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8 UNITED STATES DISTRICT COURT
9 FOR THE NORTHERN DISTRICT OF CALIFORNIA

10 Edward Hasbrouck
11 Plaintiff,
12 vs.
13 U.S. Customs and Border Protection
14 Defendant.

Case No. 3:10-cv-03793-RS

**DECLARATION OF EDWARD
HASBROUCK IN SUPPORT OF
PLAINTIFF'S COMBINED CROSS-
MOTION FOR SUMMARY
JUDGMENT AND OPPOSITION TO
DEFENDANT'S MOTION FOR
SUMMARY JUDGMENT**

Date: August 25, 2011

Time: 3:30 PM

Judge: The Hon. Richard Seeborg

DECLARATION OF EDWARD HASBROUCK

I, Edward Hasbrouck, declare as follows:

1. I am the Plaintiff in this action and I submit this declaration in support of Plaintiff's Combined Cross-Motion for Summary Judgment and Opposition to Defendant's Motion for Summary Judgment. In addition to being the Plaintiff in this lawsuit, I am a travel expert, author, journalist, consumer advocate, and consultant, specializing in issues related to air travel and travel reservations technology. I am the author of The Practical Nomad: How To Travel Around The World (4th ed. 2007; 5th ed. forthcoming 2011) and The Practical Nomad Guide to the Online Travel Marketplace (2001), both of which include consumer advice and information on the contents of travel reservation records and the privacy issues posed by this data. I have conducted extensive research on the contents of Passenger Name Records (PNRs) and other travel records in both commercial and governmental contexts. My reporting on this issue on my Web site won a Lowell Thomas Travel Journalism Award from the Society of American Travel Writers Foundation for investigative reporting in 2003, and my article, "What's in a PNR?," available at <http://hasbrouck.org/articles/PNR.html>, is the most frequently cited reference for a general audience on PNR data. I have testified or provided declarations as an expert in litigation and arbitration related to PNR data in the USA and in Canada. I have testified on issues related to PNR data before the Transportation Security Administration and the Data Privacy and Integrity Advisory Committee of the Department of Homeland Security. In 2010, I testified as an invited expert witness on the contents and usage of PNR data at hearings before Members of the European Parliament and before the Canadian House of Commons.

2. Since 2006, I have been a consultant on travel-related civil liberties and human rights issues for the Identity Project (IDP), available at <http://www.papersplease.org>. IDP provides advice, assistance, publicity, and legal defense to those who find their rights infringed, or their legitimate activities curtailed, by demands for identification, and builds public awareness about the effects of ID requirements on fundamental rights. IDP is a program of the First Amendment Project, a nonprofit organization providing legal and educational resources dedicated to protecting and promoting First Amendment rights.

2007 Privacy Act Request and Appeal

1
2 3. On June 22, 2007, I signed and dated (a) a Privacy Act (PA) request to U.S. Customs
3 and Border Protection (CBP) for all information pertaining to me contained in the CBP “Automated
4 Targeting System” (ATS), and (b) a release authorizing CBP to provide information in response to
5 this request to my attorney, James Harrison, staff attorney for the First Amendment Project.

6 4. On June 22, 2007, I mailed this request and release to the First Amendment Project
7 office for them to forward to CBP. Exhibit A attached hereto is a true and correct copy of this
8 request, and Exhibit B attached hereto is a true and correct copy of this release.

9 5. I was later advised by Mr. Harrison that my request and release had been received
10 and forwarded by the First Amendment Project to CBP on June 27, 2007.

11 6. Sometime in late August of 2007, I received from Mr. Harrison a scanned copy of
12 a letter with attachments dated August 13, 2007, from Lisa Brown of the CBP Office of Field
13 Operations. This letter purported to be “in acknowledgment and response to your Freedom of
14 Information Act (FOIA) request,” although my only request to CBP had been a Privacy Act request.
15 The attachments contained redacted and apparently incomplete excerpts from certain categories of
16 records described in the System of Records Notice (SORN) for ATS, but did not mention any
17 reasons why the other categories of information or portions of the records were missing. There was
18 no mention whatsoever of the Privacy Act in this letter. It was unclear to me after receiving this
19 letter whether my Privacy Act request had been ignored, had been summarily denied without notice,
20 had been misconstrued as a FOIA request, or was still pending with the same or a different office.

21 7. On September 14, 2007, Mr. Harrison mailed a letter on my behalf dated September
22 13, 2007, appealing CBP’s August 13, 2007, response to my Privacy Act request. That appeal letter
23 was sent by certified mail, return receipt requested, with certified mail number
24 70051160000258900956, to the address specified for any appeals by CBP in their August 13, 2007,
25 letter. Exhibit C attached hereto is a true and correct copy of that letter, Exhibit D attached hereto
26 is a true and correct copy of the certified mail receipt, and Exhibit E attached hereto is a true and
27 correct copy of the postal delivery record showing that “this item was delivered on 09/18/2007 at
28 08:25AM in WASHINGTON, DC 20229 to S CHRISTENSON,” and showing a legible signature

1 of the recipient as “Stephen Christenson” and the address of the recipient as “Customs 20229.”

