



Transactional Records Access Clearinghouse
Syracuse University

November 8, 2010

Catrina M. Pavlik-Keenan, FOIA Officer
U.S. Immigration and Customs Enforcement
800 North Capitol Street, NW
5th Floor, Suite 585
Washington, D.C. 20536

RE: your October 29, 2010 response to our October 4, 2010 letter regarding an earlier September 22, 2010 letter about our May 17, 2010 FOIA request for anonymous alien-by-alien data concerning arrests, detention, charging and removal statistics (ICE FOIA Case Number 2010FOIA4313)

Dear FOIA Director Pavlik-Keenan:

Thank you for your letter of October 29 concerning our May 17 request for anonymous alien-by-alien data on DHS enforcement activities in the agency's ENFORCE database systems. Thank you also for acknowledging that your office erred when it previously decided that Syracuse University was not an educational institution. This is important since as your letter notes: "pursuant to DHS regulations, as an educational institution [TRAC] cannot be assessed a search fee."

Your letter addressed four additional substantive points. Our follow-up letter responds to each of these in turn: (1) the alleged non-availability of the requested data, (2) your refusal to waive search fees, (3) whether the "most efficient and least expensive" search procedures as required by DHS regulations was used in determining that an estimated \$450,000.00 in agency time is required, and (4) our willingness via consultation to work with you to minimize the search time needed.

Alleged Unavailability of the Requested Data

You now contend that the reason the majority¹ of the data items we requested were labeled "unavailable" in your original response – data that was formerly released to the public -- is because DHS has upgraded its database systems in a way that prevents making copies of these data. The agency's own documents demonstrate that this contention is simply untrue.

More specifically, your letter states that the fields you previously labeled "unavailable," although actually recorded in your current database systems, cannot be produced because the agency ENFORCE "database(s) were not designed to track, search, or produce" them. From your letter we understand that your statement is based upon the information you

¹ At the August 6 phone conference as you also noted, an ICE spokesperson contended that one field, number of children, was no longer recorded by ICE. TRAC's subsequent investigations found this to be untrue. This item is now recorded in the column "civ_child_cnt" in ENFORCE's "CIVILIANS" table among other locations. This was the only specific field that ICE alleged it had discontinued recording.

received from ICE's Enforcement and Removal Operations (ERO) office. We question whether this office is in a position to speak authoritatively on the technical capabilities of ICE's ENFORCE database systems. For example, on October 19, 2010 your assistant Bradley White emailed us: "ERO ...do[es] not own the [ENFORCE] systems" and hence does not have the "ENFORCE Functional Requirements documents" TRAC had requested.

This is a telling statement by Mr. White since the documents being referred to in his email describe how information is stored in ENFORCE, how the specific data elements can be searched for and copied, and include a complete listing of the tables and data information fields in individual ENFORCE database modules.

It may well be that ERO does not know how to use these systems to make copies of the requested data. However, this in no way means that these DHS database systems are incapable of making copies. All modern databases have the built-in capability to select elements of information from their contents, copy the selected data and write the information out to external files.

DHS documents we have reviewed describe how the agency currently uses computer commands to make various bulk copies of the very portions of the ENFORCE database systems we requested.

(1) Details on an alien's criminal history previously released during the Bush administration. Despite the current Administration's focus on targeting aliens with particularly serious criminal records, your September response indicated that details of an individual's criminal history² are now "unavailable" You allege this occurred because DHS transferred from its old DACS database to an updated system that lacks the capability to search for or produce such copies.

However, in a July 28, 2010 public announcement from ICE Homeland Security Investigations office, the agency stated that details on the felony convictions of Mexicans who are deported are being extracted from your Enforcement Integrated Database (EID) and will be routinely provided to Mexican officials. Further, in a September 29, 2010 statement, that office announced that to support the agency's Secure Communities program:

"On a daily basis, data is extracted from EID ...[from] the data fields... [which] include the ICE Level and criminal history information (e.g., National Crime Information Center [NCIC] codes, prior arrests and convictions, charge information, etc.).

² These unavailable items include each specific criminal charge and its current status (e.g., whether a conviction had resulted), and whether the seriousness of these criminal convictions made that person an "aggravated felon."

As these agency documents demonstrate your ENFORCE EID database not only contains the data we requested, but has the capability of extracting this information and making copies.³

(2) Details on an alien's detention history. In the past the agency routinely released listings of anonymous alien-by-alien detention records from its ENFORCE databases including the detention facility where an individual currently was being detained, any prior facilities where he/she had been held, and the identity of ICE's Document Control Office (DCO) responsible for these detained individuals. Indeed, TRAC analyzed ICE files released under FOIA containing records of 3.4 million detention records and created an on-line facility on our web site (<http://trac.syr.edu/immigration/detention/tran.shtml>) and <http://trac.syr.edu/immigration/detention/exit.shtml> where the public can view reports based on these ICE records on each of the 1,528 detention facilities where aliens were detained in the last decade.

