



OFFICE *of* GOVERNMENT INFORMATION SERVICES

May 31, 2016 — Sent via U.S. mail

NATIONAL
ARCHIVES
and RECORDS
ADMINISTRATION

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Re: Case No. 201600792
NG: CM: KG


Dear [REDACTED]:

This responds to your request for assistance from the Office of Government Information Services (OGIS), which we received on April 22, 2016 via U.S. mail. Your request for assistance pertains to your records request to the Department of Justice (DOJ), Executive Office for United States Attorneys (EOUSA).

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.

While your submission did not include copies of your correspondence with EOUSA, we contacted that agency and obtained those records to better understand the action of EOUSA on your FOIA request. OGIS also requested a copy of your appeal from OIP. You requested a copy of [REDACTED]



██████████
May 31, 2016

Page 2 of 4

██████████ from EOUSA on ██████████. On ██████████ EOUSA responded to your request, informing you the records you seek concern third parties, and could not be released to you without authorization of consent of the third parties. You appealed this determination on ██████████. The DOJ's Office of Information Policy (OIP) responded to your appeal on ██████████ affirming EOUSA action on your request. You requested assistance from OGIS.

OGIS identified three themes in your request for mediation, the threshold for a significant public interest request and the use of Exemption 6 and 7(C), misconduct by agency personnel, and asking for additional information on appeal and reformulating your request, which we will address below.

FOIA Exemptions 6 and 7(C) and Significant Public Interest

FOIA Exemptions 6 and 7(C) protect personal privacy interests. FOIA Exemption 6, 5 U.S.C. § 552(b)(6), protects information about individuals in "personnel and medical files and similar files" when the disclosure of such information "would constitute a clearly unwarranted invasion of personal privacy." FOIA Exemption 7(C), 5 U.S.C. § 552(b)(7)(C), is limited to information compiled for law enforcement purposes and protects personal information when disclosure "could reasonably be expected to constitute an unwarranted invasion of personal privacy." Requests for records about specific individuals must be submitted with authorization from those individuals or proof of their death, or with evidence that shows how public interest in the requested information outweighs the individuals' right to privacy. For the third prong of "public interest" justification mentioned above, a requester must make a clear demonstration that the public interest in disclosures outweighs the third party's personal privacy interest and that a significant public benefit would result from the disclosure of the third party records. 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).

In addition, when "governmental misconduct" is alleged as the justification for disclosure, the public interest is insubstantial unless the requester puts forward compelling evidence that the agency denying the FOIA request is engaged in illegal activity and shows that the information sought is necessary in order to confirm or refute that evidence. *See, ACLU v. DOJ*, 655 F.3d 1, (D.C. Cir. 2011) (finding valid public interest where requesters sought to show nature, effectiveness, and intrusiveness of government's policy regarding warrantless cell phone tracking, and specifically noting that "plaintiffs are not (or at least not only) seeking to show that the government's tracking policy is legally improper, but rather to show what that policy is and how effective or intrusive it is. Matters of substantive law enforcement policy ... are properly the subject of public concern, whether or not the policy in question is lawful.")

[REDACTED]
May 31, 2016

Page 4 of 4

took on your original request. Both EOUSA and OIP explained that you may wish to consider submitting a new FOIA request. EOUSA stated the agency will release, if requested, any public records maintained in the agency's files.

I hope that this information about your request is useful to you. 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/

NIKKI GRAMIAN
Acting Director

Enclosure

cc: Donna Preston, FOIA Public Liaison, Executive Office of United States Attorneys
[REDACTED] Senior Counsel, Office of Information Policy, Department of Justice