



Transactional Records Access Clearinghouse
Syracuse University

August 7, 2012

Catrina Pavlik-Keenan, FOIA Director
U.S. Immigration and Customs Enforcement
500 12th Street, S.W.
Washington, DC 20536-5009

Re: FOIA request for case-by-case information on NTAs filed in the Immigration Courts during the first four months of 2012 (2012FOIA14731)

Dear FOIA Director Pavlik-Keenan:

This is in response to your July 26, 2012 letter informing us that you refuse to process our Freedom of Information Act request for case-by-case information in anonymous form on NTAs recently filed in the Immigration Courts because it was “unreasonably burdensome” to identify what cases the agency has filed. Because of this alleged burden, you contend that we have not submitted a valid (“perfected”) FOIA request under 6 C.F.R. §5.3(b) of DHS regulations.

The regulations you cite are based upon the FOIA statute’s requirements at 5 USC §552(a)(3)(A)(i) that requests *reasonably describe* the records sought. This language was added in the 1974 FOIA amendments to clarify the former “identifiable” records standard that had been used by some government officials as an excuse for withholding documents even though the “agency in question had known all along precisely what records were requested.” See S. Rept. 98-854, *Amending the Freedom of Information Act*, 1974. Here, there is no question that the agency knows which Immigration Court cases our request concerns. That is all that the law’s “reasonably describes” provision requires. In addition, we provided an itemized list of the specific information requested about these cases.¹ We have clearly already *reasonably described* the records sought and the agency cannot legally refuse to process our request.

Further, there can be little question that the agency already knows precisely which cases we referred to in our request. Last June, the agency furnished a fact sheet to Julia Preston of the New York Times containing statistics the agency had compiled on the number of “NTAs filed in the

¹ Almost as an afterthought, your letter mentions that our request “contains vague terms.” However, you do not identify what “vague terms” you were referring to. It is your obligation under DHS regulations to notify us of what “additional information is needed” to clear up this alleged ambiguity. See 6 C.F.R. §5.3(b). We called your office on Monday, August 6, for this information. Your office verbally informed us there were four specific items (45, 46, 48 and 49) you considered vague. While we were happy to clarify these four items on the phone to your staff member’s satisfaction, we were surprised at your confusion since each of these four items used standard ICE terminology, and the very same information on these four items previously had been furnished by ICE in response to past FOIA requests. We also referred you to the most recent occasion -- the agency’s July 20, 2012 response to our June 8, 2012 FOIA request (2012FOIA14432) -- where these same four items were requested, the agency processed our request, and three out of four of these items were actually contained in the data extract ICE prepared. We trust this resolves the matter but we would be happy to assist you if you have any further questions.

immigration courts.” The ICE fact sheet indicated that there had been a drop of over 10,000 in the number of NTAs filed, and provided the specific numbers for cases filed during two periods:

January-April 2011:	85,337 new NTAs filed
January-April 2012:	75,044 new NTAs filed

Our FOIA request specifically referred to this fact sheet and the 75,044 new NTAs filed as the cases that our request concerned. [The New York Times article referenced the fact sheet – “ice-review-stats” -- and provided a link to it at <http://www.documentcloud.org/documents/367098-ice-review-stats.html>.]

Second, it is also clear that the government’s implementation of DHS prosecutorial discretion policies is a matter of wide public interest and concern. This same ICE fact sheet stated that “[b]ecause these new cases were initiated following the implementation of DHS prosecutorial discretion policies, DHS anticipates that fewer of these cases actually filed in immigration court will constitute a very low enforcement priority.” TRAC submitted its FOIA request on June 12 to allow a fuller public examination of the characteristics of the individuals ICE was seeking to deport in the newly filed NTAs to see how many of these fit within the announced agency’s policies defining high versus low enforcement priority areas.

Third, your letter alleges that the government does not record in electronic form any information concerning the dates NTAs are filed in the Immigration Court and thus it would have to conduct a manual search to locate these 75,044 cases. This seems a most curious contention on your part. Your letter does not explain *how* the agency could readily identify that there were precisely 75,044 cases. It appears that it had no difficulty in locating these cases to compile its counts, but it somehow is unwilling to use these same methods when the public desires information about them.

Even TRAC’s cursory review of the limited records ICE has previously released to us identify at least two databases that record the dates when NTAs are filed or issued, and it is likely that similar information can be found in other agency databases and electronic systems. This information is recorded in the Enterprise Integrated Database (EID) – ICE’s master data repository, and the General Counsel Electronic Management System (GEMS) Case Management (CM) database used by ICE attorneys in representing the government before the Immigration Courts.² According to agency documents,³ “GEMS mission is to provide OPLA [Office of the Principal Legal Advisor] and ICE a web-based, automated case management, document management, project management and courtroom mobility application to store, organize and track critical case information, documents, photos, and other objects about an active immigration court case.” Not surprisingly, GEMS has an entire database module (“entity”) called “NOTICE TO APPEAR”(NTA) that is officially described as containing the information on the “I862 form served when a subject is to appear before an immigration judge.”

² The GEMS CM database Entity named "ALIEN" records in the field named "NOTICE FILED DATE" the "Date that the Notice To Appear was filed with Executive Office of Immigration Review,," and in the field named "NOTICE SERVED DATE" records “the date the Notice to Appear was served to the Alien.” The GEMS database Entity named "NOTICE TO APPEAR" records in the field named "ISSUED ON DATE" the "date the Alien was issued a Notice to Appear order." See ICE documentation GEMSD 6.0_SRD_Final.doc (GCY00.10020-01.F*0-HP), Final December 21, 2010 furnished in response to 2011FOIA6713.

³ Ibid., at 2.

Fourth, even should some specific requested items about these 75,044 cases not be electronically recorded by ICE in its files, this does not provide a legal basis for refusing to release the requested information the agency *does record* about these cases. If after a thorough search you still contend that certain specific items are not recorded in your electronic files *and* you furnish us with adequate proof – that is, complete listings sufficiently describing all fields of information and document types that are stored in your database and other electronic systems – we will be willing to agree to allow you to limit your search to electronically stored information. But this offer applies only to the extent we can verify your claims. If, as you contend your concerns are that a manual search of non-electronic record systems would be laborious, then this offer gives you the flexibility to limit what is required of you to process our request. However, if you decline our offer or subsequently fail to furnish us with the necessary information to verify the adequacy of your search, then of course we will have little alternative but to insist that, as required by law and DHS regulations, you search *all* agency files whether or not they are stored in electronic form.

While we hope that in the future we can work cooperatively together to facilitate the processing of this request, we ask you to consider your responsibilities to communicate and to assist us in this endeavor. For example, under the very same regulations your letter cited, your office is directed to offer us an opportunity to discuss our request with you and to assist us – an offer you failed to extend in your letter.

Our request has already been pending before the agency for nearly two months. Your letter informed us that if you did not receive an amended request within 15 business days of the date of your letter, you would consider our request withdrawn. We will extend the same courtesy to you. If we do not receive a letter from you within 15 business days of the date of this letter stating that you intend to promptly process our request and that the agency will do a thorough search and furnish TRAC all nonexempt requested records, we will consider our FOIA request has been denied and will seek such further relief as is available to us under the law.

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 sulong@syr.edu. Thank you very much.

Sincerely,



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