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Description of document: FOIA Administrative Appeal letters and letters provided in response to FOIA Appeals submitted to the Office of Special Counsel (OSC), 2015-2018

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FOIA Officer
U.S. Office of Special Counsel
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Washington, DC 20036-4505
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U.S. OFFICE OF SPECIAL COUNSEL
1730 M Street, N.W., Suite 218
Washington, DC 20036-4505
(202) 804-7000

December 2, 2018

Via Email

Re: Freedom of Information Act Request (#FO-18-0034)

This is in response to your request dated October 29, 2017, in which you asked the U.S. Office of Special Counsel (OSC) to provide you with "a copy of each FOIA Administrative Appeal letter submitted to the Office of Special Counsel since January 1, 2015. [You] also request a copy of each response letter provided in response to a FOIA Appeal, such responses dated since January 1, 2015." Your request has been processed under Freedom of Information Act (FOIA), 5 U.S.C. § 552.

In reviewing your request under the FOIA, OSC identified 137 pages of responsive records. We are releasing 14 pages to you in full without redaction and 123 pages withheld in part pursuant to FOIA Exemptions (b)(6). FOIA Exemption 6 protects information if disclosure would constitute a clearly unwarranted invasion of personal privacy. See 5 U.S.C. § 552(b)(6).

You have the right to appeal this determination under the FOIA. Any such appeal must be made in writing and sent to OSC's General Counsel at the address shown at the top of this letter or by email to FOIAappeal@osc.gov. The appeal must be received by the Office of General Counsel within 90 days of the date of this letter.

If you have any questions, would otherwise like to discuss your request, or you require dispute resolution services, please feel free to contact our acting FOIA Public Liaison, Mahala Dar, at mdar@osc.gov. Please reference the above tracking number when you call or write. Additionally, you may contact the Office of Government Information Services (OGIS) at the National Archives and Records Administration to inquire about the FOIA mediation services they offer.¹

Thank you,

/s/

Mahala Dar
Clerk

¹ Office of Governmental Information Services (OGIS), National Archives and Records Administration 8601 Adelphi Road, Room 2510, College Park, MD 20740-6001; ogis@nara.gov (Email) 202-741-5770 (Office) 1-877-684-6448 (Toll Free) 202-741-5769 (Fax)



U.S. OFFICE OF SPECIAL COUNSEL
1730 M Street, N.W., Suite 218
Washington, D.C. 20036-4505
202-804-7000

February 9, 2018

(b)(6)

(b)(6)

Via email:

(b)(6)

RE: Freedom of Information Act/Privacy Act Appeal (AP-18-0004)

Dear (b)(6):

I am writing in response to your February 5, 2018 email to the U.S. Office of Special Counsel (OSC), in which you appeal OSC's response to your Freedom of Information Act (FOIA) request FP-18-0007.

In its response to your request, the FOIA Unit notified you that no responsive records were located related to your prohibited personnel practice complaint. The FOIA Unit conducted a search for a complaint filed under (b)(6). In reviewing your appeal, OSC discovered your complaint was filed under (b)(6). In light of this discovery, I grant your appeal and remand your request so that the records related to your complaint can be processed under the FOIA.

If you have any questions regarding this request, please feel free to contact our Clerk, Kenneth Hendricks, who is acting as our FOIA Public Liaison, at (202) 804-7000 or via email at foiarequest@osc.gov.¹

Sincerely,

/s/

Susan K. Ullman
General Counsel

¹ Additionally, you may contact the Office of Government Information Services (OGIS) at the National Archives and Records Administration to inquire about the FOIA mediation services they offer. Using OGIS services does not affect your right to pursue litigation. The contact information for OGIS is: 8601 Adelphi Road, Room 2510, College Park, MD 20740-6001; ogis@nara.gov, 202-741-5770, 1-877-684-6448 (Toll Free), 202-741-5769 (Fax).



U.S. OFFICE OF SPECIAL COUNSEL
1730 M Street, N.W., Suite 218
Washington, D.C. 20036-4505
202-804-7000

January 9, 2018

(b)(6)

Via Email: (b)(6)

Re: Freedom of Information Act and/or Privacy Act Appeal (#AP-18-0002)

Dear (b)(6):

This responds to your January 4, 2018 Freedom of Information Act (FOIA) appeal.

On December 6, 2017, you submitted a FOIA request (FP-17-0021) asking for certain records from OSC File No. (b)(6). The FOIA Team replied that it could process the request under its "Simple track" and asked for your ID and how you wished to proceed. On December 19, 2017, you emailed a copy of your ID. On December 21, 2017, OSC provided you with three pieces of correspondence from OSC File No. (b)(6). (b)(6)

After reviewing your FOIA request, your correspondence, OSC's response, OSC File No. (b)(6) and your appeal, I deny in part and grant in part your appeal. The matter will be remanded so that OSC can process the remaining contents of OSC case file No. (b)(6).

If you have any questions regarding this request, or require dispute resolution services, please feel free to contact our Clerk, Kenneth Hendricks, who is acting as our FOIA Public Liaison, at 202-804-7000, or via email at foiarequest@osc.gov.¹

Sincerely,

/s/

Susan K. Ullman
General Counsel

¹ Additionally, you may contact the Office of Government Information Services (OGIS) at the National Archives and Records Administration to inquire about the FOIA mediation services they offer. The contact information for OGIS is: 8601 Adelphi Road, Room 2510, College Park, MD 20740-6001; ogis@nara.gov, 202-741-5770, 1-877-684-6448 (Toll Free), 202-741-5769 (Fax).



U.S. OFFICE OF SPECIAL COUNSEL

1730 M Street, N.W., Suite 218
Washington, D.C. 20036-4505
202-254-3600

January 8, 2016

(b)(6)

Via E-Mail: (b)(6)

Re: Freedom of Information Act (FOIA) Request #FO-14-0143; Appeal No. AF-16-0002

Dear (b)(6)

This responds to your January 1, 2016 Freedom of Information Act (FOIA) appeal of the U.S. Office of Special Counsel's (OSC's) September 29, 2015 interim response and December 22, 2015 final response to your request (FO-14-0143) under the Freedom of Information Act (FOIA), 5 U.S.C. § 552. I have reviewed your initial request, records reflecting your narrowing of that request, OSC's interim and final responses, and your appeal. As discussed below, I affirm OSC's responses to your FOIA requests.

The initial request sought copies of:

- 1) Anything justifying OSC's 25 year-long interpretation of 5 U.S.C. section 1213(g)(1) that it does not create a statutory right for anyone who is not included in the individuals described at section 1213(c)(2) – i.e. individuals who have a statutory right to make a whistleblower disclosure to OSC per section 1213(b) – to make a whistleblower disclosure to OSC per section 1213(g)(1);
- 2) Anything justifying OSC's 25 year-long interpretation of 5 U.S.C. section 1213(g)(2) that OSC can still . . . lawfully make discretionary, informal referrals of whistleblower disclosures it receives per section 1213(b) to the involved agency inspector general instead of only making such discretionary referrals formally to the involved agency head."

Response to Item 1.

On September 29, 2015, we responded to Item #1, as narrowed by you, and provided you a copy of the one responsive document we located. That letter also informed you of your right to appeal the determination within 45 days. *See* 5 C.F.R. §1820.6; *see* 5 U.S.C. 552(a)(6)(A). The 45 day deadline to appeal expired on Friday November 13, 2015. We could therefore deny as untimely your appeal of OSC's response to Item #1.

U.S. Office of Special Counsel

(b)(6)

January 8, 2016

Page 2 of 2

However, I have chosen to evaluate your appeal of the interim response on the merits. OSC would still deny your appeal of the September 29, 2015 disclosure. As Ms. Kral indicated to you in her correspondence and in her telephone discussions, she consulted with all components of OSC that could reasonably be expected to have responsive documents. She conducted an adequate search, located a document that satisfied the parameters to which you agreed. The U.S. District Court for the District of Columbia has ruled that OSC's standard document search methods are reasonably calculated to locate all responsive documents. *See, Judicial Watch v. U.S. Office of Special Counsel, Case No. 1:2014cv00724* (Memorandum Opinion, James E. Boasberg, January 13, 2015). Accordingly, we affirm OSC's interim response and deny your appeal.

Response to Item 2.

As indicated in our December 22, 2015 final response, our search did not locate any records responsive to Item #2, as narrowed, of your request. Your appeal complains that OSC did not state that we withheld any information by exemption. However, OSC did not locate any responsive records. *See Judicial Watch v. OSC, supra*. OSC therefore did not "withhold" and logically could not have withheld any records. Accordingly, there is nothing further to release, and no exemption to cite. We therefore deny your appeal as to Item 2.

You may seek judicial review of this decision by filing a complaint in an appropriate United States district court. *See* 5 U.S.C. § 552(a)(4)(B). The 2007 FOIA amendments created the Office of Government Information Services (OGIS) to offer mediation services to resolve disputes between FOIA requesters and federal agencies as a non-exclusive alternative to litigation. Using OGIS services does not affect your right to pursue litigation. You may reach OGIS via email (ogis@nara.gov), phone (202-741-5770), fax (202-741-5769), or the web (ogis.archives.gov).

Sincerely,

(b)(6)

Lisa V. Terry
General Counsel



U.S. OFFICE OF SPECIAL COUNSEL
1730 M Street, N.W., Suite 218
Washington, D.C. 20036-4505
202-804-7000

April 13, 2018

(b)(6)

Via email:

(b)(6)

RE: Freedom of Information Act Appeal (AF-18-0001)

Dear Dr. Coleman:

I am writing in response to your December 1, 2017 letter and December 17, 2017 email to the Office of Special Counsel (OSC), in which you appeal OSC's "constructive denial" of your September 5, 2017 Freedom of Information Act (FOIA) request. You reference the November 30 letter we sent to you, in which we acknowledged receipt of your request and noted that we placed it in the complex track to be processed in the order in which it was received.

In response, you filed your administrative appeal. While the FOIA and OSC's regulations allow a requester to file an administrative appeal of an agency's adverse determination, there is no determination for me to consider because we are currently processing your FOIA request. *See* 5 U.S.C. § 552(a)(6)(A)(i)(aa); 5 C.F.R. § 1820.6(a). We will provide you with a response as soon as practicable.

If you have any questions regarding this request, please feel free to contact our Clerk, Kenneth Hendricks, who is acting as our FOIA Public Liaison, at (202) 804-7000 or via email at foiarequest@osc.gov.¹

Sincerely,

/s/

Susan K. Ullman
General Counsel

¹ Additionally, you may contact the Office of Government Information Services (OGIS) at the National Archives and Records Administration to inquire about the FOIA mediation services they offer. Using OGIS services does not affect your right to pursue litigation. The contact information for OGIS is: 8601 Adelphi Road, Room 2510, College Park, MD 20740-6001; ogis@nara.gov, 202-741-5770, 1-877-684-6448 (Toll Free), 202-741-5769 (Fax).



U.S. OFFICE OF SPECIAL COUNSEL

1730 M Street, N.W., Suite 218
Washington, D.C. 20036-4505
202-254-3600

May 3, 2017

(b)(6)

Via email to: (b)(6)

RE: Privacy Act Appeal (AP-17-0004)

Dear (b)(6)

I am writing in response to your April 10, 2017 letter to the U.S. Office of Special Counsel (OSC), in which you appeal OSC's January 10, 2017 interim response to your Freedom of Information Act (FOIA) request FP-16-0084.

After reviewing your request, OSC's response, and your appeal, I grant your appeal. OSC's interim response to your FOIA request will be reprocessed.

If you have any questions regarding your FOIA request, or require dispute resolution services, please feel free to contact Dawn Kral, FOIA Public Liaison, at 202-254-3636 or via email at dkral@osc.gov.¹

Sincerely,

/s/

Susan K. Ullman
General Counsel

¹ Additionally, you may contact the Office of Government Information Services (OGIS) at the National Archives and Records Administration to inquire about the FOIA mediation services they offer. The contact information for OGIS is 8601 Adelphi Road, Room 2510, College Park, MD 20740-6001; ogis@nara.gov, 202-741-5770, 1-877-684-6448 (Toll Free), 202-741-5769 (Fax).



U.S. OFFICE OF SPECIAL COUNSEL

1730 M Street, N.W., Suite 218
Washington, D.C. 20036-4505
202-254-3600

March 16, 2017

Mr. Todd Feathers
Staff Reporter
Lowell Sun

Via Email: 32521-90465436@requests.muckrock.com,
tfeathers@lowellsun.com

RE: Freedom of Information Act Appeal (Ref. # AP-07-0043)

Dear Mr. Feathers:

I am writing in response to the above-referenced Freedom of Information Act (FOIA) appeal. On January 26, 2017, you submitted a FOIA request (No. FO-17-2607) for a specific letter from the U.S. Office of Special Counsel (OSC) to the President of the United States and other agencies. On February 15, 2017, an OSC FOIA Officer responded to your FOIA request with a “Glomar” response, *i.e.*, declining to confirm or deny the existence of the requested record and asserting FOIA Exemptions 6 and 7(C) (*see* 5 U.S.C. § 552(b)(6), (7)(C)). On February 27, 2017, you appealed the decision of OSC’s FOIA Officer.

I have reviewed your request, OSC’s response, and your appeal. After careful consideration, I have determined that a “Glomar” response is appropriate. Pursuant to Exemptions 6 and 7(C) of the FOIA, 5 U.S.C. § 552(b)(6), (7)(C), OSC cannot confirm or deny the existence of the requested record. Without an individual’s consent, an official acknowledgment of an investigation, or an overriding public interest, even to acknowledge the existence of investigatory records pertaining to an individual would constitute a clearly unwarranted invasion of personal privacy pursuant to Exemption 6 and could reasonably be expected to constitute an unwarranted invasion of personal privacy pursuant to Exemption 7(C). This is a standard notification given to requestors and should not be taken as an indication that the requested records do, or do not, exist.

You raise three points in your appeal that I want to address. First, you propose that OSC merely “redact” the names of whistleblowers who may appear in the requested document. This suggestion would not resolve the privacy concerns at issue here. A “Glomar” response is necessary to protect any individual mentioned in any OSC files (which may or may not exist), otherwise members of the public might draw adverse inferences from the mere fact that an individual is mentioned. *See the U.S. Department of Justice Guide to the Freedom of Information Act (DOJ Guide)*, <https://www.justice.gov/sites/default/files/oip/legacy/2014/07/23/exemption7c.pdf>, pp. 34-37.

U.S. Office of Special Counsel
Mr. Feathers
March 16, 2017
Page 2

Second, you argue that there has been an “official acknowledgement of an investigation,” based on your private correspondence with the U.S. Department of Veterans Affairs Office of the Inspector General (VA OIG) and based on “common knowledge” at a VA hospital. We do not believe that your assertions constitute an official acknowledgement of an investigation. Moreover, even if the VA OIG had officially acknowledged an investigation, OSC has never done so, accordingly a “Glomar” response from OSC is still appropriate in this instance. *See* DOJ Guide, *supra*.

Third, you assert an “obvious and overriding public interest” in disclosing the requested document based on “common knowledge” of alleged criminal activity at a VA facility. This unsupported alleged interest is insufficient to outweigh the strong privacy interests of third party individuals who may or may not be mentioned in OSC records. Again, we decline to state whether the requested document does or does not exist.

You may seek judicial review of this decision by filing a complaint in an appropriate United States district court. *See* 5 U.S.C. § 552(a)(4)(B). If you have any questions regarding this request, please feel free to contact Dawn Kral, FOIA Public Liaison, at 202-254-3636 or via email at dkral@osc.gov.¹

Sincerely,

/s/

Susan K. Ullman
General Counsel

¹ Additionally, you may contact the Office of Government Information Services (OGIS) at the National Archives and Records Administration to inquire about the FOIA mediation services they offer. The contact information for OGIS is: 8601 Adelphi Road, Room 2510, College Park, MD 20740-6001; ogis@nara.gov, 202-741-5770, 1-877-684-6448 (Toll Free), 202-741-5769 (Fax).



U.S. OFFICE OF SPECIAL COUNSEL
1730 M Street, N.W., Suite 218
Washington, D.C. 20036-4505
202-804-7000

February 6, 2018

(b)(6)

Via Email:

(b)(6)

RE: Freedom of Information Act/Privacy Act Appeal (AP-18-0003)

Dear

(b)(6)

I am writing in response to your January 29, 2018 faxed letter to the U.S. Office of Special Counsel (OSC), in which you appeal OSC's response to your client, (b)(6) (b)(6) Freedom of Information Act (FOIA) request for OSC Case File (b)(6)

After reviewing the request, OSC's response, and your appeal, I grant the appeal.

(b)(6)

FOIA request will be reprocessed as FP-18-0027.

If you have any questions regarding this request, please feel free to contact our Clerk, Kenneth Hendricks, who is acting as our FOIA Public Liaison, at (202) 804-7000 or via email at foiarequest@osc.gov.¹

Sincerely,

/s/

Susan K. Ullman
General Counsel

¹ Additionally, you may contact the Office of Government Information Services (OGIS) at the National Archives and Records Administration to inquire about the FOIA mediation services they offer. Using OGIS services does not affect your right to pursue litigation. The contact information for OGIS is: 8601 Adelphi Road, Room 2510, College Park, MD 20740-6001; ogis@nara.gov, 202-741-5770, 1-877-684-6448 (Toll Free), 202-741-5769 (Fax).



U.S. OFFICE OF SPECIAL COUNSEL

1730 M Street, N.W., Suite 218
Washington, D.C. 20036-4505

July 10, 2017

Ms. Kelly Fisher
Casa Grande Valley Newspaper
353 W. Central Ave.
Coolidge, AZ 85128

Via Email: kfisher@pinalcentral.com

Re: Freedom of Information Act Appeal (#AF-17-0006)

Dear Ms. Fisher:

This letter responds to your July 3, 2017 letter to the U.S. Office of Special Counsel (OSC) appealing OSC's response of that date to your May 31, 2017 Freedom of Information Act (FOIA) request (FO-17-0076).

Your request sought certain records or information regarding a Hatch Act case file, (b)(6)

(b)(6) After careful consideration, I affirm OSC's "Glomar" response in which we stated that, "absent . . . an overriding public interest" confirming or denying the existence of law enforcement records concerning an individual could reasonably expected to be an unwarranted invasion of personal privacy, citing 5 U.S.C. section 552.(b)(7)(c). *See Phillippi v. CIA*, 546 F.2d 1009, 1013 (D.C. Cir. 1976) (raising issue of whether CIA could refuse to confirm or deny its ties to Howard Hughes' submarine retrieval ship, the Glomar Explorer).

Your appeal seeks to assert an "overriding public interest" as follows:

it will contribute significantly to the public's understanding of government operations (specifically of the Hatch Act and violations of it). . . .

Furthermore, the information pertains to a Congressional candidate who has also campaigned for sheriff and worked for the county sheriff's office in the county where my readership primarily lies. The public has a right to know of any government investigation taking place regarding a candidate for a high public office.

You argue that the purpose of this request is to help the public's understanding of government operations (specifically of the Hatch Act and violations of it). But you do not and cannot allege that OSC in any way failed to fulfill its obligations to investigate an alleged Hatch Act complaint. "Where there is no evidence that the government has failed to investigate adequately a complaint, or that there was wrongdoing on the part of a government employee the public interest in disclosure is diminished. *See Dunkelberger v. Dep't of Justice*, 906 F. 2d 779, 782 (D.C. Cir. 1990) (*in camera* review of documents revealed nothing supporting argument that disclosure would be in the public interest).

Regarding your assertion that the alleged Hatch Act investigation of a Congressional candidate implicates a public interest, as we indicated in our FOIA response, OSC does not admit or deny the existence of records responsive to your request concerning an alleged Hatch Act case. “[A] candidate for a political office, either federal or nonfederal, does not forfeit all rights to privacy.” 127 *Department of Justice Guide the Freedom of Information Act*, Ch. 6, p. 40. <http://www.justice.gov/sites/default/files/oip/legacy/2014/07/23/exemption6.pdf>. See also, *Nation Magazine v. U.S. Customs Serv.*, 71 F.3d 885, 894 & n.9 (D.C. Cir. 1995) (“Although candidacy for federal office may diminish an individual’s right to privacy . . . it does not eliminate it”); *Hunt v. U.S. Marine Corps*, 935 F. Supp. 46, 54 (D.D.C. 1996) (finding that senatorial candidate has unquestionable privacy interest in his military service personnel records and medical records); and *Nation Magazine v. Dep’t of State*, No. 92-2303, 1995 WL 17660254, at *10 (D.D.C. Aug. 18, 1995) (upholding refusal to confirm or deny existence of investigative records pertaining to presidential candidate).

Again, without official acknowledgment of an investigation, confirming or denying the existence of law enforcement records concerning an individual could reasonably be expected to constitute an unwarranted invasion of personal privacy. See 5 U.S.C. § 552(b)(7)(C). *ACLU v. DOJ*, *supra*, footnote 8, summarizes the privacy interest at stake: “The Justice Department correctly notes this court has held that disclosure of records revealing that an individual was involved or mentioned in a law enforcement investigation implicates a significant privacy interest.”

You may seek judicial review of this decision by filing a complaint in an appropriate United States district court. See 5 U.S.C. § 552(a)(4)(B). If you have any questions regarding this request, or seek informal dispute resolution services, please feel free to contact Dawn Kral, FOIA Public Liaison, at 202-254-3636 or via email at dkral@osc.gov.¹

Sincerely,

/s/

Susan K. Ullman
General Counsel

¹ Additionally, you may contact the Office of Government Information Services (OGIS) at the National Archives and Records Administration to inquire about their FOIA mediation services. Using OGIS services does not affect your right to pursue litigation. The contact information for OGIS is 8601 Adelphi Road, Room 2510, College Park, MD 20740-6001; ogis@nara.gov, 202-741-5770, 1-877-684-6448 (Toll Free), 202-741-5769 (Fax).



U.S. OFFICE OF SPECIAL COUNSEL

1730 M Street, N.W., Suite 218
Washington, D.C. 20036-4505
202-254-3600

July 6, 2017

Mr. Jason Leopold
BuzzFeed News

Via email to: (b)(6)

RE: Freedom of Information Act Appeal (AF-17-0005)

Dear Mr. Leopold:

This letter responds to your June 23, 2017 email to the U.S. Office of Special Counsel (OSC) appealing OSC's response of that date to your May 25, 2017 Freedom of Information Act (FOIA) request (FO-17-0071).

Your request sought all OSC case file records regarding whistleblower retaliation at the Financial Crimes Enforcement Network of the Department of the Treasury from January 1, 2016 through the date of the search.

I have reviewed the relevant materials, including your request, OSC's search, OSC's response, and your appeal. OSC searched the relevant sources for the requested material. The search did not locate any records responsive to your FOIA request. After careful consideration, I have determined that the search was reasonably calculated to locate the requested information. Accordingly, I affirm OSC's response and deny your appeal.

You may seek judicial review of this decision by filing a complaint in an appropriate United States district court. *See* 5 U.S.C. § 552(a)(4)(B). If you have any questions regarding this request, or require dispute resolution services, please feel free to contact Dawn Kral, FOIA Public Liaison, at 202-254-3636 or via email at dkral@osc.gov.¹

Sincerely,

/s/

Susan K. Ullman
General Counsel

¹ Additionally, you may contact the Office of Government Information Services (OGIS) at the National Archives and Records Administration to inquire about their FOIA mediation services. Using OGIS services does not affect your right to pursue litigation. The contact information for OGIS is: 8601 Adelphi Road, Room 2510, College Park, MD 20740-6001; ogis@nara.gov, 202-741-5770, 1-877-684-6448 (Toll Free), 202-741-5769 (Fax).



U.S. OFFICE OF SPECIAL COUNSEL

1730 M Street, N.W., Suite 218

Washington, DC 20036-4505

(202) 254-3600

July 9, 2015

(b)(6)

Via email to: (b)(6)

RE: Freedom of Information Act/Privacy Act Appeal (AP-15-0002)

Dear (b)(6)

I am writing in response to your email to the U.S. Office of Special Counsel (OSC), dated May 29, 2015, in which you appealed OSC's May 28, 2015, response to your FOIA request FP-15-0057. You had requested a copy of the complaint form that you submitted to OSC and a witness summary from OSC case number (b)(6). In your appeal, you request that OSC disclose material that was redacted on the one-page witness summary.

In responding to your appeal, I have reviewed OSC's response and release package under the Freedom of Information Act (FOIA), 5 U.S.C. § 552, and the Privacy Act, 5 U.S.C. § 552a. After careful consideration, I am upholding the initial decision in full.

