

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION**

EDWARD HASBROUCK,)	
)	
Plaintiff,)	
)	
v.)	Civ. No.: C10-03793 RS
)	
UNITED STATES CUSTOMS AND BORDER PROTECTION,)	
)	
Defendant.)	
)	

DECLARATION OF SHARI SUZUKI

I, Shari Suzuki, declare as follows:

1. I am the Freedom of Information Act (“FOIA”) Appeals Officer, and Chief of the FOIA Appeals, Policy and Litigation Branch (“FAPL”), Regulations and Rulings (“R&R”), Office of International Trade (“OT”), U.S. Customs and Border Protection (“CBP”), U.S. Department of Homeland Security (“DHS”). The FAPL Branch is the Office within DHS/CBP that is charged, at all times pertinent to this litigation, with the responsibility of managing and responding to administrative appeals of initial responses to information access requests made pursuant to the FOIA, 5 U.S.C. § 552. I submit this declaration in support of Defendant’s Motion for Summary Judgment.

2. As the Chief of the FAPL Branch, I am responsible for the overall supervision and management of the FAPL Branch, and I serve as the official with the following duties and responsibilities, *inter alia*: 1) giving guidance and instructions to the personnel in CBP regarding the processing of FOIA requests; 2) adjudicating administrative appeals

that concern FOIA requests; and, 3) overseeing all CBP activities related to information disclosure. I have held this position since April 2, 2006.

3. CBP is a law enforcement agency with enforcement responsibilities for over 400 Federal statutes on behalf of over 40 different federal agencies. CBP's mission is to protect the borders of the United States against terrorists and the instruments of terror, enforce the customs and immigration laws of the United States, and foster our Nation's economy by facilitating lawful international trade and travel. Our mission includes the inspection and processing of passengers, conveyances, and merchandise entering, transiting and departing the United States. The creation and implementation of effective law enforcement policies and procedures is paramount to achieving this mission. The programs, policies and procedures at issue in this case are directly related to CBP's law enforcement activities and are all used for border security and enforcement purposes.

4. I am familiar with Edward Hasbrouck's (hereinafter "Plaintiff") requests and subsequent appeals for information from CBP pursuant to the FOIA and/or the Privacy Act. All information contained herein is based upon information furnished to me in my official capacities of FOIA Appeals Officer and FAPL Branch Chief. The statements I make in this declaration are based on my personal knowledge, which includes knowledge acquired through attorneys in my branch, and agency files that I personally reviewed in the course of my official duties.

5. The purpose of this Declaration is to describe CBP's handling of Plaintiff's FOIA requests and appeals and to provide a *Vaughn* Index identifying information responsive to Plaintiff's FOIA requests, but exempt from disclosure under the FOIA, in accordance with *Vaughn v. Rosen*, 484 F.2d 820 (D.C. Cir. 1973), *cert. denied*, 415 U.S. 977 (1974).

Attached hereto as Exhibit A is a true and correct copy of the *Vaughn* index identifying the documents released to or withheld from Plaintiff under the FOIA and the statutory bases under the FOIA for the redaction of certain information from some of the records released to the Plaintiff. This Declaration, along with the *Vaughn* Index, provides an identification of information that is withheld, the statutory exemption(s) claimed, and the justification for asserting the exemptions used to withhold certain information contained in the records at issue.

6. This Declaration consists of: (i) a summary of the relevant facts and correspondence regarding Plaintiff's FOIA requests; (ii) an explanation of the notation form used to identify the justification for redacted information; (iii) the justification for withholding information under the FOIA; and, (iv) a statement regarding the segregability of the documents partially withheld.

I. SUMMARY OF RELEVANT FACTS AND CORRESPONDENCE CONCERNING PLAINTIFF'S FOIA REQUESTS

7. Plaintiff made his initial Privacy Act Request to CBP by undated letter (but according to Plaintiff, purportedly dated June 27, 2007) that sought all records concerning himself in the Automated Targeting System ("ATS"). Attached hereto as Exhibit B (Bates-numbered US00081-84) is a true and correct copy of a letter, undated and unsigned, from Edward Hasbrouck to U.S. Customs and Border Protection, Office of Field Operations, Freedom of Information Act/Privacy Act, with accompanying Request for Records/Privacy Act Release Form.

8. The Director of Field Programs, Office of Field Operations ("OFO"), CBP, Lisa Brown, replied to Plaintiff's request via letter dated August 13, 2007 (File No. 2007F4114) and nominally released 14 pages (the actual number of pages that Plaintiff

received was 16 pages) of responsive records from ATS, with redactions made pursuant to Exemptions (b)(2)¹ and (b)(7)(C) of the FOIA. Attached hereto as Exhibit C (Bates-numbered FAP 0163) is a true and correct copy of a letter dated August 13, 2007, from Lisa Brown to James P. Harrison.

9. Via letter dated September 13, 2007 to CBP, Plaintiff purportedly appealed OFO's August 2007 release of redacted records. Attached hereto as Exhibit D (Bates-numbered US00085-87) is a true and correct copy of an unsigned letter dated September 13, 2007, from James Harrison to Office of Regulations and Rulings, United States Customs and Border Protection.

10. Plaintiff's September 13, 2007 administrative appeal was not received by CBP.

11. In February 2009, Plaintiff spoke with me regarding his 2007 appeal concerning what he alleged was the "incomplete response" to his Privacy Act request 2007F4114. I explained to Plaintiff that his appeal was not received by my office and offered to open a new appeal and move it to the front of the queue of pending FOIA appeals for processing. Plaintiff insisted that his September 13, 2007 appeal be treated as a Privacy Act Appeal. Accordingly, the appeal was transferred to the Privacy Act Policy & Procedures Branch.

12. Plaintiff filed three additional submissions dated October 15, 2009 with the FOIA Division: one captioned "Privacy Act request" and two captioned "FOIA/Privacy Act

¹ When CBP released information to the plaintiff in August 2007, December 2009 and August 2010, redactions were made in reliance upon the application of Exemption (b)(2) as interpreted by case law prior to the decision of the United States Supreme Court in *Milner v. Department of the Navy*, No. 09-1163, Decided March 7, 2011. In light of the *Milner* decision, CBP no longer is asserting Exemption (b)(2) to withhold information in the instant litigation. An asterisk in the explanatory section of this declaration indicates that Exemption (b)(2) was cited as a justification for redacting information from the documents previously released to plaintiff but is no longer being relied upon by CBP post-*Milner*. In those instances where Exemption (b)(2) was cited in addition to other exemptions, the agency post-*Milner* is relying on the other exemptions claimed. In those instances where Exemption (b)(2) was the sole exemption cited by the agency, the agency post-*Milner* is relying on Exemption (b)(7)(E).

requests”. Attached hereto as Exhibit E (Bates-stamped US00088-93) is a true and correct copy of a letter dated October 15, 2009, from Edward Hasbrouck to U.S. Customs and Border Protection, FOIA/Privacy Act Division. Attached hereto as Exhibit F (Bates-stamped US00097-99) is a true and correct copy of a letter dated October 15, 2009, from Edward Hasbrouck to U.S. Customs and Border Protection, FOIA Division. Attached hereto as Exhibit G (Bates-stamped US00094-96) is a true and correct copy of a letter dated October 15, 2009, from Edward Hasbrouck to U.S. Customs and Border Protection, FOIA Division. Each of these requests and my office’s response to the requests are detailed below.

13. Via three letters dated December 10, 2009, Plaintiff appealed the “constructive denial” of the three October 15, 2009 requests *i.e.*, the single “Privacy Act request” and two “FOIA/Privacy Act requests”. Attached hereto as Exhibit H (Bates-numbered US00102) is a true and correct copy of a letter dated December 10, 2009, from Edward Hasbrouck to Privacy Act Appeals Officer. Attached hereto as Exhibit I (Bates-numbered US00100) is a true and correct copy of a letter dated December 10, 2009, from Edward Hasbrouck to FOIA Appeals Officer. Attached hereto as Exhibit J (Bates-numbered US00101) is a true and correct copy of a letter dated December 10, 2009, from Edward Hasbrouck to FOIA/Privacy Act Appeals Officer. Plaintiff alleged, for instance, that after thirty-five (35) days from filing the requests he did not receive, other than a U.S. Postal Service delivery confirmation that his express mail correspondence was delivered to and signed for by CBP, “any acknowledgement or response whatsoever” to his initial requests. Plaintiff further “request[ed] that [CBP] promptly search for and provide [him] with all the information [he] originally requested.” Ex. H.

14. On December 15, 2009, Plaintiff and Acting FOIA Division Director Elissa Kay discussed Plaintiff's three October 2009 requests: the single Privacy Act request and the two FOIA/Privacy Act requests. The FOIA Division (through Acting Director Kay), the office responsible for coordinating and responding to initial FOIA requests made to CBP, agreed to provide Plaintiff with information from TECS and Passenger Name Record ("PNR") data from ATS *viz.* information concerning his travel to and from the United States in response to plaintiff's requests for "all information" about himself in the named systems. Attached hereto as Exhibit K (Bates-stamped FAP 0194-95) is a true and correct copy of an email dated December 16, 2009, from Elissa Kay to Edward Hasbrouck.

15. On December 16, 2009, Plaintiff and I exchanged emails and phone calls identifying and clarifying the subject matters of Plaintiff's respective cases and appeals. Attached hereto as Exhibit L (Bates-numbered US00143-44) is a true and correct copy of an email dated December 16, 2009, from me to Edward Hasbrouck, cc: Elissa Kay. Attached hereto as Exhibit M (Bates-numbered US00141-42) is a true and correct copy of an email dated December 16, 2009, from Edward Hasbrouck to me, cc: Elissa Kay. Via an email to Ms. Kay and me dated December 16, 2009, Plaintiff indicated that he "welcomed and accepted" Ms. Kay's offer to open a "***new***" FOIA request case and provide him with "entry/exits, secondary exams, and PNR" but insisted that I and my FAPL Branch consider separately each of his three appeals of the constructive denial of his three October 2009 requests. Ex. M. Although we both acknowledged that the FOIA Division was in the process of responding to Plaintiff's "new" FOIA request opened by Ms. Kay on or around December 15, 2009, I agreed simultaneously to process all three

appeals. Through these communications, it was established that I would immediately acknowledge and assign tracking numbers to the three appeals Plaintiff provided by email (which were duplicates of the December 10, 2009 letters) and further that I would promptly assign those cases for processing and decision.

16. I am aware and I confirmed that Acting FOIA Division Director Elissa Kay searched TECS (including BCI and APIS data) and ATS using the Plaintiff's first name, last name and date of birth: "Hasbrouck", "Edward" and "01/11/1960". I am aware and I confirmed that the FOIA Division searched the CBP systems specified in the Plaintiff's request. In my opinion, CBP complied with its statutory obligation to search reasonably for all records that are responsive to the FOIA request. All files likely to contain responsive material were searched. No printouts showing the search terms used were retained because the responsive records retrieved reflected the search terms used. In some cases, a FOIA processor will memorialize the searches they made in responding to a FOIA request. For instance, many times when searching for border crossing records involving a "common" name, we will search for different combinations and alternative spelling of names, *e.g.*, "Jose Fernandez-Rodriquez" would be searched as "FernandezRodriquez" (no space or hyphen), "Fernandez Rodriquez" (space no hyphen), "Rodriquez-Fernandez" (reverse order) and Fernandes-Rodriques (alternative spellings and combinations). In order to recall the searches completed and create a search record for appeal, the searcher will print the screen of the search terms and parameters. We did not have to do this for Plaintiff's searches because the name is not common and we had many details (DOB, passport numbers, a range of dates of entry, etc.) that insured we had the correct results.

17. On December 18, 2009, Acting FOIA Division Director Elissa Kay issued a decision (FOIA Division File No. 2010F03575) in response to Plaintiff's FOIA/PA request to her office, releasing thirty-three (33) pages of records which were comprised of twenty-four (24) pages of unredacted ATS PNR records released under the Privacy Act and an additional nine (9) pages of redacted TECS records collected, reviewed and released with redactions under the FOIA. Attached hereto as Exhibit N (Bates-numbered US00106-07) is a true and correct copy of a letter dated December 18, 2009, from Elissa Kay to Edward Hasbrouck.

18. In the first of the three appeal submissions dated December 10, 2009, Plaintiff appealed the constructive denial of the submission captioned "Privacy Act request" and requested from CBP "all information pertaining to [himself] contained in the following systems of records maintained by the CBP:" the Automated Targeting System ("ATS")², (ATS, DHS/CBP-006), Advanced Passenger Information System ("APIS")³, (APIS, DHS/CBP-005), Border Crossing Information System ("BCIS")⁴ (BCIS, DHS/CBP-007), Arrival and Departure Information System ("ADIS")⁵ (ADIS, DHS/CBP-001) (It should be noted that I did not provide Plaintiff with records from ADIS because ADIS records are not CBP records, but rather they are US VISIT/DHS records; I provided contact information for that entity in my August 2010 response to Plaintiff), and U.S. Customs and Border Protection TECS⁶ (DHS/CBP-011) databases. See Ex. E. Plaintiff

² See the description of ATS at http://www.dhs.gov/xlibrary/assets/privacy/privacy_pia_cbp_ats.pdf.

³ See the description of APIS at http://www.cbp.gov/xp/cgov/travel/inspections_carriers_facilities/apis/.

⁴ See the description of BCIS at <http://foia.cbp.gov/streamingWord.asp?i=45>.

⁵ See the description of ADIS at http://www.dhs.gov/xlibrary/assets/privacy/privacy_pia_usvisit_adis_2007.pdf

⁶ See the description of TECS at http://www.dhs.gov/xlibrary/assets/privacy/privacy_pia_cbp_tecs.pdf; See also, Federal Register: December 19, 2008 (Volume 73, Number 245), Pages 77778-77782: "Privacy Act of 1974; U.S. Customs and Border Protection--011 TECS System of Records Notice" at <http://edocket.access.gpo.gov/2008/E8-29807.htm>: "Accordingly, inasmuch as the Treasury Enforcement

elaborated that the request sought any Passenger Name Record (“PNR”)⁷ data and Interagency Border Inspection System (“IBIS”)⁸ data, regardless of the system(s) of records in which it is deemed to reside. See Ex. E. The request included any records held jointly by CBP in conjunction with any other agency, or in interagency systems of records. See Ex. E. I assigned this case appeal number H089015.

19. In response to this appeal and in consideration of the issues raised by Plaintiff, I and an attorney in my branch searched for records responsive to the request for ATS records. I explained (via the response letter dated August 30, 2010, see Ex. O) that the System of Records Notice (“SORN”)⁹ for ATS explicitly states that the only information that may be provided regarding ATS pursuant to the Privacy Act is raw PNR data. I acknowledged the disclosure by FOIA Division to plaintiff of twenty four (24) unredacted pages of PNR data pursuant to the Privacy Act on December 18, 2009 (see paragraph 17 above). In response to the appeal, I again provided Plaintiff with twenty four (24) unredacted pages of PNR data from ATS.

20. With respect to Plaintiff’s request in appeal file H089015 for records from APIS,

Communications System is principally owned and managed by CBP and CBP is no longer part of the Department of the Treasury, the system formerly known as the Treasury Enforcement Communications System will now be known as DHS/CBP-011 TECS (no longer an acronym) . . . DHS/CBP-011 TECS is an updated and modified version of the former Treasury Enforcement Communications System (TECS), which is principally owned and managed by U.S. Customs and Border Protection and is its principal law enforcement and anti-terrorism data base system. TECS is established as an overarching law enforcement information collection, analysis, and sharing environment that links telecommunications devices and personal computers securely to a central system and database. This environment is comprised of several modules designed to collect, maintain and screen data as well as conduct analysis, screening, and information sharing. TECS databases contain temporary and permanent enforcement, inspection, and intelligence records relevant to the anti-terrorism and law enforcement mission of U.S. Customs and Border Protection and numerous other federal agencies that it supports.”

⁷ For further information concerning PNR data see <http://www.cbp.gov/xp/cgov/travel/clearing/pnr/>.

⁸ For further information concerning IBIS see <https://help.cbp.gov/app/answers/list/kw/ibis%20fact%20sheet/p/0/c/0>.

⁹ See Privacy Act of 1974; U.S. Customs and Border Protection, Automated Targeting System, System of Records Notice (73 FR 43650; August 6, 2007) (ATS is a decision-support tool that provides a risk analysis by comparing information contained in various databases. With the exception of PNR, ATS does not actively maintain the information from those databases; the information is merely analyzed by ATS); see also Notice of Proposed Rulemaking (72 FR 43567).

