

U.S. Department of Homeland Security  
500 12<sup>th</sup> St., SW  
Washington, D.C. 20536



U.S. Immigration  
and Customs  
Enforcement

September 2, 2021

Emma Bond  
American Civil Liberties Union of Maine  
P.O. Box 7860  
Portland, ME 04112

**RE: Immigrant Legal Advocacy Project v. ICE 2:21-cv-00066-JAW**  
**ICE FOIA Case Number 2021-ICLI-00025**  
**Fifth Interim Response**

Dear Ms. Bond:

This letter is the fifth interim response to your client's Freedom of Information Act (FOIA) request to U.S. Immigration and Customs Enforcement (ICE), dated January 15, 2021. Your client seeks:

1. Any records approving transfers of ICE detainees to or from ICE Detention Facilities in Maine, including, but not limited to, approval or clearance for transfers as required by ICE's COVID-19 Pandemic Response Requirements.
2. Any records documenting transfers of detainees to or from the Cumberland County Jail, including, but not limited to Form I-203 (Notice to Detain or Release) and Form I-216 (Record of Person and Property Transfer).
3. Any records concerning communications with the Cumberland County Jail regarding transfers of ICE detainees, including but not limited to electronic communications such as emails and fax between employees of ICE and the Cumberland County Jail.
4. Records regarding precautions for transferring ICE detainees to or from the Cumberland County Jail, including, but not limited to, testing, vaccination, physical distancing, and hygiene measures.
5. Any records from June 2019 to the present regarding the lease and development plans for the ICE facility in Scarborough.
6. Any records from June 2019 to the present relating to zoning approval for the ICE facility in Scarborough.
7. Any records from June 2019 to the present regarding plans for immigration detention at the ICE facility in Scarborough.
8. Any records regarding policies for immigration detention at the ICE facility in Scarborough.

ICE has considered your request under the FOIA, 5 U.S.C. § 552, and processed 518 pages of potentially responsive records. Of the 518 pages, ICE determined that 133 pages are duplicates,

16 pages are non-responsive, 29 pages will be released in full, and 198 pages will be withheld in part pursuant to FOIA Exemptions (b)(5), (b)(6), (b)(7)(C), and (b)(7)(E) of the FOIA as described below. Please note that 7 pages were referred to the General Services Administration (GSA) and 138 pages were referred to the Department of Justice (DOJ) for processing and direct response to you. 4 pages were sent to the GSA for a consultation. 227 pages have been Bates numbered 2021-ICLI-00025 1475 through 2021-ICLI-00025 1701.

ICE has applied Exemption 5 to protect from disclosure intra-agency documents that contain the recommendations, opinions, and conclusions of agency employees. The disclosure of these communications would discourage the expression of candid opinions and inhibit the free and frank exchange of information and opinions among agency personnel on important agency decision-making by having a chilling effect on the agency's deliberative process.

**FOIA Exemption 5** protects from disclosure those inter- or intra-agency documents that are normally privileged in the civil discovery context. The three most frequently invoked privileges are the deliberative process privilege, the attorney work-product privilege, and the attorney-client privilege. After carefully reviewing the responsive documents, I have determined that portions of the responsive documents qualify for protection under the deliberative process privilege and the attorney-client privilege. The deliberative process privilege protects the integrity of the deliberative or decision-making processes within the agency by exempting from mandatory disclosure opinions, conclusions, and recommendations included within inter-agency or intra-agency memoranda or letters. The release of this internal information would discourage the expression of candid opinions and inhibit the free and frank exchange of information among agency personnel. The attorney-client privilege protects confidential communications between an attorney and his client relating to a legal matter for which the client has sought professional advice. It applies to facts divulged by a client to his attorney, and encompasses any opinions given by an attorney to his client based upon, and thus reflecting, those facts, as well as communications between attorneys that reflect client-supplied information. The attorney-client privilege is not limited to the context of litigation.

ICE has applied FOIA Exemptions 6 and 7(C) to protect from disclosure the personally identifiable information of DHS employees and third parties contained within the records.

**FOIA Exemption 6** exempts from disclosure personnel or medical files and similar files the release of which would cause a clearly unwarranted invasion of personal privacy. This requires a balancing of the public's right to disclosure against the individual's right to privacy. The privacy interests of the individuals in the records you have requested outweigh any minimal public interest in disclosure of the information. Any private interest you may have in that information does not factor into the aforementioned balancing test.

**FOIA Exemption 7(C)** protects records or information compiled for law enforcement purposes that could reasonably be expected to constitute an unwarranted invasion of personal privacy. This exemption takes particular note of the strong interests of individuals, whether they are suspects, witnesses, or investigators, in not being unwarrantably associated with alleged criminal activity. That interest extends to persons who are not only the subjects of the investigation, but those who may have their privacy invaded by having their identities and information about them revealed in connection with an investigation. Based upon the traditional recognition of strong privacy interest in law enforcement records, categorical withholding of information that identifies third parties in

law enforcement records is ordinarily appropriate. As such, I have determined that the privacy interest in the identities of individuals in the records you have requested clearly outweigh any minimal public interest in disclosure of the information. Please note that any private interest you may have in that information does not factor into this determination.

ICE has applied FOIA Exemption 7(E) to protect from disclosure internal agency law enforcement sensitive investigative techniques and internal agency URLs, agency case numbers, or database codes contained within the records.

**FOIA Exemption 7(E)** protects records compiled for law enforcement purposes, the release of which would disclose techniques and/or procedures for law enforcement investigations or prosecutions or would disclose guidelines for law enforcement investigations or prosecutions if such disclosure could reasonably be expected to risk circumvention of the law. I have determined that disclosure of certain law enforcement sensitive information contained within the responsive records could reasonably be expected to risk circumvention of the law. Additionally, the techniques and procedures at issue are not well known to the public.

If you have any questions about this letter, please contact Assistant United States Attorney Ashley Eiler at [AEiler@usa.doj.gov](mailto:AEiler@usa.doj.gov)

Sincerely,

Lynnea Schurkamp  
Deputy FOIA Officer  
Fernando Pineiro Jr.  
(A)FOIA Officer

Enclosure: 227 pages  
cc: Ashley Eiler  
Assistant United States Attorney