

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF NEW YORK

SUSAN B. LONG and
TRAC REPORTS, INC.,

Plaintiffs,

-v-

5:23-CV-1564 (DNH/MJK)

U.S. IMMIGRATION AND
CUSTOMS ENFORCEMENT
and U.S. CUSTOMS AND
BORDER PROTECTION,

Defendants.

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DAVID N. HURD
United States District Judge

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DECISION & ORDER

I. INTRODUCTION

On December 12, 2023, plaintiffs¹ Susan B. Long and TRAC Reports, Inc. (“plaintiffs”) filed this civil action under the Freedom of Information Act (“FOIA”) seeking declaratory and injunctive relief that would compel defendants U.S. Immigration and Customs Enforcement (“ICE”) and U.S. Customs and Border Protection (“CBP”) to produce certain records that are responsive to their outstanding FOIA requests. Dkt. No. 1.

Defendants answered, Dkt. No. 18, and the parties tried to work things out through settlement, Dkt. Nos. 21, 23, 25, 26. But discussions with stakeholders proved unfruitful, Dkt. No. 30, and the parties settled on a schedule for briefing dispositive motions instead, Dkt. No. 36.

In late 2024, the parties cross-moved for summary judgment. Dkt. Nos. 39, 40, 46, 47. The cross-motions have been fully briefed, Dkt. Nos. 50, 51, 57, 58, and will be considered on the basis of the submissions without oral argument.

II. BACKGROUND

Plaintiff Susan B. Long is an Associate Professor of Managerial Statistics at Syracuse University. Compl. ¶ 3. She serves as the Co-Director of the

¹ A third named plaintiff passed away and has since been dismissed. Dkt. No. 59.

Transactional Records Access Clearinghouse (“TRAC”). *Id.* TRAC is a data gathering, research, and distribution organization. *Id.* TRAC “works to provide the American people and institutions of oversight, such as Congress, news organizations, public interest groups, businesses, scholars, and lawyers, with comprehensive information about the staffing, spending, and enforcement activities of the federal government.” *Id.*

Plaintiff TRAC Reports, Inc. (“TRAC Reports”) is a 501(c)(3) organization incorporated and located in Syracuse, New York. Compl. ¶ 5. Although not formally affiliated with the clearinghouse with which it shares the “TRAC” acronym, TRAC Reports “was formed to make data and analyses regarding government performance available to the public, so as to foster smarter oversight and better-informed public debate.” *Id.* TRAC Reports also provides financial support to Long and to others engaged in academic research.

Plaintiffs, in their capacities as researchers, determined to request information from defendants that is maintained in the “Enforcement Integrated Database.” *See* Compl. ¶¶ 9, 13. The EID is a database that “captures and maintains information related to the investigation, arrest, booking, detention, and removal of persons encountered during immigration and criminal law enforcement investigations and operations” conducted by CBP, ICE, and other components of the U.S. Department of Homeland Security (“DHS”). Dkt. No. 46-1 at 6; Dkt. No. 47-1 at 8–9.

As plaintiff Long explains, the EID is organized into a series of discrete database tables, each of which is organized as a series of rows and columns. Dkt. No. 47-1 at 9. Each row is a “record” that contains a collection of information about a specific person or event, depending on the topic around which the table is organized. *Id.* Each column corresponds to a particular “field” of information contained in the records. *Id.*

On September 21, 2023, plaintiffs submitted a FOIA request to ICE through the agency’s online portal. Compl. ¶ 9. Plaintiffs’ request provided the following description of the records requested:

Under the provisions of the Freedom of Information Act we are requesting a copy of each table and field of information stored in the current Enforcement Integrated Database (EID) and the current ICE Integrated Decision Support Database (IIDS). We request that ICE provide the most current records from the EID and IIDS that exist as of the date of this letter, or at the time of the search (whichever is later).

Many of the requested fields utilize some sort of abbreviation or code to record the information. Our request includes a current copy of any code files, lookup tables, or other records which translate each code into its corresponding meaning. We further request for each lookup table, or equivalent, records containing the specific location and identity or identities of the fields in the database where these codes are used.

