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

U.S. Immigration and Customs Enforcement

February 6, 2018

Caroline DeCell
Knight First Amendment Institute
314 Low Library
535 West 116th Street
New York, NY 10027

RE: 2018-ICAP-00118; 2017-ICFO-43023

Dear Ms. DeCell:

This is in response to your appeal dated and received on January 5, 2017[1], appealing U.S. Immigration and Customs Enforcement's (ICE) response to your Freedom of Information Act (FOIA) request. Your August 7, 2017, request to ICE sought records regarding "any new immigration vetting policies, the government's understanding of its authority to base immigration decisions on individuals' speech, beliefs, or associations, and the government's reliance on specific statutory provisions to exclude or remove individuals from the United States on those grounds."

By letter dated September 28, 2017, the ICE FOIA Office advised you that "[a] search of the ICE Office of Policy and Office of the Principal Legal Advisor for records responsive to your request produced 1666 pages that are responsive to your request." The ICE FOIA Office also informed you that portions of the records responsive to your request were being withheld pursuant to Exemptions of the FOIA. By letter dated January 5, 2018, you appealed the withholdings applied and the adequacy of ICE's search.[2]

ICE applied FOIA Exemption (b)(5) to protect from disclosure intra-agency documents that contain the recommendations, opinions, and conclusions of agency employees. The disclosure of these communications would discourage the expression 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.

ICE also applied FOIA Exemptions (b)(6) and (b)(7)(C) to protect from disclosure the names, initials, and room numbers of DHS employees, third parties, and other identifying information to prevent an unwarranted invasion of privacy. The privacy interests of the individuals in the records you have requested outweigh any minimal public interest in the disclosure of the information.

[1] Although this appeal was received on January 5, 2018, processing did not begin until January 11, 2018, the date that ICE was dismissed from Case No. 1:17-cv-07572.

[2] Requester previously appealed on December 21, 2017, but the appeal was revised with the January 5, 2018 appeal.

Additionally, ICE applied FOIA Exemption (b)(7)(E) to protect from disclosure internal agency law enforcement systems information and investigative case codes, which were compiled for law enforcement purposes, and are not well known to the public. The release of this information would disclose investigative techniques and procedures, and could be reasonably expected to risk circumvention of the law.

Upon a complete review of the information withheld by ICE in the initial determination on your FOIA request, the withholding of this information was proper in all respects, and the information is exempt from disclosure under the applicable provisions of 5 U.S.C. § 552 cited above.

With regard to your appeal of the adequacy of ICE's search, upon review of the administrative record, ICE has determined that new search(s) or modifications to the existing search(s), could be made. We are therefore remanding your appeal to the ICE FOIA Office for processing and re-tasking to the appropriate agency/office(s) to obtain any responsive documents. The ICE FOIA Office will respond directly to you.

Should you have any questions regarding this appeal remand, please contact ICE at ice-foia@dhs.gov. In the subject line of the email please include the word "appeal," your appeal number, which is **2018-ICAP-00118**, and the FOIA case number, which is **2017-ICFO-43023**.

Sincerely,

/s/ Ali Karzba

for

Erin Clifford
Chief
Government Information Law Division
ICE Office of the Principal Legal Advisor
U.S. Department of Homeland Security

From Email : ice-foia@dhs.gov
To Email : carrie.decell@knightcolumbia.org
Cc Email :
Bcc Email :
Subject : ICE FOIA Request 2018-ICAP-00118
Date Sent : 2/13/2018 11:49:55 AM
Email Body : February 13, 2018 Caroline DeCell Knight First Amendment Institute 314 Low Library 535 West 116th Street New York, NY 10027 RE: ICE FOIA Case Number 2018-ICAP-00118 Dear Ms. DeCell: This letter is an update as to the status of your Freedom of Information Act (FOIA) request to the Department of Homeland Security (DHS), dated December 21, 2017, and received in this office on December 27, 2017. Your request sought, inter alia, records regarding any new immigration vetting policies, the government's understanding of its authority to base immigration decisions on individuals' speech, beliefs, or associations, and the government's reliance on specific statutory provisions to exclude or remove individuals from the United States on those grounds. For your information, document(s) potentially responsive to your request have been located and forwarded to this office for review. We are estimating approximately 14,000 pages of potentially responsive documents. We will process your request as expeditiously as possible. Due to the extremely high volume of records we would like to commit to reviewing and processing a minimum of 500 pages per month. Upon completion of the review and processing, we would produce all responsive and non-exempt portions. We are in a position to send out the first production on March 7, 2018. Subsequent production would be sent out on the 7th of each month, provided the 7th is a business day. If the 7th is not a business day the production would be sent out on the next business day. If you have any questions or would like to discuss this matter, you may contact this office at (866) 633-1182. Our mailing address is 500 12th Street, S.W., Stop 5009, Washington, D.C. 20536-5009. Sincerely, ICE FOIA Office Immigration and Customs Enforcement Freedom of Information Act Office 500 12th Street, S.W., Stop 5009 Washington, D.C. 20536-5009 Telephone: 1-866-633-1182 Visit our FOIA website at www.ice.gov/foia

