



**UNITED STATES PATENT AND TRADEMARK OFFICE**

---

OFFICE OF THE GENERAL COUNSEL

September 22, 2021

**VIA ELECTRONIC MAIL**

Mr. Richard Neifeld  
PTAAARMIGAN  
[ptaaarmigan@ptaaarmigan.org](mailto:ptaaarmigan@ptaaarmigan.org)

RE: *Freedom of Information Act Appeal No. A-21-00006 (Appeal of Request No. F-21-00169)*

Dear Mr. Neifeld:

This determination responds to your email to the United States Patent and Trademark Office (“USPTO” or “Agency”) received on August 25, 2021, appealing an effective denial of a fee waiver request in connection with your Freedom of Information Act (FOIA) Request No. F-21-00169. Your appeal has been docketed as FOIA Appeal No. A-21-00006.

FOIA Request and Response

Your initial request was dated July 12, 2021. In her correspondence of July 27, 2021, the FOIA Officer provided a more succinct statement of the request, to which you appear to accede in your appeal. Therefore, I understand the request to be for:

The following records insofar as they relate to the 2020 Fee Setting Rule (including its component DOCX rule):

1. Records sufficient to identify the individuals (either by title or by name) that were either required to, or actually did, sign off on the Notice of Proposed Rulemaking of July 31, 2019.
2. Please provide all communications with OMB or OIRA or SBA relating to the DOCX rule. This includes any communications in advance of the Notice of Proposed Rulemaking of July 31, 2019, and all communications relating to rulemaking RIN 0651-AD31 and Information Collection Control Numbers 0651-0031 and -0032.
3. Please provide all communications with OMB, OIRA, or SBA, relating to the DOCX rule that was prepared, submitted, and/or approved, and any guidance, instructions, policy memoranda, economic analyses, surveys, consideration of alternatives, information sought from the public, or other documents concerning legal, procedural, or economic justification for the claim developed in preparation for any submission to OMB, OIRA, or SBA, or any decision not to make such a submission. Please include

sufficient context to identify the date on which any document was submitted to OMB, OIRA, or SBA, and please provide all documents relating to assessment of burden on the public (as defined in 5 C.F.R. § 1320.J(b)(1)) of the DOCX rule.

In your initial request, you also requested a fee waiver.

On July 27, 2021, the Agency's FOIA Officer advised you that the estimated cost of processing your request was \$ 4,322.25. In that response, the FOIA Officer did not address your fee waiver request.

### Appeal

In your August 25, 2021, appeal, you assert that your request was received by the Agency on July 12, 2021, rather than July 15, 2021, as indicated by the FOIA Officer. You also contest what you understand to be a de facto denial of your request for a fee waiver. In addition, you assert for the first time that PTAAARMIGAN should be considered "news media" for fee category purposes.

### Remand

I agree with you that a fee waiver request was properly made in your initial request. I also agree that the FOIA Officer should have responded to that request in her response, and so that response is effectively a denial. Given that, I would prefer to provide you with a decision on your appeal. However, when discussing the existence and magnitude of a commercial interest, a key consideration when considering a fee waiver request, the USPTO's regulation requires: "Requesters shall be given an opportunity to provide explanatory information regarding this consideration." 37 C.F.R. § 102.11(k)(3)(i). That has not yet happened. Moreover, I believe this process will benefit from a more complete record.

Therefore, I am remanding your request for a fee waiver to the FOIA Officer for a determination. If the FOIA Officer concludes that the fee waiver should be denied, she will further issue a decision on your request that PTAAARMIGAN be categorized as news media.

I will also ask the FOIA Officer to address the following in her response: (1) whether July 12 or July 15, 2021, is the proper date of receipt; and (2) whether the fee estimate is correct in light of your assertions to the contrary in your appeal.

### Final Decision and Appeal Rights

I have neither granted nor denied your appeal, and you retain the right to appeal the response on remand from the FOIA Officer. Nonetheless, you are advised that you have the right to seek judicial review of this action as provided in 5 U.S.C. § 552(a)(4)(B). Judicial review is available in the United States District Court for the district in which you reside or have a principal place of business, the United States District Court for the Eastern District of Virginia, or the United States District Court for the District of Columbia.

Additionally, as part of the 2007 FOIA amendments, the Office of Government Information Services (OGIS) was created to offer mediation services to resolve disputes between FOIA requesters and Federal agencies as a non-exclusive alternative to litigation. Using OGIS services does not affect your right to pursue litigation. If you are requesting access to your own records (which is considered a Privacy Act request), you should know that OGIS does not have the authority to handle requests made under the Privacy Act of 1974. You may contact OGIS in any of the following ways:

Office of Government Information Services  
National Archives and Records Administration  
Room 2510  
8601 Adelphi Road  
College Park, MD 20740-6001  
E-mail: [ogis@nara.gov](mailto:ogis@nara.gov)  
Telephone: 301-837-1996  
Facsimile: 301-837-0348  
Toll-free: 1-877-684-6448

Sincerely,

---

Stacy Long  
Acting Deputy General Counsel for General Law  
Office of the General Counsel