



OFFICE of GOVERNMENT INFORMATION SERVICES

September 4, 2015 - Sent via email

Re: Case No. 201500922
JH:NG:HK

Dear [REDACTED]:

This letter responds to your July 8, 2015 request for assistance to the Office of Government Information Services (OGIS). Your request for assistance pertains to your Freedom of Information Act (FOIA) request [REDACTED] and subsequent appeal [REDACTED] to the United States Department of Justice's (DOJ) Office of Inspector General (OIG) in which you requested "information or records pertaining to statements appearing in a published OIG report in [REDACTED] [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 or process one request before others. OGIS serves as the Federal FOIA Ombudsman and our jurisdiction is limited to assisting with the FOIA process.

To learn more about the action on your request, my staff reached out to the OIG FOIA unit to inquire about your case. The OIG FOIA Public Liaison (FPL) stated that she was able to locate one responsive document in response to your request. The document consisted of six (6) pages of a work paper that memorialized an interview with a program office employee. The OIG FPL explained that she reviewed the document for segregable factual information; however, she was not able to release any information from this document. Therefore, the entire document was withheld pursuant to FOIA Exemption 5 of the FOIA, 5 USC § 552(b) (5).

OIG applied the deliberative process privilege under Exemption 5 to protect information that constitutes "inter-agency or intra-agency memorandums or letters which would not be available by law to a party other than an agency in litigation with the agency." This exemption has been construed to exempt documents or information generally privileged in the civil discovery context, including materials covered by the deliberative process, attorney work product, and the attorney-client privileges.

The deliberative process privilege protects the internal deliberations of an agency by exempting from release, recommendations, analyses, speculation, drafts, and other non-factual information prepared in anticipation of agency decision-making. The general purpose of the deliberative process privilege is to prevent injury to the quality of agency decisions. Thus, material that contained or was prepared in connection with the

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formulation of opinion, advice, evaluations, deliberations, policy formulations, proposals, conclusions or recommendations is properly withheld.

To invoke the deliberative process privilege, OIG has to show that a document is both: (a) “predecisional” and (b) “deliberative.” To be predecisional, the document must be antecedent to the adoption of an agency policy or decision, and must relate to, and contribute to, a specific agency policy, decision, or decision-making process. To be “deliberative,” the document must be part of the deliberative process in that it makes recommendations or expresses opinions on legal or policy matters, reflects the give and take of the consultative process, and bears on the formulation or exercise of agency policy-oriented judgment. Furthermore, OIG must identify the role of the exempt document or information in a specific deliberative process.

With respect to deliberative process, when OIG conducts a review of a particular DOJ program, it generally follows several steps in conducting an audit or inspection review before a report is finalized and issued, and the deliberative process runs through these steps. One of those steps is to request interviews with the component employees that are being inspected and others who may have knowledge or expertise about the program. These interviews are key to OIG’s auditing and inspection functions.

Information compiled and created by OIG auditors/inspectors during the course of the above process is incorporated into OIG “work papers,” and here, OIG has asserted the deliberative process privilege to protect the work paper that the inspectors created for the support of the particular paragraph that was the subject of your FOIA request.

Work papers memorializing interviews are an integral part of the OIG audit or inspection findings, and the resulting discussions between interviewees and OIG auditors/inspectors reflect the give and take of agency deliberations. The OIG’s FPL explained that if these discussions were released to the public, OIG would be hard-pressed to find cooperative individuals to provide information for an audit or inspection. Also, interviewees would filter information provided in such interviews because of their concerns on how the information would be perceived if subject to further release. Thus, other government employees and private citizens would be much more cautious and less transparent in their stated opinions and discussions on issues. This would certainly hinder OIG in its inspection and auditing missions, by chilling full and frank discussions between agency personnel and hampering OIG’s ability to foster forthright, internal discussions, both within OIG and also with other agency employees. These discussions are imperative for OIG to properly conduct its audit and inspection missions.

The FPL also explained that since these documents precede OIG’s final reports, the information falls squarely within the protection of Exemption 5’s deliberative privilege process.

I hope you find this information useful in understanding why the OIG responded to your request as it did. At this time, OGIS can offer no further assistance and we will close your case.

Thank you for bringing this matter to OGIS.

Sincerely,

Dr. James Holzer, Director

Office of Government Information Services