However, in response to our latest request that would cover the more recent period of time after ICE announced reforms to its detention practices, you again claim these data⁴ are unavailable because your database systems don't have the capability of producing copies of these specific data items.

Again, this is belied by the agency's own documents. Reproduced below is a page from the current User's Manual for the ENFORCE Alien Detention Module (EADM) showing a sample of a report output as a spreadsheet file entitled "Current Detainee Report." (Before releasing this manual to us, your office redacted the names of identified individual aliens and this accounts for the areas blacked out on the page.) Clearly shown, however, column "B" lists the detention facility identified by code ("DET LOC") where each alien was held, along with detention dates. The User's manual further gives instructions on how to produce several types of these reports listing both current and past detainees.

We could continue down the list of items you claim are "unavailable" with documentation on how your database systems are designed to locate them and produce copies. We hope, however, that the illustrations we have included will convince you that you were misinformed. We request that you retract your claims that the requested data items are "unavailable" and promptly release these data to TRAC.

³ Enforcement Integrated Database (EID), July 28, 2010, and the Alien Criminal Response Information Management System (ACRIME) & Enforcement Integrated Database (EID), U.S. Department of Homeland Security. These PIA updates are available at http://www.dhs.gov/xlibrary/assets/privacy/privacy_pia_ice_eidupdate.pdf and <http://www.dhs.gov/xlibrary/assets/privacy/pia-ice-acrime-eid-update-20100929.pdf>.

⁴ The list you provided indicated that the detention facility the alien was released from, or if still detained, the current detention facility, along with the DCO office were unavailable. You indicated that only the detention facility where the alien was initially booked into was available.

The figure below depicts a Current Detainee Report.

Current Detainee Report

Microsoft Excel - CURRENT DETAINEE REPORT09212007.xls

SEQ ID	NET LOC	SUBJECT ID	LAST NAME	FIRST NAME	AF	COC	SEX	DOB	Age	JUV	BOOK IN DATE	Cust Days	INITIAL BOOK IN DATE	ROP NUMBER	CUST OF	CLS CODE	ASSM BEO	IC CC
1																		
2	1	DEMTL				ICNDU	M		41	H	2007-05-15 10:07:50.0	99	2007-05-14 13:52:00.0		ICE	9		
3	2	DEMTL				ALGER	F		99	H	2007-07-27 11:24:20.0	98	2007-07-27 11:24:20.0		ICE	9		M
4	3	DEMTL					M				2007-05-18 13:38:05.0	95	2007-05-18 13:38:05.0	b6,b7c	USMS	9		
5	4	DEMTL				ALGER	M				2007-05-15 10:23:53.0	98	2007-05-15 10:23:53.0		ICE	9		
6	5	ELGPDIL				ARGEN	M		26	H	2007-05-14 15:34:28.0	99	2007-05-11 14:43:52.0		ICE	9		DE 36
7	6	ELGPDIL				ARGEN	M		37	H	2007-05-11 14:43:37.0	92	2007-05-11 14:43:37.0		ICE	9	34	DE 36
8	7	ELGPDIL				BLKTE	M		24	H	2007-05-14 13:55:33.0	99	2007-05-14 13:55:33.0	b6,b7c	ICE	9		DE 38
9	8	ELGPDIL				MEXIC	M				2007-05-15 12:57:08.0	98	2007-05-15 12:57:08.0		ICE	9		
10	9	ELGPDIL				MEXIC	M		19	H	2007-05-12 09:24:31.0	104	2007-05-12 09:24:31.0		ICE	9		DE 36
11	10	ELGPDIL				US	F		31	H	2007-05-07 15:52:04.0	106	2007-05-07 15:52:04.0		USMS	9		
12	11	ELGPDIL				ECUAD	U		100	H	2007-08-01 10:32:43.0	91	2007-08-01 10:32:18.0		ICE	9		
13	12	ELGPDIL				ECUAD	U		100	H	2007-08-01 10:32:20.0	91	2007-08-01 10:32:18.0	b6,b7c	ICE	9		
14	13	ELGPDIL			b6,b7c	ECUAD	U		100	H	2007-08-01 10:32:18.0	91	2007-08-01 10:32:18.0		ICE	9		
15	14	ELGPDIL				ECUAD	U		100	H	2007-08-01 10:32:22.0	91	2007-08-01 10:32:18.0		ICE	9		
16	15	ELGPDIL				MEXIC	F		27	H	2007-05-08 10:36:30.0	94	2007-05-08 10:36:15.0		ICE	9		DE 36
17	16	ELGPDIL				MEXIC	M		41	H	2007-07-19 10:20:20.0	95	2007-07-19 10:20:30.0		USMS	9		
18	17	ELGPDIL				RALA	M		22	H	2007-05-14 15:02:54.0	99	2007-05-14 15:02:54.0		ICE	9		DE 74
19	18	ELGPDIL				ALGER	M				2007-07-31 10:24:00.0	92	2007-07-31 10:24:09.0		ICE	9		2 DE 36
20	19	ELGPDIL				ALGER	M				2007-07-31 10:23:48.0	92	2007-07-31 10:24:09.0	b6,b7c	USMS	9		DE 36
21	20	ELGPDIL				MEXIC	M		32	N	2007-08-07 13:21:58.0	95	2007-08-07 13:21:58.0		USMS	9		DE 36
22	21	ELGPDIL				ALGER	M		36	H	2007-08-02 16:58:34.0	90	2007-08-02 16:58:34.0		ICE	9		
23	22	ELGPDIL				ALGER	M		36	H	2007-08-02 16:58:30.0	90	2007-08-02 16:58:34.0		ICE	9		
24	23	ELGPDIL				NGROC	F		47	H	2007-05-14 15:33:40.0	98	2007-05-14 15:33:40.0	b6,b7c	ICE	9		
25	24	ELGPDIL				IRAQ	M		28	N	2007-05-05 09:52:57.0	97	2007-05-05 09:52:57.0		ICE	9		
26	25	ELGPDIL				US	M				2007-05-18 13:38:47.0	95	2007-05-18 13:39:47.0	b6,b7c	USMS	9	34	DE 36
27	26	ELGPDIL				MEXIC	F		24	H	2007-05-11 15:08:05.0	97	2007-05-11 15:08:05.0		ICE	9	34	DE 36