2 8. On July 25, 2008, a System of Records Notice (SORN) and a Notice of Proposed
3 Rulemaking (NPRM) for Privacy Act exemptions for the Border Crossing Information (BCI) System
4 of Records was published in the Federal Register at 73 Fed. Reg. 43457-43462. That SORN
5 identified Laurence E. Castelli (Chief Privacy Act Policy and Procedures Branch, U.S. Customs and
6 Border Protection, Office of International Trade, Regulations & Rulings) as the point of contact for
7 “general questions” regarding the SORN, and Hugo Teufel III (Chief Privacy Officer, Privacy
8 Office, U.S. Department of Homeland Security) as point of contact for “privacy issues.”

9 9. On August 25, 2008, in my capacity as a consultant to the Identity Project (IDP) on
10 travel-related civil liberties and human rights issues, I filed comments with DHS in docket number
11 DHS–2007-0040 on behalf of IDP in response to the SORN for BCI.

12 10. In those comments, I wrote: “The Identity Project has received numerous reports
13 from individuals who have been waiting months without any response to their Privacy Act requests
14 and appeals for ATS records (portions of which would, under this SORN, be recategorized as BCI
15 records). One of our own appeals of the failure to provide requested ATS records has gone almost
16 a year without any acknowledgment, assignment of a docket number, or reply. (Freedom of
17 Information Act/Privacy Act Appeal on behalf of Edward Hasbrouck, appeal of CBP request file
18 number 200F1676, September 13, 2007).” Exhibit F attached hereto is a true and correct copy of
19 those comments as they were filed with DHS in docket DHS–2007-0040.

20 11. In these comments, I erroneously misstated the CBP file number that had been
21 assigned to my request. Since I had never been told what, if any, file number had been assigned to
22 my appeal, I was unable to provide any file number for my appeal. I learned for the first time from
23 Mr. Castelli’s declaration of June 3, 2011, in this case that my appeal was assigned file number
24 H051659. I had never seen this file number before that declaration, despite repeated requests to CBP
25 and DHS, including requests to Mr. Castelli personally, to advise me of what, if any, reference
26 number had been assigned to my appeal, and in spite of my FOIA/PA request for all records related
27 to the processing of my request and appeal, to which any record of the assignment of a reference
28 number would obviously have been responsive.

1 12. Neither I nor IDP ever received any acknowledgment or response to these comments
2 on the SORN for BCI, or any communication from Mr. Castelli, Mr. Teufel, or anyone else at CBP
3 or DHS regarding the report to them , as included in those comments, that I had received no
4 acknowledgment or response to my appeal. I have never received any record of what, if any, action
5 was taken by Mr. Castelli, Mr. Teufel, or anyone else at CBP or DHS on the basis of this report,
6 even though any such records would be responsive under both the Privacy Act and FOIA to my
7 request for records related to the processing of my 2007 request and appeal.

8 13. On February 3, 2010, after all of the requests at issue in this lawsuit had been
9 received by CBP, a Final Rule implementing exemptions from the Privacy Act for the BCI System
10 of Records was published in the Federal Register at 75 Fed. Reg. 5491-5495. The IDP comments
11 regarding CBP's failure to respond acknowledge or reply to my appeal were not mentioned in the
12 analysis of comments accompanying the final rule. Laurence E. Castelli was again identified as the
13 point of contact for "general questions" regarding the final rule, and Mary Ellen Callahan (Mr.
14 Teufel's successor as Chief Privacy Officer for DHS) was identified as point of contact for "privacy
15 issues."

16 14. On December 19, 2008, I participated by telephone in a meeting of the Privacy
17 Coalition at the offices of the Electronic Privacy Information Center (EPIC) in Washington, DC, at
18 which Mr. Teufel was a guest in his capacity as Chief Privacy Officer for DHS. During that meeting,
19 I raised the issue of the lack of response by CBP to Privacy Act requests, and mentioned specifically
20 the continued lack of any response to my request after more than a year. I noted that IDP had
21 received numerous other reports of a similar lack of response to Privacy Act requests for ATS data.
22 I also noted that many potential requesters were discouraged from making requests by knowing that
23 previous requests had been ignored, and suggested that a substantial increase in new requests could
24 be expected if and when DHS began to clear the backlog by responding to pending requests and
25 appeals such as mine.

26 15. Mr. Teufel asked Ms. Lillie Coney of EPIC, who had moderated the Privacy
27 Coalition meeting and invited Mr. Teufel to speak, to e-mail him any remaining unanswered
28 questions after the meeting, to remind him to follow up on them. Since I didn't have Mr. Teufel's

1 e-mail address, Ms. Coney sent him such a message that afternoon. Mr. Teufel replied a few minutes
2 later, with copies to me and to John Kropf and Vania Lockett at DHS, stating, "Let me look into
3 your requests and I or someone on my staff will get back to you." Exhibit G attached hereto is a true
4 and correct copy of that e-mail message. I never received any further communication from Mr.
5 Teufel regarding this, or any communication from Mr. Kropf or Ms. Lockett. I have not received any
6 records of what, if anything, Mr. Teufel did to "look into" my requests, even though such records
7 would be responsive under both the Privacy Act and FOIA to my request for records related to the
8 processing of my 2007 request and appeal.

