

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.	)	

**DECLARATION OF KATHERINE L. MYRICK**

I, Katherine L. Myrick, pursuant to the provisions of 28 U.S.C. § 1746, declare as follows:

1. I am currently assigned as the Chief of the Freedom of Information/Privacy Act Unit (the “FOIA Unit”) of the United States Department of Justice (“DOJ”), Drug Enforcement Administration (“DEA”), located at DEA’s Headquarters in Arlington, Virginia. I have served in this capacity since 1998 and oversee the processing of requests to DEA under the Freedom of Information Act (“FOIA”), 5 U.S.C. § 552, and the Privacy Act of 1974, 5 U.S.C. § 552a. My FOIA/Privacy Act experience at DEA dates back to 1983.
2. The FOIA Unit is the central DEA office responsible for responding to requests for records under the FOIA and Privacy Act and searching for, processing, and releasing records in response to such requests.
3. Due to my experience at DEA in responding to requests for records since 1983, and the nature of my official duties, I am familiar with the policies and practices of DEA and the DOJ related to searching for, processing, and releasing DEA records responsive to FOIA and Privacy

Act requests. I am familiar with the correspondence of Plaintiff, Electronic Privacy Information Center (“EPIC”), to DEA that is the basis of this action.

4. DEA submits this Declaration about DEA’s search for records responsive to EPIC’s correspondence. This Declaration does not address or explain the justifications for DEA’s redactions within the responsive records because I understand, based on communications between EPIC’s counsel and the DOJ attorney assigned to represent DEA in this action, that EPIC is not challenging those redactions.

5. The statements I make in this Declaration are made on the basis of my review and analysis of the file in this case, my own personal knowledge, and/or information acquired by me through the performance of my official duties.

#### **EPIC’s REQUEST FOR RECORDS**

6. Set forth below are a chronology and description of the pertinent correspondence concerning EPIC’s Complaint. Copies of the relevant correspondence are attached hereto as Exhibits A through D.

7. By electronic mail and facsimile dated February 20, 2015, Jeramie D. Scott transmitted correspondence entitled “FOIA Request” with attachments entitled “EPIC FOIA Request – DEA PIAs.PDF; Untitled attachment 00010.txt; signature.asc.” *See* Exhibit A. The correspondence identifies Mr. Scott as Plaintiff’s National Security Counsel and Privacy Coalition Coordinator. Mr. Scott’s five-page letter is also dated February 20, 2015. On page 5 of the letter, under the heading “Documents Requested,” there are two paragraphs. Paragraph 1 indicates that Plaintiff seeks “All Privacy Impact Assessments the DEA has conducted that are not publicly available at

<http://www.dea.gov/FOIA/PIA.shtml>.” Paragraph 2 indicates that Plaintiff seeks “All Privacy Threshold Analysis documents and Initial Privacy Assessments the DEA has conducted since 2007 to present.”

8. By letter dated March 2, 2015, DEA advised Plaintiff that DEA’s FOIA Unit had received its correspondence. *See* Exhibit B. The letter informed Plaintiff that the FOIA Unit assigned its correspondence case number “15-00332-F” and asked Plaintiff to include the case number when it contacts the FOIA Unit. The letter confirmed EPIC’s obligation to pay all applicable fees up to \$25.00 and advised that no fees were due “at this time.” The letter stated that, “In order to expedite all requests, your request will be handled in chronological order based on the date of this letter.” The letter provided the telephone number and address of DEA’s FOIA Customer Service Hotline Representative.

9. Plaintiff filed its Complaint on May 4, 2015, before the FOIA Unit responded to Plaintiff.

#### **DEA’s SEARCHES FOR RESPONSIVE RECORDS**

10. The FOIA Unit identified the Chief Information Officer Support Unit (“CIOSU”) of the Office of Information Systems as the best Unit within DEA to lead a search for the records requested in Plaintiff’s FOIA request. The CIOSU is responsible for coordinating DEA’s compliance with privacy documentation requirements, including requirements related to Privacy Impact Assessments and Initial Privacy Assessments (which were previously known as Privacy Threshold Analyses). Thus, the CIOSU knows the locations where responsive records are likely to be located. Further, the CIOSU is the DEA point of contact for the U.S. Department of Justice’s Office of Privacy and Civil Liberties (“OPCL”). OPCL’s mission is to provide legal

advice and guidance to Justice Department components, ensure the Department's compliance with privacy laws, regulations, and policies, and develop Departmental privacy policy. Among other things, OPCL developed the Initial Privacy Assessment form as "the first step in a process developed by OPCL to assist DOJ components in the development and use of information systems." OPCL, Initial Privacy Assessment Instructions and Template, at 1, available at <http://www.justice.gov/opcl/file/629231/download>. OPCL uses the form as a "tool" to facilitate identification of potential privacy issues and determine whether additional privacy documentation--including a Privacy Impact Assessment--is required. *Id.* The CIOSU is also the liaison between DEA's Senior Component Official for Privacy ("SCOP") and OPCL. Among other things, the CIOSU obtains the approval of DEA's SCOP on DEA's Privacy Impact Assessments before they are sent to OPCL for final approval.

