



U.S. Customs and
Border Protection

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CBP-AP-2023-001220 JHS

June 12, 2023

T. McElwee
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RE: Freedom of Information Act Appeal: CBP-AP-2023-001220; CBP-2022-105246; Ivana Marie Trump Border Crossing and/or Secondary Inspection Records.

Dear T. McElwee,

This letter is in response to your appeal dated May 9, 2023, in which you challenge the U.S. Customs and Border Protection (CBP), Freedom of Information Act (FOIA) Division's "Partial Grant/Partial Denial" response to your initial FOIA request for records. After review, the FOIA Division's "Partial Grant/Partial Denial" determination is Affirmed. Furthermore, there are a few additional records being provided to you in this appeal.

In your original FOIA submission (CBP-2022-105246) dated July 14, 2022, you requested from CBP:

"All records of border crossing and/or secondary screening or other interactions with CBP for the individual named Ivana Marie Trump (maiden name, Ivana Marie Zelníčková), who had the date of birth of February 20, 1949.

Please note that Ivana Marie Trump was born in what used to be Czechoslovakia and then naturalized. Records may indicate the nationality of her passport as American, Czechoslovakian or Czech.

Ivana Marie Trump is deceased. Attached, find a newspaper article proving she is dead. Records concerning Ivana Marie Trump as the main subject have diminished privacy interest under both FOIA and the Privacy Act and are disclosable."

On May 9, 2023, the CBP FOIA Division provided you with records and closed your request with a “Partial Grant/Partial Denial” determination due to the use of exemptions (b)(6), (b)(7)(C), and (b)(7)(E).

On May 9, 2023, you submitted an appeal to this CBP FOIA Division determination. In your appeal, you stated,

“I appeal the agency's finding in my FOIA request, noted as CBP-2022-105246. The agency has incorrectly cited the (b)(7)(C), the exemption cited where records "could reasonably be expected to constitute an unwarranted invasion of personal privacy."

Please note: the subject of this request, Ivana Trump, is dead. Please see the obituary, which was attached with the original request. The privacy interests of dead persons are greatly diminished. There is no conceivable reason for these records to be completely denied. Where records are commingled with those of living persons, records concerning the living can be excluded or redacted without withholding the record concerning Ivana Trump.

Please also note: this request has been (and remains) for records concerning IVANA Trump, and not her living daughter IVANKA.

My prayer for relief is that the request be fulfilled as made.”

The FOIA Division performed a search of your requested records and located three (3) inspection records, and a list of encounters, which were provided to you. On the inspection records, the FOIA Division made redactions using exemptions (b)(6), (b)(7)(C), and (b)(7)(E).

When we received your appeal, our office reviewed the CBP FOIA Division response and records, as well as the information you provided in your appeal. To ensure that you receive all of the records that CBP maintains about Ivana Marie Trump, an attorney on my staff has conducted a *de novo* search of the TECS systems of records. TECS is an overarching law enforcement information collection, analysis, and sharing environment that securely links telecommunications devices and personal computers to a central system and database.¹ This environment is comprised of several modules designed to collect, maintain, and screen data as well as conduct analysis, screening, and information sharing. TECS databases contain temporary and permanent enforcement, inspection, and intelligence records relevant to the law enforcement mission of CBP and numerous other federal agencies that it supports. TECS investigative and law enforcement information can pertain to individuals, businesses, conveyances, and the importation and exportation of merchandise. TECS also includes border crossing information on travelers entering and departing the United States.

¹ TECS is the updated and modified version of the former Treasury Enforcement Communications System. See 73 Fed. Reg. 77778 (December 19, 2008).

The TECS searches included Ivana Marie Trump's first, middle, and last name, and approximations thereof, with and without her date of birth. Based on our searches, the TECS review identified 14 responsive records, including three (3) Person Query records, 10 Secondary Inspection Reports, and one (1) Person Encounter List. We are releasing the 14 records, totaling 45 pages, to you with partial redactions pursuant to Exemptions (b)(3), (b)(6), (b)(7)(C), and (b)(7)(E) of 5 U.S.C. § 552.

