



OFFICE *of* GOVERNMENT INFORMATION SERVICES

August 19, 2015 — Sent via U.S. mail

[REDACTED]

Re: Case No.: 201500923
JH: CM: KG

NATIONAL
ARCHIVES
and RECORDS
ADMINISTRATION

8601 ADELPHI ROAD
OGIS
COLLEGE PARK, MD
20740-6001

web: www.ogis.archives.gov
e-mail: ogis@nara.gov
phone: 202-741-5770
toll-free: 1-877-684-6448
fax: 202-741-5769

Dear [REDACTED]:

This responds to your request for assistance from the Office of Government Information Services (OGIS), which we received on July 7, 2015 via U.S. mail. Your request for assistance pertains to a records request to the United States Department of Agriculture (USDA), seeking access to a video [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.

As you may know, when an individual requests access to his or her own records, it is most often, but not always, considered a Privacy Act, or first-party, request. Federal agencies will process requests under both FOIA and the Privacy Act of 1974 in order to provide requesters with the fullest degree of access available.

Privacy Act matters fall outside the scope of our office's mission as the FOIA Ombudsman. However, many Privacy Act requests overlap with FOIA; therefore, OGIS provides ombuds services, including providing information about the process and the status of requests, to individuals requesting their own records. OGIS does not have a statutory role in reviewing policies, procedures and compliance with the Privacy Act as we do with FOIA.

OGIS carefully reviewed the correspondence you submitted with your request for assistance. On [REDACTED] you submitted your FOIA request to USDA. The agency responded to your request on [REDACTED], informing you that while it found a responsive record, that material is withheld in full pursuant to FOIA Exemption 7(A), 5 USC 552 § (b)(7)(A). You appealed this determination, and in response to your appeal, USDA affirmed the agency's initial decision on your request. Although you did not explain in your submission to OGIS why you disagree with USDA's determination on your request and appeal, your appeal asserts the importance of the record you seek.

OGIS contacted the USDA to discuss your FOIA request. USDA FOIA Public Liaison (FPL) explained that the video relating to your request is part of investigative work that has not officially concluded. Accordingly, they are presently exempt from



August 19, 2015

Page 2 of 2

disclosure pursuant to 5 U.S.C. § 552(b)(7)(A). FOIA Exemption (b)(7)(A) pertains to records or information compiled for law enforcement purposes, the release of which could reasonably be expected to interfere with pending investigation or enforcement proceedings. Therefore, you were denied access to these records at this time.

It is important to note that FOIA Exemption (b)(7)(A) is 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 (*available at http://www.justice.gov/oip/foia_guide09/exemption7a.pdf*). This exemption will be inapplicable once the investigation and enforcement proceeding is formally concluded. Therefore, you may wish to submit a new FOIA request in six months or a year when the agency may be able to review the available video and issue a formal determination. Please note that even when the investigation or proceeding is completed, portions of the video may continue to be withheld pursuant to other applicable FOIA exemptions when the agency is reviewing the record for release determination.

I hope that this information about your request is useful to you. Thank you for contacting OGIS.

Sincerely,

/s/

Dr. James Holzer, Director
Office of Government Information Services (OGIS)

cc: Raynell Lazier, Assistant Director, Office of Regulator and Management Services

We appreciate your feedback. Please visit <https://www.surveymonkey.com/s/OGIS> to take a brief anonymous survey on the service you received from OGIS.