



OFFICE of GOVERNMENT INFORMATION SERVICES

June 9, 2015— Sent via email



Re: Case No.: 201500225  
NG: KM

NATIONAL  
ARCHIVES  
and RECORDS  
ADMINISTRATION

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Dear [REDACTED]:

This responds to your request for assistance from the Office of Government Information Services (OGIS), which we received on December 10, 2014 via email. Your request for assistance pertains specifically to two Freedom of Information Act (FOIA) fee waiver requests and generally to a FOIA appeals practice at the Internal Revenue Service (IRS). You requested and the IRS denied fee waivers for the following FOIA requests:

- Request No. [REDACTED]
- Request No. [REDACTED]

I note that the IRS, on appeal, affirmed the fee waiver denials pertaining to the two requests, which you made on behalf of your client, [REDACTED] with the [REDACTED].

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.

The IRS practice that concerns you was the subject of a previous OGIS case, No. [REDACTED], and involves situations in which requesters provide additional information about a particular FOIA matter—in this case fee waivers—on appeal. It appears that in the past, the IRS appeals team looked only at whether there had been an error at the request stage and did not consider any additional information presented on appeal.

We carefully reviewed the correspondence you submitted and discussed the issue with IRS Senior Disclosure Analyst Rhonda O'Reilly and Ryan Law, Acting Deputy Assistant Secretary for Privacy, Transparency and Records at Department of Treasury.



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In this particular case, the agency denied your request for fee waivers on [REDACTED], and provided you with three options: commit to paying fees; limit the scope of your requests; or provide evidence in support of your requests to reduce or waive fees. The IRS also provided you with appeal rights.

You appealed as, you noted, is required by statute before filing a lawsuit. You also wrote the IRS Disclosure Office with what you believed was additional information. Your [REDACTED] letter to the Disclosure Office included a letter from OGIS closing Case No. [REDACTED] in which the IRS stated that a requester can return to the Disclosure Office with new information supporting his request for a fee waiver that has been denied.

As you know, the IRS's regulation regarding "Publication, public inspection, and specific requests for records," states that the "person submitting the appeal may submit any argument in support of the appeal in the letter of the appeal." Section 601.702(c)(10)(ii)(F).

Although the agency's long-standing practice is to handle its FOIA appeals as it does *all* other administrative appeals—by adjudicating the issue at hand and not considering new information—in your case, the agency did consider the information you submitted. As the IRS informed you in its [REDACTED] letter, the agency reviewed the information you submitted but found that you did not provide any *new* information in support of fee waivers for Request No. [REDACTED] and Request No. [REDACTED]. The agency is firm in that position.

As noted above, the IRS informed you on [REDACTED], that you could provide evidence to support your request to reduce or waive fees. Ms. O'Reilly informed OGIS that the agency will ensure that it notifies requesters in plain language that they can return to the Disclosure Office with additional information regarding denials of fee waivers or expedited processing. We hope that doing so will provide meaningful public understanding of the practice, which we observe is unique among Federal agencies.

Mr. Law also stated that in a meeting with FOIA officers from across Treasury, including from the IRS, he informed them that neither IRS's regulation nor Treasury's FOIA regulation prevents the IRS—or any other Treasury FOIA office—from considering new information on appeal. In other words, requesters should not be precluded from presenting new information after a request for a fee waiver or expedited processing has been denied and the agency should consider such information. Mr. Law also noted that Treasury's FOIA and Transparency Office will assist the IRS on this matter.

I hope this information 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: Rhonda O'Reilly, Senior Disclosure Analyst, IRS, via email  
Ryan Law, Acting Deputy Assistant Secretary for Privacy, Transparency and Records, via email