



U.S. Immigration  
and Customs  
Enforcement

September 23, 2022

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**RE: Community Justice Exchange et al v. ICE and DHS 3: 22-cv-02328  
ICE FOIA Litigation Case Number 2022-ICLI-00039  
First Interim Response**

Dear Ms. Crump:

This letter is the first interim response to your client's Freedom of Information Act (FOIA) requests to U.S. Immigration and Customs Enforcement (ICE). Your client seeks records related to Immigration & Customs Enforcement (ICE's) use of B.I. Incorporated's SmartLINK Application for the Intensive Supervision Appearance Program (ISAP).

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

A search of the Office of Enforcement and Removal Operations (ERO) located records that were potentially responsive to your request. For this production ICE reviewed 64 pages of potentially responsive documents. Of those 64 pages, ICE determined that 10 pages were deemed nonresponsive/duplicative, 25 pages will be released in full and the remaining 25 pages will be withheld in part pursuant to FOIA Exemptions 5, 6, 7(C) and, 7(E) as described below. A total of 50 pages have been Bates numbered 2022-ICLI-00039 001 through 2022-ICLI-00039 050.

Please note that 4 pages have been sent to BI Inc (GEO Group) for consultation. Those pages will be produced after their review has been completed.

ICE has applied Exemption 5 to protect from disclosure intra-agency documents that contain the recommendations, opinions, and conclusions of agency employees. The disclosure of these communications would discourage the expression of candid opinions and inhibit the free and frank exchange of information and opinions among agency personnel on important agency decision-making by having a chilling effect on the agency's deliberative process.

**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, ICE has determined that portions of the responsive documents qualify for protection under the deliberative process 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.

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.

**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 Ms. Kelsey Helland at [Kelsey.Helland@usdoj.gov](mailto:Kelsey.Helland@usdoj.gov)

Sincerely,

MARCUS K FRANCIS SR  
Digitally signed by  
MARCUS K FRANCIS SR  
Date: 2022.09.23  
11:13:59 -04'00'

Marcus K. Francis, Sr.  
Supervisory Paralegal Specialist

Enclosure: 50 pages