



OFFICE *of* GOVERNMENT INFORMATION SERVICES

October 15, 2015 - Sent via e-mail

NATIONAL  
ARCHIVES  
*and* RECORDS  
ADMINISTRATION

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Mr. [REDACTED]  
[REDACTED]

Re: Case No.: 201501051  
JH: CM: HK

Dear [REDACTED]

This responds to your August 5, 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] United States Immigration and Customs Enforcement (ICE).

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 submitted a request to ICE for [REDACTED]  
[REDACTED]  
[REDACTED] Additionally, you requested, [REDACTED]  
[REDACTED]  
[REDACTED]

You received a response in which ICE withheld the information you requested pursuant to exemptions 2, 6 and 7(C) of the FOIA, 5 USC 552(b)(2), (b)(6) and (b)(7)(C) and Exemption K6 of the Privacy Act, 5 U.S.C. 552a(k)(6). You submitted an appeal and the decision to withhold the responsive documents was upheld.

We reached out to the agency to discuss your dispute and the records you requested. The agency informed OGIS that it is firm in its decision. In cases such as this where an agency is firm in its position, there is little for OGIS to do beyond providing more information about the agency's actions.



Exemption K6 of the Privacy Act exempts testing or examination material used solely to determine individual qualifications for appointment or promotion in the federal service the disclosure of which would compromise the objectivity or fairness of the testing process.

ICE informed us that the information being withheld pursuant to Exemption K6 of the Privacy Act contains rules and guidelines by which the agency rating officials followed in rating the applicants. Because this information is used to determine individual qualifications for appointment or promotion in the federal service, the agency withheld the information under Exemption K6 of the Privacy Act.

When records are found in a system of records, the privacy interest in the records belongs to the respondent in the case, not the complainant. When records are withheld pursuant to the Privacy Act, they must then be reviewed under FOIA to determine whether they can be released.

Therefore, the agency then reviewed the responsive documents under the FOIA and determined that a portion of the responsive documents are exempt from disclosure pursuant to Exemptions 2, 6 and 7(C) of the FOIA.

Exemption 2 exempts from disclosure records related solely to the internal personnel rules and practices of an agency. When we discussed your case with ICE, the agency informed us that the information being redacted pursuant to exemption 2 of the FOIA is information detailing the process by which the raters should provide the rating information.

FOIA Exemptions 6 and 7(C) protect personal privacy interests. FOIA Exemption 6, 5 U.S.C. § 552(b)(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), 5 U.S.C. § 552(b)(7)(C), is limited to information compiled for law enforcement purposes and protects personal information when disclosure “could reasonably be expected to constitute an unwarranted invasion of personal privacy.”

When making release determinations pursuant to Exemptions 6 and 7(C), an agency must weigh the public interest against an individual’s right to privacy. Courts have consistently held that the central purpose of FOIA is to allow people to learn about the conduct of agencies, not to discover information about other individuals. The Supreme Court held that “the statutory purpose [of FOIA] is not fostered by disclosure of information about private citizens that is accumulated in various governmental files but that reveals little or nothing about an agency’s own conduct.” *U.S. Dep’t of Justice v. Reporters Committee for Freedom of the Press*, 489 U.S. 749, 773 (1989).

After establishing that the named individuals have a privacy interest in their information, the agency considered whether the disclosure of the information would serve the public interest. In making this determination, the agency considered whether disclosure would open agency action to the light of public scrutiny, rather than focus on the particular purpose for which the information was being requested. The agency stated that they withheld any personal information pertaining to third parties as those individuals have a cognizable privacy interest in the information.

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I hope you find this information useful in understanding why ICE responded to your request as it did. At this time, there is no further assistance OGIS can offer and we will close your case. Thank you for bringing this matter to OGIS.

Sincerely,

JAMES V.M.L. HOLZER  
Director