

U.S. Department of Homeland Security
500 12th St., SW
Washington, D.C. 20536



U.S. Immigration
and Customs
Enforcement

February 25, 2021

Mr. Austin Evers
American Oversight
1030 15th Street, NW
Suite B255
Washington, DC 20005

RE: American Oversight v. DOH, No. 20-cv-2153
ICE FOIA Case Number 2020-ICLI-00061
Fourth Interim Release

Dear Mr. Evers

This is the fourth interim response to your client's Freedom of Information Act (FOIA) requests to U.S. Immigration and Customs Enforcement (ICE), dated September 10, 2020, given the tracking number 2020-ICLI-00061. Your clients are seeking the following: various records relating to the decision to deploy federal law enforcement officers in response to protests, the use of force on protesters, and the refusal of some federal law enforcement officers to identify themselves.

ICE has considered this request under the FOIA, 5 U.S.C. § 552, and processed 585 pages of potentially responsive records from the Directors Office. Upon review ICE has determined that 460 pages were duplicative or non-responsive in nature. ICE has determined that a total of 15 pages will have portions withheld pursuant to Exemptions 5, 6, 7(C), and 7(E) of the FOIA, 5 U.S.C. § 552 as described below.

Please note that 109 pages require consultations with an outside agency.

The ICE FOIA office has applied FOIA Exemptions (b)(5), (b)(6), (b)(7)(C), and (b)(7)(E) to portions of the pages produced as described below.

FOIA Exemption 5 protects inter-agency or intra-agency memorandums or letters which not be available by law to a party other than an agency in litigation with the agency. The deliberative process privilege protects the integrity of the deliberative or decision-making processes within the agency by exempting from mandatory disclosure opinions, conclusions, and recommendations included within inter-agency or intra-agency memoranda or letters. The release of this internal information would discourage the expression of candid opinions and inhibit the free and frank exchange of information among agency personnel. The attorney work-product privilege protects

documents and other memoranda prepared by an attorney in contemplation of litigation. The attorney-client privilege protects confidential communications between an attorney and his client relating to a legal matter for which the client has sought professional advice. It applies to facts divulged by a client to his attorney, and encompasses any opinions given by an attorney to his client based upon, and thus reflecting, those facts, as well as communications between attorneys that reflect client-supplied information. The attorney-client privilege is not limited to the context of litigation.

FOIA Exemption 6 exempts from disclosure personnel or medical files and similar files the release of which would cause a clearly unwarranted invasion of personal privacy. This requires a balancing of the public's right to disclosure against the individual's right to privacy. The privacy interests of the individuals in the records you have requested outweigh any minimal public interest in disclosure of the information. Any private interest you may have in that information does not factor into the aforementioned balancing test.

FOIA Exemption 7(C) protects records or information compiled for law enforcement purposes that could reasonably be expected to constitute an unwarranted invasion of personal privacy. This exemption takes particular note of the strong interests of individuals, whether they are suspects, witnesses, or investigators, in not being unwarrantably associated with alleged criminal activity. That interest extends to persons who are not only the subjects of the investigation, but those who may have their privacy invaded by having their identities and information about them revealed in connection with an investigation. Based upon the traditional recognition of strong privacy interest in law enforcement records, categorical withholding of information that identifies third parties in law enforcement records is ordinarily appropriate. As such, I have determined that the privacy interest in the identities of individuals in the records you have requested clearly outweigh any minimal public interest in disclosure of the information. Please note that any private interest you may have in that information does not factor into this determination.

The ICE FOIA Office applied FOIA Exemption (b)(7)(E) to protect from disclosure an internal law enforcement sensitive investigative technique. The release of this information would disclose investigative techniques and procedures and could be reasonably expected to risk circumvention of the law.

FOIA Exemption 7(E) protects records compiled for law enforcement purposes, the release of which would disclose techniques and/or procedures for law enforcement investigations or prosecutions, or would disclose guidelines for law enforcement investigations or prosecutions if such disclosure could reasonably be expected to risk circumvention of the law. I have determined that disclosure of certain law enforcement sensitive information contained within the responsive records could reasonably be expected to risk circumvention of the law. Additionally, the techniques and procedures at issue are not well known to the public.

