



OFFICE of GOVERNMENT INFORMATION SERVICES

July 8, 2013—Sent via U.S. Mail



Re: Case No.: 201300541  
MN: CZ: KM

NATIONAL  
ARCHIVES  
and RECORDS  
ADMINISTRATION

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Dear [REDACTED]

This responds to your May 12, 2013 and May 21, 2013 requests for assistance from the Office of Government Information Services (OGIS) which we received on May 15, 2013 and May 28, 2013, respectively, via U.S. Mail.

Your May 12, 2013 request for assistance pertains to your Freedom of Information Act (FOIA)/Privacy Act request, No. [REDACTED] to the Federal Bureau of Prisons (BOP), seeking access to an October 18, 2010 memorandum concerning yourself.

I note that in your May 12, 2013 correspondence you ask OGIS “to instruct the [BOP] ... to release [to] me a copy of [the] said memo.” Please know that OGIS has no investigatory or enforcement power, nor can we compel an agency to release documents. Congress created OGIS to serve as the FOIA Ombudsman, a neutral office within government that assists FOIA requesters and Federal agencies with the FOIA process. We advocate for neither the requester nor the agency, but for the FOIA process to work as intended.

We carefully reviewed the correspondence pertaining to your request and discussed it with William Baumgartel, senior paralegal specialist in the BOP’s Office of General Counsel. I note that the Department of Justice’s Office of Information Policy affirmed the BOP’s response to your request in response to Appeal No. [REDACTED].

FOIA Exemption 5, 5 U.S.C. § 552(b)(5), protects “inter-agency or intra-agency memorandums or letters which would not be available by law to a party other than an agency in litigation with the agency.” Courts have interpreted Exemption 5 to incorporate three common legal privileges: the attorney work-product privilege, the attorney-client privilege and the deliberative process privilege. The BOP cited the deliberative process privilege provision of Exemption 5.

The deliberative process privilege is the most commonly used privilege in the FOIA context. Courts have ruled that it protects the “decision making processes of government agencies,” which includes documents as well as the deliberative process itself. *See NLRB v. Sears, Roebuck & Co.*, 421 U.S. 132, 151 (1975). We learned that in your case, BOP cited Exemption 5 to protect internal processes used by the BOP to classify inmates for the purpose of creating BOP policy and procedures. The U.S. District Court in Washington, D.C., ruled that FOIA Exemption 5 protects information concerning a Federal inmate such as yourself that was used by BOP officials as part of the continuing process of making decisions regarding that inmate’s status. *See Maydak v. DOJ*, 362 F. Supp. 2d 316, 326 (D.D.C. 2005).



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Exemption 7, 5 U.S.C. § 552(b)(7), is a multi-part law enforcement exemption. In order to apply any of the Exemption 7 sub-parts to a record, that record must meet the threshold requirement that it was compiled for law enforcement purposes. Information that is used by agencies to carry out law enforcement missions or enforce the law generally qualifies for this threshold requirement.

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.” The BOP determined that in your case, Exemption 7(E) applied to the internal processes used by the BOP to classify inmates.

FOIA Exemption 7(F), 5 U.S.C. § 552(b)(7)(F), applies to information compiled for law enforcement purposes that “could reasonably be expected to endanger the life or physical safety of any individual.” We learned that in your case, the BOP withheld information about you to protect your own safety. Courts have ruled that the protections afforded by Exemption 7(F) extend to information about inmates. *See, e.g., Anderson v. U.S. Marshals Service*, 943 F. Supp. 37, 40 (D.D.C. 1996). Under FOIA, a release of information to anyone is considered a release to the public. Thus, BOP could not release any of this non-public information only to you.

We also discussed with BOP your concern that the BOP withheld information that you already have and learned that any information you may have obtained regarding the October 18, 2010 memorandum was not released under FOIA and as such, does not automatically act affect the agency’s decision-making process when processing this request under the requirements of FOIA.

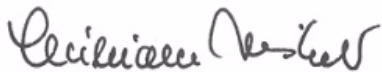
Please also know that when agency documents are provided as evidence in a Federal district court, it does not necessarily mean that the documents are releasable under FOIA, which does not apply to court records.

Finally, regarding your May 21, 2013 letter in which you asked OGIS for a list of all 100 departments and agencies subject to FOIA, please know that OGIS does not conduct research for its customers. If you have access to a computer, you may wish to visit [www.foia.gov](http://www.foia.gov). If you do not have access to a computer, you may wish to ask a friend or relative to visit [www.foia.gov](http://www.foia.gov) to obtain the information you seek.

I hope you find this information useful to understanding why the agency responded as it did to your request.

Thank you for bringing this matter to OGIS. We will close your case at this time.

Sincerely,



Miriam Nisbet, Director  
Office of Government Information Services

cc: William Baumgartel, senior paralegal specialist, Office of General Counsel, BOP