August 25, 2015—Sent via email

Re: Case No. 201501043
JH: NG: CL

Dear [Redacted]:

This responds to your August 4, 2015, request for assistance to the Office of Government Information Services (OGIS) regarding your Freedom of Information Act (FOIA) request to U.S. Customs and Border Protection (CBP) on behalf of your client, [Redacted].

Congress created OGIS to complement existing FOIA practice and procedure; we strive to work in conjunction with the existing request and appeal process. OGIS’s goal is 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.

You submitted a FOIA request to CBP on behalf of your client, who seeks a copy of the Form I-94 (Arrival Departure Record) documenting admission to the U.S. on or around [Redacted]. In response to your request and appeal, CBP informed you that the agency searched for the specific information, but was unable to locate responsive records. You are dissatisfied with CBP’s “no records” response to your request.

We carefully reviewed your submission and discussed it with CBP’s FOIA Appeals, Policy and Litigation Branch Chief, Shari Suzuki. Ms. Suzuki noted that your [Redacted] passports bear stamps that show that they were admitted to the U.S. in [Redacted]; however, despite an extensive search, the agency could not locate responsive records. Ms. Suzuki explained that CBP FOIA staff searched for your client’s and [Redacted] names in the agency’s TECS database in every way possible, including—with and without dates of birth, and with and without advanced search techniques such as wildcards, but the agency was unable to locate any responsive records. CBP also searched using the passport numbers and other numbers CBP staff saw present in the photocopies of the passports you included with your request. For your information, the search
August 25, 2015
Page 2 of 2

Regarding the agency’s inability to find records about your client, Ms. Suzuki explained that while these situations are rare, occasionally CBP is unable to locate records even though a person’s passport shows that he or she entered the U.S. According to Ms. Suzuki, it is possible that the system was down when your client and [REDACTED] entered the U.S., or that your client’s name was somehow misspelled and did not come up in response to the search terms CBP used. Ms. Suzuki noted that her office did the widest search possible, even reaching out to the port of entry to have an operational person search for responsive records. Ms. Suzuki observed that your request included a Form I-444, a form that Mexican visitors used until 1997, when Form I-94 replaced it. Unlike Forms I-94, the agency did not track Forms I-444 in its system. According to Ms. Suzuki, if your client crossed using a Form I-444 and a Form I-94 was not issued, your client’s entrance into the U.S. would not have been tracked in the system.

If you have not done so already, you may wish to submit a FOIA request to the U.S. Citizenship and Immigration Services (USCIS) for your client’s and [REDACTED] Alien files (A-files). Ms. Suzuki observed that it is possible that the old entry records (Forms I-444) may be in those files.

With regard to CBP’s search for responsive records, Federal courts have long settled that 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. Weisberg v. Dep’t of Justice, 705 F.2d 1344, 1351 (D.C. Cir. 1983).

I hope you find this information useful. Thank you for contacting OGIS; we will now consider this matter closed.

Sincerely,

/s/

Dr. James Holzer, Director
Office of Government Information Services

cc: Shari Suzuki, Chief, CBP FOIA Appeals, Policy and Litigation Branch