



Transactional Records Access Clearinghouse

Syracuse University

March 22, 2011

Catrina Pavlik-Keenan, FOIA Director
U.S. Immigration and Customs Enforcement
800 North Capitol St., NW
5th Floor, Suite 585
Washington, DC 20536

Re: release of high (b)(2) redacted materials in FOIA 2010-2139 and 2010-3333

Dear FOIA Director Pavlik-Keenan:

ICE previously redacted and large volume of material under the claim that the material was exempt under FOIA Exemption 2(high) in the above referenced cases. ICE explained its claim as follows:

“FOIA Exemption 2(high) protects information applicable to internal administrative and personnel matters, such as operating rules, guidelines, and manual of procedures of examiners or adjudicators, to the extent that disclosure would risk circumvention of an agency regulation or statute, impede the effectiveness of an agency’s activities, or reveal sensitive information that may put the security and safety of an agency activity or employee at risk. Whether there is any public interest in disclosure is legally irrelevant. Rather, the concern under high 2 is that a FOIA disclosure should not benefit those attempting to violate the law and avoid detection.” [emphasis in original]

[See, for example, the final response to FOIA 2010-3333 Items 1, 2, 3, 4, 8 and 11. Similarly, the response to 2010-2139 relied upon these same grounds in redacting extensive material from records provided.]

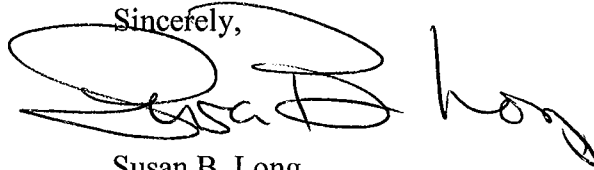
Whether the proper reading of the scope of FOIA Exemption 2 might include the very exemption claims advanced by ICE was appealed to the U.S. Supreme Court in the Milner case (*Milner v. United States Department of the Navy*). On March 7, 2011 the Supreme Court rendered its decision (see copy attached) and flatly rejected the position asserted by ICE. In an 8-1 decision the Court ruled that Exemption 2 was by the plain words of the statute limited to certain “human resource matters,” and the concept of a high (b)(2) exemption simply didn’t exist.

We therefore ask you to promptly release all materials withheld on the basis of the agency’s high (b)(2) in the above referenced cases. These passages are clearly marked in the copies you provided, and it is our understanding, based upon our conversation with the FOIA analyst who handled these cases, that the software you are using allows you to easily un-redact these passages and provide us a new copy which contains this unlawfully withheld material.

Given that your prior withholding has been found to be illegal, the agency has a clear obligation to act with dispatch to rectify its improper behavior. Should you have any questions, or if we can be of any

assistance, please feel free to contact us. You can reach Long at (315) 443-3563 or by email at suelong@syr.edu. Thank you very much.

Sincerely,

A handwritten signature in black ink, appearing to read "Susan B. Long". The signature is fluid and cursive, with the first name "Susan" being the most prominent part.

Susan B. Long
Co-Director, TRAC and
Associate Professor
Martin J. Whitman School of Management
Syracuse University

A handwritten signature in black ink, appearing to read "David Burnham". The signature is fluid and cursive, with the first name "David" being the most prominent part.

David Burnham
Co-Director, TRAC and
Associate Research Professor
S.I. Newhouse School of Public Communications
Syracuse University

Attached: U.S. Supreme Court decision in Milner.