SCHOOL OF LAW

THE UNIVERSITY OF TEXAS AT AUSTIN

Immigration Clinic • 727 E. Dean Keeton St. • Austin, TX 78705-3299
(512) 232-1292 / 232-1310 • FAX (512) 232-0800

April 11, 2008

Mr. Mark Hanson, Acting FOIA Director
U.S. Customs and Border Protection
1300 Pennsylvania Ave., NW
Attn: Mint Annex Building, FOIA Division
Washington, D.C. 20229

Dear Mr. Hanson:

I am writing to request respectfully that you provide documents pursuant to the Freedom of Information Act, 5 U.S.C. § 552. I request that you provide the following documents in the possession of U.S. Customs and Border Protection, which reference or pertain to the implementation of the Secure Fence Act of 2006 along the Texas/Mexico border:

1. Maps of possible locations for segments of fence or wall along the Texas/Mexico border. This request specifically includes all of the maps that were used or presented by the United States government at the hearings held on March 19, 2008 in connection with condemnation actions for property along the Texas/Mexico border. These hearings were held in the United States District Court for the Southern District of Texas – Brownsville. According to statements of representatives of the government at the hearings, these maps reflected the latest proposed route for the fence or wall along the Texas/Mexico border.
2. Documents or electronic files including geographic coordinates (e.g. latitude and longitude) for surveyed points along potential routes for segments of fence or wall along the Texas/Mexico border.
3. Documents identifying the properties possibly affected by the construction of the border fence or wall along the Texas/Mexico border, including documents that provide information regarding the ownership of the possibly affected properties and any other information about the characteristics of those properties.
4. Documents identifying the properties for which the United States government has sought to obtain access through consent/waiver or through litigation. This request includes documents that reflect when and how access was sought and what type of access was sought as well as documents that reflect whether access has been granted and which properties the government has physically accessed to date for surveying or any other purpose.
5. Documents reflecting appraisals of properties possibly affected by the construction of the border fence or wall along the Texas/Mexico border.

6. Documents reflecting surveys or other analyses of the areas possibly affected by the border fence or wall along the Texas/Mexico border. This request includes any analyses or research conducted on the impact on Native American individuals or communities. It also includes any analyses or research conducted on the potential impact on businesses, individuals or communities that have a presence on both sides of the Texas/Mexico border or who regularly travel back and forth across the border. Finally, it includes analyses or research conducted on the treaty and land grant history of the properties and individuals possibly impacted by the border fence or wall along the Texas/Mexico border.
7. Documents that describe the considerations or factors taken into account in making decisions regarding potential routes for segments of fence or wall along the Texas/Mexico border.
8. Communications received from, provided to or referenced by the Department of Homeland Security that make recommendations or suggestions regarding the route for segments of fence or wall along the border along the Texas/Mexico border.
9. Documents relating to potential or actual contracts for the execution of land surveys or construction of segments of fence or wall along the Texas/Mexico border. The requested documents include requests for proposals or bids, responses to requests for proposals or bids, contracts, inquiries regarding potential contracts and negotiations regarding contracts.

I ask that this FOIA request be processed on an expedited basis. The request meets the criteria for expedited processing set forth at 5 U.S.C. 552(a)(6)(E); 6 C.F.R. 5.5(d); and the U.S. Customs and Border Protection FOIA Reference Guide (March 7, 2008), at http://www.cbp.gov/xp/cgov/admin/fl/foia/making_a_request/reference_guide.xml.

I am seeking the requested information in order to conduct research and writing on the plans for construction of a wall on the Texas/Mexico border with the goal of informing the public, United States policymakers and international organizations, such as the Inter-American Commission on Human Rights, about the process. The information is urgently needed to inform the public and policymakers concerning the United States government's activities in relation to planning and construction of a border wall on the Texas/Mexico border, because the government has repeatedly indicated its intent to carry out the construction in the coming months of this year, specifically by October 2008. See Houston Chronicle, "Border fence holdouts hit with eminent domain threat" (Dec. 7, 2007). The Secure Fence Act of 2006 also provides a December 2008 deadline for construction of certain segments of the fence or wall.

The issue of construction of a border wall along the Texas/Mexico border has garnered widespread public and media interest. The information sought relates directly to questions posed by the public and the press regarding the logic and rationale of the process used to make decisions regarding placement and construction of the fence or wall. The information sought also includes documents regarding the expenditure of

public funds toward construction of the fence or wall along the Texas/Mexico border. As such, the information sought involves possible questions about the government's integrity which affect public confidence.

