

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK**

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NATIONAL DAY LABORER ORGANIZING	:	
NETWORK, et al.,	:	Civil Action No. 10-CV-3488
	:	
Plaintiffs,	:	
	:	
- v -	:	<u>DECLARATION</u>
	:	<u>OF WILLIAM H.</u>
UNITED STATES IMMIGRATION AND CUSTOMS	:	<u>HOLZERLAND</u>
ENFORCEMENT, et al.,	:	
	:	
Defendants.	:	
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William H. Holzerland, pursuant to 28 U.S.C. § 1746, declares as follows:

1. I am the Associate Director for Disclosure Policy & FOIA Program Development in the Department of Homeland Security (DHS or Department) Privacy Office (DHS Privacy). I have held this position since November 2006. I am a Certified Information Privacy Professional/Government (CIPP/G) through the International Association of Privacy Professionals (IAPP).

2. My official duties and responsibilities include the general management, oversight, and supervision of disclosure policy at DHS Privacy. DHS Privacy is one of the DHS components responsible for the processing of FOIA requests received by DHS, including those received at DHS HQ, as well as ensuring appropriate and effective compliance with disclosure laws Department-wide. In connection with my official duties, I am familiar with DHS's

procedures for responding to requests for information pursuant to provisions of FOIA and the Privacy Act, as well as the general practices of the components of DHS.

3. This declaration supplements, and hereby incorporates and makes reference to, the prior declarations submitted in this case by Donna A. Lewis on January 14, 2011, and by David J. Palmer on November 12, 2010.

4. The statements I make in this declaration are based on my personal knowledge, my review of documents kept by DHS in the ordinary course of business, and my review of relevant documents and information provided to me by DHS employees in the course of their official duties.

5. This declaration is submitted in support of defendants' motion for stay of the Court's February 7, 2011 Order¹ requiring the production of certain fields of metadata.

6. This declaration will describe DHS Privacy's and US-VISIT's standard operating procedures for FOIA requests and their technical capabilities as related to current FOIA processes.

Description of DHS Privacy's FOIA Process

7. DHS Privacy's processing of a FOIA request begins when the FOIA request is received by DHS Privacy, which is part of DHS HQ. FOIA requests are received via e-mail, fax, mail, and electronically via DHS's Web site.

8. The FOIA request is then logged into the FOIA tracking system, assigned a DHS FOIA tracking number, and assigned to a FOIA processor. The FOIA processor reviews the request for compliance with DHS regulations and to ensure it reasonably describes the records sought (i.e., that it is perfected).

¹ The Court supplemented its February 7, 2011 Order with its February 15, 2011 Supplemental Order (collectively referred to as the "Court's Orders").

9. If the FOIA request is not perfected, the FOIA processor corresponds with the requester to seek clarification of the scope of the request or to ensure potential fee issues are resolved. If the request is perfected, the FOIA processor sends an acknowledgement letter to the requester.

10. The FOIA processor then determines the component(s) of DHS that may have responsive records and sends a search tasking to the appropriate components, requiring components so tasked to conduct a search for responsive records.

11. Each tasked component then searches for responsive records and sends the records it locates to DHS Privacy.

12. Potentially responsive records may be received by DHS Privacy in a variety of formats, including paper and electronic. Electronic records may be received in one of two forms: (1) in native electronic format (for example, *.doc, *.msg, etc.), or (2) as PDF images of these native-format documents. Once the potentially responsive records are received at DHS Privacy, any records that have not already been converted to PDF format must be converted to PDF format so that they can be processed using the DHS Privacy redaction software, Adobe Acrobat Professional 9.0. Records are converted into PDF format via one of two methods: (1) printing the document and then scanning the document to create a PDF image, or (2) electronically converting the document into PDF format using Adobe Acrobat Professional. In either event, all of the pre-existing metadata associated with the document is lost. This is a necessary by-product of using Adobe Acrobat Professional 9.0 to process and redact records. Documents must be in static image form (i.e., PDF or TIFF) to be compatible with this software.

13. The process of creating a “flat” PDF image prior to processing ensures that none of the redacted information can be viewed or discovered upon production. Redacting a native

document runs the risk of the redacted information being uncovered through reverse-engineering. The elimination of metadata has never been an issue of concern before because DHS has never encountered a request for metadata in the FOIA process prior to the instant request.