With regard to the denial of records under the Privacy Act, I concur with the FOIA staff's conclusion that the records you requested were not releasable under the Privacy Act. Since records protected under the Privacy Act may be releasable under the FOIA, however, it was correct to process the records under that statute.

I reviewed the withholdings in the one-page witness summary to determine whether FOIA Exemption 7C had been properly applied. FOIA Exemption 7C protects law enforcement information if disclosure could reasonably be expected to constitute an unwarranted invasion of personal privacy. *See* 5 U.S.C. § 552(b)(7)(C). Releasing an individual's direct dial telephone number could constitute an unwarranted invasion of personal privacy. Similarly, the disclosure of comments made by an individual serving as a witness in a law enforcement investigation could constitute an unwarranted invasion of personal privacy. Indeed, the U.S. Supreme Court has found that a substantial privacy interest exists for all parties whose information is found within law enforcement investigation files and permits the withholding of such information unless a public interest is identified. The courts have not found a FOIA requester's private need for information in connection with litigation or an investigation to be a cognizable public interest. *See DOJ v. Reporters Comm. For Freedom of the Press*, 489 U.S. 749 (1989). Therefore, I uphold in full OSC's application of FOIA Exemption 7C for these portions of the record.

U.S. Office of Special Counsel

(b)(6)

Page Two

July 9, 2015

You may seek judicial review of this decision by filing a complaint in an appropriate United States district court. *See* 5 U.S.C. § 552(a)(4)(B). The 2007 FOIA amendments created the Office of Government Information Services (OGIS) to offer mediation services to resolve disputes between FOIA requesters and federal agencies as a non-exclusive alternative to litigation. Using OGIS services does not affect your right to pursue litigation. You may reach OGIS via email (ogis@nara.gov), telephone (202-741-5770), fax (202-741-5769), or on the web (<https://ogis.archives.gov>).

Sincerely,

/s/

Lisa V. Terry
General Counsel



U.S. OFFICE OF SPECIAL COUNSEL
1730 M Street, N.W., Suite 218
Washington, D.C. 20036-4505

May 22, 2017

(b)(6)

Via email:

(b)(6)

RE: Freedom of Information Act Appeal (AF-17-0003)

Dear (b)(6) and (b)(6)

This responds to your May 4, 2017, appeal of the U.S. Office of Special Counsel's (OSC's) February 3, 2017, response to your Freedom of Information Act (FOIA) request (FO-16-0048).

We have reviewed your request, OSC's response, and your appeal, including the material referenced in the footnotes. After careful consideration, we have determined that a "*Glomar*" response is appropriate.

You requested:

1) A letter from the Office of Special Counsel to (b)(6) (b)(6) regarding an investigation of reprisal allegations against (b)(6) (b)(6) by three members of (b)(6) staff (b)(6) or (b)(6) ¹;

2) the report of findings and conclusions regarding allegations of reprisal by (b)(6) (b)(6) or (b)(6); and

¹ Without confirming or denying the existence of any such letter, we direct your attention to the DC Bar Rules of Professional Conduct and the Standards of Ethical Conduct for Employees of the Executive Branch in light of this request and (b)(6)' position as an attorney and former federal employee.

3) materials produced in the course of the investigation regarding (b)(6)²

Pursuant to Exemption 7(C) of the FOIA, 5 U.S.C. § 552 (b)(7)(C), OSC cannot confirm or deny the existence of the requested records. A “*Glomar*” response is necessary to protect any individual mentioned in any OSC files (which may or may not exist). Otherwise, members of the public might draw adverse inferences from the mere fact that an individual is mentioned. See the *U.S. Department of Justice Guide to the Freedom of Information Act* (DOJ Guide), <https://www.justice.gov/sites/default/files/oip/legacy/2014/07/23/exemption7c.pdf>, pp. 34-37. This is a standard notification given to requestors and should not be taken as an indication that the requested records do, or do not, exist.

Without an individual’s consent, an official acknowledgment of an investigation, or an overriding public interest, even to acknowledge the existence of investigatory records pertaining to an individual could reasonably be expected to constitute an unwarranted invasion of personal privacy pursuant to Exemption 7(C). We do not find that any of these criteria has been met in this instance.

Your request included a Privacy Act waiver on behalf of (b)(6). It did not include a waiver from (b)(6).

We have reviewed the news articles and websites cited in your request and appeal. None of these stories includes any official acknowledgement by OSC or by the (b)(6)’s Inspector General Office (b)(6) IG) of an investigation regarding (b)(6). The cited materials address (b)(6) whistleblowing activities; they do not indicate that other individuals brought complaints against (b)(6), as your request implies.

You argue that (b)(6) waived (b)(6) privacy interests by making public statements in 2016 about (b)(6) own whistleblowing activities and publicly discussing (b)(6) alleged (b)(6) removal from employment at the (b)(6). While (b)(6) identified (b)(6) publicly as a whistleblower or supporter of whistleblowers, (b)(6) nonetheless retains a substantial privacy interest in not being associated with an investigation of alleged prohibited personnel practices. (Reprisal is a prohibited personal practice under 5 U.S.C. §§ 2302(b)(8), 2302(b)(9).) (b)(6) (b)(6)’s public allegations of wrongdoing by (b)(6) and (b)(6) do not waive (b)(6) own privacy interest in not being named in a law enforcement action against (b)(6) at OSC. Your appeal fails to cite any authority for using (b)(6)’s alleged acknowledgement of (b)(6) disclosures to OSC as a waiver of (b)(6) privacy interests in not being named in a separate, unrelated investigation of (b)(6) by OSC.

² We repeat the substance of the FOIA request at issue because your appeal appears to discuss a broader request, including repeated references to a (b)(6), but the request did not mention a

U.S. Office of Special Counsel

(b)(6) Appeal AF-17-0003

May 22, 2017

Page 3 of 3

You also assert that (b)(6) “has a diminished expectation of privacy . . . arising from (b)(6) status as a senior government official.” However, your request and appeal state that (b)(6) has been a private citizen since (b)(6).

You further argue that the purpose of this request is to help the public “in understanding why and how OSC conducted its investigations—what OSC was ‘up to.’” (Appeal, p.5). But you do not and cannot allege that OSC in any way failed to fulfill its obligations to investigate complaints brought against or by the persons you name in the FOIA request and appeal. “Where there is no evidence that the government has failed to investigate adequately a complaint, or that there was wrongdoing on the part of a government employee the public interest in disclosure is diminished. *See Dunkelberger v. Dep’t of Justice*, 906 F. 2d 779, 782 (D.C. Cir. 1990) (*in camera* review of documents revealed nothing supporting argument that disclosure would be in the public interest).”

You may seek judicial review of this decision by filing a complaint in an appropriate United States district court. *See* 5 U.S.C. § 552(a)(4)(B). If you have any questions regarding this request, or seek informal dispute resolution services, please feel free to contact Dawn Kral, FOIA Public Liaison, at 202-254-3636 or via email at dkral@osc.gov.³

Sincerely,

/s/

Susan K. Ullman
General Counsel
U.S. Office of Special Counsel

³ Additionally, you may contact the Office of Government Information Services (OGIS) at the National Archives and Records Administration to inquire about the FOIA mediation services they offer. The contact information for OGIS is: 8601 Adelphi Road, Room 2510, College Park, MD 20740-6001; ogis@nara.gov, 202-741-5770, 1-877-684-6448 (Toll Free), 202-741-5769 (Fax). Taking advantage of OGIS services does not affect your right to pursue litigation.



U.S. OFFICE OF SPECIAL COUNSEL
1730 M Street, N.W., Suite 218
Washington, D.C. 20036-4505
202-254-3600

December 21, 2015

Richard Gutman, esq.
9 Prescott Avenue
Montclair, NJ 07042-5029
Via E-mail: (b)(6)

RE: Freedom of Information Act / Privacy Act Appeal (Ref. # AF-16-0001, previously indexed as Ref. # FO-16-0009)

Dear Mr. Gutman:

This responds to your Freedom of Information Act (FOIA) and Privacy Act appeal on behalf of [redacted] dated November 25, 2015 and received that day by the U.S. Office of Special Counsel (OSC). The appeal responded to OSC's October 29, 2015 letter to Mr. Paff.

After carefully considering your appeal, I affirm OSC's action in the October 29, 2015 letter declining to confirm or deny the existence of records responsive to [redacted] request. Without consent, proof of death, official acknowledgment of an investigation, or an overriding public interest, confirming or denying the existence of law enforcement records concerning an individual could reasonably be expected to constitute an unwarranted invasion of personal privacy. *See* 5 U.S.C. § 552(b)(7)(C). *See also* *Phillippi v. Central Intelligence Agency*, 546 F.2d 1009 (D.C. Cir. 1976), *aff'd*, 655 F.2d 1325 (D.C. Cir. 1981).

You base your appeal on the fact of running for office is a "public" act. We do not admit or deny the existence of documents responsive to the request concerning either person named in [redacted] appeal. However, please also be advised that "a candidate for a political office, either federal or nonfederal, does not forfeit all rights to privacy." 127 *Department of Justice Guide the Freedom of Information Act*, Ch. 6, p. 40.

<http://www.justice.gov/sites/default/files/oip/legacy/2014/07/23/exemption6.pdf>. *See* *Nation Magazine v. U.S. Customs Serv.*, 71 F.3d 885, 894 & n.9 (D.C. Cir. 1995) ("Although candidacy for federal office may diminish an individual's right to privacy . . . it does not eliminate it . . ."); *Hunt v. U.S. Marine Corps*, 935 F. Supp. 46, 54 (D.D.C. 1996) (finding that senatorial candidate has unquestionable privacy interest in his military service personnel records and medical records); *Nation Magazine v. Dep't of State*, No. 92-2303, 1995 WL 17660254, at *10 (D.D.C. Aug. 18, 1995) (upholding refusal to confirm or deny existence of investigative records pertaining to presidential candidate); *cf. Iowa Citizens for Cmty. Improvement v. USDA*,

U.S. Office of Special Counsel

Letter to (b)(6)

December 21, 2015

Page 2

256 F. Supp. 2d 946, 954 (S.D. Iowa 2002) (ruling that nominee for position of Undersecretary of Agriculture for Rural Development does not forfeit all privacy rights).

You also cite *ACLU v. DOJ*, 655 F.3d 1, 7 (D.C. Cir. 2011) for the proposition that an individual has a lesser privacy interest where allegations of misconduct are sustained. However, OSC can neither admit nor deny whether allegations were lodged, an investigation conducted, or any charges sustained. Again, without official acknowledgment of an investigation, confirming or denying the existence of law enforcement records concerning an individual could reasonably be expected to constitute an unwarranted invasion of personal privacy. See 5 U.S.C. § 552(b)(7)(C), *ACLU v. DOJ*, *supra*, footnote 8, summarizes the privacy interest at stake: "The Justice Department correctly notes this court has held that disclosure of records revealing that an individual was involved or mentioned in a law enforcement investigation implicates a significant privacy interest." *Id.*

If (b)(6) disagrees with OSC's determination, he has two alternatives. The 2007 amendments to the FOIA created the Office of Government Information Services (OGIS) to offer mediation services to resolve disputes between FOIA requesters and federal agencies as a non-exclusive alternative to litigation. Using OGIS services does not affect Mr. Paff's right to pursue litigation. (b)(6) may also seek judicial review of this decision on his appeal by filing a complaint in an appropriate United States district court. See 5 U.S.C. § 552(a)(4)(B).

Sincerely,

(b)(6)

Lisa Terry

General Counsel

Office of Special Counsel

¹ You may reach OGIS via email (ogis@nara.gov), telephone (202-741-5770 or 1-877-684-6448), fax (202-741-5769), or U.S. Postal Service at Office of Government Information Services, NARA, 8601 Adelphi Road-OGIS, College Park, MD 20740.



U.S. OFFICE OF SPECIAL COUNSEL
1730 M Street, N.W., Suite 218
Washington, DC 20036-4505
(202) 254-3600

July 11, 2017

Mr. Matthew Topic
Loevy & Loevy
311 North Aberdeen, 3rd Floor
Chicago, IL 60607

Via email to: (b)(6)

RE: Freedom of Information Act/Privacy Act Appeal Reconsideration (AF-17-0004)

Dear Mr. Topic:

I am writing in response to your June 30, 2017, email and letter, in which you request reconsideration of my denial of the Better Government Association's appeal seeking expedited processing of its Freedom of Information Act (FOIA) request (FO-17-0068). Our FOIA regulations do not provide for reconsideration of appeal decisions. However, as it is within my discretion, I will reconsider my earlier appeal decision in light of the information provided in your June 30 letter.

In your letter, you assert that you disagree with my earlier decision because you claim that OSC handled whistleblower allegations regarding the nuclear power industry "extremely recently" and that "the intersection of nuclear safety and whistleblower protection are a matter of acute public importance and interest." Your assertion that these issues are of recent public interest is not enough to obtain expedited processing under the FOIA. *See Landmark Legal Found. v. EPA*, 910 F. Supp. 2d 270, 277 (D.D.C. 2012) (rejecting notion that matter is urgent merely because it is of public interest or concerns public health and economic well-being because "such a justification would likely sweep almost any FOIA request into the ambit of 'urgency' since FOIA requests are regularly designed to elicit information about how the government is performing its work"). You must explain why there is an urgency to inform the American public, and I do not find that the information in your letter provides this explanation. For this reason and others set forth in my letter of June 2, 2017, I decline to modify my earlier decision.

U.S. Office of Special Counsel
Mr. Matthew Topic
Page Two
July 11, 2017

Please contact Dawn Kral, OSC's FOIA Public Liaison, at (202) 254-3636 or dkral@osc.gov, for information on an estimated completion date of your request under our regular FOIA process.

Sincerely,

/s/

Susan K. Ullman
General Counsel



U.S. OFFICE OF SPECIAL COUNSEL

1730 M Street, N.W., Suite 218
Washington, D.C. 20036-4505
202-254-3600

June 2, 2017

Ms. Madison Hopkins
Better Government Association
223 W. Jackson Boulevard
Suite 900
Chicago, IL 60606

Via email to: mhopkins@bettergov.org

RE: Freedom of Information Act Appeal (AF-17-0004)

Dear Ms. Hopkins:

I am writing in response to your May 24, 2017, emails to the U.S. Office of Special Counsel (OSC), in which you appealed OSC's denial of your request for expedited processing of your Freedom of Information Act (FOIA) request (FO-17-0068). You initially sought all OSC records regarding the Nuclear Regulatory Commission's (NRC) investigation into Exelon and its decommissioning fund, but later narrowed the scope of your request to "the original complaints and any closing or final reports" by OSC in case file numbers (b)(6) and (b)(6).

Expedited processing is available whenever it is established to OSC's satisfaction, with respect to a request made by a person primarily engaged in disseminating information, that an urgency exists to inform the public about an actual or alleged federal government activity. *See* 5 C.F.R. § 1820.4(c)(1)(ii). Courts consider three factors in determining if requesters have demonstrated the requisite urgency to inform: (1) whether the request concerns a matter of current exigency to the American public; (2) whether the consequences of delaying a response would compromise a significant recognized interest; and (3) whether the request concerns federal government activity. *See, e.g., Al-Fayed v. Cent. Intelligence Agency*, 254 F.3d 300, 310 (D.C. Cir. 2001). You assert on appeal that you need information from two of OSC's case files to help inform the public of Exelon's "true financial status and its influence over state and federal agencies" and to shed light on any possible wrongdoing by NRC related to Exelon's decommissioning trust funds. You claim that access to this information is "of timely newsworthiness in Illinois and across the country" because Exelon and its competitors are urging states to pass bills, similar to a bill recently passed in Illinois, authorizing subsidies to nuclear power plants to prevent plant closures.

After considering your FOIA request, the reasons you have provided in support of expediting the processing of your request, some of the materials in the case files your request pertains to, and the factors outlined above, I deny your request for expedited processing. I have determined that there has been no showing of exigency nor will the normal processing compromise a significant recognized interest. I note that the case numbers of the files from which you requested information indicate that the complaints in those cases were filed in (b)(6).

Ms. Madison Hopkins
Page 2 of 2
June 2, 2017

and (b)(6) *i.e.*, (b)(6) years before your FOIA request. *See Al-Fayed*, 254 F.3d at 310 (finding expedited processing inappropriate where “[a]ll of the events and alleged events occurred two to three years before plaintiffs made their request for expedited processing” and, therefore, “none of the events at issue is the subject of a currently unfolding story”). I also note that I have reviewed the news coverage for which you provided links, but I have not found any current public interest in the subject of the FOIA request, *i.e.*, the referenced case files. *See Elec. Privacy Info. Ctr. v. Dep’t of Def.*, 355 F. Supp. 2d 98, 101 (D.D.C. 2004) (making clear that it is current interest in the “*specific subject*” of the request). Accordingly, I affirm the previous denial of the expedited processing for your FOIA request (FO-17-0068).

You may seek judicial review of this decision by filing a complaint in an appropriate United States district court. *See* 5 U.S.C. § 552(a)(4)(B). If you have any questions regarding this request, or require dispute resolution services, please feel free to contact Dawn Kral, FOIA Public Liaison, at 202-254-3636 or via email at dkral@osc.gov.¹

Sincerely,

/s/

Susan K. Ullman
General Counsel

¹ Additionally, you may contact the Office of Government Information Services (OGIS) at the National Archives and Records Administration to inquire about the FOIA mediation services they offer. Using OGIS services does not affect your right to pursue litigation. The contact information for OGIS is: 8601 Adelphi Road, Room 2510, College Park, MD 20740-6001; ogis@nara.gov, 202-741-5770, 1-877-684-6448 (Toll Free), 202-741-5769 (Fax).



U.S. OFFICE OF SPECIAL COUNSEL
1730 M Street, N.W., Suite 218
Washington, D.C. 20036-4505
202-254-3600

April 11, 2017

(b)(6)

Via email:

(b)(6)

RE: Freedom of Information Act/Privacy Act Appeal (AP-17-0002)

Dear (b)(6)

I am writing in response to your March 28, 2017 email to the U.S. Office of Special Counsel (OSC), in which you appeal OSC's response to your Freedom of Information Act (FOIA) request FP-17-0013.

After reviewing your request, OSC's response, and your appeal, I grant your appeal. Your FOIA request will be reprocessed.

If you have any questions regarding your FOIA request, or require dispute resolution services, please feel free to contact Dawn Kral, FOIA Public Liaison, at 202-254-3636 or via email at dkral@osc.gov.¹

Sincerely,

/s/

Susan K. Ullman
General Counsel

¹ Additionally, you may contact the Office of Government Information Services (OGIS) at the National Archives and Records Administration to inquire about the FOIA mediation services they offer. The contact information for OGIS is 8601 Adelphi Road, Room 2510, College Park, MD 20740-6001; ogis@nara.gov, 202-741-5770, 1-877-684-6448 (Toll Free), 202-741-5769 (Fax).



U.S. OFFICE OF SPECIAL COUNSEL

1730 M Street, N.W., Suite 218
Washington, D.C. 20036-4505
202-254-3600

March 17, 2016

(b)(6)

Via Email: (b)(6)

Re: Freedom of Information Act and/or Privacy Act Appeal (#AP-16-0005)

Dear (b)(6):

This responds to your appeal to the U.S. Office of Special Counsel (OSC) dated January 2013, and received by this office that date. You appealed under the Freedom of Information Act (FOIA), 5 U.S.C. § 552, from the Office of Special Counsel (OSC) decision letter dated November 25, 2015.

I have reviewed your initial request file, OSC's response, and your appeal. After carefully considering your appeal, I am affirming OSC's initial response to your FOIA request.

Your Appeal

Your appeal raises issues relating to the withholding of information pursuant to FOIA Exemptions for material normally privileged in civil litigation based on one or more legal privileges (including, in this instance, the deliberative process and attorney work product privileges) (*see* §5 U.S.C. 552(b)(5)); and for material which pertains to "law enforcement records whose disclosure could reasonably be expected to constitute an unwarranted invasion of personal privacy." 5 U.S.C. 552(b)(7)(c).

You argued three reasons to overturn the decision to withhold the requested documents. First, you state that you "did not feel the complaint was covered under the whistle blower act." Next, you state that you felt "that the complaint against [you] was based solely on political affiliation . . ." Finally, you argue that you "should be entitled to know who [your] complainant was and the contents of the complaint."

FOIA Exemptions

I affirm that Ms. Kral properly denied the entire request for information under the Privacy Act, 5 U.S.C. §552(a) and properly reviewed your request under the FOIA. As to the determination to redact portions of the released documents, OSC properly deems Hatch Act complaint records such as you requested ("all communication identifying the person making the complaint and the contents of the complaint in regards to REF#FP-14-0216.") as exempt from public access.

If you disagree with OSC's determination, you have two alternatives. The 2007 amendments to the FOIA created the Office of Government Information Services (OGIS) to offer mediation services to resolve disputes between FOIA requesters and federal agencies as a non-exclusive alternative to litigation. Using OGIS services does not affect your right to pursue litigation.¹ You may also seek judicial review of this decision on your appeal by filing a complaint in an appropriate United States district court. *See* 5 U.S.C. § 552(a)(4)(B).

Sincerely,

/s/

Lisa Terry
General Counsel

¹ You may reach OGIS via email (ogis@nara.gov), telephone (202-741-5770 or 1-877-684-6448), fax (202-741-5769), or U.S. Postal Service at Office of Government Information Services, NARA, 8601 Adelphi Road-OGIS, College Park, MD 20740.



U.S. OFFICE OF SPECIAL COUNSEL

1730 M Street, N.W., Suite 218
Washington, D.C. 20036-4505
202-804-7000

December 20, 2017

(b)(6)

Via email to: (b)(6)

RE: Freedom of Information Act Appeal (AF-18-0001)

Dear (b)(6)

This letter responds to your December 15, 2017 email to the U.S. Office of Special Counsel (OSC) appealing OSC's response of that date to your August 15, 2017 Freedom of Information Act (FOIA) request (FP-17-0069). Your request sought a copy of the investigation report related to your OSC case, (b)(6)

I have reviewed the relevant materials, including your request, OSC's response, and your appeal. After careful consideration, I agree with the FOIA Unit's determination to withhold the report under FOIA Exemptions 5 and 7(A). Accordingly, I affirm OSC's response and deny your appeal.

You may seek judicial review of this decision by filing a complaint in an appropriate United States district court. *See* 5 U.S.C. § 552(a)(4)(B). If you have any questions regarding this request, or require dispute resolution services, please feel free to contact Ken Hendricks, OSC's Chief FOIA Officer and acting FOIA Public Liaison, at 202-804-7000 or via email at khendricks@osc.gov.¹

Sincerely,

/s/

Susan K. Ullman
General Counsel

¹ Additionally, you may contact the Office of Government Information Services (OGIS) at the National Archives and Records Administration to inquire about the FOIA mediation services they offer. Using OGIS services does not affect your right to pursue litigation. The contact information for OGIS is: 8601 Adelphi Road, Room 2510, College Park, MD 20740-6001; ogis@nara.gov, 202-741-5770, 1-877-684-6448 (Toll Free), 202-741-5769 (Fax).



U.S. OFFICE OF SPECIAL COUNSEL

1730 M Street, N.W., Suite 218
Washington, D.C. 20036-4505
202-804-7000

May 25, 2018

(b)(6)

Via email to: (b)(6)

RE: Freedom of Information Act and/or Privacy Act Appeal (AP-18-0006)

Dear (b)(6):

I am writing in response to your May 14, 2018 email to the U.S. Office of Special Counsel (OSC), in which you appealed OSC's May 14, 2018 response to your request (FP-18-0019) under the Freedom of Information Act (FOIA), 5 U.S.C. § 552.

I have reviewed the relevant materials, including your request, OSC's response, and your appeal. After careful consideration, I agree with the determinations that the FOIA Unit has made in response to items 1-2, 4-8, 10, and 12-15 of your FOIA request. Accordingly, I affirm OSC's response and deny your appeal.

You may seek judicial review of this decision by filing a complaint in an appropriate United States district court. *See* 5 U.S.C. § 552(a)(4)(B). If you have any questions regarding this request, or require dispute resolution services, please feel free to contact Mahala Dar, OSC's Chief FOIA Officer and acting FOIA Public Liaison, at (202) 804-7000 or via email at mdar@osc.gov.¹

Sincerely,

/s/

Susan K. Ullman
General Counsel

¹ Additionally, you may contact the Office of Government Information Services (OGIS) at the National Archives and Records Administration to inquire about the FOIA mediation services they offer. Using OGIS services does not affect your right to pursue litigation. The contact information for OGIS is: 8601 Adelphi Road, Room 2510, College Park, MD 20740-6001; ogis@nara.gov, 202-741-5770, 1-877-684-6448 (Toll Free), 202-741-5769 (Fax).