I hereby certify that the reasons I have provided for seeking this information on an expedited basis are true and correct to the best of my knowledge. I am willing to pay reasonable photocopying costs, as set forth in the FOIA statute, to obtain copies of the documents that are responsive to this request. I ask that you advise me if the total photocopying charge is likely to exceed $200 so that I may consider the possibilities of narrowing my request or seeking a waiver of the photocopying charges.

Thank you for your attention to this request. I look forward to your response.

Sincerely,

Denise Gilman
Clinical Professor

cc:
The FOIA/Privacy Office
U.S. Department of Homeland Security
245 Murray Drive SW
STOP-0550
Washington, DC 20528-0550

SCHOOL OF LAW

THE UNIVERSITY OF TEXAS AT AUSTIN

Immigration Clinic • 727 E. Dean Keeton St. • Austin, TX 78705-3299
(512) 232-1292 / 232-1310 • FAX (512) 232-0800

April 11, 2008

U.S. Army Corps of Engineers
U.S. Army Engineer District, Fort Worth
ATTN: CESWF-OC
P.O. Box 17300
Fort Worth, Texas 76102-0300

To Whom It May Concern:

I am writing to request respectfully that you provide documents pursuant to the Freedom of Information Act, 5 U.S.C. § 552. I request that you provide the following documents in the possession of the U.S. Army Corps of Engineers, which reference or pertain to the implementation of the Secure Fence Act of 2006 along the Texas/Mexico border:

1. Maps of possible locations for segments of fence or wall along the Texas/Mexico border. This request specifically includes all of the maps that were used or presented by the United States government at the hearings held on March 19, 2008 in connection with condemnation actions affecting property along the Texas/Mexico border. These hearings were held in the United States District Court for the Southern District of Texas – Brownsville. According to statements of representatives of the government at the hearings, these maps reflected the latest proposed route for the fence or wall along the Texas/Mexico border.
2. Documents or electronic files including geographic coordinates (e.g. latitude and longitude) for surveyed points along potential routes for segments of fence or wall along the Texas/Mexico border.
3. Documents identifying the properties possibly affected by the construction of the border fence or wall along the Texas/Mexico border, including documents that provide information regarding the ownership of the possibly affected properties and any other information about the characteristics of those properties.
4. Documents identifying the properties for which the United States government has sought to obtain access through consent/waiver or through litigation. This request includes documents that reflect when and how access was sought and what type of access was sought as well as documents that reflect whether access has been granted and which properties the government has physically accessed to date for surveying or any other purpose.
5. Documents reflecting appraisals of properties possibly affected by the construction of the border fence or wall along the Texas/Mexico border.

6. Documents reflecting surveys or other analyses of the areas possibly affected by the border fence or wall along the Texas/Mexico border. This request includes any analyses or research conducted on the potential impact on Native American individuals or communities. It also includes any analyses or research conducted on the impact on businesses, individuals or communities that have a presence on both sides of the Texas/Mexico border or who regularly travel back and forth across the border. Finally, it includes analyses or research conducted on the treaty and land grant history of the properties and individuals possibly impacted by the border fence or wall along the Texas/Mexico border.
7. Documents that describe the considerations or factors taken into account in making decisions regarding potential routes for segments of fence or wall along the Texas/Mexico border.
8. Communications received from, provided to or referenced by the Department of Homeland Security that make recommendations or suggestions regarding the route for segments of fence or wall along the border along the Texas/Mexico border.
9. Documents relating to potential or actual contracts for the execution of land surveys or construction of segments of fence or wall along the Texas/Mexico border. The requested documents include requests for proposals or bids, responses to requests for proposals or bids, contracts, inquiries regarding potential contracts and negotiations regarding contracts.

I ask that this FOIA request be processed on an expedited basis. 5 U.S.C. 552(a)(6)(E). I am seeking the requested information in order to conduct research and writing on the plans for construction of a wall on the Texas/Mexico border with the goal of informing the public, United States policymakers and international organizations, such as the Inter-American Commission on Human Rights, about the process. The information is urgently needed to inform the public and policymakers concerning the United States government's activities in relation to planning and construction of a border wall on the Texas/Mexico border, because the government has repeatedly indicated its intent to carry out the construction in the coming months of this year, specifically by October 2008. See Houston Chronicle, "Border fence holdouts hit with eminent domain threat" (Dec. 7, 2007). The Secure Fence Act of 2006 also provides a December 2008 deadline for construction of certain segments of the fence or wall.

The issue of construction of a border wall along the Texas/Mexico border has garnered widespread public and media interest. The information sought relates directly to questions posed by the public and the press regarding the logic and rationale of the process used to make decisions regarding placement and construction of the fence or wall. The information sought also includes documents regarding the expenditure of public funds toward construction of the fence or wall along the Texas/Mexico border. As such, the information sought involves possible questions about the government's integrity which affect public confidence.

