

Subject: ICE FOIA
Date: Friday, January 5, 2018 at 12:47:47 PM Central Standard Time
From: Zack Kopplin
To: ice-foia@dhs.gov
Attachments: US Marshals or Other Agency.xlsx

Government Accountability Project

Zack Kopplin, GAP Investigator
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225-715-5946

FOIA Request

Dear Freedom of Information Officer:

Pursuant to the Freedom of Information Act, 5 U.S.C. § 552, I am making a FOIA request to ICE concerning detainee data.

Between January 1, 2017 and August 28, 2017, according to data provided to me by ICE, 8983 detainees booked out of ICE custody and into the custody of some other U.S. law enforcement agency. In the data provided by ICE, this was labelled as booking out into the custody of "U.S. Marshals or other agency (explain in Detention Comments)." I am requesting a copy of the detention log comments explaining what other agency, prison, task force, etc, the detainee was sent for these 8983 book outs between January 1, 2017 and August 28, 2017, when the detainee was not sent to the U.S. Marshals.

Please put this data in a spreadsheet which contains the book in and out dates, holding facility, and Area of Responsibility. I'm attaching a spreadsheet that contains the data that I currently have.

I am not requesting any data that is privacy protected like names, or anything that is protected by any other exemption. I am not looking for anything that could compromise investigations, sources and methods, etc, because I am not asking for the actual format of the detention log, just one specific lines for certain detainees from that log.

Lastly, this request is not overly broad because the Freedom of Information Act ("FOIA") specifies only two requirements for an access request to be valid: (1) that the request "reasonably describe" the records sought, and (2) that the request be made "in accordance with [the agency's] published rules." If both requirements are met the agency is compelled to provide the requested records; the agency "shall make the records promptly available to any person." Case law makes clear that the "linchpin inquiry is whether the agency is able to determine 'precisely what records [are] being requested.'" *Yeager v. DEA*, 678 F.2d 35, 322, 326 (D.C. Cir. 1982). Further, it is well established case law that a request cannot generally be deemed invalid on the grounds that the search required would be burdensome. I have met this standard so please do not tell me this request is too broad.

If I receive any of these responses, I will appeal and/or sue and I'd prefer not to have to do that, since I have had a relatively (by FOIA office standards) productive relationship with y'all in terms of receiving records. I'd rather jump through those hoops now. If there are any questions about what I'm looking for or any need for negotiations, I'd be happy to talk, and you can email me or call me.

Exhibit O

Second, I'd ask that you be more communicative with me about timing. I recognize that it can take time to answer FOIA requests and I'm willing to work with you on that, but historically I have been unable to get responses from your office on anything (your phone line is dead and you don't answer emails). These records are fairly important to my work and if I'm not receiving any word from ICE (things like not acknowledging the request within 20 days, not providing or meeting estimated completion dates), I will sue over this request. Again, I would prefer not to have to do that, but I'd like to preemptively warn you about where I stand on this request.

Thanks.

If any of the material covered by this request has been destroyed or removed, please provide all surrounding documentation including, but not limited to, a description of the action taken regarding the materials and justification for those actions taken.

I am not interested in generic news clippings or newsletters that just happen to mention a keyword, so please do not include those as responsive documents.

For any documents or portions you deny due to a specific FOIA exemption, please provide a detailed justification of your grounds for claiming such exemption, explaining why the exemption is relevant to the document or portion of the document withheld.

I anticipate that any responsive documents will be unclassified. If any of the responsive documents contain classified information, please segregate all unclassified material within the classified documents and provide all unclassified information.

I consent to the deletion of any material that would violate an individual's rights under the Privacy Act. I will work with your office to prioritize responsive data for this request, further refine the request if you find any terms too imprecise, conduct searches for unclassified responsive records, or engage in any other reasonable activities that would lessen the agency's burden and costs.

Presumption of Disclosure

In the absence of guidance from the Trump Administration, the current presidential guidance comes from President Obama's 1/21/2009 memo, in which he declared the following policy for Executive Branch agencies:

The Freedom of Information Act should be administered with a clear presumption: In the face of doubt, openness prevails. ... All agencies should adopt a presumption in favor of disclosure, in order to renew their commitment to the principles embodied in FOIA, and to usher in a new era of open Government. The presumption of disclosure should be applied to all decisions involving FOIA.

The President's policy of openness was reiterated in guidelines issued on March 19, 2009 by Attorney General Eric Holder. Contained in those guidelines was the following direction:

First, an agency should not withhold information simply because it may do so legally. I strongly encourage agencies to make discretionary disclosures of information. An agency should not withhold records merely because it can demonstrate, as a technical matter, that the records fall within the scope of a FOIA exemption.

Because of these policies, all requested records should be released in their entirety, except in cases where release is explicitly prohibited by law.

Fee Waiver

I request that all fees incurred in connection with the attached request be waived, because "disclosure of the information is in the public interest and is not primarily in the commercial interest of the requester." 5 U.S.C. §552 (a)(4)(A)(iii).