Your Refusal to Waive Search Fees

For the remaining 24 data items we requested, your September letter stated that we needed to pay \$450,000.00 but the letter contained no explanation for what these fees were for. Your latest letter clarified this by stating that the entire cost was for search time. As we noted earlier, your latest letter informed us that after consulting with the Department of Justice's Office of Privacy Information you found that you had acted improperly. Quoting your own letter you acknowledge that "pursuant to DHS regulations, [TRAC] as an educational institution cannot be assessed a search fee. "

However, you then go on to insist that we must still pay \$450,000 in search fees. Indeed, your letter insists you must immediately receive our check for \$225,000 or you will close our case. Without citing any authority, you explain your bizarre action by stating that it is your belief that the law was only intended to apply when "reasonable efforts are required to perform the search." Neither the FOIA law nor DHS's regulations make even passing reference to the waiver of search fees being limited in dollar amount or restricted to occasions when only modest or reasonable fees are involved. The law states that educational requestors *CANNOT BE ASSESSED A SEARCH FEE*.

We ask that you promptly reconsider your refusal to follow the law.

Whether the \$450,000.000 estimate used the "most efficient and least expensive" search procedures as required by DHS regulations

Your previous letter failed to provide any documentation on how the \$450,000.00 search fee was derived. In fact your assistant, Bradley White, told us that you had not received any written details on how the estimate of \$450,000 had been developed.

Your latest letter forwards us a spreadsheet prepared by ERO which indicates that the agency requires 3,340 hours of search time to locate the 24 data items involved. We note that 3,340 hours of search time amounts to the equivalent of 19 months of the time of a person working full-time to search for this information. Or, looked at from a different angle, ERO estimated that it will take an average of about 3.5 weeks of fulltime effort to search for and locate where a person's nationality is recorded, another 3.5 weeks to locate where their gender is recorded, and so forth until each of the 24 requested data items can be located in your ENFORCE database systems.

We question whether the office (ERO) you consulted with is the appropriate one for deriving this estimate. As noted earlier, this office apparently does not have copies of the technical documentation that would list where these data items in the ENFORCE databases can be found. Without this requisite information, we find it difficult to believe an appropriate time estimate could have been made.

We further note that it is incumbent upon an agency to follow its own regulations in matters of search. In addition, to the required waiver of search fees, DHS regulations at 31 CFR

5.11(b)(8) also require that: "Components shall ensure that searches are done in the most efficient and least expensive manner reasonably possible."

