

Court Says ICE Failed to Satisfy FOIA Requirements in Council's Suit to Compel Disclosure of Records on Access to Counsel

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A federal district court recently issued an [opinion](#) [1] addressing U.S. Immigration and Customs Enforcement's (ICE) failure to comply with its obligations under the Freedom of Information Act (FOIA). According to the court, ICE did not show that it had conducted an adequate search for records in response to the American Immigration Council's (Council) FOIA request regarding noncitizens' access to counsel in interactions with the agency. The court also rejected ICE's justifications for withholding numerous records.

Under the U.S. immigration system, many decisions impacting the lives of noncitizens are made by ICE officers at field offices, detention centers and arrest sites nationwide. Reports from immigration lawyers across the country indicate that the actions of ICE officers routinely impact attorneys' efforts to represent their clients. Yet, ICE's policies about access to counsel have not always been easy to ascertain and appear to vary by location. Through its FOIA request, the Council hopes to shed light on these policies.

After waiting more than a year for ICE to respond to the request, the Council's Legal Action Center and co-counsel Dorsey & Whitney LLP filed a FOIA suit on behalf of the Council, alleging that ICE had failed to turn over records responsive to the FOIA request. After filing suit, ICE [released](#) [2] 1084 pages, many of which were heavily redacted or withheld entirely. It subsequently released several thousand records related to detention facilities, which the Council is not challenging.

In its opinion, the court found that ICE has "not indicated that all those offices and records systems likely to contain responsive records have been searched." Further, the agency had failed to provide a sufficient description of its search, thus leaving the court with no way to evaluate whether the search was adequate. Furthermore, the court held that ICE's explanations for withholding records from the Council "are insufficient as a whole." As the court explained, "ICE has fallen well short of meeting its obligations and has instead shifted the burden of analyzing nearly 600 pages of withheld documents to the shoulders of this court." The court has ordered ICE to submit a new declaration describing its searches for responsive records and a new "Vaughn Index" explaining the agency's reasons for withholding or redacting documents.

Read more about this FOIA suit at the [Access to Counsel Before DHS](#) [3] website.

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Links:

[1] http://legalactioncenter.org/sites/default/files/20_Court%20opinion%20MSJ%2006-24-13.pdf

[2] <http://www.legalactioncenter.org/litigation/american-immigration-council-v-ice>

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[3] <http://www.legalactioncenter.org/litigation/access-counsel-dhs#cases>

[4] http://www.americanimmigrationcouncil.org/sites/default/files/docs/epd_edits_statement_response_to_june_2013_decision_7-12-13_fin.pdf