

December 23, 2008  
Mr. Michael Perkins

[REDACTED]  
[REDACTED]

Re : Fee Waiver Appeal PARP 08-0204, 08-0318, 08-0327, and 08-0326

Dear Mr. Perkins:

This responds to your appeal of WMATA'S decision to deny your requests for fee waivers for the above-referenced PARP requests. In accordance with PARP Section 9.1, on November 25, 2008, WMATA convened an appeal panel composed of Carol B. O'Keeffe General Counsel; Cyndi Zieman, Director, SmarTrip Operations and Fare Payment Systems; Victor Grimes, Chief Enterprise Web Portal & GIS; and me. The panel denied your requests for fee waivers and your requests for fee reductions pursuant to PARP sections 8.2 and 8.4.

The Public Access to Records Policy (rev. 1) was adopted by WMATA's Board of Directors on May 19, 2005, and became effective October 1, 2005. WMATA interprets and applies the PARP consistent with federal FOIA law and practice. Pursuant to PARP section 8.1, fees are charged for record search, review, and duplication when records are sought for commercial use. However, fees are limited to charges for copying when records are not sought for commercial use or the request is made by a representative of the news media. PARP sections 8.1, 8.2. PARP section 8.4 further provides that "documents shall be furnished without charge or at a charge reduced below the fees established in sections 8.1 and 8.2, if WMATA determines that the disclosure of the information is in the public interest because it is likely to contribute significantly to public understanding of the operations of WMATA and is not primarily in the interest of the requester."

You requested a fee waiver as a member of the news media because you assert that you will use the information to write news articles for publishing through two web sites. You claim that one of these websites has an audience of approximately 150 - 200, and the other, an audience of approximately 2000 - 2100. Per federal regulations, a representative of the news media is any person actively gathering news for an entity that is organized and operated to publish or broadcast news to the public, 28 Code of Federal Regulations C.F.R. section 16.11 (b)(6) (2008). Examples include television and radio stations broadcasting to the general public, publishers of periodicals that disseminate news to the general public, and freelance journalists who can demonstrate a solid basis of publication through a news

organization. Judicial Watch v. United States Dep't of Justice, No. 99-2315, 2000 U.S. Dist. LEXIS 19789 \*9-12 (D.D.C. August 17, 2000). A representative of the news media must disseminate the information not merely make it available. Judicial Watch, Inc. v. United States Dep't of Justice 185 F. Supp. 2d 54, 59 (D.D.C. 2002). A website, by itself, is not sufficient to qualify a requester as a representative of the news media. Electronic Privacy Information Center v. Department of Defense, 241 F.Supp. 2d 14 (D.D.C 2003). Because the appeal panel determined that the websites do not serve to provide information to the general public, we find that you are not a representative of the news media. See, Judicial Watch, Inc, v. United States Dep't of Justice, 185 F.Supp 2d 60 (D.D.C. 2002); Judicial Watch v. United States Dep't of Justice, No. 99-2315, 2000 U.S. Dist. LEXIS 19789 \*9-12 (D.D.C. August 17, 2000), Electronic Privacy Information Center v. Department of Defense, 241 F. Supp. 2d 14 (D.D.C. 2003).

You also requested fee waivers or reduced fees in accordance with PARP section 8.4 (noncommercial use that is in public interest), but WMATA based its denial only on a finding that you are not a member of the news media, Therefore, the appeal panel considered whether you are eligible for a reduction in fees under PARP section 8.4. Pursuant to section 8.4, WMATA will furnish without charge or at a reduced fee if WMATA determines that disclosure is in the public's interest because: (1) the subject of the requested records concerns "the operation or activities of the government;" (2) disclosure is likely to contribute significantly to an understanding of Government operations or activities; (3) disclosure is likely to contribute to the understanding of the public at large, as opposed to the individual understanding of the requester or a narrow segment of interested persons; (4) it is not primarily in the commercial interest of the requester. See, 28 C.F.R. section 16.11 (k)(1)(2); Judicial Watch, Inc. v. United States Dep't of Justice, 185 F. Supp. 2d 60 (D.D.C. 2002).

The following provides our bases for requests for a fee waiver or reduction the denial for each of your PARP of fees pursuant to PARP section 8.4:

(1) PARP 08-0204 Request for Records Concerning WMATA'S Efforts to Provide Transit Data Information to Google:

You claim that disclosure of these records is in the public interest because it will be summarized in a news article describing the effort that WMATA has undergone to disseminate transit scheduling and route information by partnering with Google, We determined that this information will not contribute significantly to the understanding of WMATA operations because WMATA has not entered into an

agreement with Google. Therefore, the information that will be released is not likely to increase the public understanding beyond what is already in the public domain. You also claim that prior articles written by you have been previously published by Greater Greater Washington.org and the Dcist, However, there is no direct evidence that in this case your articles will be selected. Furthermore, the panel determined that posting articles on a website which generates 150 - 200 readers a day, will not reach a broad enough audience to encompass the general public. Brown v. United States Patent and Trademark Office, 445 F. Supp 2d 29 (M.D. Fla. 2006). Therefore, there is no basis for your assertion that disclosure would contribute to the general public's understanding of WMATA'S operations.

(2) PARP 08-0326 PARP log data, including subject matter, request date, final resolution and date resolved of ail PARP requests submitted from September 1, 2007 through September 1, 2008, and the volume of records released when requests were granted in full or partial granted:

You claim that you are eligible for a fee waiver or reduction pursuant to PARP section 8.4 because this information is useful to the WMATA ridership public because it will contribute to the understanding of (1) what type of information may be potentially unnecessarily routed through the PARP system, (2) types of information that are being restricted or denied in practice, and (3) WMATA'S ability to respond to PARP requests within 20 business days.

Although information regarding WMATA'S PARP log may contribute to the public's understanding of WMATA'S compliance with the PARP, WMATA posts Quarterly Reports on its website to keep the public informed about compliance. Thus, this information is already in the public domain and additional disclosure is not likely to significantly increase the public's understanding of WMATA'S operations. Additionally, as stated previously, we determined that your articles, if published, will not be distributed to a broad audience.

(3) PARP 08-0318 SmarTrip data:

Your appeal was silent about this request. However, we based our denial on the points set out in your appeal for the other requests. The panel determined that posting an article on the websites you list will not reach a broad audience.

(4) PARP 08-0327 on-time Metrobus performance:

WMATA did not consider this request, as it did not generate a processing fee.

For all of these reasons, your requests are not eligible for a fee waiver as a member of the news media nor are your requests eligible for a public interest fee waiver or reduction.

In accordance with PARP section 9.3, if you wish you may bring a civil action for injunctive or declaratory relief in any state or federal court of the United States located in the District of Columbia, Maryland or Virginia. For details, please refer to the PARP on our website at <http://www.wmata.com/about-metro/public-rr.cfm>. This is a required notice not intended as legal advice.

Sincerely,

/s/

Shiva Pant  
Chief of Staff