

July 12, 2019

Via Certified Mail, Return Receipt Requested

U.S. Citizenship and Immigration Services
National Records Center, FOIA/PA Office,
P.O. Box 648010
Lee's Summit, MO, 64064-8010

RE: Freedom of Information Request for the Boston and Newark Asylum Offices

To Whom It May Concern,

The American Civil Liberties Union of Maine Foundation ("ACLU of Maine") submits this letter as a request for information under the Freedom of Information Act (FOIA), 5 U.S.C. § 552. This request seeks information pertaining to approvals, referrals, and denials of affirmative asylum cases arising out of the Newark Asylum Office and Boston Asylum Sub-Office. Thus, we request production of all records and documentation related to the scope of this request from the Newark Asylum Office¹ and the Boston Asylum Sub-Office², from January 1, 2010 until the present.

ACLU of Maine seeks expedited processing of this request, pursuant to 5 U.S.C. § 552(a)(6)(E), and a fee waiver, pursuant to 5 U.S.C. § 552(a)(4)(A)(iii) and 5 U.S.C. § 552(a)(4)(A)(ii)(II).

I. Purpose of Request

The purpose of this request is to obtain information for the public about the policies, procedures, objectives, and decisions of the Boston and Newark Asylum Offices. Anecdotally, over the past several years, the number of referrals in affirmative asylum cases arising out of the Boston Asylum Sub-Office has increased. To the best of the Requesters' knowledge, the Boston and Newark Asylum Offices have not released information or statistics regarding their operation and decision-making procedures, resulting in significant gaps in the public's understanding of

¹ States falling within the Newark Asylum Office's Jurisdiction include Connecticut, Delaware, Maine, Massachusetts, New Hampshire, New Jersey, Rhode Island, and Vermont, as well as certain counties in New York and Pennsylvania.

² States falling within the Boston Asylum Sub-Office's Jurisdiction include Maine, Massachusetts, New Hampshire, and Rhode Island.

the offices' policies, procedures, objectives, and decisions made regarding the affirmative asylum process.

Information not readily available to the public includes, but is not limited to, the Boston and Newark Asylum Offices' policies, procedures, objectives, and decisions rendered in the affirmative asylum decision-making processes. Additionally, information not readily available to the public includes information regarding the underlying protocols, reasoning, and instruction establishing the bases for the ultimate decisions declared.

Because the Requesters have witnessed an increase in the number of referrals to immigration courts, the Requesters are seeking information relating to affirmative asylum applicants since January 2010 who applied for asylum at the Newark and Boston Asylum Offices. Additionally, Requesters seek information relating to how affirmative asylum claims are assessed, data on affirmative asylum claim outcomes, and all Records that help influence affirmative asylum claim outcomes. Requesters specifically request the Records outlined in part III of this request to better understand how the Boston and Newark Asylum Offices render decisions in cases falling within their respective jurisdictions.

II. Definitions

For the purposes of these requests, the following are defined as:

“Any record” - Records sufficient to provide the information sought in a particular request, excluding redundant or duplicative records and any personally-identifiable information (including confidential information from individual Alien files).

“All Records” – Each and every Record responsive to a particular request, excluding any personally identifiable information (including confidential information from individual Alien files).

“Employee” - including any person who has worked for and/or is currently working for the Newark Asylum Office or Boston Asylum Sub-Office in any employment capacity.

“Memorandum” – Includes any policy directive, analysis, white paper, or order.

“Policies” – Includes any policy, procedure, manual, guidebook, protocol, or handbook.

“Record(s)” - Should be read in the broadest sense plausible and includes any writings, photographs, videos, electronically-stored material, data compilations, recordings, or any other material. This includes any documentation in your actual or constructive control, custody or possession, including documentation accessible at your request, whether prepared for or by you or someone else whom you can obtain the information from. This includes, but is not limited to,

business records, policy manuals, checklists, internal guidance, case notes, voicemail transcripts, instant messages, disciplinary notes, training manuals, photographs, videos, electronically-stored materials, documented conversations, social media posts or comments, messages, phone call logs, financial interests, notices, desk pads, work notes, minutes, emails, pamphlets, employee records, drawings, sketches, working papers, handwritten notes, formal or informal policies, procedures, and guidelines, or any other written or recorded, filmed, transcribed, or graphic matters accessible to you in any capacity.

