

Exhibit E

Jonathan Moore

From: Jonathan Moore
Sent: Wednesday, July 23, 2014 11:55 AM
To: GILD FOIA Appeals; ice-foia@dhs.gov
Subject: RE: OPLA14-1278, 2014FOIA1723
Attachments: OPLA14-1278, 2014FOIA1723 Reverse adequacy of the search-affirm exemptio....pdf; 1941_001.pdf

Importance: High

Dear Sir/Madam:

I represent Mr. David E. Gluckman in connection with FOIA Request # 2014FOIA1723, which was filed with ICE on October 9, 2013. This correspondence is in response to ICE's July 9, 2014 adjudication of the FOIA appeal I previously filed on Mr. Gluckman's behalf (OPLA14-1278).

Mr. Gluckman respectfully disagrees with ICE's decision to affirm the applicability of ICE's claimed FOIA exemptions, and notes that ICE failed to consider (or respond to) the numerous arguments he presented as to why these exemptions did not apply.

Additionally, **please note that the appeal decision contains a clear factual error.** The decision acknowledged that ICE's FOIA Office "mistakenly" referenced Exemption 5 in its response to Mr. Gluckman's FOIA request. However, the decision incorrectly states that "no information was withheld pursuant to Exemption (b)(5)." **This is patently erroneous—page ICE 2014FOIA01723.000016 (attached) of ICE's initial production clearly contains redactions where ICE claimed Exemption (b)(5).** Because these redactions were concededly in error, Mr. Gluckman requests that ICE produce this document without that information redacted.

As far as the decision to reverse as to the adequacy of ICE's search, please advise as to when Mr. Gluckman can expect to receive the results of ICE's additional search for responsive documents.

Please do not hesitate to contact me if I can provide any additional information.

Sincerely,
Jonathan Moore

Jonathan L. Moore
Attorney
McCandlish Holton, PC
1111 E. Main St. Suite 2000 | Richmond, Virginia 23219
Direct: (804) 775-7227 | Fax: (804) 775-7282
www.lawmh.com | jmoore@lawmh.com

From: GILD FOIA Appeals [<mailto:GILDFOIAAppeals@ice.dhs.gov>]
Sent: Wednesday, July 09, 2014 4:19 PM
To: Jonathan Moore
Subject: OPLA14-1278, 2014FOIA1723

Good afternoon,

Please find attached ICE's adjudication response to your FOIA appeal.

Sincerely,

*Government Information Law Division
Office of the Principal Legal Advisor
Immigration and Customs Enforcement*

Department of Homeland Security
United States of America

From: [REDACTED]
To: [REDACTED]
Cc:
Subject: Information Requested
Date: Monday, March 28, 2011 2:20:00 PM
Attachments: fed_reg_technical.pdf
virtue_memo.pdf
Failed_to_prepare.doc

(b)(6), (b)(7)

I spoke with (b)(6), (b)(7) this morning. I believe I understand his question and here is the information I am providing. Attached is the proposed regulation that is currently in effect along with the Virtue memorandum which is also current policy regarding what is considered a substantive and technical violation. I am also attaching the Section of law regarding failure to prepare an I-9 at time of hire.

As I understand the issue, your OCC believes if an I-9 is not dated in a timely fashion it is a technical violation. As I told (b)(6), (b)(7) there are two issues, failure to prepare the I-9 as required by law and failure to date the I-9 in a timely fashion. If an individual does not complete the I-9 at the time of hire and later completes the form, the violation would be a substantive failure to prepare. If an individual completes the form at time of hire, but does not date it until sometime in the future, it is a technical violation. [REDACTED] (b)(5)

[REDACTED] (b)(5)

As always we are available to assist in any way we can. Feel free to call me and we can discuss the investigation further.

Thanks.

