



OFFICE of GOVERNMENT INFORMATION SERVICES

June 25, 2015— Sent via U.S. Mail

[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

Re: Case No.: 201500838
NG: CM: KG

NATIONAL
ARCHIVES
and RECORDS
ADMINISTRATION

8601 ADELPHI ROAD
OGIS
COLLEGE PARK, MD
20740-6001

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e-mail: ogis@nara.gov
phone: 202-741-5770
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Dear [REDACTED]:

This responds to your request for assistance from the Office of Government Information Services (OGIS), which we received on June 8, 2015 via U.S. mail. Your request for assistance pertains to your records request to the Federal Bureau of Investigation (FBI) seeking access to the criminal history record of [REDACTED].

As you are aware, Congress created OGIS to serve as the Federal Freedom of Information Act (FOIA) Ombudsman and its jurisdiction is limited to assisting with the FOIA process.

OGIS:

- Advocates for neither the requester nor the agency, but for the FOIA process to work as intended
- Provides mediation services to help resolve disputes between FOIA requesters and Federal agencies
- Strives to work in conjunction with the existing request and appeal process
- May become involved at any point in the FOIA administrative process

OGIS does not:

- Compel agencies to release documents
- Enforce FOIA
- Process requests or review appeals
- Provide assistance outside the realm of FOIA
- Make determinations or dictate resolutions to disputes



OGIS staff carefully reviewed the correspondence you submitted with your request for assistance. I understand that you originally made a FOIA request to the FBI in [REDACTED]. The FBI denied your request, informing you that in order to obtain the records you requested, you must provide an uncertified copy of a death certificate for [REDACTED]. On January 2, 2015 you submitted a new FOIA request to the FBI and included an original copy of an uncertified death certificate for [REDACTED]. The FBI responded on January 28, 2015 and informed you that the Criminal Justice Information Services Division (CJIS) of the FBI was unable to provide the requested information because the State of [REDACTED] had not updated records regarding [REDACTED].

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██████████. FBI recommended you contact the ██████████ to have that office update the records. You appealed that response.

The Department of Justice Office of Information Policy (OIP) affirmed the FBI's action on your request on April 27, 2015. In OIP's response, the office explained that it is CJIS's policy that a confirmation of death must be provided by the State of ██████████ in order for FBI to release the records. OIP also recommended you contact the ██████████ to have that office update the records. You dispute this response.

You provided supporting documents to OGIS which show that you contacted ██████████, asking that agency to update ██████████ records to reflect ██████████ death. ██████████ informed you that it requires fingerprint records as proof of identity before updating an individual's records. You requested ██████████ fingerprint records from the ██████████, the ██████████, and the ██████████. All three state agencies denied your requests for fingerprints.

OGIS contacted Dennis Argall, FBI's FOIA Public Liaison, to discuss your FOIA request. FBI explained to OGIS that CJIS is a repository for the states' information and can only share that information as agreed to by the states. CJIS is bound by an agreement with each state. In most cases, CJIS will only release arrest information about individuals when the state has declared the subject deceased.

You asked several questions in your letter to OGIS. Several of your questions were about the ██████████ office's actions. OGIS serves as the Federal FOIA Ombudsman and our jurisdiction is limited to assisting with the Federal FOIA process. For this reason, I cannot address your requests for state records or answer any questions about the offices' actions. However, I can provide some answers for the questions you asked about the Federal FOIA process, which I will address below.

- **You asked why your request was transferred to David Hardy, Section Chief, Records Management Division, from ██████████ Division?** In 2013, when you made your original FOIA request to the FBI, Karen Del Greco was the Section Chief for the Biometric Services Section of the Criminal Justice Information Services Division. Ms. Del Greco responded to your request for records because her division was the program office which most likely to have the records. You made another FOIA request in ██████████. David Hardy, Section Chief, Records and Information Dissemination Section, responded to this request. All FOIA requests are now processed and handled through the Records and Information Dissemination Section. Your request wasn't transferred; it was answered from the FOIA office.
- **You asked why your \$18 was returned to you, but the FBI kept the copy of the original death certificate?** OGIS asked Mr. Argall this question. He explained that CJIS charges \$18 for a first party rap sheet request. Since you made a FOIA request for a third party's file, it was not necessary to provide the \$18 so FBI returned your check. As for the death certificate, it is FBI policy to keep all correspondence submitted to the FBI for a FOIA as part of the administrative record.
- **Why weren't you informed about OGIS's mediation services in the letter you received from David Hardy?** FBI does not include OGIS's mediation services in their final determination response letters because at that point requesters still have the right to appeal the agency's response. OGIS was created to complement existing FOIA practice and procedure; information about our office is included in appeal response letters by most agencies, including DOJ.

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- **In the 2013 correspondence from the FBI the agency included a reference to the record retention policy for fingerprints, “The Archivist also approved the destruction of fingerprints and related arrest data seven years following official notification of death of an individual whose record is maintained in FBI’s system.” You asked OGIS to prevent FBI from destroying ██████████ rap sheet.** As stated earlier in this letter, OGIS cannot compel agencies to release records and, in the same light, cannot prevent agencies from destroying records according to the agency’s approved records disposition schedule. Records may be retained longer by agencies on a case-by-case basis if there is a business need for them or if the records are subject to a litigation hold. Litigation holds (also known as “preservation orders” or “hold orders”) are stipulations requiring an agency to preserve all data that maybe related to a legal action under Federal jurisdiction. This requirement ensures that the records in question will be available for the discovery process prior to litigation.

I hope that this information about your request is useful to you. I’ve enclosed information about the ██████████. You may consider contacting the ██████████ for assistance with your state Freedom of Information issues. 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

Enclosures