



OFFICE of GOVERNMENT INFORMATION SERVICES

May 10, 2016 - Sent via email

[REDACTED]

Re: Case No. 201600446
NG: HK: CM: CL

Dear [REDACTED]:

This responds to your January 26, 2016, request for assistance to the Office of Government Information Services (OGIS) concerning your records request to U.S. Customs and Border Protection (CBP). I apologize for our delay in responding to your request.

Congress created OGIS to complement existing FOIA practice and procedure; we strive to work in conjunction with the existing request and appeal process. Our goal is 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.

You submitted a FOIA request to CBP for records of your [REDACTED] or [REDACTED] entry into the United States (U.S.). On [REDACTED] CBP's FOIA Division informed you that it conducted a comprehensive search of its databases and was unable to locate responsive records. On appeal, CBP's FOIA Appeals, Policy and Litigation Branch affirmed the agency's initial response to your request. You asked for OGIS's assistance with this matter.

We contacted CBP's FOIA Appeals, Policy and Litigation Branch to learn more about the agency's response to your request. We learned that CBP's FOIA Division searched its TECS system for responsive records. CBP staff use TECS to assist with screening and determinations regarding admissibility of arriving persons in the U.S. CBP FOIA staff used your date of birth (DOB) and the following keywords to conduct a search: [REDACTED], [REDACTED], [REDACTED], [REDACTED] and [REDACTED].

CBP's TECS search included all I-94 Form (Arrival/Departure Records) modules and the Primary History module, which would produce the Passenger Activity Report, using the timeframe January 1, 1982 through [REDACTED] (the day CBP conducted its search). That search did not produce any records.

I note that CBP's FOIA Appeals, Policy and Litigation Branch contacted you to

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
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request additional information, which you provided, to assist the agency in conducting its search. On appeal, CBP searched the TECS I-94 module for records from 1983-1990 using the last name [REDACTED] without a DOB. This produced four hits, but no match (different first name and DOB). CBP also searched the TECS Primary History module using the names [REDACTED], [REDACTED], [REDACTED], and [REDACTED] without your DOB.

Occasionally, CBP is unable to locate records even though a person's passport shows that he or she entered the U.S. In the 1980s American airports and seaports issued paper I-94s and mailed the forms from each port of entry to a processing center for manual data entry into a database. In your case, it is possible that the system was down when you entered the U.S., or that your information was misspelled in the database and did not come up in response to the search terms CBP used.

Federal courts have long settled that in regard to a search for documents, the crucial issue is whether an agency conducted an adequate search for a document, not whether a document *might* exist. An adequate search is conducted when the search is reasonably calculated to uncover all relevant documents. *Weisberg v. Dep't of Justice*, 705 F.2d 1344, 1351 (D.C. Cir. 1983) The reasonableness of an agency's search can depend on whether the agency properly determined where responsive records were likely to be found, and searched those locations, or whether the agency improperly limited its search to certain record systems or otherwise failed to explain how and why the particular search at issue was conducted.

You may wish to submit a new request to CBP if you can provide CBP with *new* information, such as your passport information (number, issuance date and expiration date) or visa information (class of visa, city that issued the visa, issued date); such information would help CBP conduct a more targeted search for your arrival records. If you have not done so already, you may wish to discuss the matter with relatives or friends with whom you had contact during the time of your entry into the U.S. They may be able to provide you with information you could include in a future FOIA request.

Additionally, you may wish to submit a FOIA request to U.S. Citizenship and Immigration Services (USCIS) for your Alien File (A-File). Although unlikely, there is a *slight* chance that your A-File contains a copy of the I-94 you seek. For information on submitting a records request to USCIS, visit <https://www.uscis.gov/about-us/freedom-information-and-privacy-act-foia/how-file-foia-privacy-act-request/how-file-foiapa-request>.

I hope you find this information useful. Thank you for contacting OGIS; we will now consider this matter closed.

Sincerely,

Nikki Gramian /s/ for

JAMES V.M.L. HOLZER
Director

cc: Shari Suzuki, Chief, CBP FOIA Appeals, Policy and Litigation Branch, via email