



OFFICE *of* GOVERNMENT INFORMATION SERVICES

June 16, 2016 — Sent via U.S. mail



Re: Case No. 201600769
NG: CM: KG

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 [REDACTED]:

This responds to your request for assistance from the Office of Government Information Services (OGIS), which we received on April 15, 2016 via U.S. mail. Your request for assistance pertains to your records request to the Department of Justice (DOJ), Federal Bureau of Investigation (FBI).

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.

You submitted a request to FBI on [REDACTED]. On [REDACTED] FBI responded to your request, informing you the agency processed and released records responsive to this request to you on [REDACTED]. You appealed this determination on [REDACTED]. DOJ's Office of Information Policy (OIP) responded to your appeal on [REDACTED] affirming the FBI's action on your request. You requested assistance from OGIS.



[REDACTED]
June 16, 2016

Page 2 of 3

In response to your request, we reviewed the Department of Justice's Annual FOIA Report Handbook and learned that agencies may close requests as duplicates when the request is "from the same requester seeking the same information." In your case, the FBI determined that the records you sought in your [REDACTED] request are identical to those you sought in your [REDACTED] request. In response to your appeal, OIP affirmed that the FBI conducted a search for records responsive to your request, but did not locate any additional records beyond those processed in response to your [REDACTED] request.

Additionally, we contacted OIP Attorney Advisor, [REDACTED] to learn more about OIP review of FBI's final response that was issued to you in [REDACTED] and [REDACTED]. [REDACTED] explained that the notes from the [REDACTED] appeal reflect that the FBI's search did not locate any [REDACTED]

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 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.

Since the FBI did not have any [REDACTED] the Bureau processed in [REDACTED] and a subsequent search did not uncover [REDACTED] or any additional records, you may wish to submit a FOIA request to the Bureau of Prison (BOP) to see if the requested [REDACTED] is in BOP's possession. Records that are under the control of one agency, should typically be requested from that agency. Since [REDACTED] you referenced in your correspondence occurred within one of BOP's facilities, and said facility [REDACTED] then a FOIA request can be submitted to BOP for the requested [REDACTED]. Another option to consider is to submit a FOIA request to the Executive Office for U.S. Attorneys (EOUSA). [REDACTED]

[REDACTED] It *could* be that the requested [REDACTED] may have been produced to the U.S. Attorney's Office for evidentiary use [REDACTED]. Therefore, you may also wish to submit a FOIA request to EOUSA to see if this DOJ component has the requested record. If so, EOUSA will then have to refer [REDACTED] to BOP for review and processing under FOIA.

It should also be noted that both BOP and EOUSA have approved records management schedules and said document may have been destroyed pursuant to the agency's records management schedules.

[REDACTED]
June 16, 2016

Page 3 of 3

I hope that this information about your request is useful to you. 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: Dennis Argall, FOIA Public Liaison, Federal Bureau of Investigations
[REDACTED], Associate Chief, Administrative Appeals Staff, Office of Information
Policy, Department of Justice