Clete Otoshi - NOAA Federal

From:	Clete Otoshi - NOAA Federal
Sent:	Monday, August 27, 2018 11:01 AM
To:	Mark Graff - NOAA Federal
Subject:	Re: update request for FOIA # 2018-947
Attachments:	DOC-OS-2018-001100 Final Disposition.pdf

Hi Mark,

[redacted] *(b)(5)* [redacted].

Thanks,

Clete

On Mon, Aug 27, 2018 at 7:20 AM, Mark Graff - NOAA Federal <mark.graff@noaa.gov> wrote:

> Hi Clete,
>
> [redacted] *(b)(5)* [redacted]
>
> Mark H. Graff
> FOIA Officer/Bureau Chief Privacy Officer (BCPO)
> National Oceanic and Atmospheric Administration
> (301) 628-5658 (O)
> [redacted] *(b)(6)* (C)
>
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>
> On Fri, Aug 24, 2018 at 9:15 AM, Clete Otoshi - NOAA Federal <clete.otoshi@noaa.gov> wrote:
>
>> Mark,
>>
>> [redacted] *(b)(5)* [redacted]
>>
>> Clete
>
> On Mon, Jul 2, 2018 at 1:07 PM, Mark Graff - NOAA Federal <mark.graff@noaa.gov> wrote:
>
>> Hello Ms. Templeton,

Although I agree the DOC/GC was delayed in responding to your appeal, it appears as though you are conflating the statutory timeliness of the response to your request in general--which remains tolled at 9 days--with the regulatory appellate authority's timeframe for a response under 15 CFR 4.10(e).

While DOC was adjudicating your appeal, your request remained, and continues to remain, tolled pending your response to NOAA's fee estimate. At any time during the appeal process you initiated, you still have the ability to narrow the scope of your request, or pay the fee estimate issued. Absent either of those actions, pursuant to 15 CFR 4.11(e)(2), NOAA has no discretion, and is not allowed to work on your request pending resolution of the fee estimate issued. For an overview of fee-related tolling, please see the DOJ/OIP Guidance here: https://www.justice.gov/oip/blog/foia-post-2008-oip-guidance-new-limitations-tolling-foias-response-time.

Hopefully this clarifies the issue for you, and we can discuss a path forward for your request within the parameters of the regulations at issue.

Best regards,

Mark H. Graff
FOIA Officer/Bureau Chief Privacy Officer (BCPO)
National Oceanic and Atmospheric Administration
(301) 628-5658 (O)
[redacted] (b)(6) (C)

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On Mon, Jul 2, 2018 at 12:51 PM, Templeton, Hallie <HTempleton@foe.org> wrote:

> Thank you for following up, Mr. Graff.
>
> I am aware of the timeline for the underlying FOIA request. However, as I indicated in my email below, my concern lies with the time taken to resolve my appeal, which was not completed within the timeframe required by law:
>
> The Department failed to respond to my appeal within the specified time period of 20 days, as mandated by 5 U.S.C. § 552(a)(6)(A)(ii). The adjudication letter was dated June 4, yet the appeal was filed more than 40 days prior to this, on April 2. Accounting for federal holidays and weekends during this period, the agency still exceeded the 20-day timeline by more than double. According to the law, unless the agency has provided timely notice of a finding of unusual circumstances (which it has not), then it may not charge fees. *See* 5 U.S.C. § 552(a)(4)(A)(vii)(II).
>
> Am I misinterpreting the law and its requirements?

From: Mark Graff - NOAA Federal <mark.graff@noaa.gov>
Sent: Monday, July 02, 2018 11:01 AM
To: Templeton, Hallie <HTempleton@foe.org>
Cc: Clete Otoshi - NOAA Federal <clete.otoshi@noaa.gov>; Robert Hogan <robert.j.hogan@noaa.gov>; Lola Stith - NOAA Affiliate <lola.m.stith@noaa.gov>; Ed Kearns - NOAA Federal <ed.kearns@noaa.gov>
Subject: Re: update request for FOIA # 2018-947

Good Morning Ms. Templeton,

I appreciate your concerns on fee estimate timeliness below. Hopefully a chronology of the days pending will be helpful.

