



OFFICE of GOVERNMENT INFORMATION SERVICES

April 7, 2015 — Sent via email

[REDACTED]

Re: Case No.: 201500431
NG: CM

NATIONAL
ARCHIVES
and RECORDS
ADMINISTRATION

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OGIS
COLLEGE PARK, MD
20740-6001

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phone: 202-741-5770
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Dear [REDACTED]:

This responds to your February 21, 2015 request for assistance from the Office of Government Information Services (OGIS). Your request for assistance pertains to your Freedom of Information Act (FOIA) request to the Securities and Exchange Commission (SEC) for records related to [REDACTED].

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.

I understand that the SEC denied your request pursuant to FOIA Exemption 7(A), 5 U.S.C. § 552(b)(7)(A), and the agency's appeals office upheld that determination. In your correspondence to OGIS, you express your concern about these responses. You assert that you have learned that an investigation into [REDACTED] is closed, and therefore the records should be releasable. You also dispute the SEC's decision to withhold the records in full and not to provide an estimate of the volume of responsive records.

As the SEC explained in its letters responding to your appeal, Exemption 7(A) protects law enforcement records pertaining to a pending or prospective law enforcement investigation or proceeding when release of information could "reasonably be expected to interfere" with that investigation or enforcement proceeding, meaning it would cause some articulable harm. Courts have routinely upheld this exemption in relation to pending criminal and civil investigations. *Lion Raisins, Inc. v. USDA*, 231 F.App'x 565 (9th Cir. 2007) (finding that the exemption was properly invoked where the "criminal investigation remains ongoing" and where release of information could "jeopardize that investigation").

Exemption 7(A) is temporal in nature and not intended to "endlessly protect material simply because it is in an investigatory file," according to the *Department of Justice Guide to the Freedom of Information Act*. Courts have ruled that Exemption 7(A) remains applicable throughout long-term law enforcement investigations. As the SEC's correspondence advises you, you may wish to file a new request for these records at some point in the future to see if 7(A)'s protections have been lifted. Please



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be aware that once Exemption 7(A) is no longer applicable to the records you seek, other FOIA exemptions may apply.

Regarding the SEC's decision not to release the volume of responsive records and/or segregable material, please be advised that when an investigation is ongoing, the volume of records can differ daily if the agency is gathering information and/or interviewing witnesses. Additionally, an agency is only required to produce *records* in response to a FOIA request -- providing an "estimate" of the number of records is typically considered answering a question, which is not required under FOIA.

The SEC's ██████████ response to your appeal remanded your request to the agency's FOIA office to search for any statistical information related to your request. OGIS staff contacted SEC's FOIA staff to inquire about the status of your remand; we learned that the agency closed that remanded request on ██████████ and informed you that it found no responsive records.

In cases such as this, there is little for OGIS to do beyond providing more information about the agency's actions and suggesting next steps. I hope that this information about your request is useful to you. Thank you for contacting OGIS; we will now consider this matter closed.

Sincerely,

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

cc: John Livornese, SEC