



U.S. Immigration
and Customs
Enforcement

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FROM: Jordan Holz 
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SUBJECT: ICE Privacy Guidance Memorandum: Limited Authorization to Release Personally Identifiable Information to the News Media; Procedures for Requesting Privacy Officer Approval for Media Release

On June 29, 2009, the DHS Chief Privacy Officer delegated to the ICE Privacy Officer the authority to approve ICE release of Privacy Act Information to the news media.¹ In 2011, the ICE Privacy Officer authorized the ICE Office of Public Affairs (OPA) to release to the news media limited Privacy Act Information in certain circumstances pursuant to guidance promulgated by the ICE Privacy Officer. ICE is updating this guidance, as detailed in Appendix A below, to include additional categories of Personally Identifiable Information (PII) that OPA may release to the news media (either proactively or in response to a media query), as long as the public interest in proposed release

¹ For purposes of this memorandum and its appendices, the term “news media” is defined pursuant to Freedom of Information Act (5 U.S.C. §552(a)(4)(A)(i)) as “any person or entity that gathers information of potential interest to a segment of the public, uses its editorial skills to turn the raw materials into a distinct work, and distributes that work to an audience. ... Examples of news-media entities are television or radio stations broadcasting to the public at large and publishers of periodicals ... who make their products available for purchase by or subscription by or free distribution to the general public. These examples are not all-inclusive. Moreover, as methods of news delivery evolve (for example, the adoption of the electronic dissemination of newspapers through telecommunications services), such alternative media shall be considered to be news-media entities. A freelance journalist shall be regarded as working for a news-media entity if the journalist can demonstrate a solid basis for expecting publication through that entity, whether or not the journalist is actually employed by the entity. A publication contract would present a solid basis for such an expectation; the Government may also consider the past publication record of the requester in making such a determination.”

outweighs the privacy interest implicated.² The ICE Privacy Division Procedures for Ad Hoc Requests for Authorization to Release Other Information (broader than that covered in Appendix A), which must be approved for release by the ICE Privacy Officer, are detailed in Appendix B of this Memorandum.

For the purpose of this Memorandum, PII is any information that permits the identity of an individual to be directly or indirectly inferred, including any information that is linked or linkable to that individual, regardless of whether the individual is a U.S. citizen, lawful permanent resident, visitor to the United States, or employee or contractor to the Department.³

Releases of PII to the news media that are not authorized by this Memorandum are not permitted unless approved by the ICE Privacy Officer. This Memorandum does not mandate the release of any information to the news media; all releases are made solely at the agency's discretion consistent with its authorities.

Upon determining that circumstances may warrant releasing an individual's PII, OPA must identify the legitimate public interest in the proposed release – that the disclosure of PII would “shed light on [the] agency's performance of its statutory duties.”⁴ OPA then determines whether the public interest is served, or what the public will learn about the agency's operations, by knowing an individual's PII.⁵ If OPA determines the public interest in disclosure outweighs an individual's privacy interest, OPA is then permitted to release PII to the news media using the procedures outlined in Appendix A. The release of PII described in Appendix A to the news media has been determined to be an authorized release consistent with both subsection (b)(3) of the Privacy Act of 1974 (5 U.S.C. § 552a(b)(3)) and DHS Privacy Policy Guidance Memorandum 2017-01 “*DHS Privacy Policy Regarding Collection, Use, Retention, and Dissemination of Personally Identifiable Information.*”

² “Prior to [DHS proactively] releasing a person's PII... to a member of the general public [when] the person has not expressly consented to or approved of the disclosure, the personal privacy interests of the subject, regardless of immigration status, must be balanced against the public interest in the requested information. The Supreme Court has determined that the privacy interest inherent in exemptions 6 and 7(C) [of the Freedom of Information Act] belongs to the person and not the agency. The only public interest to be considered is whether the requested information would shed light on the agency's performance of its statutory duties. Information that does not reveal the operations and activities of the Government does not satisfy the public interest requirement.” Internal citations omitted. See DHS Privacy Policy Guidance Memorandum 2017-01, *DHS Privacy Policy Regarding Collection, Use, Retention, and Dissemination of Personally Identifiable Information*, available at:

https://www.dhs.gov/sites/default/files/publications/PPGM%202017-01%20Signed_0.pdf.

