



U.S. Customs and
Border Protection

DIS-3 OT:RR:RDL:FAPL
CBP-AP-2018-006188 EAC

SEP 10 2018

Mr. Michael Corey
Reveal
1400 65th St.
Suite 200
Emeryville, CA 94608

Re: Freedom of Information Act Appeal of File No. CBP-2017-051381

Dear Mr. Corey:

This is in reply to a letter, with exhibits, dated October 17, 2017, to U.S. Customs and Border Protection ("CBP") which was received by our office on October 27, 2017. The letter was submitted by Attorney D. Victoria Barenetsky on your behalf and pertains to a Freedom of Information Act ("FOIA") (5 U.S.C. § 552) request you filed with CBP. As you filed the initial FOIA request and maintain a *FOIAOnline* account linked to this case, we are directing our response to this matter to your attention.

The above-referenced letter appeals the August 3, 2017, response of the CBP FOIA Division to your April 24, 2017, FOIA request for certain records. In this respect, you requested:

Any and all submissions, records, documents, white papers, memoranda and/or alike material related to border fence/border wall contract proposals, i.e. HSBP1017R0022, HSBP1017R0023, 2017-JC-RT-0001 and 2017-DHS-OCPO-RFI-0001 from the date of posting to the present. Relevant records include but are not limited to:- Phase I proposal submissions – Notifications sent to submitters of proposals, whether successful or no – Phase II proposal submissions – All schedules, calendars and itineraries related to prototype presentations – Any and all recordings of prototype presentations – Any maps, GIS data, geotechnical data or site conditions information regarding the prototype site – Any materials related to scoring proposals and/or testing of prototypes and/or mockups – Results and/or scoring of prototypes and mockups – Border Patrol-approved design standards for fence/wall – Aerial and/or satellite photos of the prototype location – Evaluations, assessments, analyses, summaries, reviews and/or reports regarding the bid, submission, evaluation and prototype process.

In response to your request, the FOIA Division stated that a search of CBP databases produced records that were responsive to your request. However, the FOIA Division stated that the responsive records were properly withheld from disclosure pursuant to FOIA Exemption (b)(4) (5 U.S.C. § 552 (b)(4)).

Exhibit F

You appeal the FOIA Division's determination to withhold the responsive documents from disclosure. Your submission states that there are no trade secrets in the requested documents which should be withheld pursuant to Exemption (b)(4). Moreover, your appeal asserts that the Requests for Proposals ("RFP's") repeatedly indicated that any information gathered through the proposal process would be in the public domain and not be considered confidential. Your appeal highlights specific portions of various CBP documents to support this position.¹ Portions of the specifically-identified documents state "the Government is not open to any form of proprietary design or equipment," "No parts of this contract are classified," and, "All such materials are to remain within the public domain." For these reasons, your appeal argues that the documents also cannot be considered commercial or financial information that is privileged or confidential under Exemption (b)(4). Lastly, you appeal the FOIA Division's determination to withhold the records in their entirety, stating that the decision to withhold the records in their entirety was overbroad and that there should be segregable information in the documents which should be released.

In order to process your appeal, we considered the parameters of your initial request, the FOIA Division's response to your initial request, and the arguments set forth in your appeal. As indicated above, you appeal the FOIA Division's determination stating that there should be segregable information in the documents that were withheld in their entirety. We have reviewed responsive records that were provided by the CBP Office of Facilities and Asset Management ("OFAM"), CBP Office of Information Technology ("OIT"), and CBP Office of Acquisition ("OA"). We note that OFAM, OIT, and OA are within CBP Enterprise Services and that these were the most appropriate components to contact within CBP concerning your FOIA appeal. The search by these offices produced 6,762 pages of responsive documents. The documents consist of records such as contractor bid and proposal documents, an interagency acquisitions supplement draft document, best procurement approach for assisted acquisition draft document, terms and conditions for assisted acquisitions draft, border wall funding draft spreadsheets, draft interagency agreements, proposed responses to U.S. Senator questions with edits, border wall communication and outreach strategy plan and outline, internal white paper draft documents pertaining to acquiring prototype wall designs, draft schedules pertaining to border wall matters, internal risk registers, U.S. Border Patrol facilities and tactical infrastructure and Air and Marine PMO wall project requirements document, maps with proposed tactical infrastructure projects, contracts, amendments, and various emails. We note that a number of the documents (for example, the contract and amendment documents) are publicly available on the Federal Business Opportunities website at www.fbo.gov and have also been provided as attachments to your appeal. Therefore, some of the documents that are being released to you with this decision may be duplicative of what you already have. However, we have processed all of the documents that were provided by OFAM, OIT, and OA in order to ensure a thorough review of your appeal was completed.

