

The Identity Project

PapersPlease.org

The Identity Project
P.O. Box 170640-idp
San Francisco, CA 94117-0640
415-824-0214 (Edward Hasbrouck)
eh@papersplease.org

February 14, 2024

Alaina Teplitz, Chief FOIA Officer
U.S. Department of State
Office of Information Programs and Services
A/GIS/IPS/RL
2201 C Street N.W., Suite B266
Washington, D.C. 20520-0008

(by certified mail, return receipt requested, and by e-mail with copies to foiastatus@state.gov, foiaprogram@state.gov, and FOIAAdvisement@state.gov)

FOIA and Privacy Act status request, request to meet and confer, and response to “still interested” letter from your office dated February 6, 2024

FOIA and Privacy Act request and appeal reference numbers:

F-2011-03370 (including all or part also referenced as F-2021-06198)
F-2011-06118 (pending Privacy Act appeal)
F-2011-06118 (portion on remand for response following FOIA appeal)
F-2011-06118 (portion on remand to confer following FOIA appeal)
F-2014-09197
P-2015-06585 (pending FOIA and Privacy Act appeals)

Dear Chief FOIA Officer:

We are writing in response to an unsigned “still interested” letter from your office which we received by email on February 6, 2024, referencing one of our pending backlogged FOIA and Privacy act request and appeals, F-2014-09197, for which we have been diligently but unsuccessfully attempting to obtain the status and confer with you.

According to your office’s letter of February 6, 2024, “we are writing to inquire whether circumstances have changed and you no longer wish to pursue your request because we have not received any communication from you in the last several years.”

However, your office has received numerous communications from us in recent years. In fact, contrary to the claim in this letter, we have made *dozens* of fruitless attempts to communicate with your office concerning these requests in recent years.

We last wrote to you about this and our other pending requests and appeals, as listed above, on April 13, 2023, by email and by certified mail, return receipt requested. We have attached a copy of that letter, to which we have received no reply from you.

We have received acknowledgments by email (although not the status information or opportunities to meet and confer which we have repeatedly requested) to some of our other communications to your office in recent years, so we know that they were received.

It remains unclear whether our communications were received and disregarded, or whether the latest “still interested” letter – and perhaps similar letters to other requesters – was sent by your office in reckless disregard for its truth or falsehood, including a boilerplate claim that “we have not received any communication from you in the last several years” without attempting to determine whether you had, in fact, received any such communications.

In these circumstances, this “still interested” letter reflects gross agency bad faith and malfeasance, whether due to gross incompetence, gross negligence, or other causes.

This is not the first such letter we have received about these requests. On July 25, 2016, we were sent a letter (see attached copy) from Eric F. Stein, Co-Director (Acting) of the Office of Information Programs and Services, asking whether we were still interested in receiving a response to some of these requests and threatening to close our request without releasing responsive records unless we replied within 30 days.

We replied on August 4, 2016 (see copy of our letter attached), describing in detail our “repeated, affirmative, written and verbal indications of our continued interest in these requests.” We noted that “No competent and diligent person, acting in good faith, could possibly infer from this record that we had abandoned, withdrawn, or lost interest in any of these requests.”

We also noted that “We have neither abandoned nor withdrawn any of these or any others of our requests, nor have we given any indication of intention or desire to do so. If we wish to withdraw a request, we could and would notify you in writing. We have not done so. In the absence of any such indication, no inference of lack of continued interest would be warranted or authorized by law. The FOIA statute does not require periodic or repeated follow-up expressions of continued interest. Failure to provide such periodic or repeated indications of continued interest is not a lawful basis for failure to respond to a FOIA request. Your continuing duty is to respond to each of these requests.”

In response, Mr. Stein called us to apologize, and followed up with a letter of apology dated August 25, 2016. In that letter (see copy attached), Mr. Stein

referenced each of our pending FOIA cases (including the one referenced in the latest letter from your office on February 6, 2024), and said, “I apologize, again, for the letter that was sent to you asking you to confirm your continued interest in your requests.... You do not need to remind us of your continued interest in these cases.”

Given that the Acting Co-Director of your office has previously apologized for sending such a “still interested” letter despite our repeated indications of continued interest in obtaining responses to these specific requests, and informed us, explicitly, in writing, that we “not need to remind us of your continued interest in these cases”, your latest letter and renewed threat to close these cases could scarcely be more inappropriate or provide more compelling evidence of severe, systemic, and persistent bad faith.

