

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



U.S. Immigration  
and Customs  
Enforcement

July 1, 2014

Denise Gilman  
Immigration Clinic  
University of Texas School of Law  
727 E. Dean Keeton  
CCJ 1.310D  
Austin, TX 787705

**RE: OPLA14-1260, 2014FOIA14251**

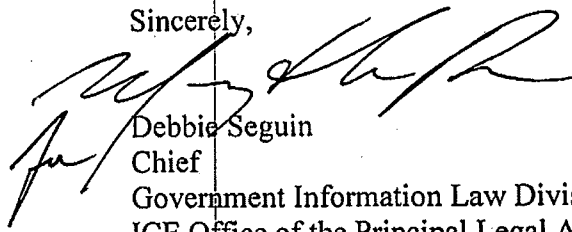
Dear Madam:

This is in response to your letter dated May 29, 2014, appealing the U.S. Immigration and Customs Enforcement's (ICE) response to your Freedom of Information Act (FOIA) request. Your initial FOIA request to ICE sought all documentation, both electronic and written, relating to the custody situation of every woman held at the T. Don Hutto Center between July 15, 2013 and March 15, 2014. In addition, you also requested five additional requests relating to your initial request. Those additional requests are contained in your March 31, 2014 FOIA request and is hereby incorporated by reference.

You have appealed the ICE FOIA Office's decision denying your request for a fee waiver as you understand that the denial is unsupported and should be reversed. You are also appealing as you have not received any documents by ICE FOIA as to your request. On April 8, 2014, ICE FOIA advised you that due to the increasing number of FOIA requests received by the ICE FOIA Office, there may be some delay in processing your request. At this time, ICE FOIA is processing your request. Once the processing is completed, and if responsive records are located, they will be reviewed for a determination of releasability and you will be contacted expeditiously. In addition, ICE FOIA advised you that you will be charged as to fees as a media requester. Upon review of the administrative record and the basis for your appeal, ICE has determined that you were not provided with a statement of the reason(s) for the denial of your request for a fee waiver. Accordingly, ICE is remanding your appeal to the ICE FOIA Office for the provision of the reason(s) for the denial of your request for a fee waiver.

Should you have any questions regarding this appeal remand, please contact ICE at [ice-foia@dhs.gov](mailto:ice-foia@dhs.gov). In the subject line of the email please include the word "appeal", your appeal number, which is **OPLA14-1260**, and the FOIA case number, which is **2014FOIA14251**.

Sincerely,

A handwritten signature in black ink, appearing to read 'Debbie Seguin', is written over the typed name and title.

Debbie Seguin

Chief

Government Information Law Division

ICE Office of the Principal Legal Advisor

Department of Homeland Security

U.S. Department of Homeland Security  
500 12<sup>th</sup> ST. SW, STOP 5009  
Washington, DC 20536-5009



U.S. Immigration  
and Customs  
Enforcement

June 16, 2014

DENISE GILMAN  
UNIVERSITY OF TEXAS SCHOOL OF LAW  
727 E. DEAN DEETON STREET  
AUSTIN, TX 78705

Dear Sir or Madam:

The Department of Homeland Security has received your letter appealing the adverse determination of your Freedom of Information Act/Privacy Act (FOIA/PA) request by U.S. Immigration and Customs Enforcement seeking any and all documentation, electronic and written, that reflects the total number of women held by the Department of Homeland Security ("DRS") at the T. Don Hutto Center for each month between July 2013 and March 2014. Your appeal dated May 29, 2014 was received on June 5, 2014.

On behalf of the Chief for the Government Information Law Division, we acknowledge your appeal request of **2014FOIA14251** and are assigning it number **OPLA14-1260** for tracking purposes. Please reference this number in any future communications about your appeal.

A high number of FOIA/PA requests have been received by the Department. Accordingly, we have adopted the court-sanctioned practice of generally handling backlogged appeals on a first-in, first-out basis.<sup>1</sup> While we will make every effort to process your appeal on a timely basis, there may be some delay in resolving this matter. Should you have any questions concerning the processing of your appeal, please contact ICE FOIA at (866) 633-1182, or by email at [ice-foia@dhs.gov](mailto:ice-foia@dhs.gov).

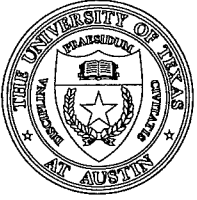
Sincerely,

A handwritten signature in black ink, appearing to read "Debbie Seguin".

Debbie Seguin  
Chief  
Government Information Law Division  
ICE Office of the Principal Legal Advisor  
Department of Homeland Security

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<sup>1</sup> Appeals of expedited treatment denials will be handled on an expedited basis.