Upon our review of the 6,762 pages of documents under consideration in this case, we have determined that 5,588 of the pages will be withheld from disclosure pursuant to FOIA Exemptions (b)(3), (b)(4), (b)(5), (b)(6), (b)(7)(C), and (b)(7)(E) (5 U.S.C. §§ 552 (b)(3),

¹ The documents are set forth as Exhibits in your submission. The Exhibits consist of Standard Form 30 (Amendment of Solicitation/Modification of Contract) amendments in which CBP responded to questions pertaining to the RFP's or incorporated revisions to the solicitations that were made as a result of the answers to certain questions.

(b)(4), (b)(5), (b)(6), (b)(7)(C), and (b)(7)(E)). In addition, we have determined that 155 pages of documents will be released to you with redactions made pursuant to FOIA Exemptions (b)(4), (b)(5), (b)(6), (b)(7)(C), and (b)(7)(E). Lastly, we have determined that the remaining 1,019 pages of documents will be released to you without redaction. Below is a discussion of how we applied the FOIA Exemptions to the documents that are under consideration in this case.

The FOIA "was enacted to facilitate public access to Government documents." U.S. Dep't of State v. Ray, 502 U.S. 164, 173 (1991). The predominant objective of the FOIA is the disclosure of executive branch information that is maintained by the Federal Government to the public unless the requested records contain certain categories of information that are exempt or excluded from compelled disclosure. FOIA provides nine exemptions and three exclusions pursuant to which an agency may withhold requested information. Thus, the public's right to government information is not without limits. However, FOIA exemptions are to be narrowly construed, and the burden is on the government to demonstrate that the materials sought may be withheld due to one or more of the exemptions. In any event, the FOIA provides that any non-exempt information that is reasonably segregable from the requested records must be disclosed. The segregability requirement limits claims of exemption to discrete units of information; to withhold an entire document, all units of information in that document must fall within a statutory exemption. See, Trans-Pacific Policing Agreement v. U.S. Customs Serv., 177 F. 3d 1022, 1027 (D.C. Cir. 1999).

Exemption (b)(3) of the FOIA protects information specifically exempted from disclosure by another statute, if the statute (A) requires that the matters be withheld from the public in such a manner as to leave no discretion on the issue, or (B) established particular criteria for withholding or refers to particular types of matters to be withheld. In applying Exemption (b)(3), we initially note that The Court of Appeals for the District of Columbia Circuit has held that records may be withheld under the authority of another statute pursuant to Exemption (b)(3) "if – and only if – that statute meets the requirements of Exemption 3, including the threshold requirement that it specifically exempt matters from disclosure." Reporters Comm. for Freedom of the Press v. DOJ, 816 F.2d 730, 734 (D.C. Cir. 1987), modified on other grounds, 831 F.2d 1124 (D.C. Cir. 1987), rev'd on other grounds, 489 U.S. 749 (1989). In Reporters Committee, the D.C. Circuit further stated that "[a] statute that is claimed to qualify as an Exemption 3 withholding statute must, on its face, exempt matters from disclosure. [The court] must find a congressional purpose to exempt matters from disclosure in the actual words or the statute (or at least in the legislative history of FOIA) – not in the legislative history of the claimed withholding statute, nor in an agency's interpretation of the statute." Reporters Comm., 816 F.2d at 735; see also, Pub. Citizen, 533 F.3d at 813-14; Nat'l Ass'n of Home Builders, 309 F.3d at 37 (finding that statute failed to qualify as withholding statute under Exemption (b)(3)).

