



**U.S. Immigration
and Customs
Enforcement**

January 15, 2014

JACQUELINE STEVENS
NORTHWESTERN UNIVERSITY
601 UNIVERSITY PLACE
EVANSTON, IL 60208

RE: ICE FOIA Case Number 2013FOIA24375

Dear Ms. Stevens:

This is the first interim response to your Freedom of Information Act (FOIA) request to the Immigration and Customs Enforcement (ICE), dated June 15, 2013 seeking the following information:

- 1) All procedures used by Immigration and Customs Enforcement (ICE) to pay for its employees' damages in civil lawsuits, per 28 CFR § 50.15 8(iii); and
- 2) All forms, worksheets, and instructions issued by the ICE office responsible for implementing CFR § 50.15 8(iii) to employees to implement ICE procedures for paying for damages in civil lawsuits. This includes but is not limited to memoranda, e-mail, PowerPoint, and individual correspondence to specific employees about their specific requests.
- 3) All correspondence from ICE officials responsive to ICE employee requests for the agency to pay money damages from a verdict, judgment, or other monetary award for which the ICE employee is responsible. This includes but is not limited to correspondence and associated attachments, enclosures or other documents:
 - a) *responding to the ICE employee* requesting the agency pay the monetary damages; and
 - b) *to other officials in ICE or other federal agencies* seeking guidance or advising them on decisions; and
 - c) with directives or instructions on the disbursement of funds to the party named as the recipient of money damages pursuant to an employee request under 28 CFR § 50.15 8(iii).

Your request has been processed under the FOIA, 5 U.S.C. § 552.

We conducted comprehensive searches within ICE's Office of the Principal Legal Advisor (OPLA), Office of the Chief Financial Officer (OCFO), and the Office of Human Capital (OHC) for records that would be responsive to your request. OPLA produced total of (625) pages, but OCFO and OHC were unable to locate any records related to your request.

This interim response contains 100 pages of records. ICE will continue to process records responsive to your request and release on a rolling basis.

After a review of the documents provided by OPLA, I have determined that 12 pages will be released in full and portions of 88 pages will be withheld pursuant to exemptions (b)(5), (b)(6), (b)(7)(C), and (b)(7)(E) of the FOIA

ICE has applied Exemption 5 to protect from disclosure intra-agency documents that contain the recommendations, opinions, and conclusions of agency employees. The disclosure of candid opinions and inhibit the free and frank exchange of information and opinions among agency personnel on important agency decision-making by having a chilling effect on the agency's deliberative process

FOIA Exemption 5 protects from disclosure those inter- or intra-agency documents that are normally privileged in the civil discovery context. The three most frequently invoked privileges are the deliberative process privilege, the attorney work-product privilege, and the attorney-client privilege. After carefully reviewing the responsive documents, I have determined that the responsive documents qualify for protection under the deliberative process privilege. The deliberative process privilege protects the integrity of the deliberative or decision-making processes within the agency by exempting from mandatory disclosure opinions, conclusions, and recommendations included within inter-agency or intra-agency memoranda or letters. The release of this internal information would discourage the expression of candid opinions and inhibit the free and frank exchange of information among agency personnel.

ICE has applied Exemptions 6 and 7(C) to protect from disclosure of the names, phone numbers, email addresses and other personal identifying information of DHS employees and third parties contained within the documents.

FOIA Exemption 6 exempts from disclosure personnel or medical files and similar files the release of which would cause a clearly unwarranted invasion of personal privacy. This requires a balancing of the public's right to disclosure against the individual's right privacy. The types of documents and/or information that we have withheld may consist of social security numbers, home addresses, dates of birth, or various other documents and/or information belonging to a third party that are considered personal. The privacy interests of the individuals in the records you have requested outweigh any minimal public interest in disclosure of the information. Any private interest you may have in that information does not factor into the aforementioned balancing test.

Exemption 7(C) protects records or information compiled for law enforcement purposes that could reasonably be expected to constitute an unwarranted invasion of personal privacy. This exemption takes particular note of the strong interests of individuals, whether they are suspects, witnesses, or investigators, in not being unwarrantably associated with alleged criminal activity. That interest extends to persons who are not only the subjects of the investigation, but those who may have their privacy invaded by having their identities and information about them revealed in connection with an investigation. Based upon the traditional recognition of strong privacy interest in law enforcement records, categorical withholding of information that identifies third parties in law enforcement records is ordinarily appropriate. As such, I have determined that the privacy interest in the identities of individuals in the records you have requested clearly outweigh any minimal public interest in disclosure of the information. Please note that any private interest you may have in that information does not factor into this determination.

FOIA Exemption 7(E) protects records compiled for law enforcement purposes, the release of which would disclose techniques and/or 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. I have determined that disclosure of certain law enforcement sensitive information contained within the responsive records could reasonably be expected to risk circumvention of the law. Additionally, the techniques and procedures at issue are not well known to the public.

You have the right to appeal ICE's withholding determination. Should you wish to do so, send your appeal and a copy of this letter to: U.S. Immigration Customs Enforcement, Office of Principal Legal Advisor, U.S. Department of Homeland Security, Freedom of Information Office, 500 12th Street, S.W., Stop 5009 Washington, D.C. 20536-5009, following the procedures outlined in the DHS regulations at 6 C.F.R. § 5.9. Your appeal must be received within 60 days of the date of this letter. Your envelope and letter should be marked "FOIA Appeal." Copies of the FOIA and DHS regulations are available at www.dhs.gov/foia.


The Office of Government Information Services (OGIS) also mediates disputes between FOIA requesters and Federal agencies as a non-exclusive alternative to litigation. If you are requesting access to your own records (which is considered a Privacy Act request), you should know that OGIS does not have the authority to handle requests made under the Privacy Act of 1974. If you wish to contact OGIS, you may email them at ogis@nara.gov or call 1-877-684-6448.

Should you wish to contact ICE regarding the processing of records located in response to your request, please notify this office e-mail at ICE-FOIA@dhs.gov, or via phone at (866) 633-1182

Provisions of the FOIA allow us to recover part of the cost of complying with your request. In this instance, because the cost is below the \$14 minimum, there is no charge.¹

If you need to contact our office about this matter, please refer to case number **2013FOIA24375**. This office can be reached at (866) 633-1182.

Sincerely,



Catrina M. Pavlik-Keenan
FOIA Officer

Enclosure(s): 100 pages

¹ 6 CFR § 5.11(d)(4).