(b)(6), (b)(7)c
Section Chief
ICE Worksite Enforcement Unit
Employer Compliance Inspection Center
(703) 603-(b)(6), (b)(7)c

[REDACTED] (b)(6), (b)(7)c

U.S. Department of Homeland Security
500 12th St. SW; STOP 5009
Washington, DC 20536-5009



U.S. Immigration
and Customs
Enforcement

July 9, 2014

Jonathan L. Moore
McCandlish Holton
1111 East Main Street, Suite 1500
Post Office Box 796
Richmond, VA 23218-0796
E-Mail: jmoore@lawmh.com

David E. Gluckman
c/o Muckrock News
Dept. MR 7040, P.O. Box 55819
Boston, MA 02205

RE: OPLA14-1278, 2014FOIA1723

Dear Mr. Gluckman:

This is in response to your letter dated June 11, 2014, received on June 12, 2014, appealing U.S. Immigration and Customs Enforcement's (ICE) response to your client David Gluckman's Freedom of Information Act/Privacy Act (FOIA/PA) request. Your client David Gluckman's FOIA/PA request asked for certain records relating to ICE's Form I-9 inspections, including how it classifies paperwork violations and how it calculates fine amounts. It appears you are appealing the adequacy of the agency's search and the applicability of exemptions asserted.

As was explained in ICE FOIA's letter dated May 20, 2014, a search of the ICE Office Homeland Security Investigations identified one Microsoft Excel spreadsheet and 36 pages of responsive documents. However, it is likely that additional responsive records may be found in locations the agency has not yet searched. We are therefore **remanding** your appeal to ICE FOIA for processing and re-tasking to the appropriate agency/office(s) to obtain any responsive documents.

As was explained in ICE FOIA's letter dated March 20, 2014, your request was processed under the FOIA 5 U.S.C. §552. First, please note that the ICE FOIA's Office letter mistakenly included reference to withholdings under FOIA Exemption 5. Upon a complete review of the information withheld in the determination on your FOIA request, we have determined that in fact no information was withheld pursuant to Exemption (b)(5). We regret any confusion this may have caused your or your client.

Additionally, as was explained in ICE FOIA's letter dated March 20, 2014, ICE has applied Exemptions (b)(6) and (b)(7)(C) to protect from disclosure information pertaining to a third parties who have not provided consent. Without the explicit consent of the individual(s) named in the records you seek, ICE cannot release these records to you, your client or any other member of the public. Protecting the privacy interests of individuals who may be named in ICE records which are

Jonathan L. Moore (David E. Gluckman)
OPLA14-1278, 2014FOIA1723
Page 2 of 2

the target of FOIA requests requires this procedure; members of the public may draw adverse inferences from the mere fact that an individual is mentioned in the files of a criminal law enforcement agency. ICE has also applied FOIA Exemptions (b)(6) and (b)(7)(C) to protect from disclosure the names, email addresses and phone numbers of DHS employees. The privacy interests of the individual(s) in the records you have requested outweigh any minimal public interest in the disclosure of the information. Please understand that any private interest you or your client may have in that information cannot factor into this determination. ICE has applied FOIA Exemption (b)(7)(E) to protect from disclosure law enforcement and investigative techniques to include assembling relevant evidence, as well as building and documenting a case, none of which are well known to the public. Upon a complete review of the information withheld in the 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.

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 **OPLA14-1278**, and the FOIA case number, which is **2014FOIA1723**.

Sincerely,



Debbie Seguin
Chief

Government Information Law Division
ICE Office of the Principal Legal Advisor
Department of Homeland Security

Jonathan Moore

From: ICE-FOIA [ICE-FOIA@ice.dhs.gov]
Sent: Wednesday, July 23, 2014 11:56 AM
To: Jonathan Moore
Subject: Automatic reply: OPLA14-1278, 2014FOIA1723

ICE has received the information you submitted to the ICE-FOIA@dhs.gov mailbox.

If you are submitting a FOIA request, this courtesy reply does not replace the Acknowledgement Letter which will be sent to you once your request has been entered into our FOIA Request Tracking System.

If you are seeking the status of a pending FOIA request for which you have a FOIA case number, you may check the status of your request online at www.ice.gov/foia/status/.

Please visit the ICE FOIA Library at www.ice.gov/foia/library/.

As this reply is automatically generated, please do not respond to this notification.