



OFFICE of GOVERNMENT INFORMATION SERVICES

November 13, 2015- Sent via U.S. mail

[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

Re: Case No. 201600019
NG: CM: AB

NATIONAL
ARCHIVES
and RECORDS
ADMINISTRATION

8601 ADELPHI ROAD
COLLEGE PARK, MD
20740-6001

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phone: 202-741-5770
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Dear [REDACTED]:

This responds to your September 30, 2015, request for assistance to the Office of Government Information Services (OGIS). In your submission, you request mediation services regarding a Freedom of Information Act (FOIA) requests you made to the Federal Bureau of Prisons (BOP).

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.

We carefully reviewed the materials you submitted, and we understand that you made a request to BOP for [REDACTED]. BOP interpreted your request for the part of [REDACTED] which is exempt under FOIA and responded that it located 76 pages responsive to your request, 29 of which it withheld in their entirety, citing FOIA Exemptions 6, 7(C), 7(E), and 7(F). You appealed BOP's decision to withhold the 29 pages to the Office of Information Policy (OIP) at the Department of Justice and requested that, at a minimum, BOP provide a sufficient description of why the records are being withheld.

We contacted BOP's FOIA Public Liaison, C. Darnell Stroble, to learn more about the categories of information that BOP withheld in response to your request. Mr. Stroble declined to share any additional information about the information that was withheld, and he affirmed BOP's position on its response to your request.

In cases such as this in which an agency declines to share any additional information, there is little OGIS can do besides provide you with an additional explanation about the exemptions BOP cited.

FOIA Exemptions 6 and 7(C) protect personal privacy interests. FOIA Exemption 6, 5 U.S.C. § 552(b)(6), protects information about individuals in "personnel and medical files and similar files" when the disclosure of such information "would constitute a clearly unwarranted invasion of personal privacy." FOIA Exemption 7(C), 5 U.S.C. § 552(b)(7)(C), is limited to information compiled for law enforcement



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purposes and protects personal information when disclosure “could reasonably be expected to constitute an unwarranted invasion of personal privacy.”

When making release determinations pursuant to Exemptions 6 and 7(C), an agency must weigh the public interest 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 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* provides an explanation of “public interest” under the Supreme Court case referenced above that states “Under the Reporter’s Committee, the standard of public interest to consider is one specifically limited to the FOIA’s ‘core purpose’ of ‘shedding light on an agency’s performance of its statutory duties.’ Accordingly, information that does not reveal the operations and activities of government does not satisfy the public interest requirements.

FOIA Exemption 7(E), 5 U.S.C. § 552(b)(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.” Courts have uniformly required that the technique or procedure at issue ordinarily must not be well known to the public in order to fall under the protection of Exemption 7(E). For example, the use of surveillance is a technique that courts have found to be generally known to the public. However, courts have upheld agencies’ withholding of the commonly known procedures under Exemption 7(E) when the *circumstances* of their usefulness are not widely known and/or disclosure could reduce or even nullify the *effectiveness* of the procedures.

FOIA Exemption 7(F), 5 U.S.C. § 552(b)(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. Courts have given federal agencies broad latitude to withhold information under Exemption 7(F) when there is reasonable cause to believe that disclosure of the information would risk physical harm to any individual.

I hope you find this information useful. 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,

/S/

JAMES V.M.L. HOLZER
Director

cc: Darnell Stroble, FOIA Public Liaison, Bureau of Prisons