

January 28, 2015

FOIA Officer
Department of Homeland Security
U.S. Customs & Border Protection
90 K Street NE, 9th Floor
Washington, DC 20229-1181

To the responsible FOIA Officer:

Pursuant to the federal Freedom of Information Act, 5 U.S.C. § 552, I request access to and copies of the following information from U.S. Customs and Border Protection (hereinafter referred to as "CBP"):

- An original copy of CBP Publication Number 0415-0511 (version dated May 2011; if that version has been superseded, then the latest version of said publication).
- Any internal memorandums, guidance, Inspector General reports, responses to Congressional questions for the record, or other correspondence, in either written or electronic form, from July 6, 1976 to the date of this request regarding confrontations with persons at internal CBP checkpoints operated for the purpose of conducting immigration inspections per Section 287 of the Immigration and Nationality Act in which individuals were detained by CBP for more than 15 minutes OR in which CBP used force to remove occupants from vehicles detained for screening.
- Any internal memorandums, guidance, Inspector General reports, responses to Congressional questions for the record, or other correspondence, in either written or electronic form, from January 1, 2000 to the date of this request regarding CBP searches of general aviation aircraft under the rubric of "zero-suspicion" seizures and searches, or on the basis of any profile used for such seizures and searches, including responses to complaints filed by individual pilots, their passengers, general aviation airport operators or organizations representing aircraft pilots and owners.

In order to help to determine my status to assess fees, you should know that I am a policy analyst and scholar at the Cato Institute, an IRS-recognized 501(c)(3) nonprofit educational and public interest organization. As I am employed by an educational or noncommercial scientific institution, this request is made for a scholarly or scientific purpose and not for a commercial use. I request a waiver of all fees for this request. Disclosure of the requested information to me is in the public interest because it is likely to contribute significantly to public understanding of the operations or activities of the government and is not primarily in my commercial interest. U.S. Customs and Border Protection's operation of internal checkpoints and use of warrantless seizures and searches is of high public interest from a Constitutional and civil liberties perspective.

Whenever possible, please provide the requested information in electronic format on either CD/DVD or other portable electronic storage device(s) such as "thumb drives".

If my request is denied in whole or part, I ask that you justify all deletions by reference to specific exemptions of the act. I will also expect you to release all segregable portions of

Group Exhibit A

otherwise exempt material. I, of course, reserve the right to appeal your decision to withhold any information or to deny a waiver of fees.

I would appreciate your communicating with me by email or telephone, rather than by mail. My email address is peddington@cato.org and my direct line is 202-216-1440.

Please provide expedited processing of this request which concerns a matter of urgency. As a civil liberties policy analyst, I am primarily engaged in disseminating information. The public has an urgent need for information about CPB's utilization of warrantless seizures and searches because CPB actions, according to multiple published reports over the last decade, constitute potential violations of the Fourth Amendment to the Constitution of the United States, as well as the possible misallocation or misuse of taxpayer dollars for illegal seizures and searches. I certify that my statements concerning the need for expedited processing are true and correct to the best of my knowledge and belief.

I look forward to your determination regarding my request for expedited processing within 10 calendar days, as the statute requires.

Thank you for your assistance.

Sincerely,

Patrick G. Eddington
Policy Analyst in Civil Liberties and Homeland Security
Cato Institute
1000 Massachusetts Ave., NW
Washington, DC 20001-5403
202-216-1440 (direct)

February 22, 2015

FOIA Appeals
Policy and Litigation Branch
U.S. Customs & Border Protection
Department of Homeland Security
90 K Street NE, 10th Floor
Washington, DC 20229-1177
Re: FOIA appeal for FOIA request CBP-2015-015114

To the responsible official:

This is an appeal of the denial of my Freedom of Information Act request, case # CBP-2015-015114, which I received from DHS via electronic mail on January 29, 2016 (see attached denial letter).

