



March 1, 2018

VIA ELECTRONIC MAIL

Nicole Barksdale-Perry
Acting Senior Director of FOIA Operations
The Privacy Office
U.S. Department of Homeland Security
245 Murray Lane, SW
STOP-0655
Washington, DC 20528-0655
foia@hq.dhs.gov

Catrina Pavlik-Keenan
Freedom of Information Act Office
U.S. Immigration & Customs Enforcement
500 12th Street SW, Stop 5009
Washington, DC 20536-5009
ice-foia@dhs.gov

Re: Freedom of Information Act Request

Dear Ms. Barksdale Perry and Ms. Pavlik-Keenan:

Pursuant to the Freedom of Information Act (FOIA), 5 U.S.C. § 552, and the implementing regulations of the Department of Homeland Security (DHS), 6 C.F.R. Part 5, American Oversight makes the following request for records.

Since at least 2011, ICE officials have had access to thousands of law enforcement databases through agreements struck between ICE and law enforcement offices across the country.¹ However, since the new administration took office, DHS and ICE have more aggressively sought cooperation from local sheriffs' and mayors' offices to comply with immigration detainers issued by ICE.² As an example, in June 2017, ICE approved additional training and funding to the Knox

¹ George Joseph, *Where ICE Has Direct Lines to Law-Enforcement Databases with Immigrant Data*, NPR (May 12, 2017, 1:44 PM), <https://www.npr.org/sections/codeswitch/2017/05/12/479070535/where-ice-already-has-direct-lines-to-law-enforcement-databases-with-immigrant-d>.

² Chantal Da Silva, *ICE Chief Lashes Out at California Mayor Who Warned Residents Ahead of Raids*, NEWSWEEK (Feb. 28, 2018, 10:28 AM), <http://www.newsweek.com/ice-chief-lashes-out-california-mayor-who-warned-residents-ahead-raids-823755>.



County, Tennessee Sheriff's Office in exchange for a number of police officers acting as ICE agents in the community.³

The number of known ICE raids and sweeps have also increased exponentially. For example, in mid-January 2018, ICE agents raided dozens of 7-Eleven stores across the country to punish employers.⁴ On February 27, 2018, news surfaced that ICE agents had arrested more than 150 undocumented individuals in a surprise Northern California "sweep" aimed at sanctuary cities such as Oakland and San Francisco.⁵

Based on recent documents that non-profit group Judicial Watch obtained from ICE, it appears that ICE prepares detailed memoranda to help DHS officials engage with mayors and law enforcement officials of local jurisdictions.⁶ See Exhibit A. American Oversight seeks copies of all such documents to shed light on the DHS's official policy positions with respect to immigration enforcement in local jurisdictions.

Requested Records

American Oversight requests that DHS and ICE produce the following within twenty business days:

All engagement briefings, engagement plans, briefing memos, or policy memos created to assist DHS officials in meetings with local jurisdictions including mayors' and sheriffs' offices relating to their enforcement of federal immigration law including cooperation with immigration detainer requests issued by ICE:

Please include in your search for responsive records all individuals likely to contain responsive records, including but not limited to the individuals listed below:

- a. Former Secretary John Kelly acting in his capacity as Secretary of DHS
- b. Secretary Kirstjen Nielson
- c. Deputy Secretary Elaine C. Duke
- d. Chief of Staff Chad Wolf

³ The Associated Press, *Sheriff's Office Partners with ICE for Funding, Training*, U.S. NEWS (June 30, 2017, 3:23 PM), <https://www.usnews.com/news/best-states/tennessee/articles/2017-06-30/sheriffs-office-partners-with-ice-for-funding-training>.

⁴ Patricia Mazzei, *Immigration Agents Target 7-Eleven Stores in Push to Punish Employers*, N.Y. TIMES, Jan. 10, 2018, <https://www.nytimes.com/2018/01/10/us/7-eleven-raids-ice.html>; Nick Miroff, *Immigration Agents Target 7-Eleven Stores in Nationwide Sweep*, MIAMI HERALD, Jan. 10, 2018, <http://www.miamiherald.com/news/local/immigration/article194038649.html>.

⁵ Hamed Aleaziz, *ICE Confirms 150-plus Arrests in California Sweep, Slams Schaaf's Early Warning*, SF GATE (Feb. 28, 2018, 7:51 AM), <https://www.sfgate.com/bayarea/article/Reports-of-California-immigration-sweep-are-true-12714833.php>.

