



May 6, 2004

BY FACSIMILE - (202) 324-3752

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

Dear Mr. Hardy:

This letter constitutes an expedited 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").

We are seeking the following agency records (including but not limited to electronic records): any records concerning, involving or related to the FBI's acquisition of passenger data from any airline since September 11, 2001. This request includes, but is not limited to, any records discussing the legal requirements governing Bureau access and use of air passenger data.

Request for Expedited Processing

This request warrants expedited processing because it pertains to a matter about which there is an "urgency to inform the public about an actual or alleged federal government activity," and the request is made by "a person primarily engaged in disseminating information."

On April 28, 2004, EPIC received a document from the National Aeronautics and Space Administration (NASA) in response to a Freedom of Information request indicating that Northwest Airlines "gave the FBI one year's [passenger] data on 6000 CD's" (attached hereto).

On May 1, 2004, the New York Times published a front page article on the disclosure, reporting that "in the days after the Sept. 11 terrorist attacks in 2001, the nation's largest airlines, including American, United and Northwest, turned over millions of passenger records to the Federal Bureau of Investigation." John Schwartz and Micheline Maynard, The N.Y. Times, F.B.I. Got Records on Air Travelers, May 1, 2004, at A1. This article was republished in the Star Tribune (Minneapolis, MN), Omaha World-Herald, Atlanta Journal Constitution, Pioneer Press (Saint Paul, MN), The Ledger (Lakeland, FL), Los Angeles Daily News, San Jose Mercury News, Ocala Star-Banner (Ocala, FL), For Worth Star Telegram, Spartanburg Herald Journal (Spartanburg, SC), Times-Picayune (New Orleans, LA), Chattanooga Times Free Press (Chattanooga, TN), Kansas City Star, and Business Times (Singapore). On May 2, 2004, the Washington Post also published a story about the airlines' disclosures of passenger data to the FBI. Sara Kehaulani Goo, Airlines Confirm Giving Passenger Data to FBI After 9/11, May 2, 2004, at A14. This article was reprinted in the Seattle Times, Indianapolis Star, and Oakland Tribune (Oakland, CA). The Wall Street Journal also published a story on the disclosure. Amy Schatz, Airline Disclosure of Traveler Data Exceeded Prior Acknowledgements, Wall Street Journal, May 3, 2004, at A4.

There is a particular urgency for the public to obtain information about the FBI's acquisition of air passenger information from airlines. The government activity at issue here -- the sweeping collection of massive amounts of passenger information without any suspicion that the vast majority of those affected have committed wrongdoing -- raises serious privacy implications, particularly in light of evidence that numerous airlines have disclosed passenger data to various government agencies and contractors. Prior to the most recent disclosure, American Airlines became the third airline, after JetBlue Airways and Northwest Airlines, to admit turning over passenger information at the government's request. See Press Release, AMR Corporation, American Airlines Passenger Data Released In June 2002 (Apr. 9, 2004). The NASA document obtained by EPIC under the FOIA and subsequent news stories indicate that such disclosures are more commonplace and widespread than previously thought.

Indeed, government collection of passenger data from airlines is the focus of increasing Congressional inquiry. The Chairman and Ranking Member of the Senate Committee on

Governmental Affairs have twice called on the Transportation Security Administration to explain its role in obtaining information from two separate airlines (see attached press releases) (noting that government acquisition of passenger data involves "privacy of personal information" and thus requires "openness and public trust"). Furthermore, members of the Senate Committee on Commerce, Science and Transportation repeatedly asked NASA Administrator Sean O'Keefe about NASA's acquisition of passenger information from Northwest Airlines during a hearing on the Bush administration's proposed space exploration program. See U.S. Senate Committee on Commerce, Science and Transportation Holds a Hearing on Administration Space Initiative, 108th Cong. (Jan. 27, 2004).

Other agencies have recognized the urgency to inform the public about government collection and use of passenger data by granting expedited processing for requests involving such matters. EPIC has submitted four FOIA requests to the Transportation Security Administration seeking information about that agency's role in the collection and use of passenger data from various airlines. All of these requests have been granted expedited processing. Furthermore, NASA granted expedited processing of two requests EPIC submitted seeking information about the agency's acquisition of passenger information and subsequent passenger profiling research.

The purpose of EPIC's request is to obtain information directly relevant to the FBI's collection of vast amounts of passenger data from major airlines. The records requested involve the manner and extent to which the FBI is involved in such activity and clearly meet the standard for expedited processing.

Further, as I explain below in support of our request for "news media" treatment, EPIC is "primarily engaged in disseminating information."

#### Request for "News Media" Fee Status

EPIC is a non-profit, educational organization that routinely and systematically disseminates information to the public. This is accomplished through several means. First, EPIC maintains a heavily visited Web site ([www.epic.org](http://www.epic.org)) that highlights the "latest news"

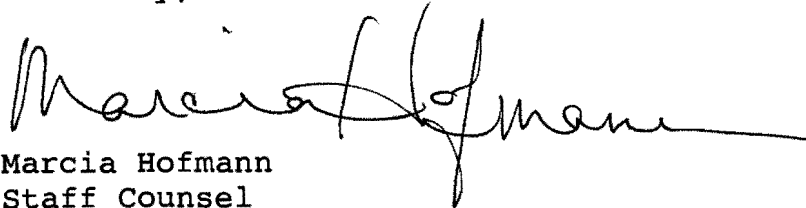
concerning privacy and civil liberties issues. The site also features scanned images of documents EPIC obtains under the FOIA. Second, EPIC publishes a bi-weekly electronic newsletter that is distributed to over 15,000 readers, many of whom report on technology issues for major news outlets. The newsletter reports on relevant policy developments of a timely nature (hence the bi-weekly publication schedule). It has been published continuously since 1996, and an archive of past issues is available at our Web site. Finally, EPIC publishes and distributes printed books that address a broad range of privacy, civil liberties and technology issues. A list of EPIC publications is available at our Web site.

For the foregoing reasons, EPIC clearly fits the definition of "representative of the news media" contained in the FOIA and the Department of Justice regulations. Indeed, the U.S. District Court for the District of Columbia has held that EPIC is a "news media" requester under the FOIA. See Electronic Privacy Information Center 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, because disclosure of this information will "contribute significantly to public understanding of the operations or activities of the government," as described above, any duplication fees should be waived.

Thank you for your consideration of this request. As applicable Department regulations provide, I will anticipate your determination on our request for expedited processing within ten (10) calendar days. Should you have any questions about this request, please feel free to call me at (202) 483-1140 ext. 112.

Under penalty of perjury, I hereby affirm that the foregoing is true and correct to the best of my knowledge.

Sincerely,



Marcia Hofmann  
Staff Counsel