

U.S. Department of  
Homeland Security

United States  
Coast Guard



Office of the Chief Administrative  
Law Judge  
United States Coast Guard

Battery Park Building  
1 South Street, Room 218  
New York, NY 10004-1466  
Staff Symbol: CG-00J  
Phone: 347-371-1045  
Fax: 212-514-4353  
Email: Janine.E.DiBerardino@uscg.mil

January 5, 2022

Ms. Rina Gandhi, Esq.  
Murray Osorio PLLC  
4103 Chain Bridge Road, Suite 300  
Fairfax, VA 22030

RE: DHS FOIA Appeal Number 2021-HQAP-00103  
FOIA Request Number 2021-OBFO-01166

Dear Ms. Gandhi:

This letter concerns your appeal of the Department of Homeland Security's (DHS) Office of Biometric Identity Management's (OBIM) response to your FOIA request 2021-OBFO-01166, wherein you sought "any and all information" about your client Jose Osman Villatoro Padilla's "entries and exits."

Pursuant to a memorandum of agreement, the United States Coast Guard Office of the Chief Administrative Law Judge is reviewing FOIA appeals for DHS General Counsel's office. Therefore, the Office of the Chief Administrative Law Judge hereby renders the official appeal decision on behalf of DHS.

On April 19, 2021, OBIM responded to your FOIA request and provided three pages of documents, portions of which OBIM withheld pursuant to Title 5 U.S.C. § 552 (b)(6), (b)(7)(C), and (b)(7)(E). Your appeal contends OBIM improperly redacted information.

Upon review of your appeal and all applicable documents, I am **REMANDING, IN PART** OBIM's response for further explanation regarding redaction of the DHS APPREHEND encounter in its entirety. The remaining redactions are proper for the reasons set forth below.

**Exemption 6 – 5 U.S.C. § 552(b)(6)**

Exemption 6 allows an agency to withhold from disclosure personnel and similar files "the release of which would constitute a clearly unwarranted invasion of personal privacy." 5 U.S.C. § 552 (b)(6). To determine whether Exemption 6 protects against disclosure, an agency should engage in a four-step analysis:

1. determine whether the information at issue is a personnel, medical, or similar file;
2. determine whether there is a significant privacy interest in the requested information;
3. evaluate the requester's asserted FOIA public interest; and
4. if there is significant public interest, balance the competing interest between privacy and the public interest.

*Wash. Post co. v. HHS*, 690 F.2d 252, 261 (D.C. Cir. 1982).

When considering this four factor analysis, each step is dependent on the prior step being satisfied; in other words, a failure at step one or step two ends the inquiry and Exemption 6 does not apply. *Multi Ag Media LLC v. USDA*, 515 F.3d 1224, 1229 (D.C. Cir. 2008). With these rules in mind, I evaluated the withheld materials using the four-step process. I conclude the OBIM properly applied Exemption 6 to the redacted fields.

**Exemption 7(C) – 5 U.S.C. § 552 (b)(7)(C)**

Exemption 7(C) provides protection for law enforcement information disclosure of which “could reasonably be expected to constitute an unwarranted invasion of personal privacy.” 5 U.S.C. § 552 (b)(7)(C). In applying this Exemption, courts “must balance the interest in privacy of the individual mentioned in the record against the public’s interest in disclosure.” *Beck v. Dept. of Justice*, 997 F.2d 1489, 1491 (D.C. Cir. 1993). A legitimate interest exists in preserving the identities of government officials. *See Callaway v. U.S. Dept. of Treasury*, 2007 WL 7698581, \*11 (D.C. Cir. August 31, 2007). When weighing the interests, “it must be remembered that it is in the interest of the general public, and not that of the private litigant, that must be considered.” *Brown v. Fed. Bureau of Investigation*, 658 F.2d 71, 75 (2d. Cir. 1981).

I reviewed the unredacted documents and conclude Exemption 7(C) is properly applied. Public interest in disclosing the records does not outweigh the private interest in withholding them.

**Exemption 7(E) - 5 U.S.C. § 552 (b)(7)(E)**

Exemption 7(E) protects records compiled for law enforcement purposes, to the extent that production of such information “would disclose techniques and procedures for law enforcement investigations or prosecutions, or would disclose guidelines for law enforcement investigations or prosecutions if such disclosure could reasonably be expected to risk circumvention of the law.” 5 U.S.C. § 552 (b)(7)(E). Courts have interpreted Exemption 7(E) to encompass the withholding of information which “could be of assistance to those who wish to evade future immigration enforcement operations.” *See Allard K. Lowenstein Int’l Human Rights Project v. U.S. Dep’t of Homeland Security*, 603 F.Supp.2d 354, 365 (D. Conn. 2009). Further, information regarding the asylum process may also be properly withheld under Exemption 7(E), even where some information about the process may be publicly available. *See Gosen v. United States Citizenship & Immigr. Servs.*, 75 F. Supp. 3d 279, 290–91 (D.D.C. 2014).

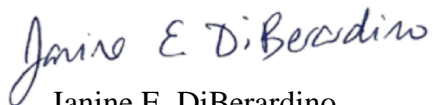
I reviewed the unredacted documents and conclude OBIM properly applied Exemption 7(E). Release of these materials would expose law enforcement techniques and procedures and could reasonably be expected to risk circumvention of the law.

Accordingly, I am REMANDING this request back to OBIM for reevaluation and further explanation related to the DHS APPREHEND encounter. OBIM has 30 days to respond to this remand. If after 30 days there is no response, the reviewing attorney will issue a letter providing final agency action so that you may enter federal court to pursue any further appeal.

Notwithstanding the above decision, as part of the 2007 FOIA amendments, the Office of Government Information Services (OGIS) was created to offer mediation services to resolve disputes between FOIA requesters and Federal agencies as a non-exclusive alternative to litigation. Using OGIS services does not affect your right to pursue 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. If you wish to contact OGIS, you may email them at [ogis@nara.gov](mailto:ogis@nara.gov) or call 1-877-684-6448.

Sincerely,

A handwritten signature in cursive script that reads "Janine E. DiBerardino".

Janine E. DiBerardino  
Attorney Advisor  
United States Coast Guard