

EXHIBIT 4



214 Massachusetts Avenue, NE
Washington, DC 20002

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SENT VIA FOIAOnline

April 1, 2022

CBP Appeals Officer
U.S. Customs and Border Protection
FOIA Appeals, Policy and Litigation Branch
90 K Street NE,
Washington, D.C. 20229

Dear CBP Appeals Officer:

I am appealing the full denial of my Customs and Border Protection's Freedom of Information Act (FOIA) request CBP-2022-056936, dated March 23, 2022, as per the Department of Homeland Security (DHS) and U.S. Customs and Border Protection (CBP) regulations 6 CFR Part 5, and 19 CFR Part 103. Specifically, I am appealing under section §5.8(a)(1) adverse determination denying my request in full, and I am appealing the search because I am questioning the adequacy of the search.

On March 23, 2022, I requested:

Section 1) For purposes of this numbered request and for all that follow the term "the September 19, 2021, incident" means "Allegations made against or about United States Customs and Border Protection (CBP) agents "whipping" or otherwise engaging migrants attempting to cross into the United States in or near the Rio Grande River near Del Rio, Texas during the migrants' encounter with CBP agents on September 19, 2021. Photographs of this encounter were taken by El Paso freelance journalist Paul Ratje."
Section 2) all records depicting or describing the findings of the "investigative work" done by U.S. Customs and Border Protection's Office of Professional Responsibility on the September 19, 2021 incident as described in Section 1.



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Section 3) all records depicting or describing the conclusions and the analysis of the “investigative work” done by U.S. Customs and Border Protection’s (CPB) Office of Professional Responsibility on “the September 19, 2021 incident” as described in Section 1.

Section 4) all records of communications between the Office of the Secretary of the Department of Homeland Security and the White House referring to “the September 19, 2021 incident” as described in Section 1.

Section 5) all records of communications to and from the Office of Public Affairs referring to “the September 19, 2021 incident” as described in Section 1.

Section 6) all records of communications to and from the and the office of Legislative affairs referring to “the September 19, 2021 incident” as described in Section 1.

Section 7) all records of communications to and from the office of Civil Rights and Civil Liberties referring to “the September 19, 2021 incident” as described in Section 1.

Section 8) all records, including emails, texts and other communications to and from the White House staff to the Secretary of Homeland Security Alejandro Mayorkas or his staff mentioning or referring to “the September 19, 2021 incident” as described in Section 1.

Section 9) all records, including emails, texts and other communications from the Secretary of Homeland Security Alejandro Mayorkas or his staff to the Office of the Inspector General mentioning or referring to “the September 19, 2021 incident” as described in Section 1.

Section 10) all records, including emails, texts and other communications from all records, including emails, texts and other communications from Raul L. Ortiz, Chief, United States Border Patrol or his staff to: the Office of the Inspector General; DHS Civil Rights and Civil Liberties; U.S. Customs and Border Protection’s Office of Professional Responsibility; and the Secretary of Homeland Security Alejandro Mayorkas or his staff mentioning or referring to “the September 19, 2021 incident” as described in Section 1.

Section 11) all records, including emails, texts and other communications from all records, including emails, texts and other communications from Troy A. Miller, Deputy Commissioner (Acting Commissioner) or his staff to: the Office of the Inspector General; DHS Civil Rights and Civil Liberties; U.S. Customs and Border Protection’s Office of Professional Responsibility; and the Secretary of Homeland Security Alejandro



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Mayorkas or his staff mentioning or referring to “the September 19, 2021 incident” as described in Section 1.

Please limit the search from September 18, 2021, through March 22, 2022.

I am appealing the adverse determination denying my request in full because CBP violated DHS FOIA regulations, specifically, sections §5.6(e), §5.6 (e)(1), §5.6 (e)(2), and §5.6 (e)(3). There was a violation of §5.6(e) because no one signed off on the denial as required per statute. There was a violation of §5.6(e)(1), because there was no name, no title, no position of the person responsible for the denial as required by statute. There was a violation of §5.6(e)(2), because there were no descriptions of the FOIA exemptions applied by CBP in denying the request, even though the statute states there should be a brief statement of the reasons for the denial, including any FOIA exemption applied by CBP in denying the request. There was a violation of §5.6(e)(3), because there was no estimate of the volume of the records withheld, or a statement that it was protected by an applicable exemption as required. Specifically, it states:

... the estimate of the volume of any records or information withheld, for example, by providing the number of pages or some other reasonable form of estimation. This estimation is not required if the volume is otherwise indicated by deletions marked on records that are disclosed in part, or if providing an estimate would harm an interest protected by an applicable exemption.

I am also appealing this request because I am questioning the adequacy of the search as per §5.8 (a)(1). There was no page count or file size of the search, or a description of where the search was conducted. I believe there was no search regarding this request.

I respectfully request that CBP reassess its response, search for records, and provide responsive records. If any portion of this request is denied for any reason, please provide copies of the records or portions of records that are being withheld and cite each specific exemption of the Freedom of Information Act on which the agency relies.



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Please provide partial responses when they are ready. Thank you in advance for considering my Appeal. If you have any questions, please contact me at oversightproject@heritage.org.

Sincerely,

Mike Howell
Senior Advisor and Author at *The Daily Signal*
The Heritage Foundation
214 Massachusetts Ave