



OFFICE *of* GOVERNMENT INFORMATION SERVICES

August 28, 2015 — Sent via email

[REDACTED]

Re: Case No. 201500888  
JH: NG: CL

Dear [REDACTED]:

This responds to your June 8, 2015, request for assistance from the Office of Government Information Services (OGIS), which we received on June 22, 2015 via mail. Your request for assistance pertains to your Freedom of Information Act (FOIA) request to the Federal Bureau of Investigation (FBI).

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.

We carefully reviewed your submission. On [REDACTED], you submitted a FOIA request, No. [REDACTED], to the FBI for records concerning [REDACTED]. The FBI withheld portions of the records you seek pursuant to FOIA Exemptions 6, 7(C), 7(D), and 7(E), U.S.C. §§ 552(b)(6), (b)(7)(C), (b)(7)(D), and (b)(7)(E). You appealed that response, and due to discussions with the Department of Justice Office of Information Policy (OIP), the FBI released an additional portion of a page to you. OIP otherwise affirmed the FBI's decision to withhold portions of the responsive records.

While processing your request the FBI located Central Intelligence Agency (CIA) records responsive to your request. The Bureau referred the CIA records to the Agency for a direct response to you. The CIA reviewed the records and denied them in full under FOIA Exemptions 1 and 3, 5 U.S.C. §§ 552(b)(1), (b)(3). You appealed, and the CIA Agency Release Panel affirmed the Agency's initial action on your request. You dispute this response.

We contacted the FBI and the CIA to learn more about the agencies' responses to your request. FBI FOIA Public Liaison Dennis Argall confirmed that the Bureau is firm in its position that its response to your request was proper. The CIA's FOIA

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Liaison affirmed the Agency's action on your request and explained that the records you seek are properly and currently classified and exempt from release under FOIA Exemptions 1 and 3. In cases such as this where agencies are firm in their positions, there is little for OGIS to do beyond providing more information about the agencies' actions and an explanation of the exemptions the agencies invoked to withhold information.

FOIA Exemption 1, invoked by CIA to withhold the records you seek, protects from disclosure information deemed classified pursuant to an executive order (in your case, Executive Order 13526). Exemption 1 covers records that are generally deemed properly classified and would harm national security or foreign policy if released.

FOIA Exemption 3 allows agencies to withhold records that are specifically exempt from disclosure by another statute. In your case, the CIA invoked two Exemption 3 statutes: section 6 of the CIA Act of 1949, as amended, 50 U.S.C. § 403g, and section 102A(i)(1) of the National Security Act of 1947, as amended, 50 U.S.C. § 403-1(i)(1). Section 6 of the CIA Act of 1949, as amended, protects from disclosure "the organization, functions, names, official titles, salaries or numbers of personnel" employed by the CIA. Section 102A(i)(1) of the National Security Act of 1947, as amended, states that the "The Director of National Intelligence shall protect intelligence sources and methods from unauthorized disclosure." In your submission to OGIS, you cite the age of the records in question and the fact that many of the people mentioned in the records you seek are no longer living as reasons these records should be released; please note that neither of these factors necessarily impact an agency's responsibility to withhold records that fall under these exemptions.

In your submission to OGIS, you noted that the FBI has released records concerning [REDACTED] and the public interest in the release of records concerning him as an historical subject. Please know that generally, agencies do not factor public interest in a topic into their decisions on matters related to classified material which is exempt pursuant to a withholding statute.

In withholding records responsive to your request, the FBI cited FOIA Exemptions 6 and 7(C). These exemptions protect personal privacy interests. FOIA Exemption 6 protects information about individuals in "personnel and medical files and similar files" when the disclosure of such information "would constitute a clearly unwarranted invasion of personal privacy." FOIA Exemption 7(C) covers information compiled for law enforcement purposes and protects personal information when disclosure "could reasonably be expected to constitute an unwarranted invasion of personal privacy."

Regarding your assertion that the individuals mentioned in these records are probably deceased, some of the protections provided under Exemptions 6 and 7(C) no longer apply after a person's death. The FBI uses the "100-year rule," which presumes that an individual is dead if the person's birth date appeared in documents responsive to a request and it is evident that the individual's age is more than 100 years old. If the records do not have the third parties' birth dates readily available, then the burden is on the requester to provide proofs of death of the individuals named in the requested records. In your case, the FBI's records did not have anyone's birth dates in the responsive documents. For this reason, the FBI could not release information on the third parties mentioned since it does not know whether the individuals are

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deceased. If you have a good idea of what the protected names might be, you may wish to submit a new request along with proofs of death for those individuals.

The FBI also invoked FOIA Exemption 7(E), which covers information compiled for law enforcement purposes and authorizes an agency to withhold information 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 your case, Mr. Argall explained that the agency invoked Exemption 7(E) to protect information concerning the investigation type and the types of surveillance used.

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

Sincerely,

/s/

Dr. James Holzer, Director  
Office of Government Information Services

cc: Dennis J. Argall, FOIA Public Liaison, FBI, via email  
CIA FOIA Public Liaison, via email