Unless otherwise defined above, words used within the requests for production below should be given their ordinary meaning.

III. Records Requested

A. Records regarding Data & Statistical Information of Affirmative Asylum Cases as handled by the Boston and Newark Asylum Offices

Any and all Records, excluding confidential information from individual Alien files, containing data or statistics prepared, compiled, or maintained or that which could readily be prepared, compiled, or maintained based upon information, records, or documentation in the Newark and Boston Asylum Offices' actual or constructive possession and/or control, pertaining to affirmative asylum interviews. Such Records include, but are not limited to:

- a. Case file information and Records for each affirmative asylum application processed by the Newark Asylum Office from January 1, 2010 to present and by the Boston Asylum Office from January 1, 2015 to present, sorted by I-589 receipt number, including all the following data associated with each application:
 - i. State of U.S. residence at the time of application;
 - ii. Asylum Office that adjudicated the application;
 - iii. Country of origin;
 - iv. Age at time of application;
 - v. Gender;
 - vi. Race;
 - vii. Nationality;
 - viii. Native Language;
 - ix. Filing date of I-589 application;
 - x. Date(s) of Request for Evidence, if any;
 - xi. Date of interview;
 - xii. Date of adjudication;

- xiii. Type of decision [approval, denial, referral (interview), referral (uninterviewed), filing deadline referral, case closed/no-show denial];
 - xiv. Whether applicant had counsel present at the interview; and
 - xv. Whether applicant had an interpreter present at the interview.
- b. Records regarding Supervisory Asylum Officers' returns and adjudicator logs underlying affirmative asylum denials, referrals, approvals, notices of intent to deny, and assessments to approve, deny, or refer from the Newark Asylum Office from January 1, 2010 until the present and the Boston Asylum Sub-Office since January 1, 2015, including assessments and reasonings regarding why returns were given and/or the reasons behind the resulting referrals and denials;
 - c. Records regarding communications related to referrals, denials, approvals, notices of intent to deny, and assessments to approve, deny, or refer from the Newark Asylum Office from January 1, 2010 until the present and the Boston Asylum Sub-Office since January 1, 2015;
 - d. Any and all related Records not specifically outlined above.

B. Records Related to the Policies, Procedures, and Objectives of the Boston and Newark Asylum Offices Regarding Affirmative Asylum Cases

Any and all Records, received, maintained, or created by any governmental agency or subdivision, related to procedures, policies, or objectives of the Newark Asylum Office controlling the decision-making process of affirmative asylum cases from January 1, 2010 until the present. Additionally, Requesters seek Records received, maintained, or created by any governmental agency or subdivision, as well as Records related to procedures, policies, or objectives from the Boston Asylum Sub-Office, including documents created on or after January 1, 2015. Records include, but are not limited to:

- a. **Overview Documents:** Any and all Records referencing, discussing, detailing, explaining, or otherwise addressing the purposes, goals, objectives, responsibilities, implementation, and deployment strategy of the Boston or Newark Asylum Office's policies, procedures, and objectives regarding the affirmative asylum process.
- b. **Approval Notices, Referral Notices, Notices of Intent to Deny, and Denial Notices:** Any and all Records regarding approval, denial (including notices of intent to deny), and referral notices that include the reasoning behind and communications regarding the approvals, referrals, denials, decisions, notices of intent to deny, and assessments to approve,

deny, or refer, including redacted letters sent to affirmative asylum seekers, notices of intent to deny, internal and external emails and other Records regarding approval, denial, or referral notices and decisions, and any and all other Records addressing the approval, denial and referral decisions of affirmative asylum cases, including those Records between Supervisory Asylum Officers and Asylum Officers, excluding confidential information from individual Alien files.