Proposals in the possession or control of a Federal agency were specifically prohibited from being disclosed to any person under the FOIA pursuant to The National Defense Authorization Act of 1997 (codified at 41 U.S.C. § 253b(m) and currently located at 41 U.S.C. § 4702(b)). Under 41 U.S.C. § 4702(c), Federal agencies are prohibited from releasing any such proposals unless a proposal is set forth or incorporated by reference in a contract entered

into between the agency and the contractor that submitted the proposal. "Proposal" is defined under the statute as a proposal, including a technical, management, or cost proposal, submitted by a contractor in response to the requirements of a solicitation for a competitive proposal. 41 U.S.C. § 4702(a).

In this case, the submissions that were submitted in response to the RFP's for prototype builds of the border wall are considered to be proposals as defined under 41 U.S.C. § 4702(a). In this respect, the submissions contain concept papers, proposed contracts, financial information, technical diagrams, and other related information. We also note that the proposals that were submitted were not selected by CBP for inclusion in a contract or otherwise incorporated into a contract by reference. As noted above, any such proposals are clearly prohibited from release by statute. See also, Hornbostel v U.S. Dep't of the Interior, 305 F. Supp. 2d 21, 30 (D.D.C. 2003), summary affirmance granted, No. 03-5257, 2004 WL 1900562 (D.C. Cir. Aug. 25, 2004). Therefore, we have applied Exemption (b)(3) to withhold 5,482 pages of these documents from release.

Exemption (b)(4) of the FOIA protects trade secrets and commercial or financial information obtained from a person [that is] privileged and confidential. Redactions have been made pursuant to Exemption (b)(4) in this case to withhold information pertaining to contractor resources that are dedicated to construction, contractor border security capabilities, financial data, and other contract management information that is unique to each submitter such as specific measures undertaken to enhance overall contract performance. We note that Exemption (b)(4) has been applied to portions of the documents that are being released to you as well as to 4,999 pages of the documents that are being withheld in their entirety. Because the information that is being withheld does not relate to trade secrets, Exemption (b)(4) will only apply to: "(1) commercial and financial information, (2) obtained from a person or by the government, (3) that is privileged and confidential." Watkins v. Customs & Border Protection, 2011 U.S. App. LEXIS 9443 at 9 (9th Cir. May 6, 2011).

As applied to the instant case, the information redacted pursuant to Exemption (b)(4) is clearly commercial. Although not all information submitted to the government by a commercial entity will be protected by Exemption (b)(4), the courts interpret the term broadly and extend the exemption to cover any information in which a third party has a "commercial interest." Baker & Hostetler LLP v. Department of Commerce, 473 F.3d 312, 319 (D.C. Cir. 2006).

Similarly, the information at issue was obtained by a "person," satisfying the second prong of Exemption (b)(4)'s requirements. Courts also interpret this prong broadly so as to include any information submitted by "an individual, partnership, corporation, association or public or private organization other than the agency." Nadler v. FDIC, 92 F. 3d 93, 95 (2d Cir. 1996). Here, the redacted information was provided to CBP by private parties which each clearly fit the description of "person" within the meaning of Exemption (b)(4).

We must next determine whether the redacted information is considered to be "privileged and confidential" within the meaning of Exemption (b)(4). Whether information submitted to a federal agency is considered "confidential" under Exemption (b)(4) depends on

whether the information was a required or voluntary submission to the government. If the government required submission of the information, the exemption will only protect commercial or financial material that is likely to: “(1) impair the government’s ability to obtain necessary information in the future; or (2) cause substantial harm to the competitive position of the person from whom the information was obtained.” National Parks and Conservation Association v. Morton, 498 F.2d 765, 770 (D.C. Cir 1974). In contrast, Exemption (b)(4) offers broader protection for any financial or commercial information provided to the government on a voluntary basis. In such situations, information will be protected in all cases so long as “it is of a kind that a provider would not customarily release to the public.” Critical Mass Energy Project v. Nuclear Regulatory Commission, en banc, 975 F.2d 871, 872 (D.C. Cir. 1992).

