UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

SUSAN B. LONG, *et. al.*, Plaintiffs, v. IMMIGRATION AND CUSTOMS ENFORCEMENT, *et al.*, Defendants.	)	Civil Action No. 1:14-cv-109 (APM)

PLAINTIFFS' RESPONSE BRIEF PURSUANT TO THIS COURT'S ORDER DATED AUGUST 14, 2020

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INTRODUCTION

Defendant ICE's initial brief and supporting declaration provide no justification for excusing ICE from reviewing and redacting the records withheld in response to plaintiffs' requests. Instead, they demonstrate only that if six people (plus agency leadership, attorneys, FOIA staff, and support personnel) are tasked with over-redacting a sample document, their efforts will predictably result in "the release of information of little value" relative to the time spent on their project. ICE Br. 5. ICE provides no explanation of why it did not raise its burden argument in a timely manner, and its brief and supporting declaration do not carry its acknowledged burden of showing that any review of records withheld in response to plaintiffs' requests will be unreasonably burdensome. Rather, ICE's submissions show that its arguments rest on highly exaggerated time estimates for segregability review and on claims regarding the extent of exempt information in the records that cannot be squared with this Court's post-evidentiary-hearing rulings. In the end, the main lesson to be drawn from ICE's review of its sample document is that ICE is starting in exactly the wrong place and its time would be far better spent reviewing the directly responsive materials that plaintiffs have proposed should be the focus of its segregability analysis: data dictionary tables identifying and describing tables and fields within the EID and IIDS, and the EID code lookup tables.

ARGUMENT

1. Although the Court specifically questioned the timeliness of ICE's new burden arguments in the August 14 status conference, ICE attempts no explanation for its failure to raise any claims about the burden of segregating and redacting

exempt information from the items on its Vaughn indexes until this late date in the litigation. As plaintiffs' initial brief pointed out, plaintiffs raised ICE's obligation to segregate and produce nonexempt information in the opening round of summary judgment briefing, and the possibility of redaction was a major focus of the evidentiary hearing. Yet ICE did not address the burden of conducting a segregability review of its metadata withholdings either in its multiple summary judgment briefs or in its post-hearing brief—even while raising other burden claims (such as its claims with respect to the production of database "snapshots") at the summary judgment stage. ICE's silence about its delay in claiming undue burden speaks volumes.

2. ICE's own declaration contradicts its contention that the sample redaction exercise supports ICE's inflated estimates of the time required for segregability review. Review of a 20-page document took only one hour, whereas ICE's segregability analysis estimates that reviewing a *single page* would take 15 to 30 minutes. ICE tries to make the two seem roughly consistent by multiplying the one hour of review by six because ICE assigned six people to participate in the sample exercise—an excessive and unnecessary commitment of personnel that the agency would be very unlikely to make when the time came to review a significant volume of materials. ICE then piles on additional layers of review that are plainly attributable to its intention to produce a document to prove a point for litigation purposes rather than to the needs of a real redaction and production effort. If ICE were genuinely undertaking such an effort, it would train its reviewers in the criteria to be applied and assign individuals, not a committee, to the task.

3. ICE's brief and declaration also fail to support its assertion that a segregability review conducted in accordance with this Court's ruling would result in the release of minimal valuable information. ICE's reviewers diligently scoured the sample document of all but seven table names ("addresses," "arrests," "attorneys," "courts," "detainers," "detentions," and "persons"), as well as any other information that would make the document minimally intelligible. But they did not do so consistently with this Court's ruling, which concluded that "only metadata that 'describes the organization of [ICE"s] data and the structure of [its] databases,' presents any risk," Mem. Op. 10, and directed ICE to "evaluate whether the requested metadata that does not link to other portions of the databases or otherwise reveal the databases' structure can be released," *id*. at 27.