- c. Boston and Newark Asylum Offices' Policies and Procedures:** Any and all Records related to policies and procedures governing the decision-making processes regarding affirmative asylum claims made by the Boston or Newark Asylum Offices. This includes, but is not limited to:
- i. Any and all Records containing policies, objectives, or procedures governing granted, denied or referred affirmative asylum cases within the Boston and Newark Asylum Offices;
 - ii. Any and all Records containing standard notices, decisions, or computer screen shots generated in response to the ultimate decision rendered, excluding confidential information from individual Alien files.
 - iii. Any and all Records pertaining to employee performance-based assessments, including the criteria, rubric, policies, procedures, data, objectives, expectations, and any and all other similar matters pertaining to employee performance review, excluding confidential employee information;
 - iv. Any and all Records pertaining to the number of cases the Asylum Officer's recommendation was changed (or where a different outcome was suggested) by the Supervisory Asylum Officer, broken down by country of origin, Asylum Officer, Supervisory Asylum Officer, and state of residence of the applicant, excluding confidential employee and Alien file information;
 - v. Any and all Records regarding the number of instances Asylum Officers have been penalized for Supervisory Officer returns of cases to the Asylum Officers and policies and directives behind such penalties given, excluding confidential employee information;
 - vi. Any and all Records related to training or education regarding the assessment of the credibility of claims, the detection of fraud, and the Boston and Newark Asylum Offices' policies and procedures regarding decisions rendered on credibility grounds in affirmative asylum cases.

- d. Training or Explanatory Materials:** Any and all Records containing training, briefing, guidance, procedures, rules, or other informational materials developed internally or externally pertaining to the job training, responsibilities, guidance, and rules for all employees at the Boston and Newark Asylum Offices, including, but not limited to:
- i. Any and all Records containing required training, policies, procedures, and expectations relating to anti-bias and sensitivity training for employees working with trauma survivors;
 - ii. Any and all Records related to evaluating, compiling, reviewing, or discussing the Boston and Newark Asylum Offices' racial or anti-racial profiling policies and procedures.
- e. Information Pertaining to Technology System Used:** Any and all Records relating to the technological system used in case management, including applicable hardware, software, systems, applications, and any and all other technological systems utilized in managing, assessing, organizing, and evaluating affirmative asylum cases within the Asylum Office.
- f. Information Pertaining to the Number of Cases and Employee Workload:** Any and all Records pertaining to the size of the Boston and Newark Asylum Offices, number of cases, and employee workload. This includes, but is not limited to:
- i. Any and all Records pertaining to the number of Asylum Officers and Supervisory Asylum Officers, per month;
 - ii. Any and all Records pertaining to the number of cases per month the Office has maintained, and the average caseload of each Asylum Officer and Supervisory Asylum Officer, per month;
 - iii. Any and all Records showing changes in policies pertaining to employee caseloads, the average time employees have to review and adjudicate a specific case, directives or policies regarding the amount of time dedicated toward the assessment of a single case, average time recommended for the Asylum Officer to conduct affirmative asylum interviews, time constraints pertaining to case review, and any and all other information pertaining to the workload of Asylum Officers and Supervisory Asylum Officers, since January 2010.

- g. Information Pertaining to Cases Coming from Maine:** Any and all Records, including emails, messages (including electronic messaging and emails where the word “Maine” is used), memoranda, and any and all other similar documentation that involve Maine cases or include “Maine” in the subject line and/or body of the Record, excluding confidential information from individual Alien files.
- h. Records pertaining to Applicants from Angola, Burundi, Democratic Republic of Congo, and Rwanda:** Any and all Records generated by the Boston or Newark Asylum Offices, pertaining to internal policies, procedures, guidance, rules, and communications, written or electronic, governing affirmative asylum applicants and consequent decisions rendered from Angola, Burundi, the Democratic Republic of the Congo, and Rwanda, excluding confidential information from individual Alien files.

