



Transactional Records Access Clearinghouse
Syracuse University

January 4, 2012

Immigration and Customs Enforcement
Office of Principle Legal Advisor (FOIA Appeal)
U.S. Department of Homeland Security
500 12th Street, S.W., Stop 5009
Washington, D.C. 20536

RE: Appeal of December 20, 2011 ICE response to our May 17, 2010 FOIA letter
(2010FOIA4313) requesting anonymous alien-by-alien ENFORCE database records

Dear Appeals Officer:

We are appealing the agency's December 20, 2011 response to our May 17, 2010 FOIA request (2010FOIA4313). Our original request covered four distinct areas. Requested were: actual data from DHS's ENFORCE database systems [*I - "data"*], files containing the definitions of abbreviations and codes used to record the data which are also stored as part of the DHS's ENFORCE database systems [*II - "code tables"*], and [*III "processing records."*] Our original FOIA letter also set forth our requests concerning the [*IV "form and format"*] of the copies to be provided. We ask for your prompt review of this appeal and the release of all records, and that these records be provided in the form and format requested.

The agency took a total of 582 days before providing its response. ICE's December 20, 2011 letter stated that it enclosed five spreadsheets for calendar years 2004 and 2005 and notified us that any appeal must be filed within 60 days of the letter's date.¹ In a followup email on December 23, 2011 from the ICE FOIA office, FOIA Specialist Bradley White explained: "you have received all 5 spreadsheets for 2004 and 2005. Those spreadsheets contain the entirety of what we will be releasing to you for those years." Accordingly the agency response is the final response of the agency for the 2004 and 2005 period, and it is with respect to this specific period that we file this appeal. For your convenience, copies of the correspondence between the ICE FOIA office and ourselves in this matter are attached.

I(A). Data – Large discrepancies between records and ICE claimed enforcement levels.

Among the data sought were records covering all instances where individuals were apprehended, detained or deported. We found vast discrepancies between the agency's public enforcement claims and the details in the records that it released to us.

	case-by-case data release	ICE public claims	discrepancy ratio
Number ICE apprehended	21,339	102,034	4.8
Number ICE deported	6,906	166,075	24.0
Number detained by ICE	6,778	233,417	34.4

¹ While the agency's response states that the files relate to "calendar years 2004 and 2005," the records appear to pertain to FY 2004 and 2005. For example, the dates for apprehensions start in October 2003 and continue only through the end of September 2005. Data for post-2005 periods are still pending before the FOIA office and are therefore not part of this appeal.

As is summarized in the table above, in its official reports, testimony and press releases ICE publicly claimed that it *arrested* almost five times the number of individuals as is shown in the agency's own case-by-case records. The agency also has publicly claimed that it *deported* 24 times more individuals than indicated in the case-by-case records and that it *detained* 34 times more individuals than the records indicate.² TRAC found the same pattern of gross discrepancies in each of the other information categories covered by our FOIA request.

It is important to note that the records the agency did release to us were drawn from its ENFORCE database. As a result of the way the information is stored in this system, it is easy to identify *all* occurrences of any type of event because they are located together in a particular column or group of columns. And of course the agency's response asserted that the records it provided TRAC cover *all* apprehensions during this time period.

If we assume the agency's public claims are correct, then the files we received were grossly deficient – a fact immediately apparent from how few records they contained. Records for 80,695 apprehensions were missing. Information on 159,169 individuals deported weren't there, and data on 226,639 individuals who had been detained weren't in the files we received. This is withholding on a massive scale! Indeed the margin of discrepancy suggests either extreme negligence in how our FOIA request was handled or willful unlawful behavior in knowingly withholding these public records.

On the other hand, if one assumes that the FOIA request was properly handled, then ICE has been making highly exaggerated and inaccurate claims about the level of its enforcement activities. We note that the alleged failure of the federal government to enforce immigration laws has been a hotly debated topic during both the Bush and Obama administrations. Thus, the agency's apparent inability to substantiate the level of its claimed enforcement activity is a very significant matter. Indeed, it is central to the current public debate on federal immigration enforcement policy in the ongoing presidential election campaign.

We ask that you investigate and determine whether gross negligence or willful unlawful behavior has occurred, and/or whether the agency's previous public claims on the level of enforcement actions have been mis-stated. Should you not wish to undertake this investigation yourself, we ask that you then refer the matter to the Office of Inspector General and request that Office undertake such an investigation to make this determination.

I(B). Data – Withholding of the actual names for fields of information that were provided.

