



**Transportation Security  
Administration**

September 25, 2003

Mr. David Sobel, General Counsel  
Electronic Privacy Information Center  
1718 Connecticut Ave. NW, Suite 200  
Washington, DC 20009

FOIA Case Number: TSA03-588

Dear Mr. Sobel:

This is in response to your request under the Freedom of Information Act (FOIA), 5 U.S.C. § 552, dated August 22, 2003, specifically requesting the following information:

1. Any "Capital Asset Plan and Business Case" materials (Exhibit 300) submitted to the Office of Management and Budget; and
2. Any "Privacy Impact Assessments" prepared for the CAPPS II project.

A search of our files has located 273 pages (two documents) in response to Item #1 and 28 pages (three documents) in response to Item #2. Item #1 is being withheld in full under Exemptions 3 and 5 of the FOIA, 5 USC § 552(b)(3) and (b)(5), and Item #2 is being withheld in full under Exemption 5.

Exemption 3 permits the withholding of records specifically exempted from disclosure by another Federal statute. Section 114(s) of title 49, United States Code, exempts from disclosure under FOIA information that "would be detrimental to the security of transportation" if disclosed. The TSA regulations implementing Section 114(s) are found in 49 CFR Part 1520.

Portions of the documents responsive to Item #1 of your request are Sensitive Security Information (SSI) under 49 CFR § 1520.7(c), (j), and (l). Section 1520.7(c) exempts from disclosure any selection criteria used in any security screening process, including for persons, baggage, or cargo. Section 1520.7(j) exempts from disclosure specific details of aviation security measures whether applied directly by TSA or entities subject to the rules listed in § 1520.5(1) through (6). Section 1520.7(l) exempts from disclosure any draft, proposed, or recommended change to the information and records identified in § 1520.7.

Exemption 5 of the FOIA permits the withholding of inter-agency or intra-agency records that are subject to the deliberative process privilege. This privilege protects communications from disclosure that are deliberative and generated before the adoption of an agency policy or decision. The general purpose of Exemption 5's deliberative process privilege is to encourage frank, open discussion on matters of policy within the government and to protect the process and quality of agency decision-making. The records withheld under Exemption 5 in this instance are drafts that have not yet been finalized.

As part of the ongoing budget process, the Exhibit 300 and Privacy Impact Assessment for CAPPS II are currently under review and revision among the staff of TSA, the Department of Homeland Security, and the Office of Management and Budget. Because the development and coordination process for budget materials is lengthy and must be in conformance with the President's budget, the final versions of the documents you have requested are not expected until early 2004.

As your request is currently in litigation, the appeal rights that would normally accompany this response have not been included in this letter.

Sincerely,

A handwritten signature in black ink, appearing to read "Patricia M. Riep-Dice". The signature is fluid and cursive, with a large initial "P" and a long, sweeping underline.

Patricia M. Riep-Dice  
Associate Director  
For Freedom of Information