U.S. OFFICE OF SPECIAL COUNSEL
1730 M Street, N.W., Suite 218
Washington, D.C. 20036-4505
202-804-7000

June 18, 2018

(b)(6)

Via email to: (b)(6)

RE: Freedom of Information Act Appeal (#AF-18-0008)

Dear (b)(6):

This letter responds to your June 12, 2018 email to the U.S. Office of Special Counsel (OSC) appealing OSC's response of that date to items 3, 9, 11, and 16 of your December, 14, 2017 Freedom of Information Act (FOIA) request (FO-18-0020). These elements of your request sought the following:

- 3. Policy identifying authority for accepting or dismissing a complaint to OSC and how it is determined who the personnel are assigned to specific investigations;**
- 9. OSC policy identifying who has authority to view, examine or gain access of any type, to your OSC investigation to include but not limited to the final determination(s);**
- 11. Copies or printouts of records showing the usual length of time required to process paperwork and for the final determination to be announced for an OSC investigation; and**
- 16. Policy identifying who the deciding official is to make and sign the final determination(s) of your OSC investigation(s) and how it is determined who the deciding official was.**

I have reviewed the relevant materials, including your request, OSC's search, OSC's response, and your appeal. After careful consideration I affirm OSC's response and deny your appeal.

You may seek judicial review of this decision by filing a complaint in an appropriate United States district court. See 5 U.S.C. § 552(a)(4)(B). If you have any questions regarding this request, please feel free to please feel free to contact Mahala Dar, OSC's Chief FOIA Officer and FOIA Public Liaison, at mdar@osc.gov or at (202) 804-7000

¹

Sincerely,

/s/

Susan K. Ullman
General Counsel

¹ Additionally, you may contact the Office of Government Information Services (OGIS) at the National Archives and Records Administration to inquire about the FOIA mediation services they offer. The contact information for OGIS is: 8601 Adelphi Road, Room 2510, College Park, MD 20740-6001; ogis@nara.gov, 202-741-5770, 1-877-684-6448 (Toll Free), 202-741-5769 (Fax).



U.S. OFFICE OF SPECIAL COUNSEL
1730 M Street, N.W., Suite 218
Washington, D.C. 20036-4505
202-804-7000

March 15, 2018

Mr. Sylvan Lane
Reporter
The Hill
1625 K Street NW
Suite 900
Washington, DC 20009

Via email to: slane@thehill.com

RE: Freedom of Information Act Appeal No. AF-18-0002

Dear Mr. Lane:

This responds to your February 15, 2018, appeal of the U.S. Office of Special Counsel's (OSC's) December 5, 2017, response to your November 2017 Freedom of Information Act (FOIA) request (FO-18-0027).

We have reviewed your request, OSC's response, and your appeal, including the material referenced in the appeal's footnotes. After careful consideration, we have determined that a "Glomar" response, *i.e.*, one in which OSC does not confirm or deny the existence of the requested records, is appropriate. *See Phillippi v. CIA*, 546 F.2d 1009, 1013 (D.C. Cir. 1976) (raising issue of whether CIA could refuse to confirm or deny its ties to Howard Hughes' submarine retrieval ship, the Glomar Explorer).

Your FOIA request sought:

Copies of all documents, communications, interviews and materials
from OSC case (b)(6) regarding potential violations of the
Hatch Act by (b)(6)

(b)(6)

Exemption 7(C) of the FOIA, 5 U.S.C. § 552(b)(7)(C), exempts from production records or information compiled for law enforcement purposes that could reasonably be expected to constitute an unwarranted invasion of personal privacy. Pursuant to Exemption 7(C), OSC cannot confirm or deny the existence of the requested records. OSC's "Glomar" response is necessary to protect any individual mentioned in any OSC files (which may or may not exist). Otherwise, members of the public might

U.S. Office of Special Counsel

FOIA Appeal AF-18-0002

Page 2

draw adverse inferences from the mere fact that an individual is mentioned. See *U.S. Department of Justice Guide to the Freedom of Information Act* (DOJ Guide), <https://www.justice.gov/sites/default/files/oip/legacy/2014/07/23/exemption7c.pdf>, pp. 34-37.

Without an individual's consent, an official acknowledgment of an investigation, or an overriding public interest, even to acknowledge the existence of investigatory records pertaining to an individual could reasonably be expected to constitute an unwarranted invasion of personal privacy. We do not find that any of these criteria has been met in this instance.

You have not provided evidence of (b)(6)'s consent. OSC has not officially acknowledged an investigation regarding (b)(6). You do make the following three points in support of the argument that the public interest would override (b)(6)'s privacy interest, each of which we address below:

- [1] (b)(6) has a greatly diminished expectation of personal privacy relative to the average person;
- [2] the public interest in disclosure of the records at issue is extremely high and greatly outweighs (b)(6)'s privacy interest; and
- [3] under the required presumption of openness, the records should be released.

You first assert that (b)(6) "has a diminished expectation of privacy relative to the average person" because of (b)(6)'s participation in the public arena, specifically (b)(6)'s position as the (b)(6) (b)(6) at the time of your FOIA request, and (b)(6) (b)(6). Without admitting or denying the existence of documents responsive to your request, we note that while an individual in the public arena may have a diminished expectation of privacy, "a candidate for a political office, either federal or nonfederal, does not forfeit all rights to privacy." 127 *Department of Justice Guide the Freedom of Information Act*, Ch. 6, p. 40. <http://www.justice.gov/sites/default/files/oip/legacy/2014/07/23/exemption6.pdf>; see also *Nation Magazine v. U.S. Customs Serv.*, 71 F.3d 885, 894 & n.9 (D.C. Cir. 1995) ("Although candidacy for federal office may diminish an individual's right to privacy . . . it does not eliminate it . . ."); *Hunt v. U.S. Marine Corps*, 935 F. Supp. 46, 54 (D.D.C. 1996) (finding that senatorial candidate has unquestionable privacy interest in his military service personnel records and medical records); and *Nation Magazine v. Dep't of State*, No. 92-2303, 1995 WL 17660254, at *10 (D.D.C. Aug. 18, 1995) (upholding refusal to confirm or deny existence of investigative records pertaining to presidential candidate).

U.S. Office of Special Counsel

FOIA Appeal AF-18-0002

Page 3

Next, you assert an “extremely high public interest” in disclosing the requested documents. The purpose of FOIA is to allow the public to “know what the government is up to,” *i.e.*, “to shed light on an agency’s performance of its statutory duties.” *DOJ v. Reporters Committee for Freedom of the Press*, 489 U.S. 749, 773 (1989); *see also, generally, Department of Justice Guide the Freedom of Information Act*, Exemption 7(C). However, you do not, and cannot, assert that OSC in any way failed to fulfill its obligations to investigate an alleged Hatch Act violation.

Finally, you claim a “presumption of openness.” However, OSC’s “*Glomar*” response is necessary in this and all instances in which OSC has not acknowledged the existence of law enforcement activity, because, as previously discussed, members of the public may draw adverse inferences from the mere fact that an individual is mentioned in OSC’s investigative files. A person has a great interest in not being associated with law enforcement activity.

Again, OSC’s “*Glomar*” response is a standard notification given to requestors and should not be taken as an indication that the requested records do, or do not, exist.

You may seek judicial review of this decision by filing a complaint in an appropriate United States district court. *See* 5 U.S.C. § 552(a)(4)(B). If you have any questions regarding this request, please feel free to contact Kenneth Hendricks, FOIA Public Liaison, at 202-804-7000 or via email at khendricks@osc.gov.¹

Sincerely,

(b)(6)

Susan K. Ullman
General Counsel

¹ Additionally, you may contact the Office of Government Information Services (OGIS) at the National Archives and Records Administration to inquire about the FOIA mediation services they offer. The contact information for OGIS is: 8601 Adelphi Road, Room 2510, College Park, MD 20740-6001; ogis@nara.gov, 202-741-5770, 1-877-684-6448 (Toll Free), 202-741-5769 (Fax).



U.S. OFFICE OF SPECIAL COUNSEL

1730 M Street, N.W., Suite 218
Washington, D.C. 20036-4505
202-254-3600

March 3, 2017

(b)(6)

Via email to: (b)(6)

RE: Privacy Act Appeal (AP-17-0001)

Dear (b)(6):

I am writing in response to the above-reference Privacy Act appeal you submitted on January 23, 2017.

On November 25, 2013, the U.S. Office of Special Counsel (OSC) sent you an individual right of action (IRA) letter associated with OSC case number (b)(6). The IRA letter contained a characterization that you thought was not accurate. Accordingly, you requested an amendment to the IRA letter under the Privacy Act, 5 U.S.C. § 552a (*see* FP-12-0363). On January 18, 2017, OSC sent you a letter declining to change the language of the IRA letter. You then submitted a letter requesting an appeal. That letter indicated that you would be providing supporting evidence. However, when you spoke with OSC Attorney-Advisor Heidi Morrison on February 28, 2017, you indicated that you no longer wished to submit additional evidence.

I have reviewed your request, OSC's response, and your appeal. After careful consideration, I decline to modify the IRA letter. The Privacy Act amendment provisions do not apply to your request because OSC has exempted investigatory material from those provisions, and the IRA letter falls within that exempted category. *See* 5 C.F.R. § 1830.6. Nonetheless, I have reviewed the substance of the amendment you seek, and have determined that the information you seek to change is not typically subject to amendment. In your appeal you assert that the IRA letter was incorrect in stating that you alleged retaliation for disclosing that a \$34-million contract was "unnecessary." This word is the writer's characterization of your allegations; your submissions in the record speak for themselves. The Privacy Act permits amendment for "factual or historical errors;" it does not permit amendment for "judgments of federal officials." *See Rogers v. U.S. Dep't of Labor*, 607 F. Supp. 697, 699 (N.D. Cal. 1985). Thus, even if the IRA letter were subject to the Privacy Act amendment provisions, we do not have a basis for amending that letter. Accordingly, I deny your appeal.

(b)(6)

Page 2 of 2

March 3, 2017

You may seek judicial review of this decision by filing a complaint in an appropriate United States district court. *See* 5 U.S.C. § 552a(g)(1)(A).

Sincerely,

/s/

Susan K. Ullman
General Counsel



U.S. OFFICE OF SPECIAL COUNSEL
1730 M Street, N.W., Suite 218
Washington, D.C. 20036-4505
202-804-7000

August 22, 2018

Mr. James McMurphy
2245 M Street, NW
Washington, DC 20036
Via Email: (b)(6)

Re: Freedom of Information Act Appeal #AP-18-0009

Dear Mr. McMurphy:

This letter responds to your August 1, 2018 email to the U.S. Office of Special Counsel (OSC) appealing OSC's June 26, 2018 response to your September 20, 2017 Freedom of Information Act (FOIA) request (FO-17-0098). Your request sought any records regarding or relating to the National Endowment for the Humanities or the Institute of Museum and Library Services during the time frame January 1, 2014 to September 20, 2017.

I have reviewed the relevant materials, including your request, OSC's search, OSC's response, and your appeal challenging our search as "incomplete" because it did not appear to you to have yielded "any records relating to matters that I understand were referred by the Office of Special Counsel to the Institute of Museum and Library Services for investigation pursuant to 5 USC 1213(c)." I have decided to grant your appeal. OSC will reprocess your FOIA request.

If you have any questions, would otherwise like to discuss your request, or you require dispute resolution services, please feel free to contact Mahala Dar, OSC's Chief FOIA Officer and acting FOIA Public Liaison, at mdar@osc.gov or at (202) 804-7000.¹ Please reference the above-noted tracking number when you call or write.

Sincerely,
/s/
Susan K. Ullman
General Counsel

¹ Additionally, you may contact the Office of Government Information Services (OGIS) at the National Archives and Records Administration to inquire about the FOIA mediation services they offer. The contact information for OGIS is: 8601 Adelphi Road, Room 2510, College Park, MD 20740-6001; ogis@nara.gov, 202-741-5770, 1-877-684-6448 (Toll Free), 202-741-5769 (Fax).



U.S. OFFICE OF SPECIAL COUNSEL
1730 M Street, N.W., Suite 218
Washington, D.C. 20036-4505
202-804-7000

October 5, 2017

(b)(6)

Via e-mail: (b)(6)

Re: Freedom of Information Act and/or Privacy Act Appeal (#AP-17-0006)

Dear (b)(6):

This responds to your Freedom of Information Act (FOIA) appeal of August 22, 2017.

On July 6, 2016, you submitted a FOIA request (FP-16-0073) on behalf of (b)(6). Since then you have had numerous communications with OSC about OSC's FOIA process and about narrowing that FOIA request. On April 3, 2017, OSC provided a first interim response to FOIA request FP-16-0073. As part of that response, OSC released approximately twenty-four (24) pages and withheld approximately six (6) pages. On June 12, 2017, OSC provided a second interim response to FOIA request FP-16-0073. The second interim response addressed the portion of FOIA request FP-16-0073 that sought the contents of OSC case file (b)(6) and explained that the contents of that case file would be withheld in full. On August 22, 2017, you submitted an appeal from OSC's June 12, 2017 second interim response.

After reviewing FOIA request FP-16-0073, OSC File No. (b)(6) OSC's two interim responses, and your appeal, as well as relevant legal material, I grant your appeal. OSC will re-process the request for the contents of OSC case file (b)(6).

U.S. Office of Special Counsel

(b)(6) AP-17-0006

October 5, 2017

Page 2 of 2

If you have any questions regarding this request, or require dispute resolution services, please feel free to contact our Clerk, Kenneth Hendricks, who is acting as our FOIA Public Liaison, at 202-804-7000, or via email at foiarequest@osc.gov.¹

Sincerely,

/s/

Susan K. Ullman
General Counsel

¹ Additionally, you may contact the Office of Government Information Services (OGIS) at the National Archives and Records Administration to inquire about the FOIA mediation services they offer. The contact information for OGIS is: 8601 Adelphi Road, Room 2510, College Park, MD 20740-6001; ogis@nara.gov, 202-741-5770, 1-877-684-6448 (Toll Free), 202-741-5769 (Fax).



U.S. OFFICE OF SPECIAL COUNSEL

1730 M Street, N.W., Suite 218
Washington, D.C. 20036-4505
202-804-7000

June 05, 2018

(b)(6)

Via email to: (b)(6)

RE: Freedom of Information Act Appeal (AP-18-0007)

Dear (b)(6):

I am writing in response to your May 25, 2018, email to the U.S. Office of Special Counsel (OSC), in which you appealed OSC's denial of your request for expedited processing of your Freedom of Information Act (FOIA) request (FP-18-0079). You requested expedited processing because you wish to appeal two Merit Systems Protection Board final decisions to the U.S. Court of Appeals for the Federal Circuit.

I have considered your FOIA request and the reason you have provided in support of your request for expedited status. Under 5 C.F.R. § 1820.4(c)(1)(iii), expedited status may be granted when the requested records relate to an appeal for which you, as the requester, face an imminent deadline for filing with the Merit Systems Protection Board or other administrative tribunal or a court of law, seeking personal relief pursuant to a complaint you filed with OSC, or referred to OSC pursuant to title 38 of the U.S. Code. However, when expedited status is granted on this basis, you are entitled to receive letters sent to you by OSC and the official complaint you submitted to OSC (or the original referred complaint if referred to OSC pursuant to title 38 of the U.S. Code). Because it appears that you may meet this criteria, I grant your appeal and remand your request so that it may be reconsidered for expedited processing under section 1820.4(c)(1)(iii).

You may seek judicial review of this decision by filing a complaint in an appropriate United States district court. *See* 5 U.S.C. § 552(a)(4)(B). If you have any questions regarding this request, or require dispute resolution services, please feel free to contact Mahala Dar, OSC's Chief FOIA Officer and acting FOIA Public Liaison, at (202) 804-7000 or via email at mdar@osc.gov.¹

Sincerely,

/s/

Susan K. Ullman
General Counsel

¹ Additionally, you may contact the Office of Government Information Services (OGIS) at the National Archives and Records Administration to inquire about the FOIA mediation services they offer. Using OGIS services does not affect your right to pursue litigation. The contact information for OGIS is: 8601 Adelphi Road, Room 2510, College Park, MD 20740-6001; ogis@nara.gov, 202-741-5770, 1-877-684-6448 (Toll Free), 202-741-5769 (Fax).



U.S. OFFICE OF SPECIAL COUNSEL

1730 M Street, N.W., Suite 218
Washington, D.C. 20036-4505
202-254-3600

April 12, 2017

(b)(6)

Via Email: (b)(6)

Re: FOIA Appeal No. AP-17-0003

Dear (b)(6):

This responds to your above-referenced Freedom of Information Act (FOIA) appeal of March 31, 2017.

On August 15, 2016, the U.S. Office of Special Counsel (OSC) opened a new FOIA request for your (b)(6) case file, and designated it FP-16-0099. On March 31, 2017, an OSC FOIA Officer provided you with an interim response to that FOIA request. The interim response included a release of 78 pages. The interim response indicated that OSC redacted material from three of the 78 pages pursuant to FOIA Exemptions 5 and 7(C), and that OSC withheld four pages in full pursuant to Exemption 5. *See* 5 U.S.C. § 552(b)(5), (7)(C). The interim response also indicated that you did not consent to the referral of documents to the Federal Election Commission (FEC) for review, so OSC could not process those documents.

On March 31, 2017, you appealed from the interim release. Your email stated only, "I appeal." You did not provide any basis for your appeal.

Appeal Response.

I have reviewed your request, OSC's interim response, and your appeal. The FOIA Officer processed and released an initial, "interim," batch of 78 responsive pages. The redactions and withholding of four pages in full were appropriate pursuant to FOIA Exemption 5 (the attorney work-product privilege) and Exemption 7(C) (unwarranted invasion of personal privacy). I have determined that OSC appropriately did not refer records to the FEC in the absence of your consent. *See* U.S. Department of Justice Guidance, "Referrals, Consultations, and Coordination: Procedures for Processing Records when Another Agency or Entity Has An Interest in Them," <https://www.justice.gov/oip/blog/foia-guidance-13>.

The "interim" nature of OSC's response to your FOIA request means that it is not OSC's final response. OSC's FOIA Officer will continue to process the remaining responsive records from your case file (b)(6) and will produce additional records, if appropriate.

U.S. Office of Special Counsel

(b)(6)

April 12, 2017

Page 2

Accordingly, after careful consideration, I deny your appeal of OSC's interim response. You may seek judicial review of this decision by filing a complaint in an appropriate United States district court. *See* 5 U.S.C. § 552(a)(4)(B). (You can also wait until you receive OSC's final response and seek judicial review then.) If you have any questions regarding this appeal response or require dispute resolution assistance, please feel free to contact OSC's FOIA Public Liaison Dawn Kral at 202-254-3636 or via email at dkral@osc.gov.¹

Sincerely,

/s/

Susan K. Ullman
General Counsel

¹ Additionally, the Office of Government Information Services (OGIS) at the National Archives and Records Administration offers FOIA mediation services. You can contact OGIS at: 8601 Adelphi Road, Room 2510, College Park, MD 20740-6001; ogis@nara.gov, 202-741-5770, 1-877-684-6448 (Toll Free), 202-741-5769 (Fax).



U.S. OFFICE OF SPECIAL COUNSEL
1730 M Street, N.W., Suite 218
Washington, D.C. 20036-4505
202-254-3600

February 13, 2017

Mr. Bradley Moss
Mark S. Zaid, P.C.
1250 Connecticut Avenue, N.W.
Suite 200
Washington, D.C. 20036

Via email to: brad@markzaid.com

RE: Freedom of Information Act Appeal (AF-17-0001)

Dear Mr. Moss:

I am writing in response to your letter to the U.S. Office of Special Counsel (OSC) dated January 18, 2017, in which you appealed OSC's January 17, 2017, response to your Freedom of Information Act (FOIA) request (FO-17-0019) received on January 9, 2017.

Your request sought: (1) records memorializing communications between OSC and President-Elect Donald J. Trump's transition team or private staff; (2) records memorializing final determinations by OSC staff regarding the steps President-Elect Trump must take to place his financial assets in a "blind trust" to resolve potential or real "conflicts of interest"; (3) records memorializing final determinations by OSC staff regarding the extent to which President-Elect Trump is subject to the Emoluments Clause of the U.S. Constitution; and (4) records memorializing final determinations by OSC staff regarding steps to be taken by President-Elect Trump's political appointees to resolve potential or real "conflicts of interest." On January 17, 2017, OSC responded to your FOIA request, indicating that the agency searched for responsive records, but did not locate any. On January 18, 2017, you submitted an appeal of OSC's response, specifically challenging the adequacy of OSC's search for responsive records.

I have reviewed the relevant materials, including your request, OSC's search, OSC's response, and your appeal. The FOIA Unit consulted with all OSC components that could reasonably be expected to have responsive documents. None of the consulted components identified any responsive records. After careful consideration, I have determined that the FOIA Unit conducted a search reasonably calculated to locate the requested information. Accordingly, I affirm OSC's response and deny your appeal.

You may seek judicial review of this decision by filing a complaint in an appropriate United States district court. *See* 5 U.S.C. § 552(a)(4)(B). The 2007 FOIA amendments created the Office of Government Information Services (OGIS) to offer mediation services to resolve disputes between FOIA requesters and federal agencies as a non-exclusive alternative to litigation. Taking advantage of OGIS services does not affect your right to pursue litigation.

Mr. Bradley Moss
Page 2 of 2
February 13, 2017

You may reach OGIS via email (ogis@nara.gov), telephone (202-741-5770), fax (202-741-5769), or on the web (<https://ogis.archives.gov>).

Sincerely,

/s/

Susan K. Ullman
General Counsel



U.S. OFFICE OF SPECIAL COUNSEL
1730 M Street, N.W., Suite 218
Washington, DC 20036-4505
(202) 254-3600

April 2, 2015

(b)(6)

Via email to: (b)(6)

RE: Freedom of Information Act and Privacy Act Appeal (AP-15-0047)

Dear (b)(6)

I am writing in response to your email to the U.S. Office of Special Counsel (OSC), dated March 23, 2015, in which you appealed OSC's March 6, 2015, response to the FOIA request (FO-14-0207) made by your client, (b)(6). In your appeal, you challenge the sufficiency of the records search and the appropriateness of the exemptions applied.

I have reviewed OSC's initial FOIA response and release package under the Freedom of Information Act (FOIA), 5 U.S.C. § 552. After careful consideration, I uphold the initial determination in full.

In his FOIA request, (b)(6) sought all records from OSC case (b)(6). In a phone call with FOIA Officer Christopher Kurt, you narrowed the scope of the request to the complaint form submitted by (b)(6) and any "initial investigative findings." Mr. Kurt confirmed the narrowed scope in an email to you on March 4, 2015. A total of 19 pages of records were subsequently released to (b)(6) on March 6, 2015, comprised of the 13-page complaint form, a five-page memorandum, and a one-page telephone call form.

I reviewed the case file and FOIA file to determine: 1) whether all documents responsive to the request for initial investigative findings were identified; and 2) whether the FOIA exemptions asserted were properly applied to the documents identified as responsive.

After reviewing the case file, I have determined that OSC's FOIA officer identified all the documents that could be deemed initial investigatory findings. In a footnote to the initial response letter, Mr. Kurt noted that OSC's pre-closure letter to (b)(6) of May 14, 2014, would also be responsive but that you stated that you did not need copies of records already sent to (b)(6). After determining that the six pages released to you were the only responsive records, I reviewed the FOIA exemptions applied. I uphold the decision to apply FOIA Exemptions 5 and 7C, as noted on the records released to (b)(6). The items withheld under Exemption 5 are classic attorney work product records that would be protected under the

Page Two
April 2, 2015

attorney work product privilege in a court of law. *See, Citizens for Responsibility & Ethics in Washington v. U.S. Dep't of Justice*, No. CV 11-1021 (JEB), 2014 WL 2604640, at *4 (D.D.C. June 11, 2014) (“classic attorney work product ... would risk putting the Government lawyers’ strategy on public display. These records include research and analysis, as well as recommendations about possible courses of action”). OSC also claimed the deliberative process privilege on the portion of the six pages of records withheld pursuant to FOIA Exemption 5. Although the FOIA requires that factual data be segregated and released pursuant to the deliberative process privilege, factual data “is itself privileged when it appears within documents that are attorney work product, so if a document is protected as work product, then a segregability analysis is not required.” *Ibid.* at *6, citing *Judicial Watch, Inc., v. Dep’t of Justice*, 432 F.3d 366, 371 (D.C. Cir. 2005). Therefore, OSC’s initial determination that all six of these pages could be withheld in full is upheld, and I affirm the discretionary release of these documents as redacted. One item, the name of a former OSC intern, was withheld solely under FOIA Exemption 7C. I uphold that determination as well, noting that the release of that name could constitute an unwarranted invasion of personal privacy.

