



Homeland
Security

September 13, 2010

Ms. Rachel Gozhansky
EPIC Clerk
Electronic Privacy Information Center
1718 Connecticut Avenue, NW
Suite 200
Washington D.C. 20009

Re: **DHS/OS/PRIV 10-0795**

Dear Ms. Gozhansky:

This is our final response to your Freedom of Information Act (FOIA) request to the Department of Homeland Security (DHS), dated June 15, 2010, and received by this office on June 24, 2010. You are seeking copies of the following agency records:

1. The DHS's report in response to Homeland Security Presidential Directive 24.
2. All agreements between DHS and any other entity, dated between June 5, 2009 and present, concerning facial recognition systems.
3. All procurement specifications dated between June 5, 2009 and present concerning facial recognitions systems.
4. All reports dated between June 5, 2009 and present concerning facial recognition systems.

A search of the office for the Executive Secretariat, the Office of Policy, the Management Directorate, the Science and Technology Directorate, U.S. Customs and Border Protection, and the U.S. Visitor and Immigrant Status Indicator Technology Program (US-VISIT), for documents responsive to your request, produced a total of 721 pages. Of those pages, I have determined that 379 pages of the records are releasable in their entirety, 49 pages are partially releasable, and 96 pages are withheld in their entirety pursuant to Title 5 U.S.C. § 552: (b)(2)(high), (b)(5), (b)(6), FOIA Exemptions 2(high), 5, and 6.

Enclosed are 428 pages with certain information withheld as described below.

FOIA Exemption 6 exempts from disclosure personnel or medical files and similar files the release of which would cause a clearly unwarranted invasion of personal privacy. This requires a balancing of the public's right to disclosure against the individual's right privacy. The privacy interests of the individuals in the records you have requested outweigh any minimal public interest in disclosure of the information. Any private interest you may have in that information does not factor into the aforementioned balancing test.

Ninety-six (96) pages are withheld in full as described below.

FOIA Exemption 2(high) protects information applicable to internal administrative and personnel matters, such as operating rules, guidelines, and manual of procedures of examiners or adjudicators, to the extent

that disclosure would risk circumvention of an agency regulation or statute, impede the effectiveness of an agency's activities, or reveal sensitive information that may put the security and safety of an agency activity or employee at risk. Whether there is any public interest in disclosure is legally irrelevant. Rather, the concern under high 2 is that a FOIA disclosure should not benefit those attempting to violate the law and avoid detection.

FOIA Exemption 5 protects from disclosure those inter- or intra-agency documents that are normally privileged in the civil discovery context. The three most frequently invoked privileges are the deliberative process privilege, the attorney work-product privilege, and the attorney-client privilege. After carefully reviewing the responsive documents, I determined that portions of the responsive documents qualify for protection under the deliberative process privilege.

The deliberative process privilege protects the integrity of the deliberative or decision-making processes within the agency by exempting from mandatory disclosure opinions, conclusions, and recommendations included within inter-agency or intra-agency memoranda or letters. The release of this internal information would discourage the expression of candid opinions and inhibit the free and frank exchange of information among agency personnel.

You have a right to appeal the above withholding determination. Should you wish to do so, you must send your appeal and a copy of this letter, within 60 days of the date of this letter, to: Associate General Counsel (General Law), U.S. Department of Homeland Security, Washington, D.C. 20528, following the procedures outlined in the DHS regulations at 6 C.F.R. § 5.9. Your envelope and letter should be marked "FOIA Appeal." Copies of the FOIA and DHS regulations are available at www.dhs.gov/foia.

As for the remaining pages located, I have determined that 147 pages, if responsive, are under the purview of the National Protection and Programs Directorate (NPPD), another DHS component; therefore, I am transferring your request and 147 pages of documents to the Acting FOIA Officer for NPPD, Gayle Worthy, for a review of responsiveness, processing and direct response to you. You may contact that office in writing at U.S. Department of Homeland Security, National Protection and Programs Directorate, Mail Stop 0380, Washington, D.C. 20528 or via telephone at 703-235-2211.

In addition, I have determined that 50 pages, if responsive, are under the purview of the DHS Management Directorate (MGMT). Therefore, I am transferring your request and 50 pages of documents to the FOIA Officer for MGMT, Mark Dorgan, for processing and direct response to you. You may contact that office in writing at U.S. Department of Homeland Security, Management Directorate, Washington, D.C. 20528 or via telephone at 202-447-3106.

Additional offices and components have been tasked to search for responsive records, and your request has been referred to the following offices for direct response to you.

- Transportation Security Administration (TSA) Acting FOIA Officer Howard Plofker. You may contact that office in writing at Transportation Security Administration, 601 S. 12th Street, 11th Floor, East Tower, Arlington, VA 22202 or via telephone at 1-866-FOIA-TSA or 571-227-2300.
- U.S. Secret Service (USSS) FOIA Officer Latita Payne. You may contact that office in writing at United States Secret Service, 245 Murray Drive, Building 410, Washington, D.C. 20223 or via telephone at 202-406-6370.
- U.S. Coast Guard (USCG) FOIA Officer Donald Taylor. You may contact that office in writing at U.S. Coast Guard, Commandant (CG-611), 2100 2nd Street, S.W., Attn: FOIA Coordinator, Washington, D.C. 20593-0001 or via telephone at 202-475-3526.

- Federal Emergency Management Agency (FEMA) Acting FOIA Officer for FEMA, Katina Hill. You may contact that office in writing at Federal Emergency Management Agency, 500 C Street, S.W., Room 840, Washington, D.C. 20472 or via telephone at 202-646-3323.
- U.S. Immigration and Customs Enforcement (ICE) FOIA Officer for ICE, Catrina Pavlik-Keenan. You may contact that office in writing at U.S. Immigration and Customs Enforcement, 800 North Capitol Street, N.W., 5th Floor, Suite 585, Washington, D.C. 20528 or via telephone at 202-732-0300.

Provisions of the FOIA allow us to recover part of the cost of complying with your request. In this instance, because the cost is below the \$14 minimum, there is no charge. 6 CFR § 5.11(d)(4).

If you need to contact our office again about this matter, please refer to **DHS/OS/PRIV 10-0795**. You may contact this office at our toll-free telephone number, 866-431-0486, or at 703-235-0790.

Sincerely,



Vania T. Lockett
Associate Director, Disclosure & FOIA Operations

Enclosures: Responsive Documents, 428 pages