



OFFICE of GOVERNMENT INFORMATION SERVICES

January 28, 2014 — Sent via U.S. mail

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

Re: Case No.: 201400160
MN: NG: CM

NATIONAL
ARCHIVES
and RECORDS
ADMINISTRATION

8601 ADELPHI ROAD
OGIS
COLLEGE PARK, MD
20740-6001

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Dear [REDACTED]:

This responds to your December 16, 2013 request for assistance from the Office of Government Information Services (OGIS). Your request for assistance pertains to your Freedom of Information Act (FOIA) request to the Federal Bureau of Investigation (FBI) seeking access to documents pertaining to five individuals.

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 its jurisdiction is limited to assisting with the FOIA process.

I understand that you made requests for FBI records regarding [REDACTED], [REDACTED], [REDACTED] and [REDACTED]. The FBI refused to confirm or deny the existence of responsive records, pursuant to FOIA Exemption 7 (C). You appealed those responses, and the Department of Justice Office of Information Policy affirmed the FBI's action on your request. You dispute the FBI's responses to your requests.

When an agency responds to a FOIA request by neither confirming nor denying the existence of responsive records, it is known as the "Glomar" response. A "Glomar" response is proper when to admit that records even exist would reveal a fact that is exempt under FOIA. If an agency issues a "Glomar" response, it must cite to one or more FOIA exemptions to explain its refusal to disclose information. In your case, DOJ explained that the existence or nonexistence of responsive records about these individuals is exempt under FOIA Exemption 7(C), 5 U.S.C. § 552(b)(7)(C).



Exemption 7(C) protects from disclosure law enforcement information the disclosure of which “could reasonably be expected to constitute an unwarranted invasion of personal privacy.” Please know that confirming or denying the existence of law enforcement records concerning an individual could reasonably be expected to invade that individual’s privacy.

You may be able to overcome the privacy interest protected by Exemption 7(C) if

- the individual (or individuals) provides his consent to the release of information; or
- you provide proof of the individual’s death; or
- there is an official acknowledgment by the U.S. Government of an investigation and you show a public interest that overrides a personal privacy interest.

Regarding the “public interest” mentioned above, please note that in order to overcome a “Glomar” response a requester must demonstrate clearly that the public interest in disclosure outweighs the third party’s personal privacy interest and that a significant public benefit would result from the disclosure of the third party records. In addition, when a requester alleges “governmental misconduct” as the basis for disclosure, the requester must put forward compelling evidence that the agency or agency officials may be engaged in wrongful activity and that the information sought is necessary in order to confirm or refute that evidence. *See ACLU v. DOJ*, 655 F.3d 1, 8 (D.C. Cir. 2011) (finding valid public interest where requesters sought to show nature, effectiveness, and intrusiveness of the government’s policy regarding warrantless cell phone tracking, and specifically noting that “plaintiffs are not (or at least not only) seeking to show that the government’s tracking policy is legally improper, but rather to show what the policy is and how effective or intrusive it is.”)

I hope you find this information useful in understanding why the FBI responded to your request as it did. In cases such as this where an agency is firm in its position, there is little for OGIS to do beyond providing more information about the agency’s actions. Thank you for contacting OGIS; we will now consider this matter closed.

Sincerely,



Miriam Nisbet, Director
Office of Government Information Services (OGIS)

cc: Dennis Argall, FBI