

U.S. Department of Homeland Security
500 12th St., SW
Washington, D.C. 20536



**U.S. Immigration
and Customs
Enforcement**

January 29, 2021

Ms. Jacqueline Stevens
601 University Place, 2d floor
Political Science Department
Evanston, IL 60208

**RE: Stevens v. ICE 20-cv-2725
ICE FOIA Case Number 2020-ICLI-00042**

Dear Ms. Stevens:

This letter is a fourth interim response to your client's Freedom of Information Act (FOIA) requests to U.S. Immigration and Customs Enforcement (ICE). Your client seeks records relating to the following Freedom of Information Act requests: 2018-ICFO-56530, 2020-ICFO-18634, 2019-ICFO-33429, 2019-ICFO-29171, 2018-ICFO-59138, and 2019-ICFO-24680. ICE has considered your request under the FOIA, 5 U.S.C. § 552. This interim response provides documents responsive to your FOIA requests 2018-ICFO-59138 and 2020-ICFO-18634.

FOIA request 2018-ICFO-59138 seeks:

"A. The most recent Jail Services Costs Statement (JSCS) for the following facilities ICE uses to hold people under immigration laws:

- 1) the Berks County Residential Center, Berks County, PA;
- 2) South Texas Family Residential Center, Dilley, TX;
- 3) Hudson County Jail, Hudson County, NJ;
- 4) Stewart County, GA, (CoreCivic);
- 5) Aurora, Colorado (GEO)
- 6) Tacoma, WA (GEO)
- 7) Otay Mesa, CA (CoreCivic)
- 8) Eloy, AZ (CoreCivic)
- 9) Pinal County Jail, AZ
- 10) Otero County Processing Center, NM (MTC)
- 11) Joe Corley Detention Facility, Conroe TX (GEO)
- 12) Houston, TX (CoreCivic on Export Drive)
- 13) IAH, Secure Adult Detention Center (MTC) (Livingstone, TX)
- 14) LaSalle, LA

B. Memorandum from Michael J. Davidson, Chief, CALD, OPLA, ICE to William C. Randolph, Director and Head of Contracting Activity, OAO, ICE, Funding Intergovernmental Service Agreements (Feb. 7, 2013)

C. All information in any medium including but not limited to e-mail, text messages, reports, contracts, memoranda, letters, or faxes signed by, from, to OR about Charlie Dent, John McCormack, Eric Ruth, Matthew Lerch, Judith Kraine, Mark Baldwin, William Dennis, Thomas Gajewski, Judith Schwank, Mark Scott in ICE components that handle Berks County, PA ICE Intergovernmental Service Agreements (IGSAs) and not responsive to previous requests. This means any document under ICE control associated with detention or removal operations, facility leases, purchases, sales, or services rendered in Berks County, PA that references any of the individuals listed above is responsive to this request. Please make sure to inquire of any ICE component responsible for any negotiations with Berks County. The time frame of this request is 2000 to the present.

The most likely location of records responsive to this request are offices responsible for the Berks County, PA operations, contracts, and reviews, including but not limited to litigation for that facility. In particular, there should be communications in 2006 about ICE-contracted facility firings based on allegations of unlawful actions. Components within ICE that are alerted about misconduct or possible litigation should be searched for responsive records.

D. Please also include all grievance logs and grievances for Berks County, PA, Hudson County, NJ, and Otero County Processing Center, January 1, 2010 to present. (Names and other Personally Identifying information is of course exempt and may be redacted.)

E. All Jail Services Costs Statements for Berks County Family Facility and Hudson County, NJ 2001 to present.

F. Since January 1, 1999, the earliest first 100 pages of documents associated with the IGSA for:

1. Berks County, PA
2. Hudson County, NJ

For "F" please request documents of the component of ICE predecessor INS that would initiate discussions of IGSAs for the purposes of holding people under immigration laws. I am seeking the first information referencing these county governments as suitable detention locations by an INS component in any medium, including but not limited to emails, letters, proposals, memorandums, or reports.