11. When the CIOSU Chief embarked on a search for responsive records, he asked whether Plaintiff sought only final versions of DEA's Privacy Impact Assessments, Privacy Threshold Analyses, and Initial Privacy Assessments or also drafts of those documents. After Plaintiff filed this litigation, DEA asked the DOJ counsel assigned to this case to obtain clarification about the scope of Plaintiff's request. In response to the inquiry by DOJ counsel, Plaintiff clarified that its request sought only final DEA Privacy Impact Assessments, Privacy Threshold Analyses, and Initial Privacy Assessments.

12. The CIOSU Chief then initiated a search designed to uncover all requested Privacy Impact Assessments, Privacy Threshold Analyses, and Initial Privacy Assessments.

#### Privacy Impact Assessments

13. According to Section 208 of the E-Government Act, "[a]n agency shall [conduct a

privacy impact assessment] before ... developing or procuring information technology [“IT”] that collects, maintains, or disseminates information that is in an identifiable form; or ... initiating a new collection of information ....”

14. It is the CIOSU that manages and helps ensure DEA’s compliance with Section 208 of the E-Government Act with respect to DEA’s IT and new collections of information.

15. According to Section 208 of the E-Government Act, the agency is to “ensure the review of the privacy impact assessment by the Chief Information Officer, or equivalent official, as determined by the head of the agency; and ... if practicable, after completion of the [Chief Information Officer’s] review ... make the privacy impact assessment publicly available through the website of the agency, publication in the Federal Register, or other means.”

16. OPCL’s Privacy Impact Assessments Official Guidance (Revised July 2015), available at <http://www.justice.gov/opcl/file/631431/download>, calls for all final Privacy Impact Assessments to be posted on the internet for as long as the IT or collection of information about which the Privacy Impact Assessment was conducted is being employed.

17. DEA complies with this requirement by posting final DEA Privacy Impact Assessments for extant IT and collections of information on DEA’s internet website. The CIOSU ensures DEA’s compliance with DOJ’s internet posting requirement.

18. Because the CIOSU is familiar with and oversees DEA’s compliance with this posting requirement, it did not expect a search to locate many final DEA Privacy Impact Assessments that were not publicly available on DEA’s website. Nevertheless, the CIOSU searched for any final DEA Privacy Impact Assessments in its paper files, “Share Drive,” SharePoint site, and relevant staff electronic mail. The CIOSU expected that applying this search protocol to the

CIOSU's "Share Drive" would identify all final DEA Privacy Impact Assessments because the CIOSU's "Share Drive" is the most complete collection of CIOSU records. The CIOSU search, nevertheless, included additional CIOSU records locations. The CIOSU staff also searched the CIOSU paper files, the CIOSU SharePoint site, and the electronic mail of the CIOSU staff whose official duties include Privacy Impact Assessments.

19. For the electronic searches, the search terms the CIOSU employed were "Privacy Impact Assessment" and "PIA." To narrow the results obtained at this first search level, the CIOSU then searched the results for the word "final" because the word "final" would likely be included in the message transmitting the final DEA Privacy Impact Assessment. The CIOSU Chief expected that these search terms would locate any responsive records, and these search terms did locate all responsive records that were found. Nevertheless, the CIOSU also used additional search terms derived from the body of Plaintiff's letter containing its FOIA request. These search terms were Hemisphere, National License Plate Reader Initiative, LPR, DEA Internet Connectivity Endeavor, DICE, Special Operations Division, SOD, telecommunications metadata, telecommunications, and metadata. Ultimately, none of the additional search terms yielded any responsive records.

a. Search of Paper Files: The CIOSU's paper files are organized by name of the IT application, equipment, and software. The CIOSU searched each paper file for final DEA Privacy Impact Assessments by manually searching each file. The search of the paper files uncovered no final DEA Privacy Impact Assessment that is not already posted online.

