



OFFICE of GOVERNMENT INFORMATION SERVICES

March 25, 2015 — Sent via U.S. Mail

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

Re: Case No. 201400872  
NG: CM: AS

NATIONAL  
ARCHIVES  
and RECORDS  
ADMINISTRATION

8601 ADELPHI ROAD  
OGIS  
COLLEGE PARK, MD  
20740-6001

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Dear [REDACTED]

This responds to your request for assistance from the Office of Government Information Services (OGIS), received on September 2, 2014. Your request for assistance pertains to your records request ([REDACTED] to the Department of Justice's Executive Office for U.S. Attorneys (EOUSA) and subsequent appeal ([REDACTED] to the DOJ Office of Information Policy (OIP). You sought a copy of a letter that was sent to your former attorney regarding a possible plea agreement.

As you know, 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.

Please know that when an individual requests access to his or her own records, as you have done, it is most often considered a Privacy Act, or first-party, request. Privacy Act matters falls 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 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.

We have carefully reviewed your submission of information, and we note that in response to your appeal, OIP affirmed the EOUSA's response. OIP also noted in response to your appeal that EOUSA searched for [REDACTED], but did not locate any records. Federal courts have long settled that in regard to a search for documents, the crucial issue is whether an agency conducted an adequate search for a document, not whether a document *might* exist. An



March 25, 2015

Page 2 of 2

adequate search is conducted when the search is reasonably calculated to uncover all relevant documents. *Weisberg v. Dep't of Justice*, 705 F.2d 1344, 1351 (D.C. Cir. 1983). In your case the agency did not find any record that was sent to your attorney concerning a plea agreement. It may be helpful to know that plea negotiations usually take place orally between defense attorneys and prosecutors and then, when accepted, are formalized in writing. Attached for your reference is section 9-27.330 et al of the U.S. Attorney Manual that provides information about this process.

I hope you find this information useful in understanding why EOUSA and OIP responded as they did to your FOIA request and appeal. There is no further assistance that OGIS can offer you in this case. Thank you for bringing this matter to OGIS; we consider your case closed.

Sincerely,

/s/

Nikki Gramian, Acting Director  
Office of Government Information Services

cc: OIP FOIA Office, via email