



Transactional Records Access Clearinghouse  
Syracuse University

March 18, 2010

T. Diane Cejka  
Director, FOIA/PA Office  
U.S. Citizenship and Immigration Services  
U.S. Department of Homeland Security  
P.O. Box 648010  
Lee's Summit, MO 64064-8010

RE: your initial response dated March 4, 2010 to our July 17, 2006 FOIA request for records relating to the CLAIMS4 database (NRC2009072918)

Dear Director Cejka:

This letter responds to yours of March 4, 2010. Apart from form letters acknowledging the receipt of our request and the assignment of a tracking number, your March 4 missive is the first response we have received to TRAC's FOIA request that has been pending in your office for nearly four years.<sup>1</sup>

We wish to formally object to various aspects of your treatment of TRAC, particularly the extraordinary bill for \$111,930 you have sent us. We ask that you reconsider your action and withdraw it. As discussed below we believe that under the law the issuance of this bill was both improper and premature.

### **The \$111,930.00 Fee**

Rather than providing us any information, your response informed us: "We have determined a fee in the amount of \$111,930.00 is due." Further, you made our agreement to pay this amount, along with an advance deposit of \$55,995 within 30 days, a precondition for providing even the list of data items that the agency tracks in its CLAIMS4 database. This database, as you know, tracks applications and adjudications for naturalization by U.S. Citizenship and Immigration Services (USCIS).

We were astonished by your letter. We routinely seek identical information from other agencies about their databases. We routinely receive this kind of documentation from them. We cannot recall ever being asked to pay a fee since producing a copy of the list of data items is typically such a simple matter. Even for a large database containing thousands of separate fields of information, the basic listing would usually be less than a 100 pages. Further, electronic copies of the list of fields (formally called a "database table schema") typically abound within an agency since most persons working with the database need this basic reference. In addition, with a click of the mouse or a simple command a person can usually output a fresh copy from the database itself.

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<sup>1</sup> Your March 4, 2010 letter while purporting to quote our original request itemizes only 5 items. However, our request in fact listed six items. Each of these items was separately numbered from 1 through 6. We will continue to use the numbers from our original request letter but -- to avoid any possible confusion -- wanted to bring this to your attention. (It appears that your letter omitted a paragraph break and created one run-on sentence you numbered 5 when in fact it is two separate items numbered 5 and 6.)

Your letter provides no information why 861 man hours – a fulltime person working 40 hours a week for 5 months -- is needed to perform such a simple task. The FOIA law is very specific and places strict limits on the types and amounts of fees that can be charged. It does this for a simple reason. Congress wanted to make sure that agencies didn't set up arbitrary cost barriers to prevent public access to public information.<sup>2</sup>

We wish to remind you that on December 8, 2009, the White House issued an historic Open Government Directive, instructing the Executive Departments to take concrete steps to provide improved public access to public information, including posting on line at least three high value agency databases within 45 days. It is striking that given this sweeping government openness directive, USCIS has chosen to move in precisely the opposite direction -- placing an outrageous price tag on public access to information even about the databases the agency holds.

### **Failure to Consult with the Requestor**

As the record shows, it took USCIS 1,316 days to provide *any* response to our request. Given this history it seems to us totally arbitrary to set a 30-day time limit for us to commit to paying the government \$111,930.00 when the agency has provided no explanation of why such an expenditure of funds is actually necessary.

As a matter of fact the agency's approach isn't just arbitrary, it is illegal. The law and the agency's own regulations require it to offer us an opportunity to discuss the matter before insisting that payment of \$111,930.00 is the one and only option. This the agency has not done.

It is possible that you are not aware of the fact that shortly after submitting our first request we began reaching out to USCIS, by phone and by letter, offering our assistance should the agency have any questions and volunteering to assist in other ways. This included our offer to further specify or even restrict what we were asking for if that would speed a response or somehow make it less burdensome for the agency to provide the information. But the agency has either been unable or unwilling to ever discuss the matter.

