



OFFICE of GOVERNMENT INFORMATION SERVICES

November 20, 2014 — Sent via email

[REDACTED]

Re: Case No. 201400742
NG: CM: CL

NATIONAL
ARCHIVES
and RECORDS
ADMINISTRATION

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OGIS
COLLEGE PARK, MD
20740-6001

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Dear [REDACTED]:

This responds to your July 17, 2014 request for assistance from the Office of Government Information Services (OGIS), which we received via email. Your request for assistance pertains to your Freedom of Information Act (FOIA) request to the National Archives and Records Administration's (NARA's) Jimmy Carter Presidential Library and Museum and subsequent appeal, No. NGC [REDACTED] to NARA for access to record related to [REDACTED] and/or [REDACTED]. I apologize for our delay in responding to your submission.

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 our jurisdiction is limited to assisting with the FOIA process.

We carefully reviewed your submission of information, and we understand that the Carter Library neither confirmed nor denied the existence of records responsive to your request under FOIA Exemption 1 and Executive Order (E.O.) 13526 § 3.3(b)(1); on appeal NARA affirmed its initial response.

When an agency responds to a FOIA request by neither confirming nor denying the existence of responsive records, this is known as a "Glomar" response.

A Glomar response is proper when to admit that records even exist would reveal a fact that is exempt under FOIA. Please know that E.O. 13526 explicitly acknowledges the Glomar response in regards to FOIA requests, stating, "An agency may refuse to confirm or deny the existence or nonexistence of requested records whenever the very fact of their existence or nonexistence is itself classified under this order."

FOIA Exemption 1, 5 U.S.C. § 552(b)(1), protects from disclosure information that has been deemed classified pursuant to an executive order (in your case, E.O. 13526) and is properly classified under that order. Records whose release may cause harm to national security are generally deemed properly classified



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and exempt from release under Exemption 1. Courts have heavily deferred to agencies in cases involving challenges to Exemption 1 claims.

OGIS Facilitator Christa Lemelin discussed your request and NARA's response with the Carter Library's FOIA staff and NARA FOIA appeals staff. Both offices confirmed that they believe that a Glomar response was proper under E.O. 13526 and Exemption 1 as explained above.

Please know that one way to show that a Glomar response is not proper is to provide evidence that an official of the agency has publicly and officially acknowledged a fact that would establish a basis for concluding that records about a subject exist (or existed). In showing "official acknowledgement," you must demonstrate that the information you requested is "as specific as the information previously released," matches the previously disclosed information, and was publicized through an official, documented disclosure. *See Int'l Counsel Bureau v. U.S.C.I.A.*, 774 F.Supp.2d 262 (D.D.C. 2011). Statements contained in media reports of government officials who are not authorized to speak for the agency do not constitute "official acknowledgement by an authoritative source." *See Am. Civil Liberties Union v. Dep't of Def.*, 752 F.Supp.2d 361 (S.D.N.Y. 2010). A general acknowledgement of intelligence activity usually will not be enough to overcome a Glomar response as to specific details of an operation that have not been officially acknowledged by the government. To learn more, you may wish to review the Exemption 1 chapter in the Department of Justice Guide to the FOIA at <http://www.justice.gov/sites/default/files/oip/legacy/2014/07/23/exemption1.pdf>. The section on Glomar responses begins on page 29.

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. At this time, OGIS can offer you no further assistance with your request. Thank you for bringing this matter to OGIS. We will close your case.

Sincerely,

Miriam Nisbet, Director
Office of Government Information Services

cc: Joseph Scanlon, FOIA Officer, National Archives and Records Administration
Brittany Parris, Archivist, Jimmy Carter Presidential Library, and Museum

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.