



U.S. Immigration  
and Customs  
Enforcement

January 26, 2011

Robert MacLean  
[REDACTED]  
[REDACTED]

Re: **FOIA Case Number 2011FOIA2214**

Dear Mr. MacLean:

This is the final response to your Freedom of Information Act (FOIA) request to the U.S. Immigration and Customs Enforcement (ICE) dated November 19, 2010. You are seeking electronic, video and/or paper notes, memoranda, correspondence, reports of interview, documents and any other evidence obtained through investigations, drafts and final report, as well as any other records generated in connection with the response of the U.S. Department of Homeland Security (DHS), including but not limited to the immigrations and Customs Enforcement (ICE) Office of Professional Responsibility (OPR), the Office of the Secretary of DHS, and the Federal Air Marshals Service (FAMS), to

1. A December 6, 2004 written whistleblower complaint filed by FAMS Las Vegas field Office (LASFO) Federal Air Marshal (FAM) Philip Black with the DHS ICE/OPR. FAM Black filed this complaint on behalf of himself, LASFO FAM Spencer Pickard, and myself. Senior Special Agent Thomas Ruzevich, who was assigned to the ICE/OPR Chicago field office, initially received the complaint. The complaint was forwarded to Associate Special Agent in Charge (ASAC) James Wong, of the ICE/OPR San Diego field office. The investigation was subsequently directed by ASAC Wong and conducted by Resident Agent in Charge (RAC) Kathy Butterfield and Senior Special Agent (SSA) Carolyn Novinsky, from the ICE/OPR San Diego field office with respect to the following Department activities; and
2. Dates written whistleblower retaliation complaints by LASFO FAM and me to the ICE/OPR Intake Center (via its email addresses [joint.intake@customs.treas.gov](mailto:joint.intake@customs.treas.gov) and/or [joint.intake@dhs.gov](mailto:joint.intake@dhs.gov) and ASAC Wong (via his email address [james.wong@dhs.gov](mailto:james.wong@dhs.gov)).

A search of the ICE Office of Professional Responsibility (OPR) produced a total of thirteen (13) compact discs including audio recordings and document files with approximately three-thousand (3000) pages of records, eight (8) analog tapes, and an estimated three-thousand two-hundred fifty (3250) pages of physical records that were located. After a complete review of the records I have determined that, absent a privacy waiver regarding the subjects named in the investigation, all records will be withheld pursuant to FOIA Exemptions 6 and 7(C) of the FOIA. In the event

that you provide a privacy waiver from the subjects named in the investigation, additional exemptions may apply to the responsive records, including, but not limited to, 2(h)(1), 3, 5, 7(A), and 7(E).

Portions of the records have been withheld as described below.

ICE has applied Exemptions 6 and 7(C) to protect from disclosure an investigation into a third party who has not provided a privacy waiver, agent names, signatures, identifying statements, and third party names to prevent an unwarranted invasion of privacy.

**FOIA Exemption 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 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.

**Exemption 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. As such, I have determined that the privacy interest in the identities of individuals in the records you have requested clearly outweigh any minimal public interest in disclosure of the information. Please note that any private interest you may have in that information does not factor into this determination. Agent names were withheld under this exemption to prevent an unwarranted invasion of privacy.

You have the right to appeal our withholding determination. Should you wish to do so, you must send your appeal and a copy of this letter, within 60 days of the date of this letter to: U.S. Immigration Customs Enforcement, Office of Principal Legal Advisor, U.S. Department of Homeland Security, 800 North Capitol Street, N.W., Stop 5009, Washington, D.C. 20536-5009. Your envelope and letter should be marked "FOIA Appeal." Copies of the FOIA and DHS regulations are available at [www.dhs.gov/foia](http://www.dhs.gov/foia).

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](mailto:ogis@nara.gov) or call 1-877-684-6448.

Provisions of the FOIA allow us to recover part of the cost of complying with your request. In this instance, because the cost is below the \$14 minimum, there is no charge.<sup>1</sup>

If you need to contact our office about this matter, please refer to FOIA case number **2011FOIA2214**. This office can be reached at (202) 732-0300 or (866) 633-1182.

Sincerely,

Handwritten signature in black ink, appearing to read "MKP FOR".

Catrina M. Pavlik-Keenan  
FOIA Officer

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<sup>1</sup> 6 CFR § 5.11(d)(4).