



U.S. Immigration
and Customs
Enforcement

October 19, 2012

MICHAEL WISHNIE
JEROME N. FRANK LEGAL SERVICES ORGANIZATION
YALE LAW SCHOOL
P.O. BOX 209090
NEW HAVEN, CT 06520-9090

Re: **FOIA Request 2012FOIA02544**
Case No. 12-00355

Dear Mr. Wishnie:

This is in response to your Freedom of Information Act/Privacy Act (FOIA/PA) request to U.S. Immigration and Customs Enforcement (ICE), dated November 29, 2011. Your request was received in this office on November 29, 2011. In your FOIA request, you seek all records, created from January 1, 1986 to the present, related to the Criminal Alien Program (CAP), and the INS and ICE programs out of which CAP developed.

As you know, this request is now in litigation, and ICE has taken the position that your request is insufficiently defined and imposes an unreasonable burden on ICE. Notwithstanding this position, we are providing you with the results of a two-hour search of the ICE Office of Enforcement and Removal Operations for records responsive to your request. *See* 6 C.F.R. § 5.11(d)((3)(ii). This search, which was conducted in conjunction with the preparation of the Declaration of Jamison Matuszewski, submitted in the litigation, produced 473 pages of documents. After a review, I have determined that 303 pages will be released to you in full, and that the responsive portions of the remaining 170 pages will be withheld pursuant to Exemptions 5, 6, 7(C), and 7(E) of the FOIA as described below.

ICE has applied FOIA Exemption 5 to protect from disclosure draft versions of policy documents, memoranda and letters.

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. 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 FOIA Exemptions 6 and 7(C) to protect from disclosure the names, phone numbers and email addresses of law enforcement officers and other ICE employees, as well as the names, addresses, phone numbers, email addresses, alien and other identification numbers, dates of birth and other personally identifiable information of third party individuals.

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 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 information relating to the number of law enforcement officers assigned to certain tasks within ICE, law enforcement systems checks and database URL addresses.

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 or would like to discuss this matter, please feel free to contact this office at (866) 633-1182 refer to case number **2012FOIA02544**.

Sincerely,

A handwritten signature in black ink, appearing to read "Catrina M. Pavlik-Keenan". The signature is fluid and cursive, with a long horizontal stroke at the end.

Catrina M. Pavlik-Keenan
FOIA Officer