

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

AMERICAN CIVIL LIBERTIES UNION OF MASSACHUSETTS and AMERICAN OVERSIGHT	}	D. Mass No. 21-10761-NMG
Plaintiffs,	}	
v.	}	
U.S. IMMIGRATION AND CUSTOMS ENFORCEMENT	}	
Defendants.	}	

**SUPPLEMENTAL DECLARATION OF LYNNEA SCHURKAMP IN SUPPORT OF
THE UNITED STATES IMMIGRATION CUSTOMS ENFORCEMENT REPLY BRIEF**

I, Lynnea Schurkamp, pursuant to 28 U.S.C. § 1746, hereby declare as follows:

1. I am the Deputy FOIA Officer of the Freedom of Information Act Office (the “ICE FOIA Office”) at U.S. Immigration and Customs Enforcement (“ICE”). The ICE FOIA Office is responsible for processing and responding to all Freedom of Information Act (“FOIA”), 5 U.S.C. § 552, and Privacy Act, 5 U.S.C. § 552a, requests received at ICE. I have held this position since August 1, 2021. I am the ICE official responsible for supervising ICE responses to requests for records in litigation as well as incoming FOIA requests to ICE under the FOIA, 5 U.S.C. § 552, the Privacy Act, 5 U.S.C. § 552a (the “Privacy Act”) and other applicable records access statutes and regulations. Prior to this position, I was the Assistant Disclosure Officer of the U.S. Secret Service FOIA Intake Team from July 21, 2019 until July 31, 2021. Prior to that I was the FOIA Program Manager/Litigation Coordinator for the National Organic Program in the Agricultural Marketing Service, U.S. Department of Agriculture (“USDA”) for one year.

2. My official duties and responsibilities include the oversight and supervision of the ICE FOIA Litigation and Intake Teams. The Intake Team is responsible for acknowledging the receipt of all FOIA and Privacy Act requests at ICE (5 U.S.C. § 552 and 5 U.S.C. § 552a). This team also conducts searches for responsive records. The Litigation Team is responsible for picking up the case when a complaint is filed and seeing it through to completion. Depending on what is alleged in the complaint, the Litigation Team will conduct a search, gather responsive records, go through the records for responsiveness, process productions, and release records with applicable withholdings to the plaintiff or plaintiff's counsel. I manage and supervise the supervisors of the Intake and Litigation Teams. These teams are comprised of FOIA Assistants and Paralegal Specialists. Due to my experience and the nature of my official duties, I am familiar with ICE's procedures for responding to requests for information pursuant to provisions of the FOIA and the Privacy Act.

3. I make this supplemental declaration in my official capacity in support of ICE's motion for summary judgment and in response to plaintiffs' cross-motion for summary judgment. The statements contained in this declaration are based upon my personal knowledge, my review of documents kept by ICE in the ordinary course of business, and information provided to me by other ICE employees in the course of my official duties.

4. This supplemental declaration provides more information regarding the manner in which ICE conducted the supplemental searches per the terms of the agreement with the plaintiffs.

I. SUPPLEMENTAL SEARCHES

5. In light of the searches described in my first and this supplemental declaration, these searches described therein encompass the locations most likely to contain responsive material to Plaintiff's FOIA request. As described in my initial declaration, as part of an agreement

with the plaintiff, ICE agreed to conduct a supplemental search of the emails and data pulled by the Office of the Chief Information Office (OCIO) of the seven agency personnel whom were specifically identified in Plaintiffs' request, for the date range between March 15, 2018 and April 25, 2019 using search terms Plaintiffs proposed and that the parties later agreed to. The seven custodians were: Thomas Homan, Matthew Albence, Thomas Blank, Tracy Short, Jon Feere, Natalie Asher, and Ronald Vitiello. Of the seven custodians plaintiffs identified, only Ms. Natalie Asher was still employed with the agency in June 2021, when ICE conducted the initial search of the email and data records retrieved by the office of OCIO.¹

6. The parties worked on refining the search terms plaintiffs provided over time and eventually agreed, at the September 9, 2021, telephonic conference, on the additional terms that would be used for additional searches of the emails and data retrieved by OCIO.²

7. OCIO uses a server-based disaster recovery system for email servers known as the Enterprise Vault ("EV"). Through this system, agency emails are maintained in accordance with applicable record retention schedules, and for data backup purposes, in the EV. Under this system, emails and other electronic files from 2008 and after are backed up so that they are searchable and recoverable.

8. In order to conduct the agreed-upon supplemental search, ICE's Office of the Chief Information Officer (OCIO) first retrieved all electronic records for the relevant time period from all seven custodians from ICE's Enterprise Vault journaling server, which captures and preserves

¹ The search terms were applied to the initial search as follows in Relativity: "Judge Shelley M. Richmond Joseph" OR "Judge Joseph" OR "Officer Wesley MacGregor" OR "Officer MacGregor" OR "Andrew Lelling" OR " Mr. Lelling Or "Lelling" OR "Case No. 19-10141-LTS."

