

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

ELECTRONIC PRIVACY INFORMATION CENTER,)	
)	
Plaintiff,)	Civil Action No. 1:15-cv-667 (CRC)
)	
v.)	
)	
UNITED STATES DRUG ENFORCEMENT ADMINISTRATION,)	
)	
Defendant.)	

SECOND DECLARATION OF KATHERINE L. MYRICK

I, Katherine L. Myrick, pursuant to the provisions of 28 U.S.C. § 1746, declare as follows:

1. I submit this Second Declaration in further support of Defendant Drug Enforcement Administration's ("DEA") motion for summary judgment, and in opposition to Plaintiff's cross-motion for summary judgment. I am currently assigned as the Chief of the Freedom of Information/Privacy Act Unit (the "FOIA Unit") of the United States Department of Justice ("DOJ"), Drug Enforcement Administration, located at DEA's Headquarters in Arlington, Virginia. I have over thirty-five years of experience at DEA responding to requests for records and, due to the nature of my official duties, I am familiar with the policies and practices of DEA and the DOJ related to searching for, processing, and releasing DEA records responsive to FOIA and Privacy Act requests.
2. I am familiar with the correspondence of Plaintiff, Electronic Privacy Information Center ("EPIC"), to DEA that is the basis of this action.
3. The statements I make in this Declaration are made on the basis of my review and

analysis of the file in this case, my own personal knowledge, and/or information acquired by me through the performance of my official duties.

4. DEA submits this Second Declaration to elaborate on and/or clarify portions of my First Declaration.

5. Regarding paragraph 19 of my First Declaration, I understand that the Plaintiff has questioned the basis for using the term “final” to narrow the results of electronic searches for Privacy Impact Assessments (“PIAs”) that were conducted using the terms “Privacy Impact Assessment” and “PIA.” I am augmenting paragraph 19 of my First Declaration in order to provide a more detailed explanation of the decision to use the word “final” to narrow the electronic search results. As I stated in my First Declaration, the Chief Information Officer Support Unit (“CIOSU”) conducted electronic searches of its “Share Drive,” SharePoint, and relevant electronic mail accounts using the terms “Privacy Impact Assessment” and “PIA.” Those searches yielded a large number of results. The Plaintiff had previously clarified that it sought only final PIAs and not drafts. Plaintiff also did not seek records that simply contained the term “Privacy Impact Assessment” or “PIA.” It is the customary practice of the CIOSU to use the word “final” in the electronic file names of final, as opposed to draft, PIAs being stored electronically in the CIOSU “Share Drive” and SharePoint site. A narrowing search using the term “final” would locate final PIAs even though the final PIA itself did not contain the word “final.” Further, it is the customary practice of the CIOSU to use the word “final” in an electronic mail message transmitting a final PIA. For these reasons, the CIOSU’s search using the terms “Privacy Impact Assessment” and “PIA,” followed by a narrowing search using the term “final,” was likely to locate all final, as opposed to draft, DEA PIAs and did not exclude

potentially responsive records. In addition, the results of the searches that the CIOSU conducted using the additional search terms identified in paragraph 19 of my First Declaration were not narrowed using the word “final.” The searches using these additional search terms did not yield any additional responsive records.

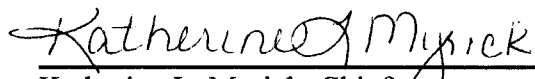
6. I understand that the Plaintiff suggested in its opposition brief that DEA should have consulted with the DEA’s SCOP about potential locations of PIAs. I am elaborating on my First Declaration in order to explain why the “consultation” that Plaintiff has suggested is not likely to lead to the discovery of any additional final DEA PIAs. While DEA’s SCOP has overall responsibility for DEA’s privacy program and policies, he has delegated the day-to-day creation, coordination, and completion of privacy documentation, including PIAs, to the CIOSU. DEA’s SCOP reviews, approves, and signs final PIAs, but it is the responsibility of the CIOSU to transmit, publish online, and store record copies of final DEA PIAs, among other things. Thus, there is no reasonable basis to believe that the SCOP would be able to identify the location of any additional final DEA PIAs that CIOSU personnel did not locate through the searches they already conducted based on their knowledge of, and experience with, privacy documentation requirements and DEA’s day-to-day implementation of and compliance with those requirements.

7. The Plaintiff’s FOIA request did not seek copies of determination letters, and the Plaintiff did not modify its request to seek determination letters. Rather, DEA offered to provide the determination letters that it had already located because it had determined that there were no final Privacy Threshold Analyses or Initial Privacy Assessments that could be provided in response to Part 2 of the Plaintiff’s request. The Plaintiff did not ask DEA to conduct another search at the time it agreed to accept the determination letters that had already been found. I

understand the Plaintiff now argues that DEA should have conducted an additional search for determination letters. Although I do not believe that the FOIA requires DEA to conduct a search for determination letters in these circumstances, as a gesture of good faith, after the Plaintiff filed its opposition brief, the CIOSU conducted a search for determination letters by manually reviewing every electronic file contained in the folder entitled "Determination Letters" in the CIOSU's "Share Drive." Copies of all determination letters received from the U.S. Department of Justice's Office of Privacy and Civil Liberties ("OPCL") are kept in that folder. The CIOSU also conducted a manual search of the CIOSU's paper files. There is no other location in DEA where determination letters not contained in the CIOSU "Share Drive" and CIOSU paper files would likely be found. The CIOSU's search for determination letters did not result in the identification of any determination letters in addition to the ones that the CIOSU previously identified and that the Office of Information Policy processed and transmitted to Plaintiff by letter dated August 27, 2015.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on March 9, 2016.



Katherine L. Myrick, Chief
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