

Knight First Amend. Inst. at Columbia Univ. v.
Dep't of Homeland Sec.
No. 1:17-cv-00548-TSC

Answer

Ex. E



Homeland
Security

Privacy Office, Mail Stop 0655

March 31, 2017

Katherine Fallow
Knight First Amendment Institute at Columbia Unive
314 Low Library
535 West 116th Street
New York, NY 10027

Re: **2017-HQFO-00585**

Dear Ms. Fallow:

This letter acknowledges receipt of your Freedom of Information Act (FOIA) request to the Department of Homeland Security (DHS), dated March 15, 2017 and to your request for expedited treatment and a waiver of all assessable FOIA fees. This office received your request on March 28, 2017. Specifically, you requested 1. Any document containing statistical information concerning the search, detention, retention, or sharing of electronic devices or information of individuals at the border (or functional equivalent of the border) since FY2012, including, but not limited to, documents: reflecting the number of travelers whose electronic devices or information were searched, detained, retained, or shared; the number or portion of those travelers who are U.S. citizens; the number or portion of those travelers who are lawful permanent residents or green card holders; the number or portion of those travelers by country of origin; the number or portion of those travelers by gender, race, ethnicity, nationality, and/or country of birth; the number or portion of those travelers by port of entry; and the number or portion of those travelers by watchlist, lookout, and/or other selectee status; 2. Documents relating to each instance since FY2012 in which CBP or ICE searched, detained, retained, or shared an electronic device or the information accessible on it, including, but not limited to: a list of the TECS data field categories used to record and track each electronic device search conducted by CBP or ICE; and all information contained in the TECS system used to record and track electronic device searches, detentions, retentions, and/or sharings. 3. Revisions of or documents supplementing or superseding: CBP Directive No. 3340-049, Border Search of Electronic Devices Containing Information (Aug. 20, 2009); or ICE Directive No. 7-6.1, Border Searches of Electronic Devices (Aug. 18, 2009). 4. The following documents relating to any reviews of CBP's or ICE's policies or practices concerning electronic device searches: any audits, impact assessments, or other reviews of CBP's or ICE's policies or practices concerning electronic device searches, including any such reports by the Office for Civil Rights and Civil Liberties, DHS's OIG, and CBP's Office of Internal Affairs, Management Inspection Division; any policies, practices, procedures, and/or training materials adopted as a result of any audits, impact assessments, or other reviews of how CBP and ICE conduct electronic device searches; and any documents reflecting annual or semi-annual examinations by CBP or ICE of electronic

device searches by port of entry, as adopted in response to the 2011 Impact Assessment. 5. Documents, including tear sheets and TRIP records, containing or relating to complaints filed by individuals or organizations about CBP's and/or ICE's search, review, retention or sharing of the information on travelers' electronic devices. 6. Documents reflecting policies, practices, or procedures concerning how CBP officers handle "privileged or other sensitive material," including "work-related information carried by journalists," as referenced in § 5.2 of the CBP Directive. 7. Documents reflecting policies, practices, and procedures concerning CBP's anti-discrimination policy as applied to discretionary device searches.

Your request for expedited treatment is hereby denied.

Under the DHS FOIA regulations, expedited processing of a FOIA request is warranted if the request involves "circumstances in which the lack of expedited treatment could reasonably be expected to pose an imminent threat to the life or physical safety of an individual," 6 C.F.R. § 5.5(d)(1)(i), or "an urgency to inform the public about an actual or alleged federal government activity, if made by a person primarily engaged in disseminating information," 6 C.F.R. § 5.5(d)(1)(ii). Requesters seeking expedited processing must submit a statement explaining in detail the basis for the request, and that statement must be certified by the requester to be true and correct. 6 C.F.R. § 5.5(d)(3).

Your request for expedited processing is denied because you do not qualify for either category under 6 C.F.R. § 5.5(d)(1). You failed to demonstrate a particular urgency to inform the public about the government activity involved in the request beyond the public's right to know about government activity generally. Your letter was conclusory in nature and did not present any facts to justify a grant of expedited processing under the applicable standards.

Due to the increasing number of FOIA requests received by this office, we may encounter some delay in processing your request. Consistent with 6 C.F.R. § 5.5(a) of the DHS FOIA regulations, the Department processes FOIA requests according to their order of receipt. Although DHS' goal is to respond within 20 business days of receipt of your request, FOIA does permit a 10-day extension of this time period in certain circumstances. As your request seeks documents that will require a thorough and wide-ranging search, DHS will invoke a 10-day extension for your request pursuant to 5 U.S.C. § 552(a)(6)(B). If you would like to narrow the scope of your request, please contact our office. We will make every effort to comply with your request in a timely manner.