9 16. Except for a two-day return visit to the USA to testify at a hearing before the TSA
10 in Washington, I was out of the country on an extended research trip to update my book, The
11 Practical Nomad: How to Travel Around the World, from shortly after my 2007 Privacy Act request
12 was filed until mid-2008. As soon as I returned home in mid-2008, I began trying to find out what
13 had happened to my pending 2007 Privacy Act request and appeal. During the latter half of 2008
14 and into 2009, I made numerous phone calls to CBP and DHS to try to determine the status of that
15 appeal. Some of my calls went to voicemail, and I left at least a dozen messages at different phone
16 numbers. In some cases I was told that whatever person or office I reached had no knowledge of my
17 request or appeal and was unable to assist me. In other cases I was transferred or referred to other
18 phone numbers, where I got the same results.

19 17. The first time (other than my exchange with Mr. Teufel on December 19, 2008, as
20 described above) that I reached anyone at CBP or DHS who even professed to be willing to receive
21 a new copy of my pending request and appeal, or to make any attempt to determine what had
22 happened to them, was on February 2, 2009, when one of my phone calls was transferred to Ms.
23 Shari Suzuki. At first, Ms. Suzuki said she had no knowledge of my request or appeal, and could not
24 help me determine their status. After I advised her that I had a postal receipt with a legible signature
25 confirming that my appeal had been received by CBP in 2007, she agreed that if I sent her a new
26 copy of my request and appeal, and the postal receipt, she would look into their status. I immediately
27 sent her an e-mail message with copies of those documents. Because I had only the word processor
28 documents of my request and release, not the scanned images with the handwritten date and

1 signature which were in the possession of my attorney, I attached my unsigned and undated copies
2 of the request, release, and appeal. But I noted in that e-mail message to Ms. Suzuki that the
3 originals had, of course, been signed. Exhibit H attached hereto is a true and correct copy of that e-
4 mail message. The documents marked Bates Nos. US 00081–00084, which I received from CBP in
5 2010 after this lawsuit was filed, and which lack a signature or date, appear to be copied from the
6 word processor documents attached to my February 2, 2009, e-mail message to Ms. Suzuki, and not
7 from my original (signed and dated) request. I have never received from CBP or DHS any copy of
8 their record of my original (signed and dated) 2007 request, or any records—such as FOIA or
9 Privacy Act request or appeal dockets or logs or backlog reports, Sharepoint or other workflow
10 tracking records, referral or assignment or consultation records, system access logs of retrieval of
11 responsive records, records of the DHS process of “Front Office” review of significant FOIA
12 requests, e-mail messages, etc.—relating to what was done with it.

13 18. Later that same day, I received a reply by-mail from Ms. Suzuki. Exhibit I attached
14 hereto is a true and correct copy of that e-mail message. Ms. Suzuki did not say what, if anything,
15 had been done with my 2007 appeal, or what, if any, reference number had been assigned to my
16 appeal. She said that she would “consult with the Privacy Act Policies & Procedures Branch”—she
17 did not specify whether that office was at agency (CBP) or department (DHS) level—and that, “If
18 this matter is to be handled by the FOIA Appeals, Policy & Litigation Branch - I will send you an
19 acknowledgement letter identifying the attorney assigned to handle the matter.” Ms. Suzuki didn’t
20 say what would happen if that were not the case. I never received any such letter.

21 19. Shortly thereafter, I received a phone call from someone who identified himself as
22 “Lawrence Castelli at DHS.” He did not identify his title or exactly what office at DHS he worked
23 in. He was either unable or unwilling to tell me what, if any, action had been taken on my 2007
24 appeal or what, if any reference number had been assigned to it. He said that he would send me a
25 letter confirming that my appeal had been docketed and would be acted on. I never received any
26 such letter, despite repeated follow-up phone calls and e-mail messages. Exhibit J attached hereto
27 is a true and correct copy of one of those e-mail messages which I sent on April 23, 2009, to Mr.
28 Castelli with a copy to Ms. Suzuki. I received no response other than an out-of-office auto-reply

1 message to this e-mail message, and no response to numerous voicemail messages left at intervals
2 throughout 2009 and 2010 for Mr. Castelli. I have received no record of what, if any, action Mr.
3 Castelli or Ms. Suzuki took with respect to my request and appeal, even though any docketing,
4 forwarding, assignment, or referral e-mail messages, logs, or other records would be responsive to
5 my FOIA/PA request for all records related to the processing of my 2007 appeal.

