



OFFICE of GOVERNMENT INFORMATION SERVICES

October 1, 2015- Sent via U.S. mail

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

Re: Case No. 201501168
NG: CM: KG

NATIONAL
ARCHIVES
and RECORDS
ADMINISTRATION

8601 ADELPHI ROAD
COLLEGE PARK, MD
20740-6001

web: www.ogis.archives.gov
e-mail: ogis@nara.gov
phone: 202-741-5770
toll-free: 1-877-684-6448
fax: 202-741-5769

Dear [REDACTED]:

This responds to your request for assistance from the Office of Government Information Services (OGIS), which we received on September 3, 2015 via U.S. mail. Your request for assistance pertains to your records request to the Federal Bureau of Investigation (FBI) seeking access to information related to an investigation.

As you are aware, Congress created OGIS to serve as the Federal Freedom of Information Act (FOIA) Ombudsman and its jurisdiction is limited to assisting with the FOIA process.

OGIS:

- Advocates for neither the requester nor the agency, but for the FOIA process to work as intended
- Provides mediation services to help resolve disputes between FOIA requesters and Federal agencies
- Strives to work in conjunction with the existing request and appeal process
- May become involved at any point in the FOIA administrative process

OGIS does not:

- Compel agencies to release documents
- Enforce FOIA
- Process requests or review appeals
- Provide assistance outside the realm of FOIA
- Make determinations or dictate resolutions to disputes



OGIS staff carefully reviewed the correspondence you submitted with your request for assistance. I understand that you originally made a FOIA request to the FBI on [REDACTED]. The FBI denied your request on [REDACTED], informing you that the materials you requested are located in an investigative file which is exempt from disclosure pursuant to FOIA Exemption 7(A). You appealed that response. The Department of Justice Office of Information Policy (OIP) affirmed the FBI's action on your request on [REDACTED]. In OIP's response, the office explained that FBI correctly applied FOIA Exemption 7(A) by denying you request for investigative files. OIP also explained that it is FBI's standard practice to apply Exemption 7(E) when the agency responds to requesters.

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Exemption 7(A) 5 U.S.C. § 552(b)(7)(A), protects law enforcement records pertaining to a pending or prospective law enforcement investigation or proceeding when release of information could “reasonably be expected to interfere” with that investigation or enforcement proceeding. Courts have recognized the specific harm of disclosing law enforcement records, including the premature release of witness statements and potential documentary evidence in pending criminal cases, civil cases and in administrative enforcement proceedings.

Exemption 7(A) is temporal in nature and not intended to “endlessly protect material simply because it is in an investigatory file,” according to the Department of Justice Guide to the Freedom of Information Act. (<http://www.justice.gov/sites/default/files/oip/legacy/2014/07/23/exemption7a.pdf>). However, courts have ruled that Exemption 7(A) remains applicable throughout long-term law enforcement investigations.

This exemption will be inapplicable once the investigation and enforcement proceeding is formally concluded. Therefore, you may wish to submit a new FOIA request in six months or a year. Please note that even when the investigation or proceeding is completed, portions of the records may continue to be withheld pursuant to other applicable FOIA exemptions.

As it relates to Exemption 7(E), the FBI routinely informs all FOIA requesters that it can neither confirm nor deny that specific names are on a watch list. Exemption 7(E) authorizes an agency to withhold information compiled for law enforcement purposes that “would disclose techniques and procedures for law enforcement investigations or prosecutions, or would disclose guidelines for law enforcement investigations or prosecutions if such disclosure could reasonably be expected to risk circumvention of the law.”

In the case of watch lists, confirmation that an individual is or is not included on such a list may reveal information that could assist a terrorist organization in circumventing the law by determining which of its members are likely to be questioned or detained. Federal courts have consistently held that records pertaining to terrorism watch lists are appropriately withheld under Exemption 7(E).

I hope you find this information useful in understanding why the FBI responded to your request as it did. 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,

/s/

JAMES V.M.L. HOLZER
Director

cc: Matthew Hurd, Senior Attorney, Department of Justice, Office of Information Policy