We ask once more that such consultation occur. We further ask to be provided with a breakdown of the 861 hours of time according to: (a) how much covers search time, (b) how much covers review time, and (c) how much for the time for copying records. We also ask to be provided a further breakdown – by each of the specific requested items -- of these three time categories. Only with this information can we understand how restricting our request in any manner would impact your cost estimate, and by how much it would affect the costs.

### **Failure to Abide with Limitations Set on Hourly Rates**

Your letter provides no explanation of the basis for charging \$130/hour. Your form acknowledgement letter had stated that rates were \$4.00, \$7.00, and \$10.25 respectively per quarter hour for clerical, professional, and managerial time. Thus, hourly charges would be somewhere in the range of \$16 to \$41 – not \$130.

<sup>2</sup>

Your imposition of this fee is also inconsistent with the Department of Homeland Security's regulations that USCIS must abide by. These regulations provide at 6 CFR 5.11 that: "Components shall ensure that searches are done in the most efficient and least expensive manner reasonably possible."

The Department's regulations place strict limits on the maximum rates that can be charged, and limit how these rates can be calculated. See 6 CFR 5.11(b)(2).

We ask for an explanation for the basis for charging \$130/hour and for a further explanation of how this conforms to the agency's regulations and to the statement you made in your acknowledgement letter as to what maximum rates would be charged.

### **Failure to Act on Our Classification Request**

FOIA fees cannot properly be determined until an agency classifies the requestor into a category. This is because the type and amount of fees that can be charged vary by category of requestor.

Our original request letter contained a request along with supporting documentation asking for classification as an educational requestor and as a representative of the news media.

Syracuse is an educational institution that operates a program of scholarly research. We are faculty at Syracuse University, co-directors of a data research center at the University, and the records are sought to enable us to carry out this program of research. We clearly meet the law's requirements for this classification category.

We further qualify as a representative of the news media, as that term is defined by the law and the Department's regulations, since at TRAC, we actively gather information of interest to the public about federal government immigration activities, transform this information utilizing our editorial and research expertise into various works and make these works available to the public through our public web site at <http://trac.syr.edu>.

### **Failure to Act on Our Request for a Full Waiver of Fees**

As provided by the FOIA law and the Department's regulations, our original request also asked for a full waiver of fees because the provision of this information is in the public interest. Again, the agency has determined what we owe and demanded full payment without bothering to act upon our fee waiver request or to inform us of your decision. This again is in clear violation of the law.

In defining what is in the public interest, we wish to draw your attention to the fact that, as previously referenced, this administration has already defined providing access to government databases to be unquestionably in the public interest. Placing a \$111,930 price tag – a truly insurmountable barrier -- in the way of public access to information about the CLAIMS4 database – the sole database covering naturalization requests and adjudications – is itself an act which is antithetical to the public interest. Waiving these fees under these circumstances is in the public interest.

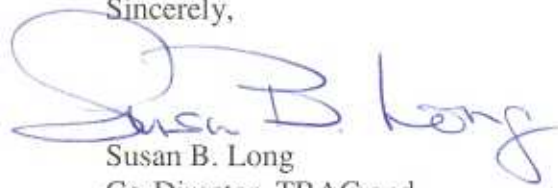
### **Other Matters**

Finally, there are two small additional matters. Your letter informed us that the costs could go even higher because they do not include item 2 of our request. You state: "We need further clarification of item 2" but your letter says nothing more. You don't explain what about item 2 you seek clarification on. We are happy to assist you but cannot do so without information from you on what about item 2 you need clarified. We are awaiting this information from you.

Your letter also states that you will not review the CLAIMS4 Reference Guide until *after* we fail to submit the \$55,995 deposit within 30 days. We don't understand why we must *refuse to pay* you before you will begin your review. Is this what you meant to say? We would appreciate a clarification.

Given the 30-day time limit you set which began running March 4, there is very little time left on the clock. Indeed time had already elapsed before your letter reached us telling us we had 30 days. We accordingly ask that this matter be handled on an expedited basis, and that your written response be faxed to us at 315-443-3196.

Sincerely,



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