6 2009 Requests and Appeals

7 20. In October, 2009, still not knowing—despite diligent and persistent inquiries over
8 more than two years—the status of my 2007 Privacy Act request or appeal, whether that appeal had
9 been docketed or if so by what office or with what reference number, or whether it had been ignored,
10 had been summarily denied without notice, or was still pending and if so with what office, I
11 submitted (a) a new and broader Privacy Act request for records from the ATS, APIS, BCIS, and
12 TECS systems of records and for an accounting of disclosures of records pertaining to me from each
13 of those systems of records, (b) a FOIA and Privacy Act request for records related to the processing
14 of my 2007 Privacy Act request and appeal, and (c) a request for information about the practices of
15 DHS regarding retrievability of records from the ATS, APIS, BCIS, and TECS systems of records.
16 I sought this information because although this information was required by the Privacy Act to be
17 included in the SORNs for those systems of records, it was missing from those SORNs. Such
18 information is necessary in order to know by what personal identifiers records in those systems are
19 retrieved or retrievable. Those personal identifiers can then be included in Privacy Act requests.
20 These three requests are attached as Exhibits E, F, and G to the Declaration of Shari Suzuki (the
21 “Suzuki Declaration”), filed with Defendant’s Motion for Summary Judgment.

22 21. I received no acknowledgment, response, or other communication related to any of
23 these three requests, other than the signed postal receipts confirming that they been received by
24 CBP.

25 22. On December 10, 2009, I appealed the constructive denial of each of these requests
26 pursuant to the Privacy Act and FOIA. These three appeals are attached as Exhibits H, I, and J to
27 the Suzuki Declaration.

28 23. Having previously been told that FOIA and Privacy Act offices of several DHS

1 components including CBP had changed their addresses without promulgating updates to their
2 Privacy Act or FOIA regulations or the SORNs specifying addresses for requests and appeals (which
3 I had reported separately to the DHS Privacy Office and the Office of the Inspector General as a
4 violation of FOIA and the Privacy Act), I began calling CBP shortly after I received postal receipts
5 confirming that these three 2009 appeals had been received, in order to be sure that they had made
6 it to the proper offices, had been docketed, and would be acted on, and to continue to try to find out
7 the status of my 2007 Privacy Act request and appeal.

8 24. Eventually, after numerous phone calls and voicemail messages, I spoke with Ms.
9 Elissa Kay on December 15, 2009. Ms. Kay said she was unable to find any record of any of my four
10 pending appeals (the 2007 appeal and the three 2009 appeals), but agreed that if I sent her new
11 copies of them, she would try to find out what had happened to them.

12 25. After I sent copies of all my pending appeals by e-mail to Ms. Kay, and after further
13 exchange of e-mail messages, Ms. Kay advised me that she had created a new FOIA request, but had
14 referred what she described as my "appeal(s) requests/information" to the FOIA Appeals and
15 Litigation Branch, despite the fact that some of them were explicitly and unambiguously Privacy Act
16 appeals rather than, or in addition to, FOIA appeals. Ms. Kay provided no information as to the
17 actual status of my 2007 Privacy Act request or any of my four pending appeals. Exhibits K, L, M,
18 N, O, P, Q, R, and S attached hereto are true and correct copies of this exchange of e-mail messages.

19 26. Shortly afterward, on December 16, 2009, I received an e-mail message from Ms.
20 Suzuki purporting to "explain the status of four requests (all of which have been appealed) that you
21 have filed with CBP." This e-mail message is attached as Exhibit L to the Suzuki Declaration.

22 27. With respect to the three 2009 appeals, Ms. Suzuki said, "I can open 3 appeal cases
23 for the 3 appeals all dated December 10th and send you acknowledgment letters (which will
24 provide tracking numbers and the name of the attorney assigned to handle each appeal)." Although
25 I immediately replied by e-mail to tell Ms. Suzuki that I wished her to do this, the three letters which
26 I later received (two of which had the same reference number), referred not to my appeals but my
27 "correspondence" and "inquiry." I never received any confirmation that any of these three appeals
28 had been docketed as a Privacy Act or FOIA appeal, or that they would be processed or responded

1 to as such appeals. Despite repeated inquiries, I received no further response or notification of any
2 determination under either the Privacy Act or FOIA with respect to any of these three appeals until
3 after I filed this lawsuit. My e-mail message to Ms. Suzuki is attached as Exhibit M to the Suzuki
4 Declaration, and Exhibits T, U, and V attached hereto are true and correct copies of the three letters
5 which I later received from her.

6 28. With respect to my 2007 Privacy Act appeal, Ms. Suzuki said that, "As you may
7 recall, we discussed this appeal back in February 2009 and you indicated that you wanted this
8 handled as a Privacy Act Appeal. You spoke with Larry Castelli, Chief of the Privacy Act Policies
9 and Procedures Branch. It is my understanding that they are working on your appeal." I have never
10 received any evidence that Mr. Castelli or anyone else was in fact "working on" my 2007 appeal,
11 or records that would have provided Ms. Suzuki with a basis for such an "understanding," even
12 though any such records would be responsive under both the Privacy Act and FOIA to my request
13 for records related to the processing of my 2007 request and appeal.

