

January 16, 2018

**Via Electronic Mail**

James Holzer  
FOIA Program Specialist  
DHS Privacy Office  
Disclosure & FOIA Program  
STOP 0655  
U.S. Department of Homeland Security  
245 Murray Lane SW  
Washington, D.C. 20528  
foia@hq.dhs.gov

Re: FOIA Request  
Reference No. 2019-HQFO-00257

Dear Mr. Holzer:

On December 24, 2018, the President of the United States made an announcement (the “Announcement”) that:

*I am in the Oval Office & just gave out a 115 mile long contract for another large section of the Wall in Texas.<sup>1</sup>*

On December 28, 2018, I submitted a request under the Freedom of Information Act, 5 U.S.C. § 552, (the “Request”) on behalf of the American Civil Liberties Union of Massachusetts (the “ACLUM”). The Request sought the following records:

1. The “contract” referenced in the Announcement.
2. All purchase orders, invoices, RFPs, documentation of selection, sole source or limited source justification and approval documents, studies of cost, efficacy, and/or environmental impact, and other memoranda and

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<sup>1</sup> <https://twitter.com/realDonaldTrump/status/1077329121745793025>

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documentation pertaining to the “contract” referenced in the Announcement

The Request additionally sought a fee waiver under 5 U.S.C. §§ 552(a)(4)(A)(ii)(II) and 552(a)(4)(A)(iii). The Request has been assigned Reference No. 2019-HQFO-00257.

On January 14, 2019, you responded on behalf of DHS that the Request “is too broad in scope or did not specifically identify the records which you are seeking.” You further stated that the Request “should include the specific DHS contract numbers of interest” (emphasis in original), which you suggested may be found by searching the website <https://www.fpds.gov/fpdsng/cms/>. You further stated that the Request should be directed to “the FOIA Officer at the funding [DHS] component directly with the specific contract number.” You concluded:

Please resubmit your revised request, containing a reasonable description of the records you are seeking, directly to the DHS component that maintains the record(s) you are seeking. . . . Please be advised that this action is not a denial of your request and will not preclude you from filing other requests in the future. (emphasis added)

ACLUM will not resubmit or modify the Request. The President’s Announcement referred to a single “115 mile long contract for another large section of the Wall in Texas” signed on December 24, 2018. There is no reason to believe that more than one such contract exists, or that retrieving this contract would present any unreasonable burden for DHS. Indeed, given the magnitude of such a project, and DHS’s recent public focus on a proposed U.S.-Mexico border wall, personnel throughout DHS, and at its highest levels, must have access to and be intimately familiar with this contract—unless the President’s Announcement was simply a lie.

Your response requests that ACLUM, the requestor, undertake to identify the specific contract number that was the subject of the President’s Announcement, and, based on that number, the “funding component” within DHS. I have reviewed the website you provided (<https://www.fpds.gov/fpdsng/cms/>). A search for contracts containing the word “Texas” and signed on December 24, 2018 reveals four entries, none of which appears to be a contract for the construction of any wall of any length, much less a wall of 115 miles in length on the U.S.-Mexico border. Indeed, none of the contracts listed on the website as having been signed on December 24, 2018, appear to relate to construction of the proposed border wall. Accordingly, although I would certainly provide you with the contract number and “funding component” if that information were available in the federal contracting system, that does not appear to be the case.

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I therefore ask that you determine whether DHS will comply with the Request and notify me immediately of that decision. *See* 5 U.S.C. § 552(a)(6)(A)(i). Should your office fail to do so by January 31, 2019 (*i.e.*, 20 business days after submission of the Request, plus two days of tolling while awaiting this response), ACLUM shall be deemed to have exhausted its administrative remedies. *See* 5 U.S.C. § 552(a)(6)(A), (C)(i).

Sincerely,

*/s/ Daniel L. McFadden*

Daniel L. McFadden