We have withheld some information from release in the attached records. While the FOIA espouses "a general philosophy of full agency disclosure,"² some governmental information is exempted from release under the FOIA under clearly delineated statutory language.³ Thus, while "disclosure, not secrecy, is the dominant objective of [FOIA]," there are some records that exist outside the statute's broad reach.⁴

We have provided you with the greatest amount of information possible. The direct language of the Freedom of Information Act instructs federal agencies to provide any "reasonably segregable portion of a record" to "any person requesting such record after deletion of the portions which are exempt."⁵ We do not take this charge lightly. To comport with this requirement, this office undertook a line-by-line review of the records and "differentiate[d] among the contents of a document rather than to treat it as an indivisible 'record' for FOIA purposes."⁶

In withholding any information, we blacked out only the information protected by the statutorily defined exemptions and identified the applicable exemption at the location of redaction. We limited our withholdings to that information in which "the agency reasonably foresees that disclosure would harm an interest protected by an exemption,"⁷ as described in further detail above. Even if information technically fell within the bounds of an exemption, we did not redact it unless we could identify any foreseeable harm that would flow from its release.

Additionally, for your information, Congress excluded three discrete categories of law enforcement and national security records from the requirements of the FOIA. See 5 U.S.C. 552(c). This response is limited to those records that are subject to the requirements of the FOIA. This is a standard notification that is given to all our requesters and should not be taken as an indication that excluded records do, or do not, exist.

Exemption (b)(3)

FOIA Exemption (b)(3) applies to information that is "specifically exempted from disclosure by statute... if that statute" either "requires that the matters be withheld from the public in such a manner as to leave no discretion on the issue" or "establishes particular criteria for withholding or refers to particular types of matters to be withheld." 5 U.S.C. § 552(b)(3). Exemption (b)(3) requires the application of a two-part test to determine its applicability. We must first assess

² *Dep't of the Air Force v. Rose*, 425 U.S. 352, 360-61 (1976).

³ 5 U.S.C. § 552(b) et seq.

⁴ *Rose*, 425 U.S. at 361.

⁵ 5 U.S.C. § 552(b).

⁶ *Fed. Bureau of Investigation v. Abramson*, 456 U.S. 615, 626 (1982).

⁷ 5 U.S.C. § 552(a)(8)(A)(i).

“whether there is a statute within the scope of Exemption 3” and next “whether the requested information falls within the scope of that statute.” *Minier v. Cent. Intel. Agency*, 88 F.3d 796, 801 (9th Cir. 1996).

In these records, FOIA Exemption (b)(3) is asserted on behalf of the Transportation Security Administration (“TSA”) to protect a very small amount of Sensitive Security Information (SSI) found in the responsive records. 49 U.S.C. §114(r) prohibits the disclosure of information that “would be detrimental to the security of transportation” if released. TSA regulations implementing Section 114(r) are found in 49 C.F.R. Part 1520. Pursuant to 49 C.F.R. §1520.5(b)(9), security screening procedures, including selection criteria for the screening of persons as well as information and sources of information used by a passenger or property screening program or system, including an automated screening system, is SSI and is therefore exempt from disclosure. *See Skurow v. Dep’t of Homeland Sec.*, 892 F. Supp. 2d 319, 329 (D.D.C. 2012); *Gordon v. Fed. Bureau of Investigation*, 390 F. Supp. 2d 897, 900 (N.D. Cal. 2004).

Exemptions (b)(6) and (b)(7)(C)

Invoking Exemption (b)(6) permits the government to withhold information about an individual in “personnel and medical and similar files” when the disclosure “would constitute a clearly unwarranted invasion of personal privacy.”⁸ Information subject to exemption pursuant to (b)(6) must fall within the category of “personnel, medical files and similar files.”⁹ Once that threshold is met, to determine whether the information in question should be disclosed to the public, Exemption (b)(6) requires a balancing test of the public’s right to know the personal information against an individual’s right to privacy.¹⁰

Concerning the first prong of the test, the “category of record” prong, personnel and medical files are easily identified, but what constitutes a “similar file” requires further analysis. In *United States Department of State v. Washington Post Co.*, the United States Supreme Court determined, based upon a review of the legislative history of the FOIA that Congress intended the term “similar files” to be interpreted broadly, rather than narrowly.¹¹ The Court noted that the protection of an individual's privacy “surely was not intended to turn upon the label of the file which contains the damaging information.”¹² Rather, the Court made clear that all information that “applies to a particular individual” meets the threshold requirement for Exemption 6 protection. Relevant in this case however is the diminished privacy interest of a deceased person. That is, even though death may have diminished the privacy interest of the deceased person, it does not render the privacy interests de minimis.¹³

⁸ 5 U.S.C. § 552(b)(6).