Our request includes **relational information**—that is, any field of information contained in the database used to link tables together within each database (i.e., “linkage fields”). Linkage fields are used by the agency

to associate records related to the same individual, agency location, or series of events.

We understand that the content of certain linkage fields may be exempt from disclosure and the agency may redact such content before producing the responsive records. However, to the extent the agency redacts fields (including linkage fields) that are needed to identify records pertaining to the same individual, action, or event, we request that a substitute method be provided to preserve the function of associating related records.

Compl. ¶ 9 (emphasis in original).

Plaintiffs' FOIA request to ICE explained that there are several alternative methods by which ICE can provide substitute keys or codes to link information among the various tables in the databases (and provided examples of methods that ICE has used in response to other FOIA requests). Compl. ¶ 9. Plaintiffs' FOIA request also asked that the data be outputted table by table and use a "csv," "tab-delimited," or similar file format that retains the structure of the underlying data. *Id.* Finally, plaintiffs' FOIA request sought a fee waiver based on plaintiffs' status as education and media requesters. *Id.*

That same day, on September 21, 2023, plaintiffs also submitted a similar FOIA request to CBP through the agency's online portal. Compl. ¶ 13. Plaintiffs' request provided the following description of the records requested:

Under the provisions of the Freedom of Information Act we are requesting person-by-person data on each individual CBP has encountered from FY 2020 up to the date of this letter or the time of search (whichever

is later). By “encountered” we use the same definition for “encounters” currently used in the Nationwide Encounters Dataset. We ask that we be provided with a copy of all records and fields about or concerning each of these individuals currently contained in the Enforcement Integrated Database (EID). Coverage of our request includes all information whether relating to time periods before, during, or after each person’s current encounter.

Many of the requested fields utilize some sort of abbreviation or code to record the information. Our request includes a current copy of any code files, lookup tables, or other records which translate each code into its corresponding meaning. We further request for each lookup table, or equivalent, records containing the specific location and identity or identities of the fields in the database where these codes are used.

Our request includes **relational information**—that is, any field of information contained in the database used to link tables together within each database (i.e., “linkage fields”). Linkage fields are used by the agency to associate records related to the same individual, agency location, or series of events.

We understand that the content of certain linkage fields may be exempt from disclosure and the agency may redact such content before producing the responsive records. However, to the extent the agency redacts fields (including linkage fields) that are needed to identify records pertaining to the same individual, action, or event, we request that a substitute method be provided to preserve the function of associating related records.

Compl. ¶ 13 (emphasis in original).

Plaintiffs’ FOIA request to CBP explained that there are several alternative methods by which CBP can provide substitute keys or codes to link

information among the various tables in the databases (and provided examples of methods that CBP's sister agency, ICE, has used in response to other FOIA requests). Compl. ¶ 13. Plaintiffs' FOIA request to CBP also asked that the data be outputted table by table and use a "csv," "tab-delimited," or similar file format that retains the structure of the underlying data. *Id.* Finally, plaintiffs' FOIA request sought a fee waiver based on plaintiffs' status as education and media requesters. *Id.*

On September 23, 2023, CBP confirmed receipt of plaintiffs' FOIA request and assigned it FOIA tracking number "CBP-FO-2023-142324." Compl. ¶ 14. A few days later, on September 27, 2023, ICE confirmed receipt of plaintiffs' FOIA request and assigned it FOIA reference number "2023-ICFO-43890." *Id.* ¶ 10. The relevant statutory deadlines for both requests have elapsed without a production from either agency. *Id.* ¶¶ 11–12, 14–15.

On December 12, 2023, plaintiffs filed this suit. The parties entered negotiations and, as relevant here, plaintiffs agreed to narrow their legal challenges to ICE and CBP's failure to produce records in the EID database. In particular, by letter dated August 1, 2024, plaintiffs agreed to challenge only ICE and CBP's failure to produce:

- (1) All datapoints (from any time) that are directly or indirectly linked to a person for whom [ICE or CBP] ha[s] established an official case seeking that persons' removal from the country.