You have requested a fee waiver. The DHS FOIA Regulations at 6 CFR § 5.11(k)(2), set forth six factors DHS is required to evaluate in determining whether the applicable legal standard for a fee waiver has been met: (1) Whether the subject of the requested records concerns "the operations or activities of the government;" (2) Whether the disclosure is "likely to contribute" to an understanding of government operations or activities; (3) Whether disclosure of the requested information will contribute to the understanding of the public at large, as opposed to the individual understanding of the requestor or a narrow segment of interested persons; (4) Whether the contribution to public understanding of government operations or activities will be "significant;" (5) Whether the requester has a commercial interest that would be furthered by the requested disclosure; and (6) Whether the magnitude of any identified commercial interest to the

requestor is sufficiently large in comparison with the public interest in disclosure, that disclosure is primarily in the commercial interest of the requestor.

Upon review of the subject matter of your request, and an evaluation of the six factors identified above, DHS has determined that it will conditionally grant your request for a fee waiver. The fee waiver determination will be based upon a sampling of the responsive documents received from the various DHS program offices as a result of the searches conducted in response to your FOIA request. DHS will, pursuant to DHS regulations applicable to non-commercial requestors, provide two hours of search time and process the first 100 pages at no charge to you. If upon review of these documents, DHS determines that the disclosure of the information contained in those documents does not meet the factors permitting DHS to waive the fees then DHS will at that time either deny your request for a fee waiver entirely or allow for a percentage reduction in the amount of the fees corresponding to the amount of relevant material found that meets the factors allowing for a fee waiver. In either case, DHS will promptly notify you of its final decision regarding your request for a fee waiver and provide you with the responsive records as required by DHS regulations. In the event that your fee waiver is denied, and you determine that you still want the records DHS shall charge you 10-cents a page for duplication for records and the per quarter-hour rate of the searcher in accordance with the DHS Interim FOIA regulations as they apply to non-commercial requestors.

You have a right to appeal the above withholding determination. Should you wish to do so, you must send your appeal and a copy of this letter, within 90 days of the date of this letter, to: Privacy Office, Attn: FOIA Appeals, U.S. Department of Homeland Security, 245 Murray Lane, SW, Mail Stop 0655, Washington, D.C. 20528-0655, following the procedures outlined in the DHS FOIA regulations at 6 C.F.R. Part 5 § 5.8. Your envelope and letter should be marked "FOIA Appeal." Copies of the FOIA and DHS FOIA regulations are available at www.dhs.gov/foia.

If you need any further assistance or would like to discuss any aspect of your request, please contact the analyst below who processed your request and refer to **2017-HQFO-00585**. You may send an e-mail to foia@hq.dhs.gov, call 202-343-1743 or toll free 1-866-431-0486, or you may contact our FOIA Public Liaison in the same manner. Additionally, you have a right to right to seek dispute resolution services from the Office of Government Information Services (OGIS) which mediates disputes between FOIA requesters and Federal agencies as a non-exclusive alternative to litigation. If you are requesting access to your own records (which is considered a Privacy Act request), you should know that OGIS does not have the authority to handle requests made under the Privacy Act of 1974. You may contact OGIS as follows: Office of Government Information Services, National Archives and Records Administration, 8601 Adelphi Road-OGIS, College Park, Maryland 20740-6001, e-mail at ogis@nara.gov; telephone at 202-741-5770; toll free at 1-877-684-6448; or facsimile at 202-741-5769

We have queried the appropriate component(s) of DHS for responsive records. If any responsive records are located, they will be reviewed for determination of releasability. Please be assured that one of the processors in our office will respond to your request as expeditiously as possible. We appreciate your patience as we proceed with your request.

We are also transferring your request to the Department of Homeland Security, Office of the Inspector General (OIG), FOIA Officer, Avery Roselle, and Transportation Security Administration (TSA), FOIA Officer, Regina McCoy, for processing and direct response to you. You may contact those offices directly at:

U.S. Department of Homeland Security
Office of Inspector General
Mail Stop 0305
245 Murray Lane, SW
Washington, DC 20528-0305
202-254-4001

Transportation Security Administration
FOIA Office, TSA-20
601 S. 12th Street, 11th Floor
East Tower
Arlington, VA 20598-6020
1-866-FOIA-TSA

Your request has been assigned reference number **2017-HQFO-00585**. Please refer to this identifier in any future correspondence. To check the status of your FOIA request, you may contact this office at 1-866-431-0486 or 202-343-1743, or you may check the status of your request online at <http://www.dhs.gov/foia-status>.

Sincerely,

A handwritten signature in black ink, appearing to read 'Angela Washington', with a stylized flourish at the end.

Angela Washington
Director of Disclosure