⁶ *New Homeland Security Documents Reveal Sanctuary Cities Denied 284 ICE Detainers in Three Months*, Released Illegal Aliens Charged with Assaults, Drug and Weapons Violations, JUDICIAL WATCH (Oct. 12, 2017), <https://www.judicialwatch.org/press-room/press-releases/judicial-watch-new-homeland-security-documents-reveal-sanctuary-cities-denied-284-ice-detainers-three-months-released-illegal-aliens-charged-assaults-drug-weapons-violations/>.

- e. Deputy Director of ICE Thomas D. Homan
- f. Chief of Staff of ICE Thomas Blank
- g. Homeland Security Executive Associate Director Peter T. Edge

Please provide responsive records from January 20, 2017, to the date of the search.

In addition to the records requested above, American Oversight also requests records describing the processing of this request, including records sufficient to identify search terms used and locations and custodians searched and any tracking sheets used to track the processing of this request. If DHS uses FOIA questionnaires or certifications completed by individual custodians or components to determine whether they possess responsive materials or to describe how they conducted searches, we also request any such records prepared in connection with the processing of this request.

American Oversight seeks all responsive records regardless of format, medium, or physical characteristics. In conducting your search, please understand the terms “record,” “document,” and “information” in their broadest sense, to include any written, typed, recorded, graphic, printed, or audio material of any kind. We seek records of any kind, including electronic records, audiotapes, videotapes, and photographs, as well as letters, emails, facsimiles, telephone messages, voice mail messages and transcripts, notes, or minutes of any meetings, telephone conversations or discussions. Our request includes any attachments to these records. **No category of material should be omitted from search, collection, and production.**

Please search all records regarding agency business. **You may not exclude searches of files or emails in the personal custody of your officials, such as personal email accounts.** Records of official business conducted using unofficial systems or stored outside of official files is subject to the Federal Records Act and FOIA.⁷ **It is not adequate to rely on policies and procedures that require officials to move such information to official systems within a certain period of time; American Oversight has a right to records contained in those files even if material has not yet been moved to official systems or if officials have, through negligence or willfulness, failed to meet their obligations.**⁸

In addition, please note that in conducting a “reasonable search” as required by law, you must employ the most up-to-date technologies and tools available, in addition to searches by individual custodians likely to have responsive information. Recent technology may have rendered DHS’s prior FOIA practices unreasonable. **In light of the government-wide requirements to manage**

⁷ See *Competitive Enter. Inst. v. Office of Sci. & Tech. Policy*, 827 F.3d 145, 149–50 (D.C. Cir. 2016); cf. *Judicial Watch, Inc. v. Kerry*, 844 F.3d 952, 955–56 (D.C. Cir. 2016).

⁸ See *Competitive Enter. Inst. v. Office of Sci. & Tech. Policy*, No. 14-cv-765, slip op. at 8 (D.D.C. Dec. 12, 2016) (“The Government argues that because the agency had a policy requiring [the official] to forward all of his emails from his [personal] account to his business email, the [personal] account only contains duplicate agency records at best. Therefore, the Government claims that any hypothetical deletion of the [personal account] emails would still leave a copy of those records intact in [the official’s] work email. However, policies are rarely followed to perfection by anyone. At this stage of the case, the Court cannot assume that each and every work related email in the [personal] account was duplicated in [the official’s] work email account.” (citations omitted)).

information electronically by the end of 2016, it is no longer reasonable to rely exclusively on custodian-driven searches.⁹ Furthermore, agencies that have adopted the National Archives and Records Agency (NARA) Capstone program, or similar policies, now maintain emails in a form that is reasonably likely to be more complete than individual custodians' files. For example, a custodian may have deleted a responsive email from his or her email program, but DHS's archiving tools would capture that email under Capstone. Accordingly, American Oversight insists that DHS use the most up-to-date technologies to search for responsive information and take steps to ensure that the most complete repositories of information are searched. American Oversight is available to work with you to craft appropriate search terms. **However, custodian searches are still required; agencies may not have direct access to files stored in .PST files, outside of network drives, in paper format, or in personal email accounts.**

Under the FOIA Improvement Act of 2016, agencies must adopt a presumption of disclosure, withholding information “only if . . . disclosure would harm an interest protected by an exemption” or “disclosure is prohibited by law.”¹⁰ If it is your position that any portion of the requested records is exempt from disclosure, American Oversight requests that you provide an index of those documents as required under *Vaughn v. Rosen*, 484 F.2d 820 (D.C. Cir. 1973), *cert. denied*, 415 U.S. 977 (1974). As you are aware, a *Vaughn* index must describe each document claimed as exempt with sufficient specificity “to permit a reasoned judgment as to whether the material is actually exempt under FOIA.”¹¹ Moreover, the *Vaughn* index “must describe *each* document or portion thereof withheld, and for *each* withholding it must discuss the consequences of disclosing the sought-after information.”¹² Further, “the withholding agency must supply ‘a relatively detailed justification, specifically identifying the reasons why a particular exemption is relevant and correlating those claims with the particular part of a withheld document to which they apply.’”¹³

