



OFFICE of GOVERNMENT INFORMATION SERVICES

May 3, 2016 - Sent via email

[REDACTED]

Re: Case No.: 201600417
NG: HK: CM: CL

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 Mr. [REDACTED]:

This responds to your December 21, 2015 request for assistance from the Office of Government Information Services (OGIS), which we received via mail on January 15, 2016. Your request for assistance pertains to your Freedom of Information Act (FOIA) request to U.S. Citizenship and Immigration Services (USCIS).

As you are aware, 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 submitted a request [REDACTED] to USCIS for records concerning yourself. USCIS's [REDACTED] response informed you that the agency located 459 responsive pages. USCIS released 303 pages in their entirety and 18 pages in part with portions withheld under FOIA Exemptions 5, 6, 7(C), and 7(E), 5 U.S.C. §§ 552 (b)(5), (b)(6), (b)(7)(C) and (b)(7)(E). USCIS further informed you that it referred potentially responsive documents to U.S. Immigration and Customs Enforcement (ICE) for consideration and direct response to you. You appealed USCIS's response to your request. On appeal, USCIS affirmed its initial response to your request. You contacted OGIS for assistance in obtaining records that will aid you in completing your U visa application.

We contacted [REDACTED] from USCIS's Office of General Counsel regarding the agency's response to your appeal. [REDACTED] affirmed USCIS's position that the agency properly withheld portions of responsive records under FOIA Exemptions 5, 6, 7(C), and 7(E).

In cases where an agency is firm in its position, there is little for OGIS to do beyond providing more information. I am glad to provide you with information regarding the FOIA exemptions that USCIS invoked and the categories of information USCIS withheld.

FOIA Exemption 5 protects "inter-agency or intra-agency memorandums or letters which would not be available by law to a party other than an agency in litigation with the agency." Courts have interpreted Exemption 5 to incorporate three common legal privileges: the attorney work-product privilege, the attorney



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client privilege and the deliberative process privilege. In your case, USCIS withheld records under the deliberative process privilege.

The deliberative process privilege is the most commonly used privilege in the FOIA context. Courts have ruled that the privilege protects the “decision making processes of government agencies,” which includes documents as well as the deliberative process itself. While matters of agency policy have traditionally fallen under Exemption 5, courts more broadly interpret it to include the entire deliberative process, whether or not a specific agency policy decision was at issue.

FOIA Exemptions 6 and 7(C) protect personal privacy interest. FOIA Exemption 6 protects information about individuals in “personnel and medical files and similar files” when the disclosure of such information “would constitute a clearly unwarranted invasion of personal privacy.” FOIA Exemption 7(C) is limited to information compiled for law enforcement purposes and protects personal information when disclosure “could reasonably be expected to constitute an unwarranted invasion of personal privacy.” [REDACTED] explained that that the categories of information USCIS withheld include the telephone numbers of other law enforcement entities, the name of a law enforcement officer and a CBP inspector’s badge number.

FOIA Exemption 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.” In your case, USCIS invoked Exemption 7(E) to protect information pertaining to law enforcement procedures and techniques, at the direction of law enforcement agencies.

We contacted ICE’s FOIA Unit to learn more about the status of the documents USCIS referred to ICE. We learned ICE assigned this case tracking No. [REDACTED], and that it emailed the response to this request to [REDACTED] on [REDACTED]. For your reference, I attached copies of the letters ICE sent you. Please note that both letters list the date as [REDACTED].

I hope you find this information useful. Thank you for contacting OGIS; we will now consider this matter closed.

Sincerely,

Nikki Gramian /s/ for

JAMES V.M.L. HOLZER
Director

cc: [REDACTED], USCIS Office of Legal Counsel, via email
ICE FOIA Unit, via email

Enclosures (2)