SCHOOL OF LAW  
**THE UNIVERSITY OF TEXAS AT AUSTIN**

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*Immigration Clinic • 727 East Dean Keeton Street • Austin, Texas 78705-3299*  
*Phone: (512) 232-1292 • Fax: (512) 232-0800*

May 29, 2014

United States Immigration & Customs Enforcement (ICE)  
Freedom of Information Act Office  
Catrina Pavlik-Keenan  
FOIA Officer  
500 12th Street, SW, Stop 5009  
Washington, D.C. 20536-5009

Via First Class Mail and electronic mail to: [ice-foia@dhs.gov](mailto:ice-foia@dhs.gov)

Re: Appeal in Connection with FOIA Request  
Concerning Custody Determinations at T. Don Hutto Center  
**FOIA Request No. 2014FOIA14251**

Dear FOIA Officer:

I have received your letter dated April 8, 2014 in response to my Freedom of Information Act request dated March 31, 2014. I hereby appeal two aspects of the response.

First, your letter of April 8, 2014, invoked the permissible 10-day extension of the ordinary 20-day FOIA response period set by statute. However, more than 30 business days have passed since you received my request and since you responded on April 8, 2014, but you have not yet provided any documents, information or other substantive response to my Freedom of Information Act request. Given that the statutory period has expired, I respectfully request that you provide an immediate response to my Freedom of Information Act request. To the extent that you have not responded due to a decision to withhold all records, I appeal that decision. Should you fail to provide a response by July 1, 2014, I will be obliged to consider filing a federal complaint under the Freedom of Information Act, 5 U.S.C. § 552, to compel a response.

Second, your letter of April 8, 2014 denied my fee waiver request properly submitted under 5 U.S.C. §§ 552(a)(6)(E) and (a)(4)(A)(iii) and agency regulations. My fee waiver request included extensive and specific factual information and citations to caselaw supporting a fee waiver. Your denial included only boilerplate language that did not address the reasons I presented for justifying a fee waiver. As such, the denial is unsupported and should be reversed. You indicated that I failed to provide sufficient information indicating that the disclosure of the requested information would contribute to the understanding of the public at large and would contribute to public understanding of government operations or activities in a "significant" manner. However, my letter established that the information requested relates directly to matters of great public interest regarding government operations in the context of immigration detention. Interest has only deepened since I made my request. See, e.g., Center for American Progress,

Congress' Costly Detention Quota (May 2014), available at <http://www.americanprogress.org/series/congress-costly-detention-quota/view/> (providing extensive information to the public about immigration detention and bond practices and reflecting strong public interest in these issues); National Immigrant Justice Center, Immigration Detention Bed Quota Timeline (March 2014), available at [http://immigrantjustice.org/sites/immigrantjustice.org/files/Immigration\\_Detention\\_Bed\\_Quota\\_Timeline\\_2014\\_03.pdf](http://immigrantjustice.org/sites/immigrantjustice.org/files/Immigration_Detention_Bed_Quota_Timeline_2014_03.pdf) (same); Barbara Hines, Huffington Post, Op/Ed: Congress Should End Immigrant Detention Quotas (April 9, 2014) (nationally-published opinion column written by the co-director of the UT Immigration Clinic relating to immigration detention). My letter further provided specific information about ways in which I would make information available to the public, and the preceding citations suggest that numerous public outlets for immigration detention information are available for me to utilize for this purpose.

Thank you for your consideration of this appeal. I look forward to your prompt response. You may contact me with any questions at (512) 232-7796. Please supply all records to: Denise Gilman, Immigration Clinic, University of Texas School of Law, 727 E. Dean Keeton, CCJ 1.310, Austin, TX 78705.

Sincerely,



Denise Gilman  
Co-Director  
Immigration Clinic  
University of Texas School of Law  
727 E. Dean Keeton  
CCJ 1.310D  
Austin, TX 78705  
512-232-1292  
512-232-0800 (Fax)

cc:

Enrique M. Lucero  
Field Office Director  
San Antonio Field Office  
Enforcement  
Immigration and Customs Enforcement  
1777 NE Loop 410, Suite 1500  
San Antonio, TX 78217

Francisco J. Venegas  
Assistant Field Office Director  
Immigration and Customs  
T. Don Hutto Center  
1001 Welch St.  
Taylor, Texas 76574

U.S. Department of Homeland Security  
Washington, DC 20536



U.S. Immigration  
and Customs  
Enforcement

April 8, 2014

DENISE GILMAN  
UNIVERSITY OF TEXAS SCHOOL OF LAW  
727 E. DEAN DEETON STREET  
AUSTIN, TX 78705

**Re: 2014FOIA14251**

Dear Ms. Gilman:

This acknowledges receipt of your Freedom of Information Act (FOIA) request to the U.S. Immigration and Customs Enforcement (ICE), dated March 31, 2014, and to your request for a waiver of all assessable FOIA fees. Your request was received in this office on April 1, 2014. Specifically, you requested any and all documentation, electronic and written, that reflects the total number of women held by the Department of Homeland Security ("DRS") at the T. Don Hutto Center for each month between July 2013 and March 2014.

Any and all documentation, electronic and written, relating to guidance, rules or policies utilized by DRS in connection with custody determinations made for women held at the T. Don Hutto Center between July 15, 2013 and March 15, 2014. This documentation includes guidance, rules or policies relating to decisions to detain or release, decisions regarding conditions of release where such conditions are imposed, decisions to grant bond or parole and decisions regarding bond amounts set by DHS officials.

