



IIUSA FOIA Efforts

A Frustrating Process to Critical Data



Ashley Sanislo Casey
Director of Education & Professional
Development | IIUSA

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In previous editions of the *Regional Center Business Journal*, I have written about IIUSA’s efforts of submitting Freedom of Information Act (FOIA) requests to the federal government, mainly U.S. Citizenship & Immigration Services (USCIS), for information and data related to the EB-5 Program. This data is critical to curating and updating the information IIUSA provides to its members, which is distilled through analytical reports produced by our own internal data scientist, Lee Li. Not only do our members find these reports interesting to read, but many find the information crucial to their marketing and business plans as it sheds light on EB-5 trends that are otherwise inaccessible.

If you have read any of my previous articles or have made FOIA requests yourself over the last five or so years, then you know the process is frustratingly slow, disjointed, and often fruitless. When I first joined IIUSA in 2014, we often would receive helpful, relatively well-organized responses through FOIA requests within only a few weeks of making the request. As time passed, the turnaround time has more or less come to a grinding halt. Most requests sit in the “pending” pile for years and when we do receive a response, they tend to be heavily redacted, omitting the crucial information we were seeking in the first place.

A majority of our requests are what we call our regular requests – ones that we ask for the same data on a recurring basis (monthly, quarterly, or yearly). Because of the regular recurrence of these requests since I have been with IIUSA,

we know that they used to provide this information not just in a much faster manner, but also in a more complete data set. The shift in both the processing time to fulfill the request and the completeness of the information we receive is confounding and burdensome, to say the least.

An added level of incongruity is fostered by the fact that there is no central place to update contact information with USCIS. IIUSA has moved offices a few times over the last several years and when our address moves, any FOIA response to a request made while at the previous address will be sent to the address on the request. With request processing taking years, we have found many times that responses are lost in the mail, and we are unable to let USCIS know to send all future responses to a new address.

To give you an idea of the backlog we are dealing with, below are three tables. Tables 2 and 3 were included in previous articles on this topic and table 1 is the updated and current data. It is important to note that IIUSA made only two requests between October 2021 and March 2023. This was due to both the lapse in the program and waiting for new forms to be published and filed once the EB-5 Reform and Integrity Act (RIA) passed in March 2022. Our oldest pending request is from May 2018. There are a total of 5 pending requests from 2018; 11 from 2019; 8 from 2020; 7 from 2021; and 38 from 2023.

Table 1: IIUSA FOIA requests as of October 2023

Total Request	Pending	Denied	In Appeal	In Litigation	Fulfilled
363	69	29	0	2	258

Table 2: IIUSA FOIA requests as of September 2020

Total Request	Pending	Denied	In Appeal	Fulfilled
285	82	20	1	182

Table 3: IIUSA FOIA Requests as of August 2019

Total Request	Pending	Denied	In Appeal	Fulfilled
248	70	20	0	158

¹ Vol. 9, Issue 2; Vol. 6, Issue 1; Vol. 7, Issue 2 <https://iiusa.org/news-publications/regional-center-business-journal/>

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A new column was added to Table 1 to reflect requests in litigation. In 2020, IIUSA began suing USCIS to compel records that were critical to our operations and/or to the industry’s knowledge. To date, IIUSA has been a party to six lawsuits to compel records through FOIA requests that were pending beyond the statutory obligation of the agency, which states that the agency has 20 business days to provide a response².

We are grateful to both John Pratt (Kurzban Kurzban Tetzeli & Pratt) and Brandon Meyer (Meyer Law Group) for their help in drafting requests and filing and managing some of these lawsuits on behalf of the association. While these requests and subsequent lawsuits have not provided us the full breadth of the information we sought, it has produced some useful information and certainly in a more timely manner than if we waited for the requests to be fulfilled on the normal timeline of FOIA processing.

A year after RIA’s passage, IIUSA rebooted its FOIA request machine in earnest. With many new forms required under the new law and several months into implementation, there was a slew of information to be solicited to learn how the EB-5 industry and USCIS were adapting to RIA. Since restarting our FOIA requests in March 2023, IIUSA has submitted 38 requests, all of which are still pending. Below is a list of some of IIUSA’s new recurring requests. **This is not an exhaustive list** and does not account for one-off requests (such as when IIUSA sought records on how USCIS came to its policy update on redeployment in August 2020).

- Forms I-526 and I-526E adjudication statistics;**
- Form I-829 adjudication statistics;**
- Forms I-526 and I-526E petitioner country of birth information;**
- Form I-829 petitioner country of birth information;**
- Forms I-956 and I-956F adjudication statistics and approval letters;**
- RFEs, NOIDs, and denial information;**
- Regional Center NOITs and termination letters; and**

The fact remains that IIUSA and its members rely heavily on the information guarded by USCIS which is only available through formal FOIA requests. Without the timely and full release of information requested, the association and the industry are hamstrung to understand trends in EB-5 that heavily impact how businesses plan for current and future projects, marketing, and compiling documents for EB-5-related petitions and applications. Additionally, much of the information sought through FOIA is critical to IIUSA’s advocacy efforts, and without updated data, the evidence we bring to Capitol Hill to tell the story of EB-5’s success and profound impact on American communities is outdated.

Unfortunately, I do not have a silver lining on which to end this article, but I can assure you IIUSA will not let up on its FOIA efforts. We will continue to make our requests, do regular audits of the requests and any releases we receive, follow up with FOIA officers and the National Records Center, and work with members who are willing to donate their time and expertise to this cause. ■



² Public Law No. 114-185