



Brian Carr <carrbp@gmail.com>

Re: FOIA # F-2023-08493

1 message

Brian Carr <carrbp@gmail.com>

Sun, Jul 30, 2023 at 8:40 PM

To: DoS FOIA Status <Foiastatus@state.gov>
Cc: Antony Blinken <secretary@state.gov>, Diana Shaw <shawd@state.gov>, Executive Director Douglas Holt <douglas.holt@cigie.gov>, FOIA@stateoig.gov, FOIARequest@state.gov, criminal.division@usdoj.gov, Jennifer.Ward@mail.house.gov, Rena Bitter <BitterR@state.gov>, hotline@stateoig.gov, Integrity-Complaint <Integrity-Complaint@cigie.gov>

Dear Sir / Madam:

Thank you for your response dated 24 Jul 2023 concerning Buakhao Von Kramer and referencing F-2023-08493. I have attached the response letter as DoSfoiF-2023-08493rspA. I ask that you provide the information originally requested under the restrictions you described, but also ask that you provide additional information based on constitutional requirements for 'Due Process' in administrative processes. There was a similar request for records concerning my wife, Rueangrong Carr and I would like similar records for her.

Basic Records to be Returned

I have attached the requested certification of ID form for Buakhao, my sister in law, (BVKidIG20230629b.pdf). Please note that Buakhao is a Thai National without any permanent residence in the U.S.. Buakhao reviewed the ID form with myself and her daughter who is more familiar with English. She signed the form with her name in Thai and the date in Thai (not CE and not in English). I believe that the date of signature was 29 Jun 2023 in Thailand (different time zone). Please let me know if anything further is required.

I have also attached the identification forms for my wife (DoSidRC) and myself (DoSidBC.pdf). I had submitted these forms previously to your office (cc: FOIA@stateoig.gov), but did not have the reference number to use.

In accordance with 8 U.S.C. Section 1202(f) and its confidentiality provisions, I would like all records that were previously received from or sent to the Buakhao. In addition I would like all video and audio recordings which were made of Buakhao and her interactions with the interviewer. She was not permitted to record the proceedings but I would like access to everything which was recorded by the DoS which was 'received from' her or 'sent to' her in video and audio communication.

I would similarly like the same records for my wife, Rueangrong Carr.

Additional Records Requested Under Due Process

I also thank you for citing 8 U.S.C. Section 1202(f) which states in part

(f) Confidential nature of records
shall be used only for the ... administration ... of the immigration ... and other laws of the United States.

It does not in any way constrain applicants' access to the evidence on which an administrative decision is based.

In order to comply with the Fifth Amendment as defined by the Supreme Court, all persons must be provided with 'due process' even in administrative proceedings. There is an excellent overview of 'due process' in

https://www.law.cornell.edu/wex/procedural_due_process
citing
https://scholarship.law.upenn.edu/cgi/viewcontent.cgi?article=5317&context=penn_law_review
and Judge Henry Friendly's article titled "Some Kind of Hearing" which states:

procedures that due process requires....

...

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5. The right to know opposing evidence.

...

7. A decision based exclusively on the evidence presented.

8. Opportunity to be represented by counsel.

9. Requirement that the tribunal prepare a record of the evidence presented.

10. Requirement that the tribunal prepare written findings of fact and reasons for its decision.

As discussed in the article, the Supreme Court has interpreted the Fifth Amendment due process requirement to cover virtually all administrative procedures which impact a person's life, but with less prohibitive requirements for less significant matters.

These requirements on administrative procedures even extend to properly classified information covered by the Classified Information Procedures Act (CIPA) which provides uniform procedures for prosecutions involving classified information.

In Kiareldeen v. Reno, see 71 F.Supp.2d 402, the court ruled in favor of an immigrant applicant. On appeal, the court ruled that the reliance on secret evidence violated his due process rights because (1) it deprived him of meaningful notice and an opportunity to confront the evidence against him, and (2) exclusively hearsay evidence could not be tested for reliability.

While 8 U.S.C. Section 1202(f) can protect the confidence of Buakhao's records from FOIA requests from other private individuals, it does not apply to any records which the interviewer (an informal administrative judge) accessed. Indeed it is an unlawful infringement of Buakhao's rights that the interviewer did not clearly identify what evidence was relied on in the denial.

As such I ask that you contact local counsel within DoS and confirm that Buakhao is entitled to all records which refer to her situation as the interviewer may have accessed those records and they may be accessed in future appeals or applications.

If the DoS counsel does not agree with this request, I ask that he / she contact the DoJ to get their analysis of the relevant law. At this point in time there is a possibility that this matter may need to be litigated in federal district courts and the courts strongly prefer that all issues which can be resolved between the parties be done so before litigation. I believe that neither DoS Counsel, DoJ Counsel or myself look forward to arguing these issues in court.

Conclusion

I ask that you promptly provide us with all the records which Buakhao submitted as well as those she received to include audio or video recordings which have both. Further, I ask that you refer the matter to counsel for an expanded release of all records which refer to Buakhao and her situation. Similarly I ask for all records concerning myself and my wife which have been submitted as FOIA different requests.

Your attention to this matter is appreciated.

Brian

On 7/24/2023 9:46 AM, CA-VO FOIA Response wrote:

PLEASE DO NOT RESPOND TO THIS EMAIL.

CA/VO has completed action on your above-listed FOIA request insofar as the request seeks records held by the Department of State, Bureau of Consular Affairs. Please see the attached response.

This message was sent by the Department of State in response to an official Freedom of Information Act request. This email and any files transmitted with it are intended solely for the use of the individual or entity to whom they are addressed. If you have received this in error please notify the sender immediately and do not review, retransmit, disseminate, or copy this e-mail or its attachments.

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4 attachments **DoSfoiF-2023-08493rspA.pdf**
111K **BVKidIG20230629b.pdf**
199K **DoSidBC.pdf**
110K **DoSidRC.pdf**
98K