



October 2, 2015

VIA ELECTRONIC MAIL

U.S. Customs and Border Protection
FOIA Division
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Also filed through FOIA Online Portal,
<https://foiaonline.regulations.gov/foia/action/public/request/publicPreCreate>

Re: Freedom of Information Act (FOIA) Request

Dear FOIA Officer:

The American Immigration Council (“Immigration Council”) submits this letter as a request for information under the Freedom of Information Act (FOIA), 5 U.S.C. § 552, *et seq.* In addition, we ask for a fee waiver.

Request for Information

The Immigration Council seeks disclosure of the below specified records¹ that were prepared, received, transmitted, collected and/or maintained by the U.S. Department of Homeland Security (DHS) and/or U.S. Customs and Border Protection (CBP)² regarding CBP’s complaint process and the actions taken by CBP in response to complaints against its agents and officers. The Immigration Council has obtained similar records in the past. *See* File Numbers 2011F13090.

¹ The term “records” as used herein includes all records or communications preserved in electronic or written form, including but not limited to correspondence, regulations, directives, documents, data, videotapes, audiotapes, e-mails, faxes, files, guidance, guidelines, standards, evaluations, instructions, analyses, memoranda, agreements, notes, orders, policies, procedures, protocols, reports, rules, manuals, technical specifications, training materials or studies, including records kept in written form, or electronic format on computers and/or other electronic storage devices, electronic communications and/or videotapes, as well as any reproductions thereof that differ in any way from any other reproduction, such as copies containing marginal notations.

² The term “CBP” as used herein means CBP headquarters offices, including any divisions, subdivisions or sections therein; CBP field operations offices, including any U.S. Border Patrol or other sectors, sub-sectors, stations, substations, forward operating bases, divisions, subdivisions or sections therein; CBP offices at ports of entry, including any divisions, subdivisions or sections therein; and/or any other CBP organizational structures.

Requesters seek:

(1) A spreadsheet containing data reflecting the following for each individual incident referenced in a complaint filed with CBP's Office of Internal Affairs between January 1, 2012 and the date that an adequate search in response to this request is completed:

- a) Case number
- b) The date the alleged misconduct took place
- c) The date the complaint was received
- d) The complainant's age or date of birth
- e) The complainant's nationality or country of birth
- f) The complainant's gender
- g) The complainant's primary language
- h) Position title of the agent against whom the complaint was made
- i) Subject office (or border sector)
- j) Primary field description code
- k) Allegation summary
- l) Charge description
- m) Decision action
- n) Decision date
- o) The department or component which investigated each complaint

The Immigration Council seeks this data in a workable format, such as Excel but also seeks all records, as defined above, which respond to this request.

(2) Any records that explain the complaint process including protocols for receiving, reviewing, responding to, investigating, referring, and resolving complaints, including but not limited to the responsibility of all departments or components involved in the receipt or handling of complaints.

(3) Any records used by any CBP component or department that in any way provides information to the public, including but not limited to individuals apprehended and/or detained by CBP, about the process of filing a complaint against CBP, its components, or its agents or officers.

Request for Waiver of Fees

We ask that the agency waive all fees associated with this FOIA request. Such a waiver is warranted because disclosure of the information is "...likely to contribute significantly to public understanding of the operations or activities of the government and is not primarily in the commercial interest of the requester." 5 U.S.C. § 552(a)(4)(A)(iii); *see also* 6 C.F.R. § 5.11(k) (records furnished without charge or at a reduced rate if the information is in the public interest, and disclosure is not in commercial interest of institution). In addition, the Immigration Council has the ability to widely disseminate the requested information. *See Judicial Watch v. Rossotti*, 326 F.3d 1309 (D.C. Cir. 2003) (finding a fee waiver appropriate when the requester explained, in detailed and non-conclusory terms, how and to whom it would disseminate the information it received).

A. Disclosure of the Information Is in the Public Interest

Disclosure of the requested information will contribute significantly to public understanding of CBP, its complaint process, and the disciplinary and other actions taken as a result of complaints lodged against the agency. Such information is of great public interest. Over at least the last decade there have been a large number of allegations of abuse and misconduct by CBP officers, including Border Patrol agents; a high incidence of the use of deadly force; and a widespread perception that the agency's is insufficiently transparent and accountable.³ Reports about the lack of discipline of border agents have created concerns about current policies and practices.⁴

