

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA**

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|-------------------------|---|-----------------------------|
| ELECTRONIC PRIVACY |) | |
| INFORMATION CENTER |) | |
| |) | |
| Plaintiff |) | |
| |) | |
| v. |) | Civ. No.: 1:14-CV-01217-RBW |
| |) | |
| U.S. CUSTOMS AND BORDER |) | |
| PROTECTION |) | |
| |) | |
| Defendant. |) | |
| _____ |) | |

DECLARATION OF SABRINA BURROUGHS

I, Sabrina Burroughs, declare as follows:

1. I am the Director of the Freedom of Information Act (FOIA) Division, Privacy and Diversity Office, Office of the Commissioner, U.S. Customs and Border Protection (CBP). As such, I am the official responsible for the overall supervision of the processing of FOIA requests submitted to CBP. Prior to joining CBP, I served as the Director of Disclosure Policy and FOIA Program Development for the Department of Homeland Security (DHS). I have been Director of CBP's FOIA Division in Washington, D.C., since May 20, 2013. As the Director of the FOIA Division, I provide technical and administrative supervision and direction, through subordinate supervisors, to a group of Government Information Specialists in processing the most complex and difficult requests for release of CBP documents and information, assist with

FOIA litigation matters, and oversee the processing of FOIA responses and adherence to federal laws and regulations.

2. I am familiar with Plaintiff Electronic Privacy Information Center's (hereinafter Plaintiff) FOIA request for information from CBP. I am also familiar with the Plaintiff's allegations in this litigation.
3. In furtherance of my responsibilities, I have access to records maintained in the ordinary course of business by CBP. All information contained herein is based upon information furnished to me in my official capacity, and the statements I make in this declaration are based on my personal knowledge, which includes knowledge acquired through, and agency files reviewed in, the course of my official duties.
4. The purpose of this declaration is to inform the Court and Plaintiff of CBP's actions since receiving Plaintiff's request for records from CBP. This declaration and its attachments provide the Court and Plaintiff with a description of the search CBP conducted to locate records responsive to Plaintiff's request, as well as an explanation of information that is withheld, the statutory exemptions claimed, and the justification for asserting the exemptions.

PLAINTIFF'S REQUEST TO CBP

5. Plaintiff submitted a FOIA request to CBP dated April 8, 2014, for four categories of information, primarily regarding CBP's Analytical Framework for Intelligence (AFI). *See* Exhibit A.
6. AFI is a CBP system which "enhances DHS's ability to identify, apprehend, and prosecute individuals who pose a potential law enforcement or security risk; and

it aids in the enforcement of customs and immigration laws, and other laws enforced by DHS at the border.” *See* 77 Fed. Reg. 33753, 33753 (June 7, 2012). AFI also “improves the efficiency and effectiveness of CBP’s research and analysis process by providing a platform for the research, collaboration, approval, and publication of finished intelligence products.” *Id.*

7. CBP did not provide a response to Plaintiff’s FOIA request to CBP dated April 8, 2014, prior to the filing of this litigation on July 18, 2014.

CBP’S RESPONSE TO PLAINTIFF’S REQUEST

8. CBP responded to Plaintiff’s request on February 5, 2015. A total of 358 pages of responsive records were located in response to Plaintiff’s request. Of those pages, 89 were released in full, 267 were partially released, and two pages were withheld in full. The Privacy Compliance Report requested by Plaintiff was also withheld in full (34 pages). Of the pages that were partially released or withheld in full, information was withheld pursuant to 5 U.S.C. § 552(b)(3), (b)(4), (b)(5), (b)(6), (b)(7)(C), and (b)(7)(E). *See* Exhibit B.
9. Part one of Plaintiff’s request asked for “[a]ll AFI Training modules, request forms and similar final guidance documents that are in, or will be used in, the operation of the program.” *See* Exhibit A. CBP’s FOIA Division referred this portion of the request to the Targeting and Analysis Systems Program Directorate (TASPD) within CBP’s Office of Information and Technology. As TASPD is responsible for the maintenance of the AFI system, it maintains the associated training for use of the system and is the office within CBP that is reasonably likely to maintain all information responsive to this portion of the

request. As TASPDP's search for responsive documents encompassed both part one and part three of Plaintiff's request, a description of TASPDP's search is included in paragraph 13 below to address both portions of Plaintiff's request. Fifty-one responsive documents, including AFI training modules and other documents regarding AFI and AFI training, were located in response to part one of the request.