G. All Evaluations associated with contracts for facilities below, including technical and performance evaluations by the Contracting Officers and ICE Detention Planning and Acquisition Unit and ongoing performance and renewals by contract officers EXCEPT Inspector reports. The time frame for this request is January 1, 2000 or the first year of the facility's submission of the JCSC through the present.

- 1) the Berks County Residential Center, Berks County, PA;
- 2) South Texas Family Residential Center, Dilley, TX;

- 3) Hudson County Jail, Hudson County, NJ;
- 4) Stewart County, GA, (CoreCivic);
- 5) Aurora, Colorado (GEO)
- 6) Tacoma, WA (GEO)
- 7) Otay Mesa, CA (CoreCivic)
- 8) Eloy, AZ (CoreCivic)
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- 12) Houston, TX (CoreCivic on Export Drive)
- 13) IAH, Secure Adult Detention Center (MTC) (Livingstone, TX)
- 14) LaSalle, LA

H. Evaluations of JCSCs by Contracting Officers and ICE Detention Planning and Acquisition Unit for all detention contracts since January 1, 2008.

I. Evaluations of the FIRST JCSCs by Contracting Officers and ICE Detention Planning and Acquisition Units (or their predecessors) for all currently operating ICE/INS detention facilities except as covered by (H)."

FOIA request 2020-ICFO-18634 seeks:

"1) All communications and related materials created, received, or maintained by the Department of Homeland Security to which Rep. Lauren Underwood (D-IL) or any member of her staff were a party. This includes but is not limited to all email, text messages, notes, reports, memorandums, proposed bill texts, and bill evaluations. Please note that in a floor speech of 9/26/2019 Rep. Underwood stated she received information from the 'Department of Homeland Security' indicating a request for an integrated Electronic Health Records System she referenced as 'EHR.' She refers to this in her remarks on HR 3525 as a 'direct ask from medical officers at the Department of Homeland Security.' Here is a link to the bill text in question: <https://www.congress.gov/bill/116th-congress/house-bill/3525/text> (It is possible that she actually had in mind Immigration and Customs Enforcement but failed to make this explicit. In the event, I am requesting all communications associated with this 'direct ask.')

2) DHS communications and related materials created by or received from other components of DHS or the Department of Health and Human Services Office of Refugee Resettlement about the use of Electronic Health Records systems already in place as well as the establishment of an EHR for the use by offices of CBP.

3) Information on meetings and communications with private individuals, including but not limited to lobbyists or company officials related to past, current, or potential 'enterprise' or other information technologies for collecting, coordinating, or maintaining health records data for those encountered or detained by DHS or any component of DHS. I have in mind technical reports, email, text messages, or other communications with the private sector tied to past, current, or potential contracts tied to EHR systems.

Information described above created by any party and directed to and accessible by employees of the U.S. Government are responsive to each part of this request. In other words, information on

'the cloud' to which employees of DHS or its components have access, even if it is privately owned, is responsive to this request should be produced as long as government employees reviewed the information in the course of their responsibilities for overseeing EHRs and related contracts as described above.

The time frame of this request is January 1, 2017 to the present, by which I mean the date a search is initiated by the tasked component."

ICE has considered your requests under the FOIA, 5 U.S.C. § 552.

ICE reviewed 500 pages of potentially responsive documents. For the pages ICE determined that 30 pages were deemed non-responsive in nature. Additionally, 39 pages were sent for consultation/referral to another agency. Once a response is received from the other agencies, ICE will process and release the pages subject to appropriate withholdings pursuant to the FOIA. Upon review, ICE has determined that the remaining portions of 431 pages will be withheld pursuant to FOIA Exemptions 4, 5, 6, 7(C), and 7(E) of the FOIA as described below:

ICE has applied FOIA Exemption 4 to protect confidential business information, including unit prices, which if released may give a pricing advantage to competitors.

FOIA Exemption 4 protects from disclosure trade secrets and commercial or financial information obtained from a person that is privileged or confidential. This exemption is intended to protect the interests of both the government and submitters of information. The existence of Exemption 4 encourages submitters to voluntarily furnish useful commercial or financial information to the government and provides the government with an assurance that required submissions will be reliable. The exemption also affords protection to those submitters who are required to furnish commercial or financial information to the government by safeguarding them from the competitive disadvantages that could result from disclosure.

