

July 13, 2010

VIA U.S. MAIL (CERTIFIED DELIVERY)
Mary Ellen Callahan
Chief Privacy Officer/Chief FOIA Officer
The Privacy Office
U.S. Department of Homeland Security
245 Murray Drive SW, Building 410
STOP-0655
Washington, D.C. 20528-0655

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

Dear Ms. Callahan:

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 agency records concerning radiation and health testing of Full Body Scanning (“FBS”) devices.¹

Background

The Transportation Security Administration (“TSA”) currently operates Full Body Scanners at airports throughout the United States. The TSA uses two types of FBS devices: backscatter x-ray and millimeter wave.² Both types of FBS devices can capture, store, and transfer detailed, three-dimensional images of individuals’ naked bodies. Experts have described full body scans as “digital strip searches.”³ In February 2007, the TSA, a Department of Homeland Security (“DHS”) component, began testing FBS technology on American travelers.⁴

EPIC has pending Freedom of Information Act lawsuits against DHS and Department of Justice (“DOJ”) regarding whole body imaging technology. As a result of

¹ The TSA currently refers to FBS devices as “advanced imaging technology” (“AIT”), and previously called the scanners “whole body imaging” (“WBI”) devices. The terms “FBS” and “body scanners” in this request include all body scanners used by the Transportation Security Administration (“TSA”) to screen passengers at domestic airports.

² TSA: Imaging Technology, http://www.tsa.gov/approach/tech/imaging_technology.shtm (last visited June 7, 2010).

³ 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; 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.”) (last visited June 11, 2010).

⁴ TSA: Imaging Technology, http://www.tsa.gov/approach/tech/imaging_technology.shtm (last visited February 3, 2010).

these lawsuits, EPIC has received hundreds of pages of contracts, traveler complaints, TSA specifications, and other documents from DHS and DOJ.⁵

Body Scanners Subject Air Travelers to Radiation and Health Risks

The health risks posed by the deployment of body scanners in US airports have not yet been fully assessed. FBS devices subject air travelers to radiation during each FBS scan.⁶ While TSA has commissioned a Johns Hopkins University study on the machines, no independent study has been conducted on the health risks of these scanners.^{7,8}

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.⁹ Studies on Terahertz Wave (T-wave) revealed that exposure to such radiation can cause DNA damage that results in cancer.¹⁰ A recent report by the European Commission found that “it is evident any exposure to ionising radiation, however small, may have health effects in the longer term.”¹¹ American scientists have also expressed concerns regarding the aggregate effect of body scanner radiation on the traveling population.¹²

University of California biochemist David Agard has stated that “While the dose would be safe if it were distributed throughout the volume of the entire body, the dose to the skin may be dangerously high. Ionizing radiation such as the X-rays used in these scanners have the potential to induce chromosome damage, and that can lead to cancer.”¹³

The dose of radiation that FBS puts forth is especially risky for certain segments of the population. Professor Agard and several other experts wrote a recent letter to Dr.

⁵ EPIC, *Whole Body Imaging Technology and Body Scanners*, <http://epic.org/privacy/airtravel/backscatter/>; EPIC, *EPIC v. DHS*, http://epic.org/privacy/airtravel/backscatter/epic_v_dhs.html.

⁶ David Brenner, *Congressional Biomedical Research Caucus: Airport Screening: The Science and Risks of Backscatter Imaging*, 2010, available at <http://blip.tv/file/3379880>.

⁷ The TSA Blog, *Advanced Imaging Technology: “Radiation Risk Tiny,”* March 11, 2010, <http://blog.tsa.gov/2010/03/advanced-imaging-technology-radiation.html>

⁸ http://epic.org/privacy/airtravel/backscatter/EPIC-Nader_WBI_Letter.pdf

⁹ <http://www.bloomberg.com/apps/news?pid=20601209&sid=aoG.YbbvknzU>

¹⁰ <http://www.technologyreview.com/blog/arxiv/24331/>

¹¹ Commission to the European Parliament, *Communication on the Use of Security Scanners at EU Airports*, June 15, 2010,

http://www.google.com/url?sa=t&source=web&cd=1&ved=0CBIQFjAA&url=http%3A%2F%2Fec.europa.eu%2Ftransport%2Fair%2Fsecurity%2Fdoc%2Fcom2010_311_security_scanners_en.pdf&ei=h6k0TODUFMSBIAenwMzSBw&usq=AFQjCNF7Ck0G64bzz4riFHukJOp4XDaVGA (p. 16)

¹² 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>

¹³ Ben Mutzabaugh, *Full-body Scanners Could Pose Cancer Risk at Airports, U.S. Scientists Warn*, USA Today, July 1, 2010, <http://travel.usatoday.com/flights/post/2010/07/full-body-scanners-pose-cancer-risk-at-airports-us-scientists-warn/98552/1>

