

U.S. Department of Homeland Security
500 12th St SW, Stop 5009
Washington, DC 20536



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

February 24, 2015

Jacqueline Stevens
Northwestern University
601 University Place, Dept. of Political Science
Evanston, IL 60208

RE: ICE FOIA Case Number 2015-ICFO-00500

Dear Ms. Stevens:

This letter is the final response to your Freedom of Information Act (FOIA) request to U.S. Immigration and Customs Enforcement (ICE), dated May 29, 2013. You have requested copies of the following records:

All systems data, including spreadsheet data on deportation order terminations by immigration judges or the Board of Immigration Appeals, as well as all memoranda, reports, email, and all other communications, including but not confined to correspondence with the ICE Office of General Counsel and Public Affairs, on which John Morton relied for his assertion that reforms since 2008 have decreased the number of US citizens ICE is detaining or deporting. Additionally, you have requested a copy of current ICE protocols for when agents or attorneys encounter individuals with probative evidence of US citizenship, and all email correspondence and attachments for January 1, 2013, to the present sent to the current USC drop box email address required by current protocols for when ICE agents or attorneys encounter potential US citizens.

ICE has considered your request under the FOIA, 5 U.S.C. § 552.

A search of the ICE Office of Enforcement and Removal Operations (ERO), Office of the Principal Legal Advisor (OPLA), and Office of Public Affairs (OPI) for records responsive to your request produced 109 pages and 8 Excel Spreadsheets that are responsive to your request. Portions of 109 pages and the 8 spreadsheets will be withheld pursuant to Exemptions of FOIA as described below.

ICE has applied FOIA Exemptions to protect from disclosure of Case name and number, individuals email and phone numbers, and inter-agency or intra-agency memoranda or letters.

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, ICE has determined that portions of the responsive documents qualify for protection under the deliberative process privilege, the



U.S. Immigration and Customs Enforcement

attorney-client privilege, and the attorney work-product 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. The attorney work-product privilege protects documents and other memoranda prepared by an attorney in contemplation of litigation. The attorney-client privilege protects confidential communications between an attorney and his client relating to a legal matter for which the client has sought professional advice. It applies to facts divulged by a client to his attorney, and encompasses any opinions given by an attorney to his client based upon, and thus reflecting, those facts, as well as communications between attorneys that reflect client-supplied information. The attorney-client privilege is not limited to the context of litigation.

ICE has applied FOIA Exemptions 6 and 7(C) to protect from disclosure the names, e-mail addresses, and phone numbers of DHS employees, as well as the names, alien numbers, and other personally identifiable information of aliens 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 to privacy. 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.

FOIA 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, ICE has 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.

ICE has applied FOIA Exemption 7(E) to protect from disclosure law enforcement database codes, the disclosure of which could allow unauthorized access to ICE systems.

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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. ICE has 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 determination and should you wish to do so, please send your appeal following the procedures outlined in the DHS regulations at 6 Code of Federal Regulations § 5.9 and a copy of this letter to:

U.S. Immigration and Customs Enforcement
Office of Principal Legal Advisor
U.S. Department of Homeland Security
Freedom of Information Act Office
500 12th Street, S.W., Stop 5009
Washington, D.C. 20536-5009

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 wish to contact OGIS, you may email them at ogis@nara.gov or call 1-877-684-6448.

Provisions of the FOIA and Privacy Act 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

¹ 6 CFR § 5.11(d)(4).

Freedom of Information Act Office

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If you need to contact the FOIA office about this matter, please call (866) 633-1182 and refer to FOIA case number **2015-ICFO-00500**.

Sincerely,

A handwritten signature in black ink that reads "Bradley E. White". Below the signature is a small horizontal line.

Catrina M. Pavlik-Keenan
FOIA Officer

Enclosure(s): 8 Excel Spreadsheets, 109 page(s)