

Exhibit 4



Nathan Woodliff-Stanley, Executive Director
Mark Silverstein, Legal Director

May 25, 2018

SENT VIA FEDEX

**U.S. Immigration and Customs Enforcement
Office of the Principal Legal Advisor
U.S. Department of Homeland Security
500 12th Street, S.W., Mail Stop 5900
Washington, D.C. 20536-5900**

***RE: Freedom of Information Act Appeal – ICE FOIA Case Number
2017-ICFO-19753***

Dear Office of the Principal Legal Advisor:

The American Civil Liberties Union Foundation of Colorado (ACLU) appeals the enclosed decision by U.S. Immigration and Customs Enforcement (ICE), dated March 8, 2018 and signed on behalf of FOIA Officer Catrina M. Pavlik-Keenan. ICE provided this decision in response to the enclosed request for records under the Freedom of Information Act (FOIA), 5 U.S.C. § 552, and the Privacy Act, 5 U.S.C. § 552a. The ACLU appeals the decision pursuant to 5 U.S.C. § 552(a)(6) and 6 C.F.R. § 5.8.

Please note that this letter does not contain an exhaustive explanation of bases for the ACLU's appeal. It is difficult to ascertain and respond to ICE's decision where it has withheld the vast majority of responsive records. *See, e.g., Vaughn v. Rosen*, 484 F.2d 820, 823 (D.C. Cir. 1973) ("In light of [FOIA's] overwhelming emphasis upon disclosure, it is anomalous but obviously inevitable that the party with the greatest interest in obtaining disclosure is at a loss to argue with desirable legal precision for the revelation of the concealed information."). We merely aim to highlight some objectionable bases for ICE's decision.

According to the letter, ICE conducted two searches, including a search of the Office of Enforcement and Removal Operations (ERO). This search apparently produced a total of five responsive pages, which contain multiple redactions. We question whether a complete search was conducted, and would ask what repositories, custodians, and search terms were considered.

The second search “was tasked to the ICE Office of Professional Responsibility (OPR) and it was determined that due to the open status of the ongoing investigation that any information pertaining to the investigation is withholdable in its entirety pursuant to Exemption (b)(7)(A) of the FOIA” Based on this response we would expect ICE to produce the investigation file upon the conclusion of the investigation. However, we dispute this blanket attempt to apply Exemption (b)(7)(A) to the entire investigation file, regardless of whether the investigation is open or closed. Courts have held that “an agency’s investigation of its own employees is for ‘law enforcement purposes’ only if it focuses ‘directly on specifically alleged illegal acts, illegal acts of particular identified officials, acts which could, if proved, result in civil or criminal sanctions.’” *Stern v. FBI*, 737 F.2d 84, 89 (D.C. Cir. 1984) (quoting *Rural Housing Alliance v. U.S. Dep’t of Agriculture*, 498 F.2d 73, 81 (D.C. Cir. 1974)). Specifically, when OPR has tried to invoke Exemption 7(A), courts have required “an evidentiary record produced by OPR to support a finding that all [requested records] are law enforcement records.” *Jefferson v. DOJ*, 284 F.3d 172, 179 (D.C. Cir. 2002). ICE has made no such record here.

We also object to ICE’s repeated reference to the “minimal public interest in disclosure of the information.” In a high-profile incident that has drawn national interest, a member of the community died while in ICE’s custody, 17 days after ICE agents arrested and detained him. There is great public interest in understanding the details of the circumstances that led to his arrest, detention, and death. Courts have rejected ICE’s attempts to invoke Exemption 7(C), as it has done here, where the requester has demonstrated “the public’s interest in shedding light on improper Agency conduct.” *CASA De Md., Inc. v. U.S. Dep’t of Homeland Sec.*, 409 F. App’x 697, 700 (4th Cir. 2011).

I look forward to your response to this appeal within 20 working days, under 5 U.S.C. § 552(a)(6) and 6 C.F.R. § 5.8(d). Please do not hesitate to contact me if you have questions or would like to discuss the appeal. Thank you for your consideration.

Yours truly,



Arash Jahanian
Staff Attorney

Enclosures (2)