



**Transportation
Security
Administration**

MAR - 2 2010

FOIA Case Number: TSA09-0510 and TSA10-0260

Mr. John Verdi
EPIC Open Government Project
1 1718 Connecticut Ave NW, Ste #200
Washington, D.C. 20009

Dear Mr. Verdi:

This letter is in response to your Freedom of Information Act (FOIA) requests to the Transportation Security Administration (TSA) dated April 14, 2009 and July 2, 2009, respectively, on behalf of the Electronic Privacy Information Center ("EPIC") in which you are seeking records dealing with TSA's advanced imaging technology program. This response pertains to those documents over which TSA exercises control, including the following documents identified in your requests:

TSA09-510 (2nd interim response):

- "1. All documents concerning the capability of passenger imaging technology to obscure, degrade, store, transmit, reproduce, retain, or delete images of individuals;
2. All contracts that include provisions concerning the capability of passenger imaging technology to obscure, degrade, store, transmit, reproduce, retain, or delete images of individuals; and
3. All instructions, policies, and/or procedures concerning the capability of passenger imaging technology to obscure, degrade, store, transmit, reproduce, retain, or delete images of individuals.

TSA10-0260:

1. All unfiltered or unobscured images captured using Whole Body Imaging Technology (WBI),
2. All contracts entered into by DHS pertaining to WBI systems, including contracts for hardware, software or training.
3. All documents detailing the technical specifications of WBI hardware, including any limitations on image capture, storage or copy.
4. All documents, including but not limited to presentations, images and videos used for training persons to use WBI systems.
5. All complaints related to the use of WBI and all documents relating to the resolution of those complaints.

6. All documents concerning data breaches of images generated by WBI technology.”

Your request has been processed under the FOIA, 5 U.S.C. § 552.

With respect to Item 1, of TSA09-510, a search within the TSA was conducted and documents (2 pages) responsive to your request were located. Two pages are being released in full. In response to Item 3, we are continuing our review of additional documents. In our interim response to you dated December 1, 2009, we provided you responsive records for item 2.

In response to items 1-4, 6, of TSA10-0260, we are continuing our search and review of responsive documents.

With respect to Item 5, of TSA10-0260, a search within the TSA was conducted and documents (49 pages) responsive to your request were located. Seven pages are being released in full. Portions of 42 pages are being withheld under Exemptions “High” and “Low” (b)(2),(b)(5) and (b)(6) of the FOIA. We have inserted notations in the attached documents to identify the portions deleted and the reasons therefore. A more complete explanation of these exemptions is provided below.

Exemption (b)(2)

Exemption 2 of the FOIA exempts from mandatory disclosure records that are “related solely to the internal personnel rules and practices of an agency.” The courts have interpreted the exemption to encompass two distinct categories of information: (1) internal matters of a relatively trivial nature -- often referred to as “Low” 2 information; and (2) more substantial internal matters, the disclosure of which would risk circumvention of a legal requirement -- often referred to as “High” 2 information.

Exemption “low” 2 of the FOIA protects from disclosure internal matters of a relatively trivial nature. The Supreme Court has held that the very task of processing and releasing some requested records would place an administrative burden on the agency that would not be justified by any genuine public benefit. Low 2 serves to relieve the agency from the administrative burden of processing FOIA requests when internal matters are not likely to be the subject of public interest. For example, routine internal personnel matters, such as information relating to performance standards and leave practices, are included within the scope of the exemption. Exemption 2 has also been construed to permit the nondisclosure of mundane, yet far more pervasive administrative data -- such as file numbers, mail routing stamps, initials, data processing notations, brief references to previous communications, and other similar administrative markings.

I have determined that certain portions of the requested records are properly withheld from disclosure as “High” 2 information, in that they contain internal administrative and/or personnel matters to the extent that disclosure would risk circumvention of a regulation or statute or impede the effectiveness of law enforcement activities. A more detailed explanation follows.

Sensitive materials are exempt from disclosure under “High” 2 when the requested document is predominantly internal, and disclosure significantly risks circumvention of a regulation or statute,

including civil enforcement and regulatory matters. 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.

Exemption (b)(5)

Exemption 5 of the FOIA 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. Of those, I have determined that portions of the documents you have requested are appropriately withheld under the deliberative process privilege. Disclosure of those records would injure the quality of future agency decisions by discouraging the open and frank policy discussions between subordinates and superiors.

Exemption (b)(6)

Exemption 6 of the FOIA permits the government to withhold all identifying information that applies to a particular individual when the disclosure of such information “would constitute a clearly unwarranted invasion of personal privacy.” This requires a balancing of the public’s right to disclosure against the individual’s right to privacy. After performing this analysis, I have determined that the privacy interest in the identities of individuals in the records you have requested outweigh any minimal public interest in disclosure of the information. Please note that any private interest you may have in that information does not factor into the aforementioned balancing test.

Fees

TSA is waiving any applicable fees associated with the processing of your request.

In addition, as TSA’s s response to this request is currently the subject of litigation, the administrative appeal rights that normally accompany a FOIA response are not being provided.

If you have any questions regarding this release, please contact Department of Justice Attorney Jesse Grauman. He can be reached directly at 202-514-2489.

Sincerely,



for Kevin J. Janet
FOIA Officer
Freedom of Information Act Office

Enclosure