IV. Format of Production

With respect to the form of production, *see* 5 U.S.C. § 552(a)(3)(B), we request that responsive documents be provided electronically in their native format (*i.e.*, Excel spreadsheets in Excel). We request that any responsive documents for which native format production is impossible be provided electronically in text-searchable, static-image format (PDF), in the best image quality the agency can produce. Please provide the requested documents in the following format:

- Saved on a CD, CD-ROM, DVD, or USB;
- Each record in a separately saved file;
- Emails should include date and time stamps and author and recipient information, including BCC and any other hidden fields, and “parent-child” relationships should be maintained, meaning that the Requesters must be able to identify the attachments with emails;
- With any other metadata preserved.

V. The Requester

The ACLU of Maine is a non-profit, 501(c)(3) organization that provides legal representation free of charge to individuals and organizations in civil rights and civil liberties cases, and educates the public about the civil rights and civil liberties implications of government activities and policies.

VI. Request for a Waiver of the Costs

Requesters ask that the agency waive all fees associated with the request. A waiver is warranted because the disclosure of information is “likely to contribute significantly to public understanding of the operations or activities of the government and is not primarily in the commercial interest of the requester.” *See* 5 U.S.C. § 552(a)(4)(iii).

A. Disclosure of Information is in the Public Interest

Disclosure of the information is in the public interest because it will contribute significantly to public understanding of how the Boston and Newark Asylum Offices have, do, and will process and decide affirmative asylum cases. This request concerns how the Boston and Newark Asylum Offices process, organize, assess, maintain, and decide individual affirmative asylum decisions and how the offices are potentially in violation of international and domestic legal obligations, unnecessarily disadvantaging individuals applying through the Boston Asylum Sub-Office through disproportionately high referral rates as compared to other offices. Access to this information is necessary to ensure objectivity and transparency throughout the affirmative asylum process.

Such information is of great public interest because it affects a large population of individuals: individual affirmative asylum seekers, derivative asylum seekers, immigration attorneys, immigration advocates, community organizers, immigration centers, service providers, family members and friends of individuals seeking affirmative asylum, and the world’s population at large. *See* 6 C.F.R. § 5.11(k)(2)(iii) (stating that disclosure contributes to public understanding when it affects a “reasonably broad audience of persons interested in the subject”). Additionally, similar articles and reports have already been created by other organizations regarding immigration matters that the public has taken interest in.³ Requesters have the ability, intent, and means to disseminate the requested information to the public at large.

Requesters will review, analyze and/or summarize the information obtained through this FOIA internally and publish a report or related written materials to be shared with the public. Requesters may make the information available through their publicly accessible websites and through action alerts, social media, emails and newsletters. Finally, Requesters have frequent contact with regional and national print and news media and plan to share information gleaned from FOIA disclosures with interested media, further guaranteeing that the information will be publicly accessible.

B. Disclosure of Information is Not Primarily in the Commercial Interest of the Requesters

³ *See e.g.* Jennifer L. Koh, et. al., *Deportation without Due Process*, Stanford University, (Sept. 2011), <https://www-cdn.law.stanford.edu/wp-content/uploads/2015/10/Deportation-Without-Due-Process-2011-09.pdf>; Rachel D. Settlage, *Affirmatively Denied: The Detrimental Effects of A Reduced Grant Rate for Affirmative Asylum Seekers*, 27 B.U. Int’l L. J. 61 (2009).

Requesters are not-for-profit organizations. Attorneys, noncitizens and any other members of the public may obtain information about immigration issues through the Requesters' distribution of oral, written, and electronic materials, including their respective websites, and through public appearances. Requesters seek the requested information for disseminating it to the public-at-large who have access to our public websites and other free publications; not for commercial gain.

