



U.S. Customs and
Border Protection

DIS-3 OT:RR:RDL:FAPL
CBP-AP-2017-025326 AML

September 15, 2017

Via FOIAOnline

Mr. Matthew Hoppock
Hoppock Law Firm, LLC
10985 Cody Street
Suite 130
Overland Park, Kansas 66210

RE: Freedom of Information Act Appeal; Request for I-213 instructions and training materials; U.S. Customs and Border Protection Reference CBP-2017-021420; Appeal of redactions

Dear Mr. Hoppock:

This is in final reply to your electronic submission dated January 24, 2017, with which you appeal the January 23, 2017 response to the Freedom of Information Act (FOIA) request you made to the FOIA Division, U.S. Customs and Border Protection (CBP) (CBP Reference# CBP-2017-021420), on or about January 7, 2017. In its January 2017 response to you, CBP's FOIA Division informed you that, although its search of CBP databases produced records responsive to your request, it determined that the responsive records should be withheld in full, pursuant to Exemptions (b)(6), (b)(7)(C) and (b)(7)(E) of the FOIA. The FOIA Division further advised you that "there are no 'pre-filled' fields on the I-213." We regret the delay in reply.

In your initial request, you sought:

[T]raining materials for CBP officers related to the preparation of Form I-213 when an immigrant is encountered or apprehended at or near the border. This would include the training materials shown to CBP officers when they learn how to prepare a Form I-213. This request also includes any templates or model language for preparing Forms I-213... [You are] requesting the fields that are "pre-filled" on the I-213. When the officer prepares the form electronically, some of the fields contain a drop-down list of options. [You are] requesting all of these fields of pre-filled information for the current Form I-213.

You describe the background and basis of your appeal as follows:

The exemptions cited do not apply, and the agency has failed to show the documents cannot be redacted to protect whatever portions of these documents could possibly be exempt. First, exemption (b)(6) doesn't apply, because we've only asked for training materials which are used to train CBP officers on how to fill out the Form I-213. We haven't asked for any specific personnel records. Similarly, exemption (b)(7)(C) does not apply because that exemption only protects documents an "individual" would have a particular "privacy interest" in. Again, we haven't asked for specific personnel files but rather the training materials. Finally, exemption (b)(7)(E) does not apply, because the agency's training materials in filling out this one particular form do not reveal the techniques and procedures for law enforcement "investigations or prosecutions." [...] We are trying to determine why the I-213 forms continue to be populated with this identical language, and where it is coming from. To that extent, what we are seeking is not information to be used for circumventing the law or interfering with the agency's investigations or prosecutions but rather information that would educate on whether the Form I-213 is all that reliable in the first place. Further the agency has not submitted a Vaughn index or indicated that there are no segregable portions of the documents that could be produced perhaps with redactions of purportedly exempt material.

Prefatorily, we reply to your contention that CBP did not provide you with a *Vaughn* Index with its initial reply. It is well-settled that a requester is not entitled to receive a *Vaughn* Index during the administrative process. See, e.g., *Bangoura v. U.S. Dep't of the Army*, 607 F. Supp. 2d 134, 143 n.8 (D.D.C. 2009) (noting that agency not required to provide *Vaughn* Index prior to filing of lawsuit); *Schwarz v. U.S. Dep't of Treasury*, 131 F. Supp. 2d 142, 147 (D.D.C. 2000) ("[T]here is no requirement that an agency provide a . . . 'Vaughn' index on an initial request for documents."); *Edmond v. U.S. Attorney*, 959 F. Supp. 1, 5 (D.D.C. 1997) (rejecting, as premature, request for *Vaughn* Index when agency had not processed plaintiff's request).

