UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

ORGANIZED COMMUNITIES AGAINST DEPORTATIONS, IMMIGRANT DEFENSE PROJECT, and CENTER FOR CONSTITUTIONAL RIGHTS,	)	
Plaintiffs,	)	No. 21 C 2519
v.	)	Judge J.R. Blakey
UNITED STATES IMMIGRATION AND CUSTOMS ENFORCEMENT,	)	
Defendant.	)	

MEMORANDUM IN SUPPORT OF PLAINTIFFS' CROSS-MOTION FOR SUMMARY JUDGMENT AND IN OPPOSITION TO DEFENDANTS' MOTION FOR SUMMARY JUDGMENT

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Chantal Da Silva, *ICE Offering 'Citizens Academy' Course with Training on Arresting Immigrants*, NEWSWEEK (July 9, 2020), https://www.newsweek.com/ice-launching-citizens-academy-course-how-agency-arrests-immigrants-1516656. 2

Chantal Da Silva, *Sen. Merkley Calls for ICE 'Citizens Academy' to Be Defunded*, NEWSWEEK (July 14, 2020), https://www.newsweek.com/sen-merkley-calls-ice-citizens-academy-defunded-1517594. 2

Elvia Malagon, *ICE Postpones Controversial 'Citizens Academy' in Chicago*, CHI. SUN-TIMES (Sep. 3, 2020), https://chicago.suntimes.com/2020/9/3/21421321/chicago-immigration-ice-citizens-academy-postponed. 3, 8

Grace Hauck, *ICE Is Holding a Citizens Academy in Chicago. Mayor, Lawmakers Say 'Vigilantes' Aren't Welcome*, USA TODAY (July 16, 2020), https://www.usatoday.com/story/news/nation/2020/07/16/chicago-ice-citizen-academymayor-says-vigilantes-not-welcome/5453758002.....2, 8

Letter to Matthew T. Albence, Acting Director, U.S. Immigr. & Customs Enforcement, from Jamie Raskin, Chairman, Subcomm. On Civil Rights & Civil Liberties, & Robin Kelly, Member, Aug. 14, 2020, https://oversightdemocrats.house.gov/sites/democrats.oversight.house.gov/files/2020-08-14.JR%20Kelly%20to%20Albence%20re%20ICE%20Citizen%20Academy.pdf.....2

Press Release, Tammy Duckworth, U.S. Senator, Duckworth Responds to ICE's Citizens Academy Pilot Program in Chicago (July 17, 2020), https://www.duckworth.senate.gov/news/press-releases/duckworth-responds-to-ices-citizens-academy-pilot-program-in-chicago.....2

PRELIMINARY STATEMENT

Pursuant to Fed. R. Civ. P. 56, Plaintiffs Organized Communities Against Deportation ("OCAD"), the Immigrant Defense Project ("IDP"), and Center for Constitutional Rights ("CCR") (collectively, "Plaintiffs") move this Court for an order denying the Motion for Summary Judgment submitted by Defendant United States Immigration and Customs Enforcement ("ICE"), and granting Plaintiffs' Cross Motion for Summary Judgment (hereinafter, the "Cross-Motion").

Plaintiffs are entitled to summary judgment. First, ICE's searches were inadequate. ICE did not search key offices, subcomponents, or custodians likely to contain responsive records and failed to use clearly relevant key terms in the searches it did conduct. Second, ICE's claimed exemptions from disclosure under the Freedom of Information Act ("FOIA") are unjustified. ICE uses Exemption 6 to improperly conceal information about Citizens Academy participants who voluntarily sought to join the program and provides no evidence that such individuals would be harmed by disclosure. Lastly, ICE's justification for claiming Exemption 7(E) articulates no tangible risk in revealing information that ICE has already voluntarily and repeatedly disclosed to members of the public.