The agency improperly withheld the actual names of the fields of information that were provided. Official field names are a vital element in any database because they link a column of information in a database table to more detailed descriptive documentation about what

² Case-by-case counts derived from information on apprehension dates, departure dates, and detention dates in the spreadsheets ICE released in this FOIA covering FY 2005. ICE public claims based upon latest 2010 Yearbook of Immigration Statistics at Table 35 for FY 2005 (<http://www.dhs.gov/files/statistics/publications/YrBk10En.shtm>) and ICE congressional budget testimony (<http://www.ice.gov/doclib/news/library/speeches/060406ICETestimonyFinal.pdf>). The discrepancy ratio is the ratio of these two numbers. While the congressional testimony said “nearly 238,000” individuals were detained, ICE's Public Affairs office later provided TRAC with the exact figure. We published this figure earlier in our 2010 report at: <http://trac.syr.edu/immigration/reports/224/>.

specifically that column contains. These names are stored along with the data in the database. A database field name always consists of two parts: the first part is the name of the database table, and the second part is the name of the column within that table.

While the columns in the spreadsheets we received did have headings, these did not match those in the agency's documentation we had obtained through other FOIA requests. Further, the spreadsheet headings were often insufficient to discern what was actually recorded in the column. For example, the same column label (e.g., "Program") appeared in more than one of the five spreadsheets we received. Did that mean that this data came from the same database field? If so why was ICE providing it twice for the same individuals? Or, did it mean that these were originally from different database fields since they appeared in different spreadsheets? Sometimes the same spreadsheet had multiple columns with different names but with identical contents (e.g., "Subj_Ncic Charge Code" and "Subj_Criminal Charge Code"). Did that mean these originally came from different database fields? Why then was their content identical? However, if they came from the same database field, then why were they copied twice and given two different names? Because the agency withheld the actual official names for these fields, we simply couldn't answer these questions.

Obviously the value of information rests in part from the clear identification of its actual source. Indeed, the agency could not locate and retrieve the information without specifying these official two-part column names at the time the data extract was made. We had specifically requested that this information be provided both in our original request letter [see (III)] and on numerous occasions where we emphasized to ICE the vital importance of providing a list of the fields of information they were releasing. Earlier in the agency's processing of our request it had promised to provide this. However, ICE did not do so, and the agency's response provided no justification for withholding this information. We ask that you direct that ICE FOIA Officer Catrina Pavlik-Keenan release this information to us.

I(C). Data – Refusal to search for and provide records on all requested topics.

Our request included an itemized, numbered list of the classes of information requested. A major portion of the categories of information we had requested were not contained in the five spreadsheets that were released.³ In addition, in flagrant violation of the law, the agency refused to search its central repository for the requested information claiming it had discretion to decide what nonexempt agency records would be made available under FOIA.

The agency's response letter did not provide any description of which of the itemized classes of information we had requested it had located information for and was providing, or vice-versa – which it had not located any information on. The letter did not explain why requested fields of information described as being available in ICE's Integrated Decision Support (IIDS) System were not provided. For example, we had requested information on the age of each person who was arrested, detained or deported – information the government's own

³ Because the information that was provided was not identified properly, it was at times unclear what it represented. We did not locate any information relating to items 3, 12, 16, 19-20, 24a-h, 28-39, and only partial information was found relating to items 6, 9-11, 14,17,18,21,23b,23f-h,27, 42, 45. For other items it is possible that additional fields of information existed that also weren't provided. Even when a field was provided for some subjects, it was sometimes entirely missing for others. Thus, for example, even such basic items as entry status, gender, and country of birth that were provided for individuals in one table, were entirely left off of a second table covering other individuals.

manuals show are routinely contained in internal reports the agency prepares,⁴ and data which had been regularly released to other FOIA requestors. We also asked for data identifying individuals classified by the agency as “aggravated felons” – information previously released to us as well as to others. We also had sought details on the location (state, city, etc.) where each apprehension took place. This information was not provided, even though the agency itself publishes aggregate statistics on apprehensions by state and county.⁵ While the agency admitted that sometimes categories of information were not contained in a single field, but in a set of fields, it neglected to ensure that the complete set of fields were included [see earlier footnote 3].

The agency states it restricted its search to the IIDS database and claimed it did not have to provide any data from the agency’s more comprehensive central repository -- the Enterprise Integrated Database (EID) – or from any other databases and modules that are part of the ENFORCE system other than IIDS.

It is well settled law that FOIA applies to all agency records. The agency has not claimed that the records in the agency’s ENFORCE database systems are other than agency records. It is also well settled law that it is unlawful for an agency to withhold an agency record unless that record clearly falls within one of nine narrow exemption categories specified in the FOIA statute. While the burden is placed on the agency to affirmatively set forth its exemption claim before it can withhold agency records, ICE has not claimed – nor could it -- that the records in EID and other ENFORCE systems are categorically exempt from public disclosure. Accordingly, the agency has a clear obligation to promptly make available upon request all nonexempt agency records in these systems. The law does not grant ICE discretion to decide which nonexempt agency records it chooses to disclose.

