



COMMUNITY EDUCATION CENTER • IMMIGRATION POLICY CENTER • INTERNATIONAL EXCHANGE CENTER • LEGAL ACTION CENTER

March 14, 2011

**U.S. Customs and Border Protection
FOIA Division
799 9th Street NW, Mint Annex
Washington, DC 20229-1181**

Re: Freedom of Information Act Request

Dear Sir or Madam:

The American Immigration Council (AIC) submits this letter as a request for information under the Freedom of Information Act (FOIA), 5 U.S.C. §552, *et. seq.*

1. RECORDS SOUGHT

AIC requests any and all records¹ which have been prepared, received, transmitted, collected and/or maintained by the U.S. Department of Homeland Security and/or U.S. Customs and Border Protection (CBP), whether issued or maintained by CBP Headquarters offices, including any divisions, subdivisions or sections therein; CBP field operations offices, including any divisions, subdivisions or sections therein; CBP offices at ports of entry, including any divisions, subdivisions or sections therein; and/or any other CBP organizational structure; and which relate or refer in any way to any of the following:

- Attorneys' ability to be present during their clients' interactions with CBP;
- What role attorneys may play during their clients' interactions with CBP;
- Attorney conduct during interactions with CBP on behalf of their clients;
- Attorney appearances at CBP offices or other facilities.

The above records may include, but are not limited to:

- 1) Guidance or any information obtained by the agency regarding the circumstances under which an attorney may accompany a client during questioning in primary inspection, or what role the attorney may play during such questioning;
- 2) Guidance or any information obtained by the agency regarding the circumstances under which an attorney may accompany a client during questioning in secondary inspection, or what role the attorney may play during such questioning;

¹ The term "records" as used herein includes all records or communications preserved in electronic or written form, including but not limited to correspondence, documents, data, videotapes, audiotapes, e-mails, faxes, files, guidance, guidelines, evaluations, instructions, analyses, memoranda, agreements, notes, orders, policies, procedures, protocols, reports, rules, manuals, technical specifications, training materials, and studies.

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- 3) Guidance or any information obtained by the agency regarding the circumstances under which an attorney may accompany a client during questioning in deferred inspection, or what role the attorney may play during such questioning;
- 4) Guidance or any information obtained by the agency regarding the circumstances under which an attorney may accompany a client during questioning related to alleged abandonment of U.S. residence, or what role the attorney may play during such questioning;
- 5) Guidance or any information obtained by the agency regarding the circumstances under which an attorney may accompany a client during questioning related to alleged lack of proper immigration documents, or what role the attorney may play during such questioning;
- 6) Guidance or any information obtained by the agency regarding the circumstances under which an attorney may accompany a client during questioning related to the National Security Entry-Exit Registration System (NSEERS), or what role the attorney may play during such questioning;
- 7) Guidance or any information obtained by the agency regarding the circumstances under which an attorney may accompany a client during any other questioning by a CBP agent, or what role the attorney may play during such questioning;
- 8) Guidance or any information obtained by the agency regarding procedures for notification of attorneys with Form G-28 and/or EOIR-28 on file of CBP's intention to question their clients;
- 9) Guidance or any information obtained by the agency regarding the circumstances under which an attorney may be involved in the CBP's decision to return an unaccompanied alien child to Mexico without referring the child to ICE or HHS/ ORR/ Department of Unaccompanied Children;
- 10) Guidance or any information obtained by the agency regarding the circumstances under which an attorney may be involved in CBP's decision to release an unaccompanied immigrant child to a responsible adult who is not a family member.

AIC requests that records existing in electronic form be provided in electronic format or on a compact disc. If any of the requested records or information is not in a succinct format, we request the opportunity to view the documents in your offices.

If under applicable law any of the information requested is considered exempt, please describe in detail the nature of the information withheld, the specific exemption or privilege upon which the information is withheld, and whether the portions of withheld documents containing non-exempt or non-privileged information have been provided.

2. REQUEST FOR WAIVER OF ALL COSTS

AIC requests that all fees associated with this FOIA request be waived. AIC is entitled to a waiver of all costs because disclosure of the information is "...likely to contribute significantly to public understanding of the operations or activities of the government and is not primarily in the commercial interest of the requester." 5 U.S.C. § 552(a)(4)(A)(iii). *See also* 6 C.F.R. § 5.11 (k) (Records furnished without charge or at a reduced rate if the information is in the public interest, and disclosure is not in commercial interest of institution). In addition, AIC has the ability to widely disseminate the requested information. *See Judicial Watch v. Rossotti*, 326 F.3d 1309 (D.C. Cir. 2003) (finding a fee waiver appropriate when the requester explained, in detailed and non-conclusory terms, how and to whom it would disseminate the information it received).

i. Disclosure of the Information Is in the Public Interest

AIC educates citizens about the enduring contributions of America's immigrants, supports sensible and humane immigration policies that reflect American values, and works to ensure that immigration laws are enacted and implemented in compliance with fundamental constitutional and human rights. The AIC's Immigration Policy Center (IPC) and Legal Action Center (LAC) help carry out this mission by reaching out to the general public to promote a better understanding of immigration law, policy and practice. The IPC researches issues related to immigration (such as the impact of immigration on the economy, jobs and crime), and regularly provides information to leaders on Capitol Hill and the media. The LAC works with other immigrants' rights organizations and immigration attorneys across the United States to advance the fair administration of immigration laws. Relevant to this FOIA request, the LAC has historically focused on access to counsel issues. Specifically, the LAC educates the public about the law surrounding access to counsel for immigrants in removal proceedings, advocates for fair standards and procedures to remedy the effects of ineffective assistance of counsel, and encourages better access to counsel in proceedings before the Department of Homeland Security and its sub-agencies.

Disclosure of the requested information will contribute significantly to public understanding of non-citizens' access to counsel in interactions with ICE. The disclosed records will inform attorneys who represent non-citizens at risk of removal from the United States, the noncitizens themselves, and other members of the public who are concerned with immigration agency proceedings and policies. Because there is no available comprehensive guidance governing attorney representation and conduct in interactions with CBP, the dissemination of these records will significantly inform public understanding of the scope of representation permitted before CBP. AIC has the capacity and intent to disseminate widely the requested information to the public. To this end, the LAC and the IPC will post the information on the AIC website, a website that is accessible by any member of the public. In addition, the LAC and IPC will publish this information in an LAC report, an LAC newsletter and an IPC blog. The LAC newsletter is directly distributed to 12,000 recipients and the IPC blog is distributed to 25,000 recipients. These publications also are available on the AIC website.

ii. Disclosure of the Information Is Not Primarily in the Commercial Interest of the Requester

AIC is a 501(c)(3), tax-exempt, not-for-profit educational, charitable organization. Immigration attorneys, noncitizens and any other interested member of the public may obtain information about counsel-related issues on AIC's frequently updated website. AIC seeks the requested information for the purpose of disseminating it to members of the public who access AIC's website and other AIC publications, and not for the purpose of commercial gain.

Please inform us if the charges for this FOIA production will exceed \$25.00.

Thank you in advance for your response to this request within twenty working days, as FOIA requires. *See* 5 U.S.C. § 552(a)(6)(A)(i). If you have any questions, please feel free to contact me at (202) 507-7505.

Sincerely,

A handwritten signature in black ink that reads "Emily Creighton". The signature is fluid and cursive, with a long, sweeping underline that extends to the right.

Emily Creighton
Staff Attorney
American Immigration Council
Suite 200
1331 G Street, NW
Washington, DC 20005-3141
Telephone: (202) 507-7505
Fax: (202) 742-5619
E-mail: ecreighton@immcouncil.org