



OFFICE of GOVERNMENT INFORMATION SERVICES

December 2, 2013—sent via e-mail



Re: OGIS Case No. 201200253  
NG: KM

NATIONAL  
ARCHIVES  
and RECORDS  
ADMINISTRATION

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Dear [REDACTED]

This further responds to your January 31, 2012 request for assistance from the Office of Government Information Services (OGIS). Your request pertains to your October 5, 2011 Freedom of Information Act (FOIA) requests to the Department of Energy (DOE) and the National Protection and Programs Directorate (NPPD) at the Department of Homeland Security (DHS) seeking access to

- records regarding "[REDACTED]" and [REDACTED]
- records regarding "the [REDACTED]"

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.

We carefully reviewed your requests and after receiving your signed and dated consent on March 14, 2012, we began discussions about your requests with Kevin T. Hagerty, DOE's FOIA Public Liaison; James Holzer, DHS's Senior Director of FOIA Operations; and Sandy Ford Page, an NPPD Senior FOIA Analyst. I understand you had concerns about DOE posting on its website responses to your FOIA appeals, No. [REDACTED] and No. [REDACTED] appealing requests No. [REDACTED] ( [REDACTED] and No. [REDACTED] ). We learned that DOE posts all of its FOIA appeal decisions and orders on its web site — <http://energy.gov/oha/services/appeals> — and that responses to your appeal were not singled out for posting. Please know that names of FOIA requesters are not protected under FOIA or the Privacy Act of 1974 and agencies routinely make public the names of FOIA requesters when they post agency FOIA logs on their websites.

Regarding your concern that DOE determined that the requested records were not DOE records, please know that FOIA defines a record as "any information ... that is maintained for an agency by an entity under Government contract, for the purposes of records management," 5 U.S.C. § 552(f)(2)(B). We learned from DOE that the records you seek belong to DHS, not DOE; as such, DHS appears to be the correct agency to process any requests for those records.



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With regard to NPPD Request No. [REDACTED], I understand that Ms. Page located 377 documents that she believed originated with DOE and thus referred those pages to DOE on January 8, 2013 for direct response to you. I also understand that DOE's [REDACTED] Office returned the documents and informed Ms. Page that they were incorrectly referred to DOE. I also understand that Ms. Page processed the records for release to you.

NPPD also referred 22 pages of responsive documents to the Nuclear Regulatory Commission (NRC) and 94 pages of responsive records to the Department of Defense (DOD). If you have not gotten responses to those referrals, OGIS urges you to call the NRC FOIA office at 301-415-7169 and the DoD FOIA Office at 1-866-574-4970.

Regarding Request No. [REDACTED] the [REDACTED] request, the agency located 38,000 pages of potentially responsive records which it organized in spreadsheets. I understand that Ms. Mitchell facilitated telephone and email communication between you and Ms. Page so you could prioritize which categories of information on those spreadsheets interest you most, which you did in December 2012. Please know that FOIA requires a line-by-line, page-by-page review of those 38,000 pages to determine what information can be released and what information must be withheld.

As you know, periodically in 2013, OGIS tried to obtain from NPPD estimated dates of completion, as required by FOIA, 5 U.S.C. § 552(a)(7)(B)(ii), for Request No. [REDACTED]. NPPD informed OGIS that it is unable to provide estimated dates of completion.

As you also know, OGIS worked to facilitate a call between you, Mr. Holzer, Ms. Page and Grace Cheng, a DHS attorney, and such a call was scheduled for October 4, 2013. Unfortunately, the government shutdown prevented that call from occurring and it appears from your October 4, 2013 voice mail to OGIS Facilitator Kirsten Mitchell and the lack of response to an October 18, 2013 email from Ms. Mitchell that you are not interested in rescheduling.

I understand that you are frustrated with both DHS and OGIS. However, mediation services are voluntary and OGIS can provide its services only if both the agency and the requester are willing to work with OGIS. We regret to inform you that 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,



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

cc: Kevin Hagerty, FOIA Public Liaison, DOE  
James Holzer, Senior Director, FOIA Operations, DHS  
Sandy Ford Page, Senior FOIA Analyst, NPPD

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.