



OFFICE of GOVERNMENT INFORMATION SERVICES

December 17, 2015 - Sent via email

[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

Re: Case No. 201600057
NG: CM: KG

NATIONAL
ARCHIVES
and RECORDS
ADMINISTRATION

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OGIS
COLLEGE PARK, MD
20740-6001

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Dear [REDACTED]:

This responds to your October 14, 2015, letter to the Office of Government Information Services (OGIS), which we received via email. Your request for assistance concerns your Freedom of Information Act (FOIA) request ([REDACTED]) processed by the U. S. Department of Veterans Affairs (VA), Veterans Health Administration (VHA) Central Office FOIA Office.

Congress created OGIS to complement existing FOIA practice and procedure and we strive to work in conjunction with the existing request and appeal process. OGIS's goal, whenever practical, is to allow 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 process a particular request before others. OGIS serves as the Federal FOIA Ombudsman and our jurisdiction is limited to assisting with the FOIA process.

You contacted OGIS regarding your [REDACTED] FOIA request for a [REDACTED]. The VHA Central Office FOIA Office responded to your request on [REDACTED] withholding the responsive information in its entirety under Exemption 6. You appealed this determination on the grounds [REDACTED]. [REDACTED] should not be withheld under Exemption 6 because they contribute to the public's understanding of the operations or activities of the government. On [REDACTED] the VA Office of General Counsel responded to your appeal, affirming the VHA's determination. You asked OGIS to assist with this matter.

OGIS contacted VHA's Acting FOIA Director, Barbara Swailes, to discuss your request and appeal. The responsive records consisted of two documents totaling three pages listing the [REDACTED]. Ms. Swailes explained that she re-reviewed the documents and the agency is firm in its decision to withhold them in their entirety under FOIA Exemption 6.

Exemption 6, 5 U.S.C. § 552(b)(6), protects information from release that would be a "clearly unwarranted invasion of personal privacy." Courts have found that individuals have a privacy interest in their name, address, date of birth, place of birth, employment history, and other personal information, and the privacy interest in protecting the information outweighs the public interest in the release of the information.



December 17, 2015

Page 2 of 2

In your appeal letter, you stated that the [REDACTED] should be released [REDACTED] [REDACTED] is in charge of creating policy and it is in the public's interest to know who is making the policy decisions. The VA's appeal letter stated that you did not demonstrate that public interest, specifically, "[REDACTED] [REDACTED]." The Court of Appeals for the Second Circuit in Hopkins v. HUD found that the "simple invocation of a legitimate public interests... cannot itself justify the release of personal information. OIP guidance states, "release of the actual personal information at issue must further the public's understanding of the activity that is the basis for the asserted FOIA public interest in disclosure. It is not enough that the information would permit speculative inference about the conduct of an agency or a government official."

<http://www.justice.gov/sites/default/files/oip/legacy/2014/07/23/exemption6.pdf#p53>

The VA's appeal response explained, regarding the agency's use of Exemption 6, federal civilian employees generally have a limited privacy interest in information such as their names. However, Department of Justice, Office of Information Policy guidance states, "Federal employees involved in law enforcement, as well as military personnel and employees in sensitive occupations, do possess, by virtue of the nature of their work, substantial privacy interests in their identities."

<http://www.justice.gov/sites/default/files/oip/legacy/2014/07/23/exemption6.pdf#p21> Though the information you requested pertains to non-law enforcement employees, the VA explained the agency's use of Exemption 6 as appropriate because the release of this type of information, "could represent a threat to their well-being, harassment, or their ability to function within the sphere of their employment."

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. 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: Barbara Swailes, Acting FOIA Director, Veterans Health Administration