⁹ *U.S. Dep’t of Justice v. Reporters Committee for Freedom of the Press*, 489 U.S. 749 (1989).

¹⁰ *Dep’t of the Air Force v. Rose*, 425 U.S. 352 (1976).

¹¹ *Dep’t of State v. Wash. Po. Co.*, 456 U.S. 595, 599-603 (1982) (citing H.R. Rep. No. 89-1497, at 11 (1966); S. Rep. No. 89-813, at 9 (1965); S. Rep. No. 88-1219, at 14 (1964)).

¹² *Id.* at 601 (citing H.R. Rep. No. 89-1497, at 11 (1966)); see *Judicial Watch, Inc. v. FDA*, 449 F.3d 141, 152 (D.C. Cir. 2006) (“The Supreme Court has read Exemption 6 broadly, concluding the propriety of an agency's decision to withhold information does not 'turn upon the label of the file which contains the damaging information.'” (quoting *Wash. Post*, 456 U.S. at 601)).

¹³ *Wessler v. DOJ*, 381 F. Supp. 3d 253, 259 (S.D.N.Y. 2019).

In this instance, the records at issue concerns personal privacy because the information being withheld from disclosure includes the first and last names, and telephone numbers of CBP personnel. Furthermore, the records at issue are considered investigative records because they are border crossing and inspection records relevant to the law enforcement mission of CBP. As such, the first prong of the Exemption 6 test is met as the subject records are records that contain personally identifiable information and these types of records fall within the broad definition of “similar files.”

Once the “category of record” threshold has been met, we must next examine whether disclosure of the identified information in the record at issue would constitute a clearly unwarranted invasion of personal privacy. Determining whether there would be a clearly unwarranted invasion of personal privacy requires a balancing of the privacy interest that would be compromised by disclosure against any public interest in the requested information.

The requestor bears the burden of establishing that even if there is a privacy interest, disclosure would serve the public interest.¹⁴ In this instance however, Ivana Marie Trump (deceased) has a diminished privacy interest in the records being released, but this privacy interest is not eliminated.

Separately, these records still maintain a personal privacy interest because the Personal information at issue here are first and last names, and phone numbers of CBP personnel, and not information related to the deceased. You have not demonstrated any genuine and significant interest in CBP personnel aforementioned personally identifiable information, nor have you articulated how the disclosure of this information would advance the primary goal of the FOIA (i.e., to shed light on the operation of the federal government). As such, we are invoking the (b)(6) exemption for this type of information in the records that CBP is releasing to you.

In your appeal, you state that the agency incorrectly cited to exemption (b)(7)(C) because Ivana Marie Trump is deceased. After reviewing the records previously provided to you and the additional records we are providing, we do not agree with your claim.

Exemption (b)(7)(C) exempts from disclosure “records and information compiled for law enforcement purposes” the disclosure of which “could reasonably be expected to constitute an unwarranted invasion of personal privacy.”¹⁵ As background, Exemption (b)(7) is subdivided into six subparts, (A) through (F). The initial requirement for the use of all the (b)(7) exemptions is that the records or information subject to disclosure consideration have been “compiled for law enforcement purposes.”¹⁶ Additionally, the (b)(7) exemptions apply to civil, criminal, and administrative law enforcement proceedings.¹⁷

¹⁴*Associated Press v. DOD*, 549 F.3d 62, 66 (2d Cir. 2008) (“The requesting party bears the burden of establishing that disclosure of personally identifiable information would serve a public interest cognizable under FOIA”).

¹⁵ 5 U.S.C. § 552 (b)(7)(C).

¹⁶ 5 U.S.C. § 552 (b)(7).

