

1300 Pennsylvania Avenue, NW  
Washington, DC 20229



## U.S. Customs and Border Protection

OT: RR: RDL: DLJA  
**CBP-AP-2024-001933 GS**

June 28, 2024

SangYeob Kim  
ACLU of New Hampshire  
18 Low Avenue  
Concord, NH 03301

RE: Freedom of Information Act Appeal; **CBP-FO-2024-106765**

Dear Mr. Kim:

This letter represents our response to the Freedom of Information Act (FOIA) appeal you filed after U.S. Customs and Border Protection's (CBP) FOIA Division reported it could not identify any records responsive to your request for information. By this letter, we affirm FOIA Division's determination that there are no responsive records – which means there were no apprehensions or encounters in New Hampshire during the period your request for U.S. Border Patrol (USBP) apprehensions and encounters specified.

On May 13, 2024, you requested via SecureRelease,

- 1) "From April 28, 2024 to May 4, 2024, records sufficient to identify how many apprehensions occurred in New Hampshire – including in the New Hampshire counties of the Swanton sector (Coos, Grafton, and Carroll Counties) – relative to the total number of 492 apprehensions that occurred in the sector during this time period.
- 2) From April 28, 2024 to May 4, 2024, records sufficient to identify how many apprehensions *and encounters* occurred in New Hampshire – including in the New Hampshire counties of the Swanton sector (Coos, Grafton, and Carroll Counties) – relative to the total number of apprehensions and encounters that occurred in the sector during this time period.
- 3) From January 1, 2024 to April 30, 2024 (disaggregated by month), records sufficient to identify how many apprehensions and encounters occurred in New Hampshire – including in the New Hampshire counties of the Swanton sector (Coos, Grafton, and Carroll Counties) – relative to the total number of apprehensions and encounters that occurred in the sector during this time period."

You indicated that “[e]counters are defined as the sum of U.S. Border Patrol (USBP) Title 8 apprehension and noncitizens processed for expulsions under Title 42 authority by USBP.” SecureRelease assigned your request Case File No. CBP-FO-2024-106765 and FOIA Division acknowledged receipt of your request on May 14, 2024. On May 31, 2024, FOIA Division gave you an update to inform you that it was still conducting searches and that “[t]he custodians most likely to hold your records have been identified and your request has been tasked for search.” FOIA Division issued its determination related to your request on June 11, 2024, and explained that it had “conducted a comprehensive search of files within the CBP databases for records that would be responsive to your request,” but it was “unable to locate or identify any responsive records, based upon the information you provided in your request.”

You appealed that determination via SecureRelease in a submission dated June 11, 2024, which was received by my office on June 12, 2024, and your appeal was assigned the Case File No. CBP-AP-2024-001933. In your appeal, you restated your request for records and stated that you were appealing “CBP’s determination that it did not locate any responsive record.” As such, we interpret your appeal to mean that you are challenging the adequacy of the search conducted by FOIA Division. You also stated that FOIA Division’s determination was vague and “unclear whether the absence of any responsive record meant no encounter or apprehension.”

The Freedom of Information Act was enacted to “ensure an informed citizenry, vital to the functioning of a democratic society, needed to check against corruption and to hold the governors accountable to the governed.” *Nat’l Labor Relations Bd. v. Robbins Tire & Rubber Co.*, 437 U.S. 214, 242 (1978). The law provides the public with the right to receive records and information from the government in order to further democratic principles and allow for independent evaluation of government action. In furtherance of this goal, we have reviewed FOIA Division’s action and find that they did complete an adequate search. Under FOIA, we are required to respond to requests for existing records. Since records are generated for all apprehensions and encounters, a lack of records means that there were no apprehensions or encounters.

The FOIA provides that “the term ‘search’ means to review, manually or by automated means, agency records for the purpose of locating those records which are responsive to a request.” 5 U.S.C. § 552(a)(3)(D). Generally, courts require agencies to undertake a search that is “reasonably calculated to uncover all relevant documents.” See *Williams v. Dep’t of Justice*, 177 F. App’x 231, 233 (3d Cir. 2006). “[T]he adequacy of a FOIA search is generally determined not by the fruits of the search, but by the appropriateness of the methods used to carry out the search,” and the adequacy of an agency’s search is judged by a test of “reasonableness,” which will vary from case to case. See *Jennings v. Dep’t of Justice*, 230 F. App’x 1, 1 (D.C. Cir. 2007) (quoting *Iturralde v. Comptroller of Currency*, 315 F.3d 311, 315 (D.C. Cir. 2003)); *Zemansky v. Env’t Prot. Agency*, 767 F.2d 569, 571-73 (9th Cir. 1985) (observing that the reasonableness of an agency search depends upon the facts of each case (citing *Weisberg*, 705 F.2d 1344, 1351 (D.C. Cir. 1983))).