I hereby certify that the reasons I have provided for seeking this information on an expedited basis are true and correct to the best of my knowledge. I am willing to pay reasonable photocopying costs, as set forth in the FOIA statute, to obtain copies of the documents that are responsive to this request. I ask that you advise me if the total photocopying charge is likely to exceed $200 so that I may consider the possibilities of narrowing my request or seeking a waiver of the photocopying charges.

Thank you for your attention to this request. I look forward to your response.

Sincerely,

Denise Gilman
Clinical Professor

cc:
The Army Freedom of Information
and Privacy Act Office
Suite 201
1725 Jefferson Davis Highway,
Arlington, VA 22202-4102

DEPARTMENT OF THE ARMY
FORT WORTH DISTRICT, CORPS OF ENGINEERS
P. O. BOX 17300
FORT WORTH, TEXAS 76102-0300

REPLY TO
ATTENTION OF

April 17, 2008

Office of Counsel

SUBJECT: Freedom of Information Act 08-143

Ms. Denise Gilman
The University of Texas at Austin
School of Law
727 E. Dean Keeton St.
Austin, Texas 78705-3299

Dear Ms. Gilman:

I am in receipt of your various Freedom of Information Act request wherein you requested various documents pertaining to documents in the possession of the U.S. Army Corps of Engineers, Fort Worth District, that refer to or pertain to the implementation of the Secure Fence Act of 2006 along the Texas/Mexico border.

I have reviewed the standards for expedited processing at 32 C.F.R. § 286.4(d)(3)(7-1-03) and have found that your request as stated does not meet the requirements for expedited processing. The C.F.R. section states in part at 286.4(d)(3):

> (i) Compelling need means that the failure to obtain the records on an expedited basis could reasonably be expected to pose an imminent threat to the life or physical safety of an individual.
>
> (ii) Compelling need also means that the information is urgently needed by an individual primarily engaged in disseminating information in order to inform the public concerning actual or alleged Federal Government activity. An individual primarily engaged in disseminating information means a person whose primary activity involves publishing or otherwise disseminating information to the public. Representatives of the news media (see § 286.28(e)) would normally qualify as individuals primarily engaged in disseminating information. Other persons must demonstrate that their primary activities involves publishing or otherwise disseminating information to the public.
>
> (iii) A demonstration of compelling need by a requester shall be made by a statement certified by the requester to be true and correct to the best of their knowledge. This statement must accompany their request in order to be considered and responded to within the 10 calendar days required for decisions on expedited access.

Your request is not considered to have a compelling need under the requirements of (i) and (ii) as outlined above for expedited process.

At 32 C.F.R. § 286.4(d)(3), a response is required to be made to the requester within 10 days regarding the request for expedited processing, as such your response is being mailed within the stated time limit.

Based on the regulations cited above, your request for expedited processing under the Freedom is denied. We are continuing to process your request. Attached for your review is a copy of 32 C.F.R. § 286.4.

As required by the regulations, you should expect a response to be mailed from our office no later than May 12, 2008, which is 20 working days as provided under 5 U.S.C. §552(b). If you have any questions regarding this matter please contact me at (817) 886-1148 or via email at Delene.R.Smith@swf02.usace.army.mil.

Sincerely,

Delene R. Smith

Delene R. Smith
Alternate Freedom of Information
Act Officer

U.S. Department of Homeland Security
Washington, DC 20528

Homeland Security

Privacy Office, Mail Stop 0550

May 1, 2008

Ms. Denise Gilman
Clinical Professor
The University of Texas at Austin
Immigration Clinic
727 E. Dean Keeton Street
Austin, TX 78705

Re: **DHS/OS/PRIV 08-493/Gilman request**

Dear Ms. Gilman:

This acknowledges receipt of your Freedom of Information Act (FOIA) request addressed to the United States Customs and Border Protection (CBP), dated April 11, 2008, and seeking records pertaining to the implementation of the Secure Fence Act of 2006 along the Texas/Mexico border. You mailed your request to the Department of Homeland Security FOIA/Privacy Office, and we received it in this office on April 22, 2008.

Since your FOIA request letter was addressed to CBP, and since CBP will likely possess the records requested, I am referring your request to the FOIA Officer for CBP, Mark Hanson, for processing and direct response to you. You may contact that office in writing at U.S. Customs and Border Protection, 1300 Pennsylvania Avenue, N.W., Mint Annex, Washington, D.C. 20229 or via telephone at 202-572-8720.

If you need to contact this office again concerning your request, please refer to **DHS/OS/PRIV 08-493/Gilman**. This office can be reached at 866-431-0486.