14 29. I immediately replied to Ms. Suzuki to correct her misunderstanding. I advised her
15 that, despite Mr. Castelli's promise in February, 2009 (10 months earlier) to send me a letter
16 confirming that he had docketed my 2007 Privacy Act appeal, he had not done so and had not
17 responded to any of my further attempts to determine the status of that appeal. I again requested that
18 Ms. Suzuki "[p]lease confirm (or have the responsible person confirm) by letter that this appeal has
19 now been docketed, and is now being tracked, and advise contact information for how I can follow
20 up to find out its status." I received no response to this request, and no further communication from
21 Ms. Suzuki until after this lawsuit was filed.

22 30. Shortly thereafter, I received a letter from Ms. Kay dated December 18, 2009, in
23 which she stated that she was "enclosing responsive records to your initial Freedom of Information
24 Act (FOIA) request," which it referenced as file number 2010F03575. This was the same number
25 which Ms. Kay had told me in her e-mail message of December 16, 2009, applied to a new FOIA
26 (not Privacy Act) request which she had created on her own initiative, and not to any of my pending
27 Privacy Act requests or appeals: "Mr. Hasbrouck, the number I provided 2010F03575 applies to a
28 new FOIA request for entry/exits, secondary exams, and PNR data; which last evening I agreed to

1 provide to you.” Ms. Kay’s letter of December 18, 2009 made no mention whatsoever of the Privacy
2 Act. This letter is attached as Exhibit N to the Suzuki Declaration.

3 31. Ms. Suzuki’s subsequent declaration in this case of June 3, 2011, claims at paragraph
4 17 that Ms. Kay’s December 18, 2009, letter constituted “a decision (FOIA Division File No.
5 2010F03675) in response to Plaintiff’s FOIA/PA request to her office . . . releasing . . . ATS PNR
6 records released under the Privacy Act.” However, the plain language both of Ms. Kay’s letter and
7 her prior e-mail message that this reference number did not apply to any of my Privacy Act requests
8 or appeals, and the absence of any mention of the Privacy Act or of Privacy Act rights of appeal or
9 judicial review in her letter, make clear that this letter was not intended to constitute a response or
10 determination with respect to any of my Privacy Act requests or appeals. Accordingly, I remained
11 uncertain, after receiving Ms. Kay’s “response” to the parallel FOIA request which she had
12 generated of her own initiative, what, if anything, had happened to any of my Privacy Act requests
13 or appeals.

14 32. Through the efforts described above, I made diligent efforts to exercise my rights
15 with respect to my FOIA requests under 5 U.S.C. § 552(a)(7), which requires that: “Each agency
16 shall—(A) establish a system to assign an individualized tracking number for each request received
17 that will take longer than ten days to process and provide to each person making a request the
18 tracking number assigned to the request; and (B) establish a telephone line or Internet service that
19 provides information about the status of a request to the person making the request using the
20 assigned tracking number, including—(i) the date on which the agency originally received the
21 request; and (ii) an estimated date on which the agency will complete action on the request.” I called
22 every telephone number and sent e-mail messages to every e-mail address listed on the CBP or DHS
23 Web sites in relation to FOIA requests, or to which I was referred, in each case explicitly requesting
24 the status of my requests and appeals. I was not told, in response to those requests, much of the
25 information provided in Mr. Castelli’s and Ms. Suzuki’s declarations of June 3, 2011 as to the
26 previous status of my requests and appeals, the reference numbers which CBP had assigned to some
27 of them, and the dates when CBP claimed to have received them. I never received any information
28 as to any estimated dates on which, if ever, CBP expected to complete action on any of my requests

1 or appeals.

2 33. Having heard nothing further from CBP or DHS regarding my Privacy Act requests
3 and appeals for another eight months, having exhausted (through constructive denial) all available
4 administrative remedies, and having diligently and persistently exhausted all reasonably available
5 means to bring the constructive denial of my requests and appeals to the attention of the responsible
6 CBP and DHS officials and to ascertain their status and what, if any, action had been taken on them
7 I finally filed this lawsuit on August 25, 2010.

