



U.S. Department of Justice
Office of Information Policy
Sixth Floor
441 G Street, NW
Washington, DC 20530-0001

Telephone: (202) 514-3642

Michael Ding

November 7, 2022

Re: Appeal No. A-2022-01253
Request No. EOUSA-2022-
001207
CDT:JKD

FOIA@aflegal.org

VIA: Online Portal

Dear Michael Ding:

You appealed from the action of the Executive Office for United States Attorneys (EOUSA) on your Freedom of Information Act (FOIA) request for records "concerning or mentioning the use of race as a factor in charging decisions and/or downward variances in sentencing recommendations by the United States," as well as records concerning United States v. Lee. I note that your appeal concerns EOUSA's February 24, 2022 categorical denial of your request for certain records about United States v. Lee.

After carefully considering your appeal, I am affirming EOUSA's action on that portion of your request seeking certain records concerning United States v. Lee. 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. To the extent that non-public responsive records exist, disclosure of such records, including law enforcement records, concerning a third-party individual would constitute a clearly unwarranted invasion of personal privacy, and could reasonably be expected to constitute an unwarranted invasion of personal privacy. See 5 U.S.C. § 552(b)(6), (7)(C). Further, it is reasonably foreseeable that releasing any non-public records, to the extent such records exist, would harm the interests protected by these exemptions. Because any non-public records responsive to your request would be categorically exempt from disclosure, EOUSA properly asserted these exemptions and was not required to conduct a search for the requested records. See, e.g., DOJ v. Reporters Committee for Freedom of the Press, 489 U.S. 749, 780 (1989) (holding "as a categorical matter" pursuant to Exemption 7(C) that release of investigatory records concerning a third party "can reasonably be expected to invade" that person's privacy and that such an invasion is unwarranted in the absence of an overriding public interest).

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 underlying request, and the action of EOUSA in response to your request.

If you are dissatisfied with my action on your appeal, the FOIA permits you 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 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. 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.

Sincerely,

Matthew W. Hurd

X

Matthew W. Hurd, Chief, Administrative Appeals
Staff