

AILA Seeks Quick Win In Trimmed Judge FOIA Docs Fight

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Law360, New York (June 6, 2017, 6:39 PM EDT) -- The [American Immigration Lawyers Association](#) recently sought a quick win in a suit challenging the [Executive Office for Immigration Review](#)'s practice of redacting immigration judges' names when disclosing complaints against them, asking a D.C. federal court to reveal just a fraction of the more than 200 names it originally requested.

The AILA — which had filed a Freedom of Information Act request with the EOIR for complaints against 201 federal immigration judges in an attempt to identify misconduct among them — filed a summary judgment motion that trimmed the request down to only 34 judges.

The organization also argued that the office wrongly applied a FOIA exemption for private information, pushing back against the government's April motion for summary judgment, which asserted that the privacy concerns of each individual judge were paramount to the public interest.

“[The exemption] does not apply because, with respect to each judge, the public interest in disclosure of the withheld information outweighs the judge's privacy interest,” the motion states. “The government's justification to the contrary suffers from numerous shortcomings, including erroneous factual assumptions about the public and private interests related to disclosure.”

The AILA filed its FOIA request for the complaints in September 2012 with the EOIR, which is the Department of Justice's arm overseeing the immigration courts. The EOIR produced some 16,000 pages of documents, redacting the judges' names and all other identifying information — such as pronouns, the judges' workplaces and related media articles — under a FOIA exemption allowing redactions of information that would constitute “a clearly unwarranted invasion of personal privacy.”

The district court decided in favor of the government's redactions in December 2014, but the D.C. Circuit [reversed and remanded](#), ruling that the the government could not prove that all immigration judges' personal privacy interests trump the public interest in broad strokes and would have to evaluate each one on a case-by-case basis.

The EOIR thereafter conducted an individualized analysis, arriving at the same conclusion by evaluating the merits of each complaint, a judge's disciplinary history and the agency's response to the complaint, among other factors. In its motion for summary judgment, the government

bolstered its analysis of each judge's case with declarations from the executive vice president of the National Association of Immigration Judges, Judge Denise Slavin, who argued that identifying the judges could pose national security threats, unduly prejudice and defame them, and harm the integrity of immigration courts.

But the AILA argued Thursday that the public interest in disclosure of immigration judges' identities is strong, claiming that it would improve accountability for individuals who are charged with deciding the futures of a vulnerable population and have agency to abuse their power. Additionally, it would encourage more people to file complaints and aid the public in reviewing the EOIR's complaint system, which has been the subject of critique.

Though the AILA trimmed its complaint in order to focus its litigation, Mary Kenney, the organization's counsel, told Law360 on Wednesday that the names of the other 167 judges are not protected from disclosure.

"Release of immigration judges' names in relation to complaints would allow these groups to direct their attention to courtrooms where complaints 'suggest or confirm a pattern of misconduct or abusive behavior by particular judges,'" the motion states.

The AILA furthermore tried to invalidate Judge Slavin's arguments as speculation, claiming that they "deserve no weight" because they do not rely on her personal knowledge and are factually incorrect. Though the government denied in its motion that it relied on Slavin's assertions in its analysis of judges' privacy interests, the organization urged the court to consider that the government's memorandum cited her heavily.

In response to the D.C. Circuit's ruling in the AILA case, the [U.S. Department of Justice](#)'s Office of Information Policy [issued guidance](#) in January urging agencies to use the definition of "record" found in the Privacy Act — each "item, collection or grouping of information" on the topic of the FOIA request — to guide their decisions regarding what is a record when searching for documents. The OIP's approach, it said, will permit a more "fine-tune, content-based approach" to an agency's decision regarding what constitutes a record.

Representatives for EOIR declined to comment Monday.

The government is represented by Channing D. Phillips, Daniel F. Van Horn and Daniel P. Schaefer of the Department of Justice.

The American Immigration Lawyers Association is represented by Melissa Crow and Mary Kenney of the [American Immigration Council](#) and Julie A. Murray and Allison M. Zieve of the Public Citizen Litigation Group.

The case is American Immigration Lawyers Association v. Executive Office for Immigration Review et. al., case number [1:13-cv-00840](#), in the U.S. District Court for the District of Columbia.

--Additional reporting by Kelly Knaub and Allissa Wickham. Editing by Sara Ziegler.

Update: This story has been updated with a comment from AILA's counsel.

Case Information

Case Title

[AMERICAN IMMIGRATION LAWYERS ASSOCIATION v. EXECUTIVE OFFICE FOR IMMIGRATION REVIEW et al](#)

Case Number

[1:13-cv-00840](#)

Court

District Of Columbia

Nature of Suit

Freedom of Information Act

Judge

[Christopher R. Cooper](#)

Date Filed

June 6, 2013

Case Title

[American Immigration Lawyers v. Exec. Office for Immigration, et al](#)

Case Number

[15-5201](#)

Court

Appellate - DC Circuit

Nature of Suit

2895 Freedom of Information Act of 1974

Date Filed

July 21, 2015

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Government Agencies

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