



OFFICE *of* GOVERNMENT INFORMATION SERVICES

August 1, 2016—Sent via email

██████████  
████████████████████

Re: Case No.: 201600746  
NG: HK: CM

NATIONAL  
ARCHIVES  
*and* RECORDS  
ADMINISTRATION

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Dear ██████████

This responds to your April 11, 2016 request for assistance from the Office of Government Information Services (OGIS), which we received via email. Your request for assistance pertains to your Freedom of Information Act (FOIA) request to the U.S. Department of Veterans Affairs (VA).

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.

In your initial submission to OGIS (dated January 7, 2016), you ask for OGIS's assistance with what you assert is an unfair hiring process. Because OGIS's mandate is limited to assisting with the FOIA process, we are unable to assist you with your hiring complaint. However, OGIS staff carefully reviewed the materials related to your FOIA request and appeal that you submitted on ██████████, and we contacted VA's FOIA department to inquire about this matter.

We understand that you made a request to VA for information about a particular position for which you applied. VA responded to your request on ██████████, informing you of the selectee's name. The agency withheld all other responsive information about the selectee in full pursuant to FOIA Exemption 6, 5 U.S.C. § 552(b)(6). You appealed that response, and on ██████████, VA responded to your appeal by releasing 4 pages in part. The agency continued to withhold 13 additional pages (including the selectee's DD Form 214, letters of recommendation, performance appraisal and performance plan) pursuant to FOIA Exemption 6. You asked for OGIS's assistance with this matter.

In response to your submission, OGIS staff contacted VA's FOIA office to inquire about the agency's response to your request and appeal. VA FOIA staff affirmed the agency's decision to withhold the material responsive to your request. In case in which an agency is firm in its position, there is little for OGIS to do beyond further explaining the agency's actions.

For your information, the Office of Personnel Management (OPM) issued a regulation that authorizes the disclosure of certain information about government



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employees. *See 5 CFR 293.311*. Pursuant to this regulation, the information appropriate for release includes:

- the candidate's name;
- all employment history (government and private) *relating to the successful candidate's current duties*;
- post-graduate education;
- job-related training;
- past grades, salaries, and duty stations;
- awards and honors; and,
- Memberships in professional groups.

In our communication with VA's FOIA unit, we learned that VA released the above-specified information about the successful applicant, but withheld all other personal information from his/her resume, including the individual's home address and telephone number; social security number; date of birth; and names, addresses, and telephone numbers for any non-government supervisors or former supervisors that the successful applicant identified as references. In addition, VA withheld the successful applicant's performance evaluation that was attached to the applicant's resume pursuant to FOIA Exemption 6.

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." In considering withholding records under Exemptions 6, an agency must weigh the interest in public disclosure against an individual's right to privacy. 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 VA protects your performance evaluation or other personal information much the same way were it to receive a request for your records from anyone other than you.

I hope you find this information useful in understanding why VA withheld the material it did in response to your request. At this time, there is no further assistance OGIS can offer. Thank you for bringing this matter to OGIS. We will close your case.

Sincerely,

/s/

NIKKI GRAMIAN  
Acting Director

cc: VA FOIA

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.