



OFFICE of GOVERNMENT INFORMATION SERVICES

March 26, 2015 - Sent via U.S. Mail

NATIONAL  
ARCHIVES  
and RECORDS  
ADMINISTRATION

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Re: Case No. 201500024  
NG: CM: AS



Dear [REDACTED]:

This responds to your September 22, 2014 request for assistance from the Office of Government Information Services (OGIS), received on October 6, 2014. Your request for assistance pertains to your Freedom of Information (FOIA) request, No. [REDACTED], to the Federal Bureau of Investigation (FBI), and appeal, AP-2014-[REDACTED], submitted to the Department of Justice's Office of Information Policy (OIP). You sought assistance with your efforts to obtain records from the FBI regarding yourself. Thank you for your interest in OGIS.

As you know, 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.

Please know that when an individual requests access to his or her own records, as you have done, it is most often considered a Privacy Act, or first-party, request. 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 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.

We carefully reviewed your paper submission and the materials OIP was able to provide to us. From these materials, we understand that you requested records concerning yourself located within the Combined DNA Index System (CODIS). In its initial response, the FBI denied your request pursuant to FOIA Exemption 3, 5 U.S.C. §§ 552(b)(3). You appealed that response, and the OIP upheld the FBI's earlier determination.



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Per our discussions on this issue with the FBI, the agency explained that it can only disclose this information under the following criteria which was also listed in the agency's response letter to you:

- (1) criminal justice agencies for law enforcement identification purposes;
- (2) in judicial proceedings, if otherwise admissible pursuant to applicable statutes or rules;
- (3) for criminal defense purposes, to a defendant, who shall have access to samples and analyses performed in connection with the case in which such defendant is charged; and
- (4) if personally identifiable information is removed, for a population statistics database, for identification research and protocol development purposes, or for quality control purposes.

The FOIA Public Liaison further explained the agency is prohibited from disclosing any information from the CODIS unless the requester can meet criteria number three (3) by showing he/she is currently a defendant in a criminal proceeding which requires access to the DNA information. You may wish to submit a new request to the FBI along with any information that shows you are currently involved in a criminal proceeding. Past criminal proceeding which has already resulted in a criminal conviction and subsequent appeals that have been resolved will not be considered. Therefore, without such information, the FBI is firm in its response to your request.

It may be helpful to know that Exemption 3 of the FOIA establishes two categories of statutes—those that provide agencies with no discretion to release information and those that provide agencies with some discretion by establishing particular criteria or referring to particular types of matters, 5 U.S.C. §§ 552(b)(3)(A) and (B). In other words, the discretion to release information potentially covered by Exemption 3 is not governed by FOIA, but by the withholding statute itself. In this situation, these records fall under the first category and FBI has no discretion to release these records, should they exist.

As a courtesy to you we asked OIP to send us copies of your request and the FBI's initial response which we are enclosing for your reference. I hope you find this information useful in understanding why the FBI and the OIP responded to your request and appeal as they did. Thank you for contacting OGIS; we will now consider this matter closed.

Sincerely,

/s/

Nikki Gramian, Acting Director  
Office of Government Information Services

cc: Dennis Argall, FBI FOIA Public Liaison