



March 12, 2021

SUBMITTED ONLINE

Privacy Office, Mail Stop 0655  
Department of Homeland Security  
2707 Martin Luther King Jr. Ave. S.E.  
Washington, DC 20528-065

**RE: Freedom of Information Act Request Concerning the Sandusky Bay Station of  
the United States Border Patrol, October 1, 2015 to present**

To Whom It May Concern:

This is a request under the Freedom of Information Act (“FOIA”), 5 U.S.C. § 552, on behalf of Advocates for Basic Legal Equality (“ABLE”), a legal services organization that represents people living in poverty in individual and impact litigation in Ohio, and the American Immigration Council (“Council”), a national nonprofit immigration law organization that represents clients and groups in litigation, education, communication strategies, and cultural exchange to advance immigrant rights, for documents related to the enforcement activities of the U.S. Border Patrol Sandusky Bay Station (Ohio) and/or its employees (“Sandusky Bay Station”).

**Public Interest in Requested Records**

The purpose of this request is to provide the public with information regarding the Sandusky Bay Station’s practices and procedures relating to apprehension, arrest and/or seizure, detention and/or custody, racial profiling, and collaborations with state and local law enforcement. Border enforcement practices are central to our nation’s debates on immigration enforcement and reform—and thus are matters of great public concern. The public has a right to review such practices and procedures in order to ensure that constitutional safeguards are respected and the

rights of the most vulnerable are upheld. Courts have ordered CBP to produce documents similar to those requested here. For example, a federal district court repeatedly ordered a local New York Customs and Border Protection (CBP) office to search for and produce documents regarding that office's procedures and practices.<sup>1</sup> Your prompt compliance in providing the records herein requested is necessary to vindicate the public's right to be part of an "informed citizenry, vital to the functioning of a democratic society, needed to check against corruption, and to hold the governors accountable to the governed."<sup>2</sup>

### **Request for Information**

We request the following records created by and/or in the possession of the Sandusky Bay Station on or after October 1, 2015:<sup>3</sup>

1. Records concerning complaints or other communication received and/or investigated by the Office for Civil Rights and Civil Liberties (CRCL) against Sandusky Bay Station and/or its employees, including but not limited to:
  - a. Complaints alleging misconduct with respect to apprehension, arrest and/or seizure, detention and/or custody, racial profiling, and collaborations with state and local law enforcement agencies;
  - b. Complaints or communication received through the CRCL complaint line or email box or through referral from CBP;

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<sup>1</sup> *Families for Freedom v. U.S. Customs & Border Prot.*, 797 F. Supp. 2d 375, 382 (S.D.N.Y. 2011); *Families for Freedom v. U.S. Customs & Border Prot.*, 2011 U.S. Dist. LEXIS 113143, \*11 – 24 (S.D.N.Y. Sept. 30, 2011); *Families for Freedom v. U.S. Customs & Border Prot.*, 837 F. Supp. 2d 287, 293-304 (S.D.N.Y. 2011); *Families for Freedom v. U.S. Customs & Border Prot.*, 837 F.Supp.2d 331, 336-337 (S.D.N.Y. 2011).

<sup>2</sup> *Cody Zeigler, Inc. v. U.S. Dep't of Labor, Occupational Safety & Health Admin*, C2-00-134, 2002 WL 31159309 (S.D. Ohio Sept. 3, 2002); *NLRBv. Robbins Tire & Rubber Co.*, 437 U.S. 214, 242 (1979).

<sup>3</sup> The term "records" should be understood broadly, including but not limited to: all records or communications preserved in electronic and written form, such as correspondences, emails, documents, data, statistics, videotapes, audio tapes, faxes, files, guidance, guidelines, evaluations, instructions, analyses, policies, procedures, memoranda, instructions, training materials, notes (including handwritten), orders, legal opinions, protocols, reports, technical manuals, technical specifications, studies, or any other record of any kind.

- c. Statistical anomalies (“yellow flags”) recognized through standing quarterly reviews of CBP by CRCL;
- d. Final conclusions or findings by CRCL relating to the Sandusky Bay Station and/or its employees.