As filed, my FOIA request of January 28, 2015 read as follows:

“Pursuant to the federal Freedom of Information Act, 5 U.S.C. § 552, I request access to and copies of the following information from U.S. Customs and Border Protection (hereinafter referred to as “CBP”):

- “An original copy of CBP Publication Number 0415-0511 (version dated May 2011; if that version has been superseded, then the latest version of said publication).
- “Any internal memorandums, guidance, Inspector General reports, responses to Congressional questions for the record, or other correspondence, in either written or electronic form, from July 6, 1976 to the date of this request regarding confrontations with persons at internal CBP checkpoints operated for the purpose of conducting immigration inspections per Section 287 of the Immigration and Nationality Act in which individuals were detained by CBP for more than 15 minutes OR in which CBP used force to remove occupants from vehicles detained for screening.
- “Any internal memorandums, guidance, Inspector General reports, responses to Congressional questions for the record, or other correspondence, in either written or electronic form, from January 1, 2000 to the date of this request regarding CBP searches of general aviation aircraft under the rubric of “zero-suspicion” seizures and searches, or on the basis of any profile used for such seizures and searches, including responses to complaints filed by individual pilots, their passengers, general aviation airport operators or organizations representing aircraft pilots and owners.”

The day I filed my request, I received a telephone call from Ms. Sharon Deshield of the CBP Privacy and Diversity Office, Freedom of Information Act Division, inquiring about the first item in my request: CBP Publication Number 0415-0511, dated May 2011. Upon an initial search of the CBP publication catalogue, Ms. Deshield said she could find no such publication. The next day, January 29, 2015, I sent via electronic mail to Ms. Deshield a black-and-white copy of said document in PDF format (see attached email exchange and PDF reproduction of said document).

In Ms. Deshield’s denial letter of January 29, 2016, she stated in part “...based on the information you provided, we were unable to locate or identify any responsive records.” Clearly, based on the PDF of CBP Publication Number 0415-0511 (dated May 2011), the document does indeed exist, or at least existed as of May 2011. I further asked in my original FOIA request for that document “if that version has been superseded, then the latest version of said publication.” Ms. Deshield did not indicate that this type of publication had been discontinued and that no archival copy was available for reproduction, or that it was deniable under an applicable FOIA exemption. As the search for this

document or its successor was clearly inadequate, I appeal the denial and request that a new search for it or its successor be conducted immediately.

Regarding my second category of requested records—those involving CBP use-of-force incidents or vehicle stops in excess of 15 minutes, I enclose the following:

- 1) The cover page of a Department of Justice FOIA litigation production letter in *ACLU Foundation of Arizona v DHS*, No. 14-2025 (D. Ariz), in which the ACLU obtained via litigation CBP records of exactly the kind I sought in my January 28, 2015 FOIA request to CBP. Indeed, pursuant to this ongoing litigation, CBP has turned over to the ACLU of Arizona thousands of pages of material on this very topic via document productions dated as follows:

- August 8, 2014
- August 13, 2014
- September 24, 2014
- October 10, 2014
- December 15, 2014
- December 19, 2014
- January 6, 2015
- February 20, 2015
- March 12, 2015
- March 17, 2015
- April 3, 2015
- April 14, 2015
- May 21, 2015

A review of just one of these document productions revealed material directly responsive to my request, and accordingly I request not only copies of all documents produced pursuant to this ACLU Arizona chapter lawsuit against CBP, but a renewed search for the material I originally requested on January 28, 2015.

- 2) A copy of a CBP press release and accompanying charts, issued on October 13, 2015, outlining use-of-force incidents by CBP personnel between FY2011 and FY2015. I note for the record that not only is this information—and any information used in the production of the report—directly responsive to my request, **this material was being compiled while my FOIA request was pending for months**. Accordingly, I reiterate my request that I be provided with all information on these use-of-force incidents, and that a renewed search be conducted for responsive material on incidents prior to FY2011 going back to July 6, 1976.

Additionally, with respect to the third category of records I sought—regarding CBP searches of general aviation aircraft under the rubric of "zero-suspicion" seizures and searches, or on the basis of any profile used for such seizures and searches, including responses to complaints filed by individual pilots, their passengers, general aviation airport operators or organizations representing aircraft pilots and owners—I attach a copy of an April 30, 2014 Aircraft Owners and Pilots Association (AOPA) article describing a face-to-face meeting with Commissioner Kerlikowske on this very issue.

Clearly, not only did this meeting take place and the Commissioner subsequently order a review of the searches, but multiple responsive documents on this request were no doubt generated by this meeting and the subsequent CBP actions that flowed from it. Accordingly, I appeal this denial and request that a proper search for records on this topic be conducted immediately.

Finally, for both my second and third categories of documents sought, I also asked for responses to Congressional questions on these issues. Ms. Deshield's "no responsive records" response is not credible in light of letters sent by House and Senate members in the fall of 2013 (see three letters, attached) inquiring about CBP use-of-force and general aviation searches. Since this part of my request also clearly did not receive a thorough search, I appeal the denial and request that a proper search for records on this topic be conducted immediately.

