



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

January 19, 2023

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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  
Fifth Interim Response**

Dear Ms. Crump:

This letter is the fifth 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 this request under the FOIA, 5 U.S.C. § 552.

This response contains 125 pages that were sent to BI Incorporated for consultation. After review, ICE has determined that 14 pages will be released in full and portions of the remaining 111 pages will be withheld pursuant to FOIA Exemptions (b)(4), (b)(6), (b)(7)(C) and (b)(7)(E) as described below. These pages have been Bates numbered 2022-ICLI-00039 302 through 2022-ICLI-00039 426.

**FOIA Exemption 4** protects trade secrets and commercial or financial information obtained from a person that is privileged or confidential. The courts have held that this subsection protects (a) confidential commercial information, the disclosure of which is likely to cause substantial harm to the competitive position of the person who submitted the information and (b) information that was voluntarily submitted to the government if it is the kind of information that the provider would not customarily make available to the public. I have reviewed the responsive documents, the submitter's objections to release, and relevant case law, and I have determined that portions of the responsive records are exempt from disclosure under subsection (b)(4) of the FOIA and must be withheld in order to protect the submitter's proprietary interests.

ICE has applied FOIA Exemptions 6 and 7(C) to protect from disclosure the names, e-mail addresses, and phone numbers of ICE and DHS employees contained within the documents, as well as the names, and other personally identifiable information of other individuals 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.

ICE has applied FOIA Exemption 7(C) to protect from disclosure the names, e-mail addresses, and phone numbers of BI Inc. employees contained within the documents.

**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 particular 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 case numbers contained within the document.

**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.  
Supervisory Paralegal Specialist

Enclosure: 125 pages