

EXHIBIT C



August 25, 2020

Via Email

U.S. Immigration and Customs Enforcement
Office of the Principal Legal Advisor
U.S. Department of Homeland Security
500 12th Street, S.W., Mail Stop 5900
Washington, D.C. 20536-5900
GILDFOIAAppeals@ice.dhs.gov

Re: FREEDOM OF INFORMATION ACT APPEAL – ICE Case No. 2020-ICFO-66235

To Whom It May Concern:

This is a Freedom of Information Act (“FOIA”) appeal of the determination of Immigration and Customs Enforcement (“ICE”) to deny a fee waiver and expedited processing in connection with FOIA Request **2020-ICFO-66235** (“the request”), dated July 16, 2020. The request seeks information on behalf of the Immigrant Defense Project (“IDP”), the Center for Constitutional Rights (“CCR”), and Organizing Communities Against Deportations (“OCAD”) (collectively “the Requesters”) for information regarding “citizen academies” run by the U.S. Immigration and Customs Enforcement agency (“ICE”) and its components and offices.

ICE acknowledged our request in an email dated July 20, 2020 (“ICE Email,” attached at Attachment A). However, this letter failed to respond to our requests for both a fee waiver and expedited processing. ICE provided boilerplate language regarding processing times, and misconstrued Requesters as “commercial requesters” in regards to fees. Therefore, our requests for a fee waiver and expedited processing have both been constructively denied. Pursuant to the Freedom of Information Act, 5 U.S.C. § 552(a)(6), Requesters appeal ICE’s denials of our request for expedited processing and our request for a fee waiver, which we address below.

Fee Waiver

The Requesters qualify for a fee waiver on the grounds that the information we seek “is in the public interest because it is likely to contribute significantly to the public understanding of the activities or operations of the government and is not primarily in the commercial interest of the requester[s],” 5 U.S.C. § 552(a)(4)(A)(iii) as well as because Requesters qualify as representatives of the news media, as they all engage in the dissemination of information to the

public as a primary activity. *See* 5 U.S.C. § 552(a)(4)(A)(ii)(II). ICE erred in appearing to conclude that the Requesters should be categorized as “commercial requester[s].” Instead, we are entitled to a full fee waiver. Furthermore, in a very recent, separate FOIA request filed by two of the three Requesters (CCR and IDP) on June 17, 2020, ICE granted a fee waiver on July 23, 2020. *See* Attachment B.

1. Requesters have been mis-categorized in regards to fees

Requesters made clear in their request that they are all non-profit organizations who have no commercial interest in the records asked for. From our FOIA request:

“...the Requesters’ primary interest is in disclosure; and they have no commercial interest in the information. See 6 C.F.R. 5.11(b).

As described in above, the Requesters are non-profit organizations dedicated to educating the public and advocating for civil rights, human rights, and immigrant rights, and have undertaken this work in the public interest and not for any private commercial interest.”

It is confusing to Requesters how ICE could misconstrue the language above. However, we reiterate here that Requesters have no commercial interest in ICE records.

2. Requesters qualify for a fee waiver

Requesters reiterate here that we qualify for a fee waiver under 5 U.S.C. § 552 as well as 6 C.F.R. § 5.11(b)(6). Requested information regarding ICE’s “citizens academies” will “contribute significantly to the public understanding of the activities or operations of the government and is not primarily in the commercial interest of the requester.” 5 U.S.C. § 552(a)(4)(A)(iii). Disclosure in this case meets the statutory criteria, and a fee waiver would fulfill Congress’s legislative intent in amending FOIA. *See Judicial Watch, Inc. v. Rossotti*, 326 F.3d 1309, 1312 (D.C. Cir. 2003) (“Congress amended FOIA to ensure that it be ‘liberally construed in favor of waivers for noncommercial requesters.’”)

The records sought this request will inform the public about why ICE is operating these academies and what kind of resources are being expended and invested into their operation. Requesting organizations have shown that records received will be published for no cost and distributed to both their membership and the general public.

3. ICE recently granted a fee waiver to CCR and IDP

On July 23, 2020, ICE sent a letter to CCR and IDP granting the organizations a fee waiver for a separate request filed June 17, 2020. It makes no sense for ICE to grant a fee waiver to CCR and IDP on July 23, 2020 three days after categorizing the same organizations as “commercial” requesters. *See* Attachment B. ICE has not offered any support for its denial here, nor can it. It is indisputable that OCAD, CCR and IDP seek this information not for commercial interests but for the purpose of educating the public about government activities.