BCIS and TECS, I noted that APIS and BCIS are subsets of data within TECS. I processed Plaintiff's request for TECS records under the FOIA in order to provide Plaintiff with the greatest degree of access authorized by law. I informed Plaintiff that the Privacy Act did not afford him the greatest degree of access authorized by law to TECS records because on December 19, 2008, the Department of Homeland Security ("DHS"), of which CBP is a component agency, published in the Federal Register (73 FR 77778) a SORN concerning TECS and the Privacy Act. In this SORN, the Secretary of DHS exempted TECS from the notification, access, and amendment procedures of the Privacy Act because it is a law enforcement system. Therefore, the reason the agency did not provide Plaintiff with TECS records pursuant to the Privacy Act is because TECS is exempt from the access provisions of the Privacy Act pursuant to subsections (j)(2) and (k)(2) of the Act (5 U.S.C. §§ 552a (j)(2) and (k)(2)). On appeal, I determined that sixteen (16) pages were partially releasable under FOIA; certain portions of the records contain information that was redacted pursuant to the following exemptions set forth in the FOIA: 5 U.S.C. §§ 552(b)(2)*(see footnote 1 on page 4), (b)(6), (b)(7)(C), and (b)(7)(E). All files likely to contain responsive material were searched. These sixteen pages consisted of: six (6) pages of Passenger Activity Reports¹⁰; four (4) pages of inspection records from TECS; and six (6) pages of detailed API data from APIS contained in TECS.¹¹ These sixteen (16) pages comprise the redacted pages (000001-16) described in the agency's *Vaughn* Index.

¹⁰ The Passenger Activity Report provides Plaintiff with all the border crossing information from BCIS and limited advanced passenger information from APIS contained in TECS.

¹¹ As described more fully in paragraph 17 above, the FOIA Division had previously released among other records nine (9) pages of redacted TECS records. On appeal, I found additional responsive TECS records that I released to Plaintiff in redacted form.

21. In the December 2009 appeal submission captioned “FOIA/Privacy Act request”¹², to which I assigned case number H089016, Plaintiff requested records related to the search and retrieval of data from ATS, APIS, BCIS, and TECS.¹³ See Ex. F. Plaintiff elaborated in this FOIA/PA request that:

Specifically, this request (sic) any user manuals, training manuals or materials, reference manuals, query format guides, search protocols or instructions, interpretation guides, standard operating procedures, contract specifications, software use cases or other functional or technical specifications, Application Programming Interface (API) specifications and formats for any software or systems which contain, process, or interact with these records, and the contents of any online or electronic help or reference system for any of these systems.

This request includes any responsive records of (1) the CBP FOIA and Privacy Act offices (such as protocols, references, and manuals that may be used in retrieving and/or interpreting PNR or other data in response to Privacy Act and/or FOIA requests); (2) any offices or agencies responsible for policies and procedures related to the collection, retention, or use of this data; (3) any offices or agencies which have access to or use records retrieved from these systems of records, and which may have manuals, protocols, or the like for such usage; (4) any offices or agencies responsible for or engaged in development, deployment, or operation of software or systems that use data from, or interface with, these systems of records, or contracting with third parties for such development, deployment, or operation, and (5) any other office or agency identifiable as having, or likely to have, responsive records.

Ex. F.

22. In response to Plaintiff’s appeal request I located fifty-two (52) pages from the TECS User Guide that describes and instructs personnel in the function and use of the law enforcement information collection, analysis, and sharing tool, and one hundred nineteen (119) pages from the ATS User’s Guide that provides specific instructions

¹² The Privacy Act provides access to information about an individual in his or her own records that the agency maintains in a system of records. Since the user guides are not records that pertain to an individual, the Privacy Act does not provide a right of access to the records.

¹³ Plaintiff also specified ADIS. However, as explained previously, ADIS is not a CBP system of records. Accordingly, ADIS was not addressed.

concerning the operation of a computer program that assists CBP officers in all facets of customs, border and immigration law enforcement. Initially I looked at the tables of contents for the portions of the user's guides that dealt with searching for records to narrow my search and then read through those sections. (There was no "key word" search.) Then I read through the relevant sections of the user's guides page-by-page and line-by-line searching for information about how to search the systems identified by Plaintiff (and set forth in paragraph 21, above). All files likely to contain responsive material were searched. The excerpts from the TECS and ATS user guides were withheld in their entirety pursuant to FOIA Exemptions (b)(2)*(see footnote 1 on page 4), and (b)(7)(E). These excerpts comprise the pages entirely withheld (000017-187) described in the *Vaughn* Index. I withheld the excerpts from the user's guides in full because they provide detailed and precise road maps of how to search and navigate CBP's law enforcement databases. Release of this information would reveal step-by-step instructions on how to access and utilize the databases. The user guides were protected to prevent unauthorized access to information which could result in alteration, loss, damage or destruction of data contained in the computer systems.

23. In the second "FOIA/PA request", which I assigned appeal case number H089017, Plaintiff requested records related to the processing of his 2007 Privacy Act request, CBP file number 2007F4114, and his appeal of CBP's response to that request.

See Ex. G. Plaintiff elaborated in the second FOIA/PA request that:

"This request includes any responsive records of (1) the CBP FOIA and Privacy Act offices; (2) the office(s) in which Stephen Christenson did or does work, or to which his former duties, files or records were transferred or assigned; (3) any other office or agency which was consulted or contacted by CBP in the course of processing my request and/or appeal; and (4) any other office or agency identifiable as having or likely to have, responsive records."

Ex. G.

24. In response to appeal H089017, I checked the employee directory and could not locate any CBP employees by the name of "Stephen Christenson." Additionally, I contacted the mailroom and was advised that there were no responsive records. No log is kept of incoming mail. I noted with regard to the request that pertinent case law states that agencies such as CBP are not obligated to create records or answer questions in response to a FOIA request.

25. I also contacted the FOIA Division regarding file number 2007F4114. The file only contained Plaintiff's incoming request and CBP's response thereto. I contacted the Privacy Act Policies and Procedures Branch and was then informed that the Privacy Act appeal remained pending with the Privacy Act Policy and Procedures Branch. (I provided Plaintiff with contact information for that Branch.) Therefore, there were no responsive records to be released. All files likely to contain responsive material were searched.

26. On February 17, 2010 (and on several occasions prior and subsequent thereto), Plaintiff discussed the pending matters (FOIA Appeal files H089015, H089016 and H089017) separately with me and one of my staff attorneys. I also confirmed that there were three "appeal" cases filed by Plaintiff that were pending at that time with my branch. During those conversations, Plaintiff insisted that he wanted to be provided the information he originally requested under the Privacy Act in July 2007, a matter which I and an attorney on my staff explained and which Plaintiff (at that time) acknowledged remained under consideration by the Privacy Act Policy and Procedures Branch, an entity that is separate from the FAPL.

27. On August 25, 2010, unbeknownst to me or my staff, Plaintiff filed his complaint

in the U.S. District Court for the Northern District of California.

28. On August 30, 2010, I issued final administrative appeal decisions in H089015, H089016 and H089017. I provided a single response letter to the multiple appeals Plaintiff had pending with my office because of the interrelationship of the appeals and the overlap of the subject matters of the requests. Attached hereto as Exhibit O (Bates-numbered FAP 0199-212) is a true and correct copy of a letter dated August 30, 2010, from me to Edward Hasbrouck.

29. On September 1, 2010, I was notified for the first time that Plaintiff filed the instant disclosure lawsuit.

II. EXPLANATION OF NOTATIONS USED FOR JUSTIFICATION OF REDACTED MATERIAL

30. As the documents were reviewed prior to their release to Plaintiff, certain portions were redacted pursuant to one or more of the exemptions provided by the FOIA. The responsive documents released on August 30, 2010, were redacted with a superimposed reference to the FOIA exemptions which detailed the nature of the information withheld. For example, if “(b)(7)(C)” appears on a document, this refers to Exemption (b)(7)(C) of the FOIA, which exempts from disclosure “records and information compiled for law enforcement purposes” the disclosure of which “could reasonably be expected to constitute an unwarranted invasion of personal privacy.” 5 U.S.C. § 552(b)(7)(C). The narrative description of withheld information, as provided in this declaration and the attached *Vaughn* Index, is unique to each document described. These descriptions are intended to provide a general understanding of the document or material withheld without being so detailed as to identify specifically, and hence release, the material sought to be protected.

III. JUSTIFICATION OF FOIA EXEMPTIONS ASSERTED

31. In total, I released to Plaintiff forty (40) pages of records under FOIA – sixteen (16) pages of TECS records with redactions (which pages are described on the *Vaughn* Index as 000001-16) and twenty four (24) unredacted pages of ATS records. I also withheld one hundred and seventy-one (171) pages of TECS and ATS User’s Guides (fifty-two (52) pages from the TECS User’s Guide and one hundred nineteen (119) pages from the ATS User’s Guide) information in full (which pages are described on the *Vaughn* Index as 000017-187). CBP withheld information pursuant to Exemptions (b)(6), (b)(7)(C) and (b)(7)(E)¹⁴ of the FOIA.

A. 5 U.S.C. § 552(b)(6): Personnel and Medical Files and Similar Files the Disclosure of which would constitute a Clearly Unwarranted Invasion of Personal Privacy

32. Exemption (b)(6) (5 U.S.C. § 552(b)(6)) exempts from disclosure personnel and medical files and similar files the release of which would constitute a clearly unwarranted invasion of personal privacy. This protection is afforded to information that would infringe on the personal privacy of individuals about whom it pertains. The United States Supreme Court in *United States v. Washington Post Co.*, 456 U.S. 595 (1982) stated in reliance on the legislative history of the FOIA that the phrase “personnel and medical and similar files” was to be broadly interpreted and made it clear that all information that “applies to a particular individual” meets the threshold requirement for Exemption (b)(6) protection. Once the threshold requirement is met, Exemption (b)(6) requires a balancing of the public’s right to know against an individual’s right to privacy to determine whether disclosure of the records at issue would constitute a clearly unwarranted invasion of a person’s privacy. *Dep’t of the Air Force v. Rose*, 425 U.S. 352 (1976). It must be

¹⁴ See footnote 1 on page 4, *supra*.

ascertained whether a protectible privacy interest exists that would be threatened by disclosure. In this matter the identification numbers of CBP officials who processed Plaintiff when he entered the United States, as well as the names and social security numbers of CBP employees associated with processing Plaintiff's FOIA requests and appeals were redacted on sixteen (16) pages of information to protect their personal privacy. The information withheld is located within TECS records. The CBP officers and employees have a protectible privacy interest in their names, social security numbers and identification numbers that would be threatened by disclosure. Release of this information would not shed light on the actions of CBP and there is no public interest in the disclosure of this information. Accordingly, the individual officers' and individuals' privacy rights outweigh whatever public interest, if any, might exist in knowing the information.

B. 5 U.S.C. § 552(b)(7)(C): Records and Information Compiled for Law Enforcement Purposes that Could Reasonably be expected to Constitute an Unwarranted Invasion of Personal Privacy

33. In addition to Exemption (b)(6), the names and identification numbers of individual CBP employees were redacted from the same sixteen (16) pages of information pursuant to Exemption (b)(7)(C) to protect their personal privacy. Exemption (b)(7)(C) exempts from disclosure "records and information compiled for law enforcement purposes" the disclosure of which "could reasonably be expected to constitute an unwarranted invasion of personal privacy." 5 U.S.C. § 552(b)(7)(C). Exemption (b)(7)(C) applies to civil, criminal, and administrative law enforcement proceedings, and protects, among other information, the identity of law enforcement personnel and third parties referenced in files compiled for law enforcement purposes.

Exemption (b)(7)(C) was asserted to protect the identities of the above mentioned individuals to protect such individuals from unnecessary questioning and harassment concerning the administrative and law enforcement proceedings in which they are involved.

34. The CBP records (which consist of border enforcement records and systems of records that are the subject of this FOIA litigation) meet the requirement for being compiled for law enforcement purposes because these records are created as a result of the border enforcement proceedings, *i.e.*, assessing and accounting for the entry and departure of travelers into and from the United States.

35. CBP's mission is to protect the borders of the United States against terrorists and the instruments of terror, enforce the customs and immigration laws of the United States, and foster our Nation's economy through lawful international trade and travel. Its mission includes the processing of passengers, conveyances, and merchandise entering into the United States. The creation and implementation of effective law enforcement systems and procedures is paramount to achieving this mission. Given the nature of Plaintiff's request and the description of the TECS system of records, the sixteen (16) pages of redacted records constitute law enforcement records because such records are compiled in direct relation to CBP's law enforcement mandate to enforce both the customs laws and those of other agencies (such as the inspection and examination of international travelers). Further, the individuals whose privacy would be subject to invasion are identified in the unredacted records, and the invasion of that privacy is unwarranted. There is no public interest to be served by placing the identity information of CBP officers before the public.

C. 5 U.S.C. § 552(b)(7)(E): Records and Information Compiled for Law Enforcement Purposes that Would Disclose Techniques and Procedures for Law Enforcement Investigations or Prosecutions

36. Exemption (b)(7)(E) exempts from disclosure information that would disclose techniques and procedures for law enforcement investigations or prosecutions, or would disclose guidelines for law enforcement investigations or prosecutions if such disclosure could reasonably be expected to risk circumvention of the law. 5 U.S.C. § 552(b)(7)(E). *See Fisher v. U.S. Dep't of Justice*, 772 F.Supp. 7 (D.D.C. 1991)(explicitly recognizing categorical protection for law enforcement techniques and procedures), *aff'd*, 968 F.2d 92 (1992); *Keys v. Department of Homeland Security*, 510 F.Supp.2d 121 (D.D.C. 2007); *Hammes v. U.S. Customs Serv.*, 1994 WL 693717 (S.D.N.Y. 1994) (protecting criteria used to determine which passengers to stop and examine). Thus, where the agency has a clear law enforcement mandate it only need establish a rational nexus between enforcement of a federal law and the information withheld based on a (b)(7) exemption. *See Coastal Delivery Corp. v. U.S. Customs Serv.*, 272 F.Supp.2d 958, 963 (C.D.Cal. 2003) (Exemption (b)(7)(E) case that allowed withholding of techniques or guidelines for law enforcement investigations); *Pons v. U.S. Customs Serv.*, 1998 U.S. Dist. LEXIS 6084 (D.D.C. 1998) (protecting cooperative arrangements between Customs and other law enforcement agencies to keep them effective); and, *Judicial Watch, Inc. v. FBI*, 2001 U.S. Dist. LEXIS 25732 (D.D.C. 2001) (protecting the “identities of two types of [FBI] records concerning prison inmates,” the release of which would enable inmates “to alter their activities[,] thus hindering the effectiveness of this technique”).

37. CBP has a clear law enforcement mandate. *See* 6 U.S.C. § 111(b). *See also Coastal Delivery Corp. v. U.S. Customs Serv.*, 272 F.Supp.2d 958 (C.D.Cal. 2003). The

rational nexus CBP has between enforcement of a federal law and the information withheld pertains to the screening of passengers entering the United States.

38. In this case Exemption (b)(7)(E) was used to protect two general categories of information: 1) information that would reveal procedures for processing international travelers and 2) information that would reveal how to navigate sensitive law enforcement databases. More specifically, the names of law enforcement databases queried and the results of those queries were withheld pursuant to Exemption (b)(7)(E) because disclosure would reveal CBP law enforcement examination and inspection procedures used in the processing of international travelers. Release of this information would permit potential violators to design strategies to circumvent the examination procedures developed by CBP.

39. Computer terminal identification codes, screen transaction codes, screen program codes and computer "PF" function/navigation codes were withheld pursuant to Exemption (b)(7)(E) because disclosure would reveal precise CBP procedures for retrieving law enforcement records and navigating a law enforcement database. Release of the computer function or navigation codes ("PF keys") would reveal exact keys and keystrokes used for navigating TECS. Release of the computer terminal and screen codes would reveal methods for retrieving precise screens within TECS. The information is withheld to prevent unauthorized access to information which could result in alteration, loss, damage or destruction of data contained in CBP's law enforcement database. Release of this information could allow an individual knowledgeable in computer mainframes and systems to circumvent the database and interfere with enforcement proceedings.

40. Information from the user manuals for TECS and ATS were withheld because they provide a road map of how to use the law enforcement databases. The information withheld includes step-by-step instructions on how to navigate a law enforcement database, step-by-step instructions on how to retrieve records from a law enforcement database, specific drop down menus and instructions for querying and navigating the database, names of specific modules within a law enforcement database, computer query codes, precise details of query screens, query screen field descriptions that would reveal law enforcement techniques of how system can be queried, navigation buttons, instructions on how to read results screens, system capabilities with respect to records that would reveal law enforcement techniques, and information about querying abilities and results that would reveal capabilities of system. This information was withheld because release would facilitate unlawful access to law enforcement databases and disclose precise procedures followed by CBP officers when conducting law enforcement queries to determine the admissibility of international travelers and would disclose scope of investigations and techniques/procedures for border law enforcement and investigations, thereby risking circumvention of the law.