In the event some portions of the requested records are properly exempt from disclosure, please disclose any reasonably segregable non-exempt portions of the requested records. 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.¹⁴ Claims of nonsegregability must be made with the same degree of detail as required for claims of exemptions in a *Vaughn* index. If a request is denied in whole, please state specifically that it is not reasonable to segregate portions of the record for release.

⁹ Presidential Memorandum—Managing Government Records, 76 Fed. Reg. 75,423 (Nov. 28, 2011), <https://obamawhitehouse.archives.gov/the-press-office/2011/11/28/presidential-memorandum-managing-government-records>; Office of Mgmt. & Budget, Exec. Office of the President, Memorandum for the Heads of Executive Departments & Independent Agencies, “Managing Government Records Directive,” M-12-18 (Aug. 24, 2012), <https://www.archives.gov/files/records-mgmt/m-12-18.pdf>.

¹⁰ FOIA Improvement Act of 2016 § 2 (Pub. L. No. 114-185).

¹¹ *Founding Church of Scientology v. Bell*, 603 F.2d 945, 949 (D.C. Cir. 1979).

¹² *King v. U.S. Dep’t of Justice*, 830 F.2d 210, 223–24 (D.C. Cir. 1987) (emphasis in original).

¹³ *Id.* at 224 (citing *Mead Data Central, Inc. v. U.S. Dep’t of the Air Force*, 566 F.2d 242, 251 (D.C. Cir. 1977)).

¹⁴ *Mead Data Central*, 566 F.2d at 261.

You should institute a preservation hold on information responsive to this request. American Oversight intends to pursue all legal avenues to enforce its right of access under FOIA, including litigation if necessary. Accordingly, DHS is on notice that litigation is reasonably foreseeable.

To ensure that this request is properly construed, that searches are conducted in an adequate but efficient manner, and that extraneous costs are not incurred, American Oversight welcomes an opportunity to discuss its request with DHS before it undertakes a search or incurs search or duplication costs. By working together at the outset, American Oversight and DHS can decrease the likelihood of costly and time-consuming litigation in the future.

Where possible, please provide responsive material in electronic format by email or in PDF or TIF format on a USB drive. Please send any responsive material being sent by mail to American Oversight, 1030 15th Street NW, Suite B255, Washington, DC 20005. If it will accelerate release of responsive records to American Oversight, please also provide responsive material on a rolling basis.

Fee Waiver Request

In accordance with 5 U.S.C. § 552(a)(4)(A)(iii) and 6 C.F.R. § 5.11(k), American Oversight 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 will likely contribute to a better understanding of relevant government procedures by the general public in a significant way.¹⁵ Moreover, the request is primarily and fundamentally for non-commercial purposes.¹⁶

American Oversight requests a waiver of fees because disclosure of the requested information is “in the public interest because it is likely to contribute significantly to public understanding of the operations or activities of the government.”¹⁷ There is significant public interest in how ICE identifies target jurisdictions; on what basis ICE classifies certain localities as sanctuary cities; and the process by which ICE briefs DHS officials for meetings with mayors and sheriffs. These records have the potential to shed significant light on how ICE engages with mayors, particularly, its internal operations and activities related to local cooperation with DHS policies. As discussed below, American Oversight has the capacity and intention to inform a broad audience about government activities that are the subject of these records.

This request is primarily and fundamentally for non-commercial purposes.¹⁸ As a 501(c)(3) nonprofit, American Oversight does not have a commercial purpose and the release of the information requested is not in American Oversight’s financial interest. American Oversight’s mission is to promote transparency in government, to educate the public about government activities, and to ensure the accountability of government officials. American Oversight uses the information gathered, and its analysis of it, to educate the public through reports, press releases, or other media. American Oversight also makes materials it gathers available on its public website and

¹⁵ 6 C.F.R. § 5.11(k)(1)(i).

¹⁶ 6 C.F.R. § 5.11(k)(1)(ii).

¹⁷ 6 C.F.R. § 5.11(k)(1)(i); *see also* 6 C.F.R. § 5.11(k)(2)(i)-(iv).

