



U.S. Department of Justice
Office of Information Policy
Suite 11050
1425 New York Avenue, NW
Washington, DC 20530-0001

Telephone: (202) 514-3642

Martin G. Weinberg, Esq.
Suite 1000
20 Park Plaza
Boston, MA 02116
[REDACTED]

Re: Appeal No. DOJ-AP-2016-004027
Request No. 1203982-001
MWH:TAZ

VIA: Email

Dear Mr. Weinberg:

You appealed on behalf of your client, Jeffrey Epstein, from the action of the Federal Bureau of Investigation on his Freedom of Information Act request for access to records concerning himself. Please be advised that I am interpreting your appeal as challenging all withholdings made on the first through fifth interim releases of records responsive to your client's request.

After carefully considering your appeal, and as a result of discussions between FBI personnel and this Office, I am remanding your client's request in part to the FBI for further processing of select portions of the responsive records.¹ If the FBI determines that additional records are releasable, it will send them to you directly, subject to any applicable fees. You may appeal any future adverse determination made by the FBI. If you would like to inquire about the status of this remand, please contact the FBI directly. I am otherwise affirming the FBI's action on your client's request.

In order to provide your client with the greatest possible access to responsive records, your client's request was reviewed under both the Privacy Act of 1974 and the FOIA. I have determined that the records responsive to your client's request are exempt from the access provision of the Privacy Act. See 5 U.S.C. § 552a(j)(2); see also 28 C.F.R. § 16.96 (2016). For this reason, I have reviewed your appeal under the FOIA.

The FOIA provides for disclosure of many agency records. At the same time, Congress included in the FOIA nine exemptions from disclosure that provide protection for important interests such as personal privacy, privileged communications, and certain law enforcement activities. The FBI properly withheld certain information in full because it is protected from disclosure under the FOIA pursuant to:

¹ This remand encompasses certain withholdings made pursuant to Exemptions 3 and 7(D) of the FOIA. On remand, the FBI is also verifying the applicability of court seals to certain responsive records.

5 U.S.C. § 552(b)(3), which concerns matters specifically exempted from release by statute (in this instance, Rule 6(e) of the Federal Rules of Criminal Procedure, which pertains to the secrecy of grand jury proceedings);

5 U.S.C. § 552(b)(5), which concerns certain inter- and intra-agency records protected by the deliberative process privilege;

5 U.S.C. § 552(b)(6), which concerns material the release of which would constitute a clearly unwarranted invasion of the personal privacy of third parties;

5 U.S.C. § 552(b)(7)(A), which concerns records or information compiled for law enforcement purposes the release of which could reasonably be expected to interfere with enforcement proceedings;

5 U.S.C. § 552(b)(7)(C), which concerns records or information compiled for law enforcement purposes the release of which could reasonably be expected to constitute an unwarranted invasion of the personal privacy of third parties;

5 U.S.C. § 552(b)(7)(D), which concerns records or information compiled for law enforcement purposes the release of which could reasonably be expected to disclose the identities of confidential sources and information furnished by such sources; and

5 U.S.C. § 552(b)(7)(E), which concerns records or information compiled for law enforcement purposes the release of which would disclose techniques and procedures or guidelines for law enforcement investigations or prosecutions.

Please be advised that for each of these exemptions, it is reasonably foreseeable that disclosure of the information withheld would harm the interests protected by these exemptions.

Additionally, please be advised that a portion of the records maintained by the FBI are protected from disclosure by a court seal issued by a United States District Court. In this instance, the FBI lacks authority to consider the releasability of this information under the FOIA. See GTE Sylvania, Inc. v. Consumers Union, 445 U.S. 375, 384-86 (1980) (finding "no discretion for the agency to exercise" when records are sealed, thus no improper withholding).

Please note that the FBI is contacting the District Court to verify that the court seal continues to prohibit disclosure of the records you seek. In the event that the District Court informs the FBI that the court seal no longer prohibits disclosure of these records, the FBI will reopen client's your request and take further action as appropriate.

Please be advised that this Office's decision was made only after a full review of this matter. Your appeal was assigned to an attorney with this Office who thoroughly reviewed and analyzed your appeal, your client's underlying request, and the action of the FBI in response to

your client's request. If you have any questions regarding the action this Office has taken on your appeal, you may contact this Office's FOIA Public Liaison for your appeal. Specifically, you may speak with the undersigned agency official by calling (202) 514-3642.

If your client is dissatisfied with my action on your appeal, the FOIA permits him to file a lawsuit in federal district court in accordance with 5 U.S.C. § 552(a)(4)(B).

For your information, the Office of Government Information Services (OGIS) offers 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 client's right to pursue litigation. The contact information for OGIS is as follows: Office of Government Information Services, National Archives and Records Administration, Room 2510, 8601 Adelphi Road, College Park, Maryland 20740-6001; email at ogis@nara.gov; telephone at 202-741-5770; toll free at 1-877-684-6448; or facsimile at 202-741-5769.

Sincerely,

8/29/2017

X

Chief, Administrative Appeals Staff

Signed by: OIP