

HUMAN RIGHTS WATCH

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April 3, 2007

RE: FREEDOM OF INFORMATION ACT REQUEST

VIA FACSIMILE AND US POSTAL SERVICE

FOIA/PA Section
Information Disclosure Unit
Mission Support Division
Office of Investigations
US Immigrations and Customs Enforcement
425 I Street NW, Room 4038
Washington, D.C. 20536

FOIA Office
US Immigration and Customs Enforcement
800 N. Capitol St NW
5th Floor, Room 585
Washington, DC 20536

To Whom It May Concern:

This letter constitutes a request ("Request") pursuant to the Freedom of Information Act, 5 USC Section 552 (FOIA.) The Request is submitted on behalf of Human Rights Watch ("Requester").

Definitions

For the purposes of this Request, the definitions of these terms are provided below:

- 1) "records" is defined as any document, memorandum, message, or other communication intended to be covered by 5 USC Sec. 552, including those in electronic format;
- 2) "HIV/AIDS" is defined as the Human Immunodeficiency Virus and Acquired Immune Deficiency Syndrome;
- 3) "specialty care" is defined as any medical treatment provided by health care practitioners specializing in the treatment of HIV/AIDS or infectious disease;
- 4) "policies" and "procedures" includes any directives, instructions, memoranda, guidelines, practice, protocol, or requirements that have been established, published or followed by the agencies listed in the request.

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www.hrw.org

Records Requested

I. Records Relating to Agency Policies and Procedures for Detainees with HIV/AIDS

We request disclosure of all records relating to any policies and procedures for detainees with HIV/AIDS, including but not limited to:

- 1) policies or procedures of US Immigration and Customs Enforcement related to the testing and/or medical treatment of detainees with HIV/AIDS;
- 2) policies and procedures of the Division of Immigration Health Services related to the testing and/or medical treatment of detainees with HIV/AIDS;
- 3) policies and procedures of US Immigration and Customs Enforcement related to the deportation and/or removal from the United States of detainees with HIV/AIDS;
- 4) policies and procedures of the Division of Immigration Health Services related to the deportation and/or removal of detainees with HIV/AIDS.

II. Records Indicating the Numbers of Detainees Receiving Medical Treatment for HIV/AIDS

We request disclosure of records indicating the numbers of detainees receiving medical testing and treatment services related to HIV/AIDS, including but not limited to:

- 1) the number of detainees tested for HIV;
- 2) the number of signed consent forms DIHS-075 (consent to HIV testing);
- 3) the number of detainees testing positive for HIV;
- 4) the number of detainees receiving treatment for HIV, including but not limited to anti-retroviral medications and/or treatment for opportunistic infections;
- 5) the number of HIV cases reported to federal, state, county or municipal public health agencies;
- 6) the number of detainees receiving specialty medical care, either on or offsite, related to HIV;
- 7) the number of deaths in ICE custody, if any, related to HIV/AIDS.

III. Records Related to Deportation of Detainees With HIV/AIDS

We request all records indicating the numbers of detainees with HIV/AIDS ordered to be deported or removed from the United States, including but not limited to:

- 8) the number of detainees with HIV/AIDS ordered deported or removed;
- 9) the number of detainees with HIV deported or removed with a supply of HIV/AIDS medication;

- 10) the number of detainees granted removal exemption or waiver due to terminal illness related to HIV/AIDS.

IV. Time Period for Which Records Are Sought

We request disclosure of the records in sections I ,II and III above for the time period 2002-present.

V. Category of ICE Facility

The records requested in sections II, and III above are requested for each of the following three categories of immigration detention centers operated and/or supervised by the US Immigration and Customs Enforcement Agency ("ICE"):

- 1) Service Processing Centers (SPC);
- 2) Contract Detention Facilities (CDF) operated by the Corrections Corporation of America or other private companies;
- 3) Intergovernmental Service Agreement Facilities (IGSA).

