



September 22, 2003

BY FACSIMILE - (571) 227-1946

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RE: Freedom of Information Act Request  
and Request for Expedited Processing

Dear Ms. Reip-Dice:

This letter constitutes an expedited request under the Freedom of Information Act ("FOIA"), 5 U.S.C. § 552, and is submitted on behalf of the Electronic Privacy Information Center ("EPIC").

We are seeking the following agency records (including but not limited to electronic records):

1. Any documents or materials relating to JetBlue Airways Corporation;
2. Any documents or materials relating to Acxiom Corporation;
3. Any documents or materials relating to Torch Concepts Inc.; and
4. Any documents or materials relating to SRS Technologies.

Request for Expedited Processing

This request warrants expedited processing because it pertains to a matter about which there is an "urgency to inform the public about an actual or alleged federal government activity," and the request is made by "a person primarily engaged in disseminating information." 6 CFR § 5.5(d)(1)(ii).

On September 18, 2003, Wired News reported that:

JetBlue Airways confirmed . . . that in September 2002, it provided 5 million passenger itineraries to a defense contractor for proof-of-concept testing of a Pentagon project unrelated to airline security -- with help from the Transportation Security Administration. The contractor, Torch Concepts, then augmented that data with Social Security numbers and other sensitive personal information, including income level, to develop what looks to be a study of whether passenger-profiling systems such as CAPPS II are feasible . . . . The TSA, which is in charge of developing a new airline passenger-screening system called CAPPS II, adamantly denied receiving or reviewing the JetBlue data in the transfer. [The TSA] also said that the data was not used to test CAPPS II or CAPPS II prototypes.

Ryan Singel, JetBlue Shared Passenger Data, Wired News, Sept. 18, 2003. According to the New York Times:

after receiving the passenger information from JetBlue, Torch Concepts matched the passenger names against a variety of databases that it had purchased from Acxiom, a large consumer research company. "For approximately 40 percent of the passengers," the report said, the Acxiom databases provided additional "demographic information," including a passenger's Social Security number, occupation, income, gender and home- and car-ownership history, as well as the number of adults and children living in the passenger's household.

Philip Shenon, JetBlue Gave Defense Firm Files on Passengers, NY Times, Sept. 20, 2003, at A1.

Despite the TSA's reported denials of involvement, the Torch Concepts study includes references to meetings between Torch Concepts officials and both TSA and Department of Transportation officials. Wired News reported that privacy activist and travel agent Edward Hasbrouck has called the study "a 'smoking gun' that

proves that real passenger data has been used in the development of CAPPS II without attempts to get consent from passengers." Ryan Singel, JetBlue Shared Passenger Data, Wired News, Sept. 18, 2003.

There is a particular urgency for the public to obtain information about the TSA's possible use of actual passenger data to test CAPPS II. The government activity at issue here -- the potential use of actual passenger data to test CAPPS II without the knowledge or consent of those passengers -- raises serious privacy implications that have received considerable media attention in the week since the Torch Concepts study was made public. The New York Times noted on September 20, 2003 that:

JetBlue's announcement comes at a time when many civil liberties groups are warning that privacy rights are becoming victims of the government's struggle against terrorism and the desire of law enforcement and intelligence agencies for quick access to customer information that has traditionally been closely held by corporations.

Philip Shenon, JetBlue Gave Defense Firm Files on Passengers, NY Times, Sept. 20, 2003, at A1.

A number of other news outlets have reported on the study. A search in the Lexis-Nexis U.S. newspaper and wire database for articles on "JetBlue and privacy" between September 15, 2003, when the power point presentation was first made public, and September 22, 2003 returns 34 results from newspapers throughout the country (see attached search results).

News of the study's existence comes at a time when the TSA itself has publicly recognized that the controversial passenger profiling system raises privacy concerns. TSA Administrator Admiral James M. Loy has stated, "CAPPS II is being designed to serve our national security without sacrificing individual privacy. Concerns about privacy are understandable. As we address such concerns, we believe that the public will come to have a higher comfort level in air travel." Press Release, Transportation Security Administration, TSA Selects Lockheed Martin Management and Data Systems to build TSA Passenger Pre-Screening System (February 28, 2003). In a statement issued just last month, the TSA reiterated its

"dedication . . . to developing a system that provides the highest possible level of security, reflects American values, and respects the rights and privacy of the traveling public." Joint Statement On CAPPS II by Nuala O'Connor Kelly, Chief Privacy Officer, U.S. Department of Homeland Security and Admiral James M. Loy, Administrator, Transportation Security Administration (August 25, 2003). It is vital, therefore, that the public obtain as much information about the TSA's possible involvement in testing CAPPS II with actual passenger data without the knowledge or consent of those passengers.

The purpose of EPIC's request is to obtain information directly relevant to the TSA's involvement in the testing of CAPPS II with actual passenger data. The records requested involve the manner and extent to which the TSA is involved in such testing and clearly meet the standard for expedited processing.

Further, as I explain below in support of our request for "news media" treatment, EPIC is "primarily engaged in disseminating information."

#### Request for "News Media" Fee Status

EPIC is a non-profit, educational organization that routinely and systematically disseminates information to the public. This is accomplished through several means. First, EPIC maintains a heavily visited Web site ([www.epic.org](http://www.epic.org)) that highlights the "latest news" concerning privacy and civil liberties issues. The site also features scanned images of documents EPIC obtains under the FOIA. Second, EPIC publishes a bi-weekly electronic newsletter that is distributed to over 15,000 readers, many of whom report on technology issues for major news outlets. The newsletter reports on relevant policy developments of a timely nature (hence the bi-weekly publication schedule). It has been published continuously since 1996, and an archive of past issues is available at our Web site. Finally, EPIC publishes and distributes printed books that address a broad range of privacy, civil liberties and technology issues. A list of EPIC publications is available at our Web site.

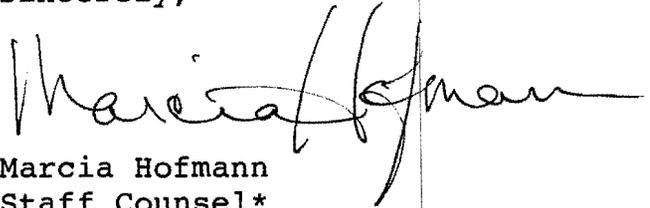
For the foregoing reasons, EPIC clearly fits the definition of "representative of the news media" contained in the FOIA and the Department of Homeland

Security regulations. Indeed, the U.S. District Court for the District of Columbia has held that EPIC is a "news media" requester under the FOIA. See Electronic Privacy Information Center v. Department of Defense, 241 F. Supp. 2d 5 (D.D.C. 2003). Based on our status as a "news media" requester, we are entitled to receive the requested records with only duplication fees assessed. Further, because disclosure of this information will "contribute significantly to public understanding of the operations or activities of the government," as described above, any duplication fees should be waived.

Thank you for your consideration of this request. As applicable Department regulations provide, I will anticipate your determination on our request for expedited processing within ten (10) calendar days. Should you have any questions about this request, please feel free to call me at 202-483-1140 ext. 112.

Under penalty of perjury, I hereby affirm that the foregoing is true and correct to the best of my knowledge.

Sincerely,

A handwritten signature in black ink, appearing to read "Marcia Hofmann". The signature is fluid and cursive, with a long horizontal stroke at the end.

Marcia Hofmann  
Staff Counsel\*  
DC Bar admission pending