

November 3, 2020

U.S. Immigration and Customs Enforcement  
Freedom of Information Act Office  
500 12th Street, S.W., Stop 5009  
Washington, D.C. 20536-5009

Sent by email to: [ice-foia@ice.dhs.gov](mailto:ice-foia@ice.dhs.gov)

Re: FOIA Request and Request for Expedited Processing & Fee Waiver

Dear Madam or Sir:

Pursuant to the Freedom of Information Act (“FOIA”), 5 U.S. Code § 552, et. seq, the Brennan Center for Justice (“Brennan Center”) hereby requests copies of all records in your agency’s possession or control described below, and a waiver of processing and reproduction fees for the reasons that follow. The Brennan Center would be happy to discuss this request via phone or e-mail in order to answer any questions regarding the scope or substance.

### **Request**

The Brennan Center hereby requests the following documents and materials:

- 1) The following HSI Special Agent Handbooks, as identified in the Index to the Special Agent Manual,<sup>1</sup> in the version most recently finalized for agency use:
  - a. Counterterrorism & Criminal Exploitation Investigations Handbook
  - b. Human Smuggling & Trafficking Investigations Handbook
  - c. Narcotics and Transnational Organized Crime Rewards Program Handbook
  - d. National Security Investigations Handbook
  - e. Investigative Methods Handbook<sup>2</sup>

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<sup>1</sup> This index was released in 2017 in response to a FOIA request from governmentattic.org; see Exhibit A.

<sup>2</sup> This handbook is designated in the above index as a legacy USCS OI Special Agent Handbook chapter, dated August 1990. Our request is for the most recent version of this handbook or its HSI equivalent.

- 2) Any memoranda or training materials issued from January 21, 2017 to the date of this request that purport to explain the policies behind, or guide agents in implementation of, the documents above.

If any information described above is withheld, we request copies of all non-exempt, reasonably segregable portions of such materials, as well as a detailed statement of the statutory basis and reasons for each instance of withholding, including specifically but not limited to the FOIA exemption relied upon for such withholding, and an index or similar statement of the nature of any materials withheld.

### **Application for Expedited Processing**

The Brennan Center requests expedited processing pursuant to 5 U.S.C. § 552(a)(6)(E) and DHS's implementing regulation, 6 C.F.R. § 5.5(e). There is a "compelling need" for these records because the information requested is required by an organization "primarily engaged in disseminating information" due to an "urgency to inform the public concerning actual or alleged federal government activity." 6 C.F.R. § 5.5(e)(1)(ii).

The Brennan Center is a section 501(c)(3) non-profit organization that is "primarily engaged in disseminating information" within the meaning of 5 U.S.C. § 552(a)(6)(E)(v)(II) and 6 C.F.R. § 5.5(e)(1)(ii). *See, e.g., Leadership Conference on Civil Rights v. Gonzales*, 404 F. Supp. 2d 246, 260 (D.D.C. 2005) (expedited treatment warranted where requester "disseminates information regarding civil rights and voting rights to educate the public, promote effective civil rights laws, and ensure their enforcement"). The Brennan Center regularly writes and publishes reports and newspaper articles and makes appearances on various media outlets, addressing U.S. policy on issues ranging from counterterrorism efforts to the powers of the federal government to voting rights and beyond, and it will continue to do so for the foreseeable future.

Furthermore, the Brennan Center requires the information sought by this request in order to inform the public of federal government activity, namely the standards and training governing the actions of HSI agents. *See* 5 U.S.C. § 552(a)(6)(E)(v)(II); 6 C.F.R. § 5.5(e)(1)(ii). HSI has been the subject of significant news coverage, indicating substantial public interest in the agency's activities and the circumstances under which it can undertake investigations and other matters. In addition to coverage of HSI's role in monitoring and intervening in domestic protests this summer,<sup>3</sup> there has been reporting

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<sup>3</sup> *See, e.g.,* Jimmy Tobias, "Exclusive: ICE Has Kept Tabs on 'Anti-Trump' Protesters in New York City," *The Nation*, March 6, 2019, <https://www.thenation.com/article/archive/ice-immigration-protest-spreadsheet-tracking/> (reporting that HSI conveyed information to DHS about public protests occurring in New York City, challenging the Trump administration's immigration and deportation policies, in a spreadsheet titled "Anti-Trump protests"); *id.* (reporting that an HSI official circulated information about a "Deportee Suitcase Solidarity March" opposing the administration's deportation practices); Nicole

regarding the scope of the agency’s investigations,<sup>4</sup> training materials for HSI agents,<sup>5</sup> the opacity of its policies,<sup>6</sup> and concerns about the mechanisms by which HSI agents obtain information from their targets.<sup>7</sup> Furthermore, DHS has publicly stated that it is preparing for possible mobilization of ICE and CBP agents in case of civil unrest around the November 3 federal election; in light of the deployment of HSI agents over the summer, it seems likely that they would be involved in election response as well.<sup>8</sup> As the executive director of the First Amendment Coalition has observed, “There is intense public interest in understanding [HSI’s] processes.”<sup>9</sup> This request will contribute to the public understanding of those processes.

