



OFFICE of GOVERNMENT INFORMATION SERVICES

May 13, 2016 — Sent via email

[REDACTED]
[REDACTED]
Re: Case No.: 201600406
NG: CM: KG

NATIONAL
ARCHIVES
and RECORDS
ADMINISTRATION

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OGIS
COLLEGE PARK, MD
20740-6001

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Dear [REDACTED]:

This responds to your request for assistance from the Office of Government Information Services (OGIS), which we received on January 13, 2016 via email. Your request for assistance pertains to a records request to the Government Accountability Office (GAO), the Social Security Administration (SSA), and the Equal Employment Opportunity Commission (EEOC).

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.

As you may know, when an individual requests access to his or her own records, it is most often, but not always, considered a Privacy Act, or first-party, request. Federal agencies will process requests under both FOIA and the Privacy Act of 1974 in order to provide requesters with the fullest degree of access available.

Privacy Act matters fall outside the scope of our office's mission as the FOIA Ombudsman. However, many Privacy Act requests overlap with FOIA; therefore, OGIS provides ombuds services, including providing information about the process and the status of requests, to individuals requesting their own records. OGIS does not have a statutory role in reviewing policies, procedures and compliance with the Privacy Act as we do with FOIA.

After opening a case, OGIS gathers information from the requester and the agency to learn more about the nature of the dispute. This process helps us gather necessary background information, assess whether the issues are appropriate for mediation, and determine the willingness of the parties to engage in our services. As part of our information gathering, OGIS carefully reviewed your submission of information. We understand that you made several requests to state and Federal agencies. In our role as the Federal FOIA Ombudsman, OGIS is limited to assisting with only Federal FOIA disputes; therefore, we will only address your request to the GAO, SSA, and EEOC.



Your request to Government Accountability Office (GAO)

On [REDACTED] you made a request to GAO for records about [REDACTED]. On [REDACTED] GAO responded, informing you that GAO is not subject to the FOIA per the agency's regulations. GAO is an agency within the legislative branch of the Federal government; FOIA applies only to records of the executive branch. It does not provide access to records held by the legislative branch/Congress, the Federal courts, advisory offices of the President, state or local government agencies, or by private businesses or individuals. Since OGIS's mandate is limited to assisting with requests under the FOIA, there is no assistance we can provide with your request to GAO.

Your request to Social Security Administration (SSA)

While your submission did not include copies of your correspondence with SSA, we contacted that agency and obtained those records to better understand the action of SSA on your FOIA request. We understand that you made a request for records [REDACTED]. SSA responded on [REDACTED] stating that the agency conducted a search for requested records but did not locate records responsive to your request. In its correspondence to you, SSA indicated that the records you seek are more likely to be available from a state agency; SSA provided contact information for the Michigan Department of Health Human Resources (MDHHR). According to documentation you provided OGIS, it appears you submitted a FOIA request to the MDHHR and on [REDACTED], the MDHHR released some records from [REDACTED].

In our role as Ombudsman, we inquired whether SSA has any [REDACTED] SSA FOIA searched its database using [REDACTED] and found no [REDACTED].

In a telephone conversation you had with OGIS staff members, you explained that you [REDACTED]. You assert that SSA did not fully respond to your request, because the information from [REDACTED] was not produced. OGIS staff explained to you that your FOIA request to SSA did not seek [REDACTED]—rather, you sought records about [REDACTED].” For this reason, SSA’s search for records was limited to what was requested. Should you wish to obtain any records about [REDACTED], you need to submit a new FOIA request for said records.

Your requests to Equal Employment Opportunity Commission (EEOC)

You submitted a request to EEOC for records regarding [REDACTED]

[REDACTED]. While your submission did not include all of the correspondence associated with this matter, we contacted EEOC and received additional correspondence. It appears that EEOC responded to you by informing you that it found no records responsive to your request; you appealed that response on [REDACTED]. EEOC responded to your appeal on [REDACTED], affirming its no records response and explaining that since you did not [REDACTED]—as the agency instructed you to do--EEOC did not [REDACTED]. For this reason, the agency has no records on this matter.

Generally, a FOIA requester has to provide sufficient information for a federal agency to be able to find records. In the above-referenced cases, it appears the agencies conducted reasonable searches to find records responsive to what you had requested. Federal courts have long settled that in regard to a search for documents, the crucial issue is whether an agency conducted an adequate search for a document, not whether a document *might* exist. An adequate search is conducted when the search is reasonably calculated to uncover all relevant documents. *Weisberg v. Dep’t of Justice*, 705 F.2d 1344, 1351 (D.C. Cir. 1983) The reasonableness of an agency's search can depend on whether the agency properly determined where responsive records were likely to be found, and searched those locations, or whether

[REDACTED]
May 13, 2015

Page 3 of 3

the agency improperly limited its search to certain record systems or otherwise failed to explain how and why the particular search at issue was conducted.

You also made a request to EEOC for records related to [REDACTED]. Although your OGIS submission did not include copies of your all of your correspondence to EEOC, we contacted that agency and obtained the agency's [REDACTED] acknowledgement of this request. On [REDACTED] the EEOC denied your request, issuing a no records response. That same day you emailed the agency asking to appeal the determination. You did not receive a response from the agency regarding your appeal. You requested OGIS's assistance.

In response to your submission, OGIS contacted EEOC to discuss the agency's response to your request and the status of your appeal. As a courtesy to you, OGIS sent EEOC a copy of the appeal you submitted on [REDACTED]. EEOC sent you an acknowledgement letter on [REDACTED], assigning the appeal the number [REDACTED]. On [REDACTED], EEOC responded to your appeal, affirming its initial determination that the agency did not have responsive records. We have enclosed a copy of that letter.

Regarding your concerns about your requests to Michigan state agencies, you may wish to consult the *Michigan Open Government Guide*, available online at <http://www.rcfp.org/rcfp/orders/docs/ogg/MI.pdf>.

I hope you find the explanation provided above useful to understanding why EEOC and SSA responded as they did to your FOIA requests and appeals. At this time, there is no further assistance that OGIS can offer you in this case.

Thank you for bringing this matter to OGIS. We will close your case.

Sincerely,

/s/

JAMES V.M.L. HOLZER
Director

Enclosure

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.