Here, each party voluntarily submitted a proposal in response to the RFP’s in order to be awarded a contract by CBP to build a prototype of the border wall. However, CBP *required* the submission of the information at issue in order to adequately evaluate the proposals and ultimately award the contracts to build the prototypes of the wall. Therefore, because CBP required the submissions, in order to qualify for protection under Exemption (b)(4), disclosure of the information must be likely to (1) impair the government’s ability to obtain necessary information in the future; or (2) cause substantial harm to the competitive position of the person from whom the information was obtained.

In this case, we have determined that release of the information that is being withheld would cause substantial harm to the competitive positions of the submitters. In this regard, release of the information would clearly reveal the competitive vulnerabilities and operational capabilities of various firms. Releasing the information that is being withheld would enable competitors to exploit this information for their benefit by enhancing their ability to obtain future government contracts by formulating and altering their business strategies. This would thereby substantially harm the competitive positions of the CBP contractors by undercutting their ability to obtain future contracts. Accordingly, we determine that this information is exempt from disclosure pursuant to Exemption (b)(4).

In applying Exemption (b)(4), we have considered your argument that the RFP’s repeatedly indicated that any information gathered through the proposal process would be in the public domain and not be considered confidential. We do not believe the specific provisions you highlighted are applicable to this FOIA matter. For example, you have highlighted only a specific portion of one document that states “All such materials are to remain in the public domain.” The clause you have cited states, in part, that:

Article C.13 Special Considerations

Neither the Contractor nor any subcontractor or representative thereof shall release or publish any sketch, photograph, report or other material of any nature derived or prepared under and resulting task order without specific written permission of the Contracting Officer except as specifically provided in the SOW.

Copyright shall not be claimed by the Contractor for any materials produced under any

resulting task order. All such materials are to remain within the public domain.

As stated above, we do not believe this provision or the others that you have highlighted in the attachments to your appeal are applicable to this case.

Exemption (b)(5) of the FOIA protects inter-agency or intra-agency memorandums or letters which would not be available by law to a party other than an agency in litigation with the agency. The statutory language unequivocally incorporates all civil discovery rules into FOIA Exemption (b)(5). The three primary, most frequently invoked privileges that have been held to be incorporated into Exemption (b)(5) are the deliberative process privilege, the attorney work-product privilege, and the attorney-client privilege.

The most commonly invoked privilege incorporated within Exemption 5 is the deliberative process privilege, the general purpose of which is to “prevent injury to the quality of agency decisions.” NLRB v. Sears, Roebuck & Co., 421 U.S. 132, 151 (1975). Specifically, three policy purposes consistently have been held to constitute the basis for this privilege: (1) to encourage open, frank discussions on matters of policy between subordinates and superiors; (2) to protect against premature disclosure of proposed policies before they are finally adopted; and (3) to protect against public confusion that might result from disclosure of reasons and rationales that were not in fact ultimately the grounds for an agency’s actions. See, e.g., Russell v. Dep’t of the Air Force, 682 F.2d 1045, 1048 (D.C. Cir. 1982); Coastal States Gas Corp. v. Dep’t of Energy, 617 F.2d 854, 866 (D.C. Cir. 1980). Traditionally, the courts have established two fundamental requirements, both of which must be met, for the deliberative process privilege to be invoked. Petroleum Info. Corp. v. United States Dep’t of the Interior, 976 F.2d 1429, 1434 (D.C. Cir. 1992). First, the communication must be predecisional, and second, the communication must be deliberative in that it makes recommendations or expresses opinions on legal or policy matters. Vaughn v. Rosen, 523 F.2d 1136, 1143-44 (D.C. Cir. 1975).

