



OFFICE of GOVERNMENT INFORMATION SERVICES

September 26, 2016 - Sent via email

[REDACTED]

Re: Case No. 201601176
NG: CM: KR

NATIONAL
ARCHIVES
and RECORDS
ADMINISTRATION

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OGIS
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Dear [REDACTED]:

This responds to your July 29, 2016 letter to the Office of Government Information Services (OGIS), which we received via email. Your request for assistance concerns your Freedom of Information Act (FOIA) request to the U.S. Department of Justice (DOJ), Federal Bureau of Investigation (FBI).

Congress created OGIS to complement existing FOIA practice and procedure and we strive to work in conjunction with the existing request and appeal process. OGIS's goal, whenever practical, is to allow 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 process a particular request before others. OGIS serves as the Federal FOIA Ombudsman and our jurisdiction is limited to assisting with the FOIA process.

OGIS provides mediation services to resolve disputes between FOIA requesters and Federal agencies. After opening a case, OGIS gathers information from the requester and the agency to learn more about the nature of the dispute. This process helps us gather necessary background information, assess whether the issues are appropriate for mediation, and determine the willingness of the parties to engage in our services. As part of our information gathering, OGIS carefully reviewed your submission of information.

On [REDACTED], you made a request to FBI for information regarding an investigation involving the [REDACTED]. On [REDACTED], the FBI conducted a search using the [REDACTED] as its search term and responded to your request, stating the agency was unable to identify main file records responsive to your request. You appealed this determination on [REDACTED]. On [REDACTED], the DOJ's Office of Information Policy (OIP) responded to your appeal, and affirmed the agency's determination on modified grounds, citing FOIA Exemptions 6 and 7(C), 5 U.S.C. § 552(b)(6) and (b)(7)(C) for the portion of your request seeking records on [REDACTED] name. You asked OGIS to assist with this matter.



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When a requester seeks records about a third party under FOIA, it is his/her responsibility to provide the agency with the third party's express authorization or consent, proof that the subject of the request is deceased, or a clear demonstration that the public interest in disclosure outweighs the personal privacy interest. If the requester does not provide the required authorization, a death certificate, and/or an overriding public interest justification, then the agency will invoke FOIA Exemptions 6 and 7(C) to categorically withhold the requested records.

FOIA Exemptions 6 and 7(C) protect the privacy of individuals identified in agency records. Exemption 6 limits the release of "personnel and medical files and similar files the disclosure of which would constitute a clearly unwarranted invasion of personal privacy." Likewise, Exemption 7(C) applies to records or information compiled for law enforcement purposes, and limits the release of such records that "could reasonably be expected to constitute an unwarranted invasion of personal privacy."

Since you did not furnish the FBI with an authorization from [REDACTED] or proof of her death, you have the option to submit a new FOIA request by providing a certificate of identity to allow FBI to produce records about the named individuals to you. You may find the DOJ's Certificate of Identity at: https://www.justice.gov/sites/default/files/oip/legacy/2014/07/23/cert_ind.pdf.

If you are unable to obtain authorization from [REDACTED], you may consider filing a new request and providing public interest justification. The public interest justification needs to focus on the conduct of the government (in your case, the FBI). In considering release of personally identifying information on third parties under FOIA, 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 the agency, and 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).

The standard of public interest in records of this type is limited to information that reveals the operations and activities of the government. The *Department of Justice Guide to the Freedom of Information Act* states:

'bare suspicion' of [official] misconduct is inadequate and that a requester must produce evidence that would be credible in the eyes of a reasonable person. When a requester asserts government misconduct as the public interest in disclosure, that requester must make a 'meaningful evidentiary showing' in order to provide a public interest 'counterweight' to the privacy interest.

Regarding the FBI's assertion that it located no main file records responsive to your request, the FBI searched its database, using the [REDACTED] as its search term and could not find any main files for this organization. Federal courts have long settled that in regard to a search for documents, the crucial issue is whether an agency conducted an adequate search for a document, not whether a document *might* exist. An adequate search is conducted when the search is

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reasonably calculated to uncover all relevant documents. *Weisberg v. Dep't of Justice*, 705 F.2d 1344, 1351 (D.C. Cir. 1983) You mentioned in a phone call with OGIS that you have seen references to an FBI investigation regarding this matter and have heard from individuals that such an investigation took place. If you choose to submit a new request, it would be helpful to include any written references to the investigation and the named individuals.

Lastly, the FBI's response to your request was limited to records that are subject to FOIA. As the FBI informed you, the agency tells all of its requesters about exclusions and such notification is not an indication that excluded records do, or do not, exist. Although agencies rarely use exclusions, the Department of Justice issued guidance to agencies directing them to inform requesters about exclusions in all their response letters. <http://www.justice.gov/sites/default/files/oip/legacy/2014/07/23/exclusions.pdf>.

I hope you find the explanation provided above useful to understanding why DOJ responded as it did to your FOIA request and appeal. At this time, there is no further assistance that OGIS can offer and we will close your case.

Sincerely,

/s/

NIKKI GRAMIAN
Acting Director

cc: Mike Seidel, FOIA Public Liaison, Federal Bureau of Investigation

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.