In response to your appeal, we revisited the decision to withhold the responsive records in full. In reviewing those records we discovered that the fifty-six (56) pages that were withheld in full by the FOIA Division as responsive records are in fact comprised of training materials created and presented by a separate Department of Homeland Security (DHS) component agency¹. Your request should have been referred to that component

¹CBP has neither the authority nor the ability to disclose records created and maintained by other DHS components. Each of the twenty two (22) component agencies of the Department of Homeland Security (DHS) maintains its own, separate FOIA office. See 6 CFR § 5.1¹ at http://www.ecfr.gov/cgi-bin/text-idx?SID=4eaf8ec42e77e5a3d23fa89038f7d5b3&mc=true&node=se6.1.5_11&rgn=div8. Other responsive records may be maintained by United States Citizenship and Immigration Services (USCIS) which can be reached via the World Wide Web at <https://www.uscis.gov/about-us/freedom-information-and-privacy-act-foia/uscis-freedom-information-act-and-privacy-act> or via U.S. Mail at U.S. Citizenship and Immigration Services, National Records Center, FOIA/PA Office, P. O. Box 648010, Lee's Summit, MO 64064-8010.

agency for processing. See 5 U.S.C. § 552(a)(6)(B)(iii)(III) (2006 & Supp. IV 2010) (describing that one of three statutory circumstances where agencies can extend time to respond concerns “the need for consultation . . . with another agency [or among two or more agency components] having a substantial interest in the determination of the request”).

Notwithstanding, in response to your appeal, the FOIA Appeals, Policy and Litigation Branch (FAPL) requested searches from the CBP component offices in which, because of their duties and functions, responsive records were likely to have been created and be maintained and thus could likely be found: the Office of Border Patrol (USBP) and the Office of Field Operations (OFO). The searches produced one document created and maintained by CBP that we have redacted and are disclosing under the cover of this letter: “Preparation of Form I-213, Record of Deportable/Inadmissible Alien.” The exemption invoked for the redactions made to the document and the bases for their invocation are set forth and discussed below.

The FOIA Generally

Congress enacted FOIA in order “to pierce the veil of administrative secrecy and to open agency action to the light of public scrutiny.” *Dep’t of Air Force v. Rose*, 425 U.S. 352, 361 (1976) (citation omitted). “The basic purpose of FOIA is to ensure an informed citizenry, vital to the functioning of a democratic society, needed to check against corruption and to hold the governors accountable to the governed.” *John Doe Agency v. John Doe Corp.*, 493 U.S. 146, 152 (1989) (citation omitted). The statute provides that “each agency, upon any request for records which (i) reasonably describes such records and (ii) is made in accordance with published rules . . . shall make the records promptly available to any person.” 5 U.S.C. § 552(a)(3)(A).

The predominant objective of the FOIA is the disclosure to the public of executive branch information that is maintained by the Federal Government unless the requested records contain certain categories of information that are exempt or excluded from compelled disclosure. The FOIA provides nine exemptions and three exclusions pursuant to which an agency may withhold requested information. Thus, the public’s right to government information is not without limits. However, the FOIA exemptions are to be narrowly construed, and the burden is on the government to demonstrate that the materials sought may be withheld due to one or more of the exemptions.

Certain information that is contained in the records withheld in full and the responsive records released under the cover of this letter is exempt from disclosure pursuant to Exemption (b)(7)(E) of the FOIA (5 U.S.C. § 552 (b)(7)(E)) and was therefore redacted from the records disclosed. The information has been withheld pursuant to Exemption (b)(7)(E), which protects from disclosure information compiled

for law enforcement purposes, “if such disclosure could reasonably be expected to risk circumvention of the law[.]”

Exemption (b)(7)(E)

Exemption (b)(7)(E) exempts from disclosure 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. Information that falls within the purview of Exemption (b)(7)(E) is “categorically exempt” from disclosure. *Fisher v. Dep’t of Justice*, 772 F.Supp. 7, 12 at n. 9 (D.D.C. 1991), *aff’d*, 968 F.2d 92 (1992). It is well established that CBP has a clear law enforcement mandate. *Coastal Delivery Corp. v. US Customs Service*, 272 F. Supp. 2d 958, 963 (C.D. Cal. 2003). The document at issue in this administrative appeal were compiled for the purpose of enforcing this nation’s immigration laws, particularly as those laws pertain to the completion of the I-213 forms.

The Federal Courts in the District of Columbia have repeatedly determined that CBP is a law enforcement agency and that the records it creates and maintains are generally exempt from disclosure under the FOIA as law enforcement records.

