



OFFICE of GOVERNMENT INFORMATION SERVICES

March 3, 2016 - Sent via e-mail

[Redacted]

In Re: Case No.: 201600265
NG: CM: HK

Dear [Redacted]

This responds to your December 9, 2015, request for assistance to the Office of Government Information Services (OGIS). Your request for assistance pertains to your request to the Corporation for National and Community Service (CNCS) for National Civilian Community Corps (NCCC) member hearing and incident report records. Thank you for your interest in OGIS.

Congress created OGIS to complement existing Freedom of Information Act (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 your request for NCCC member hearing and report records on [Redacted]. After discussing your request with CNCS, you narrowed your original request to seek only the [Redacted] pertaining to [Redacted] members who [Redacted] plus [Redacted] NCCC during the same time period.

CNCS replied to your request by releasing the [Redacted] letter records, with information withheld pursuant to Exemption 6 of the FOIA, 5 U.S.C. § 552(b)(6), pending receipt of the calculated fees. CNCS withheld in full the [Redacted] [Redacted] also pursuant to FOIA Exemption 6. You appealed the withholding of the records and the fee, and CNCS upheld the agency's initial response to your request. You dispute this response and asked for OGIS's assistance with this matter.

In response to your submission, OGIS staff contacted CNCS to discuss your request and the agency's response. CNCS confirmed that portions of the information you requested was withheld pursuant to FOIA Exemption 6.

FOIA Exemptions 6 protects personal privacy interests in 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." In this case, CNCS explained that it withheld notes from the [Redacted]

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[REDACTED] that contain factual, highly personal information specific to individuals. CNCS asserts that this information—even without the names of individuals—could allow someone to identify the individual associated with each [REDACTED]

When making release determinations pursuant to Exemption 6, 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). In considering the release of the records you seek, CNCS determined that the information would shed little light on agency operations. Thus, in each instance where information was withheld under Exemptions 6, CNCS determined that individual privacy rights outweighed the public interest in disclosure.

OGIS staff also discussed your concerns with the fees CNCS charged you for the responsive documents as well as the search performed by the agency. It is helpful to understand the difference between fee categories. All FOIA requests are considered in one of three requester categories, and there are different fee structures – and different requirements – associated with each. The law on fee waivers and fee categories is fully explained in the Department of Justice's FOIA guide, which you can access here: http://www.justice.gov/oip/foia_guide09/fee-waivers.pdf.

The FOIA statute restricts agencies from charging search or duplication fees when they fail to comply with FOIA's 20-day statutory time limit; however, that particular provision of the FOIA statute, 5 U.S.C. § 552(a)(4)(A)(viii), does not apply to cases in which the agency claims "unusual or exceptional circumstances" which include the need to search for and collect the requested records from field facilities, in your case, the Vicksburg facility, and the need to search for, collect, and review a voluminous amount of separate and distinct records. CNCS informed OGIS they are firm in their decision and asserted their response was proper. In situations where an agency is firm in its position, there is little more that OGIS can do beyond explaining the agency's action on a request and the exemptions the agency invoked.

Finally, in response to your request that an [REDACTED] [REDACTED] CNCS stated that it is normal FOIA procedure across the Federal government to ask the custodians of records to conduct their own searches, as they know their records best and have the most direct access to them. Therefore, [REDACTED] as the custodian of the records, was asked to conduct the search for documents responsive to your request.

I hope you find this information useful. 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,

[REDACTED]
JAMES V.M.L. HOLZER
Director

cc: [REDACTED], Law Officer Manager and FOIA Officer, CNCS

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.