



**OFFICE OF INSPECTOR GENERAL**  
Department of Homeland Security

Washington, DC 20528 / [www.oig.dhs.gov](http://www.oig.dhs.gov)

July 2, 2018

Shawn Musgrave  
MuckRock News  
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411A Highland Avenue  
Sommerville, MA 02144-2516  
[53593-68957767@requests.muckrock.com](mailto:53593-68957767@requests.muckrock.com)

Subject: Freedom of Information Act Request No. 2018-IGFO-00150  
Final Response

Dear Mr. Musgrave:

This responds your Freedom of Information Act (FOIA) request to the Department of Homeland Security (DHS) Office of Inspector General (OIG), dated May 10, 2018 seeking materials related to OIG Management Alert 18-18 titled "CBP's Use of Examination and Summons Authority Under 19 U.S.C. § 1509". Specifically, you are seeking the following: 1) The May 25, 2017 email sent by the Executive Director of CBP's Office of Professional Responsibility, Investigative Operations Division "clarifying the limited contexts in which Section 1509 Summonses may properly be used." (This email is excerpted on page 3 of the alert.); 2) Data provided by CBP to the OIG, as described in the management alert; 3) CBP's 90-day update letter to the OIG with regard to its progress meeting its commitments in response to the OIG's recommendations. Your request was received in this office on May 10, 2018.

DHS-OIG conducts independent investigations, audits, inspections, and special reviews of DHS personnel, programs, and operations to detect and deter waste, fraud, and abuse, and to promote integrity, economy, and efficiency within DHS. In response to your request, a search of the DHS-OIG Office of Special Reviews Group was conducted. That search resulted in the enclosed records responsive to your request. We reviewed the responsive records under the FOIA to determine whether they may be disclosed to you. Based on that review, this office is providing the following:

  1   page(s) are released in full (RIF);  
  1   page(s) are released in part (RIP);  
  0   page(s) are withheld in full (WIF);

0 page(s) are duplicate copies of material already processed;  
0 page(s) are non-responsive to your request and therefore withheld in full;  
14 page(s) were referred to another entity.

The exemptions cited for withholding records or portions of records are marked below.

<b>Freedom of Information Act, 5 U.S.C. § 552</b>			<b>Privacy Act, 5 U.S.C. § 552a</b>
<input type="checkbox"/> 552(b)(1)	<input type="checkbox"/> 552(b)(5)	<input checked="" type="checkbox"/> 552(b)(7)(C)	<input type="checkbox"/> 552a(j)(2)
<input type="checkbox"/> 552(b)(2)	<input checked="" type="checkbox"/> 552(b)(6)	<input type="checkbox"/> 552(b)(7)(D)	<input type="checkbox"/> 552a(k)(2)
<input type="checkbox"/> 552(b)(3)	<input type="checkbox"/> 552(b)(7)(A)	<input type="checkbox"/> 552(b)(7)(E)	<input type="checkbox"/> 552a(k)(5)
<input type="checkbox"/> 552(b)(4)	<input type="checkbox"/> 552(b)(7)(B)	<input type="checkbox"/> 552(b)(7)(F)	<input type="checkbox"/> Other:

OIG redacted from the enclosed documents, names and identifying information of third parties to protect the identities of these individuals. Absent a Privacy Act waiver, the release of such information concerning the third parties named in these records would result in an unwarranted invasion of personal privacy in violation of the Privacy Act. Information is also protected from disclosure pursuant to Exemptions (b)(6) and (b)(7)(C) of the FOIA further discussed below.

**Exemption 6, 5 U.S.C. § 552(b)(6)**

Exemption 6 allows withholding of “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)(emphasis added). DHS-OIG is invoking Exemption 6 to protect the names of third parties and any information that could reasonably be expected to identify such individuals.

**Exemption 7(C), 5 U.S.C. § 552(b)(7)(C)**

Exemption 7(C) protects from public disclosure “records or information compiled for law enforcement purposes . . . [if disclosure] could reasonably be expected to cause an unwarranted invasion of personal privacy.” 5 U.S.C. § 552(b)(7)(C). DHS-OIG is invoking Exemption 7(C) to protect the identities of third parties, and any information contained in these investigative records that could reasonably be expected to identify those individuals.]

### **Referral**

Additionally, 14 pages have been referred to Customs and Border Protection (CBP), a DHS component. Customs and Border Protection (CBP) will process the record under the FOIA and respond to you directly. Should you wish to contact CBP you may write to:

FOIA Officer  
U.S. Customs and Border Protection  
90 K Street, NW  
9th Floor, Mail Stop 1181  
Washington, DC 20229

### **Appeal**

You have the right to appeal this response. Your appeal must be in writing and received within 90 days after the date of this response. Please address any appeal to:

FOIA/PA Appeals Unit  
DHS-OIG Office of Counsel  
Stop 0305  
245 Murray Lane, SW  
Washington, DC 20528-0305

Both the envelope and letter of appeal must be clearly marked "Freedom of Information Act/Privacy Act Appeal." Your appeal letter must also clearly identify the DHS-OIG's response. Additional information on submitting an appeal is set forth in the DHS regulations at 6 C.F.R. § 5.8.

