



OFFICE *of* GOVERNMENT INFORMATION SERVICES

July 12, 2016—Sent via U.S. mail

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

NATIONAL
ARCHIVES
and RECORDS
ADMINISTRATION

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Re: Case No.: 201600826
NG: CM

Dear [REDACTED]:

This responds to your request for assistance from the Office of Government Information Services (OGIS), which we received on May 6, 2016 via U.S. mail. Your request for assistance pertains to your Freedom of Information Act (FOIA) request to the Executive Office for United States Attorneys (EOUSA).

As you may be 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.

OGIS provides mediation services to resolve disputes between FOIA requesters and Federal agencies. After opening a case, OGIS gathers information from the requester and the agency to learn more about the nature of the dispute. This process helps us gather necessary background information, assess whether the issues are appropriate for mediation, and determine the willingness of the parties to engage in our services. As part of our information gathering, OGIS carefully reviewed your submission of information.

It appears that you made a request to EOUSA for particular subpoenas. EOUSA withheld the records you seek in full pursuant to FOIA Exemptions 3 and 7(C), 5 U.S.C. §§ 552(b)(3) and (b)(7)(C). You appealed this response, and the Office of Information Policy (OIP) affirmed EOUSA's action on your request. You dispute this response, and ask for OGIS's assistance with this matter.

It may be helpful to know that not all records are releasable under the FOIA. Congress established categories of information that agencies are not required to release in response to FOIA requests because their release would harm governmental or private interests. These categories are called "exemptions." As OIP explains in its April 21, 2016 response to your appeal, FOIA Exemption 7(C) protects information from



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release that is compiled for law enforcement purposes and would be an “unwarranted invasion of personal privacy.” Courts have found that individuals have privacy interests in their name, address, date of birth, place of birth, employment history, and other personal information, and that the privacy interest in protecting the information outweighs the public interest in the release of the information.

Regarding the agency’s use of FOIA Exemption 3, this exemption incorporates other, separate statutes that either specifically require information to be withheld from release, establish particular criteria for the withholding of information or refer to particular types of matters to be withheld. Exemption 3 establishes two categories of statutes—those that provide agencies with no discretion for withholding information and those that provide agencies with some discretion by establishing particular criteria or referring to particular types of matters to be withheld, 5 U.S.C. §§ 552(b)(3)(A) and (B).

In the case of the records you seek, Rule 6(e) of the Federal Rules of Criminal Procedure applies. This rule stipulates that grand jury material (testimony, subpoenas, exhibits and names of grand jury witnesses) is exempt from release. Individuals who disclose grand jury materials may be charged with contempt and face up to six months imprisonment. In addition, a prosecutor who leaks grand jury material may be charged with a felony under Title 18, punishable by up to five years in prison and a \$250,000 fine.

While I understand that this is not the outcome for which you hoped, I hope you find this information useful in understanding why EOUSA 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/

NIKKI GRAMIAN
Acting Director

cc: EOUSA FOIA