The agency’s claim that it cannot access these data is wholly specious. There is no technical difficulty in retrieving the requested data from these databases, as the agency demonstrably does for its own purposes on a routine basis. Data storage and retrieval are part and parcel of what modern databases are designed to do. But the question of how easy or difficult it may be is wholly besides the point. The agency has no discretion in the matter and must search for and provide all requested nonexempt data from not only its IIDS but from all of the other databases such as the EID, including all of the modules that are part of the ENFORCE system, to the extent these may contain any additional information. We ask that they be directed to do so.

II. Failure to provide “code tables.”

The agency did not release any code tables -- that is, files that translate the codes and abbreviations used within the data into what each represents. The agency’s response provides

⁴ See page 4 of our November 8, 2010 letter in this case which is enclosed. Shown there is page from an ENFORCE manual showing that the age of the individual is tracked in the database and is routinely included in internal agency reports. Note that the agency said it did withhold two fields of information but we had not requested either field. For example, the agency withheld date of birth – a field we didn’t ask for -- but failed to provide the information on age, the specific item we did request.

⁵ See for example, the county-by-county statistics starting at p 7 providing information related to apprehensions through ICE’s Secure Communities program. http://www.ice.gov/doclib/foia/sc-stats/nationwide_interoperability_stats-fy2012-to-date.pdf

no justification for failing to provide this distinct class of documents. We ask that they be ordered to provide them, and in the form and format we requested.⁶

III. Failure to provide requested “processing records.”

Our May 17, 2010 request stated: “We further specifically ask under the Freedom of Information Act to be provided with copies of all records indicating the method used -- including but not limited to scripts, commands, batch files, programs and queries -- to produce the copies of the information requested in this letter. We further request any outputs and logs prepared during the process of running these scripts/commands/programs and queries, or prepared to check that the copies are complete and accurate in all particulars.” The agency’s response did not provide any explanation on why it failed to provide any of this requested class of records.

It is unquestioned that in locating and retrieving records from any database that specific computer commands are used to tell the database how to locate records and what specifically to retrieve. Data retrieved have little meaning unless accompanied by what these precise instructions are. The agency further had an obligation to preserve these instructions since it is unlawful under FOIA for agencies to destroy requested records before the final disposition of the case. In addition, the agency was well aware of this part of our FOIA request, because not only was it included in our original written request, but we had subsequently reminded agency officials of this specific aspect of our request, and had explained why we were seeking this class of records and of its importance to the utility of any data extract we received.

We also note that under FOIA the agency itself has a responsibility to take specific steps reasonably designed to ensure that appropriate procedures are used to locate, retrieve, and make accurate copies of all requested records. For extracts made from a database, such steps would necessarily involve a review of the computer instructions to be used, as well as the specific tests incorporated into the process to examine whether the records produced met reasonable standards for completeness and accuracy. The agency is also responsible for ensuring that the personnel it assigned to carry out these tasks have the requisite knowledge and training to perform these tasks in a professional and suitable manner.

We ask that in considering our appeal you specifically determine whether the agency exercised its responsibilities under FOIA in an appropriate and professional manner and whether the personnel assigned to carry out these tasks also had the requisite knowledge and training to perform these tasks in a professional and suitable manner. We further ask you to determine whether the agency failed to preserve the requested records, or preserved them but failed to provide them to us. We further ask that you take whatever steps are required to ensure

⁶ While the spreadsheets contained abbreviations and codes without any translation, it also appeared that sometimes the agency created new fields in the spreadsheet where it physically changed what was recorded in the original records and replaced these entries with explanatory phrases. Sometimes it appeared that these replacement phrases were provided along with the codes, sometimes these columns appeared instead of the original data. Databases are designed to ensure that the codes or abbreviations used are unique within a field and the particular codes used also can reveal distinctive aspects to the data such as a hierarchical structure. Databases do not impose the same constraints on the explanatory phrases. The same descriptive phrase may be used for several different codes, and also may not include distinctive aspects the code itself incorporates. Thus, providing the explanatory phrases in place of the original entries in the database inherently results in the withholding of information contained in the original records. (We note that such a practice can also unnecessarily bloat the size of database files making them more costly and less efficient to analyze.) Our request specified that the copies should be provided in their original form. It was unlawful for the agency to ignore our express request.

that we receive both the set of computer instructions actually used to locate, extract and copy all requested data extracts and code tables, as well as all the actual data and code tables themselves.