IV. Segregability

41. All information withheld is exempt from disclosure pursuant to a FOIA exemption or is not reasonably segregable because it is so intertwined with protected material that segregation is not possible or its release would have revealed the underlying protected material. I have reviewed the records that have been released to Plaintiffs in response to this litigation and determined the released documents are responsive. I have reviewed the documents line-by-line, to identify information exempt from disclosure or

for which a discretionary waiver of exemption could apply, and I am satisfied that all reasonably segregable portions of the relevant records have been released to the Plaintiff in this matter. In my determination, any further release of the exempted materials could reasonably lead to the identification of the individuals or other law enforcement information that are properly protected by the exemptions asserted.

42. To the extent that there is any non-exempt information in the documents referenced in the *Vaughn* Index (Bates Stamp numbers 000001 through 000187), I assert that after conducting a line-by-line review, it is inextricably intertwined with the exempt information and therefore no portions can be segregated and disclosed. The few non-exempt words and phrases that are dispersed throughout the records withheld in full, if disclosed, would be meaningless and would not serve the purpose of FOIA--to open agency action to the light of public scrutiny.

JURAT CLAUSE

I declare under penalty of perjury that the statements made in the forgoing Declaration are true and correct to the best of my knowledge, information and belief.

Signed this 3rd day of June, 2011 in Washington, D.C.



Shari Suzuki, Chief
FOIA Appeals, Policy and Litigation Branch
Regulations and Rulings
Office of International Trade
U.S. Customs and Border Protection
U.S. Department of Homeland Security

Hasbrouck v. U.S. CBP
Civil No.: 10-3793 RS
Defendant CBP's Vaughn Index

Location & Other Document Identifiers	Description of Document(s)	Bates Stamp Page Number	Number of Pages	FOIA Exemption(s) Cited ¹	Explanation for Redaction(s) under Exemption Cited
CBP TECS Documents TECS Screen prints Six (6) page "Passenger Activity Report (PAR)"	Plaintiff's Passenger Activity Report which indicates the dates, times and ports of entry through which he entered and exited the United States.	000001 – 000006	6	*(see footnote 1 below) (b)(6) (b)(7)(C) (b)(7)(E)	<p>Exemption (b)(7)(E) – Names of law enforcement databases queried and the results of those queries were withheld because disclosure would reveal CBP law enforcement examination and inspection procedures used in the processing of international travelers and permit potential violators to design strategies to circumvent the examination procedures developed by CBP.</p> <p>Exemptions (b)(6) and (b)(7)(C) – Identification number of CBP officers who processed plaintiff upon arrival to the United States and the name and social security number of the CBP employee who retrieved record was redacted because release would be an unwarranted invasion of personal privacy. Release of such information does not shed light on how CBP performs its statutory duties nor is there any public interest in the disclosure of such information.</p>

¹ When CBP released the information in Attachment A to the plaintiff in August 2010, several redactions were made in reliance upon the application of Exemption (b)(2) as expanded by case law prior to the decision of the United States Supreme Court in *Milner v. Department of the Navy*, No. 09-1163, Decided March 7, 2011. In light of the *Milner* decision, CBP no longer is asserting Exemption (b)(2). An asterisk in the "FOIA Exemption Cited" column of this *Vaughn* Index indicates that Exemption (b)(2) was cited as a justification for redacting information from the information released to plaintiff in 2010 but is no longer being relied on post-*Milner*. In those instances where Exemption (b)(2) was the sole exemption cited by CBP, CBP post-*Milner* is relying on Exemption (b)(7)(E).

Hasbrouck v. U.S. CBP
 Civil No.: 10-3793
 Defendant CBP's *Vaughn* Index

Location & Other Document Identifiers	Description of Document(s)	Bates Stamp Page Number	Number of Pages	FOIA Exemption(s) Cited	Explanation for Redaction(s) under Exemption Cited
CBP TECS Documents TECS Screen prints "Secondary Inspection" and "Inspection Remarks"	Plaintiff's inspection record which reflects Plaintiff's 4/12/09 entry into the United States, including the inspecting officer's comments.	000007 – 000008	2	*(see footnote 1 at page 1 above) (b)(6) (b)(7)(C) (b)(7)(E)	Exemption (b)(7)(E) – Computer terminal identification codes, screen transaction codes, screen program codes, referral code "PF" function navigation codes, names of law enforcement databases and results of these queries were withheld because disclosure would reveal precise CBP procedures for retrieving law enforcement records and navigating law enforcement database and would facilitate improper access to CBP's law enforcement database. Exemptions (b)(6) and (b)(7)(C) – Identification number of CBP employee who retrieved record was redacted because release would be an unwarranted invasion of personal privacy. Release of such information does not shed light on how CBP performs its statutory duties nor is there any public interest in the disclosure of such information.

Hasbrouck v. U.S. CBP
 Civil No.: 10-3793
 Defendant CBP's *Vaughn* Index

Location & Other Document Identifiers	Description of Document(s)	Bates Stamp Page Number	Number of Pages	FOIA Exemption(s) Cited	Explanation for Redaction(s) under Exemption Cited
CBP TECS Documents TECS Screen prints "Secondary Inspection" and "Inspection Remarks"	Plaintiff's inspection record which reflects Plaintiff's 9/19/07 entry into the United States, including the inspecting officer's comments.	000009-000010	2	*(see footnote 1 at page 1 above) (b)(6) (b)(7)(C) (b)(7)(E)	<p>Exemption (b)(7)(E) – Computer terminal identification codes, screen transaction codes, screen program codes, referral code "PF" function navigation codes, names of law enforcement databases and results of these queries were withheld because disclosure would reveal precise CBP procedures for retrieving law enforcement records and navigating law enforcement database and would facilitate improper access to CBP's law enforcement database.</p> <p>Exemptions (b)(6) and (b)(7)(C) – Identification number of CBP employee who retrieved record was redacted because release would be an unwarranted invasion of personal privacy. Release of such information does not shed light on how CBP performs its statutory duties nor is there any public interest in the disclosure of such information.</p>

Hasbrouck v. U.S. CBP
 Civil No.: 10-3793
 Defendant CBP's *Vaughn* Index

Location & Other Document Identifiers	Description of Document(s)	Bates Stamp Page Number	Number of Pages	FOIA Exemption(s) Cited	Explanation for Redaction(s) under Exemption Cited
CBP TECS Documents TECS Screen print	Plaintiff's PQH API/HIT DATA record which reflects Plaintiff's 01/13/09 exit from the United States (San Francisco Int'l), to Paris (Charles De Gaulle).	000011	1	*(see footnote 1 at page 1 above) (b)(6) (b)(7)(C) (b)(7)(E)	<p>Exemption (b)(7)(E) – Computer terminal identification codes, screen transaction codes, screen program codes, referral code “PF” function navigation codes, names of law enforcement databases and results of these queries were withheld because disclosure would reveal precise CBP procedures for retrieving law enforcement records and navigating law enforcement database and would facilitate improper access to CBP’s law enforcement database.</p> <p>Exemptions (b)(6) and (b)(7)(C) – Identification number of CBP employee who retrieved record was redacted because release would be an unwarranted invasion of personal privacy. Release of such information does not shed light on how CBP performs its statutory duties nor is there any public interest in the disclosure of such information.</p>

Hasbrouck v. U.S. CBP
 Civil No.: 10-3793
 Defendant CBP's *Vaughn* Index

Location & Other Document Identifiers	Description of Document(s)	Bates Stamp Page Number	Number of Pages	FOIA Exemption(s) Cited	Explanation for Redaction(s) under Exemption Cited
CBP TECS Documents TECS Screen print	Plaintiff's PQH API/HIT DATA record which reflects Plaintiff's 01/21/09 entry into the United States (San Francisco Int'l), from Paris, France (Charles de Gaulle).	000012	1	*(see footnote 1 at page 1 above) (b)(6) (b)(7)(C) (b)(7)(E)	<p>Exemption (b)(7)(E) – Computer terminal identification codes, screen transaction codes, screen program codes, referral code “PF” function navigation codes, names of law enforcement databases and results of these queries were withheld because disclosure would reveal precise CBP procedures for retrieving law enforcement records and navigating law enforcement database and would facilitate improper access to CBP’s law enforcement database.</p> <p>Exemptions (b)(6) and (b)(7)(C) – Identification number of CBP employee who retrieved record and social security number of CBP officer who processed plaintiff upon his arrival to the United States were withheld because release would be an unwarranted invasion of personal privacy. Release of such information does not shed light on how CBP performs its statutory duties nor is there any public interest in the disclosure of such information.</p>

Hasbrouck v. U.S. CBP
 Civil No.: 10-3793
 Defendant CBP's *Vaughn* Index

Location & Other Document Identifiers	Description of Document(s)	Bates Stamp Page Number	Number of Pages	FOIA Exemption(s) Cited	Explanation for Redaction(s) under Exemption Cited
CBP TECS Documents TECS Screen print	Plaintiff's PQH API/HIT DATA record which reflects Plaintiff's 03/28/09 exit from the United States (Boston Logan), to London, England (Heathrow).	000013	1	*(see footnote 1 at page 1 above) (b)(6) (b)(7)(C) (b)(7)(E)	<p>Exemption (b)(7)(E) – Computer terminal identification codes, screen transaction codes, screen program codes, referral code “PF” function navigation codes, names of law enforcement databases and results of these queries were withheld because disclosure would reveal precise CBP procedures for retrieving law enforcement records and navigating law enforcement database and would facilitate improper access to CBP’s law enforcement database.</p> <p>Exemptions (b)(6) and (b)(7)(C) – Identification number of CBP employee who retrieved record was withheld because release would be an unwarranted invasion of personal privacy. Release of such information does not shed light on how CBP performs its statutory duties nor is there any public interest in the disclosure of such information.</p>

Hasbrouck v. U.S. CBP
 Civil No.: 10-3793
 Defendant CBP's *Vaughn* Index

Location & Other Document Identifiers	Description of Document(s)	Bates Stamp Page Number	Number of Pages	FOIA Exemption(s) Cited	Explanation for Redaction(s) under Exemption Cited
CBP TECS Documents TECS Screen print	Plaintiff's PQH API/ HIT DATA record which reflects Plaintiff's 04/12/09 entry into the United States (Boston Logan) from London, England (Heathrow).	000014	1	*(see footnote 1 at page 1 above) (b)(6) (b)(7)(C) (b)(7)(E)	<p>Exemption (b)(7)(E) – Computer terminal identification codes, screen transaction codes, screen program codes, “PF” function navigation codes, names of law enforcement databases and results of these queries were withheld because disclosure would reveal precise CBP procedures for retrieving law enforcement records and navigating law enforcement database and would facilitate improper access to CBP’s law enforcement database.</p> <p>Exemptions (b)(6) and (b)(7)(C) – Identification number of CBP employee who retrieved record was withheld because release would be an unwarranted invasion of personal privacy. Release of such information does not shed light on how CBP performs its statutory duties nor is there any public interest in the disclosure of such information.</p>

Hasbrouck v. U.S. CBP
 Civil No.: 10-3793
 Defendant CBP's *Vaughn* Index

Location & Other Document Identifiers	Description of Document(s)	Bates Stamp Page Number	Number of Pages	FOIA Exemption(s) Cited	Explanation for Redaction(s) under Exemption Cited
CBP TECS Documents TECS Screen print	Plaintiff's PQH API/HIT DATA record which reflects Plaintiff's 04/05/10 exit from the United States (San Francisco, Int'l), to Frankfurt Germany.	000015	1	*(see footnote 1 at page 1 above) (b)(6) (b)(7)(C) (b)(7)(E)	<p>Exemption (b)(7)(E) – Computer terminal identification codes, screen transaction codes, screen program codes, referral code “PF” function navigation codes, names of law enforcement databases and results of these queries were withheld because disclosure would reveal precise CBP procedures for retrieving law enforcement records and navigating law enforcement database and would facilitate improper access to CBP's law enforcement database.</p> <p>Exemptions (b)(6) and (b)(7)(C) – Identification number of CBP employee who retrieved record was withheld because release would be an unwarranted invasion of personal privacy. Release of such information does not shed light on how CBP performs its statutory duties nor is there any public interest in the disclosure of such information.</p>

Hasbrouck v. U.S. CBP
 Civil No.: 10-3793
 Defendant CBP's *Vaughn* Index

Location & Other Document Identifiers	Description of Document(s)	Bates Stamp Page Number	Number of Pages	FOIA Exemption(s) Cited	Explanation for Redaction(s) under Exemption Cited
CBP TECS Documents TECS Screen print	Plaintiff's PQH API/HIT DATA record which reflects Plaintiff's 04/23/10 entry into the United States (Dulles), from Frankfurt.	000016	1	*(see footnote 1 at page 1 above) (b)(6) (b)(7)(C) (b)(7)(E)	<p>Exemption (b)(7)(E) – Computer terminal identification codes, screen transaction codes, screen program codes, “PF” function navigation codes, names of law enforcement databases and results of these queries were withheld because disclosure would reveal precise CBP procedures for retrieving law enforcement records and navigating law enforcement database and would facilitate improper access to CBP’s law enforcement database.</p> <p>Exemptions (b)(6) and (b)(7)(C) – Identification number of CBP employee who retrieved record was withheld because release would be an unwarranted invasion of personal privacy. Release of such information does not shed light on how CBP performs its statutory duties nor is there any public interest in the disclosure of such information.</p>

Hasbrouck v. U.S. CBP
 Civil No.: 10-3793
 Defendant CBP's *Vaughn* Index

Location & Other Document Identifiers	Description of Document(s)	Bates Stamp Page Number	Number of Pages	FOIA Exemption(s) Cited	Explanation for Redaction(s) under Exemption Cited
CBP TECS User Guide	Internal CBP Guide describing methods, use and navigation of TECS system	000017 – 000068	52	*(see footnote 1 at page 1 above) (b)(7)(E)	Exemption (b)(7)(E) – Step-by-step instructions on how to navigate a law enforcement database, step-by-step instructions on how to retrieve records from a law enforcement database, specific keystroke instructions for querying and navigating the database, names of specific modules within a law enforcement database, computer query codes, precise details of query screens, query screen field descriptions that would reveal law enforcement techniques of how system can be queried, navigation codes, details regarding the formatting of record identification numbers, instructions on how to read results screens, system capabilities with respect to related records that would reveal law enforcement techniques, rules for data storage and information about querying abilities and results that would reveal capabilities of system were withheld because release would facilitate unlawful access to CBP law enforcement database and disclose precise procedures followed by CBP officers when conducting law enforcement queries to determine the admissibility of international travelers and would disclose scope of investigations and techniques/procedures for border law enforcement and investigations.

Hasbrouck v. U.S. CBP
 Civil No.: 10-3793
 Defendant CBP's *Vaughn* Index

Location & Other Document Identifiers	Description of Document(s)	Bates Stamp Page Number	Number of Pages	FOIA Exemption(s) Cited	Explanation for Redaction(s) under Exemption Cited
CBP ATS User's Guide	Internal CBP Guide describing methods, use and navigation of ATS system	000069 – 000187	119	*(see footnote 1 at page 1 above) (b)(7)(E)	Exemption (b)(7)(E) – Step-by-step instructions on how to navigate a law enforcement database, step-by-step instructions on how to retrieve records from a law enforcement database, specific drop down menus and instructions for querying and navigating the database, names of specific modules within a law enforcement database, computer query codes, precise details of query screens, query screen field descriptions that would reveal law enforcement techniques of how system can be queried, navigation buttons, instructions on how to read results screens, system capabilities with respect to records that would reveal law enforcement techniques, and information about querying abilities and results that would reveal capabilities of system were withheld because release would facilitate unlawful access to law enforcement databases and disclose precise procedures followed by CBP officers when conducting law enforcement queries to determine the admissibility of international travelers and would disclose scope of investigations and techniques/procedures for border law enforcement and investigations.

Privacy Act Request

**U.S. Customs and Border Protection
Office of Field Operations
Freedom of Information Act/Privacy Act, Room 5.5-C
1300 Pennsylvania Avenue, NW
Washington, D.C. 20229**

Dear FOIA Officer,

This letter constitutes a request under the Privacy Act, 5 U.S.C. §552a. I request copies of all information relating to myself contained in the system of records established for the Automated Targeting System ("ATS"). Notice of this system of records ("SORN") was made in the Federal Register on November 2, 2006 (Volume 71, Number 212, pages 64543-64546). This letter of explanation is accompanied by a completed Request for Records/Privacy Act Release Form.

My request is for all information relating to myself referenced in the Categories of Records in the System section of the SORN. Specifically, I am asking for any records relating to any risk assessments, the rules used for determining the assessments, any pointer or reference to the underlying records from other systems that resulted in the assessments, and any API (Advance Passenger Information) and PNR (Passenger Name Record) information obtained from commercial air, rail, or road carriers, CRSs (Computerized Reservation Systems), GDSs (Global Distribution Systems), PNR aggregators or intermediaries, or other third parties. I am requesting these records as is my right under 5 U.S.C. § 552a(d)(1). (*See also* OMB Guidelines (40 Fed. Reg. 28948, 28957) as well as a 2004 U.S. Department

of Justice overview of the Privacy Act, "a requestor need not state his reason for seeking access to records under the Privacy Act ..."¹)

Should CBP provide less than a complete copy of all records relating to myself contained in this system of records, I request a detailed explanation as to the reasons for denying or not fully complying with my request.