If you have any questions about this letter, please contact DOJ Attorney Keri L. Berman at keri.l.berman@usdoj.gov.

Sincerely,

ROLANDO
VELASCO
JR
Digitally signed
by ROLANDO
VELASCO JR
Date: 2021.02.23
11:56:45 -05'00'
Senior Paralegal, ICE FOIA for

Fernando Pineiro Jr.
(A)FOIA Officer

Enclosure: 15 pages

From: Pham, Tony H
Sent: 1 Jun 2020 12:45:33 +0000
To: Albence, Matthew
Cc: (b)(6); (b)(7)(C) Allen, Matthew C; (b)(6); (b)(7)(C) Johnson, Tae D; Benner, Derek N; Davis, Mike P
Subject: RE: NOC Response: DHS Support to DOJ RFI (NOC 0378-20-003)

Thank you. Will do.

Tony H. Pham
Principal Legal Advisor
Office of the Principal Legal Advisor
U.S. Immigration and Customs Enforcement
U.S. Department of Homeland Security
(O) 202.732.5000

(b)(6); (b)(7)(C)

*** Warning *** Attorney/Client Privilege *** Attorney Work Product ***

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From: Albence, Matthew (b)(6); (b)(7)(C)
Sent: Monday, June 1, 2020 8:44 AM
To: Pham, Tony H (b)(6); (b)(7)(C)
Cc: (b)(6); (b)(7)(C) Allen, Matthew C (b)(6); (b)(7)(C) Johnson, Tae D (b)(6); (b)(7)(C) Benner, Derek N (b)(6); (b)(7)(C) Davis, Mike P (b)(6); (b)(7)(C)
Subject: RE: NOC Response: DHS Support to DOJ RFI (b)(7)(E)

Tony:

(b)(5)

Matt

From: Pham, Tony H <(b)(6); (b)(7)(C)>

Sent: Monday, June 1, 2020 5:54 AM

To: Albence, Matthew <(b)(6); (b)(7)(C)>

Cc: (b)(6); (b)(7)(C)

(b)(6); (b)(7)(C)

Johnson, Tae D <(b)(6); (b)(7)(C)>

Davis,

Mike P <(b)(6); (b)(7)(C)>

Subject: RE: NOC Response: DHS Support to DOJ RF (b)(7)(E)

Matt. OPLA has engaged OGC on the matter yesterday evening. We will follow up with additional discussion this morning.

(b)(5)

Thanks.

Tony

Sent with BlackBerry Work
(www.blackberry.com)

From: Albence, Matthew <(b)(6); (b)(7)(C)>

Date: Sunday, May 31, 2020, 10:03 PM

To: Pham, Tony H <(b)(5); (b)(7)(C)>

Cc: (b)(6); (b)(7)(C)

Matthew C <(b)(5); (b)(7)(C)>

Johnson,

Tae D <(b)(5); (b)(7)(C)>

Benner, Derek N <(b)(5); (b)(7)(C)>

Davis, Mike P

(b)(6); (b)(7)(C)

Subject: FW: NOC Response: DHS Support to DOJ RF (b)(7)(E)

Tony:

(b)(5)

From: Benner, Derek N
Sent: 29 May 2020 22:24:24 +0000
To: Albence, Matthew
Subject: FW: CBP UAS flying over Minneapolis

Fysa

From: Allen, Matthew C (b)(5); (b)(7)(C)
Date: Friday, May 29, 2020, 6:08 PM
To: Benner, Derek N (b)(6); (b)(7)(C), Albence, Matthew
(b)(6); (b)(7)(C)
Cc: (b)(6); (b)(7)(C)

(b)(6); (b)(7)(C)

Subject: RE: CBP UAS flying over Minneapolis

Sirs,

Further to my last, we have learned that AMO will be sending the UAS back to fly tonight, this time at the request of local authorities.