Plaintiffs and the public are entitled to a full understanding of an ICE public relations program whose workings have been made accessible to hundreds of individuals outside of the federal government. This Court should compel ICE (1) to search certain offices and custodians for records that shed light on the Citizens Academy program and (2) to disclose the improperly withheld portions of the requested records.

BACKGROUND AND TIMELINE

In April 2019, the Trump Administration announced a "national roll-out" of an ICE program that had originated in its Homeland Security Investigations ("HSI") component: the

Citizens Academy program. Pls.' 56.1 Statement, Ex. 1, Decl. of Antonio Gutierrez dated Dec. 7, 2023 ("OCAD Decl.") at ¶ 3; Pls.' 56.1 Statement, Ex. 2. Neither a school nor an accredited educational program, the "Academy" is run through ICE's Office of Public Affairs ("OPA") and is branded as an outreach program for selected community leaders and members of the public. Pls.' 56.1 Statement, Ex. 3. While the program had existed in select cities prior to this announcement, it was given new life with the expansion: it would now focus on ICE's Enforcement and Removal Office ("ERO") operations, including training in "defensive tactics, firearms familiarization and targeted arrests."[1] In July 2020, ICE announced it would pilot its new ERO Academy in Chicago (the "Chicago Academy"). OCAD Decl. at ¶ 10.

Public outcry followed. Local politicians and widespread media coverage raised concerns that the Academies would empower amateur volunteers to target members of immigrant communities for arrest and removal.[2] Members of Congress took action, criticizing the Citizens Academy program as part of a larger debate on the DHS budget.[3] The Chicago pilot,

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[1] Chantal Da Silva, *ICE Offering 'Citizens Academy' Course with Training on Arresting Immigrants*, NEWSWEEK (July 9, 2020), https://www.newsweek.com/ice-launching-citizens-academy-course-how-agency-arrests-immigrants-1516656.

[2] *See* Grace Hauck, *ICE Is Holding a Citizens Academy in Chicago. Mayor, Lawmakers Say 'Vigilantes' Aren't Welcome*, USA TODAY (July 16, 2020), https://www.usatoday.com/story/news/nation/2020/07/16/chicago-ice-citizen-academymayor-says-vigilantes-not-welcome/5453758002; Press Release, Tammy Duckworth, U.S. Senator, Duckworth Responds to ICE's Citizens Academy Pilot Program in Chicago (July 17, 2020), https://www.duckworth.senate.gov/news/press-releases/duckworth-responds-to-ices-citizens-academy-pilot-program-in-chicago.

[3] Chantal Da Silva, *Sen. Merkley Calls for ICE 'Citizens Academy' to Be Defunded*, NEWSWEEK (July 14, 2020), https://www.newsweek.com/sen-merkley-calls-ice-citizens-academy-defunded-1517594; Chantal Da Silva, *DHS Spending Bill Amended to Ban Funding for ICE's Citizen's Academy*, NEWSWEEK (July 15, 2020), https://www.newsweek.com/dhs-spending-bill-amended-ban-funding-ices-citizens-academy-1518059; *see also* Letter to Matthew T. Albence, Acting Director, U.S. Immigr. & Customs Enforcement, from Jamie Raskin, Chairman, Subcomm. On Civil Rights & Civil Liberties, & Robin Kelly, Member, Aug. 14, 2020, https://oversightdemocrats.house.gov/sites/democrats.oversight.house.gov/files/2020-08-14.JR%20Kelly%20to%20Albence%20re%20ICE%20Citizen%20Academy.pdf; Press Release, U.S. Senator Dick Durbin, Durbin Statement on Creation Of ICE "Citizens Academy" Pilot Program in Chicago (July 17, 2020), https://www.durbin.senate.gov/newsroom/press-releases/durbin-statement-on-creation-of-ice-citizens-academy-pilot-program-in-chicago.

set to start in fall 2020, was postponed due to the COVID-19 pandemic two weeks before it was set to begin.[4] Despite the purported goal of increasing transparency into ICE's operations, however, ICE has not made additional information available about the content, scope, and purpose of its Citizens Academy programs. The presidential administration has changed,[5] but debates over the funding and scope of ICE removal operations remain urgent. OCAD Decl. at ¶ 18.