### **Request for Fee Waiver**

The requesters additionally seek a waiver of all costs pursuant to 5 U.S.C. § 552(a)(4)(A)(iii) (“Documents shall be furnished without any charge or at a [reduced] charge . . . if disclosure of the information is in the public interest because it 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.”). Disclosure in this case meets the statutory criteria, and a fee waiver would fulfill congressional intent.<sup>4</sup>

Disclosure of the records herein requested is in the public interest as it will inform the public on a matter of heightened controversy: a local Border Patrol Station’s immigration enforcement policies and practices, including racial profiling and its efforts to work with local law enforcement. Given the current debate on comprehensive immigration reform, and ongoing debates over local and state law enforcement’s cooperation with federal immigration enforcement, few issues are more important to the public. CBP’s practices and procedures regarding racial profiling have received national attention, addressed both by Congress during the drafting of comprehensive immigration reform legislation and by the media due to the advocacy of immigrant rights groups and various lawsuits filed against CBP.<sup>5</sup>

The requesters are non-profit advocacy organizations that have no commercial interest in this matter. *See e.g.*, 6 C.F.R. § 5.11(k)(3)(i)-(ii). The Council was established to increase public understanding of immigration law and policy, advocate for the fair and just

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<sup>4</sup> *Judicial Watch, Inc. v. Rossotti*, 326 F.3d 1309, 1312 (D.C. Cir. 2003) (“Congress amended FOIA to ensure that it be liberally construed in favor of waivers for noncommercial requesters.” (internal quotation omitted)).

<sup>5</sup> *See, e.g.*, Brian Bennett, *Immigration rights groups accuse officials of racial profiling*, L.A. TIMES, Mar 13, 2013; Manuel Valdes, *ACLU Sues Border Patrol Over Alleged Racial Profiling in Pacific Northwest Border*, HUFF. POST, Apr. 26, 2012; Rebekah L. Cowell, *Raleigh church members sue feds, allege racial profiling*, INDY WEEK, Mar. 2, 2011.

administration of U.S. immigration laws, protect the legal rights of noncitizens and citizens, and educate the public about the enduring contributions of immigrants. Through research and analysis, the Council has become a leading resource for policymakers at the national, state, and local levels who seek to understand the power and potential of immigration and to develop policies that are based on facts rather than myths. The Council also seeks to hold the government accountable for unlawful conduct and restrictive interpretations of the law and for failing to ensure that the immigration laws are implemented and executed in a manner that comports with due process through the pursuit of transparency and impact litigation.

To further its mission, the Council regularly provides information to the public based on its FOIA requests.<sup>6</sup> As with all other reports and information available on the Council's website, the information that the Council receives in response to this FOIA request will be available to immigration attorneys, noncitizens, policymakers, and other interested members of the public on its publicly accessible website free of charge. Between June 1, 2019 and the present, the Council has received more than 2.6 million pageviews from more than 1.6 million visitors.

Advocates for Basic Legal Equality, Inc. is a legal services organization that has represented people living in poverty in individual and impact litigation for more than 50 years. Its mission is to provide high quality legal assistance in civil matters to help eligible low-income individuals and groups achieve self-reliance, and equal justice and economic opportunity. ABLE's Agricultural Worker and Immigrant Rights practice group provides a range of free legal services to immigrant workers across Ohio, including representation in civil rights, wage theft, immigration, employment discrimination, sexual harassment, housing, and education cases.

To further its mission, ABLE has defended and increased immigrants' rights through legal representation and education, policy advocacy, impact litigation, and media communications. The practice group also spends considerable resources on outreach to agricultural labor camps and community legal education events. These events are directed to both client communities and stakeholder agencies and community groups. ABLE will make any information it receives as a result of this FOIA request available to its client communities, stakeholders, and interested members of the public, by publishing such information on ABLE's website and advocacy and

education networks. Disclosure in this case therefore meets the statutory criteria, and a fee waiver would fulfill congressional intent in amending FOIA to the benefit of “noncommercial requesters.”<sup>6</sup>

If this request for records is denied in whole or in part, we ask that you justify all deletions by reference to specific provisions of the Freedom of Information Act. We expect you to release all segregable portions of otherwise exempt material. We request that responsive electronic records be provided electronically in their native file format, if possible. 5 U.S.C. § 552(a)(3)(B). Alternatively, we request that the records be provided electronically in a text-searchable, static-image format (PDF), in the best image quality in the agencies’ possession, and that the records be provided in separate, Bates-stamped files. We reserve the right to appeal a decision to withhold any information. We also request that you provide an estimated date on which you will complete the processing of this request. 5 U.S.C. § 552(a)(7)(B).

Thank you for your prompt attention to this matter. Please furnish all responsive records to Mark Heller.

Sincerely,

s/ Mark Heller

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<sup>6</sup> *Judicial Watch*, 326 F.3d at 1312