



OFFICE *of* GOVERNMENT INFORMATION SERVICES

April 25, 2016 — Sent via U.S. mail



Re: Case No. 201600592  
NG: CM: KG

NATIONAL  
ARCHIVES  
*and* RECORDS  
ADMINISTRATION

8601 ADELPHI ROAD  
OGIS  
COLLEGE PARK, MD  
20740-6001

web: [www.ogis.archives.gov](http://www.ogis.archives.gov)  
e-mail: [ogis@nara.gov](mailto: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 March 3, 2016 via U.S. mail. Your request for assistance pertains to your records request to the United States Department of Agriculture (USDA), Food Safety and Inspection Service (FSIS).

As you may be aware, 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. This process helps us gather necessary background information, assess whether the issues are appropriate for mediation, and determine the willingness of the parties to engage in our services. As part of our information gathering, OGIS carefully reviewed your submission of information.

OGIS staff carefully reviewed the correspondence you submitted, which pertains to 13 FOIA requests you submitted to FSIS. In response to your submission, OGIS contacted FSIS to discuss the agency's actions on each request.



██████████  
April 25, 2016

Page 2 of 3

**Request No. ██████████**

In response to your request, FSIS released ██████████ pages with portions of the records withheld under FOIA Exemptions 4 and 6, 5 U.S.C. § 552(b)(4) and (b)(6). It appears that you did not appeal this response. Because OGIS provides a non-exclusive alternative to litigation, we cannot assist with cases in which a requester has not exhausted his or her administrative remedies, including the administrative appeal. The appeal is an important part of the FOIA administrative process. By filing an appeal, you preserve your administrative rights and give the agency a chance to carefully review and reconsider every part of a request and the agency's decision.

**Requests ██████████, ██████████ (which you resubmitted as ██████████) and ██████████**

These three requests sought records related to an open investigation; in all three cases, FSIS withheld records in full under FOIA Exemption 7(A), 5 U.S.C. § 552(b)(7)(A). This exemption 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.

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. Because of the temporal nature of Exemption 7(A), OGIS asked FSIS to provide an estimated closure date for this investigation FSIS informed OGIS that the investigation was closed on ██████████ and the agency will be providing the records you requested in the coming weeks.

FSIS further informed OGIS that while it initially denied request No. ██████████ under Exemption 7(A), the agency recently provided you records that would have been responsive to this request in its response to request No. ██████████.

**Requests ██████████ and ██████████**

In both these cases FSIS conducted a search for responsive records and, finding none, issued a no records response. FSIS informed OGIS that FOIA staff discussed request No. ██████████ with you on ██████████; in that call, you discussed appealing the agency's response. FSIS further informed OGIS that the agency did not receive the appeal that you included in your submission to OGIS. As a courtesy to you, OGIS sent FSIS a copy of the appeal you submitted for ██████████. FSIS processed your appeal and responded directly to you on ██████████.

Regarding request No. ██████████, FSIS FOIA staff explained that the agency does not collect the information you seek. For this reason, FSIS does not have responsive records.

██████████  
April 25, 2016

Page 3 of 3

Requests ██████████, ██████████, and the request you submitted on ██████████

These three requests are phrased as *questions* rather than *requests for records*. Please know, the FOIA gives requesters the right to request federal *records*. The law does not give the public the right to obtain answers in response to questions or to explain the context of documents. As a courtesy to you, FSIS referred your questions to the Congressional and Public Affairs staff for direct response to you.

Requests ██████████, ██████████, and ██████████

OGIS requested information related to the status of these three pending requests. FSIS informed OGIS the agency issued a response to request ██████████ on ██████████. The agency anticipates that it will respond to ██████████ and ██████████ before ██████████.

I hope that this information about your requests and appeals is useful to you. 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.