



OFFICE *of* GOVERNMENT INFORMATION SERVICES

July 7, 2016 — Sent via email

[REDACTED]

Re: Case No. 201600928  
NG: CM: KG

NATIONAL  
ARCHIVES  
*and* RECORDS  
ADMINISTRATION

8601 ADELPHI ROAD  
OGIS  
COLLEGE PARK, MD  
20740-6001

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e-mail: [ogis@nara.gov](mailto:ogis@nara.gov)  
phone: 202-741-5770  
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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 June 8, 2016 via email. Your request for assistance pertains to your records request to the Federal Trade Commission (FTC).

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.

You made a request for records on [REDACTED]. On [REDACTED] the FTC responded to your request, stating that although the agency conducted a search, any responsive documents would be exempt from disclosure under FOIA Exemption 7(A), 5 U.S.C. 552(b)(7)(a). You appealed this determination on [REDACTED]. The FTC responded to your appeal on [REDACTED] affirming the decision to withhold the one responsive document located in the agency's search. You requested that OGIS assist with this matter.

OGIS contacted the FTC regarding your request. The FTC FOIA unit confirmed that FTC's response to your request was proper and the agency is firm in its position. In situations like this when an agency is firm in its



[REDACTED]  
July 7, 2016

Page 2 of 2

position, there is little for OGIS to do beyond providing more information regarding the agency's response and the FOIA exemptions the agency cited in its final response letter. The FTC's FOIA Unit explained that it searched the agency's matter profile database and discussed your request with the appropriate staff officials. The FTC then referred your request to the Office of Inspector General for an additional search. This search located one responsive record, which the agency withheld pursuant to FOIA Exemption 7(A).

Exemption 7(A) 5 U.S.C. § 552(b)(7)(A), protects law enforcement records pertaining to a pending or prospective law enforcement investigation or proceeding when release of information could "reasonably be expected to interfere" with that investigation or enforcement proceeding. Courts have recognized the specific harm of disclosing law enforcement records, including the premature release of witness statements and potential documentary evidence in pending criminal cases, civil cases and in administrative enforcement proceedings.

Exemption 7(A) is temporal in nature and not intended to "endlessly protect material simply because it is in an investigatory file," according to the Department of Justice Guide to the Freedom of Information Act.

(<http://www.justice.gov/sites/default/files/oip/legacy/2014/07/23/exemption7a.pdf>). However, courts have ruled that Exemption 7(A) remains applicable throughout long-term law enforcement investigations. OGIS inquired whether Exemption 7(A) still apply to the withheld record, and the FTC affirmed that it does.

The FTC also explained to OGIS that you may wish to file a new request for this information in the future and FTC will conduct a new search to see whether FOIA Exemption 7(A) still applies. Please be aware that once Exemption 7(A)'s protections are lifted, other FOIA exemptions may apply to the information 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.