b. Electronic "Share Drive" Search: The CIOSU "Share Drive" is a set of internal network drives that the CIOSU controls. The CIOSU uses these drives to store files. The CIOSU

also uses these drives to allow designated users to work collectively on joint projects, including privacy documentation projects. The CIOSU “Share Drive” is the primary location where privacy documentation is saved and stored. It is the CIOSU’s practice to save all drafts and final iterations of privacy documentation, including Privacy Impact Assessments, to this “Share Drive.” The CIOSU searched for final DEA Privacy Impact Assessment in the CIOSU “Share Drive” using the same search terms and protocol identified above in paragraph 19. The CIOSU’s search of the “Share Drive” uncovered all of the Privacy Impact Assessments posted on DEA’s internet site and the Privacy Impact Assessment for “Avue Digital Services,” an application that DEA no longer uses.

c. Electronic SharePoint Search: The CIOSU’s SharePoint is an internal site belonging to the CIOSU. The CIOSU shares this site with the Office of Chief Counsel. It also shares this site with DEA offices that sponsor IT applications, equipment, and software for which privacy documentation is required, but only as to those offices’ specific IT applications, equipment, and software. Records are stored on the SharePoint site by the name of the IT application, equipment, or software. Using the above search terms and protocol, the CIOSU searched for final DEA Privacy Impact Assessments in the CIOSU’s SharePoint. The CIOSU’s search of its SharePoint did not uncover any additional final DEA Privacy Impact Assessments.

d. Electronic Mail Account Search: Using the same search terms and protocol identified above in paragraph 19, the CIOSU Chief and staff whose official duties include working on privacy documentation searched for final DEA Privacy Impact Assessments in their electronic mail accounts. The searches did not uncover any additional final DEA Privacy

Impact Assessments.

20. The search for final DEA Privacy Impact Assessments uncovered the Privacy Impact Assessments currently posted on DEA's internet site and the final DEA Privacy Impact Assessment for "Avue Digital Services," an application that DEA no longer uses.

21. The CIOSU's search did not uncover any other final DEA Privacy Impact Assessments.

22. The CIOSU Chief forwarded the "Avue Digital Systems" Privacy Impact Assessment to the FOIA Unit.

Privacy Threshold Analyses/Initial Privacy Assessments

23. As stated above, the CIOSU is responsible for coordinating DEA's compliance with privacy documentation, including Privacy Threshold Analyses/Initial Privacy Assessments, and knows the locations where responsive records are likely to be located. The Privacy Threshold Analysis form or, currently, the Initial Privacy Assessment form, are forms developed by OPCL to be filled out and submitted to OPCL by Justice Department components. The CIOSU is the DEA point of contact for OPCL regarding this process.

24. The CIOSU Chief and staff searched for final DEA Privacy Threshold Analyses and final DEA Initial Privacy Assessments in the same four locations described above. It used the following search terms in its electronic searches for responsive records: "Privacy Threshold Analysis," "Initial Privacy Assessment," "PTA," "IPA," and "[privacy@usdoj.gov](mailto:privacy@usdoj.gov)," the e-mail address of OPCL. The CIOSU Chief expected that these search terms would locate any responsive records. Nevertheless, as described above, 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.

- a. Paper Files: As described above, the CIOSU's paper files are organized by the name of the IT application, equipment, and software. The CIOSU searched for final DEA Privacy Threshold Analyses and final DEA Initial Privacy Assessments in its paper files. The CIOSU searched each paper file for final DEA Privacy Threshold Analyses and final DEA Initial Privacy Assessments by manually searching each file. Its search found none. Instead, the CIOSU found either (1) Privacy Threshold Analyses/Initial Privacy Assessments containing edits, and/or (2) subsequently dated records indicating that any draft DEA Privacy Threshold Analysis/Initial Privacy Assessment for that application was not final because work had continued after that draft was submitted.
- b. Electronic "Share Drive" Search: The CIOSU searched for final DEA Privacy Threshold Analyses and final DEA Initial Privacy Assessments in the CIOSU "Share Drive," using the search terms and protocol identified above at the beginning of paragraph 24. The CIOSU's search of the "Share Drive" uncovered no final DEA Privacy Threshold Analysis or final DEA Initial Privacy Assessment. The search uncovered thirteen (13) OPCL determination letters. OPCL issues determination letters at the end of the Privacy Threshold Analysis/Initial Privacy Assessment process. In the determination letter, OPCL conveys its conclusions about the privacy ramifications of the IT application, equipment, or software and the privacy documentation required, if any.
- c. Electronic SharePoint Search: Using the search terms and protocol identified above at the beginning of paragraph 24, the CIOSU searched for final DEA Privacy Threshold Analyses and final DEA Initial Privacy Assessments in the CIOSU's electronic SharePoint, described

above. The CIOSU's search of its SharePoint did not uncover any final DEA Privacy Threshold Analysis or final DEA Initial Privacy Assessment. The search uncovered thirteen (13) OPCL determination letters.