Request for Fee Waiver for Contributing to Public Understanding

Fees should be waived entirely or below the level of duplication costs because "disclosure of the information is in the public interest because it is likely to contribute significantly to public understanding of the operations or activities of the government and is not primarily in the commercial interest of the requester." 5 U.S.C. § 552(a)(4)(A)(iii). It was the intent of Congress that the burden of proving that a request is in the public interest be "minimal." *Institute for Wildlife Protection v. United States Fish and Wildlife Service*, 290 F.Supp. 2d 1226, 1232 (D. Or. 2003).

This Request meets the four criteria laid out in Department of Homeland Security regulations for determining whether disclosures are "in the public interest." First, the information requested concerns, "the operations or activities of the government." 6 C.F.R. § 5.11(k)(2)(i) (2005). Medical treatment provided by the government to detained persons under its jurisdiction is a subject clearly within the public interest.

Second, the Request concerns information that is of significant value to informing the public. This information is not already in the public domain, and therefore its disclosure will greatly add to the public's understanding since it will reveal new and important information about the medical treatment for detainees with HIV/AIDS, and the deportation and removal of such detainees. 6 C.F.R. 5.11(k)(2)(ii) (2005). The information we are seeking will be compiled and explained in an easy to understand format and distributed widely through extensive public advocacy by Requesters. The information is not available publicly at present. Disclosure will therefore have tremendous value to public understanding.

Third, a Request must be able to contribute to public understanding of "a reasonably broad audience..., as opposed to the individual understanding of the requester. A requester's expertise

in the subject area and ability and intention to effectively convey information to the public shall be considered.” 6 C.F.R. 5.11(k)(2)(iii) (2005). Human Rights Watch is the largest human rights organization based in the United States. Human Rights Watch employs over 150 professionals, among them lawyers, journalists, academics and country experts who are among the world’s leading experts in their fields. Human Rights Watch’s reports are made available in print and on our website and are the subjects of intensive publicity campaigns which utilize Human Rights Watch’s extensive contacts in the media. The information disclosed in this Request will be used in such a report. The Request therefore clearly meets the requirement of aiding public understanding by reaching a broad audience.

Fourth, “the level of public understanding existing prior to the disclosure” will “be enhanced by the disclosure to a significant extent.” 6 C.F.R. 5.11 (k)(2)(iv) (2005). Currently, there is little public understanding of the medical treatment and/or deportation of detainees with HIV/AIDS. What limited media attention there has been on the issue has generally treated only individual cases. Without statistics based on the disclosure requested, it is difficult, if not impossible, to have true public understanding of these issues. This will significantly enhance public understanding relative to its current level, as required.

The Request also meets the requirement that disclosure not be primarily in the commercial interest of the requester. 6 C.F.R. 5.11(k)(1)(ii) (2005). Human Rights Watch is a non-profit organization, and therefore has no commercial interest. 6 C.F.R. 5.11 (k)(3)(i) (2005). As such, Human Rights Watch cannot put the disclosed information to “commercial use,” as defined under 6 C.F.R. 5.11(b)(1) (2005).

The Request meets all of the criteria set out by statute and regulation for the grant of a fee waiver for disclosures that further public understanding of government rather than commercial interest. Granting fee waivers in cases such as the instant Request furthers the intent of Congress in drafting the FOIA statute. Consequently, we request that you disclose the requested information without charge or at a level lower than that of duplication costs.

Request for Fee Waiver for Representatives of the News Media and Educational Institutions

We also request a fee waiver because Human Rights Watch is a representative of the news media. 5 U.S.C. §552(a)(4)(A)(ii)(II). Human Rights Watch is “an entity that is organized and operated to publish or broadcast...information that is about current events or that would be of current interest to the public.” 6 C.F.R. 5.11(b)(6) (2005). It is therefore appropriate to waive fees for this Request, especially considering that Congress intended that the term “representative of the news media” be interpreted broadly. *National Security Archive v. Department of Defense*, 880 F.2d 1381, 1383 (D.C. Cir. 1989).