On July 16, 2020, Plaintiffs submitted a FOIA request ("Request") to U.S. Immigration and Customs Enforcement as the agency responsible for the Citizens Academy program. FOIA Req., Compl. Ex. A, ECF No. 1-1. After receiving no records from ICE for nearly ten months, Plaintiffs filed this lawsuit on May 11, 2021. Compl., ECF No. 1. Defendant began producing documents in February 2022, nineteen months after the Request was submitted. Mar. 31, 2022 Joint Status Report, ECF No. 35 at ¶ 1. Throughout the litigation, Plaintiffs repeatedly proposed that ICE prioritize production of certain records and custodians, including records related to program budgeting and information about the Chicago, New York, and Puerto Rico programs. *Id.* at ¶ 11. Although three years have passed since Plaintiffs' initial Request, Defendant has failed to produce records related to budget and costs and minimal records related to the Chicago Academy. Further, many of the records Defendant has produced have been improperly redacted pursuant to claimed Exemptions (b)(6) and (b)(7)(E).

[4] Elvia Malagon, *ICE Postpones Controversial 'Citizens Academy' in Chicago*, CHI. SUN-TIMES (Sep. 3, 2020), https://chicago.suntimes.com/2020/9/3/21421321/chicago-immigration-ice-citizens-academy-postponed.

[5] Plaintiffs are not aware of any announcement discontinuing the program and the ICE website still contains information about the program. *Citizens Academy*, *supra* note 1.

ARGUMENT

I. Standard of Review

The fundamental purpose of FOIA is "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." *NLRB v. Robbins Tire & Rubber Co.*, 437 U.S. 214, 242 (1978). The statute was designed "to pierce the veil of administrative secrecy and to open agency action to the light of public scrutiny." *U.S. Dep't of State v. Ray*, 502 U.S. 164, 173 (1991) (quoting *Dep't of Air Force v. Rose*, 425 U.S. 352, 361 (1976)). Accordingly, FOIA's "strong presumption in favor of disclosure" places the burden on the defending agency to justify its searches and redactions and to show that withheld information falls within the claimed exemptions. *Ray*, 502 U.S. at 173; *see also* 5 U.S.C. § 552 (a)(4)(B).

Summary judgment is appropriate when "there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law." FED. R. CIV. P. 56(a). The Court must draw all justifiable inferences in the non-movant's favor. *See Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 255 (1986). Summary judgment is commonly used to resolve FOIA claims. *Struth v. FBI.*, 673 F. Supp. 949, 953 (E.D. Wis. 1987). To satisfy this summary judgment burden, agencies provide "reasonably detailed nonconclusory affidavits submitted in good faith." *Rubman v. U.S. Citizenship & Immigr. Servs.*, 800 F.3d 381, 387 (7th Cir. 2015) (internal quotation omitted).

The agency bears the burden of showing that it conducted an adequate search for records responsive to the FOIA request and that any withheld material is exempt from disclosure. *Carney v. U.S. Dep't of Justice*, 19 F.3d 807, 812 (2d Cir. 1994). To satisfy this burden, the agency must show "beyond material doubt . . . that it has conducted a search reasonably calculated to uncover all relevant documents." *DeBrew v. Atwood*, 792 F.3d 118, 122 (D.C. Cir. 2015) (internal citations

omitted). To justify decisions to withhold responsive records, agencies must provide affidavits that "describe 'the justifications for nondisclosure with reasonably specific detail, demonstrate that the information withheld logically falls within the claimed exemption, and are not controverted by either contrary evidence in the record nor sic by evidence of agency bad faith.'" *Struth*, 673 F. Supp. at 954 (citing *Miller v. Casey*, 730 F.2d 773, 776 (D.C. Cir. 1984)).

