



U.S. Immigration
and Customs
Enforcement

February 27, 2013

VIA Electronic Mail and FedEx

Catherine Crump
Staff Attorney
American Civil Liberties Union Foundation
125 Broad Street, 17th Floor
New York, NY 10004

**RE: *ACLU of Massachusetts v. DOJ, et al* (D. Mass. 12-cv-11776)
ICE FOIA Case Number 2012FOIA19286**

Dear Ms. Crump:

This letter is the second interim release in response to your July 30, 2012, Freedom of Information Act (FOIA) request to U.S. Immigration and Customs Enforcement (ICE), seeking records regarding the use of automatic license plate readers (APLRs). This FOIA request is now the subject of litigation in the United States District Court for the District of Massachusetts.

Your request has been processed under the FOIA, 5 U.S.C. § 552. In our first interim release, sent to you on January 31, 2013, ICE provided you with 91 pages of records located by the ICE Office of Homeland Security Investigations (HSI).

For this release, the ICE FOIA Office processed a total of 943 pages located by the ICE Privacy Office. The ICE FOIA Office determined that 916 pages of those records were non-responsive, as they were either unrelated to the subject matter of your FOIA request, or fell outside of the date range for this request. The remaining 27 pages were responsive to your request. After a review of those 27 pages, the ICE FOIA Office has determined that one (1) page will be released in its entirety, 4 pages will be withheld in full, and portions of 22 pages will be withheld pursuant to Exemptions (b)(5), (b)(6), (b)(7)(C) and (b)(7)(E) of the FOIA as described below.

ICE is continuing to process records and will release them to you on a rolling basis. ICE expects to make its third interim release to you by March 29, 2013.

ICE has applied FOIA Exemption (b)(5) on behalf of the U.S. Department of Homeland Security (DHS) to protect from disclosure the contents of email exchanges between the ICE Privacy Officer and employees within the DHS Privacy Office, offering opinions regarding the use APLR technology by DHS, and the user agreement for the technology.

FOIA Exemption(b)(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. 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.

ICE has applied Exemptions (b)(6) and (b)(7)(C) of the FOIA to protect from disclosure the names, phone numbers, and email addresses of ICE employees and third party individuals.

FOIA Exemption (b)(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 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 (b)(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 (b)(7)(E) to protect from disclosure law enforcement sensitive information relating to specific improvements to and overall capabilities of the APLR technology. The release of this information could allow the suspects of ICE criminal investigations to circumvent the law and evade detection and apprehension by law enforcement officers.

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FOIA Exemption (b)(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 Jennifer Serafyn at (617) 748-3188.

Sincerely,

Handwritten signature in black ink, appearing to read 'M. Pavlik-Keenan'. To the right of the signature, the letters 'FOR' are handwritten in a similar style.

Catrina M. Pavlik-Keenan
FOIA Officer

Enclosure(s): 1 CD, 27 pages (Bates numbers ICE 2012FOIA19286.000092-118)
cc: AUSA Serafyn