

Section 552(a)(6)(B)(iv) provides that:

Each agency may promulgate regulations, pursuant to notice and receipt of public comment, providing for the aggregation of certain requests by the same requestor, or by a group of requestors acting in concert, if the agency reasonably believes that such requests actually constitute a single request, which would otherwise satisfy the unusual circumstances specified in this subparagraph, and the requests involve clearly related matters. Multiple requests involving unrelated matters shall not be aggregated.

The applicable DHS regulation provides as follows:

Aggregating requests. For the purposes of satisfying unusual circumstances under the FOIA, components may aggregate requests in cases where it reasonably appears that multiple requests, submitted either by a requester or by a group of requesters acting in concert, constitute a single request that would otherwise involve unusual circumstances. Components will not aggregate multiple requests that involve unrelated matters.

6 C.F.R. § 5.5(d); *see also, e.g., Simon v. U.S. Dep't of Justice*, No. 1:16-cv-00671 (APM), 2017 WL 1495915, at *1 (D.D.C. Apr. 26, 2017) (permitting agency to aggregate multiple FOIA requests submitted by single requester and to conduct a single search for records responsive to the aggregated requests); *Henson v. Dep't of Health & Human Servs.*, No. 14-cv-908-DRH-DGW, 2017 WL 1090815, at *4 & n.5 (S.D. Ill. Mar. 23, 2017) (finding search was adequate where agency aggregation “did not modify scope of Plaintiff’s FOIA requests, but instead sought to reduce duplicate productions”).

The agency’s decision to aggregate the FOIA requests was based in part on its conclusion that the various ACLU affiliates acted in concert in submitting the 19 FOIA requests, which the ACLU itself described as a “coordinated FOIA filing.” *See* ACLU, Press Release, *ACLU Files Demands for Documents on Implementation of Trump’s Muslim Ban* (Feb. 2, 2017), <https://www.aclu.org/news/aclu-filesdemands-documents-implementation-trumps-muslim-ban>. Moreover, all of the requests seek the same or substantially the same categories of information regarding CBP’s interpretation and

implementation of Executive Order 13,769. In addition, the aggregation of the requests enhances the efficiency and consistency of the agency's processing, in particular by allowing the agency to avoid duplicative processing of records that are responsive to more than one of the 19 requests, such as, for example, emails received by field office personnel in more than one field office.

Dated: October 5, 2017

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