³ See DHS Instruction 047-01-006, *Privacy Incident Responsibilities and Breach Response Team*, available at: <https://www.dhs.gov/sites/default/files/publications/047-01-006%20Privacy%20Incident%20Responsibilities%20and%20Breach%20Response%20Team%20FINAL%2012-04-17.pdf>.

⁴ See *DOJ v. Reporters Comm. for Freedom of the Press*, 489 U.S. 749, 773 (1989).

⁵ “DHS personnel must perform an analysis [which] seeks to balance the public's right to know about the functions and operations of the Government—in other words how DHS enforced the law or complied with a legal obligation—as compared to the interest of the [record] subject... in keeping his or her identity and activities private. Depending upon the nature of the encounter between DHS and the subject, the notoriety of the subject's actions may diminish the extent to which those actions may remain private... Discretionary disclosure of confirmed non-U.S. citizen and non-LPR PII is permitted when no other restrictions or prohibitions on the disclosure apply, subject to review under the balancing analysis described above.” See DHS Privacy Policy Guidance Memorandum 2017-01, *DHS Privacy Policy Regarding Collection, Use, Retention, and Dissemination of Personally Identifiable Information*, available at:

https://www.dhs.gov/sites/default/files/publications/PPGM%202017-01%20Signed_0.pdf.

OPA must appropriately train its personnel before they are authorized to release information under this Memorandum. OPA supervisors must actively monitor and oversee the release of PII to the media by OPA personnel for compliance with this Memorandum. The ICE Privacy Office or the DHS Privacy Office may elect to conduct formal or informal audits or reviews in order to assess OPA's compliance with this Memorandum.

Finally, OPA must maintain an accounting of any releases authorized by this Memorandum for at least five years from the date of the release. The accounting shall document to whom the disclosure was made along with the date, nature, and purpose of the disclosure, and a copy of the privacy waiver (if applicable). The accounting shall include any statement communicated verbally or in writing and any other records released including photographs or other images.

Appendix A

Releases of Personally Identifiable Information

Releases to the news media not authorized in this Appendix are not permitted unless approved by the ICE Privacy Officer. All releases under Appendix A (whether in the criminal or immigration enforcement context) must fulfill the public interest threshold – that the disclosure of PII would “shed light on [the] agency’s performance of its statutory duties.” OPA shall use the procedures described in Appendix B to request case-by-case approval for such releases.

I. General Prohibitions or Limitations on Releases of Personally Identifiable Information

A. Information Regarding Minors

Information regarding minors is extremely sensitive and shall generally not be released without specific approval from the ICE Privacy Officer. Separate from those limited circumstances outlined directly below, please use the procedures in Appendix B to request approval to release information to the news media about a person currently a minor or information relating to when a person was a minor.

- (a) For individuals who are no longer minors, confirmation that the individual entered the United States as a minor, unaccompanied, or otherwise, if applicable.
- (b) Expired or revoked grants of Deferred Action for Childhood Arrivals (DACA) where applicable for adults who were granted DACA as a minor.

B. Other Legal Restrictions May Prohibit Release

OPA may release limited Personally Identifiable Information (PII) to the media as outlined in this Appendix, except where disclosure of the information conflicts with limitations imposed by statute, regulation (including immigration-related confidentiality rules pertaining to asylum, refugees, T/U Visa, Violence Against Women Act, etc.), court rule or court order. Consult with OPLA or the ICE Privacy Division if you believe or have concerns that other restrictions on release may apply in a particular matter.

C. Release of Photographs

Release of photographs in criminal or immigration matters is authorized in certain circumstances, as described in this Appendix (e.g., at-large individuals sought or apprehended for criminal prosecution; individuals who are arrested or removed).

Otherwise, OPA shall not release identifiable photographs of an individual in criminal or immigration matters unless the individual has provided written consent or the ICE Privacy Officer has specifically authorized the release of the photograph through the Appendix B procedures. Using those procedures, OPA may request authorization to release an identifiable photograph if doing so would further a legitimate law enforcement interest, such as promoting public safety, helping to build a criminal case, and/or potentially leading to the identification of other victims of a crime. OPA shall not encourage news media in photographing or televising the face or other identifying features of an individual in criminal or immigration matters, absent their written consent.

