

EXHIBIT C

Office of Inspector General

U.S. Department of Homeland Security
Washington, DC 20528



**Homeland
Security**

April 29, 2010

Bridget Kessler
Clinical Teaching Fellow
Cardozo School of Law
Immigration Justice Clinic
55 Fifth Avenue
New York, NY 10003

Subject: Freedom of Information Act Request No. 2010-062

Dear Ms. Kessler:

This is in response to your Freedom of Information Act (FOIA) request dated February 3, 2010 (copy attached for reference). The Department of Homeland Security (DHS) Office of Inspector General (OIG) received your request on February 16, 2010, and assigned it the above-referenced tracking number.

In a February 16, 2010 telephone conversation between Mr. Markowitz, of your organization, and my staff member, Nikki Gramian, it was explained that the Secure Communities program is a U.S Immigration and Customs Enforcement (ICE) program and the type of records sought in your FOIA request consisted of documents that would fall under the purview of ICE. Ms. Gramian, however, explained in a subsequent telephone conversation with you that the OIG conducts independent investigations, audits, inspections, and special reviews of DHS personnel, programs, and operations to detect and deter waste, fraud, and abuse, and to promote integrity, economy, and efficiency within DHS. As such, if OIG has conducted an audit, inspection, or investigation of the Secure Communities program, then OIG might maintain some of the enumerated items in your request. Ms. Gramian explained that she would request three of OIG's offices to conduct a search for possible records that may be responsive to items 6 and 7 of your request. Ms. Gramian also asked for your assistance in formulating search terms so that OIG's Office of Investigations could search for complaints OIG might have received pertaining to the Secure Communities program.¹

A February 19, 2010 email to Ms. Gramian from your staff member, Morgan Russell, provided a broad and complicated list of search terms to be used for the OIG Office of Investigations' search. Ms. Gramian explained to you the limitations in the investigative database's ability to

¹ During your conversation with Ms. Gramian, it was also discussed that OIG would provide you with a narrative listing of such complaints.

perform searches as formulated by Mr. Russell. You and Ms. Gramian therefore agreed that the OIG Office of Investigations would use the following search terms in its search for these records:

Police and Immigration custody
Sheriff and Immigration custody
Arrest and Immigration custody
Book and Immigration custody
Jail and Immigration custody
Police and ICE custody
Sheriff and ICE custody
Arrest and ICE custody
Book and ICE custody
Jail and ICE custody
Police and Immigration Hold
Sheriff and Immigration Hold
Arrest and Immigration Hold
Book and Immigration Hold
Jail and Immigration Hold, and
Secured Communities Program.

In response to your reformulated search, a search of the OIG's investigative indices was conducted electronically using the above-referenced search terms. The search resulted in the attached narrative listing wherein the database tracking system pulled the single search terms, identified above, found within each narrative in the attached list.² The records have been considered under the FOIA, 5 U.S.C. § 552, and FOIA exemptions have been applied when deemed appropriate to withhold certain information. The exemptions cited for withholding certain information are marked below.

OIG also conducted a search of its Offices of Inspections and Audits for any reviews those offices may have conducted on the Secure Communities program. The OIG Office of Inspections notified the OIG FOIA staff that there are no pending or completed reviews of this program. The OIG Office of Audits, however, notified the FOIA staff that a review is in progress and field work has begun on its audit of the ICE Criminal Alien Program. The OIG Office of Audits explained that although its review is focused solely on the Criminal Alien Program, some information is being reviewed regarding the role Secure Communities may play in the ICE Criminal Alien Program. The auditors explained that thus far they only have two internal work papers, totaling five pages, which contain some information about Secure Communities. Additionally, in an effort to educate themselves, the auditors have collected documents from ICE which pertain to the Secure Communities Program. In this regard OIG is withholding its internally-created work papers in full, but referring to ICE the material collected from that entity so a FOIA review can be conducted for direct response to you.

Based on our review of the documents obtained from OIG's Offices of Investigations and Audits, this office is providing the following:

² Please note that the investigative database does not have the ability to search for two search terms at once. For your reference, OIG has highlighted in yellow the search terms found within the narratives.

- _____ page(s) are being released in full (RIF);
- 4 pages are being released in part (RIP);
- 5 page(s) are withheld in full (WIF);
- _____ pages are duplicate copies of material already processed;
- _____ page(s) are non-responsive to your request and therefore withheld in full;
- 308 pages were referred to another agency.

The exemptions cited for withholding records or portions of records are marked below.

Freedom of Information Act, 5 U.S.C. § 552			Privacy Act, 5 U.S.C. § 552a
<input type="checkbox"/> 552(b)(1)	<input type="checkbox"/> 552(b)(4)	<input type="checkbox"/> 552(b)(7)(B)	<input type="checkbox"/> 552a(j)(2)
<input type="checkbox"/> 552(b)(2)	<input checked="" type="checkbox"/> 552(b)(5)	<input checked="" type="checkbox"/> 552(b)(7)(C)	<input type="checkbox"/> 552a(k)(2)
<input type="checkbox"/> 552(b)(3)	<input checked="" type="checkbox"/> 552(b)(6)	<input type="checkbox"/> 552(b)(7)(D)	<input type="checkbox"/> 552a(k)(5)
	<input type="checkbox"/> 552(b)(7)(A)	<input type="checkbox"/> 552(b)(7)(E)	<input type="checkbox"/> Other:

Please note, with the exception of a few complaints received by the OIG Office of Investigations, none of the complaints listed in the attached narratives are responsive to your FOIA request.³ In addition, please note that none of the complaints were investigated by OIG. OIG, therefore, took no action on these complaints other than referring them to other entities for action, or closing them administratively.