ICE has applied FOIA Exemption 5 to protect from public disclosure intra-agency documents that contain the recommendations, opinions, and conclusions of agency employees, and portions of the responsive documents which qualify for protection under the deliberative process privilege and the attorney-client privilege.

FOIA Exemption 5 protects from disclosure those inter- or intra-agency documents that are normally privileged in the civil discovery context. The three most frequently invoked privileges are the deliberative process privilege, the attorney work-product privilege, and the attorney-client privilege. After carefully reviewing the responsive documents, I have determined that portions of the responsive documents qualify for protection under the deliberative process privilege and the attorney-client privilege. The deliberative process privilege protects the integrity of the deliberative or decision-making processes within the agency by exempting from mandatory disclosure opinions, conclusions, and recommendations included within inter-agency or intra-agency memoranda or letters. The release of this internal information would discourage the expression of candid opinions and inhibit the free and frank exchange of information among agency personnel. The attorney-client privilege protects confidential communications between an attorney and his client relating to a legal matter for which the client has sought professional advice. It applies to facts divulged by a client to his attorney, and encompasses any opinions given by an attorney to his client based upon, and thus reflecting, those facts, as well as

communications between attorneys that reflect client-supplied information. The attorney-client privilege is not limited to the context of litigation.

ICE has applied FOIA Exemptions 6 and 7(C) to protect from disclosure the personally identifiable information of DHS employees and third parties contained within the records.

FOIA Exemption 6 exempts from disclosure personnel or medical files and similar files the release of which would cause a clearly unwarranted invasion of personal privacy. This requires a balancing of the public's right to disclosure against the individual's right to privacy. The privacy interests of the individuals in the records you have requested outweigh any minimal public interest in disclosure of the information. Any private interest you may have in that information does not factor into the aforementioned balancing test.

FOIA Exemption 7(C) protects records or information compiled for law enforcement purposes that could reasonably be expected to constitute an unwarranted invasion of personal privacy. This exemption takes note of the strong interests of individuals, whether they are suspects, witnesses, or investigators, in not being unwarrantably associated with alleged criminal activity. That interest extends to persons who are not only the subjects of the investigation, but those who may have their privacy invaded by having their identities and information about them revealed in connection with an investigation. Based upon the traditional recognition of strong privacy interest in law enforcement records, categorical withholding of information that identifies third parties in law enforcement records is ordinarily appropriate. As such, I have determined that the privacy interest in the identities of individuals in the records you have requested clearly outweigh any minimal public interest in disclosure of the information. Please note that any private interest you may have in that information does not factor into this determination.

ICE has applied FOIA Exemption 7(E) to protect from disclosure internal agency law enforcement sensitive investigative techniques and internal agency URLs, agency case numbers, or database codes contained within the records.

FOIA Exemption 7(E) protects records compiled for law enforcement purposes, the release of which would disclose techniques and/or 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. I have determined that disclosure of certain law enforcement sensitive information contained within the responsive records could reasonably be expected to risk circumvention of the law. Additionally, the techniques and procedures at issue are not well known to the public.

If you have any questions about this letter, please contact Assistant United States Attorney Alex Hartzler at Alex.Hartzler@usdoj.gov.

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Sincerely,

ROLANDO
VELASCO JR

Digitally signed by
ROLANDO VELASCO JR
Date: 2021.01.29
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Senior Paralegal, ICE FOIA for

Fernando Pineiro Jr.
(A)FOIA Officer

Enclosure: 431 pages

Health Records Systems and Integration / Health IT / Telemedicine Workgroup

Agenda 2/24/2020
(times are approx)

