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Founded in 1986, the Immigration Reform Law Institute (IRLI) is a nonprofit legal organization defending the rights and interests of Americans.

IRLI is a supporting organization of the Federation for American Immigration Reform (FAIR).

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January 24, 2024

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

RE: 2024-ICFO-14051

Freedom of Information Act (FOIA) – APPEAL

Dear Appeal Officer,

This letter serves an appeal under the Freedom of Information Act (FOIA) of FOIA Request 2024-ICFO-14051 and is submitted to Immigration and Customs Enforcement (ICE) on behalf of the Immigration Reform Law Institute (IRLI), Washington, D.C.

This appeal is timely filed within 90 days of an adverse determination as required by FOIA and by Department of Homeland Security (DHS) regulations implementing FOIA.

On January 12, 2024, IRLI submitted a FOIA request for existing records, as outlined below, regarding Memoranda of Agreements (MOA) signed between ICE and numerous state and/or local law enforcement agencies. The identities of the signing state and local law enforcement agencies were then, and remain now, unknown to IRLI.

IRLI's FOIA request sought that ICE produce the following records:

1. All 287(g) Memoranda of Agreements (MOA) signed by both Immigration and Customs Enforcement (ICE) and a state or local law enforcement agency, from and including January 20, 2021 up to and including December 31, 2023.

On January 18, 2024, ICE emailed a "final response" to our FOIA request, which included a tracking number of 2024-ICFO-14051 and declared the following: "These documents are publicly available on the ICE.gov website at <https://www.ice.gov/identify-and-arrest/287g>".

In that same letter, ICE reminded us of our appeal rights, should we deem this response to be an adverse determination.

As it stands, IRLI regards the “final response” as an adverse determination. IRLI is not satisfied with this response for the following reasons:

Respectfully, it does not appear that the responding FOIA officer(s) fully understood what our request was asking of the agency, or perhaps did not fully understand what is currently available – and not currently available -- on the agency’s website. The webpage that the FOIA office directed us to in their final response letter – which IRLI was already well aware of before submitting our original request – did not provide a complete answer.

The webpage to which the “final response” refers includes only operational 287(g) agreements, all of which were entered into in 2020 or earlier. Keep in mind, our request asked for *ALL* MOAs signed between ICE and state and local law enforcement agencies from January 20, 2021 up to December 31, 2023 – which includes MOAs that have been signed by one or more parties but have not become operational.

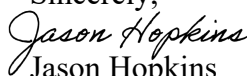
IRLI and the public are aware of at least 23 pending partnerships ICE has, so far, chosen not to make operational, pursuant to a so-called “program hold” on any new 287(g) agreements becoming operational even if signed by all parties: <https://cis.org/Feere/Biden-Admin-Changes-ICEs-287g-Webpage-Admits-Theres-Hold-Program>

The webpage directed to us only provides MOAs that are currently operational. Our request also asked for those non-operational partnerships where an MOA has been signed. Such non-operational, post-January 2021 signed MOA’s are not presently accessible on ICE’s website but are agency records within the meaning of FOIA, presumably in ICE’s possession and necessarily responsive to IRLI’s original request.

As such, simply providing a link to this webpage is not a sufficient response to our request.

If you have questions regarding this request, please contact me via email at foia@irli.org or phone at 202-792-1081.

Thank you for your assistance in this matter.

Sincerely,

Jason Hopkins
Investigations Manager