Expedited Processing

In their July 20, 2020 email, in regards to processing time for a response to our request, ICE wrote: “*Please be assured that one of the processors in our office will respond to your request as expeditiously as possible.*” See Attachment A.

This boilerplate and unspecific language does not meet statutory requirements for a suitable response to an expedited processing request. Expedited processing of this request is required because there is a "compelling need" for the information. See 5 U.S.C. § 552(a)(6)(E)(i)(I). A "compelling need" may exist where there is an "urgency to inform the public concerning actual or alleged Federal Government activity," and the requesting party is "primarily engaged in disseminating information." 6 C.F.R. § 5.5(e)(ii).

As stated in our FOIA Request, there is ongoing public interest in the records sought by Requesters. Multiple U.S. Congressional representatives from Illinois have spoken out against the academy¹ as well as introduced legislation to defund it² and there has been substantial media attention nationwide.³ Uproar and confusion over these academies continue to command public attention and gaining more information is a matter of urgency as ICE’s enforcement activities continue unabated.

Furthermore, the information sought is of critical importance locally. Requester OCAD is based in Chicago, IL where ICE is planning to launch a new “academy” this fall, and requester IDP is based in New York, NY where ICE has recently operated at least one academy within the past few years. Information gathered from this FOIA request is very important to their advocacy work and the communities each organization serves. And as organizations primarily engaged in disseminating information to the public, such information is crucial to their work in informing and engaging the public in debates about ICE’s activities.

¹ See Ted Cox, *Quigley Cuts Funds for ICE “Citizen Academy”* (July 16, 2020) <https://www.oneillinois.com/stories/2020/7/16/quigley-bill-cuts-funds-for-ice-citizens-academy>; also see Office of Senator Dick Durbin, *Durbin Statement On Creation Of ICE “Citizens Academy” Pilot Program In Chicago*, <https://www.durbin.senate.gov/newsroom/press-releases/durbin-statement-on-creation-of-ice-citizens-academy-pilot-program-in-chicago>

² See Office of Congressman Mike Quigley, “Quigley Amendment Would Prevent ICE from Launching “Citizen Academy” Program, available at: <https://quigley.house.gov/media-center/press-releases/quigley-amendment-would-prevent-ice-launching-citizen-academy-program>

³ For example, “ICE Offering ‘Citizens Academy’ Course with Training on Arresting Immigrants” <https://www.newsweek.com/ice-launching-citizens-academy-course-how-agency-arrests-immigrants-1516656> (July 7, 2020); “ICE Citizens Trainings May Be A ‘Vigilante Academy,’ Chicago Alderman Warns” <https://www.npr.org/local/309/2020/07/10/889726473/i-c-e-citizens-trainings-may-be-a-vigilante-academy-chicago-alderman-warns> (July 10, 2020); “ICE Chicago Citizens Academy faces criticism from activists” <https://abc7chicago.com/ice-program-chicago-citizens-academy-training/6315870/> (July 13, 2020).

I certify that the information relayed above is true and accurate to the best of my knowledge. The Requesters are available to discuss the fee waiver and expedited processing and can be contacted at (212) 614-6470.

Sincerely,

A handwritten signature in black ink, appearing to read 'I. Head', with a stylized flourish at the end.

Ian Head
Senior Legal Worker
Center for Constitutional Rights
666 Broadway, 7th Floor
New York, NY 10012
Phone: (212) 614-6470

ATTACHMENT A



Ian Head <ihead@ccrjustice.org>

ICE FOIA Request 2020-ICFO-66235

1 message

ice-foia@dhs.gov <ice-foia@dhs.gov>
To: ihead@ccrjustice.org

Mon, Jul 20, 2020 at 1:05 PM

July 20, 2020

Ian Head
Center for Constitutional Rights - DWN
666 Broadway, 7th Floor
New York, NY 10012

RE: ICE FOIA Case Number 2020-ICFO-66235

Dear Head:

This acknowledges receipt of your July 16, 2020, Freedom of Information Act (FOIA) request to U.S. Immigration and Customs Enforcement (ICE), for information pertaining to "citizen academies" run by ICE (see request for details). Your request was received in this office on July 16, 2020.