¹⁸ 6 C.F.R. § 5.11(k)(1)(ii), (3)(i)-(ii).

promote their availability on social media platforms, such as Facebook and Twitter.¹⁹ American Oversight has demonstrated its commitment to the public disclosure of documents and creation of editorial content. For example, after receiving records regarding an ethics waiver received by a senior DOJ attorney, American Oversight promptly posted the records to its website²⁰ and published an analysis of what the records reflected about DOJ's process for ethics waivers.²¹ Additionally, this particular FOIA request is part of a public project conducted by American Oversight called "Audit the Wall," where the organization is gathering and analyzing information and commenting on public releases of information related to the administration's proposed construction of a barrier along the U.S.-Mexico border.²²

Accordingly, American Oversight qualifies for a fee waiver.

Conclusion

We share a common mission to promote transparency in government. American Oversight looks forward to working with DHS on this request. If you do not understand any part of this request, have any questions, or foresee any problems in fully releasing the requested records, please contact Pooja Chaudhuri at foia@americanoversight.org or 202.869.5244. Also, if American Oversight's request for a fee waiver is not granted in full, please contact us immediately upon making such a determination.

Sincerely,



Austin R. Evers
Executive Director
American Oversight

Attachments:

Exhibit A - Documents Obtained by Judicial Watch from DHS and ICE Related to ICE Detainer Requests and Communications with Local Jurisdictions (Oct. 12, 2017)

¹⁹ American Oversight currently has approximately 11,800 page likes on Facebook, and 40,100 followers on Twitter. American Oversight, FACEBOOK, <https://www.facebook.com/weareoversight/> (last visited Mar. 1, 2018); American Oversight (@weareoversight), TWITTER, <https://twitter.com/weareoversight> (last visited Mar. 1, 2018).

²⁰ *DOJ Civil Division Response Noel Francisco Compliance*, AMERICAN OVERSIGHT, <https://www.americanoversight.org/document/doj-civil-division-response-noel-francisco-compliance>.

²¹ *Francisco & the Travel Ban: What We Learned from the DOJ Documents*, AMERICAN OVERSIGHT, <https://www.americanoversight.org/francisco-the-travel-ban-what-we-learned-from-the-doj-documents>.

²² *Audit the Wall*, AMERICAN OVERSIGHT, www.auditthewall.org.

Exhibit A

From: (b)(6);(b)(7)(C)
Sent: 30 Apr 2017 10:45:03 -0400
To: Homan, Thomas
Subject: FW: S1 Mtg w Boston Mayor on Monday
Attachments: S1 Meeting with the Mayor of Boston.docx

Good morning Tom,

I hope yesterday's event went well. We plan to share the attached with OIA. Please let me know if you have any questions or concerns.

Thanks,

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

From: (b)(6);(b)(7)(C)
Sent: Friday, April 28, 2017 7:18 PM
To: Ragsdale, Daniel H
Subject: FW: S1 Mtg w Boston Mayor on Monday

Good evening Dan,

S1 is meeting with the Mayor of Boston on Monday. DHS OIA asked us to put together a briefer on our engagement with the City. Would you mind reviewing?

Thanks,

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

From: (b)(6);(b)(7)(C)
Sent: Friday, April 28, 2017 12:24 PM
To: Robbins, Timothy S
Cc: (b)(6);(b)(7)(C)
Subject: RE: S1 Mtg w Boston Mayor on Monday

(b)(6);(b)(7)(C) received Tim's out of office, can you help?

From: (b)(6);(b)(7)(C)
Sent: Friday, April 28, 2017 12:21:51 PM
To: Robbins, Timothy S
Cc: (b)(6);(b)(7)(C)
Subject: S1 Mtg w Boston Mayor on Monday

Tim,

We just prebriefed S1 for his Boston trip Monday and did not have an engagement with the Mayor planned, however the Secretary requested we add a meeting with him on the schedule. We just locked that meeting in with the Mayor at 2:45 on Monday. given how late this is in scheduling, we are not going the Esec route for information- can you help and have ICE send us

pertinent information related to Boston regarding heir cooperation? Given the Mayor, we anticipate he will focus is questions to S1 on sanctuary jurisdictions, DDOR, etc.

(b)(6);(FYI- also anything else we should highlight for s1's materials in prep for this Monday meeting?

Thank you,

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

S1 MEETING WITH BOSTON MAYOR MAY 1, 2017

Objective:

- S1 will be meeting with the Martin J. Walsh, Mayor of the City of Boston, and has requested a brief overview on local ICE engagement.