d. Electronic Mail Account Search: Using the search terms and protocol identified above at the beginning of paragraph 24, the CIOSU Chief and staff whose official duties include working on privacy documentation searched for final DEA Privacy Threshold Analyses and final DEA Initial Privacy Assessments in their electronic mail accounts. The searches did not uncover any final DEA Privacy Threshold Analysis or final DEA Initial Privacy Assessment.

25. The CIOSU advised the FOIA Unit and the DOJ counsel assigned to this case that its search did not uncover final DEA Privacy Threshold Analyses or final DEA Initial Privacy Assessments, but that its search did uncover thirteen (13) determination letters. The CIOSU further advised that Privacy Threshold Analyses and Initial Privacy Assessments were essentially used as working drafts in an ongoing discussion with OPCL, and that the final document that emerged from this process was not a final DEA Privacy Threshold Analysis or a final DEA Initial Privacy Assessment, but was instead OPCL's determination letter.

26. DOJ counsel assigned to this case conveyed this information to Plaintiff and offered to provide Plaintiff with all the determination letters that the CIOSU's search uncovered instead of final DEA Privacy Threshold Analyses or final DEA Initial Privacy Assessments since those did not exist. Plaintiff accepted this alternative.

27. The CIOSU Chief forwarded to the FOIA/PA Unit the thirteen determination letters that its search uncovered.

**DEA's FINAL RESPONSE**

28. By letter dated July 23, 2015, the FOIA/PA Unit transmitted ten pages to Plaintiff. *See* Exhibit C. The letter described those ten pages as a Privacy Impact Assessment for Avue Digital Services.

29. The transmittal letter also advised Plaintiff that other responsive records originated with OPCL and that the Office of Information Policy ("OIP") processes OPCL records. The letter advised Plaintiff that, "[T]he records have been referred for a decision as to access and OIP will respond directly to you in accordance with 28 C.F.R. §16.4."

30. Following DOJ requirements, and as stated in its letter to Plaintiff dated July 23, 2015, the FOIA/PA Unit forwarded the thirteen OPCL determination letters to OIP for processing and direct response to Plaintiff.

31. By letter dated August 27, 2015, OIP transmitted to Plaintiff the thirteen processed determination letters. *See* Exhibit D.

32. Plaintiff notified the DOJ counsel assigned to this case on September 30, 2015 that it reviewed the produced records "but ha[s] questions regarding the sufficiency of the agency's search for responsive records." Plaintiff requested that "DEA perform a supplemental search for and production of" six Privacy Impact Assessments based on its interpretation of the produced records. Plaintiff also requested that DEA perform a supplemental search for and production of Privacy Impact Assessments for four "programs" that Plaintiff identified as "known DEA systems that impact privacy."

33. The CIOSU conveyed to DOJ counsel assigned to this case its disagreement with Plaintiff's interpretation of the produced records. Moreover, the CIOSU did not see anything in

Plaintiff's request that identified an additional location that would be likely to contain additional responsive records, nor did it identify any additional search terms that were likely to locate additional responsive records. Nevertheless, the CIOSU searched its paper files, "Share Drive," SharePoint, and relevant CIOSU electronic mail accounts using the following terms: "USTO," "Cellsite Simulator," "Cell-site Simulator," and "phone data" in response to the Plaintiff's request for a supplemental search for supposed DEA "programs" that it had not identified in its original FOIA request. The searches did not uncover any additional responsive records. In addition, in order to verify that its original search had located all responsive records, the CIOSU repeated the same searches for final DEA Privacy Impact Assessments as described above in paragraph 19. The re-searches did not uncover any other final DEA Privacy Impact Assessments.

34. The DOJ counsel assigned to this case conveyed to Plaintiff that DEA disagreed with Plaintiff's interpretation of the produced records, that DEA nevertheless conducted a supplemental search, and that the supplemental search did not uncover any additional final DEA Privacy Impact Assessments.

35. There is no other location that could be searched, or search method that could be used, that is likely to yield additional responsive records.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on December 22, 2015.



Katherine L. Myrick, Chief  
Freedom of Information/Privacy Act Unit  
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