



OFFICE of GOVERNMENT INFORMATION SERVICES

June 3, 2015 - Sent via U.S. mail

[REDACTED]

Re: Case No. 201500187

Dear [REDACTED]:

This responds to your November 20, 2014 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 Federal Bureau of Investigation (FBI). I apologize for the delay in responding to your request.

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.

A review of the background information you submitted to OGIS indicates that you submitted a FOIA request to the FBI on [REDACTED] for the following items:

1. Exhibit used by the government in the case of *United States v.* [REDACTED] (Case No. [REDACTED]) marked exhibit [REDACTED]
2. Government exhibit [REDACTED] (copies of [REDACTED]);
3. FBI Agent report which [REDACTED] and [REDACTED]
4. All \$ [REDACTED] worth of [REDACTED]

By a letter dated [REDACTED], the FBI responded to your request by assigning tracking number [REDACTED] and stating that the records you requested are located in an investigative folder and exempt from disclosure under FOIA Exemption 7(A), 5 U.S.C. § 552(b)(7)(A). You appealed the FBI's response to the Department of Justice's Office of Information (OIP), and on [REDACTED], OIP responded to your appeal affirming the FBI's action on your request.

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Subsequent to OIP's response to your appeal, on [REDACTED], the FBI sent you a letter informing you that the FBI determined that the records you requested may be under the purview of the Executive Office for United States Attorneys (EOUSA). The FBI forwarded your request for the referenced exhibits to EOUSA for a direct response to you.

We reached out to EOUSA FOIA Public Liaison Donna Preston to learn more about the agency's response to the FBI's referral of your request. As a result of our conversations with Ms. Preston, we learned that the EOUSA located the two exhibits you identified (Exhibits [REDACTED]) in your FOIA request and learned both exhibits were entered into evidence in Case No. [REDACTED]. For this reason, the EOUSA agreed to reprocess your request and asked us to inform you that they will provide you with copies of the public records in a supplemental response.

As it relates to the FBI agent's reports documenting the [REDACTED], you may wish to submit a new FOIA request to the FBI to see if Exemption 7(A) is still applicable.

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. Courts have recognized the specific harm of disclosing law enforcement records, including the premature release of witness statements and potential documentary evidence in pending criminal cases, civil cases and in administrative enforcement proceedings.

Exemption 7(A) is temporal in nature and not intended to "endlessly protect material simply because it is in an investigatory file, however, courts have ruled that Exemption 7(A) remains applicable throughout long-term law enforcement investigations. You may wish to submit a new request to the FBI, and include the name of the subject of the investigation ([REDACTED]). In addition, your new request should describe the specific information you seek to aid the FBI in identifying records responsive to your request.

I hope you find this information useful. At this time, OGIS can offer no further assistance and we will close your case. Thank you for bringing this matter to OGIS.

Sincerely,

Hirsh Kravtiz, Attorney-Advisor  
Office of Government Information Services

cc: Dennis J. Argall, FOIA Public Liaison, FBI  
Donna Preston, FOIA Public Liaison, EOUSA