

EX#1

- COPY OF OPR'S JAN 14, 2020 DENIAL, ("GLOMAR") RESPONSE
TO (FOIA) REQUEST NO. F19-00031



950 Pennsylvania Avenue, N.W., Suite 3266
Washington, D.C. 20530
(202) 514-3365

JAN 14 2020

Antonio Akel
Register# 06899-017
United States Penitentiary, Big Sandy
P.O. Box 2068
Inez, KY 41224

Re: OPR FOIA No. F19-00031

Dear Mr. Akel:

This letter responds to your undated Freedom of Information Act (FOIA) request to the Office of Professional Responsibility (OPR) requesting any records created and/or received by OPR in regards to AUSA Thomas P. Swaim. OPR received your request on December 10, 2018. Your request has been assigned request number F19-00031. Please refer to that number in any correspondence pertaining to this matter.

OPR refuses to confirm or deny the existence of any records that are subject to the protection of Exemption 6 of the FOIA, 5 U.S.C. § 552(b)(6). The FOIA provides for disclosure of many agency records. At the same time, Congress included in the FOIA nine exemptions that provide protection for important interests such as personal privacy, privileged communications, and certain law enforcement activities. Lacking an individual's consent, an official Department acknowledgment of an investigation, or an overriding public interest, even to acknowledge the existence of records related to claims of misconduct by an individual would constitute a clearly unwarranted invasion of personal privacy.

To the extent that your request seeks law enforcement records, OPR refuses to confirm or deny the existence of records responsive to your request pursuant to 5 U.S.C. § 552(b)(7)(C). Confirming or denying the existence of such records, including law enforcement records concerning a third-party individual, and could reasonably be expected to constitute an unwarranted invasion of personal privacy. Additionally, it is reasonably foreseeable that confirming or denying the existence of such records would harm the interests protected by these exemptions. *See, e.g., People for the Ethical Treatment of Animals v. NIH*, 745 F.3d 535, 544 (D.C. Cir. 2014) (upholding agency's refusal to confirm or deny existence of records that would confirm whether investigation of third party had occurred); *see also Antonelli v. FBI*, 721 F.2d 615, 618 (7th Cir. 1983) (finding that confirming whether third party has been the subject of investigation would likely "constitute an invasion of that person's privacy that implicates the protections of Exemptions 6 and 7").

This is OPR's standard response to such requests and should not be taken to indicate that such records do, or do not, exist. In addition, OPR has completed the balancing of the public interest versus the privacy interests involved and concludes that the public interest does not outweigh any privacy interests.

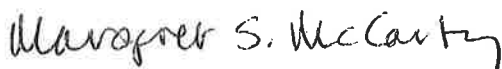
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For your information, Congress excluded three discrete categories of law enforcement and national security records from the requirements of the FOIA. See 5 U.S.C. § 552(c) (2006 & Supp. IV 2010). This response is limited to those records that are subject to the requirements of the FOIA. This is a standard notification that is given to all our requesters and should not be taken as an indication that excluded records do, or do not, exist.

If you have a question, you may contact OPR's FOIA Public Liaison at the telephone number and address listed above. 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 as follows: Office of Government Information Services, National Archives and Records Administration, 8601 Adelphi Road-OGIS, College Park, Maryland 20740-6001, ogis@nara.gov; 202-741-5770; 1-877-684-6448; or facsimile at 202-741-5769.

If you are not satisfied with my response to this request, you may administratively appeal by writing to the Director, Office of Information Policy (OIP), U.S. Department of Justice, 441 G Street, N.W., Sixth Floor, Washington, D.C. 20530, or you may submit an appeal through OIP's FOIAonline portal by creating an account on the following web site: <https://www.foiaonline.gov/foiaonline/action/public/home>. Your appeal must be postmarked or electronically transmitted within 90 days of the date of my response to your request. If you submit your appeal by mail, both the letter and the envelope should be clearly marked "Freedom of Information Act Appeal."

If you are dissatisfied with the result of any appeal you make, judicial review may thereafter be available to you in the United States district court for the judicial district in which you reside, or in which you have your principal place of business, or in the District of Columbia.

Sincerely,



Margaret S. McCarty
Deputy Director

EX-12

- O.I.P AFFIRMANCE IN APPEAL NO. A-2020-00310 ON MAY 21, 2020
(FRONT AND BACK)



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

Telephone: (202) 514-3642

Antonio Akel
United States Penitentiary
Post Office Box 2068
Inez, KY 41224

May 21, 2020

Re: Appeal No. A-2020-00310

Request No. F19-00031

MWH:JNW

VIA: U.S. Mail

Dear Antonio Akel:

You appealed from the action of the Office of Professional Responsibility (OPR) on your Freedom of Information Act request for access to misconduct records concerning a retired Assistant United States Attorney. I note that your appeal concerns OPR's full denial of your request.

After carefully considering your appeal, I am affirming OPR's action on your request. 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. Confirming or denying the existence of such records concerning a third-party individual would constitute a clearly unwarranted invasion of personal privacy. See 5 U.S.C. 552(b)(6). Additionally, it is reasonably foreseeable that confirming or denying the existence of such records would harm the interests protected by this exemption. See, e.g., People for the Ethical Treatment of Animals v. NIH, 745 F.3d 535, 544 (D.C. Cir. 2014) (upholding agency's refusal to confirm or deny existence of records that would confirm whether investigation of third party had occurred); see also Antonelli v. FBI, 721 F.2d 615, 618 (7th Cir. 1983) (finding that confirming whether third party has been the subject of investigation would likely "constitute an invasion of that person's privacy that implicates the protections of Exemptions 6 and 7").

Additionally, to the extent that your request seeks law enforcement records, confirming or denying the existence of law enforcement records concerning a third-party individual could reasonably be expected to constitute an unwarranted invasion of personal privacy. See 5 U.S.C. 552(b)(7)(C). Additionally, it is reasonably foreseeable that confirming or denying the existence of such records would harm the interests protected by this exemption. See, e.g., People for the Ethical Treatment of Animals v. NIH, 745 F.3d 535, 544 (D.C. Cir. 2014)