



## OFFICE of GOVERNMENT INFORMATION SERVICES

November 10, 2015 — Sent via email

Re: Case No. 201500725  
NG: CM: AS

NATIONAL  
ARCHIVES  
and RECORDS  
ADMINISTRATION

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Dear [REDACTED]:

This responds to your May 13, 2015, request for assistance from the Office of Government Information Services (OGIS), pertaining to your Freedom of Information Act (FOIA) request to the Central Intelligence Agency (CIA). Thank you for contacting OGIS. We apologize for the delay in handling your request for assistance.

Congress created OGIS as the Federal FOIA Ombudsman to complement existing FOIA practice and procedure; we strive to work in conjunction with the agency's 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.

In your submission to OGIS, you requested assistance related to your FOIA request assigned tracking number [REDACTED] (formerly [REDACTED]) and subsequent appeal to CIA. You dispute CIA's continued withholding of information that you feel does not affect current national security.

We carefully reviewed your submission of information and contacted CIA's FOIA Office to discuss your dispute and how the agency processed your request and appeal. CIA staff reviewed the matter and affirmed the agency's final position on the records you seek. In cases such as this where an agency is firm in its response, there is little assistance OGIS can offer beyond providing more information about the agency's actions.

In the Exemption 1 context, intelligence agencies often issue what are referred to as "Glomar" responses to FOIA requests, in which they refuse to even confirm or deny whether responsive records exist.

Courts have held that agencies may refuse to confirm or deny the existence of records where to answer the FOIA inquiry would cause harm cognizable under a FOIA exception. In the national security context, [EO 13526](#) provides that agencies may issue Glomar responses "whenever the fact of their existence or nonexistence is itself classified under this order or its predecessors." *See*, E.O. 13526 §3.6(a).

One way to challenge a Glomar response is to show that the information Glomar'd by the agency has been officially acknowledged to the public. In showing "official acknowledgement," you must demonstrate that the information you requested is "as specific as the information previously



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released,” matches the previously disclosed information, and was publicized through an official, documented disclosure. *See, Int’l Counsel Bureau v. U.S.C.I.A.*, 774 F.Supp.2d 262 (D.D.C. 2011).

A general acknowledgement of intelligence activity usually will not be enough to overcome a Glomar response as to specific details of an operation that have not been officially acknowledged by the government. Also, statements contained in media reports of government officials who are not authorized to speak for the agency do not constitute “official acknowledgement by an authoritative source.” *See, Am. Civil Liberties Union v. Dep’t of Def.*, 752 F.Supp.2d 361 (S.D.N.Y. 2010).

FOIA Exemption 3 authorizes the withholding of agency records on subject-matters specifically exempted from disclosure by a non-FOIA statute, provided that such statute “(i) requires that the matters be withheld from the public in such a manner as to leave no discretion on the issue; or (ii) establishes particular criteria for withholding or refers to particular types of matters to be withheld.” 5 U.S.C. § 552(b)(3). To properly invoke Exemption 3, the CIA “need only show that the statute claimed is one of exemption as contemplated by Exemption 3 and that the withheld material falls within the statute.” *Larson*, 565 F.3d at 865.

The CIA first points to the Central Intelligence Agency Act of 1949, as amended, 50 U.S.C. § 403-4 *et seq.* (“CIA Act”), which exempts the CIA from “any . . . law which require[s] the publication or disclosure of the organization, functions, names, official titles, salaries, or numbers of personnel employed by the Agency.” 50 U.S.C. § 403g. Secondly, the CIA proffers the National Security Act of 1947, as amended, 50 U.S.C. § 401 *et seq.* (the “NSA”), which mandates that the “Director of National Intelligence shall protect intelligence sources and methods from unauthorized disclosure.” 50 U.S.C. § 403-1(i)(1). It is well-established that both statutory provisions cited by the CIA qualify as withholding statutes for purposes of Exemption 3. *See, e.g., ACLU v. U.S. Dep’t of Defense*, 628 F.3d 612, 619 (D.C. Cir. 2011); *Halperin v. CIA*, 629 F.2d 144, 147 (D.C. Cir. 1980); *Majed Subh v. CIA*, 760 F. Supp. 2d 66, 70 (D.D.C. 2011).

Unfortunately, since this is the requirement for the agency, whether or not the requester deems the release of the information harmless does not lessen the agency’s requirement to withhold.

While I understand that this is not the result for which you hoped, I hope that this additional information about your request is useful to you. Thank you for bringing this matter to OGIS; at this time there is no further action for us to take and we will consider this matter closed.

Sincerely,

JAMES V.M.L HOLZER  
Director

cc: CIA FOIA Office, 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.