



OFFICE of GOVERNMENT INFORMATION SERVICES

August 30, 2013

NATIONAL
ARCHIVES
and RECORDS
ADMINISTRATION

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Re: Case No. 201300530
MN: NG: PP

Dear [REDACTED]:

This responds to your request to the Office of Government Information Services (OGIS), which we received on May 14, 2013 and a second letter received on July 10, 2013. Your request for assistance pertains to your Freedom of Information Act (FOIA) request No. [REDACTED] to the Department of Justice's Drug Enforcement Administration (DEA).

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 its jurisdiction is limited to assisting with the FOIA process.

After opening a case, OGIS obtains information from the requester and the agency to learn more about the nature of the dispute. We carefully reviewed your submission of information and also contacted the DEA FOI Specialist, Rhoda Green, to inquire about your request.

Regarding your request for access to records about a Hill County Sheriff's Narcotics Officer, [REDACTED], DEA responded to you by letter dated March 20, 2013, and a subsequent letter dated, May 29, 2013, that without proof of death and/or an original notarized authorization by [REDACTED], DEA is unable to fulfill your FOIA request. You state in your May 6, 2013 letter to OGIS that your request for [REDACTED] deputation document does not infringe on his privacy rights because he testified in open court.

OGIS facilitator contacted DEA and inquired about its response to your FOIA request and was informed that DEA is firm on its decision requesting consent and/or proof of death for the subject of your request. However, DEA acknowledged that it has not given you an opportunity to provide a statement of public interest to overcome the privacy interest of the narcotics officer who testified at your trial. In this regard, DEA agreed to



██████████
August 30, 2013

Page 3 of 3

allow you to submit a new FOIA request providing DEA with a statement of public interest justification for release of the specific information you seek on ██████████.

Please be advised that the public interest justification needs to focus on the conduct of the government (in your case, DEA). In considering release of records 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" (pages 589-590).

Additionally, in your letter to OGIS, you state "the nature of my request with the Drug Enforcement Administration lies entirely upon a specific task force agent that operates in Hill County Texas. I have a particular need for information of which clarifies this agent capacity as a 'federal' employee or a 'state' employee. As it is set forth under Title 5 U.S.C. § 3374(a)(2) a 'state' actor may, 'by request,' be assigned to operate in a 'federal' capacity." Although DEA denied your request in its response dated May 29, 2013, it also indicated that the type of records you seek would be under the control and custody of Hill County Sheriff's Department. As such, you may wish to submit a FOIA request to the Hill County Sheriff's Office for the particular information you seek on ██████████. Although in your recent correspondence to OGIS you state you do not wish to pursue this avenue, because you have a lawsuit against the Sheriff's department, another option would be to obtain the requested information through civil discovery.

As to your request for documentation or policy that provides you the DEA's deputation process, OGIS facilitator discussed this matter with DEA FOIA specialist and learned that the DEA has policy guidance on the deputation of state and local task force members; however, the "DEA Agents Manual," which contains this policy, is currently being revised which makes the policy unavailable for release at this time. The FOIA specialist explained she is unable to provide a copy of the policy from its old version because her office no longer has a copy of the 2002 version. The FOIA specialist informed the OGIS facilitator that the old version of the manual, namely the 2002 DEA Agents Manual, is available on the Internet and directed us to inform you to obtain the policy by searching for the "2002 DEA Agents Manual." She explained that after the manual is updated, the office will post its most up-dated version on the web and you can locate the up-dated information by accessing the DEA web site at www.dea.gov, or submitting a FOIA request once the up-dated version is published. Since DEA was unable to provide you a copy of its old policy, as a courtesy to

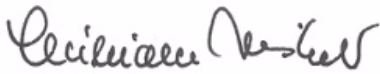
[REDACTED]
August 30, 2013

Page 3 of 3

you, an OGIS facilitator conducted a search of the online version of the 2002 manual and was able to print a copy of subchapter 633 dealing with DEA State and Local Task Force Program. This section of the old manual provides the requested policy on the deputation of state and local officers in DEA taskforces.

We hope that this information is helpful to you. There is no further action for us to take and we will consider this matter closed. Pursuant to your request, we are returning your FOIA correspondence to and from DEA. If you have additional questions at any point in the future, please feel free to contact us again and we will gladly open a new case to try to assist you.

Sincerely,



Miriam Nisbet, Director
Office of Government Information Services

Enclosure

cc: Romona Ashby, DEA FOI Supervisor Specialist