II. Defendant Failed to Conduct an Adequate Search for Relevant Records.

To succeed on summary judgment, "the agency must show that there is no genuine issue of material fact about the adequacy of its records search." *Rubman*, 800 F.3d at 387. Defendant must demonstrate "that it made a good faith effort to conduct a search for the requested records, using methods which can be reasonably expected to produce the information requested." *Id*., quoting *Oglesby v. U.S. Dep't of Army*, 920 F.2d 57, 68 (D.C. Cir. 1990). The agency should not succeed on summary judgment "where the agency's response raises serious doubts as to the completeness of the agency's search, . . . where the agency's response is patently incomplete, or where the agency's response is for some other reason unsatisfactory." *Exxon Corp. v. Fed. Trade Comm'n*, 466 F. Supp. 1088, 1094 (D.D.C. 1978) (internal citation omitted).

Under this standard, Defendant's searches are plainly inadequate. First, Defendant did not search key offices, subcomponents, or custodians clearly within the scope of Plaintiffs' FOIA request and Defendant did not justify this failure to search. Second, Defendant's selection of search terms, search methods, and file systems varied widely and without any rational basis, and the agency failed to include clearly relevant key terms.

A. Defendant Did Not Search Key Offices, Subcomponents, or Custodians Within the Scope of Plaintiffs' FOIA Request and Did Not Justify This Failure to Search.

1. ICE failed or refused to search key offices, subcomponents, and custodians.

ICE failed to search key offices, subcomponents and custodians that would likely have responsive records, including records related to: (i) the inaugural ERO Citizens Academy program set to take place in Chicago; and (ii) ICE's budget for the citizen academies program.

First, ICE failed to search key subcomponents and custodians of the ERO and it is unclear which ERO subcomponents and custodians ICE actually searched. According to the Declaration of ICE's FOIA Officer Pineiro, ERO twice "deferred" conducting any search of its own records. Def.'s 56.1 Statement, Ex. A, Pineiro Decl., ECF No. 69 ("Pineiro Decl.") at ¶¶ 26, 27. After receiving a third request from the ICE FOIA Office in January 2023, an unidentified "Management & Program Analyst at ERO conducted a search of their shared drive . . . and his/her own sent and received emails . . . ." Pineiro Decl. at ¶ 28. No responsive records were identified and ERO did not conduct any further searches. *Id*. The Pineiro Declaration provides no explanation of which "shared drive" was searched by the analyst and why a search of a single ERO analyst's emails constitutes "a good faith effort to conduct a search for the requested records." *Rubman*, 800 F.3d at 387.

ICE's description of its ERO search is especially perplexing given that Defendant represented to the Court on January 17, 2023[6] that ICE's ERO field office in Chicago had specifically searched for responsive records and determined that it had none. It is unclear from the

[6] The January 27, 2023 Joint Status Report states: "ICE reported in its December 2022 status report that, in response to plaintiffs' identification of a document suggesting that ICE's Enforcement and Removal Operations field office in Chicago may possess records responsive to plaintiffs' FOIA request, it would follow up with that office to determine whether the office possesses responsive records. Dkt. 44. Since then, the office has searched for responsive records and determined that it has none." ECF No. 48 at ¶ 2.

Pineiro Declaration and ICE's representations to this Court whether ICE conducted a search of the entire ERO unit or whether the search described in the Pineiro Declaration was limited to the Chicago ERO Field Office specifically. The Pineiro Declaration merely provides that a "Management & Program Analyst at ERO conducted a search of their shared drive." Pineiro Decl. at ¶ 28.

