



U.S. Department of Justice
Drug Enforcement Administration
FOI/Records Management Section
8701 Morrisette Drive
Springfield, Virginia 22152

OCT 25 2018

Case Number: 17-00308-F (Sixth Release)

Patrick Morrissey, Attorney General
c/o Thomas Lampman
Office of the West Virginia Attorney General
State Capitol, Building 1, Rm. 26 E
Charleston, West Virginia 25305

Via Email: Thomas.T.Lampman@wvago.gov

Dear Mr. Morrissey:

This letter further responds to your Freedom of Information/Privacy Act request dated January 26, 2017 and your reformulated request dated June 1, 2017, addressed to the Drug Enforcement Administration (DEA), Freedom of Information/Privacy Act Unit, seeking access to information concerning opioid quotas from 2010-2016.

On October 9, 2018 our office made a fifth release of 232 pages to you, which included aggregate production quota records from 2015. Please note, this response constitutes DEA's fifth supplemental release and includes aggregate production quota documents from 2010 and 2016. We are also providing documents that may be responsive to ¶¶ 4-9 of your FOIA request. As of the date of this release, DEA has provided all documents that it has located after conducting a reasonable search that are responsive to ¶¶ 1, 4-9 of your FOIA request.

While DEA was conducting its search for responsive records, it located a Government Accountability Office ("GAO") Report titled "Drug Shortages: Better Management of the Quota Process for Controlled Substances Needed; Coordination Between DEA and FDA Should Be Improved." DEA considers this document to be a "congressional record" which is not subject to FOIA. *See, e.g., United We Stand Am. v. IRS*, 359 F. 3d 595, 597 (D.C. Cir. 2004) (observing that "[t]he Freedom of Information Act does not cover congressional documents."). Since this document is already publicly available, DEA is providing it to you as a courtesy, however, if you are interested in obtaining any other GAO correspondence, you must contact GAO directly.

Portions of records not released are being withheld pursuant to the Freedom of Information Act (FOIA), 5 U.S.C. § 552, and/or the Privacy Act, 5 U.S.C. § 552a. Please refer to the list enclosed with this letter that identifies the authority for withholding the deleted material, which is indicated by a mark appearing in the block next to the exemption. An additional enclosure with this letter explains these exemptions in more detail. The documents are being forwarded to you with this letter.

Certain records contain information that was furnished to DEA by the Food and Drug Administration (FDA). That information and a copy of your request have been referred to FDA for a decision. The FDA will respond directly to you in accordance with 28 C.F.R § 16.4 and/or 16.42. If you have any questions about this referral, you can contact Sarah Kotler, Director, Division of Freedom of Information, FDA 5630 Fishers Lane, Room 1035, Rockville, Maryland, 20857 or call (301) 796-3900.

The rules and regulations of the DEA applicable to FOIA requests are contained in the Code of Federal Regulations, Title 28, Part 16, as amended. They are published in the Federal Register and are available for inspection by members of the public.

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.

If you have any questions regarding this letter, you may contact Caitlin Trujillo, Attorney, Administrative Law Section at (202) 598-2730.

Sincerely,

Katherine L. Myrick, Chief
Freedom of Information/Privacy Act Unit
FOI/Records Management Section

Number of pages withheld: 6

Number of pages released: 596

Number of pages referred: 35

APPLICABLE SECTIONS OF THE FREEDOM OF INFORMATION AND/OR PRIVACY ACT:

Freedom of Information Act 5 U.S.C. 552			Privacy Act 5 U.S.C. 552a	
<input type="checkbox"/> (b)(1)	<input checked="" type="checkbox"/> (b)(5)	<input type="checkbox"/> (b)(7)(C)	<input type="checkbox"/> (d)(5)	<input type="checkbox"/> (k)(2)
<input type="checkbox"/> (b)(2)	<input checked="" type="checkbox"/> (b)(6)	<input type="checkbox"/> (b)(7)(D)	<input type="checkbox"/> (j)(2)	<input type="checkbox"/> (k)(5)
<input type="checkbox"/> (b)(3)	<input type="checkbox"/> (b)(7)(A)	<input checked="" type="checkbox"/> (b)(7)(E)	<input type="checkbox"/> (k)(1)	<input type="checkbox"/> (k)(6)
<input checked="" type="checkbox"/> (b)(4)	<input type="checkbox"/> (b)(7)(B)	<input type="checkbox"/> (b)(7)(F)		

