

American
Oversight
American Oversight
1030 15th Street NW
Suite B255
Washington, District of Columbia 20005

06/02/2025

CBP-2020-044534

Dear American Oversight,

This is a final response to your Freedom of Information Act (FOIA) request to U.S. Department of Homeland Security (DHS) in which you requested all documents surrounding instances of tear gas (2-chlorobenzylidene malononitrile (CS)) and pepper spray (Pava Capsaicin) use by the U.S. Customs and Border Protection agency from Fiscal Year 2010 to the present. Specifically, I am looking for all records of instances of tear gas and pepper spray use, including, but not limited to the 126 times tear gas was used between FY 2012 and FY 2018 and the 540 times pepper spray was used between FY 2012 and FY 2018, in addition to records of why tear gas and pepper spray were deployed in each instance.

CBP is granting your request under the FOIA, Title 5 U.S.C. § 552. CBP has conducted a reasonable and adequate search for information concerning your request and has made the requested records available pursuant to 5 U.S.C. § 552(a)(2). Upon initial review of your request, we have determined that the following documents can be found on the CBP FOIA Reading Room at the following link: <https://www.cbp.gov/document/foia-record/enforcement-action-statistical-analysis-and-reporting-system-e-star-use-force>.

CBP is currently processing all use of force reports for Fiscal Years 2010–2024 (FY10–FY24). The reports will be posted monthly to the link above, until posting of all fiscal years is complete. The lethal force use of force reports will be produced once any pending investigations are closed. Please continue to check the site monthly for updates.

CBP has considered the foreseeable harm standard when reviewing the record set and has applied the FOIA exemptions as required by the statute and the Attorney General's guidance: Department of Justice (DOJ), "Freedom of Information Act Guidelines," March 15, 2022, <https://www.justice.gov/ag/page/file/1483516/download>.

For your information, Congress excluded three discrete categories of law enforcement and national security records from the requirements of the FOIA. See 5 U.S.C. 552(c). The documents have been released with redactions pursuant to 5 U.S.C. § 552 (b)(2), (b)(6), (b)(7)(C), and (b)(7)(E). A description of the exemptions applied can be found at: https://www.cbp.gov/sites/default/files/assets/documents/2019-Dec/definitions-exemptions-foia_0.pdf.

This response is limited to those records that are subject to the requirements of the FOIA. This is a standard notification that is given to all our requesters and should not be taken as an indication that excluded records do, or do not, exist.

This completes the CBP response to your request. You may contact CBP's FOIA Public Liaison, Charlyse Hoskins, by sending an email via your SecureRelease account, mailing a letter to 1300 Pennsylvania Avenue, NW MS 1181, Washington DC, 20229 or by calling 202–

325–0150.

(If you need telecommunication relay service (TRS) assistance to communicate with the CBP FOIA Office and you are in the United States, please dial 711 to obtain TRS assistance and notify the Communications Assistant that you want to contact the CBP FOIA Office at the telephone number (202) 325–0150). The FOIA Public Liaison is able to assist in advising on the requirements for submitting a request, assist with narrowing the scope of a request, assist in reducing delays by advising the requester on the type of records to request, suggesting agency offices that may have responsive records and receiving questions or concerns about the agency's FOIA process. Please note file number CBP–2019–013575 on any future correspondence to CBP related to this request.

If you are not satisfied with the response to this request, you have a right to appeal the final disposition. Should you wish to do so, you must file your appeal within 90 days of the date of this letter following the procedures outlined in the DHS regulations at Title 6 C.F.R. §5.8. Please include as much information as possible to help us understand the grounds for your appeal. You should submit your appeal via your SecureRelease account. If you do not have computer access, you may send your appeal and a copy of this letter to: FOIA Appeals, Policy and Litigation Branch, U.S. Customs and Border Protection, 90 K Street, NE, 10th Floor, Washington, DC 20229–1177. Your envelope and letter should be marked "FOIA Appeal." Copies of the FOIA and DHS regulations are available at www.dhs.gov/foia. Additional information can be found at the following link: https://www.cbp.gov/sites/default/files/assets/documents/2019-Dec/definitions-exemptions-foia_0.pdf.

Additionally, you have a right to seek dispute resolution services from the Office of Government Information Services (OGIS) which mediates disputes between FOIA requesters and Federal agencies as a non-exclusive alternative to litigation. If you are requesting access to your own records (which is considered a Privacy Act request), you should know that OGIS does not have the authority to handle requests made under the Privacy Act of 1974. You may contact OGIS as follows: Office of Government Information Services, National Archives and Records Administration, 8601 Adelphi Road–OGIS, College Park, Maryland 20740–6001, e-mail at ogis@nara.gov; telephone at 202–741–5770; toll free at 1–877–684–6448; or facsimile at 202–741–5769. Please note that contacting the CBP FOIA Public Liaison or OGIS does not stop the 90-day appeal clock and is not a substitute for filing an administrative appeal.

Sincerely,

FOIA Division U.S. Customs and Border
Protection

AMERICAN
OVERSIGHT