

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK**

**IMMIGRANT DEFENSE PROJECT,)
HISPANIC INTEREST COALITION)
OF ALABAMA, CTR. FOR)
CONSTITUTIONAL RIGHTS,)
Plaintiffs,)
v.)
**UNITED STATES IMMIGRATION &)
CUSTOM ENFORCEMENT AND)
UNITED STATES DEPARTMENT OF)
HOMELAND SECURITY.****

Civil Action No. 14-CV-6117

Defendants.

DECLARATION OF KEVIN L. TYRRELL

I, Kevin L. Tyrrell, declare and state as follows:

1. I am the Associate Director of FOIA Appeals and Litigation for the Department of Homeland Security (DHS) Privacy Office. In this capacity, I am the Department official immediately responsible for responding to appeals and litigation matters that arise 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 July 2015. Prior to that, I held the position of FOIA Litigation Specialist. I have been with the Department since July 28, 2014. I make the following statements based upon my personal knowledge, which in turn is based on a personal review of the appropriate records in the case file and coordination with relevant FOIA personnel established for processing the subject request and upon information furnished to me in the course of my official duties.

2. Through the exercise of my official duties, I have become familiar with the background of plaintiff's FOIA request and DHS's response. I have also become familiar with the background of this litigation and have read a copy of the complaint filed by plaintiff.

3. The purpose of this declaration is to provide supplemental information regarding the searches conducted by FLETC, CRCL, DHS OGC, OPA, and Policy.

4. As outlined in my previous declaration, out of an abundance of caution, on August 19, 2014, DHS Privacy Office decided to perform a second search for responsive records expanding on the original search terms and requesting a manual review instead of a simple key word review. At that time DHS Privacy Office again tasked CRCL, USCIS, and FLETC. DHS Privacy Office also tasked the DHS Office of Public Affairs (OPA), the DHS Office of Policy "Immigration Division", and the DHS Office of the General Counsel (OGC) to conduct a search for responsive records.

5. On October 9, 2014, FLETC responded to the second search request stating a new search did not yield any additional records above the 26 pages that were previously provided to the requester on November 18, 2013 by FLETC and again on March 7, 2014 by the DHS Privacy Office. The search undertaken by FLETC was performed by an employee of the Training Management Division/ Center Basic Branch. The search included the shared drives, syllabus and student text and handouts as well as cross referencing date with the CITP (criminal investigator training programs). The search terms used included; home enforcement operations, interactive cover drills, raid house scenarios, tactics, enforcement operations, and physical techniques.

6. CRCL also conducted a supplemental search on remand after concluding that the terms and descriptors culled from Plaintiffs' FOIA request used in the initial electronic search were possibly too narrow. On October 30, 2014, an analyst with the CRCL compliance branch conducted a wider keyword search of CRCL's complaint tracking database Entellitrak using the following keywords: "ICE" and or "home, house, apartment, shelter, motel, residence, trailer, Nashville, Los Angeles, Chicago, Alabama, New York (state or city), Cherokee, Chilton, DeKalb, Jackson, Jefferson, Shelby, Tuscaloosa, Fort Payne (or Ft. Payne), Scottsboro or Collinsville.

7. The analyst manually reviewed the results from the keyword search results, and also manually reviewed CRCL shared drives for any potentially responsive documents. 2,528 pages of potentially responsive records were identified.

8. In my previous declaration, I stated that on November 17, 2014, DHS Privacy Office received a no records response from OPA indicating that they searched their database and found no records that matched the search criteria provided by the requester "home enforcement operation by ICE" from January 20, 2009 to present or the expanded search terms "home enforcement, home enforcement operations, home arrests, target enforcement, enforcement raids, enforcement operations".

9. Upon further inquiry, I have now learned that OPA does not keep records in a database as was erroneously reported in my prior declaration. Upon receipt of the FOIA request, the Chief of Staff of OPA tasked the request to employees in the office and searches of email were performed within Microsoft Outlook using the expanded keywords described in paragraph 8. No potentially responsive records were located.

10. On November 21, 2014, to ensure compliance, DHS tasked the Office of Intelligence & Analysis (I&A) to search for responsive records.

11. On November 21, 2014, DHS Privacy Office received a no records response from I&A indicating that after a careful review of the initial FOIA request and search terms provided it was determined that I&A would have no records on that subject because I&A had no involvement with immigration enforcement actions.

12. In my prior declaration, I noted that on December 22, 2014, DHS Privacy Office received a no records response from Office of Policy “Immigration Division” indicating that they searched their database and found no records that matched the search criteria provided by the requester “home enforcement operation by ICE” from January 20, 2009 to present or the expanded search terms “home enforcement, home enforcement operations, home arrests, target enforcement, enforcement raids, enforcement operations”.

13. Based on more detailed information provided to me by an Administrative Specialist with the Office of Policy, Border, Immigration and Trade Policy branch, the Office of Policy “Immigration Division” does not have a “database”, but was referring to shared network drives as well as searches of email through the Microsoft Outlook application. Both shared network drives and email searches were conducted using the expanded search terms noted in paragraph 12. No potentially responsive records were located.

14. On November 25, 2014, DHS Privacy Office receive notification from OGC that they had located some email records associated with the Associate General Counsel of the Immigration Law Division that might be responsive to the request.

