

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



U.S. Immigration
and Customs
Enforcement

September 6, 2023

Ms. Jacqueline Stevens
601 University Place, 2d floor
Political Science Department
Evanston, IL 60208

RE: Stevens v. ICE 20-cv-2725
ICE FOIA Case Number 2020-ICLI-00042
Supplemental Release

Dear Ms. Stevens:

This letter is a supplemental response to your client's Freedom of Information Act (FOIA) requests to U.S. Immigration and Customs Enforcement (ICE). Your client seeks records relating to the following Freedom of Information Act requests: 2018-ICFO-56530, 2020-ICFO-18634, 2019-ICFO-33429, 2019-ICFO-29171, 2018-ICFO-59138, and 2019-ICFO-24680. ICE has considered your request under the FOIA, 5 U.S.C. § 552.

For this production, ICE is making a discretionary re-release of 199 pages of records. ICE has reviewed the pages and determined that 77 pages will be released in full and portions of the remaining 122 pages will be withheld pursuant to FOIA Exemptions (b)(4), (b)(6), (b)(7)(C) and (b)(7)(E) as described below. The pages will retain their original Bates numbers.

FOIA Exemption 4 protects trade secrets and commercial or financial information obtained from a person that is privileged or confidential. This exemption covers two categories of information in federal agency records: (1) trade secrets; and (2) information that is commercial or financial, obtained from a person (which may include corporations or state governments), and privileged or confidential, which is both customarily and actually treated as private by the submitter of the information. *See Food Marketing Institute v. Argus Leader Media*, 139 S. Ct. 2356, 2362-63 (2019). I have reviewed the responsive documents, the submitter's objections to release, and relevant case law, and I have determined that portions of the responsive records are exempt from disclosure under subsection (b)(4) of the FOIA and must be withheld in order to protect the submitter's proprietary interests.

ICE has applied FOIA Exemptions 6 and 7(C) to protect from disclosure the personally identifiable information of DHS employees and third parties contained within the records.

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 non-public-facing 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 note of the strong interests of individuals, whether they are suspects, witnesses, investigators, or individuals performing their official duties in connection with a law enforcement agency, in not being unwarrantably associated with alleged criminal activity or becoming targets for revenge by begrudged individuals. 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 the non-public-facing 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 United States Attorney Alex Hartzler at Alex.Hartzler@usdoj.gov.

Sincerely,

Marcus K. Francis Sr.
Supervisory Paralegal Specialist

Enclosure: 199 pages

From: (b)(6); (b)(7)(C) [mailto:(b)(6); (b)(7)(C)@ice.dhs.gov]
Sent: Tuesday, March 20, 2018 7:16 PM
To: (b)(6); (b)(7)(C)
Cc:
Subject: RE: DROIGSA-10-0003_P00017

County of Berks Warning: This is an external email. Please exercise caution.

Hi (b)(6); (b)(7)(C)

I received your changes on March 1, 2018 for the transportation language-thank you.

To clarify the concern your CFO presented has regarding the language of "availability of funds," per federal law and the recording statute, ICE will record and set aside the agreed upon not-to-exceed amount of \$275,000 for the purpose of reimbursing Berks County should the expenses be greater than the amount invoiced. The language of "subject to the availability of funds" has to appear in all ICE contracts because we are funded by Congress on annual appropriations (and continuing resolutions). While we will set aside the not-to-exceed amount each year, we still need to include language about availability of funds based on congressional appropriations so that we do not create an anti-deficiency act violation through this modification. If it would make you more comfortable we can change the language of this sentence to read as follows: "...the County may submit an invoice with supporting data and documentation, which ICE will evaluate for payment subject to ICE's appropriations, not to exceed \$275,000.00".

I cannot agree that the rate approval will be retroactive to January 1, 2018 since the request was not submitted until December 21, 2017. The rate approval/increase will be effective the date the modification is signed. Budget is still reviewing the rate increase request.

Also, the language allows for an adjustment request to the IGSA pricing every 36 months; however, it does not prohibit the County from submitting an invoice with supporting data and documentation if the per diem reimbursement for programmatic expenses is less than the actual expenses incurred for services rendered.

I will keep you posted on the progress of the review for the rate increase request.

Thank you,

V/R,

(b)(6); (b)(7)(C)

From: (b)(6); (b)(7)(C) [mailto:(b)(6); (b)(7)(C)@countyofberks.com]
Sent: Thursday, March 8, 2018 11:14 AM
To: (b)(6); (b)(7)(C)
Cc:
Subject: RE: DROIGSA-10-0003_P00017

Hi (b)(6); (b)(7)(C)

Below is the response I received from the County Chief Financial Officer, Robert Patrizio. After his team reviewed the modification and the attachment they have the below concerns and requests.

I have also sent you the changes last week for the transportation part in the modification. If you have any questions or would like to discuss the email, please let me know and Keri and I can give you a call.

(b)(6);

(b)(5)

Regards, Bob

From: (b)(6); (b)(7)(C) [mailto:(b)(6); (b)(7)(C)@ice.dhs.gov]
Sent: Thursday, March 8, 2018 12:06 PM
To: (b)(6); (b)(7)(C)
Cc:
Subject: RE: DROIGSA-10-0003_P00017

All,

Quick update-I am hopeful that we will receive approval from budget for the REA by COB on 3/14.

Thank you,

V/R,

(b)(6); (b)(7)(C)

From: (b)(6); (b)(7)(C) [mailto:(b)(6);@countyofberks.com]
Sent: Thursday, March 1, 2018 10:17 AM
To: (b)(6); (b)(7)(C)
Cc:
Subject: RE: DROIGSA-10-0003_P00017

One area that I see that needs to be changed in the wording (2nd page) "by 1:00pm", I will need the

discharge report the night before. Both are stated, but to remove confusion as to which one should be followed. BCRC will need the night before not 1pm the day of. Any questions with this please feel free to call.

Also, I am unable to sign the above modification until everything is complete. Do you have a date for the completion of the REA?? I will need to get approval from my board of Commissioners and I need to present it together.

(b)(6); (b)(7)(C)

From: (b)(6); (b)(7)(C) [mailto:(b)(6); (b)(7)(C)]@ice.dhs.gov
Sent: Tuesday, February 27, 2018 3:28 PM
To: (b)(6); (b)(7)(C)
Cc:
Subject: DROIGSA-10-0003_P00017

Good Afternoon (b)(6); (b)(7)(C)

Attached is the subject modification (to include one attachment) for your review/approval. I will now be working on the REA, but in the meantime, the language about the annual credit or charge should cover any additional charges.

We will also be adding a CLIN to the task order to cover the annual NTE amount of \$275K.

Thank you,

V/R,

(b)(6); (b)(7)(C)

(b)(6); (b)(7)(C)

Contracting Officer

Detention, Compliance & Removals (DCR)

U.S. DHS | ICE | Office of Acquisition Management (OAQ)

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