

U.S. Department of Homeland Security
500 12th St., SW
Washington, D.C. 20536



U.S. Immigration
and Customs
Enforcement

August 4, 2021

Cathy Alton
WilmerHale
1875 Pennsylvania Avenue NW
Washington, DC 20006

**RE: Citizens For Responsibility and Ethics in Washington v. DHS, No. 20-cv-2553-TJK
ICE FOIA Case Number 2021-ICLI-00011
Fifth Interim Release**

Dear Ms. Alton

This is the fifth interim response to your client's Freedom of Information Act (FOIA) requests to U.S. Immigration and Customs Enforcement (ICE), dated September 11, 2020, given the tracking number 2021-ICLI-00011. Your clients are seeking records from June 2, 2020 relating the decision or plans to deploy federal agents to Portland, OR and Chicago, IL. as well as other cities and/or states.

A search of the Office of Homeland Security Investigations (HSI) located records that were responsive to your request. Unlike the previous releases where the records were located during a search in response to a FOIA request similar to the one you submitted, these records were the result of HSI's search in response to your FOIA request specifically. For this production ICE reviewed 516 pages of potentially responsive records. Of those 516 pages, 369 pages were determined to be non-responsive, 12 pages were determined to be duplicates and 11 pages were being referred to other agencies for their direct response to you. The remaining 110 pages have been Bates numbered 2021-ICLI-00011- 282 through 2021-ICLI-00011-391.

Furthermore, 14 pages were sent for consultations to another agencies for their review and input.

The ICE FOIA office has applied FOIA Exemptions (b)(5), (b)(6), (b)(7)(C), and (b)(7)(E) to portions of the pages produced as described below.

FOIA Exemption 5 protects inter-agency or intra-agency memorandums or letters which are not available by law to a party other than an agency in litigation with the agency. 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. The attorney work-product privilege protects documents and other memoranda prepared by an attorney in contemplation of litigation. The attorney-client privilege protects confidential communications between an attorney and his client relating to a legal matter for which the client has sought professional advice. It applies to facts divulged by a client to his attorney, and encompasses any opinions given by an attorney to his client based upon, and thus reflecting, those facts, as well as communications between attorneys that reflect client-supplied information. The attorney-client privilege is not limited to the context of litigation.

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 to 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.

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 about this letter, please contact Assistant U.S. John C. Truong at [\(202\) 815-8958](tel:202-815-8958).

Sincerely,

Senior Paralegal, ICE FOIA for

Fernando Pineiro Jr.

(A)FOIA Officer

Enclosure: 110 pages