Second, the Pineiro Declaration states that ICE records are maintained by various "leadership offices and/or within ICE directorates," including "the Chief Financial Officer (CFO)." *Id*. at ¶ 15. However, despite Plaintiffs' repeated request for prioritization of budgetary documents,[7] ICE failed to search the Chief Financial Officer for any budgetary documents. Only the Office of Public Affairs ("OPA") conducted a search using the cumbersome search term "national budget for all ICE citizen academy programs." *Id*. at ¶ 30. The Pineiro Declaration provides no justification for why ICE reasonably expected the OPA to hold the budgetary documents requested by Plaintiffs.[8] Unsurprisingly, the OPA search did not yield responsive budgetary records. To date, Plaintiffs have received no records specific to the budget of the proposed Chicago Academy, nor other Citizens Academies in New York and Puerto Rico, field offices that Plaintiffs had identified as priorities. Out of the 6,956 pages that ICE produced, very few related to budgetary information. OCAD Decl. at ¶ 16. As a result, Plaintiffs and the public have been deprived of crucial information about the costs and expenses of this national public relations program.

2. ICE failed to uncover material known to be in its possession or to follow obvious leads.

[7] *See, e.g.,* Aug. 22, 2022 Joint Status Report, ECF No. 40 at ¶ 12.
[8] ICE describes OPA as "the agency's public face, a team of communications professionals dedicated to telling the story of ICE and fostering an understanding of the agency's mission through outreach to employees, the media and the general public." Pineiro Decl. at ¶ 29.

ICE's failure to produce material known to be in its possession "raises a legitimate question as to thoroughness of the search." *See Bagwell v. U.S. Dep't of Justice*, No. 15-cv-00531, 2015 WL 9272836, at *2 (D.D.C. Dec. 18, 2015) (finding doubt as to the adequacy of a search where it failed to uncover a record of communication alluded to in public). In numerous communications with Defendant, Plaintiffs specifically identified records that Plaintiffs knew existed yet had not been produced by ICE. *See, e.g.*, Sept. 30, 2022 Joint Status Report, ECF No. 42 at ¶ 9. Plaintiffs know from various ICE press releases and media reports, including those produced in this litigation, that the Chicago ERO Field Office solicited applications for the Chicago Academy before it was canceled. Pls.' 56.1 Statement, Ex. 5. The director of the Chicago Field Office at the time, Robert Guadian, sent out a letter on Chicago ERO Field Office letterhead soliciting applications. Pls.' 56.1 Statement, Ex. 6. Media reports also documented inquiries to ICE regarding the Chicago Academy from elected representatives, community leaders and journalists.[9] ICE should have followed these leads and searched the appropriate custodians and subcomponents for responsive records. *Nat'l Day Laborer Org. Network v. U.S. Immigr. Customs Enf't Agency*, 877 F.Supp.2d 87, 103 n.79 (S.D.N.Y. 2012) ("Agencies have an obligation to follow through on obvious leads to discover requested documents . . . .") (internal quotation omitted). Despite Plaintiffs' identification of this information to Defendant ICE, these records were never produced, and it is apparent that ICE did not adequately follow the leads provided by Plaintiffs. The cursory search of ERO described in the Pineiro Declaration did not include relevant custodians such as the Chicago Field Office Director, and it is unclear what ERO subcomponents, if any, were searched.

In addition, the Chicago Academy was postponed only two weeks before it was set to begin in September of 2020. OCAD Decl. at ¶¶ 10, 18.[10] Given the Chicago Field Office's documented

[9] *See, e.g.*, Hauck, *supra* note 5.
[10] *See also* Malagon, *supra* note 7.

planning for the program at least as far back as July, ICE should have produced a full array of responsive records regarding the Chicago Academy. Instead, the documents produced come from the OPA at ICE Headquarters. Defendant has not produced a single application to the Chicago Academy, or any training materials created by ICE in anticipation of the launch of the Chicago Academy. *Id*. The existence of similar records (recruitment emails, applications, schedules and more) related to Citizens Academy programs which took place in other field offices suggest that these documents should exist for Chicago. *See, e.g.*, Pls.' 56.1 Statement, Ex. 13 (Bates Nos. 3802A, 3816A). Similarly, Defendant did not produce any applications to the Citizens Academy in Puerto Rico and produced Academy evaluation forms only sporadically and from field offices that Plaintiffs did not identify as priorities, like Kansas City. OCAD Decl. at ¶ 15. These inconsistencies suggest strongly that ICE failed to conduct searches reasonably designed to uncover all responsive documents.

