

EXHIBIT 18

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Seth A. Watkins, Ph.D.
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September 6, 2014
By Email (OMBFOIA@omb.eop.gov)

FREEDOM OF INFORMATION ACT APPEAL

Ms. Dionne Hardy, FOIA Officer
Office of Management and Budget (“OMB”)
725 17th Street NW, Room 9026
Washington, DC 20503

Re: Administrative Appeal of OMB FOIA No. 14-130

Dear Ms. Hardy:

This will appeal the denial of information requested on behalf of our client the National Immigrant Justice Center—a program of the Heartland Alliance (“Requester”), under FOIA.

Pending before OMB is a letter request dated and emailed to OMB on July 1, 2014. A copy of the request is attached hereto as Exhibit A (“FOIA Request”). Receipt of the FOIA Request was acknowledged by OMB by email dated July 11, 2014 and the FOIA Request was assigned tracking no. 14-130. See Exhibit B.

It is clear that OMB does have responsive records. For example, just last month, the Department of Homeland Security’s Office of Inspector General issued a report entitled “ICE’s Release of Immigration Detainees” which repeatedly discusses OMB records relevant to the FOIA Request. The report states:

- *On January 29, 2013, ICE’s CFO first informed OMB that ICE faced a budget shortfall. At the end of January 2013, ADP was 34,451 and ICE’s CFO proposed to reduce the daily population to 25,700 by the end of the continuing resolution on March 27, 2013.¹*
- *On January 31, 2013, Congressional staff informed ICE’s CFO that maintaining 34,000 ADP is a statutory requirement. Around this time, ICE’s CFO requested \$22 million from OMB. OMB initially responded negatively and asked for a legal analysis.*

¹¹ ADP stands for “average daily population” with respect to detention.

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- On February 20, 2013, ICE executive leadership sought legal guidance from ICE counsel concerning the 34,000 ADP requirement. *After receiving legal advice from ICE's counsel, ICE's CFO again requested \$22 million from OMB.*
- *On February 21, 2013, OMB requested legal input by DHS counsel, which was provided.*
- On Friday, February 22, 2013, ICE executive leadership decided to reduce ADP sharply by the following Monday to address the budget shortfall and provided FODs target detention populations. *ICE notified OMB of the analysis received from DHS counsel.* We obtained no evidence ICE informed OMB of its planned releases. We were not able to determine why ICE executive leadership did not wait for OMB to make a decision on releasing additional funding.²

See OIG-14-116 (Revised), August 2014, at 9-10 (emphasis added), available at http://www.oig.dhs.gov/assets/Mgmt/2014/OIG_14-116_Aug14.pdf. As for the "Congressional staff" who communicated with ICE's CFO on January 31, 2013, the report separately reveals:

Only after *House appropriations staff* informed ICE's Chief Financial Officer on January 31, 2013, that maintaining 34,000 average daily population is a statutory requirement did ICE executive leadership realize ICE would need to obtain additional funding to cover the detention budget shortfall.

Id. at 1 (emphasis added). All of the aforementioned communications fall within the scope of the FOIA Request.

Constructive Denial of FOIA Request. Pursuant to 5 U.S.C. § 552(a)(6)(A)(i), a response to the Request was due within 20 business days. Requester deems OMB's failure to provide a response determination, grant expedited processing, and grant a fee waiver within the statutory time limits as a denial of the FOIA Request. Requester hereby appeals the denial of the FOIA Request. See, e.g., 5 U.S.C. § 552(a)(6)(C).

Please respond to this appeal within 20 business days in accordance with 5 U.S.C. § 552(a)(6)(A)(ii).

² "FOD" stands for Field Office Director.

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If you have any questions regarding the FOIA Request or this administrative appeal, please contact the undersigned by email at sethwatkins@steptoe.com or by telephone at (202) 429-8090.

Sincerely,
/s/
Seth A. Watkins

Attachments

EXHIBIT A

Watkins, Seth

From: Watkins, Seth
Sent: Tuesday, July 01, 2014 3:08 PM
To: OMBFOIA@omb.eop.gov
Subject: FOIA Request
Attachments: 2014.07.01 FOIA request to OMB.pdf

Please see the attached FOIA request.

Thank you.

Sincerely,

Seth Watkins

Seth A. Watkins, Ph.D.
Steptoe & Johnson LLP
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Seth A. Watkins, Ph.D.
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July 1, 2014
By Email (OMBFOIA@omb.eop.gov)

Ms. Dionne Hardy, FOIA Officer
Office of Management and Budget ("OMB")
725 17th Street NW, Room 9026
Washington, DC 20503

Re: FOIA Request

Dear Ms. Hardy:

This Freedom of Information Act ("FOIA") request is made on behalf of our client the National Immigrant Justice Center, a program of the Heartland Alliance, 208 S. LaSalle St., Suite 1300, Chicago, IL 60604 ("Requester"). All communications concerning this request should be sent to the undersigned attorney, Seth A. Watkins, Steptoel & Johnson LLP, 1330 Connecticut Avenue, NW, Washington, DC 20036-1795, tel. (202) 429-8090, direct fax (202) 261-0548, and email sethwatkins@steptoel.com.

