

October 12, 2018

BY EMAIL: foia@hq.dhs.gov

Jonathan Cantor
Acting Chief Privacy Officer/Chief FOIA Officer
The Privacy Office
U.S. Department of Homeland Security
245 Murry Lane SW
STOP-0655
Washington, D.C. 20528-0655

Re: Freedom of Information Act Request

Dear Mr. Cantor:

Citizens for Responsibility and Ethics in Washington (“CREW”) makes this request for records pursuant to the Freedom of Information Act (“FOIA”), 5 U.S.C. § 552, and U.S. Department of Homeland Security (“DHS”) regulations.

Specifically, CREW requests:

1. All documents from January 20, 2017 to the present reflecting policies, procedures, protocols, directives, or methods by which DHS identifies and tracks alien minors taken in its custody, including without limitation documents reflecting policies on photographing, fingerprinting, or the issuance of bracelets or other identifying material to such minors.
2. All documents from January 20, 2017 to the present concerning the creation, existence, or maintenance of a “central database” containing information compiled by DHS regarding “how [minors] illegally entered the country and whether or not they were with a parent or adult and, to the extent possible, the parent(s) or guardian(s) information and location,” which DHS and the U.S. Department of Health and Human Services (“HHS”) “can access and update when a parent(s) or minor(s) location information changes” (the “Central Database”), as described in the DHS Fact Sheet: Zero-Tolerance Prosecution and Family Reunification, dated June 23, 2018, <https://bit.ly/2K6QRpm>. This request includes without limitation all documents reflecting policies, procedures, protocols, or methods concerning the Central Database.
3. All documents from January 20, 2017 to the present concerning the creation, existence, or maintenance of a “matching table” or manually-compiled spreadsheet maintained by HHS, U.S. Customs and Border Protection (“CBP”), and U.S. Immigration and Customs

Enforcement personnel containing location information for separated parents and legal guardians and minors (the “Matching Table”), as described in the DHS Office of Inspector General report titled Special Review – Initial Observations Regarding Family Separation Issues Under the Zero Tolerance Policy, OIG-18-84, dated September 27, 2018, at pages 10-11, <https://bit.ly/2NhATFE> (“OIG-18-84 Report”). This request includes without limitation all documents reflecting policies, procedures, protocols, directives, or methods concerning the Matching Table.

4. Documents from the Central Database, the Matching Table, or any other source of records sufficient to identify (a) the number of alien minors who were apprehended at ports of entry following DHS’s implementation of the Zero Tolerance Policy; (b) the number of such minors who were separated from their parents or legal guardians after being apprehended by DHS; (c) the number and locations of such minors who have been reunited with their parents or legal guardians, and the dates of those reunifications; and (d) the number and locations of such minors who remain, as of the date of this FOIA request, separated from their parents or legal guardians.

5. All documents from January 20, 2017 to the present reflecting policies, procedures, protocols, directives, or methods by which the CBP Office of Field Operations (“OFO”) transmits to HHS information regarding alien minors who are apprehended at ports of entry and then transferred to HHS’s custody. This request includes without limitation (a) documents concerning OFO’s manual entry of information into Microsoft Word documents that are then emailed to HHS, as described in the OIG-18-84 Report at page 10; and (b) documents concerning DHS’s storage of information reflecting such transmissions from DHS to HHS, and its ability to retrieve that information.

6. Documents sufficient to identify the number and dates of DHS’s transmissions of information regarding alien minors to HHS that have occurred following DHS’s implementation of the Zero Tolerance Policy.

Please search for responsive records regardless of format, medium, or physical characteristics. We seek records of any kind, including paper records, electronic records, audiotapes, videotapes, photographs, data, and graphical material. Our request includes without limitation all correspondence, letters, emails, text messages, facsimiles, telephone messages, voice mail messages, and transcripts, notes, or minutes of any meetings, telephone conversations, or discussions. Our request also includes any attachments to emails and other records.

If it is your position any portion of the requested records is exempt from disclosure, CREW requests that you provide it with an index of those documents as required under *Vaughn v. Rosen*, 484 F.2d 820 (D.C. Cir. 1973). If some portions of the requested records are properly exempt from disclosure, please disclose any reasonably segregable non-exempt portions of the requested records. See 5 U.S.C. § 552(b). If it is your position that a document contains non-exempt segments, but that those non-exempt segments are so dispersed throughout the

document as to make segregation impossible, please state what portion of the document is non-exempt, and how the material is dispersed throughout the document. *See Mead Data Central v. U.S. Dep't of the Air Force*, 566 F.2d 242, 261 (D.C. Cir. 1977).

Fee Waiver Request

In accordance with 5 U.S.C. § 552(a)(4)(A) and DHS regulations, CREW requests a waiver of fees associated with processing this request for records. The subject of this request concerns the operations of the federal government, and the disclosures likely will contribute to a better understanding of relevant government procedures by CREW and the general public in a significant way. *See* 5 U.S.C. § 552(a)(4)(A)(iii). Moreover, the request primarily and fundamentally is for non-commercial purposes. *See, e.g., McClellan Ecological v. Carlucci*, 835 F.2d 1282, 1285 (9th Cir. 1987).