You may seek judicial review of this decision by filing a complaint in an appropriate United States district court. *See* 5 U.S.C. § 552(a)(4)(B). The 2007 FOIA amendments created the Office of Government Information Services (OGIS) to offer mediation services to resolve disputes between FOIA requesters and federal agencies as a non-exclusive alternative to litigation. Using OGIS services does not affect your right to pursue litigation.¹

Sincerely,

/s/

Lisa V. Terry
General Counsel

¹ You may reach OGIS via email (ogis@nara.gov), telephone (202-741-5770), fax (202-741-5769), or on the web (<https://ogis.archives.gov>).



U.S. OFFICE OF SPECIAL COUNSEL
1730 M Street, N.W., Suite 218
Washington, D.C. 20036-4505
202-804-7000

April 17, 2018

(b)(6)

(b)(6)

Via email:

(b)(6)

RE: Freedom of Information Act/Privacy Act Appeal (AP-18-0005)

Dear (b)(6):

I am writing in response to your March 19, 2018 email to the U.S. Office of Special Counsel (OSC), in which you appeal OSC's response to your Freedom of Information Act (FOIA) request FP-14-0171.

In an earlier letter, the FOIA Unit notified you that the records responsive to your request originated with the Federal Mediation and Conciliation Service (FMCS) and explained that the records would be referred to that agency for FOIA processing and direct response to you. In your appeal, you object to OSC sending the records you requested to the FMCS. In response to a recent email from my colleague, Heidi Morrison, you clarified that you do not object to OSC's referring the documents to FMCS, rather you are concerned that FMCS will not process these referred documents in a timely manner, based on a previous experience. Since OSC has determined that FMCS is in a better position to decide whether its records are exempt from disclosure under the FOIA, we are required to refer the records to them for processing. *See* 5 C.F.R. § 1820.3(b). Accordingly, I must deny your appeal and affirm OSC's referral.

I encourage you to contact FMCS' FOIA office at foia@fmcs.gov to express your concerns about receiving a timely response. You may also want to contact the Office of Government Information Services (OGIS) at the National Archives and Records Administration to inquire about the FOIA mediation services they offer. Using OGIS services does not affect your right to pursue litigation. The contact information for OGIS is: 8601 Adelphi Road, Room 2510, College Park, MD 20740-6001, ogis@nara.gov, 202-741-5770, 1-877-684-6448 (Toll Free), 202-741-5769 (Fax).

U.S. Office of Special Counsel

(b)(6)

April 17, 2018

Page 2

You may seek judicial review of this decision by filing a complaint in an appropriate United States district court. *See* 5 U.S.C. § 552(a)(4)(B). If you have any questions regarding this request, please feel free to contact our Clerk, Kenneth Hendricks, who is acting as our FOIA Public Liaison, at (202) 804-7000 or via email at foiarequest@osc.gov.

Sincerely,

/s/

Susan K. Ullman
General Counsel



U.S. OFFICE OF SPECIAL COUNSEL
1730 M Street, N.W., Suite 218
Washington, DC 20036-4505
(202) 254-3600

November 25, 2015

(b)(6)

(b)(6)

Re: Freedom of Information Act/Privacy Act Appeal (AP-16-0002)

Dear (b)(6)

I am writing in response to your email to the U.S. Office of Special Counsel (OSC), dated November 4, 2015, in which you appealed OSC's response to Freedom of Information Act (FOIA) request FP-15-0099. In FP-15-0099, you had requested that OSC update your Standard Form 181 in its files. In your appeal, you challenge OSC's contention that it did not receive your identification and that OSC was therefore unable to update any records.

In responding to your appeal, I have reviewed OSC's response under both the Freedom of Information Act (FOIA), 5 U.S.C. § 552, and the Privacy Act, 5 U.S.C. § 552a. After careful consideration, I am upholding the decision in full under the FOIA. The Freedom of Information Act is a disclosure statute, intended as a mechanism for the government to make records promptly available to the public. You did not ask that OSC produce any records for you; therefore, I affirm that your request is not a proper request under the Freedom of Information Act.

However, OSC erred in not processing your request pursuant to the Privacy Act. Unfortunately, the identification that you submitted in a timely fashion never made its way to the file, so our processing staff was under the mistaken impression that you did not submit proof of identification. I apologize for that oversight. I thus reviewed your request for amendment pursuant to the Privacy Act and searched OSC's case files to determine whether we could include your revised SF-181 in our files. A search of OSC's database did not identify any case files in your name. Therefore, we are unable to amend or update any OSC files as you had requested.

You may seek judicial review of this decision by filing a complaint in an appropriate United States district court. *See* 5 U.S.C. § 552(a)(4)(B). The 2007 FOIA amendments created the Office of Government Information Services (OGIS) to offer mediation services to resolve disputes between FOIA requesters and federal agencies as a non-exclusive alternative to litigation. Using OGIS services does not affect your right to pursue litigation. You may reach OGIS via email (ogis@nara.gov), phone (202-741-5770), fax (202-741-5769), or the web (ogis.archives.gov).

Sincerely,

/s/

Lisa V. Terry
General Counsel



U.S. OFFICE OF SPECIAL COUNSEL
1730 M Street, N.W., Suite 218
Washington, DC 20036-4505
(202) 254-3600

September 6, 2016

(b)(6)

(b)(6)

Via Email:

(b)(6)

RE: Freedom of Information Act and Privacy Act Appeal (AP-16-0007)

Dear

(b)(6)

I am writing in response to your letter to the U.S. Office of Special Counsel (OSC) dated August 14, 2016, in which you appealed OSC's August 4, 2016, interim response to your FOIA request (FP-12-0363). You requested a copy of interviews conducted by OSC of both subject and witnesses in OSC file (b)(6) and any correspondence between (b)(6) Air Force Base officials and OSC. In your appeal, you challenge the sufficiency of the records search and the appropriateness of the exemption applied.

In responding to your appeal, I have reviewed OSC's interim response under the Freedom of Information Act (FOIA), 5 U.S.C. § 552, and the Privacy Act, 5 U.S.C. § 552a. After careful consideration, I uphold the initial determination in full.

OSC did not locate any records responsive to your request for copies of subject and witness interviews. In your appeal letter, you advised OSC to expand its search to include the Michigan office of OSC attorney Efthemia Valiotis, and you submitted email correspondence between yourself and Ms. Valiotis to show that interviews took place during December 2008 and January 2009. In our initial efforts to locate records responsive to your FOIA request, an OSC FOIA officer consulted with all components of OSC that could reasonably be expected to have had responsive documents, including Ms. Valiotis. Ms. Valiotis confirmed that OSC conducted interviews, but that no transcripts were made. These interviews were recorded, but the CD containing the recordings could not be located after an exhaustive search. After examining the file, I have determined that the FOIA officer conducted a reasonable search for the requested information.

I reviewed the withholding in full of fourteen pages of information to determine whether the attorney work product privilege under FOIA Exemption 5 has been properly applied. The fourteen pages withheld contain information (b)(6) Air Force Base provided in response to Ms. Valiotis' request. These documents consist of attorney work product records that would routinely be protected under the attorney work product privilege in a court of law. *See, e.g., Margolin v. NASA*, No. 09-00421, 2011 WL 1303221, at *8-9 (D. Nev. Mar 31, 2011) (holding that communications between agency attorneys "produced in the course of an agency's response

to administrative claims against the agency in contemplation of potential litigation are not 'normally' or 'routinely' subject to disclosure in civil litigation and therefore are exempt from the mandatory disclosure under Exemption 5, without regard to the status of any litigation") (citing *FTC v. Grolier, Inc.*, 462 U.S. 19, 28 (1983)). You assert that the application of the attorney work product privilege under FOIA Exemption 5 is inappropriate because an April 2011 settlement agreement "put to rest contemplation of litigation and/or criminal prosecution by the OSC." Such a factor, however, is not relevant here because (b)(6) Air Force Base's April 4, 2008, response to our attorney's request for information was prepared well before the April 2011 settlement, at a time when litigation was still being anticipated. See *Gov't Accountability Project v. Dep't of Justice*, 852 F.Supp.2d 14, 24-26 (D.D.C. 2012) (privilege applies to situations where litigation was contemplated, but an affirmative decision was made not to initiate legal proceedings). Although the FOIA requires that factual data be segregated and released pursuant to the deliberative process privilege, factual data "is itself privileged when it appears within documents that are attorney work product, so if a document is protected as work product, then a segregability analysis is not required." See *Citizens for Responsibility & Ethics in Washington v. Dep't of Justice*, 48 F.Supp.3d 40, 51 (D.D.C. 2014) (citing *Judicial Watch, Inc., v. Dep't of Justice*, 432 F.3d 366, 371 (D.C. Cir. 2005)). I also note that you are not entitled to receive a Vaughn Index during the administrative process. See, e.g., *Bangoura v. U.S. Dep't of the Army*, 607 F. Supp.2d 134, 143 n.8 (D.D.C. 2009) (noting that agency not required to provide Vaughn Index before filing of a civil action). Therefore, OSC's initial determination that all fourteen of these pages could be withheld in full is affirmed.

You also allege that our denial of your request for records under the Privacy Act is inappropriate because it prevents you from requesting an amendment of Privacy Act records under 5 C.F.R. § 1830.4. A denial of records does not affect your ability to request an amendment, which is a separate process under section 1830.4. I concur with the FOIA staff's conclusion that the records you requested were not releasable under the Privacy Act. Since records protected under the Privacy Act may be releasable under the FOIA, however, it was correct to process the records under that statute. Accordingly, I affirm OSC's interim response and deny your appeal.

You may seek judicial review of this decision by filing a complaint in an appropriate United States district court. See 5 U.S.C. § 552(a)(4)(B). The 2007 FOIA amendments created the Office of Government Information Services (OGIS) to offer mediation services to resolve disputes between FOIA requesters and federal agencies as a non-exclusive alternative to litigation. Using OGIS services does not affect your right to pursue litigation. You may reach OGIS via email (ogis@nara.gov), telephone (202-741-5770), fax (202-741-5769), or on the web (<https://ogis.archives.gov>).

Sincerely,

/s/

Lisa V. Terry
General Counsel



U.S. OFFICE OF SPECIAL COUNSEL
1730 M Street, N.W., Suite 218
Washington, DC 20036-4505
(202) 254-3600

November 23, 2015

(b)(6)

(b)(6)

Via email to: (b)(6)

Re: Freedom of Information Act Appeal (#AP-16-0004)

Dear (b)(6)

I am writing in response to your email to the U.S. Office of Special Counsel (OSC), dated November 19, 2015, in which you appealed OSC's response to your request (FP-16-0013) under the Freedom of Information Act (FOIA), 5 U.S.C. § 552. Your appeal referred to attachments, but it did not include any attachments. I have reviewed your initial request, OSC's response, and your appeal. As discussed below, I affirm OSC's response to your FOIA request.

The FOIA provides requesters with certain rights of access to agency records, and it requires that requesters reasonably describe the records being requested. *See* 5 U.S.C. § 552(a)(3)(A). You sent OSC a letter dated November 2, 2015, which was styled as a FOIA request. Your letter did not describe the records to which you requested access, nor did it describe any records that would appear related to OSC. Accordingly, by letter dated November 10, 2015, OSC denied your request. By email dated November 19, 2015, you appealed OSC's decision.

After carefully considering your appeal, I have determined that it does not contain any information that would clarify your initial FOIA request. In light of this, we are unable to determine whether you are seeking access to OSC records, and, if so, which records. Accordingly, I affirm OSC's response to your FOIA request.

You may seek judicial review of this decision by filing a complaint in an appropriate United States district court. *See* 5 U.S.C. § 552(a)(4)(B). The 2007 FOIA amendments created the Office of Government Information Services (OGIS) to offer mediation services to resolve disputes between FOIA requesters and federal agencies as a non-exclusive alternative to litigation. Using OGIS services does not affect your right to pursue litigation. You may reach OGIS via email (ogis@nara.gov), phone (202-741-5770), fax (202-741-5769), or the web (ogis.archives.gov).

Sincerely,

(b)(6)

Lisa V. Terry
General Counsel

U.S. OFFICE OF SPECIAL COUNSEL

1730 M Street, N.W., Suite 218
Washington, D.C. 20036-4505
202-254-3600



December 22, 2015

(b)(6)

(b)(6)

Via E-Mail at (b)(6)

RE: Freedom of Information Act Appeal (Ref. # FP-14-0182; AP-16-0003)

Dear (b)(6):

This responds to your Freedom of Information Act (FOIA), 5 U.S.C. § 552, appeal, dated November 4, 2015, and received by this office on November 4, 2015. You appealed from the decision of the Office of Special Counsel (OSC) described in FOIA Public Liaison Dawn R. Kral's October 20, 2015 letter to you.

I have reviewed your initial request, records processed for that response, and your appeal. After carefully considering your appeal, I am affirming OSC's response. OSC properly withheld records under the FOIA Exemptions discussed in Ms. Kral's response. My decision is as discussed below.

Your Appeal

Your appeal raises issues relating to the withholding of information pursuant to FOIA Exemptions for investigatory material, 5 U.S.C. §552(a); for material normally privileged in civil litigation, §5 U.S.C. 552(b)(5); and for material which pertains to "law enforcement records whose disclosure could reasonably be expected to constitute an unwarranted invasion of personal privacy." §5 U.S.C. 552(b)(5).

FOIA Exemptions

I affirm that Ms. Kral properly denied the entire request for information under the Privacy Act, 5 U.S.C. 5 U.S.C. §552(a) and properly reviewed your request under the FOIA. By regulation OSC deems complaint records such as you requested ("final draft

reports” and “the last actual ‘final report’” of investigations OSC conducted for case numbers (b)(6) and (b)(6) as exempt from public access.

Your appeal also challenges the two FOIA Exemptions on which Ms. Kral relied to withhold the sole responsive document. FOIA Exemption 5, 5 U.S.C. § 552(b)(5), permits agencies to protect from disclosure documents that are normally privileged in civil discovery (including the attorney work product, deliberative, and attorney client privileges). The attorney work product privilege protects from disclosure information prepared in reasonable anticipation of litigation. The deliberative process privilege protects from disclosure information the release of which would harm agency decision-making. The 13 page document withheld here was properly designated as attorney work product pursuant to FOIA Exemption 5, since the material was prepared in reasonable anticipation of litigation, and also properly withheld under the deliberative process privilege.

You complain that your PPP was not a “civil” action and that the document was generated in connection with a settlement. However, the attorney work product privilege extends to administrative proceedings. *See* U.S. Dep’t of Justice Guide to the Freedom of Information Act, 2009 ed., at 394; *Martin v. Office of Special Counsel*, 819 F.2d 1181, 1187 (D.C.Cir 1987). The attorney work-product privilege also has been held to cover documents “relat[ing] to possible settlements” of litigation. <http://www.justice.gov/sites/default/files/oip/legacy/2014/07/23/exemption5.pdf> at p.50. *Cities Serv. Co. v. FTC*, 627 F. Supp. 827, 832 (D.D.C. 1984) (“attorney’s notes or working papers which relate to . . . possible settlement discussions . . . are protected under the attorney work-product privilege”), *aff’d*, 778 F.2d 889 (D.C. Cir. 1985) (unpublished table decision).

You also again challenge our designation of the withheld records as “law enforcement records” subject to the protections of FOIA Exemption 7. However, law enforcement records created or compiled for law enforcement purposes also include civil law enforcement matters. *See* U.S. Dep’t of Justice Guide to the Freedom of Information Act, 2009 ed., at 502. OSC is a civil law enforcement agency, and the records responsive to your request were created or compiled for law enforcement purposes within our jurisdiction. OSC also properly withheld, under FOIA Exemption 7(C), certain portions in order to avoid an unwarranted invasion of personal privacy.

If you disagree with OSC’s determination, you have two alternatives. The 2007 amendments to the FOIA created the Office of Government Information Services (OGIS) to offer mediation services to resolve disputes between FOIA requesters and federal agencies as a non-exclusive alternative to litigation. Using OGIS services does not affect your right to pursue litigation.¹ You may also seek judicial review of this decision on your appeal by filing a complaint in an appropriate United States district court. *See* 5 U.S.C. § 552(a)(4)(B).

¹ You may reach OGIS via email (ogis@nara.gov), telephone (202-741-5770 or 1-877-684-6448), fax (202-741-5769), or U.S. Postal Service at Office of Government Information Services, NARA, 8601 Adelphi Road-OGIS, College Park, MD 20740.

Sincerely, 1 0

(b)(6)

Lisa V. Terry
General Counsel
Office of Special Counsel



U.S. OFFICE OF SPECIAL COUNSEL
1730 M Street, N.W., Suite 218
Washington, DC 20036-4505
(202) 254-3600

November 24, 2015

(b)(6)

(b)(6)

Copy via email: (b)(6)

Re: Freedom of Information Act / Privacy Act Appeal AP-15-0003

Dear (b)(6)

I am writing in response to your June 4, 2015 administrative appeal under the Freedom of Information Act (FOIA), 5 U.S.C. § 552. You appealed the decision of the U.S. Office of Special Counsel (OSC) to partially withhold information from its release of records in response to your FOIA request, number FP-14-0167. For the reasons discussed below, I am affirming OSC's response to your FOIA request.

By FOIA request dated February 11, 2014, you requested copies of all documents pertaining to your OSC complaint file, number (b)(6). Due to OSC's delay in issuing a FOIA response, you contacted the Office of Government Information Services (OGIS) at the National Archives and Records Administration. OGIS contacted us, including in March 2015, about the status of your request, and we informed OGIS that we would respond soon. On March 18, 2015, we issued our FOIA response via email address (b)(6), which you used to correspond with OSC during the pendency of your complaint file ((b)(6)).

In April 2015, you contacted OGIS and stated that you had not received OSC's response. OGIS contacted us, and we informed them that we responded on March 18, 2015, using your (b)(6) Outlook email address. You told OGIS that you had never used such an address, and you requested that OSC's response be sent to a different email address. By email on April 20, 2015, OSC re-transmitted to you a copy of our March 18, 2015 FOIA decision. Although your FOIA appeal refers to an OSC letter dated May 18, 2015, you are apparently appealing OSC's March 18, 2015 FOIA response. Your June 4, 2015 appeal, therefore, was submitted after the 45-day appeal deadline that commenced with our March 18 response. You previously maintained that you did not receive OSC's initial transmittal of the March 18 response. As a matter of administrative discretion in this instance, rather than deny your appeal as untimely, OSC has opened this administrative FOIA appeal.

U.S. Office of Special Counsel

(b)(6)

November 24, 2015

Page 2 of 2

I have reviewed your initial request, OSC's response, and your appeal. After carefully considering your appeal, I am affirming OSC's response to your FOIA request. After searching for and locating the responsive records, OSC reviewed them and made release determinations. OSC released to you 50 pages in full; 7 pages with partial redactions; and 1 page from which the text was withheld.

OSC withheld from 7 pages the names, initials, signatures, contact information, and other information relevant to the personal privacy interests of people other than you, pursuant to FOIA Exemption 7(C). That exemption protects law enforcement information, the disclosure of which could reasonably be expected to constitute an unwarranted invasion of personal privacy. *See* 5 U.S.C. § 552(b)(7)(C). Your request and appeal did not identify a public interest that would outweigh the personal privacy interests of those other people, nor is such a public interest apparent. Accordingly, I have determined that OSC properly withheld this information pursuant to FOIA Exemption 7(C).

Finally, OSC withheld the text from 1 page pursuant to FOIA Exemption 5. That exemption protects from disclosure information that is normally protected from discovery in civil litigation based on one or more legal privileges (including, in this instance, the attorney work product and deliberative process privileges). *See* 5 U.S.C. § 552(b)(5). The redacted text, which was prepared in anticipation of litigation, discusses considerations to be addressed during OSC's formulation of a final decision on the complaint that you filed in (b)(6). In your appeal, you stated that you could not sue OSC over its final decision, and therefore you challenged OSC's withholding of this information. Such a factor, however, is not dispositive, especially since your complaint alleged improper actions by others. Accordingly, I have determined that OSC properly withheld this information pursuant to FOIA Exemption 5.

You may seek judicial review of this decision on your appeal by filing a complaint in an appropriate United States district court. *See* 5 U.S.C. § 552(a)(4)(B).

Sincerely,

(b)(6)

Lisa Terry
General Counsel



U.S. OFFICE OF SPECIAL COUNSEL
1730 M Street, N.W., Suite 218
Washington, DC 20036-4505
(202) 254-3600

September 29, 2017

Mr. Jeremy Singer-Vine
BuzzFeed News
111 E. 18th St. 11th Floor
New York, NY 10003

Via Email: jeremy.singer-vine@buzzfeed.com

RE: Freedom of Information Act/Privacy Act Appeal (AP-16-0003)

Dear Mr. Singer-Vine:

I am writing in response to your June 20, 2016 email to the U.S. Office of Special Counsel (OSC), in which you appeal OSC's response to your Freedom of Information Act (FOIA) request F0-16-0027.

After reviewing your request, OSC's response, and your appeal, I grant your appeal. Your FOIA request will be reprocessed.

If you have any questions regarding your FOIA request, or require dispute resolution services, please feel free to contact Dawn Kral, FOIA Public Liaison, at 202-804-7067 or via email at dkral@osc.gov.¹

Sincerely,

/s/

Susan K. Ullman
General Counsel

¹ Additionally, you may contact the Office of Government Information Services (OGIS) at the National Archives and Records Administration to inquire about the FOIA mediation services they offer. The contact information for OGIS is 8601 Adelphi Road, Room 2510, College Park, MD 20740-6001; ogis@nara.gov, 202-741-5770, 1-877-684-6448 (Toll Free), 202-741-5769 (Fax).



U.S. OFFICE OF SPECIAL COUNSEL
1730 M Street, N.W., Suite 218
Washington, D.C. 20036-4505
202-804-7000

April 3, 2018

(b)(6)

Via email to: (b)(6)

RE: Freedom of Information Act Appeal (#AF-18-0005)

Dear (b)(6)

This letter responds to your March 27, 2018 email to the U.S. Office of Special Counsel (OSC) appealing OSC's March 26, 2018 response to your March 26, 2018 Freedom of Information Act (FOIA) request (FO-18-0057). Your request sought any records related to (b)(6)

I have reviewed the relevant materials, including your request, OSC's search, OSC's response, and your appeal. After careful consideration and after double-checking the search of the relevant database, I affirm OSC's response and deny your appeal.

You may seek judicial review of this decision by filing a complaint in an appropriate United States district court. *See* 5 U.S.C. § 552(a)(4)(B). If you have any questions regarding this request, please feel free to contact Kenneth Hendricks, FOIA Public Liaison, at 202-804-7000 or via email at khendricks@osc.gov.¹

Sincerely,

/s/

Susan K. Ullman
General Counsel

¹ Additionally, you may contact the Office of Government Information Services (OGIS) at the National Archives and Records Administration to inquire about the FOIA mediation services they offer. The contact information for OGIS is: 8601 Adelphi Road, Room 2510, College Park, MD 20740-6001; ogis@nara.gov, 202-741-5770, 1-877-684-6448 (Toll Free), 202-741-5769 (Fax).



U.S. OFFICE OF SPECIAL COUNSEL
1730 M Street, N.W., Suite 218
Washington, DC 20036-4505
(202) 254-3600

December 17, 2015

(b)(6)

(b)(6)

Via email: (b)(6)

Re: Freedom of Information Act Appeal (#AP-16-0006)

Dear (b)(6):

I am writing in response to your email to the U.S. Office of Special Counsel (OSC), dated November 24, 2015, in which you appealed OSC's response to your request (FP-16-0016) under the Freedom of Information Act (FOIA), 5 U.S.C. § 552. I have reviewed your initial request, OSC's response, and your appeal. As discussed below, I affirm OSC's response to your FOIA request.