Neither ICE's declaration nor its brief explains how the analysis required by the Court's order could support redaction of all but seven table names. ICE's declarant does not assert that any of the redacted names revealed linkages between tables or structural information concerning the IIDS. Instead, she says that ICE redacted any table names that were not "also general terms descriptive of the work ICE performs as a law enforcement agency." De Castro Dec. ¶ 12, at 3–4. The declaration states in wholly conclusory fashion that all other terms were "determined to be more sensitive and would compromise the security of the database." *Id*. ¶ 12, at 4. The declaration offers no explanation of how those table names were "sensitive" or how they would "compromise" database security. And it makes no effort to reconcile those conclusions with the findings this Court made after the evidentiary hearing.

To top it off, the reviewers also redacted a host of *non-metadata* information in the document, *see id.* ¶ 8, without any explanation of the basis for the redactions other than a bare invocation of Exemption 7(E). The non-metadata redactions, however, are not even within the scope of the claims of exemption ICE advanced in its summary judgment papers or at the evidentiary hearing. Any such exemption claims are thus thoroughly waived. ICE's declarant's new assertions of risk to "officers, agency employees, employees of other law enforcement agencies, and the public," de Castro Dec. ¶ 4, at 2, also bear no relationship to the justifications offered for claims of exemption previously made by the agency in this case (except as to names of employees withheld under Exemption 6, which are not at issue). The agency's Exemption 7(E) claims have consistently focused on risks of compromise of the databases, not threats to officers, employees, or the public. Moreover, ICE's approach to the non-metadata redactions, like its vague and unexplained references to the "sensitivity" of the table names it redacted and the risk of "compromise" of its databases, appears to reflect the "defense in depth" rationale that this Court specifically rejected as a basis for withholding information "without further explanation or justification." Mem. Op. 23.

In short, ICE's exercise of redacting the sample document was not the segregability review ordered by this Court: It was not "a segregability analysis consistent with this opinion." Mem. Op. 27. Thus, it provides no basis for concluding that such a segregability review would fail to identify releasable information sufficiently meaningful to justify the effort of review and redaction.

4. The principal takeaway from ICE's review of its sample document is that ICE's resources could be better spent reviewing the records directly responsive to the requests at issue: the IIDS and EID records that list and describe tables and fields in the databases, and the EID code lookup tables. Concentration on those records would avoid the issue of ICE's belated claims that it is entitled to claim exemption for and redact non-metadata narrative information in documents on its Vaughn index. Moreover, the data dictionary tables that plaintiffs propose as the starting-point for ICE's efforts contain a wealth of information that ICE's witness at the evidentiary hearing did not claim was sensitive or exempt: the English-language descriptions of tables and fields in the data dictionaries' "comments" field. Plaintiffs' proposal that ICE begin by producing that field while redacting field and table names entirely (for purposes of an initial production only) would thus sidestep the problem of over-redaction of field and table names revealed by ICE's sample exercise. Similarly, production of the code lookup tables, which consist principally of codes and code translations that, as ICE's witness at the evidentiary hearing conceded, pose *no* threat to the databases, would yield a large amount of meaningful, responsive information relative to a minimal burden of redaction and review. The third stage of plaintiffs' proposed process, in which ICE would review table and field names in the data dictionary tables, would involve greater effort. But conscientious adherence by ICE to the Court's rulings—as opposed to the disregard for those rulings evident in the meat-ax approach taken in ICE's review of its sample document—will not involve a burden disproportionate to the amount of nonexempt information in the records.

ICE's opening brief makes no attempt to defend its position that data dictionary and code lookup tables in the databases are outside the scope of this Court's ruling, and plaintiffs' initial brief has shown that that position is baseless. ICE confines itself to asserting that review of this discrete set of records "would only increase the total number of pages, documents, and number of months that it would take to segregate the newly created and vastly expanded universe of records." ICE Br. 3 n.1. As plaintiffs have explained, however, the relatively small number of database tables that plaintiffs' proposal encompasses does not vastly expand the universe of records at issue or require a burdensome new search. Those records, moreover, comprise the heart of the information sought by plaintiffs. The time spent on their review would do more to advance the resolution of this case—and potentially to *avoid* the need for review of the entirety of the records included in ICE's Vaughn index—than review of records such as the sample that is the subject of ICE's brief.

CONCLUSION

The Court should deny ICE's request that it be excused from engaging in the segregability review ordered by the Court and required by FOIA.

Respectfully submitted,

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