As applied, we initially note that the information withheld pursuant to the Exemption (b)(5) deliberative process privilege includes documents such as the interagency acquisitions supplement draft document, best procurement approach for assisted acquisition draft document, terms and conditions for assisted acquisitions draft document, border wall funding draft spreadsheets, draft interagency agreements, proposed responses to U.S. Senator questions with edits, border wall communication and outreach strategy plan and outline, internal white paper draft documents pertaining to acquiring prototype wall designs, draft schedules pertaining to border wall matters, internal risk registers, U.S. Border Patrol facilities and tactical infrastructure and Air and Marine PMO wall project requirements document, maps with proposed tactical infrastructure projects, and portions of certain emails. In determining that this information is properly withheld from disclosure pursuant to Exemption (b)(5), we note that the initial consideration that must be made is whether the information being withheld is of the type intended to be covered by the phrase “inter-agency” or “intra-agency memorandums.” The information being withheld pursuant to Exemption (b)(5) in this case was created by CBP employees in order to develop, examine, or propose CBP policies relating to the border wall. Therefore, the initial threshold requirement of Exemption (b)(5) is met in this case.

Having satisfied the threshold requirement of Exemption (b)(5), we must next consider whether the information that is being withheld is considered both predecisional and deliberative in nature. In considering this issue, we note that the Supreme Court has held that “[a]gencies are, and properly should be, engaged in a continuing process of examining their policies; this process will generate memoranda containing recommendations which do not ripen into agency decisions...”. Sears, 421 U.S. at 151 n. 18. As such, courts have held that Exemption (b)(5) can be applicable if documents are generated as part of such a continuing process of decision making. See, e.g., Cassad v HHS, 301 F.3d 1247, 1252 (10th Cir. 2002). Categories of documents that are routinely protected by the deliberative process privilege are “advisory opinions, recommendations, and deliberations comprising part of a process by which governmental decisions and policies are formulated.” Sears, 421 U.S. at 150. They are protected because, by their very nature, their release would likely “stifle honest and frank communication within the agency.” Coastal States, 617 F.2d at 866. To this end, it has been recognized that “[t]he deliberative process privilege rests on the obvious realization that officials will not communicate candidly among themselves if each remark is a potential item of discovery and front page news.” See, Dep’t of the Interior v. Klamath Water Users Protective Ass’n, 532 U.S. 1, 8-9 (2001).

In the instant case, we find that the information that is being withheld pursuant to Exemption (b)(5) is predecisional and deliberative in that it consists of evaluations, opinions, observations, and other findings that CBP employees have deemed critical as part of administering the evolving and ongoing border wall construction process. We have determined that these documents are predecisional and deliberative in nature in that they contain information under consideration by CBP as the agency moves towards a decision on how to proceed with this process. In this regard, the authors of the documents are selecting specific facts out of a larger group of facts and this constitutes an exercise of judgment by CBP personnel and this very act is deliberative in nature. Release of the documents and information would reveal how CBP employees are prioritizing different facts and what facts they consider to be important in the process. In addition, releasing these documents could result in confusion regarding reasons and rationales that may not ultimately be the grounds for any actions the agency may take regarding the ongoing construction process. Moreover, release of these documents could chill open and frank discussions among CBP employees. We specifically note that the documents contain employee findings; alternatives/advantages/disadvantages/recommendations for different construction and procurement scenarios; suggested text proposals for agreements and other documents; internal funding calculations; employee edits; proposed construction schedules; proposed courses of action; and, analyses of proposed tactical infrastructure projects. The act of distilling the evidence, which involves separating the significant facts from the insignificant facts, constitutes an exercise of judgment by agency personnel. Such selective facts are therefore entitled to the same protection as afforded to purely deliberative materials, as their release would permit indirect inquiry into the mental processes of employees and expose agency deliberations. If disclosed, this information could result in confusion regarding reasons and rationales that are not ultimately the grounds for the agency’s actions and would chill open and frank discussions among those CBP employees that are involved in the border wall construction and contracting processes. This deliberative and pre-decisional information is precisely the type of material that the exemption was intended to cover as the information

reflects agency deliberations and is therefore properly withheld from disclosure pursuant to FOIA Exemption (b)(5).