Freedom of Information Act Office

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

U.S. Immigration and Customs Enforcement

March 7, 2018

Caroline M. DeCell
Knight First Amendment Institute at
Columbia University
475 Riverside Drive, STE 302
New York, NY 10115

RE: ICE FOIA Case Number 2018-ICAP-00118

Dear Ms. DeCell:

This letter responds to the Freedom of Information Act (FOIA) request to U.S. Immigration and Customs Enforcement (ICE), submitted by Knight First Amendment Institute, dated August 7, 2017. In the FOIA request your client has requested copies of the following records:

1. All directives, memoranda, guidance, emails, or other communications sent by the White House to any federal agency since January 19, 2017, regarding consideration of individuals' speech, beliefs, or associations in connection with immigration determinations, including decisions to exclude or remove individuals from the United States.

2. All memoranda concerning the legal implications of excluding or removing individuals from the United States based on their speech, beliefs, or associations.

3. All legal or policy memoranda concerning the endorse or espouse provisions, or the foreign policy provision as it relates to "beliefs, statements or associations."

4. All records containing policies, procedures, or guidance regarding the application or waiver of the endorse or espouse provisions or the foreign policy provision. Such records would include policies, procedures, or guidance concerning the entry or retrieval of data relevant to the endorse or espouse provisions or the foreign policy provision into or from an electronic or computer database.

5. All Foreign Affairs Manual sections (current and former) relating to the endorse or espouse provisions or the foreign policy provision, as well as records discussing, interpreting, or providing guidance regarding such sections.

6. All records concerning the application, waiver, or contemplated application or waiver of the endorse or espouse provisions to exclude or remove individuals from the United States, or the application, waiver, or contemplated application or waiver of the foreign policy provision to

exclude or remove individuals from the United States based on "beliefs, statements or associations," including:

a. Statistical data or statistical reports regarding such application, waiver, or contemplated application or waiver;
b. Records reflecting the application, waiver, or contemplated application or waiver of the endorse or espouse provisions or foreign affairs provision by an immigration officer, a border officer, a Department of Homeland Security official, or a Department of Justice official;
c. Records concerning any determination made by the Attorney General pursuant to 8 U.S.C. § 1225(c) regarding the admissibility of arriving aliens under the endorse or espouse provisions or the foreign policy provision;
d. Department of Homeland Security and Department of Justice records concerning consultation between the Secretary of State, the Secretary of Homeland Security, and/or the Attorney General (or their designees) relating to any waiver or contemplated waiver of the endorse or espouse provisions pursuant to 8 U.S.C. §§ 1158(b)(2)(v), 1182(d)(3)(A), or 1182(d)(3)(B)(i); and
e. Notifications or reports from the Secretary of Homeland Security or the Secretary of State concerning waivers of the endorse or espouse provision pursuant to 8 U.S.C. §1182(d)(3)(B)(ii).

This Production – March 2018

ICE has processed 560 pages for release, 87 pages of which were sent to other agencies for referral. These 560 pages of records were located by a search of ICE's Enforcement and Removal Office (ERO), Office of Policy, OPLA, and the Front Office. These documents have been Bates numbered 2018-ICAP-00118 1 through 2018-ICAP-00118 463. Portions of these documents have been withheld pursuant to FOIA Exemptions 5, 6, 7(C) and 7(E) of the FOIA.

ICE has applied FOIA Exemption 5 to withhold draft documents under the deliberative process privilege, the general purpose of which is to prevent injury to the quality of agency decisions, as well as the attorney-client privilege and the attorney work product privilege.

FOIA Exemption (5) exempts from disclosure 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.

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

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.

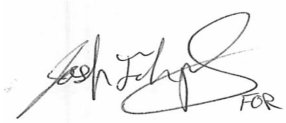
FOIA Exemption 7(C) protects records or information compiled for law enforcement purposes that could reasonably be expected to constitute an unwarranted invasion of personal privacy. This exemption takes particular note of the strong interests of individuals, whether they are suspects, witnesses, or 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, 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.

ICE has applied FOIA Exemption 7(E) to protect from disclosure internal agency law enforcement case numbers, internal codes, agency software and hardware information, and instructional manuals, user manuals, and training materials related to a law enforcement system and database which contain law enforcement sensitive techniques and procedures that are not well known to the public.

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.

If you need to contact our office about this matter, please refer to FOIA case number **2018-ICAP-00118**. This office can be reached at (866) 633-1182.

Sincerely,



Catrina M. Pavlik-Keenan
FOIA Officer

Enclosure(s): 463 page(s)