



OFFICE of GOVERNMENT INFORMATION SERVICES

April 1, 2016 - Sent via email

[REDACTED]  
[REDACTED]

In Re: Case No.: 201600540  
NG: HK

Dear [REDACTED]:

This responds to your February 10, 2016 request for assistance to the Office of Government Information Services (OGIS), pertaining to your Freedom of Information Act (FOIA) request to U.S. Customs and Border Protection (CBP). Thank you for contacting OGIS.

As you may be aware, 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.

We carefully reviewed your submission of information, and we understand that you requested a video recording [REDACTED] [REDACTED] [REDACTED], in the vicinity of [REDACTED].

CBP responded to your request by informing you that all responsive records were being withheld in their entirety (see attached copy of the agency's response)<sup>1</sup>. You appealed the response, and CBP upheld its initial action to your request, stating in its appeal response that the records you seek were withheld in full pursuant to FOIA Exemption (b)(7)(E), 5 U.S.C. § 552(b)(7)(E). You dispute this response, asserting that the video has been in the public domain since 2013.

As CBP's appeal response letter explains, Exemption 7(E) authorizes the protection of law enforcement information that "would disclose techniques and procedures for law enforcement investigations or prosecutions, or would disclose guidelines for law enforcement investigations or prosecutions if such disclosure could reasonably be expected to risk circumvention of the law."



<sup>1</sup> In discussions with OGIS, CBP's FOIA unit explained that its final response (copy attached) reflects that the requested document (the recording) was withheld in full pursuant to FOIA Exemption 7(E); however, the FOIA processor who responded to your case inadvertently sent you an email responding to a different case. For this reason, the final response CBP issued and uploaded to FOIAonline and its email correspondence are contradictory. CBP clarified that the attached final response is the agency's correct response.

OGIS staff contacted CBP to discuss your request. CBP informed OGIS that the video was from [REDACTED]; as CBP previously informed you, that Office's cameras insert metadata and other indicators into the recording which show their video capability. For this reason, CBP withheld the records you seek under FOIA Exemption 7(E).

As it relates to your comment about the video being available on YouTube since 2013, our search of the internet produced articles that someone at DHS may have leaked the requested video. However, CBP informed OGIS that the video has never been publicly released by CBP. Courts have consistently held that an unauthorized "leak" does not constitute a waiver of the FOIA Exemption an agency can invoke to protect the leaked document from official disclosure

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,

/S/

JAMES V.M.L. HOLZER  
Director

cc: Sabrina Burroughs FOIA Public Liaison, CBP  
Enclosure: CBP's initial response letter, dated Oct. 13, 2015

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.