Discussion Points:

❖ Local Engagement

- ICE Boston regularly collaborates with the Boston Police Department (BPD) and participates with state and local law enforcement in the planning, coordination, and execution of large-scale events such as the Boston Marathon and Sail Boston as well as criminal investigations related to transnational criminal organizations.
- Currently, there are two full time task force officers (TFO) from BPD assigned to the ICE Boston Strike Force and High Intensity Drug Trafficking Area (HIDTA), and several part-time TFOs working gangs and human trafficking.
- ICE Boston and Mayor Walsh recently participated in the repatriation of Italian artifacts at the Boston Library where Mayor Walsh made positive comments about the cooperation with the ICE.

❖ Detainers

- When law enforcement agencies fail to honor immigration detainers and fail to transfer serious criminal offenders to U.S. Immigration and Customs Enforcement (ICE), it undermines ICE's ability to protect public safety and carry out its mission.
 - When criminal aliens are released from local or state custody, they have the opportunity to reoffend.
 - It is much safer for all involved – the community, law enforcement, and the criminal alien – if ICE officers take custody in the controlled environment of a jail or another law enforcement agency.
 - For Fiscal Year 2017, as of April 22, 2017, the Boston AOR has:
 - Issued 1,009 detainers (it issued 691 during the same time period last year).
 - Conducted 1,399 arrests, including 932 criminals and 467 non-criminal immigration violators (there were 989 arrests during the same time period last year, including 837 criminals and 152 non-criminals immigration violators).
 - Removed 969 aliens, including 625 criminal and 344 non-criminal immigration violators (there were 781 removals during the same time period last year, including 551 criminals and 230 non-criminal immigration violators).

❖ Declined Detainer Outcome Report (DDOR)

- The President's Executive Order on *Enhancing Public Safety in the Interior of the United States* requires weekly publication of a report listing locations that have ignored or otherwise failed to honor an immigration detainer or request for notification.
- Boston has been included in the Declined Detainer Outcome Report (DDOR), as the Boston Trust Act of August 20, 2014 limits cooperation with immigration officials. Section 2 of the Act specifies that cooperation will be limited as follows:

- Except as provided in subsection (b), a law enforcement official shall not detain an individual on the basis of a civil immigration detainer request after that individual becomes eligible for release from custody.
- (b) Law enforcement officials may continue to detain an individual in response to a civil immigration detainer request for up to forty-eight (48) hours after that individual becomes eligible for release from custody, excluding Saturdays, Sundays, and holidays, if the individual meets any of the following criteria:
 - (1) ICE has a criminal warrant for the individual;
 - (2) The individual has ever been convicted of a violent crime as defined in Massachusetts General Laws Chapter 140, Section 121;
 - (3) In the past ten (10) years, the individual has been convicted of a felony as defined in Massachusetts General Laws Chapter 274, Section 1;
 - (4) The individual is a current registrant on the Massachusetts Sex Offender Registry;
 - (5) The individual is identified in the federal government's consolidated Terrorist Watchlist.

❖ **Sanctuary Cities**

- On February 25, 2017, Mayor Walsh publicly discussed *Boston's status as a sanctuary city in the Boston Globe*, "I'm not afraid of losing money, first of all because we have the Constitution on our side, and secondly, we're doing the right thing here in the city of Boston."

❖ **Sensitive Locations / Arrests at Courthouses**

- The ICE October 24, 2011 memorandum entitled, Enforcement Actions at or Focused on Sensitive Locations remains in effect.
- This memorandum is not intended to categorically prohibit lawful enforcement operations when there is an immediate need for such actions.
- Courthouses do not fall under ICE's policy concerning enforcement actions at or focused on sensitive locations.
 - ICE Boston received a letter from the Chief Justice of the Trial Court Paula Carey expressing concerns about immigration enforcement actions taken against victims who appear in court. ICE responded on March 22, 2017.
 - When arrests at or near courthouses are planned, ICE officers act as discreetly as possible, generally conducting the arrest off court property and in a manner so as not to draw attention. There are occasions, however, when arrests are made on court property.
 - ICE greatly values its cooperative relationship with all levels of the Massachusetts judiciary, including the Trial Court, and ICE is committed to the continued partnership. ICE will continue to be respectful of, and work closely with, the courts when carrying out its mission. Further, any necessary enforcement actions on court property will be taken in collaboration with court security staff.

Participants:

John Kelly, Secretary of the Department of Homeland Security
 Martin J. Walsh, Mayor of the City of Boston