### **Assistance and Dispute Resolution Services**

Should you need assistance with your request, you may contact DHS-OIG's FOIA Public Liaison. You may also seek dispute resolution services from our FOIA Public Liaison. You may contact DHS-OIG's FOIA Public Liaison in any of the following ways:

FOIA Public Liaison  
DHS-OIG Counsel  
STOP 0305  
245 Murray Lane, SW

Washington, DC 20528-0305  
Phone: 202-254-4001  
Fax: 202-254-4398  
E-mail: [foia.oig@oig.dhs.gov](mailto:foia.oig@oig.dhs.gov)

Additionally, the 2007 FOIA amendments created the Office of Government Information Services (OGIS) to offer mediation services to resolve 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. Using OGIS services does not affect your right to pursue litigation. You may contact OGIS in any of the following ways:

Office of Government Information Services  
National Archives and Records Administration  
8601 Adelphi Road - OGIS  
College Park, MD 20740-6001  
E-mail: [ogis@nara.gov](mailto:ogis@nara.gov)  
Web: <https://ogis.archives.gov>  
Telephone: 202-741-5770  
Fax: 202-741-5769  
Toll-free: 1-877-684-6448

If you have any questions about this response, please contact us at 202-254-4001.

Sincerely,

*Glenn Lewis*  
Glenn Lewis  
FOIA/PA Disclosure Specialist

Enclosure(s) 2 pages

Requester's Name: Mr. Musgrave  
FOIA/PA NO.: No. 2018-IGFO-00150

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PAGES OF DOCUMENTS

1 PAGES are released in full (RIF);  
1 PAGES are released in part (RIP);  
       PAGES are withheld in full (WIF);

EXEMPTIONS CITED

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(b)(6), (b)(7)(C)



# OFFICE OF INSPECTOR GENERAL

Department of Homeland Security

## MEMORANDUM OF ACTIVITY

**Type of Activity:** Records Review – Request and Receipt of Information Regarding use of Title 19, USC, Section 1509 Summons Authority

<b>Case Number:</b> I17-CBPOPR-SID-13121	<b>Case Title:</b> (b)(6);(b)(7)(C) et al; CBP OPR
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On June 1, 2017, (b)(6);(b)(7)(C), (b)(6);(b)(7)(C) Department of Homeland Security (DHS), Customs and Border Protection (CBP), Office of Professional Responsibility (OPR), Washington, DC, provided (b)(6);(b)(7)(C) Senior Special Agent, DHS, Office of Inspector General (OIG), Special Investigations Division, Washington, DC, with previously requested information regarding summons issued by CBP OPR pursuant to Title 19, United States Code (USC), Section 1509. The information was requested in conjunction with an investigation concerning the use of this type of summons by CBP OPR. On March 14, 2017, a summons was issued under this statute to Twitter, Inc., 1355 Market Street, San Francisco, CA, regarding a Twitter social media account (b)(6);(b)(7)(C). The summons was issued after the account holder had posted derogatory information on the Twitter social media platform concerning DHS, CBP and the administration of President Donald Trump, along with what was claimed to be official emails from CBP employees threatening to murder illegal aliens and steal their belongings. Attorneys representing Twitter, Inc. filed a lawsuit within the United States District Court, Northern District of California, against John Kelly, Secretary, DHS, Washington, DC; Kevin McAleenan, Acting Commissioner, CBP, Washington, DC, and other CBP personnel claiming that the summons exceeded the authority of CBP granted under the statute.

The information obtained from (b)(6);(b)(7)(C) consisted of records and logs regarding summons that were issued under Title 19, USC, Section 1509 by CBP OPR field elements between the dates of January 22, 2015 and May 1, 2017. The original request was for 2016 and 2017, but due to the manner some of the field elements provided data, some information was outside this two-year window (Attachment 1). The following CPB OPR Offices provided data:

- El Paso, TX
- Del Rio, TX
- Bellingham, WA
- Miami, FL
- Houston, TX
- Los Angeles, CA
- Washington, DC
- Yuma, AZ
- San Diego, CA

(b)(6);(b)(7)(C)	(b)(6);(b)(7)(C)	Date: 6/20/17
Agent	6/20/2017	

### IMPORTANT NOTICE

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## MEMORANDUM OF ACTIVITY

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Detroit, MI

Some of the information obtained was incomplete due to the manner each office logged the issuance of this type of summons. As a result, the following analysis is based on a representative sample of the CBP OPR use of the Title 19, USC, Section 1509 summons authority:

- Within the data provided by CBP OPR, there were 244 summons issued during the referenced period.
- None of the summons issued were in reference to investigations involving Title 19, USC violations.
- The vast majority of the summons issued by CBP OPR under this statute involved investigations concerning allegations of corruption, bribery, disclosure of sensitive information by CBP personnel, along with drug and alien smuggling.
- Summons were also issued for allegations of impersonation of CBP officials (22); threats against CBP personnel (4); general misconduct by CBP employees (3) and theft investigations (4).
- There was only one summons issued to Twitter, Inc. [referenced previously within this Memorandum of Activity] and three summons issued to Facebook, Inc. The summons issued to Facebook are believed to all be in reference to allegations of impersonation of CBP officials.
- The majority of the summons were issued to cell phone carriers for subscriber information and toll records, but summons were also issued to various airlines, car rental agencies, utility companies and Western Union.

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