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D. Release of Lists of Subjects of Enforcement Action

OPA is not authorized to release to anyone, either affirmatively or in response to a request, comprehensive lists of individuals who are the subjects of criminal or administrative enforcement actions either generally or in the context of specific operations or regions. If OPA proposes to release such a list, OPA shall first seek Appendix B approval through the ICE Privacy Officer. If Appendix B clearance is not granted, OPA must refer the request to the ICE FOIA Division for processing under the Freedom of Information Act (FOIA).⁶

E. Limitations on Releases in Criminal Matters

Notwithstanding Section II.B. below, OPA shall not release, disseminate, or otherwise provide to the news media the following information from the time an individual is the subject of an arrest or investigation until any resulting proceeding has been terminated by a criminal trial or otherwise:

1. Observations about the individual's character.
2. Statements, admissions, confessions, or alibis attributable to the individual, or the refusal or failure of the individual to make a statement.
3. References to investigative procedures such as fingerprints, psychophysiological detection of deception examinations (formerly referred to as polygraph examinations), ballistic tests, or laboratory tests, or to the refusal by the individual to submit to such tests or examinations.
4. Statements concerning the identity, testimony, or credibility of prospective witnesses.
5. Statements concerning evidence or arguments in the case, whether it is anticipated that such evidence or arguments will be used in a criminal trial or immigration hearing.
6. Any opinions as to the individual's guilt, or the possibility of a plea of guilty to the offense charged, or the possibility of a plea to a lesser offense.

F. Caveat Regarding Public Statements Relating to Criminal Trials

Public statements about an individual's criminal case may adversely impact an individual's right to a fair trial and privacy. Information shall never be released to the media for the purpose of influencing a trial. In accordance with U.S. Department of Justice (DOJ) policy regarding statements to the news media, public statements in the period immediately before and during a criminal trial are to be avoided.

II. Approved Releases of Personally Identifiable Information

⁶ Although there is no specific guidance on the number that constitutes a list, as a general rule any number of individuals more than five should be referred the ICE Privacy Officer. This prohibition does not prevent the release of information about a high-profile removal, but rather serves to prevent PII from being unnecessarily released when sanitized releases would suffice.

OPA may release PII described below in response to inquiries from the news media, or affirmatively (i.e., proactively) in press releases where the event described (e.g., removal, conviction, sentencing) is a matter of public interest, as outlined further below.

A. Privacy Waivers and Consents

OPA may release PII to the media when the individual has provided written consent authorizing the release.⁷ Questions regarding the validity or scope of an individual's waiver should be directed to the ICE Privacy Division. Copies of consents and waivers must be maintained by OPA for five years in accordance with the accounting for disclosure requirements explained in the Memorandum.

B. Criminal Matters

1. Criminal Investigations or Operations

In the context of an ICE criminal investigation or operation (to include joint operations with foreign governments) where an arrest, indictment, commencement of a trial, plea, verdict, or sentencing has recently occurred, OPA may release the following PII from agency records or public court records:

- (a) The defendant's name, age, city and state of residence, country of origin, and place of birth.
- (b) In the case of an arrest, identifiable photograph(s) of the subject, so long as release of the photograph is in the public interest.
- (c) The date, text, or summary of a criminal charge, as found in documents such as complaints, indictments, or criminal information.
- (d) The identity of any investigating and/or arresting agencies that worked with ICE on the case, the length and/or scope of the investigation, and any other person(s) arrested and/or charged.
- (e) The date and circumstances immediately surrounding the arrest, including the time and place (individuals' home addresses shall not be released), resistance, pursuit, possession and use of weapons, and a description of physical items seized.
- (f) The law enforcement agency maintaining current custody of the defendant.
- (g) Date and nature of any prior offenses or pending criminal charges, so long as there is a legitimate public interest in the release of such charges (i.e., disclosure of the information would shed light on the agency's performance of its statutory duties).
- (h) If the individual is wanted for criminal activity, the crime(s) the individual is wanted for and in what jurisdiction(s).

⁷ See ICE Form 60-001, Privacy Waiver Authorizing Release to a Third Party, available at: <https://www.ice.gov/doclib/news/library/forms/pdf/60-001.pdf>.

- (i) The resolution of the case, including the verdict, terms of any plea (if public), sentencing, and any fines imposed.

