



**U.S. Immigration  
and Customs  
Enforcement**

June 28, 2013

VIA Electronic Mail and FedEx

Catherine Crump  
Staff Attorney  
American Civil Liberties Union Foundation  
125 Broad Street, 17<sup>th</sup> 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 sixth 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).

In our second release, ICE provided you with 27 pages of responsive records located by the ICE Privacy Office.

In our third release, ICE provided you with 85 pages of responsive records located by HSI.

In our fourth release, ICE provided you with 64 pages of responsive records located by HSI.

In our fifth release, ICE provided you with 56 pages of responsive records located by HSI and the ICE Office of Enforcement and Removal Operations (ERO)

For this release, the ICE FOIA Office processed a total of 204 pages located by ERO. The ICE FOIA Office determined that 72 pages of those records were non-responsive, as they were either unrelated to the subject matter of your FOIA request or were duplicates of records previously released. The remaining 132 pages were responsive to your request. After a review of those 132

pages, the ICE FOIA Office has determined that 11 pages will be released in their entirety, and portions of 121 pages will be withheld pursuant to Exemptions (b)(4), (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 seventh interim release to you by July 31, 2013.

ICE has applied Exemption (b)(4) of the FOIA to protect from disclosure unit pricing information for individual license plate readers and related products and services.

**FOIA Exemption 4** protects trade secrets and commercial or financial information obtained from a person that is privileged or confidential. The courts have held that this subsection protects (a) confidential commercial information, the disclosure of which is likely to cause substantial harm to the competitive position of the person who submitted the information and (b) information that was voluntarily submitted to the government if it is the kind of information that the provider would not customarily make available to the public. I have reviewed the responsive documents and relevant case law, and I have determined that portions of the responsive records are exempt from disclosure under subsection (b)(4) of the FOIA and must be withheld in order to protect the submitter's proprietary interests.

ICE has applied FOIA Exemption (b)(5) to protect from disclosure a draft letter from ICE management to union representatives regarding changes to an ICE Field Office's standard operating procedures that would incorporate the use of ALPRs.

**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, along with other personally identifiable information pertaining to third party individuals and subjects of law enforcement investigations.

**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 internal database identification numbers, law enforcement database URL addresses, and other law enforcement sensitive information relating to the location, placement, proliferation and mission-specific capabilities of the LPR system cameras and database. The release of this information, particularly the capabilities and location of LPR systems, could allow the suspects of ICE criminal investigations to circumvent the law and evade detection and apprehension by law enforcement officers.

**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.

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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 'MPK' with a flourish.

FOR

Catrina M. Pavlik-Keenan  
FOIA Officer

Enclosure(s): 1 CD, 132 pages (Bates numbers ICE 2012FOIA19286.0000324-455)  
cc: AUSA Serafyn