

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

DETENTION WATCH NETWORK and CENTER FOR
CONSTITUTIONAL RIGHTS,

Plaintiffs,

- against -

UNITED STATES IMMIGRATION AND CUSTOMS
ENFORCEMENT AGENCY and
UNITED STATES DEPARTMENT OF
HOMELAND SECURITY,

Defendants.

No. 14 Civ. 583 (LGS)

ECF Case

DECLARATION

I, James V.M.L. Holzer, I, declare and state as follows:

1. I am the Senior Director of FOIA Operations for the Department of Homeland Security (DHS or Department) Privacy Office. In this capacity, I am the Department official immediately responsible for responding to requests for records under the Freedom of Information Act (FOIA), 5 U.S.C. § 552 (the FOIA), the Privacy Act, 5 U.S.C. § 552a (the Privacy Act), and other applicable records access provisions. I have been employed by the DHS Privacy Office (DHS Privacy) in this capacity since November 2012. Prior to that, I held the position of Director of Disclosure and FOIA Operations. I have been with the Department since 2009.

2. I make the following statements based upon my personal knowledge, which in turn, is based on a personal review of the records in the case files established for processing the subject request and upon information furnished to me in the course of my official duties.

3. Through the exercise of my official duties, I have become familiar with the background of this case and have read a copy of the Complaint filed by plaintiffs (Requesters or Plaintiffs).

4. The purpose of this declaration is to provide the Court with an overview of the FOIA process at DHS, and to explain the particular process employed in this matter. DHS is submitting this declaration in support of its' Motion to Dismiss Plaintiffs' complaint.

THE DHS PRIVACY OFFICE FOIA PROCESS

5. DHS Privacy is the Department of Homeland Security's Privacy Office. DHS Privacy partners with privacy staff in every DHS component to assess all new or proposed programs, systems, technologies or rule-makings for privacy risks, and recommend privacy protections and alternative methods for handling personal information to mitigate privacy risks. DHS Privacy also centralizes FOIA and Privacy Act operations to provide policy and programmatic oversight, and support implementation across the Department.

6. The mission of DHS Privacy is to preserve and enhance privacy protections for all individuals, to promote transparency of Department operations, and to serve as a leader in the privacy community. DHS Privacy (1) evaluates Department legislative and regulatory proposals involving collection, use, and disclosure of personally identifiable information (PII); (2) centralizes FOIA and Privacy Act operations to provide policy and programmatic oversight, and support implementation across the Department; (3) operates a Department-wide Privacy Incident Response Program to ensure that incidents involving PII are properly reported, investigated and mitigated, as appropriate; (4) responds to complaints of privacy violations and provides redress, as appropriate; and (5) provides training, education and outreach to build a culture of privacy across the Department and transparency to the public.

7. Each Component maintains its own automated case tracking system which assigns case control numbers to, and tracks the status of, all FOIA and Privacy Act requests received by that Component. Components log all incoming FOIA and Privacy Act requests into their automated case tracking system, and input information about each request into the system (including, but not limited to, the requester's name and/or organization and, in the case of FOIA requests, the request's topic). All requesters are then notified of the case control numbers assigned to their requests. It is the custom of all Components to refer to the case control numbers in all correspondence with requesters. The automated case tracking systems are text searchable on a field-by-field basis.

8. When any DHS Component receives a referral or tasking from DHS Privacy, it mirrors the actions of DHS Privacy. Component FOIA personnel make a determination regarding which subcomponent or program office may have responsive documents, and then task that office with a search.

THE FOIA REQUEST

9. DHS Privacy received a FOIA Request dated November 25, 2013, from the Requesters on December 2, 2013. DHS Privacy assigned the matter file number 2014-HQFO-00186. Attached as Exhibit A is a true and correct copy of the Requesters' FOIA Request.

10. DHS Privacy sent an acknowledgement to the Requesters on December 6, 2013. DHS Privacy indicated in its acknowledgement that request was "too broad in scope or did not specifically identify the records which you are seeking." The acknowledgement included an explanation that the description of the records sought in the request was not sufficiently detailed to enable government employees to locate the records. The acknowledgement letter also explained that § 5.3(b) of the DHS FOIA regulations, 6 C.F.R. Part 5, require that a requester

describe the records sought with as much information as possible to ensure that the agency's search of appropriate systems of records could locate records with a reasonable amount of effort. Attached as Exhibit B is a true and correct copy of DHS Privacy's December 6, 2013, acknowledgment letter to the Requesters.

11. The December 6, 2013, letter stated that if no response was received in 30 days, the request would be administratively closed, and that the request could be reinstated if the Requesters provided additional information, thereby perfecting the request.

12. The acknowledgement letter made clear that no denial was issued. Instead, the requesters were provided 30 days within which to provide further information such as the type of record(s) sought, the DHS component believed to have created and/or controlled the records, the precipitating event believed to warrant creation of records and the time period relevant to the records or files being created and compiled.

13. DHS Privacy did not receive any further communication from the requesters, either in written form or telephonically after the December 6, 2014 acknowledgment letter was sent.

14. In accordance with DHS's acknowledgment letter, DHS Privacy administratively closed the request on January 8, 2014.

15. DHS Privacy has no record of the filing of any administrative appeal or other communication from the Requesters.

16. Despite the Requester's failure to adhere to DHS administrative regulations, DHS has, in its discretion, been processing the request.

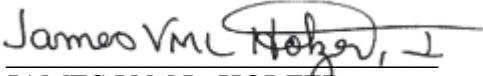
17. DHS has commenced searching for records that may be potentially responsive to those portions of Plaintiff's request that DHS has been able to give a reasonable interpretation that allows DHS employees to search for records.

18. The search, processing, and production of potentially responsive records will take place in accordance with DHS's normal procedures of processing requests on a first-in-first-out basis.

19. As of the date of this declaration, DHS Privacy has 141 open FOIA requests. Fifty (50) of these requests were received prior to the Requesters' request on December 2, 2014.

I declare under the penalty of perjury that the above is true, correct, and complete to the best of my knowledge and belief.

Dated: March 4, 2014


JAMES V.M.L. HOLZER