

October 29, 2020

U.S. Department of Homeland Security  
U.S. Citizenship and Immigration Services  
National Records Center  
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**Re: Freedom of Information Act Appeal COW2020002226**

To Whom It May Concern:

The American Civil Liberties Union and the American Civil Liberties Union Foundation (together, the "ACLU") write to appeal the response by the United States Citizenship and Immigration Services ("USCIS"), to the FOIA request dated August 21, 2020 with reference number COW2020002226 (the "Request," attached as Exhibit A). The Request seeks records regarding processing of naturalization applications for military service members and USCIS implementation of the October 13, 2017 Department of Defense ("DoD") memorandum regarding certification of honorable service.

USCIS's response letter, dated September 4, 2020 (the "Response," attached as Exhibit B), requested clarification in accordance with 6 C.F.R. § 5.3(c) of the Department of Homeland Security ("DHS") FOIA regulations, stating, "[USCIS] does not find that you have adequately described the records sought." Response, Ex. B at 1. USCIS requested "specific information that may assist...with identifying the requested records, such as a list of USCIS employees...to have searched for responsive records" and an "end date for the search." *Id.* USCIS further stated that if the ACLU did not respond with clarification within thirty working days of the response, the request may be "administratively closed." *Id.* at 2.

The ACLU clarifies that the Request seeks records dating from October 13, 2017 to the date of this response, October 29, 2020.

However, the ACLU appeals USCIS's erroneous determination that the Request does not, in other respects, adequately describe the records sought. *See* 6 C.F.R. § 5.8 (a)(1) ("A requester may also appeal if he or she questions the adequacy of the component's

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search for responsive records, or believes the component either misinterpreted the request or did not address all aspects of the request ...”). To fulfill the FOIA’s “strong presumption in favor of disclosure,” *U.S. Dep’t of State v. Ray*, 502 U.S. 164, 173 (1991), agencies must make records available to a person who submits a request that “(i) reasonably describes such records and (ii) is made in accordance with [the agency’s] published rules.” 5 U.S.C. § 552(a)(3)(A); *see also* 6 C.F.R. § 5.3(b). Records are reasonably described if the description “enable[s] a professional employee of the agency who [i]s familiar with the subject area of the request to locate the record with a reasonable amount of effort.” *Truitt v. U.S. Dep’t of State*, 897 F.2d 540, 545 n.36 (D.C. Cir. 1990) (internal quotations omitted); *accord, e.g., Marks v. U.S. Dep’t. of Justice*, 578 F.2d 261, 263 (9th Cir. 1978).

The Request describes the records with adequate precision, specifying materials related to implementation of a single document (the October 13, 2017 DoD memorandum) and a narrowly defined category of related information (information regarding service member naturalization applications after October 13, 2017). Request, Ex. A at 4. The Request describes the records reasonably enough to enable an employee familiar with the subject area to locate them. USCIS employees who are familiar with the DoD memorandum and service member naturalization applications must pursue any clear leads in identifying responsive records and use “some semblance of common sense” in interpreting the Request liberally. *See Truitt*, 897 F.2d at 545 n.36; *Pinson v. U.S. Dep’t of Justice*, 70 F. Supp. 3d 111, 121 (D.D.C. 2014) (quoting *Dale v. IRS*, 238 F. Supp. 2d 99, 105 (D.D.C. 2002) and *LaCedra v. Exec. Office for U.S. Attorneys*, 317 F.3d 345, 348 (D.C. Cir. 2003), respectively). Furthermore, as the agency in control of these records, USCIS, not the requester, “is in the best position to determine custodians most likely to have relevant records.” *Judicial Watch, Inc. v. U.S. Dep’t of Justice*, 373 F. Supp. 3d 120, 127 (D.D.C. 2019) (internal quotation marks omitted). Thus, the Response is incorrect in asserting that the ACLU is under an obligation to provide a list of USCIS employees to have searched for responsive records.

Finally, the Response states that if the ACLU did not respond within thirty working days of the letter, the Request may be administratively closed in accordance with 6 C.F.R. § 5.3(c). However, due to the COVID-19 pandemic, ACLU staff are working remotely and the physical office has strict limited access resulting in delays in receiving mail. The ACLU requests that this requirement be waived for this administrative appeal. The ACLU further requests that future correspondence be done via email to avoid delays in correspondence.

Because the ACLU has provided clarification with regard to an end date and the rest of the Request reasonably describes the records sought, USCIS should process the Request, conduct an adequate search for responsive documents, and produce documents consistent with its obligations under the FOIA.

Respectfully,

/s/ Sana Mayat

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