



OFFICE *of* GOVERNMENT INFORMATION SERVICES

November 25, 2014 — Sent via email

Mr. Nate Jones
foiamail@gwu.edu

Re: Case No.: 201400915
NG: CM

NATIONAL
ARCHIVES
and RECORDS
ADMINISTRATION

8601 ADELPHI ROAD
OGIS
COLLEGE PARK, MD
20740-6001

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Dear Mr. Jones:

This responds to your July 29 and September 15, 2014 requests for assistance from the Office of Government Information Services (OGIS), which pertains to your Freedom of Information Act (FOIA) requests to the Environmental Protection Agency (EPA) and the Central Intelligence Agency (CIA), respectively.

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.

We opened OGIS case No. 201400915 in response to your July 29, 2014 letter, in which you request assistance regarding EPA's practice of sending "still interested" letters regarding lingering FOIA requests. Specifically, you object to the agency's practice of allowing a requester ten days to indicate that he or she would like a pending request to remain open before closing that request, as the agency did with seven of your longstanding FOIA requests. I understand that although you agree to close the pending EPA requests, you strongly object to the agency's practice.

On October 30, 2014, a group of organizations including the National Security Archive contacted OGIS about agencies' practice of sending still interested letters, citing EPA, among other agencies. As you are aware, OGIS's review team determined that it will take a close look at this matter. Because this issue seems more appropriate for OGIS's review function than for its mediation function, we will take no further action on that part of your request in the context of this case.

Your September 15, 2014 submission to OGIS requests assistance with a denied request you submitted to CIA for records related to Mandatory Declassification Review (MDR) regulation changes. I understand that the CIA initially responded to your request by denying all responsive records in full pursuant to FOIA exemptions 3 and 5. You appealed that response, and the agency released two documents to you in part, with sections withheld pursuant to Exemptions 1 and 3. Additional records were withheld in full pursuant to Exemptions 1 and 3. I understand that you object to the CIA citing different exemptions in its initial response and appeal response in withholding the records you seek, and that you attempted to appeal the agency's supplemental communication to you regarding your request.



Mr. Nate Jones
November 25, 2014
Page 2 of 2

We contacted the CIA to learn more about how the agency handled your request. The agency provided OGIS with copies of two additional letters it sent to you related to your appeal of request No. F-2012-00855. On September 9, 2014, the CIA sent a letter to you explaining that its August 5, 2014 letter responding to your appeal mistakenly cited FOIA exemption 1 to withhold the records you seek, and that the records were withheld both in part and in full pursuant to Exemptions 3 and 5. The agency contacted you again on September 25, 2014, informing you that it would not accept your appeal of its appeal decision, since it considered the action to which you object an administrative error rather than a change in justification.

In explaining its response to your request and appeal, the CIA reiterated the explanation it provided in its August 5, 2014 letter to you, that the agency's determination on your request was tied to a concluded FOIA lawsuit. The CIA further explained that, consistent with the rules outlined in Section 3.5(d) of Executive Order 13526, the agency cannot re-review its decision until June 13, 2015 at the earliest. This applies to any FOIA or MDR requests for the same materials that are filed between now and June 13, 2015.

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. I hope that this information about your request is useful to you. Thank you for contacting OGIS; we will now consider this matter closed.

Sincerely,

Handwritten signature of Miriam Nisbet in cursive script.

Miriam Nisbet, Director
Office of Government Information Services (OGIS)

cc: CIA FOIA Public Liaison
Kirsten Mitchell, OGIS Review Team Lead

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.