VII. Request for a Limitation of Search and Review Fees

Requesters seek a limitation of processing fees because of their qualification as “representatives of the media” pursuant to 5 U.S.C. § 552(a)(4)(A)(ii)(II) (“fees shall be limited to reasonable standard charges for document duplication when records are not sought for commercial use and the request is made by . . . educational or noncommercial scientific institution . . . or a representative of the news media”) and 6 C.F.R. § 5.11(d)(1) (search fees shall not be charged to “representatives of the news media”). “[A] representative of the news media’ means any person or entity that gathers information of potential interest to a segment of the public, uses its editorial skills to turn the raw materials into a distinct work, and distributes that work to an audience.” 5 U.S.C. § 552(a)(4)(A)(ii)(III).

Courts have previously found that the ACLU is considered a “representative of the media” for FOIA-related purposes. *See ACLU of Wash. v. U.S. Dep’t of Justice*, No. C09-0642RSL, 2011 WL 887731, at *10 (W.D. Wash. Mar. 10, 2011) (finding that Washington’s ACLU was an organization that “gathers information of potential interest to a segment of the public, uses its editorial skills to turn the raw materials into a distinct work, and distributes that work to an audience”); *ACLU v. DOJ*, 321 F. Supp. 2d 24, 30 n.5 (D. D.C. 2004) (finding nonprofit public interest group to be “primarily engaged in disseminating information”).

Per the statutory definition, the Requestors do not have to be a part of the traditional media; instead, if the requester meets the definition in any aspect of its work, it qualifies for fee limitations. *See Cause of Action v. FTC*, 799 F.3d 1108, 1125 (D.C. Cir. 2015). Requesters qualify as a “representative of the news media” under the statute, because they routinely gather information for public interest, turn it into distinct work, and publicly distribute this work. *See Electronic Privacy Information Center v. Department of Defense*, 241 F. Supp. 2d 5 (D.D.C. 2003) (non-profit organization that gathered information and published it in newsletters and otherwise for general distribution qualified as representative of news media for purpose of limiting fees). Courts have reaffirmed that non-profit requesters that are not traditional media outlets can qualify as media for FOIA-related purposes. *See Cause of Action v. FTC*, 799 F.3d 1108, 1125 (D.C. Cir. 2015). Thus, fees must be limited to duplication costs.

VIII. Expedited Processing

Expedited processing of this request is required because there is a “compelling need” for the information. 5 U.S.C. § 552(a)(6)(E)(i)(I). A “compelling need” is established when there exists an “urgency to inform the public concerning actual or alleged Federal Government activity,” when the requester is a “person primarily engaged in disseminating information,” 28 C.F.R. § 16.5(e)(1)(ii), and when “a matter of widespread and exceptional media interest in which there exist possible questions about the government’s integrity which affect public confidence” exists. 28 C.F.R. § 16.5(e)(1)(iv).

There is an urgent need for public information regarding the Newark and Boston Asylum Offices’ handling of affirmative asylum cases. 28 C.F.R. § 16.5(e)(1)(ii). The approval numbers regarding affirmative asylum claims have continued to drop since the Boston Sub-Office’s inception in January 2015 and remain among the lowest in the country, impacting the lives of thousands of asylum seekers across the region and potentially undertaken in violation of national and international law. This has established substantial uncertainty within affirmative asylum seekers’ minds because of this significant balance between the success rate for individuals falling within the Boston Asylum Sub-Office’s jurisdiction as compared with asylum seekers within other jurisdictions. Despite this widespread community impact, the Boston and Newark Asylum Offices have promulgated no regulations or agency explanations regarding the policies and procedures explaining their activities and clarifying the reasoning behind the current approval, referral, and denial rates. As the Boston and Newark Asylum Offices continue to deny or refer affirmative asylum claims at record rates, the public has an urgent need to understand the reasoning and processes governing these actions.

IX. Certification

The Requesters certify that the above information is true and correct to the best of the Requesters’ knowledge. *See* 6 C.F.R. § 5.5(e)(3).

Please furnish the applicable records to:

Zachary L. Heiden, Esq.
ACLU of Maine
121 Middle Street, Suite 200
Portland, Maine 04101
zheiden@aclumaine.org

Respectfully submitted,

Zachary L. Heiden, Legal Director
ACLU of Maine