Enclosure

EXPLANATION OF EXEMPTIONS
SUBSECTIONS OF TITLE 5, UNITED STATES CODE, SECTION 552

- (b)(1) (A) specifically authorized under criteria established by an Executive order to be kept secret in the interest of national defense or foreign policy and (B) are in fact properly classified pursuant to such Executive order;
- (b)(2) related solely to the internal personnel rules and practices of an agency;
- (b)(3) specifically exempted from disclosure by statute (other than section 552b of this title), if that statute- (A)(i) requires that the matters be withheld from the public in such a manner as to leave no discretion on the issue; or (ii) establishes particular criteria for withholding or refers to particular types of matters to be withheld; and (B) if enacted after the date of enactment of the OPEN FOIA Act of 2009, specifically cites to this paragraph.
- (b)(4) trade secrets and commercial or financial information obtained from a person and privileged or confidential;
- (b)(5) inter-agency or intra-agency memorandums or letters which would not be available by law to a party other than an agency in litigation with the agency;
- (b)(6) personnel and medical files and similar files the disclosure of which would constitute a clearly unwarranted invasion of personal privacy;
- (b)(7) records or information compiled for law enforcement purposes, but only to the extent that the production of such law enforcement records or information (A) could reasonably be expected to interfere with enforcement proceedings, (B) would deprive a person of a right to a fair trial or an impartial adjudication, (C) could reasonably be expected to constitute an unwarranted invasion of personal privacy, (D) could reasonably be expected to disclose the identity of a confidential source, including a State, local, or foreign agency or authority or any private institution which furnished information on a confidential basis, and, in the case of a record or information compiled by criminal law enforcement authority in the course of a criminal investigation or by an agency conducting a lawful national security intelligence investigation, information furnished by a confidential source, (E) would disclose techniques and procedures for law enforcement investigations or prosecutions, or would disclose guidelines for law enforcement investigations or prosecutions if such disclosure could reasonably be expected to risk circumvention of the law, or (F) could reasonably be expected to endanger the life or physical safety of any individual;
- (b)(8) contained in or related to examination, operating, or condition reports prepared by, on behalf of, or for the use of an agency responsible for the regulation or supervision of financial institutions; or
- (b)(9) geological and geophysical information and data, including maps, concerning wells.

SUBSECTIONS OF TITLE 5, UNITED STATES CODE, SECTION 552a

- (d)(5) information compiled in reasonable anticipation of a civil action proceeding;
- (j)(2) material reporting investigative efforts pertaining to the enforcement of criminal law including efforts to prevent, control, or reduce crime or apprehend criminals;
- (k)(1) information which is currently and properly classified pursuant to an Executive order in the interest of the national defense or foreign policy, for example, information involving intelligence sources or methods;
- (k)(2) investigatory material compiled for law enforcement purposes, other than criminal, which did not result in loss of a right, benefit or privilege under Federal programs, or which would identify a source who furnished information pursuant to a promise that his/her identity would be held in confidence;
- (k)(3) material maintained in connection with providing protective services to the President of the United States or any other individual pursuant to the authority of Title 18, United States Code, Section 3056;
- (k)(4) required by statute to be maintained and used solely as statistical records;
- (k)(5) investigatory material compiled solely for the purpose of determining suitability, eligibility, or qualifications for Federal civilian employment or for access to classified information, the disclosure of which would reveal the identity of the person who furnished information pursuant to a promise that his/her identity would be held in confidence;
- (k)(6) testing or examination material used to determine individual qualifications for appointment or promotion in Federal Government service the release of which would compromise the testing or examination process;
- (k)(7) material used to determine potential for promotion in the armed services, the disclosure of which would reveal the identity of the person who furnished the material pursuant to a promise that his/her identity would be held in confidence.