



OFFICE *of* GOVERNMENT INFORMATION SERVICES

October 3, 2015—Sent via email

[REDACTED]

Re: Case No.: 201501094
NG: CM

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 August 17, 2015, request for assistance from the Office of Government Information Services (OGIS), which we received via email. Your request for assistance pertains to your Freedom of Information Act (FOIA) request to the Small Business Administration (SBA).

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.

You made a request to SBA for information [REDACTED]. You also requested [REDACTED]. SBA denied your request in full, citing FOIA Exemption 4, 5 U.S.C. § 552(b)(4). You appealed that response, asserting that the information you seek should be releasable. SBA responded to your appeal, upholding the agency's decision on the records you seek. You dispute this response and ask for OGIS's assistance with this matter.

In response to your submission, we contacted SBA to discuss the agency's analysis of your request. According to SBA, the agency is firm in its decision that the records you seek must be withheld pursuant to FOIA Exemption 4. In cases such as this where an agency is firm in its position, there is little for OGIS to do beyond further explaining the agency's actions.

As SBA's response to your appeal explains, FOIA Exemption 4 protects "trade secrets or commercial or financial information obtained from a person [that is] privileged or confidential." Exemption 4 provides protection to submitters who furnish commercial or financial information to the government by insulating them from competitive disadvantages that may result from disclosure. To qualify for Exemption 4 protection, the information must be a trade secret or commercial or financial information, and it must be obtained from a person (this includes corporations) and contain privileged or confidential information.



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In both your appeal letter and your submission to OGIS you assert that the information you seek is not confidential business information and will not cause competitive harm to the companies on the list. OGIS staff discussed your position with SBA and inquired whether the agency could produce a list of [REDACTED] while redacting any information that would indicate whether a particular company was accepted into the program. SBA FOIA staff explained that because [REDACTED] [REDACTED] are publicly available either on the agency's website [REDACTED] or through publicly available web search services (i.e. Google), it would be possible to compare that list with a list of [REDACTED] and determine which [REDACTED]. According to SBA, a record of rejection from a federal financial program could pose significant reputational and financial harm to an applicant, and that information must be protected under Exemption 4 of the FOIA.

Although I know that this is not the outcome you expected, I hope that this information about your request is useful to you. Thank you for contacting OGIS; we will now consider this matter closed.

Sincerely,

/s/

JAMES V.M.L. HOLZER
Director

cc: Linda DiGiandomenico, SBA FOIA

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.