



U.S. Immigration
and Customs
Enforcement

November 4, 2011

Ms. Jennifer Lynch
Electronic Frontier Foundation
454 Shotwell Street
San Francisco, CA 94110

RE: ICE FOIA Case Number 2011FOIA01331

Dear Ms. Lynch:

This letter acknowledges receipt of your Freedom of Information Act (FOIA) request to the U.S. Department of Homeland Security (DHS), Immigration and Customs Enforcement (ICE), dated October 20, 2011. You have requested copies of records created from 2006 to the present pertaining to problems ICE faces obtaining information from communications providers who cannot comply with electronic surveillance requests as required under the Communications Assistance to Law Enforcement Act (CALEA); specifically, documents and reports concerning any communication company's non-compliance with an electronic surveillance order or request for retrieval of communications records. EFF makes reference to documents produced in response to a previous FOIA request entitled "ELSUR noncompliance incident report(s)", "Provider noncompliance with retrieval of communication records" reports, "ELSUR noncompliance incident report comments page" reports, and "Electronic surveillance capability assessment response" reports.

After careful review of your request, I have determined that your request is too broad in scope and does not specifically identify the records which you are seeking. The parameters of your request are broad to the point that any search conducted using them may result in thousands, if not tens-of-thousands of potentially responsive documents.

Further, the parameters of your request would require ICE to conduct an unduly burdensome search. The reports and information you seek are not maintained in any single location within ICE. To locate the reports you have requested ICE would be required to conduct a manual search of each individual investigative case file maintained by ICE. These case files are located at ICE Offices and throughout the United States and around the World. Additional investigative case files are in the custody of the National Archives and Records Administration (NARA). ICE would be required to retrieve each case file and conduct a manual review of that case file for records that would be responsive to your request. It is expected that the majority of ICE's investigative case files will not contain any records that are responsive to your request; however, ICE is not able to determine which case files would (or would not) contain responsive records without first conducting a manual search of that file. This manual search would require the review of millions, if not tens-of-millions of records. There are hundreds-of-thousands of case files that would need to be searched for potentially responsive records.

Records must be described in reasonably sufficient detail to enable government employees who are familiar with the subject area to locate records without placing an unreasonable burden upon the agency. For this reason §5.3(b) of the DHS regulations, 6 C.F.R. Part 5, require that you describe the records you are seeking with as much information as possible to ensure that our search can locate them with a reasonable amount of effort. Whenever possible, a request should include specific information about each records sought, such as the date, title or name, author, recipients, and subject matter of the records, if known, or the DHS component or office you believe created and/or controls the record. The FOIA does not require an agency to create new records, conduct research projects, answer questions posed by requesters, or attempt to interpret a request that does not identify specific records.

Please resubmit your request containing a reasonable description of the records you are seeking. Upon receipt of a perfected request, you will be advised as to the status of your request.

If we do not receive an amended request from you within 15 business days from the date of this letter, we will assume you are no longer interested in this FOIA request and will consider your request withdrawn. Please be advised that this action is not a denial of your request and will not preclude you from filing other requests in the future.

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 wish to contact OGIS, you may email that entity at ogis@nara.gov or call 877-684-6448.

If you need to contact our office again about this matter, please refer to FOIA case number **2012FOIA01331**. This office can be reached at (202) 732-0600.

Sincerely,

 FOR

Catrina M. Pavlik-Keenan
FOIA Officer

Enclosures: Your October 20, 2011 FOIA Request