



OFFICE *of* GOVERNMENT INFORMATION SERVICES

February 24 2016 - Sent via e-mail

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*and* RECORDS  
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In Re: Case No.: 201600234  
NG: HK

Dear [REDACTED]

This responds to your December 2, 2015, request for assistance to the Office of Government Information Services (OGIS). Thank you for your interest in OGIS.

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

You submitted a request to the United States Department of Commerce's International Trade Administration (ITA) for data files from the agency's [REDACTED], as well as related technical documentation. ITA denied your request, informing you that because the agency provides the records you requested for sale, ITA is not required by law to produce those records. You appealed this response, and Commerce's Office of the General Counsel (OGC) upheld ITA's action on your request. You asked for OGIS's assistance with this matter.

In response to your submission, OGIS staff contacted ITA to discuss your request and the agency's response. ITA informed OGIS that the agency is firm in its position and the final response it issued was appropriate. However, in response to our inquiry the agency provided the following explanation. In accordance with 5 U.S.C. § 552(a)(4)(A)(vi), the records you requested are maintained for distribution by the agency and provided for distribution according to a fee schedule that is assessed pursuant to a superseding fee statute, specifically providing for setting the level of fees of particular types of records. The records are therefore available from that source for the amount designated by the agency under that statute. This fee schedule may result in the assessment of fees that are higher than those that would otherwise be chargeable under the FOIA, but it ensures that such fees are properly borne by the requester and not the general public.



We further learned that the relevant superseding fee statute in this case, 15 U.S.C. § 1525, provides that, “the Secretary of Commerce is authorized, upon the request of any person, firm, organization, or others, public or private, to make special studies on matters within the authority of the Department of Commerce; to prepare from its records special compilations, lists, bulletins, or reports; to perform the functions authorized by section 1152 of this title; and to furnish transcripts or copies of its studies, compilations, and other records; upon the payment of the actual or estimated cost of such special work.” In addition, 15 C.F.R. § 4.3(c) provides that, “Department officials may, upon request, create and provide new records to the public pursuant to statutes that authorize the creation and provision of new records for a fee, such as the first paragraph of 15 U.S.C. 1525, or in accordance with authority otherwise provided by law. Such creation and provision of records is outside the scope of the FOIA.”

It was explained to the OGIS facilitator that this provision is important as it allows the agency to fund work the public is interested in but otherwise could not produce. As a result of this provision, the records you requested must be obtained in compliance with ITA’s pre-established process and fee structure and can be requested at <http://travel.trade.gov/about/overview.html>.

In cases such as this in which the agency is firm in its position, there is little for OGIS to do beyond providing more explanation about the agency’s actions and response. At this time, there is no further assistance OGIS can offer and we will close your case. Thank you for bringing this matter to OGIS.

Sincerely,

/S/

JAMES V.M.L. HOLZER  
Director

cc: [REDACTED] Attorney Advisor, DOC OGC

cc: [REDACTED]

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.