If you disallow my fee-waiver request, I pledge to pay the price of the FOIA request up to \$25. Alert me if it exceeds this price.

I am a member of the media. I have published articles in a wide variety of news outlets including *The Atlantic*, *Slate Magazine*, *Politico Magazine*, *Science Magazine*, the *Daily Beast*, *Salon*, *ThinkProgress* and *The Guardian*. I have appeared on a wide variety of television, radio and digital news programs including HBO, MSNBC, NPR and PBS and I have helped create news segments for NowThis News.

My articles have been widely read, with many reaching hundreds of thousands of readers. Whatever I write has a reasonable expectation of publication. My editorial and writing skills are well established.

On top of this, the organization I work for, the Government Accountability Project, runs a news blog, where newsworthy information can be published.

My requests are made as part of my news gathering process.

While my research is not limited to this, a great deal of it, including this, focuses on the activities and attitudes of the government itself and disseminating it to the public.

It is unnecessary for me to demonstrate the relevance of this particular subject in advance. Additionally, despite my past record, case law states that "proof of the ability to disseminate the released information to a broad cross-section of the public is not required." *Judicial Watch, Inc. v. Dep't of Justice*, 365 F.3d 1108, 1126 (D.C. Cir. 2004); see *Carney v. U.S. Dep't of Justice*, 19 F.3d 807, 814-15 (2d Cir. 1994). Further, courts have held that "qualified because it also had "firm" plans to "publish a number of . . . 'document sets'" concerning United States foreign and national security policy." Under this criteria, as well, I qualify as a member of the news media. Additionally, courts have held that the news media status "focuses on the nature of the requester, not its request. The provision requires that the request be "made by" a representative of the news media. *Id.* § 552(a)(4)(A)(ii)(II). A newspaper reporter, for example, is a representative of the news media regardless of how much interest there is in the story for which he or she is requesting information." As such, the details of the request itself are moot for the purposes of determining the appropriate fee category.

The disclosure is "likely to contribute" to an understanding of government operations or activities.

While I do not need to explain the specifics of why I make each individual request, these documents will help me to better inform the public about potential waste, fraud or abuse, gross negligence or abuse of authority, or threats to public health and safety or the environment. All of this will serve the American people and strengthen our country.

The Government Accountability Project's Public Interest Status and History

GAP is a non-profit, non-partisan, public interest organization chartered under IRS Code §501 (C)(3) as a non-profit, educational and charitable organization. We seek to serve the public through achieving governmental accountability by protecting and encouraging federal and corporate employees who observe or are victimized by wrongdoing, gross waste of public funds, threats to public health and safety, environmental

contamination, corruption, abuse of the public trust and other abuses of power.

GAP accomplishes these goals primarily by conducting advocacy campaigns before Congress, through the media, and for the general public and by providing legal representation to whistleblowers to combat the retaliation they have suffered in exercising their right of occupational free speech. Our twin aims are to promote corporate and government accountability and to expose, investigate, and correct substantive problems that formed the basis of protected whistleblowing disclosures. GAP's role is well-recognized by the courts and, as an organization, has informational standing under the First Amendment protecting its receipt of disclosed information. *Taylor v. RTC*, 56 F.3d 1437 (D.C. 1995); *United States v. Garde*, 573 F. Supp. 604 (D.D.C. 1987); ~ *Generally Virginia Pharmacy Bd. v. Virginia Consumer Council*, 425 U.S. 748, 756-57 (1976).

GAP has a 20-year history of working in the public interest. GAP does not take individual cases based on the client's ability to pay, how much money GAP believes it can recover in legal fees through litigation or any other commercial interest.

GAP takes cases of legitimately harassed whistleblowers, often pro-bono (without charge), that further public policy or legislative changes that make the law stronger for workers who witness and choose to tell the truth about corporate and taxpayer-financed wrongdoing and to pursue exposure and resolution of the wrongdoing.

GAP has, among other things, pushed for enactment of several whistleblower protection statutes, exposed unhealthy food at supermarket chains, pushed for independent reviews of the safety of the Alaska pipeline, exposed the threat of explosion in waste tanks at the Hanford nuclear site, and pushed for policy reform within numerous executive agencies. All this activity is done primarily with the interest of the public in mind.

Non-commercial use of the Requested Information

Disclosure of this information by GAP is in no way connected with any commercial interest since GAP is a non-profit, tax-exempt organization under § 501 (c)(3) of the IRS Code. The information we are seeking is crucial to advance public knowledge and will not be put to any commercial use.

Reducing Request Workload

Please begin working on the request while processing the request for a fee waiver.

Please send me documents electronically.

Please be reminded that under the Freedom of Information Act, we are entitled to a response to this request within twenty working days. Should this request be denied for any reason, we ask that a detailed explanation be provided along with the name of the person to whom administrative appeals should be addressed.

If my request is taking a large amount of time, please process it in tranches so I may begin processing the documents while waiting for the request to be filled.

Thank you in advance for your assistance and cooperation,

Zack Kopplin, Investigator and Outreach Associate
Government Accountability Project
225-715-5946

