

TRAC 
Transactional Records Access Clearinghouse
Syracuse University

November 4, 2019

Director James McHenry
Executive Office for Immigration Review
5107 Leesburg Pike
Falls Church, VA 22041

Dear Director McHenry:

We are writing to request a public correction to recent statements outlined below made by an EOIR spokesperson.¹ We ask that this public correction acknowledge that (a) recent EOIR public data releases were in fact not complete, and (b) missing were thousands of records which the agency had not, and does not now, claim were exempt under the Freedom of Information Act (FOIA).

TRAC previously reported to EOIR that its recent anonymized public data releases contained gross irregularities. After attempting—unsuccessfully—to work with the EOIR to fix these problem, we published a report detailing our observations on the quality of the agency’s public data releases. We also urged the agency to implement basic quality control procedures to ensure that future EOIR releases to the public of anonymized data were not inadvertently garbled or incomplete. [Our report outlining these concerns](#) was published last Thursday, October 31, 2019.

In response to this report, [a spokesperson for EOIR was quoted](#) as “the agency does not delete records, and that the missing records are ‘simply withheld from release to TRAC under a FOIA exemption.’ ... to the best of our knowledge, the EOIR data release is accurate and up-to-date.”

However, based upon a careful case-by-case comparison matching the records received in EOIR’s September 2019 versus August 2019 public releases, TRAC had reported that “inexplicably missing [were] more than 1,500 applications for relief that were present the previous month.” Our report went on to list large numbers of other records which had been present in past releases but were missing as well from the latest data release.

To further illustrate the problem, we have attached a listing of 1,507 disappearing records of applications for relief that had been filed by immigrants as part of proceedings in the Immigration Court. These were present in the data TRAC received from EOIR a month ago but were not present in the latest release.

¹ We note that [EOIR Information Quality Guidelines for Information Disseminated to the Public](#) implementing “section 515 of the Treasury and General Government Appropriations Act for FY2001, Public Law No. 106-554, and government-wide guidelines issued by the Office of Management and Budget (OMB) for ensuring and maximizing the quality, objectivity, utility, and integrity of information, including statistical information, disseminated by Federal agencies” provides that the public can seek correction of information disseminated by DOJ. While records merely provided under FOIA are not covered, because this data release was posted and distributed on EOIR’s public website these provisions appear to be applicable and provide further justification for the corrections we seek along with a detailed accounting of the number, types, and reasons for records that were missing from the release. As provided by these provisions, we are also sending a copy of this letter to EOIR’s General Counsel.

Missing in the September 2019 release were records concerning seventeen different types of relief applications including those for adjustment of status, suspension of deportation, asylum and asylum withholding. These 17 types of missing applications, along with their record counts, are listed below:

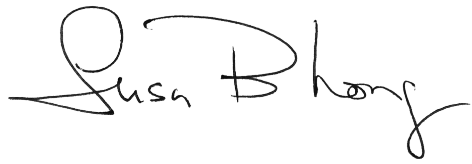
<i>Missing Applications for Relief by Type</i>	<i>Number</i>
212C; WAIVER IN RMV PROCEED. PERMITTED BY CASE LAW	3
245 - ADJUSTMENT OF STATUS	18
APPLICATION FOR SUSPENSION OF DEPORTATION	6
ASYLUM	711
ASYLUM WITHHOLDING	583
COERCIVE POPULATION CONTROL	1
EOIR42A	6
EOIR42B	120
HRFA - ASYLUM	2
REGISTRY-ADJUSTMENT OF STATUS, ENTRY BEFORE 1/1/72	1
REQUEST FOR REMOVAL OF CONDITIONAL BASIS OF L.P.R.	2
SUSPENSION/CANCELLATION UNDER NACARA	2
VOLUNTARY DEPARTURE	25
WAIVER OF INADMISSIBILITY OF A REFUGEE	1
WAIVER OF VISA FRAUD (ADMISSION-ADJUSTMENT)	2
WAIVER UNDER SECTION 237 A 01 H	1
WITHDRAWAL OF REQUEST FOR ADMISSION	15
UNKNOWN	8
<i>Total Applications for Relief Present in EOIR's Public August 2019 Release But Not Provided in its September 2019 Release</i>	<i>1,507</i>

Should the agency continue to contend that it withheld all disappearing records including these 1,507 applications because they were exempt from disclosure under FOIA, we ask that it identify with specificity the amount of the information deleted in these files. A basic provision of 5 U.S.C. 552 subsection (b) of the FOIA statute requires:

“Any reasonably segregable portion of a record shall be provided to any person requesting such record after deletion of the portions which are exempt under this subsection. The amount of information deleted, and the exemption under which the deletion is made, shall be indicated on the released portion of the record, unless including that indication would harm an interest protected by the exemption in this subsection under which the deletion is made. If technically feasible, the amount of the information deleted, and the exemption under which the deletion is made, shall be indicated at the place in the record where such deletion is made.”

Should you desire any additional information, or if we can assist the agency in any way to resolve this matter, please do not hesitate to contact TRAC. We would be delighted to work cooperatively with the agency to ensure that going forward the public is provided with accurate and reliable data about the Immigration Court's operations.

Sincerely,



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



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

Attachment: Listing of 1,507 previously released relief application records missing from the September 2019 release

Cc: General Counsel, Office of the General Counsel, Executive Office for Immigration Review