



OFFICE *of* GOVERNMENT INFORMATION SERVICES

July 7, 2015 — Sent via email

██████████
██████████

Re: Case No.: 201500797
NG: CM

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 ██████████:

This responds to your June 4, 2015 request for assistance from the Office of Government Information Services (OGIS), which we received via email. Your request for assistance pertains to your Freedom of Information Act (FOIA) request to the Department of Labor Division of Energy Employees Occupational Illness Compensation (DEEOIC).

As you are aware, 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 our jurisdiction is limited to assisting with the FOIA process.

You contacted OGIS with concerns about two recent requests that you submitted to DEEOIC.

Request No. ██████████

You made a request for information related to Energy Employees Occupational Illness Compensation Program Act Part E claims data, as well as beryllium and asbestos claims data. DEEOIC assigned your request No. ██████████ and provided you with a fee estimate of ██████████.

You replied to DEEOIC's fee estimate by email on May 6, 2015, suggesting places where the agency might locate the information you seek (to reduce search time) and clarifying and modifying other aspects of your request. The agency responded to your email, informing you that because you did not respond to its estimate of fees for ██████████ but rather modified your original request in a way that would require a new search, the agency administratively closed request No. ██████████ and assigned your new request No. ██████████. Further, the agency denied your request to be treated as a representative of the news media for the purpose of fees and provided you with a fee estimate of ██████████. You dispute the estimate of fees and the agency's action of opening a new request rather than modifying request No. ██████████.

Regarding the agency's administrative closure of ██████████ and opening of ██████████, the FOIA provides an agency with significant freedom to track and manage FOIA requests as it sees fit. This process is not intended to punish requesters, but rather to



allow an agency to keep better administrative records and manage its caseload effectively. As DEEOIC explained in its correspondence to you, because your suggested modifications required a new search and expanded some of the information you sought in your previous request, the agency assigned a new case number and administratively closed the previous request. While we note your concerns about this action, OGIS does not have authority to instruct an agency how to administer its FOIA program.

DEEOIC's June 3, 2015 letter regarding request No. [REDACTED] provides not only an estimate of fees associated with this request, but an explanation of the agency's consideration of your request to be treated as a representative of the news media for the purpose of fees. In that letter, DEEOIC states "...we previously determined that you have not satisfied the criteria to qualify for a fee waiver as 'a representative of the news media' and denied your request for journalist fee waiver status. We continue to follow our previous determination regarding your requester status and fee waiver request." We note that your original FOIA request stated "I am a member of the news media, please place this request in the proper fee category."

In the context of a previous OGIS case [REDACTED], we explained to you the difference between fee waivers and fee categories and the threshold of analysis for each. These concepts are easily confused; in its June 3, 2015 letter, DEEOIC appears to use the terms interchangeably. Although the letter does not articulate your right to appeal the agency's fee estimate, you may wish to do so.

In your appeal, you should clarify whether you seek a waiver of fees or treatment as a representative of the news media for the purpose of fees. In the case of the latter, keep in mind that it is generally not sufficient to simply state that you belong in a particular fee category; rather, you must show that your research will lead to a publication by a news media entity. Labor's own FOIA regulations (see <http://webapps.dol.gov/FederalRegister/PdfDisplay.aspx?DocId=11855>, § 70.38) provide more information about the factors the agency considers when determining requester category. For instance, the agency states that a freelance journalist will be treated as a representative of the news media if he/she presents a publication contract with a qualifying news media entity. According to Labor's FOIA regulations, appeals should be submitted within 90 days of the action being appealed and sent to:

Solicitor of Labor, Division of Management and Administrative Legal Services
U.S. Department of Labor
200 Constitution Avenue, NW, Room N-2428
Washington, DC 20210
foiaappeal@dol.gov

Request No. [REDACTED]

In your correspondence to OGIS, you explain that you submitted questions about agency records by email to DEEOIC, and that the agency assigned your inquiry a FOIA tracking number. You object to this practice, likening it to the agency opening an improper FOIA request in your name without authorization. I understand that on June 4, 2015, DEEOIC responded to your inquiry. You asked for OGIS's assistance in this matter.

OGIS's role as the federal FOIA Ombudsman allows us to observe a wide variety of agency FOIA practices across the government. As DEEOIC explained in its May 21, 2015 acknowledgment of your inquiry, the agency treated your questions as a FOIA request for tracking purposes. Although not every agency manages correspondence in this way, DEEOIC's practice is not out of the ordinary. We note your concerns about this matter.

July 7, 2015

Page 3 of 3

If you prefer, you may address future questions to the Department of Labor Office of Public Affairs at:

Office of Public Affairs
U.S. Department of Labor
200 Constitution Ave. NW, Room S-1032
Washington, D.C. 20210
(202) 693-4676
Fax: (202) 693-4674

We hope that this information about your requests is useful to you. 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,

/s/

Nikki Gramian, Deputy Director
Office of Government Information Services (OGIS)

cc: Thomas Hicks, U.S. Department of Labor FOIA

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.