
Dear Mr. Bressi:

The purpose of this correspondence is to address your request for an administrative appeal of the response of the Special Agent in Charge, Bureau of Immigration and Customs Enforcement (ICE), Tucson, Arizona, dated October 15, 2003, pursuant to the Freedom of Information Act (FOIA)/Privacy Act, requesting access to records pertaining to information from enforcement actions on December 20, 2002, to December 22, 2002, along Arizona Highway 86. The appeal you instituted was dated November 11, 2003, and received in this office on November 18, 2003.


The Office of Regulations and Rulings is the office within the Bureau of Customs and Border Protection (CBP) assigned the responsibility of reviewing Freedom of Information Act appeals. This office, in response to your appeal, initially obtained a complete, unredacted copy of all records responsive to your request, as well as a copy of the records as they were provided to you.

In the initial FOIA response dated October 15, 2003, you were informed that ICE located sixteen (16) pages of information responsive to your request. However, the document was withheld from disclosure in its
entirety pursuant to Exemptions (b)(7)(C), and (b)(7)(E) of the FOIA. The sixteen (16) pages consisted of Report of Investigations (ROI) [ROI Nos. 001, 002, and 003]. There were no other documents found responsive to your request.

In your appeal letter dated November 11, 2003, you indicated that your letter requested copies of the following documentation related to a roadblock setup on Arizona Highway 86 on the weekend of December 20, 2002, in which a CBP agent was observed engaging in enforcement activity:

- The name & I.D. # of all CBP agents operating on Highway 86 on December 20, 2002 within a 20 mile radius of mile marker 145 on Arizona Highway 86.

- Documentation related to any other person known to CBP who was operating at or near this roadblock along Arizona Highway 86 near mile marker 145.

- All incident reports generated between December 20, 2002 & December 22, 2002 along Arizona highway 86 within a 20 mile radius of mile marker 145.

- All operational summaries generated between December 20, 2002 & December 22, 2002 within a 20 mile radius of mile marker 145 on Arizona Highway 86.

- Copies of all interagency agreements in effect with the Tohono O'odham Police Department or the Tohono O'odham Nation.

- Any documentation generated between December 20, 2002 & December 22, 2002 related to operations along Arizona Highway 86 within a 20 mile radius of mile marker 145.

In addition, you state in your appeal that Exemption (b)(7)(C) does not apply in this case, in that the actions of federal agents operating within the public domain and at taxpayer's expense is open to public scrutiny and their names are not exempted under the FOIA. Also, you claim, any other information that may identify third parties could be released with the names redacted accordingly. In addition, you claim that interagency agreements are a matter of public policy and don't divulge detailed operational procedures. Further, law enforcement incident reports have consistently been ruled by the courts to be records falling within the public domain and operational summaries are exactly that, summaries of operations that
outline the number of individuals detained/arrested, property seized, etc. and would fall within the public's right to know.

Upon review of the documents presented to our office from the field office involving this case, the Report of Investigations (ROI) Nos. 001, 002, and 003 (16 pgs) are now released to you with portions withheld from disclosure pursuant to Exemptions (b)(2); (b)(6); and (b)(7)(C). In addition, please be advised that there are a total of 16 pages of documents located and/or responsive to your FOIA request.

As stated above, there are portions exempt from disclosure pursuant to Exemption (b)(2). The exempt aspect of these documents consist of internal case and file numbers and other similar administrative markings, “Low 2 Information.” These aspects of the records, in accordance with Exemption (b)(2), relate “solely to the internal personnel rules and practices” of CBP and are exempt from disclosure. 5 U.S.C. 552(b)(2). Further, Exemption (b)(2) protects from disclosure information considered to be “Low 2 Information” when that information “relates to trivial administrative matters of no genuine public interest.” Founding Church of Scientology v. Smith, 721 F.2d 828, 830 (D.C. Cir. 1983). See also Department of Air Force v. Rose supra; Lesar v. United States, 636 F.2d 472 (D.C. Cir. 1980). This FOIA exemption additionally provides for the nondisclosure of routine yet possibly pervasive administrative data including initials, data processing notations, routing notations and references to previous communications. See Massey v. FBI, 3 F.3d 620 (2nd Cir. 1993); Hale v. United States, 973 F.2d 894 (10th Cir. 1992).

In addition, there are portions of the ROI that are exempt from disclosure pursuant to 5 U.S.C.. 552 (b)(6). The Freedom of Information Act exemption (b)(6) provides for the exemption from disclosure of “personnel and medical files and similar files.” (Emphasis added) 5 U.S.C. 552 (b)(6). The United States Supreme Court in United States v. Washington Post Co., 456 U.S. 595 (1982) stated in reliance on the legislative history of the Freedom of Information Act that the phrase “personnel and medical files and similar files” was to be broadly interpreted.

