



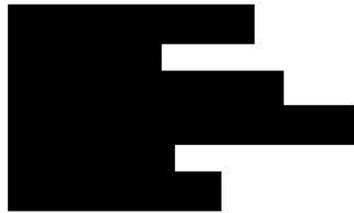
OFFICE *of* GOVERNMENT INFORMATION SERVICES

June 1, 2016—Sent via U.S. mail

NATIONAL  
ARCHIVES  
*and* RECORDS  
ADMINISTRATION

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Re: Case No.: 201600580  
NG: HK: CM

Dear [REDACTED]:

This responds to your request for assistance from the Office of Government Information Services (OGIS), which we received on March 1, 2016 via U.S. mail. Your request for assistance pertains to your Freedom of Information Act (FOIA) request to the Federal Bureau of Investigation (FBI).

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.

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.

It appears that you made a request to the FBI for information related to a specific individual. The FBI responded to your request by informing you that the FOIA does not require the agency to answer questions. You appealed this response, and the Department of Justice Office of Information Policy (OIP) responded to your appeal by upholding the FBI's action on partially modified grounds. You ask for OGIS's assistance with this matter.

In its response to your appeal, OIP explained that the existence or nonexistence of records responsive to your request is exempt from disclosure. When an agency responds to a FOIA request by neither confirming nor denying the existence of responsive records, as OIP has done in your case, this is known as a "Glomar" response. A Glomar response is proper when to admit that records even exist would reveal a fact that is exempt under FOIA.

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If an agency issues a Glomar response, it must cite to one or more FOIA exemptions to explain its refusal to disclose information. In your case, OIP cites to FOIA Exemptions 6 and 7(C), 5 U.S.C. §§ 552(b)(6) and (b)(7)(C), which protect personal privacy interests. Specifically, FOIA Exemption 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) 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.” As OIP explains in its appeal response, you may be able to overcome the privacy interest protected by Exemptions 6 and 7(C) if:

- the individual, in this case [REDACTED], provides his consent to the release of information;
- you provide proof of [REDACTED] death; or
- there is an official acknowledgment by the U.S. Government of an investigation and you show a public interest that overrides a personal privacy interest.

While the above information is required for a Federal agency to pierce the Glomar response and provide records related to a FOIA request, it is not clear from your submission why you believe the FBI (a Federal law enforcement agency) maintain records responsive to your request. As you may be aware, both federal and state governments have authority to investigate and prosecute criminal offenses; the federal government and each state have their own criminal statutes, court systems, prosecutors, and law enforcement agencies. It appears the case you reference was filed in the [REDACTED]. Therefore, it is unlikely that a Federal law enforcement agency such as the FBI would have records related to a state criminal investigation. When a case is prosecuted in a state’s criminal court, that state or a local Criminal Justice System Division (CJSD) typically conducts the investigation.

State freedom of information laws grant access to state and local government records; the Federal FOIA does not apply to state or local agencies. You may wish to submit a public records request to the appropriate state or local agency or agencies within the [REDACTED] for the records you seek, if you have not done so already. For your reference, we are enclosing a copy of the [REDACTED] web page that provides contact information for submission of a FOIA request to its CJSD.

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

Sincerely,

/S/

NIKKI GRAMIAN  
Acting Director

cc: FBI FOIA