



OFFICE *of* GOVERNMENT INFORMATION SERVICES

April 26, 2016—Sent via U.S. mail

[REDACTED]
[REDACTED]
[REDACTED]

Re: Case No.: 201600331
NG: HK: 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 December 23, 2015 via U.S. mail. Your request for assistance pertains to your Freedom of Information Act (FOIA) request to the Environmental Protection Agency (EPA).

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.

OGIS staff carefully reviewed your submission of information, and we understand that you submitted a records request to EPA Region 8 for records related to a [REDACTED]; you also requested a waiver of fees. EPA rejected your request for a waiver of fees and attempted to contact you to affirm your commitment to pay fees up to \$56.00 toward the processing of this request. Receiving no response from you, EPA administratively closed your request. You appealed this action, and EPA denied your appeal. You dispute this response and request OGIS's assistance with this matter.

In response to your submission, we contacted EPA FOIA staff to discuss the agency's action on your request. EPA FOIA staff confirmed the agency's decision on your request for a waiver of fees. 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.



OGIS hears from many requesters—and agencies—who seek assistance with issues related to FOIA fees and fee waiver requests. According to the FOIA statute, 5 U.S.C. § 552(a)(4)(A)(iii), the Department of Justice's guidance on fee waivers (available at <https://www.justice.gov/oip/blog/foia-update-new-fee-waiver-policy-guidance>) and EPA's FOIA regulation (available online at <https://www.epa.gov/foia>), the standard for a fee waiver is that disclosure of the information (1) is in the public interest because it is likely to contribute significantly to the public understanding of the operations or activities of the government, and (2) is not primarily in the commercial interest of the requester.

April 26, 2016

Page 2 of 2

Further, there are six analytical factors that must be considered in applying the statutory fee waiver standard. If you wish to pursue a fee waiver in a future request to EPA, you will need to supply the agency with information to show how your request meets each of these analytical factors:

- the requested records must concern identifiable “operations or activities of the government”;
- the portions of the requested records to be disclosed must be meaningfully informative, i.e. not routine administrative information;
- the disclosure must contribute to the public understanding not the requester’s individual understanding;
- the disclosure must contribute “significantly” to the public understanding of government operations or activities;
- the request must not further the commercial interests of the requester (FOIA requests under the auspices of newsgathering are generally not considered to be furthering the commercial interest of a requester); and
- the public interest in the disclosure is greater than the requester’s commercial interest.

Considering how challenging it can be to meet the threshold for fee waivers, you may instead wish to request placement in a more favorable fee category. For example, if your research is in furtherance of a goal of an educational institution, you may qualify for educational institute status. If your research will lead to publication in a news media entity, you may qualify for news media status. You can learn more about FOIA fees at <http://www.justice.gov/sites/default/files/oip/legacy/2014/07/23/fee-waivers.pdf>.

I hope you find this information useful in understanding why EPA 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,

/s/

JAMES V.M.L. HOZER
Director

cc: EPA FOIA

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.