

From: [Jolly, Vinay \(USAE0\)](#)
To: [Brudy-Everett, Kristin \(USADC\)](#)
Subject: FW: RE: District of Puerto Rico NACDL v. BOP (18cv2399)
Date: Wednesday, October 28, 2020 11:46:11 PM
Importance: High

From: Ramirez, Hector E. (USAPR) 1 <HRamirez1@usa.doj.gov>
Sent: Wednesday, September 02, 2020 3:16 PM
To: Jolly, Vinay (USAE0) <VJolly@usa.doj.gov>
Subject: RE: District of Puerto Rico NACDL v. BOP (18cv2399)
Importance: High

Vinay,

This email responds to your request for our explanation on the search conducted and request for responsive records on the subject case. I conducted an initial search in 2019 and a recent updated search for records. As you are aware, the National Association of Criminal Defense Lawyers sent out a nationwide FOIA Request seeking information about the different policies in each US Attorney's Office regarding requests from AUSAs to BOP for inmate emails where these may contain attorney-client communications.

The specific criteria for the search, in summary, included:

1. All records containing those U.S. Attorneys' Offices' policies, practices, or procedures for requesting copies of inmates' attorney-client emails from the BOP.
2. All records containing those U.S. Attorneys' Offices' policies, practices, or procedures for requesting copies of inmates' emails from the BOP, including non-attorney-client emails.
3. All external guidance, including directives, emails, or other communications, sent to those U.S. Attorneys' Offices, regarding policies, practices, or procedures for requesting copies of inmates' attorney-client emails from the BOP.
4. All external guidance, including directives, emails, or other communications, sent to those U.S. Attorneys' Offices, regarding policies, practices, or procedures for requesting copies of inmates' emails from the BOP, including non-attorney-client emails.
5. All records containing those U.S. Attorneys' Offices' policies, practices, or procedures concerning the use of attorney-client emails once they have been obtained from the BOP.
6. 6. All legal or policy memoranda concerning any decision to change those U.S. Attorneys' Offices' policies, practices, or procedures for requesting inmates' emails from the BOP, including any policies, practices, or procedures for requesting that the BOP exclude from production any emails between an inmate and their attorney, as well as any policies, practices, or procedures concerning the circumstances under which the government does not request such exclusions.

Initially, the response from the District of Puerto Rico was a “No Records” result. The request for policies, generally included the items listed above.

I. Search conducted.

Because the request focused on policies, practices, and procedures, I proceeded to email and speak with then First Assistant U.S. Attorney Timothy Henwood and Criminal Chief Jose Capo to inquire on such policies, practices, and procedures. After a review of our Criminal Prosecution Guidelines, Former Criminal Chief Jose Capo informed verbally that the USAO did not have written policies on the request for inmate email communications, whether privileged or not. Therefore, our response was in the negative.

II. Expanded Search:

Upon your latest request for a new search, Former FAUSA Henwood clarified that even though we did not have written internal policies on the matters subject of this request, our prosecutors followed DOJ Memoranda on the topic, namely, the May 2005 Memorandum on Receipt of Inadvertently-Produced Privileged Information, the May 2009 EOUSA Memorandum from Director H. Jarrett Marshall regarding Prisoner E-Mail accounts, the December 1, 2014 Memorandum from Assistant Attorney General Leslie R. Caldwell on Electronic Surveillance Procedures within the Federal Prison System, the U.S. Attorney’s Manual for Coordination with the Office of Enforcement Operations, consultations with PRAO on inadvertent disclosure of attorney-client communications, DOJ Guidance on Filter Teams, as well as BOP Memoranda on Program Statement Correspondence, Prisoner Statement Trust Fund, Release of Information, Transactional Data Request, and Trulincs Summary.

After the aforementioned clarification, I proceeded to email the entire office in request for any and all emails, documents, and communications that any member of the office had with the BOP or related to production, examination, directives, policies, practice, and procedures with respect to any request for production by the BOP of inmate email communications. I also met and discussed with our Systems Manager for a System-wide search for the above requested information. The System Search conducted by our Systems Manager included searching for “Attorney-Client Privileged; Attorney-client emails; Inmate email policy; Inmate email request; Non-privileged inmate communications; BOP inmate communications policy “Bureau of Prisons” or BOP AND “Consent to Monitoring Agreement” OR Trulincs OR “Filter team” OR “inmate! /50 email!” OR “inmate transactional data”. I also informed that AUSAs Teresa Zapata, Mariana Bauza, Jose Contreras, Jeanette Collazo, and Jonathan Gottfried responded with having responsive information, namely, various requests made to the BOP using the BOP Guidance on the Transactional Data Request Forms. They included these requests to BOP, as well as consultations to PRAO, and the corresponding Transactional Data Forms. They also informed that most requests are done by the various Law Enforcement Agencies during their investigation.

Once our Systems Manager performed the system-wide search, he proceeded to transfer a copy of the potentially positive data onto a shared folder that I could have access to. I then proceeded to verify every single potentially positive file. I have proceeded to extract and attach to this email all responsive documents, emails, and policies that I was able to

extract from this search. You will see that some of this are emails pertaining to specific investigations and contain attorney work-product material from our AUSAs and are therefore privileged. I have also attached the various inmate email policies discussed above.

I hope this information is helpful in resolving this matter. In order to be clear on the U.S. Attorney's Office's practice and procedures with regards to inmate email communications, or any type of inmate communication is that:

1. AUSA assigned to a case contact the BOP Attorney and ask for the BOP requirements for obtaining inmate communications;
2. Review any such BOP policy, as well as the Department of Justice Policies above mentioned;
3. Fill out the Inmate Transactional Data Form;
4. Provide the information produced to the Case Agent
5. Set up a Taint Review Team should agents encounter potentially privileged materials;
6. Consult PRAO on any matter that warrants ethics consultation;
7. Consult with Supervisor on any ethics matter or if the AUSA or Agents come across any potentially privileged material.

Lastly, our AUSAs regularly consult DOJ Book Online for guidance on these matters.

Should you have additional questions, please do not hesitate to contact me.

Regards,

Hector Ramirez

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