



OFFICE *of* GOVERNMENT INFORMATION SERVICES

June 23, 2016— Sent via email

██████████  
████████████████████

Re: Case No.: 201600659  
NG: CM

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 ██████████:

This responds to your March 18, 2016 request for assistance from the Office of Government Information Services (OGIS), which we received via email. Your request for assistance pertains to your request for records regarding ██████████

██████████.

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.

We carefully reviewed your submission of materials, and it appears that you made a request to the Department of the Army for records about ██████████. According to a March 9, 2016 letter from the Department of Justice Office of Information Policy (OIP), Army referred some responsive material to the Federal Bureau of Investigation (FBI) for review and direct response. The FBI withheld this material pursuant to FOIA Exemption 7(E), 5 U.S.C. § 552(b)(7)(E). You appealed this response, and OIP upheld the FBI's action on your request. You ask for OGIS's assistance with this matter.

In working cases similar to yours, OGIS has learned that background investigations include a search of a particular FBI database; that database allows investigators to learn that there is either no match to an individual's name or a match revealing either negative or neutral information about that individual.

As it did in your case, the FBI withholds that information—regardless of the search outcome—from *all* requesters under FOIA Exemption 7(E), 5 U.S.C. § 552(b)(7)(E). 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.” The FBI's response to you should not be taken as an indication that it has or does not have records about ██████████



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Please know that courts have consistently held that information pertaining to activities such as background checks fall within Exemption 7(E). For example, the U.S. Court of Appeals for the District of Columbia Circuit ruled that CIA background investigations inherently fall within Exemption 7(E). *Morley v. C.I.A.*, 508 F.3d 1108, 1128-29 (D.C. Cir. 2007). The D.C. Circuit also has ruled that “an agency may seek to block the disclosure of internal agency materials relating to guidelines, *techniques*, sources, and procedures for law enforcement investigations,” as they are protected by Exemption 7. *Tax Analysts v. I.R.S.*, 294 F.3d 71, 79 (D.C. Cir. 2002) (emphasis added). An agency technique would be the way it conducts a computer search in relation to a background check.

Your submission also included the FBI’s acknowledgment of a second referred request ( [REDACTED] ), this one from the Office of Personnel Management (OPM). OGIS staff contacted the FBI to inquire about the status of this request, and the FBI explained that it responded to your request on [REDACTED]

I hope that this information about your request is useful to you. Thank you for contacting OGIS; we will now consider this matter closed.

Sincerely,

/s/

NIKKI GRAMIAN  
Acting Director

cc: FBI FOIA

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.