



OFFICE of GOVERNMENT INFORMATION SERVICES

June 24, 2016 — Sent via email

[REDACTED]

Re: Case No. 201600851
NG: CM: KG

NATIONAL
ARCHIVES
and RECORDS
ADMINISTRATION

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Dear Mr. Devoy:

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 [REDACTED] 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.

We understand that [REDACTED] submitted a request to the FBI for documents about himself. On [REDACTED] the FBI responded to his request, informing [REDACTED] that the agency was unable to identify main file records responsive to his request. The agency also cited FOIA Exemptions 7(E), 5 U.S.C. §552a (b)(7)(E), to neither confirm nor deny the existence of [REDACTED] name on any watch list. [REDACTED] appealed this determination, and on [REDACTED], DOJ's Office of Information Policy (OIP) responded to his appeal, affirming the agency's actions. You requested OGIS assistance with this matter, specifically asking OGIS for a better understanding of the FBI's practices in conducting its records search.

In working cases similar to [REDACTED], OGIS has gained an understanding of the FBI's search process for FOIA requests. When FBI receives a FOIA request, it searches databases where records responsive to the FOIA are reasonably likely to be stored; in the case of [REDACTED] 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



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maintained by the FBI in the course of fulfilling its integrated mission and function as a law enforcement and national security agency. The CRS spans the entire FBI organization and encompasses the records of FBI headquarters, FBI field offices, and FBI legal attaché offices worldwide.

The CRS consists of a numerical sequence of files, called FBI “classifications,” which are organized according to designated subject categories. The broad array of CRS file classification categories includes types of criminal, counterterrorism, counterintelligence, and cyber investigations; intelligence assessments; and personnel and administrative matters. The FBI searches for and locates records in the CRS using its general indices. The CRS is indexed in a manner which meets the FBI’s investigative needs and priorities, and allows FBI personnel to reasonably and adequately locate pertinent files in the performance of their law enforcement and national security duties. The general indices are arranged in alphabetical order and comprise an index on a variety of subject matters to include individuals, organizations, events, or other subjects of investigative interest that are indexed for future retrieval. FBI employees may index information in the CRS by individual (persons), by organization (organizational entities, places, and things), and by event (*e.g.*, a terrorist attack or bank robbery). Indexing information in the CRS is based on operational necessity, and the FBI indexes that information considered relevant and necessary for future retrieval. Accordingly, the FBI does not index every individual name or other subject matter in the general indices.

The CRS is the principal records system searched by the FBI when responding to FOIA requests as the CRS is where the FBI indexes information about individuals, organizations, and other subjects of investigations for future retrieval. The CRS is the FBI system where records responsive to most requests would reasonably be found. If a request is such as to reasonably conclude records would reside outside of the CRS, then an additional search of the appropriate database or location will be conducted.

In [REDACTED] case, the FBI searched the CRS but was unable to locate responsive main file records. It is not clear from [REDACTED] submission to OGIS why he believes the FBI may have records about him. It may be helpful to know that in the United States, both the Federal government and the states have authority to prosecute criminal offenses. The Federal government and each state have their own criminal and civil statutes, court systems, prosecutors, and law enforcement agencies. The FBI is a Federal investigative agency that investigates violations of Federal law. It does not investigate matters that fall within the jurisdiction of state and local law enforcement authorities, nor is it a repository for all records that are created, maintained, and used by state and local enforcement authorities.

If [REDACTED] believes his name may be referenced in another individual’s FBI file, he may wish to submit a new request for a cross reference search and include enough information to enable the FBI to ensure with certainty that the cross references are identifiable to him. The information may include the following:

- The specific circumstances in which he may have had contact with the FBI;
- The date(s) of such contact;
- The location(s) of such contact;
- His full name and any prior names or aliases he used;
- His Social Security number, date of birth, place of birth, and home address;
- Names of his associates, the mention of whom might help in identifying responsive records; and

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- Other references of him in the media, such as in books or articles or on websites.

With regard to the FBI neither confirming nor denying the existence of your name on any watch lists, please know that the FBI routinely informs all FOIA requesters that it can neither confirm nor deny that their names are on a watch list. As OIP informed [REDACTED] in its [REDACTED] response to his appeal, the FBI's response is standard and does not indicate whether watch list records pertaining to you exist.

In neither confirming nor denying that [REDACTED] name is in the Government's "Terrorist Screening Database," the FBI cited FOIA Exemption 7(E), 5 U.S.C. § 552(b)(7)(E). Exemption 7(E) authorizes an agency to withhold information compiled for law enforcement purposes 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." In the case of watch lists, confirmation that an individual is or is not included on such a list may reveal information that could assist a terrorist organization in circumventing the law by determining which of its members are likely to be questioned or detained. Federal courts have consistently held that records pertaining to terrorism watch lists are appropriately withheld under Exemption 7(E).

Finally, your request for assistance also included a question about the depth of OIP's review on appeal. When OIP receives appeals they are assigned to staff attorneys who conduct a thorough review. Attorneys review the request, the component's search, and the letters issued to the requester. OIP may remand requests back to components if the request requires additional response.

I hope that this information about your client's request 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.