



OFFICE of GOVERNMENT INFORMATION SERVICES

April 6, 2016—Sent via email

[REDACTED]
[REDACTED]

Re: Case No.: 201600415
NG: CM

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

Dear [REDACTED]:

This responds to your request for assistance from the Office of Government Information Services (OGIS), which we received on January 15, 2016 via email. Your request for assistance pertains to your Freedom of Information Act (FOIA) request to the Department of Homeland Security, U.S. Immigration and Customs Enforcement (ICE), seeking records [REDACTED]. Thank you for your interest in OGIS.

As you may be aware, 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.

In your case, you made a request to ICE for records related to a [REDACTED] investigation by the Office of Professional Responsibility [REDACTED]. ICE denied your request in full, citing FOIA Exemption 7(A), 5 U.S.C. § 552(b)(7)(A). You appealed that response, and ICE Office of the Principal Legal Advisor affirmed the ICE FOIA unit's response to your request. You dispute this response, particularly in light of your assertion that there is no pending criminal or administrative investigation in this matter.

In response to your request, we contacted ICE FOIA staff to inquire about your request and the agency's response. ICE FOIA affirmed the agency's position on the records you seek. 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.

FOIA Exemption 7(A) protects law enforcement records pertaining to a pending or prospective law enforcement investigation or proceeding when release of information could "reasonably be expected to interfere" with that investigation or enforcement proceeding. Courts have recognized the specific harm of disclosing law enforcement records, including the premature release of witness statements and potential documentary evidence in pending criminal cases, civil cases and in administrative enforcement proceedings.

It may be useful to know that Exemption 7(A) is temporal in nature and not intended to "endlessly protect material simply because it is in an investigatory file," according to the *Department of Justice Guide to the Freedom of Information Act*. However,



April 6, 2016

Page 2 of 2

courts have ruled that Exemption 7(A) remains applicable throughout long-term law enforcement investigations or enforcement proceedings. Considering this, you may wish to make another request in the near future to see if the records you seek are still exempt pursuant to FOIA Exemption 7(A); however, please be aware that once Exemption 7(A)'s protections are lifted, other FOIA exemptions may apply to the requested records.

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,

/s/

JAMES V.M.L. HOLZER
Director

cc: ICE FOIA