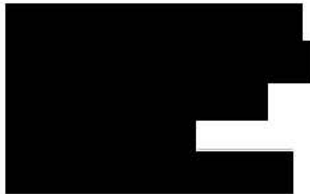




OFFICE *of* GOVERNMENT INFORMATION SERVICES

April 2, 2015 — Sent via U.S. mail



Re: Case No.: 201400419
NG: CM: CL

NATIONAL
ARCHIVES
and RECORDS
ADMINISTRATION

Dear [REDACTED]:

8601 ADELPHI ROAD
OGIS
COLLEGE PARK, MD
20740-6001

This letter responds to your March 29, 2014 request for assistance from the Office of Government Information Services (OGIS), which we received via U.S. mail. Your request for assistance pertains to your records request, No. [REDACTED], to the Drug Enforcement Administration (DEA). We are sorry for our delay in responding to your request for assistance.

web: www.ogis.archives.gov
e-mail: ogis@nara.gov
phone: 202-741-5770
toll-free: 1-877-684-6448
fax: 202-741-5769

Congress created OGIS to complement existing Freedom of Information Act (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 our jurisdiction is limited to assisting with the FOIA process.

As you may know, when an individual requests access to his or her own records, it is most often, but not always, considered a Privacy Act (PA), or first-party, request. Federal agencies will process requests under both FOIA and the Privacy Act of 1974 in order to provide requesters with the fullest degree of access available.

Privacy Act matters fall outside the scope of our office's mission as the FOIA Ombudsman. However, many Privacy Act requests overlap with FOIA; therefore, OGIS provides ombuds services, including providing information about the process and the status of requests, to individuals requesting their own records. OGIS does not have a statutory role in reviewing policies, procedures and compliance with the Privacy Act as we do with FOIA.

On [REDACTED], you submitted a FOIA/PA request, No. [REDACTED], to DEA for records



██████████
April 2, 2015

Page 2 of 3

regarding ██████████ ██████████
██████████. DEA's ██████████ letter in response to your request explained that DEA's FOI/Records Management Section forwarded a copy of your request to the DEA's Office of Operations Management (OM), Asset Forfeiture Section (OMA), the office most likely to have responsive records. OMA searched for responsive records, and by a letter dated ██████████ ██████████, DEA released 12 pages to you in part and withheld 23 pages in full under FOIA Exemptions 7(C), (7)(E), and 7(F), 5 U.S.C. §§ 552 (b)(7)(C), (b)(7)(E), and (b)(7)(F). You were dissatisfied with DEA's response to your request and by a letter dated ██████████, you filed an appeal, No. AP-██████████, with the Department of Justice's Office of Information Policy (OIP). OIP's ██████████ response to your appeal stated that OIP remanded Request No. ██████████ to DEA for a further search of responsive records. Otherwise, OIP affirmed DEA's action to withhold 23 responsive pages in full under FOIA Exemptions 7(C), 7(E), and 7(F). You requested that OGIS "mediate the decision of the DEA and Office of Information Policy to withhold 23 pages of documents responsive" to your FOIA request. For this reason, this letter will only address the status of your remanded records request and DEA's denial of the 23 pages in full.

We carefully reviewed your submission of information and contacted DEA FOIA Public Liaison Phyllis Scott Drewery to learn more about the status of your remanded request. Ms. Drewery said that DEA sent you a letter dated October 14, 2014 (enclosed for your reference) regarding your FOIA requests, including your remanded request. DEA's October 14, 2014 letter explained that with regard to request No. ██████████, DEA's FOI/Records Management Section requested a search of the San Diego Field Office and will send you any responsive releasable documents provided that you submit payment to cover the search and duplication costs. I understand that DEA never received your payment and closed Request No. ██████████. For your reference, I enclosed a copy of 28 C.F.R. § 16.11, the section of DOJ's FOIA regulations that addresses FOIA fees.

With regard to the 23 pages DEA withheld in full, Ms. Drewery explained that DEA is firm in its decision to withhold the records in full under FOIA Exemptions 7(C), 7(E), and 7(F). In situations like this when an agency is firm in its position, there is little more that OGIS can do beyond providing more information regarding the agency's response and the FOIA exemptions the agency cited in response to a request.

As you may know, not all records are releasable under the FOIA. Congress established categories of information that agencies are not required to release in response to FOIA requests because release would harm governmental or private interests. These categories are called "exemptions."

Exemption 7(C) states that records compiled for law enforcement purposes may be withheld if they "could reasonably be expected to constitute an unwarranted invasion of personal privacy." The government recognizes strong privacy interests in law enforcement records and courts have agreed that it is generally appropriate to withhold information that identifies third parties in law enforcement records.

██████████
April 2, 2015

Page 3 of 3

In considering withholding records under Exemption 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). It may be helpful to know that DEA protects the identity 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.

FOIA Exemption 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."

FOIA Exemption 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." Courts have extended Exemption 7(F)'s protections to include information about inmates, law enforcement officers, confidential sources and third parties.

We hope you find this information about your request useful. At this time, OGIS cannot offer you any additional assistance. Thank you for bringing this matter to OGIS. We will close your case.

Sincerely,

Nikki Gramian, Acting Director
Office of Government Information Services

cc: Phyllis Scott Drewery, FOIA Public Liaison, Drug Enforcement Administration, via email

Enclosures (2)