Due to the increasing number of FOIA requests received by this office, we may encounter some delay in processing your request. Per Section 5.5(a) of the DHS FOIA regulations, 6 C.F.R. Part 5, ICE processes FOIA requests according to their order of receipt. Although ICE's goal is to respond within 20 business days of receipt of your request, the FOIA does permit a 10-day extension of this time period. As your request seeks numerous documents that will necessitate a thorough and wide-ranging search, ICE will invoke a 10-day extension for your request, as allowed by Title 5 U.S.C. § 552(a)(6)(B). If you care to narrow the scope of your request, please contact our office. We will make every effort to comply with your request in a timely manner.

Provisions of the FOIA allow us to recover part of the cost of complying with your request. We shall charge you for records in accordance with the DHS Interim FOIA regulations as they apply to commercial requesters. As a commercial requester, you will be charged 10 cents per page for duplication, and for search and review time at the per quarter-hour rate (\$4.00 for clerical personnel, \$7.00 for professional personnel, \$10.25 for managerial personnel) of the searcher and reviewer. We will construe the submission of your request as an agreement to pay up to \$25.00. You will be contacted before any further fees are accrued.

We have queried the appropriate program offices within ICE for responsive records. If any responsive records are located, they will be reviewed for determination of releasability. Please be assured that one of the processors in our office will respond to your request as expeditiously as possible. We appreciate your patience as we proceed with your request.

Your request has been assigned reference number **2020-ICFO-66235**. Please refer to this identifier in any future correspondence. To check the status of an ICE FOIA/PA request, please visit <http://www.dhs.gov/foia-status>. Please note that to check the status of a request, you must enter the 2020-ICFO-66235 tracking number. If you need any further assistance or would like to discuss any aspect of your request, please contact the FOIA office. You may send an e-mail to ice-foia@ice.dhs.gov, call toll free (866) 633-1182, or you may contact our FOIA Public Liaison, Fernando Pineiro, in the same manner. Additionally, you have a right to seek dispute resolution services from the Office of Government Information Services (OGIS) which 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. You may contact OGIS as follows: Office of Government Information Services, National Archives and Records Administration, [8601 Adelphi Road](http://www.ogis.gov)-OGIS, College Park, Maryland 20740-6001, e-mail at ogis@nara.gov; telephone at 202-741-5770; toll free at 1-877-684-6448; or facsimile at 202-741-5769.

Regards,

ICE FOIA Office
Immigration and Customs Enforcement
Freedom of Information Act Office
[500 12th Street, S.W.](#), Stop 5009
Washington, D.C. 20536-5009
Telephone: 1-866-633-1182
Visit our FOIA website at www.ice.gov/foia

ATTACHMENT B



Ian Head <ihead@ccrjustice.org>

ICE FOIA Request 2020-ICFO-67509

1 message

ice-foia@dhs.gov <ice-foia@dhs.gov>
To: ihead@ccrjustice.org

Thu, Jul 23, 2020 at 10:54 AM

July 23, 2020

Ian Head
Center for Constitutional Rights - DWN
666 Broadway, 7th Floor
New York, NY 10012

RE: ICE FOIA Case Number 2020-ICFO-67509

Dear Mr. Head:

This acknowledges receipt of your Freedom of Information Act (FOIA) request to U.S. Immigration and Customs Enforcement (ICE), dated July 21, 2020, your request for a waiver of all assessable FOIA fees, and your request for expedited treatment. Your request was received in this office on July 21, 2020. Specifically, you requested records and data concerning the ICE surveillance and enforcement program "Operation Palladium" (see request for details).

Due to the increasing number of FOIA requests received by this office, we may encounter some delay in processing your request. Per Section 5.5(a) of the DHS FOIA regulations, 6 C.F.R. Part 5, ICE processes FOIA requests according to their order of receipt. Although ICE's goal is to respond within 20 business days of receipt of your request, the FOIA does permit a 10-day extension of this time period. As your request seeks numerous documents that will necessitate a thorough and wide-ranging search, ICE will invoke a 10-day extension for your request, as allowed by Title 5 U.S.C. § 552(a)(6)(B). If you care to narrow the scope of your request, please contact our office. We will make every effort to comply with your request in a timely manner.