IV. Failure to provide records in the “form and format” requested.

Our letter, pursuant to § 552(a)(3)(B) of the FOIA, discussed the form and format for the copies of the records we are requesting. We subsequently sought before any extracts were made to discuss these issues with knowledgeable agency personnel but these requests were rebuffed by ICE. None of the records provided were in the form or in the format we requested. As a result, the value of much of the information provided has been seriously compromised.

Linkage fields and unique record keys. The agency did not, as we requested, provide the original unique record keys including all fields in the database used to link records that related to the same individual. Its response provided no explanation for its failure to do so. Instead, it stated it used a “random number” to create its own sequence numbers assigned to individuals as part of the extraction process. However, it provided no records documenting the computer commands and instructions used in creating these new fields although ICE was required to turn over the records detailing these instructions as part of the “processing records” we had requested.

Even when assigned correctly, creating a new set of individual sequence numbers each time data is extracted diminishes the information value contained in an integrated database system such as ENFORCE which is designed to store and associate in one place all actions taken over time by not only ICE, but also by Customs and Border Protection (CBP) and the U.S. Citizenship and Immigration Services (USCIS). Indeed the purpose of creating an integrated database system is to allow these diverse activities and actions to all be linked together for a given individual regardless of which office carried them out. For example, a portion of TRAC’s current request has already been referred by ICE to CBP to extract records from ENFORCE related to CBP’s specific actions – including any apprehensions and deportations – it carried out. ICE’s assignment of different sequence numbers when making its extract prevents us from associating actions undertaken by CBP with those carried out by ICE regarding the same individuals. Also, if separate extracts are later prepared for other time periods, assigning sequence numbers separately to each extract will prevent linking information on the same individual contained in the present extract with information from a later extract.

Unfortunately, it is also unclear whether ICE was successful in assigning unique sequence numbers to each individual. We found in the spreadsheets we received an inexplicable number of duplicate records – records supposedly about the same individual but where all information in separate records was identical. For example, one of the files provided information about the mother, father, spouse, and other relatives for each individual. However, using the ICE-assigned sequence numbers to identify records about the same individual, the file showed that typically individuals had multiple mothers, multiple fathers, *and* multiple spouses. This seems highly improbable. Indeed, the information in one entry showed that the individual in question had 27 fathers. Another entry showed an individual with 40 mothers. The individual in a third entry had 26 spouses, all of whom that person appeared to have been currently married to.

Table structures. Despite our explicit request, the agency also failed to preserve the same table structure in its copies that its database used. No explanation was given why it reorganized the data into the particular five tables we received. With database records both the simplest and most reliable way to produce an accurate copy is to reproduce the information in the same form, table-by-table, as the information was originally stored in the database. Changing this structure as part of the extraction and copying process often produces unintended results – inaccurate or misleading information as well as gaps where requisite information is omitted.

File formats. Despite our repeated requests, the agency refused to consult with us on the selection of the specific format – such as fixed column format, csv comma separated files, or the use of proprietary formats such as Excel or Access. ICE selected a format we had specifically asked it not to use, and failed to provide any written justification for this selection. In addition, the agency introduced additional complexity and potential error by undertaking a series of wholly unnecessary processing steps. The response letter indicates the agency took the copies of the original data extracts it made, converted these into Access database(s), and then converted the Access database(s) into Excel spreadsheets. Also, it again failed to provide requested documentation on these added processing steps.

We accordingly ask that in responding to this appeal that you direct that the original table structure the agency keeps these records in shall be maintained in the copies created, and that all unique record keys including the original linkage fields be retained in these copies. We further ask that as a procedural matter you require that what is and isn't a reproducible format meeting TRAC's needs when making these copies be resolved through direct discussions between our IT staff and knowledgeable agency IT staff members.

Should you have any questions, or need any additional information, please don't hesitate contacting us by phone (315-443-3563) or email (trac@syr.edu).

Sincerely,



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Copies To: James V.M.L. Holzer
DHS Public Liaison and Director of Disclosure & FOIA Operations*

Miriam Nisbet, Executive Director
NARA Office of Government Information Services*

Attached (with encl): May 17, 2010 FOIA request
 September 22, 2010 letter from ICE
 October 4, 2010 TRAC response to ICE
 October 29, 2010 letter from ICE
 November 8, 2010 TRAC response to ICE
 December 20, 2011 letter from ICE
 December 22, 2011 TRAC email to ICE
 December 23, 2011 ICE email
 December 27, 2011 TRAC email to ICE

*Note that the Office of Government Information Service and DHS's Office of Disclosure and FOIA Operations both also intervened during the pendency of this request.