

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA**

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| ELECTRONIC PRIVACY INFORMATION |) | |
| CENTER, |) | |
| |) | |
| Plaintiff |) | |
| |) | |
| v. |) | Civil Action No. 14-cv-317 (EGS) |
| |) | |
| DRUG ENFORCEMENT ADMINISTRATION, |) | |
| |) | |
| Defendant |) | |

DEFENDANT’S STATEMENT OF MATERIAL FACTS NOT IN DISPUTE

Pursuant to Local Civil Rule 7(h)(1) of the Rules of the United States District Court for the District of Columbia, defendant Drug Enforcement Administration hereby submits the following statement of material facts as to which the defendant contends there is no genuine issue in connection with its motion for summary judgment under Rule 56(a) of the Federal Rules of Civil Procedure.

1. On September 25, 2013, EPIC mailed a letter to the Freedom of Information Operations Unit of the Drug Enforcement Administration requesting Government records under the Freedom of Information Act. Decl. of Katherine L. Myrick ¶ 7 (attached as Exhibit 1).

2. In a letter dated October 24, 2013, DEA acknowledged receipt of the September 25, 2013, request and indicated that it had been assigned case number 14-00009-F. Myrick Decl. ¶ 8.

3. In a letter dated November 13, 2013, DEA informed EPIC that the September 25, 2013, request did not meet the requirements of the FOIA because it did not reasonably describe the requested records and did not comply with applicable Department of Justice regulations. The letter invited EPIC to reformulate its request by specifying the DEA records systems and offices to be searched. The letter informed EPIC that if DEA did not receive a reformulated request

within 30 days, DEA would assume that EPIC did not wish to pursue its request and would administratively close the request. Myrick Decl. ¶ 9.

4. In a letter dated November 15, 2013, EPIC submitted a revised request seeking four categories of documents “from DEA Headquarters and DEA division offices in Atlanta, Houston, Los Angeles, and Washington, D.C.”:

- 1) All Hemisphere training modules, request forms, and similar final guidance documents that are used in the day-to-day operation of the program.
- 2) Any analyses, memos, opinions, or other communications that discuss the legal basis of the program.
- 3) Any analyses, memos, opinions, or other communications that discuss the privacy impact of the program.
- 4) Any presentations, analyses, memos, opinions or other communications for Congress that cover Hemisphere’s operations.

Myrick Decl. ¶ 10.

5. The DEA identified six offices at DEA Headquarters likely to have responsive records and tasked each of them with searching for responsive records: the Operations Division, the Intelligence Division, the Office of Training, the Office of Chief Counsel, the Office of Information Systems, and the Office of Congressional and Public Affairs. Myrick Decl. ¶ 16. The FOIA Unit also tasked the Atlanta, Houston, Los Angeles, and Washington, D.C., division offices with searching for responsive records. Myrick Decl. ¶ 16. Some of these offices knew immediately, and confirmed to the FOIA Unit, that they did not have any responsive documents. Myrick Decl. ¶¶ 18, 22. Other offices searched the locations within each office where responsive documents were likely to be found and returned any responsive documents to the FOIA Unit. Myrick Decl. ¶¶ 17, 19–21, 23–27. The FOIA Unit also searched the Narcotics and Dangerous Drugs Information System (NADDIS), which is the index to and the practical means by which DEA retrieves investigative reports and information from the Investigative Reporting and Filing

system, the DEA's investigative and intelligence Privacy Act system of records. Myrick Decl. ¶ 27.

6. DEA identified 319 pages of responsive documents subject to FOIA. Myrick Decl. ¶ 11.

7. DEA mailed its response to EPIC's FOIA request on July 21, 2014. Of the 319 pages of responsive documents, 39 pages were released in full, 176 pages were released in part and withheld in part, and 104 pages were withheld in full. Myrick Decl. ¶ 11.

8. DEA's counsel sent an electronic version of the response package to EPIC's counsel on July 23, 2014. Myrick Decl. ¶ 11.

9. By letter dated July 25, 2014, DEA provided EPIC corrected copies of four pages of the July 21, 2014, release. The corrected pages contained corrected markings but did not change the material withheld or released on the four pages. Myrick Decl. ¶ 13.

10. DEA later learned that its search efforts had unintentionally excluded a search avenue DEA had intended to pursue. Pursuing that avenue located 4 pages of responsive documents subject to FOIA that had not previously been located. Myrick Decl. ¶ 14.

11. In all, DEA located 323 pages of responsive documents subject to FOIA. Of these 323 pages, 41 were released in full, and 178 pages were withheld in part and 104 pages were withheld in full based on FOIA Exemptions 5, 6, 7(C), 7(D), 7(E), and 7(F). Myrick Decl. ¶ 48. Also, on one page, DEA redacted a document that was not itself responsive to EPIC's request but contained a copy of an email message that was responsive to EPIC's request. Myrick Decl. ¶ 30.

12. The attached Declaration of Katherine L. Myrick provides a detailed explanation of the documents at issue in this case that DEA withheld in full or in part from EPIC's FOIA request.

Date: September 29, 2014

Respectfully submitted,

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