10. Part two of Plaintiff's request asked for "[a]ny records, memos, opinions, communications, or other documents that discuss potential or actual sources of information not currently held in DHS databases, or potential or actual uses of information not currently held in DHS databases." *See* Exhibit A. CBP's FOIA Division reviewed this request and determined that it was overly broad and unduly burdensome as it requested all documents discussing potential or actual sources and uses of information not currently held in DHS databases. Search terms to locate records in response to this request, as submitted by Plaintiff, could not be formulated given the breadth of the request, the large number of DHS databases, and the immeasurable number of potential or actual sources and uses of information not currently held in DHS databases. A comprehensive search in response to such an overly broad request for information potentially would have involved a large number of CBP offices and employees combing line by line through voluminous CBP records regarding all DHS databases for any discussion of such potential or actual sources or uses of information not currently held in DHS databases with little likelihood of locating responsive

records. The FOIA Office therefore concluded that such a search would have been clearly unreasonably and overly burdensome.

11. The FOIA Office, however, considered that the remainder of Plaintiff's request (parts one, three and four) focused largely on AFI and referred this portion of Plaintiff's request to appropriate CBP subject matter experts, i.e., individuals with knowledge of the AFI program, to determine whether any potentially responsive information could be reasonably located. These experts reviewed records contained in the files relating to AFI and located two documents not otherwise deemed responsive to the other requests: a meeting minutes document, which was provided in part; and a two page document regarding maps, which was withheld in full under 5 U.S.C. § 552(b)(5) as a pre-decisional and deliberative draft. The meeting minutes document appeared to be responsive as it discussed whether to include certain information and functionality within AFI. The maps document appeared to be responsive as it addressed potential sources of information in AFI. The experts' review of the two documents did not suggest that additional records might be located in other locations within the agency and did not conduct a record-by-record review of agency records because the agency had determined that such a search was unreasonable and unduly burdensome.

12. Part three of Plaintiff's request asked for "[a]ny records, contracts, or other communications with commercial data aggregators regarding the AFI program." *See Exhibit A.* CBP's FOIA Division referred this portion of Plaintiff's request to the Procurement Directorate within CBP's Office of Administration, as this

office would be the office within CBP to maintain contracts and related records regarding AFI. The Procurement Directorate searched for documents regarding AFI using “AFI” as a search term, but the documents located were determined not to be responsive as, upon further review, they were not related to commercial data aggregators. TASPDP also searched for records responsive to this portion of the request, as TASPDP is responsible for the maintenance of the AFI system. Nine contract documents determined to be responsive were located and provided in part in response to this portion of Plaintiff’s request.

13. In response to parts one and three of the request, TASPDP searched all AFI contracts, all program documentation related to acquisition decisions (to include documentation related to privacy threshold analyses, privacy impact assessments, and the systems security plan that identifies system connections), all training documents maintained by the program, CBP’s internal network, TASPDP’s and CBP’s intranet websites, and e-mail accounts. Keywords used included “AFI training,” “AFI,” “Analytical Framework,” “commercial data aggregator,” “commercial data,” “commercial,” “source,” “Lexis,” “data aggregator,” and “aggregator.”

14. Part four of Plaintiff’s request asked for “[t]he Privacy Compliance Report initiated in August of 2013.” *See* Exhibit A. The requested Privacy Compliance Report was withheld in full pursuant to 5 U.S.C. § 552(b)(5) as it was a draft and therefore deliberative and pre-decisional. As explained further below, this document is no longer being withheld as it has been finalized and published on the DHS website.

JUSTIFICATION FOR WITHHOLDING INFORMATION UNDER FOIA

15. CBP has released, in whole or in part, 356 pages of records to Plaintiff, withholding certain information pursuant to FOIA exemptions (b)(3), (b)(4), (b)(6), (b)(7)(C), and (b)(7)(E). A two page record and the Privacy Compliance Report requested by Plaintiff were withheld in full pursuant to FOIA exemption (b)(5). The Privacy Compliance Report is no longer being withheld, as explained below.

Exemption (b)(3)

16. Section 552(b)(3) of Title 5 of the U.S. Code exempts from disclosure matters that are “specifically exempted from disclosure by statute” if that statute “requires that the matters be withheld from the public in such a manner as to leave no discretion on the issue” or “establishes particular criteria for withholding or refers to particular types of matters to be withheld.”

17. In this case, exemption (b)(3) was applied to taxpayer identification numbers appearing in the contract related documents located in response to Plaintiff’s request. Release of the taxpayer identification numbers is prohibited by 26 U.S.C. § 6103, which prohibits the release of tax returns and return information, including the taxpayer’s identifying number, by officers or employees of the United States.

Exemption (b)(4)

18. Section 552(b)(4) of Title 5 of the U.S. Code exempts from disclosure matters that are “trade secrets and commercial or financial information obtained from a person and privileged or confidential.”

19. In this case, exemption (b)(4) was applied to line item pricing information. Line item pricing information is the pricing breakdown per descriptive line item included on purchase orders or contracts. Line item pricing information is non-public commercial information. The disclosure of this information would inappropriately disclose the vendor's competitive pricing structure and strategy. Exemption (b)(4) was also applied to taxpayer identification numbers, in addition to exemption (b)(3), as release of this information could cause significant harm to the company and could be used for fraudulent purposes if released to the public.