(2) All datapoints (from any time) that are directly or indirectly linked to a person who was apprehended pursuant to a CBP “encounter” in or after Fiscal Year 2020, with “encounter” used to mean the same thing that CBP uses it to mean in its Nationwide Encounters Dataset.

(3) All code files, lookup tables, or other records that translate the specific codes used in connection with the datapoints contained in paragraphs (1) and (2) above into their corresponding meaning.

Dkt. No. 46-1 at 7; Dkt. No. 47-1 at 10. Plaintiffs’ August 1 letter stated that they would not challenge defendants’ decision to redact “free-format fields or, in other words, fields that contain potentially unique individualized content entered into each cell, as distinct from standardized-content fields that allow only standardized entries (such as dates, times, numbers, codes, or categories).” *Id.* According to plaintiffs, ICE and CBP accept this August 1 letter as the “operative FOIA request for all present purposes.” *Id.* (cleaned up).

III. LEGAL STANDARD

The entry of summary judgment is appropriate when “the movant shows that there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law.” FED. R. CIV. P. 56(a). A fact is “material” if it “might affect the outcome of the suit under the governing law.” *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 248 (1986). A dispute about a material fact is considered “genuine” when “the evidence is such that a reasonable jury could return a verdict for the nonmoving party.” *Id.* In conducting this

analysis, the court must view the facts and draw all reasonable inferences in the light most favorable to the non-movant. *Id.* at 255. But there is no genuine issue for trial “[w]here the record taken as a whole could not lead a rational trier of fact to find for the non-moving party.” *Matsushita Elec. Indus. Co., Ltd. v. Zenith Radio Corp.*, 475 U.S. 574, 588 (1986).

IV. DISCUSSION

Plaintiffs’ two-count complaint asserts claims under FOIA for the records requested from (1) ICE and (2) CBP. Compl. ¶¶ 16–17, 18–19.

“The mandate of [] FOIA calls for broad disclosure of Government records.” *Osen LLC v. U.S. Central Command*, 969 F.3d 102, 107 (2d Cir. 2020) (quoting *CIA v. Sims*, 471 U.S. 159, 166 (1985)). FOIA “generally provides that ‘each agency, upon any request for records . . . shall make the records promptly available to any person.’” *Osen LLC*, 969 F.3d at 107 (quoting 5 U.S.C. § 552(a)(3)(A)).

Under FOIA, “the agency has the burden of justifying the withholding of any requested documents.” *Seife v. U.S. Food & Drug Admin.*, 43 F.4th 231, 235 (2d Cir. 2022) (quoting *U.S. Dep’t of State v. Ray*, 502 U.S. 164, 173 (1991)) (cleaned up). “All doubts are resolved in favor of disclosure.” *Id.*

“FOIA cases are often resolved by summary judgment.” *Seife*, 43 F.4th at 238. “Accordingly, the evidence in FOIA cases is typically limited to

affidavits ‘in lieu of other documentary or testimonial evidence.’” *Id.* (quoting *Long v. Off. Of Pers. Mgmt.*, 692 F.3d 185, 190 (2d Cir. 2012)).

“Summary judgment for the agency in a FOIA case is appropriate ‘when the affidavits describe the justifications for nondisclosure with reasonably specific detail, demonstrate that the information withheld logically falls within the claimed exemption, and are not controverted by either contrary evidence in the record nor by evidence of agency bad faith.’” *Seife*, 43 F.4th at 238 (quoting *Wilner v. Nat’l Sec. Agency*, 592 F.3d 60, 73 (2d Cir. 2009)).

Measured against this general legal standard, and after reviewing the parties’ voluminous submissions, defendants’ motions will be denied and plaintiffs’ cross-motions will be granted.

First, the Court rejects CBP’s assertion that it has no duty under FOIA to produce records that it creates and stores in the EID. The Supreme Court has explained that “agency records” are documents that an agency (1) either creates or obtains; and (2) controls at the time of the FOIA request. *See U.S. Dep’t of Justice v. Tax Analysts*, 492 U.S. 136, 144–45 (1988).