2. *At-Large Individuals Sought for Criminal Prosecution*

In the context of an individual sought by ICE or other domestic or foreign law enforcement agency for alleged criminal activity, OPA may release the following PII from agency records or public court records:

- (a) Name(s), alias(es), age, photograph(s), city and state of residence, country of origin, place of birth, date(s) of birth, occupation, height, weight, eye color, hair color, skin tone, and other identifying marks. OPA must blur the faces of any other individuals who appear in the photograph, unless the individual has consented to release.
- (b) Date and nature of any criminal offenses or pending criminal charges,
- (c) What crime(s) the individual is wanted for and in what jurisdiction(s), and whether the individual is considered armed and dangerous.
- (d) How the individual came to ICE's attention.
- (e) How and when the individual became a fugitive.
- (f) Any publicly-listed Interpol Notices or other international warrants or charging documents that indicate why an individual is subject to removal.

3. *At-Large Individuals Apprehended for Criminal Prosecution*

Once the individual is apprehended by ICE or another domestic or foreign law enforcement agency, OPA may re-release the information listed above and also release the following:

- (a) The date and circumstances immediately surrounding the arrest, including the time and place (individuals' home addresses shall not be released), resistance, pursuit, possession and use of weapons, and a description of physical items seized at the time of arrest.
- (b) Previously released photographs of the individual may be re-released, as well as any extemporaneous photo of the individual taken at any public location. OPA must blur the faces of any other individuals who appear in the photograph, unless the individual has consented to release.

4. *Reissuance of Non-DHS Public Statements and Documents*

OPA may re-issue, in whole or in part, public statements or documents issued by representatives of other federal, state, or local government or law enforcement agencies. ICE's publication of the content of the statements must not violate federal law or policy, including information about asylum claims or special protected classes.

C. Immigration Enforcement Matters

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In the context of activities related to the administrative enforcement of U.S. immigration laws, OPA may also release the following PII from agency records or public court records:

1. Arrests, Removals and Voluntary Departures

OPA may release the following information after the arrest, removal or voluntary departure has occurred.

- (a) Name, age, gender, city and state of residence, country of origin, place of birth, and the dates of arrest, removal or voluntary departure.
- (b) Date and circumstances immediately surrounding the arrest, including how the alien came to ICE's attention, present and past immigration violations charged, resistance, and a description of physical items seized at time of arrest. Whether the individual entered the United States legally or illegally, as well as whether the individual is in a lawful status, may also be provided.
- (c) Date and nature of any criminal convictions or pending criminal charges.
- (d) If the individual is wanted abroad for criminal activity, the crime(s) the individual is wanted for and in what jurisdiction(s). This includes any publicly-listed international warrants, such as Interpol Notices, that would give rise to High Profile Removal status.
- (e) Booking photographs, or departure photographs of an individual taken in a visible public location, where the photographs are related to a significant criminal event, and where there is a legitimate public interest to release those photographs to foster cooperation amongst ICE and state, local, and tribal law enforcement entities.
- (f) Date of an order of removal and date of any denial of a request for a stay of removal (including denials of appeal), as well as the date of any pending appeal.
- (g) Date and circumstances an individual is released from ICE custody and the conditions of the release (e.g., on bond, order of supervision, ATD, stay of removal) and whether or not the individual was released/removed as part of a family unit.

2. Immigration Detainers

OPA may release the subject's name, age, gender, current immigration status, city and state of residence, the date of the detainer, and the law enforcement agency and/or the institution or facility to which the detainer was issued. OPA may also release the presence or absence of a detainer, the nature of the offense that brought the individual to ICE's attention, the date and nature of any criminal convictions or pending charges (so long as the charges are in the public interest, i.e., disclosure of the information would shed light on the agency's performance of its statutory duties), and whether the detainer was honored or declined. Where ICE has not issued a detainer on a particular subject, or has cancelled a previously issued detainer, OPA may also confirm the absence of a detainer. Prior immigration encounters may be released (i.e., previous DHS arrests and removals or returns). More

specific information regarding the details of such encounters, however, may be released only if authorized by the ICE Privacy Officer pursuant to the procedures set forth in Appendix B.