We ask that you inform us what steps you have taken to comply with your legal obligation to use the most efficient and least expensive search procedures. If you have not already undertaken this task, we ask that you perform it and send us a revised cost estimate that uses the most efficient and least expensive search procedures reasonably possible.

Consultation

Thank you for acknowledging your legal obligation to afford TRAC "an opportunity to discuss these matters [regarding costs] with Department personnel in order to reformulate the request to meet the requester's needs at a lower cost." Even though we cannot be required to pay any search fees, we do have a sincere desire to work with the agency to find the most efficient way to provide the information we seek and to ensure that the agency has not misinterpreted what TRAC wants. We are therefore formally informing you that we wish to avail ourselves of this opportunity to discuss the matter further in the interests of finding a way to reduce the search time needed to meet our needs.

ERO's cost estimate breaks down the tasks involved in its estimate as follows:

1. Data analysis and relationship analysis	880 hours	\$118,603
2. Design the table structure to store the data	160 hours	\$17,834
3. Write and test the scripts	1,040 hours	\$143,939
4. Resulted data analysis	480 hours	\$65,226
5. Define data exchange method	480 hours	\$54,638
6. Deliver result set	40 hours	\$3,597
7. System architect	260 hours	\$46,030

However, the actual work that will be performed under each category is not further described beyond these short labels and the weekly pay of the staff member(s) involved. Thus, we would like to clarify the following matters so that we can minimize search time, and make sure that you are not undertaking any unnecessary work. Our questions below follow the numbered items in the cost table above.

1. Is the purpose of this step to identify the database tables and fields that contain the 24 information items along with the fields needed to associate information relating to the same person? Is anything in addition to this required? Why can't this information be readily located in your existing documentation? TRAC would be happy to assist you in locating this information if that would be helpful.
2. We believe you have misconstrued our request. TRAC specified we wanted exactly the same table structure used to store the data as used in your existing databases. Since this table structure is already known, nothing new needs to be designed.

3. So that we can better understand why 1,040 hours of time is required to write the script(s), could you please advise us what you anticipate the approximate lines of code that would be needed and the database management system software and scripting language you use?. We would also like to know why adapting one of your existing scripts that select fields of information and copy them to a file might not be a more efficient approach than starting from scratch? Based upon our extensive experience working with other federal agencies when they copy fields of information from their databases for us, up until now just making copies of specific fields has always been a straight-forward procedure involving only a handful of simple commands. Thus, any details that would help us understand why the process requires more than a few hours to accomplish would be appreciated

4. We do not understand what will be accomplished in a "Resulted data analysis." We did not ask you to conduct any data analysis for us. Please advise why this step is required and what it accomplishes.

5. Does this step simply mean to agree upon what type of computer media (tape, CD, DVD, etc.) you will use? If not what exactly is accomplished in this step, and why is it required?

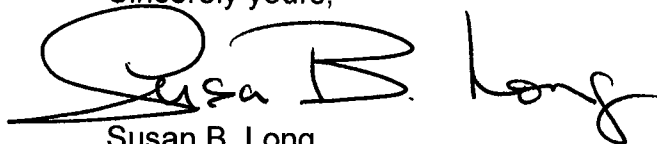
6. Does this step simply mean someone will issue the command that runs the script, and then issue another command to copy the files that have been output onto the agreed upon media? If so, why is 40 hours required to issues a few commands? If something more/else is to be accomplished please identify what these tasks are and why they are required.

7. No other agencies we have worked with in obtaining copies of specific items of data from their databases have needed a system architect. What information will a system architect have that isn't already contained in your existing documentation for the database? Why is this additional information needed? Why will this information require 20 hours a week for 13 weeks to supply?

Please let us know if you have any suggestions on how we might further focus our request to make the search process more efficient.

In closing we wish to reiterate that, as Dr. Long mentioned during the August 6 conference and we repeated in our October 4 letter, TRAC would be delighted to work cooperatively with the agency to find a way to produce the data extract we have requested with minimum effort and cost on everyone's part. TRAC has over two decades of experience working with other federal agencies in obtaining individual data extracts that also typically involve millions of records. Using efficient methods, it has been our experience that such data extracts usually can be produced in a straightforward manner. We are confident an approach can be found if we work together that will achieve this same objective here.

Sincerely yours,

A handwritten signature in black ink that reads "Susan B. Long". The signature is fluid and cursive, with the first name "Susan" being the most prominent.

Susan B. Long
Co-director TRAC and
Associate Professor
Martin J. Whitman School of Management

A handwritten signature in black ink that reads "David Burnham". The signature is fluid and cursive, with the first name "David" being the most prominent.

David Burnham
Co-director TRAC and
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Copies To: John T. Morton
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