



VIA ELECTRONIC MAIL

October 26, 2015

James M. Kovakas
Freedom of Information/Privacy Act Officer
Civil Division, Department of Justice, Room 8020
1100 L Street, NW
Washington, DC 20530-0001
civil.routing.FOIA@usdoj.gov

RE: Freedom of Information Act Request

Dear FOIA Officer:

The National Immigration Project of the National Lawyers Guild (NIPNLG), the American Civil Liberties Union of Southern California (ACLU SoCal), and Dolores Street Community Services (DSCS) submit this letter as a request for information under the Freedom of Information Act (FOIA), 5 U.S.C § 552. This request seeks information pertaining to the Office of Immigration Litigation's ("OIL's") access to Executive Office for Immigration Review ("EOIR") case processing databases.¹

NIPNLG, ACLU SoCal, and DSCS (Requestors) seek a fee waiver in connection with this request pursuant to 5 U.S.C. § 552(a)(4)(A)(iii) and 5 U.S.C. § 552(a)(4)(A)(ii)(II).

I. Records Requested

Requestors seek any and all records² prepared, received, transmitted, collected and/or maintained by the OIL, between January 1, 2014 until the date the agency conducts an adequate records

¹ The term "case processing database" as used herein includes all EOIR databases, including but not limited to, any interfaces, docking systems or platforms that gather, hold, and disseminate EOIR case information and records.

² The term "records" as used herein includes all records or communications preserved in electronic or written form, including but not limited to correspondence, documents, data, videotapes, audiotapes, e-mails, faxes, files, guidance, guidelines, evaluations, instructions, analyses, memoranda, agreements, notes, orders, policies, procedures, protocols, reports, rules, manuals, technical specifications, training manuals, and studies.

search, which relate to OIL access to information maintained in EOIR³ case processing databases, including but not limited to, Case Access System for EOIR (CASE), eInfo, the Automated Case Information Hotline (also known as the 1-800 EOIR number) and any legacy databases, including the Interactive Scheduling System and Automated Nationwide System for Immigration Review.

The above records include, but are not limited to:

1. Manuals, internal memoranda, training or instructional materials, policies and directives describing practices and protocols for OIL staff relating to accessing EOIR case processing databases.
2. Internal memoranda, training materials, policies and directives regarding notices provided to OIL of case filings or case developments by EOIR.
3. Internal memoranda, training materials, policies, directives and inter-agency agreements discussing access, use or sharing of case processing information between OIL personnel and personnel from outside OIL, including, but not limited to, any employees of the Department of Justice and/or Department of Homeland Security.
4. Records related to OIL agency databases, storage and record systems, and/or information hubs that are configured with, and/or have access to, information stored in EOIR case processing databases.

Requesters ask that the agency provide any records that exist in electronic form on a compact disc. Requesters also request that the agency provide any documents stored in Portable Document Format (PDFs) in a searchable PDF format.

If under applicable law any of the information is considered exempt, please describe in detail the nature of the information withheld, the specific exemption or privilege upon which the information is withheld, and whether the portions of withheld documents containing non-exempt or non-privileged information have been provided. Requesters seek the release of all portions of otherwise exempt material that can be segregated.

II. The Requestors

The National Immigration Project of the National Lawyers Guild (NIPNLG) is a national non-profit membership organization comprised of attorneys, jailhouse lawyers, community activists, law students, and other advocates seeking to advance the rights of noncitizens. The NIPNLG provides technical and litigation support to members and other advocates, provides training to the bar and the bench on immigration law, and is the author of four treatises on immigration law

³ “Executive Office for Immigration Review” (EOIR) as used herein includes means offices, components, divisions, subdivision or sections therein, including but not limited to the Board of Immigration Appeals, Office of the General Counsel, Office of the Chief Immigration Judge, and immigration courts.

published by Thomson Reuters. In addition, NIPNLG staff present, and regularly publish practice advisories, on immigration law topics, which are disseminated to its members as well as to a large public audience through its website, www.nationalimmigrationproject.org. Finally, NIPNLG has contact with national print and news media and plans to share information gleaned from FOIA disclosures with interested media.

The ACLU of Southern California (ACLU SoCal) is a non-profit organization dedicated to defending and securing the rights granted by the U.S. Constitution and Bill of Rights. ACLU SoCal's work focuses on immigrants' rights, the First Amendment, equal protection, due process, privacy, and furthering civil rights for disadvantaged groups. ACLU SoCal disseminates information to the public through its website and social media platforms, "Know Your Rights" documents, and other educational and informational materials. The ACLU SoCal regularly submits FOIA requests to DHS and other agencies – including, for example, on ICE's policies and practices for worksite immigration enforcement, and USCIS's policies and practices for the adjudication of naturalization applications – and publicizes the information it obtains through its website, newsletters, reports and "Know Your Rights" presentations and materials.

Dolores Street Community Services (DSCS) provides community outreach services and pro bono deportation defense to low-income immigrants. DSCS is an active participant in the San Francisco Immigrant Legal and Education Network ("SFILEN"), which supports immigrants facing deportation in removal proceedings and disseminates information to the public through trainings and workshops as well as published educational and informational materials. DSCS specializes in representing individuals arrested during civil immigration workplace or home raids and works collaboratively with the Central American Resource Center of San Francisco ("CARECEN") and La Raza Community Resource Center ("LRCRC") to rapidly respond to immigrants in need of legal services.