ICE evaluates fee waiver requests under the legal standard set forth above and the fee waiver policy guidance issued by the Department of Justice on April 2, 1987, as incorporated into the Department of Homeland Security's Freedom of Information Act regulations. These regulations set forth six factors to examine in determining whether the applicable legal standard for fee waiver has been met. I have considered the following factors in my evaluation of your request for a fee waiver:

- (1) Whether the subject of the requested records concerns "the operations or activities of the government";
- (2) Whether the disclosure is "likely to contribute" to an understanding of government operations or activities;
- (3) Whether disclosure of the requested information will contribute to the understanding of the public at large, as opposed to the individual understanding of the requestor or a narrow segment of interested persons;
- (4) Whether the contribution to public understanding of government operations or activities will be "significant";
- (5) Whether the requester has a commercial interest that would be furthered by the requested disclosure; and
- (6) Whether the magnitude of any identified commercial interest to the requestor is sufficiently large in comparison with the public interest in disclosure, that disclosure is primarily in the commercial interest of the requestor.

Upon review of your request and a careful consideration of the factors listed above, I have determined to grant your request for a fee waiver.

Your request for expedited treatment is hereby denied.

Under the DHS FOIA regulations, expedited processing of a FOIA request is warranted if the request involves "circumstances in which the lack of expedited treatment could reasonably be expected to pose an imminent threat to the life or physical safety of an individual," 6 C.F.R. § 5.5(e)(1)(i), or "an urgency to inform the public about an actual or alleged federal government activity, if made by a person primarily engaged in disseminating information," 6 C.F.R. § 5.5(e)(1)(ii). Requesters seeking expedited processing must submit a statement explaining in detail the basis for the request, and that statement must be certified by the requestor to be true and correct. 6 C.F.R. § 5.5(e)(3).

Your request for expedited processing is denied because you do not qualify for either category under 6 C.F.R. § 5.5(e)(1). You failed to demonstrate a particular urgency to inform the public about the government activity involved in the request beyond the public's right to know about government activity generally. Your letter was conclusory in nature and did not present any facts to justify a grant of expedited processing under the applicable standards.

Your request for expedited processing is denied because you do not qualify for either category under 6 C.F.R. § 5.5(e)(1). You have not established that lack of expedited treatment in this case will pose an imminent threat to the life or physical safety of an individual. While you may be primarily engaged in the dissemination of information, you have not detailed with specificity why you feel there is an urgency to inform the public about the information you have requested. Qualifying urgency would need to exceed the public's right to know about government activity generally. You also did not offer sufficient supporting evidence of public interest that is any greater than the public's general interest in the information you have requested. Your letter was conclusory in nature and did not present any facts to justify a grant of expedited processing under the applicable standards.

If you deem the decision to deny expedited treatment of your request an adverse determination, you have the right to appeal. Should you wish to do so, you must send your appeal and a copy of the original response letter, within 90 days of the date of the letter following the procedures outlined in the DHS FOIA regulations at 6 C.F.R. Part 5 § 5.8. You may submit your appeal electronically at GILDFOIAAppeals@ice.dhs.gov or via regular mail to:

U.S. Immigration and Customs Enforcement
Office of the Principal Legal Advisor
U.S. Department of Homeland Security
500 12th Street, S.W., Mail Stop 5900
Washington, D.C. 20536-5900

Your envelope and letter should be marked "FOIA Appeal." Copies of the FOIA and DHS regulations are available at www.dhs.gov/foia.

ICE has queried the appropriate program offices within ICE for responsive records. If any responsive records are located, they will be reviewed for determination of releasability. Please be assured that one of the processors in our office will respond to your request as expeditiously as possible. We appreciate your patience as we proceed with your request.

Your request has been assigned reference number **2020-ICFO-67509**. Please refer to this identifier in any future correspondence. To check the status of an ICE FOIA/PA request, please visit <http://www.dhs.gov/foia-status>. Please note that to check the status of a request, you must enter the 2020-ICFO-67509 tracking number. If you need any further assistance or would like to discuss any aspect of your request, please contact the FOIA office. You may send an e-mail to ice-foia@ice.dhs.gov, call toll free (866) 633-1182, or you may contact our FOIA Public Liaison, Fernando Pineiro, in the same manner. Additionally, you have a right to seek dispute resolution services from the Office of Government Information Services (OGIS) which 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. You may contact OGIS as follows: Office of Government Information Services, National Archives and Records Administration, 8601 Adelphi Road-OGIS, College Park, Maryland 20740-6001, e-mail at ogis@nara.gov; telephone at 202-741-5770; toll free at 1-877-684-6448; or facsimile at 202-741-5769.

Regards,

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