



OFFICE of GOVERNMENT INFORMATION SERVICES

April 29, 2015 — Sent via U.S. mail

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Re: Case No.: 201500489  
NG: CM

Dear [REDACTED]:

This responds to your February 1, 2015 request for assistance from the Office of Government Information Services (OGIS), which we received via U.S. mail. Your request for assistance pertains to your Freedom of Information Act (FOIA) request to the Drug Enforcement Administration (DEA).

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 enclosed with your submission to OGIS the Office of Information Policy's (OIP's) response to your appeal of DEA's denial. It appears from OIP's correspondence that the agency interpreted your request as seeking specific records on two DEA agents, [REDACTED]. OIP affirmed DEA's decision to withhold any responsive records, should they exist, citing FOIA Exemption 7(C).


When an agency responds to a FOIA request by neither confirming nor denying the existence of responsive records, it is known as the "Glomar" response. A Glomar response is proper when to admit that records even exist would reveal a fact that is exempt under FOIA. If an agency issues a Glomar response, it must cite to one or more FOIA exemptions to explain its refusal to disclose information. In your case, OIP explained that the existence or nonexistence of responsive records about [REDACTED] is exempt under FOIA Exemption 7(C), 5 U.S.C. § 552(b)(7)(C).

In your correspondence to OGIS, you explain that you do not seek private information about the individuals cited in your request; rather, you explain that you seek information including the DEA's oath of office, written standards of ethical conduct, an address to file an ethical complaint, and the agents' disciplinary records. You seek OGIS's assistance in obtaining this information.

While an OPM regulation, 5 CFR 293.311, allows some personnel records to be disclosed under FOIA, your request for information was not interpreted to be for the type of records that would fall under the OPM regulation. You may wish to submit a new FOIA request for the Oath of Office of the named agents or written standards of ethical conduct. However, requests for records about specific individuals, such as disciplinary records, must be submitted with authorization from those individuals or proof of their death, or with evidence that shows how public interest in the requested information outweighs the individuals' right to privacy.

In your appeal to OIP, you describe the records you seek as being in the interest of the public. Please be advised that the public interest justification needs to focus on the conduct of the government (in your case, DEA). When an agency considers releasing personal information such as disciplinary records about individuals (should such records exist) under FOIA, the agency must weigh the interest in public disclosure 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 the agency and not to discover information about other individuals. The U.S. 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. As the result, courts have consistently refused to recognize any public interest, as defined by Reporters Committee, in disclosure of information sought to assist someone in challenging their conviction." (Pages 585-586).

  
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I hope you find this information useful in understanding why the DEA withheld the material it did in response to your request. 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,

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

cc: Phyllis Scott-Drewery, DEA FOIA