Sincerely,

Vania T. Lockett
Associate Director, Disclosure & FOIA Operations

DEPARTMENT OF THE ARMY
FORT WORTH DISTRICT, CORPS OF ENGINEERS
P. O. BOX 17300
FORT WORTH, TEXAS 76102-0300

REPLY TO
ATTENTION OF

May 6, 2008

Office of Counsel

SUBJECT: Freedom of Information Act 08-143

Ms. Denise Gilman
The University of Texas at Austin
School of Law
727 E. Dean Keeton Street
Austin, Texas 78705-3299

Dear Ms. Gilman:

This is in regard to your Freedom of Information Act request wherein you requested various documents which reference or pertain to the implementation of the Secure Fence Act of 2006 along the Texas/Mexico border.

You requested that if it was estimated that the photocopying charge was to exceed $200 that you would like to be advised so that you could consider the possibility of narrowing the scope of your request. The estimated cost of reproduction of the documents responsive to your request is $54,545.55. These charges have been figured in accordance with Army Regulation 25-55 and include 100 pages of free reproduction; the fee includes an estimated 363,637 pages of reproduction at 15¢ per page. With a request this large, (over $250), I require 75% of our expenses in advance in compliance with Title 32, Code of Federal Regulations, Section 286.28(e)(2)(vi). If I do not receive a response from you within 30 days, I will consider your request withdrawn.

If you have any questions regarding this matter contact the undersigned at (817) 886-1148 and reference FOIA No. 08-143.

Sincerely,

Delene R Smith

Delene R. Smith
Alternate Freedom of Information
Act Officer

U.S. Department of Homeland Security
Washington, DC 20528

Homeland Security

May 19, 2008

Denise Gilman
Immigration Clinic
The University of Texas at Austin
727 E. Dean Keeton St.
Austin, Texas 78705

Dear Ms. Gilman,

This letter is to advise you of further action taken on your Freedom of Information Act (FOIA) request to the U.S. Customs and Border Protection (CBP), dated April 11, 2008. You requested copies of documents related to contract #HSBP1006R01353.

In processing the above referenced request, it was determined that responsive records contain information that DHS has reason to believe may be protected from disclosure under FOIA Exemption 4 as confidential business information.

Executive Order 12600 (June 23, 1987) and the DHS FOIA regulations at 6 C.F.R. § 5.8(f) require that a government agency provide pre-disclosure notification to the submitter of business information whenever confidential commercial information has been requested under the FOIA. The business submitter is afforded ten (10) working days within which to provide the Department of Homeland Security with a statement of objection to disclosure. If this office decides to disclose business information over the objection of the business submitter, we must notify the business submitter in writing of the specified disclosure date, which is ten (10) working days after the notice of the final decision to release the requested information has been mailed to the submitter.

Due to the above requirements, you should anticipate some delay in receiving a final response to your request. However, this should not be construed as a denial of access. Upon receipt of the above information, the documents will be processed in accordance with the Freedom of Information Act and mailed to you upon completion.

If you have any questions concerning this matter, please feel free to contact Tierney F. Davis, 1300 Pennsylvania Avenue, RRB-Room 7.2-43, Washington, DC 20229. He may also be reached via email at Tierney.Davis@dhs.gov. Please refer to the assigned case number, **SBIAO2008024**, in any future correspondence.

Sincerely,

Rita A. Williams
Assistant Director, Acquisition Policy and Contract Operations/SBI Acquisition Office
U.S. Customs and Border Protection

Denise Gilman

From: Denise Gilman
Sent: Wednesday, May 28, 2008 3:14 PM
To: 'Smith, Delene R SWF'; Tackett, Jason B SWF
Subject: RE: FOIA request

Thanks to both of you for your responsiveness and willingness to work with me on this request. I am writing to confirm that I am willing to pay up to $500 in photocopying costs for the documents I have requested. Thank you.

Denise Gilman
Clinical Professor of Law
Immigration Clinic
University of Texas School of Law
727 E. Dean Keeton
Austin, Texas 78705
512-232-7796
512-232-0800 (fax)

From: Smith, Delene R SWF [mailto:Delene.R.Smith@usace.army.mil]
Sent: Wednesday, May 28, 2008 8:28 AM
To: Denise Gilman; Tackett, Jason B SWF
Subject: RE: FOIA request

We are working on the estimate that you requested. I will provide that to you this week.

Delene Smith
Paralegal Specialist
(817) 886-1148
(817) 886-6415

From: Denise Gilman [mailto:DGilman@law.utexas.edu]
Sent: Tuesday, May 27, 2008 8:05 AM
To: Tackett, Jason B SWF
Cc: Smith, Delene R SWF
Subject: RE: FOIA request

Dear Jason and Delene,

It has been two weeks since I spoke to each of you and provided you with the narrowed FOIA request laid out below, but I have not yet heard anything further from you. What is the status of your response to my FOIA request? Thank you.