V/r,

Matt

From: Allen, Matthew C (b)(5); (b)(7)(C)
Date: Friday, May 29, 2020, 5:15 PM
To: Benner, Derek N (b)(6); (b)(7)(C), Albence, Matthew
(b)(6); (b)(7)(C)
Cc: (b)(6); (b)(7)(C)

(b)(6); (b)(7)(C)

Subject: RE: CBP UAS flying over Minneapolis

Sirs,

I'm copying in the summary that AMO in Great Falls provided to their HQ on this. (b)(5)

(b)(5)

Matt

NASOC-GF [Great Falls, MT] received a request for air support from the HSI Minneapolis air coordinator on the evening of 5/28 to provide aerial situational awareness to protect life and property in response to the domestic event. Our AS350 helicopter was not available due to

maintenance and our next UAS flight was scheduled for the morning of 5/29. We commonly receive air support requests from HSI Minneapolis to support their mission and it became a preplanned mission to be executed on 5/29.

(b)(7)(E)

From: (b)(6); (b)(7)(C)
Sent: Friday, May 29, 2020 4:22 PM
To: Allen, Matthew (b)(5); (b)(7)(C) Albence, Matthew
(b)(6); (b)(7)(C)
Cc: (b)(6); (b)(7)(C)
(b)(6); (b)(7)(C)
Subject: RE: CBP UAS flying over Minneapolis

10-4 thanks (b)(7)(C) adding AD1

From: Allen, Matthew (b)(6); (b)(7)(C)
Sent: Friday, May 29, 2020 2:10 PM
To: Benner, Derek N (b)(6); (b)(7)(C)
Cc: (b)(6); (b)(7)(C)
(b)(6); (b)(7)(C)
Subject: FW: CBP UAS flying over Minneapolis

(b)(7)(E)

Matt

From: (b)(6); (b)(7)(C)
Sent: Friday, May 29, 2020 2:04 PM
To: Allen, Matthew C (b)(5); (b)(7)(C)
(b)(6); (b)(7)(C)
Cc: (b)(6); (b)(7)(C)
Subject: FW: CBP UAS flying over Minneapolis

Per my text.

From: (b)(6); (b)(7)(C)
Date: Friday, May 29, 2020, 2:01 PM
To: (b)(6); (b)(7)(C)
Subject: CBP UAS flying over Minneapolis

(b)(6); (b)(7)(C)
Special Agent in Charge
Homeland Security Investigations
St. Paul, MN
(b)(6); (b)(7)(C)

To: CBP OPA Front Office (b)(6); (b)(7)(C)
Subject: article: CBP UAS flying over Minneapolis

https://www.vice.com/en_ca/article/5dzbe3/customs-and-border-protection-predator-drone-minneapolis-george-floyd

Customs and Border Protection Is Flying a Predator Drone Over Minneapolis

The surveillance drone is flying in a circle above the city, which has broken out in protests over the police killing of George Floyd.

Customs and Border Protection (CBP) is flying a Predator drone, military technology used for surveilling and killing terrorists abroad, over Minneapolis as protesters continue to demonstrate against police brutality, according to publicly available flight data. The drone flown over Minneapolis is an unarmed version of the aircraft.

The drone was first spotted on a flight tracking tool by members of the ADB-S Exchange, a community of flight watchers who

use open-source flight data to monitor America's skies. Presumably, the drone is surveilling protests there, though CBP did not respond to a request for comment about what the drone is doing there.

"CBP Predator Drone CPB104 circling over Minneapolis at 20K feet," Jason Paladino, an investigative reporter at The Project on Government Oversight tweeted on Friday. "Took off from Grand Forks Air Force Base."

These latest protests come after a white police officer killed George Floyd, an unarmed black man, earlier this week. The officer and three others involved in the incident were fired, but have not faced any criminal charges yet.

Motherboard verified the flight path of CPB104 with flight data from ADB-S Exchange, a repository of unfiltered flight data. The drone took off from the Air Force Base before making several hexagonal-shaped flyovers around Minneapolis, according to the data. At the time of writing, the drone is still above the city.

CBP-104 is a drone with a history. In a 2007 Popular Mechanics article, author Jeff Wise names that aircraft as a Predator. "CBP-104 has no pilot on board. The plane is a Predator B, a sophisticated unmanned aerial vehicle (UAV)," the article says, describing a surveillance action on the U.S.-Mexico border.

CBP-104 is also named in daily drone flight logs from CBP from 2012, published by the Electronic Frontier Foundation. The drone's activities at the time included collecting synthetic-aperture radar imagery and full-motion video to aid in actions such as surveilling the border, as well as surveilling and busting cannabis grow ops and methamphetamine labs. In one instance, the logs note that the drone continued to circle and feed video to officers until every suspect in a lab raid was arrested. According to the logs, this ongoing surveillance "played an invaluable role" in the arrests.

