



April 20, 2012

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

Dear Ms. Payne:

This letter constitutes a 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"). EPIC seeks the technical specifications of body scanner hardware deployed at United States Secret Service ("USSS") protective sites, including the limitations on image capture and storage, and related documents. Additionally, EPIC seeks agency records concerning radiation and health testing of body scanner devices deployed at USSS protective sites.

Background

On December 23, 2011, the United States Department of Homeland Security ("DHS") published a Privacy Impact Assessment for the Secret Service Use of Advanced Imaging Technology.¹ The Privacy Impact Assessment states that the USSS, a component of DHS, is deploying body scanner technology at USSS protective sites.² Body scanner technology "creates an image of the full body that highlights anomalies that are on the body," and will be used "as a secondary means of personnel screening at [Secret Service] protected sites . . . after the primary screening measures indicate that an individual requires an additional level of screening."³ The use of body scanners raises serious privacy concerns. Body scanner systems produce detailed, three-dimensional images of individuals. Security experts have described this technology as the equivalent of a "physically invasive strip-search."⁴

The PIA states, "the Secret Service employee who examines the image is at a remote location and cannot see the person who is being screened, only the image produced by the [body scanner]."⁵ Additionally, the "Secret Service employee that is in the room with the person being

¹ U.S. DEP'T OF HOMELAND SEC., DHS/USSS/PIA-008, SECRET SERVICE USE OF ADVANCED IMAGING TECHNOLOGY (Dec. 23, 2011) (hereafter "DHS/USSS/PIA-008").

² *Id.* at 2.

³ *Id.*

⁴ Joe Sharkey, *Whole-Body Scans Pass First Airport Tests*, N.Y. Times, Apr. 6, 2009 available at http://www.nytimes.com/2009/04/07/business/07road.html?_r=1; see also Schneier on Security, June 9, 2005, http://www.schneier.com/blog/archives/2005/06/backscatter_x-r.html ("[whole body imaging] technology is incredibly intrusive. I don't think that people should be subjected to strip searches before they board airplanes.").

⁵ *Id.*

imaged can communicate with the Secret Service employee who examines the image, but cannot view the image.”⁶

Pursuant to 18 U.S.C. § 3056(e)(1), the Secret Service has statutory authority to protect National Special Security Events (“NSSE”). The statute states, “the United States Secret Service is authorized to participate, under the direction of the Secretary of Homeland Security, in the planning, coordination, and implementation of security operations at special events of national significance, as determined by the President.”⁷ NSSE designation factors include the “anticipated attendance by U.S. officials and foreign dignitaries, [the] size of the event”⁸ and events of “historical, political, and symbolic significance that may heighten the possibility of terrorist attacks.”⁹ Past NSSE events have included Presidential Inaugurations, a G8 summit, the 2002 Winter Olympic Games, and numerous Super Bowl events.¹⁰ When the Secretary of Homeland Security designates an event as an NSSE, “the Secret Service assumes its mandated role as the lead agency for the design and implementation of the operational security plan.”¹¹ Because thousands of people attend NSSE events, the use of body scanners at these events by Secret Service can greatly impact the privacy of many people.

EPIC has filed several Freedom of Information Act requests to DHS regarding body scanners deployed by the Transportation Security Administration (“TSA”) at domestic airports.¹² EPIC also filed a Freedom of Information Act request with the Department of Justice (“DOJ”) to obtain records concerning body scanner technology deployed at federal courthouses.¹³ As a result of these requests, EPIC has received hundreds of pages of contracts, traveler complaints, TSA specifications, and other documents from DHS and DOJ.

DHS uses Rapiscan Systems for body scanners deployed at USSS protective sites.¹⁴ Rapiscan Systems is the same manufacturer used for body scanner technology deployed by the TSA.¹⁵ Although DHS claims that the body scanner technology it deploys cannot store, transmit, or print images that it creates,¹⁶ Rapiscan Systems technology does have the capability to “store the scanned image onto the system hard drive for retrieval and review at a later time.”¹⁷ Further, certain Rapiscan Systems technology permits images “to be retrieved by a variety of filter types

⁶ *Id.*

⁷ 18 U.S.C. § 3056(e)(1).