Any and all documentation, electronic and written, related to the procedures and decision making process utilized by DHS in connection with custody determinations made for women held at the T. Don Hutto Center between July 15, 2013 and March 15, 2014. This documentation includes electronic and written documents relating to decisions to detain or release, decisions regarding conditions of release where such conditions are imposed, decisions to grant bond or parole and decisions regarding bond amounts set by DHS officials. This documentation may relate to the procedures and decision-making process utilized by DHS in connection with initial custody determinations and initial decisions regarding bond amounts or in connection with redetermination of custody or modification to bond amounts or conditions of release.

For each woman held at the T. Don Hutto Center between July 15, 2013 and March 15, 2014, any and all documentation, electronic and written, relating to any and all individual custody determinations made as to

that individual. This documentation includes but is not limited to the following:

a. All Forms I-286, Notice of Custody Determination, issued for each woman held at the T. Don Hutto Center between July 15, 2013 and March 15, 2014, including those forms that were initially issued as well as those forms that were amended as a result of a custody redetermination. As detailed below, I understand that personally identifying information may be redacted from these forms, but the forms should nonetheless be provided with the non-identifying information intact and without redaction (e.g. dates, bond amounts, terms of release).

b. Any and all Risk Classification Assessments made in connection with each woman held at the T. Don Hutto Center between July 15, 2013 and March 15, 2014. As detailed below, I understand that personally identifying information may be redacted from these assessments, but the assessments should nonetheless be provided with the non-identifying information intact and without redaction.

c. Any and all Bond Determination Checksheets completed in connection with each woman held at the T. Don Hutto Center between July 15, 2013 and March 15, 2014. As detailed below, I understand that personally identifying information may be redacted from these checksheets, but the checksheets should nonetheless be provided with the non-identifying information intact and without redaction.

d. Any and all documentation, electronic and written, relating to responses by DHS to any request for custody determination or redetermination for any woman held at the T. Don Hutto Center between July 15, 2013 and March 15, 2014. This documentation includes DHS responses to initial requests regarding release from custody as well as responses to requests for redetermination of custody, bond amounts or conditions of release. As detailed below, I understand that personally identifying information may be redacted from these documents, but the documents should nonetheless be provided with the nonidentifying information intact and without redaction.

Any and all Notices to Appear issued for each woman held at the T. Don Hutto Center between July 15, 2013 and March 15, 2014. As detailed below, I understand that personally identifying information may be redacted from these forms, but the forms should nonetheless be provided with the non-identifying information intact and without redaction.

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, the Department processes FOIA requests according to their order of receipt. Although DHS' 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, DHS 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;

however, there are currently 2916 open requests ahead of yours.

As it relates to your fee waiver request, I have reviewed your letter thoroughly and have determined that you have not presented a convincing argument that UNIVERSITY OF TEXAS SCHOOL OF LAW IMMIGRATION CLINIC is entitled to a blanket waiver of fees.

The DHS FOIA Regulations, 6 CFR § 5.11(k)(2), set forth six factors to examine in determining whether the applicable legal standard for a fee waiver has been met. We will consider these factors in our 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 requestor 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.

As a requestor, you bear the burden under the FOIA of showing that the fee waiver requirements have been met. Based on my review of your March 31, 2014 letter and for the reasons stated herein, I have determined that your fee waiver request is deficient because you failed to meet factors 3 and 4. Since your request for a fee waiver has failed to satisfy each of the required factors, I am denying your fee waiver request.

Provisions of the Act 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 media requesters. As a media requester you will be charged 10-cents a page for duplication, although the first 100 pages are free. 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.

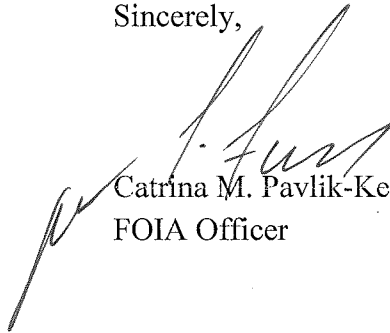
You have the right to appeal the determination to deny your fee waiver request. Should you wish to do so, you must **send your appeal within 60 days of the date of this letter to:** Associate General Counsel (General Law), U.S. Department of Homeland Security, Washington, D.C.



20528, following the procedures outlined in Subpart A, Section 5.9, of the DHS Regulations. Your envelope and letter should be marked "Freedom of Information Act Appeal." The implementing Department regulations establish the criteria under which the FOIA is administered. Copies of the FOIA and regulations are available at [www.DHS.gov](http://www.DHS.gov).

Your request has been assigned reference number **2014FOIA14251**. Please refer to this identifier in any future correspondence. If you have any questions, or would like to discuss this matter, please feel free to contact this office at (866) 633-1182.

Sincerely,

A handwritten signature in black ink, appearing to read "C. Pavlik-Keenan", is written over the typed name.

Catrina M. Pavlik-Keenan  
FOIA Officer