



OFFICE *of* GOVERNMENT INFORMATION SERVICES

June 10, 2016 — Sent via email

[REDACTED]

Re: Case No. 201600815  
NG: CM: KG

NATIONAL  
ARCHIVES  
*and* RECORDS  
ADMINISTRATION

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OGIS  
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Dear [REDACTED]

This responds to your request for assistance from the Office of Government Information Services (OGIS), which we received on April 25, 2016 via email. Your request for assistance pertains to your records request to the Department of Justice (DOJ), Drug Enforcement Agency (DEA).

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.



Your law firm made a request to DEA on [REDACTED] seeking information about [REDACTED]. On [REDACTED], DEA responded to your request, informing you the agency searched its Investigative Report and Filing System (IRFS) and identified two case files responsive to your request. The letter further informed you that one of those case files was destroyed in accordance with the DEA's records management policies. Regarding the second case file, DEA released one page to you, withholding another page pursuant to FOIA Exemptions 7(C), 7(D), 7(E), and 7(F). 5 U.S.C. §552a (b)(7)(C), (b)(7)(D), (b)(7)(E) and (b)(7)(F). DEA also explained that it is the agency's standard practice to neither confirm nor deny the

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existence of records related to informants. Your law firm appealed this determination, and the Department of Justice Office of Information Policy (OIP) responded to your appeal on [REDACTED] affirming DEA's action on your request. You seek OGIS's assistance with this matter, explaining that [REDACTED].

In response to your submission OGIS contacted DEA. DEA affirmed its position that the agency will neither confirm nor deny the existence of records relating to informants/confidential sources that provided information that assisted DEA in any investigative matter. 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 agency's actions.

When an agency responds to a FOIA request by neither confirming nor denying the existence of responsive records, it is known as a "Glomar" response. A Glomar response is proper when to admit that records exist would reveal a fact that is exempt under FOIA. If an agency issues a Glomar response, it cites to one or more FOIA exemptions to explain its refusal to acknowledge existence or non-existence of records.

In the case of the records you seek, DEA issued a Glomar response pursuant to FOIA Exemption 7(D). The other exemptions, 7(C), 7(E), and 7(F), were utilized to withhold portions of the two pages released to you. For your reference, we are providing you an explanation of each exemption. However, the explanations provided should not be taken as an indication that DEA has any records when it issued a Glomar response to your request; rather it is our standard way to provide more explanation of the exemptions to requesters seeking information or records pertaining to third parties.

Exemption 7(C) states that records compiled for law enforcement purposes may be withheld if they "could reasonably be expected to constitute an unwarranted invasion of personal privacy." The government recognizes a strong privacy interest in law enforcement records and courts have agreed that it is generally appropriate to withhold information that identifies third parties in law enforcement records.

Exemption 7(C) is regularly used to withhold references to individuals who are not targets of an investigation, but are merely mentioned in law enforcement files, as well as to individuals in whom a law enforcement agency has an investigatory interest. 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). It may be helpful to know that DEA protects your client's identity much the same way were it to receive a request for his records from anyone other than [REDACTED].

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Exemption 7(D) broadly protects all information shared with criminal law enforcement agencies by confidential sources in criminal investigations. Exemption 7(D) is designed to protect confidential sources from retaliation that could result if information pertaining to their law enforcement activities were disclosed. Agencies use Exemption 7(D) to withhold information which could reasonably be expected to disclose the identity of a confidential source who provides information to investigators in a criminal matter.

The use of the exemption hinges on the circumstances under which the information is provided. Unlike other exemptions, which require a balancing of public and private interests, Exemption 7(D) does not require a balancing test. If a source is confidential, the exemption may be invoked regardless of the public interest in disclosure.

Exemption 7(E) affords protection to all law enforcement 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." This exemption authorizes the withholding of information consisting of, or reflecting, a law enforcement "technique" or a law enforcement "procedure" when that technique or procedure is employed in law enforcement investigations. *See Nowak v. IRS*, 2000 U.S. App. LEXIS 948 (2000).

Exemption 7(F) 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 the explanation provided above useful to understanding why DEA responded as it did to your FOIA request and appeal. At this time, there is no further assistance that OGIS can offer you in this case. Thank you for contacting OGIS; we will now consider this matter closed.

Sincerely,

/s/

NIKKI GRAMIAN  
Acting Director

cc: Phyllis Drewery-Scott, FOIA Public Liaison, Drug Enforcement Agency  
[REDACTED], Senior Counsel, Office of Information Policy, Department of Justice

We appreciate your feedback. Please visit <https://www.surveymonkey.com/s/OGIS> to take a brief anonymous survey on the service you received from OGIS.