8 **Adequacy of Searches Done**

9 34. In October, 2010, I learned from documents posted online by DHS that, pursuant to
10 directives issued to all DHS and component FOIA offices and officers by the DHS Chief Privacy
11 Officer in 2005, and updated in 2006 and 2009, all DHS FOIA offices were required to report a list
12 of “significant FOIA activities” each week to the DHS Privacy Office, for inclusion in a weekly
13 report to the DHS “Front Office” and for review and approval. “Significant” FOIA requests were
14 defined to include all requests for which “The FOIA request or requested documents will garner
15 media attention or is receiving media attention; . . . The FOIA request is from a member of the
16 media; . . . FOIA request is from a member of an activist group, watchdog organization, special
17 interest group, etc.,” or “The FOIA request is for documents associated with a controversial or
18 sensitive subject.” FOIA appeals were also included in the reporting requirement if they met any of
19 the same criteria. I reported on this news, with links to the policy directives from the DHS Chief
20 Privacy Officer and a December 23, 2009, report distributed to FOIA offices of all DHS components
21 mentioning me and my affiliation with IDP and describing one of my FOIA requests on behalf of
22 IDP, on the IDP Web site at [http://papersplease.org/wp/2010/10/29/dhs-privacy-office-ordered-tsa](http://papersplease.org/wp/2010/10/29/dhs-privacy-office-ordered-tsa-not-to-answer-our-foia-request/)
23 [-not-to-answer-our-foia-request/](http://papersplease.org/wp/2010/10/29/dhs-privacy-office-ordered-tsa-not-to-answer-our-foia-request/). Exhibit W attached hereto is a true and correct copy of the
24 December 23, 2009, report that DHS posted online and was linked to from the IDP Web site.

25 35. I, the Identity Project, and these requests clearly satisfy the criteria for inclusion in
26 this reporting system as “significant” activities, as we know others of our requests were. I have
27 received no records related to the inclusion of my 2007 request and appeal in this reporting system
28 although such records would obviously be responsive under both the Privacy Act and FOIA to my

1 request for records related to the processing of that request and appeal. Since the DHS policy would
2 have required these requests and appeals to be included in this reporting system, an adequate search
3 would have included a search for such e-mail messages, reports, and other records.

4 36. In November and December of 2009, on behalf of the Identity Project, I submitted
5 a complaint to the DHS Privacy Office and the DHS Office of the Inspector General that another
6 DHS component, the Transportation Security Administration (TSA), had failed to comply with the
7 requirements of FOIA and the Privacy Act to promulgate valid addresses for submission of FOIA
8 and Privacy Act requests and appeals. On August 17, 2010, I made a request to the DHS on behalf
9 of the Identity Project, pursuant to FOIA and the Privacy Act, for records related to the handling of
10 this complaint.

11 37. Eventually, I received a letter dated January 24, 2011, from Sabrina Burroughs,
12 Acting Associate Director, Disclosure & FOIA Operations, DHS, in partial response to this request,
13 with which were enclosed 202 pages of partially redacted responsive documents consisting primarily
14 of DHS e-mail messages. Portions of this request and appeals related thereto, remained (and remain
15 to this day) pending and unanswered. Exhibits X and Y attached hereto are true and correct copies
16 of this letter and of portions of the attached documents.

17 38. Mr. Castelli's declaration in this case of June 3, 2011, says at paragraph 10, "On
18 February 2, 2009, the request . . . was assigned case file number H051659." I had never seen this file
19 number before, despite my repeated explicit written requests, including to Mr. Castelli, that I be
20 advised what, if any, reference number had been assigned to my request or appeal. Moreover, I have
21 never received any record of the assignment of such a reference number, which assignment
22 presumably was reflected in some records such as a Privacy Act and/or FOIA request and/or appeal
23 docket or log or workflow tracking system, even though such records are obviously responsive under
24 both the Privacy Act and FOIA to my request for any records related to the processing of my 2007
25 request and appeal.

26 39. Mr. Castelli's declaration in this case of June 3, 2011, also says at paragraph 12, "On
27 February 5, 2009, the Privacy Branch received an email from the Chief, Passenger Branch, Office
28 of Intelligence and Operations Coordination (OIOC), attaching unredacted PNR records for Edward

1 Hasbrouck that were responsive to Plaintiff's initial request." I have never received a copy of this
2 e-mail message, and it is not listed on the Vaughn Index, even though its existence was known
3 personally to Mr. Castelli and even though it was obviously responsive under both the Privacy Act
4 and FOIA to my request for any records related to the processing of my 2007 request and appeal.

5 40. Despite Mr. Castelli's knowledge of the existence of this e-mail message from the
6 OIOC and thus of the existence of responsive records in the possession of the OIOC as well as, of
7 course, in Mr. Castelli's office (which Ms. Suzuki had also identified as the likely site of responsive
8 records), there is no evidence that any search was conducted for responsive records in the possession
9 of either the Privacy Branch or the OIOC.

10 41. From 1991 to 2006, I was employed as a travel agent, supervisor, trainer, and
11 in-house consultant by a series of travel agencies specializing in complex around-the-world and
12 multi-stop international airline tickets. From 1998 to 2006, I was the staff "Travel Guru" for
13 Airtreks.com, an Internet-based travel agency in San Francisco with a worldwide clientele.

14 42. At different times during the course of my employment, I have used three of the four
15 major global Computerized Reservation Systems (CRSs) on a daily basis to create, retrieve, modify,
16 and work with air travel PNRs.