B. ICE's Selection of Search Terms, Search Methods, and File Systems Varied Widely and Arbitrarily, and the Agency Failed to Include Clearly Relevant Key Terms.

Courts must look to whether an agency's search "appears designed to return all relevant records." *Immigr. Def. Project v. U.S. Immigr. & Customs Enf't*, 208 F.Supp.3d 520, 527 (S.D.N.Y. 2016). Agencies cannot fail to use obvious terms, acronyms, or spelling variations in their searches, or fail to explain discrepancies between the systems each office searched. *Brennan Ctr. for Just. at N.Y. Univ. Sch. of L. v. U.S. Immigr. & Customs Enf't*, 571 F.Supp.3d 237, 246 (S.D.N.Y. 2021) ("[T]he disparity between the search terms used by various sections also indicates that the search was inadequate where some divisions failed to use what other divisions deemed clearly relevant search terms . . . ."); *Austin Sanctuary Network v. U.S. Immigr. & Customs Enf't*, No. 20-cv-1686, 2022 WL 4356732, *12 (S.D.N.Y. Sept. 19, 2022) ("[I]CE has provided no explanation whatsoever for the disparities in searches amongst custodians, including . . . why some

employees used a relatively large number of search terms while others—sometimes within the same office and holding the same position—used just one search term.").

First, there were obvious and unexplained omissions from ICE's search terms. None of the searches conducted by ICE included "Chicago," "New York," or "Puerto Rico." Instead, ICE's searches used inconsistently worded terms such as "Citizens Academy Atlanta," "HSI Tampa," "Citizens Academy Denver," and "HSI Miami." Pineiro Decl. at ¶¶ 28, 30, 33, 36. This is puzzling given Plaintiffs' repeated requests to prioritize the review of records from the field offices in Chicago, New York, and Puerto Rico. *See, e.g.,* Aug. 22, 2022 Joint Status Report, ECF No. 40 at ¶ 12.

Second, ICE custodians used search terms highly unlikely to yield responsive documents. Most notably, the only search term used by ICE related to budgetary documents was "national budget for all ICE citizen academy programs." Pineiro Decl., ECF No. 69 Ex. A. at ¶ 30. Such a lengthy search term would not uncover budgets for individual offices, documentation of any expense reports, or emails that did not use the phrases "national budget" or "all ICE citizen academy programs." As the only search term used to search for budget-related information, it seems designed to avoid uncovering responsive records.

Third, Defendants used a haphazard and inconsistent approach, with search terms that varied widely among ICE offices. For example, the Office of Partnership and Engagement ("OPE") was the only office to search specific names of people employed at field offices. *See* Pineiro Decl. at ¶ 33. Additionally, in searches of shared drives, ERO only used three search terms while HSI used 24 terms, OPE used 18 terms, and OPA used 13 terms. *See id*. at ¶¶ 28, 30, 33, 36.

In addition, ICE did not consistently search email accounts. ICE searched the "shared drive" of ICE Homeland Security Investigation, but no emails. *See id*. at ¶¶ 30, 33, 36. For the

OPA and the OPE, ICE searched the "shared drive" and emails of certain unidentified employees. *See id*. at ¶¶ 30, 33, 36. For ERO, ICE searched the "shared drive" and the emails of one unidentified ERO analyst. *See id*. at ¶ 28. ICE provided no explanation of what kind of records are located on a "shared drive" nor why ICE made the decision to search the emails of certain unnamed employees in certain circumstances but not in others. Failing to search email accounts for a program that depends on planning and communication with the public is plainly inadequate.