1. Introductions (10min)
2. Tasks, deliverables, expectations: (20 min)
 - a. From the JES:
 - i. (JES) **Health Record System**. The account total includes \$30,000,000 derived from the rescission and re-appropriation of prior year emergency funds to enable the DHS CMO, in conjunction with CBP, ICE, and other operational components, to develop and establish interim and long-term electronic systems for recording and maintaining information related to the health of individuals in the Department's custody.
 - ii. (JES) **Health Record System**. A plan (and spend plan) for the design and development of such systems shall be provided to the Committees within 90 days of the date of enactment of this Act. (March 19, 2020)
 - b. Definitions and clarifications:
 - i. Determine working definition of "interim" and "electronic systems"
 - ii. Determine "plan" scope and define "system" vice "systems"
 - c. Develop Health Record System (HRS) Plan, including spend plan (3/5/20)
 - d. Develop Charter for HRS Oversight Board (HRSOB) (3/5/20)
 - e. Submit HRS Plan for Departmental Clearance
 - f. Submit Plan to Committee
3. Component descriptions of capabilities/issues/concerns/requirements regarding health records: (60 min max, with 5 min stretch break)
 - a. What types of activities does your component perform that might be construed as generally medical or health-related in nature?
 - b. What is the reporting structure for oversight of those activities?
 - c. What are the Systems of Records for those activities? In what format are those records kept (database, paper, etc)?
 - d. What other records are generated from those activities, including informal records? Are there repositories of legacy records that you deem valuable? In what format do all of these records occur (Excel, published reports, web page dashboards, retired database, etc)?
 - e. What outside systems do your records connect to / import from / export to? What systems do they need to connect to, but do not?
 - f. What contracts and systems support the creation, maintenance, or archiving of those records?
 - g. How much does your component budget annually to support those contracts, products, systems, and records?
 - h. What gaps do you perceive in the information returning to you from those records?
 - i. How would you close those gaps, and what would it cost?
 - j. What value would you find in having access to information or expertise from other DHS components? From outside agencies or non-Federal partners?
4. CMIO infographic concept for an integration platform solution (30 min max)

(b)(6); (b)(7)(C)

Subject: FY2020 DHS Health System Coordination Activities

Dear Colleagues,

As you are likely aware, you have been designated as a primary point of contact (POC) for your Component to assist the Office of the Chief Medical Officer (OCMO) with accomplishing the medical coordination activities and requirements described in the fiscal year (FY) 2020 DHS Appropriations Bill and Joint Explanatory Statement. I have attached a matrix that describes these activities and requirements. You will note that some of them have tight timelines, and I, in conjunction with your Component leadership, am required to brief the appropriations committees on or before March 19, 2020 on the progress made and future efforts planned toward meeting these requirements.

To design and implement our strategies for these activities I have identified seven working groups:

1. Disease Surveillance and Reporting
2. Health Records Systems and Integration/Health IT/ Telemedicine
3. Medical Guidance/Requirements
4. Quality Assurance/Performance Improvement
5. Outbreak Response (DHS Personnel and individuals in DHS care/custody)
6. DHS-wide Medical Response Strategy (Migration Surges – Annex Q, NSSEs, SEARs, Stafford Act Disasters)
7. CBP Implementation Plan for Medical Directive

I am requesting your assistance with identifying substantive experts/POCs from your respective Components to serve on each working group. **Please use the attached table to provide information on the POCs for your Component for each working group.** As the primary POC, you will be kept informed of each working group's activities and will be asked review policies and guidance, and to provide updates to your Component on the CMO's activities; however, the working group POCs on this table should have substantive expertise specific to each working group. Further, while each working group will have its own meeting and deliverable cadence, many of them will exist concurrently; therefore, it is best to have a specific POC for each working group. **Please submit your completed table to (b)(6); (b)(7)(C) Director of Health System Management, at (b)(6); (b)(7)(C) to no later than February 12, 2020.**

If you have any questions, please do not hesitate to contact me at (b)(6); (b)(7)(C) or you may contact (b)(6); (b)(7)(C) at (b)(6); (b)(7)(C)

Thank you for your assistance. We look forward to working with you to further enhance medical coordination activities within the Department.

Best regards,

(b)(6); (b)(7)(C) MD, MS
Chief Medical Officer

Department of Homeland Security

(b)(6); (b)(7)(C)