17 43. I have been trained in CRS usage and formats, CRS system administration, PNR
18 retrieval from CRSs, interpreting PNRs and PNR histories, and other advanced CRS topics. I have
19 trained and supervised the training of other travel agents in CRS usage, PNR formats, PNR retrieval,
20 and the interpretation of PNR and history data. At Airtreks.com, I was in charge of agency relations
21 with CRSs, including CRS operations in a multi-CRS environment, negotiating new and renewal
22 CRS contracts, and planning and coordinating agency conversions between CRSs.

23 44. As "key operator" or "superuser," I was responsible for creating and managing CRS
24 user logins, passwords, and permissions. I also worked as an in-house consultant and subject-matter
25 expert on projects with in-house and third-party software developers and system integrators related
26 to Airtreks' use of airfare data from multiple CRSs and other sources.

27 45. Each of the travel agencies for which I have worked has utilized a global sourcing
28 strategy dependent on obtaining portions of customers' tickets from whichever vendor (ticket

1 wholesaler), wherever in the world they might be, offered the lowest price. As a result, my
 2 day-to-day work exposed me to, and required me to be familiar with, the PNR data entry and
 3 retrieval practices of an unusually wide range of airlines and travel agencies around the world. As
 4 part of my work, I visited and negotiated both prices and operational agreements, including methods
 5 for exchanging and transferring PNR and reservation data, with air ticket vendors in other countries,
 6 both in their offices where I could observe their procedures first hand, and at meetings of
 7 international consortia and networking groups of discount ticket exporters and importers.

8 46. In my role within the travel industry, as a journalist and consultant, and in my
 9 ongoing research and policy analysis work with IDPI, I follow developments in the travel technology
 10 industry, especially those related to reservations (PNR) data, including attending industry
 11 conferences and trade shows and monitoring the relevant trade publications and information sources.

12 47. I consider myself an expert in industry (airline, travel agency, and CRS) practices for
 13 the entry, retrieval, and international transmission, exchange, and sharing of PNR data, and in the
 14 norms and global variation in practices for PNR data entry and handling.

15 48. As the person to whom such customer service problems were referred by the agencies
 16 at which I worked, I know from experience that it is routine for a traveller or travel agent to be told
 17 that an airline has no record of a reservation (a “NOREC”), only to find, when they are prompted
 18 to conduct their search differently, that in fact they do have such a reservation.

19 49. My experience with PNRs—in which my job responsibilities included evaluating
 20 airline and travel agency claims to have conducted a search without finding any responsive
 21 record—confirms the general principle that to evaluate whether an adequate search of a
 22 computerized database has been performed, one must know:

- 23 (a) what input was provided (typically either through a line command or
 24 commands, or the completion of a query form or forms in a graphical user
 25 interface);
- 26 (b) using what methodology for identifying responsive records (typically query
 27 software implementing a particular algorithm, such as exact matching,
 28 Boolean matching, regular expression matching, Bayesian scoring, or

1 “fuzzy” matching of phonetically or otherwise similar data); and
 2 (c) against what target database (typically either the full text of the target
 3 database, a subset of selected fields or data categories, or an index or indexes
 4 constructed in a particular manner, either manually or automatically, from
 5 either full text or certain fields).

6 50. Ms. Suzuki’s and Mr. Castelli’s declarations of June 3, 2011, provide no information
 7 as to the search algorithms which were used. Without this essential information as to what is actually
 8 meant by the simplistic and conclusionary term “search,” these declarations are insufficient to
 9 establish that whatever was done constituted a diligent or competent search. Moreover, anyone
 10 experienced and competent in retrieving PNRs and other travel records would be aware of these
 11 issues, and would identify the exact query, the algorithm, and the data or subset or index against
 12 which the query was run.

13 51. My name, “Hasbrouck,” is commonly misspelled in many different ways. It is a n
 14 uncommon name, and the spelling I use is not intuitive for most people. Almost as soon as I was
 15 taught how to write my name as a child, I was taught by my parents that other people would not
 16 usually be able to spell it, and that whenever I gave my name to other people, I would need both to
 17 spell it out, and to check that they had transcribed it correctly. I have learned from a lifetime of
 18 experience that this lesson was correct. Even when I spell out my name, face to face or over the
 19 phone, I often find that it has been written incorrectly.

20 52. While the name Hasbrouck is uncommon, it is not rare. It is spelled in many ways
 21 by different members of the family, and people who have encountered the name have often
 22 encountered it with an alternate spelling and thus may assume that spelling when they hear the name.
 23 There are perhaps 10,000 or more members of the Hasbrouck family in America.¹ While all these
 24 Hasbroucks in America are descended from common ancestors who arrived in the 1600s (originally

26
 27 ¹ Kenneth E. Hasbrouck, The Hasbrouck Family in America, With European Background,
 28 Vols. I through VI (Huguenot Historical Society). See also Obituary, Kenneth Hasbrouck, 79;
 Championed a Heritage, New York Times, June 2, 1996, available at <http://www.nytimes.com/1996/06/02/nyregion/kenneth-hasbrouck-79-championed-a-heritage.html>.

