023-000325 (submitted February 8, 2023).

We did not have access to the actual phones tested by the test lab used by the *Chicago Tribune*. The FCC Lab, therefore, obtained the same makes and models of these phones (where available), both from suppliers and on the open market. We tested the devices manufactured by Apple, BLU Products, Motorola, and Samsung at a 5mm separation distance, consistent with our published guidance.³ These tests were conducted consistent with the FCC Lab normal practices and the RF exposure compliance report for each phone that is publicly available in the application for certification in the Equipment Authorization System. These devices all complied with the FCC limits for RF exposure, limits that have a significant safety margin. With this letter, we release the test results.

Separately, and only for purposes of comparison with the *Chicago Tribune* results, the FCC Lab tested the devices with a separation distance at which the *Chicago Tribune* tested its devices, i.e., at 2 mm separation distance. We observed that at a 2 mm separation distance, the FCC RF exposure limits were exceeded, and found that the *Chicago Tribune* results at the 2 mm separation distance were even higher than what we observed. With this letter, we release our 2 mm separation distance test results with the caveat that the 2 mm separation distance test results are inconsistent with FCC practice,⁴ and are misleading because they reflect extreme conditions. Notwithstanding the foregoing, given that the RF exposure limit includes a significant safety margin, none of the results suggest there is any RF safety issue with the devices tested.

We also stress that cell phones operate under the control of the wireless networks to which they are connected. We believe that the *Chicago Tribune* tests did not use the appropriate wireless network control codes to set the phone in the proper modes for operation for the U.S. This may have disabled the various sensors or caused the network simulator to not control the phone's transmitters properly for operation in the U.S.

With that explanation, in response to your FOIA requests, out of the 18 documents located, we are releasing 11 records in full with no redactions. We are withholding the remaining seven records in full under FOIA Exemption 5. Exemption 5 protects certain inter-agency and intra-agency records that are normally considered privileged in the civil discovery context.⁵ Exemption 5 encompasses a deliberative process privilege intended to "prevent injury to the quality of agency decisions."⁶ To fall within the scope of this privilege the agency records must be both pre-decisional and deliberative.⁷ Pre-decisional records must have been "prepared in order to assist an agency decision maker in arriving at his decision."⁸

³ KDB 447498 D01 General RF Exposure Guidance v06 specifies the 5 mm minimum test separation distance. https://apps.fcc.gov/kdb/GetAttachment.html?id=f8IQgJxTTL5y0oRi0cpAuA%3D%3D&desc=447498%20D01%20General%20RF%20Exposure%20Guidance%20v06&tracking_number=20676 at 11 ("Devices that are designed to operate on the body of users ... without requiring additional body-worn accessories must be tested for SAR compliance using a conservative minimum *test separation distance* $\leq$ 5 mm to support compliance" (emphasis in original); see also KDB 648474 D04 Handset SAR v01r03, at 3, https://apps.fcc.gov/kdb/GetAttachment.html?id=zCDu9bDcV8fcsumpj%2Bef3w%3D%3D&desc=648474%20D04%20Handset%20SAR%20v01r03&tracking_number=33853 (citing KDB 447498 D01 General RF Exposure Guidance v06).

⁴ See, e.g., KDB 447498 D01 General RF Exposure Guidance v06, *supra* note 3.

⁵ 5 U.S.C. § 552(b)(5).

⁶ *NLRB v. Sears Roebuck & Co.*, 421 U.S. 132, 151 (1975).

⁷ *Id.* at 151-52.

⁸ *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

Deliberative records must be such that their disclosure “would expose an agency’s decision-making process in such a way as to discourage candid discussion within the agency and thereby undermine the agency’s ability to perform its functions.”⁹

The records withheld under Exemption 5, constituting internal documents and emails, contain pre-decisional internal deliberations among Commission staff. These records include staff summaries, pre-decisional discussion of the merits of information provided by third parties, preliminary thoughts of agency staff regarding policy, and general discussion of internal staff questions and viewpoints. Particularly, the withheld records implicate sensitive matters that require particular candor in the advice given to decision makers, which would be discouraged by the public release of the advice. We have determined that it is reasonably foreseeable that disclosure would harm the Commission’s deliberative processes, which Exemption 5 is intended to protect. Release of this information would chill deliberations within the Commission and impede the candid exchange of ideas.

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.¹⁰ 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.¹¹

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.”¹² As an “educational requester, non-commercial scientific organization, or representative of the news media,” 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 involve more than 100 pages of duplication and is being 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.”

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 . . .”).

⁹ *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)).

¹⁰ See 5 U.S.C. § 552(a)(4)(A); 47 CFR § 0.470.

¹¹ 47 CFR § 0.470.

¹² 47 CFR § 0.466(a)(5)-(7).

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

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>

Sincerely,



Ronald T. Repasi
Chief
Office of Engineering & Technology

Attachments

cc: FOIA Office, EB