Exemption (b)(5)

20. Section 552(b)(5) of Title 5 of the U.S. Code exempts from disclosure matters that are "inter-agency and intra-agency memorandums or letters which would not be available by law to a party other than an agency in litigation with the agency." In this case, two documents were withheld under exemption (b)(5) based upon the deliberative process privilege that is incorporated into exemption (b)(5). In addition, a portion of a meeting minutes document was withheld pursuant to exemption (b)(5).

21. The general purpose of this exemption and the underlying privilege is to prevent injury to the quality of agency decisions. In the instant case, exemption (b)(5) was initially applied to protect two draft documents, a two page document regarding maps and the Privacy Compliance Report requested by Plaintiff, which had not been finalized when FOIA Division's search for this document was conducted. These documents were therefore determined to be deliberative

and pre-decisional. In the course of preparing this declaration, however, CBP discovered that DHS had finalized and issued the Privacy Compliance Report regarding AFI (published on December 19, 2014). It is a public document, available at <http://www.dhs.gov/publication/privacy-compliance-review-analytical-framework-intelligence>. As such, it is no longer being withheld as a draft pursuant to exemption (b)(5). The two page map document continues to be a deliberative and pre-decisional draft, which is still being withheld pursuant to exemption (b)(5). In addition, a portion of a meeting minutes document was also withheld pursuant to exemption (b)(5) as the portions of the document asked whether certain information and functionality should be included within AFI. Such information is withheld as pre-decisional and deliberative pursuant to exemption (b)(5).

22. Release of the two page draft map document withheld pursuant to exemption (b)(5) would be harmful as the document would reveal the thought and decision-making processes of the drafters and the individuals responsible for editing the document and may not reflect the agency's final decisions. The withheld maps document is clearly a draft as it includes edits to the text, indicating that certain text was being deleted and added to the document. Similarly, release of the text withheld pursuant to exemption (b)(5) in the meeting minutes document would reveal the deliberations of those at the meeting regarding a decision that was not made. Release of this information would be harmful to the deliberative process as it would have a chilling effect on future internal discussions and the record keeping of those discussions.

Exemption (b)(5) protects not merely documents, but also the integrity of the deliberative process itself where the exposure of that process would result in harm.

Exemption (b)(6)

23. Section 552(b)(6) of Title 5 of the U.S. Code exempts from disclosure personnel and medical files and similar files the release of which would constitute a clearly unwarranted invasion of personal privacy. This exemption requires balancing the public's right to disclosure against an individual's right to privacy. The redacted documents contain information exempted from disclosure, because the privacy interests in that information outweigh the public interest in its disclosure.
24. In this case, exemption (b)(6) has been applied to phone numbers and e-mail addresses for government and vendor employees, names of government and vendor employees, signatures of government and vendor employees, and personally identifiable information and other identifying details of third party individuals.
25. Exemption (b)(6) has been applied to such information because its release would constitute a clearly unwarranted invasion of privacy. Government employees, including CBP law enforcement officers, and vendor employees have a protectable privacy interest in their identities that would be threatened by disclosure. Similarly, government and vendor employees have a protectable privacy interest in their phone numbers, e-mail addresses, and personal signatures that would also be threatened by disclosure. Release of this

information would not shed light on the actions of CBP and there is no public interest in the disclosure of this information. In addition, the redacted names were not of high-ranking government officials. Accordingly, the individual's right to privacy outweighs whatever public interest, if any, might exist in knowing this information.

26. Exemption (b)(6) has also been applied to the personally identifiable information (such as names) and other identifying details of third party individuals because release of this information would constitute a clearly unwarranted invasion of privacy. Third party individuals have a protectable privacy interest in their identities and personally identifiable information that would be threatened by disclosure. Release of this information would not shed light on the actions of CBP and there is no public interest in the disclosure of this information. Accordingly, the individual's right to privacy outweighs whatever public interest, if any, might exist in knowing the information.

Exemption (b)(7)(C)

27. Section 552(b)(7) of Title 5 of the U.S. Code exempts from disclosure certain records or information that are "compiled for law enforcement purposes." The records at issue in this case were compiled for law enforcement purposes in that the information is created and used by CBP in its law enforcement mission to secure the border of the United States.
28. Section 552(b)(7)(C) of Title 5 of the U.S. Code exempts from disclosure law enforcement records or information that "could reasonably be expected to constitute an unwarranted invasion of personal privacy." This exemption

extends to CBP as a law enforcement agency. Exemption (b)(7)(C) is designed to protect, among other things, law enforcement personnel from harassment and annoyance in the conduct of their official duties and in their private lives, which could conceivably result from the public disclosure of their identity. The privacy interest in the identity of an individual in the redacted document outweighs any public interest in disclosure of that information.

