



Transactional Records Access Clearinghouse
Syracuse University

April 20, 2012

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

Re: FOIA Appeal – of ICE response dated April 5, 2012 to our April 25, 2011 request (2011FOIA7607) anonymous alien-by-alien data covering all individuals who the Department of Homeland Security had filed charges against in Immigration Court

Dear Appeals Officer:

On April 25, 2011 we wrote ICE under the Freedom of Information Act requesting data on all individuals who the Department of Homeland Security had filed charges against in Immigration Court. A list of 81 specific information items about each case was requested. We further noted that “Should any information on some fields not be available for the entire period of time our request covers, we ask that all the information be released for whatever period within this time frame an item is available.”

We also asked for copies of any code files or other records which translate codes or abbreviations used in these fields into their corresponding meaning. We also specified the form and format of the records requested and requested copies of all records indicating the method used in producing the copies.

While the Freedom of Information Act and the Department’s regulations specifies strict time limits within which the agency is required to respond, FOIA Officer Catrina M. Pavlik-Keenan took almost a full year to respond to this request. In her letter dated April 5, 2012 and received on April 12, 2012 she declined to provide any records. [Officer Pavlik-Keenan also misstates the time period covered by our request. Our letter covers those “charged since October 1, 2005, as well as those charged previously but whose... cases were still pending as of October 1, 2005” -- not “2001” as her letter states.] Copies of our request letter and the agency’s response are attached for your convenience.

We appeal this unauthorized withholding of public records to you and ask for your prompt review and release of all requested records, and in the form and format we requested.

Inability to locate *all records* is not a legal basis for withholding *those records that can be located.* Officer Pavlik-Keenan asserts that the agency “cannot reliably identify” cases it has filed or has pending before the Immigration Courts. This is the sole rationale that she gives for not releasing *any* records. She does admit that ICE is able to locate at least some records responsive to our request – indeed, she states that the date a charging instrument filed in Immigration Court is served is recorded and could be used to locate at least some of the records responsive to our request.

The fact that an agency can locate *some* but not *all* records requested is not a legal basis for withholding the requested records that can be located. The agency did not claim that these records were exempt from disclosure. As the person charged with seeing that ICE complies with FOIA requirements, FOIA Officer Pavlik-Keenan knew that the law required her to release these records to us. Her failure to do so was arbitrary and capricious.

Failure to enumerate records withheld, to cite specific exemption claim(s) and to provide an estimate of the volume of records withheld. Our request enumerated the specific items of information being requested. FOIA Officer Pavlik-Keenan's response failed to state which of these specific items of information 1-30 and 81 she was withholding, or whether she was withholding all of them. For each of the enumerated items she withheld, she failed to cite the exemption claim that applied to that item. She also failed, as required by law, to provide an estimate of the volume of the records withheld.

Strong public interest in determining the volume of Immigration Court cases ICE has filed and then lost track of. In addition, if FOIA Officer Pavlik-Keenan's statement is truthful that ICE cannot keep track of the cases it has filed in the Immigration Courts, the public has a strong interest in determining the scope of this problem. The public can only determine the magnitude of cases that ICE has lost track of by obtaining the records the agency *can* locate. This information will then allow the public to compare these records with the actual Immigration Court filings from the court's own files maintained by the Executive Office for Immigration Review (EOIR) in the Department of Justice. The official count of court cases recorded by EOIR but not located in ICE's own files will identify the number of cases ICE has lost track of and thereby show how serious of a problem FOIA Officer Pavlik-Keenan has alleged exists.

Inadequacy of search. The search undertaken to locate responsible records was inadequate. FOIA Officer Pavlik-Keenan states that IIDS does not contain items 31-80 in the list of information we sought on each Immigration Court case. She does not explain why she limited her search to IIDS. Indeed, she does not even identify explicitly what she is referring to by the use of this acronym.

We assume IIDS refers to the ICE's Integration Decision Support System used by the Office of Enforcement and Removal Operations (ERO). If we are correct, then limiting the search to IIDS was inappropriate since the responsibility for handling litigation before the Immigration Courts rests with ICE's Office of the Principal Legal Advisor (OPLA), not with ERO which is an entirely separate office within ICE. OPLA does rely upon IIDS for its information, data extracts or reports, and our request did not limit our interest to data stored in IIDS. There is accordingly no legal justification to limit the agency's search to information contained in IIDS.

Failure to address request for records containing the meaning of codes. Finally, we appeal the failure of the agency to address our request for records containing the definition or meaning of the abbreviations and codes used to record information in the 81 fields listed in our letter. The response letter contains not even a reference to this portion of our request.

Should you have any questions, or if we can be of any assistance, please feel free to contact us. You can reach Long at (315) 443-3563 or by email at suelong@syr.edu. Thank you very much.

Sincerely,

A handwritten signature in black ink that reads "Susan B. Long". The signature is written in a cursive style with a large, looped "S" and a distinct "B".

Susan B. Long
Co-Director, TRAC and
Associate Professor
Martin J. Whitman School of Management
Syracuse University

A handwritten signature in black ink that reads "David Burnham". The signature is written in a cursive style with a large, looped "D" and a distinct "B".

David Burnham
Co-Director, TRAC and
Associate Research Professor
S.I. Newhouse School of Public Communications
Syracuse University

Enclosures: 1) April 25, 2011 FOIA request
2) April 5, 2012 ICE response