



OFFICE *of* GOVERNMENT INFORMATION SERVICES

February 23, 2016 - Sent via e-mail

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

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

In Re: Case No.: 201501039
NG: HK

Dear [REDACTED]:

This responds to [REDACTED] August 3, 2015, request for assistance to the Office of Government Information Services (OGIS). His request for assistance pertains to his records request [REDACTED] and appeal to the Federal Energy Regulatory Commission (FERC). In his correspondence with OGIS, [REDACTED] directs us to respond to you concerning his FOIA dispute with FERC.

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.

In a letter included with his submission to OGIS, [REDACTED] disputes FERC's response to his request and the withholding of certain information pursuant to Exemptions 4, 6, 7(A) and 7(E) of the FOIA, 5 U.S.C. § 552(b)(4), (b)(6), (b)7(A) and (b)7(E).

In working cases such as yours, an OGIS facilitator will first reach out to the agency to discuss how it handled the request and appeal. In your case, we contacted FERC to discuss your request and learned that the agency is firm in its decision. When an agency is firm in its decision, there is little for OGIS to do other than provide more information concerning the agency's action and exemptions it invoked. Hence, with this letter, we are providing you an explanation of the exemptions FERC invoked and types of information withheld under each exemption.



Exemption 4, 5 U.S.C. § 552(b)(4), of the FOIA protects "trade secrets and commercial or financial information obtained from a person that is privileged or confidential. FERC described the information withheld pursuant to Exemption 4 as containing [REDACTED] responses to commission's data requests and draft settlement proposals exchanged between the Commission and [REDACTED] during the course of the investigation which revealed confidential commercial information during the settlement negotiations. Release of the confidential commercial information could subject [REDACTED] to competitive disadvantage and therefore, Exemption 4 is being used to withhold [REDACTED] commercial information from release.

FOIA Exemption 6, 5 U.S.C. § 552(b)(6), protects information about personnel and medical files and similar files when the disclosure of such information would constitute a clearly unwarranted invasion of personal privacy. When making release determinations pursuant to Exemption 6, 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). FERC invoked Exemption 6 to withhold lower level Commission staff's names, and email addresses.

After establishing that the lower level Commission staff has a privacy interest in their names and email addresses, the agency considered whether the disclosure of the information would serve the public interest. In making this determination, the agency considered whether disclosure would open agency action to the light of public scrutiny, rather than focus on the particular purpose for which the information was being requested. In the 73 additional emails released to you by the Agency on appeal, FERC redacted the names and email addresses of lower level Commission staff as the agency determined the privacy interest of the individuals outweighed the public interest in disclosure.

FOIA Exemption 7, 5 U.S.C. § 552(b)(7)(A), protects from disclosure "records or information compiled for law enforcement purposes, but only to the extent that the production of such law enforcement records or information could reasonably be expected to interfere with investigations or enforcement proceedings. In describing their use of Exemption 7(A), FERC explained that although the final settlement agreement led to the termination of the Commission's investigation into [REDACTED] FERC has a continuing oversight and enforcement related responsibility. Release of the material withheld under Exemption 7(A) could reveal sensitive information pertaining to their investigative process. The information, if released, would allow other entities to purposefully conceal relevant information. Therefore, even though the investigation into [REDACTED] itself has ended, the enforcement process is continuing and the privilege remains to protect forthright compliance filings.

Exemption 7(A) is temporal in nature and is not intended to endlessly protect material simply because it is in an investigatory file. Therefore, it is important to note that this exemption will be inapplicable once the compliance process is complete. Therefore, you may wish to submit a new FOIA request at a later date.

FOIA Exemption 7(E), 5 U.S.C. § 552(b)(7)(E), protects law enforcement 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. FERC invoked Exemption 7(E) to withhold information concerning enforcement techniques and proceedings that are confidential and only effective when protected from disclosure. FERC FOIA staff reviewing your case explained that 7(E) requires only that the agency demonstrate logically how the release of the information might create a risk of circumvention of the law. Disclosure of the information could undermine the Commission's investigative communications and FERC's ability to monitor and investigate other entities for violations that may be found through compliance monitoring.

I hope you find this information useful in understanding why FERC responded to your request as it did. 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: Toyia Johnson, FOIA Public Liaison, Federal Energy Regulatory Commission

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.