

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)

OFFICE OF HOMELAND SECURITY)
1600 Pennsylvania Avenue, N.W.)
Washington, DC 20502,)

and)

TOM RIDGE, in his official capacity)
as Director of Homeland Security,)

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 Office of Homeland Security.

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 government 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 Office of Homeland Security ("OHS") is an establishment in the executive branch of the United States Government. OHS is an agency within the meaning of 5 U.S.C. § 552(f).

5. Defendant Tom Ridge is Director of Homeland Security and heads the Office of Homeland Security. Defendant Ridge is responsible for OHS compliance with the laws of the United States, including the laws at issue in this case.

Office of Homeland Security Initiatives and Privacy

6. Subsequent to the terrorist attacks of September 11, 2001, the newly-created Office of Homeland Security reportedly began drafting legislation, and planning and designing security systems, that could implicate the privacy rights of American citizens. These initiatives reportedly include proposed model state legislation requiring that driver's licenses issued to non-citizens be tied to visas; the development of biometric

identification systems; and establishment of a "trusted-flier" program that would create a new federally issued identity card.

Plaintiff's FOIA Request and Request for Expedited Processing

7. By letter and fax to defendant OHS dated March 20, 2002, plaintiff requested under the FOIA "all records relating to efforts to standardize driver's licenses across the country in the possession of the Office for Homeland Security, including but not limited to memos, talking points, reports and draft legislation." Plaintiff also requested "all records associated with [the trusted-flier program] and other proposals being considered by the Office that rely on biometric technology to identify citizens and visitors to America." Plaintiff requested expedited processing of its FOIA request, noting that "there is a particular urgency to inform the public about the government's proposed activity," and that "funding and legislative decisions" regarding this activity "are currently before Congress." Plaintiff's request was in conformance with the requirements for such requests set forth in the FOIA laws.

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

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

9. Plaintiff is entitled to expedited processing of its FOIA request under the applicable statutory standard.

10. 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 Request for Expedited Processing

11. Plaintiff repeats and realleges paragraphs 1-10.

12. Defendants' failure to timely respond to plaintiff's request for expedited processing violates the FOIA, 5 U.S.C. § 552(a)(6)(E)(ii).

Second Cause of Action:

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

13. Plaintiff repeats and realleges paragraphs 1-10.

14. Defendants' failure to timely respond to plaintiff's request 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 Request for Expedited Processing

15. Plaintiff repeats and realleges paragraphs 1-10.

16. Defendants' failure to grant plaintiff's request for expedited processing violates the FOIA, 5 U.S.C. § 552(a)(6)(E)(i).

Fourth Cause of Action:

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

17. Plaintiff repeats and realleges paragraphs 1-10.

18. Defendants' failure to grant plaintiff's request 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,

DAVID L. SOBEL
D.C. Bar No. 360418

MARC ROTENBERG
D.C. Bar. No. 422825

CHRIS J. HOOFNAGLE
D.C. Bar No. 463182

ELECTRONIC PRIVACY INFORMATION CENTER
1718 Connecticut Avenue, N.W.
Suite 200
Washington, DC 20009
(202) 483-1140

Counsel for Plaintiff