If you have changed your policy without notice to requesters since Mr. Stein’s letter to us of August 25, 2016, and you now require periodic expressions of continued interest on the part of requesters, we request that you inform us of precisely how often (daily? weekly? monthly? quarterly? annually? once a decade?), by what means, and at what point of contact we should remind you of our continued interest – since you apparently didn’t understand our repeated requests for the status and estimated date of completion of each of these requests as indicating continued interest – and the provisions of the FOIA statute and your Department’s FOIA regulations which you believe authorize you to require such periodic expressions of continued interest or “close” such cases.

As we informed you in our letter of April 13, 2023, our address is now:

Edward Hasbrouck
The Identity Project
PO Box 170640-idp
San Francisco, CA 94117-0640

telephone: 415-824-0214
email: eh@papersplease.org

Please reply to confirm that our address has been updated in each of these case files and that any components or other agencies to which all or any portion of any of these requests has been referred have also been notified of our change of address.

We also request the status including the estimated data of completion of agency action with respect to each of the following FOIA and Privacy Act requests and appeals:

F-2011-03370 (all or some portion a/k/a F-2021-06198)
F-2011-06118 (pending Privacy Act request and appeal)
F-2011-06118 (portion on remand for response following FOIA appeal)
F-2011-06118 (portion on remand to confer following FOIA appeal)
F-2014-09197
P-2015-06585 (pending FOIA and Privacy Act appeals)

We are still interested in receiving responses to all portions of each of our FOIA and Privacy Act requests and appeals, including those listed above.

Many of the issues raised in our unanswered letter to you of April 23, 2023, remain, including the following.

With respect to request F-2011-03370, we were told in an unsigned email message on July 22, 2022 from FOIAStatus@state.gov that, “FOIA case control number F-2011-03370 was closed inadvertently. FOIA case control number F-2021-06198 was created and forwarded to the Department of State’s Bureau of Consular Affairs, Office of Passport Services, Law Enforcement Liaison Division for processing.... your status inquiry regarding FOIA case control number F-2021-06198 was forwarded to that office for direct reply. You may also contact the Office of Passport Services, Law Enforcement Liaison Division directly via email at PPT-Public-FOIARequests@state.gov to obtain a status report regarding FOIA case control number F-2021-06198.” We were also told in an unsigned email message on August 22, 2022, from Foiaprogram@state.gov that, “status inquiries of passport requests may be also made by phone to (202) 485-6550.”

We request that you verify and confirm that, even if a new reference number is assigned, your records accurately indicate that this request was made on April 27, 2011.

Otherwise, closing the file and re-opening it with a new “request” date would result in underreporting of processing times and possible omission of backlogged requests and appeals from your required reports of oldest requests and appeals.

Moreover, (a) we have never been provided with any postal address for the Office of Passport Services, Law Enforcement Liaison Division, (b) we have never received any communication whatsoever, by any means, from this office or component, (c) we have never had any of our calls answered by a human or received any response to any of our voicemail messages left at 202-485-6550, and (d) we have never received any response to any of our email messages sent to PPT-Public-FOIARequests@state.gov.

With respect to FOIA and Privacy Act request and appeal F-2011-06118, we have received no response to the portion of this request and appeal made pursuant to the Privacy Act. It is unclear whether the portion of the original request made pursuant to the Privacy Act remains pending, or whether the portion of the original request made pursuant to the Privacy Act was deemed to have been denied, in which case that denial was appealed, pursuant to the Privacy Act, and that Privacy Act appeal remains pending.

We have never been provided with a separate reference number for this request or appeal under the Privacy Act or with separate FOIA and Privacy Act reference numbers for any of our requests or appeals made pursuant to both FOIA and the Privacy Act.

We discussed this issue in our conversation with Mr. Stein in August 2016, and he

agreed that your department's boilerplate needed to be improved to clearly distinguish FOIA and Privacy Act responses and exemption claims and to inform requesters of both FOIA and Privacy Act appeal rights where requests were made under both statutes, but we have seen no improvement in your boilerplate or procedures.

We received a response to a portion of this FOIA appeal by postal mail (although we had requested that any response be provided electronically) on October 17, 2019. A portion of this request was remanded for further action, which remains pending:

“The Office of Passport Services of the Bureau of Consular Affairs (CA/PPT/L) is conducting a renewed search of its files. We believe that our statement to you in our letter of December 22, 2017, which referred to separate correspondence having been sent to you from the Office of Passport Services, may have been in error, as we are unable to locate a copy of that correspondence. The Office of Passport Services will inform you directly of the results of its renewed search.”

However, we have never been provided with any postal address, phone number, or email address for the Office of Passport Services of the Bureau of Consular Affairs (CA/PPT/L), and we have never received any communication from that office.