Courts have found searches to be reasonable when, among other things, they are based on a reasonable interpretation of the scope of the subject matter of the request or when it focused on the records specifically mentioned in the request. See *Larson v. Dep’t of State*, 565 F.3d 857, 869

(D.C. Cir. 2009) (affirming adequacy of search based on agency's reasonable determination regarding records being requested and searched accordingly). The reasonableness of an agency's search can depend on whether the agency properly determined where responsive records were likely to be found and searched those locations. See *Lechliter v. Rumsfeld*, 182 F. App'x 113, 115 (3d Cir. 2006) (concluding that agency fulfilled duty to conduct a reasonable search when it searched two offices that it "determined to be the only ones likely to possess responsive documents" (citing *Oglesby*, 920 F.2d at 68)).

Our review of the FOIA Division case file revealed that an adequate and complete search was conducted. In response to your initial request, FOIA Division staff contacted staff at U.S. Border Patrol (USBP) with expertise and knowledge of their office's programs, operations, and policies, to conduct a search for records that pertain to your request. USBP secures our borders by detecting and preventing the entry of illegal aliens and outside threats and reducing the likelihood that dangerous people and capabilities enter the United States between the ports of entry. To achieve its law enforcement mission to enforce immigration laws and to detect, interdict, and apprehend those who attempt to illegally enter or smuggle people or contraband across U.S. borders between official ports of entry, USBP oversees Sectors, including Swanton Sector, and Stations within those Sectors with an area of responsibility that includes New Hampshire. USBP would have purview over the records you requested if they existed; therefore, USBP was the best office to search for records. USBP informed FOIA Division that there were no apprehensions or encounters in New Hampshire during the requested timeframe; thus, no responsive records.

By searching USBP, FOIA Division searched all offices "that would reasonably contain the information requested" in your FOIA request. *Moayedi v. U.S. Customs & Border Prot.*, 510 F. Supp. 2d 73, 80 (D.D.C. 2007). To satisfy the FOIA, an agency must undertake a search that is "reasonably calculated to uncover all relevant documents." *Weisberg v. Dep't of Justice*, 705 F.2d 1344, 1351 (D.C. Cir. 1983). "[T]he reasonableness of an agency's search can depend on whether the agency properly determined where responsive records were likely to be found, and searched those locations," *Karantalis v. Dep't of Justice*, 635 F.3d 497, 500-501 (11th Cir. 2011). By conducting a search of the office that would have purview over the records you requested, FOIA Division's search was reasonable and complete.

For your information, Congress excluded three discrete categories of law enforcement and national security records from the requirements of the FOIA. See 5 U.S.C. 552(c). This response is limited to those records that are subject to the requirements of the FOIA. This is a standard notification that is given to all our requesters and should not be taken as an indication that excluded records do, or do not, exist.

In the event that you are dissatisfied with the disposition of your appeal, you may obtain judicial review of this decision pursuant to the provisions of 5 U.S.C. §552(a)(4)(B) in the United States District Court in the District in which you reside, in the District where the agency records are situated, or in the United States District Court for the District of Columbia.

The Office of Government Information Services (OGIS) also mediates disputes between FOIA requesters and Federal agencies as a non-exclusive alternative to litigation. If you are requesting

access to your own records (which is considered a Privacy Act request), you should know that OGIS does not have the authority to handle requests made under the Privacy Act of 1974. If you wish to contact OGIS, you may email them at [ogis@nara.gov](mailto:ogis@nara.gov) or call 1-877-684-6448.

Sincerely,

A handwritten signature in black ink, appearing to read 'MA', with a small dot to the right.

Melissa Pansiri, Chief  
Disclosure Law and Judicial Actions Branch  
Regulations and Rulings Directorate  
Office of Trade