Denise Gilman
Clinical Professor of Law
Immigration Clinic

University of Texas School of Law
727 E. Dean Keeton
Austin, Texas 78705
512-232-7796
512-232-0800 (fax)

From: Denise Gilman
Sent: Monday, May 12, 2008 4:38 PM
To: 'jason.b.tackett@usace.army.mil'
Cc: 'delene.r.smith@usace.army.mil'
Subject: FOIA request

Thank you for speaking with me today about my FOIA request (FOIA No. 08-143) relating to the implementation of the Secure Fence Act of 2006 along the Texas/Mexico border. I very much appreciate your responsiveness.

Per our conversation, I am writing to narrow my request in the hopes that I can obtain the information I am seeking without creating an undue burden for your office and without incurring a large photocopying cost. The priority documents that I would like to obtain are the following:

1. Maps, GPS coordinates or descriptions setting forth the original fence alignments (locations) for the Texas/Mexico border set out by the Secure Border Initiative at the Department of Homeland Security and conveyed to the US Army Corps of Engineers.
2. Current maps (as of this month if possible) setting forth the current alignment/locations for the Texas/Mexico border fence as well as real estate, plat and property owner information regarding the properties to be impacted by the fence as per these maps. As we discussed, it would be most helpful to have both a statewide map of the proposed locations for the border wall in Texas AND a set of maps that demonstrates fence locations for each individual Border Patrol sector. If it is not possible to copy both sets of maps, or if it is very costly, I would at least like to obtain the statewide map for Texas for the border fence. If it is not possible for you to provide "current" maps, I would seek a recent set of maps. For example, if it is not possible to provide maps developed this month, I would request the set of maps used by the United States government at the hearing in federal District Court in Brownsville, Texas on March 19, 2008.
3. Task orders already awarded for construction of fence segments along the Texas/Mexico border.
4. Surveys, analyses or other documents reflecting implementation of the Secure Fence Act as it affects Native American communities or lands.
5. Documents reflecting the decision-making process that led to a conclusion that fencing should not be constructed on the following properties: 1) River Bend Resort, 4541 US Highway 281, Brownsville, TX 78520; 2) Property owned by Ray L. Hunt and his relatives, all or most of which is known as Sharyland Plantation, located in or near Hidalgo County, Texas; 3) Properties in the City of Eagle Pass along the border wall trajectory where fencing is not scheduled to be built (other areas of Eagle Pass are scheduled to be sites of construction).

I look forward to hearing from you about the feasibility and cost of providing these documents pursuant to my FOIA request. I believe that documents provided under these rubrics would meet my research needs. Of course, once I review any documents you provide, I may need to follow up further as to documents I believe would be responsive to the original FOIA request or to the narrowed request set forth in this e-mail.

Thanks again for your assistance. Take care.

Denise Gilman
Clinical Professor of Law
Immigration Clinic
University of Texas School of Law
727 E. Dean Keeton
Austin, Texas 78705
512-232-7796
512-232-0800 (fax)

DEPARTMENT OF THE ARMY
FORT WORTH DISTRICT, CORPS OF ENGINEERS
P. O. BOX 17300
FORT WORTH, TEXAS 76102-0300

REPLY TO
ATTENTION OF

May 28, 2008

Office of Counsel

SUBJECT: Freedom of Information Act 08-174

Ms. Denise Gilman
The University of Texas at Austin
School of Law
727 E. Dean Keeton St.
Austin, Texas 78705-3299

Dear Ms. Gilman:

This is in regard to a Freedom of Information Act request wherein you requested various documents pertaining to the Texas/Mexico border.

As required by the regulations, you should expect a response to be mailed from our office no later than June25, 2008, which is 20 working days as provided under 5 U.S.C. §552(b). If you have any questions regarding this matter please contact me at (817) 886-1148 or via email at Delene.R.Smith@usace.army.mil.

Sincerely,

Delene R Smith

Delene R. Smith
Alternate Freedom of Information
Act Officer

DEPARTMENT OF THE ARMY
FORT WORTH DISTRICT, CORPS OF ENGINEERS
P. O. BOX 17300
FORT WORTH, TEXAS 76102-0300

REPLY TO
ATTENTION OF

June 25, 2008

Office of Counsel

SUBJECT: Freedom of Information Act 08-174

Ms. Denise Gilman
Immigration Clinic
University of Texas School of Law
727 E. Dean Keeton
Austin, Texas 78705

Dear Ms. Gilman:

This is in response to your Freedom of Information Act request wherein you requested various documents pertaining to the implementation of the Secure Fence Act of 2006 along the Texas/Mexico border.