3. At-Large Aliens Sought by ICE

In the context of an at-large alien sought by ICE for administrative arrest or removal (i.e., an alien who has failed to leave the United States based upon a final order of removal, deportation, or exclusion, or who has failed to report to ICE after receiving notice to do so), OPA may release the following PII from agency records or public court records:

- (a) Name(s), alias(es), age, photograph(s), city and state of residence, country of origin, place of birth, date(s) of birth, occupation, height, weight, eye color, hair color, skin tone, and other identifying marks.
- (b) Date and nature of any criminal convictions or pending criminal charges, so long as there is a legitimate public interest in the release of such charges (i.e., disclosure of the information would shed light on the agency's performance of its statutory duties).
- (c) Whether the individual is considered armed and dangerous.
- (d) How the alien came to ICE's attention.
- (e) Immigration violations charged, including immigration history.
- (f) Date of the Order of Removal and any appeals.
- (g) Information concerning the alien's failure to leave the United States, as ordered.

4. At-Large Aliens Apprehended

Once an at-large alien is apprehended, OPA may re-release the information listed above and also release the following:

- (a) The date and circumstances immediately surrounding the arrest, including the time and place (individuals' home addresses shall not be released), resistance, pursuit, possession and use of weapons, and a description of physical items seized at the time of arrest.
- (b) Previously released photographs of the fugitive alien may be re-released, as well as any photo of the fugitive taken in an area that is visible from any public location.

D. Pending Charges

When a subject either enters ICE custody, has a detainer lodged on him or her, or a criminal history is requested on the subject, OPA may release the existence of any pending serious criminal charges, so

long as such charges are a matter of public interest (i.e., disclosure of the information would shed light on the agency's performance of its statutory duties).⁸

E. Limited Release of Information of Deceased Individuals

OPA may issue press releases or respond to media inquiries in the event of a death in custody. Medical information pertaining to the deceased individual must be pertinent to the cause of death. Any other medical information proposed for release must be submitted to the ICE Privacy Officer for Appendix B clearance. OPA may not release identifiable information about survivors without their written consent.

⁸ Determination of other charges that do not rise to such a level under Appendix A authority will be referred to the ICE Privacy Officer pursuant to Appendix B for review. Additionally, ICE's Office of Public Affairs will ensure that all of its Public Affairs Specialists are adequately trained in determining which serious criminal charges are able to be disclosed pursuant to Appendix A.

Appendix B
ICE Privacy Division Procedures for Ad Hoc Requests
for Authorization to Release of Other Information

I. Release of Other Information

On a case-by-case basis, the ICE Privacy Officer may authorize the release of additional information about individuals to the news media. The ICE Privacy Officer is authorized to do so pursuant to the June 29, 2009 Delegation of Authority from the Chief Privacy Officer. OPA employees shall follow the procedures in Section II below to request such authorization.

The ICE Privacy Officer cannot authorize release unless it is clear that the release of the specific PII in the context of the particular case will not constitute an unwarranted invasion of personal privacy. If that threshold is met, release may be authorized only if at least one of the following three criteria are met: (1) There is a legitimate public interest in the release of the information (i.e., disclosure of the information would shed light on the agency's performance of its statutory duties); (2) Release is necessary to preserve confidence in the integrity of ICE/DHS; or (3) Release is necessary to demonstrate the accountability of DHS officers or employees.

II. Procedures for Requesting Release of Other Information.

The responsible Public Affairs Officer shall send a formal request to authorize release of information about an individual, which is not covered in Appendix A above, to the ICE Privacy Officer. Requests shall contain sufficient information and context for the ICE Privacy Officer to make an informed decision. To ensure a timely response, the request shall be drafted based upon the guidelines below and should include any deadline for decision on the request. The ICE Privacy Officer will review the request and email a response authorizing or denying the request. The request shall include:

- (a) The nature of the matter and/or controversy.
- (b) Which of the three criteria in Section I above is the basis for the request, and why.
- (c) What is prompting the request (e.g., reporter has asked specific questions about a detainee's situation; ICE wishes to issue a press release on a high-profile detainee who has just been removed).
- (d) Whether the individual or those acting on his/her behalf have released information about his/her situation to the media, and, if so, what information.
- (e) What personal information is proposed to be released (if it is a press release, provide a copy of the draft release).
- (f) Justification that aligns each piece of information to be released with how it is responsive to the incoming request.
- (g) The date/time that OPA requests a response.

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