

1300 Pennsylvania Avenue NW
Washington, DC 20229



U.S. Customs and
Border Protection

February 5, 2015

Ginger McCall
1718 Connecticut Avenue NW, Suite 200
Washington, DC 20009

Dear Ms. McCall:

This Letter is a final response to your Freedom of Information Act (FOIA) request to U.S. Customs and Border Protection (CBP) seeking records regarding the Analytical Framework for Intelligence (AFI).

Epic requests copies of the following agency records:

- (1) All AFI Training modules, request forms and similar final guidance documents that are in, or will be used in, the operation of the program;
- (2) Any records, memos, opinions, communications, or other documents that discuss potential or actual sources of information not currently held in DHS database or potential or actual uses of information not currently held in DHS databases;
- (3) Any records, contracts, or other communications with commercial data aggregators regarding the AFI program;
- (4) The Privacy Compliance Report initiated in August of 2013.

CBP was able to locate 358 pages of responsive records. Of those pages, CBP has determined that 89 pages are releasable in full, 267 pages are partially releasable, pursuant to Title 5 U.S.C. § 552 (b)(3), (b)(4), (b)(6), (b)(7)(C), (b)(7)(E) and two pages are withheld in full pursuant to Title 5 U.S.C. § 552 (b)(5). The Privacy Compliance Report is currently a draft and withheld in its entirety pursuant to Title 5 U.S.C. § 552 (b)(5).

FOIA Exemption (b)(3) protects information specifically exempted from disclosure by another statute, if the statute (A) requires that the matters be withheld from the public in such a manner as to leave no discretion on the issue, or (B) established particular criteria for withholding or refers to particular types of matters to be withheld. Exemption 3 is asserted on behalf of the Transportation Security Administration to protect Sensitive Security Information (SSI). 49 U.S.C. § 114(r) prohibits the disclosure of information that “would be detrimental to the security of transportation” if released. The TSA regulations implementing Section 114(r) are found in 49 CFR Part 1520. Pursuant to 49 CFR Section 1520.5(b)(9)(i), security screening procedures,

including selection criteria for the screening of persons, is SSI and is therefore exempt from disclosure.

FOIA Exemption 4 protects trade secrets and commercial or financial information obtained from a person that is privileged or confidential. The courts have held that this subsection protects (a) confidential commercial information, the disclosure of which is likely to cause substantial harm to the competitive position of the person who submitted the information and (b) information that was voluntarily submitted to the government if it is the kind of information that the provider would not customarily make available to the public.

FOIA Exemption 5 protects from disclosure those inter- or intra-agency documents that are normally privileged in the civil discovery context. The three most frequently invoked privileges are the deliberative process privilege, the attorney work-product privilege, and the attorney-client privilege. After carefully reviewing the responsive documents, CBP has determined that portions of the responsive documents qualify for protection under the Deliberative Process Privilege. The deliberative process privilege protects the integrity of the deliberative or decision-making processes within the agency by exempting from mandatory disclosure opinions, conclusions, and recommendations included within inter-agency or intra-agency memoranda or letters. The release of this internal information would discourage the expression of candid opinions and inhibit the free and frank exchange of information among agency personnel.

FOIA Exemption (b)(6) exempts from disclosure personnel or medical files and similar files the release of which would cause a clearly unwarranted invasion of personal privacy. This requires a balancing of the public's right to disclosure against the individual's right privacy. The types of documents and/or information that we have withheld may consist of birth certificates, naturalization certificates, driver license, social security numbers, home addresses, dates of birth, or various other documents and/or information belonging to a third party that are considered personal. The privacy interests of the individuals in the records you have requested outweigh any minimal public interest in disclosure of the information. Any private interest you may have in that information does not factor into the aforementioned balancing test.

FOIA Exemption (b)(7)(C) protects records or information compiled for law enforcement purposes that could reasonably be expected to constitute an unwarranted invasion of personal privacy. This exemption takes particular note of the strong interests of individuals, whether they are suspects, witnesses, or investigators, in not being unwarrantably associated with alleged criminal activity. That interest extends to persons who are not only the subjects of the investigation, but those who may have their privacy invaded by having their identities and information about them revealed in connection with an investigation. Based upon the traditional recognition of strong privacy interest in law enforcement records, categorical withholding of information that identifies third parties in law enforcement records is ordinarily appropriate.

FOIA Exemption (b)(7)(E) protects records compiled for law enforcement purposes, the release of which would disclose techniques and/or 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. CBP has determined that disclosure could reasonably be expected to risk circumvention of the law.

The Office of Government Information Services (OGIS) also mediates disputes between FOIA requesters and Federal agencies as a non-exclusive alternative to litigation. If you are requesting access to your own records (which is considered a Privacy Act request), you should know that OGIS does not have the authority to handle requests made under the Privacy Act of 1974. If you wish to contact OGIS, you may email them at ogis@nara.gov or call (877) 684-6448.

Please notate file number 2014-032396 on any future correspondence to CBP related to this request.

Sincerely,

A handwritten signature in cursive script, appearing to read "T. Pegues".

Timikia Pegues
Government & Information Specialist
Privacy & Diversity Office

Enclosures