In an online chat with Motherboard, Paladino also pointed to the aircraft's previous flights along the Canadian border, its near perfect hexagonal flight path, and its constant altitude of

20,000ft mentioned in the flight data as additional evidence that the aircraft is a drone.

Motherboard has previously visited Grand Forks Air Force base, where remote pilots fly unarmed MQ-9 Reaper drones (also known as Predator drones) and Global Hawk drones both domestically and abroad. Its pilots operate out of trailers there, and Customs and Border Patrol has a presence at the base; it flies its Predator drones along the US-Canada and US-Mexico borders, but has also been known to operate them domestically in the interior of the country, as it is currently doing over Minneapolis.

Unarmed Predator drones were first used within the United States in 2012, when the Department of Homeland Security flew one over the property of a cattle farmer named Rodney Brossart to surveil him, and to help end a 16-hour standoff between him and another rancher over a stolen-cattle dispute. The use was highly controversial at the time; since then, CBP has used drones hundreds of times, and has not kept very good records about their use.

In 2015, the FBI surveilled Black Lives Matter protests using aircraft over Baltimore after people there protested the police killing of Freddie Gray.

Customs and Border Patrol did not immediately respond to a request for comment.

This article originally appeared on VICE US.

From: Benner, Derek N
Sent: 31 May 2020 00:16:58 +0000
To: (b)(6); (b)(7)(C); Davis, Mike P; Davidson, (b)(6); Allen, Matthew C; Johnson, Tae D; (b)(6); (b)(7)(C); Albence, Matthew; (b)(6); (b)(7)(C)
(b)(6); Pham, Tony H (b)(6); (b)(7)(C)
Cc: (b)(6); (b)(7)(C)
(b)(6); (b)(7)(C)
(b)(6); (b)(7)(C); Loiacono, Adam V (b)(6); (b)(7)(C)
Subject: RE: 2pm - Civil Unrest Discussion

Thanks (b)(6);

From: (b)(6); (b)(7)(C)
Date: Saturday, May 30, 2020, 8:07 PM
To: Davis, Mike P (b)(6); (b)(7)(C)
(b)(6); (b)(7)(C) Allen, Matthew C (b)(6); (b)(7)(C), Johnson, Tae D (b)(6); (b)(7)(C) Albence, Matthew (b)(6); (b)(7)(C)
(b)(6); (b)(7)(C) Benner, Derek N (b)(6); (b)(7)(C)
(b)(6); (b)(7)(C) Pham, Tony H (b)(6); (b)(7)(C)
Cc: (b)(6); (b)(7)(C)
(b)(6); (b)(7)(C)
(b)(5); (b)(7)(C) Loiacono, Adam V (b)(5); (b)(7)(C)
(b)(5); (b)(7)(C)
Subject: RE: 2pm - Civil Unrest Discussion

ERO El Paso just finished a conference call with the USA for the Western District of Texas. (b)(5)

(b)(5)

(b)(5)

HQ OPLA may be looped in by DOJ on these efforts soon if not already.

From: Davis, Mike P (b)(6); (b)(7)(C)
Date: Saturday, May 30, 2020, 4:30 PM

To: Davidson, Michael J (b)(6); (b)(7)(C)

(b)(6); (b)(7)(C) Allen, Matthew C (b)(6); (b)(7)(C) Johnson,

Tae D (b)(6); (b)(7)(C) Albence,

Matthew (b)(6); (b)(7)(C)

(b)(6); (b)(7)(C) Benner, Derek N (b)(6); (b)(7)(C)

(b)(6); (b)(7)(C) Pham, Tony H

(b)(6); (b)(7)(C)

(b)(6); (b)(7)(C)

Cc: (b)(6); (b)(7)(C)

(b)(6); (b)(7)(C)

(b)(6); (b)(7)(C)

(b)(6); (b)(7)(C)

(b)(6); (b)(7)(C) Loiacono, Adam (b)(6); (b)(7)(C)

(b)(6); (b)(7)(C)

