

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

ELECTRONIC PRIVACY INFORMATION CENTER)
1718 Connecticut Avenue, N.W.)
Suite 200)
Washington, DC 20009,)

Plaintiff,)

v.)

DEPARTMENT OF HOMELAND SECURITY)
Washington, DC 20528,)

and)

TRANSPORTATION SECURITY ADMINISTRATION)
400 Seventh Street, S.W.)
Washington, DC 20590,)

and)

DEPARTMENT OF DEFENSE)
The Pentagon)
Washington, DC 20301,)

Defendants.)

Civil Action

COMPLAINT FOR INJUNCTIVE RELIEF

1. This is an action under the Freedom of Information Act ("FOIA"), 5 U.S.C. § 552, for injunctive and other appropriate relief, seeking the release of agency records concerning airline passenger screening procedures requested by plaintiff from defendants Department of Homeland Security, Transportation Security Administration and Department of Defense.

Jurisdiction and Venue

2. This Court has both subject matter jurisdiction over this action and personal jurisdiction over the parties pursuant to 5 U.S.C. § 552(a)(4)(B). This court also has jurisdiction over this

action pursuant to 28 U.S.C. § 1331. Venue lies in this district under 5 U.S.C. § 552(a)(4)(B).

Parties

3. Plaintiff Electronic Privacy Information Center ("EPIC") is a public interest research organization incorporated as a not-for-profit corporation in Washington, DC. EPIC's activities include the review of federal law enforcement activities and policies to determine their possible impacts on civil liberties and privacy interests. Among its other activities, EPIC publishes books, reports and a bi-weekly electronic newsletter. EPIC also maintains a heavily-visited site on the World Wide Web (www.epic.org) containing extensive information on privacy issues, including information EPIC has obtained from federal agencies under the FOIA.

4. Defendant Department of Homeland Security ("DHS") is a Department of the Executive Branch of the United States Government. DHS is an agency within the meaning of 5 U.S.C. § 552(f).

5. Defendant Transportation Security Administration ("TSA") is a component of defendant DHS. TSA is an agency within the meaning of 5 U.S.C. § 552(f).

6. Defendant Department of Defense ("DOD") is a Department of the Executive Branch of the United States Government. DOD is an agency within the meaning of 5 U.S.C. § 552(f).

TSA and the Enhanced Computer Assisted
Passenger Prescreening System ("CAPPS II")

7. On November 19, 2001, the President signed the Aviation and Transportation Security Act ("ATSA"), Pub. L. No. 107-71. The ATSA created TSA within the Department of Transportation and, *inter alia*, transferred to TSA the duties and responsibilities set forth in Chapter 449 of Title 49, United States Code, relating to civil aviation security. Those duties and responsibilities include "screening of all passengers." 49 U.S.C. § 44901 (2003).

8. On November 25, 2002, the President signed the Homeland Security Act ("HSA"), Pub. L. No. 107-296. The HSA created DHS and, *inter alia*, transferred the functions of TSA to DHS. 6 U.S.C. § 203 (2003).

9. As part of its responsibilities relating to the screening of airline passengers, TSA has been engaged in the development of what it describes as "the next generation of the Computer Assisted Passenger Prescreening System (CAPPS II)." In a press release titled "TSA's CAPPS II Gives Equal Weight to Privacy, Security," and issued on March 11, 2003, TSA described CAPPS II as "an enhanced system to confirm the identities of passengers and to identify foreign terrorists or persons with terrorist connections before they can board U.S. aircraft." TSA's administrator, Admiral James M. Loy, stated in the press release that TSA "will accomplish this without compromising the privacy and civil liberties enjoyed by every American," and that "[t]he privacy rights of all passengers will be honored."

10. In the course of developing CAPPs II, TSA officials have communicated with Admiral John Poindexter, director of DOD's Office of Information Awareness. On February 3, 2002, Paul Polski, the Chief of Staff of TSA's Chief Technology Officer, sent an electronic mail message to Admiral Poindexter requesting a meeting and stating, in part: "I am very interested in hearing more about your plans for a Total Information Awareness (TIA) program. I think that a few of our key people who are working the TSA CAPPs initiative . . . may also be interested." The following day, Admiral Poindexter responded to Mr. Polski's request and scheduled a meeting.

Plaintiff's FOIA Request to Defendant TSA

11. By letter to defendant TSA dated March 10, 2003, plaintiff requested under the FOIA all agency records related to TSA's CAPPs II project that address the following subjects:

- a) Any existing legal, statutory and/or regulatory frameworks concerning governmental access to and use of transactional and other records about individuals. This request includes, but is not limited to, any assessments of the legal authority (or lack thereof) for information collection activities planned or proposed for the CAPPs II project; and
- b) Potential privacy and/or civil liberties implications of the activities planned or proposed for the CAPPs II project.

12. Plaintiff requested that TSA expedite the processing of its request.

13. By electronic mail message to plaintiff dated March 12, 2003, defendant TSA stated that plaintiff's request for expedited processing had been granted.

Defendant TSA's Failure to Timely Respond

14. By letter to plaintiff dated April 30, 2003, defendant TSA provided copies of 58 pages of records responsive to plaintiff's FOIA request. Defendant TSA stated that, "Additional pages are currently being processed and reviewed for releasability pursuant to the FOIA. Once those documents have been reviewed, you will receive a final determination."

15. To date, defendant TSA has not completed its processing of plaintiff's FOIA request, notwithstanding the FOIA's requirement of an agency response within twenty (20) working days.

16. Plaintiff has exhausted the applicable administrative remedies.

17. Defendants TSA and DHS have improperly withheld the requested records from plaintiff.

Plaintiff's FOIA Request to Defendant DOD

18. By letter to defendant DOD dated March 18, 2003, plaintiff requested under the FOIA all agency records "concerning Defense Department involvement in the development of the Computer Assisted Passenger Pre-Screening System II ('CAPPS II'), which is being implemented by the Transportation Security Administration."

19. Plaintiff requested that DOD expedite the processing of its request.

20. By electronic mail message to plaintiff dated March 20, 2003, defendant DOD stated that plaintiff's request for expedited processing had been granted.

Defendant DOD's Failure to Timely Respond

21. To date, defendant DOD has not completed its processing of plaintiff's FOIA request, notwithstanding the FOIA's requirement of an agency response within twenty (20) working days.

22. Plaintiff has exhausted the applicable administrative remedies.

23. Defendant DOD has improperly withheld the requested records from plaintiff.

Requested Relief

WHEREFORE, plaintiff prays that this Court:

- A. order defendants to disclose the requested records in their entirety and make copies available to plaintiff;
- B. provide for expeditious proceedings in this action;
- C. award plaintiff its costs and reasonable attorneys fees incurred in this action; and
- D. grant such other relief as the Court may deem just and proper.

Respectfully submitted,

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