You sent OSC an email on November 10, 2015, in which you requested a copy of OSC case file (b)(6). OSC consulted with your attorney, who gave us permission to contact you directly. The FOIA Officer subsequently spoke to you by phone. You then sent an email to him affirming that you were requesting only the complaint from that file. Accordingly, the FOIA Officer sent you an email on November 20, 2015, that contained a letter and a release in full of the complaint form under the FOIA. That letter also explained that your request was being denied under the Privacy Act, although that determination did not change the fact that the complaint was being released in full. You appealed the decision in an email dated November 24, 2015. After an email conversation with an OSC attorney regarding the appeal, you affirmed your desire to appeal in an email on December 1, 2015.

After carefully considering your appeal, I have affirmed in full the decision to withhold the five-page document pursuant to the Privacy Act. OSC has exempted its law enforcement records from release under the Privacy Act. *See* 5 C.F.R. § 1830.6. Thus, the decision to withhold under the Privacy Act was the correct one and I uphold that determination. OSC was able to release the same five pages in full pursuant to the Freedom of Information Act, so there is nothing further to release.

In your email conversation with an OSC attorney, you noted that you were no longer under the same time constraints and would like additional records from OSC case file (b)(6). It is my understanding that a new FOIA request has been opened to address that request and has been given tracking number # FP-16-0022.

U.S. Office of Special Counsel

(b)(6)

Page 2

You may seek judicial review of this decision by filing a complaint in an appropriate United States district court. *See* 5 U.S.C. § 552(a)(4)(B). The 2007 FOIA amendments created the Office of Government Information Services (OGIS) to offer mediation services to resolve disputes between FOIA requesters and federal agencies as a non-exclusive alternative to litigation. Using OGIS services does not affect your right to pursue litigation. You may reach OGIS via email (ogis@nara.gov), phone (202-741-5770), fax (202-741-5769), or the web (ogis.archives.gov).

Sincerely,

/s/

Lisa V. Terry
General Counsel



U.S. OFFICE OF SPECIAL COUNSEL
1730 M Street, N.W., Suite 218
Washington, DC 20036-4505
(202) 254-3600

August 24, 2017

(b)(6)

Via email to: (b)(6)

RE: Freedom of Information Act Appeal (AF-17-0005)

Dear (b)(6)

This letter responds to your May 19, 2017 email to the U.S. Office of Special Counsel (OSC) appealing OSC's May 2, 2017 response to your November 14, 2012 Freedom of Information Act (FOIA) request (No. FP-13-1223) seeking all records from case file (b)(6). We released to you approximately 1,074 pages in full, another approximately 269 released in part, and withheld 70 pages in full. We referred another 133 pages to two originating agencies for their processing and direct response to you.

I have reviewed the relevant materials, including your FOIA request, OSC's search, OSC's response, and your appeal. After careful consideration, I have determined that the FOIA Unit properly withheld certain records in part and in full pursuant to appropriate exemptions. Accordingly, I affirm OSC's response and deny your appeal.

You may seek judicial review of this decision by filing a complaint in an appropriate United States district court. *See* 5 U.S.C. § 552(a)(4)(B). If you have any questions regarding this request, or require dispute resolution services, please feel free to contact Dawn Kral, FOIA Public Liaison, at 202-254-3636 or via email at dkral@osc.gov.¹

Sincerely,

/s/

Susan K. Ullman
General Counsel

¹ Additionally, you may contact the Office of Government Information Services (OGIS) at the National Archives and Records Administration to inquire about the FOIA mediation services they offer. Using OGIS services does not affect your right to pursue litigation. The contact information for OGIS is: 8601 Adelphi Road, Room 2510, College Park, MD 20740-6001; ogis@nara.gov, 202-741-5770, 1-877-684-6448 (Toll Free), 202-741-5769 (Fax).

From:

(b)(6)

To:

Appeal. Foia

Subject:

FOIA REQUEST OF (b)(6)

(b)(6)

Date:

Monday, February 5, 2018 11:38:06 AM

I would like to appeal the decision to deny my FOIA request of Nov 2017 . This request was for investigative notes, records, phone logs, OSC internal records as to their specific findings regarding my OSC case (b)(6) in which investigator (b)(6) was the lead investigator.

I sent prior proof of identity to your office as requested post my Nov 2017 FOIA REQUEST.

As I was the complainant, I do not understand why my FOIA request could be legally denied.

If I am misunderstanding your lettering which I believe your office is denying my FOIA request, I apologize. Please correct my confusion.

I believed it to be my FOIA RIGHT to request the details of MY OSC complaint investigation.

There most assuredly would be investigative notes, documents, logs as to the Approx six mos investigation my complaint initiated.

As with other FOIA documents I received from other agencies, I know the names of individuals will be blackened out. However the over all findings of the investigation would be intact.

If you believe I need to I can contact my congressman to help with my request.

Sincerely,

(b)(6)

From: (b)(6)
To: Appeal, Foia
Cc: (b)(6)
Subject: re: Tracking #FP18-0021
Date: Thursday, January 4, 2018 10:48:23 AM

Good morning

I am writing in regard to the above referenced track number. I am requesting ALL documentation affiliated with the cases affiliated with the reference number listed above be sent ro me at the email address listed as

(b)(6) and via the US postal service to the attention of (b)(6) (b)(6)
(b)(6).

Sincerely,

(b)(6)

Freedom of Information Act (FOIA) APPEAL

January 1, 2016

Ms. Lisa Terry, General Counsel
U.S. Office of Special Counsel
1730 M St, NW, Suite 218
Washington, DC 20036 foiaappeal@osc.gov

Subject: Appeal of Interim and Final OSC response to FOIA no. FO-14-0143

Dear Ms. Terry,

Per the relevant regulations, I appeal this OSC's interim and final FOIA response because I wish to further establish my ^{(b)(6)} as it applies to the Office of Special Counsel (OSC).¹

By my ^{(b)(6)} I specifically claim that because of decades-long OSC law-breaking, the employees of federal agencies cannot, as a rule and contrary to law, effectively make whistleblower disclosures; nor are they, as a rule and contrary to law, adequately protected from reprisal and other type of prohibited personnel practices (PPPs).

By law at 5 U.S.C. §552(a)(4)(F), OSC has singular responsibilities to enforce FOIA law, to deter "arbitrary and capricious withholding" of information requested of any federal agency via FOIA. Despite this - and consistent with my claims of OSC being a decades-long law-breaking fraud of a federal law enforcement agency - OSC appears to be engaged in "arbitrary and capricious" withholding of information requested in this FOIA request.

Specifically, there is no question that OSC, for approximately 25 years after the enactment of 5 U.S.C. §1213(g)(2) in 1989, continued its previous discretionary practice of informally referring to the involved agency inspector general some of whistleblower disclosures for which it did not make a positive substantial likelihood determination. This is in violation of the 1989 law, which requires, when OSC, at its discretion, refers a whistleblower disclosure for which it did not make a substantial likelihood determination, that OSC make it formally to the involved agency head.² About 2013-14, OSC ended this unlawful practice, according to its Annual Reports to Congress.

¹ See ^{(b)(6)} for extensive background information.

² OSC's Annual Reports to Congress, both before 1989 and for about 25 years afterward, describe how OSC made, at its discretion, some informal referrals of whistleblower disclosures for which it did not make a substantial likelihood determination, to the involved Agency Inspector General.

My FOIA request item 2, as modified, was for any information related to why OSC violated the law for about 25 years and why it then changed to comply with it. Undoubtedly, something changed in OSC in its interpretation and application of this law and my FOIA request was for records relevant to that change.

Additionally, by §552(a)(2)(B):

Each agency, in accordance with published rules, shall make available for public inspection and copying those statements of policy and interpretations which have been adopted by the agency and are not published in the Federal Register;

OSC seems to be lawbreaking by not having such “published rules” - as this seem to be precisely the information I seek about §1213(g)(1) and (2) via a FOIA request I made nearly two years ago, on February 5, 2014. Why does OSC not have such “published rules” and why I have I been unlawfully hindered in obtaining “statements of policy and interpretations that have been adopted” for §1213(g)(1) and (2)?

Additionally, by §552(b)

Any reasonably segregable portion of a record shall be provided to any person requesting such record after deletion of the portions which are exempt under this subsection. The amount of information deleted, and the exemption under which the deletion is made, shall be indicated on the released portion of the record, unless including that indication would harm an interest protected by the exemption in this subsection under which the deletion is made. If technically feasible, the amount of the information deleted, and the exemption under which the deletion is made, shall be indicated at the place in the record where such deletion is made.

Contrary to this, neither the interim response of September 29, 2015 nor the final response of December 22, 2015 states whether any information was withheld by any exemption. Given all the meetings Mr. Kral had with OSC attorneys in responding to this request, I suspect significant information was withheld via some claimed exemption. If nothing was withheld, the response should say so and it should be standard practice at OSC in responding to all FOIA requests to state whether any information was withheld based on some exemption.

On these bases, I appeal the interim and final responses to this FOIA request.

Respectfully,

/s/

(b)(6)

(b)(6)

(b)(6)

From: [Kerner, Henry](#)
To: [Hendricks, Kenneth](#)
Cc: [Leavitt, Tristan](#)
Subject: Fw: Administrative appeal
Date: Sunday, December 17, 2017 9:38:08 PM

Hi Ken,

Please see below.

Thanks,
Henry

From: John J. Coleman (b)(6)
Sent: Sunday, December 17, 2017 8:24 PM
To: Kerner, Henry
Subject: Administrative appeal

December 17, 2017

Henry Kerner
Special Counsel
US Office of Special Counsel
Washington, D.C.

Re: Freedom of Information Act Request (#FO-17-0094)

My FOIA request was acknowledged by email as received by the Office of Special Counsel (OSC) on September 5, 2017. It is now far beyond the statutory time frame for a response by your office either to furnish the requested information or deny it based on the exemption authority in the FOIA statute. FOIA case law suggests that your failure to respond to my request within the statutory time limit is a constructive denial of that request. Accordingly, this constitutes an administrative appeal of that denial.

Please review this matter and respond to this administrative appeal within the statutory time frame of 20 business days.

Thank you for your prompt consideration of this appeal.

Sincerely,

John J. Coleman, PhD
(b)(6)

(b)(6)

From: (b)(6)
To: Appeal, Foia
Cc: (b)(6)
Subject: APPEAL TO FREEDOM OF INFORMATION ACT AND/OR PRIVACY ACT REQUEST (#FP-16-0084)
Date: Monday, April 10, 2017 12:35:57 PM
Attachments: OSC - APPEAL TO OSC LETTER OF JAN 10-2017-1227.doc
Importance: High

(b)(6)
(b)(6)
Cell: (b)(6)
Fax: (b)(6)
Email: (b)(6)

April 10, 2017

**OSC's General Counsel
U.S. Office of Special Counsel
Email: FOIAappeal@osc.gov
Telephone: 202-254-3600 - Fax: 202-653-5151
1730 M Street, N.W., Suite 218
Washington, DC 20036-4505**

**RE: APPEAL TO FREEDOM OF INFORMATION ACT
AND/OR PRIVACY ACT REQUEST (#FP-16-0084)**

This letter is my timely Appeal to your interim response letter date January 10, 2017, in which basically the OSC denied my request for more than 99 percent of all documents retained by the OSC on my whistleblower cases that are now pending before Administrative Judge Sherry A. Zamora at the Washington Regional Office of the Merit System Protection Board. Also, since your interim reply, I have not received any further release of any documentation or material.

Please provide me without any further delay all the material requested to be transferred to the Administrative Judge Sherry A. Zamora at the MSPB, and to the TSA Counsel. Please notice that time is of the essence and "***Justice delayed is justice denied***". Also please notice that none of the documentation requested pertains to investigatory material compiled for law enforcement purposes, as is erroneously stated in your refusal letter.

Furthermore, the documents that I am requesting are not "classified information" as per Executive Order 12356 and Information Security Oversight Office (ISOO) Directive No. 1. However, some of the documents may contain Sensitive Security Information (SSI) those documents are to be seeing by the Administrative Law Judge of the MSPB, and the defense attorney for the TSA, which had the right to see all the documents involved in this matter. So, please delivery all the documentation requested without any further delay. Your prompt cooperation is much appreciated. Thank you.

Respectfully,

(b)(6)



Virus-free. www.avast.com

From: 32521-90465436@requests.muckrock.com
To: Appeal, Foia
Subject: FREEDOM OF INFORMATION ACT APPEAL
Date: Monday, February 27, 2017 5:03:21 PM

February 27, 2017
Office of Special Counsel
FOIA Officer
U.S. Office of Special Counsel
1730 M St., N.W. (Suite 218)
Washington, DC 20036-4505

This is a follow up to a previous request:

Hello,

I am writing to appeal the Office of Special Counsel's decision to reject my request for a Dec. 15, 2015 letter regarding (b)(6)

On Feb. 15, the OSC responded to my request, citing exemptions 6 and 7(c).

"Without written consent, proof of death, official acknowledgment of an investigation, or an overriding public interest, confirming or denying the existence of Whistleblower Disclosure records concerning an individual would constitute a clearly unwarranted invasion of personal privacy, or could reasonably be expected to constitute an unwarranted invasion of personal privacy," the agency wrote.

This argument is mistaken in several respects. To begin with, I have no problem with OSC's desire to protect any whistleblowers whose names may be included in the Dec. 15, 2014 letter. But it is easy to do this by redacting those names and releasing the rest of the document. Federal law states that an agency shall "consider whether partial disclosure of information is possible whenever the agency determines that a full disclosure of a requested record is not possible; and ... take reasonable steps necessary to segregate and release nonexempt information" (FOIA Improvement Act of 2016). OSC has clearly not taken the very reasonable step of redacting names while releasing the rest of the document.

Secondly, OSC writes that disclosure of the document would be appropriate if there were "official acknowledgement of an investigation" or "an overriding public interest." On Dec. 16, 2016, the VA Office of the Inspector General responded to a request I made for files regarding its investigation into (b)(6). In its letter, the VA OIG wrote "some of the records you requested are part of an ongoing law enforcement investigation." That clearly constitutes official acknowledgement of an investigation. The investigation is also common knowledge at the (b)(6) Veterans Hospital, where (b)(6) (b)(6) (b)(6) Given the nature of the crimes allegedly committed by the (b)(6) -- (b)(6) (b)(6) -- and the fact that (b)(6) remains an employ of the same VA hospital (b)(6) is under investigation for (b)(6) I think there is an obvious and overriding public interest in the disclosure of the OSC's Dec. 15, 2014 letter.

I therefore ask you to overrule the OSC's decision to withhold this public record and instruct the agency to send it to me as soon as possible. Thank you very much for your time and consideration.

Sincerely,
Todd Feathers

On Feb. 15, 2017:
Dear Mr. Feathers,

Please find a response letter attached.

Christopher Kurt
FOIA-PA Officer
U.S. Office of Special Counsel
Ph (202) 254-3716
Fax (202) 254-3711

On Jan. 26, 2017:
To Whom It May Concern:

This is a request under the Freedom of Information Act. I hereby request the following records:

1) A letter, dated Dec. 15, 2014, sent by the Office of Special Counsel to the President of the United States, and other agencies, regarding (b)(6), employees of the (b)(6) Veterans Hospital in (b)(6) MA.

I ask that all fees be waived as I am a journalist employed by the Lowell Sun and I intend to use the requested records to publish articles in the public interest and not for any commercial purposes.

Thank you in advance for your anticipated cooperation in this matter. I look forward to receiving your response to this request within 20 business days, as the statute requires.

Sincerely,

Todd Feathers

Filed via MuckRock.com
E-mail (Preferred): 32521-90465436@requests.muckrock.com

For mailed responses, please address (see note):
MuckRock
DEPT MR 32521
411A Highland Ave
Somerville, MA 02144-2516

PLEASE NOTE: This request is not filed by a MuckRock staff member, but is being sent

through MuckRock by the above in order to better track, share, and manage public records requests. Also note that improperly addressed (i.e., with the requester's name rather than "MuckRock News" and the department number) requests might be returned as undeliverable.

(b)(6)

FAX COVER SHEET

TO: FOIA Request
US Office of Special Counsel

NUMBER: (202) 254-3711

FROM: (b)(6)

DATE: January 29, 2018

Re: (b)(6) (b)(6)

No. Pages: 4 including cover

CC: _____

Please see the attached FOIA request.

Thank you.

(b)(6)

(b)(6)

(b)(6)

(b)(6)

January 29, 2018

Office of General Counsel
U.S. Office of Special Counsel
1730 M Street, N.W. (Suite 218)
Washington, DC 20036-4505

Re: (b)(6), Appeal of Denial of FOIA Request, OSC Case OSC
File No.: (b)(6)

To Whom It May Concern:

Please see attached for the FOIA denial on this case, relating to the above mentioned OSC number. Kindly consider this letter our appeal.

Sincerely,

(b)(6)

(b)(6)

(b)(6)

(b)(6)

(b)(6)

(b)(6)

From: Hendrickson, David <(b)(6)@osc.gov>
Sent: Thursday, January 25, 2018 12:03 PM
To: (b)(6)
Subject: Re: OSC File No. (b)(6)

Follow Up Flag: Follow up
Flag Status: Completed

Dear (b)(6)

I regret to inform you that your request for this case file has been denied. The U.S. Office of Special Counsel is an investigative and prosecutorial agency. As such, the contents of our case files are usually subject to withholding under the Freedom of Information Act (FOIA). Most case file records are withheld, in whole or in part, on the basis of four of the FOIA's nine exemptions. For more details, please consult our FOIA page:

<https://osc.gov/Pages/FOIA-Resources.aspx>

Sincerely,

David Hendrickson
Investigator
U.S. Office of Special Counsel
1730 M Street N.W.
Suite 218
Washington, DC 20036-4505

t: (202) 804-(b)(6)

NOTICE: This message and any attachments may contain information that is sensitive, confidential, or legally privileged. If you are not the intended recipient, please immediately notify the sender and delete this email from your system; you should not copy, use, or disclose its contents. Thank you for your cooperation.

From: (b)(6)
Sent: Thursday, January 25, 2018 9:13:44 AM
To: Hendrickson, David
Subject: RE: OSC File No. (b)(6)

Mr. Henderickson,

I'd like a copy of this entire OSC file sent to me.

(b)(6)

(b)(6) <mailto:(b)(6)>
www.(b)(6).com<http://www.(b)(6).com/>

Send files to our firm using the below link

Click here<[https://\(b\)\(6\).sharefile.com/r/r35460474edf4f97a](https://(b)(6).sharefile.com/r/r35460474edf4f97a)> to upload files.

We invite you to join us on Facebook, [https://www.facebook.com/\(b\)\(6\)](https://www.facebook.com/(b)(6))

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If the recipient of this email is a defense lawyer or an individual involved in an adversarial relationship with one of my firm's clients, any discussion of this email that relates to offers or counteroffers of settlement, or even emails which don't specify a settlement figure, but discuss reasons for settlement, are not discoverable, evidentiary material or to be utilized in any motion practice aside of determining if necessary, whether the parties reached settlement.

If the recipient of this email is someone other than a Judge and is sending the law firm notice of some artificial deadline, for which law firm must respond or react by a date certain, please be advised that if the notice provided is less than 16 days from the expected due date, this law firm does not accept such notice by email and sender is required to send to law firm written correspondence by U.S. Mail.

From: Hendrickson, David [mailto:(b)(6)]@osc.gov]

Sent: Tuesday, January 23, 2018 10:35 AM

To: (b)(6)

Subject: OSC File No.: (b)(6)

Dear (b)(6)

Please accept the attachment on behalf of your client, (b)(6)

Sincerely,

David Hendrickson
Investigator
U.S. Office of Special Counsel
1730 M Street N.W.
Suite 218
Washington, DC 20036-4505

t: (202) 804-(b)(6)

NOTICE: This message and any attachments may contain information that is sensitive, confidential, or legally privileged. If you are not the intended recipient, please immediately notify the sender and delete this email from your system; you should not copy, use, or disclose its contents. Thank you for your cooperation.

Kelly Fisher
County Reporter
Casa Grande Valley Newspapers
353 W. Central Ave.
Coolidge, AZ 85128

(b)(6)

July 3, 2017

General Counsel
Office of Special Counsel
1730 M Street, NW
Suite 218
Washington, DC 20036-4505
(202) 254-3716
FOIAappeal@osc.gov

FOIA APPEAL

Fee waiver requested

Dear OSC General Counsel:

This is an appeal under the Freedom of Information Act.

On May 31, I requested under the federal Freedom of Information Act, 5 U.S.C. § 552, a copy of a completed complaint form and related documentation pertaining to case file #(b)(6). The request number is #FO-17-0076. I received a response signed by Tarik S. Ndongo, dated June 14. The response states that the “OSC must decline to confirm or deny whether the requested records exist,” stating that there is apparently no written consent, proof of death, official acknowledgment of an investigation or an overriding public interest. The letter claims disclosure could constitute an unwarranted invasion of privacy, citing 5 U.S.C. § 552(b)(7)(C).

I appeal the decision to decline confirmation or denial of the documentation’s existence. The confirmation or denial of the documentation’s existence — as well as the the eventual disclosure of it — which I requested with a specific case file number is in the public interest because it will contribute significantly to the public’s understanding of government operations (specifically of the Hatch Act and violations of it), and it is not in my commercial interest to obtain the information. Furthermore, the information pertains to a Congressional candidate who has also campaigned for sheriff and worked for the county sheriff’s office in the county where my readership primarily lies. The public has a right to know of any government investigation taking place regarding a candidate for a high public office.

I also request a waiver of fees for any documentation which the OSC may provide, as I am part of the news media.

Thank you very much for your time and consideration of this appeal.

Kelly Fisher
County Reporter
Casa Grande Valley Newspapers
353 W. Central Ave.
Coolidge, AZ 85128

(b)(6)

From: kfisher@pinalcentral.com
To: [Appeal_Foia](#)
Subject: FOIA Appeal
Date: Monday, July 3, 2017 6:34:10 PM
Attachments: Fisher_FOIAAppeal_OSC.pdf

To whom it may concern:

Please find the attached appeal to FOIA request #FO-17-0076. If there is anything else I can do for you, please let me know.

Thanks,
Kelly Fisher^[L]_[SEP]
County Reporter^[L]_[SEP]
Casa Grande Valley Newspapers^[L]_[SEP]
353 W. Central Ave.^[L]_[SEP]
Coolidge, AZ 85128^[L]_[SEP]

(b)(6)

Ndongo, Tarik

From: (b)(6)
Sent: Wednesday, November 4, 2015 10:05 AM
To: Appeal, Foia
Subject: Appeal

This email is an appeal and dispute to the Office of Special Counsel's decision to deny my request to update my file in their office. This request included a SF181 Ethnicity and Racial classification form. I received a response from Dawn Kral on August 22, 2015. Here's the email:

Kral, Dawn <dkral@osc.gov>

Aug 21

to me

Dear (b)(6)

Good day to you! This is regarding your inquiry to the U.S. Office of Special Counsel (OSC) via our on-line Public Access Link (PAL), in which you attached a copy of a Standard Form 181 and asked that we add the form to "all government records" concerning yourself. You stated that the form corrects certain information about yourself.

OSC does not have access to "all government records"; rather, we only have access to our own records. If you believe OSC has records about you, can you tell me what type(s) of records we may have? Also, we must verify your identity if you would like us to conduct a search for records about yourself. If you would like us to conduct this search, we ask that you provide us with a copy of your ID. A driver's license, work ID or similar would be just fine. The ID can be copied/scanned and attached to a reply to this message, or you may FAX it to my attention at (202) 254-3711.

If we do not receive your reply or copy of ID by close of business next Friday, August 28, we will construe that to mean that you do not wish to proceed with this request.

Thank you for your cooperation in this matter! If you have any questions, please do not hesitate to call or E-Mail me!

With kind regards,

Dawn R. Kral

FOIA Public Liaison

U.S. Office of Special Counsel

Washington, D.C.

(202) 254-3636

dkral@osc.gov

I sent as a reply a copy of (b)(6) ID and a copy of a bank card to satisfy (b)(6) request. So as a courtesy, please update your emails and files and grant my request for my file to be updated.

