

U.S. Immigration and Customs Enforcement
Office of the Principal Legal Advisor
U.S. Department of Homeland Security
500 12th Street, S.W., Mail Stop 5900
Washington, D.C. 20536-5900

Dear FOIA Appeals Officer:

We received the attached final response to our FOIA request (2016-ICFO-08061) for detainer data covering FY 2015 through November 2016. Unfortunately, this response does not comply with the requirements of the law. We are therefore appealing this response to you and ask for your prompt review and release of all requested records.

We note at the outset that we are hampered by the agency's failure to provide an adequate explanation of the agency's handling of our request, or of the reasons why requested information was not being provided. Thus, we are left in the dark about many pertinent matters. Given these inadequacies in the agency's final response, the specific grounds discussed below are of necessity illustrative rather than comprehensive.

Among the deficiencies in the agency's response were the following.

We do not believe that an adequate search was conducted for the records. Many requested records were not contained in the data we received. Some of the omitted records we have reason to believe are actually contained in the agency's databases since we have been provided with this same type of information on many previous occasions. We therefore ask that a more thorough search be conducted. In addition, we also were not provided with an adequate description of the search that was conducted, and ask that your response provide us with complete details of all search(es) that have been conducted, the locations and databases searched, why the search was limited to these particular locations/databases, and what was particularly searched for at each location/database. If a specific computer query was used, or particular search terms applied, we ask that we be provided with these express details.

We note that existing records, even where the information isn't complete or "systematic," must be provided. If the agency believes that the information requested requires that a "calculation or analysis" not required by FOIA be performed on other relevant information that is recorded, then this is actually an admission that additional responsive records exist and the agency's response must identify these additional responsive records and then either provide this additional information, or explicitly provide a legal basis for withholding it. Our request clearly extends to this additional information, and as you may be aware, as scholars we prefer to carry out any required analyses ourselves from the original information that is recorded in the agency's files.

The response also failed to abide by FOIA's "reasonably segregable" obligations. FOIA does not permit withholding of information that is not in itself exempt simply because it is found within other information that may be exempt from disclosure.

The agency's response also claimed that release of some information was exempt from disclosure. However, the claimed exemptions do not apply to the specific information items that were withheld, particularly in light of DHS newly announced privacy policies. In addition, the response failed to comply with new requirements contained in the FOIA Improvement Act of 2016. No exemption can be claimed unless "the agency reasonably foresees that disclosure would harm an interest protected by [such] an exemption." The response did not point to any harm that could be reasonably foreseen that would justify such withholding. We are also concerned that the redaction method used did not fully comply with legal requirements.

Should you have any questions or desire any additional information to process this appeal, please do not hesitate to contact us by either phone (315-443-3563) or email (tracfoia@syr.edu).

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