



OFFICE of GOVERNMENT INFORMATION SERVICES

May 19, 2015 — Sent via email



Re: Case No.: 201500640  
NG:HK:CM:KG

NATIONAL  
ARCHIVES  
and RECORDS  
ADMINISTRATION

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Dear Ms. Graham:

This responds to your request for assistance from the Office of Government Information Services (OGIS), which we received on April 18, 2015 via email and fax. Your request for assistance pertains to a records request to the Federal Bureau of Investigation (FBI), seeking access to records about [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.

OGIS carefully reviewed the correspondence you submitted with your request for assistance. OGIS contacted the FBI to get a copy of the agency's final determination letter and discuss your request. According to the agency, it searched its central record system using [REDACTED] name as the search term, but located no responsive records. On [REDACTED] the FBI responded to your request, stating the agency was unable to identify responsive main file records, which includes headquarters and field office records. You appealed the decision, and the Department of Justice's Office of Information Policy (OIP) affirmed the FBI's response to your request.

Regarding the FBI's response to your request, please know that Federal courts have long settled that in regard to a search for documents, the crucial issue is whether an agency conducted an adequate search for a document, not whether a document might exist. An adequate search is conducted when the search is reasonably calculated to uncover all relevant documents. See *Weisberg v. Dep't of Justice*, 705 F.2d 1344, 1351 (D.C. Cir. 1983).

According to the FBI's website, the agency indexes the name of any individuals, organizations, or items considered to be of investigative or administrative interest. The main file refers to the entity that is the main subject of an FBI investigation. When the FBI receives a request for records, it analyzes that request to identify key terms that it can use to search for responsive records. In the case of your request, the agency was unable to identify any main file records related to your request using [REDACTED] name. If you can identify any additional search terms related to [REDACTED], you



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may wish to submit an additional request so the FBI can search those terms as well. Terms may include:

- 1) The specific circumstances in which the subject of your request had contact with the FBI;
- 2) The date(s) of such contact;
- 3) The locations(s) of such contact;
- 4) The full name (first, middle, last) as well as any prior names or aliases used by the subject of your request;
- 5) Social Security number, date of birth, place of birth, and home address of the subject of your request;
- 6) Names of associates of the subject of your request, the mention of whom might aid in the identification of responsive records; and
- 7) Other references to the subject of your request in media, such as books, articles, websites, etc.

Please note, however, that the inclusion of additional terms will not necessarily result in the FBI locating additional documents.

The FBI's response informed you that although it found no responsive records, the agency could neither confirm nor deny the existence of records with regard to government watch lists. FOIA law supports the FBI's decision because the very fact that someone is or is not on a watch list is itself information that is exempt from public disclosure.

The FBI routinely informs all FOIA requesters that it can neither confirm nor deny that specific names are on a watch list. In neither confirming nor denying that ██████████ name is in the Government's "Terrorist Screening Database," the FBI cited FOIA Exemption 7(E), 5 U.S.C. §552(b)(7)(E). Exemption 7(E) authorizes an agency to withhold information compiled for law enforcement purposes that "would disclose techniques and procedures for law enforcement investigations or prosecutions, or would disclose guidelines for law enforcement investigations or prosecutions if such disclosure could reasonably be expected to risk circumvention of the law." In the case of watch lists, confirmation that an individual is or is not included on such a list may reveal information that could assist a terrorist organization in circumventing the law by determining which of its members are likely to be questioned or detained. Federal courts have consistently held that records pertaining to terrorism watch lists are appropriately withheld under Exemption 7(E).

We will not address the FBI's use of Privacy Act Exemption (j)(2) as the review of information relating to the Privacy Act is outside of OGIS's jurisdiction.

In cases 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. Thank you for contacting OGIS; we will now consider this matter closed.

Sincerely,  
/s/

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

cc: Dennis J. Argall, FBI FOIA Public Liaison