The Pineiro Declaration also fails to explain whether terms were searched together using Boolean connectors or how the searches were conducted more generally. For example, OPA conducted searches for "Citizen," "Academy," "Citizens Academy," and "Citizens' Academy," among other terms. There is no indication of whether every record containing the word "Citizen" was considered potentially responsive or if Boolean connectors were used to limit results and, if so, how. It is also unclear whether the searches were case-sensitive and, if so, how this affected which documents were produced. These basic search methods are required for an adequate search and should be habit for an agency well-versed in FOIA. *See Knight First Amend. Inst. at Columbia Univ. v. Ctrs. for Disease Control & Prevention*, 560 F.Supp.3d 810, 823-25 (S.D. N.Y. 2021); *Nat'l Day Laborer Org. Network,* 877 F.Supp.2d at 106-07 (explaining how slight changes to search terminology and use of Boolean connectors can yield dramatically different results).

III. Defendant Improperly Redacted and Withheld Information.

A. ICE Improperly Applied Claimed Exemption (b)(6).

In its productions of participant lists, emails, and Citizen Academy nomination and application forms, ICE has improperly redacted names of participants and even information related to the employers and job titles of participants. For example, the "Job Function," and "Position/Title" columns are entirely redacted from some participant lists. *See, e.g*., Pls.' 56.1

Statement, Ex. 8. (Bates Nos. 702A, 764A) Plaintiffs do not seek private information such as phone numbers or Social Security numbers of individuals. But disclosing employers and job titles of members of the public who voluntarily applied to participate in Citizens Academy programs does not implicate privacy concerns. FOIA Exemption 6 does not justify these redactions.

5 U.S.C. § 552(b)(6) exempts from disclosure "personnel and medical files and similar files the disclosure of which would constitute a clearly unwarranted invasion of personal privacy." The purpose of Exemption 6 is to "protect individuals from the injury and embarrassment that can result from the unnecessary disclosure of personal information." *Wood v. FBI*, 432 F.3d 78, 86 (2d Cir. 2005). If disclosure would compromise "substantial privacy interests," it need not be disclosed. *Aguirre v. Sec. & Exch. Comm'n*, 551 F.Supp.2d 33, 53 (D.D.C. 2008). However, if no substantial privacy interest is established, the court must weigh the "potential harm to privacy interests" against "the public interest in disclosure of the requested information." *Id.* The "only relevant 'public interest in disclosure' to be weighed in this balance is the extent to which disclosure would serve the 'core purpose of FOIA,' which is 'contribut[ing] significantly to public understanding of the operations or activities of the government.'" *U.S. Dep't of Def. v. Fed. Labor Rels. Auth.*, 510 U.S. 487, 495 (1994).

ICE does not explain why employment information (including job function, organization, position/title, profession) should be withheld from participant lists and other records pursuant to Exemption 6. The employment information included on participant lists and other documents does not contain personally identifying information or pose a threat to an individual's personal privacy. Because ICE has already redacted all personal information from the documents (e.g., name, social security number, date of birth and individual contact information) there is no evidence that production of employment information would cause "a clearly unwarranted invasion of personal

privacy." 5 U.S.C. § 552(b)(6). Indeed, "job title" information is not redacted in applications to Citizens Academies. *See, e.g.*, Pls.' 56.1 Statement, Ex. 7 (Bates No. 0177A).

The names of individual participants may be a closer question. But even if a protected privacy interest is more than de minimis, it may "yet be insufficient to overcome the public interest in disclosure." *Media LLC v. Dep't of Agriculture*, 515 F.3d 1224, 1230 (D.C. Cir. 2008). Given the Citizens Academies' stated training topics, including participation in firearms familiarization and targeted arrests, *supra* n.5, the public has an interest in knowing whom ICE is selecting for its training program. This interest outweighs the minimal concerns of those who voluntarily applied to join these programs.

