



OFFICE of GOVERNMENT INFORMATION SERVICES

March 26, 2015 — Sent via U.S. Mail

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

Re: Case No. 201400958
NG: CM: AS

NATIONAL
ARCHIVES
and RECORDS
ADMINISTRATION

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OGIS
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Dear [REDACTED]

This responds to your September 19, 2014 request for assistance from the Office of Government Information Services (OGIS), which we received on September 22, 2014 by mail. Your request for assistance pertains to your Freedom of Information Act (FOIA) request ([REDACTED] and appeal [REDACTED]), sent to U.S. Environmental Protection Agency (EPA). You sought information pertaining to an EPA job posting for which you applied.

As you are aware, 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 noted the agency split your request into two parts. The Human Resources (HR) Division reviewed records responsive to your request for selection certification, the job analysis, the announcement summary, the vacancy announcement, the resumes, questionnaires, and associated email correspondence. The Office of Criminal Enforcement, Forensics and Training (OCEFT) reviewed records responsive to your request for the interview and selection process.

We contacted EPA FOIA Office to inquire about the two responses and the agency's appeal's unit. EPA's FOIA Public Liaison expressed both offices are firm about the agency's decision regarding their responses to your FOIA request and further explained the agency will not change its position. As you know, the EPA used FOIA Exemptions 2, 5, and 6 to withhold certain records responsive to your FOIA request and on appeal the agency upheld its withholding under Exemption 5 and 6 of the FOIA. Below is an explanation of each exemption the agency applied.



Exemption 2, 5 U.S.C. § 552(b)(2)

In its response dated February 22, 2014, the HR Division released some records to you in full and some in part. The HR Division invoked FOIA Exemptions 2 and 6 for its withholding. FOIA Exemption 2 allows agencies to withhold records that are related solely to the internal personnel rules and practices of an agency. EPA applied Exemption 2 to information that is internal in nature for which there is no genuine or significant public interest. In this case, information such as evaluative material, the agency's rating plan, and material accessed through the agency's EZHire system were withheld under FOIA Exemption 2.

Exemption 6, 5 U.S.C. § 552(b)(6)

The HR Division and OCEFT cited FOIA Exemption 6 of the FOIA to withhold records in full (resumes of unsuccessful applicants) and in part (personal information on successful applicants. Records may be withheld under Exemption 6 if the information is contained in "personnel and medical files and similar files the disclosure of which would constitute a clearly unwarranted invasion of personal privacy." 5 U.S.C. § 552(b)(6). In determining whether to invoke Exemption 6, agencies must balance the individual's right of privacy against public interest which centers on preservation of the basic purpose of FOIA -- to open agency action to the light of public scrutiny. In your request, EPA withheld the resumes of unsuccessful applicants (those who applied but did not get the job) and certain information from the successful applicants' resumes that were purely personal in nature (such as Social Security numbers and home addresses).

With regard to the information withheld on unsuccessful applicants, courts have held that applicants that were not selected for an advertised position have a substantial privacy interest in anonymity. Courts have determined that the release of any information on who has applied for a position could reveal knowledge of their non-selection which could lead to embarrassment or adversely affect present and future employment or promotion prospects. It may be helpful to know that EPA protects the identity of third parties in much the same way that it would protect your identity were it to receive a request for your records from anyone other than you.

With regard to successful applicants' resumes, EPA released names, applicants work experience, present and past job titles, and/or present and past grades, present and past salaries, and present and past duty stations. Courts have found that the names, professional qualifications, and work experience of the successful candidates is required to be disclosed, but not other private information such as home telephone numbers and addresses, dates of birth, and social security numbers, and any other information that is not relevant to the applicant's qualification. EPA withheld purely personal information from the successful applicants' resumes but released other information that provided the applicants' qualifications.

March 26, 2015

Page 3 of 3

FOIA Exemption 5, 5 U.S.C. § 552(b)(5)

FOIA Exemption 5 protects “inter-agency or intra-agency memorandums or letters which would not be available by law to a party other than an agency in litigation with the agency.” Courts have interpreted Exemption 5 to incorporate three common legal privileges: the attorney work-product privilege, the attorney-client privilege and the deliberative process privilege. In this case, the agency invoked the deliberative process privilege. EPA invoked this exemption for material such as drafts and other deliberative information it used in its decision making process for selection or non-selection of applicants.

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. I hope that this information about your request is useful to you. At this time there is no further action for us to take and we will consider this matter closed.

Sincerely,

/s/

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

cc: Larry Gottesman, EPA FOIA Office, via email

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.