



**Homeland
Security**

November 19, 2021

404-142 (CIO/IBM)

Austin R. Evers
American Oversight
1030 15th St NW, Suite B255
Washington, DC 20005

Email: foia@americanoversight.org

Re: **FOIA 22-008**

Dear Mr. Evers:

This is the final response to your Freedom of Information Act (FOIA) request that was transferred to the Federal Law Enforcement Training Centers (FLETC) from United States Marshal Service (USMS) dated October 21, 2021.

One document containing 4 pages was referred to our office that is responsive to your request. These records are partially withheld pursuant to Exemptions (b)(6), Title 5 U.S.C. § 552, FOIA Exemptions 6.

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 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.

Pursuant to DHS Instruction 262-11-004, DHS FLETC FOIA Officers shall withhold Sensitive PII and PII ... of DHS Personnel who are employed by Components of offices with a law enforcement or intelligence mission unless a determination is made that disclosure does not raise security or privacy concerns or if those concerns are outweighed by the public interest in that information." The policy specifies that the Federal Law Enforcement Training Centers is a law enforcement component. This policy is located online at <https://www.dhs.gov/publication/foia-compliance-instruction-262-11-004-dhs-employee-personal-identifiable-information>.

Under this policy, certain information for agency spokespersons and senior agency officials, as defined, may be released unless a determination is made that disclosure raises security or privacy concerns and those concerns outweigh the public interest in that information.

With respect to this FOIA request, DHS may have applied FOIA Exemption 6 to protect PII of DHS Personnel, including names and contact information. To the extent that DHS has withheld DHS Personnel PII within these records, it has been determined that the individual(s) has/have substantial and legitimate security and/or privacy concern and that these concerns outweigh the public interest in that information.

You have a right to appeal the above withholding determination. Should you wish to do so, you must send your appeal and a copy of this letter, within 90 days of the date of this letter, to: FOIA Appeals, Federal Law Enforcement Training Centers, 1131 Chapel Crossing Road, Bldg. 681, Glynco, GA 31524, following the procedures outlined in the DHS FOIA regulations at 6 C.F.R. Part 5 § 5.8. Your envelope and letter should be marked "FOIA Appeal." Copies of the FOIA and DHS FOIA regulations are available at www.dhs.gov/foia.

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.

As a portion of the records falls under the purview of the United States Marshals Service (USMS), they have applied their own FOIA exemptions to their portion of the record. Please find below their appeal rights:

FOIA Exemption (b)(6) allows an agency to withhold personnel, medical, and similar files, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy. Records that apply to or describe a particular individual, including investigative records, qualify as "personnel," "medical," or "similar files" under Exemption 6. FOIA Exemption (b)(7)(C) protects records or information compiled for law enforcement purposes to the extent that the production of such records or information could reasonably be expected to constitute an unwarranted invasion of personal privacy. A discretionary release of such records is not appropriate. See *United States Department of Justice (DOJ) v. Reporters Committee for Freedom of the Press*, 489 U.S. 749 (1989).

FOIA Exemption (b)(7)(F) protects law enforcement information that "could reasonably be expected to endanger the life or physical safety of any individual." 5 U.S.C. § 552(b)(7)(F) (2006), amended by OPEN Government Act of 2007, Pub. L. No. 110175, 121 Stat. 2524. Courts have routinely upheld the use of Exemption (b)(7)(F) to protect the identities of law enforcement agents, as well as protect the names and identifying information of non-law

enforcement federal employees, local law enforcement personnel, and other third persons in connection with particular law enforcement matters. See *Rugiero v. DOJ*, 257 F.3d 534, 552 (6th Cir. 2001); *Johnston v. DOJ*, No. 97-2173, 1998 WL 518529, *1 (8th Cir. Aug. 10, 1998).

Accordingly, the personally identifiable information of law enforcement officers and government employees was withheld from the responsive documentation. The disclosure of such sensitive information contained in records compiled for law enforcement purposes to the public could subject law enforcement officers and other government personnel to harassment and unwelcome contact. This could disrupt and impede official agency activity, as well as endanger the safety of law enforcement officials. Additionally, the personally identifiable information of third parties named in the records was withheld. The disclosure of third-party information could constitute an unwarranted invasion of personal privacy and subject the individuals to embarrassment, harassment, and undue public attention. Individuals have a recognized privacy interest in not being publicly associated with law enforcement investigations, not being associated unwarrantedly with alleged criminal activity, and controlling how communications about them are disseminated.

If you are not satisfied with the United States Marshals Service (USMS) determination in response to this request, you may administratively appeal by writing to the Director, Office of Information Policy (OIP), United States Department of Justice, 441 G Street, NW, 6th Floor, Washington, D.C. 20530, or you may submit an appeal through OIP's FOIA STAR portal by creating an account on the following website: <https://www.justice.gov/oip/submit-and-track-request-or-appeal>. Your appeal must be postmarked or electronically transmitted within 90 days of the date of my response to your request. If you submit your appeal by mail, both the letter and the envelope should be clearly marked "Freedom of Information Act Appeal."

