



OFFICE of GOVERNMENT INFORMATION SERVICES

June 20, 2016 — Sent via email

[REDACTED]

Re: Case No. 201600795
NG: CM: KG

NATIONAL
ARCHIVES
and RECORDS
ADMINISTRATION

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OGIS
COLLEGE PARK, MD
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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 U.S. mail. Your request for assistance pertains to your records request to the Department of Justice (DOJ), Federal Bureau of Investigation (FBI).

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 regarding your two FBI records requests.

Request No. [REDACTED]

You made a request to the FBI for documents related to [REDACTED]. On [REDACTED] the FBI responded to your request, releasing 392 pages. The agency withheld portions of those pages pursuant to FOIA Exemptions 3, 6, 7(C), and 7(D), 5 U.S.C. §§552a (b)(3), (b)(6), (b)(7)(C), and (b)(7)(D). You appealed this determination on [REDACTED].

OGIS contacted the DOJ's Office of Information Policy (OIP) to obtain the status of your appeal. According to OIP appeals staff, the agency expects to respond to your appeal by [REDACTED].



[REDACTED]
June 20, 2016

Page 2 of 3

Request No. [REDACTED]

On [REDACTED], you made a request to the FBI for documents related to [REDACTED] during the time frame [REDACTED]. On [REDACTED], the FBI denied your request pursuant to FOIA Exemption 7(A), 5 U.S.C. §552a (b)(7)(A). You appealed this determination, and OIP affirmed the FBI's response to your request. You requested OGIS's assistance with this matter.

In response to your request the agency searched its Central Records System (CRS). CRS is an extensive system of records consisting of applicant, investigative, intelligence, personnel, administrative, and general files compiled and maintained by the FBI in the course of fulfilling its mission. The FBI's search of its database located one active file. For this file, the FBI withheld the entire file under FOIA Exemption 7(A). The FBI's search also located an entry in CRS for a file that may have been potentially responsive to your request. However, that file was destroyed in accordance with the FBI's record retention plan and dispositions schedules.

As you may be aware, Federal agencies are responsible for managing their records according to record dispositions schedules which are approved by the Archivist of the United States. Record schedules set specific time periods in which the agency must transfer permanent records to the National Archives and Records Administration, or destroy temporary records in the agency's possession. In your case, the FBI's search of its indices indicate that certain records that may be responsive to your request were properly destroyed. Thus, the FBI is unable to review those records to confirm whether or not they are responsive.

As explained above, the FBI withheld the other file that contained an active investigative records pursuant to FOIA Exemption 7(A). To invoke Exemption 7(A), there must be a pending or prospective law enforcement investigation and release of information must "reasonably be expected to interfere" with that investigation, meaning it would cause some articulable harm. *NLRB v. Robbins Tire & Rubber Co.*, 437 U.S. 214, 224 (1978). Courts have routinely upheld this exemption in relation to pending investigations. *See, e.g., Lion Raisins, Inc. v. USDA*, 231 F.App'x 565 (9th Cir. 2007) (finding that the exemption was properly invoked where the "criminal investigation remains ongoing" and where release of information could "jeopardize that investigation").

While the subjects of your request have both passed away, FBI's investigation still remains open. Courts have ruled that Exemption 7(A) remains applicable throughout long-term law enforcement investigations. For example, the U.S. Court of Appeals for the Sixth Circuit ruled in 1993 that Exemption 7(A) applied to the FBI's continuing investigation into the 1975 disappearance of Jimmy Hoffa. Additionally, in 2005, the U.S. District Court in the state of Washington ruled that the FBI's continued use of Exemption 7(A) was proper in withholding documents regarding the 1971 airplane hijacking by "D.B. Cooper," who parachuted out of that plane with ransom. (*See DOJ Guide to the Freedom of Information Act, FOIA Exemption (7)(A) at page 529*).

June 20, 2016

Page 3 of 3

Despite that, Exemption 7(A) is temporal in nature, meaning that it may only apply when a related investigation is pending. Mr. Argall also explained that you may wish to file a new request for this information in the future and the Bureau conduct a new search to see whether or not the investigation is still pending.

Please be aware that once Exemption 7(A)'s protections are lifted, other FOIA exemptions may apply to the records you seek.

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/

NIKKI GRAMIAN
Acting Director

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.