



OFFICE of GOVERNMENT INFORMATION SERVICES

January 14, 2013—Sent via email



Re: OGIS Case No. 201300145
MN: CZ: KM

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 November 21, 2012 request for assistance, which the Office of Government Information Services (OGIS) received on that date via fax. Your request for OGIS assistance pertains to Freedom of Information Act (FOIA) request, no. [REDACTED], to U.S. Citizenship and Immigration Services (USCIS), Department of Homeland Security (DHS), seeking access to information pertaining to [REDACTED].

In your request for OGIS assistance, you seek “judicial review,” which OGIS does not offer. OGIS serves at the FOIA Ombudsman, a neutral office within government that assists FOIA requesters and Federal agencies with the FOIA process. Congress created OGIS as a non-exclusive alternative to litigation and 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.

I note that in response to your request, USCIS released 10 pages in their entirety and six pages in part, withholding 190 pages in full under FOIA Exemptions 6, 7(C) and 7(E). After you appealed, USCIS released 39 additional pages.

FOIA Exemptions 6 and 7(C) protect personal privacy interests. FOIA Exemption 6, 5 U.S.C. § 552(b)(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.” FOIA Exemption 7(C), 5 U.S.C. § 552(b)(7)(C), is limited to information compiled for law enforcement purposes and protects personal information when disclosure “could reasonably be expected to constitute an unwarranted invasion of personal privacy.”

In considering withholding records under Exemptions 6 and 7(C), an agency must weigh the interest in public disclosure against an individual’s right to privacy. Courts have consistently held that FOIA is intended 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).



OGIS Facilitator Kirsten Mitchell learned from USCIS that in your case, the agency withheld the names of law enforcement officers, information that appears to fall properly within the parameters of Exemption 7(C).

We also learned from USCIS that the majority of information withheld under Exemption 6 pertains to a 1952 hearing by the Immigration and Naturalization Service (INS), the precursor to USCIS, regarding the eligibility for U.S. residency of five or more [REDACTED] who immigrated to the U.S. The withheld documents are primarily lists of questions and answers that contain personally identifiable information such as birthdates and citizenship status, the type of information that seems to fit squarely within the parameters of Exemption 6.

Some of the protections provided under Exemption 6 no longer apply after a person's death. If you believe you know the identity of the individuals in [REDACTED] file, you can provide either the individuals' consent to release information to you or proof of their deaths with a new request to USCIS. Proof of death can include a death certificate, obituary, funeral memorial or a photograph of a headstone. Please know that some FOIA requesters are familiar enough with the subject they are researching that they have a fairly good idea of the identities of the protected names; however, if this is not the case for you, the agency will continue to withhold the information under Exemption 6.

Please know that a requester's status as a descendent of individuals named in government documents does not allow that requester to claim an entitlement to greater FOIA access than is available to any other requester. You may wish to use USCIS Form G-639, the agency's FOIA and Privacy Act request form, available via <http://www.uscis.gov/foia>, to request additional records; Section 3 of the form provides space for an individual's consent to release information to the requester or for the requester to submit proof of an individual's death.

FOIA Exemption 7(E), 5 U.S.C. § 552(b)(7)(E), applies to information compiled for law enforcement purposes and authorizes an agency to withhold information 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."

We learned that in your case USCIS withheld law enforcement documents which, while old, could potentially disclose techniques and procedures of law enforcement investigations with a reasonable risk of circumvention of the law. The information withheld here seems to fit properly within the parameters of Exemption 7(E).

Regarding your reference to the National Archives and Records Administration (NARA), OGIS's parent agency, NARA generally does not release information on third-party individuals younger than 100 years old unless it has the individual's consent or proof of their death.

Finally, regarding your reference in your appeal to USCIS to the U.S. House of Representatives' June 18, 2012 resolution expressing regret for the passage of laws that adversely affected the Chinese in the United States, including the Chinese Exclusion Act, please know that the House resolution does not act as a waiver of USCIS's ability to withhold information under FOIA.

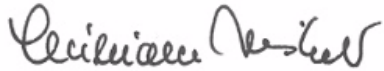
We have concluded our fact finding and have determined that it appears that USCIS's action in response to your records request is in accordance with established FOIA law and policy. There is no further assistance that OGIS can offer you in this case. We hope this information helps you better understand the types of information withheld and why USCIS withheld the information.

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I know this is not the result that you wanted; however, I hope that you find this information useful. Your case with OGIS is now closed. If you wish to contact us again, please refer to OGIS case no. 201300145.

Sincerely,

A handwritten signature in black ink, appearing to read "Miriam Nisbet". The signature is fluid and cursive, with the first name being more prominent.

Miriam Nisbet, Director
Office of Government Information Services (OGIS)

Cc: Lincoln Cameron, FOI/PA Office, National Records Center, U.S. Citizenship and Immigration Services

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.