



OFFICE *of* GOVERNMENT INFORMATION SERVICES

December 4, 2015—Sent via email

████████████████████
████████████████████

Re: Case No.: 201501243
NG: CM

NATIONAL
ARCHIVES
and RECORDS
ADMINISTRATION

8601 ADELPHI ROAD
OGIS
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 ██████████:

This responds to your September 21, 2015 request for assistance from the Office of Government Information Services (OGIS), which we received by U.S. mail. Your request for assistance pertains to your Freedom of Information Act (FOIA) request to U.S. Citizenship and Immigration Services (USCIS) for records related to your client, ██████████.

As you are aware, 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 made a request to USCIS for ██████████' records. The agency responded by releasing 370 pages in their entirety and 31 pages in part. 15 more pages were withheld in full. You appealed this decision, and USCIS released 13 more pages in part. In withholding the records you seek, USCIS cited to FOIA Exemptions 5, 6, 7(C) and 7(E), 5 U.S.C. §§ 552(b)(5), (b)(6), (b)(7)(C) and (b)(7)(E). You asked for OGIS's assistance with this matter.

OGIS staff contacted USCIS to discuss your concerns with the agency's response to your request and appeal. USCIS affirmed its decision on the records you seek; in cases such as this where an agency is firm in its position, there is little for OGIS to do beyond providing more information about the agency's actions.

Regarding the agency's use of FOIA Exemption 5, this exemption protects "inter-agency or intra-agency memorandums or letters which would not be available by law to a party other than an agency in litigation with the agency." Courts have interpreted Exemption 5 to incorporate three privileges: the attorney work-product privilege, the attorney-client privilege and the deliberative process privilege.

USCIS cited the deliberative process privilege in its use of Exemption 5 to withhold the records you seek. The deliberative process privilege is the most commonly used privilege in the FOIA context. Courts have ruled that the privilege protects the "decision making processes of government agencies," which includes documents as well as the deliberative process itself. While matters of agency policy have



December 4, 2015

Page 2 of 2

traditionally fallen under Exemption 5, it is more broadly interpreted by courts to include the entire deliberative process, whether or not a specific agency policy decision was at issue. In your case, USCIS explained that a discretionary release of the documents withheld under this exemption could chill the agency's deliberative process.

FOIA Exemptions 6 and 7(C) protect personal privacy interests. Specifically, FOIA Exemption 6 protects information about individuals in "personnel and medical files and similar files" when the disclosure of such information "would constitute a clearly unwarranted invasion of personal privacy." FOIA Exemption 7(C) is limited to information compiled for law enforcement purposes and protects personal information when disclosure "could reasonably be expected to constitute an unwarranted invasion of personal privacy." USCIS withheld information and records related to [REDACTED] family members in the materials you seek. If you can obtain consent of your client's relatives mentioned in the records, USCIS would be able to produce those records as well.

When making release determinations pursuant to Exemptions 6 and 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." *U.S. Dep't of Justice v. Reporters Committee for Freedom of the Press*, 489 U.S. 749, 773 (1989).

FOIA Exemption 7(E) applies to information compiled for law enforcement purposes and authorizes an agency to withhold information 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 this case, USCIS withheld information related to law enforcement systems checks; courts have consistently held that activities such as background checks fall within the scope of Exemption 7(E).

I hope you find this information useful in understanding why USCIS 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,

/s/

JAMES V.M.L. HOLZER
Director

cc: USCIS FOIA

We appreciate your feedback. Please visit <https://www.surveymonkey.com/s/OGIS> to take a brief anonymous survey on the service you received from OGIS.