Subject: RE: 2pm - Civil Unrest Discussion

(b)(5); (b)(7)(E)

Thanks,

Mike

From: (b)(5); (b)(7)(C)

Sent: Saturday, May 30, 2020 4:25 PM

To: Davis, Mike P (b)(6); (b)(7)(C)

(b)(5); (b)(7)(C) Allen, Matthew C (b)(5); (b)(7)(C)

Johnson, Tae (b)(5); (b)(7)(C)

Albence, Matthew (b)(5); (b)(7)(C)

(b)(5); (b)(7)(C) Benner, Derek N (b)(5); (b)(7)(C)

(b)(5); (b)(7)(C)

Pham, Tony H (b)(5); (b)(7)(C)

(b)(5); (b)(7)(C)

Cc: (b)(6); (b)(7)(C)

(b)(6); (b)(7)(C)

(b)(6); (b)(7)(C)

(b)(6); (b)(7)(C)

(b)(6); (b)(7)(C)

Loiacono, Adam V <(b)(6); (b)(7)(C)>

Subject: RE: 2pm - Civil Unrest Discussion

(b)(5); (b)(7)(E)

Sent with BlackBerry Work
(www.blackberry.com)

From: Davis, Mike P (b)(6); (b)(7)(C)

Date: Saturday, May 30, 2020, 3:57 PM

To: (b)(6); (b)(7)(C)

(b)(6); (b)(7)(C), Johnson, Tae D (b)(6); (b)(7)(C)

(b)(6); (b)(7)(C) Albence, Matthew (b)(6); (b)(7)(C)

(b)(6); (b)(7)(C)

(b)(6); (b)(7)(C), Pham,

Tony H (b)(6); (b)(7)(C)

(b)(6); (b)(7)(C)

Cc: (b)(6); (b)(7)(C)

(b)(6); (b)(7)(C)

Loiacono, Adam V (b)(6); (b)(7)(C)

Subject: RE: 2pm - Civil Unrest Discussion

(b)(6);

(b)(5); (b)(7)(E)

(b)(5); (b)(7)(E)

(b)(5)

Thanks,
Mike

Michael P. Davis
Executive Deputy Principal Legal Advisor
Office of the Principal Legal Advisor
U.S. Immigration and Customs Enforcement
(b)(6); (b)(7)(C) (office) || (b)(6); (b)(7)(C) (mobile)
(b)(6); (b)(7)(C)

Please note that this message may contain sensitive and/or legally privileged information (attorney work product, attorney-client communication, deliberative process, personally identifiable information, law enforcement sensitive, etc.) and should be handled accordingly.

From: (b)(6); (b)(7)(C)
Date: Saturday, May 30, 2020, 3:38 PM
To: Allen, Matthew C (b)(6); (b)(7)(C) Johnson, Tae D
(b)(6); (b)(7)(C) Albence, Matthew
(b)(6); (b)(7)(C) Benner,
Derek N (b)(6); (b)(7)(C)
(b)(6); (b)(7)(C) Pham, Tony H (b)(6); (b)(7)(C) Davis, Mike P
(b)(6); (b)(7)(C)
Cc: (b)(6); (b)(7)(C)
(b)(6); (b)(7)(C)

Subject: RE: 2pm - Civil Unrest Discussion

Adding that ERO SRT is onsite at our building and is ready to deploy if we give them the approval. ERO FOD is at Buffalo PD attending LEA briefing.

(b)(6); (b)(7)(C)

Executive Associate Director
Enforcement and Removal Operations

U.S. Immigration and Customs Enforcement

(b)(6); [redacted] office)

(b)(6); (b)(7)(C)

From: (b)(6); (b)(7)(C)

Sent: Saturday, May 30, 2020 3:30 PM

To: Allen, Matthew C (b)(6); (b)(7)(C) Johnson, Tae D

(b)(6); (b)(7)(C) Albence, Matthew

(b)(6); (b)(7)(C)

Benner, Derek N (b)(6); (b)(7)(C)

(b)(6); (b)(7)(C) Pham, Tony H

(b)(6); (b)(7)(C) Davis, Mike P (b)(6); (b)(7)(C)

(b)(6); (b)(7)(C)

Cc: (b)(6); (b)(7)(C)

(b)(6); (b)(7)(C)

Subject: RE: 2pm - Civil Unrest Discussion

Circling back and looking for concurrence to deploy ERO SRT.

