



July 16, 2019

U.S. Department of Justice
Executive Office for Immigration Review (EOIR)
Office of the General Counsel – FOIA Service Center
FOIA/Privacy Act Requests
5107 Leesburg Pike, Suite 1903
Falls Church, VA 22041

Via email: EOIR.FOIARequests@usdoj.gov

Re: Freedom of Information Act Request

Dear Sir or Madam:

The American Immigration Council (Immigration Council) submits the following request for information under the Freedom of Information Act (FOIA), 5 U.S.C. § 552, *et. seq.* In accordance with 5 U.S.C. § 552(a)(6)(A)(i), we expect that you will respond to this request within twenty working days, unless otherwise permitted by statute.

1. REQUEST FOR INFORMATION

The Immigration Council requests the following records from the Executive Office for Immigration Review (EOIR):

- All Immigration Judge (IJ) and/or EOIR-issued “standing orders”¹ presently in force at any and all immigration courts and immigration adjudication centers;
- Any EOIR or IJ-issued policy or guidance outlining how and when IJ or EOIR standing orders are created and/or how standing orders are communicated to respondents, counsel and/or the general public.

2. FEE WAIVER REQUEST

The Immigration Council requests a fee waiver because the information it seeks 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 [Council]....” 5 U.S.C. § 552(a)(4)(A)(iii).

A. Disclosure Will Contribute to Public Understanding of EOIR Operations

The immigration courts are tasked with administering the immigration laws of the United States. Noncitizens appearing before the immigration courts have well-established statutory and constitutional

¹ In this FOIA request, the term “standing order(s)” means an immigration judge or EOIR-created and issued written instruction outlining the immigration judge’s criteria, preference and/or policy governing procedural and substantive components of a bond or removal proceeding.

due process rights, including the right to counsel and the right to present evidence. 8 U.S.C. § 1229a(b)(4); *see also Wong Wing v. U.S.*, 163 U.S. 228 (1896). Immigration judge standing orders implicate those rights. However, at present, individual immigration judges' standing orders are not publicly available. As a result, noncitizens are often left in the dark about a given immigration judge's policies and procedures on crucial aspects of their hearings before the immigration court. In some cases, advance knowledge of an immigration judge's standing order can impact fundamental rights in a bond or removal hearing. For example, whether a noncitizen will be able to obtain counsel, a right guaranteed by statute, can depend on an immigration judge's policy regarding telephonic appearances. Disclosure of IJ standing orders will thus contribute to the public's understanding by providing clear guidance on judges' requirements regarding key procedural components in a deportation proceeding. This information will greatly benefit respondents, family members, potential counsel, policy-makers and the general public.

The Immigration Council regularly provides information to the public based on its FOIA requests.² In keeping with its track record of synthesizing or otherwise publishing information on governmental operations gleaned from FOIA requests, the Immigration Council intends to post documents received in response to this FOIA request on its publicly accessible website. For calendar year 2018 (Jan. 1 - Dec. 31, 2018), the Immigration Council's website had over 3.1 million-page views from 1.8 million unique visitors.

B. Disclosure of the Information Is Not in the Commercial Interest of the Council

The Immigration Council is a not-for-profit organization and has no commercial interest in the present request. *See e.g.* 6 C.F.R. § 5.11(k)(3)(i)-(ii). This request furthers the Immigration Council's work to increase public understanding of immigration law and policy, advocate for the fair and just administration of our immigration laws, protect the legal rights of noncitizens, and educate the public about the enduring contributions of America's immigrants. As stated in the preceding section, as with all other reports and information available on the Immigration Council's website, the information that the Immigration Council receives in response to this FOIA request will be available to immigration attorneys, noncitizens, and other interested members of the public free of charge.

Given that FOIA's fee-waiver requirements are to "be liberally construed in favor of waivers for noncommercial requesters," a waiver of all fees is justified and warranted in this case. *See Judicial Watch v. Rossotti*, 326 F.3d 1309, 1312 (D.C. Cir. 2003) (finding a fee waiver appropriate when the requester explained, in detailed and non-conclusory terms, how and to whom it would disseminate the information it received).

3. DISCLOSURE UNDER 5 U.S.C. §§ 552(a)(1)(A) and (B)

² *See, e.g., Behind Closed Doors: An Overview of DHS Restrictions on Access to Counsel*, a report summarizing certain key documents released by DHS agencies in response to FOIA requests regarding noncitizens' access to counsel, available at http://bit.ly/Council_behind_closed_doors (last visited, March 21, 2019); *Enforcement Overdrive: A Comprehensive Assessment of ICE's Criminal Alien Program*, a report analyzing data obtained from ICE to provide a fuller picture of CAP's evolution, operations, and outcomes between fiscal years 2010 and 2013, all of which was previously unknown to the public, available at http://bit.ly/Council_ICE_CAP (last visited, March 21, 2019); *Still No Action Taken: Complaints Against Border Patrol Agents Continue to Go Unanswered*, a report examining records of alleged misconduct by Border Patrol employees, available at http://bit.ly/Council_StillNoActionTaken (last visited, March 21, 2019); and *Legal Orientation Program Overview*, a fact sheet providing an overview of the Legal Orientation Program (LOP), detailing the kinds of services it provides, and explaining the important role the program plays in helping ensure due process for detained immigrants, available at <https://bit.ly/2U7VUdu> (last visited, March 21, 2019).

A review of EOIR's website indicates that IJ standing orders are not publicly available. The Immigration Council thus also urges EOIR to post these orders on its website pursuant to 5 U.S.C. §§ 552(a)(1)(A) and (B). These provisions require that an agency proactively disclose how "...the public may obtain information, make submittals or requests, or obtain decisions...", 5 U.S.C. §§ 552(a)(1)(A), or "statements of the general course and method by which its functions are channeled and determined, including the nature and requirements of all formal and informal procedures available...." 5 U.S.C. §§ 552(a)(1)(B).

The Immigration Council maintains that IJ standing orders constitute crucial procedural guidance to respondents, family members and/or attorneys. In the absence of this guidance, individuals are placed at a serious disadvantage in their deportation hearings. Because IJ standing orders are encompassed by 5 U.S.C. §§ 552(a)(1)(A) and (B), EOIR should make these available to the public on its website.

4. EXEMPTIONS

If EOIR concludes that statutory exemptions apply to any of the information requested, please describe in detail the nature of the information withheld, the specific exemption or privilege upon which the information is withheld, and whether the portions of withheld documents containing non-exempt or non-privileged information have been provided.

Thank you in advance for your attention to this request. If you have any questions regarding this request, please feel free to email or call me at the contact information below.

Sincerely,

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