



OFFICE of GOVERNMENT INFORMATION SERVICES

May 24, 2016 —Sent via email

[REDACTED]
[REDACTED]

Re: Case No. 201600775
NG: HK: CM: CL

NATIONAL
ARCHIVES
and RECORDS
ADMINISTRATION

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OGIS
COLLEGE PARK, MD
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Dear [REDACTED]:

This responds to your April 18, 2016, request for assistance from the Office of Government Information Services (OGIS), which we received via email. Your request for assistance concerns your records request to the U.S. Nuclear Regulatory Commission (NRC).

Congress created OGIS to complement existing Freedom of Information Act (FOIA) practice and procedure; we strive to work in conjunction with the existing request and appeal process. Our goal is 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.

On [REDACTED], you submitted a FOIA request (No. 2 [REDACTED]) to NRC for a copy of a [REDACTED] the Office of Inspector General (OIG). NRC responded to your request on [REDACTED], releasing [REDACTED] to you with portions withheld under FOIA Exemption 7(C), 5 U.S.C. § 552 (b)(7)(C). You appealed this response, and on appeal, NRC released portions [REDACTED] concerning [REDACTED]; the agency otherwise affirmed its initial determination to withhold information concerning the third parties named in the report. You ask for OGIS's assistance with this matter,

We carefully reviewed your submission and contacted the NRC FOIA Public Liaison Roger Andoh to learn more about the agency's response to your request. Mr. Andoh affirmed NRC's action on your request. In situations where an agency is firm in its position, there is little more OGIS can do beyond explaining the agency's rationale for responding as it did and explaining the exemptions the agency invoked.

To protect an individual's personal privacy, both the FOIA and the Privacy Act of 1974 prohibit the government from releasing information about a third party without his or her written consent or proof of his/her death, or without a showing of an overriding public interest in disclosure of the information. Please know that these third party protections also apply if someone requests records from the government records pertaining to you.

In your case, NRC invoked Exemption 7(C) to protect the privacy interests of the third parties named in the investigative report you requested. Exemption 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." The government recognizes a strong privacy interest in law enforcement records and



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courts have agreed that it is generally appropriate to withhold information that identifies third parties in law enforcement records.

You dispute NRC's withholding of the names and official positions of the third parties named in the investigative report you requested; however, please know that courts have upheld withholding names of agency employees, including law enforcement officers, under Exemption 7(C).

Federal employees engaged in and/or employed at federal agencies that conduct investigations as part of their employment, such as the OIG investigators, are among the occupations about which information may be withheld. In a recent case, the U.S. Court of Appeals for the Second Circuit held that disclosure of names and other identifying information do not always present a significant threat to an individual's privacy interest, but employees in sensitive agencies and occupations have a cognizable privacy interest. The mission and nature of the work the employees perform leaves them vulnerable to an increased risk of harassment or attack. *Long v. Office of Personnel Management*, 692 F.3d 185 (2d Cir. 2012).

Finally, under the FOIA, a release of information by the agency to any person is considered a release to the public. Thus, NRC could not release any non-public information only to you even if you know the names of the third parties named in the report you requested.

Regarding your concern that "[REDACTED]," please know that NRC's Assistant Inspector General for Investigations (AIGI) determines whether to release or withhold records created by, received by and maintained by the OIG. OIG counsel is responsible for responding to appeals to the AIGI, following consideration of any new information presented in the appeal letter, for the approval and signature of the IG. In your case, AIGI Joseph McMillan was the denial authority for your request and IG Hubert Bell was the denial authority for your appeal. For information concerning NRC's procedures for processing requests and appeals, you may wish to refer to NRC's FOIA Management Directive at <http://www.nrc.gov/docs/ML1100/ML110050002.pdf> and NRC's FOIA regulations at <http://www.nrc.gov/reading-rm/doc-collections/cfr/part009/>.

I hope you find this information useful. Thank you for contacting OGIS; we will now consider this matter closed.

Sincerely,

/s/

NIKKI GRAMIAN
Acting Director

cc: Roger Andoh, NRC FOIA Public Liaison, via email