



OFFICE of GOVERNMENT INFORMATION SERVICES

April 4, 2016 — Sent via U.S. Mail

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



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

Re: Case No.: 201600546
NG: CM: KG

Dear [REDACTED]:

This responds to your request for assistance from the Office of Government Information Services (OGIS), which we received on February 24, 2016 via U.S. mail. Your request for assistance pertains to your records request to the Executive Office for United States Attorney (EOUSA).

OGIS was created 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. Please know that 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.

OGIS provides mediation services to resolve disputes between FOIA requesters and Federal agencies. After opening a case, OGIS gathers information from the requester and the agency to learn more about the nature of the dispute. OGIS then decides how and whether to proceed on the request for assistance.

OGIS staff carefully reviewed the correspondence you submitted with your request for assistance. You submitted a FOIA request to EOUSA for records about [REDACTED]. On [REDACTED] EOUSA responded to your request [REDACTED]. In its response, the agency informed you that because the records you seek concern third parties, the agency cannot release the records without authorization and consent of the third parties, proof that the subjects of your request are deceased, or a clear demonstration that the public interest in disclosure outweighs the personal privacy interests of the named individuals. The agency explained in its letter that records responsive to requests of this nature are generally exempt from

██████████
April 4, 2016

Page 2 of 3

disclosure pursuant to FOIA Exemption 6 and 7(C). You appealed this response, and on ██████████ OIP affirmed EOUSA's determination on modified grounds

Your submission to OGIS also included a letter that you wrote to EOUSA on ██████████ ██████████, restating your prior request in terms that you hoped would "not be erroneously construed as a request for records which would constitute an unwarranted invasion of personal privacy if released." You stated that you believe the agency's actions were improper because the agency did not conduct a search before determining portion of any such records are exempt. You also stated that records described in your request cannot reasonably be expected to constitute an unwarranted invasion of personal privacy since the people named in your request were ██████████ ██████████, and you believe there is little likelihood they would be embarrassed, endangered, harassed, intimidated, or otherwise adversely affected by the release of the information. Lastly, you stated that the records were compiled in connection with ██████████ ██████████.

Regarding your request for access to records about the two witnesses who testified at your trial, both FOIA and the Privacy Act of 1974 protect personal privacy of individuals in records the government might have on them or any other individual. These third party protections also apply if someone requests records from the government pertaining to *you*.

As EOUSA explained in its response to your request, the government is prohibited from releasing information about a third party without:

- his or her written consent; or
- proof of his/her death; or
- a showing of an overriding public interest in disclosure of the 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."

In considering withholding records under Exemptions 6 and 7(C), an agency must weigh the interest in public disclosure 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 U.S. 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 Comm. for Freedom of the Press*, 489 U.S. 749, 773 (1989). For this reason, EOUSA did not conduct a search for records without first receiving one of the justifications listed above. Absent the consent of these individuals, proof of their deaths, or a showing of public interest in the information, you may wish to request

[REDACTED]
April 4, 2016

Page 3 of 3

a [REDACTED]. The trial transcripts are in the public domain and EOUSA does not need authorization from the third parties for release of such records.

As it relates to your [REDACTED], EOUSA responded to this correspondence on [REDACTED], and assigning it a new FOIA tracking number, [REDACTED]. EOUSA informed OGIS that it expects to send you a response to this request by the first week of April.

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

Sincerely,

JAMES V.M.L. HOLZER
DIRECTOR

cc: Matthew Hurd, Senior Attorney, Department of Justice, Office of Information Policy
Donna Preston, FOIA Public Liaison, Executive Office of United States Attorneys