

Exhibit C



TEACHING, INTERPRETING AND CHANGING LAW SINCE 1979

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**Submitted via Electronic Mail to [ice-foia@dhs.gov](mailto:ice-foia@dhs.gov)**

September 15, 2017

U.S. Immigration and Customs Enforcement  
Office of Principal Legal Advisor  
U.S. Department of Homeland Security  
Freedom of Information Act Office  
500 12th Street SW, Stop 5009  
Washington, D.C. 20536-5009

**Re: 2017-ICFO-34743**

Dear FOIA Appeals Officers:

On June 23, 2017 the Immigrant Legal Resource Center (“ILRC”) submitted a request under the Freedom of Information Act (FOIA) to U.S. Immigration and Customs Enforcement (ICE). The ILRC request (the “ILRC Data FOIA Request” attached as Exhibit A) asked for information relating to Detainer and Notification Acceptance Status between state or local law enforcement agencies and ICE, current and pending Section 287(g) agreements, ICE detention data, and information relating to ICE enforcement and planning and operations.

ICE responded by e-mail on June 28, 2017 acknowledging receipt of the ILRC Data FOIA Request, assigning it a case number (2017-ICFO-34743), invoking the ten-day delay period for response contained in 5 U.S.C. § 552(a)(6)(B), and granting Requestors’ fee waiver request (Exhibit B). ICE has not provided any further response to the ILRC Data FOIA Request or any further information about the status of that request.

Please consider this letter an appeal of ICE’s constructive denial of the FOIA request submitted on June 23, 2017. 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 for a maximum of 10 additional business days. 5 U.S.C. § 552(a)(6)(B). 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. 5 U.S.C. § 552(a)(6)(C)(i). *See, e.g., Coleman v. DEA*, 714 F.3d 816, 823 (4th Cir. 2013) (“even if a request ‘may have been burdensome to the agency or would have to be delayed because of other requests filed earlier,’ the constructive exhaustion provision still applies”) (quoting *Pollack v. DOJ*, 49 F.3d

115, 119 (4th Cir. 1995); *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 a FOIA request, the requestor shall be deemed to have exhausted his administrative remedies and [may] bring suit.”). ICE has failed to respond to the ILRC Data FOIA request within the 30 business days provided under the FOIA statute.

FOIA incorporates a strong presumption in favor of disclosure of requested records. *Casa De Md., Inc. v. United States Dep't of Homeland Sec.*, 409 Fed. Appx. 697, 699 (4th Cir. 2011) (“Given the overarching disclosure policy, FOIA exemptions must be narrowly construed to favor disclosure”); *Wisconsin Project on Nuclear Arms Control v. Dep't of Commerce*, 317 F.3d 275, 279 (D.C. Cir. 2003) (“FOIA accordingly mandates a ‘strong presumption in favor of disclosure.’”) (quoting *Dep't of Justice v. Ray*, 502 U.S. 164, 173 (1991)). Agencies may deny a FOIA request only when the requested records fall under any of the nine exemptions listed in FOIA. 5 U.S.C. § 552(b)(1)-(9).

ICE exceeded the statutory time frame for responding to the ILRC Data FOIA Request more than one month ago. Because ICE has not applied any of the statutory exemptions to withhold the requested records, Requestors are entitled to the requested records.

Thank you for your prompt attention to this appeal. Under 5 U.S.C. § 552(a)(6)(A)(ii), you are required to make a determination on an appeal within 20 business days. If you have any questions regarding this appeal, please do not hesitate to contact Lena Graber at [lgraber@ilrc.org](mailto:lgraber@ilrc.org) or 415-321-8545.

Sincerely,



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