¹⁷ See generally *Center for National Policy Review v. Weinberger*, 502 F.2d 370 (D.C. Cir. 1974); *Detroit Free Press, Inc. v. Department of Justice*, 73 F.3d 93 (6th Cir. 1996); *Ortiz v. Health and Human Services*, 70 F.3d 729 (2d Cir. 1995).

This exemption protects, among other information, the identity of law enforcement personnel and third parties referenced in files compiled for law enforcement purposes. It is designed to protect law enforcement personnel conducting their official duties from harassment and annoyance in their private lives that could conceivably result from public disclosure of their identity.¹⁸

The application of Exemption (b)(7)(C) to specific information requires the user to perform a balancing test regarding an individual's privacy interest versus the public interest in CBP employees' personally identifiable information.¹⁹ The privacy interests of CBP personnel (being protected from public disclosure of the identity of a law enforcement officer who, because of the conduct of his/her official duties, could conceivably be subject to harassment and annoyance in his/her private life) far outweigh whatever public interest, if any, exists in having CBP employees' information released. Here, Exemption (b)(7)(C) is applied to withhold CBP personnel's names and telephone numbers in the records that we are releasing to you.

Exemption (b)(7)(E)

Under Exemption (b)(7)(E), elements of a record may be redacted to protect methods for categorizing, identifying, and navigating law enforcement information. Exemption (b)(7)(E) exempts from disclosure information that would disclose techniques and procedures of law enforcement investigations or prosecutions if such disclosure could reasonably be expected to risk circumvention of the law.²⁰ Where the agency has a clear law enforcement mandate it only need establish a rational nexus between enforcement of a federal law and the information withheld based on a (b)(7) exemption.²¹

In this case, Exemption (b)(7)(E) is applied as the basis to redact information that would reveal CBP procedures for screening and inspecting international travelers (i.e., examination and inspection procedures, names of specific law enforcement databases used, procedures related to external/internal coordination/reporting, information which would reveal the scope and focus of certain law enforcement techniques, particular types of secondary inspection, clearance or authorization procedures, names of specific equipment or capabilities used, and instructions on how to process certain information). A release of this information would reveal CBP targeting, and inspection techniques used in processing international travelers. Such a release would enable potential violators to design strategies to circumvent the examination procedures developed and

¹⁸ *Nix v. United States*, 572 F.2d 998, 1006 (4th Cir. 1978).

¹⁹ *See Castaneda v. United States*, 757 F.2d 1010, 1012 (9th Cir. 1985).

²⁰ *See Fisher v. U.S. Dep't of Justice*, 772 F. Supp. 7 (D.D.C. 1991) (explicitly recognizing categorical protection for law enforcement techniques and procedures), *aff'd* 968 F.2d 92 (1992); and *Hammes v. U.S. Customs Serv.*, 1994 WL 693717 (S.D.N.Y. 1994) (protecting criteria used to determine which passengers to stop and examine).

²¹ *See Coastal Delivery Corp. v. U.S. Customs Serv.*, 272 F. Supp.2d 958, 963 (C.D.Cal. 2003) (Customs has a clear law enforcement mandate; Exemption (b)(7)(E) used to withhold techniques or guidelines for law enforcement investigations); *Pons v. U.S. Customs Serv.*, 1998 U.S. Dist. LEXIS 6084 (D.C.C. 1998) (protecting cooperative arrangements between Customs and other law enforcement agencies to keep them effective); and, *Judicial watch, Inc. v. FBI*, 2001 U.S. Dist. LEXIS 25732 (D.D.C. 2001)(protecting the "identities of two types of [FBI] records concerning prison inmates, "the release of which would enable inmates "to alter their activities[,] thus hindering the effectiveness of the technique").

employed by CBP in its mission to secure the border and enforce immigration laws by allowing potential violators to better prepare themselves to evade and exploit U.S. immigration and other laws.

Judicial Review

In the event that you are dissatisfied with the disposition 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, in the District where the agency record is situated, or in the United States District Court for the District of Columbia.

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 or call 1-877-684-6448.

Sincerely,

Shari Suzuki

Shari Suzuki, Chief
FOIA Appeals and Policy
Regulations and Rulings
Office of Trade