ICE provides no support for its conclusory assertion that release of such information would be "stigmatizing." Pineiro Decl. at ¶ 58. To the contrary, ICE itself has previously publicly disclosed the names, employers, and even photographs of Citizens Academy "graduates" in press releases. Pls.' 56.1 Statement, Exs. 9, 10. Citizens Academy participants also were aware of each other's identities; emails produced by Defendant show that some Citizens Academies even had "alumni" newsletters which encouraged past participants to recruit their colleagues for future academies. Pls.' 56.1 Statement, Ex. 11 (Bates Nos 3344-3346).

ICE's proud disclosure of names and photographs of Citizens Academy participants in the past cannot be reconciled with its refusal to disclose names, job titles and functions and employers now. Exemption 6 does not apply.

B. ICE Improperly Withheld Information under Exemption (b)(7)(E).

ICE has relied on Exemption 7(E) to redact training materials that ICE specifically created for an outreach and public relations program for civilians, that is, members of the public. This information is not sensitive law enforcement information and must be disclosed.

Exemption 7(E) protects "techniques and procedures for law enforcement investigations and procedures" or information that "would disclose guidelines for law enforcement investigations and procedures if such disclosure could reasonably be expected to risk circumvention of the law." 5 U.S.C. §552 (b)(7)(E). To successfully claim Exemption 7(E), the government must provide:

> 1) a description of the technique or procedure at issue in each document, 2) a reasonably detailed explanation of the context in which the technique is used, 3) an exploration of why the technique or procedure is not generally known to the public, and 4) an assessment of the way(s) in which individuals could possibly circumvent the law if the information were disclosed.

Am. Immigr. Council v. U.S. Dep't of Homeland Sec., 950 F.Supp.2d 221, 247 (D.D.C. 2013). All of these prongs must be met for Exemption 7(E) to apply.

Defendant cannot meet its burden here. ICE has not shown how the information is a "technique or procedure . . . not generally known to the public" or that, if disclosed, it "could reasonably risk circumvention of the law." Such detail is notably absent from anywhere in the Pineiro Declaration or the *Vaughn* index. There is simply no support in the record for this speculative assertion. But most significantly, any purported techniques or procedures in these materials are known to many members of the public; indeed, the very purpose of these materials is to share such information with members of the public, i.e. civilian participants in the Citizens Academy programs. Defendant itself *voluntarily* has disclosed this information to hundreds of civilians in its Citizens Academy programs since 2014, including "lawyers, entrepreneurs, bank anti-money laundering specialists and city officials" as well as journalists and non-profit employees.[11] *See, e.g.*, Plaintiffs' 56.1 Statement, Ex. 12 (Bates No. 3022). Yet ICE has identified

[11] Plaintiffs note that at the commencement of this litigation, ICE through its counsel indicated openness for Plaintiffs, OCAD and IDP, to attend a future Citizens Academy program. If Plaintiffs had accepted ICE's invitation, Plaintiffs would already have access to certain training materials that ICE subsequently redacted pursuant to Exemption 7(E). Plaintiffs 56.1 Statement, Ex. 1 (OCAD Decl.) at ¶ 14.

no instance where disclosure of public-facing training materials to these individuals has resulted in circumvention of the law by what ICE calls "bad actors." Pineiro Decl. at ¶¶ 64-65.

Further, "voluntary disclosures of all or part of a document may waive an otherwise valid FOIA exemption." *N.Y. Times Co. v. U.S. Dep't of Justice*, 756 F.3d 100, 114 (2d Cir. 2014) (internal citations and quotations omitted). Even if redacted information in the training presentations could be characterized as shielded by Exemption 7(E), ICE has previously released no explanation for why records it voluntarily discloses to hundreds of people in civilian public relations and educational programs should now be redacted when advocacy organizations seek that information through the Freedom of Information Act.

CONCLUSION

For the reasons set forth above, Plaintiffs respectfully request that the Court deny Defendant's Motion for Summary Judgment, grant Plaintiffs' Cross-Motion, and order Defendant to (1) confer with Plaintiffs in order to run supplemental searches using appropriate custodians and search terms; and (2) lift improperly applied redactions from materials already produced.

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Respectfully submitted,

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