



U.S. Department of Justice

*United States Attorney
Eastern District of New York*

KMA: 2019V03293

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January 17, 2023

BY ECF

Honorable Ramon E. Reyes, Jr.
United States Magistrate Judge
Eastern District of New York
225 Cadman Plaza East
Brooklyn, New York 11201

Re: *CLEAR, et al. v. United States Customs and Border Protection,*
Civil Action No. 19-CV-07079 (RER)

Dear Judge Reyes:

In accordance with the Memorandum & Order dated November 2, 2022 (ECF #54) (“Order”), Defendant United States Customs and Border Protection (“CBP”) is filing the enclosed supplemental submissions (two declarations) in this action pursuant to the Freedom of Information Act (“FOIA”), 5 U.S.C. § 552, in which Plaintiffs sought to compel the release of records pertaining to CBP’s Tactical Terrorism Response Teams (“TTRTs”).¹

Supplemental Declaration of Patrick Howard (“CBP Supplemental Declaration”)

CBP reviewed the disputed documents in accordance with the findings in the Order regarding Exemption 7(E) and segregability, and determined that it would continue to withhold one document in full and portions of the other 28 disputed documents pursuant to FOIA Exemption 7(E). CBP Supp. Decl. ¶¶ 5-7; *see id.* ¶ 4. FOIA Exemption 7(E) protects information compiled for law enforcement purposes where the release of the information “would disclose techniques and procedures for law enforcement investigations or prosecutions, or would disclose guidelines for law enforcement investigations or prosecutions

¹ The Order granted in part and denied in part the parties’ motions for summary judgment following *in camera* review of a selected sample of the disputed records. The Order set forth specific findings regarding the applicability of FOIA Exemption 7(E), 5 U.S.C. § 552(b)(7)(E), concluded that there was non-exempt and segregable information, and directed CBP to submit an amended or supplemental *Vaughn* index and/or declaration addressing all of the disputed documents that were withheld in full or in part pursuant to Exemption 7(E).

if such disclosure could reasonably be expected to risk circumvention of the law.” 5 U.S.C. § 552(b)(7)(E). *See also* Memorandum of Law in Support of Defendant’s Motion for Summary Judgment (“Def. Mem.”) (Dkt. #34) at 6-9; Memorandum of Law in Further Support of Defendant’s Motion for Summary Judgment and in Opposition to Plaintiffs’ Cross-Motion for Summary Judgment (“Def. Reply”) (Dkt. #43) at 5-6, 8. The Order found that the ten records in the representative sample reviewed by the Court were compiled for law enforcement purposes, specifically to train and support TTRT officers in carrying out law enforcement duties, to provide guidance for counterterrorism-related inspections at ports of entry, and to share information about CBP’s law enforcement and counterterrorism efforts. Order at 18.

The one-page document that CBP is continuing to withhold in its entirety is a map of the ports of entry where the TTRT operates. CBP Supp. Decl. ¶ 18. Disclosure of this information would enable individuals to avoid those ports of entry and thwart CBP’s efforts to secure the border from potential international terrorism. *Id.*; *see also* Declaration of Patrick Howard (Dkt. #35), Exhibit M (Dkt. #39-3) (Vaughn index) at 8 (Document Number 10).

The remaining 28 documents are being released today in part, including the 15 documents that had been withheld in full. *See* CBP Supp. Decl. ¶¶ 6, 37. The CBP Supplemental Declaration discusses the individual documents and justifies in detail the reasons for withholding of every category of redacted information in each document. *Id.* ¶¶ 7-17, 19-36. The CBP Supplemental Declaration demonstrates that disclosure of each type of information could enable bad actors to attempt to evade inspection, develop countermeasures to enable them to enter the United States, and circumvent CBP’s efforts to protect the borders and keep terrorists and their weapons out of the United States while facilitating lawful international travel and trade. *Id.*

CBP personnel reviewed the documents line-by-line to identify information that is exempt from disclosure or to which a discretionary waiver of exemption could apply, and released all reasonably segregable information. CBP Supp. Decl. ¶ 37.

Declaration of Gregory M. Koch, Chief, Information Management Office, Office of the Director of National Intelligence (“ODNI Declaration”)

The ODNI Declaration explains and justifies the ODNI withholdings pursuant to FOIA Exemption 3, 5 U.S.C. § 552(b)(3), from one document (the Watchlisting Reference Guide).² As applicable here, Exemption 3 exempts from disclosure matters that are that specifically exempted from disclosure by statute (other than the Privacy Act) if the statute affords the agency no discretion on disclosure, or establishes particular criteria for withholding information or refers to the particular types of materials to be withheld. 5 U.S.C. § 552(b)(3). *See also* Def. Mem. at 18-19; Def. Reply at 13-14. As set forth in the ODNI Declaration, the redacted information in the Watchlisting Reference Guide reveals intelligence methods used in maintaining the Terrorist Identities Datamart Environment (“TIDE”), the United States

² The Court reserved judgment on whether FOIA Exemption 3 was properly invoked. *See* Order at 15.

Government's classified knowledge bank on terrorist identities, and TIDE's relation to the federal government's watchlisting process. Koch Decl. ¶ 13. The ODNI Declaration states that CBP had redacted this information at ODNI's request, pursuant to Section 102A(i)(1) of the Intelligence Reform and Terrorism Prevention Act of 2004, 50 U.S.C. § 3024(i). ODNI Decl. ¶¶ 15-16; *see also* Def. Mem. at 19-20; Def. Reply at 13-14.

These supplemental submissions demonstrate that CBP has complied with the Order and has not improperly withheld any responsive records or information. Accordingly, Plaintiffs are not entitled to any further relief, and this action should be dismissed.

Thank you for Your Honor's consideration of these submissions.

Respectfully submitted,

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Enclosures

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