Thank you

(b)(6)

Kral, Dawn

From: (b)(6)
Sent: Friday, May 29, 2015 11:53 AM
To: Appeal, Foia
Cc: Kral, Dawn
Subject: Fw: FOIA/PA Request #FP-15-0057
Attachments: (b)(6) Final Response.pdf; FP-15-0057 (responsive documents).pdf

Good Morning,

I am appealing the decision not to turn over the conversation to me for my mspb case against (b)(6) and Social Security. The conversation show (b)(6) is a liar and since the conversation concerns my prior OSC case and if they were protected by law why would Barbara Wheeler disclose them to me. I also need this for my current OSC case.

Thank you

(b)(6)

Happy Connecting. Sent from my Sprint Phone.

----- Original message-----

From: Kral, Dawn
Date: Thu, May 28, 2015 2:07 PM
To: (b)(6)
Subject: FOIA/PA Request #FP-15-0057

Dear (b)(6)

Attached is OSC's response to your above-subject Freedom of Information Act (FOIA)/Privacy Act (PA) request. If you have any questions, please do not hesitate to contact me!

With kind regards,

Dawn R. Kral
FOIA Public Liaison
U.S. Office of Special Counsel
Washington, D.C.
(202) 254-3636
dkral@osc.gov

May 4, 2017

Via Electronic Mail and Hand Delivery

Susan K. Ullman
U.S. Office of Special Counsel
Office of General Counsel
1730 M Street NW
Suite 218
Washington, D.C. 20036

Re: FOIA Appeal, Request No. FO-16-0048

Dear Ms. Ullman:

Pursuant to 5 C.F.R. § 1820.6(a), we write to appeal the Office of Special Counsel's ("OSC") February 3, 2017 adverse determination in connection with the above-referenced Freedom of Information Act ("FOIA") Request Number.

OSC cites to FOIA Exemption 5 U.S.C. § 552b(7)(C) as grounds for declining to confirm or deny whether the requested records exist, let alone produce responsive records. That exemption does not apply to the records that are the subject of (b)(6)'s request for the reasons outlined below. We therefore respectfully request that OSC produce all records responsive to (b)(6)'s request.

Legal Standard.

The government bears the burden to justify withholding under FOIA Exemption b(7)(C), which is intended to protect privacy interests arising out of law enforcement proceedings. *O'Keefe v. U.S. Dep't of Def.*, 463 F. Supp. 2d 317, 323 (E.D.N.Y. 2006); *Iowa Citizens for Cmty. Improvement v. U.S. Dep't of Agric.*, 256 F. Supp. 2d 946, 949 (S.D. Iowa 2002). If a party has more than a *de minimis* privacy interest in the material at issue, then a court will weigh the privacy interest against the public interest in disclosure. *Rosenfeld v. U.S. Dep't of Justice*, No. C-07-3240 EMC, 2012 WL 710186, at *2 (N.D. Cal. Mar. 5, 2012).

Exemption b(7)(C) Does Not Apply to the Requested Records.

OSC's unsupported assertion that Exemption b(7)(C) protects the requested records, without more, falls short. OSC still bears the burden of establishing a protected privacy interest in the records, and the absence of an overriding public interest. OSC cannot meet this burden as no privacy interest exists to protect, and the public interest in disclosure outweighs any privacy interest.

There is no privacy interest in the requested materials. Where the government alleges that Exemption b(7)(C) applies, it must meet its burden of showing a privacy interest in the requested materials. No such privacy interest exists.

(b)(6) FOIA request seeks records pertaining to multiple OSC investigations, including a 2012 investigation and report bearing on (b)(6) conduct as a government employee and another investigation into complaints filed by (b)(6) and rejected by OSC in (b)(6) 2016. The FOIA request explains that (b)(6) and (b)(6) have waived any privacy interest in the matters at issue in the requested materials. Both individuals have spoken and written publicly about the fact of the OSC investigations and the circumstances relating to these investigations. And they continue to publicly comment on the same issues, keeping themselves in the public light.

For example, as reported by (b)(6) 2016, (b)(6) alleged, in a complaint filed with the Merit Systems Protection Board around (b)(6) 2016, that (b)(6) former employer punished (b)(6) for disclosing “(b)(6)”¹ The same article reports that the Office of Special Counsel “(b)(6)” and that (b)(6) complaint relied on a sworn affidavit submitted by (b)(6) that spoke to the same allegations of adverse employment action. A (b)(6) article published the following day corroborates that “(b)(6)” in (b)(6) 2016 regarding (b)(6) complaints, and that the “(b)(6)”² The fact of OSC’s investigation into (b)(6), then, is public knowledge due to (b)(6) self-disclosure.

So too is OSC’s investigation into (b)(6). The same (b)(6) article reports, in connection with (b)(6) publicly-disclosed support of (b)(6) MSPB complaint, that “(b)(6)”

(b)(6) and (b)(6) public comments go far beyond disclosing the fact of the OSC’s investigations. They disclose, in detail, the circumstances giving rise to the investigations. The (b)(6) 2016 (b)(6) article reported that (b)(6) complaint alleged that “(b)(6)”
(b)(6)³ The same article goes on:

1 (b)(6)
(b)(6)

2 (b)(6)
(b)(6)

³ *Id.*

(b)(6)

(b)(6)

Similarly, (b)(6) contributed to a (b)(6) article published on (b)(6) 2016⁴ in which (b)(6) (b)(6), about the circumstances of (b)(6) employment and investigations. The testimony, which (b)(6) provided during “(b)(6)” with reporter (b)(6) tracks the history of (b)(6) government employment, and the alleged issues that “(b)(6)”

On (b)(6) 2016, (b)(6) appeared on a (b)(6) to speak to the same issues. A publicly available transcripts reflects the “(b)(6)” that (b)(6) gave to reporter (b)(6) to discuss (b)(6) allegations that (b)(6) was “(b)(6)” by (b)(6) employer in retaliation for whistleblowing. The same transcript notes that “(b)(6)” (b)(6) (b)(6) (emphasis added). The transcript itself recounts (b)(6) public statements on the broadcast to reporter (b)(6) that “(b)(6)” (b)(6) and much more. Though it almost goes without saying, it bears emphasis that there is nothing inadvertent about the way these very specific allegations have been injected into public discourse. Nor does there appear to be any end in sight, as (b)(6) has now accepted a position with the (b)(6)

4 (b)(6)

(b)(6)

5 Interview of (b)(6)

(b)(6)

(b)(6) in which (b)(6) “(b)(6)
 (b)(6)
 (b)(6).”% (The same publicly available biography references (b)(6) employment as a senior (b)(6) and states, interestingly, “(b)(6)
 (b)(6)”) This is not how private people treat private information.

“[A] person’s privacy interest is lessened, if not entirely eliminated, when the person who is identified by or is the subject of the information maintained by the agency has commented publicly about such information.” *Iowa Citizens for Cmty. Improvement*, 256 F. Supp. 2d at 955 (also noting that official wrongdoing deprives an individual of full privacy protections under FOIA exceptions); *see also Rosenfeld*, 2012 WL 710186, at *6 (where the subject of a FOIA request “has placed himself in the public light, writing and speaking about his life experiences,” privacy interest is diminished in matters made part of the public record). Here too, (b)(6) and (b)(6) eliminated any privacy interest they might otherwise have claimed by publicly making very specific allegations about the agency employment decisions that the OSC investigations impact. Because they publicized the matter so extensively—albeit with a false version of the story—there is no remaining privacy interest to protect.

Indeed, (b)(6) has a diminished expectation of privacy anyway, arising from (b)(6) status as a senior government official. Because public figure status lessens one’s privacy interest, (b)(6) senior executive status negates any expectation of privacy relating to (b)(6) employment in the Senior Executive Service. *Rosenfeld*, 2012 WL 710186, at *5 (“in most instances a public official’s or public figure’s privacy interests will be outweighed by the public interest in disclosure”). So even if (b)(6) had not commented publicly about the various adverse employment actions (b)(6) earned for (b)(6) during government employment, the fact that the OSC investigations relate to (b)(6) employment with the SES means that (b)(6) had no privacy interest in the underlying events in the first place.

(b)(6), though not an SES, is still a GS-15 who holds (b)(6) out as a leader and is currently employed by the (b)(6). A (b)(6) 2014, (b)(6) article indicates that (b)(6) is the “(b)(6) (b)(6),” giving all of these issues continuing relevance for (b)(6) as well.⁷ The substance of (b)(6) interview for this article clearly indicates (b)(6) is a public figure. While “insistence on anonymity negates any finding of public figure status,” *Marzen v. Dep’t of Health & Human Servs.*, 825 F.2d 1148, 1152 (7th Cir.

6 (b)(6)
 (b)(6)

7 (b)(6)
 (b)(6)
 (b)(6)

Exemption b(7)(C) is intended to protect against the possibility of an “unwarranted invasion of personal privacy” caused by disclosure of “records compiled for law enforcement purposes.” *Iowa Citizens for Cmty. Improvement*, 256 F. Supp. 2d at 950. Because [REDACTED] and [REDACTED] chose to publicize their version of their government tenure and the fact of the OSC investigations, this animating purpose is absent here. Disclosure of the requested records cannot protect against unwarranted invasion of personal privacy because the individuals at issue have already exposed the fact of the OSC’s investigations and the circumstances giving rise to the investigative records. Disclosure, then, would merely set the record straight for the public’s benefit.

The core purpose of FOIA is “to open agency action to the light of public scrutiny, to inform the citizenry about what their government is up to.” *Rosenfeld*, 2012 WL 710186, at *6 (quoting *U.S. Dep’t of Justice v. Reporters Comm. for Freedom of the Press*, 489 U.S. 749, 771 (1989)); see also *N.Y. Times Co. v. U.S. Dep’t of Homeland Sec.*, 959 F. Supp. 2d 449, 454 (S.D.N.Y. 2013); *Union Leader Corp. v. U.S. Dep’t of Homeland Sec.*, 749 F.3d 45, 49 (1st Cir. 2014). FOIA was “enacted to facilitate public access to Government documents.” *Union Leader Corp.*, 749 F.3d at 49 (quoting *U.S. Dep’t of State v. Ray*, 502 U.S. 164, 173 (1991)). It is not a screen to conceal wrongdoing.

Here, disclosure serves the public interest in understanding why and how OSC conducted its investigations – what OSC was “up to.” [REDACTED] and [REDACTED] have used self-serving half-truths (or worse) to create and sustain a false and misleading narrative about their service in government. Worse, their public statements do not merely discuss the circumstances of their own employment disputes; they also target [REDACTED] and others. They falsely claim, for example, that [REDACTED] “[REDACTED]
[REDACTED].”⁸ The public is entitled to know, as [REDACTED] knows, that such statements are false. FOIA is intended to promote *greater* disclosure of information about our government; it is not supposed to create an artificial information vacuum in which

8 (b)(6)

outright lies can persist indefinitely while the facts that refute them lie locked away in government files.

Disclosure of the requested records will reveal the truth about OSC's investigations and findings. Because the requested records would "contribut[e] significantly to public understanding of the operations or activities of the government," disclosure is more than warranted. It is required. *Iowa Citizens for Cmty. Improvement*, 256 F. Supp. 2d at 951 (quoting *U.S. Dep't of Defense v. Fed. Labor Relations Auth.*, 510 U.S. 487, 495 (1994)). Presumably (b)(6), who recently accepted the "(b)(6)" in recognition of (b)(6) (b)(6) within the (b)(6) 9 would not want it any other way.

Because there is no privacy interest in the existence or substance of the requested records, and because any privacy interest is outweighed by the public interest in disclosure, OSC cannot withhold responsive records based on Exemption b(7)(C).

(b)(6) is Entitled to Understand the Basis for OSC's Failures to Disclose.

(b)(6) is entitled to an explanation justifying OSC's refusal to identify, let alone produce, responsive documents. The burden "remains with the agency when it . . . seeks to withhold an entire document." *Union Leader Corp.*, 749 F.3d at 50 (quoting *U.S. Dep't of State v. Ray*, 502 U.S. 164, 173 (1991)).

The justification (such as it is) provided in OSC's February 3 letter wholly fails to satisfy that standard. The letter merely states that Exemption b(7)(C) applies, without more. But "the burden which the FOIA specifically places on the Government to show that the information withheld is exempt from disclosure cannot be satisfied by the sweeping and conclusory citation of an exemption." *Akin, Gump, Strauss, Hauer & Feld, L.L.P. v. U.S. Dep't of Justice*, 503 F. Supp. 2d 373, 379 (D.D.C. 2007) (quoting *Mead Data Cent., Inc. v. Dep't of Air Force*, 566 F.2d 242, 251 (D.C. Cir. 1977)). And for all the reasons outlined above, this is not a case where a so-called "Glomar response" is appropriate. *See Am. Civil Liberties Union v. C.I.A.*, 710 F.3d 422, 426 (D.C. Cir. 2013) ("Glomar responses are an exception to the general rule that agencies must acknowledge the existence of information responsive to a FOIA request and provide specific, non-conclusory justifications for withholding that information . . . they are permitted only when confirming or denying the existence of records would itself cause harm cognizable under an FOIA exception.") (internal citation omitted). OSC cannot plausibly refuse to confirm or deny whether the requested investigative records exist where the subjects of the investigations have publicly commented on their existence.

(b)(6) maintains that the cited exemption does not apply to the requested records, and (b)(6) requests production of an unredacted set of responsive documents. In the event that OSC is unwilling to produce the documents, (b)(6) requests, at minimum, a Vaughn index. The index should include, for each item of withheld information, a detailed description of the information and an explanation of how disclosure would damage the interest in the statutory exemption allegedly applicable. *See Akin, Gump, Strauss, Hauer & Feld, L.L.P.*, 503 F. Supp. 2d at 379.

* * * *

Thank you for your time and consideration. We look forward to receiving your reply within the 20 day timeframe set forth by 5 C.F.R. § 1820.6(c). Please do not hesitate to contact us if you have any questions.

Sincerely,

(b)(6)

(b)(6)

Stone, Pamela

From: Richard Gutman (b)(6)
Sent: Wednesday, November 25, 2015 11:43 AM
To: Appeal, Foia
Cc: John Paff
Subject: FOIA Appeal, FO-16-0009
Attachments: Appeal.pdf

Please see attachment.

Richard Gutman 9 Prescott Ave Montclair, NJ 07042-5029 (b)(6) (voice
& fax)

RICHARD GUTMAN, P. C.

ATTORNEY AT LAW

9 PRESCOTT AVENUE

MONTCLAIR, NEW JERSEY 07042-5029

TELEPHONE & FAX

(b)(6)

E-MAIL:

(b)(6)

November 25, 2015

General Counsel Lisa Terry
U.S. Office of Special Counsel
1730 M Street, N.W. Suite 218
Washington, D.C. 20036-4505
FOIAappeal@osc.gov

Re: FOIA Appeal, #FO-16-0009

Dear Ms. Terry:

I represent John Paff regarding his FOIA request #FO-16-0099. This is an appeal under FOIA, Section 552(a)(6).

Mr. Paff, by fax dated October 16, 2015, requested records regarding (b)(6) and (b)(6) of New Jersey. Mr. Paff believes that these federal employees were the subject of Hatch Act investigations. (See attachment.)

On October 29, 2015, Attorney Advisor Pamela J. Stone denied access to all the requested records on the grounds of FOIA Exemptions (7)(C), personal privacy regarding law enforcement records. (See attachment.)

The determination of whether the asserted exemption applies requires a balancing of the public interest in disclosure against the degree of the invasion of personal privacy that would result from disclosure. Lesar v. Department of Justice, 636 F.2d 472, 486 (D.C. Cir. 1980).

The requests at issue involve, or may involve, two factors that would shift the balance towards disclosure. First, both (b)(6) and (b)(6) either held elected public office or were candidates for elected public office. (b)(6) was the (b)(6) candidate for a (b)(6) New Jersey municipal office. (b)(6) was elected (b)(6) for (b)(6) New Jersey and is the (b)(6)

Elected office holders and candidates for elected office are public figures. They have a diminished expectation of personal privacy regarding their elected public office position and candidacy. Common Cause v. National Archives & Records Service, 628 F.2d 179, 184 (D.C. Cir. 1980). Indeed, it is difficult to imagine any activity involving less personal privacy than running for, or holding, elected public office.

The second factor is that an individual has less privacy regarding sustained allegations of misconduct than unsustained allegations of misconduct. American Civil Liberties Union v. U.S. Department of Justice, 655 F. 3d 1, 7 (D.C. Cir. 2011).

In conclusion, the negligible personal privacy involved in running for and/or holding elected public office is greatly outweighed by the public interest in shedding light on the OSC's performance in handling (b)(6) and (b)(6) alleged Hatch Act violations. The requested records should be disclosed.

Please respond within 20 working days.

Should you have any questions about this appeal, please do not hesitate to contact me.

Respectfully submitted,

(b)(6)

Richard M. Gutman

Ndongo, Tarik

From: (b)(6)
Sent: Saturday, January 9, 2016 11:05 AM
To: Request, Foia
Cc: info@markwarnerva.com
Subject: Re: Final response documents for request ID 'FP-14-0216'
Attachments: FP-14-0216.pdf; (b)(6) Response - FP-14-0216.pdf

Follow Up Flag: Follow up
Flag Status: Flagged

I (b)(6) would like to formally request an appeal to the decision to withhold information per my request for FP-14-0216. Reasons for my appeal is that I do not feel this complaint is covered under the whistle blower act and that the complaint against me was based solely on political affiliation due that I was a (b)(6) and that I should be entitled to know who my complainant was and the contents of the complaint. I am also copying Senator Mark Warner for his review of this complaint.

Respectfully,

(b)(6)

(b)(6)

On Wednesday, November 25, 2015 2:05 PM, "FOIArequest@osc.gov" <FOIArequest@osc.gov> wrote:

From: (b)(6)
To: Appeal, Foia
Subject: Fwd: FP-18-0019
Date: Monday, May 14, 2018 1:08:23 PM
Attachments: (b)(6) Final Response_FP-18-0019.pdf

To whom it may concern,

Please consider this email as my appeal request.

Contrary to the attachment, #5 does not pertain to law enforcement records.

Contrary to the attachment, there has been a determination made.

Regards,

(b)(6)

(b)(6)

-----Original Message-----

From: Baker, Katie <KBaker@osc.gov>

To: (b)(6) (b)(6)

Sent: Mon, May 14, 2018 11:30 am

Subject: FP-18-0019

Good afternoon,

This email is in regards to FOIA/PA request #FP-18-0019. Please refer to the attached letter.

Thank you,

Katie Baker

Attorney

U.S. Office of Special Counsel

1730 M Street, N.W.

Washington, D.C. 20036-4505

(202) 804-7024

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From: (b)(6)
To: Appeal, Foia
Subject: Fwd: Freedom of Information Act/Privacy Act Request (FP-17-0069)
Date: Friday, December 15, 2017 6:15:39 PM

Dear OSC's General Counsel,

I respectfully appeal the decision below.

Regards,

(b)(6)

-----Original Message-----

From: Hendricks, Kenneth <khendricks@osc.gov>
To: (b)(6)
Sent: Fri, Dec 15, 2017 5:03 pm
Subject: Freedom of Information Act/Privacy Act Request (FP-17-0069)

Dear (b)(6)

I am writing in response to your request dated August 15, 2017, in which you asked the U.S. Office of Special Counsel (OSC) to provide you with a copy of the investigation report related to your OSC case, (b)(6). We processed your request under the Privacy Act, 5 U.S.C. § 552a, and the Freedom of Information Act (FOIA), 5 U.S.C. § 552. We apologize for the delay in our response.

The Privacy Act permits agencies to exempt a system of records from public access if the system consists of investigatory material compiled for law enforcement purposes. Based on that authority, OSC has exempted its complaint, whistleblower disclosure, and Hatch Act records from public access, 5 C.F.R. § 1830.6. For that reason, OSC must deny your request for information under the Privacy Act.

After reviewing your request under the FOIA, we are withholding the responsive record pursuant to FOIA Exemptions 5 and 7(A). FOIA Exemption 5 protects from disclosure inter-agency or intra-agency information that is normally protected from discovery in civil litigation based on one or more legal privileges (including, in this instance, the deliberative process and attorney work product privileges). *See* 5 U.S.C. § 552(b)(5). FOIA Exemption 7(A) protects our law enforcement information if releasing the information could reasonably be expected to interfere with our enforcement proceeding. *See* 5

U.S.C. § 552(b)(7)(A).

You have the right to appeal this determination under the FOIA, the Privacy Act, or both of those statutes. Any such appeal must be made in writing and sent to OSC's General Counsel, at the address shown below, or by email to FOIAappeal@osc.gov. The appeal must be received by the Office of General Counsel within 90 days of the date of this letter.

If you have any questions, would otherwise like to discuss your request, or you require dispute resolution services, please feel free to email me, with reference to the above-noted tracking number. Additionally, you may contact the Office of Government Information Services (OGIS) at the National Archives and Records Administration to inquire about the FOIA mediation services they offer. You can reach OGIS by mail at Office of Government Information Services (OGIS), National Archives and Records Administration, 8601 Adelphi Road, Room 2510, College Park, MD, 20740-6001; by email at ogis@nara.gov; by fax at 202-741-5769; or by telephone at 202-741-5770 or toll-free at 1-877-684-6448.

Thank you,

Kenneth Hendricks, Esq.
Clerk of the U.S. Office of Special Counsel
U.S. Office of Special Counsel
1730 M Street, N.W. (Suite 218)
Washington, DC 20036-4505
(202) 804-7000 (phone)
(202) 653-5161 (fax)

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From: (b)(6)
To: [Appeal, Foia](#)
Subject: Fwd: FOIA/PA Request #FP-18-0020
Date: Tuesday, June 12, 2018 1:37:53 PM
Attachments: (b)(6) Final Response_FP-18-0020.pdf

This email is for the purpose of appealing.

Kind regards,

(b)(6)

"I always said no matter how much corruption there is, it's never greater than the individual or the might of doing the right thing."

Frank Serpico

-----Original Message-----

From: Baker, Katie <KBaker@osc.gov>

To: (b)(6)

Sent: Tue, Jun 12, 2018 11:42 am

Subject: FOIA/PA Request #FP-18-0020

Good afternoon,

This email is in regards to FOIA/PA request, #FP-18-0020. Please refer to the attached letter.

Thank you,

Katie Baker

Attorney

U.S. Office of Special Counsel

1730 M Street, N.W.

Washington, D.C. 20036-4505

(202) 804-7024

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Re: Freedom of Information Act request #FO-18-0027

Dear Mr. Hendricks:

I am writing to appeal the Office of Special Counsel's (OSC) denial of my Freedom of Information Act (FOIA) request quoted above, which OSC issued to me on Dec. 5, 2017. I had requested records pertaining to the OSC's investigation into then (b)(6) (b)(6). OSC issued a *Glomar* response¹, arguing that confirmation or denial of such records would be "an unwarranted invasion of personal privacy" as outlined in 5 U.S.C. § 552(b)(7)(C).

I appeal OSC's decision on the following grounds: (b)(6) has a greatly diminished expectation of personal privacy relative to the average person; the public interest in disclosure of the records at issue is extremely high and greatly outweighs (b)(6)'s privacy interest; and under the required presumption of openness, the records should be released.

First, (b)(6)'s privacy interest is lower than that of the average person under the FOIA standards. At the time of my request and at the time that the records were created or obtained by the OSC, (b)(6) was a federal government employee, and such employees "have a somewhat diminished privacy interest."² (b)(6) was a senior government employee at the time — (b)(6) (b)(6), in fact — which diminishes (b)(6)'s privacy interest relative to other government employees.³

In addition, (b)(6) was a public official at the time of my request and the time the records were created or obtained. As stated earlier, (b)(6) was the (b)(6) a major, independent government agency. (b)(6) is now (b)(6) and was previously an (b)(6) (b)(6) and the (b)(6) and (b)(6). In short, (b)(6) has been a high-profile public servant, voluntarily, for decades. People, particularly politicians, who "voluntarily participate in the public arena have a significantly diminished privacy interest than others."⁴

Secondly, the public interest in disclosure of the records greatly outweighs any privacy interest by (b)(6). In particular, the records at issue may reveal official misconduct, by their very nature. They concern potential violations of the Hatch Act, which prohibits federal employees from participating in certain government activities. "Official misconduct" by government employees significantly increases the public interest in disclosure of records.⁵ Agencies are to take into account both "the rank of the public official involved and the seriousness of the

¹ Antonelli v. FBI, 721 F.2d 615, 617 (7th Cir. 1983)

² Fund for Constitutional Gov't v. Nat'l Archives & Recs. Serv., 656 F.2d 856, 866 (D.C. Cir. 1981)

³ Forest Serv. Employees for Envtl. Ethics v. U.S. Forest Serv., 524 F.3d 1021, 1024 (9th Cir. 2008)

⁴ Rosenfeld v. DOJ, 57 F.3d 803, 811-12 (9th Cir. 1995)

⁵ Lissner v. U.S. Customs Serv., 241 F.3d 1220, 1224 (9th Cir. 2001)

misconduct alleged” when weighing the privacy interest versus public disclosure interests, two factors which, in this case, weigh heavily toward disclosure.⁶

(b)(6)

(b)(6)

(b)(6)

(b)(6)

The records, and the investigation at issue in the records, are also important to major policy debates directly pertaining to the (b)(6), which enhances the public interest in disclosure.