² Plaintiffs followed up by email on September 10, requesting additional searches *after* ICE had already agreed to conduct additional searches with agreed upon terms to locate any potentially responsive records, should they exist.

all sent, deleted and received electronic records of all ICE users.³ Because six out of the seven custodians plaintiff identified were no longer with ICE at the time of the searches, and in order to ensure that the search of electronic records was as comprehensive as possible, ICE determined to retrieve the electronic records for all seven custodians from the Enterprise Vault directly. OCIO retrieved the relevant electronic records from the Enterprise Vault in the form of “personal storage tables” or .pst files. These .pst files are Microsoft Outlook data files containing individual Outlook items such as email messages, email attachments, calendar items and contacts. OCIO then imported the .pst files into ICE’s e-discovery software called *Relativity*, where the .pst files were indexed and processed in order to enable complex searches to be run on the data in the files.

9. In order to search the collected emails utilizing the search terms the plaintiff provided, ICE counsel provided the ICE FOIA paralegal with the mutually agreed-upon search terms in the parties’ September 9, 2021, telephonic conference. The search terms agreed upon at the September 9, 2021, telephonic conference were: “Newton District Court;” “Jose Medina-Perez;” “Medina-Perez,” “Shelley Joseph;” and “Wesley MacGregor.”

10. The ICE FOIA paralegal applied the mutually agreed upon search terms to the OCIO’s collected email data located in *Relativity*. The search terms were applied to data in different variations⁴ likely to produce any potentially responsive records, should they exist. Records deemed responsive, totaling 17 pages, were marked as such, extracted from *Relativity* and uploaded into ICE FOIA’s software, FOIAXpress, for processing and release to the plaintiffs. These records were processed and produced to Plaintiffs via Fedex on September 30, 2021, and reproduced via email on October 6, 2021.

³ ICE has been preserving electronic records in the Enterprise Vault since 2008.

⁴The additional search terms were entered as follows in *Relativity* :“Wesley MacGregor” OR “Shelley Joseph” OR “Newton District Court” OR “Jose Medina-Perez” OR “Medina-Perez.”

11. Upon further litigation review, To further describe searches as noted in my original declaration, ICE d re-tasked additional offices in order to search for any potentially responsive records relating to communications, should any exist, regarding Judge Shelly Joseph and Officer MacGregor. As stated previously, the additional offices tasked were the Office of the Executive Secretariat (OES), and the Chief of Staff, as previously detailed in my previous declaration. *See Schurkamp Declaration* ¶37, ¶42. The mission of the Office of the Chief of Staff is to provide the ICE Director with the most current, accurate and comprehensive information available, and to facilitate a seamless exchange of information between all of the agency's program offices and the ICE Director⁵. A search of the Office of the Chief of Staff would have most likely captured any communications, should any exist, from the agency's program offices and the ICE director concerning Judge Shelly and Officer MacGregor. The former Chief of Staff conducted a search of his Microsoft Outlook emails for the relevant time period using the following terms, which were independently queried: "Joseph," "Shelley Joseph," "MacGregor" and "Officer MacGregor." No records were located.

12. As stated in my previous declaration, the Office of Executive Secretariat (OES) provides professional, timely, and accurate responses to all public, governmental, and congressional correspondence addressed to the agency. OES also maintains a repository for incoming letters and official responses, and internally generated communications. A search of OES would have most likely captured any communications, should any exist, from the agency's program offices concerning Judge Shelly and Officer MacGregor.

⁵ See original Declaration of Lynnea Schurkamp ¶42.

13. The OES office uses a Microsoft Dynamics Customer Relationship Management (CRM)/SharePoint system to track all requests from task creation to completion. CRM, referred to as ICATT within ICE, also serves as a document repository for ICE-generated documents.

14. For this request, ICATT was searched for work packages and emails containing the following terms and phrases, each of the following search terms independently queried: “Shelley M. Richmond Joseph”, “Judge Joseph”, “Officer MacGregor”, “Wesley MacGregor”, “Shelley Joseph”, “Newton District Court”, “Andrew Lelling.” Four potentially responsive records were located, and those pages were forwarded to the ICE FOIA Office for processing. The ICE FOIA office reviewed and produced all responsive non-exempt records on September 30, 2021 to Plaintiffs.

