



May 29, 2024

Via Public Access Link Portal

U.S. Department of Justice
Executive Office for Immigration Review
Office of General Counsel – FOIA Service Center
5107 Leesburg Pike, Suite 1903
Falls Church, VA 22041

The American Immigration Council (the “Council” or the “Requester”) submits this request for records pursuant to the Freedom of Information Act (“FOIA”), 5 U.S.C. § 552. Requester seeks records about the Executive Office for Immigration Review’s (“EOIR”) implementation of 5 U.S.C. § 552(a)(2), maintenance of its FOIA library and reading room, and processing of FOIA requests and requests for a record of proceeding (“ROP” or Form EOIR-59). Requester also seeks EOIR’s FOIA logs, as well as the ongoing, proactive disclosure of these logs. Finally, Requester asks for a waiver of any fee imposed by the agency since the records sought will contribute to the public’s understanding of EOIR operations and their release is not in Requester’s commercial interest.

1. REQUEST FOR INFORMATION & COMPLIANCE

- A. Requester seeks all operative processing manuals, policies, procedures, guidelines, guidance, memoranda, training materials, and other similar records¹ for the following:
 1. Processing FOIA requests, including but not limited to:
 - a. Approving requests for expedited processing;
 - b. Approving requests for fee waivers;
 - c. Assigning requests to a processing track;
 - d. Identifying custodians and search terms;
 - e. Conducting searches;
 - f. Processing records;
 - g. FOIAXpress, Public Access Link (PAL), and any software used to search for and process responsive records;
 - h. Claiming and making withholdings/redactions;
 - i. Assessing responsiveness;
 - j. Processing variances based on subject matter, the requestor, and/or litigation;
 - k. Referring records or requests to other agencies;
 - l. Requesting and obtaining consultations from other agencies; and
 - m. Directing requesters to submit ROP requests for records.

¹ This request should be construed to omit the Immigration Court Practice Manual and other records available to the public on in EOIR’s FOIA Library or Reading Room as of May 29, 2024.

2. Processing ROP requests, including but not limited to:
 - a. Designating portions of the record as prohibited;
 - b. Informing the requester the request cannot be fulfilled;
 - c. Processing variances based on the requester (e.g., *pro se* v. with counsel), immigration case status, immigration court, detained or non-detained status, and/or access to email and Internet;
 - d. Directing requesters to submit a FOIA request for the records.
3. Maintaining and updating EOIR's FOIA library and reading room;
4. Making records available for public inspection under 5 U.S.C. § 552(a)(2), including but not limited to determining whether a record is one of the following:
 - a. A final opinion or order, made in the adjudication of cases;
 - b. A statement of policy and interpretation adopted by the agency;
 - c. An administrative manual or instructions to staff affecting a member of the public;
 - d. A record that because of its subject matter has become or is likely to become the subject of subsequent requests for substantially the same records; or
 - e. A record that has been requested at least three times.

- B. Requester seeks EOIR's FOIA logs² from 2020 to present and the ongoing proactive disclosure of these logs in EOIR's FOIA library as required by 5 U.S.C. § 552(a)(2).

Possible custodians include, but are not limited to, EOIR's Office of General Council, EOIR's FOIA Service Center, EOIR's FOIA Public Liaison, the Office of the Chief Immigration Judge—both the Chief Immigration Judge and Assistant Chief Immigration Judges—and each immigration court.

Requester seeks responsive electronic records in a machine-readable, native file format, with all metadata and load files. Requester asks that the records be provided electronically in a text-searchable, static-image format (PDF), in the best image quality in the agency's possession, and that the records be provided in separate, Bates-stamped files.

2. FEE WAIVER REQUEST

Requester seeks a fee waiver since "disclosure of the requested records is in the public interest." 5 U.S.C. § 552(a)(4)(A)(iii). Disclosure "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 [R]equester." *Id.*; see also 28 C.F.R. § 16.10(k)(1).

² A FOIA log is an index of FOIA requests received by EOIR. Other agencies proactively disclose their FOIA logs in their FOIA reading rooms on a monthly or annual basis as required by 5 U.S.C. § 552(a)(2).