A search of the records within the Fort Worth District shows that several of the items requested as listed below are not U.S. Army Corps of Engineers documents and must, therefore, be requested from the official record owner, the Secure Border Initiative at the Department of Homeland Security. Those records include:

1. Maps, GPS coordinates or descriptions setting forth the original fence alignments (locations) for the Texas/Mexico border set out by the Secure Border Initiative at the Department of Homeland Security.

2. Current maps setting forth the current alignment/locations for the Texas/Mexico border fence as well as real estate, plat and property owner information regarding the properties to be impacted by the fence as per these maps. This information can also be retrieved from the Federal District Court that you stated the hearing was held in Brownsville, Texas on March 19, 2008. The Freedom of Information Act is not required to release documents that are publicly recorded or are already in the public realm.

3. The U.S. Army Corps of Engineers is not the executing agency for this mission, therefore, we are not included in the final decision making process for fence location or alignment. As such, the documents reflecting the decision-making process that led to a conclusion that fencing should not be constructed on the following properties: 1) River Bend Resort, 4541 US Highway 281, Brownsville, TX 78520; 2) property owned by Ray L. Hunt and his relatives, all or most of which is known as Sharyland Plantation, located in or near Hidalgo County, Texas; 3) properties in the City of Eagle Pass along the board will trajectory where fencing is not scheduled to be built (other areas of Eagle Pass are scheduled to be sites of construction) will also need to be requested from Department of Homeland Security.

The address for the FOIA Office for Department of Homeland Security is:

FOIA
The Privacy Office
U.S. Department of Homeland Security
245 Murray Drive SW
STOP-0550
Washington, DC 20528-0550
Toll-free: 866-431-0486
Telephone: 703-235-0790
Facsimile: 703-235-0443
Email: foia@dhs.gov

To address the remaining issues of your request, there are no affected tribal reservation lands in Texas; therefore, there are no surveys, analyses or other documents reflecting implementation of the Secure Fence Act as it affects Native American communities or lands.

Lastly, to date, no task orders have been awarded for construction of fence segments along the Texas/Mexico border.

As a portion of the records requested by you do not exist this is deemed a "no records denial." You have the right to appeal a no record determination through this office and we will forward it to our Washington Office for processing to the Secretary of the Army (Attn: General Counsel). An appeal must be received by the General Counsel within 60 days of the date of this letter; however, we are requesting that you please send you appeal to us within 30 days. The appeal package must be in the General Counsel's office by the 60th day. The envelope containing the appeal should bear the notation, "Freedom of Information Act Appeal," and should be sent to the U.S. Army Corps of Engineers, Fort Worth District, Attn: CESWF-OC, Post Office Box 17300, Fort Worth, Texas 76102-0300.

The point of contract for any further information on this matter is Mrs. Delene Smith and she can be reached at (817) 886-1148.

Sincerely,

Rex Crosswhite
District Counsel

SCHOOL OF LAW
THE UNIVERSITY OF TEXAS AT AUSTIN

Immigration Clinic • 727 East Dean Keeton Street • Austin, TX 78705
Phone: (512) 232-1292 • Fax: (512) 232-0800

August 13, 2008

U.S. Army Corps of Engineers
Fort Worth District
P.O. Box 17300
Fort Worth, Texas 76102-0300
ATTN:CESWF-OC

RE: Freedom of Information Act Appeal of Denial

To Whom It May Concern:

I am writing to appeal a denial of my request to obtain records under the Freedom of Information Act ("FOIA"). The denial was sent to me by the District Counsel for the Forth Worth District of the U.S. Army Corps of Engineers on June 25, 2008. I appeal the denial for the following reasons:

1. My request for access to a number of records was improperly denied on the grounds that the documents sought are "not U.S. Army Corps of Engineers documents." The denial stated that the documents must be sought from the "official record owner, the Secure Border Initiative at the Department of Homeland Security." The Freedom of Information Act does not limit the obligation to disclose a particular record only to one agency deemed "official record owner." Rather, FOIA requires disclosure by any agency holding control of a record and maintaining it in any form. See 5 USC 552(f)(2); U.S. Dep't of Justice v. Tax Analysts, 492 U.S. 136, 144-45 (1989).

