



**U.S. Department of Justice**

Criminal Division

*Office of Enforcement Operations*

*Washington, D.C. 20530*

**VIA Electronic Mail**

September 24, 2019

Ms. Megan Graham  
National Association of Criminal Defense Lawyers  
Clinical Teaching Fellow  
Samuelson Law, Technology & Public Policy  
Clinic  
U.C. Berkeley School of Law  
[mgraham@clinical.law.berkeley.edu](mailto:mgraham@clinical.law.berkeley.edu)

NACDL v. Federal Bureau of Prisons and  
Department of Justice, Case No. 18-02399  
(D.D.C.) (KBJ).

Dear Ms. Graham:

This is the second interim response to your Freedom of Information Act request dated August 2, 2018, seeking records concerning federal prosecutor's access to emails between incarcerated persons held at Federal Bureau of Prisons ("BOP") facilities and their legal counsel. Your request is currently the subject of litigation NACDL v. Federal Bureau of Prisons and Department of Justice, Case No. 18-02399 (D.D.C.) (KBJ). You should refer to this case title and number in any future correspondence with this Office.

Please be advised that searches have been conducted in the appropriate Criminal Division sections and we are continuing to review and process potentially responsive records. Thus far, and in connection with Search Category One, we have identified a total of 2,132 pages that relate to your request.

After carefully reviewing the records, I have determined that 122 pages were non-responsive; 1,703 pages were duplicative; twenty-two pages are appropriate for release in full; one page is appropriate for release in part, and 116 pages are exempt from disclosure pursuant to:

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

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.

Additionally, eighteen pages originated with the Executive Office for United States Attorneys ("EOUSA") and 150 pages originated with BOP. In accordance with 28 C.F.R. § 16.4(d) (2018), this Office referred that material to the appropriate offices for processing and direct response to you. If you have questions regarding these referrals, you may contact those agencies at the following addresses:

<p>ATTN: Vinay Jolly  Kevin Krebs, Assistant Director  FOIA/Privacy Unit  Department of Justice  Executive Office for United States Attorneys  175 N Street, NE, Suite 5.400  Washington, DC 20530-0001</p>	<p>ATTN: Darrel Stroble  Eugene Baime, Supervisory Attorney  Department of Justice  Federal Bureau of Prisons  Room 924, HOLC Building  320 First Street, NW  Washington, DC 20534</p>
---	--

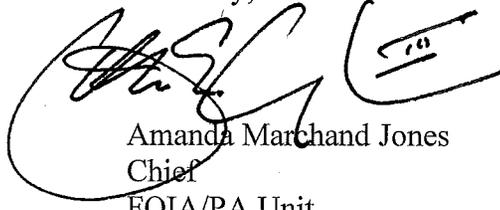
For your information, Congress excluded three discrete categories of law enforcement and national security records from the requirements of the FOIA. See 5 U.S.C. § 552(c). This response is limited to those records that are subject to the requirements of the FOIA. This is a standard notification that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

You may contact our FOIA Public Liaison at the (202) 616-0307 for any further assistance and to discuss any aspect of your request. 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, Room 2510, 8601 Adelphi Road, College Park, Maryland 20740-6001, e-mail at [ogis@nara.gov](mailto:ogis@nara.gov); telephone at 202-741-5770; toll free at 1-877-684-6448; or facsimile at 202-741-5769.

Although your request is the subject of litigation, I am required by statute to inform you that 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), United States Department of Justice, Suite 11050, 1425 New York Avenue, NW, Washington, DC 20530-0001, or you may submit an appeal through OIP's FOIA online portal by creating an account on the following web site: <https://foiaonline.regulations.gov/foia/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."

Sincerely,

 (For)

Amanda Marchand Jones  
Chief  
FOIA/PA Unit

Attachments

cc: W. Mark Nebeker  
Assistant United States Attorney  
555 4<sup>th</sup> Street, N.W,  
Washington, D.C. 20530  
[mark.nebeker@usdoj.gov](mailto:mark.nebeker@usdoj.gov)