³ *See, e.g.,* Bob Ortega, *CBP: No Action Taken Against Border Agents in Deadly-Force Cases*, The Arizona Republic (Jun. 8, 2015), <http://goo.gl/Jq8gBy>; Charles Davis, *U.S. Customs and Border Protection Has Killed Nearly 50 People in 10 Years. Most Were Unarmed.*, The New Republic (Jan. 4, 2015), <http://goo.gl/fBuLc8>; Joesph Tanfani, *Border Agents Rarely Disciplined in Shooting Cases, Official Says*, Los Angeles Times (Sept. 12, 2014), <http://goo.gl/KSAMz7>; Bob Ortega, *Border Killings, 46 people Killed, No Agents Disciplined*, The Arizona Republic (Sept. 14, 2014), <http://goo.gl/y3aFvj>; American Civil Liberties Union San Diego & Imperial Counties, American Immigration Council, National Immigration Project, Northwest Immigrant Rights Project, *Hold CBP Accountable Stopping U.S. Customs and Border Protection (CBP) Abuse*, <http://holdcbpaccountable.org/>.

⁴ *See, e.g.,* CBP Integrity Advisory Panel, *Interim Report of the CBP Integrity Advisory Panel*, Homeland Security Advisory Panel (June 29, 2015), <http://goo.gl/KpgRHS>; American Immigration Council, *No Action Taken: Lack of CBP Accountability in Responding to Complaints of Abuse*, (May 2014), <http://goo.gl/I9280u>; Bob Ortega, *Secrecy Continues to Shroud Killings by Border Agents*, The Arizona Republic (Sept. 14, 2014), <http://goo.gl/3nRBja>; Garrett Graf, *The Green Monster How Border Patrol Became America's Most Out of Control Law Enforcement Agency*, Politico Magazine (October 29, 2014), <http://goo.gl/Spw72R>.

These incidents and concerns have prompted lawsuits and legislation.⁵ Though CBP use-of-force incidents have garnered increasing attention, much remains unknown about CBP's complaint process and disciplinary practices.

As discussed below, the Immigration Council has the capacity, intent and demonstrated ability to disseminate the requested information to a broad cross-section of the public, including the segment of the public most interested in and concerned about these immigration issues.

The Immigration Council is a non-profit organization established to increase public understanding of immigration law and policy, advocate for the fair and just administration of our immigration laws, protect the legal rights of noncitizens, and educate the public about the enduring contributions of America's immigrants. Our policy department researches issues related to immigration, and regularly provides information to leaders on Capitol Hill, the media, and the general public. Our legal department works with other immigrants' rights organizations and immigration attorneys across the United States to advance the fair administration of our immigration laws, including those relating to the removal process. The Council has synthesized and disseminated information from prior FOIA requests—including a prior request regarding discipline of officers⁶—to facilitate the sharing of this information with a broad public audience.⁷

The Immigration Council will analyze and post the information obtained through this FOIA request on its publicly accessible websites. The Immigration Council's website has received 2.6 million page views so far this year. If the responsive information is voluminous, the Immigration Council also will publish a summary analysis of such information and will disseminate that summary through its established networks. Finally, the Immigration Council has regular contact with national print and news media and plans to share information gleaned from FOIA disclosures with interested media.

B. Disclosure of the Information Is Not Primarily in the Commercial Interest of the Immigration Council

⁵ See e.g., American Civil Liberties Union San Diego & Imperial Counties, American Immigration Council, National Immigration Project, Northwest Immigrant Rights Project, *Hold CBP Accountable Stopping U.S. Customs and Border Protection (CBP) Abuse*, <http://holdcbpaccountable.org/>; H.R. REP. NO. 113-481, at 42 (2015). United States Customs and Border Protection Authorization Act, H.R. 878, 114th Cong. § 2(a) (2014); Border Enforcement Accountability, Oversight, and Community Engagement Act of 2014, H.R. 4303, 113th Cong. (2014).

⁶ American Immigration Council, *No Action Taken: Lack of CBP Accountability in Responding to Complaints of Abuse*, (May 2014), <http://goo.gl/I9280u>.

⁷ See also American Immigration Council, Fact Sheet, CBP Restrictions on Access to Counsel, available at <http://legalactioncenter.org/sites/default/Final%20CBP%20access%20to%20counsel%20FOIA%20factsheet%20%282%29.pdf>.

The Immigration Council is a not-for-profit organization. We seek the requested information for the purpose of disseminating it to members of the public who have access to our public website and other free publications, and not for the purpose of commercial gain.

* * *

Thank you for your prompt attention to this request. If you have any questions, please do not hesitate to contact us by telephone or email.

Sincerely,

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