My full name is: EDWARD JOHN HASBROUCK
My current address is: 1130 TREAT AVENUE
SAN FRANCISCO, CA 94110
My date of birth is: JANUARY 11, 1960
My place of birth is: CAMBRIDGE, MA

I ask that your response to this Privacy Act request, and all other communication by you to me regarding this matter, be directed to James P. Harrison, staff attorney at the First Amendment Project. This request also constitutes my sworn statement verifying and identifying Mr. Harrison as my representative in this matter. I expressly authorize you to release to him copies of my records contained in the system of records mentioned above and to respond to any other Privacy Act request made by him on my behalf.

Mr. Harrison's address is:

James P. Harrison
First Amendment Project
1736 Franklin Street, 9th Floor
Oakland, CA 94612

¹ USDOJ: FOIA: OVERVIEW OF THE PRIVACY ACT OF 1974, 2004 EDITION, "Individual's Right of Access, May 2004, available at <http://www.usdoj.gov/oip/1974indrigacc.htm>.

I promise to pay reasonable fees incurred in the copying of these documents up to the amount of \$25. If the estimated fees will be greater than that amount, please contact Mr. Harrison before such expenses are incurred.

If you deny all or any part of this request, please cite each specific exemption that forms the basis of your refusal to release the information and notify Mr. Harrison of the appeal procedures available under the law.

I have traveled to from the United States, by commercial air carrier, within the previous five years. Should CBP need my travel information to locate the requested records, please contact James P. Harrison and specify the information you require.

Pursuant to 28 USCS §1726, and in compliance with 6 CFR 5.21(d), I declare (certify, verify, or state) under penalty of perjury that the foregoing is true and correct.

Executed on this date:

Signature:

EDWARD JOHN HASBROUCK

U.S. Customs and Border Protection
 Office of Field Operations
 Freedom of Information Act/Privacy Act, Room 5.5-C
 1300 Pennsylvania Avenue, NW
 Washington, D.C. 20229

REQUEST FOR RECORDS/PRIVACY ACT RELEASE FORM
 Requests received without a letter of explanation will not be processed.
 (Please Print)

Family Name	Given Name	Middle Name
HASBROUCK	EDWARD	JOHN
Address (Street Number and Name)	Apt Number	
1130 TREAT AVENUE		
City	State	Zip Code
SAN FRANCISCO	CA	94110
Date of Birth	Country of Birth	Other names used, if any
JANUARY 11, 1960	USA	
Name at time of entry into the U.S.	Dates of Entry into the U.S.	Ports of Entry into the U.S.

EDWARD JOHN MULTIPLE ENTRIES MULTIPLE AIRPORTS
 HASBROUCK BY FOOT, PRIVATE CAR, AND MULTIPLE LAND
 BUS, TRAIN, AND AIRLINE PORTS OF ENTRY

Passport Number	Alien Registration Number	Petition or Claim Receipt
212838038 (PREVIOUS PASSPORTS 158700338 AND 052187408)		

Consent to Release Information *(Complete if name is different from requester)*
 I understand that knowingly or willfully seeking or obtaining access to records and/or information about another person under false pretenses is punishable by a fine up to \$5,000. I also understand that any applicable fees must be paid by me. I request that any located and disclosable CBP records and/or information be forwarded to:

Name of Requester (Last, First and Middle Name)

Address (Street Number and Name)	Apt Number
City	State Zip Code

I declare (or certify, verify, or state) under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

Signature	Date
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Note: The signature on this request is not required to be notarized; however, severe penalties may apply for false identification. Revised January, 2006

U.S. Department of Homeland Security
Washington, DC 20229



**U.S. Customs and
Border Protection**

August 13, 2007

DIS-2-OFO:FP DG
2007F4114

James P. Harrison
First Amendment Project
1736 Franklin Street, 9th Floor
Oakland, California 94612

Dear Mr. Harrison:

This is in acknowledgement and response to your Freedom of Information Act (FOIA) request, on behalf of your client Edward John Hasbrouck.

A search of U.S. Customs and Border Protection (CBP) database has produced fourteen (14) pages of requested documents. Certain portions of these documents are exempt from disclosure pursuant to 5 USC 552 (b)(2), as they are administrative markings and are related solely to the internal administrative practices of this agency. In addition, specific sections are excepted from revelation pursuant to exemption (b)(7)(C) of the FOIA, as they are names of individuals the disclosure of which would constitute an unwarranted invasion of personal privacy.

If you consider the deletions to constitute a partial denial of your request for disclosure, you may appeal to the Office of Regulations and Rulings, U.S. Customs and Border Protection, 1300 Pennsylvania Avenue NW , Mint Annex 5th Floor, Washington, D.C. 20229. Both the front of the envelope and the appeal letter should contain the notation "Freedom of Information Act Appeal."

Please notate file number 2007F4114 on any future correspondence to CBP related to this request.

Sincerely,

A handwritten signature in black ink, appearing to read "Lisa Brown".

Lisa Brown
Director, Field Programs
Office of Field Operations

Enclosures

FAP 0163

Freedom of Information Act/Privacy Act Appeal

Office of Regulations and Rulings
United States Customs and Border Protection
1300 Pennsylvania Avenue, NW
Mint Annex, 5th Floor
Washington, D.C. 20229

Dear FOIA Appeals Officer,

I am in receipt of your response to my client Edward Hasbrouck's Privacy Act request, identified by CBP as file number 2007F4114. His request was for all of his records contained in the ATS system of records. The CBP has failed to release all of the categories of information responsive to this request that I have reason to believe exist in the ATS system of records. Similar requests by other individuals confirm that data, not provided to my client, is included in typical ATS records.

My client's request stated:

My request is for all information relating to myself referenced in the Categories of Records in the System section of the SORN. Specifically, I am asking for any records relating to any risk assessments, the rules used for determining the assessments, any pointer or reference to the underlying records from other systems that resulted in the assessments, and any API (Advance Passenger Information) and PNR (Passenger Name Record) information obtained from commercial air, rail, or road carriers, CRSs (Computerized Reservation Systems), GDSs (Global Distribution Systems), PNR aggregators or intermediaries, or other third parties...

My client appeals the CBP's response to his records request due to its failure to disclose any information other than the 16 pages (erroneously described in Ms. Brown's cover letter as 14 pages) attached to Ms. Brown's letter of August 13, 2007. Appealed is CBP's failure to disclose any of the following:

- A. ATS and PNR records relating to Mr. Hasbrouck's travel prior to June 23, 2003.
- B. PNRs containing data entered by, or otherwise identifiable with, Mr. Hasbrouck in his capacity as a travel agent. These include, but are not limited to, PNRs from the Sabre computerized reservation system showing PNR history entries from pseudo-city code A787 and agent sines A24 or AEH, and all records identifiable with ARC/IATA travel agency ID number **05626315** and agent "EH" or "EDWARD".
- C. Portions of responsive PNRs not displayed on the "face" (front page) or "history" (audit trail) of the PNR. The existence of additional categories of PNR data in ATS records is

specifically confirmed both in the SORN and in the portions of PNRs disclosed in response to Mr. Hasbrouck's request, described in lines such as "ELECTRONIC [ticket] DATA EXISTS] *HTE", "LINEAR FARE DATA EXISTS] *LF", and "VCR COUPON DATA EXISTS *VI TO DISPLAY". This data includes, but is not limited to, ticketing records (including electronic and paper ticket records), frequent flyer data, and seating records. This data typically exists buried within PNRs without explicit mention of their existence on the face of the PNR. Without access to the complete PNRs in their original electronic form, as well as the specifications for the systems in which they were created and stored and the protocols by which they were transmitted, it is impossible to know with certainty what other data might be contained in the responsive PNRs.

D. Split PNRs identifiable with Mr. Hasbrouck through "SPLIT" or "DIVIDED" references in PNRs (as mentioned in the SORN and visible in the portions of PNRs disclosed to Mr. Hasbrouck), as well as any API data and any other ATS information associated with those split PNRs.

E. Risk assessments pertaining to Mr. Hasbrouck or to risk assessments records identifiable with Mr. Hasbrouck, as mentioned in the SORN.

F. The rules used for determining the risk assessments, as mentioned in the SORN.

G. API data concerning Mr. Hasbrouck, including API data corresponding to the air travel PNRs disclosed in the CBP's response to Mr. Hasbrouck request as well as API data received from rail and road carriers. Mr. Hasbrouck has been specifically told by air, rail, and road carriers that they have provided API data concerning Mr. Hasbrouck to the CBP.

Mr. Hasbrouck has reason to believe that as-yet-undisclosed information responsive to his request in each of the categories listed above exists in the ATS system of records. The CBP has not listed or described any of the responsive information that it has not disclosed, has not indicated the amount of responsive information not disclosed, has not given any explanation as to its reasons for not fully complying with his request for this information, and has not claimed that any of this information is exempt from the requirements for complete and unredacted disclosure.

It is unclear whether the CBP's failure to disclose this information indicates incompetence (in particular, lack of sufficient technical knowledge of PNRs to know how to identify or retrieve all elements of a PNR, to determine their meaning sufficiently to know which

records are responsive to his request, or to determine which records are properly exempt from disclosure), lack of due diligence in searching and retrieval of records, or bad faith. In light of the CBP's manifest failure to disclose all categories of responsive records or all portions of those records, Mr. Hasbrouck requests a diligent, good faith, de novo search for responsive records and de novo review to determine which records or portions of records should be disclosed. In light of the CBP's failure to provide all portions of PNRs, even where the existence of additional PNR components is clear from the portions of PNRs disclosed, Mr. Hasbrouck also requests that all PNR's be disclosed in their original and unredacted electronic format in addition to their disclosure in hardcopy form. Disclosure of records in electronic form is particular appropriate and necessary here where the original electronic records contain meaningful but non-ASCII display and storage characters typical of PNRs, which cannot be fully or unambiguously rendered into ASCII or typical printer character sets.

The CBP's claimed exemptions, noted next their redactions in the documents provided, are arbitrary, inconsistent, and appear unjustified. For example, some of Mr. Hasbrouck's own business telephone numbers ("AIRTREKS.COM ... EDWARD") were redacted on the purported grounds that their disclosure would infringe the rights of third parties – when in fact they are the requester's own numbers. Mr. Hasbrouck appeals all of CBP's redactions and their associated claimed exemptions.

Executed on this day: September 13, 2007

Signature:

James Harrison
The First Amendment Project
1736 Franklin St., 9th Floor
Oakland, CA 94560

EDWARD HASBROUCK

1130 Treat Avenue
San Francisco, CA 94110, USA
phone +1-415-824-0214
edward@hasbrouck.org

15 October 2009

Privacy Act Request

**U.S. Customs and Border Protection
FOIA/Privacy Act Division
799 - 9th Street NW, Mint Annex
Washington, DC 20001-4501**

Dear FOIA/Privacy Act Officer,

This letter constitutes a request under the Privacy Act, 5 U.S.C. §552a.

I request copies of all information pertaining to myself contained in the following systems of records maintained by the CBP: the Automated Targeting System (ATS, DHS/CBP-006), Advance Passenger Information System (APIS, DHS/CBP-005), Border Crossing Information System (BCIS, DHS/CBP-007), Arrival and Departure Information System (ADIS, DHS/USVISIT-001), and U.S. Customs and Border Protection TECS (DHS/CBP-011). This request includes any Passenger Name Record (PNR) data and Interagency Border Inspection System (IBIS) data, regardless of the system(s) of records in which it is deemed to reside. This request includes any records held jointly by CBP in conjunction with any other agency, or in interagency systems of records.

My request includes all information relating to myself referenced in the "Categories of Records in the System" section of the "System of Records Notice" (SORN) for each of these systems of records.

Edward Hasbrouck, Privacy Act request, 15 October 2009 (page 1 of 6)

US00088

With respect to TECS, this request includes the indexes of TECS records as well as the detail page or pages pertaining to each entry on that index.

With respect to ATS, this request includes, but is not limited to, all of the categories listed in the most recent ATS System of Records Notice (SORN), as published on August 6, 2007, at 72 *Federal Register* 43650-43656. This includes any PNR information, any records relating to any risk assessments, the rules used for determining the assessments, and any pointer or reference to the underlying records from other systems that resulted in the assessments. This request includes all PNR data in any of these systems of records, not merely a sample of PNRs or the most recent PNRs. This request includes all portions of the PNR, including the "face" of each PNR, the "history" of each PNR, any ticket records (ticket images for printed tickets, "electronic coupon records" or "virtual coupon records" for electronic tickets), and any other data included in or retrievable from the PNR, regardless of whether or not that data is displayed on the "face" of the PNR.

This request includes all information about myself contained in PNRs for my own travel as well as any information about me in PNRs for other individuals' travel, such as "split" PNRs cross-referenced with the record locators of PNRs for my travel, and any other PNRs that contain my name, telephone number(s) or other contact information, credit card or payment information, travel agent identifying information, or any other identifying particular in any field (including "received", "phone", "address", "delivery", "customer", "account", "form of payment", "ticketing", "remarks", OSI, and SSR entries) or in the "history" of the PNR.

This request includes any APIS, ADIS, BCIS, ATS, TECS, or other information from air or surface transportation carriers (including but not limited to operators of trains including Amtrak and VIA Rail Canada, buses including

Greyhound, ferries, cruise lines, and operators of other ocean vessels), CRSs (Computerized Reservation Systems), GDSs (Global Distribution Systems), PNR aggregators or intermediaries, or other third parties, for travel by any and all means of transport including by foot or bicycle, and any secondary inspection records.

I also request a complete accounting of any and all disclosures that have been made of any or all of these records, including the date, nature, and purpose of each disclosure, the specific information disclosed, and the name and address of the person, organization, or agency to which the disclosure was made .

I believe that CBP may have such records because I have traveled to, from, transiting, or overflying U.S. airspace or U.S. territory, or have made reservations, paid for tickets, or had information about me provided to airlines or train, bus, ferry, or ocean vessel operators, in conjunction with such travel by other people.

I am entitled by DHS policy to make this request regardless of my nationality or country of residence: "DHS has made a policy decision to extend administrative Privacy Act protections to PNR data stored in the ATS regardless of the nationality or country of residence of the data subject, including data that relates to European citizens. Consistent with U.S. law, DHS also maintains a system accessible by individuals, regardless of their nationality or country of residence, for providing redress to persons seeking information about or correction of PNR." Letter from Michael Chertoff, Secretary of Homeland Security, to Mr Luis Amado, President of the Council of the European Union, as published in the *Official Journal of the European Union*, 4.8.2007 (L 204/23). "DHS components will handle non-U.S. person PII [Personally Identifiable Information] held in mixed systems in accordance with the fair information practices, as set forth in the Privacy Act. Non-U.S. persons have the right of access

to their PII and the right to amend their records, absent an exemption under the Privacy Act ." DHS Privacy Policy Regarding Collection, Use, Retention, and Dissemination of Information on Non-U.S. Persons , DHS Privacy Policy Guidance Memorandum Number 2007-1, as amended January 7, 2009.

Should CBP provide less than a complete copy of all records relating to myself contained in these systems of records, I request a detailed explanation as to the reasons for denying or not fully complying with my request. I request that you "black out" rather than "white out" any withheld information.

In an effort to assist with your search for these records, I am providing the following additional information and identifying particulars about myself:

My full name is: Edward John Hasbrouck

My current address is: 1130 Treat Ave., San Francisco, CA 94110, USA

My date of birth is: January 11, 1960

My place of birth is: Cambridge, MA, USA

My country of citizenship is: USA

My current and past U.S. passport numbers are: 212838038

158700338

052187408

My current and past telephone numbers, each of which is or was a residential landline listed in my name, a mobile phone or VOIP phone number with an account in my name, or a business direct line used exclusively by me, include:

415-824-8562

415-824-0214

415-533-4165

415-977-7183

Edward Hasbrouck, Privacy Act request, 15 October 2009 (page 4 of 6)

US00091

The identifying particulars of records pertaining to me as a travel agent include, but are not limited to, all PNRs from the Sabre CRS/GDS showing PNR history entries from pseudo-city code A787 (including owner, creator, and history entries) and agent sines A24 or AEH, and all records from the Sabre, Galileo/Apollo, Amadeus, or Worldspan CRSs/GDSs identifiable with ARC/IATA travel agency number 05626515 or agency "Airtreks", "Airtreks.com", or "High Adventure Travel", and agent or "received" or agent phone entries including "EH" or "EDWARD" in the PNR or any PNR history entries.

