



**U.S. Immigration
and Customs
Enforcement**

December 4, 2013

Mark Graham
P. O. Box 1823
Elk Grove, CA 95759

RE: OPLA14-1012, 2013FOIA23842

Dear Mr. Graham:

This is in response to your letter dated October 31, 2013, appealing the adverse determination concerning your Freedom of Information Act/Privacy Act (FOIA/PA) request. The initial request asked for all records pertaining to ICE's policies and procedures in conducting searches as well as prioritization of prosecution of child pornography offenses by ICE. You are appealing the adequacy of the search and application of exemptions.

ICE reviewed the administrative record for your request. The ICE Office of Policy, (OP), Office of Enforcement and Removal Operations (ERO), Homeland Security Investigations (HSI), Office of the Principal Legal Advisor (OPLA) and the Office of National Firearms and Tactical Training Unit (NFTTU) conducted a search for records in response to your FOIA/PA request. Following the parameters of your initial request, these offices located the records which were subsequently released to you.

Therefore, based upon a complete review of the administrative record which led to the ICE FOIA Office's determination on your FOIA request, the search was adequate in all respects and was reasonably calculated to uncover all relevant documents.

Of the documents that were located, 211 were released to you in part and another 82 pages were withheld in full. ICE denied your request in part by withholding records pursuant to the FOIA/PA exemptions (b)(5), (b)(6), (b)(7)(C), and (b)(7)(E). We have reviewed the records in question that gave rise to this initial determination. Our analysis follows.

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.

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, we 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. We determined that disclosure of law enforcement system code use could reasonably be expected to risk circumvention of the law. Additionally, the techniques and procedures at issue are not well known to the public.

Upon a complete review of the information withheld in the initial determination on your FOIA request, the withholding of this information was proper in all respects, and the information is exempt from disclosure under the applicable provisions of 5 U.S.C. § 552 cited above.

With regard to your supplemental appeal dated November 18, 2013, please be advised that FOIA does not require agencies to do legal research, analyze data, answer questions or create records in response to a request.

This decision is the final action of the Department of Homeland Security concerning your FOIA/PA request. Inasmuch as you consider this to be a denial of your appeal, you may obtain judicial review of this decision pursuant to the provisions of 5 U.S.C. § 552(a)(4)(B) in the United States District Court in the district in which you reside, or in which the agency records are situated, or in the District of Columbia.

The Office of Government Information Services (OGIS) also 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. If you wish to contact OGIS, you may email them at ogis@nara.gov or call 1-877-684-6448.

Should you have any questions regarding this appeal closure, please contact ICE at ice-foia@dhs.gov. In the subject line of the email please include your appeal number, which is **OPLA14-1012**, and the FOIA case number, which is **2013FOIA23842**.

Sincerely,

Catherine Gonzalez Gallego
for

Abby Meltzer
Acting Chief
Government Information Law Division
ICE Office of the Principal Legal Advisor
Department of Homeland Security