



OFFICE of GOVERNMENT INFORMATION SERVICES

July 31, 2013—Sent via U.S. Mail

NATIONAL
ARCHIVES
and RECORDS
ADMINISTRATION

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Re: OGIS Case No. 201300662
MN: NG: CZ

Dear [REDACTED]:

This letter is in response to your July 2, 2013 request to the Office of Government Information Services (OGIS). You wrote to OGIS asking for assistance with a Freedom of Information Act (FOIA) matter with the U.S. Marshals Service (USMS) and appeal to the Department of Justice, Office of Information Policy (OIP).

OGIS serves as the FOIA Ombudsman and we are limited to assisting with issues related to 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

We carefully reviewed your letter to OGIS as well as the appeal response letter that you included from OIP related to FOIA Request No. [REDACTED] which pertained to records about your [REDACTED] arrest. In your letter to OGIS, you also describe various categories of records that you seek related to U.S. Deputy Marshal [REDACTED]. OGIS spoke with the FOIA Public Liaison at USMS and learned that the FOIA request for the records related to Deputy Marshal [REDACTED] is actually related to a different FOIA request, No. [REDACTED]. Although you did not provide OGIS with copies of the correspondence related to that request, we discussed it with the USMS FOIA Public Liaison.

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The Public Liaison said that USMS responded to your request for records related to Deputy [REDACTED] by denying the request pursuant to FOIA Exemption 6, 5 U.S.C. § 552(b)(6), stating that it would need a waiver or release from the subject of the request to provide you with those records without violating his personal privacy. While FOIA provides the public with a right to request agency records, it is not without limitations. As you may know, there are several categories of records that are considered non-public and are not releasable under FOIA. Records whose release would be a "clearly unwarranted invasion of personal privacy" may properly be withheld under Exemption 6.

Work schedules and other records about employees are records typically kept in employees' personnel files and Exemption 6 expressly protects from release those kinds of records. Courts have agreed that although Federal employees may have lesser privacy rights than other individuals, those individuals do not "waive all privacy interests." *Forest Serv. Employees for Envtl. Ethics*, 524 F.3d 1021, 1025 (9th Cir. 2008). As you know, the central purpose of FOIA is to "ensure that the Government's activities be opened to the sharp eye of public scrutiny, not that information about private citizens" be disclosed. *U.S. Dep't of Justice v. Reporters Committee for Freedom of the Press*, 489 U.S. 749, 773 (1989). In a similar case where a FOIA requester asked for time sheets of Internal Revenue Service employees, the Federal court held that disclosure of IRS employees' time sheets "would primarily serve Plaintiffs' particular private interests. ... Disclosure would not be instrumental in shedding light on the operations of government." *Berger v. IRS*, 487 F. Supp. 2d 482, 505 (D.N.J. 2007).

Regarding your other FOIA request, for records concerning your [REDACTED] arrest, the USMS withheld certain information citing to FOIA Exemption 7(C), 5 U.S.C. § 552(b)(7)(C). OGIS learned that the specific information withheld in that case was names of law enforcement employees. Exemption 7(C), 5 U.S.C. § 552(b)(7)(C), states that records compiled for law enforcement purposes, such as criminal investigations, may be withheld if they "could reasonably be expected to constitute an unwarranted invasion of personal privacy." Courts have upheld withholding names of agency employees including law enforcement officers under these exemptions. See *Fabiano v. McIntyre*, 146 F. App'x 549, 549 (3d Cir. 2005); *Rugiero v. DOJ*, 257 F.3d 534, 552 (6th Cir. 2001); *Robert v. Nat'l Archives*, 1 F. App'x 85, 86 (2d Cir. 2001).

In both instances, it appears as though the USMS reviewed your request and made decisions that are consistent with FOIA law and policy. In a case such as this, there is not a question or issue to be mediated; you appear to be asking for access that the FOIA does not provide.

We hope that the information we provided has been helpful to your understanding of the USMS's actions. If you have additional information that you wish for us to consider, you may provide us with that information. However, at this time, there is no additional assistance that OGIS can offer and we will now close your case.

Sincerely,



Miriam Nisbet, Director
Office of Government Information Services