



OFFICE *of* GOVERNMENT INFORMATION SERVICES

February 9, 2015 — Sent via email

██████████
████████████████████

Re: Case No.: 201500218
NG: CM

NATIONAL
ARCHIVES
and RECORDS
ADMINISTRATION

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OGIS
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Dear ██████████

This responds to your December 11, 2014 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 Central Intelligence Agency (CIA).

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.

I understand that you requested CIA records related to the death of former ██████████ ██████████, which occurred in ██████████. The CIA neither confirmed nor denied the existence of records responsive to your request. You appealed that response, and after considering your request and appeal, the Agency Release Panel upheld the CIA's original determination on your request.

In your submission to OGIS, you provided information about why the information you seek is important, including a Resolution passed by the UN General Assembly that forms an independent panel to examine new information and encourages member nations to release relevant records.

In response to your submission, we contacted the CIA to learn more about your request. The agency reiterated that it is firm in its response to request No. ██████████ ██████████. The CIA also informed OGIS that you have a pending request in the agency's queue for records related to ██████████ (assigned case ██████████). The agency is still processing this request.

When an agency responds to a FOIA request by neither confirming nor denying the existence of responsive records, this is known as the "Glomar" response. A Glomar response is proper when to admit whether records even exist would reveal a fact that is exempt under FOIA. In your case, the existence or nonexistence of responsive records is classified under FOIA Exemptions 1 and 3, 5 U.S.C. §§ 552(b)(1) and (3).



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FOIA Exemption 1 protects “information that has been deemed classified “under criteria established by an Executive order to be kept secret in the interest of national defense or foreign policy.” FOIA Exemption 3 incorporates other, separate statutes that require information to be withheld from release. In this case, two statutes apply:

- 50 U.S.C. § 403g: This section of the CIA Act of 1949 protects the nature of agency’s function in the interest of the security of the foreign intelligence activities of the United States and “exempts the CIA from laws that require the disclosure of the “organization, functions, names, official titles, salaries, or numbers of personnel employed by the agency.”
- 50 U.S.C. § 403-1(i)(1): This section of the National Security Act of 1947 allows the CIA to withhold “intelligence sources and methods.”

Regarding the agency’s refusal to confirm or deny existence of records responsive to your request, known as a Glomar response, please know that Executive Order 12958 and the subsequent Executive Order 13526, both regarding classified information, explicitly acknowledge the Glomar response in response to FOIA requests: “An agency may refuse to confirm or deny the existence or nonexistence of requested records whenever the very fact of their existence or nonexistence is itself classified under this order.” (See Department of Justice Guide to the Freedom of Information Act, p. 169 http://www.justice.gov/sites/default/files/oip/legacy/2014/07/23/exemption1_1.pdf)

Please know that one way to show that a Glomar response is not proper is to provide evidence that an official of the agency has publicly and officially acknowledged a fact that would establish a basis for concluding that records about a subject exist (or existed). A report by a news organization does not equate to confirmation of information or a fact by a government official. If the CIA responds in a similar way to case ██████████, you may wish to provide this supplementary information (along with the U.N. Resolution) with your administrative appeal.

In cases such as this where an agency is firm in its position, there is little for OGIS to do beyond providing more information about the agency’s actions. I hope that this information about your request is useful to you. Thank you for contacting OGIS; we will now consider this matter closed.

Sincerely,

/s/

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

cc: CIA FOIA Public Liaison

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.