



OFFICE of GOVERNMENT INFORMATION SERVICES

September 9, 2015 - Sent via U.S. mail

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ARCHIVES  
and RECORDS  
ADMINISTRATION

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

Re: Case No. 201501145  
NG: CM: KG

Dear [REDACTED]:

This responds to your August 21, 2015 letter to the Office of Government Information Services (OGIS), which we received via U.S. mail. Your request for assistance concerns your Freedom of Information Act (FOIA) request to the Federal Bureau of Prisons (BOP).

Congress created OGIS to complement existing FOIA practice and procedure and we strive to work in conjunction with the existing request and appeal process. OGIS's goal, whenever practical, is to allow 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, it is most often, but not always, considered a Privacy Act, or first-party, request. Privacy Act matters fall outside the scope of our office's mission as the Freedom of Information Act (FOIA) Ombudsman. However, many Privacy Act requests overlap with FOIA; therefore, OGIS provides ombuds services 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.



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You contacted OGIS regarding your request to BOP for access to a recording of a telephone conversation between you and [REDACTED]. BOP denied your request, stating that without the written consent of the parties involved in the conversation (in your case, [REDACTED]), BOP could not release the recorded conversation. You disputed BOP's response to your request and submitted an appeal to the Department of Justice Office of Information Policy (OIP). In response to your appeal, OIP affirmed BOP's action on your request, determining that BOP properly withheld the telephone recording in full under FOIA Exemptions 7(C). You dispute this response.

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Exemption 7(C), 5 U.S.C. § 552(b)(7)(C), states that records compiled for law enforcement purposes may be withheld if they “could reasonably be expected to constitute an unwarranted invasion of personal privacy.” When making release determinations pursuant to Exemption 7(C), 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.”

You *may* be able to overcome the privacy interest protected by Exemption 7(C) if the individual, in this case, [REDACTED] provides [REDACTED] consent to the release of [REDACTED] conversation with you. Without the consent of [REDACTED], the agency will not release the transcript of the requested telephone conversation. *See, Pendergrass v. U.S. Dept. of Justice*, (CA# 04-112) attached for your reference.

In your correspondence to OGIS you assert that this information should be released to you because government employees are required to report [REDACTED]. Although you did not elaborate on the connection between the record you seek and an allegation of [REDACTED] as a courtesy to you, OGIS contacted BOP to find out how an inmate can report a crime.

If the crime is internal and relates to an inmate’s incarceration, BOP informed OGIS that you can use the BOP Administrative Remedy Process to report such crimes. We included with this letter the BOP’s Administrative Remedy Program Policy. If you wish to pursue the Administrative Remedy Process you need to obtain a Request for Administrative Remedy Form, Form BP-9 (BP-22) from institution staff, and follow the instructions in the attached policy. However, BOP informed us that if the crime involves someone outside of the Bureau of Prison, you may wish to contact your case unit manager and/or someone else in a position of authority at the institution to find out the procedures that are set up for an inmate to report an alleged criminal activity.

I hope you find this information useful in understanding BOP’s action on your request. At this time, OGIS can offer no further assistance. Thank you for bringing this matter to OGIS. We will close your case.

Sincerely,

/s/

Dr. James V.M.L. Holzer  
Director

Enclosures