1 from the vicinity of Hazebrouck, France), they spell their names in various ways. There are also
2 branches of the Hasbrouck family in other countries, some of which use other spellings. According
3 to an article published by the Hasbrouck Family Association, “In my travels through various books,
4 I’ve found many ways we spell our name. This is a list of the variations I have come across:
5 Hasebroock, Hazbrouck, Hazebrouck, Von Asbroeck, del Hazebrouck, Hazebroucq, Assbroecq,
6 Assebrouck, Hasbrouck, Heasbreucq, d’Hazebrouck, Hassebrauk, Hasebreucq, Van Hazebrouck and
7 Hasbrook. Some spell it with a capital B in the middle.”²

8 53. I have seen my name misspelled in dozens of ways, and I have learned to expect that
9 when I have made reservations by phone, even if I have spelled my name, I will find that it has been
10 entered incorrectly. Other family members have reported the same experience. I have traveled using
11 airline tickets with my name misspelled in many different ways.

12 54. I am not unusual in having a name that is often misspelled. In my travel industry
13 experience, I have learned that names can be misspelled because they are unfamiliar, by
14 typographical error, because the person entering the data is a native speaker of a different language
15 or unfamiliar with the name, because of poor audio quality of telephone calls made while traveling
16 and often in airports or other environments with loud background noise, because of variations in
17 accented pronunciation, and for many other reasons.

18 55. From my experience, I know that similar name searches and searches on multiple
19 name versions are essential to finding all responsive PNR data for a particular person.

20 56. Because of the frequency of name misspellings, and the commercial importance of
21 being able to retrieve PNRs even if names are misspelled, all major CRSs in which PNRs are hosted
22 have found it commercially necessary to develop phonetic similar-name matching software. By
23 default, a search or retrieval command for PNRs by passenger name in any of the four major CRSs
24 (Sabre, Amadeus, Galileo/Travelport, and Worldspan/Travelport) searches for similar names as well
25 as exact name matches. So essential is this functionality to effective search and retrieval that I am
26 aware of no command format in any of these CRSs to override the similar name matching and search

27
28 ² Jon Hasbrouck, “Hasbrouck, Our Family Name,” available at <http://www.hasbrouckfamily.org/name.htm>.

1 solely for exact name matches. In the commercial context, it is universally recognized throughout
2 the travel industry that a search solely by exactname would not be reasonably calculated to retrieve
3 all responsive PNRs.

4 57. Responses to other requesters' FOIA and/or Privacy Act requests for ATS and TECS
5 records have included screen prints showing th at the CBP system includes options perm itting a
6 search for "LIKE" nam es, but default s to a search for "EXACT" nam es. From my extensive
7 commercial experience and expertise, I know that thisdefault search for exact nam e is not likely to
8 produce all responsive records in a large proportion of individual cases. I have received no record
9 showing whether any search conducted in response to any of my requests used the default exact
10 name search, or the similar name search option.

11 58. Having received no information about the similar-name matching algorithms which
12 could have been used, but weren't, by CBP in searching for responsive records, I cannot judge the
13 efficacy of those algorithm s. In the com mercial context, however , the similar-name matching
14 software used by CRSs cannot be relied on to successf ully identify all misspellings or typographical
15 errors. Other identifiers such as telephone numbers are often used.

16 59. Responses to other requesters' FOIA and/or Privacy Act requests for ATS and TECS
17 records have included records retrieved by, am ong other personal identifiers, pa ssport numbers.
18 DHS officials have publicly described the re trieval of PNRs by telephone num ber in specific
19 criminal investigations.

20 60. "First" and "last" names in PNRs are routinely tansposed, even by experienced travel
21 agency and airline staff. The default in all founmajor CRSs is that passenger names are entered and
22 displayed in the com mand line interface and on tickets as "LASTNAME/FIRSTNAME." This
23 causes confusion when graphical user interfaces display or provide for entry of nam es in
24 "FIRSTNAME LASTNAME" sequence, or when passengers trying to be helpful speak their nam e
25 in the order in which they expect it to be entered, i.e., "My name is LASTNAME FIRSTNAME."
26 I have transposed my own first and last names when using an unfamiliar user interface, and I have
27 traveled on airline tickets with my first and last names transposed. In my professional experience,
28 I have seen num erous such tickets for other travelers, and it is m y expert opinion that such

1 transpositions in PNR data are a routine and predictable event which any search strategy reasonably
2 calculated to identify all relevant PNR data needs to take into account.

3 61. In the commercial context, I have learned that one of the more common reasons that
4 a PNR is not found, even though it exists, is that the first and last name have been transposed. I have
5 been trained, and I have trained others, that a search reasonably calculated to retrieve all PNRs
6 identifiable with a name includes a search with the first and last names transposed. I specifically
7 requested that such a search be performed, but it was not.

8
9 I declare under penalty of perjury that the foregoing is true and correct to the best of my
10 knowledge and belief.

11
12 Executed on 21 June 2011.

13
14
15 

16 By: Edward John Hasbrouck