Since names can be entered in different ways in reservations and PNRs, I request that your search include "HASBROUCK/EDWARD JOHN", "HASBROUCK/EDWARD J", "HASBROUCK/EDWARD", "HASBROUCK/EDWARD JOHN MR", "HASBROUCK/EDWARD J MR", and "HASBROUCK/EDWARD MR", in addition to any other variations which would otherwise be included in your search methodology. Since misspellings and data entry errors in PNRs are common, I request that you search by "similar" or "like" name, and using any available "fuzzy matching" capability, rather than solely by exact name. Since transposition of names in PNRs is common, I request that for each of these permutations you search by "LAST NAME/FIRST NAME" as well as by "FIRST NAME/LAST NAME". I request that you search PNRs and other records for my name and identifying particulars using any indexed fields (such as names in form of payment fields) or fields by which data may be retrieved, and not solely by my name in the "name" field of PNRs. If data is retrievable by full-text search ("grep"), I request that you perform a full-text search in addition to any searches of indexes. Should CBP need further information to locate all of the requested records, please contact me and specify the information you require.

Edward Hasbrouck, Privacy Act request, 15 October 2009 (page 5 of 6)

I note that the types of numbers and personal identifiers by which information is retrieved are not listed in the SORNs for any of these systems of records. If there are any other numbers or identifying particulars by which information from any of these systems of records is retrieved (including by indexes of these identifiers or by full-text search), I request that you advise me of the complete list of these numbers and identifying particulars by which data in any of these systems of records is retrievable (including if full-text search is available), so that I can supply you with the necessary information to retrieve all my records.

I promise to pay reasonable fees incurred in the copying of these documents up to the amount of \$25. If the estimated fees will be greater than that amount, please contact me before such expenses are incurred.

If you deny all or any part of this request, please cite each specific exemption that forms the basis of your refusal to release the information and notify me of the appeal procedures available under the law.

Pursuant to 28 USC §1726, and in compliance with 6 CFR 5.21(d), I declare (certify, verify, or state) under penalty of perjury that the foregoing is true and correct to the best of my knowledge and belief.

Executed in the City and County of San Francisco, CA, USA, on this date:

15 October 2009

Signature:



Edward Hasbrouck, Privacy Act request, 15 October 2009 (page 6 of 6)

Edward Hasbrouck
The Identity Project
1736 Franklin Street, 9th Floor
Oakland, CA 94612

edward@hasbrouck.org
telephone 510-208-7744

October 15, 2009

U.S. Customs and Border Protection
FOIA Division
799 - 9th Street NW, Mint Annex
Washington, DC 20229-1177

fax 202-572-8755

FOIA/PRIVACY ACT REQUEST

Fee benefit requested

Fee waiver requested

Dear FOIA Officer:

Pursuant to the federal Freedom of Information Act, 5 U.S.C. § 552, I request access to and copies of any and all documents and records describing the search systems and methods, indexing, query formats and options, data fields and formatting, and the numbers or other identifying particulars by which Passenger Name Record (PNR) or other data can be retrieved from the Automated Targeting System (ATS, DHS/CBP-006), Advance Passenger Information System (APIS, DHS/CBP-005), Border Crossing Information System (BCIS, DHS/CBP-007), Arrival and Departure Information System (ADIS, DHS/USVISIT-001), and U.S. Customs and Border Protection TECS (DHS/CBP-011) systems of records.

Specifically, this request any user manuals, training manuals or materials, reference manuals, query format guides, search protocols or instructions, interpretation guides, standard operating procedures, contract specifications, software use cases or other functional or technical specifications, Application Programming Interface (API) specifications and formats for any software or systems which contain, process, or interact with these records, and the contents of any online or electronic help or reference system for any of these systems.

This request includes any responsive records of (1) the CBP FOIA and Privacy Act offices (such as protocols, references, and manuals that may be used in retrieving and/or interpreting PNR or other data in response to Privacy Act and/or FOIA requests); (2) any offices or agencies responsible for policies and procedures related to the collection, retention.

The Identity Project FOIA request for search and retrieval info (page 1 of 3)

or use of this data; (3) any offices or agencies which have access to or use records retrieved from these these systems of records, and which may have manuals, protocols, or the like for such usage; (4) any offices or agencies responsible for or engaged in development, deployment, or operation of software or systems that use data from, or interface with, these systems of records, or contracting with third parties for such development, deployment, or operation, and (5) any other office or agency identifiable as having, or likely to have, responsive records.

As a representative of the news media I am only required to pay for the direct cost of duplication after the first 100 pages. Through this request, I am gathering information on what information is contained in these systems of records; how it is organized, structured, and indexed; and how it can be searched and retrieved; all of which is of current interest to the public because of public uncertainty regarding what information is contained in these CBP records and how CBP is able to search and retrieve this data.

This information is being sought on behalf of The Identity Project ("IDP"). 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.

One of the principal activities of IDP is publication of the informational and educational Web site at <http://www.papersPlease.org>, where we have published documents obtained in response to our previous FOIA requests, including an extensive report at <http://www.papersplease.org/wp/2007/09/21/the-homeland-security-vacuum-cleaner/> containing excerpts, interpretation, and analysis of CBP responses to Privacy Act requests for PNRs and other ATS records. That IDP report has been the primary source used by other news organizations for reporting about these records, including the front-page report in the Washington Post, "Collecting of Details on Travelers Documented", by Ellen Nakashima, September 22, 2007, available at <http://www.washingtonpost.com/wp-dyn/content/article/2007/09/21/AR2007092102347.html>. Information obtained in response to this request will be used to inform future IDP reporting and educational materials on our Web site. This information will also be publicized through my own Web site and blog of travel news, information, and advice, "The Practical Nomad", at <http://hasbrouck.org> and <http://hasbrouck.org/blog>, which has been a leading source of news concerning government records about travelers, including how they are organized, searchable, and retrievable.

Please waive any applicable fees. Release of the information is in the public interest because it will contribute significantly to public understanding of government operations and activities. There has been, and continues to be, extensive interest in what records of travel are kept by CBP, and in how members of the public can inspect and obtain copies of these records pertaining to themselves. Because none of the System of Records Notices (SORNs) for these systems of records lists the numbers or other identifying particulars by which information

The Identity Project FOIA request for search and retrieval info (page 2 of 3)

can be retrieved, it is impossible for members of the public to know what those numbers or identifying particulars might be, or to provide them in a request pursuant to the Privacy Act. Public knowledge of the information sought by this request and likely to be contained in records responsive to this request – specifically, the numbers or identifying particulars by which information is retrievable – is an essential precondition to the informed and meaningful ability of the public to exercise their right of access under the Privacy Act to information pertaining to themselves for these systems of records, and is thus of great public interest.

If my request is denied in whole or part, I ask that you justify all deletions by reference to specific exemptions of the act. I will also expect you to release all segregable portions of otherwise exempt material. I, of course, reserve the right to appeal your decision to withhold any information or to deny a waiver of fees.

Please respond as soon as possible to confirm your receipt of this request. I look forward to your complete reply within 20 business days, as the statute requires.

Thank you for your assistance.

Sincerely,



Edward Hasbrouck

Consultant on travel-related issues
The Identity Project

10/23/09

Edward Hasbrouck
The Identity Project
1736 Franklin Street, 9th Floor
Oakland, CA 94612

edward@hasbrouck.org
telephone 510-208-7744

October 15, 2009

U.S. Customs and Border Protection
FOIA Division
799 - 9th Street NW, Mint Annex
Washington, DC 20229-1177

fax 202-572-8755

FOIA/PRIVACY ACT REQUEST

Fee benefit requested

Fee waiver requested

Dear FOIA/Privacy Act Officer:

Pursuant to the federal Freedom of Information Act, 5 U.S.C. § 552, and/or the Privacy Act, 5 U.S.C. §552a., I request access to and copies of any and all documents and records created by CBP or other agencies in the course of processing of my Privacy Act request, CBP file number 2007F41114, and my appeal of your response to that request.

To assist you in locating responsive records, I have attached copies of my Privacy Act request; your response to that request dated August 13, 2007; my appeal; and the receipt showing that my appeal was delivered to CBP on September 18, 2007 at 08:25 AM in Washington, DC 20229 and was signed for by "Stephen Christenson". I have received no response to that appeal. So far as I know, it remains pending with CBP.

This request includes any responsive records of (1) the CBP FOIA and Privacy Act offices; (2) the office(s) in which Stephen Christenson did or does work, or to which his former duties, files, or records were transferred or assigned; (3) any other office or agency which was consulted or contacted by CBP in the course of processing my request and/or appeal; and (4) any other office or agency identifiable as having, or likely to have, responsive records.

I hereby waive any objections which I might be entitled to assert under the Privacy Act to the release under FOIA, in response to this request, of information pertaining to me.

The Identity Project FOIA request for Privacy Act processing records (page 1 of 3)

As a representative of the news media I am only required to pay for the direct cost of duplication after the first 100 pages. Through this request, I am gathering information on TSA processing of Privacy Act requests and appeals for Passenger Name Records (PNRs) and other Automated Targeting System (ATS) records that is of current interest to the public because of public uncertainty regarding what information is contained in these CBP records, and whether members of the public are able to obtain access to these records pertaining to themselves. rights

This information is being sought on behalf of The Identity Project ("IDP"). 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.

One of the principal activities of IDP is publication of the informational and educational Web site at <<http://www.papersPlease.org>>, where we have published documents obtained in response to our previous FOIA requests, including an extensive report at <<http://www.papersplease.org/wp/2007/09/21/the-homeland-security-vacuum-cleaner/>> containing excerpts, interpretation, and analysis of CBP responses to Privacy Act requests for PNRs and other ATS records, including the response to my Privacy Act request. That IDP report has been the primary source used by other news organizations for reporting about these records, including the front-page report in the Washington Post, "Collecting of Details on Travelers Documented", by Ellen Nakashima, September 22, 2007, available at <<http://www.washingtonpost.com/wp-dyn/content/article/2007/09/21/AR2007092102347.html>>. Information obtained in response to this request will be used to inform future IDP reporting and educational materials on our Web site. This information will also be publicized through my own Web site and blog of travel news, information, and advice, "The Practical Nomad", at <<http://hasbrouck.org>> and <<http://hasbrouck.org/blog>>, which has been a leading source of news concerning government records about travelers.

Please waive any applicable fees. Release of the information is in the public interest because it will contribute significantly to public understanding of government operations and activities. There has been, and continues to be, extensive interest in what records of travel are kept by CBP and how CBP responds to requests for those records. Because the DHS has made public commitments concerning how it will respond to such requests, and because those commitments have been relied on by foreign governments in negotiating and debating international agreements concerning access to and transfers of PNR and other travel data, information about how actual requests and appeals are processed is of great political concern.

This public concern as to how CBP processes requests and appeals is especially great where, as in this case, CBP has not responded within the time limits in the Privacy Act, and has not responded to an appeal for more than two years.

The Identity Project FOIA request for Privacy Act processing records (page 2 of 3)

If my request is denied in whole or part, I ask that you justify all deletions by reference to specific exemptions of the act. I will also expect you to release all segregable portions of otherwise exempt material. I, of course, reserve the right to appeal your decision to withhold any information or to deny a waiver of fees.

Please respond as soon as possible to confirm your receipt of this request. I look forward to your complete reply within 20 business days, as the statute requires.

Thank you for your assistance.

Pursuant to 28 USC §1726, and in compliance with 6 CFR 5.21(d), I declare (certify, verify, or state) under penalty of perjury that I am Edward John Hasbrouck, the subject of the attached Privacy Act request and appeal, as identified in that request and appeal, and that the foregoing is true and correct to the best of my knowledge and belief.

Executed in the City and County of San Francisco, CA, USA, on this date:

15 October 2009

Signature:

Edward John Hasbrouck

Edward Hasbrouck

Consultant on travel-related issues
The Identity Project

EDWARD HASBROUCK

1130 Treat Avenue
San Francisco, CA 94110, USA
phone +1-415-824-0214
edward@hasbrouck.org

December 10, 2009

Privacy Act Appeals Officer
United States Customs and Border Protection
799 9th Street NW, Mint Annex
Washington, DC 20229-1179

PRIVACY ACT APPEAL (Appeal of constructive denial)

Dear Privacy Act Appeals Officer:

On October 15, 2009, I made a request by Express Mail pursuant to the federal Privacy Act, 5 U.S.C. §552a, for documents and records pertaining to myself contained in specified CBP systems of records. A copy of my request is attached, along with a copy of the delivery confirmation from the U.S. Postal Service showing that it was signed for on behalf of the CBP FOIA/Privacy Act office by "E. Truch" on October 19, 2009.

I have not yet received any acknowledgment or response whatsoever to my request, other than the delivery confirmation from the Postal Service. It has been 35 business days since my request was received by your agency. Accordingly, I deem my request to be denied.

Pursuant to the Privacy Act, I appeal the constructive denial of my request and request that you promptly search for and provide me with all the information I originally requested..

Please reply as soon as possible to confirm your receipt of this appeal.

Sincerely,


Edward Hasbrouck

Edward Hasbrouck, Privacy Act appeal of constructive denial of request (page 1 of 1)

Edward Hasbrouck
The Identity Project
1736 Franklin Street, 9th Floor
Oakland, CA 94612

edward@hasbrouck.org
telephone 510-208-7744

December 10, 2009

FOIA Appeals Officer
United States Customs and Border Protection
799 9th Street NW, Mint Annex
Washington, DC 20229-1179

FOIA APPEAL (Appeal of constructive denial)

Dear FOIA Appeals Officer:

On October 15, 2009, I made a request by Express Mail pursuant to the federal Freedom of Information Act, 5 U.S.C. §552, for documents and records related to the search and retrieval of data from specified CBP systems of records. A copy of my request is attached, along with a copy of the delivery confirmation from the U.S. Postal Service showing that it was signed for on behalf of the CBP FOIA office by "E. Trueh" on October 19, 2009.

I have not yet received any acknowledgment or response whatsoever to my request, other than the delivery confirmation from the Postal Service. It has been substantially more than 20 business days since my request was received by your agency. Accordingly, I deem my request to be denied.

Pursuant to the FOIA, I appeal the constructive denial of my request. As the FOIA requires, I expect that you will act on this appeal and produce responsive documents within 20 working days.

Sincerely,


Edward Hasbrouck

Consultant on travel-related issues
The Identity Project

The Identity Project FOIA appeal of constructive denial of request (page 1 of 1)

DEC 17 2009

Edward Hasbrouck
The Identity Project
1736 Franklin Street, 9th Floor
Oakland, CA 94612

edward@hasbrouck.org
telephone 510-208-7744

December 10, 2009

FOIA/Privacy Act Appeals Officer
United States Customs and Border Protection
799 9th Street NW, Mint Annex
Washington, DC 20229-1179

FOIA/PRIVACY ACT APPEAL (Appeal of constructive denial)

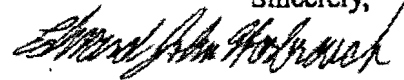
Dear FOIA/Privacy Act Appeals Officer:

On October 15, 2009, I made a request by Express Mail pursuant to the federal Freedom of Information Act, 5 U.S.C. §552, and the Privacy Act, 5 U.S.C. §552a, for documents and records related to the processing of my Privacy Act request, CBP file number 2007F4114, and my appeal of your response to that request. A copy of my request is attached, along with a copy of the delivery confirmation from the U.S. Postal Service showing that it was signed for on behalf of the CBP FOIA office by "E. Truch" on October 19, 2009.

I have not yet received any acknowledgment or response whatsoever to my request, other than the delivery confirmation from the Postal Service. (I also have still received no response to my original appeal of your response to my appeal of request 2007F4114, to which the records requested and at issue in this appeal pertain. To the best of my knowledge and belief, that appeal also remains pending.) It has been substantially more than 20 business days since my request was received by your agency. Accordingly, I deem my request to be denied.

I appeal the constructive denial of my request pursuant to both the Privacy Act and FOIA. As the FOIA requires, I expect that you will act on this appeal and produce responsive documents within 20 working days.

Sincerely,



Edward Hasbrouck

Consultant on travel-related issues
The Identity Project

The Identity Project FOIA/PA appeal of constructive denial of request (page 1 of 1)

Subject: RE: pending FOIA and PA appeals
 Date: Wed, 16 Dec 2009 14:12:53 -0500
 From: "KAY, ELISSA G" <elissa.kay@dhs.gov>
 To: "Edward Hasbrouck" <edward@hasbrouck.org>

Mr. Hasbrouck, the number I provided 2010F03575 applies to a new FOIA request for entry/exits, secondary exams, and PNR data; which last evening I agreed to provide to you.

My office handles the initial FOIA requests, and not appeals. I referred your appeal(s) requests/information to the FOIA Appeals and Litigation Branch, and Shari Suzuki, the Branch Chief, will be contacting you shortly.

If you have any further questions, don't hesitate to contact me.

