

Jun 12, 2019, 4:27 PM

**Re: OGIS Case No. 19-02234**

**Subject of case: RDT1R-19-19161 & Appeal No. NGC19-030A and NGC19-277**

Dear Mr. Henry:

We write to follow up on your request for assistance concerning your requests to the National Archives and Records Administration (NARA). This email primarily addresses Freedom of Information Act (FOIA) request No. NGC19-277. We will respond to your request for assistance with RDT1R-19-19161 & Appeal No. NGC19-030A in a separate email.

Before we address your specific request, it may be helpful to know that the NARA agency typically receives FOIA requests for the following types of records:

**Operational Records:** Records that NARA creates or receives in carrying out its mission and responsibilities as an executive branch agency. Equal Rights Amendment (ERA) records dating after 1982 are operational records maintained by the agency's Office of the Federal Register (OFR). NARA's Office of General Counsel (NGC) handles requests for operational records.

**Accessioned Archival Records:** Permanent records are records originated with all agencies of the U.S. government (the Department of Justice, the Department of State, etc) and are transferred to NARA's legal and physical custody for permanent preservation and access. Less than 5% of all the records that Federal agencies create or receive in the course of conducting the business of the U.S. government are considered to have permanent value and are transferred to NARA. The permanent records transferred to NARA are referred to as "archival" records. Agencies generally do not transfer those permanent or archival records to NARA until the records are 20-30 years old. OFR records relating to the Equal Rights Amendment (ERA) dating between 1972 to 1982 are archival records. Because of their age or subject matter, most records in NARA's archival holdings are unrestricted and are available for research without filing a FOIA request. Textual Reference Staff, Special Access & FOIA, or the National Declassification Center handle FOIA requests for the archival records the agency maintains in the Washington, D.C. area.

It appears that NARA staff interpreted your first request, RDT1R-19-19161, as a request for archival records. The agency understood your second request, NGC19-277, to be a request for the OFR's operation records.

On April 8, 2019, Mr. Ed Martin submitted a request, NGC19-277, to the OFR for access to records "relating to actions taken by the legislatures of Illinois and Nevada voting to "ratify" the Equal Rights Amendment originally proposed by the Congress to the several states on March 22, 1972. I am not looking for copies of the official resolution sent to your office by the legislatures, but other communications, including emails, which could have led the Archivist of the United States to declare those supposed ratifications to be valid." The OFR forwarded NGC19-277 to the NGC for processing. On April 30, 2019, the NGC denied Mr. Martin's request in its entirety pursuant to FOIA Exemption 5, 5 U.S.C. §552(b) (5).

As of June 5, 2019, the NGC had no record that you appealed the agency's initial response to NGC19-277. If you have not done so already, we **strongly** encourage you to file a FOIA administrative appeal. The appeal is an important part of the FOIA administrative process, and OGIS's assistance does not replace the appeal process. By filing an appeal, you preserve your administrative rights and give the agency a chance to look at the request anew and carefully review and reconsider every part of the initial response, from the search the agency conducted to any initial decision the agency made to withhold records in full or in part.

On appeal, the agency FOIA office that reviews and addresses administrative appeals will typically review your request, the agency's initial response, your appeal letter, and files pertaining to the agency's processing of your request. Based on the available information, the appeals office will independently determine whether the agency properly processed your request at the initial stage. The appeals office may affirm the initial response in full; or it may reverse or modify the initial response - and may remand your request back to the FOIA office which handled the initial request for further action. The agency will notify you of its appeal determination in writing.

At this time, if NARA's initial response to NGC19-277 dissatisfies you, your best course of action is to file an appeal and work your way through the agency's FOIA administrative appeal process.

For information on how to submit your appeal, refer to the NGC's final response letter and/or the agency's FOIA Reference Guide at <https://www.archives.gov/foia/foia-guide#appeals>.

If you dispute the appeal determination or have questions or concerns that we have not addressed, please contact us again and provide us with the material listed on our website at <https://www.archives.gov/ogis/mediation-program/request-assistance>.

We hope you find this information useful. We will be in touch regarding RDT1R-19-19161 & Appeal No. NGC19-030A.

Sincerely,  
The OGIS Staff