

December 9, 2022

FOIA Officer
U.S. Customs and Border Protection

Re: Freedom of Information Act Request

Dear FOIA Officer:

We submit this request under the Freedom of Information Act (“FOIA”), 5 U.S.C. § 552, to the U.S. Customs and Border Protection (“CBP”) on behalf of Access Now (“Access Now”).

Requested Records

Access Now requests all records from the launch of the CBP One™ Mobile Application (“CPB One”) to the present concerning the use of CBP One for automated decision making, profiling, registering people on the move.

Specifically, Access Now requests the following records:

1. Records related to automated decision making using the CBP One, including but not limited to:
 - Records describing how decisions are made using CBP One; and
 - Records describing which decisions occur in an automated or semi-automated way.
2. Manuals, trainings, policy statements, or similar records describing the intended, permitted, limited, or prohibited uses of CBP One.
3. Manuals, trainings, policy statements, or similar records describing intended, permitted, limited, or prohibited uses of profiling procedures by CBP One.
4. Records sufficient to show:
 - The number of people on the move registered via CBP One by officials or staff of the government of Mexico, Guatemala, Honduras, and El Salvador each year since the launch of CBP One.
 - The number, nationality, and age of people on the move whose information was accessed via CBP One by officials or staff of the government of Mexico, Guatemala, Honduras, and El Salvador since the launch of CBP One.

- The number of officers, employees, or contractors of the governments of Mexico, Guatemala, Honduras, or El Salvador that have had access to CBP One since its launch.
- The names of any departments of the government of Mexico, Guatemala, Honduras, or El Salvador that have had access to CBP One since its launch.

Definitions

For the purpose of this request, these terms have the following defined meanings:

- **People on the move** means migrants, refugees, asylum seekers, stateless people, and other similarly situated persons.
- **Automated decision making** means any computer-assisted action or recommendation that would affect the rights of any person.
- **Profiling procedure** means any procedure that involves any action undertaken for reasons of safety, security or public protection, that relies on stereotypes about race, color, ethnicity, ancestry, religion, or place of origin, gender, sexual orientation, or a combination of these, rather than on a reasonable suspicion, to single out an individual for greater scrutiny or different treatment.

Request for News Media Requester Status

Access Now requests a limitation on search and review fees on the ground that they are a “representative of the news media” and do not seek the requested records for commercial use.¹ Accordingly, fees associated with the processing of this request should be limited to reasonable duplication costs.

Access Now “actively 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.”² Specifically, Access Now conducts research on a variety of issues related to privacy, freedom of expression, digital security, Business & Human Rights, and net discrimination. It then publishes its research in a variety of formats, including but not limited to research reports,³ policy papers,⁴ and frequent blog posts.⁵ This information is made available to the public via Access Now’s website. Access Now intends to use its editorial skills to turn any information obtained through this request into a report, blog post, or other relevant product, freely distributed to educate the public.

¹ 5 U.S.C. § 552(a)(4)(A)(ii)(II).

² 6 C.F.R. § 5.11(b)(6).

³ See, e.g., *Digital Dictatorship: Authoritarian Tactics and Resistance in Eastern Europe and Central Asia*, ACCESS NOW (Oct. 2022), <https://www.accessnow.org/cms/assets/uploads/2022/10/Digital-dictatorship-authoritarian-tactics-and-resistance-in-Eastern-Europe-and-Central-Asia-Access-Now.pdf>.

⁴ See, e.g., *Policy Brief: How to Strengthen Jordan's Data Protection Law*, ACCESS NOW (Apr. 2022), https://www.accessnow.org/cms/assets/uploads/2022/05/Access-Now-Policy-Brief_Jordan-Data-Protection-bill-vs-GDPR.pdf.

⁵ See, e.g., Estelle Massé, *Why Data Minimisation Matters for Safe Data Transfers and More*, ACCESS NOW, (Sept. 8, 2022), <https://www.accessnow.org/why-data-minimisation-matters-for-data-transfers/>.

Request for a Public Interest Fee Waiver

In the alternative, Access Now requests a waiver of search, review, and duplication fees because disclosure of the requested records “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.”⁶

First, the request concerns “identifiable operations or activities of the federal government.”⁷ The request seeks information regarding identifiable guidance, programs, or training provided by the CBP related to how data of people on the move is collected and processed. Specifically, the requested records will shed light on the role of the CBP officials in the sharing and exchange of biometric data between foreign governments.

Second, disclosure of the requested records will be “meaningfully informative about government operations or activities” so as to be “likely to contribute to an increased public understanding of those operations or activities.”⁸ U.S. security practices at the border and in collaboration with foreign governments to collect biometric data of people on the move are a matter of great public interest and concern. The requested records will reveal substantial new information about U.S. border processing and data collection practices. Access Now believes that such information will bring greater transparency to the U.S. government’s data treatment of people on the move and any related implications on civil liberties.

The requested records will also “contribute to the understanding of a reasonably broad audience of persons interested in the subject, as opposed to the individual understanding of the requester” and significantly enhance “the public’s understanding of the subject in question.”⁹ Access Now has regularly published the results of their FOIA requests on its website.¹⁰ Consistent with this practice, Access Now also intends to disseminate any information obtained through this request to the public, contributing to the public’s enhanced understanding of foreign security assistance provided by the U.S. government.

Finally, Access Now does not have a commercial interest in the disclosure of the requested records. Access Now is a New York-based 501(c)(3) non-profit organization. They aim to encourage companies and governments to protect individuals’ digital rights by submitting information requests about data usage and distributing that information on the Access Now website.

For the reasons above, Access Now respectfully requests that all fees related to the search, review, and duplication of the requested records be waived. If the fees will not be waived,

⁶ 5 U.S.C. § 552(a)(4)(A)(iii).

⁷ 6 C.F.R. § 5.11(k)(2)(i).

⁸ *Id.* § 5.11(k)(2)(ii).

⁹ *Id.* § 5.11(k)(2)(iii).

¹⁰ See, e.g., *FOIA Requests Show U.S. FBI Could Be Spying on Advocacy Groups*, ACCESS NOW (Jan. 15, 2020), <https://www.accessnow.org/foia-requests-show-fbi-could-be-spying-on-u-s-advocacy-groups/>; *OIA Documents Reveal Intensity of US Lobbying Against the DPR*, ACCESS NOW (June 12, 2013), <https://www.accessnow.org/foia-documents-reveal-intensity-of-us-lobbying-against-the-dpr/>.

Access Now agrees to pay up to \$100 for the processing of this request. If the estimated fees will exceed this limit, please contact us before you begin processing.

Request for Records in Electronic Format

Access Now requests that responsive electronic records be provided electronically in their native file format, if possible.¹¹ Alternatively, Access Now requests that the records be provided electronically in text-searchable PDF, in the best image quality in the CBP's possession, and in separate, Bates-stamped files. Access Now further requests that you provide an estimated date on which you will finish processing this request.¹²

If this FOIA request is denied in whole or in part, please provide the reasons for the denial, pursuant to 5 U.S.C. § 552(a)(6)(A)(i). In addition, please release all segregable portions of otherwise exempt material in accordance with 5 U.S.C. § 552(b).

Thank you for your consideration of this request. If you have any questions or concerns, please do not hesitate to contact me [REDACTED]

Yours,

[REDACTED]

[REDACTED]

Access Now

By their counsel

[REDACTED]

[REDACTED]

Harvard Law School Cyberlaw Clinic

¹¹ 5 U.S.C. § 552(a)(3)(B).

¹² *Id.* § 552(a)(7)(B)(ii).