15. At the time of the search, the OGC Immigration Law Division consisted of three attorneys, the Associate General Counsel, an Assistant General Counsel, and an attorney-advisor. All three attorneys reviewed the request for records, and based on the subject matter of the request, it was determined that the subject matter fell under the purview of the Associate General Counsel. As such, only the email records of the Associate General Counsel were searched.

16. On December 4, 2014, DHS Privacy Office tasked MGMT/OCIO to search and provide to DHS Privacy Office the email records associated with the Associate General Counsel of the Immigration Law Division that met the requesters search terms and the expanded search terms. The search parameters and terms provided to MGMT/OCIO were as follows: “All records . . . related to the policies, procedures, or objectives of home enforcement operations from January 20, 2009, to the present.” Using the following keywords and or filters, “ICE OR home AND (“enforcement operations” OR arrests) OR “target enforcement”

17. The DHS Directorate for Management includes the Office of Chief Information Officer (MGMT/OCIO); The Directorate for Management is responsible for:

- budget, appropriations, expenditure of funds, accounting and finance;
- procurement; human resources and personnel;
- information technology systems;
- facilities, property, equipment, and other material resources; and
- identification and tracking of performance measurements relating to the responsibilities of the Department.

DHS MGMT/OCIO is the agency who manages they email system for DHS/HQ Offices which includes OGC. Therefore, in some instances, such as when voluminous records

may be involved or electronic searches of email records may be more efficiently conducted by a system administrator, the task of conducting a search may be delegated to MGMT/OCIO.

18. On December 17, 2014, MGMT/OCIO provided DHS Privacy Office with all the potential responsive records located from the OGC email account of the Associate General Counsel of the Immigration Law Division for processing. The number of potential responsive documents totaled 16,211; the large number of potentially responsive documents initially located by the MGMT/OCIO search was a result of the use of overly broad search terms such as “ICE” in conjunction with “arrests”. After applying the date limits provided by the requester and applying a more targeted key word search, 18 documents totaling 538 pages were found to be responsive to the request.

19. On December 19, 2014, DHS Privacy Office released 778 pages of responsive documents found by the supplemental search conducted by CRCL. The 778 pages of responsive documents consisted of 594 pages released in full and 184 pages withheld in full. An additional 1,012 pages were referred to other agencies for processing and direct response to the requester as follows; 949 to U.S. Immigration and Customs Enforcement (ICE), 62 to the Office of Inspector General (OIG) and 1 to Department of Justice (DOJ).

20. In response to a July 17, 2015, letter from Plaintiffs complaining about the adequacy of DHS searches, again out of an abundance of caution, on August 6, 2015, DHS Privacy Office tasked the DHS Office of Operations Coordination (OPS) to search

for any potential responsive records using the search terms provided by the requester and any terms that would be associated with the requested information.

21. The DHS Office of Operations Coordination (OPS) is responsible for monitoring the security of the United States on a daily basis and coordinating activities within the Department and with governors, Homeland Security Advisors, law enforcement partners, and critical infrastructure operators in all 50 States and more than 50 major urban areas nationwide. The Office of Operations Coordination works to deter, detect, and prevent terrorist acts by coordinating the work of federal, state, territorial, tribal, local, and private sector partners and by collecting and fusing information from a variety of sources.

22. Based on the subject matter of the request on August 10, 2015, DHS Privacy Office received a no records response from OPS indicating that they searched their database and found no records that matched the search criteria provided by the requester “home enforcement operation by ICE” from January 20, 2009 to present or the expanded search terms “home enforcement, home enforcement operations, home arrests, target enforcement, enforcement raids, enforcement operations”. As a general matter, OPS is not involved with immigration arrests.

23. On January 21, 2015, DHS Privacy Office released 1,007 pages of responsive documents found by OGC and CRCL. The OGC search yielded 538 responsive documents and CRCL released 469 responsive documents for the month of January. Of the 1,007 pages located 157 pages are releasable in full, 411 pages are releasable in part and 439 pages are withheld in full. An additional 71 pages were referred to U.S.

Immigration and Customs Enforcement (ICE) and the DHS Office of Inspector General (OIG) for review and direct response to the requester.

24. On February 9, 2015, the AUSA assigned to the case received a letter from Plaintiffs requesting all fully redacted pages to be included in the release.

25. On February 12, 2015, DHS Privacy Office and CRCL through the AUSA provided an updated release to the Plaintiff containing all the released in full, released in part and withheld in full pages for both the December and January release.

26. DHS further conducted a re-review of the document previously produced by CRCL and determined, in its discretion, that certain additional information could be disclosed.

27. On August 31, 2015, DHS Privacy Office re-released 1, 247 pages of responsive documents previously produced by CRCL in the December 2014 and January 2015 releases. Of the 1,247 pages in the production, 181 pages were releasable in full, 935 pages were releasable in part and 131 pages were withheld in full.

28. As of August 31, 2015, DHS Privacy Office has completed the release of all responsive records found in reference to the Plaintiff's FOIA request after a complete and thorough search of CRCL, FLETC, USCIS, OPS, OPA, OIG, OGC, Office of Policy "Immigration Division" and I&A.

I declare under penalty of perjury that the foregoing is true and correct.

Executed this 5th day of April, 2016.



Kevin L. Tyrrell
Associate Director FOIA Appeals and Litigation