



AMERICAN IMMIGRATION COUNCIL

May 17, 2012

U.S. Department of Justice
Executive Office for Immigration Review
Office of General Counsel - FOIA Service Center
FOIA/Privacy Act Requests
5107 Leesburg Pike, Suite 1903
Falls Church, VA 22041

Re: Freedom of Information Act Request

Dear Sir or Madam:

The American Immigration Council (AIC) submits this letter as a request for information under the Freedom of Information Act (FOIA), 5 U.S.C. § 552, *et seq.*

Request for Information

AIC asks for any and all records¹ prepared, received, transmitted, collected and/or maintained by the Executive Office for Immigration Review (EOIR)² which relate or refer in any way to video teleconferencing (VTC).

The above records may include, but are not limited to:

- 1) Documents directing and managing the use of VTC at the Headquarters Immigration Court or other immigration courts throughout the country;

¹ The term "records" as used herein includes all records or communications preserved in electronic or written form, including but not limited to correspondence, documents, data, videotapes, audiotapes, e-mails, faxes, files, guidance, guidelines, evaluations, instructions, analyses, memoranda, agreements, notes, orders, policies, procedures, protocols, reports, rules, manuals, technical specifications, training manuals, and studies.

² "EOIR" as used herein means EOIR offices and components (including Office of the Director, Office of the General Counsel, Office of the Chief Immigration Judge, the Board of Immigration Appeals, Office of Management Programs, the Administration Division, and Office of Planning, Analysis and Technology), and any divisions, subdivisions, or sections therein.

- 2) Documents relating to the decisions to install VTC equipment at immigration courts and/or detention facilities;
- 3) Documents relating to the process used to select the courts and detention facilities where VTC will be used;
- 4) Documents describing the number and/or location of VTC equipped courtrooms, including those that service the Institutional Hearing Program (IHP);
- 5) Documents describing the number of hearings where VTC was used and whether the respondent was detained in FY 2009, FY 2010, and FY 2011;
- 6) Documents describing the types of hearings (i.e. bond, master calendar, merits) where VTC was used in FY 2009, FY 2010, and FY 2011;
- 7) Documents describing the number of cases where VTC was used in FY 2009, FY 2010, and FY 2011;
- 8) Documents describing the types of relief requested in cases where VTC was used in FY 2009, FY 2010, and FY 2011;
- 9) Documents relating to the decision to establish the Headquarters Immigration Court;
- 10) Documents describing the number of cases heard and/or hearings conducted at the Headquarters Immigration Court in FY 2009, FY 2010, and FY 2011;
- 11) Documents evaluating the use of VTC, including but not limited to the impact of VTC on outcomes of removal proceedings and/or respondents' due process rights;
- 12) Documents explaining the protocol for transferring records between various locations when VTC is used;
- 13) Communications with the Department of Homeland Security (DHS) and/or Immigration and Customs Enforcement (ICE) regarding coordination or conduct of VTC;
- 14) Communications with detention facilities regarding coordination or conduct of VTC;
- 15) Documents describing the number of immigration judges who have refused to conduct master and/or merits hearings via VTC and any decisions on motions to conduct in person hearings;

- 16) Communications with DHS and/or ICE regarding the staffing of immigration courts, including the use of VTC, at facilities ICE began using within the last 24 months;
- 17) Communications with DHS and/or ICE regarding the staffing of immigration courts, including the use of VTC, at facilities ICE plans to open within the next 5 years.
- 18) Documents, including training materials and directives, describing practices and protocols for Immigration Judges and other immigration court staff, DHS staff, interpreters, and/or detention center staff during VTC hearings.

AIC asks that any records that exist in electronic form be provided in their native electronic format on a compact disc, digital video disk, or equivalent electronic medium. AIC also requests that any documents stored in Portable Document Format ("PDFs") be provided as individual files in a searchable PDF format. Finally, Requesters request that reasonable metadata be transmitted along with files, including but not limited to maintaining parent-child relationships between emails and their attachments, author information, date and time stamp information. If any of the requested records or information are not kept in a succinct format, we request the opportunity to view the documents in your offices.