Human Rights Watch’s primary method of advocacy is investigating and publishing the findings of its investigations in reports in order to generate publicity and influence policy.¹ In 2006, for example, Human Rights Watch published over 100 such reports. Human Rights Watch also publishes up-to-the-minute information concerning crises around the world. On average, fifty citations to our reports appeared in major newspapers and media around the world on each day from January 1, 2006 to January 1, 2007.² The information requested in this Request will be

¹ See e.g., www.hrw.org/about/faq/

² These newspapers are: The Advertiser/Sunday Mail (South Australia), The Atlanta Journal and Constitution, The Australian, The Baltimore Sun, The Boston Globe, The Boston Herald, Brisbane News, The Buffalo News, Business Times (Malaysia), The Business

published in such a report, which will be made available in print and on the internet. As such, we request that you grant a fee waiver to Human Rights Watch as a representative of the news media. 6 C.F.R. 5.11(d)(1) (2005).

In compliance with 6 C.F.R. 5.5(d)(3) (2005), the undersigned certify that the above information pertaining to a request for expedited processing is true and correct to the best of the undersigned's knowledge and belief.

We thank you for your attention in this matter and look forward to your response within 20 business days. 5 U.S.C. §552(a)(6)(A)(i). Please respond to Megan McLemore, HIV/AIDS and Human Rights Program, Human Rights Watch, 350 5th Avenue, 34th Floor, New York, NY 10118, telephone (212) 216-1259, email mclmom@hrw.org.

Signed:



Times Singapore, The Charlotte Observer, Chicago Sun-Times, Chicago Tribune, The Christian Science Monitor, The Columbus Dispatch, The Courier Mail/The Sunday Mail (Australia), The Courier-Journal (Louisville, Kentucky), Daily News (New York), The Daily/Sunday Telegraph (London), Daily Telegraph and Sunday Telegraph (Sydney, Australia), The Daily Yomiuri (Tokyo), The Dallas Morning News, The Denver Post, Detroit Free Press, The Detroit News (Michigan), The Dominion Post (Wellington, New Zealand), The Dominion (Wellington), The Evening Post (Wellington), Financial Times (London), Het Financieele Dagblad (English), Fort Worth Star-Telegram, Gazeta Mercantil Online, The Gazette (Montreal), The Guardian (London), The Hartford Courant, The Herald (Glasgow), Herald Sun/Sunday Herald Sun (Melbourne, Australia), The Houston Chronicle, The Idaho Statesman (Boise), The Independent and Independent on Sunday (London), The Indianapolis Star (Indiana), The Irish Times, The Jerusalem Post, Journal of Commerce, The Kansas City Star, Los Angeles Times, The Mercury/Sunday Tasmanian (Australia), Miami Herald, The Milwaukee Journal Sentinel, The Myrtle Beach Sun-News, New Straits Times (Malaysia), The New York Times, The New Zealand Herald, Newsday (New York, NY), The Observer, Omaha World Herald, The Orange County Register, The Oregonian, Orlando Sentinel, Ottawa Citizen, The Philadelphia Daily News - Most Recent Two Weeks, The Philadelphia Daily News (PA), The Philadelphia Inquirer, The Philadelphia Inquirer - Most Recent Two Weeks, Pittsburgh Post-Gazette, The Plain Dealer, The Press (Christchurch, New Zealand), Rocky Mountain News, Sacramento Bee, Saint Paul Pioneer Press, San Antonio Express-News, San Diego Union-Tribune, The San Francisco Chronicle, San Jose Mercury News, The Scotsman & Scotland on Sunday, The Seattle Times, South China Morning Post, St. Louis Post-Dispatch, St. Petersburg Times, Star Tribune (Minneapolis MN), The Straits Times (Singapore), Sun-Sentinel (Fort Lauderdale), The Tampa Tribune, The Times-Picayune, The Toronto Star, USA Today and The Washington Post.