The U.S. Army Corps of Engineers has provided no information or evidence suggesting that it does not maintain or control the records sought in the present FOIA request. To the contrary, public information suggests that the U.S. Army Corps of Engineers is heavily involved in the development and construction of a fence along the Texas/Mexico border and has created and utilized many of the records sought in the present request, demonstrating its control over those records. For example, the environmental stewardship plans published in relation to the fence project, including maps of proposed fence locations, survey information and other documents, are posted on a website jointly managed by the U.S. Army Corps of Engineers and the U.S. Department of Homeland Security. See http://www.borderfenceplanning.com/. The U.S. Army Corps of Engineers has regularly corresponded with affected property owners along the Texas/Mexico border and has engaged in surveys of their land. See, e.g., Correspondence from U.S. Army

Corps of Engineers to Mr. Eduardo Benavides (April 7, 2008); Correspondence from U.S. Army Corps of Engineers to Dr. Eloisa G. Tamez (Dec. 7, 2007); "Government takes first look at border fence opponent's land," Houston Chronicle (April 22, 2008).

In addition, the U.S. Army Corps of Engineers initially communicated regarding this FOIA request in a manner that established its control over the relevant records. In a letter dated May 6, 2008, Delene R. Smith with the U.S. Army Corps of Engineers stated that the cost of reproduction of the requested documents would amount to $54,545.55. Upon receipt of that letter, the undersigned engaged in telephone and e-mail conversations with Delene R. Smith and James B. Tackett in order to provide a narrowed request that would allow me to obtain the documents sought without creating an undue burden for the U.S. Army Corps of Engineers. The narrowed request that I provided on May 12, 2008 was based on the conversations that I held with U.S. Army Corps of Engineers employees regarding the types of records available. On May 28, 2008, the undersigned received e-mail correspondence from Delene Smith indicating that the U.S. Army Corps of Engineers was working on an estimate of the cost of photocopying the records sought in the narrowed request. The denial of the FOIA request sent on June 25, 2008 nonetheless inexplicably states that the U.S. Army Corps of Engineers cannot provide the requested records because they belong to another agency.

2. The response provided by the U.S. Army Corps of Engineers to the present FOIA request fails to comply with the agency's obligation to consider seriously each FOIA request and respond in a "results-oriented manner." See Exec. Order No. 13,392, 70 Fed. Reg. 75,373 (Dec. 14, 2005). Instead, the responses provided to the present request by the U.S. Army Corps of Engineers and other agencies have shuttled the request from one agency to another in an apparent effort to avoid the obligation to release records. The U.S. Army Corps of Engineers' FOIA denial states that the undersigned should direct the request to the FOIA/Privacy Office of the US Department of Homeland Security. However, on April 12, 2008, the undersigned directed a FOIA request, which was substantially the same request directed to the U.S. Army Corps of Engineers, to U.S. Customs and Border Protection, with a copy to the FOIA/Privacy Office of the U.S. Department of Homeland Security. On May 1, 2008, the FOIA/Privacy office of the U.S. Department of Homeland Security responded by stating that the request had been referred to U.S. Customs and Border Protection. Thus, the very office that the U.S. Army Corps of Engineers directs this requester to contact has already responded to the request by referring it elsewhere. On May 19, 2008, U.S. Customs and Border Protection responded to the FOIA request directed to that agency component by stating that it would provide pre-disclosure notification to a submitter of business information before releasing any records. Since that time, the undersigned has received no further communication from U.S. Customs and Border Protection. On August 12, 2008, the undersigned sent an e-mail to the point-of-contact person identified in the letter from U.S. Customs and Border Protection regarding the status of the request. That e-mail message was returned as undeliverable. It is altogether improper for the U.S. Army Corps of Engineers and other agencies of the U.S. government to avoid their obligations under FOIA in this manner.

In addition, the denial by the U.S. Army Corps of Engineers of the present FOIA request did not comply with the 20-day deadline imposed by the FOIA statute. The denial was sent more than two months after the request was presented and more than one month after the undersigned provided a narrowed request. See 5 USC 552(a)(6)(A)(i).

3. The response provided by the U.S. Army Corps of Engineers incorrectly states that certain maps, real estate, plat and property information presented by the U.S. government at a hearing held in Brownsville, Texas on March 19, 2008 are publicly available and may be retrieved from the United States District Court for the Southern District of Texas. U.S. government representatives present at the March 19, 2008 hearing showed the requested maps and other documents in open court. However, they were not made part of the court record. They were apparently used as demonstrative exhibits and were not entered into evidence. They are not available on PACER, the federal courts' public access database. FOIA request the release of these records, which were shown publicly but then were not made part of any publicly accessible record.

