OFFICE of GOVERNMENT INFORMATION SERVICES

NATIONAL ARCHIVES and RECORDS ADMINISTRATION

8601 ADELPHI ROAD
OGIS
COLLEGE PARK, MD
20740-6001

web: www.ogis.archives.gov
e-mail: ogis@nara.gov
phone: 202-741-5770
toll-free: 1-877-684-6448
fax: 202-741-5769

May 31, 2016

Glenn E. Sklar
Executive Director
Office of Privacy and Disclosure
Social Security Administration
Altmeyer Building, Room 617
6401 Security Boulevard
Baltimore, MD 21235

Dear Mr. Sklar:

I write in reference to a September 28, 2015 letter that you received from the Office of Government Information Services (OGIS) regarding our ability to work efficiently and effectively with the Social Security Administration (SSA) to assist Freedom of Information Act (FOIA) requesters. Because we received no response from your agency, I write again to request your assistance with this important matter.

Congress created OGIS in the OPEN Government Act of 2007; as the FOIA Ombudsman, OGIS has the statutory mandate to review FOIA policies, procedures and compliance of administrative agencies, and to offer mediation services to resolve disputes between FOIA requesters and agencies. 5 U.S.C. § 552(h)(1)-(3). We advocate for neither the requester nor the agency, but for the FOIA process to work as intended.

As you are aware, the Privacy Act of 1974 protects FOIA and Privacy Act (PA) request and appeal files, prohibiting agencies from sharing information contained in those files without the prior written consent of the requester or the existence of a routine use allowing such disclosure. Because your agency does not include such a routine use in its systems of records for FOIA/PA files, OGIS cannot assist FOIA requesters with the SSA' requests without first obtaining a signed and dated consent from the requester authorizing OGIS and the SSA to share information.

NATIONAL ARCHIVES

Since opening in 2009, OGIS has requested and received this consent from thousands of requesters; however, this step represents a significant inefficiency in the dispute resolution process to which requesters—and agencies—are entitled under the statute. Furthermore, in cases in which agencies that do not have an OGIS routine use contact us for assistance with a FOIA request, the need to obtain consent may be a barrier to such assistance. In these cases, the agency must obtain this consent from the requester; this may be difficult in cases in which communications have broken down between the requester and the agency. Further, during our agency FOIA compliance assessments, we review a randomly selected statistically significant sample size of FOIA request files. Without a routine use for OGIS, we would have to obtain the consent from each requester included in the sample.

I write to request that you add an OGIS routine use to your FOIA/PA SORN, as 12 Cabinet-level departments and eight agencies have done. As explained in our previous letter, OGIS worked with the Department of Justice (DOJ) to develop model routine use language that agencies can use for this purpose:

*To the National Archives and Records Administration, Office of Government Information Services (OGIS), to the extent necessary to fulfill its responsibilities in 5 U.S.C. § 552(h), to review administrative agency policies, procedures and compliance with the Freedom of Information Act (FOIA), and to facilitate OGIS' offering of mediation services to resolve disputes between persons making FOIA requests and administrative agencies.*

I have attached a copy of DOJ's FOIA/PA SORN for your reference.

In the interest of transparency—and because this issue is important to our stakeholders—OGIS posts all of its correspondence with other agency officials on its website; this letter will also be posted. We ask that you respond to this request by June 30, 2016, and let us know your willingness to amend your agency's FOIA/PA SORN to include the OGIS-DOJ language provided in italics above. I would be happy to discuss this matter and answer any questions. I can be reached at Nikki.Gramian@nara.gov and at 202-741-5772.

Sincerely,

/S/

Nikki Gramian
Acting Director

Enclosure: Copy of DOJ FOIA/PA SORN
cc: Keisha Mahoney-Jones, Acting Chief FOIA Officer