Exemption 7 protects from disclosure “records or information compiled for law enforcement purposes,” but only to the extent that the production of such records would cause an enumerated harm. 5 U.S.C. § 552 (b)(7); see *Fed. Bureau of Investigation v. Abramson*, 456 U.S. 615, 622, 102 S. Ct. 2054, 72 L. Ed. 2d 376 (1982). A record is considered to have been compiled for law enforcement purposes if it was “created or acquired in the course of an investigation and the nexus between the investigation and one of the agency’s law enforcement duties is based on information sufficient to support at least a colorable claim of its rationality.” *Quiñon v. Fed. Bureau of Investigation*, 86 F.3d 1222, 1228, 318 U.S. App. D.C. 228 (D.C. Cir. 1996) (*quoting Pratt v. Webster*, 673 F.2d 408, 420-21, 218 U.S. App. D.C. 17 (D.C. Cir. 1982)). *Callaway v. United States Dep’t of Treasury*, 2007 U.S. Dist. LEXIS 102512, 32-33 (D.D.C. Aug. 31, 2007).

CBP’s mission is to protect the borders of the United States against terrorists and the instruments of terror, enforce the customs and immigration laws of the United States, and foster our Nation’s economy through lawful international trade and travel. Its mission includes the interdiction and processing of aliens and passengers entering into the United States. The creation and implementation of effective law enforcement systems and procedures is paramount to achieving this mission. Given the nature and the contents of the instructions regarding the I-213 form at issue, which constitute law enforcement techniques and procedures that reflect CBP’s law enforcement priorities, information gathering techniques and considerations, the responsive record constitutes a law enforcement record. Such records are compiled in direct relation to CBP’s law

enforcement mandate to enforce the customs and immigration laws. Specifically, the I-213 is used to record unique and particular demographic and investigative information compiled as part of CBP's ongoing enforcement efforts of the customs and immigration laws and those persons who run afoul of those laws. There is a rational nexus between CBP's enforcement of the federal laws and the information withheld because the information pertains to the CBP's law enforcement functions. Thus, Exemption (b)(7)(E) is implicated and is applicable to the responsive record at issue.

In the event that you are dissatisfied with the disposition of your appeal, you may obtain judicial review of this decision pursuant to the provisions of 5 U.S.C. §552(a)(4)(B) in the United States District Court in the District in which you reside, in the District where the agency records are situated, or in the United States District Court for the District of Columbia.

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. You may contact OGIS in any of the following ways:

Office of Government Information Services
800 N. Capitol Street, Suite 795
Washington, DC 20002

Telephone: 202-741-5770
Facsimile: 202-741-5769
www.archives.gov/ogis

Sincerely,
Shari Suzuki, Chief
FOIA Appeals, Policy & Litigation Branch

Preparation Of Form I-213, Record Of Deportable/Inadmissible Alien

- A) The numbered information that follows corresponds to the sample Form I-213 at the end of this section.
- B) There are several different versions of Form I-213. However, they contain the same basic format, and method of completion.
- C) In any of the data spaces, if the block is not applicable, write 'NA'. If more explanation is required, type "See Narrative".

1. **Family Name** – Enter the complete true name of the alien (b) (7)(E)
[REDACTED]
2. **Sex** - Enter "M" for male or "F" for female.
3. **Hair** - Enter the color of the alien's hair or "Bald" if alien has no hair.
4. **Eyes** - Enter the color of the alien's eyes.
5. **Complexion** - Enter the applicable term as noted below ONLY:
 - a. Light;
 - b. Medium;
 - c. Dark;
 - d. Very dark.

Note: These are the only options available.
6. **Country of Citizenship** - Enter the country of which the alien is a citizen, subject or national. (b) (7)(E)
[REDACTED]
7. **Passport Number and Country of Issue** - If a document was used to enter the United States, or if the Subject has a travel document, enter the serial number of the passport, travel document, or similar certificate of identity, the country that issued the document, and expiration date.
8. **File Number** - Enter the ICE "A" file number.
9. **Height** - Enter the height in feet and inches.
10. **Weight** - Enter the weight in pounds. 1 Kilogram = 2.2 pounds.
11. **Occupation** - Enter the occupation practiced in country of foreign residence. (b) (7)(E)
[REDACTED]
12. **U.S. Address** - Enter residence address. (b) (7)(E)
[REDACTED]
13. **Scars and/or Marks** (b) (7)(E)
[REDACTED]
14. **Date, Place, Time, Manner of Last Entry** (b) (7)(E)
[REDACTED]

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recent ENTRY into U.S. If status has changed since entry, note change in "Immigration Record" and/or "Narrative."