Once the threshold requirement is met, the issue becomes whether disclosure of the information “would constitute a clearly unwarranted invasion of personal privacy.” 5 U.S.C. 552 (b)(6). The resolution of this issue involves a balancing of the public’s right to know the information against the individual’s right to privacy. See Department of Air Force v. Rose, supra. The individual’s privacy right in this instance, CBP personnel’s right to have his or her name and social security number
withheld from disclosure, outweighs the public's interest in knowing this information. See generally United States Department of Justice v. Reporters Committee for Freedom of the Press, supra.

Also, Exemption (b)(7)(C) is utilized to withhold information found on the ROI. Please be advised that Exemption (b)(7) is subdivided into six subparts, (A) through (F), two (2) of which are applicable to this appeal as indicated in the initial FOIA response. The initial requirement of Exemption (b)(7) is that the records or information subject to disclosure consideration have been "compiled for law enforcement purposes." 5 U.S.C. 552(b)(7). It is noted at the outset that Exemption (b)(7) applies to civil, criminal and administrative law enforcement proceedings. See generally Center for National Policy Review v. Weinberger, 502 F.2d 370 (D.C. Cir. 1974); Detroit Free Press, Inc. v. Department of Justice, 73 F.3d 93 (6th Cir. 1996); Ortiz v. Health and Human Services, 70 F.3d 729 (2d Cir. 1995). It is further noted that this exemption is equally applicable to and makes no distinction regarding whether the records were compiled for local, state, federal or foreign law enforcement. See generally Wojtczak v. United States, 548 F. Supp. 143 (E.D. Pa. 1982); Kuffle v. Bureau of Prisons, 882 F. Supp. 1116 (D.D.C. 1995); Bevis v. Department of State, 801 F.2d 1386 (D.C. Cir. 1986).

The name of Special Agents and their telephone numbers, as well as the names of other individuals mentioned in the ROI and found on law enforcement records are exempt from disclosure pursuant to 5 U.S.C. (b)(7)(C). Exemption (b)(7)(C) applies to "records or information compiled for law enforcement purposes, but only to the extent that the production of such law enforcement records or information... (C) could reasonably be expected to constitute an unwarranted invasion of personal privacy." 5 U.S.C. 552 (b)(7)(C). It is the conclusion of this office that FOIA Exemption (b)(7)(C) is applicable to the information withheld from disclosure on the ROI. Exemption (b)(7)(C) protects from disclosure, among other information, the identity of law enforcement personnel referenced in files compiled for law enforcement purposes. In addition, 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" that could conceivably result from public disclosure of their identity. Nix v. United States, 572 F.2d 998, 1006 (4th Cir. 1978). Exemption (b)(7)(C) is also intended to protect third-parties whose identities are revealed in law enforcement files from comment, speculation and stigmatizing connotation associated with being identified in a law enforcement record. See Lesar, supra; Massey, supra.
Further, the review of the documents undertaken by this office in the course of the appeal process establishes the applicability of Exemption (b)(7)(C) to the information and records withheld from disclosure. The record meets the requirement of being compiled for law enforcement purposes, the individual whose personal privacy would be subject to invasion is law enforcement personnel and the invasion of that privacy is reasonably considered unwarranted. Absent proven misconduct on the part of the investigator, the identities of law enforcement personnel should be exempt from disclosure pursuant to Exemption (b)(7)(C).

With regard to Exemption (b)(7)(C), we are required to perform a balancing test regarding an individual's privacy interest versus the public interest in disclosure of his or her name. See Castaneda v. United States, 757 F.2d 1010, 1012 (9th Cir. 1985). The privacy interests referenced above far outweigh whatever public interest, if any, exists in having such names released. Thus, releasing this information to the general public could reasonably be expected to constitute an unwarranted invasion of personal privacy.

It appears you have a personal interest in obtaining the information and records sought through your FOIA request. Thus, the Supreme Court has, however, held that the "particular purpose" for which records or information have been sought is not determinative of the issue of their disclosure. Reports Committee supra at 772. Disclosure determinations are based on the nature of the records requested and the relationship of those records to the public interest in general. See Reporters Committee supra. Furthermore, disclosure to one is tantamount to disclosure to the world.

The Freedom of Information Act, particularly 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.

Sincerely,

Joanne Roman Stump
Chief, Disclosure Law Branch

Enclosures