

The Honorable Thomas S. Zilly

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UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

The Human Rights Defense Center and Michelle
Dillon,

Plaintiffs,

v.

U.S. Department of Homeland Security, and
United States Immigration and Customs
Enforcement,

Defendants.

No. 2:18-cv-01141 TSZ

FIRST AMENDED COMPLAINT

1. This lawsuit is an action under the Freedom of Information Act, 5 U.S.C. § 552, et seq., seeking production of records responsive to a request submitted by Ms. Michelle Dillon, an employee of the Human Rights Defense Center, to Immigration and Customs Enforcement.

JURISDICTION AND VENUE

2. This Court has both subject matter jurisdiction over this action and personal jurisdiction over the defendant under 5 U.S.C. § 552(a)(4)(B) and 2201(a).

3. Venue is appropriate in this Court under 5 U.S.C. § 552(a)(4)(B).

PARTIES

4. Plaintiff Human Rights Defense Center is a non-profit organization that advocates on behalf of the human rights of people held in U.S. detention facilities. Its advocacy

1 efforts include publishing *Prison Legal News*, a 72-page monthly publication that covers
2 prison-related news and litigation nationwide, and *Criminal Legal News*, a monthly publication
3 that covers the criminal justice system beyond incarceration. The Human Rights Defense
4 Center also publishes and distributes self-help reference books for prisoners, and engages in
5 litigation, media campaigns and outreach, public speaking and education, and testimony before
6 legislative and regulatory bodies.

7 5. Plaintiff Michelle Dillon resides in the Western District of Washington. She is
8 an employee of the Human Rights Defense Center in its Seattle office.

9 6. Defendant Department of Homeland Security is a department of the executive
10 branch of the U.S. government and is an agency within the meaning of 5 U.S.C. § 552(f)(1).

11 7. Defendant Immigration and Customs Enforcement is a component of the United
12 States Department of Homeland Security and an agency under 5 U.S.C. §552(f)(1) and 5
13 U.S.C. § 701.

14 **FACTS**

15 **Human Rights Defense Center's Background and Mission**

16 8. The Human Rights Defense Center was founded in 1990. It is dedicated to
17 public education, prisoner education, advocacy, and outreach to support the rights of prisoners
18 and to further basic human rights.

19 9. The Human Rights Defense Center's publishing project distributes books to
20 prisoners and other customers. It also publishes two monthly magazines, *Criminal Legal News*
21 and *Prison Legal News*.

22 10. In addition to publishing, the Human Rights Defense Center engages is
23 advocacy and education.

24 11. Prior to a 2009 name change, the entire organization was known as Prisoners'
25 Legal News.

Immigration and Customs Enforcement

12. The United States Immigration and Customs Enforcement enforces federal laws governing border control, customs, trade and immigration. It is a component of the United States Department of Homeland Security.

The Request for Information at Issue

13. On March 20, 2018, Ms. Dillon sent a request via email to the Immigration and Customs Enforcement for certain records related to litigation that the agency has resolved.

14. On behalf of the Human Rights Defense Center, Ms. Dillon requested records regarding litigation against ICE and its employees or agents created since January 1, 2010. She limited her request to claims and cases in which the government paid \$1,000 or more. For traffic-related claims and cases, she limited her request to those in which the payout was more than \$50,000.

15. In each case or claim described above, she asked to be provided:

- The Complaint or Claim Form and any amended versions;
- The Verdict Form, Final Judgment, Settlement Agreement, Consent Decree, or other paper that resolved the case.
- A record that shows the amount of money involved in the resolution and to whom it was paid.

16. The email requested a fee waiver.

17. Ms. Dillon's request also included a spreadsheet of cases and claims, based on the information provided on the United States Treasury Judgment Fund website. She noted that the spreadsheet might not include reference to all responsive records, as some may not have been included in the public database.

18. The spreadsheet contained all publically available information for case and claim jurisdiction, court docket number, internal agency file numbers, agency control numbers, and the Treasury payment identification number.

1 19. The Immigration and Customs Enforcement's via email on April 2, 2018,
2 informing Ms. Dillon that the fee waiver request had been granted and that the request had been
3 assigned internal tracking number 2018-ICFO-26920.

4 20. The email also invoked the agency's right to ten-day extension under 5 U.S.C. §
5 552(a)(6)(B).

6 21. The Immigration and Customs Enforcement's Office of Information Governance
7 and Privacy further responded by letter dated April 18, 2018, informing Ms. Dillon that some
8 of the requested information may be duplicated on Public Access to Court Electronic Records,
9 www.PACER.gov.

10 22. On April 25, 2018, the ICE FOIA office asked Ms. Dillon via email for
11 clarification of the request. By further email correspondence, ICE FOIA clarified that the
12 request for clarification was a request to limit the time frame or scope of the document.

13 23. On April 26, 2018, Ms. Dillon notified ICE FOIA that the Human Rights
14 Defense Center declined to narrow the request.

15 24. On June 20, Ms. Dillon received a letter via email from the ICE Office of
16 Information Governance and Privacy. That letter denied FOIA request, stating "After careful
17 review of your FOIA request, we determined that your request is too broad in scope, did not
18 specifically identify the records which you are seeking, or only posed questions to the agency."

19 25. On June 26, 2018, Ms. Dillon filed an appeal of this denial to the Office of the
20 Principal Legal Advisor for the U.S. Immigration and Customs Enforcement.

21 26. On July 6, 2018 that office sent an acknowledgment that the appeal was received
22 on July 5, 2018 and assigned the number 2018-ICAP-00366 for tracking purposes.

23 27. Per 5 U.S.C. § 552(a)(6)(A)(ii), the Agency has twenty working days to
24 respond, which expired on August 2, 2018.

25 28. On August 6, 2018, the Office of the Principal Legal Advisor emailed a final
26 denial of the appeal.

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1 29. The email stated that the request was “vague, overbroad, and unduly
2 burdensome,” and therefore ICE decided not to process the request.

3 **THE HUMAN RIGHTS DEFENSE CENTER AND MS. DILLON’S CLAIM FOR
4 RELIEF**

5 **Violation of the Freedom of Information Act, 5 U.S.C. §552**

6 30. This claim incorporates paragraphs 1 – 29 by reference.

7 31. Immigration and Customs Enforcement wrongly withheld documents responsive
8 to the properly submitted and appealed request.

9 32. The Human Rights Defense Center and Ms. Dillon have a statutory right to all
10 the records sought, and there is no basis for the Immigration and Customs Enforcement to
11 withhold them.

12 33. By failing to release all the records specifically requested, Immigration and
13 Customs Enforcement has violated the Freedom of Information Act.

14 **REQUESTED RELIEF**

15 The Human Rights Defense Center and Ms. Dillon therefore respectfully request that
16 this Court:

17 1. Declare that the records they seek are subject to disclosure under the Freedom of
18 Information Act;

19 2. Order Immigration and Customs Enforcement to disclose the requested records;

20 3. Award costs and attorneys’ fees under 5 U.S.C. § (a)(4)(E); and

21 4. Grant such other relief as the Court may consider just and proper.

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1 Date: August 7, 2018

2 Respectfully submitted,

3 /s/ Eric M. Stahl

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17 *Pro Hac Vice application pending*
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