(b) (7)(E)

15. **Passenger Boarded At** - Foreign location where Subject boarded plane or vessel to the U.S. If EWI put N/A.

16. **F.B.I. Number** - (b) (7)(E)

17. **Marital Status** - Check appropriate box.

18. **Number, Street, City...of Permanent Address** - Enter the address in Subject's country of residence, citizenship and/or nationality.

Examples:

- a. Calle Cinco de Mayo 38, Colonia Morales, Reynosa, Tamps, Mex.
- b. Ejido Guzman, Ojo de Agua, Son., Mex.
- c. Avenida B #3 4, Jaltepec, Hgo., Mex.

19. **Method of Location/Apprehension** - (b) (7)(E)

(b) (7)(E)

20. **Date of Birth** - Month, day, and year in MM/DD/YY format.

21. **Date of Action** - Date of apprehension, location or interview.

22. **Location Code** - Your duty station code (three-letter code).

Example: Atlanta = ATL.

23. **At/Near** - Cross out non-applicable word and show city and state of location/apprehension.

24. **Date and Hour** - Month, day, year and time located/apprehended.

25. **City, Province (State) and Country of Birth** - Town or city, state or province, and country of birth.

26. **AR - Alien Registration** - (b) (7)(E)

(b) (7)(E)

27. **Form** - Type and number. Complete only if alien has proof of registration. If taken from alien, check appropriate square for "lifted."

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28. **By** - Name and title of agent(s).
29. **NIV Issuing Post and NIV Number** - List place where alien obtained his/her non-immigrant visa to come to the U.S with visa number. If visa is waived for that country, so indicate.
30. **Social Security Account Name** – Insert name exactly as on social security card (b) (7)(E)
(b) (7)(E)
31. **Status at Entry** - Immigration status upon ENTRY into U.S. If Subject changed status after entry, note change in "Immigration Record" and/or "Narrative".

Examples:

- a. PWI (Present Without Inspection)
- b. Visitor Student
- c. Immigrant

32. **Status When Found** – Use one of the following choices ONLY:

- a. Employed
- b. Seeking Employment
- c. Seeking Assistance
- d. In Travel/Transit
- e. Welfare
- f. In Institution

Note: These are the only options available.

33. **Date Visa Issued** - Self-explanatory.
34. **Social Security Number** - Self-explanatory (include fraudulent or counterfeit number.).
35. **Length of Time Illegally in U.S.** - Use one of the following choices ONLY:

- a. At Entry
- b. Within 72 hours
- c. 4-30 days
- d. 1 month - 1 year
- e. Over 1 year

Note: These are the only options available.

36. **Immigration Record** - Show all prior Bureau actions. Continue in "Narrative" if necessary.
37. **Criminal Record** - Show criminals records or note "FBI report attached." May refer to "Narrative" for continuation.
38. **Name, Address and Nationality of Spouse** - Self-explanatory. Include Maiden name in parentheses with word "NEE", if not part of current last name used. If spouse resides with subject, write same U.S. address (SUSA) or if foreign write same foreign address (SFA).
39. **Number/Nationality of Minor Children** - Provide number of Minor children with breakdown, by number, of nationality, if it differs by child.

Example: If Subject has 2 minor children; one born in France, 2 born in U.S. note:

