



OFFICE of GOVERNMENT INFORMATION SERVICES

January 14, 2014 — Sent via U.S. mail



Re: Case No.: 201300850
MN: NG: CL

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 September 16, 2013 request for assistance from the Office of Government Information Services (OGIS), which we received via fax. Your request for assistance pertains to your Freedom of Information Act (FOIA) request, No. [REDACTED] and subsequent appeal, No. [REDACTED], to the U.S. Postal Service Office of the Inspector General (USPSOIG) for access to a report pertaining to the investigation into theft at the [REDACTED] Post Office.

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 submission of information relating to your request and appeal and we discussed it with USPSOIG's staff. We note that in response to your appeal, USPSOIG affirmed its July 10, 2013 response to request No. [REDACTED] in which it cited FOIA Exemption 7(C), 5 U.S.C. §552(b)(7)(C), to withhold information from release. We also note the concern you expressed in your September 16, 2013 fax to OGIS requesting assistance that USPSOIG denied your appeal because "no one of consequence has been involved." You believe USPSOIG's position is erroneous because "The privacy concerns of individuals should not override the criminal activity these individuals have done, or are currently involved in."

Please know that both the FOIA and the Privacy Act of 1974 prohibit the government from releasing information about a third party without his or her written consent or proof of his/her death, or without a showing of an overriding public interest in disclosure of the information. To demonstrate an overriding public interest in disclosure of information related to "official misconduct," you must produce "evidence that would warrant a belief by a reasonable person that the alleged Government impropriety might have occurred." *NARA v. Favish*, 541 U.S. 157, 174 (2002). To obtain the requested information, you would have to produce documents or



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information that would establish more than a bare suspicion of agency wrongdoing or official misconduct.

With regard to your comments regarding the privacy concerns of the individuals named and described in the records you requested, please note that the courts have specifically addressed privacy interests involved in criminal investigations of third parties and have overwhelmingly ruled that individuals' privacy interests outweigh public interests because of the stigma or harassment that may result from public knowledge of such an investigation. *See, e.g., Palacio v. DOJ*, No. 00-1564, 2002 U.S. Dist. LEXIS 2198, at *9 (D.D.C. Feb. 11, 2002).

In addition, courts have upheld withholding names of agency employees including law enforcement officers under these exemptions. With regard to misconduct by government employees, generally the courts have ruled that less serious misconduct by low and mid-level agency employees is not of sufficient public interest to outweigh the individuals' right to privacy. *See, e.g. Cotton v. Adams*, 798 F. Supp. 22, 26-27 (D.D.C. 1992), *Heller v. U.S. Marshals Serv.*, 655 F. Supp. 1088, 1091 (D.D.C. 1987). Please know that the mere mention of an individual, including *you*, in connection with a law enforcement investigation could invade that individual's privacy if the information became public.

For the reasons described above, USPSOIG invoked FOIA Exemption 7 to withhold information in response to your FOIA request. Exemption 7 is a multi-part law enforcement exemption. 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 agencies use to carry out law enforcement missions or enforce the law generally qualifies for this threshold requirement. In your case, USPSOIG created the record that you requested during its investigation into theft at the [REDACTED] Post Office.

As the agency explained in its response to your appeal, Exemption 7(C) protects from disclosure law enforcement information the disclosure of which "could reasonably be expected to constitute an unwarranted invasion of personal privacy." Agencies typically use Exemption 7(C) to withhold references to individuals who are not targets of investigation, but who are merely mentioned in law enforcement files, as well as to individuals in whom a law enforcement agency has an investigatory interest.

In considering withholding records under Exemptions 7(C), 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 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).

Under the FOIA, a release of information to anyone is considered a release to the public, thus USPSOIG could not release any of this non-public information to you even if you believe you already know the names of the individuals named in the report. USPSOIG protects the identities of third parties in much the same way that it would protect your identity were it to receive a request for your records from anyone other than you.

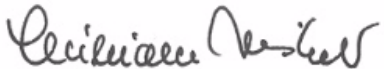
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After carefully reviewing USPSOIG's actions, it appears that USPSOIG processed your request in accordance with FOIA law and policy.

I hope you find this information useful in understanding why USPSOIG withheld the material it did in response to your request. At this time, there is no further assistance OGIS can offer and we will close your case. Thank you for bringing this matter to OGIS.

Sincerely,



Miriam Nisbet, Director
Office of Government Information Services

cc: Betsy Cuthbertson, FOIA Public Liaison, U.S. Postal Service Office of the Inspector, via email

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.