14. A FOIA processor reviews each potentially responsive record and uses Adobe Acrobat Professional to mark (bracket) information within the record that is exempt pursuant to one or more of the FOIA exemptions. The result of this review is a “highlighted version” of the record in which information deemed exempt is marked (bracketed) within the record, but has not yet been removed. A senior FOIA analyst or the FOIA officer reviews the work of the FOIA processor.

15. Upon completion of the review, the FOIA processor uses Adobe Acrobat Professional to permanently apply the redactions.

16. While the steps provided above represent the general process, it should be noted that there are some additional steps that have no bearing on the metadata issue currently at hand. Moreover, individual circumstances related to particular FOIA requests may dictate that steps occur in a different order, that they be repeated, or that they not occur at all.

Description of the US-VISIT FOIA Process

17. The FOIA process followed by US-VISIT, which is a program that is a part of the DHS HQ component National Protection and Programs Directorate (NPPD), is similar to the processes discussed above, and the statements below are made based upon my knowledge of the Department’s general practices and conversations with the US-VISIT FOIA Officer.

18. US-VISIT also uses Adobe Acrobat software in processing and responding to FOIA requests, but uses Standard version 7.0. Redactions are applied using an Adobe plug-in software product called Redax, which was developed by Appligent.

19. US-VISIT's longtime standard practice in responding to FOIA requests is to provide requestors with responsive records in hard copy form, which typically consist of: (1) photocopies of responsive records that US-VISIT maintains in hard copy format, and (2) printouts of responsive records that US-VISIT maintains in native, electronic format (e.g., e-mail and Microsoft Word, Excel, and PowerPoint files).

20. Hard copy records and printouts of electronic records are manually scanned to create PDF image files that are then reviewed and redacted using Redax. Adobe also allows US-VISIT to convert records that are maintained in electronic format into PDF files. US-VISIT will sometimes do this instead of scanning a printout of the electronic document. However, regardless of whether the records are manually scanned into PDF or electronically converted to PDF, the process of doing so results in the elimination of the pre-existing metadata. And, the documents must be in PDF (or TIFF) form to be processed using Adobe/Redax.

21. Prior to this litigation, US-VISIT had only been asked one or two times by FOIA requesters to provide responsive records in electronic format (as opposed to in hard copy). In those instances, US-VISIT's practice was to create electronic files by scanning the hard copy records and the printouts of electronic records into PDF image files and then provide the PDF image files to the requester on a CD-ROM or DVD.

Capability to Provide Metadata

22. Prior to the Plaintiffs' December 22, 2010 letter, US-VISIT had never received a request under FOIA for metadata to be provided along with responsive records. The same is true for DHS Privacy, which is part of DHS HQ.

23. Because these components had never before received a request for any kind of metadata, they have never considered nor explored acquiring or using any kind of software that

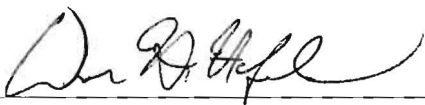
would allow them to process and produce metadata and electronic records in the format the Plaintiffs seek here.

24. As explained in the declaration of Maria Roat, which is being submitted herewith, these DHS components lack access to software that might enable them to process and produce metadata in response to the Plaintiffs' current FOIA request. In order to produce such metadata, these components would need to acquire the necessary software and/or hardware that would allow metadata to be: (1) extracted from the electronic records that are identified as potentially responsive; (2) reviewed to determine which of the FOIA exemptions may apply to exempt the metadata from disclosure; (3) redacted, as appropriate, under the relevant FOIA exemption(s); and (4) produced in the format as requested. For example, the following metadata fields ordered to be produced by the Court in its Orders presumably contain material that may be exempt under FOIA exemptions 6 and/or 7(C): To; From; CC; BCC; Subject/Title; Text; Custodian; Native File; and Author Load File.

25. In DHS, there likely is not currently money available to allow for the procurement of such software/hardware. Moreover, the software/hardware would also have to be tested to ensure that it allows for the production of metadata in a manner consistent with DHS's obligations under FOIA. That is, the software/hardware would need to allow DHS to apply appropriate redactions to the metadata without subjecting DHS to undue burden and expense. In my professional assessment, achieving this goal is not possible for this Fiscal Year, and may never be possible.

JURAT CLAUSE

I declare under penalty of perjury that the forgoing is true and correct to the best of my knowledge and belief. Signed this 23 day of March, 2011.



William H. Holzerland, CIPP/G
U.S. Department of Homeland Security
Associate Director,
Disclosure Policy & FOIA Program Development