Regards,

Elissa Kay
 FOIA Division, Acting Director
 Customs and Border Protection
 799 9th Street, NW, Mint Annex
 Washington, DC 20229
 202-325-0175
 202-325-0230 (7th floor fax) or 202-325-0700 (10th floor fax)
 202-325-0150 (FOIA Main #)

'Life isn't about how to survive the storm but how to dance in the rain.'

-----Original Message-----

From: Edward Hasbrouck [mailto:edward@hasbrouck.org]=20
 Sent: Wednesday, December 16, 2009 2:06 PM
 To: KAY, ELISSA G
 Subject: Re: pending FOIA and PA appeals=20

On 16 Dec 2009 at 13:58, "KAY, ELISSA G" <KAY, ELISSA G=20
 <elissa.kay@dhs.gov>> wrote:

> Mr. Hasbrouck: I have assigned FOIA tracking number 2010F03575. I have
 > consulted with Shari Suzuki regarding your appeal(s), and she will be
 > contacting you shortly.
 >
 > If you have any other questions, please contact me.

To which of my 4 pending appeals have you assigned this tracking number?

And what numbers have been assigned to the other 3 appeals?

Please forgive my uncertainty. Since I have multiple appeals pending, and because there have been problems in the past, I want to be sure that I have the correct tracking numbers for each appeal, as listed below:

> > Thank you very much! Could you please advise me of the tracking number
 > > assigned to each of the 4 respective appeals, and the point of contact
 > > for whichever office or person each of them has been assigned to:
 > >
 > > (1) Privacy Act appeal of incomplete response to Privacy Act request
 > > 2007F4114
 > >
 > > (2) Privacy Act appeal of constructive denial of 2009 request for ATS,
 > > APIS, BCIS, ADIS, and TECS records
 > >
 > > (3) FOIA and Privacy Act appeal of constructive denial of request for
 > > records related to processing of Privacy Act request and appeal
 > > 2007F4114
 > >

> > (4) FOIA appeal of constructive denial of request for records related to
> > search and retrieval systems and methods for the ATS, APIS, BCIS, ADIS,
> > and TECS systems.

Sincerely,

Edward Hasbrouck

Edward Hasbrouck
<edward@hasbrouck.org>
<<http://hasbrouck.org>>
+1-415-824-0214

SUZUKI, SHARI

From: SUZUKI, SHARI
Sent: Wednesday, December 16, 2009 2:47 PM
To: edward@hasbrouck.org
Cc: KAY, ELISSA G
Subject: FW: pending FOIA and PA appeals

Mr. Hasbrouck,

I spoke to Lisa Kay in FOIA Division and am providing this email to explain the status of four requests (all of which have been appealed) that you have filed with CBP.

(1) Privacy Act appeal of incomplete response to Privacy Act request 2007F4114 - As you may recall, we discussed this appeal back in February 2009 and you indicated that you wanted this handled as a Privacy Act Appeal. You spoke with Larry Castelli, Chief of the Privacy Act Policies and Procedures Branch. It is my understanding that they are working on your appeal.

(2) Privacy Act appeal of constructive denial of 2009 request for ATS, APIS, BCIS, ADIS, and TECS records.

(3) FOIA and Privacy Act appeal of constructive denial of request for records related to processing of Privacy Act request and appeal 2007F4114.

AND

(4) FOIA appeal of constructive denial of request for records related to search and retrieval systems and methods for the ATS, APIS, BCIS, ADIS, and TECS systems.

I have not received any of these appeals via the mail. I checked the mailroom today and also reviewed the appeals that I am currently assigning - all of which are dated prior to December 10th. I believe that your appeals are making their way through the mail and will be here soon. In any event, I have received your appeals via the email you sent Ms. Kay.

I can open 3 appeal cases for the 3 appeals all dated December 10th and send you acknowledgement letters (which will provide tracking numbers and the name of the attorney assigned to handle each appeal). However, Ms. Kay has already offered to send you "entry/exits, secondary exams, and PNR" - which are the records responsive to your request "(2)" (and assigned you a tracking number for an initial request). Please let me know if you would prefer to pursue this one particular initial request with her office.

Regards,
Shari Suzuki, Chief
FOIA Appeals, Policy & Litigation Branch Regulations and Disclosure Law Division Office of International Trade U.S. Customs & Border Protection
799 Ninth Street NW, Mint Annex
Washington DC 20229
Direct Dial 202.325.0121
Fax 202.325.0152

-----Original Message-----

From: KAY, ELISSA G
Sent: Wednesday, December 16, 2009 8:20 AM
To: SUZUKI, SHARI
Subject: FW: pending FOIA and PA appeals

These all say appeal(s). I did promise to give him his entry/exits, secondary exams, and PNR. We're working on that, and I'll give it a new number based on the letter you gave me yesterday, but I think ultimately these are all still appeals.

-----Original Message-----

From: Edward Hasbrouck [mailto:edward@hasbrouck.org]
Sent: Wednesday, December 16, 2009 8:06 AM
To: KAY, ELISSA G
Subject: Re: pending FOIA and PA appeals

On 16 Dec 2009 at 7:33, you wrote:

> Mr. Hasbrouck: I did receive your four separate emails.

Thank you very much! Could you please advise me of the tracking number assigned to each of the 4 respective appeals, and the point of contact for whichever office or person each of them has been assigned to:

(1) Privacy Act appeal of incomplete response to Privacy Act request
2007F4114

(2) Privacy Act appeal of constructive denial of 2009 request for ATS, APIS, BCIS, ADIS,
and TECS records

(3) FOIA and Privacy Act appeal of constructive denial of request for records related to
processing of Privacy Act request and appeal 2007F4114

(4) FOIA appeal of constructive denial of request for records related to search and
retrieval systems and methods for the ATS, APIS, BCIS, ADIS, and TECS systems.

Sincerely,

Edward Hasbrouck

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<edward@hasbrouck.org>
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+1-415-824-0214

SUZUKI, SHARI

From: Edward Hasbrouck [edward@hasbrouck.org]
Sent: Wednesday, December 16, 2009 3:29 PM
To: SUZUKI, SHARI
Cc: KAY, ELISSA G
Subject: Re: pending FOIA and PA appeals

email covers

On 16 Dec 2009 at 14:46, "SUZUKI, SHARI" <SUZUKI, SHARI <shari.suzuki@dhs.gov>> wrote:

- > I spoke to Lisa Kay in FOIA Division and am providing this email to
- > explain the status of four requests (all of which have been appealed)
- > that you have filed with CBP.
- >
- > (1) Privacy Act appeal of incomplete response to Privacy Act request
- > 2007F4114 - As you may recall, we discussed this appeal back in
- > February
- > 2009 and you indicated that you wanted this handled as a Privacy Act
- > Appeal. You spoke with Larry Castelli, Chief of the Privacy Act
- > Policies and Procedures Branch. It is my understanding that they are
- > working on your appeal.

You are correct that this appeal was made pursuant to the Privacy Act, as was the original request to which it pertained.

I do recall several phone conversations with you, Mr. Castelli, and others early this year, and Mr. Castelli's promise that my pending appeal would be prioritized and acted upon. Unfortunately, I still have never received any written or electronic communication from him or from anyone acting on his behalf or delegation, nor any written acknowledgement other than the receipt for the certified mail letter (until your e-mail

message today) that this appeal had been received. My monthly phone messages left for Mr. Castelli, inquiring as to the status of this appeal, have not been returned. When I have called the main CBP and DHS FOIA and Privacy offices, and spoken with other staff, they have been unable to retrieve any tracking information concerning this appeal, or even any evidence of its existence, from their systems. Please confirm (or have the responsible person confirm) by letter that this appeal has now been docketed, and is now being tracked, and advise contact information for how I can follow up to find out its status.

- > (2) Privacy Act appeal of constructive denial of 2009 request for ATS,
- > APIS, BCIS, ADIS, and TECS records. (3) FOIA and Privacy Act appeal of
- > constructive denial of request for records related to processing of
- > Privacy Act request and appeal 2007F4114. AND (4) FOIA appeal of
- > constructive denial of request for records related to search and
- > retrieval systems and methods for the ATS, APIS, BCIS, ADIS, and TECS
- > systems.

...

- > I have received your appeals via the email you sent Ms. Kay.
- >
- > I can open 3 appeal cases for the 3 appeals all dated December 10th
- > and send you acknowledgement letters (which will provide tracking
- > numbers and the name of the attorney assigned to handle each appeal).

Thank you. Please do so.

- > However, Ms. Kay has already offered to send you "entry/exits,
- > secondary exams, and PNR" - which are the records responsive to your
- > request "(2)" (and assigned you a tracking number for an initial
- > request). Please let me know if you would prefer to pursue this one
- > particular initial request with her office.

In light of the delays that I have already experienced, and the possibility that this

might get me at least some of the overdue information sooner than merely continuing to wait for my pending appeals, I welcomed and accepted Ms. Kay's offer to open a new FOIA request, which is now pending, which I do not withdraw, and to which I expect a response.

I note, however, that the information described in her message to me, and in yours as quoted above, is only a portion of the information which I requested and which would be responsive to my prior and outstanding requests and constructive denial appeals. Ms. Kay specifically said that she was treating this as *new* FOIA request. This is entirely independent of, in addition to, and without prejudice to, any of my previous and outstanding requests or constructive denial appeals, none of which have I withdrawn or abandoned, and to each of which I continue to expect a response.

Should you have any other questions, feel free to call me in San Francisco at 415-824-0214 or contact me by e-mail at this address.

Sincerely,

Edward Hasbrouck

Edward Hasbrouck
<edward@hasbrouck.org>
<<http://hasbrouck.org>>
1130 Treat Ave., San Francisco, CA 94110, USA
+1-415-824-0214

consultant to The Identity Project (IDP), a program of the First Amendment Project
<<http://www.papersplease.org>>

"Congress shall make no law ... abridging ... the right of the people peaceably to assemble" (U.S. Constitution, Amendment 1)

"Everyone has the right to freedom of movement and residence within the borders of each state. Everyone has the right to leave any country, including his own, and to return to his country."

(Universal Declaration of Human Rights, Article 13)

"Liberty of movement is an indispensable condition for the free development of a person."
(United Nations Human Rights Committee, General Comment No. 27)

799 9th Street NW
Washington, DC 20229



**U.S. Customs and
Border Protection**

DIS 1-OT:FD EGK
2010F03575

December 18, 2009

Edward Hasbrouck
The Identity Project
1736 Franklin Street, 9th Floor
Oakland, CA 94612

Dear Mr. Hasbrouck:

As promised during our telephone conversation of December 15, 2009, I am enclosing responsive records to your initial Freedom of Information Act (FOIA) request. You were seeking entry/exit records, secondary examination records, and passenger name records (PNR) that are maintained by the U.S. Customs and Border Protection (CBP).

We were able to locate thirty-three pages of responsive records. Of those pages, CBP has determined that the twenty-four pages of passenger name records from the ATS database are being provided to you under the Privacy Act 5 U.S.C. § 552a. In addition, nine page are partially releasable pursuant to the FOIA Title 5 U.S.C. § 552 (b)(2)(low), (b)(2)(high), (b)(6), and (b)(7)(C).

FOIA Exemption 2(low) protects information applicable to internal administrative personnel matters to the extent that the information is of a relatively trivial nature and there is no public interest in the document.

FOIA Exemption 2(high) protects information applicable to internal administrative and personnel matters, such as operating rules, guidelines, and manual of procedures of examiners or adjudicators, to the extent that disclosure would risk circumvention of an agency regulation or statute, impede the effectiveness of an agency's activities, or reveal sensitive information that may put the security and safety of an agency activity or employee at risk. Whether there is any public interest in disclosure is legally irrelevant. Rather, the concern under high 2 is that a FOIA disclosure should not benefit those attempting to violate the law and avoid detection.

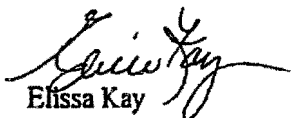
FOIA Exemption 6 exempts from disclosure personnel or medical files and similar files the release of which would cause a clearly unwarranted invasion of personal privacy. This requires a balancing of the public's right to disclosure against the individual's right privacy. The privacy interests of the individuals in the records you have requested outweigh any minimal public interest in disclosure of the information. Any private interest you may have in that information does not factor into the aforementioned balancing test.

FOIA Exemption 7(C) protects records or information compiled for law enforcement purposes that could reasonably be expected to constitute an unwarranted invasion of personal privacy. This exemption takes particular note of the strong interests of individuals, whether they are suspects, witnesses, or investigators, in not being unwarrantably associated with alleged criminal activity. That interest extends to persons who are not only the subjects of the investigation, but those who may have their privacy invaded by having their identities and information about them revealed in connection with an investigation. Based upon the traditional recognition of strong privacy interest in law enforcement records, categorical withholding of information that identifies third parties in law enforcement records is ordinarily appropriate. As such, CBP has determined that the privacy interest in the identities of individuals in the records you have requested clearly outweigh any minimal public interest in disclosure of the information. Please note that any private interest you may have in that information does not factor into this determination.

You have a right to appeal the above withholding determination. Should you wish to do so, you must send your appeal and a copy of this letter, within 60 days of the date of this letter, to: FOIA Appeals, Policy and Litigation Branch, U.S. Customs and Border Protection, 799 Ninth Street NW, Mint Annex, Washington, DC 20229-1179, following the procedures outlined in the DHS regulations at 6 C.F.R. § 5.9. Your envelope and letter should be marked "FOIA Appeal." Copies of the FOIA and DHS regulations are available at www.dhs.gov/foia.

If you need to contact our office concerning this request, please call 202-325-0150 and refer to 2010F03575.

Sincerely,



Elissa Kay
Acting Director
FOIA Division
Office of International Trade

Enclosures

U.S. Department of Homeland Security
Washington, DC 20229



U.S. Customs and
Border Protection

AUG 30 2010

DIS-3 OT:RR:RDL:FAPL
H089015, H089016 and
H089017 AML

Mr. Edward Hasbrouck
1130 Treat Avenue
San Francisco, CA 94110

RE: Freedom of Information Act Appeals

Dear Mr. Hasbrouck:

This is in reply to the several letters of appeal you have filed with the Freedom of Information Act Appeals, Policy and Litigation Branch as detailed below. The FOIA Appeals, Policy and Litigation Branch handles appeals of decisions made pursuant to the Freedom of Information Act ("FOIA") (5 U.S.C. § 552). We do not handle Privacy Act ("PA") appeals.¹

Via three (3) letters of December 10, 2009, you appeal what you deem to be the constructive denial of your Privacy Act request and FOIA/Privacy Act requests made to U.S. Customs and Border Protection ("CBP") and dated October 15, 2009. You indicate that you did not receive, other than a U.S. Postal Service delivery confirmation that your

¹ 6 CFR § 5.25 provides guidance for DHS entities on Privacy Act appeals. 6 CFR § 5.25 states the following:

- (a) Appeals. If you are dissatisfied with a component's response to your request for access to records, you may appeal an adverse determination denying your request in any respect to the Associate General Counsel (General Law), Department of Homeland Security, Washington, DC 20528. You must make your appeal in writing and it must be received by the Associate General Counsel (General Law) within 60 days of the date of the letter denying your request. Your appeal letter may include as much or as little related information as you wish, as long as it clearly identifies the component determination (including the assigned request number, if known) that you are appealing. For the quickest possible handling, you should mark both your appeal letter and the envelope "Privacy Act Appeal."
- (b) Responses to appeals. The decision on your appeal will be made in writing. A decision affirming an adverse determination in whole or in part will include a brief statement of the reason(s) for the affirmance, including any Privacy Act exemption applied, and will inform you of the Privacy Act provisions for court review of the decision. If the adverse determination is reversed or modified on appeal in whole or in part, you will be notified in a written decision and your request will be reprocessed in accordance with that appeal decision. An adverse determination by the Associate General Counsel (General Law) will be the final action of the Department.
- (c) When appeal is required. If you wish to seek review by a court of any adverse determination or denial of a request, you must first appeal it under this section. An appeal will not be acted on if the request becomes a matter of litigation.

FAP 0199

correspondence was delivered to and signed for by CBP, “any acknowledgement or response whatsoever” to your initial requests. You indicate that after 35 business days you “appeal the constructive denial” of your requests and “request that [CBP] promptly search for and provide [you] with all the information you originally requested.”

In your Privacy Act request, you requested copies of:

“all information pertaining to myself contained in the following systems of records maintained by the CBP: the Automated Targeting System (ATS, DHS/CBP-006), Advanced Passenger Information System (APIS, DHS/CBP-005), Border Crossing Information System (BCIS, DHS/CBP-007), Arrival and Departure Information System (ADIS, DHS/CBP-001), and U.S. Customs and Border Protection TECS (DHS/CBP-011). This request includes any Passenger Name Record (PNR) data and Interagency Border Inspection System (IBIS)² data, regardless of the system(s) of records in which it is deemed to reside. This request includes any records held jointly by CBP in conjunction with any other agency, or in interagency systems of records.”