29. Exemption (b)(7)(C) has been applied to phone numbers and e-mail addresses for government employees, names of government employees, and personally identifiable information and other identifying details of third party individuals because release of this information could reasonably be expected to constitute an unwarranted invasion of personal privacy. The records provided in response to Plaintiff's request were compiled for law enforcement purposes in that the information contained within these records is created and used by CBP in its mission to secure the borders of the United States. The holders of the redacted government phone numbers and e-mail addresses and the named government employees have a protectable privacy interest in their identities that would be compromised by the release of this information. Similarly, the third party individuals whose personally identifiable information and other identifying details appear in the records have a protectable privacy interest in their identities that would be compromised by the release of this information. Release of this information would not shed light on the actions of CBP, and there is no public interest in the disclosure of this information. In addition, the redacted names were not of high-ranking government officials. Accordingly, the individual's

right to privacy outweighs whatever public interest, if any, might exist in knowing this information.

Exemption (b)(7)(E)

30. As noted above, Section 552(b)(7) of Title 5 of the U.S. Code exempts from disclosure certain records or information that are “compiled for law enforcement purposes.” The records at issue in this case were compiled for law enforcement purposes in that the information is created and used by CBP in its law enforcement mission to secure the border of the United States.
31. Section 552(b)(7)(E) of Title 5 of the U.S. Code exempts from disclosure law enforcement records or information that “would disclose techniques and 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.”
32. In this case, exemption (b)(7)(E) has been applied to screen shots of the AFI system and specific information regarding how to navigate and use AFI as well as to descriptions of law enforcement techniques and procedures regarding the use of the AFI system, AFI’s capabilities, and CBP’s processing of international travelers.
33. Exemption (b)(7)(E) has been applied to screen shots of the AFI system and specific information regarding how to navigate and use AFI because this information may enable an individual knowledgeable in computer systems to improperly access the system, facilitate navigation or movement through the system, allow manipulation or deletion of data and interfere with enforcement

proceedings. The information regarding how to navigate and use the AFI system which has been redacted in the records provided to Plaintiff would provide a detailed roadmap to individuals looking to manipulate AFI or to evade detection by law enforcement, thereby circumventing the law and potentially resulting in alteration, loss, damage or destruction of data contained in CBP's computer system.

34. Descriptions of law enforcement techniques and procedures regarding the use of the AFI system, AFI's capabilities, and CBP's processing of international travelers are withheld under exemption (b)(7)(E) because this information would reveal CBP targeting and inspection techniques used in the processing of international travelers. Release of this information would enable potential violators to design strategies to circumvent the law enforcement procedures developed by CBP.

35. Protecting and maintaining the integrity of CBP computer systems is imperative in assisting CBP to meet its mission to prevent terrorists, their weapons, and other dangerous items from entering the United States. As previously noted, AFI "enhances DHS's ability to identify, apprehend, and prosecute individuals who pose a potential law enforcement or security risk; and it aids in the enforcement of customs and immigration laws, and other laws enforced by DHS at the border." *See* 77 Fed. Reg. 33753, 33753 (June 7, 2012). As an important law enforcement tool, there is a great need to defend AFI against any threatened or real risk of threat or compromise to ensure CBP is able to effectively carry out its mission.

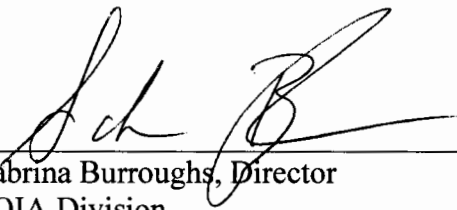
SEGREGABILITY

36. Plaintiff has been provided with all responsive records pursuant to its request.

Where appropriate, CBP asserted FOIA exemptions in the released records. All information withheld is exempt from disclosure pursuant to a FOIA exemption or is not reasonably segregable because it is so intertwined with protected material that segregation is not possible or its release would have revealed the underlying protected material. I have reviewed the documents determined to be responsive, line-by-line, to identify information exempt from disclosure or for which a discretionary waiver of exemption could apply, and I am satisfied that all reasonably segregable portions of the relevant records have been released to the Plaintiff in this matter. In my determination, any further release of the exempted materials could reasonably lead to the identification of the individuals or other items that are properly protected by the exemptions asserted.

I declare under a penalty of perjury that the information provided is true and correct to the best of my information, knowledge, and belief.

Signed this 27 day of May 2015.



Sabrina Burroughs, Director
FOIA Division
Privacy and Diversity Office
Office of the Commissioner
U.S. Customs and Border Protection
U.S. Department of Homeland Security