1 – France

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2 – US

40. **Father's Name, Nationality and Address** - Self-explanatory. If father resides with subject, write same U.S. address (SUSA) or if foreign write same foreign address (SFA). If father is deceased, write "deceased" instead of address. Make sure to note nationality, even if deceased.
41. **Mother's Name, Nationality and Address** - Self-explanatory. If mother resides with subject, write same U.S. address (SUSA) or if foreign write same foreign address (SFA). If mother is deceased, write "deceased" instead of address. Make sure to note nationality, even if deceased.
42. **Monies Due/Property in U.S. Not in Immediate Possession** - Note whether alien claims property/assets in U.S. If alien claims none, he/she will initial this block. If alien claims property, complete Form I-43. (See Section VI – C for I-43 description.)
43. **Fingerprinted** - Check Yes, if agent fingerprints Subject during processing. (b) (7)(E)
44. (b) (7)(E)
45. (b) (7)(E)
- (b) (7)(E)
46. **Name and Address of (Last)/(Current) U.S. Employer** - Strike out non-applicable word in title. Provide name and address of most recent/present employer in U.S.
47. **Type of Employment** - Insert one of the following, as appropriate:
- a. "HI" - Heavy Industry
 - b. "LI" - Light Industry
 - c. "A" - Agriculture
 - d. "C" - Construction
 - e. "S" - Service
- Note: These are the only options available (derived from Form G-23.18).
48. **Salary** - Show hourly, or change to weekly salary in current place of employment.
49. **Employed From/To** - Date present/most recent employment began and terminated, separated by the word "to." If Subject is still employed by company, or if Subject was apprehended at the place of employment note "Present" after the "to."
50. **Narrative**

The following relates to the preparation of the narrative portion of the I-213. Place the underlined title as noted before the related narration:

- A. Method of Location/Apprehension: Articulate the predication for the apprehension: Fugitive Operations, referral by other branch, etc. If it is related to an operational case, place the case

number in this section.

(b) (7)(E) [REDACTED]

- B. Alienage and deportability/inadmissibility: Alienage and deportability or inadmissibility must be established in the narrative. (b) (7)(E)

[REDACTED]

Example:

SUBJECT is a native and citizen of Mexico who makes no claim to U.S. citizenship or LPR status. He last entered the U.S., in violation of Section 212 of the Act, by wading the river 1 mile west of the Brownsville Port of Entry and was not inspected and admitted by an immigration officer.

(b) (7)(E) [REDACTED]

- C. Criminal History: List a detailed account of subject's criminal history and disposition. [REDACTED]
(b) (7)(E)

- D. Health and Humanitarian Aspects: Full details should be recorded as to health and humanitarian aspects of the case, such as close family ties in U.S., any health problems (i.e. positive tuberculosis test reaction), if subject is on public assistance or welfare, etc.

- E. Intelligence Information: (b) (7)(E) [REDACTED]

(b) (7)(E) [REDACTED]

(b) (7)(E) [REDACTED]

(b) (7)(E) [REDACTED]

[REDACTED]

- F. Funds: Amount of funds, both U.S. and foreign, in the alien's possession should be listed.

- G. Recommendations: After obtaining all pertinent data relating to the case, the processing officer will record his/her recommendation for the disposition of the SUBJECT following outstanding ICE policy and guidelines.

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There are four types of dispositions that can generally be recommended;

- a. Prosecution
- b. Removal proceedings
- c. Voluntary departure, and
- d. V/R (Voluntary departure with safeguards) (I-210)

When it appears that the SUBJECT may be eligible for discretionary relief or the matter is of an unusual or complex nature, the information should be immediately brought to the attention of the official who would authorize the Notice to Appear.

Alien has been advised of communication privileges (In narrative box):

8 CFR 236.1(e) states that if Subject is to be served with a Warrant of Arrest, I-200, he must be notified of the privilege of communication with the consular officer of his country of citizenship, nationality or residence, located in the United States. Once advised of this privilege, the officer will initial and date the space provided.

This CFR section also states that immediate communication with diplomatic or consular officers, by the ICE officer, is required for aliens who are citizens or nationals of certain countries, as listed in the regulation. This notification must be effected regardless of the alien's wishes. The officer will not notify the consular or diplomatic officer of any application by the alien for asylum or withholding of removal.

51. **Signature and Title** - Insert full name, title, and signature of officer preparing I-213.

52. **Distribution** - Show distribution of I-213 copies.

(b) (7)(E)

[Redacted]

53. **Received** - (b) (7)(E)

[Redacted]

54. **Disposition** - Show preliminary disposition (NTA, I-210 VD, etc. When a NTA and Warrant of Arrest is applied for, note "NTA/WA". Include bond amount.

55. **Examining Officer** (b) (7)(E)

[Redacted]