In your first FOIA/Privacy Act request, you requested access to and copies of:

“any and all documents and records describing the search systems and methods, indexing, query formats and options, data fields and formatting, and the numbers or other identifying particulars by which Passenger Name Record (PNR) or other data can be retrieved from the Automated Targeting System (ATS, DHS/CBP-006), Advance Passenger Information System (APIS, DHS/CBP-005), Border Crossing Information System (BCIS, DHS/CBP-007), Arrival and Departure Information System (ADIS, DHS/USVISIT-001), and U.S. Customs and Border Protection TECS (DHS/CBP-011) systems of records.”

In your second FOIA/PA request, you requested access to and copies of:

“any and all documents and records created by CBP or other agencies in the course of processing my Privacy Act request, CBP file number 2007F4114, and my appeal of your response to that request.”

² The Interagency Border Inspection System (IBIS) was accessed by Immigration and Naturalization Service (INS) inspectors at ports of entry. IBIS was a joint effort by the Department of State, the Department of Agriculture, U.S. Customs Service (Customs), and INS to more effectively facilitate and control entry of persons at U.S. borders. It was a computerized system that interfaced with the Treasury Enforcement Communications System (TECS) which was maintained by Customs. With the integration of INS Inspections with U.S. Customs Service into the Department of Homeland Security, the term IBIS has fallen out of use since the IBIS physically resided on the Treasury Enforcement Communication System (TECS) and is now referred to simply as TECS (no longer an acronym).

On February 17, 2010 (and on several prior and subsequent occasions), you discussed these pending matters separately with me and an attorney on my staff. During those conversations, you indicated that you would like to be provided the information you originally requested under the Privacy Act in July 2007, a matter which I and the staff attorney explained³ and which you acknowledged remains under consideration by the Privacy Act Policy and Procedures Branch. We also confirmed that there are three “appeal” cases filed by you that are pending with my branch. The case numbers and subject matter of those cases are: H089015, which is a request for records concerning yourself under the ATS, APIS, BCIS, ADIS and TECS systems of records; H089016, which inquires as to processing of the matter that remains pending with the Privacy Act Policy and Procedures Branch, and H089017, which inquires about search methods for various electronic systems. We provide this single response to the multiple appeals you have pending with my office because of the interrelationship of the appeals and the overlap of the subjects of the requests.

Prefatorily, we note that you allege that “as a representative of the news media [you are] only required to pay for the direct cost of duplication [of responsive records] after the first 100 pages.” We note that the mere assertion that one is a member of the new media does not suffice as justification for fee waiver. See *Brown v. U.S. Patent & Trademark Office*, 445 F. Supp. 2d 1347, 1356-57 (M.D. Fla. 2006) (finding that plaintiff has not shown “that he is a freelance journalist with a ‘solid basis for expecting publication’” (quoting agency regulation); See *Id.*, 445 F. Supp. 2d at 1356-57 (holding that plaintiff who provided no evidence of employment by news organization or evidence that he was “freelance” journalist as defined by agency’s regulation, has “not demonstrated ‘firm intention’ of creating or publishing an editorialized work,” and does not qualify as representative of news media), *aff’d per curiam*, 226 F. App’x 866 (11th Cir. 2007); *Judicial Watch, Inc. v. Rossotti*, No. 01-1612, 2002 WL 535803, at *5 (D.D.C. Mar. 18, 2002) (finding persuasive prior district court decision on same issue, adopting “the reasoning and conclusions set forth” therein, and holding that plaintiff organization before it is not a representative of news media), *rev’d on other grounds*, 326 F.3d 1309 (D.C. Cir. 2003); *Judicial Watch, Inc. v. DOJ*, 185 F. Supp. 2d 54, 59 (D.D.C. 2002) (concluding that plaintiff organization did not qualify for media status as it was not organized to broadcast or publish news and was “at best a type of middleman or vendor of information that representatives of the news media can utilize when appropriate”.) Although the number of responsive records being released does not merit the imposition of fees in response to these appeals, absent a demonstration that you are a member of the media we will impose fees as necessary should the circumstances require in the future.

I. Request for Records from ATS, APIS, BCIS, ADIS and TECS

Our appeal case number H089015 relates to your request for records concerning yourself under the ATS, APIS, BCIS, ADIS and TECS systems of records.

³ You and I had a similar exchange and you made a similar acknowledgment regarding the status of the three (3) appeal cases via email on December 16, 2009.

With respect to your PA request for records from ATS, we note that there is considerable overlap with your Privacy Act request filed in July 2007 which also requested information pertaining to you contained in ATS⁴. As explicitly stated in the System of Records notice (“SORN”) for ATS, the only information actively maintained in ATS is Passenger Name Record (“PNR”) data. See Privacy Act of 1974; U.S. Customs and Border Protection, Automated Targeting System, System of Records (73 FR 43655; August 6, 2007) (ATS is a decision-support tool that provides a risk analysis by comparing information contained in various databases. With the exception of PNR, ATS does not actively maintain the information from those databases; the information is merely analyzed by ATS). Furthermore, the SORN explicitly states that the only information that may be provided pursuant to the Privacy Act is raw PNR data. *Id.* It is our understanding that FOIA Division provided you with twenty four (24) pages of PNR data pursuant to the Privacy Act in December 2009. In response to your appeal, we are again providing you with twenty four (24) pages of PNR data from ATS.

Your request for TECS records was processed under the FOIA. Regarding the applicability of the Privacy Act (“PA”) to the TECS records, we note that on December 19, 2008, the Department of Homeland Security (“DHS”), of which CBP is a component agency, published in the Federal Register (73 FR 77778) a SORN concerning TECS and the PA. In this Notice, under the heading “NOTIFICATION PROCEDURE”, it is provided that [t]he Secretary of Homeland Security has exempted this system from the notification, access, and amendment procedures of the Privacy Act because it is a law enforcement system. Accordingly, the reason CBP did not provide you with TECS records pursuant to the Privacy Act is because TECS is exempt from the access provisions of the Privacy Act pursuant to subsections (j)(2) and (k)(2) of the Act (5 U.S.C. §§ 552a (j)(2) and (k)(2)). Accordingly, your request for TECS records pursuant to the Privacy Act was treated as a request under the FOIA to provide you with the greatest degree of access authorized by law.

With respect to your request for records from APIS, BCIS and TECS, we note that APIS and BCIS are subsets of data within TECS. It is our understanding that FOIA Division provided you with a five (5) page Passenger Activity Report. The Passenger Activity Report provides you with all the border crossing information from BCIS and limited advanced passenger information from APIS contained in TECS. It is also our understanding that FOIA Division provided you with four (4) pages of inspection records from TECS. In response to your appeal, we located six (6) additional pages of detailed API data from APIS contained in TECS. Accordingly, we are providing you with sixteen (16) pages of records from TECS consisting of BCIS data, APIS data and inspection data.

We do not provide records from ADIS because ADIS records are not CBP records. ADIS is a system of records maintained by US-VISIT/DHS. According to the System of Records Notice for ADIS, an individual desiring copies of records maintained in this system should direct his or her request to the FOIA Officer, US-VISIT Program, U.S. Department of Homeland Security, Washington, DC 20528.

⁴ We note that FOIA Division responded to this request by letter dated August 13, 2007 and provided you with 16 pages of PNR data pursuant to the Privacy Act (FOIA Division file number 2007F4114).

Subject to the clarifications and limitations set forth above, we have searched for and obtained copies of records concerning you and contained in the TECS system of records. We identified sixteen (16) pages of responsive records and have determined that the sixteen (16) pages are partially releasable; certain portions of the records contain information that has been redacted pursuant to the following exemptions set forth in the FOIA: 5 U.S.C. §§ 552(b)(2), (b)(6), (b)(7)(C), and (b)(7)(E).

Certain information that is contained in the sixteen (16) pages of released records is exempt from disclosure pursuant to Exemptions (b)(2), (b)(6), (b)(7)(C) and (b)(7)(E) of the FOIA and was therefore redacted from the records disclosed. Some information on these pages has been withheld because it consists of administrative markings and relates solely to the internal administrative practices of CBP and thus falls within Exemption (b)(2). The remaining information was partially withheld pursuant, respectively, to Exemption (b)(6), which protects from disclosure “personnel and medical files and similar files” the release of which could constitute an unwarranted invasion of personal privacy; Exemption (b)(7)(C), which protects from disclosure information compiled in a law enforcement context if its disclosure could constitute an unwarranted invasion of personal privacy; and Exemption (b)(7)(E), which protects from disclosure information compiled for law enforcement purposes, “if such disclosure could reasonably be expected to risk circumvention of the law[.]”

The FOIA requires an agency “upon any request for records which . . . reasonably describes such records . . . [to] make the records promptly available.” 5 U.S.C. § 552(a)(3).

In this way, FOIA allows citizens to peek behind the curtain and find out “what their government is up to.” *United States Dep’t of Justice v. Reporters Comm. for Freedom of the Press*, 489 U.S. 749, 773, 109 S. Ct. 1468, 103 L. Ed. 2d 774 (1989) (“*Reporters Comm.*”); *Solar Sources, Inc. v. United States*, 142 F.3d 1033, 1037 (7th Cir. 1998). *Sutton v. IRS*, 2007 U.S. Dist. LEXIS 299 (N.D. Ill. 2007).

The Freedom of Information Act generally provides citizens the right of access to federal agency records, except insofar as they are protected from disclosure by one of nine exemptions or three law enforcement record exclusions. “The basic purpose of [the] FOIA is to ensure an informed citizenry, vital to the functioning of a democratic society, needed to check against corruption and to hold the governors accountable to the governed.” *NLRB v. Robbins Tire & Rubber Co.*, 437 U.S. 214, 242 (1978). *Public Citizen v. Department of State*, 1991 U.S. Dist. LEXIS 11962 (D.D.C. Aug. 26, 1991).

The FOIA requires that federal agencies comply with requests to make their records available to the public, unless such “information is exempted under [one of nine exemptions set forth in] clearly delineated statutory language.” *Id.* (internal quotation

marks omitted); see also 5 U.S.C. § 552(a), (b). As quoted by *Bangoura v. United States Dep't of the Army*, 2009 U.S. Dist. LEXIS 29541 (D.D.C. Apr. 8, 2009).

Congress remained sensitive, however, to the need to achieve balance between this objective and the vulnerability of “legitimate governmental and private interests [that] could be harmed by release of certain types of information.” *Critical Mass Energy Project v. Nuclear Regulatory Comm'n*, 298 U.S. App. D.C. 8, 975 F.2d 871, 872 (D.C. Cir. 1992). As quoted by *Peter S. Herrick's Customs & Int'l Trade Newsletter v. United States Customs & Border Prot.*, 2005 U.S. Dist. LEXIS 38915 (D.D.C. Sept. 22, 2005) (“*Herrick I*”).

Exemption (b)(2) of the FOIA exempts from mandatory disclosure records that are “related solely to the internal personnel rules and practices of an agency.” 5 U.S.C. § 552(b)(2). “The phrase ‘personnel rules and practices’ has been interpreted to include not only ‘minor employment matters’ but also ‘other rules and practices governing agency personnel.’” *Kurdyukov v. U.S. Coast Guard*, 578 F. Supp. 2d 114, 124 (D.D.C. 2008) (quoting *Crooker v. Bureau of Alcohol, Tobacco and Firearms*, 216 U.S. App. D.C. 232, 670 F. 2d 1051, 1056 (D.C. Cir. 1981) (*en banc*)). As quoted in *Bangoura v. United States Dep't of the Army*, 2009 U.S. Dist. LEXIS 29541 (D.D.C. Apr. 8, 2009):

With respect to your records, Exemption (b)(2) is applicable. The types of information that were withheld under Exemption (b)(2) consist of, but are not limited to, internal data processing notations, such as record ID numbers, data processing codes, terminal identification codes, and other similar administrative markings. Other types of information withheld under Exemption (b)(2) include quantitative and qualitative information, such as the routing of agency information between law enforcement agencies, and narrative information that pertains to the agency’s procedures and reports on specific findings pursuant to those procedures, which can also embrace alpha-numeric and narrative data information. *NYC Apparel FZE v. U.S. Customs and Border Protection*, 2007 U.S. Dist. LEXIS 26427 (D.D.C. 2007).

In *James v. United States Customs*, 549 F. Supp. 2d 1, 8-9 (D.D.C. 2008), the United States District Court for the District of Columbia held, with regard to the application of the Exemption (b)(2) information withheld, that:

Here, CBP invoked Exemption 2 to protect “telephone, facsimile numbers, administrative markings . . . relating to internal file control systems, [and] administrative codes and computer codes . . . of internal agency information systems.” Def.’s Mem. at 6-7. Ms. Pullo attests that these “markings are purely internal and are utilized by CBP to assist in the management and control of its mission.” Pullo Decl. P 14. Not only does “the public [have] little or no interest in this information,” but access to “internal agency computer system codes could facilitate improper access to sensitive CBP records.” *Id.*

The Court concludes that CBP properly withheld this kind of information under Exemption 2. *James v. United States Customs*, 549 F. Supp. 2d 1, 9 (D.D.C. 2008).

On each of the pages partially disclosed, there are sensitive administrative and/or record identification codes that contain information about law enforcement activities. This information is withheld to prevent unauthorized access to information which could result in alteration or destruction of data contained in CBP systems. Further, there is other information which identifies specific targeting information and the means by which this information was compiled. If this information were to become generally known, then CBP's law enforcement efforts would be frustrated and circumvented. Again, this information – protected in tandem with the application of FOIA Exemption (b)(7)(E), set forth and discussed below – consists of internal matters that are not publicized for law enforcement reasons. Accordingly, we find that this information was properly withheld under the provisions of Exemption (b)(2).

FOIA Exemption (b)(6) provides for the exemption from disclosure of “personnel and medical files and similar files” disclosure of which “would constitute a clearly unwarranted invasion of personal privacy.” 5 U.S.C. § 552(b)(6). The United States Supreme Court in *United States v. Washington Post Co.*, 456 U.S. 595 (1982) stated, in reliance on legislative history of the FOIA, that the phrase “personnel and medical and similar files” was to be broadly interpreted. Once the threshold requirement that the records are “personnel and medical and similar files” is met, the issue becomes whether disclosure of the information “would constitute a clearly unwarranted invasion of personal privacy.” 5 U.S.C. § 552(b)(6). The resolution of this issue involves a balancing of the public's right to know the information against the individual's right to privacy. See, *Department of Air Force v. Rose*, *supra*, at 352.

Please be advised that the names of individuals withheld pursuant to Exemption (b)(6) (and Exemption (b)(7)(C); set forth and discussed below) pertain to the names of CBP employees who entered your name into TECS or processed you upon arrival to the United States. The names and contact information redacted do not pertain to the names of other parties. In *Canaday v. United States Citizenship & Immigration Servs.*, 545 F. Supp. 2d 113, 118 (D.D.C. 2008), the United States District Court for the District of Columbia, in considering the invocation of Exemption 6 to withhold the names of federal employees, held that:

USCIS invoked Exemption 6 to protect the identities of certain Federal employees. See, e.g., *Vaughn* index at 4 (“The release of these names would be a clear invasion of the personal privacy of those individuals while, at the same time, [would] serve no legitimate public interest since the release of this information would shed no additional light on the manner in which this agency fulfills its statutory obligations.”) . . . While there may be some public interest in obtaining the identifying information of the Federal employees at issue, disclosure would not shed any light on the workings of USCIS. *Lepelletier v. FDIC*, 334 U.S. App. D.C. 37, 164

F.3d 37, 46 (D.C. Cir. 1999) (The only legitimate public interest in the balancing analysis is “the extent to which disclosure of the information sought would shed light on an agency’s performance of its statutory duties or otherwise let citizens know what their government is up to.”) (Internal citations omitted).

In this case, the CBP employees’ rights to have their names and other identifying information withheld from disclosure outweigh the public’s interest in knowing this information. The privacy consideration is to protect CBP personnel, as individuals, from unnecessary, unofficial questioning and harassment as to the conduct of their duties, whether or not they are currently employed by CBP. Further, disclosing the information redacted from documents in this case, *i.e.*, names and other personal identifying information, does not shed light on how CBP performs its statutory duties. Thus, Exemption (b)(6) has been appropriately applied to withhold the names, the telephone numbers, and other markings identifying CBP officers.

