

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 renewed motion for summary judgment pursuant to Rule 56(a) of the Federal Rules of Civil Procedure and the Court’s Order of September 13, 2016 (ECF No. 25).

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 (“First Myrick Dec.,” ECF No. 17-3) ¶ 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. Through counsel, Plaintiff clarified that it sought only final DEA PIAs, IPAs, and PTAs. First Myrick Dec. ¶ 11; Joint Status Report at 1, ECF No. 16; Memorandum Opinion of September 13, 2016 (“Mem. Op. of Sept. 13, 2016,” ECF No. 24), at 3.

3. The DEA tasked the Chief Information Officer Support Unit (“CIOSU”), within its Office of Information Systems, to search for responsive records. First Myrick Dec. ¶ 10. The CIOSU “is the DEA’s point-of-contact for the OPCL and acts as a liaison between the OPCL and the DEA’s Senior Component Official for Privacy (“SCOP”).” Mem. Op. of Sept. 13, 2016, at 3 (citing First Myrick Dec. ¶ 10; Second Declaration of Katherine L. Myrick (“Second Myrick Dec.,” ECF No. 21-1) ¶ 6). Ultimately, one PIA that was not already publicly available on DEA’s website, for an application that had been discontinued, was located and was provided to Plaintiff. *Id.* at 3-4 (citing First Myrick Dec. ¶¶ 19, 20-22). Following Plaintiff’s agreement to accept OPCL determination letters in lieu of IPAs or PTAs, DEA sent OPCL the thirteen determination letters that it found, and OPCL sent those letters, with minor redactions, to Plaintiff. *Id.* at 4 (citing First Myrick Dec. ¶¶ 26, 30-32).

4. The parties filed cross-motions for summary judgment. ECF Nos. 17, 18. Plaintiff’s sole challenge was the adequacy of DEA’s search. *Id.* On September 13, 2016, the Court granted in part and denied in part DEA’s motion, and denied in part and reserved judgment in part on Plaintiff’s cross-motion. Mem. Op. of Sept. 13, 2016, at 11. The Court held that DEA’s initial search was reasonable. *Id.* at 7-8.

5. The Court identified four OPCL determination letters that directed DEA to prepare PIAs for four specific DEA applications (“the four applications”) as potential leads. *Id.* at 9-10. The Court observed that “the CIOSU apparently did not run any independent searches

using the . . . names [of the four applications] as search terms—as it did with earlier searches.” *Id.* at 10. The Court also observed that the CIOSU “did not explain why searching the SCOP, once [Plaintiff] presented evidence of potential additive PIAs, was not likely to uncover responsive records.” *Id.* The Court ordered DEA “either to conduct a supplemental search consistent with [the Court’s] opinion or explain in a supplemental declaration why such a search would not be likely to uncover the remaining records in question.” *Id.*

6. In response to the Court’s order, the DEA has provided a detailed, nonclusory declaration by Katherine L. Myrick, Chief of DEA’s Freedom of Information/Privacy Act Unit, describing DEA’s compliance with the Court’s order, including supplemental searches consistent with the Court’s opinion. *See* Third Declaration of Katherine L. Myrick (“Third Myrick Dec.,” included as an attachment in this filing). As explained in that declaration:

7. The CIOSU did not consider it likely that searches using the names of the four applications would locate final PIAs for those applications. Third Myrick Dec. ¶¶ 6-7. Rather, the CIOSU regarded its original search of the Share Drive, which had located all PIAs posted on DEA’s website as well as an additional PIA by using the terms “final,” “Privacy Impact Assessment,” and “PIA,” as likely to have identified all final DEA PIAs in CIOSU files. *Id.*; First Myrick Dec. ¶¶ 18-19. While the CIOSU had conducted other searches in the past, including searches using alleged application names that Plaintiff had identified in correspondence, none of those other searches identified any additional final DEA PIA. First Myrick Dec. ¶¶ 18-19. In addition, the fact that previous searches had uncovered determination letters relating to the four applications indicated to CIOSU that its prior searches had covered the locations where privacy documentation relating to the four applications would likely be found. Third Myrick Dec. ¶ 7.

8. The CIOSU conducted supplemental searches of the same locations that it had previously searched (described in First Myrick Dec. ¶ 19(a)-(d)), but using the names of the four applications as search terms. Third Myrick Dec. ¶¶ 8-10. Specifically, the CIOSU conducted a supplemental manual search of its paper files, specifically focusing on files that referenced the four programs LIMS, DrugSTAR, NVNS, and WebOCTS. *Id.* ¶ 8. The CIOSU also conducted supplemental electronic searches of its Share Drive, SharePoint site, and the electronic mail of the CIOSU Chief and staff whose official duties include working on privacy documentation. *Id.* ¶¶ 9-10. For these electronic searches, the CIOSU first used the search terms “Privacy Impact Assessment” and “PIA.” *Id.* ¶ 9. The CIOSU then searched the results of that initial search using the terms “Laboratory Information Management System,” “LIMS,” “DrugSTAR,” “Nationwide Video Network System,” “NVNS,” “Web OPR Case Tracking System,” and “WebOCTS.” *Id.* ¶ 10. These searches located no final DEA PIA that had not already been identified through prior searches. *Id.* ¶¶ 8-10.

9. The CIOSU did not consider it likely that any additional final DEA PIAs could be found in the SCOP’s files. *Id.* ¶¶ 12-13. When OPCL has provided final approval of DEA PIAs, it has transmitted this approval directly to the CIOSU, not to the SCOP. *Id.* ¶ 12. The CIOSU has then sent OPCL-approved PIAs to the SCOP for final signature but it has closely monitored those PIAs and has tracked them down if it did not receive the PIA back from the SCOP within a reasonable period of time. *Id.* ¶ 13. The SCOP does not keep his own file of final PIAs. *Id.* ¶ 15. Rather, the CIOSU keeps all PIA-related files. *Id.* The SCOP is not aware of being in possession of any final DEA PIA. *Id.*

10. The SCOP conducted a supplemental search for final DEA PIAs. *Id.* ¶¶ 16-18. The SCOP indicated that he did not consider it likely that his e-mail would contain any final

DEA PIA. *Id.* ¶ 15. However, because, in his recollection, he has received written communications from OPCL only via e-mail, the SCOP concluded that, if he had possession of a final DEA PIA, the only possible location of that PIA would be in his e-mail. *Id.* The SCOP searched his e-mail using the search terms “Privacy Impact Assessment” and “PIA.” *Id.*

¶¶ 16-17. The SCOP also searched his e-mail using the search terms “Laboratory Information Management System,” “LIMS,” “DrugSTAR,” “National Video Network System,” “NVNS,” “Web OPR Case Tracking System,” and “WebOCTS.” *Id.* ¶ 18. These searches failed to locate any final DEA PIA. *Id.* ¶¶ 16-18.

11. 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.* ¶ 19.

October 27, 2016

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