NOAA issued its denial of your fee waiver request on March 21, 2018, and issued you a fee estimate on March 28, 2018. At that point in time, 9 processing days had passed towards completing your request. As such, in accordance with to 15 CFR 4.11(e)(2), the processing timeframe or completing your request you referenced below--in 5 U.S.C. § 552(a)(4)(A)(vii)(I)--was tolled, and NOAA remained compliant with its statutory time limits.

Your April 2, 2018 appeal was adjudicated by the Department of Commerce/Information Law Division, on June 4, 2018, upholding NOAA's initial determination, and as such, the tolled status of your request has not changed. NOAA is still within its statutory 20 day processing window, and as such, your request will remain tolled until you either (1) pay the estimated fee, or (2) narrow the scope of your request in accordance with 15 CFR 4.11(e)(1). Absent your payment of the estimated fee or narrowing of the scope of your request, we will administratively close your request pursuant to 15 CFR 4.11(e)(2).

Best regards,

Mark H. Graff

FOIA Officer/Bureau Chief Privacy Officer (BCPO)

National Oceanic and Atmospheric Administration

(301) 628-5658 (O)

(b)(6) (C)

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On Fri, Jun 29, 2018 at 11:52 AM, Templeton, Hallie <HTempleton@foe.org> wrote:

> Thank you for following up, Mr. Otoshi.
>
> I did finally receive the correct appeal adjudication letter, after first receiving an incorrect attachment pertaining to another organization's FOIA request.
>
> I want to covey to you and Mr. Graff my concerns that NOAA and DOC are not complying fully with 5 U.S.C. § 552(a)(4)(A)(vii)(I) ("an agency shall not assess any search fees . . . if the agency has failed to comply with any time limit . . .). The Department failed to respond to our appeal within the specified time period of 20 days, as mandated by 5 U.S.C. § 552(a)(6)(A)(ii). The adjudication was letter was dated June 4, yet the appeal was filed more than 40 days prior to this, on April 2. Accounting for federal holidays and weekends during this period, the agency still exceeded the 20-day timeline by more than double. According to the law, unless the agency has provided timely notice of a finding of unusual circumstances with the request (which it has not), then it may not charge fees. *See* 5 U.S.C. § 552(a)(4)(A)(vii)(II).
>
> Please advise how best to proceed so we may ensure efficient disclosure of our requested documents.
>
> Best,
> Hallie
>
> **From:** Clete Otoshi - NOAA Federal <clete.otoshi@noaa.gov>
> **Sent:** Friday, June 29, 2018 10:39 AM
> **To:** Templeton, Hallie <HTempleton@foe.org>
> **Cc:** mark.graff@noaa.gov
> **Subject:** Re: update request for FOIA # 2018-947
>
> Dear Ms. Templeton,
>
> Regarding FOIA #DOC-NOAA-2018-000947, an adjudication letter (dated June 4, 2018) was sent to you by the Department of Commerce General Counsel that denies your appeal to the fee waiver denial.
>
> Regards,
>
> Clete

On Thu, Jun 14, 2018 at 1:39 PM, Templeton, Hallie <HTempleton@foe.org> wrote:

> Good afternoon, Clete and Mark:
>
> I hope you're both doing well. I wanted to touch base on the pending request #2018-947 for documents regarding Friends of the Earth's January 2018 correspondence with NOAA and its funding of marine finfish aquaculture projects. We did file an appeal over the denied fee waiver request, which was mooted out and closed on June 4.
>
> Do you happen to have an update on when responsive documents might be ready for release?
>
> Many thanks,
>
> Hallie
>
> <><><><><><><><><><><><><><><><><><><><><><><><>
>
> Hallie Templeton, Senior Oceans Campaigner
>
> (434)326-4647
>
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>
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>
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--

Clete Otoshi

Program Coordinator

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NOAA FISHERIES

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NOAA FISHERIES

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