



OFFICE of GOVERNMENT INFORMATION SERVICES

April 11, 2016—Sent via email

[REDACTED]
[REDACTED]

Re: Case No. [REDACTED]
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 to the Office of Government Information Services (OGIS), which we received on [REDACTED], via email. Your request for assistance pertains to your Freedom of Information Act (FOIA) request to the Office of Personnel Management (OPM) seeking access to documents pertaining to your background investigation.

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.

I note that in response to your request for records related to your background investigation, OPM withheld certain information on behalf of the Federal Bureau of Investigation (FBI) and invoked FOIA Exemption (7)(E) for those redactions. OPM also informed you that you may appeal this withholding to the Department of Justice, Office of Information and Policy (OIP). You appealed the withholding, and OIP affirmed the redactions that OPM made on behalf of the FBI. You ask for OGIS's assistance with this matter.

In working cases similar to yours, OGIS contacted OIP to learn more about OPM's response. We learned that when OPM conducts background investigations, it has access to a particular FBI database; a search of that database allows investigators to learn that there is either no match to an individual's name or a match revealing either negative or neutral information about that individual.

As it did in your case, OPM withholds that information—regardless of the search outcome—from *all* requesters under FOIA Exemption 7(E), 5 U.S.C. § 552(b)(7)(E). Exemption 7(E) applies to information compiled for law enforcement purposes and authorizes an agency to withhold 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.” OPM's response to you should not be taken as an indication that FBI has or does not have records about you.



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Please know that courts have consistently held that information pertaining to activities such as background checks fall within Exemption 7(E). For example, the U.S. Court of Appeals for the District of Columbia Circuit ruled that CIA background investigations inherently fall within Exemption 7(E). *Morley v. C.I.A.*, 508 F.3d 1108, 1128-29 (D.C. Cir. 2007). The D.C. Circuit also has ruled that “an agency may seek to block the disclosure of internal agency materials relating to guidelines, *techniques*, sources, and procedures for law enforcement investigations,” as they are protected by Exemption 7. *Tax Analysts v. I.R.S.*, 294 F.3d 71, 79 (D.C. Cir. 2002) (emphasis added). An agency technique would be the way it conducts a computer search in relation to a background check.

I hope you find this information useful in understanding why OPM, acting on behalf of the FBI, withheld the material it did in response to your request. Thank you for contacting OGIS; we will now consider this matter closed.

Sincerely,

/s/

JAMES V.M.L. HOLZER

Director

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.