



OFFICE of GOVERNMENT INFORMATION SERVICES

March 26, 2015— Sent via email

[REDACTED]

Re: Case No.: 201500087
NG: CM: AS

NATIONAL
ARCHIVES
and RECORDS
ADMINISTRATION

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OGIS
COLLEGE PARK, MD
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Dear [REDACTED]:

This responds to your, October 27, 2014 request for assistance from the Office of Government Information Services (OGIS). Your request for assistance pertains to your [REDACTED], 2014 Freedom of Information Act (FOIA) request and subsequent appeal (14-FI-[REDACTED]) to the U.S. Department of Housing and Urban Development (HUD). You sought a copy of all internal correspondence between HUD staff that related to HUD case number [REDACTED] [REDACTED] v. [REDACTED] [REDACTED]. Upon appeal the agency upheld its earlier decision.

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.

You reached out to OGIS previously and facilitator Christa Lemelin advised you to exhaust your administrative rights through the appeal process and then, if not satisfied, to contact us again for assistance. It appears you have now exhausted your appeal rights and wish to engage in OGIS's services.

We carefully reviewed your submission of information and discussed it with HUD's FOIA Office. The FOIA Office confirmed that HUD is firm its position that the agency's response to your request was proper. In situations like this when an agency is firm in its position, there is little more that OGIS can do beyond providing more information regarding the agency's response and the FOIA exemptions the agency cited in response to a request.

FOIA Exemption 5, 5 U.S.C. § 552(b)(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



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privilege. In this case, redactions were asserted on the emails to protect information that was pre-decisional and part of the deliberative process.

FOIA Exemption 6, 5 U.S.C. § 552(b)(6), protects information about individuals in “personnel and medical files and similar files” when the disclosure of such information “would constitute a clearly unwarranted invasion of personal privacy.” In this case, the redacted information consisted of personal addresses, email addresses and telephone numbers of individuals.

In considering withholding records under Exemptions 6, an agency must weigh the interest in public disclosure against an individual’s right to privacy. Courts have consistently held that the central purpose of FOIA is to allow people to learn about the conduct of agencies, not to discover information about other individuals. The U.S. Supreme Court held that “the statutory purpose [of FOIA] is not fostered by disclosure of information about private citizens that is accumulated in various governmental files but that reveals little or nothing about an agency’s own conduct.” *U.S. Dep’t of Justice v. Reporters Committee for Freedom of the Press*, 489 U.S. 749, 773 (1989).

I also noted your request for advice on how to proceed to obtain information related to your case against [REDACTED]. As stated above, OGIS works within the FOIA process and does not have any enforcement power. Please also be advised this request is a non-FOIA issue which falls outside of our jurisdiction. You may wish to consult with your attorney to see how you can obtain the information the company produced through the discovery process.

I hope you find this information useful in understanding why HUD responded as they did to your FOIA request and appeal. There is no further assistance that OGIS can offer you in this case. Thank you for bringing this matter to OGIS; we consider your case closed at this time.

Sincerely,

/s/

Nikki Gramian, Acting Director
Office of Government Information Services

cc HUD FOIA Office, via email