### Request for Fee Waiver

The Brennan Center respectfully requests a waiver of all fees for document search, duplication, and review associated with this request in accord with 5 U.S.C. § 552(a)(4)(A)(ii)-(iii), as disclosure of the records sought is in the public interest, because it is likely to contribute significantly to public understanding of the operations or activities of the federal government’s law enforcement agencies and operations, and because the Brennan Center has no commercial interest in this information. The Brennan Center is an independent, nonpartisan law and policy organization organized under 26 U.S.C. § 501(c)(3) that works to reform, revitalize, and when necessary, defend the nation’s systems of democracy and justice. The Brennan Center has a demonstrated ability to analyze, synthesize, and report on matters of public concern, in a manner that is available to and reaches the public on a widespread basis.

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Acevedo, “ICE special agents detain Floyd protester in NYC,” *NBC News*, June 5, 2020, <https://www.nbcnews.com/news/latino/federal-immigration-agents-detain-floyd-protester-nyc-n1226086> (reporting the detention of an individual of Puerto Rican descent who was targeted by HSI officers at a protest against police brutality).

<sup>4</sup> Brittny Mejia, “This agency helped catch ‘El Chapo.’ But association with ICE can be a headache,” *Los Angeles Times*, March 19, 2019, <https://www.latimes.com/local/lanow/la-me-ln-ice-difficulties-20190319-story.html>.

<sup>5</sup> Todd Feathers, “The most powerful agency you’ve never heard of: Homeland Security Investigations,” *MuckRock*, April 22, 2014, <https://www.muckrock.com/news/archives/2014/apr/22/operation-cornerstone-training-slides/>.

<sup>6</sup> Eoin Higgins, “ICE doesn’t want you to read its manuals—for no good reason whatsoever,” *The Intercept*, April 18, 2018, <https://theintercept.com/2018/04/18/ice-hsi-special-agent-training-manuals/>.

<sup>7</sup> Eoin Higgins, “Confidential ICE handbook lays out paths for investigations to avoid constitutional challenges,” *The Intercept*, February 23, 2018, <https://theintercept.com/2018/02/23/ice-search-seizure-handbook-manual-secret/>.

<sup>8</sup> Geneva Sands and Priscilla Alvarez, “Homeland Security agencies prepare for civil unrest amid heightened tensions nationwide,” *CNN*, October 26, 2020, <https://www.cnn.com/2020/10/26/politics/cbp-ice-prepare-for-unrest/index.html>.

<sup>9</sup> Eoin Higgins, “Confidential ICE handbook lays out paths for investigations to avoid constitutional challenges.”

The Brennan Center qualifies as a “representative of the news media” for the same reasons that it is “primarily engaged in dissemination of information”—i.e., because the Brennan Center “gathers information of potential interest to a segment of the public, uses its editorial skills to turn the raw materials into a distinct work, and distributes that work to an audience.”<sup>10</sup> The Brennan Center has released over 100 publications in the form of reports and papers on various issues of public importance in the period since January 2011.<sup>11</sup> The Brennan Center is therefore entitled to a waiver of search and review fees pursuant to 5 U.S.C. § 552(a)(4)(A)(ii)(II) and 28 C.F.R. § 16.10(d)(1).

As a noncommercial requester, the Brennan Center also qualifies for waivers as an “educational institution” pursuant to 28 C.F.R. § 16.10 (c)(1)(i). The Brennan Center qualifies as an educational institution because it is affiliated with the NYU School of Law, which is plainly an educational institution under the definition provided in 28 C.F.R. § 16.10(b)(4).<sup>12</sup> Moreover, disclosure is not primarily in the Brennan Center’s commercial interests.<sup>13</sup> As stated above, the Brennan Center plans to make any information disclosed as a result of this request available to the public at no cost. A fee waiver would therefore fulfill Congress’s legislative intent that FOIA be “liberally construed in favor of waivers for noncommercial requesters.”<sup>14</sup>

We look forward to your response within twenty (20) working days from the date you receive this request, as required by 5 U.S.C. § 552(a)(6)(A)(i). Please email the undersigned at [levinsonr@brennan.law.nyu.edu](mailto:levinsonr@brennan.law.nyu.edu) if you have any questions. Thank you.