In addition, we also note that courts have found that “drafts” are a category of document that is particularly likely to be found exempt under the deliberative process privilege. Abdelfattah v. DHS, 488 F.3d 178, 183 (3d Cir. 2007); Gerstein v. CIA, No. 06-4643, 2008 WL 4415080, at *16 (N.D. Cal. Sept. 26, 2008) (protecting draft letters); Donham v. U.S. Forest Service, No. 07-111, 2008 WL 2157167, at *5 (S.D. Ill. May 21, 2008) (finding draft documents to be “precisely the kind of documents that Exemption 5 and the deliberative process privilege seek to protect from disclosure”); Pub. Employees for Env'tl Responsibility v. Bloch, 532 F. Supp. 2d 19, 22 (D.D.C. 2008) (protecting draft “position descriptions”); Ebersole v. United States, No. 06-2219, 2007 WL 2908725, at *5 (D. Md. September 24, 2007) (protecting draft memorandum of understanding, noting that draft “does not memorialize a final agency decision”); Judicial Watch, Inc. v. U.S. Dep't of Commerce, 337 F. Supp. 2d 146, 174 (D.D.C. 2004) (protecting draft agreement and draft of letter from Secretary of Commerce). Therefore, we find that the draft documents are properly withheld from disclosure pursuant to Exemption (b)(5).

Exemption (b)(6) permits the Government to withhold all information about individuals in “personnel and medical files and similar files” when the disclosure of such information “would constitute a clearly unwarranted invasion of personal privacy.” Once the threshold requirement is met, Exemption (b)(6) requires a balancing of the public’s right to know against an individual’s right to privacy to determine whether disclosure of the records at issue would constitute a clearly unwarranted invasion of a person’s privacy. Dep't of the Air Force v. Rose, 425 U.S. 352 (1976). It must be ascertained whether a protectible privacy interest exists that would be threatened by disclosure. In order to compel release of materials, there must be a public interest because “something, even a modest privacy interest outweighs nothing every time.” Cappabianca v. Comm'r, U.S. Customs Serv., 847 F. Supp. 1558 (M.D. Fla. 1994).

In this case, we have determined that you have no genuine and significant interest in the names and other identifying information (for example, telephone numbers, email addresses, photographs) of the Federal employees and other third-parties that are located in the documents, nor have you asserted any public interest in the disclosure of this information. Further we find that the individual’s right to privacy outweighs whatever public interest, if any, might exist in knowing information such as their identity. Accordingly, Exemption (b)(6) has been applied to withhold this information from disclosure in the documents that are being released to you as well as in the documents that are being withheld from disclosure.

In addition to Exemption (b)(6), the information identifying the Federal employees and other third parties is also withheld under Exemption (b)(7)(C). Exemption (b)(7)(C) provides protection for personal information in law enforcement records, the disclosure of which “could reasonably be expected to constitute an unwarranted invasion of personal privacy.” The names of Federal employees as well as third-party individuals mentioned in law enforcement records are exempt from disclosure pursuant to Exemption (b)(7)(C). This exemption is designed to protect, among other interests, the interests of law enforcement personnel from “harassment and annoyance in the conduct of their official duties and in their private lives” which could

conceivably result from public disclosure of their identity. Nix v. United States, 572 F.2d 998, 1006 (4th Cir. 1978). In addition, the exemption is also intended to protect third-parties whose identities are revealed in law enforcement files from comment, speculations, and stigmatizing connotation associated with being identified in a law enforcement record. Lesar v. United States, 636 F.2d 472 (D.C. Cir. 1980).