II. ADDITIONAL APPLICABLE FREEDOM OF INFORMATION ACT WITHHOLDINGS
Exemptions 5 U.S.C. § 552 (b)(6) and (b)(7)(C)

15. In addition to the previously applied FOIA Exemption (b)(7)(A), 5 U.S.C. §552(b)(7)(A)⁶, FOIA Exemption 6 allows the withholding of information found in “personnel and medical files and similar files, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.” 5 U.S.C. § 552(b)(6) (“Exemption 6”). Records that apply to or describe a particular individual, including investigative records, qualify as “personnel,” “medical” or “similar files” under Exemption 6. When applying this exemption to responsive documentation, the agency must balance the individual’s personal privacy interest against the public need for the information.

⁶*Id.* ¶ 53.

16. FOIA Exemption (b)(7)(C), 5 U.S.C. § 552(b)(7)(C), protects from disclosure records or information “compiled for law enforcement purposes” if a release of the records or information “could reasonably be expected to constitute an unwarranted invasion of personal privacy. “When asserting FOIA Exemptions 6 and 7(C), ICE balances an individual’s personal privacy interest against the public’s interest in shedding light on ICE’s performance of its statutory duties.

17. Here, ICE applied FOIA Exemption (b)(6) in conjunction with Exemption (b)(7)(C) to protect from disclosure the names, phone numbers, and e-mail addresses of ICE personnel . ICE also applied FOIA Exemption (b)(6) in conjunction with Exemption (b)(7)(C) to protect from disclosure the names and alien numbers of third-party individuals.

18. To begin, by virtue of the positions held by the ICE personnel referenced in the responsive records, they are permitted access to official law enforcement investigation information. ICE gave consideration to the privacy interests of these federal employees in not becoming targets of harassment – be it in the form of requests for authorized access to law enforcement information or requests for information about ongoing or closed investigations - and their interest in remaining free of interference in the performance of their duties by persons who are currently of interest to law enforcement or oppose the ICE mission.

19. As to that information specific to ICE personnel, the privacy consideration at issue is the interest of each of these individuals in remaining free from harassment, intimidation, doxing and annoyance in conducting their official duties in the future, their interest in remaining free from harassment, intimidation, doxing and annoyance in their private lives, and their interest in not being targeted by individuals in the future who may begrudge them. In recognition of the above described strong privacy interest of all ICE employees, on June 11, 2020, the Office of

Personnel Management (“OPM”) approved ICE’s request to be designated as “security/sensitive” agency for FOIA purposes, which ensures that OPM would, henceforth, withhold all personally identifying information pertaining to ICE employees.

20. With respect to third party individuals names were redacted from the responsive documentation. The disclosure of third-party information could constitute an unwarranted invasion of personal privacy and subject the individuals to embarrassment, harassment, and undue public attention.

21. Furthermore, third party individuals have a recognized privacy interest in not being publicly associated with law enforcement investigations through the release of records compiled for law enforcement purposes. The identities of persons named in law enforcement files (whether or not the named individual is the target of investigations or law enforcement actions) are properly withheld under FOIA Exemptions (b)(6) and (b)(7)(C) in recognition of the stigmatizing connotation carried by the mere mention of individuals in law enforcement files. The individuals’ privacy interest in the information contained in the record outweighs any minimal public interest in the disclosure of the information. Plaintiff has not articulated a sufficient public interest or public need to justify release of this information. The disclosure of this PII serves no public benefit and would not assist the public in understanding how ICE is carrying out its statutory responsibilities. Finally, the third parties mentioned in the law enforcement records did not consent to the disclosure of their PII.

22. ICE determined that the disclosure of lower-level ICE employees would constitute a clearly unwarranted invasion of personal privacy. Moreover, ICE determined that disclosure of emails of ICE personnel which were compiled for law enforcement purposes, could reasonably be expected to constitute an unwarranted invasion of personal privacy.

23. Having determined that the individuals identified in the responsive records have a cognizable privacy interest in not having their information released, ICE FOIA then balanced the interest in safeguarding the individuals' privacy from unnecessary public scrutiny against the public's interest in shedding light on the operations and activities of ICE in the performance of its statutory duties. In each instance where Exemptions 6 and 7(C) were applied, the redaction was limited to the name of the individual or other personally identifiable information, which if released, would not shed light any further light as to the operations or activities of ICE. Most if not all of the information surrounding the redactions was released and the limited extent of the redaction is readily apparent from the context of the records. Additionally, Plaintiff has failed to articulate any public interest that could be advanced by releasing the personally identifiable information of the individuals in question. As such, releasing the information redacted per FOIA Exemptions 6 and 7(C) would not shed light on the operations of ICE or the government.

24. Based upon the traditional recognition of strong privacy interests in law enforcement records, the categorical withholding of ICE personnel information identified in law enforcement records is appropriate.

III. 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 10th day of February, 2022.

LYNNEA A
SCHURKAMP

Digitally signed by
LYNNEA A SCHURKAMP
Date: 2022.02.10
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