



United States of America
FEDERAL TRADE COMMISSION
WASHINGTON, D.C. 20580

APR 20 2016

Susan Koehler Sullivan
Sedgwick Law
801 South Figueroa Street, 19th Floor
Los Angeles, CA 90017

Re: FOIA-2016-00415
T-Mobile USA, Inc.

Dear Ms. Sullivan:

This is our final response to your request dated January 21, 2016 under the Freedom of Information Act seeking access to:

1. Any documents evidencing the FTC's investigation leading up to the filing of the FTC Action (Category 1);
2. Any communications between FTC and T-Mobile related to the claims leading up to the FTC Action (Category 2);
3. Documents obtained from consumers, law enforcement agencies, or in connection with other lawsuits, in the course of the investigation of T-Mobile leading up to the FTC Action (Category 3);
4. Overall conclusions or findings related to the investigation of T-Mobile leading up to the FTC Action (Category 4);
5. Supporting documents used or relied upon by the FTC in preparing any conclusions or findings regarding T-Mobile leading up to the FTC Action (Category 5);
6. Any documents or communications between T-Mobile and the FTC leading up to the settlement agreement from the FTC Action (Category 6); and
7. The settlement agreement from the FTC Action (Category 7).

We have located approximately 1131 pages of responsive records within our initial search. I am granting partial access to approximately 536 pages of responsive records. Portions of these pages fall within the exemptions to the FOIA's disclosure requirements, as explained below.

Some responsive records are exempt from disclosure under FOIA Exemption 3, 5 U.S.C. § 552(b)(3), because they are exempt from disclosure by another statute. Specifically, Section 21(f) of the FTC Act provides that information obtained by the Commission in a law enforcement investigation, whether through compulsory process, or voluntarily in lieu of such process, is exempt from disclosure under the FOIA. 15 U.S.C. § 57b-2(f), *see Kathleen McDermott v. FTC*, 1981-1 Trade Cas. (CCH) ¶ 63964 (D.D.C. April 13, 1981).

I am denying access to some of the responsive records under FOIA Exemption 3, 5 U.S.C. § 552(b)(3), because they are exempt from disclosure by another statute. Specifically, Sections 21(b) and (f) provide that the FTC may not disclose information it obtains in a law

enforcement investigation pursuant to compulsory process or voluntarily in lieu thereof. 15 U.S.C. § 57b-2; *see A. Michael's Piano, Inc. v. FTC*, 18 F.3d 138 (2d Cir. 1994).

In addition, some responsive records constitute confidential commercial or financial information, which is exempt from disclosure under FOIA Exemption 4, 5 U.S.C. § 552(b)(4). *See Critical Mass Energy Project v. NRC*, 975 F.2d 871, 879 (D.C. Cir. 1992). Moreover, because Section 6(f) of the FTC Act, 15 U.S.C. § 46(f), prohibits public disclosure of this type of information, it is also exempt under FOIA Exemption 3, 5 U.S.C. § 552(b)(3), which, as noted above, exempts from disclosure any information that is protected from disclosure under another federal statute.

Some responsive records contain staff analyses, opinions, and recommendations. Those portions are deliberative and pre-decisional and are an integral part of the agency's decision making process. They are exempt from the FOIA's disclosure requirements by FOIA Exemption 5, 5 U.S.C. § 552(b)(5). *See NLRB v. Sears, Roebuck & Co.*, 421 U.S. 132 (1975). Additionally, some records contain information prepared by an attorney in contemplation of litigation which is exempt under the attorney work-product privilege. *See Hickman v. Taylor*, 329 U.S. 495, 509-10 (1947). Furthermore, some of the materials are exempt from disclosure as attorney-client communications. *See Upjohn Co. v. United States*, 499 U.S. 383 (1981); and *Mead Data Central, Inc. v. Department of the Air Force*, 566 F.2d 242 (D.C. Cir. 1977).

Some of the records were obtained on the condition that the agency keep the source of the information confidential and are exempt from disclosure under FOIA Exemption 7(D), 5 U.S.C. § 552(b)(7)(D). That exemption is intended to ensure that "confidential sources are not lost because of retaliation against the sources for past disclosures or because of the sources' fear of future disclosures." *Brant Constr. Co. v. EPA*, 778 F.2d 1258, 1262 (7th Cir. 1985).

Finally, some of the records in our files originated from another agency, the Federal Communications Commission. These records were forwarded to the FCC for a release determination. You can check on the status of this referral by contacting:

Vanessa Lamb
Federal Communications Commission
Deputy Associate Managing Director - FOIA Program
Room 1-A834
445 12th Street, SW
Washington, DC 20554
(202) 418-0440

There may be more documents responsive to your request, however, we have exhausted your fee agreement of \$1500. Closing this request does not preclude you from filing a new FOIA request.

Based on the fee provisions of the FOIA, 5 U.S.C. § 552(a)(4)(A), and the Commission's Rules of Practice, 16 CFR § 4.8 *et seq.*, as amended, I am also enclosing an invoice for the charges we incurred for this response to your request. Failure to pay this bill promptly will result

in our refusal to provide copies of accessible documents in response to future requests. If not paid within 30 days, this bill will accrue interest penalties as provided by Federal Claims Collection Standards, 31 C.F.R. § 900-904, as amended.

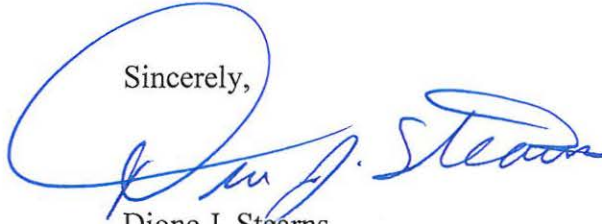
Please make checks payable to U.S. Treasury and send payment to:

Financial Management Office, H-790
Federal Trade Commission
600 Pennsylvania Avenue, NW
Washington, DC 20580

If you are not satisfied with this response to your request, you may appeal by writing to Freedom of Information Act Appeal, Office of the General Counsel, Federal Trade Commission, 600 Pennsylvania Avenue, NW, Washington, DC 20580, within 30 days of the date of this letter. Please enclose a copy of your original request and a copy of this response. If you believe that we should choose to disclose additional materials beyond what the FOIA requires, please explain why this would be in the public interest.

If you have any questions about the way we handled your request or about the FOIA regulations or procedures, please contact Shelley M. O'Hara at (202) 326-2072.

Sincerely,



Dione J. Stearns
Assistant General Counsel

Enclosures
1 CD Rom
Invoice