The US Marshal, (b)(6); [redacted] called ERO Buffalo to request our SRT. (b)(6); [redacted] state's that there is a planned violent protest scheduled at 1700 hrs today in downtown Buffalo. The protesters are meeting at Niagara Square in front of Buffalo City hall.

(b)(6); [redacted] (b)(5); (b)(7)(E)

(b)(5); (b)(7)(E)

(b)(5); (b)(7)(E)

(b)(7)(E)

The Buffalo Police Department has told the USM that they don't have enough staff to provide assistance for any Federal properties and FPS only has three officers in the city of Buffalo.

(b)(5); (b)(7)(E)

Thank you,

(b)(6);

(b)(6); (b)(7)(C)

Executive Associate Director
Enforcement and Removal Operations
U.S. Immigration and Customs Enforcement

(b)(6); (b)(7)(C) office)

(b)(6); (b)(7)(C)

From: Allen, Matthew C (b)(6); (b)(7)(C)

Sent: Saturday, May 30, 2020 2:57 PM

To: Johnson, Tae D (b)(6); (b)(7)(C)

(b)(6); (b)(7)(C); Albence, Matthew (b)(6); (b)(7)(C)

(b)(6); (b)(7)(C) Benner, Derek N

(b)(6); (b)(7)(C)

Pham, Tony H (b)(6); (b)(7)(C) Davis, Mike P <(b)(6); (b)(7)(C)>

(b)(6); (b)(7)(C)

Cc: (b)(6); (b)(7)(C)

(b)(6); (b)(7)(C)

Subject: RE: 2pm - Civil Unrest Discussion

All,

I wanted to circle back about our discussion of Buffalo.

(b)(5); (b)(7)(E)

(b)(5); (b)(7)(E)

(b)(5); (b)(7)(E)

Matt

From: Johnson, Tae D <(b)(6); (b)(7)(C)>

Date: Saturday, May 30, 2020, 1:56 PM

To: (b)(6); (b)(7)(C) Albence, Matthew

(b)(6); (b)(7)(C) Benner,

Derek N <(b)(6); (b)(7)(C)>

(b)(6); (b)(7)(C) Allen,

Matthew (b)(6); (b)(7)(C) Pham, Tony H <(b)(6); (b)(7)(C)> Davis,

Mike P <(b)(6); (b)(7)(C)>

(b)(6); (b)(7)(C)

Cc: (b)(6); (b)(7)(C)

(b)(6); (b)(7)(C)

Subject: RE: 2pm - Civil Unrest Discussion

This is what we have thus far:

Minneapolis:

1. (b)(5); (b)(7)(C)

(b)(5); (b)(7)(C)

(b)(5); (b)(7)(E)

(b)(5); (b)(7)(E)

(b)(5); (b)(7)(C)

2. Estimates are over 75,000 unauthorized people on the streets of Minneapolis tonight.
3. There is an 8pm curfew.
4. An additional 1,200 National Guardsmen being called up.
5. (b)(5); (b)(7)(E)

Buffalo:

1. The USM is asking for assistance to protect the federal building in Buffalo.

(b)(5); (b)(7)(E)

(b)(5); (b)(7)(E)

1. This appears to be primarily a mission to protect federal property.

-----Original Appointment-----

From: ICE.Scheduler (b)(6); (b)(7)(C)

Sent: Saturday, May 30, 2020 12:36 PM

To: (b)(5); (b)(7)(C) Albence, Matthew; (b)(5); (b)(7)(C); Benner, Derek N; (b)(5); (b)(7)(C)

(b)(5); (b)(7)(C); Johnson, Tae D (b)(5); (b)(7)(C) Allen, Matthew C; Pham, Tony H; Davis, Mike

P; (b)(5); (b)(7)(C)

Cc: (b)(6); (b)(7)(C)

(b)(6); (b)(7)(C)

Subject: 2pm - Civil Unrest Discussion

When: Saturday, May 30, 2020 2:00 PM-2:30 PM (UTC-05:00) Eastern Time (US & Canada).

Where: (b)(6); (b)(7)(C)