Pursuant to the Freedom of Information Act, 5 U.S.C. § 552 *et seq.*, the following Records¹ are hereby requested (collectively, the "Requests") **with respect to nationwide ICE-related² detention (a.k.a. the Detention Bed Quota):**

1. any Records dated between January 1, 2009 and the present which set out or reflect approved policies, guidelines, or procedures for maintaining and/or filling (i) a level of not less than 33,400 detention beds and/or (ii) a level of not less than 34,000 detention beds, including all communications (*e.g.*, transmittals, letters, emails, memoranda, and reports, instructions, and summaries) related thereto (such as to, from, or within ICE headquarters, an ICE field office, or an ICE AOR³);

¹ As used herein, the term "Records" *includes but is not limited to* data (including Excel spreadsheets), transmittals, letters, emails, memoranda, reports (including, *e.g.*, audit reports), instructions (such as to or from agency staff, contractors, or other providers), and summaries.

² As used herein, the term "ICE" means U.S. Immigration and Customs Enforcement.

³ As used herein, the term "AOR" means the geographic area of responsibility under the authority of an ICE field office.

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2. any Records dated between January 1, 2009 and the present which set out or reflect an assessment of compliance with any statutory requirement for maintaining and/or filling (i) a level of not less than 33,400 detention beds and/or (ii) a level of not less than 34,000 detention beds;
3. any Records from January 1, 2009 through the present which set out or reflect approved policies, guidelines, or procedures for appraising the performance of ICE personnel, Field Offices, or AORs related to maintaining and/or filling beds in detention facilities used to house ICE detainees;
4. any Records from January 1, 2009 through the present which set out or reflect approved policies, guidelines, or procedures for requesting and/or setting and/or calculating bond amounts for apprehended and/or detained individuals based on the presence of vacant beds in an ICE detention facility.

The above Requests do **NOT** include any Records, or portions of Records, specifically identifying a particular individual, that would be covered under the Privacy Act or other privacy protections.

With respect to the foregoing, Requester is **NOT** requesting the disclosure of any drafts and no such drafts need be listed on any *Vaughn* index of withheld Records or portions thereof.

Possession of Records. If OMB does not have custody or control over certain requested and responsive Records but knows or believes that another department, agency, private entity, or another subject to FOIA does, please forward this FOIA request to the appropriate person and inform the undersigned that you have done so.

Withheld Records. If OMB believes any Records or portions of the Records are exempt from disclosure, please provide the non-exempt and/or reasonably segregable portions of the Records. Please also provide a *Vaughn* index identifying all Records or portions thereof that are being withheld from disclosure and state the specific basis for any denial or redaction.

Request for Expedited Processing and Fee Waiver. Requester hereby requests expedited processing pursuant to 5 U.S.C. § 552(a)(6)(E) and a fee waiver under FOIA to the fullest extent permitted by law.

Requester is a nonprofit entity under Section 501(c)(3) of the Internal Revenue code. Dedicated to ensuring human rights protections and access to justice for all immigrants, refugees, and asylum seekers, Requester provides direct legal services to and advocates for these populations through policy reform, impact litigation, and public education. Through its work, Requester advocates for individual clients as well as for broad-based systemic change.

The primary purpose of the Requester is to inform the legal community and the public about ICE detention, release, and bond policies and procedures. Specifically, the

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Requester seeks to determine, *inter alia*, whether ICE has adopted uniform detention, release, and bond policies that are independent from bed space inventory and/or from ICE quotas or performance objectives. Providing the requested information will likely contribute significantly to understanding current practices at ICE, as well as identifying potential grounds for seeking to adjust such practices.

To the extent that fees associated with the Requests exceed the maximum allowable fee waiver, Requester (through its attorneys) hereby agrees to pay fees not to exceed \$250.00 in connection with the FOIA requests herein. If OMB requires the payment of fees in excess of \$250.00, please contact the undersigned to seek advance authorization to proceed and please provide an estimate of fees broken down according to each numbered request above.

Records Produced in Electronic Form. To the extent possible, please disclose all Records in connection with this FOIA request in electronic form. Where data is to be disclosed, to the extent possible, please produce native files (*e.g.*, Excel spreadsheets). Please send these Records by email to sethwatkins@steptoe.com or on media such as a CD or DVD. If the file sizes of the Records are too large to be emailed or provided on electronic media, please contact the undersigned to arrange another method for transmitting them.

Please respond within 20 business days in accordance with 5 U.S.C. § 552(a)(6)(A). If you have any questions regarding this request, please contact the undersigned by email at sethwatkins@steptoe.com or by telephone at (202) 429-8090.

Sincerely,

/s/

Seth A. Watkins, Ph.D.

EXHIBIT B

Watkins, Seth

From: FN-OMB-FOIA <OMBFOIA@omb.eop.gov>
Sent: Friday, July 11, 2014 10:10 AM
To: Watkins, Seth
Subject: RE: FOIA Request

Good Morning:

This email acknowledges receipt of your Freedom of Information Act (FOIA) request to the Office of Management and Budget (OMB) dated July 1, 2014, which was received in OMB's FOIA office on July 9, 2014. Your request has been logged in and is being processed. For your reference, the OMB FOIA number is 14-130.

Sincerely,
Dionne Hardy

From: Watkins, Seth [<mailto:sawatkins@steptoe.com>]
Sent: Tuesday, July 01, 2014 3:08 PM
To: FN-OMB-FOIA
Subject: FOIA Request

Please see the attached FOIA request.

Thank you.

Sincerely,

Seth Watkins

Seth A. Watkins, Ph.D.
Steptoe & Johnson LLP
1330 Connecticut Avenue, NW
Washington, DC 20036-1795
Tel. 202-429-8090
Direct FAX 202-261-0548
Main FAX 202-429-3902
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