EOIR “must consider” three factors to determine a fee waiver: (i) whether “disclosure . . . would shed light on the operations or activities of the government”; (ii) whether “disclosure . . . would contribute significantly to public understanding of those operations or activities”; and (iii) whether “disclosure [would] be primarily in the commercial interest of the requester.” 28 C.F.R. § 16.10(k)(2). Each factor supports a fee waiver here.

The first factor favors a fee waiver since disclosing the requested records would shed light on EOIR’s operations and activities, specifically its processing of records requests and compliance with proactive disclosure requirements. EOIR is an agency as defined in 5 U.S.C. § 551(1) and the component of the Department of Justice that adjudicates immigration cases under delegated authority from the Attorney General. In addition to conducting various immigration proceedings and keeping records of these proceedings, EOIR responds to requests for these records from parties to proceedings or their lawyers and for other records from these and other members of the public. It also maintains a FOIA library and reading room for records subject to proactive disclosure. The records sought detail EOIR operations or activities with respect to record disclosure, making the first factor favor a fee waiver.

The second factor justifies a fee waiver since disclosing the records sought would contribute significantly to the public’s understanding of EOIR’s processing of records request and compliance with proactive disclosure requirements. Significant contribution entails (a) the provision of meaningful information not already in the public domain to (b) a reasonably broad audience of persons interested in the subject. 28 C.F.R. § 16.10(k)(2)(ii).

Requester satisfies requirement (a) since no meaningful information exists in the public domain about EOIR’s processing of records requests or its compliance with proactive disclosure requirements. EOIR’s FOIA library and reading room contain the records it deems subject to proactive disclosure but not any information about how the agency decides what records are subject to this disclosure. Nor do these or any other websites detail how EOIR processes requests for the ROP or requests under FOIA. Similarly, while certain information on making ROP requests is available, the available information does not address how EOIR processes such requests.³

Requester satisfies requirement (b) here since it is “a representative of the news media”, *id.* § 16.10(k)(ii)(B), as a nonprofit that engages in media advocacy alongside policy and litigation, see, e.g., *Serv. Women’s Action Network v. Dep’t of Def.*, 888 F. Supp. 2d 282, 287-88 (D. Conn. 2012); *Elec. Privacy Info. Ctr. v. Dep’t of Def.*, 241 F. Supp. 2d 5, 10-15 (D.D.C. 2003); *Judicial Watch, Inc. v. U.S. Dep’t of Justice*, 133 F. Supp. 2d 52, 53-54 (D.D.C. 2000). Indeed and in the alternative, Requester has vast experience and expertise in educating the public on immigration issues: Requester prepares fact sheets, reports, and other publications to the public based on its FOIA requests; Requester releases these publications on its a publicly accessible website and blog, which received more than 2.6 million pageviews from over 1.6 million visitors in 2022; and Requester shares knowledge and records it gains from FOIA requests like this one with other

³ See Capital Area Immigrants’ Rights Coalition, Practice Advisory: Requesting ROPs & DARs from EOIR (2023).

media outlets. In keeping with its track record of synthesizing and publishing information on governmental operations gained from responses to FOIA requests, Requester intends to provide information received in response to this FOIA request on its publicly accessible website.

Finally, the third factor also favors a fee waiver since Requester, as a nonprofit and a news media requester, has no commercial interest in the records requested. *See Am. Immigr. Council v. U.S. Dep't of Homeland Sec.*, 82 F. Supp. 3d 396, 406 (D.D.C. 2015) (finding that Requester has no such interest in its record requests); 28 C.F.R. § 16.10(k)(2)(iii)(B) (presuming that a news media requester satisfying the second factor also satisfies the third factor). The request furthers Requester's work to increase public understanding of immigration processes, including noncitizens' access to records in proceedings. As with all other reports and information available on Requester's website, as well as information frequently disseminated to the public via electronic newsletters, the information that Requester receives in response to this FOIA request will be available to immigration attorneys, noncitizens, policymakers, and other interested members of the public free of charge.

Thank you for your consideration of this request. Please notify the undersigned in advance if the cost of producing responsive records exceeds \$100.00 or you have any questions about this request.

Sincerely,

/s/ Chris Opila

Christopher (Chris) Opila
Staff Attorney (Transparency)**

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