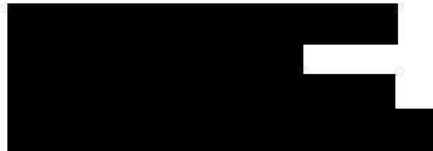




OFFICE of GOVERNMENT INFORMATION SERVICES

November 6, 2014 — Sent via U.S. Mail



Re: Case No.: 201400026
MN: NG: CL

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 letter responds to your September 26, 2013 request for assistance from the Office of Government Information Services (OGIS), which we received via U.S. mail. Your request for assistance pertains to your records request to the Executive Office for United States Attorneys (EOUSA) and subsequent appeal to the Department of Justice's Office of Information Policy (OIP) for records related to the criminal case *USA v. [REDACTED]* No. [REDACTED]-[REDACTED]. I apologize for the delay in responding to your request.

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.

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 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.

In your case, EOUSA informed you that the Office could not locate records responsive to your request. You appealed that response, and OIP responded to your appeal by affirming EOUSA's initial response, stating that EOUSA



November 6, 2014

Page 2 of 2

conducted an adequate and reasonable search, but was unable to locate responsive records. You contacted OGIS because you are dissatisfied with the Department of Justice's response to your request and appeal.

OGIS Facilitator Christa Lemelin carefully reviewed the correspondence related to your request and appeal and discussed your request with EOUSA Attorney John Kornmeier. Mr. Kornmeier explained that when a U.S. Attorney's Office (USAO) no longer needs documentary evidence or records it uses to prosecute a case, the office typically returns the evidentiary material to the owner, usually the agency responsible for conducting the investigation. Because your criminal trial was complete at the time you made your records request, it is likely the USAO for the Eastern District of New York had already returned records pertaining to your criminal case to the agency/agencies responsible for investigating your case and no longer had responsive records in its custody. For your reference, I enclose Chapter 3-13.000 Procurement, Property, and Records Management of the U.S. Attorney's Manual. Please note the highlighted portion regarding USAO policies for managing documentary evidence.

Mr. Kornmeier said that that Federal agencies like the Drug Enforcement Agency (DEA) often collaborate with state and local law enforcement agencies on task forces and investigations; these local and state authorities may provide EOUSA with the information it needs to try a case. If you have not done so already, you may wish to submit records requests to the Federal, state and local law enforcement agencies that investigated you.

We hope you find this information about your requests useful. At this time, OGIS can offer you no further assistance. Thank you for bringing this matter to us. We will close your case.

Sincerely,

/s/

Miriam Nisbet, Director
Office of Government Information Services

cc: Donna Preston, FOIA Public Liaison, EOUSA, via email
John Kornmeier, Attorney, EOUSA, via email

Enclosure