

U.S. Department of Homeland Security
500 12th St., SW
Washington, D.C. 20536



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

October 9, 2019

Jonathan Manes
Civil Liberties & Transparency Clinic
University at Buffalo School of Law
507 O'Brian Hall, North Campus
Buffalo, NY 14260-1100

RE: Privacy International v Federal Bureau of Investigation, et al.; 18-cv-01488-LJV
ICE FOIA Case Number 2019-ICLI-00016
Final Response

Dear Mr. Manes:

This letter is the response to your Freedom of Information Act (FOIA) request to U.S. Immigration and Customs Enforcement (ICE), dated September 10, 2018. This request has been processed in accordance with the interpretation and parameters set forth by Defendants in the letter to you from Marcia Sowles, Senior Trial Counsel, Civil Division, U.S. Department of Counsel.

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

A search of the ICE Homeland Security Investigations (HSI) and the Office of the Principal Legal Advisor (OPLA) located 76 pages of records that were responsive to your request. These documents have been Bates numbered 2019-ICLI-00016 1 through 2019-ICLI-00016 76. ICE has applied FOIA Exemptions (b)(5), (b)(6), (b)(7)(A), (b)(7)(C) and (b)(7)(E) to portions of these pages as described below. In total, ICE is releasing 38 pages in full and withholding 38 pages in full or in part.

FOIA Exemption (b)(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 Exemption (b)(5) to withhold pre-decisional documents 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 also applied the attorney-client privilege and the attorney work

product privilege.

FOIA Exemption (b)(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 (b)(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(A) protects from disclosure records or information compiled for law enforcement purposes, the release of which could reasonably be expected to interfere with enforcement proceedings. I have determined that some pages or portions of the responsive records relate to an ongoing law enforcement investigation. Therefore, I am withholding those records or portions of all records, which if disclosed prior to completion, could reasonably be expected to interfere with law enforcement proceedings and final agency actions related to those proceedings. Please be advised that once all pending matters are resolved and FOIA Exemption 7(A) is no longer applicable, there may be other exemptions which could protect certain information from disclosure, such as FOIA Exemptions 5, 6, 7(C), and 7(E).

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.

Page 3 of 3

If you have any questions about this letter, please contact Marcia Sowles, Senior Trial Counsel, Civil Division, U.S. Department of Justice, at 202-514-4960.

Sincerely,

Deftor E. Johnson/for

Catrina M. Pavlik-Keenan
FOIA Officer

Enclosure(s): 76 page(s)