III. Request for a Waiver of Costs

Requestors ask that the agency waive all fees associated with this request. Such a waiver is warranted because the disclosure of information is "likely to contribute significantly to public understanding of the operations or activities of the government and is not primarily in the commercial interest of the requester. *See* 5 U.S.C. § 552(a)(4)(iii); *see also* 6 C.F.R. § 5.11(k) (records furnished without charge or at a reduced charged when disclosure is in public interest and is not primarily in the commercial interest of the requestors). In addition, Requestors have the ability to widely disseminate the requested information. *See Judicial Watch v. Rossotti*, 326 F.3d 1309, 1312 (D.C. Cir. 2003) (finding a fee waiver appropriate when the requester explained, in detailed and non-conclusory terms, how and to whom it would disseminate the information it received); *Cause of Action v. FTC*, --- F.3d ---, 2015 WL 5009388 (D.C. Cir. 2015) (same).

A. Disclosure of Information is in the Public Interest

Disclosure of the information is in the public interest because it will contribute significantly to the public understanding of how EOIR processes and maintains individual case files. This request concerns how EOIR processes, stores, maintains, and uses individual case files. Access to this information is fundamental to ensure fairness and transparency in immigration

proceedings before immigration judges and the Board of Immigration Appeals. Such information is of great public interest given that it affects a large population of individuals: immigration attorneys, immigration advocates, individuals with cases in immigration court, and individuals with appeals or motions pending before the Board of Immigration Appeals. *See* 6 C.F.R. § 5.11(k)(2)(iii)(stating that disclosure will contribute to public understanding when it affects a “reasonably broad audience of persons interested in the subject.”).

Requestors have the capacity and intent to disseminate widely the requested information to the public. Requestors will review, analyze and and/or summarize the information obtained through this FOIA. In addition, Requestors staff will speak publicly and may publish practice advisories or related written materials to be shared with the public, organizational members and the academic community. Requestors may make the information available through their website, which are accessible by any member of the public, and through action alerts, emails and newsletters (the ACLU SoCal has more than 28,000 members and, nationwide, the ACLU has more than 500,000 members). Requestors have demonstrated the capacity to disseminate information to the public in the past through these means, including information obtained through FOIA requests. *See, e.g.*, <http://www.aclu.org/immigrants-rights/immigrant-detainee-rights-are-routinely-systematically-violated-new-report-finds> (ACLU SoCal report based on documents disclosed through FOIA); http://nationalimmigrationproject.org/legalresources/practice_advisories/Reinstatement%20FOIA%20Results_USCIS.pdf (summary of documents disclosed through FOIA). *See also* <http://www.aclusocal.org/about/report-directory/> (compiling recent ACLU SoCal reports).

Finally, Requestors have frequent contact with national print and news media and plans to share information gleaned from FOIA disclosures with interested media.

B. Disclosure of Information is Not Primarily in the Commercial Interest of the Requestors

Requestors are not-for-profit organizations. Attorneys, noncitizens and any other interested members of the public may obtain information about immigration-related issues through its distribution of written materials, including their individual websites, and through public and educational appearances. Requestors seek the requested information for the purpose of disseminating it to members of the public who have access to our public websites and other free publications, and not for the purpose of commercial gain.

IV. Request for a Limitation of Search and Review Fees

We also request a limitation of processing fees as “representatives of the media” pursuant to 5 U.S.C. § 552(a)(4)(A)(ii)(II) (“fees shall be limited to reasonable standard charges for document duplication when records are not sought for commercial use and the request is made by . . . educational or noncommercial scientific institution . . . or a representative of the news media”) and 6 C.F.R. § 5.11(d)(1) (search fees shall not be charged to “representatives of the news media”).

The “term ‘a representative of the news media’ means any person or entity that gathers information of potential interest to a segment of the public, uses its editorial skills to turn the raw materials into a distinct work, and distributes that work to an audience.” 5 U.S.C. § 552(a)(4)(A)(ii). The statutory definition does not require that the requestor be a member of the traditional media. As long as the requestor meets the definition in any aspect of its work, it qualifies for limitation of fees under this section of the statute. *See Cause of Action v. FTC*, --- F.3d ---, 2015 WL 5009388, at *5-6 (D.C. Cir. 2015).

Requestors qualify as a “representative of the news media” under the statutory definition, because they routinely gather information of interest to the public, uses editorial skills to turn it into distinct work, and distributes that work to the public. *See Electronic Privacy Information Center v. Department of Defense*, 241 F. Supp. 2d 5 (D.D.C. 2003) (non-profit organization that gathered information and published it in newsletters and otherwise for general distribution qualified as representative of news media for purpose of limiting fees). Courts have reaffirmed that non-profit requestors who are not traditional news media outlets can qualify as representatives of the new media for the purposes of the FOIA, including after the 2007 amendments to the FOIA. *See ACLU of Washington v. U.S. Dep’t of Justice*, No. C09-0642RSL, 2011 WL 887731, at *18 (D. Wash. Mar. 10, 2011) (finding that the ACLU qualifies as a “representative of the news media”). Accordingly, any fees charged must be limited to duplication costs.

V. Address for Production

Please furnish the records as soon as they are identified to:

Trina Realmuto
National Immigration Project of the National Lawyers Guild
14 Beacon Street, Suite 602
Boston, MA 02108

If you have any questions regarding this request, please contact Trina Realmuto at trina@nipnl.org or 617-227-9727 extension 8. Thank you in advance for your prompt response to this matter.

Sincerely,



Trina Realmuto
National Immigration Project of the National Lawyers Guild

Michael Kaufman
ACLU of Southern California

Frances Kreimer
Dolores Street Community Services