4. The U.S. Army Corps of Engineers provided an incomplete and incorrect response to the request for information regarding the impact of the border fence on Native American communities or lands. The response states that "there are no affected tribal reservation lands in Texas." The response unjustifiably limits the request, which sought records addressing implementation of the border fence "as it affects Native American communities or lands." The request was not limited to records addressing impact on recognized reservations alone but rather sought information about all effects on Native American communities. It is incorrect to state that Native American communities are not impacted. The U.S. Army Corps of Engineers has recognized that at least some Native American communities will be affected. For example, the Environmental Stewardship Plan for the El Paso Sector of Texas available on the U.S. Army Corps of Engineers website makes specific mention of the Ysleta del Sur Native American community and the impact of the fence on its religious ceremonies. Given the sectors of the border expected to be fenced, it is also very likely that the Kickapoo tribe located near Eagle Pass, Texas and Lipan Apache community members in the Rio Grande Valley will also be impacted.

For the foregoing reasons, I respectfully request that the U.S. Army Corps of Engineers Fort Worth District immediately release the records sought pursuant to the agency's FOIA obligations. Please do not hesitate to contact me if you desire to discuss this matter further.

Sincerely,

Denise Gilman
Clinical Professor

Denise Gilman

From: WILLIAMS, RITA A [rita.williams@dhs.gov]
Sent: Thursday, August 14, 2008 2:49 PM
To: Denise Gilman
Cc: LOWENSTEIN, CRAIG (CTR)
Subject: RE: SBIAO2008024 FOIA request

Ms. Gilman, My apologies, thanks for bringing to my attention that I forgot to include Mr. Lowenstein on my response. He is included on this message, and I'll let him know personally to give you a call. Thanks again for your patience.

Rita A. Williams, CPCM
Assistant Director, Acquisition Policy & Contract Operations
U.S. Customs and Border Protection
Secure Border Initiative Acquisition Office
(202) 344-1232
(202) 344-2720

From: Denise Gilman [mailto:DGilman@law.utexas.edu]
Sent: Thursday, August 14, 2008 3:22 PM
To: WILLIAMS, RITA A
Subject: RE: SBIAO2008024 FOIA request

Thank you for your response. I will look forward to hearing from Mr. Lowenstein. I noticed that you did not copy him on your e-mail. Could you provide me with his e-mail address? Thanks again.

Denise Gilman
Clinical Professor of Law
Immigration Clinic
University of Texas School of Law
727 E. Dean Keeton St.
Austin, TX 78705
(512)232-7796
(512)232-0800 (fax)

From: WILLIAMS, RITA A [mailto:rita.williams@dhs.gov]
Sent: Wednesday, August 13, 2008 5:07 PM
To: Denise Gilman
Subject: RE: SBIAO2008024 FOIA request

Ms. Gilman,

Please accept my apologies for the delay in responding to your request. We are inundated with FOIA requests, and are working diligently to process them all. Mr. Davis has since left our agency and his replacement is Mr. Craig Lowenstein whom I've cc'd on my response to you. Please expect his response on the status of your request on Thursday.

Thank you.

Rita A. Williams, CPCM
Assistant Director, Acquisition Policy & Contract Operations
U.S. Customs and Border Protection
Secure Border Initiative Acquisition Office
(202) 344-1232
(202) 344-2720

From: Denise Gilman [mailto:DGilman@law.utexas.edu]
Sent: Tuesday, August 12, 2008 5:17 PM
To: WILLIAMS, RITA A; Tierney.Davis@dhs.gov
Subject: RE: SBIAO2008024 FOIA request

I sent the following e-mail to Tierney Davis as suggested in correspondence you signed on May 19, 2008. The e-mail was returned to me. Please advise me as to who I should contact regarding this FOIA request.

Denise Gilman
Clinical Professor of Law
Immigration Clinic
University of Texas School of Law
727 E. Dean Keeton St.
Austin, TX 78705
(512)232-7796
(512)232-0800 (fax)

From: Denise Gilman
Sent: Tuesday, August 12, 2008 4:13 PM
To: 'Tierney.Davis@dhs.gov'
Subject: SBIAO2008024 FOIA request

Dear Ms. Davis,

I am writing in relation to the above-named FOIA request, which sought records relating to the construction of a border fence along the Texas/Mexico border. This request was filed on April 12, 2008. I received a letter dated May 19, 2008, beyond the 20-day statutory time period allowed for a response to a FOIA request, indicating that DHS would notify a submitter of business information before responding to my FOIA request. Almost three months later, I have received no further correspondence or information from your office regarding my request.

Please advise me of the status of this FOIA request at your earliest convenience so that I may determine whether I should treat your failure to respond as a denial of the request and take the appropriate follow-up actions including the filing of suit in federal district court.

Thank you for your attention.

Denise Gilman
Clinical Professor of Law
Immigration Clinic
University of Texas School of Law
727 E. Dean Keeton St.
Austin, TX 78705
(512)232-7796
(512)232-0800 (fax)