



OFFICE of GOVERNMENT INFORMATION SERVICES

April 4, 2016 — Sent via U.S. Mail

[REDACTED]
[REDACTED]
[REDACTED]

Re: Case No.: 201600602
NG: CM: KG

NATIONAL
ARCHIVES
and RECORDS
ADMINISTRATION

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OGIS
COLLEGE PARK, MD
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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 March 8, 2016 via email. Your request for assistance pertains to your Freedom of Information Act (FOIA) request to the Department of Justice, Executive Office for United States Attorneys, seeking grand jury transcripts.

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 Department of Justice denied your request, and subsequent appeal, for grand jury records, invoking Exemption 3, citing Rule 6(e) of the Federal Rules of Criminal Procedures.

Exemption 3 covers records "specifically exempted from disclosure by statute" provided that such statute either "(i) requires that the matters be withheld from the public in such a manner as to leave no discretion on the issue; or (ii) establishes particular criteria for withholding or refers to particular types of matters to be withheld." 5 U.S.C. § 552(b)(3)(A). In your case, the relevant statute EOUSA used is the Federal Rule of Criminal Procedure 6(e). This rule bars the disclosure of matters occurring before a grand jury. Because Rule 6(e) was affirmatively enacted by Congress, it is recognized as a "statute" for Exemption 3 purposes. The grand-jury-secrecy requirement is applied broadly and embraces any information that "tend[s] to reveal some secret aspect of the grand jury's investigation, [including] the identities of witnesses or jurors, the substance of testimony, the strategy or direction of the investigation, the deliberations or questions of jurors, and the like." Lopez v. Dep't. of Justice, 393 F.3d 1345, 1349 (D.C. Cir. 2005).



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In fact, individuals who disclose grand jury materials may be charged with contempt and face up to six months imprisonment. For example, if a prosecutor or other government employees leak grand jury material they may be charged with a felony under Title 18, punishable by up to five years in prison and pay a \$250,000 fine.

If a grand jury proceeding results in an indictment and a case in Federal court, one may be able to obtain non-grand jury information from EOUSA or by going to the clerk of court in the District in which the case was tried.

I hope you find this information useful in understanding why the Department of Justice withheld the grand jury material 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,

JAMES V.M.L. HOLZER
DIRECTOR

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.