

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

ELECTRONIC PRIVACY INFORMATION CENTER)
1718 Connecticut Avenue, N.W.)
Suite 200)
Washington, DC 20009,)

Plaintiff,)

v.)

Civil Action)

DEPARTMENT OF TRANSPORTATION)
400 Seventh Street, S.W.)
Washington DC 20590,)

and)

NORMAN Y. MINETA, in his official)
capacity as Secretary of Transportation,)

Defendants.)
_____)

COMPLAINT FOR INJUNCTIVE RELIEF

1. This is an action under the Freedom of Information Act ("FOIA"), 5 U.S.C. § 552, and the Administrative Procedure Act ("APA"), 5 U.S.C. §§ 701 et seq., for injunctive and other appropriate relief, and seeking the expedited processing and release of agency records requested by plaintiff from defendant Department of Transportation.

Jurisdiction and Venue

2. This Court has both subject matter jurisdiction over this action and personal jurisdiction over the parties pursuant to 5 U.S.C. §§ 552(a)(4)(B) and 552(a)(6)(E)(iii). This court also has jurisdiction over this action pursuant to 28 U.S.C. § 1331 and 5 U.S.C. §§ 701-706. Venue lies in this district under 5 U.S.C. § 552(a)(4)(B).

Parties

3. Plaintiff Electronic Privacy Information Center ("EPIC") is a public interest research organization incorporated as a not-for-profit corporation in Washington, DC. EPIC's activities include the review of federal law enforcement activities and policies to determine their possible impacts on civil liberties and privacy interests. Among its other activities, EPIC publishes books, reports and a bi-weekly electronic newsletter. EPIC also maintains a heavily-visited site on the World Wide Web containing extensive information on privacy issues, including information EPIC has obtained from federal agencies under the FOIA.

4. Defendant Department of Transportation ("DOT") is a Department of the Executive Branch of the United States Government. DOT is an agency within the meaning of 5 U.S.C. § 552(f).

5. Defendant Norman Y. Mineta is Secretary of Transportation and heads the Department of Transportation. Defendant Mineta is responsible for DOT compliance with the laws of the United States and regulations promulgated thereunder, including the laws and regulations at issue in this case.

The Transportation Security Administration and Privacy

6. Subsequent to the terrorist attacks of September 11, 2001, the newly-created Transportation Security Administration ("TSA") reportedly began planning and designing security systems that could implicate the privacy rights of American citizens. On January 28, 2002, the Washington Times reported that a DOT taskforce called the Credentialing Direct Agency Group, working

under the TSA, was proposing a biometric identification card for transportation system workers. The taskforce reportedly has proposed designing the system so that it can expand to include "trusted passengers." Tom Ramstack, ID Card for Air Passengers, Washington Times, January 31, 2002. On February 1, 2002, the Washington Post reported on its front page the development of airline passenger screening/profiling systems that would "establish a computer network linking every reservation system in the United State to private and government databases." Robert O'Harrow Jr., Intricate Screening of Fliers in Works; Database Raises Privacy Concerns, Washington Post, February 1, 2002.

Plaintiff's FOIA Requests and Requests for Expedited Processing

7. By letter to defendant DOT dated February 1, 2002, plaintiff requested under the FOIA "the disclosure of all records concerning the development of an identification system for transportation system workers and its possible expansion to include all users of the transportation system." Plaintiff also requested expedited processing of its FOIA request. Plaintiff's request was in conformance with the requirements for such requests set forth in defendant DOT's regulations. Plaintiff stated that its FOIA request meets the criteria for expedited processing under defendant DOT's regulations, 49 CFR 731(c), as there is a "particular urgency to inform the public about the government activity involved in this request." In support of its request, plaintiff noted the media coverage of the DOT security proposals, and cited public questions that had been raised about the privacy implications of the proposed systems.

8. By separate letter to defendant DOT dated February 1, 2002, plaintiff requested under the FOIA "the disclosure of all records concerning the development of airline passenger screening/profiling systems." Plaintiff also requested expedited processing of its FOIA request. Plaintiff's request was in conformance with the requirements for such requests set forth in defendant DOT's regulations. Plaintiff stated that its FOIA request meets the criteria for expedited processing under defendant DOT's regulations, 49 CFR 731(c), as there is a "particular urgency to inform the public about the government activity involved in this request." In support of its request, plaintiff noted the media coverage of the DOT security proposals, and cited public questions that had been raised about the privacy implications of the proposed systems.

Defendant's Failure to Respond and Plaintiff's
Entitlement to Expedited Processing

9. By two form letters to plaintiff dated February 4, 2002, defendant DOT acknowledged receipt of "your FOIA request[s]," but did not reference plaintiff's requests for expedited processing.

10. To date, defendant DOT has not responded to plaintiff's requests for expedited processing of its FOIA requests. Plaintiff has exhausted the applicable administrative remedies.

11. Plaintiff is entitled to expedited processing of its FOIA requests under the standards contained in defendant DOT's regulations.

12. Defendants have wrongfully withheld the requested records from plaintiff.

CAUSES OF ACTION

First Cause of Action:

Violation of the Freedom of Information Act for
Failure to Timely Respond to Requests for Expedited Processing

13. Plaintiff repeats and realleges paragraphs 1-12.

14. Defendants' failure to timely respond to plaintiff's requests for expedited processing violates the FOIA, 5 U.S.C. § 552(a)(6)(E)(ii), and defendant DOT's own regulation promulgated thereunder, 49 CFR 731(c)(4).

Second Cause of Action:

Violation of the Administrative Procedure Act for
Failure to Timely Respond to Requests for Expedited Processing

15. Plaintiff repeats and realleges paragraphs 1-12.

16. Defendants' failure to timely respond to plaintiff's requests for expedited processing constitutes agency action unlawfully withheld and unreasonably delayed, in violation of the APA. Defendants' failure to timely respond is arbitrary, capricious, an abuse of discretion, not in accordance with law and without observance of procedure required by law, all in violation of the APA.

Third Cause of Action:

Violation of the Freedom of Information Act for
Failure to Grant Requests for Expedited Processing

17. Plaintiff repeats and realleges paragraphs 1-12.

18. Defendants' failure to grant plaintiff's requests for expedited processing violates the FOIA, 5 U.S.C. § 552(a)(6)(E)(i), and defendant DOT's own regulation promulgated thereunder, 49 CFR 731(c).

Fourth Cause of Action:

Violation of the Administrative Procedure Act for
Failure to Grant Requests for Expedited Processing

19. Plaintiff repeats and realleges paragraphs 1-12.

20. Defendants' failure to grant plaintiff's requests for expedited processing is arbitrary, capricious, an abuse of discretion, not in accordance with law and without observance of procedure required by law, all in violation of the APA.

Requested Relief

WHEREFORE, plaintiff prays that this Court:

- A. order defendants immediately to process the requested records in their entireties;
- B. order defendants, upon completion of such expedited processing, to disclose the requested records in their entireties and make copies available to plaintiff;
- C. provide for expeditious proceedings in this action;
- D. award plaintiff its costs and reasonable attorneys fees incurred in this action; and
- E. grant such other relief as the Court may deem just and proper.

Respectfully submitted,

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