You may also contact Charlotte Luckstone or our FOIA Public Liaison at (703) 740-3943 for any further assistance and to discuss any aspect of your request. Additionally, you may contact the Office of Government Information Services (OGIS) at the National Archives and Records Administration to inquire about the FOIA mediation services they offer. The contact information for OGIS is as follows: Office of Government Information Services, National Archives and Records Administration, Room 2510, 8601 Adelphi Road, 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.

Provisions of FOIA allow us to charge for processing fees, unless you seek a waiver of fees. In this instance, because the cost is below the \$25 minimum, there is no charge.

If you need any further assistance or would like to discuss any aspect of your request, I can be reached at (912) 267-3103 or via email at Alicia.Mikuta@fletc.dhs.gov.

Sincerely,

Alicia D. Mikuta
Information Management Officer
FOIA/Privacy

Enclosure(s):

1. FLETC RECORD_Redacted

(b) (6), (b) (7)(C), (b) (7)(F) (USMS)

From: (b) (6), (b) (7)(C), (b) (7)(F) (USMS)
Sent: Thursday, July 2, 2020 1:21 PM
To: (b) (6), (b) (7)(C), (b) (7)(F)

Subject: FW: The Informer - June 2020

Staff,

I try to only send these out when there is a case that is relevant to our scope of work.

This edition, check out the *Cole v Hutchins* decision. Covers qualified immunity in a OIS where the officer ended up being found to have used force unreasonably (objective reasonableness as being a major component how our using of force is judge). Interesting points on how they got to that finding of unreasonableness.

If you haven't signed up for these I would suggest it, now more than ever.

Thanks, let me know if you have questions.

(b) (6), (b) (7)(C), (b) (7)(F)

Pacific Southwest Regional Fugitive Task Force

Los Angeles, CA

(b) (6), (b) (7)(C)

From: FLETC - Legal Division (b) (6)
Sent: Thursday, July 2, 2020 6:50 AM
To: (b) (6), (b) (7)(C), (b) (7)(F) (USMS)(b) (6), (b) (7)(C), (b) (7)(F)
Subject: The Informer - June 2020



No images? [Click here](#)

The Informer - June 2020

Case Summaries (table of contents)

Circuit Courts of Appeals

First Circuit

United States v. Rivera-Morales: Whether the government's warrantless examination of the defendant's cell phone was lawful under the private search doctrine.

Seventh Circuit

United States v. Howell: Whether a police officer established reasonable suspicion to stop and frisk the defendant.

Eighth Circuit

Cole v. Hutchins: Whether a police officer was entitled to qualified immunity in a lawsuit alleging the officer violated the Fourth Amendment by shooting and killing a suspect who did not pose an immediate threat of physical injury or death to the officer or others.

Sok Kong v. City of Burnsville: Whether police officers were entitled to qualified immunity in a lawsuit alleging excessive use of force for shooting and killing a suspect who was running through a parking lot with a knife.

Ninth Circuit

United States v. Yang: Whether the defendant had a reasonable expectation of privacy in the historical location information in his rental car which he still possessed eight days after the rental agreement had expired and the rental company had attempted to repossess it.

United States v. Grey: Whether police officers violated the Fourth Amendment when their primary purpose in assisting code enforcement inspectors during the execution of an administrative warrant was to gather evidence in support of a criminal investigation.

Tenth Circuit

United States v. Neugin: Whether the warrantless search of the defendant's pickup truck was justified under the community caretaking doctrine and whether the inevitable discovery exception to the exclusionary rule applied.

FLETC Informer Webinar Schedule - July 2020

History of Indian Law (1-hour)

Presented by Robert Duncan, Attorney-Advisor and Senior Instructor, Federal Law Enforcement Training Centers, Artesia, New Mexico.

There are three sovereign entities in the United States – federal, state, and tribal. Tribal governments are unique among the three, as they possess a separate sovereignty that has never been formally incorporated into the American constitutional framework. This webinar will discuss "Indian" and "non-Indian" concepts as matters of political recognition, which are distinguishable from racial, genetic, cultural, or ethnic identity. This distinction is especially important in light of public interest as well as upcoming Supreme Court cases involving Indian Country Criminal Jurisdiction. Further, this webinar will discuss the history behind recognition through political status – especially in criminal jurisdiction – and why concepts unique to Indian law exist in an historical context.

Wednesday, July 22, 2020: 3 p.m. Eastern / 2 p.m. Central / 1 p.m. Mountain / 12 p.m. Pacific

To participate in this webinar: <https://share.dhs.gov/jul/>

FLETC Office of Chief Counsel Podcast Series

Fundamentals of the Fourth Amendment – A 15-part podcast series that covers the following Fourth Amendment topics:

- A Flash History of the Fourth Amendment
- What is a Fourth Amendment Search?
- What is a Fourth Amendment Seizure?
- Fourth Amendment Levels of Suspicion
- Stops and Arrests
- Plain View Seizures
- Mobile Conveyance (Part 1 and Part 2)
- Exigent Circumstances
- Frisks
- Searches Incident to Arrest (SIA)
- Consent (Part 1 and Part 2)
- Inventories
- Inspection Authorities

Click Here: <https://leolaw.podbean.com/>

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