

EXHIBIT D

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



U.S. Immigration
and Customs
Enforcement

September 17, 2020

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

RE: 2020-ICAP-00469, 2020-ICFO-66235

Dear Mr. Head:

This is in response to your letter, dated August 25, 2020, appealing U.S. Immigration and Customs Enforcement's (ICE) response to your Freedom of Information Act (FOIA) request. Your July 16, 2020, FOIA request sought records and data concerning "ICE's "citizens academy" programs." You also requested expedited treatment and a fee waiver.

By email dated July 20, 2020, the ICE FOIA Office advised you that it had received your FOIA request. The ICE FOIA Office did not respond to your request for expedited treatment and stated that ICE would "charge you for records in accordance with the DHS Interim FOIA regulations." You have appealed the constructive denial of your request for expedited treatment and fee waiver request.

Expedited Treatment

In your FOIA request, you stated that "[t]here is an urgent need to inform the public of why and how these academies are being operated." To support this assertion, you provided citations to three news articles. You stated that these headlines "drawn the attention of Congressmembers" and that an amendment was introduced in congress to "prohibit the use of funds for ICE ERO citizen academies."

You have appealed the constructive denial of expedited treatment on your FOIA request. Specifically, you assert that there is "ongoing public interest in the records sought," there is "[u]proar and confusion over these academies," and that the "information sought is of critical importance locally," as "ICE is planning to launch a new "academy" this fall."

On appeal, ICE completes a *de novo* review of the denial of expedited treatment of your FOIA request. As a requester, you bear the burden under the FOIA of showing that your request satisfies the requirements for expedited treatment.

The DHS FOIA Regulations at 6 C.F.R. § 5.5(e) set forth the following four situations in which in processing on an expedited basis will be granted:

Ian Head

2020-ICAP-000469, 2020-ICFO-66235

- (i) Circumstances in which the lack of expedited processing could reasonably be expected to pose an imminent threat to the life or physical safety of an individual;
- (ii) An urgency to inform the public about an actual or alleged federal government activity, if made by a person who is primarily engaged in disseminating information;
- (iii) The loss of substantial due process rights; or
- (iv) A matter of widespread and exceptional media interest in which there exist possible questions about the government's integrity which affect public confidence.

The first situation in which processing on an expedited basis is appropriate requires a showing of circumstances in which the lack of expedited processing could reasonably be expected to pose an imminent threat to the life or physical safety of an individual. You have not provided any evidence suggesting that standard processing of the request would pose an imminent threat to the life of physical safety of an individual.

The second situation in which processing on an expedited basis is appropriate has two requirements. The first requirement is that there is an "urgency to inform the public about an actual or alleged federal government activity." The second requirement is that the requester "is primarily engaged in disseminating information."

The "urgency to inform the public" prong determination hinges on three factors: (1) whether the request concerns a matter of current exigency to the American public; (2) whether the consequences of delaying a response would compromise a significant recognized interest; and (3) whether the request concerns federal government activity. *Am. Civil Liberties Union v. U.S. Dep't of Justice*, 321 F. Supp. 2d 24, 29 (D.D.C. 2004).

With regard to the first factor, whether the request concerns a matter of current exigency to the American public, you state that "[t]here is an urgent need to inform the public of why and how these academies are being operated" and that "[i]mmigrant rights advocates and organizations, including Requesters, are very concerned about these citizens academies and their potential in further stoking violence against immigrant communities." However, while you have explained why you have concerns about these citizen academies you have not demonstrated that the request concerns a matter of current exigency to the American public.

With regards to the second factor, you have not provided any substantial evidence suggesting that delaying a response would compromise a significant recognized interest.

With regard to the third factor, the request concerns federal government activity.

While you have stated there is urgency to the information requested, ICE has determined that the reasons you provided do not show that there is an urgency to inform the public about an actual or alleged federal government activity which is beyond the public's right to know about government activity generally. Since ICE has determined that you have not met the "urgency to inform the public" prong, ICE will not evaluate the second prong, whether the requester "is primarily engaged in disseminating information" under its analysis of expedited treatment.

Ian Head
2020-ICAP-000469, 2020-ICFO-66235

With regard to the third situation in which processing on an expedited basis is appropriate, you have not made a showing of a loss of substantial due process rights.

With regard to the fourth situation in which processing on an expedited basis is appropriate, you have not shown that the that the request deals with a matter of widespread and exceptional media interest. The mere fact that that there is some public interest is not sufficient to demonstrate that the matter is of widespread and exceptional media interest. Further, even if you were able to demonstrate that the request deals with a matter of widespread and exceptional media interest, you have not made a showing regarding the existence of possible questions about the government's integrity which would affect public confidence.

Therefore, ICE affirms the decision of ICE FOIA to deny your request for expedited processing.

Fee Waiver and Status as a "representative of the news media"

In your request, you stated that 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." Additionally, you requested a fee waiver because "disclosure of the information is likely to contribute to a significant public understanding of government operations or activities, the Requesters' primary interest is in disclosure; and they have no commercial interest in the information."

With regard to your request for a fee waiver, the ICE FOIA Office determined that you were a commercial requester and therefore constructively denied your request for a full fee waiver. You are appealing the ICE FOIA Office's constructive denial of your request for a fee waiver.

On appeal, ICE completes a *de novo* review of the request for classification. As a requester, you bear the burden under the FOIA of showing that you meet the requirements for classification as members of the news media. After a review of the administrative record, your request for a fee waiver in case 2020-ICFO-66235 is granted.

This decision is ICE's final action as to the expedited treatment and fee waiver requests concerning your FOIA 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 have a principal place of business, 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 wish to contact OGIS, you may email them at ogis@nara.gov or call 1-877-684-6448.

Ian Head
2020-ICAP-000469, 2020-ICFO-66235

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 the word “appeal,” your appeal number, which is 2020-ICAP-00469 and the FOIA case number, which is 2020-ICFO-66235.

Sincerely,

Christopher Lanks

for Shiraz Panthaky
Chief
Government Information Law Division
ICE Office of the Principal Legal Advisor
U.S. Department of Homeland Security

cc: The ICE FOIA Office