



OFFICE of GOVERNMENT INFORMATION SERVICES

December 18, 2014 — Sent via email

NATIONAL  
ARCHIVES  
and RECORDS  
ADMINISTRATION

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Re: Case No.: 201300800  
NG: CM: CL

Dear [REDACTED]:

This letter responds to your August 29, 2013 request for assistance from the Office of Government Information Services (OGIS), which we received via email. Your request for assistance pertains to the [REDACTED] Freedom of Information Act (FOIA) request, No. [REDACTED], to the Department of Agriculture's (USDA's) Forest Service. We are sorry for our delay in responding to your request for assistance. Until recently, we were short staffed and not responding to requests as quickly as we would like.

Congress created OGIS to complement existing FOIA practice and procedure; we strive to work in conjunction with the existing request and appeal process. The goal is for OGIS to allow, whenever practical, the requester to exhaust his or her remedies within the agency, including the appeal process. OGIS has no investigatory or enforcement power, nor can we compel an agency to release documents or process one request before others. OGIS serves as the Federal FOIA Ombudsman and our jurisdiction is limited to assisting with the FOIA process.

We carefully reviewed your submission to our office. On behalf of the [REDACTED] [REDACTED] submitted a FOIA request to the Forest Service on [REDACTED] 2012 for records pertaining to the [REDACTED] that occurred in [REDACTED] on [REDACTED] 2006. The Forest Service referred the request to the [REDACTED] – Human Resources Management FOIA Service Center and assigned it FOIA Control No. [REDACTED]. The Albuquerque FOIA Service Center rerouted items 1-3 of your FOIA request to the FOIA Regional Office Region 5 for a direct response to you. With regard to item 4, [REDACTED], [REDACTED] the Forest Service informed you that absent [REDACTED] consent, proof of death, or an overriding public interest, the agency could neither confirm nor deny the existence of responsive records under FOIA Exemption 6, 5 U.S.C. § 552 (b)(6). I note that you appealed the Forest Service's response on the basis that the overriding public interest surrounding the [REDACTED] outweighs [REDACTED] personal privacy interests and the records you seek could corroborate the innocence claim of a death row inmate. I further note that on appeal the USDA affirmed the agency's response to your request.

We reached out to Mr. George Vargas, Assistant Director of the Forest Service's Office of Regulatory and Management Services to learn more about the agency's response to your request. We are glad to provide you with more information on the agency's response.



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### **The Forest Service's "Glomar" response**

When an agency responds to a FOIA request by neither confirming nor denying the existence of responsive records, this is known as the "Glomar" response. A Glomar response is proper when to admit that existence or nonexistence of responsive records would reveal a fact that is exempt under FOIA. In your case, the Forest Service initially determined that the existence or nonexistence of responsive records pertaining to [REDACTED] is exempt from disclosure under FOIA Exemption 6.

As a result of conversations between the Forest Service and OGIS, the Forest Service agreed to revisit the Glomar response and determined that the Glomar no longer applies. Mr. Vargas noted, however, that the [REDACTED] report you seek is still exempt in full under FOIA Exemptions 6 and 7(C).

### **The FOIA and Personal Privacy**

As you may know, to protect an individual's personal privacy, the FOIA prohibits the government from releasing information about a third party without his/her written consent or proof of his/her death, or without a showing of an overriding public interest in disclosure of the information. In your case, the Forest Service has determined that [REDACTED] report you seek is withholdable in full under FOIA Exemptions 6 and 7(C).

FOIA Exemptions 6 and 7(C) protect personal privacy interests. FOIA Exemption 6, 5 U.S.C. § 552(b)(6), protects information about individuals in "personnel and medical files and similar files" when the disclosure of such information "would constitute a clearly unwarranted invasion of personal privacy." FOIA Exemption 7(C), 5 U.S.C. § 552(b)(7)(C), is limited to information compiled for law enforcement purposes and protects personal information when disclosure "could reasonably be expected to constitute an unwarranted invasion of personal privacy."

In considering withholding records under Exemptions 6 and 7(C), an agency must weigh the interest in public disclosure against an individual's right to privacy. Courts have consistently held that the central purpose of FOIA is to allow people to learn about the conduct of agencies, not to discover information about other individuals.

If you can provide the Forest Service with [REDACTED] consent, Mr. Vargas noted, that the Forest Service could release the report to you although some FOIA exemptions may apply.

I hope you find this information useful. Thank you for contacting OGIS; we will now consider this matter closed.

Sincerely,

/s/

Nikki Gramian, Acting Director  
Office of Government Information Services

cc: George Vargas, Assistant Director, Office of Regulatory and Management Services  
U.S. Department of Agriculture Forest Service, via email

We appreciate your feedback. Please visit <https://www.surveymonkey.com/s/OGIS> to take a brief anonymous survey on the service you received from OGIS.