



OFFICE of GOVERNMENT INFORMATION SERVICES

February 11, 2015 — Sent via U.S. mail

[REDACTED]
[REDACTED]
[REDACTED]

Re: Case No.: 201500168
NG: CM: KG

NATIONAL
ARCHIVES
and RECORDS
ADMINISTRATION

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OGIS
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Dear [REDACTED]

This responds to your December 1, 2014 request for assistance from the Office of Government Information Services (OGIS), which we received on December 1, 2014 via fax. Your request for assistance pertains to your Freedom of Information Act (FOIA) request to the U.S. Equal Employment Opportunity Commission (EEOC).

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.

OGIS staff carefully reviewed the correspondence you submitted with your request for assistance. I understand that you made a FOIA request to the EEOC for Charge no. [REDACTED]. The EEOC denied your request on October 7, 2014 citing FOIA Exemptions 3 and 7(c). You appealed EEOC's decision on October 22, 2014. EEOC denied your appeal on November 25, 2014 affirming the initial determination. In the appeal denial EEOC further clarified their use of the FOIA exemptions.

OGIS reached out to the EEOC to get more information on your case. The agency was responsive to OGIS's inquiry, but affirmed the denial determination.

FOIA Exemption 3, 5 U.S.C. § 552(b)(3), incorporates other, separate statutes that require information to be withheld from release. In your case, the EEOC cited two b(3) statutes, 42 U.S.C. §§ 2000e-5(b), 2000e-8(e) of the Civil Rights Act of 1964 and 42 U.S.C §12117 of the Americans with Disabilities Act.

Section 2000e-5(b) of the Civil Rights Act of 1964 states that any charges brought to the Commission shall not be made public by the commission; additionally, nothing said or done during and as part of the case may be made public by the Commission, without the written consent of the persons concerned. Section 2000e-8(e) of the Civil Rights Act of 1964 states that it is unlawful for any employee of the Commission to release information obtained by the Commission prior to the institution of any proceedings. Any Commission employee who releases information about a charge can be criminally prosecuted, fined, and incarcerated.



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Section 107 of the Americans with Disabilities Act (codified as section 12117 under the 2008 amendments) states that the Commission must follow the procedures set forth by the previous two sections mentioned in the Civil Rights Act of 1964.

Exemption 7(C), 5 U.S.C. § 552(b)(7)(C), states that records compiled for law enforcement purposes, such as civil or criminal investigations conducted by regulatory agencies such as the EEOC, may be withheld if they “could reasonably be expected to constitute an unwarranted invasion of personal privacy.” Apart from the separate statutory exemptions that would require complete withholding of this information, the EEOC stated that Exemption 7(c) would also cover the records at issue. The government recognizes strong privacy interests in law enforcement records and courts have agreed that it is generally appropriate to withhold information that identifies third parties in law enforcement records.

I hope you find this information useful in understanding why the EEOC withheld the material it did in response to your request. We’ve enclosed more information that may help you better understand the agency’s decision. At this time, there is no further assistance OGIS can offer. Thank you for bringing this matter to OGIS. We will close your case.

Sincerely,

/s/

Nikki Gramian, Acting Director
Office of Government Information Services (OGIS)

cc: Stephanie Garner, Assistance Legal Counsel, EEOC

Enclosures