⁸ Shawn Reese, *National Special Security Events*, CONGRESSIONAL RESEARCH SERVICE, 1 (Mar. 24, 2009), available at <http://www.fas.org/sgp/crs/natsec/RS22754.pdf>.

⁹ *Id.* at n.7.

¹⁰ Shawn Reese, *National Special Security Events*, CONGRESSIONAL RESEARCH SERVICE, 4 (Nov. 6, 2007), available at <http://fpc.state.gov/documents/organization/95048.pdf>.

¹¹ United States Secret Service: National Special Security Events, <http://www.secretservice.gov/nsse.shtml> (last visited Apr. 16, 2012). See also *National Special Security Event Begins Saturday*, HAWAII REPORTER, Nov. 11, 2011, <http://www.hawaiireporter.com/national-special-security-event-begins-saturday/123>.

¹² EPIC, EPIC v. Department of Homeland Security-Body Scanners, http://epic.org/privacy/airtravel/backscatter/epic_v_dhs.html; EPIC, EPIC v. Department of Homeland Security – Full Body Scanner Radiation Risks, http://epic.org/privacy/airtravel/backscatter/epic_v_dhs_radiation.html.

¹³ EPIC, EPIC v. DOJ (USMS), http://epic.org/privacy/body_scanners/epic_v_doj/default.html.

¹⁴ DHS/USSS/PIA-008, 4.

¹⁵ Rapiscan Systems, Technologies: Backscatter, <http://www.rapiscansystems.com/en/technologies/backscatter> (last visited Apr. 9, 2012).

¹⁶ DHS/USSS/PIA-008, 4.

¹⁷ Rapiscan Systems, Rapiscan Image Archiving, http://www.rapiscansystems.com/en/products/bpi/productsrapiscan_image_archiving (last visited Apr. 9, 2012).

[and] available image enhancements functions (such as Crystal Clear, Inverse, and Black and White) . . .”¹⁸

In addition to privacy concerns, body scanners may also pose health risks. Experts recognize that frequent exposure to radiation is harmful. The Environmental Protection Agency has documented that frequent exposure to radiation, even in low individual doses, can lead to cancer and birth defects.¹⁹ Studies on Terahertz Wave (T-wave) revealed that exposure to such radiation can cause DNA damage that results in cancer.²⁰ A report by the European Commission found that “it is evident any exposure to ionizing radiation, however small, may have health effects in the longer term.”²¹ American scientists have also expressed concerns regarding the aggregate effect of body scanner radiation on the traveling population.²²

Documents Requested

EPIC requests the following agency records in possession of DHS:

1. All contracts, instructions, policies, and/or procedures that include provisions concerning the capability of AIT body scanners deployed at USSS protective sites to obscure, degrade, store, transmit, reproduce, retain, or delete images of individuals;
2. All unfiltered or unobscured images captured using AIT body scanners deployed at USSS protective sites;
3. All documents, including but not limited to presentations, images, and videos, used for training persons to use AIT body scanners at USSS protective sites;
4. All documents concerning data breaches of images generated by AIT body scanners deployed at USSS protective sites;
5. All records concerning USSS tests regarding AIT body scanners deployed at USSS protective sites radiation emission or exposure; and
6. All records concerning third party tests regarding AIT body scanners deployed at USSS protective sites radiation emission or exposure.

Request for Expedited Processing

This request warrants expedited processing because it is made by “a person primarily engaged in disseminating information . . .” and it pertains to a matter about which there is an

¹⁸ *Id.*

¹⁹ Jonathan Tirone, *Airport Body Scanning Raises Radiation Exposure, Committee Says*, BLOOMBERG, Feb. 5, 2010, <http://www.bloomberg.com/apps/news?pid=newsarchive&sid=aoG.YbbvnkzU>.

²⁰ How Terahertz Waves Tear Apart DNA, THE PHYSICS ARXIV BLOG, Oct. 30, 2009, <http://www.technologyreview.com/blog/arxiv/24331/>.

