



OFFICE of GOVERNMENT INFORMATION SERVICES

August 23, 2016 - Sent via U.S. mail

[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

Re: Case No. 201601023
NG: CM: KG

NATIONAL
ARCHIVES
and RECORDS
ADMINISTRATION

8601 ADELPHI ROAD
OGIS
COLLEGE PARK, MD
20740-6001

web: www.ogis.archives.gov
e-mail: ogis@nara.gov
phone: 202-741-5770
toll-free: 1-877-684-6448
fax: 202-741-5769

Dear [REDACTED]:

This responds to your June 22, 2016 letter to the Office of Government Information Services (OGIS), which we received via U.S. mail. Your request for assistance concerns your Freedom of Information Act (FOIA) request to the U.S. Department of Justice (DOJ), Federal Bureau of Prisons (BOP).

Congress created OGIS to complement existing FOIA practice and procedure and we strive to work in conjunction with the existing request and appeal process. OGIS's goal, whenever practical, is to allow 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 process a particular request before others. OGIS serves as the Federal FOIA Ombudsman and our jurisdiction is limited to assisting with the FOIA process.

You contacted OGIS regarding your FOIA request for [REDACTED] [REDACTED] s. BOP responded to your request on [REDACTED], withholding the responsive information in its entirety pursuant to FOIA Exemptions 6 and 7(C), 5 U.S.C. §§ 552(b)(6) and (b)(7)(C). You appealed this determination on [REDACTED]. On [REDACTED], the DOJ's Office of Information Policy (OIP) responded to your appeal, affirming the BOP's determination. You asked OGIS to assist with this matter.

In working cases similar to yours, OGIS learned that BOP does not release the certifications and qualifications of BOP employees and the agency is firm in that decision. 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.

In your appeal of BOP's decision, you assert that that you have a right to know [REDACTED], and that the information is needed in order to litigate a civil claim in Federal court. While provides a right of access to federal agency records, it is important to note the right is not absolute. Records or portions of records may be



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protected from disclosure by one of the nine exemptions or three exclusions enumerated in 5 U.S.C. § 552, and a requester's basic access rights are neither increased nor decreased based upon the requester's particular interest in, or need for, the records sought.


When a requester seeks records about a third party under FOIA, it is his/her responsibility to provide the agency with the third party's express authorization or consent, proof that the subject of the request is deceased, or a clear demonstration that the public interest in disclosure outweighs the personal privacy interest. If the requester does not provide the required authorization, a death certificate, and/or an overriding public interest justification, then the agency will invoke FOIA Exemptions 6 and 7(C) to categorically withhold the requested records.

FOIA Exemptions 6 and 7(C) protect the privacy of individuals identified in agency records. Exemption 6 limits the release of "personnel and medical files and similar files the disclosure of which would constitute a clearly unwarranted invasion of personal privacy." 5 U.S.C. § 552(b)(6). Likewise, Exemption 7(C) applies to records or information compiled for law enforcement purposes, and limits the release of such records that "could reasonably be expected to constitute an unwarranted invasion of personal privacy." 5 U.S.C. § 552(b)(7)(C).

Since you did not furnish an authorization or proof of death, you have the option to submit a new FOIA request and provide a public interest justification. The public interest justification needs to focus on the conduct of government (in your case, BOP). In considering release of personally identifying information on third parties under FOIA, 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 the agency, and 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). The standard of public interest in records of this type is limited to information that reveals the operations and activities of the government. The *Department of Justice Guide to the Freedom of Information Act* states that "'bare suspicion' of [official] misconduct is inadequate and that a requester must produce evidence that would be credible in the eyes of a reasonable person. When a requester asserts government misconduct as the public interest in disclosure, that requester must make a 'meaningful evidentiary showing' in order to provide a public interest 'counterweight' to the privacy interest" (See attached).

While the agency withheld this information from its files, you may wish to provide a family member or friend with the name(s) of the [redacted] within your institution and ask the family member or friend to search the [redacted] website for the information you seek. I am attaching a printout of the Board's website for your reference.

I understand that this is not the outcome for which you hoped. However, I hope you find the explanation provided above useful to understanding why BOP responded as it did to your FOIA


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request and appeal. At this time, there is no further assistance that OGIS can offer and we will close your case.

Sincerely,

/s/

NIKKI GRAMIAN
Acting Director

Enclosure