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**From:** Talebian, Bobak (OIP) <btalebian@jmd.usdoj.gov>  
**Sent:** Monday, January 27, 2020 12:33 PM  
**To:** Alina Semo  
**Subject:** RE: Smith v ICE

Thanks so much!

**From:** Alina Semo <alina.semo@nara.gov>  
**Sent:** Sunday, January 26, 2020 6:15 PM  
**To:** Talebian, Bobak (OIP) <btalebian@jmd.usdoj.gov>  
**Subject:** Fwd: Smith v ICE

Bobby: Here's the Exemption 4 case that Lauren Harper brought to our attention at our brown bag.

**Alina M. Semo**  
Director, Office of Government Information Services  
National Archives and Records Administration  
Phone: (202) 741-5771; Fax: (202) 741-5769; Cell: (b)(6)



Website: [www.archives.gov/ogis](http://www.archives.gov/ogis)  
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----- Forwarded message -----  
**From:** Lauren Harper (b)(6)  
**Date:** Fri, Jan 24, 2020 at 7:20 PM  
**Subject:** Re: Smith v ICE  
**To:** Alina Semo <[alina.semo@nara.gov](mailto:alina.semo@nara.gov)>

Dear Alina, not a problem - here is the Bloomberg Law link to the case: [https://www.bloomberglaw.com/public/desktop/document/Ctr for Investigative Reporting v DOL No](https://www.bloomberglaw.com/public/desktop/document/Ctr%20for%20Investigative%20Reporting%20v%20DOL%20No)

One of the interesting quotes I thought was the following regarding foreseeable harm: “Even if the information was exempt, the Government has failed to carry its burden of showing that foreseeable harm would result should the documents be released.” Westmore goes on to note, “The foreseeable harm standard prohibits agencies from withholding information unless (1) the agency reasonably foresees that disclosure of the record would harm an interest protected by an exemption, or (2) the disclosure is prohibited by law. [5 U.S.C. § 552\(a\)\(8\)\(A\)\(i\)](#). Consequently, even if information falls within the scope of a discretionary exemption, it cannot be withheld from the public unless the agency also shows that disclosure will harm the interest protected by that exemption. *Id.*; see also *Judicial Watch, Inc. v. U.S. Dep’t of Commerce*, [375 F. Supp. 3d 93](#), [98](#) (D.D.C. 2019).”

Have a good weekend!

Lauren

On Fri, Jan 24, 2020 at 6:58 PM Alina Semo <[alina.semo@nara.gov](mailto:alina.semo@nara.gov)> wrote:

Lauren: Would you be able to find out and send me a cite to the Exemption 4 N.D. California ruling involving the Department of Labor that you mentioned at our get-together yesterday? Thanks, and have a good weekend. - Alina

**Alina M. Semo**

Director, Office of Government Information Services

National Archives and Records Administration

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On Thu, Jan 23, 2020 at 12:48 PM Lauren Harper (b)(6) wrote:

<https://aclu-co.org/wp-content/uploads/2020/01/2019-12-16-92-Order-on-SJ-Motions.pdf>

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**Lauren Harper**

[The National Security Archive](#)

Director of Public Policy

<https://tinyletter.com/leharpernsa>

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**From:** Freddy Martinez <FMartinez@openthegovernment.org>  
**Sent:** Thursday, August 20, 2020 5:02 PM  
**To:** Hannah Bassett; Adam Marshall; Susan Harley; thomas.susman@americanbar.org; kyla.sommers@americanoversight.org; john.bies@americanoversight.org; hwigger@sheppardmullin.com; Cate, Alicia; Daniel Schuman; Enid Zhou; Rakhee Vemulapalli; Amelia@DemandProgress.org; arosenbaum@citizen.org  
**Cc:** Talebian, Bobak (OIP)  
**Subject:** Re: Call-in info: Brown bag meeting with OIP, TOMORROW  
**Attachments:** OIP Introduction Call.pdf

Hi all,

Thank you so much for joining our call with OIP earlier this week. I typed up some notes and included them (attached) to this email. I hope they help express some of our feedback and can be useful in future discussions with OIP.

Thanks again Bobby for joining us. We looking forward to doing it again soon.

All the best,  
Freddy Martinez  
Policy Analyst

# Not Responsive Records

**FOIA Coordination Call**  
**August 18th, 2020, 12:00-1:00pm**

**Facilitator:** Freddy Martinez (OTG)

**Participants:** Bobby Talebian (OIP), Amelia Strauss (Demand Progress), Enid Zhou (EPIC), Hannah Bassett (OTG), Kel McClanahan (Nation Security Counselors) Lindsay Roberts (OIP), Rahkee Vemalpalli (GAP), Sean O'Neil (OIP), Tom Sussman (ABA), Adina Rosenbaum (Public Citizen)

**Discussion**

**OIP Initiatives include some of the following top level priorities:**

- Overall agency compliance with the FOIA.
- Summary assessments of Chief FOIA Officers (CFO) reports, in conjunction with the FACA recommendations. OIP is also working with agencies to finish annual FOIA reports for the end of FYSA 2020.
- Providing a rolling update to the "guide to FOIA" that OIP puts out, hoping to update it on a rolling basis every two years.
- Continuing to do training for employees at all agencies (remotely) and have reached thousands of participants. This also allows OIP to update eLearning materials that it puts out.
- OIP is working on a "best practices" guide from a requestor's perspective.
- OIP is also working on a toolkit for agencies to self evaluate its FOIA programs as well as adding technology to the self-evaluation.
- Continued work to the FOIA.gov portal
- Redesigning the FOIA annual reports (and making them mobile friendly)
- Working with agencies to understand what resources they need to meet its legal obligations which may be technology or the addition of other FOIA professionals.
- Reducing the FOIA backlog of requests older than a year continues to be a big focus of OIP and will continue to be a big focus.

**Discussion topics**

"Foreseeable harm" and including it as a mandatory step in release and making sure DOJ lawyers also understand this position. Notable case includes *Machado Amadis vs DOJ*, No-19-5088 DCC).

Better guidance to all agencies about how agencies should interpret language about “representatives of the news media” Some agencies fight requesters tooth and nail while others do not. This is just one example but there are others. Can it be more uniform across government?

Portals. The community feels there are a lot of portals with divergent capabilities which both confuse and frustrate. Can OIP ask agencies to have a minimum set of features?

Penalty of perjury: There are many places where requesters have to make declarations (for example when asking for expedited processing) but this can be very off putting to requestors.

Improvements to foia.gov. The hope is to have 40% of the budget go to ongoing maintenance and the rest to new features such as linking and searching all foia reading rooms.

The DOJ piloted ediscovery tools in 2017 but never rolled it out, what happened? Some components are using ediscovery tools but it was not a silver bullet. Technology helps and there are other tools like AI tools that could further help but it not going to solve everything.