

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLUMBIA

---

ELECTRONIC PRIVACY INFORMATION CENTER,	)	
	)	
	)	
Plaintiff,	)	Civil Action No. 1:15-cv-667 (CRC)
	)	
v.	)	
	)	
UNITED STATES 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 (“Defendant” or “DEA”) 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. In February 2015, Plaintiff Electronic Privacy Information Center (“Plaintiff” or “EPIC”) submitted a request to DEA, seeking records under the Freedom of Information Act (“FOIA”), 5 U.S.C. § 552. Declaration of Katherine L. Myrick (“Myrick Dec.,” included as an attachment in this filing) ¶ 7 & ex. A. Specifically, Plaintiff sought:

- 1) All Privacy Impact Assessments (“PIAs”) the DEA has conducted that are not publicly available at <http://www.dea.gov/FOIA/PIA.shtml> (“Part 1” of Plaintiff’s request); and
- 2) All Privacy Threshold Analysis (“PTA”) documents and Initial Privacy Assessments (“IPAs”) the DEA has conducted since 2007 to present (“Part 2” of Plaintiff’s request).

*Id.*

2. DEA has provided a detailed, noncluserory declaration by Katherine L. Myrick, Chief of DEA's Freedom of Information/Privacy Act Unit, describing DEA's search for records responsive to Plaintiff's FOIA request. *See* Myrick Dec. As explained in that declaration:

3. DEA identified the Chief Information Officer Support Unit ("CIOSU"), within its Office of Information Systems, as the component best able to locate records responsive to Plaintiff's request because the CIOSU manages DEA's compliance with privacy documentation requirements, including requirements related to PIAs and IPAs (and the latter's predecessor, PTAs). Myrick Dec. ¶¶ 10, 14, 17. DEA therefore tasked the CIOSU with conducting a search for responsive records. *Id.* ¶ 10.

4. Through counsel, Plaintiff clarified that it sought only final DEA PIAs, IPAs, and PTAs. Myrick Dec. ¶ 11.; Joint Status Report at 1, ECF No. 16.

5. Regarding Part 1 of Plaintiff's request, the CIOSU did not expect to locate many PIAs that were not publicly available on DEA's website because the U.S. Department of Justice's Office of Privacy and Civil Liberties ("OPCL") requires that, where practicable, PIAs for current applications be posted online. Myrick Dec. ¶¶ 15-18.

6. The CIOSU searched its paper files, Share Drive, SharePoint site, and relevant staff email for records responsive to Part 1 of Plaintiff's request, using the search terms "Privacy Impact Assessment" and "PIA," and then searched the results for the word "final." Myrick Dec. ¶¶ 18-19. The CIOSU expected that this search would locate any final DEA PIAs. *Id.* This search did locate all PIAs that were publicly available on DEA's website, as well as one additional PIA for an application no longer in use. *Id.* ¶¶ 18-21.

7. The CIOSU also searched the locations identified in Paragraph 6 using additional search terms derived from the body of the letter from Plaintiff containing its FOIA request. *Id.*

¶ 19. Specifically, the CIOSU also used the search terms Hemisphere, National License Plate Reader Initiative, LPR, DEA Internet Connectivity Endeavor, DICE, Special Operations Division, SOD, telecommunications metadata, telecommunications, and metadata. *Id.* Use of these search terms did not locate any additional responsive records. *Id.*

8. The CIOSU searched the same locations identified in Paragraph 6 for records responsive to Part 2 of Plaintiff's request, using the search terms "Privacy Threshold Analysis," "Initial Privacy Assessment," "PTA," "IPA," and "[privacy@usdoj.gov](mailto:privacy@usdoj.gov)," the e-mail address of OPCL, as well as the search terms identified in Paragraph 7. Myrick Dec. ¶ 24. While CIOSU located documentation related to the PTA/IPA process through this search, it located no final DEA IPAs or PTAs. *Id.* Instead, it located documents containing edits and/or subsequently dated records indicating that any draft DEA PTA/IPA document for the application, equipment, or software at issue was not final because work had continued after that draft was submitted. *Id.*

9. Instead of final DEA IPAs or PTAs, the CIOSU located thirteen final "Determination Letters" during this search. *Id.* ¶¶ 24-25. Determination letters are documents issued by OPCL after the PTA/IPA process, conveying its conclusions about the privacy ramifications of the IT application, equipment, or software at issue and the privacy documentation required, if any. *Id.* ¶ 24.

10. The CIOSU concluded that no final DEA document results from the PTA/IPA process, and that instead, OPCL determination letters are the final document that results from the PTA/IPA process. *Id.* ¶¶ 23-25.

11. Through counsel, DEA offered to provide Plaintiff with the thirteen OPCL determination letters that it had found during its search, in place of the records that Plaintiff requested in Part 2 of its FOIA request. *Id.* ¶ 26. Plaintiff accepted this alternative. *Id.*; *see also*

Joint Status Report at 1, ECF No. 16.

12. DEA provided Plaintiff with the single final DEA PIA that it had located that was not already publicly available on its website. Myrick Dec. ¶ 28. DEA also forwarded the thirteen determination letters to the Department of Justice's Office of Information Policy ("OIP") for FOIA processing and direct response to Plaintiff. *Id.* ¶¶ 29-30. OIP provided Plaintiff with the thirteen determination letters with limited redactions. *Id.* ¶ 31 & ex. D.

13. Plaintiff does not challenge the redactions made in the thirteen determination letters. *Id.* ¶ 4; *see also* Joint Status Report at 1, ECF No. 16.

14. After Plaintiff received the releases from DEA and OIP, it requested, through counsel, that DEA perform a supplemental search for PIAs. *See* Myrick Dec. ¶ 32. DEA was unable to identify in Plaintiff's request any other location where additional final DEA PIAs would likely be found, or any other search terms that would be likely to identify additional final DEA PIAs. *Id.* ¶ 33. However, because Plaintiff's request identified additional supposed DEA "programs" that had not been identified in the original letter containing Plaintiff's FOIA request, the CIOSU searched the locations identified in Paragraph 6 above using the new search terms "USTO," "Cellsite Simulator," "Cell-site Simulator," and "phone data." *Id.* The use of those search terms did not uncover any additional PIAs responsive to Plaintiff's request. *Id.* In addition, in order to verify that its original search had located all final DEA PIAs, DEA conducted the same search a second time. *Id.* This search did not locate any additional final DEA PIAs responsive to Plaintiff's request. *Id.* ¶¶ 33-34.

15. Ms Myrick attests in her declaration that "[t]here is no other location that could be searched, or search method that could be used, that is likely to yield additional responsive records." *Id.* ¶ 35.

December 22, 2015

Respectfully submitted,

BENJAMIN C. MIZER  
Principal Deputy Assistant Attorney General  
CHANNING D. PHILLIPS  
United States Attorney  
MARCIA BERMAN  
Assistant Director, Federal Programs Branch

/s/ Kathryn L. Wyer

KATHRYN L. WYER  
U.S. Department of Justice, Civil Division  
20 Massachusetts Avenue, N.W.  
Washington, DC 20530  
Tel. (202) 616-8475 / Fax (202) 616-8470  
kathryn.wyer@usdoj.gov  
*Attorneys for Defendant*