Lawmakers in Congress have used the allegations against (b)(6) to justify (b)(6)

(b)(6)

Under (b)(6)

(b)(6)

⁶ Kimberlin v. DOJ, 139 F.3d 944, 948 (D.C. Cir. 1998)

(b)(6)

(b)(6)

(b)(6) as the (b)(6) of the (b)(6) the impact of (b)(6)
(b)(6) and (b)(6) current pursuit of public office means the public interest in the requested records far outweighs (b)(6) privacy concerns.

Completely withholding all of the records I requested would violate FOIA's presumption of openness. The FOIA Improvement Act of 2016 states that an agency "shall ... withhold information under this section only if ... the agency reasonably foresees that disclosure would harm an interest protected by an exemption described in subsection ... or ... disclosure is prohibited by law."¹⁸ Given the above facts, the OSC has not met that harm standard.

The presidential memorandum "Memorandum for the Heads of Executive Departments and Agencies" further strengthens this presumption of openness. "All agencies should adopt a presumption in favor of disclosure, in order to renew their commitment to the principles

(b)(6)

¹⁸ FOIA Improvement Act

embodied in FOIA, and to usher in a new era of open government. The presumption of disclosure should be applied to all decisions involving FOIA,” it states.¹⁹

Given the above, I ask that my FOIA request be fulfilled to its fullest possible reach.

Sincerely,

Sylvan Lane
The Hill

(b)(6)

¹⁹ Presidential memorandum

From: Jason Leopold
To: [Appeal, Foia](#)
Subject: Freedom of Information Act appeal.
Date: Friday, June 23, 2017 7:21:00 PM
Attachments: Leopold FO-17-0071 Response+.pdf

To Whom It May Concern,

I receive the attached letter, dated June 23, 2017, in response to my Freedom of Information Act request. The Office of Special Counsel responded by stating it could not locate responsive records. I appeal the determination and the integrity of the search OSC undertook to locate responsive records. I am aware that employees at (b)(6) have contacted and sought assistance from the OSC over what would constitute whistleblower retaliation. I request OSC conduct a new search for responsive records.

Kind regards,
Jason Leopold

--



Jason Leopold | **BuzzFeed News** | [Senior Investigative Reporter](#) | (213) 270-4334 | @JasonLeopold |
6824 Lexington Avenue, Los Angeles, CA 90038

Send me documents and tips, anonymously and securely: contact.buzzfeed.com

My personal PGP

My BuzzFeed PGP fingerprint: 46DB 0712 284B 8C6E 40FF 7A1B D3CD 5720 694B 16F0

Kurt, Christopher

From: (b)(6)
Sent: Friday, January 20, 2017 4:08 PM
To: Kurt, Christopher
Subject: Re: FOIA

Sir,

Thank you very much for your assistance in this matter.

I do wish to appeal the determination on the Privacy Act decision. The following summary is provided. A more specific rebuttal with supporting evidence will be provided.

You decline to correct the record by inferring that I am attempting to "alter evidence." This is incorrect and defamatory.

The IRA, dated (b)(6) and written by Ms. Leslie Gogan, incorrectly states that I asserted the (b)(6) contract "was unnecessary." This is not true and not supported by the OSC Form 11 included in your email.

In paragraph 2 of my Form 11 received by OSC on (b)(6), I state:

(b)(6) recommended to (b)(6) reducing costs and accelerating delivery by combining or coordinating the (b)(6) initiative with (b)(6) Department of Defense (DOD) initiatives (b)(6) learned of while at the Pentagon on (b)(6) and in Afghanistan from (b)(6).
(b)(6)"

Nothing in this statement implies or infers that the contract was "unnecessary." (b)(6)

(b)(6)

During my service in Afghanistan from (b)(6)

(b)(6)

My advise to Air Force Civilian (b)(6) was that (b)(6) should "combine" or "coordinate" (b)(6) action with existing initiatives underway by the US Army, and my other agencies in the Department of Defense. This was in accordance with Public Law 108-488, the Intelligence Reform and Terrorism Prevention Act of 2004. My recommendation was not trivial and came from (b)(6)

(b)(6) My specific recommendation to (b)(6) was that (b)(6) contact and coordinate with, among others, (b)(6)'s personal cell phone

number was (b)(6) Before (b)(6) death in (b)(6) (b)(6)
(b)(6), (b)(6) duties included responsibility for upwards
of (b)(6)

Rather than coordinating with (b)(6), (b)(6) recommended my termination. This action has never been investigated, nor have (b)(6) or others ever been questioned under oath regarding their actions.

In (b)(6), the Agency disclosed that in (b)(6) (b)(6) misappropriated or misdirected government funds when (b)(6) instructed that the Army funds used to finance (b)(6) position be redirected to pay for the continued active duty service of National Guard (b)(6). (b)(6) active duty service was previously funded by counter-narcotic funding. (b)(6) was specifically told my (b)(6) personnel officer, (b)(6), that this redirection of funds was inappropriate.

In (b)(6), the Agency disclosed a classified email that showed that in (b)(6) (b)(6) contract manager (b)(6) was allowed by (b)(6) to play a role in my termination. The involvement of a contractor in providing a constructive evaluation of my alleged performance to an Army Officer and in influencing my termination represents the interference of a contractor in the inherently governmental function of supervising a government employee.

With Deepest Respects,

(b)(6)

On Thu, Jan 19, 2017 at 11:11 AM, Kurt, Christopher wrote:

(b)(6)

Please find attached a FOIA/Privacy Act response letter and two complaint forms. The second one will appear upside-down due to scanning constraints.

Christopher Kurt

FOIA-PA Officer

U.S. Office of Special Counsel

Ph (202) 254-3716

Fax (202) 254-3711

ref: FP-16-0065

From: James McMurphy
To: [Myers, Malia](#)
Cc: [Dar, Mahala](#); [Appeal, Foia](#)
Subject: Re: Response to FOIA Request # FO-17-0098
Date: Wednesday, August 1, 2018 10:48:23 AM

Ms. Myers,

I have reason to believe the search conducted and/or response provided below was incomplete. In particular, it does not include any records relating to matters that I understand were referred by the Office of Special Counsel to the Institute of Museum and Library Services for investigation pursuant to 5 USC 1213(c). I would ask that you either provide such responsive documents or notify me of why they are not being provided.

Thank you.

> Sent: Wednesday, June 27, 2018 at 12:19 AM

> From: "Myers, Malia" <mmyers@osc.gov>

> To: "James McMurphy" (b)(6)

> Subject: Response to FOIA Request # FO-17-0098

>

> Dear Mr. McMurphy:

>

> Attached, please find our response to your FOIA request # FO-17-0098.

>

> Sincerely,

>

>

> Malia S. Myers

> Attorney

> U.S. Office of Special Counsel

> Office of the Clerk

>

>

> NOTICE: This message and any attachments may contain information that is sensitive, confidential, or legally privileged. If you are not the intended recipient, please immediately notify the sender and delete this email from your system; you should not copy, use, or disclose its contents. Thank you for your cooperation.

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(b)(6)

Via Priority Mail and Email: FOIAappeal@osc.gov

August 22, 2017

U.S. Office of Special Counsel
Office of General Counsel
1730 M Street, N.W., Suite 218
Washington, D.C. 20036-4505

RE: **Freedom of Information Act (FOIA) and/or Privacy Act Request Appeal**

Appellant: (b)(6)

Case No.: #FP-16-0073

To Whom It May Concern:

Pursuant to the Freedom of Information Act, 5 U.S.C. §552, and the Privacy Act, 5 U.S.C. §552a, I am writing on behalf of this firm's client, (b)(6), GS-15, Office of (b)(6), Department of Energy ("DOE"), to timely¹ appeal the Office of Special Counsel's Second Interim Reply concerning (b)(6)'s FOIA/PA request #FP-16-0073.

Our office initially served a FOIA/Privacy Act Request on behalf of (b)(6) on July 6, 2016 wherein he specifically requested, *inter alia*, the following documents/information:

- a) As it relates to OSC File No. (b)(6), any and all documents and/or transcriptions, including reports, exhibits to the report, the reason for the inquiry/investigation, its processing, any and all findings, recommendations, directives, and/or orders", including any records of, about, or pertaining to (b)(6) with respect to investigations that occurred between 2010 and July 2016;
- b) DOE (b)(6) hiring for the position of (b)(6) (Vacancy Announcement No. (b)(6); and
- c) DOE (b)(6) employee or management prohibited personnel practices or acts or other acts of misconduct wherein (b)(6) was the victim of, or subject alleged to have engaged in, the prohibited acts.

During the course of discovery in (b)(6)'s EEOC complaint, it was revealed by the DOE that (b)(6) was the subject of an Office of Special Counsel investigation, File No. (b)(6)

¹ The Second Interim Reply stated that an appeal must be received within 90 days of the date of the letter, which was dated June 12, 2017.

As a consequence of the opening and processing of File No. (b)(6), (b)(6) was suspended from pay and duty by the DOE. During discovery, the DOE refused to turn over the documents related to OSC File NO. (b)(6), asserting that the documents were covered by the deliberative process privilege due to the DOE's use of the OSC file to issue discipline to (b)(6).²

On June 12, 2017, the Office of Special Counsel issued its Second Interim Response to (b)(6), in which OSC failed to provide any additional documentation to (b)(6), citing FOIA Exemptions 5 and 7, 5 U.S.C. § 552(b)(5) and 5 U.S.C. § 552(b)(7)(C).

The OSC's letter stated that the "FOIA Exemption 5 protects from disclosure inter-agency or intra-agency information that is normally protected from discovery in civil litigation based on one or more legal privileges (including, in this instance, the attorney work product privilege). *See* 5 U.S.C. § 552(b)(5)." However, that recitation of the FOIA exemption is not fully accurate. Indeed, the statute specifies "inter-agency or intra-agency *memorandums or letters*..." *See* 5 U.S.C. § 552(b)(5) (*emphasis added*). Here, OSC has failed to provide any indication of the type of material it is withholding (sworn witness statements, email communications from the DOE, an investigative file, a conclusory memoranda or letter from DOE counsel, etc.). Since OSC failed to specify the types of material it is withholding, (b)(6) has no way of determining whether the documents OSC is failing to disclose were improperly withheld. Indeed, records submitted to the OSC are likely not protected by the exemption laid out in Section 552(b)(5) as they are most likely not memorandums or letters produced by DOE counsel in which the work product doctrine or attorney client privilege may arguably apply.

FOIA Exemption 7(C) protects law enforcement information if disclosure could reasonably be expected to constitute an unwarranted invasion of personal privacy. *See* 5 U.S.C. § 552(b)(7)(C). Notably, Exemption 7(C) is recognized to protect the disclosure of a *third party*. Upon information and belief, (b)(6) was *the subject* of OSC File No. (b)(6) and as such, (b)(6) is not a third party. Accordingly, there would be no invasion of his privacy by releasing to (b)(6) the contents of this file, subject to any redactions of the names of any other parties named within the file (such as the name of the individual who filed the OSC complaint).

OSC's position goes against the predominant goal of the FOIA and is overreaching in its scope of withholding. "Where government agency seeks to withhold information as exempt from disclosure under Freedom of Information Act, it must provide relatively detailed justification, specifically identifying reasons why a particular exemption is relevant and correlating those claims with particular part of withheld documents to which they apply." *See Pacific Architects & Engineers, Inc. v. Renegotiation Board*, 164 U.S.App.D.C. 276, 278, 505 F.2d 383, 385 (1974). "Agencies must furnish disclosable portions of documents, even if other portions may be exempt from disclosure under Freedom of Information Act (FOIA)." *See American Civil Liberties Union Foundation v. U.S. Dept. of Justice*, S.D.N.Y.1993, 833 F.Supp. 399 (1993).

The FOIA exemptions must be narrowly construed. *See Dept. of the Air Force v. Rose*, 425 U.S. 352, 361 (1976). It was never the intention of Congress, under FOIA, to exempt an entire document merely because it contained confidential information. *See Ethyl Corp. v. Environmental Protection Agency*, C.A.4 (Va.) 1973, 478 F.2d 47. "It is a violation . . . for a government agency to withhold

² This is despite the Agency's legal obligation to produce all evidence relied upon in disciplining an employee.

documents on the ground that parts are exempt and parts are nonexempt from disclosure, and in such event suitable deletions may be made.” *See Wellford v. Hardin*, 315 F.Supp. 768 (D.D.C. 1970).

OSC’s improper use of these two FOIA exemptions denies [redacted] fairness, access to records about him and prevents him from achieving any sort of equitable resolution to the factually inaccurate records contained in DOE’s, OSC’s and OPM’s records. Specifically, the Office of Special Counsel’s FOIA Office committed an egregious misapplication of the FOIA exemptions by limiting [redacted] [redacted] from reviewing [redacted] own investigation file, File No. [redacted].

Therefore, it is respectfully requested that the Office of Special Counsel’s FOIA office provide the contents of File No. [redacted], redacted only in accordance with the above standards, *i.e.*, that the segregable portions of these records be released with a detailed justification as to why any deletions/redactions were made. Compliance with this request will prevent further litigation in District Court, which may result in a request for sanctions against OSC for its improper withholding of documents in this matter.

Thank you for your time and attention to this matter.

Respectfully submitted,

[redacted]

From: (b)(6)
To: Appeal, Foia
Subject: Appeal of Denial of Expedited Processing of FP-18-0079
Date: Friday, May 25, 2018 2:05:21 PM
Attachments: (b)(6) Expd-Response FP-18-0079.pdf
27. Initial Decision - 0070 - 27 Mar 2018.pdf

To whom it may concern:

With this email I am appealing OSC's decision to deny my request for expedited processing of FOIA request FP-18-0079. See Attached. Your letter states that, "you have not met the criteria for expedited processing pursuant to OSC's FOIA regulations, 5 CFR Part 1820.4(c)." Yes, I have met the criteria.

As stated in my request, this information will be used in an appeal of two Merit Systems Protection Board final decisions to the U.S. Court of Appeals to the Federal Circuit. The latest of these decisions in (b)(6) became final on May 1, 2018. I have sixty days from that date in order to appeal to the U.S. Court of Appeals for the Federal Circuit "seeking personal relief." 5 U.S.C. § 7703(b)(1)(A). We are currently 24 days into that 60 day time limit, thus the need is imminent.

I also stated in my request that I am providing this information to Senator Tim Kaine (D-VA) as part of blowing the whistle on unlawful government activities involving OSC. I contend that a whistleblower, as I have been since 2012, is a "person primarily engaged in disseminating information." Alternatively, Senator Kaine (for whom I am collecting this information) is such a person. Blowing the whistle on unlawful government activity demonstrates a "compelling need" involving "informing the public about the government activity involved in the request." 28 U.S.C. 16.5; 5 U.S.C. 552. The need is imminent because it involves ongoing felony violations of law.

I hereby certify that this statement is true and correct to the best of my knowledge and belief.

If you have any questions or need additional information, you may reach me at this email address.

(b)(6)



U.S. OFFICE OF SPECIAL COUNSEL

1730 M Street, N.W., Suite 218
Washington, D.C. 20036-4505
202-254-3600

April 12, 2017

(b)(6)

Via Email: (b)(6)

Re: FOIA Appeal No. AP-17-0003

Dear (b)(6)

This responds to your above-referenced Freedom of Information Act (FOIA) appeal of March 31, 2017.

On August 15, 2016, the U.S. Office of Special Counsel (OSC) opened a new FOIA request for your (b)(6) case file, and designated it FP-16-0099. On March 31, 2017, an OSC FOIA Officer provided you with an interim response to that FOIA request. The interim response included a release of 78 pages. The interim response indicated that OSC redacted material from three of the 78 pages pursuant to FOIA Exemptions 5 and 7(C), and that OSC withheld four pages in full pursuant to Exemption 5. *See* 5 U.S.C. § 552(b)(5), (7)(C). The interim response also indicated that you did not consent to the referral of documents to the Federal Election Commission (FEC) for review, so OSC could not process those documents.

On March 31, 2017, you appealed from the interim release. Your email stated only, "I appeal." You did not provide any basis for your appeal.

Appeal Response.

I have reviewed your request, OSC's interim response, and your appeal. The FOIA Officer processed and released an initial, "interim," batch of 78 responsive pages. The redactions and withholding of four pages in full were appropriate pursuant to FOIA Exemption 5 (the attorney work-product privilege) and Exemption 7(C) (unwarranted invasion of personal privacy). I have determined that OSC appropriately did not refer records to the FEC in the absence of your consent. *See* U.S. Department of Justice Guidance, "Referrals, Consultations, and Coordination: Procedures for Processing Records when Another Agency or Entity Has An Interest in Them," <https://www.justice.gov/oip/blog/foia-guidance-13>.

The "interim" nature of OSC's response to your FOIA request means that it is not OSC's final response. OSC's FOIA Officer will continue to process the remaining responsive records from your case file (b)(6), and will produce additional records, if appropriate.

U.S. Office of Special Counsel

(b)(6)

April 12, 2017

Page 2

Accordingly, after careful consideration, I deny your appeal of OSC's interim response. **You may seek judicial review of this decision by filing a complaint in an appropriate United States district court. See 5 U.S.C. § 552(a)(4)(B). (You can also wait until you receive OSC's final response and seek judicial review then.) If you have any questions regarding this appeal response or require dispute resolution assistance, please feel free to contact OSC's FOIA Public Liaison Dawn Kral at 202-254-3636 or via email at dkral@osc.gov.¹**

Sincerely,

/s/

Susan K. Ullman
General Counsel

¹ Additionally, the Office of Government Information Services (OGIS) at the National Archives and Records Administration offers FOIA mediation services. You can contact OGIS at: 8601 Adelphi Road, Room 2510, College Park, MD 20740-6001; ogis@nara.gov, 202-741-5770, 1-877-684-6448 (Toll Free), 202-741-5769 (Fax).

The James Madison Project
1250 Connecticut Avenue, N.W.
Suite 200
Washington, D.C. 20036

(202) 498-0011
(202) 330-5610 fax

E-Mail: FOIA@JamesMadisonProject.org
<http://www.JamesMadisonProject.org>

January 18, 2017

VIA E-MAIL

General Counsel
U.S. Office of Special Counsel
1730 M St., N.W. (Suite 218)
Washington, DC 20036-4505

Re: FOIA Request – FO-17-0019

To whom it may concern:

This is an administrative appeal with respect to the above-identified FOIA request. By letter dated January 17, 2017, OSC informed us that its search had found no responsive records. We are appealing the adequacy of the searches conducted by OSC.

Your cooperation in this matter would be appreciated. If you wish to discuss this appeal, please do not hesitate to contact me at (b)(6) or via e-mail at brad@jamesmadisonproject.org.

Sincerely,

/s/

Bradley P. Moss
Deputy Executive Director

“Knowledge will forever govern ignorance, and a people who mean to be their own Governors, must arm themselves with the power knowledge gives.”

James Madison, 1822

Kurt, Christopher

From: (b)(6)
Sent: Monday, March 23, 2015 4:43 PM
To: Kurt, Christopher
Subject: FW: Status of FOIA request FP-14-0207

Mr. Kurt,

I write to inform you that (b)(6) appeals the OSC decision on his FOIA request.

(b)(6)

From: (b)(6)
Sent: Friday, March 20, 2015 7:34 PM
To: 'Kurt, Christopher'
Subject: RE: Status of FOIA request FP-14-0207

Mr. Kurt,

I have called the number you provided on two separate days. The line holds no personalized message, just a number. I've left a message twice and have received no response. This appears to be more of the same stonewalling on the part of OSC.

(b)(6)

From: Kurt, Christopher [<mailto:ckurt@osc.gov>]
Sent: Monday, March 16, 2015 4:49 PM
To: (b)(6)
Subject: RE: Status of FOIA request FP-14-0207

(b)(6)

Please be aware that under the FOIA, the next step would be to file an administrative appeal of the response. You would have to exhaust your administrative remedies before filing a complaint in court. OSC's General Counsel, Lisa Terry, is available to discuss: (202) 254-3603.

Chris Kurt

From: (b)(6)
Sent: Thursday, March 12, 2015 1:20 PM
To: Request, Foia; Kurt, Christopher
Subject: RE: Ststus of FOIA request FP-14-0207

Mr. Kurt,

I received the materials you forwarded to (b)(6) last week. Other than documents which (b)(6) (b)(6) prepared or OSC correspondence previously received, your package contained no investigative notes or findings specifically request by (b)(6). A one page document OSC did provide was completely redacted but for the address lines.

This is not a game. (b)(6) has shown great patience in pursuing this FOIA request and is dismayed that OSC has chosen to disregard the law.

As a result, on Monday, March 16, (b)(6) will seek a court order demanding compliance.

Respectfully,

(b)(6)

From: Request, Foia [mailto:foiarequest@osc.gov]
Sent: Wednesday, March 4, 2015 1:59 PM
To: (b)(6)
Cc: (b)(6)
Subject: Sttus of FOIA request FP-14-0207

(b)(6)

Per our conversation today, we covered the following issues:

- I conveyed that processing of the request is well under way. Tomorrow's projected inclement weather could slow our response.
- You agreed that OSC will respond directly to the Requester/Complainant, (b)(6), so as to avoid the need for (b)(6) consent.
- You agreed that after processing the Complaint form and any initial investigatory findings, the request will be closed.

Sincerely,
Chris Kurt

From: (b)(6)
Sent: Monday, December 08, 2014 5:29 PM
To: Request, Foia
Subject: RE: REQUEST FOR EXPEDITED FILING - OSC File # (b)(6)

Mr. Kurt,

On an interim basis I would like (b)(6)'s initial complaint form. More importantly, I request the initial investigative findings upon which OSC made the decision to refer the complaint for further investigative findings.

Thank you.

(b)(6)

From: Kurt, Christopher [mailto:ckurt@osc.gov] **On Behalf Of** Request, Foia
Sent: Monday, December 8, 2014 3:23 PM
To: (b)(6)
Subject: RE: REQUEST FOR EXPEDITED FILING - OSC File # (b)(6)

(b)(6)

(b)(6) request is for the entire case file. Given OSC's limited resources, please indicate which items you wish us to review now for an interim response. For example, some appellants at MSPB seek the complaint form they submitted to OSC or OSC closure letters that were issued to them. A narrow interim scope should allow us to respond by December 19, 2014.

OSC sent an acknowledgement letter to (b)(6) by e-mail and USPS on or about June 4, 2014. That letter announced that (b)(6) was granted expedite processing.

Sincerely,

Christopher Kurt
FOIA/Privacy Act Officer
U.S. Office of Special Counsel
Tel: (202) 254-3716
Fax: (202) 254-3711

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From: (b)(6)
Sent: Wednesday, November 26, 2014 10:12 PM
To: Request, Foia
Subject: REQUEST FOR EXPEDITED FILING - OSC File # (b)(6)

Mr. Kurt,

I respectfully request expedited filing of the above listed matter to prepare for a scheduled MSPB hearing on 6 January 2015.

Thank you for your consideration.

Sincerely,

(b)(6)

From: (b)(6)
To: [Appeal. Foia](#)
Cc: [Hendricks, Kenneth](#)
Subject: Appeal: Fw: FOIA/PA FP-14-0171
Date: Monday, March 19, 2018 5:06:52 PM
Attachments: (b)(6) [Final Response FP-14-0171.pdf](#)
Importance: High

I would like to appeal this determination under both the Privacy Act and the FOIA. My FOIA requests were purposely delayed for years and the delay substantially hindered my ability to defend my case. The 1967 Freedom of Information Act (FOIA) provided the public with the right to request access to records from any federal agency. I have been denied that right.

The multiple-year delays have perpetuated my case and sending my records back to Federal Mediation and Conciliation Services (FMCS) to process will only make the matters worse. Discussing this matter any further is useless. It is not my understanding that my consent meant to send the records to FMCS.