We request the status including the estimated date of completion of agency action on remand with respect to this portion of F-2011-06118, and the point of contact from which we can exercise our statutory right to obtain future status updates.

In addition to the portion of request F-2011-06118 which was remanded for further searches, a different portion of this request was remanded by the October 17, 2019, appeal decision for us to confer with the FOIA office regarding possible narrowing of this portion of the request. However, neither in the appeal decision nor in response to our repeated, diligent telephone and email inquiries to the FOIA requester service center and your department's FOIA Public Liaison have we even been provided with any point of contact with whom we can seek to meet and confer regarding this matter.

More than four years later, we still are seeking diligently but unsuccessfully to find out with whom we can confer, much less to arrange a meeting with them.

By making your processing on remand of this portion of our request contingent on narrowing of the request, and then refusing for more than three years to make anyone available to confer regarding what narrowing might be acceptable, you are effectively engaging in an illegal, bad faith, “pocket veto” of this portion of our request.

I request that you telephone me in San Francisco at 415-824-0214 or email me at eh@papersplease.org at your earliest convenience to confirm the first available appointment for a phone call or virtual meeting with you to discuss these requests.

We have continued, diligently but unsuccessfully, to obtain the status including

the estimated date of completion of action with respect to each of these requests and appeals, which we again request of you. It is an unconscionable breach of your statutory duties for it to take more than four years to provide the status of a request or appeal.

The FOIA Public Liaison has not responded to any of our requests for a meeting with them, and has informed us that despite more than four years of requests from us for their assistance in obtaining the status of these requests, they are “unable” to provide the status or estimated dates of completion of several of these requests.

We want to make sure that you are aware that status information is not available to requesters, even when requested, so that you can accurately include this information in your future FOIA reports and do not, in ignorance or in mistaken reliance on misinformation from your staff, falsely report that this is available.

Please confirm your receipt of this report that status information has not been provided or available to us, despite our years of diligent efforts to obtain it and our repeated requests for the assistance of the FOIA Public Liaison in obtaining it.

We look forward to your response and to the opportunity to confer with you.

Sincerely,

Edward Hasbrouck
The Identity Project

cc: Kellie Robinson, FOIA Public Liaison
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United States Department of State

Washington, D. C. 20520

JUL 13 2016

Case No. F-2011-03370

Mr. Edward Hasbrouck
The Identity Project
1736 Franklin Street, 9th Floor
Oakland, CA 94612

Dear Mr. Hasbrouck:

Reference is made to our letter dated May 17, 2011 acknowledging your request of April 27, 2011 under the Freedom of Information Act.

The Department of State is undertaking a comprehensive effort to clear up its backlog of information requests. As part of that effort, we are writing to inquire whether you are still interested in pursuing this case. If you are, please contact us by fax to (202) 663-2232, or by writing to the Office of Information Programs and Services, A/GIS/IPS/CR/MPD, SA-2, Room 8100, Department of State, Washington, DC 20522-0208. Please be sure to refer to your case number in all correspondence about this case.

If we do not receive a response from you within forty-five (45) days of the date of this letter, we will conclude that you are no longer interested in this matter and will close this case, at which point the Department will take no further action.

Sincerely,

A handwritten signature in black ink, appearing to read "E. Stein", written in a cursive style.

Eric F. Stein
Co-Director, Acting
Office of Information Programs and Services

The Identity Project

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August 4, 2016

Mr. Eric F. Stein
Co-Director, Acting
Office of Information Programs and Services
A/GIS/IPS/CR/MPD, SA-2, Room 8100
U.S. Department of State
Washington, DC 20522-0218

Re: FOIA request F-2011-03370 (submitted April 27, 2011)
FOIA request F-2011-06118 (submitted July 14, 2011)
FOIA request F-2014-09197 (submitted May 28, 2014)
FOIA request P-2015-06585 (submitted March 12, 2015)

Dear Mr. Stein:

I am writing in response to your "still interested" letter dated July 13, 2016.

We are still interested in receiving responses to each of our FOIA requests, including requests F-2011-03370, F-2011-06118, F-2014-09197, and P-2015-06585.

We have neither abandoned nor withdrawn any of these or any others of our requests, nor have we given any indication of intention or desire to do so. If we wish to withdraw a request, we could and would notify you in writing. We have not done so.

In the absence of any such indication, no inference of lack of continued interest would be warranted or authorized by law. The FOIA statute does not require periodic or repeated follow-up expressions of continued interest. Failure to provide such periodic or repeated indications of continued interest is not a lawful basis for failure to respond to a FOIA request. Your continuing duty is to respond to each of these requests.

