



OFFICE *of* GOVERNMENT INFORMATION SERVICES

May 18, 2016 — Sent via U.S. Mail

[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]

Re: Case No.: 201600416  
NG: CM: KG

NATIONAL  
ARCHIVES  
and RECORDS  
ADMINISTRATION

8601 ADELPHI ROAD  
OGIS  
COLLEGE PARK, MD  
20740-6001

web: [www.ogis.archives.gov](http://www.ogis.archives.gov)  
e-mail: [ogis@nara.gov](mailto:ogis@nara.gov)  
phone: 202-741-5770  
toll-free: 1-877-684-6448  
fax: 202-741-5769

Dear [REDACTED]:

This responds to your requests for assistance from the Office of Government Information Services (OGIS), which we received on January 15 and March 10, 2016 via U.S. mail. Your requests for assistance pertains to your records requests to various divisions of the Department of Justice (DOJ).

OGIS was created 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. Please know that 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.

OGIS provides mediation services to resolve disputes between FOIA requesters and Federal agencies. 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.

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



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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.

OGIS staff carefully reviewed the correspondence you submitted in which you state you are having difficulty obtaining documents from Federal agencies, though you do not specify what assistance you seek from OGIS. In reviewing your submission, we understand that you requested access to records concerning ██████████ from the Drug Enforcement Agency (DEA), DOJ Office of Inspector General (OIG) and the Federal Bureau of Investigations (FBI). In your submissions you expressed concern that you do not have copies of the agencies' responses to provide to OGIS. In response to your submission, OGIS contacted DOJ to discuss the agency's actions on each request.

### **Your request to the Drug Enforcement Agency**

For your appeal of DEA's response to your FOIA request ██████████, OGIS contacted DOJ's Office of Information Policy (OIP), which handles all the Department's administrative FOIA appeals. OIP informed OGIS that your appeal of DEA's response to your request is in process at the agency and OIP anticipates responding to your appeal by the end of May. In your March 10, 2016 correspondence to OGIS, you noted that you received documents from the DEA in response to another FOIA request ██████████, and you state that you plan to appeal that response. The appeal is an important part of the FOIA administrative process. By filing an appeal, you preserve your administrative rights and give the agency a chance to carefully review and reconsider every part of a request and the agency's decision.

### **Your request to the Office of Inspector General**

For your appeal of OIG's no records response, OIP informed OGIS that it responded to your appeal ██████████ on ██████████. As a courtesy to you, we have enclosed a copy of OIP's appeal response in which the agency affirms OIG's no records response.

### **Your request to Federal Bureau of Investigation**

Your submission to OGIS included a copy of OIP's ██████████ response to your appeal of FBI request No. ██████████. In its response, OIP affirmed that the FBI conducted an adequate search for records ██████████ and did not located responsive records. It is not clear to us why you believe that OIG and FBI may have records ██████████. In working your cases with OIP, it appears to us that DEA was the only federal agency that had ██████████.

With FBI searches, it may be helpful to know that if you were a "subject" of an investigation by FBI, then its search of their database (Central Records System) for "main" files on subjects would have turned up records ██████████. However, if you were not a "subject" of an investigation, but

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you provided a statement about another individual or were a victim of a crime that was investigated by FBI, you may wish to submit a new request to FBI and ask for a “cross-reference” search of your name.

For a “cross-reference” search, you need to include enough information about the case to enable the FBI to ensure with certainty that the cross-references are identifiable to you. The information you may include for a cross-reference search are:

- The specific circumstances in which you may have had contact with the FBI;
- The date(s) of such contact;
- The location(s) of such contact;
- Your full name and any prior names or aliases you used;
- Your Social Security number, date of birth, place of birth, and home address;
- Names of your associates, the mention of whom might help in identifying responsive records; and
- Other references of you in the media, such as in books or articles or on websites.

The date(s) and location(s) of any contact with the FBI or a specific crime would also be useful in trying to locate records pertaining to you in someone else’s main files.

Finally, I note that the FBI informed you about two matters which the agency informs all requesters. The FBI routinely informs all FOIA requesters that it can neither confirm nor deny that their names are on a watch list. This response is known as a “Glomar response.” As OIP informed you in its December 7, 2015 response to your appeal, the FBI’s response is standard and does not indicate whether watch list records pertaining to you exist.

When an agency issues a “Glomar response,” it also cites to an exemption for such responses. In your case, FBI cited to FOIA Exemption 7(E), 5 U.S.C. § 552(b)(7)(E). Exemption 7(E) authorizes an agency to withhold information compiled for law enforcement purposes 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 the case of watch lists, confirmation that an individual is or is not included on such a list may reveal information that could assist a terrorist organization in circumventing the law by determining which of its members are likely to be questioned or detained. Federal courts have consistently held that records pertaining to terrorism watch lists are appropriately withheld under Exemption 7(E).

Finally, you noted your March 10, 2016 correspondence that the agency deviated from your original request and wanted ██████████ for copies, though you do not enclose any correspondence related to the agency’s assessment of fees. As the FOIA Ombudsman, OGIS has observed that direct communication between agencies and requesters is often one of the most essential parts of the FOIA

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process. When making a request to a Federal agency for records, it is important to be as specific in your request as possible, which in turn will help FOIA professionals locate records directly responsive to your specific request and process those records as quickly as possible. Enclosed with this letter is a document from the National Security Archives website that provides good tips for crafting FOIA requests.

I hope you find this information useful. In addition to the two letters enclosed, we are returning the documents you submitted to OGIS. At this time, there is no further assistance OGIS can offer. Thank you for bringing this matter to OGIS. We will close your case.

Sincerely,

/s/

NIKKI GRAMIAN  
Acting Director

cc: ██████████, Senior Attorney, Department of Justice, Office of Information Policy