



January 6, 2016

VIA FEDERAL EXPRESS

FOIA Appeals, Policy and Litigation Branch
U.S. Customs and Border Protection
90 K Street, NE
Washington, DC 20229-1177

Re: Freedom of Information Act Case Tracking Number CBP-2016-000254
Appeal of Constructive Denial of Request

Dear Sir or Madam:

The American Immigration Council (“Immigration Council” or “Requester”) is in receipt of the October 2, 2015, email notice from CBP FOIA acknowledging receipt of our October 2, 2015 request for records that were prepared, received, transmitted, collected and/or maintained by the Department of Homeland Security and/or the Customs and Border Protection (CBP) regarding CBP’s complaint process and the actions taken by CBP in response to complaints against its agents and officers. Please see our October 2, 2015 FOIA request for a detailed description of the records we seek. Since then, we have received three further communications regarding this FOIA, none of which was a complete response within the meaning of the statute. These include an October 2, 2015 email acknowledgement of receipt of the FOIA request; an October 20, 2015 email determining that the FOIA request was not billable and that the fee waiver request was therefore not applicable; and an October 21, 2015 email with attached letter and list of website links reaffirming receipt of the FOIA, indicating that it would be processed in the order in which it was received, and purporting to be a “partial response” because it included links to the CBP website that the FOIA office located following a “google” search.

It has been more than 90 business days since you initially acknowledged receipt of our FOIA request. When a party submits a FOIA request, the agency has 20 business days to determine whether to produce records responsive to the request. 5 U.S.C. § 552(a)(6)(A)(i). In unusual circumstances, this deadline may be extended by no more than 10 additional business days. 5 U.S.C. § 552(a)(6)(B)(i). When an agency fails to meet the response times required by FOIA, requesting parties may deem the agency’s delay a denial of the FOIA request and appeal the denial. *See, e.g., Coleman v. Drug Enforcement Admin.*, 714 F.3d 816, 823 (4th Cir. 2013) (constructive exhaustion applies even if the agency’s failure to meet the FOIA time limits is due to delay caused by earlier-filed requests); *Ruotolo v. Dep’t. of Justice*, 53 F.3d 4, 8 (2d Cir. 1995) (“[A]dministrative remedies are ‘deemed exhausted’ if the agency fails to comply with the ‘applicable time limit’ provisions of the FOIA.”); *Voinche v. Fed. Bureau of Investigation*, 999 F.2d 962, 963 (5th Cir. 1993) (“If an agency has not complied within the statutory time limits of an FOIA request, the requester shall be deemed to have exhausted his administrative remedies and [may] bring suit.”).

You failed to respond to our FOIA request within the 20 days provided under the FOIA statute. Accordingly, please consider this letter an administrative appeal of your constructive denial of our FOIA request.

Sincerely,

A handwritten signature in black ink, appearing to read "Mary Kenney". The signature is fluid and cursive, with a large initial "M" and "K".

Mary Kenney
Senior Attorney
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