To be sure, CBP did not create or obtain *all* of the data in the EID and, as defendants explain, CBP’s access to the EID is limited to a subset of records that are germane to its mission within DHS’s broader mandate. However, plaintiffs point out that CBP has admitted that it does regularly *transmit* certain data to the EID, that it regularly *accesses* the EID, and that it can even

change that data using its existing applications, or at least import a copy of that data as it exists in the EID database, to further its own operational objectives. *See Cox v. Dep't of Justice*, 111 F.4th 198, 208 (2d Cir. 2024) (explaining four-factor test for determining whether an agency has sufficient control over a document to make it an “agency record”).

In other words, at least some of the records that are responsive to plaintiffs’ FOIA request are records that CBP has created and that CBP could search for and obtain from the EID using its own standard systems and processes. It is therefore hard to conclude that the agency’s justification for its complete inaction is “reasonable” or “logical and plausible.” *Cf. Knight First Amend. Inst. v. U. S. Citizenship & Immigr. Servs.*, 30 F.4th 318, 327 (2d Cir. 2022) (cleaned up); *see also Whitaker v. Dep't of Commerce*, 970 F.3d 200, 207 (2d Cir. 2020) (holding “an agency need not conduct a search that it has *reasonably* determined would be futile” (emphasis added)).

Indeed, the Court rejects CBP’s convoluted arguments to the contrary (including its hypothetical concern about post-hoc third-party modifications to data it created and transmitted to the EID) for each and every one of the reasons set forth in plaintiffs’ thorough reply memorandum. Dkt. No. 57 at 6–16. Among other things, the Court finds persuasive plaintiffs’ showing that, until recently, CBP acknowledged that certain EID records fell within CBP’s purview for purposes of FOIA disclosure. In short, because CBP has failed to carry

its burden of justifying withholding of disclosure, and because all doubts are resolved in favor of disclosure, plaintiffs are entitled to summary judgment against CBP.

Second, the Court rejects ICE's apparent blanket defense theory in this litigation, which is that a full production of everything sought by plaintiffs in one fell swoop in one particular way would be unduly burdensome and that some of the records would probably be exempt from such disclosure. Neither of these arguments, nor the force of the two together, justify how much apparent effort has gone into the agency's compliance with plaintiffs' FOIA request so far—as far as the Court can tell, ICE has not produced *any* responsive records.

After reviewing the briefing, the Court agrees with plaintiffs that ICE's submissions fail to “logically and plausibly” explain why it would be infeasible to copy and transmit individual, nonexempt EID tables on a rolling basis over a period of time (as opposed to its claim that agglomerating all of the EID information into a single gargantuan file would take thousands and thousands of hours of employee time).

Defendants make much of the fact that the EID database was not purpose-built for FOIA disclosure and complains that plaintiffs' FOIA request would require a laborious query-building process. *See* Dkt. No. 40-1. That explanation, at least by itself, has zero persuasive value in light of the fact that

FOIA was intended to foster disclosure in the absence of a clear reason to conclude otherwise. *See, e.g., Seife*, 43 F.4th at 234. Besides, as plaintiffs point out, an ICE witness in another case has stated that copying data from a transactional system such as EID and loading it into a different system is a “standard process” routinely undertaken by ICE. *Cf. Long v. U.S. Immigr. & Customs Enf’t*, 2020 WL 5994182, at *10–*11 (N.D.N.Y. Oct. 9, 2020).

Although the Court certainly acknowledges that the technological capacities of individual federal agencies vary wildly and often lag behind what might be available on the consumer market, ICE’s showing on this point is not at all persuasive, especially in light of plaintiffs’ thorough, contrary offering. Dkt. No. 58 at 7–14. Further, as plaintiffs point out, there is no genuine dispute that ICE can feasibly begin to copy and transmit certain nonexempt, responsive records in the EID, such as the “CSE” table (which has relatively few data fields and apparently contains no personal information). *Cf. Am. Civil Liberties’ Union Immigrants’ Rts. Project v. U.S. Immigr. & Customs Enf’t*, 58 F.4th 643, 648 (2d Cir. 2023).