Your letter and its suggested inference of lack of continued interest is especially inappropriate in these cases, since we have provided your agency with repeated, affirmative, written and verbal indications of our continued interest in these requests.

When we did not receive a response by the statutory deadline to the earliest of these requests, F-2011-03370, we appealed the constructive denial of this request. In response to our appeal, Lori Hartmann, Appeals Officer, Office of Information Programs and services, notified us by letter dated June 7, 2011, that "Your FOIA request is not subject to administrative appeal at this time, since no specific material has been denied in response to the request.... I have confirmed that your request is being processed, but I am unable to predict the length of time before action on it will be completed."

We have not filed administrative appeals of the constructive denial of our subsequent requests only because of this policy that such appeals will not be considered.

If your policy or practice has changed and you are now willing to entertain appeals of constructive denial by delay or non-response, please let us know.

We can scarcely imagine a clearer indication of continued interest than a formal administrative appeal of the lack of response. Having received this appeal, and having assured us in your written response that our request was being processed, any "inference" of lack of interest, or the sending of a "still interested" letter, was inappropriate.

It was obviously impossible for us to know how often we should follow up to make sure that our request had not been lost, forgotten, or (improperly) closed, especially after receiving the explicit written notice from Ms. Hartmann, as quoted above, that your agency was "unable" to comply with its statutory duty to provide, on request, an estimated date of completion of agency action with respect to each of our requests.

We have continued to make regular inquiries by e-mail and telephone as to the status of each of these requests. Our e-mail correspondence includes the following:

- On July 13, 2011, I requested the estimated date of completion of agency action with respect to request F-2011-03370, and requested the assistance of OGIS in obtaining an estimated date of completion of agency action (OGIS Case 2011-0309). Although your Department never responded to my request, on October 28, 2011, OGIS provided me with estimated dates of completion which they had obtained: "Regarding request no. 201106118... State Department FOIA professionals estimate a completion date of January 30, 2012. Regarding request no. 201103370 ... the estimated date of search completion is November 2011, with an estimated date of completion of April 20, 2012."
- On June 11, 2012, I requested the status including the estimated completion dates for F-2011-03370 and F-2011-06118 by e-mail to "FOIAStatus@state.gov". On June 14, 2012, I received a response by e-mail from Shamella Tribble, "According to our records, case number F-2011-06118 is pending searches and review of responses received. The estimated completion date is July 30, 2012. We are

awaiting response from the pending searches for F-2011-03370. The estimated completion date is December 31, 2012."

- On December 5, 2012, I again e-mailed to request the status and updated estimated dates of completion of action for each of these requests.
- On December 13, 2012, I received an e-mail message from Tewodros Makonnen, Senior Program Analyst, A/GIS/IPS/MPD, Office of Information Programs and Services, Management & Public Diplomacy, Statutory Compliance & Research Division, attaching a letter from Sheryl L. Water, Director, Office of Information Programs and Services, with respect to F-2011-06118. According to this letter, a search of one Department of State component "has been completed and has resulted in the retrieval of no documents responsive to your request. The remaining searches are still in progress."
- On December 13, 2012, I responded to Mr. Makonnen's e-mail message, "Thank you very much for e-mailing this. As previously requested, please advise the expected date of completion of agency action on this request."
- On December 31, 2012, I received an e-mail message from Charlotte W. Duckett, responding to my December 5, 2012, status request for request F-2011-06118: "The new estimated completion date has been determined to be August 31, 2013."
- On February 11, 2015, I again e-mailed "FOIAstatus@state.gov" to request the status, including the expected date of completion of agency action, with respect to each of these three requests. I received a response the same day by e-mail from Ms. Duckett: "Please be advised that a copy of your e-mail has been forwarded to the office that is processing your request. Case numbers F-2011-03370 and F-2011-06118 are being processed by the same team. Our office has requested status and an estimated completion date for your request. Information will be provided to you as soon as we receive a response. Case number F-2014-09197 is being processed by a different team. The estimated completion date for this case number is September 2015."
- On February 25, 2015, I received another e-mail message from Ms. Duckett responding to my February 11, 2015, status request: "A search of records was initiated with the Office of Passport Services, Office of the Legal Adviser and the Consular Affairs-Overseas Citizens Services for case number F-2011-06118. Those searches are continuing. The estimated completion date for this case F-2011-06118 is August 2015. Information pertaining to case number F-2011-03370 is currently in the reviewing process. Our office has requested an estimated completion date for case F-2011-03370. We will provide that date to you soon. The estimated completion date for case number F-2014-09197 is still September 2015. Additional information pertaining to each case will be provided

to you as soon as it becomes available."