²¹ European Commission, *Communication from the Commission to the European Parliament and the Council on the Use of Security Scanners at EU Airports*, June 15, 2010, available at <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=COM:2010:0311:FIN:EN:PDF>.

²² Kate Schneider, “Naked” Scanners May Increase Cancer Risk, NEWS.COM.AU, May 19, 2010, <http://www.news.com.au/travel/news/naked-scanners-may-increase-cancer-risk/story-e6frfq80-1225868706270>. See also, Drs. John Sedat, David Agard, Marc Shuman, and Robert Stroud, *Letter of Concern to Dr. John P. Holdren, Assistant to the President for Science and Technology*, Apr. 6, 2010, available at <http://www.npr.org/assets/news/2010/05/17/concern.pdf>; David Brenner, *Congressional Biomedical Research Caucus: Airport Screening: The Science and Risks of Backscatter Imaging*, 2010, available at <http://blip.tv/file/3379880>.

"urgency to inform the public about an actual or alleged federal government activity." 5 U.S.C. § 552(a)(6)(E)(v)(II) (2008); *Al-Fayed v. CIA*, 254 F.3d 300, 306 (D.C. Cir. 2001).

EPIC is "primarily engaged in disseminating information." *American Civil Liberties Union v. Department of Justice*, 321 F. Supp. 2d 24, 29 n.5 (D.D.C. 2004).

For many reasons, there is a particular urgency for the public to obtain information about the privacy implications of body scanner technology.

As mentioned above, the Secret Service is often charged with protecting events attended by thousands of people, such as Presidential Inaugurations, G8 summits, and Super Bowl activities. Therefore, the use of body scanners by the Secret Service at these events can affect thousands of people.

Moreover, in July 2011, the United States Court of Appeals for the D.C. Circuit ruled that TSA violated the Administrative Procedure Act when it installed body scanners in airports for primary screening without first soliciting public comment.²³ The Court held that "by producing an image of the unclothed passenger, [body scanner technology] intrudes upon his or her personal privacy" in a way that "substantively affects the public to a degree sufficient to implicate the policy interests animating notice-and-comment rulemaking."²⁴ The Court then ordered TSA to conduct a public rulemaking on the use of body scanners for primary screening.²⁵ This rulemaking has still not been undertaken.

Additionally, there has been bicameral support for legislation that would require DHS to contract with an independent laboratory concerning the body scanner technology use by the TSA at airline checkpoints.²⁶ The bills recognize the negative health effects on those screened by body scanner machines, including frequent air travelers, flight crews, and individuals with greater sensitivity to radiation, such as children, pregnant women, the elderly, and cancer patients. DHS should expeditiously release any information concerning radiation emission or exposure of body scanners deployed at USSS protective sites.

Request for "News Media" Fee Status

EPIC is a "representative of the news media" for fee waiver purposes. *EPIC 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, as addressed above, NSSE can potentially subject hundreds of thousands of people to Secret Service body scans. It is therefore imperative that the public is made aware of body scanner privacy and health implications. Release of the requested records will "contribute significantly to public understanding of the operations or activities of the government," because the records will inform the public about, *inter alia*, the practices, policies, and technical capabilities concerning Secret Service body scanners. Therefore, any duplication fees should be waived.

²³ *Elec. Privacy Info. Ctr. v. U.S. Dept. of Homeland Sec.*, 653 F.3d 1 (D.C. Cir. 2011).

²⁴ *Id.* at 6.

²⁵ *Id.* at 11.

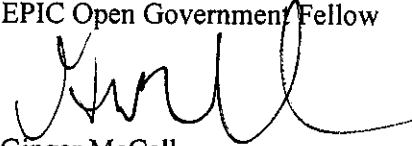
²⁶ H.R. 4068, 112th Cong. (2012); S. 2044, 112th Cong. (2012).

Thank you for your consideration of this request. As 6 C.F.R. § 5.5(d)(4) provides, I will anticipate your determination on our request within ten (10) calendar days. For questions regarding this request, please contact 202-483-1140 ext. 102 or foia@epic.org.

Respectfully submitted,



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