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Dear Terri Miller:

This letter constitutes a request under the Freedom of Information Act ("FOIA"), 5 U.S.C. § 552, and is submitted on behalf of the Electronic Privacy Information Center ("EPIC") to the Transportation Security Administration ("TSA").

EPIC seeks documentation regarding the policies and procedures of the Visible Intermodal Prevention and Response (VIPR) teams operated by the TSA.

#### Documents Requested

1. The Public Affairs Guidance document developed by the VIPR program and the Office of Strategic Communications and Public Affairs;
2. The Activity Summary Reports for deployments in the past 2 years;
3. All records related to the policies and procedures of the Joint Coordination Center for evaluating Operations Plans submitted to them;
4. The Federal Air Marshal protocols for when VIPR teams encounter potential or actual criminal activity in mass transit environments;
5. The VIPR Teams' Standard Operating Procedures as revised;
6. All Privacy Impact Assessments of VIPR, whether prepared by the Office for Civil Rights and Civil Liberties or another unit;
7. All Civil Rights & Civil Liberties Impact Assessments of VIPR, whether prepared by the Office for Civil Rights and Civil Liberties or another unit.

## Background

VIPR is a TSA program wherein TSA agents work directly with local law enforcement officials, conducting random searches and security checks, to augment security at transportation hubs around the country.<sup>1</sup> According to the agency, VIPR teams can include Federal Air Marshals, Transportation Security Inspectors, Behavior Detection Officers, Transportation Security Officers, and Transportation Security Specialists-Explosives.<sup>2</sup> The teams can be found at train stations, events like the Super Bowl, and the Democratic and Republican National Conventions.<sup>3</sup> The VIPR program is managed by the Office of Law Enforcement/Federal Air Marshall Service.<sup>4</sup>

The VIPR program was created in 2004 in response to the Madrid Train bombing.<sup>5</sup> In August 15, 2012, the DHS Inspector General (IG) released a report detailing recommendations for TSA to implement regarding its VIPR teams.<sup>6</sup> Specifically, the IG recommended that TSA "Develop and implement a public awareness initiative to convey the VIPR Program's intent... Clarify the definitions of VIPR operations... Develop and communicate guidance for FAM engagement protocols and legal authorities when VIPR teams encounter potential or actual criminal activity in mass transit environments... [and] Refine Standard Operating Procedures to reflect appropriate roles and responsibilities for TSIs during VIPR operations."<sup>7</sup> TSA responded to the recommendations and agreed to implement the majority of their recommendations.<sup>8</sup> Since then, TSA has not released any documents verifying their compliance with the IGs recommendation.

## Expedited Process

This request warrants expedited processing because (1) it is made by "a person primarily engaged in disseminating information" and (2) it pertains to a matter about which there is an "urgency to inform the public about an actual or alleged federal government activity."<sup>9</sup>

EPIC is "primarily engaged in disseminating information."<sup>10</sup> Further, EPIC has published articles and analysis on TSAs activities.<sup>11</sup>

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<sup>1</sup> Francine Kerner, *Presentation on Legal Justification for VIPR Teams*, The New York Times, (Apr. 18, 2008), <http://www.nytimes.com/interactive/2013/08/06/us/06vipr-documents.html>.

<sup>2</sup> Office of the Inspector Gen., Dep't of Homeland Sec., OIG Project No. 11-073-ISP-TSA, *Efficiency and Effectiveness of TSA's Visible Intermodal Prevention and Response Program Within Rail and Mass Transit Systems*, (Aug. 15, 2012). [https://www.oig.dhs.gov/assets/Mgmt/2012/OIGr\\_12-103\\_Aug12.pdf](https://www.oig.dhs.gov/assets/Mgmt/2012/OIGr_12-103_Aug12.pdf).

<sup>3</sup> Ron Nixon, *T.S.A. Expands Duties Beyond Airports*, The New York Times, (Aug. 5, 2013), <http://www.nytimes.com/2013/08/06/us/tsa-expands-duties-beyond-airport-security.html>.

<sup>4</sup> Kerner, *supra* note 1.

<sup>5</sup> Nixon, *supra* note 3.

<sup>6</sup> [https://www.oig.dhs.gov/assets/Mgmt/2012/OIGr\\_12-103\\_Aug12.pdf](https://www.oig.dhs.gov/assets/Mgmt/2012/OIGr_12-103_Aug12.pdf)

<sup>7</sup> *Id.*

<sup>8</sup> *Id.*

<sup>9</sup> 5 U.S.C. § 552(a)(6)(E)(v)(II) (2008); *Al-Fayed v. CIA*, 254 F.3d 300, 306 (D.C. Cir. 2001).