- On February 25, 2015, I responded by e-mail: "Have any records responsive to any of these requests been processed? If so, given that these are all months (and in 2 of the 3 cases years) overdue, and that you expect a complete response to take many months longer, we request that interim releases be made of as many records as possible responsive to each of these requests, as soon as possible. Please reply to advise the first expected date for any interim release with respect to each of these 3 requests."
- On March 4, 2015, I received an e-mail message from Ms. Duckett: "This is in reference to your e-mail dated February 25, 2015 requesting interim releases. Please be advised that a copy of your e-mail has been forwarded to the appropriate case analyst for their records."
- On October 8, 2015, I again e-mailed: "We have received no response to our request (as copied below) for interim releases as records responsive to each of these requests are processed, and no response to these requests. Each of the estimated completion dates for these requests has passed. Please provide an estimated date for the first interim release of records responsive to each of these requests, and an updated estimated date of the completion of your response to each of these requests."
- On October 8, 2015, I received an e-mail message from Angela Burks with respect to request P-2015-06585, "The estimated completion date (ECD) for this case is June 2016."
- On October 16, 2015, I received an unsigned e-mail message, "We have contacted the Case Analysts working on all 3 cases and requested new estimated completion dates. The Analysts will contact the bureaus doing the searches and the individuals reviewing the material. This will take some time because each case is different."
- On October 19, 2015, I received an unsigned e-mail message, "RE: FOIA status request for Case Control Number F-2014-09197... The Department's electronic case notes indicate the case is still open. The searches are still pending.... The estimated completion date (ECD) for this case is: August 2016."
- On October 28, 2015, I received an e-mail with respect to FOIA case F-2011-03370: "The Department's electronic case notes indicate the case is still open.... The estimated completion date (ECD) for this case is: December 2015."

No competent and diligent person, acting in good faith, could possibly infer from this record that we had abandoned, withdrawn, or lost interest in any of these requests.

As you you no doubt are aware, both the Department of Justice Office of Information Policy (OIP) and the National Archives and Records Administration Office of Government Information Services (OGIS) have recently reviewed and issued updated guidance and recommendations for the use of "still interested" letters.

The letter you sent to us was, in multiple respects, clearly contrary to both the latest OIP guidance¹ and the OGIS recommendations²:

- "Agencies should also ensure that they limit their use of 'still-interested' inquiries to those situations where they have a reasonable basis to conclude that the requester's interest in the records may have changed... For example, an agency may have been in regular communication with a requester and as a result of those exchanges it would have a clear indication that the requester remains interested in the records despite the age of a request. A 'still-interested' inquiry would not be appropriate in such a case." This was, obviously, the situation with respect to our requests, making your "still interested" letter clearly contrary to the OIP guidance.
- "When an agency identifies the need to contact a requester for the purposes of determining whether he or she is 'still-interested' in the request, it should do so using the requester's preferred method of communication. For requesters who prefer to be contacted by phone or by email, agencies should first use those methods of communication to inquire about the requester's continued interest in the request, prior to sending a letter. In the absence of a stated preference, agencies should communicate electronically as their default." In our case, we had requested that responses be provided in electronic form, and we had repeatedly inquired by e-mail and telephone as to the status of our request. You ignored our clearly expressed preference for methods of communication, and used postal mail as your default, contrary to the OIP guidance.
- "Agencies should also ensure that there is a simple way for requesters to notify the agency if they are still interested in the continued processing of the request. There should be no rigid requirements imposed on the requester as to how they communicate their interest in having the request continued to be processed. For example, a simple response over the telephone, a reply to an email, or checking off a box on a self-addressed form are all examples of easy methods that agencies can make available to requesters so that they can most readily respond to the

1 "Limitations on Use of 'Still-Interested' Inquiries", updated July 2, 2015, <<https://www.justice.gov/oip/oip-guidance-8>>, and "Implementation Checklist for OIP Guidance on 'Still-Interested' Inquiries", <<https://www.justice.gov/oip/oip-guidance-7>>.

2 "Compliance Review of the Use of 'Still Interested' Letters, Part 3: Recommendations To Improve Transparency of the Use of Still Interested Letters", May 11, 2016, <<https://ogis.archives.gov/Assets/Still-interested-part-3-final.pdf>>

inquiry." Contrary to this guidance, your letter failed to provide any e-mail address or telephone number, and requested a reply either by postal mail (the slowest and most expensive mode of reply) or by fax (the least widely used mode of communication; some law firms and large organizations still have fax machines, but far more individuals and organizations have e-mail).