The documents under consideration in this case relate to construction of a border wall which is meant to deter illegal crossings and to protect the United States from other outside threats. Therefore, the records are considered law enforcement records compiled in furtherance of CBP's law enforcement mission. Moreover, the individuals whose privacy would be subject to invasion are identified in the various documents and such invasion of privacy is unwarranted. There is no public interest to be served by placing the identities or personally identifying information of the individuals before the public. Therefore, Exemption (b)(7)(C) has also been properly applied throughout the records to withhold this information from disclosure.

Exemption (b)(7)(E) exempts from disclosure information that would disclose techniques and procedures for law enforcement investigations or prosecutions, or would disclose guidelines for law enforcement investigations or prosecutions if such disclosure could reasonably be expected to risk circumvention of the law. See, Fisher v. U.S. Dep't of Justice, 772 F. Supp. 7 (D.D.C. 1991) (explicitly recognizing categorical protection for law enforcement techniques and procedures), aff'd, 968 F.2d 92 (1992); and, Hammes v. U.S. Customs Service, 1994 WL 693717 (S.D.N.Y. 1994) (protecting criteria used to determine which passengers to stop and examine). Exemption (b)(7)(E) is designed to provide categorical protection for law enforcement techniques and procedures. See, Beck v. U.S. Dep't of the Treasury, No. 88-493 (D.D.C. 1989), aff'd, 949 F.2d 1563 (D.C. Cir. 1992) (approving nondisclosure of certain documents because disclosure would reveal surveillance techniques used by Customs, as well as why certain individuals were contacted with regard to investigations).

In this case, Exemption (b)(7)(E) has been applied to withhold from disclosure sensitive law enforcement information. The information that is being withheld from disclosure pursuant to FOIA Exemption (b)(7)(E) includes information relating to tactical infrastructure construction plans that could reveal potential strengths or vulnerabilities to violators as well as other sensitive information relating to U.S. Government border facilities and operations. In this regard, an example of the information that is being withheld includes the locations of U.S. Border Patrol forward operating bases and checkpoints which are strategically located for the sustainment of tactical operations. In addition, tactical infrastructure construction plans that set forth the specific locations of cables, cameras, and other detection technologies have been withheld from disclosure as well as information pertaining to specific fence vulnerabilities and proposed surveillance techniques intended to better deter illegal crossings. Internal risk assessments that were developed to analyze the foregoing projects have also been withheld pursuant to Exemption (b)(7)(E) as they discuss sensitive CBP law enforcement information. In making the determination to withhold this information from disclosure, we note that the border wall and other tactical infrastructure projects are law enforcement tools that CBP utilizes to enforce the immigration and narcotics laws of the United States as well as to perform

its homeland security mission. The information has been withheld from disclosure in order to protect this sensitive law enforcement information. Release of the information would enable individuals to develop countermeasures to evade border security measures thereby circumventing the law. Also, internal CBP accounting and data codes have been withheld from disclosure pursuant to Exemption (b)(7)(E). This information has been redacted in order to protect CBP's methods for categorizing, identifying, and navigating certain law enforcement records. Release of this information could enable individuals to identify and potentially access law enforcement records and CBP databases without authorization thereby circumventing the law. Therefore, Exemption (b)(7)(E) has been applied to certain documents to withhold this information from disclosure.

The Freedom of Information Act, particularly Title 5 U.S.C. § 552 (a)(4)(B), provides you with the opportunity to seek judicial review of this administrative appeal. You may institute judicial review in the United States District Court in the district in which you reside, have a principal place of business, where the agency records are located, or in the United States District Court for the District of Columbia.

As part of the 2007 FOIA amendments, the Office of Government Information Services ("OGIS") was created to offer mediation services to resolve disputes between FOIA requesters and Federal agencies as a non-exclusive alternative to litigation. Using OGIS services does not affect your right to pursue 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. You may contact OGIS in any of the following ways:

Office of Government Information Services
800 N. Capitol Street, Suite 795
Washington, DC 20002

Telephone: 202-741-5770
Facsimile: 202-741-5769
www.archives.gov/ogis

Sincerely,



Shari Suzuki, Chief
FOIA Appeals, Policy, and Litigation
Regulations and Rulings
Office of Trade

Enclosures