In April 2018, the Trump Administration announced a new “Zero Tolerance” immigration enforcement policy, requiring that all improper entry offenses be referred for criminal prosecution to the extent possible. As the DHS Office of Inspector General (“OIG”) has noted, this policy “fundamentally changed DHS’ approach to immigration enforcement.”¹ Specifically, “[b]ecause minor children cannot be held in criminal custody with an adult, alien adults who entered the United States illegally would have to be separated from any accompanying minor children when the adults were referred for criminal prosecution.”² The children were then held in “DHS custody until they could be transferred to the [HHS] Office of Refugee Resettlement.”³

The fallout from the Zero Tolerance Policy was catastrophic, resulting in thousands of children being ripped from their parents. Following massive public outcry, President Trump halted the family separations by Executive Order issued June 20, 2018. On June 26, 2018, a federal court ordered the Government to reunify separated children and parents within 30 days—an order it has still not fulfilled.

On September 27, 2018, the DHS OIG issued a report titled Special Review – Initial Observations Regarding Family Separation Issues Under the Zero Tolerance Policy. The OIG found that “DHS was not fully prepared to implement the Administration’s Zero Tolerance Policy or to deal with some of its after-effects,” and that “DHS . . . struggled to identify, track, and reunify families separated under Zero Tolerance due to limitations with its information technology system.”⁴ The OIG further noted that contrary to DHS’s public statements in June 2018 that it had a “central database” with location information for separated parents and minors, “OIG found no evidence that such a database exists.”⁵ The OIG also observed

¹ OIG-18-84 Report at 2.

² *Id.* at 3.

³ *Id.*

⁴ *Id.* at 1.

⁵ *Id.* at 10.

problems with DHS's record management practices, noting that the agency took "many weeks" to provide OIG with data relating to alien family separations and unification, that the data DHS eventually supplied did not appear to be maintained "in a readily accessible format," and that the data was "incomplete and inconsistent, raising questions about its reliability."⁶

Concerns have also been raised about DHS's possible destruction of records that could have been used to reunite hundreds of families.⁷ Such conduct would plainly violate the Federal Records Act, if not other laws.

The requested records will shed light on serious deficiencies in DHS's record management policies and practices—deficiencies which have had catastrophic consequences in connection with the agency's implementation of the Zero Tolerance policy. The records will also reveal whether DHS currently possesses critical data relating to alien family separations that it should possess if it were complying with applicable law and records management requirements. As indicated by the widespread media coverage it has received, these are issues of intense public interest.

CREW is a non-profit corporation, organized under section 501(c)(3) of the Internal Revenue Code. CREW is committed to protecting the public's right to be aware of the activities of government officials, to ensuring the integrity of those officials, and to highlighting and working to reduce the influence of money on politics. CREW uses a combination of research, litigation, and advocacy to advance its mission. CREW intends to analyze the information responsive to this request and to share its analysis with the public through reports, press releases, or other means. In addition, CREW will disseminate any documents it acquires from this request to the public through its website, www.citizensforethics.org. The release of information obtained through this request is not in CREW's financial interest.

CREW further requests that it not be charged search or review fees for this request pursuant to 5 U.S.C. § 552(a)(4)(A)(ii)(II) because CREW qualifies as a member of the news media. *See Nat'l Sec. Archive v. U.S. Dep't of Defense*, 880 F.2d 1381, 1386 (D.C. Cir. 1989) (holding non-profit a "representative of the news media" and broadly interpreting the term to include "any person or organization which regularly publishes or disseminates information to the public").

⁶ *Id.* at 11.

⁷ *See* Letter from CREW to U.S. Archivist, July 6, 2017, available at <https://bit.ly/2IWqi2o>; Caitlin Dickerson, Trump Administration in Chaotic Scramble to Reunify Migrant Families, *New York Times*, July 6, 2018, available at <https://nyti.ms/2MU6hKG>; Michelle Mark, Customs agents reportedly deleted records that could have been used to reunite hundreds of immigrant families, *Insider*, July 6, 2018, available at <https://bit.ly/2A7QzYO>; Letter from Sen. Blumenthal et al. to DHS, July 30, 2018, available at <https://bit.ly/2LEb0DP>.

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CREW routinely and systematically disseminates information to the public in several ways. CREW's website receives tens of thousands of page views every month. The website includes a blog that reports on and analyzes newsworthy developments regarding government ethics, corruption, and money in politics, as well as numerous reports CREW has published to educate the public about these issues. In addition, CREW posts the documents it receives under the FOIA on its website, and that site has been visited hundreds of thousands of times.

Under these circumstances, CREW satisfies fully the criteria for a fee waiver.

Conclusion

If you have any questions about this request or foresee any problems in fully releasing the requested records, please contact me at (202) 408-5565 or nsus@citizensforethics.org. Also, if CREW's request for a fee waiver is not granted in full, please contact our office immediately upon making such a determination.

Where possible, please produce records in electronic format. Please send the requested records to me at either nsus@citizensforethics.org or Nikhel Sus, Citizens for Responsibility and Ethics in Washington, 455 Massachusetts Ave., N.W., Washington, D.C. 20001. Thank you for your assistance in this matter.

Sincerely,



Nikhel Sus
Staff Counsel