



OFFICE *of* GOVERNMENT INFORMATION SERVICES

May 12, 2016—Sent via U.S. mail

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

NATIONAL
ARCHIVES
and RECORDS
ADMINISTRATION

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Re: Case No.: 201600334
NG: HK: CM

Dear [REDACTED]:

This responds to your requests for assistance from the Office of Government Information Services (OGIS), which we received on December 28, 2015 and January 4, 2016 via U.S. mail. Your request for assistance pertains to your Freedom of Information Act (FOIA) requests to the Central Intelligence Agency (CIA), the Department of Justice Office of the Inspector General (DOJ OIG), and the Department of State.

As you are aware, 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.

We carefully reviewed your submissions of information, and we understand that you have made a series of requests for records about [REDACTED]. You seek OGIS's assistance with this matter.

Your request to DOJ OIG

You made a request to the Department of Justice for records about a specific individual; your request was routed to DOJ OIG and assigned case [REDACTED]. DOJ OIG responded to your request, informing you that because you seek investigatory records, the fact of the existence or non-existence of such



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records is protected pursuant to FOIA Exemption 7(C), 5 U.S.C. § 552(b)(7)(C). DOJ OIG further informed you that if you disagree with the agency's response, you have the right to file an administrative appeal.

In response to your submission, OGIS contacted the Department of Justice Office of Information Policy (OIP) to inquire whether you appealed request [REDACTED]. OIP staff informed OGIS that it has no record of an administrative appeal from you.

In our role as the FOIA ombudsman, OGIS provides mediation services as a non-exclusive alternative to litigation. For this reason, we cannot assist with situations in which a requester has not exhausted his or her administrative remedies, including the appeals process. The appeal process is important because it preserves your rights should you decide to seek judicial review. You may find it reassuring to know that on appeal, the agency's attorneys carefully review every part of a request including the search that was conducted.

OIP reviews FOIA appeals for the entire Department of Justice. If you still wish to have this request considered on appeal, you may do so by submitting a new request to OIG for the same records you sought in your previous request. While the OIG may close this new request as a duplicate, you may appeal within the 60 day deadline. According to OIP, requesters may employ this process for any requests for which the appeal deadline is missed.

Your request to the State Department

Your submission to OGIS also included an acknowledgment of a request you submitted to the State Department (request [REDACTED]). OGIS staff contacted State Department FOIA staff to inquire about the status of your request; we learned that the agency expects to respond to your request by September, 2016.

Your request to the CIA

You also submitted a request to the CIA for records about [REDACTED]. The CIA responded to your request by informing you that it found no responsive records reflecting an open and acknowledged relationship between [REDACTED]; the Agency's letter further informed you that it can neither confirm nor deny the existence of any records that would reveal a classified connection between [REDACTED]. You appealed that response, and the CIA upheld its initial decision on your request. You dispute this response and ask for OGIS's assistance with this matter.

In working with the CIA on cases similar to yours, we have learned that when the agency receives a request for records about a subject, it first searches for records that relate to an open or acknowledged relationship between that subject and the agency. As the CIA explains in its November 20, 2015 response letter to you, the agency's search revealed no such records.

The CIA also maintains records that are, by statute, exempt from disclosure. In your case, the agency refused to confirm or deny whether it has classified records related [REDACTED]; this is known as the "Glomar" response. A Glomar response is proper when to admit whether records

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even exist would reveal a fact that is exempt under FOIA. As the CIA explains in its response letter, the existence or nonexistence of responsive records is classified under FOIA Exemptions 1 and 3, 5 U.S.C. §§ 552(b)(1) and (b)(3). FOIA Exemption 1 protects “information that has been deemed classified “under criteria established by an Executive order to be kept secret in the interest of national defense or foreign policy.” FOIA Exemption 3 incorporates other, separate statutes that require information to be withheld from release.

In citing FOIA Exemption 3, the CIA first points to the Central Intelligence Act of 1949, as amended, 50 U.S.C. § 403-4 *et seq.* (CIA Act), which exempts the CIA from “any...law which require(s) the publication or disclosure of the organization, functions, names, official titles, salaries, or numbers of personnel employed by the Agency.” 50 U.S.C. § 403g. In addition, the CIA proffers the National Security Act of 1947, as amended, 50 U.S.C. § 3001 *et seq.* (the NSA), which mandates that the “Director of National Intelligence shall protect intelligence sources and methods from unauthorized disclosure.” 50 U.S.C. § 3024(i)(1). Please be aware that the CIA’s response to your request is standard and should not be interpreted as an indication that the agency does or does not have classified records [REDACTED].

It can be very challenging to pierce an agency’s Glomar response, particularly when it is related to classified (FOIA Exemption 1) matters. One way to show that a Glomar response is not proper is to provide evidence that an official of the agency has publicly and officially acknowledged a fact that would establish a basis for concluding that records about a subject exists (or existed). Please note that the agency does not consider a report by a news organization to be confirmation of a fact by a government official. Also, as a general rule, the public’s interest in a topic is not factored into an agency’s decision in matters related to classified material or that which is exempt pursuant to a withholding statute. If you can find some official acknowledgment of [REDACTED], you may wish to present this material to the agency with another request.

I hope that this information about your requests is useful to you. Thank you for contacting OGIS; we will now consider this matter closed.

Sincerely,

/s/

JAMES V.M.L. HOLZER
Director

cc: DOJ OIG FOIA, CIA FOIA, Department of State FOIA