It is particularly troubling that you disregarded the OIP guidance and OGIS recommendations so soon after providing both OIP and OGIS with assurances that you were complying with their guidance in your use of "still interested" letters.³

Please reply by e-mail to (1) confirm your receipt of this letter, (2) confirm that you have noted in each of these case files that we strongly prefer to be contacted by telephone and/or e-mail, and that we have requested that access to and copies of responsive records be provided in electronic form, and for records found in electronic form (such as e-mail messages, word processor or spreadsheet files, digital photographs, digital and video files, etc.) that copies be provided as bitwise copies of each complete file containing any responsive records, and for e-mail messages including both the raw message "source" file with all headers and bitwise copies of all attachments, (3) advise the status including the estimated date of completion of agency action with respect to each of these requests, and (4) advise the interval at which we should remind you of our continued interest. If you have any questions, please contact us by phone or e-mail.

If you are going to attempt to require periodic indications of continued interest in having your agency comply with its statutory duty to respond to FOIA requests – a requirement which we believe would be inconsistent with the FOIA statute – that requirement should be spelled out in a proposed rule to amend your FOIA regulations, through notice-and-comment rulemaking that would provide both notice to the public of what you expect, and an opportunity to challenge the improper proposed requirement.

Such a proposed rule should also specify the interval at which requesters are required to indicate our continued interest. Should we phone or e-mail you to indicate our continued interest, and to request a status update and written confirmation from you that each of our requests is still being processed, annually? Monthly? Weekly? Daily? Given the number of backlogged FOIA requests pending with your Department at any given time, what would be the implications for your FOIA staff of processing and responding to periodic expressions of continued interest and status requests from all those requesters?

3 "The Department is in compliance with OIP's new guidance" (U.S. Department of State, Chief Freedom of Information Act Officer Annual Report, March 2016, <<https://foia.state.gov/Learn/Reports/Officer/2016.pdf>>); "the Department is aware of Office of Information Policy (OIP) guidance regarding the use of 'still interested' letters.... Specifically, all Department FOIA procedures and guidance are now compliant with the guidance issued by OIP" (letter to OGIS from Joyce A. Barr, Assistant Secretary of State for Administration, 15 June 2016, <<https://ogis.archives.gov/Assets/State+Response+re+Still+Interested.pdf>>).

We urge you to bring your procedures into compliance with the FOIA statute, the OIP guidance, and the OGIS recommendations. If you chose not to comply with that guidance and those recommendations, we strongly urge you to accurately report that fact to those agencies and the public, in your annual and other FOIA reports, and to spell out any requirements in your FOIA regulations, through notice-and-comment rulemaking.

Sincerely,

Edward Hasbrouck
Consultant on travel-related civil liberties and human rights issues
The Identity Project

eh@papersplease.org
415-824-0214 (cell/mobile)

cc: Nikki Gramian, Acting Director
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Kellie Robinson, FOIA Public Liaison
Office of Information Programs and Services
A/GIS/IPS/PP
U. S. Department of State
Washington, D. C. 20522-8100

Joyce A. Barr, Chief FOIA Officer
Assistant Secretary, Bureau of Administration
U.S. Department of State
Washington, D. C. 20522-8100



United States Department of State

Washington, D.C. 20520

AUG 25 2016

Edward Hasbrouck
The Identity Project
1736 Franklin Street, 9th Floor
Oakland, CA 94612
eh@papersplease.org

Dear Mr. Hasbrouck:

Thank you for your letter of August 4, and for taking the time to talk to me last week. I appreciate your detailed comments and suggestions.

I apologize, again, for the letter that was sent to you asking you to confirm your continued interest in your requests. Also, as we discussed during our call, I am writing to address the four specific points you raised in your letter.

Point 1 – I confirm receipt of your letter dated August 4, 2016.

Point 2 – I confirm that the four case files have been annotated to indicate that you strongly prefer to be contacted by telephone and/or e-mail and that you request any released material be provided to you in electronic format.

Point 3 – All four requests are being processed. The estimated completion dates for each are:

F-2011-03370 – January 2017
F-2011-06118 – April 2017
F-2014-09197 – March 2017
P-2015-06585 – January 2017

Point 4 – You do not need to remind us of your continued interest in these cases.

