



OFFICE of GOVERNMENT INFORMATION SERVICES

May 10, 2016 — Sent via U.S. mail

NATIONAL
ARCHIVES
and RECORDS
ADMINISTRATION

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[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

Re: Case No. 201600474
NG: CM: KG

Dear [REDACTED]:

This responds to your request for assistance from the Office of Government Information Services (OGIS), which we received on February 5, 2016 via U.S. mail. Your request for assistance pertains to your records request to the Bureau of Prisons (BOP).

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.

OGIS staff carefully reviewed the correspondence you submitted with your request for assistance and we contacted BOP for copies of the documents you no longer have. From the information we gathered, it appears you submitted a FOIA request to BOP requesting [REDACTED]. In response to your request, BOP identified [REDACTED] pages and [REDACTED] dated [REDACTED]. BOP released [REDACTED] pages in full and [REDACTED] pages in part, but withheld [REDACTED] pages and [REDACTED] in full. In withholding these records, BOP cited to FOIA Exemptions 2, 6, 7(C), 7(E),

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and 7(F). In its final response, BOP also explained that they conducted a thorough search for ██████████ using the terms and search parameters you provided, but were not able to locate ██████████ for the ██████████ date.

You appealed this response, but in your appeal, you only challenged BOP's withholding of the ██████████ along with the ██████████. On ██████████, the Department of Justice's Office of Information Policy (OIP) affirmed BOP's action on your request, upholding BOP's use of FOIA Exemptions 6, 7(C), and 7(E), and 7(F) to withhold staff names and the ██████████ ██████████ located but withheld in full. You requested OGIS's assistance with this matter.

In response to your submission, OGIS contacted BOP to discuss the agency's response to your request. BOP reaffirmed the agency's use of exemptions and explained that it conducted a search using the search parameters you gave, including dates and locations, but was unable to locate the ██████████. OGIS also contacted OIP to discuss the agency's response to your appeal. OIP also affirmed its decision to uphold BOP's withholding 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 exemptions the agency invoked.

As you are aware, BOP cited FOIA Exemptions 6 and 7(C) in withholding the names of BOP staff members and other third parties mentioned in the records you sought. You expressed concern about this, asserting that because BOP staff are public civil servants, they are not entitled to have their names withheld when they are performing government duties.

In most instances, the type of information you requested about federal employees is available under FOIA, pursuant to 5 C.F.R. § 293.311. However, in October 2009, the U.S. Office of Personnel Management (OPM) changed its policy of disclosing specific information about certain government occupations. Federal employees engaged and/or employed at federal agencies that are employed in sensitive law enforcement positions, such as correctional officers, who are mentioned in the records you seek, are among those occupations about which information must be withheld. In a recent case, the U.S. Court of Appeals for the Second Circuit held that disclosure of names and other identifying information do not always present a significant threat to an individual's privacy interest, but that employees in the sensitive agencies and occupations have a cognizable privacy interest. The mission and nature of the work these employees perform leaves them vulnerable to an increased risk of harassment or attack. *See Long v. Office of Personnel Management*, 692 F.3d 185 (2d Cir. 2012). In your situation, correctional officers' names are among the occupational series that are protected from release pursuant to the OPM guidance.

The BOP (and OIP) withheld the information about BOP employees and other third parties mentioned in your records under FOIA Exemption 6, and 7(C). Exemption (b)(6) protects records when the release would lead to a clearly unwarranted invasion of personal privacy. 5 U.S.C. § 552(b)(6). Similarly, exemption (b)(7)(C) protects material compiled for law enforcement when the production of such records could reasonably be expected to constitute an unwarranted invasion of personal privacy.

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In considering withholding records under Exemptions 6 and 7(C), an agency must weigh the interest in public disclosure against an individual's right to privacy. Courts have consistently held that the central purpose of FOIA is to allow people to learn about the conduct of agencies, not to discover information about other individuals. The U.S. Supreme Court held that "the statutory purpose [of FOIA] is not fostered by disclosure of information about private citizens that is accumulated in various governmental files but that reveals little or nothing about an agency's own conduct." *U.S. Dep't of Justice v. Reporters Committee for Freedom of the Press*, 489 U.S. 749, 773 (1989).

Regarding BOP's use of FOIA Exemption 7(E), this exemption 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."

BOP also cited FOIA Exemption 7(F). This exemption protects information compiled for law enforcement purposes that "could reasonably be expected to endanger the life or physical safety of any individual." Courts have extended Exemption 7(F)'s protections to include information about inmates, law enforcement officers, confidential sources and third parties. Courts have given federal agencies broad latitude to withhold information under Exemption 7(F) when there is reasonable cause to believe that disclosure of the information would risk physical harm to an individual.

I hope you find this information useful in understanding why the BOP 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. HOLZER
DIRECTOR

cc: ██████████ Senior Attorney, Department of Justice, Office of Information Policy
C. Darnell Stroble: FOIA Public Liaison, Bureau of Prisons