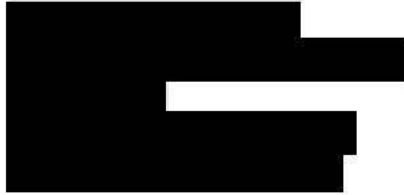




OFFICE of GOVERNMENT INFORMATION SERVICES

September 4, 2014 — Sent via email



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

Re: Case No.: 201400490  
MN: NG

Dear [REDACTED]:

This letter responds to your April 29, 2014 request for assistance from the Office of Government Information Services (OGIS), which we received on May 1, 2014 via email. Your request for assistance pertains to your Freedom of Information Act (FOIA) request to U.S. Citizenship and Immigration Services (USCIS) on behalf of your client, [REDACTED] ([REDACTED] or the petitioner).

We apologize for the delay in responding to your request. OGIS is short-staffed and we are not responding to requests as quickly as we would like.

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.

OGIS's Deputy Director, Nikki Gramian, contacted the USCIS FOIA Office to learn more about your request and the records you seek. It is our understanding that in your August, 2013 FOIA request to USCIS, your client sought a copy of "all documents relating to all petitions filed, I-130s, etc." In response, we understand that USCIS identified 94 pages of responsive records from [REDACTED] A-file. USCIS released in full 92 pages, released in part one page, and withheld in full one page. It is our understanding that [REDACTED] then filed an administrative appeal of the Agency's response and in that appeal, you clarified that [REDACTED] was seeking a copy of all records related to any petitions that he had filed, including an approved I-130 petition that he had earlier filed on behalf of his son, [REDACTED] ([REDACTED] or the beneficiary), which was not included among the responsive records provided.



In its appeal response, the USCIS FOIA appeals office explained that “applications and petitions such as I-130 applications are filed in the beneficiary’s A-file and thus become the ownership of the beneficiary and not the petitioner that filed it” and therefore, you would need to file a FOIA request for the I-130. The appeals response provided you instructions on how you may be able to obtain the requested information, but explained that in the absence of the beneficiary’s consent, proof that the beneficiary is deceased, or a demonstration that the public interest in the requested information outweighs the beneficiary’s personal privacy interest, the I-130 would be exempt from release under the FOIA pursuant to Exemption 6 of the FOIA, 5 U.S.C. § 552(b)(6). Specifically, FOIA Exemption 6 requires the government to withhold all information about individuals in personnel, medical, and similar files when the disclosure of such information “could reasonably be expected to constitute an unwarranted invasion of personal privacy.” Id.

USCIS explained to Ms. Gramian that when an I-130 petition is filed with USCIS and the petition is adjudicated, the document becomes part of and maintained in the beneficiary’s alien file (A-file) and no such copy is maintained in the petitioner’s A-file. As you know, the A-file is the official government record that contains information regarding transactions involving an individual as he/she passes through the U.S. immigration and inspection process. *See* 76 Fed. Reg. 34233 (June 13, 2011). Accordingly, when a request is submitted by a petitioner to obtain a copy of the petition, USCIS considers this type of request to be a “third-party” FOIA request.

In your letter to OGIS you stated that USCIS does not cite to any legal authority for its reasoning that the location where it [USCIS] files a document determines its releasability. Please know when an individual requests access to his or her own records, it is most often, but not always, considered a “first-party” request. Federal agencies will process requests under both FOIA and the Privacy Act of 1974 in order to provide the requester with the fullest degree of access available. However, in your client’s situation, the request is *not* considered to be a first-party request. Rather the request is considered to be a third-party request because, as explained above, the information would have to be retrieved from the beneficiary’s A-file. Simply said, in your client’s case records that are generated as a result of an immigration benefit are not considered to be records about the petitioner; rather the records are considered to be about the beneficiary. Although the information provided in the I-130 form is information that your client (the petitioner) provided for the benefit of his son, and that information might seem to be a record about the petitioner, what your client requested was a record about his son that USCIS considers to be protected under the Privacy Act of 1974.<sup>1</sup> With certain exceptions, the Privacy Act prohibits an agency from releasing those records without “a written request by, or with the prior written consent of, the individual to whom the record pertains. . .” 5 U.S.C. § 552a(b). One of the exceptions to that prohibition is when information in a Privacy Act protected file is required to be released under the FOIA. But that means your client’s access rights are only those provided by FOIA.

<sup>1</sup> USCIS has published a Privacy Act System of Records Notice (SORN) for Alien files. *See*, 78 FR 69864 (001-Alien File).

As USCIS's letter explained, you may be able to obtain the requested record by meeting one of the following criteria. You may:

- 1) Obtain the beneficiary's authorization permitting the disclosure of the records to you or your client.
- 2) Provide proof of parentage verifying the subject of the record (in this case the beneficiary) is a minor.
- 3) Provide proof of court-appointed guardianship with your client's verification of identity.
- 4) Provide proof that the subject of the request (in this case the beneficiary) is deceased.
- 5) Provide a clear demonstration that the public interest in disclosure outweighs the personal privacy of the beneficiary and that significant public benefit would result from the disclosure of the requested records.

You also provided Ms. Gramian with a publication from the American Immigration Lawyers Association (AILA) indicating that "USCIS has confirmed that for FOIA requests seeking a complete and unredacted copy of Form I-130, Petition for Alien Relative, a G-28 and/or consent must be completed by both the petitioner and beneficiary of the petition. **Otherwise, the released I-130 will be redacted to exclude the information of the non-consenting party.**"

My deputy sought clarification from USCIS about the bolded statement above in AILA's publication. USCIS advised my deputy that it was not familiar with the source AILA has used and that the information in the publication does not accurately reflect USCIS' FOIA processing.

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.

Although Privacy Act matters fall outside the scope of our office's mission, we have provided some information about the Act in order to explain the reasons why USCIS denied your client's request. I understand that this is not the response you expected to receive, but I hope that the explanation we provided is useful to you. Thank you for contacting OGIS; we will now close your request.

Sincerely,

/s/

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

cc: USCIS Office of Chief Counsel

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.