Additionally, we have updated our FOIA website to include email addresses for both our Requester Service Center and Public Liaison. You can view these changes at <https://foia.state.gov/Contact/Default.aspx>. I also contacted FOIA.gov to have them update the two names listed on that site, as well as to have them provide email addresses.

Again, thank you for your letter and for your patience. As soon as any material becomes available for release in any of the four cases, it will be provided to you.

Sincerely,



Eric F. Stein
Co-Director, Acting
Office of Information Programs and Services

The Identity Project

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April 13, 2023

Chief FOIA Officer
U.S. Department of State
Office of Information Programs and Services
A/GIS/IPS/RL
2201 C Street N.W., Suite B266
Washington, D.C. 20520-0000

(by certified mail, return receipt requested, and by e-mail to foiastatus@state.gov)

FOIA change of address, status request, and request to meet and confer

FOIA and Privacy Act request and appeal reference numbers:

F-2011-03370 (including all or part also referenced as F-2021-06198)
F-2011-06118 (pending Privacy Act appeal)
F-2011-06118 (portion on remand for response following FOIA appeal)
F-2011-06118 (portion on remand to confer following FOIA appeal)
F-2014-09197
P-2015-06585 (pending FOIA and Privacy Act appeals)

Dear Chief FOIA Officer:

Because you are not named and no direct phone number or email address for you is available on the State Department website at foia.state.gov or at foia.gov, and we have received no response to repeated attempts to contact you through messages left at 202-261-8484 and sent to foiastatus@state.gov, we are sending this message by postal mail.

As detailed below, (1) our address has changed, (2) we request the status including the estimated date of completion of agency action with respect to each of our pending FOIA and Privacy act requests and appeals, and (3) we have been told that we need to confer with your office regarding a portion of one of our FOIA requests that was remanded for further action following one of our appeals, but we have not yet been provided with any point of contact or any opportunity for such a conference.

Our address has changed to:

Edward Hasbrouck
The Identity Project
PO Box 170640-idp
San Francisco, CA 94117-0640

telephone: 415-824-0214
email: eh@papersplease.org

Please reply to confirm that our address has been updated in each of these case files and that any components or other agencies to which all or any portion of any of these requests has been referred have also been notified of our change of address.

We also request the status including the estimated data of completion of agency action with respect to each of the following FOIA and Privacy Act requests and appeals:

F-2011-03370 (all or some portion a/k/a F-2021-06198)
F-2011-06118 (pending Privacy Act request and appeal)
F-2011-06118 (portion on remand for response following FOIA appeal)
F-2011-06118 (portion on remand to confer following FOIA appeal)
F-2014-09197
P-2015-06585 (pending FOIA and Privacy Act appeals)

With respect to request F-2011-03370, we were told in an unsigned email message on July 22, 2022 from FOIAStatus@state.gov that, "FOIA case control number F-2011-03370 was closed inadvertently. FOIA case control number F-2021-06198 was created and forwarded to the Department of State's Bureau of Consular Affairs, Office of Passport Services, Law Enforcement Liaison Division for processing.... your status inquiry regarding FOIA case control number F-2021-06198 was forwarded to that office for direct reply. You may also contact the Office of Passport Services, Law Enforcement Liaison Division directly via email at PPT-Public-FOIARequests@state.gov to obtain a status report regarding FOIA case control number F-2021-06198." We were also told in an unsigned email message on August 22, 2022, from Foiaprogram@state.gov that, "status inquiries of passport requests may be also made by phone to (202) 485-6550."

We request that you verify and confirm that, even if a new reference number is assigned, your records accurately indicate that this request was made on April 27, 2011.

Otherwise, closing the file and re-opening it with a new "request" date would result in underreporting of processing times and possible omission of backlogged requests and appeals from your required reports of oldest requests and appeals.

Moreover, (a) we have never been provided with any postal address for the Office of Passport Services, Law Enforcement Liaison Division, (b) we have never received any communication whatsoever from this office or component, (c) we have never had any of our calls answered by a human or received any response to any of our voicemail messages left at 202-485-6550, and (d) we have never received any response to any of our email messages sent to PPT-Public-FOIARequests@state.gov.

With respect to FOIA and Privacy Act request and appeal F-2011-06118, we have received no response to the portion of this request and appeal made pursuant to the Privacy Act. It is unclear whether the portion of the original request made pursuant to the Privacy Act remains pending, or whether the portion of the original request made pursuant to the Privacy Act was deemed to have been denied, in which case that denial was appealed, pursuant to the Privacy Act, and that Privacy Act appeal remains pending.

We have never been provided with a separate reference number for this request or appeal under the Privacy Act or with separate FOIA and Privacy Act reference numbers for any of our requests or appeals made pursuant to both FOIA and the Privacy Act.