OIG redacted from the enclosed documents, names and identifying information of third parties and employees to protect the identities of these individuals. Absent a Privacy Act waiver, the release of such information concerning the third parties named in these records would result in an unwarranted invasion of personal privacy in violation of the Privacy Act, 5 U.S.C. § 552a. The information excised is also protected from disclosure pursuant to exemptions (b)(6) and (b)(7)(C) of the FOIA.

Exemption 6, 5 U.S.C. § 552(b)(6)

Exemption 6 allows withholding of “personnel and medical files and *similar files* the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.” See 5 U.S.C. § 552(b)(6)(emphasis added). OIG is invoking Exemption 6 to protect the names and initials of lower level employees, non-agency employees, and private citizens in the attached document.

³ OIG also redacted as non-responsive, complaints that OIG Office of Investigations received related to DHS employees and their alleged misconduct which involved investigative authorities. These narratives that have been withheld in their entirety also contain the relevant search terms (i.e arrest, police, etc.). However, these complaints pertain to DHS employees and did not involve criminal aliens subject to enforcement of the Secure Communities Program. OIG therefore considered them non-responsive to your request.

Exemption 7(C), 5 U.S.C. § 552(b)(7)(C)

Exemption 7(C) protects from public disclosure “records or information compiled for law enforcement purposes...[if disclosure] could reasonably be expected to cause an unwarranted invasion of personal privacy.” *See* 5 U.S.C. § 552(b)(7)(C). The OIG is invoking Exemption 7(C) to protect the identities of OIG Agents, investigative assistants, third parties mentioned or referenced in the attached document, and any information that could reasonably be expected to identify such individuals.

Exemption 5, 5 U.S.C. § 552(b)(5)

Pursuant to Exemption 5 of the FOIA, OIG is withholding work papers, totaling 5 pages, that were obtained from the OIG Office of Audits which are part of the ongoing OIG Audit identified above (a review of the ICE Criminal Alien Program). There are three categories of information that are protected under Exemption 5: records covered by the deliberative process privilege, the attorney work-product privilege, or the attorney-client privilege. The deliberative process privilege is intended to protect the decision-making process of government agencies and to encourage frank discussion of legal and policy issues. The scope of the privilege covers documents reflecting advisory opinions, recommendations, and deliberations comprising part of a process by which government decisions and policies are formulated. To qualify for the deliberative process privilege, a document must be both "pre-decisional" and "deliberative." Documents are pre-decisional when they precede an agency decision and are prepared in order to assist an agency in arriving at its decision. Documents are deliberative when they comprise part of the process by which government decisions are made. Work papers fall into this category.

At this juncture, OIG has not even prepared a draft report, but continues to compile records and information as part of this ongoing audit. Thus, the records potentially responsive to your request consist of preliminary and background documentation that reflects OIG auditors' ongoing decisions as to the methodology and scope of the planned audit; mental impressions concerning documents and other materials; data, preliminary analyses, and conclusions; supervisory reviews; and related ongoing evaluations of the audit work in progress. As such the underlying records document a collaborative, consultative process which will lead to a final decision. As such, these records fall squarely within the protection of the deliberative process privilege of Exemption 5 of the FOIA as both pre-decisional and deliberative. Although, other exemptions may be applicable to these records, OIG is not in a position to assert other exemptions at this time since this matter is still ongoing.

Please note that OIG posts all of its non-classified final reports on the OIG website at <http://www.dhs.gov/xoig/rpts/>. You may, therefore, wish to check this website periodically to see if the final report regarding this audit is posted, or sign up to receive email notifications when a report is posted on our website.

Referral

For your information, 308 pages have been referred to ICE, a DHS component. ICE will process the referred records under the FOIA and respond to you directly. This referral was made in

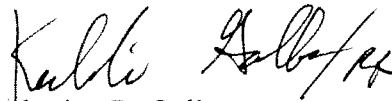
accordance with DHS regulations, which require DHS agencies to determine whether another agency is better able to determine whether records are exempt from disclosure under the FOIA, and if so, then the record must be referred to the other agency. *See* 6 C.F.R. § 5.4(c)(2). In general, the agency that created a record is presumed best able to determine whether it may be disclosed under the FOIA.

This is the final action this office will take concerning this matter. You have the right to appeal this response. Your appeal must be in writing and **received** within 60 days of the date of this response. Please address any appeal to:

Associate General Counsel (General Law)
Department of Homeland Security
Washington, D.C. 20528

Both the envelope and letter of appeal must be clearly marked, "Freedom of Information Act/Privacy Act Appeal." Your appeal letter must also clearly identify the OIG's response. Additional information on submitting an appeal is set forth in the DHS regulations at 6 C.F.R. § 5.9.

Sincerely,

A handwritten signature in black ink, appearing to read "Katherine R. Gallo".

Katherine R. Gallo
Assistant Counsel to the Inspector General

FOIA/PA Analyst: Nikki Gramian
Phone Number: (202) 254-4001