Defendants’ blanket assertion that plaintiffs’ FOIA request is unduly burdensome and therefore absolves them of producing *anything* responsive is rejected. So too is defendants’ assertion that no production is warranted because *certain* information in the EID would be exempt from disclosure. The Court rejects these arguments for each and every one of the reasons set forth

in plaintiffs' thorough memoranda. Dkt. No. 47-1 at 12–40; Dkt. No. 58 at 14–21.

Plaintiffs have adduced evidence that copying and producing EID data is not only “feasible” but a routine event, that copying and producing individual EID tables (such as the “CSE” table) would be a possible means of complying with the FOIA request, that ICE regularly produces vast quantities of person-specific data from the EID without raising re-identification concerns, that ICE has admitted that the release of data (as opposed to metadata) does not implicate claimed cybersecurity concerns, and that ICE has released large amounts of EID metadata without creating any identifiable harm to cybersecurity. Dkt. No. 58 at 21–22. In short, because ICE has failed to carry its burden of justifying withholding of at least *partial* disclosure, and because all doubts are resolved in favor of disclosure, plaintiffs are entitled to partial summary judgment against ICE.

IV. CONCLUSION

Plaintiffs' motions will be granted and defendants' cross-motions will be denied. In reaching this conclusion, the Court is mindful of the Second Circuit's admonition that in the FOIA context courts should “craft remedies that take into account the potentially significant burden on the agency of [compliance], and work with the parties to establish realistic timelines for

compliance.” *N.Y. Legal Assistance Grp. v. Bd. of Immigration Appeals*, 987 F.3d 207, 225 (2d Cir. 2021).

Therefore, the parties are directed to meet and confer in an attempt to resolve the outstanding issues in this litigation and to come up with a realistic timeline for the production of nonexempt records that can be reasonably segregated. When doing so, defendants should keep in mind that Congress has expressed a strong preference for at least partial disclosure when doing so is reasonably possible to achieve. *See, e.g., Am. Civil Liberties Union Immigrants’ Rts. Project*, 58 F.4th at 654.

As a final matter, the Court rejects the apparent belief—suggested throughout defendants’ filings—that the outcome of this summary judgment motion practice is merely the opening salvo in a war of attrition against any FOIA disclosure. If the parties are unable to work things out, the next step would appear to be the creation of a full evidentiary record, which would be burdensome in its own right. Defendants should not expect to fight a rear-guard action against plaintiffs’ FOIA requests with *seriatim* motion practice, at least not in this forum.

Therefore, it is

ORDERED that

1. Defendants’ motions (Dkt. Nos. 39, 40) for summary judgment are DENIED;

2. Plaintiffs' motions (Dkt. Nos. 46, 47) for summary judgment are GRANTED;

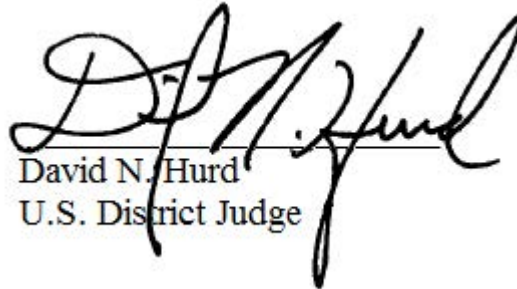
3. The parties are directed to meet and confer within THIRTY DAYS of the date of this opinion; and

4. The parties are directed to submit a joint status report within SIXTY DAYS of the date of this opinion regarding their progress toward a resolution of plaintiffs' FOIA requests, including whether a referral for a conference before the assigned magistrate judge might assist in a just resolution.

The Clerk of the Court is directed to terminate the pending motions and set the appropriate deadlines.

IT IS SO ORDERED.

Dated: March 24, 2026.
Utica, New York.



David N. Hurd
U.S. District Judge