We discussed this issue with Chief FOIA Officer Eric F. Stein in August 2016 (see his letter to us of August 25, 2016, apologizing for the department's earlier mishandling of this request), and he agreed that your department's boilerplate needed to be improved to clearly distinguish FOIA and Privacy Act responses and exemption claims and to inform requesters of both FOIA and Privacy Act appeal rights where requests were made under both statutes, but we have seen no improvement in your boilerplate or procedures.

We received a response to a portion of this FOIA appeal by postal mail (although we had requested that any response be provided electronically) on October 17, 2019. A portion of this request was remanded for further action, which remains pending:

“The Office of Passport Services of the Bureau of Consular Affairs (CA/PPT/L) is conducting a renewed search of its files. We believe that our statement to you in our letter of December 22, 2017, which referred to separate correspondence having been sent to you from the Office of Passport Services, may have been in error, as we are unable to locate a copy of that correspondence. The Office of Passport Services will inform you directly of the results of its renewed search.”

However, we have never been provided with any postal address, phone number, or email address for the Office of Passport Services of the Bureau of Consular Affairs (CA/PPT/L), and we have never received any communication from that office.

We request the status including the estimated date of completion of agency action on remand with respect to this portion of F-2011-06118, and the point of contact from which we can exercise our statutory right to obtain future status updates.

In addition to the portion of request F-2011-06118 which was remanded for further searches, a different portion of this request was remanded by the October 17, 2019, appeal decision for us to confer with the FOIA office regarding possible narrowing of this portion of the request. However, neither in the appeal decision nor in response to our repeated, diligent telephone and email inquiries to the FOIA requester service center and your department's FOIA Public Liaison have we even been provided with any point of contact with whom we can seek to meet and confer regarding this matter.

More than three years later, we still are seeking diligently but unsuccessfully to find out with whom we can confer, much less to arrange a meeting with them.

By making your processing on remand of this portion of our request contingent on narrowing of the request, and then refusing for more than three years to make anyone available to confer regarding what narrowing might be acceptable, you are effectively engaging in an illegal, bad faith, "pocket veto" of this portion of our request.

I request that you telephone me in San Francisco at 415-824-0214 or email me at eh@papersplease.org at your earliest convenience to confirm the first available appointment for a phone call or virtual meeting with you to discuss this request.

We remind you that the FOIA statute requires that each agency provide FOIA status information online or by phone. That we have been unable to obtain status information by phone or email, despite diligent efforts, and have to resort to much slower, more costly, postal mail, is indicative of your failure to fulfill your statutory duty.

We also want to make sure that you are aware that neither status information nor the assistance of the FOIA Public Liaison is actually available to requesters, so that you can accurately include this information in your future FOIA reports and do not, in mistaken reliance on misinformation from your staff, falsely report that this is available.

We look forward to your response and to the opportunity to confer with you.

Sincerely,

Edward Hasbrouck
The Identity Project

cc: Kellie Robinson, FOIA Public Liaison
U.S. Department of State
A/GIS/IPS/PP
2201 C Street N.W., Suite B266
Washington, DC 20520-0000
RobinsonKN@state.gov



United States Department of State

Washington, D.C. 20520

February 6, 2024

Case No. F-2014-09197

Via email: eh@papersplease.org

Mr. Edward Hasbrouck

Dear Mr. Hasbrouck:

This is in response to your May 28, 2014, request, submitted under the Freedom of Information Act (FOIA), 5 U.S.C. § 552 to the Department of State (the Department) in which you requested:

Records/correspondence related to meeting with nongovernmental organizations in Geneva, Switzerland regarding U.S. implementation of the International Covenant on Civil and Political Rights (ICCPR).

The Department is undertaking a comprehensive effort to reduce its backlog of FOIA requests. As part of that effort, we are writing to inquire whether circumstances have changed and you no longer wish to pursue your request because we have not received any communication from you in the last several years. If you still wish to pursue this request, please contact us by phone at (202) 261-8484, by e-mail at FOIAAdvisement@state.gov, or by writing to the Office of Information Programs and Services, A/GIS/IPS/CR, U.S. Department of State, 2201 C Street N.W., Suite B266 Washington, D.C. 20520-0008. In your reply, please include the above case number and any updates needed to your email address, telephone number, or mailing address.

If we do not receive a response from you within thirty (30) business days of the date of this letter, the Department will conclude you are no longer pursuing this request and administratively close your case and no further action will be taken.

Sincerely,

Office of Information Programs and Services