John P. Holdren, the Assistant to the President for Science and Technology.¹⁴ They called for further evaluation of the FBS technology, and identified several groups of people – including children and pregnant women, as being especially at risk of harm from the scans.¹⁵ They letter stated that a “large population of older travelers, >65 years of age, is particularly at risk from the mutagenic effects of the X-rays based on the known biology of melanocyte aging.”¹⁶ The experts also noted, “A fraction of the female population is especially sensitive to . . . radiation leading to breast cancer. Notably, because these women, who have defects in DNA repair mechanisms, are particularly prone to cancer, X-ray mammograms are not performed on them. The dose to breast tissue beneath the skin represents a similar risk.”¹⁷ Dr. Agard and the other experts also stated, “The population of immunocompromised individuals--HIV and cancer patients (see above) is likely to be at risk for cancer induction by the high skin dose [of FBS technology radiation].”¹⁸

Other experts have said that FBS radiation could be especially harmful to some segments of the population. In a report restricted to certain agencies and not meant for public dissemination, the Inter-Agency Committee on Radiation Safety said “pregnant women and children should not be subject to scanning.”¹⁹ The European Commission report called for a similar exception for pregnant women and children, stating that “Special considerations might also be called for when it comes to passengers that are especially sensitive to ionising radiation, primarily pregnant women and children.”²⁰ In his recent address to the Congressional Biomedical Caucus, Columbia Professor Dr. David Brenner agreed, stating that the dose of radiation delivered by FBS machines would be particularly risky for children and members of the population with a genetically higher sensitivity to radiation.²¹

Experts have also reported that body scanners may emit up to twenty times the reported amount of radiation.²² Dr. Brenner noted that FBS machines expose the skin of the scalp to up to twenty times the reported amount of radiation.²³ He pointed out that skin is one of the most radiation-sensitive parts of the body.²⁴

¹⁴ 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*, April 6, 2010, available at: <http://www.npr.org/assets/news/2010/05/17/concern.pdf>

¹⁵ *Id.*

¹⁶ *Id.*

¹⁷ *Id.*

¹⁸ *Id.*

¹⁹ <http://www.bloomberg.com/apps/news?pid=20601209&sid=aoG.YbbvknzU>

²⁰ Commission to the European Parliament, *Communication on the Use of Security Scanners at EU Airports*, June 15, 2010, http://www.google.com/url?sa=t&source=web&cd=1&ved=0CBIQFjAA&url=http%3A%2F%2Fec.europa.eu%2Ftransport%2Fair%2Fsecurity%2Fdoc%2Fcom2010_311_security_scanners_en.pdf&ei=h6k0TODUFMSBIAenwMzSBw&usq=AFQjCNF7Ck0G64bzz4riFHukJOp4XDaVGA (p. 16)

²¹ David Brenner, *Congressional Biomedical Research Caucus: Airport Screening: The Science and Risks of Backscatter Imaging*, 2010, available at <http://blip.tv/file/3379880>.

²² *Id.*

²³ David Brenner, *Congressional Biomedical Research Caucus: Airport Screening: The Science and Risks of Backscatter Imaging*, 2010, available at <http://blip.tv/file/3379880>.

²⁴ *Id.*

Dr. Agard and the other drafters of the letter to the Assistant to the President for Science and Technology called for a truly independent review of FBS technology because the true extent of the risk “can only be determined by a meeting of an impartial panel of experts that would include medical physicists and radiation biologists at which all of the available relevant data is reviewed.” In his address to the Congressional Biomedical Caucus, Dr. Brenner also called for greater testing of FBS technology and the effects of “low dose” radiation.²⁵

Documents Requested

EPIC requests the following agency records in the possession of DHS:

1. All records concerning TSA tests regarding body scanners and radiation emission or exposure.
2. All records concerning third party tests regarding body scanners and 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 “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).

There is a particular urgency for the public to obtain information about the health implications of the TSA's whole body imaging program. The TSA is presently expanding its FBS program to be used as the primary screening method in all domestic airports.²⁶ The systems expose passengers to radiation, the exposure levels have not been independently verified, and scientists have warned of the serious health risks for air travelers.

While the TSA claims that the FBS devices do not subject travelers to harmful levels of radiation, the agency has presented no evidence to support that assertion. The documents requested by EPIC will inform the public about the safety of the FBS scanners being deployed at airports nationwide.

²⁵ *Id.*

²⁶ *An Assessment of Checkpoint Security: Are Our Airports Keeping Passengers Safe?: Hearing Before the Subcomm. On Transp. Sec. and Infrastructure Prot.*, 111th Cong. (2010) (statement of Robin Kane, Assistant Administrator, Operational Process and Technology, Transportation Security Administration), *also available at* <http://hsc.house.gov/SiteDocuments/20100317140301-14594.pdf>.

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 record 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,” any duplication fees should be waived.

Thank you for your consideration of this request. As provided in 6 C.F.R. § 5.5(d)(4), I will anticipate your determination on our request for expedited processing with ten (10) calendar days.

Sincerely,

Ginger P. McCall
Staff Counsel
Electronic Privacy Information Center