



OFFICE *of* GOVERNMENT INFORMATION SERVICES

August 21, 2014 — Sent via email

[REDACTED]
[REDACTED]

Re: Case No.: 201400583
NG: CM

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

Dear [REDACTED]:

This responds to your June 5, 2014 request for assistance from the Office of Government Information Services (OGIS), which we received via email. Your request for assistance pertains to your Freedom of Information Act (FOIA) request to the Federal Bureau of Investigation (FBI).

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. OGIS serves as the Federal FOIA Ombudsman and our jurisdiction is limited to assisting with the FOIA process.

You made a request to the FBI for records related to the [REDACTED] and [REDACTED] surveillance programs. FBI responded to your request by refusing to confirm or deny the existence of records pursuant to FOIA exemptions 1, 3 and 7(E), U.S.C. § 552(b)(1),(b)(3) and (b)(7)(E). You appealed that response, and the U.S. Department of Justice Office of Information Policy (OIP) affirmed the FBI's response to your request. It also informed you that it referred the FBI's decision to classify the existence or non-existence of responsive records to the Department of Justice's Department Review Committee.

We contacted OIP to discuss your request. According to OIP Attorney Advisor Matthew Hurd, your case with the Department Review Committee was assigned tracking [REDACTED], and it is still open. You will receive a response when the Committee has reached a decision about DOJ's action on your request.

OIP's May 30, 2014 letter to you also informed you that should any records responsive to your request exist, they would be protected from disclosure pursuant to FOIA Exemptions 3 and 7(E). Exemption 3 to FOIA establishes two categories of statutes—those that provide agencies with no discretion for withholding information and those that provide agencies with some discretion



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by establishing particular criteria or referring to particular types of matters. See 5 U.S.C. §§ 552(b)(3)(A) and (B). In other words, the discretion to release information potentially covered by Exemption 3 is not governed by FOIA, but by the withholding statute itself. In your case, the FBI cites the National Security Act of 1947 and the Central Intelligence Agency Act of 1949.

FOIA Exemption 7(E), 5 U.S.C. § 552(b)(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.” The D.C. Circuit has held that “an agency may seek to block the disclosure of internal agency materials relating to guidelines, techniques, sources, and procedures for law enforcement investigations,” as they are protected by Exemption 7(E). *Tax Analysts v. I.R.S.*, 294 F.3d 71, 79 (D.C. Cir. 2002).

In your correspondence to OGIS, you cite the United States Constitution in arguing against the government’s activities related to its surveillance programs. Please know that OGIS has no authority to provide assistance related to the constitutionality of particular law enforcement programs. Our role is limited to providing assistance with the FOIA process.

In cases such as this where an agency is firm in its position, there is little for OGIS to do beyond providing more information about the agency’s actions. I hope that this information about your request is useful to you. Thank you for contacting OGIS; we will now consider this matter closed.

Sincerely,

/s/

Miriam Nisbet, Director
Office of Government Information Services (OGIS)

cc: Matthew Hurd, Attorney Advisor, Office of Information Policy

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.