I do not concur with sending the records to FMCS for any processing. It is my desire for the records that I requested through FOIA in 2014 to be sent to me. There is no plausible explanation for these multiple-year delays other than a total disregard for the FOIA.

To state that OSC was a total disappointment in their mission for fair and equitable assistance in my case is an understatement. From the beginning all actions have favoured FMCS, this extended delay is yet another one.

Kind regards,

(b)(6)

From: Edwards, Carla <cedwards@osc.gov>
Sent: Monday, March 19, 2018 8:36 PM
To: (b)(6)
Subject: FOIA/PA FP-14-0171

Dear (b)(6)

This email is in regards to FOIA/PA FP-14-0171. Please refer to the attached letter.

Thank you,

Carla Edwards
Paralegal Specialist
FOIA Team
Office of the Clerk

Office of General Counsel
U.S. Office of Special Counsel
1730 M Street, N.W., Suite 218
Washington, D.C. 20036-4505

WASHINGTON, D.C.
2016 AUG 19 PM 12:55

14 August 2016

Re: Freedom of Information Act/Privacy Act Appeal

This is an appeal under the Freedom of Information Act and The Privacy Act.

On 10 October 2011, I requested documents under the Freedom of Information Act. My request was assigned identification number FP-12-0363, and then went dormant until June 2015. On 5 August 2016, I received a response to my request in a letter dated 4 August 2016, signed by Dawn R Kral, FOIA Public Liaison. A copy of my FOIA request (TAB A) and the agency determination, (TAB B) which is the subject of this appeal, are attached for your convenience.

1.) In reference to the first part of my request, which read, "I am requesting a copy of all interviews conducted by the OSC of both subjects and witnesses derived through OSC File (b)(6) (b)(6)" The OSC responded, "We have completed our search for records responsive to the first item of your request. That search did not locate any responsive records."

Basis for appeal: E-mail correspondence between OSC Attorney Efthemia Valiotis and myself, clearly indicate that interviews took place during the months of December 2008 and January 2009. (See TAB C) Please expand your search for responsive records to include the records of Efthemia Valiotis, OSC Attorney, 477 Michigan Avenue, Suite 2340, Detroit, Michigan.

2.) In reference to the second part of my request: The OSC successfully located 357 pages of responsive records. The OSC is forwarding 371 pages to the originating agency for processing while withholding 14 pages "in full" citing Attorney Work Product privilege, 5U.S.C.§552(b)(5).

Basis for appeal: Exemption 5 U.S.C. 552(b)(5) is inappropriate due the fact that a settlement in April 2011, overseen by the Merit System Protection Board, put to rest contemplation of litigation and/or criminal prosecution by the OSC. (See TAB D) (Reference MSPB case number DE-1221-11-0132-W-1)

Additionally, when a requested document contains some information which falls under one of the exemptions, FOIA requires that all non-exempt portions of the record must still be released. The Act expressly mandates that any "reasonably segregable portion" of a record must be disclosed to a requester after the redaction (the deletion of part of a document to prevent disclosure of material covered by an exemption) of the parts which are exempt. (Ref. 5 U.S.C. § 552(b). In the event that the OSC continues to withhold the 14 pages "in full", The OSC shall provide me with a Vaughn Index to justify the exemptions. (32 C.F.R. § 701.39)

3.) My request was also processed as a Privacy Act Request, 5 C.F.R. § 1830. The OSC denied my request for information under the Privacy Act stating, "The Privacy Act permits agencies to exempt a system of records from public access if the system consists of investigatory material compiled for law enforcement purposes. Based on that authority, OSC has exempted its

complaint, whistleblower disclosure, and Hatch Act records from public access, 5 C.F.R. § 1830.6.”

Basis for Appeal: Documents obtained through 5 U.S.C. § 7114(b)(4) disclosed official personal records, as well as law enforcement records, which contained grossly inaccurate derogatory information. (See TAB E) 5 C.F.R § 1830.4 permits the correction of records. Therefore, the withholding of 14 pages “in full” citing 5 C.F.R. 1830.6 is inappropriate, presenting a barrier to the correction of records which may be inaccurate.

Thank you for your consideration of this appeal.

Sincerely,

(b)(6)

A large rectangular redacted area, outlined in black, covering the signature and any handwritten notes. The text "(b)(6)" is written in the top-left corner of this redacted area.

Stone, Pamela

From: (b)(6)
Sent: Thursday, November 19, 2015 2:13 PM
To: Appeal, Foia
Subject: Fwd: Delivery Status Notification (Failure)

----- Forwarded message -----

From: **Mail Delivery Subsystem** <mailer-daemon@googlemail.com>
Date: Thu, Nov 19, 2015 at 12:47 PM
Subject: Delivery Status Notification (Failure)
To: (b)(6)

Delivery to the following recipient failed permanently:

FOIAAppeal@ocs.gov

Technical details of permanent failure:

DNS Error: Address resolution of ocs.gov failed: Domain name not found

----- Original message -----

DKIM-Signature: v=1; a=rsa-sha256; c=relaxed/relaxed;
d=gmail.com; s=20120113;
h=mime-version:date:message-id:subject:from:to:content-type;
bh=vgzzcRR9QdjpYOs6Bqnw8SYkKAwcMu1MHNnX5j4g9B0=;
b=sVQuuxftqmw1dk08NIUb6u/81M9IbiXMQvdDVnQ92D+fD4vDcKb+3pwwU5Cc0HOtR
r/S2LwuNinLf9izYZjiYsvz82Xqs8Ed49OPpKFmBjVn/ArjHSxJ/9qyN/B5ta1dsj9ZX
QNLVoiV3Qj7oWCEU0cBrgvSZNCv1ZumSzZDG5O9xSdGqp0OaorSoE1lXKzkXsIuWFe1Y
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wyN7cJ35tEpdA2EhBI7pD6lp8fvuZud5U/3C3lsCQzgoyXEpzWDJ0K/yioJMo6MQAc0w
BqJg==

MIME-Version: 1.0

X-Received: by 10.50.50.137 with SMTP id c9mr14270248igo.23.1447958854890;

Thu, 19 Nov 2015 10:47:34 -0800 (PST)

Received: by 10.79.93.134 with HTTP; Thu, 19 Nov 2015 10:47:34 -0800 (PST)

Date: Thu, 19 Nov 2015 12:47:34 -0600

Message-ID: <CAMUUX89vepgt5iPF2sqkyF-5Gw9sU=rSy5Kbv9ytscdVNoJbRw@mail.gmail.com>

Subject: #FP-16-0013

From: (b)(6)

To: FOIAAppeal@ocs.gov

Content-Type: multipart/alternative; boundary=047d7bdc07b2320cc50524e9313c

To: Attorney Advisor
Pamela J. Stone
Office of General Counsel
1730 M. Street N.W.

Suite 218
Washington, DC 2006-4505

(FOIA Appeal Request)

Dear, Ms. Stone

The reason for this appeal is a substantial determination of violations, wrongdoing, conduct, abuse of personnel practices, laws, rules, regulations and securities.

See: Evidence Code 952, 954

See: Cooke v. Superior Court supra Cal. App 3d at pp589,592,147

The limits are solely based on data collected and security documentation with intrinsic and extrinsic value for purposes obtained by any other agency of referral. The advisorship was recommended by an agency for the purpose of authoritative measures, but at what cost. The action sought is a neutral to security and the securities implemented by qualifications and verifications to the beneficial interest and rights of the appeal.

(Cases in Question) What are the merits of the case?

Sincerely,

(b)(6)

(b)(6)

Note: Also the request may be for any information not obtained by the party or claimant to the knowledge of any other governmental agency.

See: Federal Register

Stone, Pamela

From: (b)(6)
Sent: Thursday, November 19, 2015 2:33 PM
To: Appeal, Foia
Subject: #FP-16-0013

To: Attorney Advisor
Pamela J. Stone
Office of General Counsel
SUITE 218
1730 M. Street N.W.
Washington, DC 20006

(FOIA Appeal Request)

The reason for this appeal and this might be the second or third time sending this request due to the wrong address. A substantial determination of violations, wrongdoing, abuse of personnel practices, laws, rules, regulations, and securities.

See: Evidence Code 952,954
See: Cooke v. Superior Court supra Cal. App) 3d at pp. 589,592,147

The limits are solely based on data collected as just sent for the documentation and security purposes obtained and not obtained by any other (agencies). The advisorship was recommended by a agency for the purpose of authoritative measures, but at what cost. See: Rules

The purpose for this action sought is for the necessary qualifications and verifications to the beneficial interest and the rights obtained to and for this appeal.

(Cases in Question) What are the merits of the case?

Also this request may be for information not obtained, but may be receivable thru this agency.
See: Advisor Inc.etc.

Sincerely,

(b)(6)

(Attachments)

Ndongo, Tarik

From: (b)(6)
Sent: Wednesday, November 4, 2015 11:22 AM
To: Appeal, Foia
Subject: Appeal of Our Denied FOIA Request--FP-14-0182
Attachments: OSC FOIA Denial Appeal.docx

Dear Office of the General Counsel---OSC

We are appealing the denial of our FOIA request for a "13-page document" which summarized our combined cases: (b)(6).

Please let us know if you need any more information from us, or if you want us to send the above attached letter by regular mail.

We look forward to your decision!

Respectfully,

(b)(6)

Stone, Pamela

From: (b)(6)
Sent: Thursday, June 04, 2015 8:21 PM
To: Appeal, Foia
Subject: Appeal of FOIA Request FP-14-0167

Hello

I got your letter dated May 18, 2015, signed by Dawn Kral. I want to appeal. There are many redactions, and I don't see how they can possibly be necessary. How in the world can anything about this case be an "unwarranted invasion of personal privacy"? And I don't see why the "deliberative process" needs to be protected either, because OSC decisions are final, therefore I could not sue over OSC's decision even if I wanted to. It is obvious that what is going on here is that the people at OSC know darn well that the law is on my side, and they just can't bear to admit it.

Sincerely, (b)(6)

From: (b)(6)
To: Appeal, Foia
Subject: (b)(6) Appeal
Date: Tuesday, March 27, 2018 11:25:35 AM
Attachments: image003.png
(b)(6).pdf

Dear Sir r Madame,

Please supply copies of all emails, jokes, and correspondence the San Diego Times reports concerning (b)(6) I believe OSC completed Hatch Act investigation in reference to this individual.

Respectfully.

(b)(6)

Stone, Pamela

From: Appeal, Foia
Sent: Tuesday, December 01, 2015 4:52 PM
To: (b)(6)
Subject: RE: FW: OSC FOIA Response

Thank you for your response. I will open an appeal from your Freedom of Information Act (FOIA) request, FP-16-0016, and you will shortly receive a formal acknowledgment of your appeal.

--pam stone

Pamela J. Stone
Attorney Advisor
Office of General Counsel
U.S. Office of Special Counsel
1730 M Street, N.W.
Suite 218
Washington, D.C. 20036
(202) 254-3663

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From: (b)(6) [mailto:(b)(6)]
Sent: Tuesday, December 01, 2015 2:44 PM
To: Appeal, Foia
Subject: Re: FW: OSC FOIA Response

Good afternoon,

I wish to appeal the response.

Thank you,

(b)(6)

On Tue, Dec 1, 2015 at 2:12 PM, Appeal, Foia <foiaappeal@osc.gov> wrote:

(b)(6)

I am following up on the email I sent to you last week regarding your request for an appeal of FP-16-0016 (below). Please let me know if you still wish to appeal the response or if you have received the records you were seeking.

Thanks so much,

--pam stone

Pamela J. Stone

Attorney Advisor

Office of General Counsel

U.S. Office of Special Counsel

1730 M Street, N.W.

Suite 218

Washington, D.C. 20036

(202) 254-3663

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From: Appeal, Foia
Sent: Wednesday, November 25, 2015 10:25 AM
To: (b)(6)
Subject: RE: OSC FOIA Response

Dear (b)(6),

The Office of General Counsel at the U.S. Office of Special Counsel (OSC) has received your email appealing OSC's response to your Freedom of Information Act (FOIA) request, FP-16-0016. Before I open an appeal file, I want to make sure I understand the basis of your appeal. Mr. Kurt sent you two attachments in response to your request: the first attachment was a letter explaining OSC's response and the second attachment was a copy of your complaint form. Although the records were denied under the Privacy Act, they were released to you in full under the Freedom of Information Act. Since the complaint form was released in full under the FOIA, I am not sure what you are appealing.

Thanks for clarifying your request for me. Best wishes for a happy Thanksgiving holiday,

--pam stone

Pamela J. Stone

Attorney Advisor

Office of General Counsel

U.S. Office of Special Counsel

1730 M Street, N.W.

Suite 218

Washington, D.C. 20036

(202) 254-3663

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From: (b)(6) [mailto:(b)(6)]

Sent: Tuesday, November 24, 2015 1:18 PM

To: Appeal, Foia
Subject: Fwd: OSC FOIA Response

Hello,

I am writing to appeal the decision to not allow me to have the complaint form of my case (file number included in attachment). It is my understanding that I have 45 days to appeal the decision that denied me the right to have information under FOIA. I ask for this information as I feel it falls under a need to know basis for me.

Thank you,

(b)(6)

----- Forwarded message -----

From: **Kurt, Christopher** <ckurt@osc.gov>

Date: Fri, Nov 20, 2015 at 10:26 AM

Subject: OSC FOIA Response

To: (b)(6) (b)(6)" (b)(6)

(b)(6)

Please find a 2-part response package attached.

Christopher Kurt

FOIA/Privacy Act Officer

U.S. Office of Special Counsel

Tel: (202) 254-3716

Fax: (202) 254-3711

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Ndongo, Tarik

From: Kurt, Christopher
Sent: Thursday, May 25, 2017 2:34 PM
To: (b)(6)
Subject: RE: FP-13-1223

(b)(6)

OSC is in receipt of your appeal. A formal acknowledgment will be issued once the appeal has been entered into our tracking system. Please contact me with any questions.

Sincerely,

Christopher Kurt
FOIA-PA Officer
U.S. Office of Special Counsel
Ph (202) 254-3716
Fax (202) 254-3711

NOTE: The information contained in this e-mail message, including any attached files, is intended only for the recipient(s) to whom it is addressed. This message contains information that is sensitive, confidential, and/or protected by the attorney work product, law enforcement, deliberative process, or other privilege. Any review, retransmission, dissemination or other use of, or taking of any action in reliance upon, this information by persons or entities other than the intended recipient(s) is strictly prohibited. If you have received this message in error, please contact the sender immediately and delete the material from your computer system.

-----Original Message-----

From: (b)(6) [mailto:(b)(6)]
Sent: Friday, May 19, 2017 6:28 PM
To: Appeal, Foia <foiaappeal@osc.gov>
Subject: FP-13-1223

I would like to file a formal timely appeal for the above referenced FOIA. Documents requested were unnecessarily redacted and subtracted from the case file.

The State Bar of California has reprimanded attorney (b)(6) the agency represented involved in the matter and it is imperative to receive the full body of the documents for investigative review.

As I am also now a media publisher this request is necessary in furtherance of the press.

Best,

(b)(6)

Sent from my iPhone

Appeal, Foia

From: Madison Hopkins <mhopkins@bettergov.org>
Sent: Wednesday, May 24, 2017 12:16 PM
To: Appeal, Foia
Subject: Re: FOIA expedited processing appeal

Furthermore, to add to the importance of the federal government's role in this information, the Nuclear Regulatory Commission is tasked with ensuring the safety of the nation's 61 nuclear power plants. This information should also shed light on the any potential wrongdoing by the NRC as it relates to Exelon's decommissioning trust funds.

Thank you again,

Madison Hopkins
Investigator
Better Government Association

(b)(6)

On May 24, 2017, at 11:00 AM, Madison Hopkins <mhopkins@bettergov.org> wrote:

Hello,

This is a request for an appeal for the decision to deny expedited processing for the FOIA with the tracking number FO-17-0068.

In my original request, I asked for expedited processing because as a member of the news media, I am primarily in the business of disseminating information. After speaking with the FOIA officer assigned to this case, I learned that my request for expedited processing was denied because I failed to demonstrate that an urgency exists to obtain this information. To expand on why an urgency does exist, I am providing the following information:

An urgency exists to access this information because it is of timely newsworthiness in Illinois and across the nation. Illinois recently passed a bill to subsidize nuclear power plants in the state with hundreds of millions of dollars each year. Without these subsidies, the licensee-holder for these plants, Exelon, threatened to close down two of its plants in Illinois. The files we are requesting relate to Exelon's financial plan for the closure of all of its plants. This information will help inform the public of the company's true financial status and its influence over state and federal government agencies. Exelon and its competitors are also in the process of requesting similar taxpayer-payer funded bailouts in other states, which emphasizes the need for this information to be available to the public as quickly as possible. We are planning to publish a story with this information in the next few weeks.

For reference, here are a few links to recent news coverage of the issue:

Washington Times - "Why nuclear power subsidies must end"

Appeal, Foia

From: Madison Hopkins <mhopkins@bettergov.org>
Sent: Wednesday, May 24, 2017 12:00 PM
To: Appeal, Foia
Subject: FOIA expedited processing appeal

Hello,

This is a request for an appeal for the decision to deny expedited processing for the FOIA with the tracking number FO-17-0068.

In my original request, I asked for expedited processing because as a member of the news media, I am primarily in the business of disseminating information. After speaking with the FOIA officer assigned to this case, I learned that my request for expedited processing was denied because I failed to demonstrate that an urgency exists to obtain this information. To expand on why an urgency does exist, I am providing the following information:

An urgency exists to access this information because it is of timely newsworthiness in Illinois and across the nation. Illinois recently passed a bill to subsidize nuclear power plants in the state with hundreds of millions of dollars each year. Without these subsidies, the licensee-holder for these plants, Exelon, threatened to close down two of its plants in Illinois. The files we are requesting relate to Exelon's financial plan for the closure of all of its plants. This information will help inform the public of the company's true financial status and its influence over state and federal government agencies. Exelon and its competitors are also in the process of requesting similar taxpayer-payer funded bailouts in other states, which emphasizes the need for this information to be available to the public as quickly as possible. We are planning to publish a story with this information in the next few weeks.

For reference, here are a few links to recent news coverage of the issue:

Washington Times - "[Why nuclear power subsidies must end](#)"

Chicago Tribune - "[Exelon competitors file lawsuit to stop nuclear subsidies](#)"

NPR - "[Struggling Nuclear Industry Lobbies State Governments For Help](#)"

Please do not hesitate to call me with any questions or information regarding this request at (b)(6)

Thank you for handling this.

Best,

Madison Hopkins
Investigator
Better Government Association

(b)(6)

Jeremy Singer-Vine
Data Editor, BuzzFeed
111 E. 18th Street, 11th Floor
New York, NY, 10003
646-757-2252 (office)
(b)(6) (mobile)
jeremy.singer-vine@buzzfeed.com

June 17, 2016
Office of General Counsel
U.S. Office of Special Counsel
1730 M St., N.W. (Suite 218)
Washington, DC 20036-4505

To Whom It May Concern:

I am writing to appeal the Office of Special Counsel's response to FOIA request #FO-16-0027, which I submitted on March 3, 2016. In a letter dated June 13, 2016, I received a response to the request which I consider to be incomplete.

FO-16-0027 sought all data "all database/spreadsheet records containing information based on, or stemming from, submissions of Form OSC-12, minus fields that personally identify the complainant/submitter." The response including data from only two fields "Case Number" and "Date Received." Many other fields from Form OSC-12, however, contain information (a) essential to the public's understanding of whistleblower complaints and (b) that would not "constitute a clearly unwarranted invasion of personal privacy." They include, but are not limited to:

- Part 1, Question 2: **"Status"**
- Part 1, Question 7: **"How did you first become aware that you could file a disclosure with OSC"**
- Part 2, Question 1: **"I know about the information I am disclosing here based on (check all that apply)"**
- Part 2, Question 2: **"Please identify the U.S. government department or agency involved in your disclosure"**
- Part 2, Question 3: **"Please identify the organizational unit of the department or agency involved"**
- Part 2, Question 5: **"Please identify the type of agency wrongdoing that you are alleging (check all that apply)"**

● Part 3, Question 1: **“I have previously disclosed (or am disclosing) the violations alleged here to (complete all that apply)”**

These fields, and other responsive information, were denied under Exemption 6.

Exemption 6 exempts from disclosure only those “personnel and medical files and similar files the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.” 5 U.S.C. § 552(b)(6). Courts have recognized that FOIA’s “presumption favoring disclosure is at its zenith under Exemption 6.” See *Consumers’ Checkbook Ctr. for the Study of Servs. v. HHS*, 554 F.3d 1046, 1057 (D.C. Cir. 2009).

As an initial matter, it is not clear that the requested files constitute files similar to “personnel and medical files” as the statute requires. And while Exemption 6 protects “the individual’s control of information concerning his or her person,” *U.S. Dep’t of Def. v. Fed. Labor Relations Auth.*, 510 U.S. 487, 500 (1994), “the statute does not categorically exempt individuals’ identities . . . because the ‘privacy interest at stake may vary depending on the context in which it is asserted.’” *People for the Am. Way Found. v. Nat’l Park Serv.*, 503 F.Supp.2d 284, 304 (D.D.C. 2007) (quoting *Judicial Watch, Inc. v. Food & Drug Admin.*, 449 F.3d 141, 153 (D.C. Cir. 2006)). Instead, the request only seeks what could be described as “metadata,” and nothing material to the whistleblower’s complaint, any personally-identifying information, nor anything resembling a personnel file.

But even if that were true, the OSC has failed to adequately demonstrate the harm that would result from the release of the information. The U.S. Supreme Court has clarified that the exemption is “directed at threats to privacy more palpable than mere possibilities,” *Rose*, 425 U.S. at 381 n.19. and the U.S. Court of Appeals for the D.C. Circuit requires the government to show a “substantial probability that the disclosure will lead to the threatened invasion.” *People for the Am. Way Found.*, 503 F.Supp.2d at 304. No such demonstration has been made here. And a perfunctory demonstration will not suffice here, where the burden is plainly articulated as a requirement to demonstrate that the release of the information will result in a “clearly unwarranted invasion of personal privacy” – which, as courts have found, is more than simply stating “a demonstrated privacy interest.” *People for the Am. Way Found.*, 503 F.Supp.2d at 304 (quoting *Alliance for the Wild Rockies v. Dep’t of the Interior*, 53 F.Supp.2d 32, 36 (D.D.C. 1999)) (emphasis added).

The public interest in these documents is paramount. In an election year, public access to this data is particularly important. In 2017, many federal agencies will undergo significant personnel changes, and federal resources will undergo significant re-allocations. Whistleblower complaint data is a crucial element in evaluating agencies’ track records.

By way of comparison, note that courts including the U.S. District Court for the District of Columbia found it “difficult to understand how there could not be a substantial public interest in disclosure of documents regarding the manner in which [the Department of Justice] handled high profile allegations of public corruption about an elected official.” *Citizens for Responsibility & Ethics in Wash.*, 2012 WL 45499 at *7. In that case, the court found a significant public interest in records relating to the agency’s investigation of a member of the U.S. House of Representative on allegations of bribery and other illegal behavior where legislation had been passed specifically directing the Justice Department to investigate those claims. Further enhancing the public interest, “highly unusual, and unexplained” changes had been made in the language of the relevant appropriations bill that was a subject of the investigation, and the legislator at issue had made statements about the investigation on the floor of the House of Representatives. *Id.*

Given the plain public interest of the documents, and the absence of any articulated countervailing privacy interest, the records should be disclosed

Sincerely,
Jeremy Singer-Vine

Ndongo, Tarik

From: (b)(6) [mailto:(b)(6)]
Sent: Tuesday, March 28, 2017 12:20 AM
To: Appeal, Foia <foiaappeal@osc.gov>
Subject: Appeal of FR FP-17-0013

To whom it may concern,

The records I seek are of my OWN complaint investigation therefore I should be able to receive ALL documents the OSC has in their possession related to MY OWN CASE, I cannot invade my own privacy. Please provide ALL documents in my listed OSC investigation on whistleblower reprisal. The OSC has closed this case and turned it over for an Individual Right of Action for the MSPB to investigate.

Thank you.

From: U.S. Office of Special Counsel <FOIArequest@osc.gov>
Sent: Tuesday, January 17, 2017 1:15 PM
To: (b)(6)
Subject:

You have received this email message from FOIAXpress Document Management. Document file (b)(6) FR FP-17-0013.pdf' has been attached with this email for your reference.