



U.S. Customs and
Border Protection

JUL 30 2008

Shirin Sinnar, Staff Attorney
Asian Law Caucus
939 Market Street, Suite 201
San Francisco, CA 94103

Re: **FOIA Request H025725; Asian Law Caucus and the Electronic Frontier Foundation; CBP Policies and Procedures on Questioning and Searches**

Dear Ms. Sinnar:

This is the final response to your Freedom of Information Act (FOIA) request to U.S. Customs and Border Protection (CBP), dated October 31, 2007, seeking policies and procedures on: 1) the questioning of travelers and 2) inspections and searches of travelers' property.

By letter dated June 26, 2008, CBP provided you with an interim response consisting of 190 pages. An additional search of CBP headquarters and field offices for documents responsive to your request produced a total of 499 pages.

Of those 499 pages, I have determined that 184 pages of the records are releasable in their entirety; 287 pages are releasable in part with redactions pursuant to Title 5 U.S.C. § 552 (b)(2)(high), (b)(2)(low), (b)(5), (b)(6), (b)(7)(C) and (b)(7)(E) (FOIA Exemptions 2(high), 2(low), 5, 6, b7(C) and b7(E)); and 28 pages have been withheld in their entirety pursuant to FOIA Exemptions 2(high), 2(low), 6, b7(C) and b7(E).

Enclosed are 471 pages with certain information withheld as described below.

FOIA Exemption 2 (high) protects information applicable to internal administrative and personnel matters, such as operating rules, guidelines, and manual of procedures of examiners or adjudicators, to the extent that disclosure would risk circumvention of an agency regulation or statute, impede the effectiveness of an agency's activities, or reveal sensitive information that may put the security and safety of an agency activity or employee at risk. Whether there is any public interest in disclosure is legally irrelevant. Rather, the concern under high 2 is that a FOIA disclosure should not benefit those attempting to violate the law and avoid detection.

FOIA Exemption 2(low) protects information applicable to internal administrative personnel matters to the extent that the information is of a relatively trivial nature and there is no public interest in the document.

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 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.

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 privacy. The types of information that we have withheld consist of names of CBP personnel and other personal identification information. 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.

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 outweighs 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. The types of information that we have withheld consist of names and other personal identification information.

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 determined that disclosure of information including law enforcement systems checks, locations and details regarding secure rooms, procedures relating to the supervision of detainees, procedures for the safeguarding of weapons, internal computer codes, list of items to be removed for an individual's safety, procedures regarding required approvals, procedures regarding internal coordination, techniques for identifying

potential terrorist suspects, special teams activated in response to certain incidents, details regarding questioning techniques, external coordination procedures and guidelines, information which would reveal the strengths and weaknesses of CBP programs, details regarding specific equipment used by CBP and specific step-by-step operational information could reasonably be expected to risk circumvention of the law. Additionally, the techniques and procedures at issue are not well known to the public.

Although I am aware that your request is the subject of ongoing litigation and that appeals are not ordinarily acted on in such situations, I am required by statute and regulation to inform you of your right to file an administrative appeal. If you are not satisfied with my action on your request, you may administratively appeal from this partial denial by writing to the FOIA Appeals Officer, Regulations and Rulings, Office of International Trade, U.S. Customs and Border Protection, 1300 Pennsylvania Ave., NW, Mint Annex, Washington, D.C. 20229, within sixty (60) days after the date of this determination letter. The appeal must be in writing and signed; contain your name and address; date of the initial request; date and control number of the letter denying your request; description of the records or information withheld; and reason(s) you believe that the records or information should be disclosed. Your appeal letter and mailing envelope should be marked "FOIA Appeal."

Sincerely,



Shari Suzuki, Chief
FOIA Appeals, Policy & Litigation Branch

Enclosure: Responsive Documents, 471 pages