In order to help to determine my status to assess fees, you should know that I am a policy analyst and scholar at the Cato Institute, an IRS-recognized 501(c)(3) nonprofit educational and public interest organization. As I am employed by an educational or noncommercial scientific institution, this request is made for a scholarly or scientific purpose and not for a commercial use. I request a waiver of all fees for this request. Disclosure of the requested information to me is in the public interest because it is likely to contribute significantly to public understanding of the operations or activities of the government and is not primarily in my commercial interest. U.S. Customs and Border Protection's operation of internal checkpoints and use of warrantless seizures and searches is of high public interest from a Constitutional and civil liberties perspective.

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Please provide expedited processing of this request which concerns a matter of urgency. As a civil liberties policy analyst, I am primarily engaged in disseminating information. The public has an urgent need for information about CPB's utilization of warrantless seizures and searches because CPB actions, according to multiple published reports over the last decade, constitute potential violations of the Fourth Amendment to the Constitution of the United States, as well as the possible misallocation or misuse of taxpayer dollars for illegal seizures and searches. I certify that my statements concerning the need for expedited processing are true and correct to the best of my knowledge and belief.

I look forward to your determination regarding my request for expedited processing within 10 calendar days, as the statute requires.

Thank you for your assistance.

Sincerely,

Patrick G. Eddington
Policy Analyst in Civil Liberties and Homeland Security
Cato Institute
1000 Massachusetts Ave., NW
Washington, DC 20001-5403
202-216-1440 (direct)

Patrick Eddington

From: CBPFOIA@cbp.dhs.gov
Sent: Friday, January 29, 2016 6:37 PM
To: Patrick Eddington
Subject: Final Disposition, Request CBP-2015-015114
Attachments: CBP-2015-015114 Cato Institute.docx

This is a final response to your Freedom of Information Act (FOIA) request to U.S. Customs and Border Protection (CBP).

We conducted a comprehensive search of files within the CBP databases for records that would be responsive to your request. Unfortunately, we were unable to locate or identify any responsive records, based upon the information you provided in your request.

You have the right to appeal this determination that no records exist within CBP that would be responsive to your request. Should you wish to do so, you must send your appeal and a copy of this letter, within 60 days of the date of this letter, to: FOIA Appeals, Policy and Litigation Branch, U.S. Customs and Border Protection, 90 K Street, NE, 10th Floor Washington, DC 20229-1177, following the procedures outlined in the DHS FOIA regulations at Title 6 C.F.R. 5.9. Your envelope and letter should be marked "FOIA Appeal." Copies of the FOIA and DHS regulations are available at www.dhs.gov/foia.

Please notate file number CBP-2015-015114 on any future correspondence to CBP related to this request.

Given the nature of this request, some records are only being released to you as the requester. If you have an account in FOIAonline, you may access those records by logging into FOIAonline. Otherwise, those responsive records will be sent via the method agreed upon with the FOIA processor.

1300 Pennsylvania Avenue NW
Washington, DC 20229



**U.S. Customs and
Border Protection**

January 29, 2015

CBP-2015-015114

Mr. Patrick Eddington
Cato Institute
1000 Massachusetts Avenue, NW
Washington, DC 20001

Dear Mr. Eddington:

This is a final response to your Freedom of Information Act (FOIA) request to U.S. Customs and Border Protection (CBP). In your request you were seeking:

- 1) An original copy of CBP Publication Number 0415-0511 (version dated May 2011; if that version has been superseded, then the latest version of said publication).
- 2) Any internal memorandums, guidance, Inspector General reports, responses to Congressional questions for the record, or other correspondence, in either written or electronic form, from July 6, 1976 to the date of this request regarding confrontations with persons at internal CBP checkpoints operated for the purpose of conducting immigration inspections per Section 287 of the Immigration and Nationality Act in which individuals were detained by CBP for more than 15 minutes OR in which CBP used force to remove occupants from vehicles detained for screening.
- 3) Any internal memorandums, guidance, Inspector General reports, responses to Congressional questions for the record, or other correspondence, in either written or electronic form, from January 1, 2000 to the date of this request regarding CBP searches of general aviation aircraft under the rubric of "zero-suspicion" seizures and searches, or on the basis of any profile used for such seizures and searches, *including responses to complaints filed by individual pilots, their passengers, general aviation airport operators or organizations representing aircraft pilots and owners.*

We conducted a comprehensive search of files within the CBP databases for your records that would be responsive for your request. Unfortunately, based on the information you provided, we were unable to locate or identify any responsive records. In section three of your request; specifically, "...response to complaints filed by individual pilots, their passengers, general aviation airport operators or organizations representing aircraft pilots and owners." It has been determined that that portion of the request is too broad in nature.

