

Before the
Federal Communications Commission
Washington, D.C. 20554

In the matter of)
DONNA HARRINGTON-LUEKER) FOIA Control Nos. 21-039 and 21-045
On Requests for Inspection of Records)

MEMORANDUM OPINION AND ORDER

Adopted: September 5, 2001

Released: September 13, 2001

By the Commission:

1. The Commission has before it an electronic mail (e-mail) letter from Donna Harrington-Lueker of the Education Writers Association seeking review of the decision of the Common Carrier Bureau (CCB or Bureau) granting in part and denying in part her Freedom of Information Act (FOIA) requests for Funding Years 1-3 applications by four school districts for funding from the Universal Service Administrative Company Schools and Libraries Division (SLD), and documents concerning review of part of those applications. As discussed below, Ms. Harrington-Lueker's application for review is denied.

2. Ms. Harrington-Lueker's first FOIA request, assigned FOIA Control No. 21-039, sought copies of the FCC Form 471 filed for Funding Years 1-3 by the Chicago, Cleveland, Detroit, and Milwaukee school districts. Her second FOIA request, assigned FOIA Control No. 21-045, sought copies of "Item 25 Review documents" for those four school districts. CCB granted the request for the applications, but denied the request for the review documents pursuant to FOIA Exemption 7, 5 U.S.C. § 552(b)(7)(E) (Exemption 7(E)) (authorizing withholding of investigatory records that "would disclose techniques and procedures for law enforcement investigations or prosecutions, or would disclose guidelines for law enforcement investigations or prosecutions if such disclosure could reasonably be expected to risk circumvention of the law"). CCB explained that disclosure of the review information "would reveal SLD's techniques and guidelines for conducting investigations of misuse of program funds

1 E-mail from Donna Harrington-Lueker to Joseph T. Hall, Assistant Bureau Chief, CCB (Application for Review).

2 E-mail from Donna Harrington-Lueker addressed to the Assistant General Counsel, FCC (FOIA 21-039).

3 "Item 25" refers to a part of Form 471, the services ordered and certification form, requiring certification "that the current budget and any other budgets applicable to the funding year for the eligible schools and libraries . . . will provide sufficient funding to purchase all of the resources - including computers, training, software, maintenance, and electrical connections - that are necessary for you to make effective use of the eligible services you have request . . . as well as to pay discounted charges for eligible services." See Instructions for Completing FCC Form 471, Specific Instructions Section G Item (25) (October 2000). In earlier years of the program, Item 25 was numbered Item 22.

4 E-mail from Donna Harrington-Lueker addressed to the Assistant General Counsel, FCC (February 25, 2001) (FOIA 21-045).

5 E-mail from Narda Jones to Donna Harrington-Lueker, attaching letter from Joseph T. Hall, Assistant Bureau Chief, CCB, to Donna Harrington-Lueker (CCB Decision) (addressing both FOIA 21-039 and FOIA 21-045).

and thus undermine SLD's (acting on behalf of the Commission) investigatory process."⁶

3. We have reviewed the Bureau's decision and find no error in its disposition of the FOIA request for the Item 25 review documents for the four specified school districts. Form 471 Item 25 is a certification that a school or library will have secured access to all of the resources necessary to make effective use of the services purchased as well as to pay the discounted charges for eligible services.⁷ The Universal Service Administrative Company Schools and Libraries Division (SLD) reviews, *inter alia*, Item 25 for fraud and abuse in violation of our rules and orders.⁸ The Bureau properly determined that release of these documents would undermine the SLD's review process by revealing techniques and guidelines for conducting such reviews.⁹ Exemption 7(E) permits the Commission to describe the general nature of review techniques while withholding the full details,¹⁰ and the Commission has done so.¹¹ The documents sought by Ms. Harrington-Lueker would give detailed information concerning the review process and provide a blueprint for those wishing to frustrate or defeat such reviews. Even revealing whether or not any of the four school districts were subject to an Item 25 review would give insights into which applications are chosen for review by SLD. The records are thus properly withheld under FOIA Exemption 7(E).¹²

4. We do not agree with Ms. Harrington-Lueker that the documents must be released because the reviews "are perhaps the only way the public has to ensure that the E-rate monies are being properly spent."¹³ E-rate applications are publicly available on the SLD Internet site, and are subject to review by SLD and the Commission.¹⁴ The Inspector General, and the General Accounting Office also conduct oversight of the E-rate program. The results of these reviews are publicized. It is not necessary to disclose the underlying workpapers and SLD review guidelines as Ms. Harrington-Lueker suggests.

5. Accordingly, IT IS ORDERED that Ms. Harrington-Lueker's application for review IS DENIED. She may seek review of the denial of her FOIA request pursuant to 5 U.S.C. § 552(a)(4)(B).

⁶ CCB Decision at 2.

⁷ See Request for Review of the Decision of the Universal Service Administrator by United Talmudical Academy Brooklyn, New York, 15 FCC Rcd 423, 424 (2000) (UTA); n. 3, supra.

⁸ CCB Decision at 2.

⁹ Id. citing FOIA Exemption 7(E).

¹⁰ See, e.g., Bowen v. FDA, 925 F.2d 1225, 1228 (9th Cir. 1991) (release of specifics of investigatory techniques would threaten future investigations).

¹¹ A general description of the review process may be found in Request for Review of the Decision of the Universal Service Administrator by Children's Village Academy Kingston, North Carolina, *Order*, File No. SLD-204351, DA 01-794 (CCB/APD Mar. 30, 2001) at paragraphs 5-7 (providing a general description of an example an Item 25 Certification review) and UTA, 15 FCC Rcd at 425 (similarly describing the necessary resources certification review process used by SLD).

¹² See J. David Stoner, 5 FCC Rcd 6458, 6460 (1990) (Exemption 7(E) used to withhold files that would allow carriers to frustrate or defeat audit process); US Air, 5 FCC Rcd 3753 (1990) (Exemption 7(E) protects discussion of techniques and strategy for identifying transmitters used for unauthorized or illegal purposes); J.A. Savage, 5 FCC Rcd 819, 819-20 (1990) (Exemption 7(E) protects records that would allow manufacturers to discern measurement error tolerance criteria used by Commission in deciding whether to grant an application).

¹³ Application for Review at 2.

¹⁴ See UTA, 15 FCC Rcd at 430 (SLD review of "necessary resources certifications" is "an important means by which SLD implements the Commission's directive to SLD to take steps to curb waste, fraud, and abuse in the schools and libraries universal service support mechanism").

6. The Officials responsible for this action are the following Commissioners: Chairman Powell, Commissioners Tristani, Abernathy, Copps, and Martin.

FEDERAL COMMUNICATIONS COMMISSION

Magalie Roman Salas
Secretary