



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

February 11, 2011

Mr. Michael Bekesha
Judicial Watch
425 Third Street S.W., Suite 800
Washington, D.C. 20024

**RE: ICE FOIA Case Number 2011FOIA2155
DHS FOIA Case Number DHS/OS/PRIV 11-0051**

Dear Mr. Bekesha:

This is in response to your Freedom of Information Act (FOIA) request to the U.S. Department of Homeland Security (DHS), dated October 12, 2010. DHS referred your request to U.S. Immigration and Customs Enforcement (ICE) on November 16, 2010. You have requested copies of "the report/memorandum prepared at the direction of Secretary Napolitano related to Carlos Martinelly-Montano".

Your request has been processed under the FOIA, 5 U.S.C. § 552. ICE has searched its offices that would possess records responsive to your request. Our search produced one draft document totaling thirty-five (35) pages. After review of that draft document, I have determined that this draft document will be withheld in its entirety pursuant to Exemption 5 of the FOIA as described below. Additionally, I have also determined that portions of seven (7) pages of the draft document will also be withheld pursuant to Exemptions 6 and 7(C) of the FOIA as described below.

ICE has applied Exemption 5 to protect from disclosure intra-agency draft documents that contain the recommendations, opinions, and conclusions of agency employees. The disclosure of intra-agency draft documents would discourage the expression of candid opinions and inhibit the free and frank exchange of information and opinions among agency personnel on important agency decision-making by having a chilling effect on the agency's deliberative process. Because draft documents contain statements and positions not necessarily adopted by the agency, disclosure of draft documents could result in public confusion over what constitutes the final agency position with respect to issues addressed in the draft documents.

FOIA Exemption 5 protects from disclosure those inter- or intra-agency documents that are normally privileged in the civil discovery context. The three most frequently invoked privileges are the deliberative process privilege, the attorney work-product privilege, and the attorney-client privilege. After carefully reviewing the responsive documents, I have determined that the responsive documents qualify for protection under the deliberative process privilege. 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. Furthermore, the deliberative process privilege protects against public confusion that might result from the disclosure of reasons and rationales that were not in fact ultimately the grounds for an agency action.

ICE has applied Exemptions 6 and 7(C) to protect from disclosure the home address, social security number, alien number, birth date, and a U.S. Citizenship and Immigration Services (USCIS) application number of the subject of your request. In addition, ICE applied Exemptions 6 and 7(C) to protect from disclosure the home addresses and birth dates of third parties contained within the documents.

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 types of documents and/or information that we have withheld may consist of social security numbers, home addresses, dates of birth, or various other documents and/or information belonging to a third party that are considered personal. 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 continues to monitor the status of the requested report. When the draft report is finalized, ICE will immediately process and disclose the final version of the report to Judicial Watch.

If you need to contact our office again about this matter, please refer to FOIA case number **2011FOIA2155**. This office can be reached at (202) 732-0300.

Sincerely,



Catrina M. Pavlik-Keenan
FOIA Officer