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<sup>10</sup> The Freedom of Information Act (FOIA), 5 U.S.C. § 552(a)(4)(A)(ii)(III) (1966); 28 C.F.R. § 16.10(b)(6) (2015); *Nat’l Sec. Archive v. Dep’t of Def.*, 880 F.2d 1381, 1387 (D.C. Cir. 1989); *see also Elec. Privacy Info. Ctr. v. Dep’t of Def.*, 241 F. Supp. 2d 5, 11 (D.C. Cir. 2003).

<sup>11</sup> For representative examples of the Brennan Center’s previous publications on issues of public concern, *see, e.g.*, Faiza Patel, Rachel Levinson-Waldman and Raya Koreh, *Social Media Monitoring*, Brennan Center for Justice, 2019, <https://www.brennancenter.org/our-work/research-reports/social-media-monitoring>; Elizabeth Goitein and Faiza Patel, *What Went Wrong with the FISA Court*, Brennan Center for Justice, 2015, <https://www.brennancenter.org/our-work/research-reports/what-went-wrong-fisa-court>; Michael German, *Hidden in Plain Sight: Racism, White Supremacy, and Far-Right Militancy in Law Enforcement*, Brennan Center for Justice, 2020, <https://www.brennancenter.org/our-work/research-reports/hidden-plain-sight-racism-white-supremacy-and-far-right-militancy-law>; “Social Media Surveillance by Homeland Security Investigations: A Threat to Immigrant Communities and Free Expression,” *Brennan Center for Justice*, November 15, 2019, <https://www.brennancenter.org/our-work/research-reports/social-media-surveillance-homeland-security-investigations-threat>; *cf. Elec. Privacy Info. Ctr.*, 241 F. Supp. 2d at 11-12 (finding that the Electronic Privacy Information Center was representative of the news media based on its publication of seven books about national and international policies relating to privacy and civil rights); *see also Nat’l Sec. Archive*, 880 F.2d at 1386 (deeming National Security Archive a representative of the news media after it published one book and indicated its intention to publish a set of documents on national and international politics and nuclear policy).

<sup>12</sup> *See also Nat’l Sec. Archive*, 880 F.2d at 1381.

<sup>13</sup> *See* 28 C.F.R. § 16.10 (d)(1).

<sup>14</sup> *McClellan Ecological Seepage Situation v. Carlucci*, 835 F.2d 1282, 1284 (9th Cir. 1987) (quoting 132 Cong. Rec. 27, 190 (1986) (Statement of Sen. Leahy)).

Sincerely,

A handwritten signature in black ink that reads "Rachel Levinson-Waldman". The signature is written in a cursive, flowing style with a long horizontal line extending to the right.

Rachel Levinson-Waldman  
Deputy Director, Liberty & National Security Program  
Brennan Center for Justice at NYU School of Law

# **EXHIBIT A**



# governmentattic.org

*"Rummaging in the government's attic"*

Description of document: Immigration and Customs Enforcement (ICE) Office of Homeland Security Investigations (HSI) Special Agent Manual table of contents, 2016\*

Requested date: 25-January-2017

Released date: 09-August-2017

Posted date: 29-January-2018

\* Manual composed of sections originating 2005-2016

Source of document: FOIA Request  
U.S. Consumer Product Safety Commission  
4330 East West Highway  
Bethesda, MD 20814  
Fax: 301-504-0127  
Email: [cpsc-foia@cpsc.gov](mailto:cpsc-foia@cpsc.gov)  
[e-FOIA Public Access Link \(PAL\)](#)

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**U.S. Department of Homeland Security**  
500 12<sup>th</sup> St SW, Stop 5009  
Washington, DC 20536



**U.S. Immigration  
and Customs  
Enforcement**

August 09, 2017

**RE: ICE FOIA Case Number 2017-ICFO-16778**

This letter is the final response to your Freedom of Information Act (FOIA) request to U.S. Immigration and Customs Enforcement (ICE), dated January 25, 2017, for all records pertaining to a digital/electronic copy of the table of contents of the “Special Agent Handbook”..

ICE has considered your request under the FOIA, 5 U.S.C. § 552.

A search of the ICE Office of Homeland Security Investigations (HSI) for records responsive to your request produced 6 pages that are responsive to your request. ICE has determined that 6 pages will be released in their entirety; ICE has claimed no deletions or exemptions.

