

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

From: OGIS <[ogis@nara.gov](mailto:ogis@nara.gov)>  
Date: Friday, March 15, 2019  
Subject: Request For Assistance George Pierce  
To: [pierce.205@gmail.com](mailto:pierce.205@gmail.com)

Re: OGIS Case No. 19-01460

Dear Mr. Pierce:

This responds to your February 13, 2019 request Office of Government Information Services (OGIS) assistance, which we received via email. OGIS is the Federal Freedom of Information Act (FOIA) Ombudsman. In this role, we complement existing practice and procedure by assisting with the FOIA process. We provide information to FOIA requesters and Federal agencies to increase understanding and resolve disputes. However, OGIS has no investigatory or enforcement power, nor can we compel an agency to release documents. Using OGIS services does not affect your right to pursue litigation.

We carefully reviewed your submission of information and we understand that you administratively appealed the Department of Homeland Security (DHS), U.S. Customs and Border Protection's (CBP's) failure to respond to Request Nos. CBP-2018-032355, CBP-OIT-2018-035911, CBP-2018-037694, CBP-2018-040734, CBP-2019-015207, and CBP-OIT-2019-009179/Appeal No. CBP-AP-2019-020116 within the statutory time period (also known as "constructive denials" of your requests). In response to your appeals, CBP informed you that your requests are not subject to administrative appeals at this time because there are no administrative records for the agency to review. Under the FOIA, a requester has the right to administratively appeal an "adverse determination" on a request. Every department and agency has regulations on how to implement the FOIA. Some FOIA regulations specifically define an adverse determination, while others do not. Examples of adverse determinations as defined in agency FOIA include decisions such as:

the requested record is exempt, completely or partially;  
the request does not reasonably describe the records the requester is seeking;  
the information requested is not a record subject to the FOIA;  
the requested record does not exist, cannot be located, or has been destroyed;  
the requested record is not readily reproducible in the form or format sought by the requester;  
the requester did not meet the standard for receiving a fee waiver and/or expedited processing of a request; and  
denials on fee issues, such as fee waivers.

Regarding CBP's action on your appeals, please know that the CBP does not grant an administrative appeal unless it has made an adverse determination on a request. The agency denied your appeals because your requests are pending. The agency does not consider its delay in responding to your requests to be adverse determinations subject to appeal.

We understand that CBP denied your request, No. CBP-2019-015207, for "all documents in the AFI system pertaining to George Hampton Pierce Jr. (DOB 04/09/1978) including but not limited to Finished Intelligence Products, Any Requests For Information (RFIs), and Any Documents disclosed to agencies outside of CBP" on the grounds that your request did not reasonably describe the sought records in sufficient detail to enable government employees who are familiar with the subject area to locate records without placing an unreasonable burden upon the agency, See 6 CFR §5.3(b). On appeal (No. CBP-AP-2019-022121), you disputed CBP's failure to respond to your request within the statutory time period rather than its determination that your request did not reasonably describe the request. Again, because you disputed the agency's failure to respond to your request within the statutory time period, CBP denied your appeal on the grounds that it had not issued an adverse determination for you to appeal.

We contacted the CBP FOIA Division to inquire about the status of your requests. Below, we provide the status information that the agency shared with us.

CBP-2018-028578 - improper FOIA request  
CBP-2018-032355 - pending review & redactions  
CBP-2018-037694 - pending review & redactions  
CBP-2018-040734 - pending review & redactions  
CBP-2019-015207 - closed because the request was not reasonably described  
CBP-OIT-2018-035911 - search pending  
CBP-OIT-2019-009179 - search pending

The FOIA Division reports that CPB has a significant backlog of FOIA requests. The expected response time for a FOIA request is currently 3-6 months.

At this point if CBP's delay in responding to your requests dissatisfies you, you may wish to contact the agency's FOIA Public Liaison (FPL) to discuss refining the scope of your requests.

All Federal agencies have an FPL, whose role is to explain the FOIA process and assist requesters with their FOIA requests at any stage of the administrative process. They are often able to answer questions about which records are kept by the agency and their retention periods.

Requesters who are unsure of where to start identifying records that relate to their request may wish to ask the FPL what types of records that agency maintains that might be relevant. Requesters can also ask how best to word their request or narrow the scope of a request to help the agency conduct an efficient search. You may contact CPB FPL at the following:

U.S. Customs & Border Protection

Exhibit E

Charlyse Hoskins, FOIA Public Liaison  
90 K Street, NW, 9th Floor, Mail Stop 1181  
Washington, DC 20229-1181  
Phone: 202-325-0150

We hope that this information is useful in understanding CBP's action on your requests and appeals. At this time, it appears that there is no further assistance OGIS can offer and we consider this matter closed. If you have questions or concerns that we have not addressed, please contact us again.

Sincerely,  
The OGIS Staff

On Fri, Mar 8, 2019 at 9:47 AM OGIS <[ogis@nara.gov](mailto:ogis@nara.gov)> wrote:

>  
> Re: OGIS Case No. 19-01460  
> Dear Mr. Pierce:  
> Thank you for contacting the Office of Government Information Services (OGIS). Congress created OGIS to serve as the Federal Freedom of Information Act (FOIA) Ombudsman. We assist the public and Federal agencies by helping them resolve their FOIA disputes, and by addressing their questions and concerns about the FOIA process.  
> We assigned your February 13, 2019 assistance request the case number listed above. Please include this number in all communications with our office regarding this matter.  
> An OGIS facilitator will review your submission and determine what assistance we can provide. An increase in demand for our services means there may be a delay in our response. We apologize for any inconvenience this may cause, and will address your request for assistance as soon as possible.  
> OGIS is not a replacement or substitute for the FOIA administrative appeal process available to requesters. If you are at the stage in the FOIA process where you are able to file an appeal, we strongly encourage you to do so. By filing an appeal, you preserve your administrative rights and give the agency a chance to review and reconsider every part of its initial response. If we assist you in resolving your dispute with the agency, you may withdraw your FOIA appeal at any time.  
> We look forward to assisting you.  
> Sincerely,  
> The OGIS Staff

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> On Wednesday, February 13, 2019 at 1:04:20 PM UTC-5, Pierce wrote:  
>>  
>> Hello,  
>> Please find attached a letter and accompanying documents requesting assistance.  
>> Very Respectfully  
>> George Pierce

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> --  
> OFFICE OF GOVERNMENT INFORMATION SERVICES  
> National Archives and Records Administration  
> 8601 Adelphi Road (OGIS)  
> College Park, MD 20740-6001  
> Email: [ogis@nara.gov](mailto:ogis@nara.gov)  
> Phone: 202-741-5770  
> Fax: 202-741-5769  
> Website: [archives.gov/ogis](http://archives.gov/ogis)  
> Blog: <http://foia.blogs.archives.gov/>  
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