



OFFICE *of* GOVERNMENT INFORMATION SERVICES

March 25, 2015 — Sent via U.S. mail

[REDACTED]

Re: Case No.: 201400730
NG: CM: CL

Dear [REDACTED]:

This letter responds to your July 1, 2014 request for assistance from the Office of Government Information Services (OGIS), which we received via U.S. mail on July 21, 2014. Your request for assistance pertains to your records request to the Federal Bureau of Investigation (FBI), No. [REDACTED], and subsequent appeal, No. [REDACTED], to the Department of Justice's Office of Information Policy (OIP) for records concerning the [REDACTED].

Congress created OGIS to complement existing Freedom of Information Act (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 note that you requested records about yourself. As you may know, when an individual requests access to his or her own records, it is most often, but not always, considered a Privacy Act, or first-party, request. Federal agencies will process requests under both FOIA and the Privacy Act of 1974 in order to provide requesters with the fullest degree of access available.

Privacy Act matters fall outside the scope of our office's mission as the FOIA Ombudsman. However, many Privacy Act requests overlap with FOIA; therefore, OGIS provides ombuds services, including providing information about the process and the status of requests, to individuals requesting their own records. OGIS does not have a statutory role in reviewing policies, procedures and compliance with the Privacy Act as we do with FOIA.

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The FBI's [REDACTED] response to your request explained that the Bureau reviewed 12 pages responsive to your request and released seven pages to you in part with portions withheld under FOIA Exemptions 6, 7(C), 7(D), and 7(E), 5 U.S.C. §§ 552 (b)(6), (b)(7)(C), (b)(7)(D), and (b)(7)(E). I note that in response to your appeal OIP affirmed the FBI's action on your request on partly modified grounds. OIP determined that the records responsive to your request are exempt from the access provision of the Privacy Act, 5 U.S.C. § 552a(j)(2). For this reason, OIP reviewed your appeal under the FOIA and determined that the FBI properly withheld information under FOIA Exemptions 6, 7(C), 7(D), and 7(E).

We carefully reviewed your submission of information and discussed it with the FBI's FOIA Public Liaison, Dennis J. Argall. Mr. Argall confirmed that the FBI is firm its position that the Bureau's response to your request was proper. In situations like this when an agency is firm in its position, there is little more that OGIS can do beyond providing more information regarding the agency's response and the FOIA exemptions the agency cited in response to a request.

As you may know, not all records are releasable under the FOIA. Congress established categories of information that agencies are not required to release in response to FOIA requests because release would harm governmental or private interests. These categories are called "exemptions."

FOIA Exemptions 6 and 7(C) protect personal privacy interests. FOIA Exemption 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) 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. The U.S. Supreme Court held that "the statutory purpose [of FOIA] is not fostered by disclosure of information about private citizens that is accumulated in various governmental files but that reveals little or nothing about an agency's own conduct." *U.S. Dep't of Justice v. Reporters Committee for Freedom of the Press*, 489 U.S. 749, 773 (1989).

Courts have specifically addressed the privacy interests of third parties and/or witnesses involved in criminal investigations and have overwhelmingly ruled that individuals' privacy interests outweigh public interests because of the stigma or harassment that may result from public knowledge of such an investigation. Mr. Argall explained that the FBI invoked Exemptions 6 and 7(C) to protect information on law enforcement employees and third parties who were part of the investigation.

FOIA Exemption 7(D) broadly protects all information shared with criminal law enforcement agencies by confidential sources in criminal investigations. Exemption 7(D) is designed to protect confidential sources from retaliation that could result if information pertaining to their

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law enforcement activities was disclosed. Agencies use Exemption 7(D) to withhold information which could reasonably be expected to identify anyone—from an individual to a state or local law enforcement agency—who provides information to investigators in criminal cases.

The use of the Exemption 7(D) hinges on the circumstances under which the information is provided. Unlike other FOIA exemptions, which require a balancing of public and private interests, Exemption 7(D) does not require such a balancing test. If a source is confidential, agencies may invoke the exemption regardless of the public interest in disclosure. In your case, Mr. Argall explained that the FBI invoked Exemption 7(D) to protect information provided to the FBI confidentially.

FOIA Exemption 7(E), applies to information compiled for law enforcement purposes and authorizes an agency to withhold information 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.” In your case, Mr. Argall explained that the FBI invoked Exemption 7(E) to protect the law enforcement techniques used to solve this particular case.

I note your request for a form that you could use to file a complaint against the FBI agent cited in your letter. Please be advised that as a non-FOIA issue, your request falls outside our jurisdiction; however, if you wish to submit a complaint against a Department of Justice (DOJ) employee, you may do so by writing to the DOJ Office of Inspector General (OIG) or the DOJ Office of Professional Responsibility (OPR). As a courtesy, I am enclosing copies of printouts from DOJ’s website concerning the processes for submitting complaints to the OIG and the OPR.

I hope you find this information useful in understanding why the FBI and the OIP responded to your request and appeal as they did. Thank you for contacting OGIS; we will now consider this matter closed.

Sincerely,

Nikki Gramian, Acting Director
Office of Government Information Services

Enclosures (2)

cc: Dennis J. Argall, FOIA Public Liaison, Federal Bureau of Investigation, via email