Please be advised Department of Homeland Security (DHS) regulations require you to describe the records that you seek in enough detail to enable Departmental personnel to locate them with a

reasonable amount of effort. Whenever possible your request should include specific information about each record sought, such as the date, title or name, author, recipient, and subject matter of the record. See Title 6 C.F.R §5.21(b). In this case, "...response to complaints filed by individual pilots, their passengers, general aviation airport operators or organizations representing aircraft pilots and owners". If you are able to provide detailed information as indicated, on specific complaints, CBP would be able to conduct another search for the information.

Should you wish to appeal this response, you must send your appeal and a copy of this letter, within 60 days of the date of this letter, to: FOIA Appeals, Policy and Litigation Branch, U.S. Customs and Border Protection, 90 K Street, NE, 10th Floor, Washington, DC 20229-1177, following the procedures outlined in the DHS regulations at Title 6 C.F.R. § 5.9. Your envelope and letter should be marked "FOIA Appeal." Copies of the FOIA and DHS regulations are available at www.dhs.gov/foia.

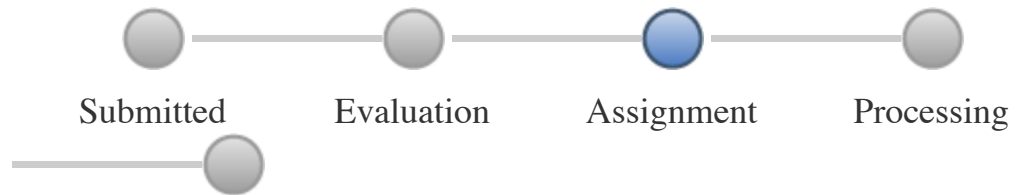
The Office of Government Information Services (OGIS) also mediates disputes between FOIA requesters and Federal agencies as a non-exclusive alternative to litigation. If you are requesting access to your own records (which is considered a Privacy Act request), you should know that OGIS does not have 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 (877) 684-6448.

Your request has been assigned reference number CBP-2015-015114. Please refer to this identifier in any future correspondence. You may contact this office at (202) 325-0150.

Sharon R. Deshield
Government Information Specialist

Appeal Details

Tracking Number : CBP-AP-2016-024415

**Contact Information**

Closed

Full Name : Mr. Patrick
EddingtonMailing Location : United
States/U.S.Organization : Cato Territories
InstituteAddress Line 1 : 1000
Massachusetts Ave, NWEmail Address :
peddington@cato.org

Address Line 2 :

Phone Number : 202-216-
1440

City : Washington

Fax Number :

State/Province : District of
Columbia

Zip Code/Postal Code : 20001

Appeal InformationAgency : U.S.
Customs and

Request Phase : Assignment

Border Protection- FOIA Appeals

Request Track : Complex

Date Submitted : 03/01/2016

Final Disposition :

Estimated Date of Completion : 04/08/2016

Undetermined

Request InformationTracking Number : CBP-2015-
015114

Request Phase : Closed

Full Name : Mr. Patrick
Eddington

Request Track : Complex

Date Submitted : 01/28/2015

Final Disposition : No records

Basis for Appeal :

32/2000

appeals no records determination

Request Expedited Handling

Made Request ? No

Supporting Files

Attached Files :
No attachments were previously added.

Payments

No payments to display.

Invoice

Total Amount Billed : \$0.00
Date Sent :
No invoice has been added.

Correspondence with Requester

Subject	From	Date	Detail
FOIA Appeal CBP-AP-2016-024415 Submitted		2016-03-01	

This message is to notify you of a new appeal submission to the FOIAonline application. Appeal information is as follows:

- Appeal Tracking Number: CBP-AP-2016-024415
- Request Tracking Number: CBP-2015-015114
- Requester Name: Patrick Eddington
- Date Submitted: 03/01/2016
- Appeal Status: Submitted
- Description: appeals no records determination

Released Records

No records have been released.