All requested records that are responsive may be provided with personally identifying details redacted. FOIA exempts information from disclosure if that disclosure would lead to an unwarranted invasion of privacy. 5 U.S.C. § 552(b)(6). Determination of this exemption requires "a balancing of the public's interest in obtaining the information against any possible invasions of privacy which would result from disclosure." *Burkins v. United States*, 865 F. Supp. 1480, 1502 (D. Colo. 1994). AIC expects the release of all segregable portions of otherwise exempt material.

If under applicable law any of the information requested is considered exempt, please describe in detail the nature of the information withheld, the specific exemption or privilege upon which the information is withheld, and whether the portions of withheld documents containing non-exempt or non-privileged information have been provided.

Request for Waiver of All Costs

AIC asks that all fees associated with this FOIA request be waived. AIC is entitled to a waiver of all costs because disclosure of the 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." 5 U.S.C. § 552(a)(4)(A)(iii). *See also* 6 C.F.R. § 5.11 (k) (records furnished without charge or at a reduced rate if the information is in the public interest, and disclosure is not in commercial interest of institution). In addition, AIC has the ability to widely disseminate the requested information. *See Judicial Watch v. Rossotti*, 326 F.3d 1309 (D.C. Cir. 2003) (finding a

fee waiver appropriate when the requester explained, in detailed and non-conclusory terms, how and to whom it would disseminate the information it received).

A. Disclosure of the Information Is in the Public Interest

Disclosure of the requested information will contribute significantly to public understanding of government operations and activities related to the use of VTC in immigration court. Such information is of great public interest given that it affects a large number of individuals who face removal each year.

AIC has the capacity and intent to disseminate widely the requested information to the public. AIC educates citizens about the enduring contributions of America's immigrants, supports sensible and humane immigration policies that reflect American values, and works to ensure that immigration laws are enacted and implemented in compliance with fundamental constitutional and human rights. AIC's Immigration Policy Center (IPC) and Legal Action Center (LAC) help carry out this mission by reaching out to the general public to promote a better understanding of immigration law, policy and practice. The IPC researches issues related to immigration and regularly provides information to leaders on Capitol Hill and the media. The LAC works with other immigrants' rights organizations and immigration attorneys across the United States to advance the fair administration of immigration laws, including those relating to the adjudication of employment-based visa petitions.

The LAC and the IPC will post the information obtained through this FOIA on the AIC website – a website that is accessible by any member of the public. AIC's website receives more than 115,000 monthly page views (or 1.5 million yearly page views), and information available on the website is regularly shared and reposted on other websites with large audiences, including Altnet, a website with 2.3 million monthly visitors. AIC also will publish a summary of the information received in the LAC quarterly newsletter and in a blog. These publications are distributed to thousands of recipients and also are available on the AIC website. Finally, AIC has regular contact with national print and news media and plans to share information gleaned from FOIA disclosures with interested media.

B. Disclosure of the Information Is Not Primarily in the Commercial Interest of the Requester

AIC is a 501(c)(3), tax-exempt, not-for-profit educational, charitable organization. Immigration attorneys, noncitizens and any other interested members of the public may obtain information about immigration-related issues on AIC's frequently updated website. AIC seeks the requested information for the purpose of disseminating it to members of the public who access AIC's website and other AIC publications, and not for the purpose of commercial gain.

* * *

Thank you for your prompt attention to this request. If you have any questions, please do not hesitate to contact me by telephone or email at 202-507-7522 or bwlerin@immcouncil.org.

Sincerely,

A handwritten signature in black ink, appearing to read 'Beth Werlin', with a large, sweeping flourish at the end.

Beth Werlin
Deputy Director, Legal Action Center
American Immigration Council