If you are not satisfied with the response to this request, you have the right to appeal following the procedures outlined in the DHS regulations at 6 C.F.R. § 5.9. 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:

U.S. Immigration and Customs Enforcement  
Office of the Principal Legal Advisor  
U.S. Department of Homeland Security  
500 12th Street, S.W., Mail Stop 5900  
Washington, D.C. 20536-5900

Your envelope and letter should be marked “FOIA Appeal.” Copies of the FOIA and DHS regulations are available at [www.dhs.gov/foia](http://www.dhs.gov/foia).

Provisions of the FOIA and Privacy Act allow us to recover part of the cost of complying with your request. In this instance, because the cost is below the \$14 minimum, there is no charge.<sup>1</sup>

If you need any further assistance or would like to discuss any aspect of your request, please contact the FOIA office and refer to FOIA case number **2017-ICFO-16778**. You may send an e-

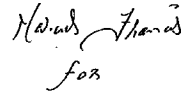
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<sup>1</sup> 6 CFR § 5.11(d)(4).



mail to [ice-foia@ice.dhs.gov](mailto:ice-foia@ice.dhs.gov), call toll free (866) 633-1182, or you may contact our FOIA Public Liaison in the same manner. Additionally, you have a right to 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](mailto:ogis@nara.gov); telephone at 202-741-5770; toll free at 1-877-684-6448; or facsimile at 202-741-5769.

Sincerely,

A handwritten signature in cursive script, appearing to read "Catrina M. Pavlik-Keenan".

Catrina M. Pavlik-Keenan  
FOIA Officer

Enclosure(s): 6 page(s)

# HOMELAND SECURITY INVESTIGATIONS

## SPECIAL AGENT MANUAL



# **HOMELAND SECURITY INVESTIGATIONS SPECIAL AGENT MANUAL INDEX**

**The HSI Special Agent Manual is composed of the Special Agent Handbooks issued by ICE Homeland Security Investigations or its predecessor ICE Office of Investigations, as well as selected chapters from the legacy U.S. Customs Service Office of Investigations Special Agent Handbook which are being updated and will be superseded by new Handbooks. (See the following indexes.)**

# HOMELAND SECURITY INVESTIGATIONS

## Special Agent Handbooks

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(All Special Agent Handbooks are Law Enforcement Sensitive.)

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| 1.  | Arrest Procedures Handbook   | HB 15-03  | 07/21/2015 |
| 2.  | Asset Forfeiture Handbook  | HB 10-04  | 06/30/2010 |
| 3.  | Benefit Fraud Investigations Handbook                              | HB 14-01  | 01/07/2014 |
| 4.  | Case Management Handbook   | HB 08-02  | 02/01/2008 |
| 5.  | Child Sexual Exploitation Investigations Handbook                  | HB 12-05  | 11/19/2012 |
| 6.  | Commercial Trade Fraud Investigations Handbook                     | IHB 07-03 | 12/03/2007 |
| 7.  | Computer Forensics Handbook  | HB 11-01  | 04/27/2011 |
| 8.  | Counterterrorism and Criminal Exploitation Investigations Handbook | HB 14-07  | 11/12/2014 |
| 9.  | Cultural Property, Art, and Antiquities Investigations Handbook    | IHB 13-06 | 11/08/2013 |
| 10. | Currency Pick-Up and Delivery Operations Handbook                  | HB 16-01  | 4/14/2016  |
| 11. | Cyber Crimes Investigations Handbook                               | HB 11-03  | 08/09/2011 |
| 12. | Denaturalization Investigations Handbook                           | IHB 08-01 | 01/15/2008 |
| 13. | Document and Identity Fraud Investigations Handbook                | HB 13-01  | 01/08/2013 |
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| 19. Human Smuggling and Trafficking Investigations Handbook               | HB 15-04 | 08/21/2015 |
| 20. Informants Handbook   | HB 12-03 | 08/02/2012 |
| 21. Interviewing Techniques Handbook                                      | HB 10-03 | 04/28/2010 |
| 22. Live and Photographic Lineups Handbook                                | HB 08-05 | 10/08/2008 |
| 23. Lure Operations Handbook  | HB 15-07 | 11/23/2015 |
| 24. Narcotics and Transnational Organized Crime Rewards Programs Handbook | HB 16-03 | 08/11/2016 |
| 25. National Ceremonial Honor Guard Handbook                              | HB 12-01 | 05/08/2012 |
| 26. National Security Investigations Handbook                             | HB 13-03 | 04/26/2013 |
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| 28. Polygraph Examinations Handbook                                       | HB 16-02 | 06/02/2016 |
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| 30. Protective Operations Handbook  | HB 15-01 | 02/26/2015 |
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| 34. Special Response Team Handbook | HB 06-001 | 11/20/2005 |
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# **HOMELAND SECURITY INVESTIGATIONS**

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**(All Chapters are Law Enforcement Sensitive.)**

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