<sup>10</sup> *American Civil Liberties Union v. Department of Justice*, 321 F. Supp. 2d 24, 29 n.5 (D.D.C. 2004) ("[T]he Court concludes that EPIC is indeed "primarily engaged in disseminating information" for the purposes of expediting the request.").

There is an "urgency to inform the public" about VIPR. VIPR is continuously conducting warrantless searches on individuals.<sup>12</sup> This has caused a public outcry against TSA leading to several calls for the program to stop.<sup>13</sup> The House of Representatives is currently considering testimony on TSA's role in surface transportation, including the use of VIPR teams.<sup>14</sup>

Furthermore, the program has expanded recently with Operation RAILS SAFE to include locations other than traditional airports.<sup>15</sup> This has led to an anonymous DHS attorney to state, "Travelers entering a train station, bus station, ferry terminal, subway station, do not have any reasonable expectation that they will be stopped and searched without probable cause and travelers need not submit to TSA VIPR Teams."<sup>16</sup> The documents requested by EPIC will inform the public as to what criteria VIPR teams are deployed, what criteria they use to justify warrantless searches, and whether the current state of VIPR is consonant with the Fourth Amendment and its authorizing statute.

#### Request for "News Media" Fee Status and Fee Waiver

EPIC is a "representative of the news media" for fee classification purposes.<sup>17</sup> Based on EPIC's status as a "news media" requester, EPIC is entitled to receive the requested record with only duplication fees assessed.<sup>18</sup>

Further, because disclosure of this information will "contribute significantly to public understanding of the operations or activities of the government," any duplication fees should be waived.<sup>19</sup> According to the agency's regulations, a fee waiver should be granted because (i) the subject of the request concerns "the operations or activities of the government"; (ii) disclosure is "likely to contribute" to an understanding of government operations or activities and the information is not already in the public domain; (iii) the disclosure "will contribute to the understanding of a reasonably broad audience of persons interested in the subject," and EPIC has the "expertise in the subject area and ability and intention to effectively convey information to the public" (As the agency notes, "[i]t shall be presumed that a representative of the news media

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<sup>11</sup> EPIC, *TSA Conducts Warrantless Searches Outside of Airports*, (Aug. 8, 2013) <https://epic.org/2013/08/tsa-conducts-warrantless-search.html>.

<sup>12</sup> Nixon, *supra* note 3.

<sup>13</sup> CJ Ciaramella, *Abolish the TSA*, Washington Post, (Apr. 16, 2015) <https://www.washingtonpost.com/posteverything/wp/2015/04/16/abolish-the-tsa/>.

<sup>14</sup> *House Committee on Homeland Security, Transportation Security Subcommittee, Counterterrorism and Intelligence Subcommittee, Testimony on Surface Transportation*, (Sep. 18, 2015) (testimony of Eddie Mayenschein, Office of Security Policy and Industry Engagement Assistant Administrator, Transportation Security Administration) <https://www.tsa.gov/news/testimony/2015/09/18/testimony-surface-transportation>.

<sup>15</sup> Bart Jansen, Amtrak, *TSA boost rail security for Labor Day weekend*, USA Today, (Sep. 3, 2015) <http://www.usatoday.com/story/news/2015/09/03/tsa-rail-security-amtrak-homeland-security-jeh-johnson-tsa-peter-neffenger/71608730/>

<sup>16</sup> Boarding Area, *DHS Lawyer: Travelers Need Not Submit to TSA VIPR Teams*, (Nov. 1, 2011), <http://flyingwithfish.boardingarea.com/2011/11/01/dhs-lawyer-travelers-need-not-submit-to-tsa-vipr-teams/>.

<sup>17</sup> *EPIC v. Department of Defense*, 241 F. Supp. 2d 5 (D.D.C. 2003).

<sup>18</sup> 18 5 U.S.C. § 552(a)(4)(A)(ii)(II).

<sup>19</sup> § 552(a)(4)(A)(iii).

will satisfy this consideration."); and, (iv) the disclosure is likely "to contribute 'significantly' to public understanding of government operations or activities."<sup>20</sup>

### Conclusion

Thank you for your consideration of this request. As provided in 5 U.S.C. § 552(a)(6)(E)(ii)(I), I will anticipate your determination on our request within ten business days. For questions regarding this request I can be contacted at 202-483-1140 x104 or [FOIA@epic.org](mailto:FOIA@epic.org).

Respectfully Submitted,



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John Tran  
EPIC FOIA Counsel  
Coordinator, Open Government Project

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<sup>20</sup> See 6 C.F.R. § 5.11(k).