In addition to the application of Exemption (b)(6), the names and other identifying information of CBP employees are withheld under Exemption (b)(7)(C). Exemption (b)(7)(C) exempts from disclosure “records and information compiled for law enforcement purposes” the disclosure of which “could reasonably be expected to constitute an unwarranted invasion of personal privacy.” 5 U.S.C. § 552(b)(7)(C). Exemption (b)(7) applies to civil, criminal, and administrative law enforcement proceedings, and protects, among other information, the identity of law enforcement personnel and third parties referenced in files compiled for law enforcement purposes. Exemption (b)(7)(C) is asserted to protect the identities and contact information of CBP employees responsible for creating the records in question and conducting the law enforcement activities. The primary consideration is to protect CBP employees as individuals from unnecessary, unofficial questioning and harassment as to the conduct of their duties. See *Cappabianca v. Comm’r, U.S. Customs Serv.*, 847 F. Supp. 1558, 1566 (M.D. Fla. 1994) (ruling that witnesses, investigators, and other subjects of investigation have “substantial privacy interests”); *Amro v. U.S. Customs Serv.*, 128 F.Supp.2d 776, 784 (E.D.Pa. 2001) (pursuant to exemption (b)(7)(C), Customs withheld the name of a clerical worker who retrieved the record from the TECS database, the names of Customs Inspectors, officers of other federal agencies, local law enforcement officers and the names of third parties of investigatory interest to Customs, as well as the name of the holder of the TECS record; individuals’ privacy interests outweighed any public interest in their identities).

The TECS records, containing the names and contact information of CBP personnel, meet the requirement for being compiled for law enforcement purposes. CBP is a law enforcement agency with enforcement responsibilities for over 400 federal statutes. CBP’s mission is to protect the borders of the United States by enforcing the customs and immigration laws of the United States, and fostering our Nation’s economy through lawful international trade and travel. Given the nature of your request and the location of the responsive records within TECS, the records partially disclosed are law enforcement records because such records are compiled in direct relation to CBP’s law

enforcement mandate to protect the U.S. borders by screening and inspecting international travelers. Further, the individuals whose privacy would be subject to invasion are identified in the records, and the invasion of that privacy is unwarranted. There is no public interest to be served by placing the identities and contact information of CBP employees before the public. Thus, we conclude that Exemption (b)(7)(C) is applicable to the information withheld from disclosure.

Exemption (b)(7)(E) protects from release all law enforcement information that “would disclose techniques and procedures for law enforcement investigations or prosecutions, or would disclose guidelines for law enforcement investigations or prosecutions if such disclosure could reasonably be expected to risk circumvention of the law.” 5 U.S.C. §552(b)(7)(E). (*See Nowak v. IRS*, 2000 U.S. App. LEXIS 948 (9th Cir. 2000)(Exemption (b)(7)(E) authorizes the withholding of records and information that consist of or reveal a law enforcement “technique” or “procedure” when that technique or procedure is employed in law enforcement investigations.) Information that has a law enforcement purpose where disclosure would risk circumvention of law and agency regulations and withheld pursuant to Exemption (b)(2) is also being withheld under Exemption (b)(7)(E). Disclosure of the information in this matter would reveal CBP targeting and inspection techniques used in the processing of international travelers and would enable potential violators to design strategies to circumvent the examination procedures developed and employed by CBP.

We note that in your initial Privacy Act request you also requested a complete accounting of any and all disclosures that have been made. The FOIA Appeals, Policy and Litigation Branch does not handle requests for accounting disclosures. We note the following from the DHS Privacy Act Regulations found at 6 CFR Part 5.

§ 5.27 Requests for an accounting of record disclosures.

(a) *How made and addressed.* Except where accountings of disclosures are not required to be kept (as stated in paragraph (b) of this section), you may make a request for an accounting of any disclosure that has been made by the Department to another person, organization, or agency of any record about you. This accounting contains the date, nature, and purpose of each disclosure, as well as the name and address of the person, organization, or agency to which the disclosure was made. Your request for an accounting should identify each particular record in question and should be made by writing directly to the Department component that maintains the record, following the procedures in § 5.21.

(b) *Where accountings are not required.* Components are not required to provide accountings to you where they relate to:

- (1) Disclosures for which accountings are not required to be kept, such as disclosures that are made to employees within the agency and disclosures that are made under the FOIA;

(2) Disclosures made to law enforcement agencies for authorized law enforcement activities in response to written requests from those law enforcement agencies specifying the law enforcement activities for which the disclosures are sought; or

(3) Disclosures made from law enforcement systems of records that have been exempted from accounting requirements.

(c) *Appeals.* You may appeal a denial of a request for an accounting to the Associate General Counsel (General Law) in the same manner as a denial of a request for access to records (see § 5.25) and the same procedures will be followed.

We suggest that you contact the Privacy Act Policy & Procedures Branch for further information related to requesting an accounting of all disclosures of your records. That branch is headed by Laurence Castelli who may be reached at (202) 325-0280 or at 799 9th Street, NW- 5th Floor, Washington, DC 20001-1179.

II. Request for Records Related to the Search and Retrieval of Data from Specified CBP systems

As stated previously, in your first FOIA/Privacy Act⁵ request, you requested records related to the search and retrieval of data from ATS, APIS, BCIS, and TECS.⁶ You elaborated in the original FOIA/PA request that:

Specifically, this request (sic) any user manuals, training manuals or materials, reference manuals, query format guides, search protocols or instructions, interpretation guides, standard operating procedures, contract specifications, software use cases or other functional or technical specifications, Application Programming Interface (API) specifications and formats for any software or systems which contain, process, or interact with these records, and the contents of any online or electronic help or reference system for any of these systems.

This request includes any responsive records of (1) the CBP FOIA and Privacy Act offices (such as protocols, references, and manuals that may be used in retrieving and/or interpreting PNR or other data in response to Privacy Act and/or FOIA requests); (2) any offices or agencies responsible for policies and procedures related to the collection, retention, or use of this data; (3) any offices or agencies which have access to or use records retrieved from these systems of records, and which may have manuals,

⁵ The Privacy Act provides access to information about an individual in his or her own records that the agency maintains in a system of records. Since the user guides are not records that pertain to you, the Privacy Act does not provide a right of access to the records.

⁶ You also specified ADIS. However, as explained previously, ADIS is not a CBP system of records. Accordingly, ADIS will not be addressed.

protocols, or the like for such usage; (4) any offices or agencies responsible for or engaged in development, deployment, or operation of software or systems that use data from, or interface with, these systems of records, or contracting with third parties for such development, deployment, or operation, and (5) any other office or agency identifiable as having, or likely to have, responsive records.

In response to your request we located fifty-two (52) pages from the TECS User Guide and one hundred nineteen (119) pages from the ATS User's Guide that are responsive to your request. The excerpts from the TECS and ATS user guides are being withheld in their entirety pursuant to FOIA Exemptions (b)(2) and (b)(7)(E).

As stated previously, Exemption (b)(2) of the Freedom of Information Act exempts from mandatory disclosure records that are related solely to the internal personnel rules and practices of an agency. Legislative history indicates that Exemption (b)(2) was intended to cover operating rules, guidelines, and manuals of procedure for Government investigators or examiners. H. Rep. No. 89-1497, at 10 (1966).

The Court of Appeals for the District of Columbia Circuit held that Exemption (b)(2) covers sensitive law enforcement agents' training manuals. *Crooker v. ATF*, 670 F.2d 1051, 1073 (D.C. Cir. 1981). The *Crooker* decision stands at the head of a long line of cases interpreting Exemption (b)(2) to encompass protection for sensitive internal agency information where disclosure would significantly risk circumvention of the law. *Massey v. FBI*, 3 F.3d 620, 622 (2d Cir. 1993) (finding that disclosure of informant symbol numbers and source-identifying information "could do substantial damage to the FBI's law enforcement activities"); *Hardy v. ATF*, 631 F.2d 653, 657 (9th Cir. 1980) (holding that "law enforcement materials, disclosure of which may risk circumvention of agency regulation, are exempt from disclosure" under Exemption 2).

In *Crooker*, the D.C. Circuit fashioned a two-part test for determining which sensitive materials are exempt from mandatory disclosure under the "high 2" aspect of Exemption 2. This test requires both: (1) that a requested document be "predominantly internal," and (2) that its disclosure "significantly risks circumvention of agency regulations or statutes." Historically, beginning with *Crooker*, courts typically found that any asserted public interest in disclosure is legally irrelevant under this "anti-circumvention" aspect of Exemption 2. Rather, the concern under Exemption 2 is that a FOIA disclosure should not benefit those attempting to violate the law and avoid detection.

Courts have treated a wide variety of information pertaining to law enforcement activities as "predominantly internal," including general guidelines for conducting investigations. See, e.g., *PHE, Inc. v. DOJ*, 983 F.2d 248, 251 (D.C. Cir. 1993) ("FBI guidelines as to what sources of information are available to its agents"); *Suzhou Yuanda Enter. v. U.S. Customs & Border Prot.*, 404 F. Supp. 2d 9, 12 (D.D.C. 2005) (internal instructions on handling seized property); *Becker v. IRS*, No. 91-C-1203, 1992 WL 67849, at *6 n.1 (N.D. Ill. Mar. 27, 1992) (operational rules, guidelines, and procedures

for law enforcement investigations and examinations), motion to amend denied (N.D. Ill. Apr. 12, 1993), *aff'd in part & rev'd in part on other grounds*, 34 F.3d 398 (7th Cir. 1994); *Goldsborough v. IRS*, No. 81-1939, 1984 WL 612, at *7 (D. Md. May 10, 1984) (manual with guidelines for criminal investigation). The user guides at issue are internal documents; they are used internally to teach CBP Officers how to perform searches in the various databases and are not disseminated to the public.

Once the “internality” of the information involved is established, courts readily move to the second Exemption 2 requirement and focus on what constitutes circumvention of legal requirements. Courts have upheld nondisclosure of any information that might permit unauthorized access to agency computer or communications systems. See, *Lewis-Bey v. DOJ*, 595 F. Supp. 2d 120, 131 (D.D.C.2009) (protecting law enforcement and administrative codes where release could “allow an individual ‘knowledgeable in computer mainframes and systems to try to circumvent the database and interfere with enforcement proceedings’”); *Asian Law Caucus v. DHS*, No. 08-00842, 2008 WL 5047839, (N.D. Cal. Nov. 24, 2008) at *4 (withholding names of databases and other information that could lead to improper accessing of Customs and Border Patrol databases); *Singh v. FBI*, 574 F. Supp. 2d 32, 44-45 (D.D.C. 2008) (protecting ICE “distribution and apprehension codes” whose disclosure would facilitate improper access to ICE computer systems); *James v. U.S. Customs & Border Prot.*, 549 F. Supp. 2d 1, 8-9 (D.D.C. 2008) (protecting computer codes to prevent access to sensitive Customs records); *Boyd v. ATF*, 496 F. Supp. 2d 167, 171 (D.D.C. 2007) (finding that disclosure of TECS database screenshots containing database codes could provide “computer-literate” persons with sufficient information to circumvent TECS system); *Knight v. NASA*, No. 2:04-cv2054, 2006 WL 3780901, at *6 (E.D. Cal. Dec. 21, 2006) (observing that “high 2” protects “information facilitating a computer hacker’s access to vulnerable agency databases, like file pathnames, keystroke instructions, directory address and other internal information,” and approving agency’s withholding of information that would reveal server’s “directory structure”); *Poulsen v. U.S. Customs & Border Prot.*, No. 06-1743, 2006 WL 2788239, at *6-9 (N.D. Cal. Sept. 26, 2006) (holding that agency properly withheld certain specific technical details of repairing computer network, such as “identifying codes for machines and workstations”); *Masters v. ATF*, No. 04-2274, slip op. at 8-9 (D.D.C. Sept. 25, 2006) (protecting computer data that would indicate to a hacker “the terminal from which a query was made and the route by which the record was retrieved”); *Elec. Privacy Info. Ctr. v. DHS*, 384 F. Supp. 2d 100, 109 (D.D.C. 2005) (protecting “information [that] would allow access to an otherwise secure database”); *Judicial Watch, Inc. v. U.S. Dep’t Commerce*, 337 F. Supp. 2d 146, 166 (protecting file numbers and administrative markings because release could render computer system “vulnerable to hacking,” and also protecting information pertaining to internal DOD communication method).

Similarly, Exemption (b)(7)(E) of the FOIA affords protection to all law enforcement information that “would disclose techniques and procedures for law enforcement investigations or prosecutions, or would disclose guidelines for law enforcement investigations or prosecutions if such disclosure could reasonably be expected to risk circumvention of the law.” 5 U.S.C. § 552(b)(7)(E). Exemption

(b)(7)(E) protects any law enforcement guideline when it is determined that its disclosure could reasonably be expected to risk circumvention of the law. Courts have found protection for various types of law enforcement guidelines that pertain to the investigative stage of law enforcement matters including law enforcement manuals. *PHE, Inc. v. DOJ*, 983 F.2d 248, 251 (D.C. Cir. 1993) (approving withholding of a portion of FBI manual containing investigation guidance); *Peter S. Herrick's Customs & Int'l Trade Newsletter v. U.S. Customs & Border Prot.*, No. 04-00377, 2006 WL 1826185, at *7 (D.D.C. June 30, 2006) (protecting many portions of manual pertaining to seized property, including details of “the transport, seizure, storage, testing, physical security, evaluation, maintenance, and cataloguing of, as well as access to, seized property”); *Guerrero v. DEA*, No. 93-2006, slip op. at 14-15 (D. Ariz. Feb. 22, 1996) (approving nondisclosure of portions of Special Agents Manual); *Linn v. DOJ*, No. 92-1406, 1995 WL 417810, at *32 (D.D.C. June 6, 1995) (affirming nondisclosure of one page from Special Agent’s Guide to Forfeiture of Assets on basis that agency explained harm); *Church of Scientology Int'l v. IRS*, 845 F. Supp. 714, 723 (C.D. Cal. 1993) (concluding that parts of agency law enforcement manual concerning “procedures for handling applications for tax exemption and examinations of Scientology entities” and memorandum regarding application of such procedures were properly withheld); *Unidad Latina En Accion v. DHS*, 253 F.R.D. 44, 50 (D. Conn. 2008) (holding “[a]ny computer coding or web site information . . . is covered by both Exemptions (b)(2) and (b)(7)(E), since the information is internal to DHS and would disclose information that might significantly risk circumvention of the law”).

In this case, the risk of circumvention is readily apparent. The excerpts from the user guides provide detailed and precise road maps of how to search and navigate CBP’s law enforcement databases. Release of this information would reveal step by step instructions on how to access and utilize the databases. The user guides are protected to prevent unauthorized access to information which could result in alteration, loss, damage or destruction of data contained in the computer systems.

III. Request for Records related to the processing of your Privacy Act request

As stated previously, in your second FOIA/Privacy Act request, you requested records related to the processing of your Privacy Act request, CBP file number 2007F4114, and your appeal of CBP’s response to your request. You elaborated in the original FOIA/PA request that:

“this request includes any responsive records of (1) the CBP FOIA and Privacy Act offices; (2) the office(s) in which Stephen Christenson did or does work, or to which his former duties, files or records were transferred or assigned; (3) any other office or agency which was consulted or contacted by CBP in the course of processing my request and/or appeal; and (4) any other office or agency identifiable as having or likely to have, responsive records.”

In response to your appeal, we checked the employee directory and could not locate any CBP employees by the name of “Stephen Christenson.” Additionally, we

contacted the mailroom and were advised that there were no responsive records. No log is kept of incoming mail. We note with regard to your request that pertinent case law states that agencies such as CBP are not obligated to create records or answer questions in response to a FOIA request. *See e.g., Poll v. U.S. Office of Special Counsel*, No. 99-4021, 2000 WL 14422, at *5 n.2 (10th Cir. Jan. 10, 2000) (recognizing that FOIA does not require agency “to create documents or opinions in response to an individual’s request for information” (quoting *Hudgins v. IRS*, 620 F. Supp. 19, 21 (D.D.C. 1985))); *Krohn v. DOJ*, 628 F.2d 195, 197-98 (D.C. Cir. 1980) (finding that agency “cannot be compelled to create the [intermediary records] necessary to produce” information sought); *Stuler v. IRS*, No. 05-1717, 2006 WL 891073, at *3 (W.D. Pa. Mar. 31, 2006) (stating that agency “is not required to create documents that don’t exist”); *Jones v. Runyon*, 32 F. Supp. 2d 873, 876 (N.D. W. Va. 1998) (concluding that “because the FOIA does not obligate the [agency] to create records,” it “acted properly by providing access to those documents already created”), *aff’d*, 173 F.3d 850 (4th Cir. 1999) (unpublished table decision).

We contacted FOIA Division regarding file number 2007F4114. The file only contains your incoming request and FOIA Division’s response. We contacted the Privacy Act Policies and Procedures Branch. We were informed that the Privacy Act appeal remains pending with the Privacy Act Policy and Procedures Branch. Again, that branch is headed by Laurence Castelli who may be reached at (202) 325-0280 or at 799 9th Street, NW- 5th Floor, Washington, DC 20001-1179. I recall discussing this particular PA appeal and the distinction between PA and FOIA requests in early 2009. I recall that we exchanged emails at that time as well but my Information Technology Office was unable to reproduce those emails as of the date of this letter. The case law is unambiguous: there is no obligation for agencies to create records or answer questions under the FOIA.

This is our final determination. In the event that you are dissatisfied with the disposition of your appeals, you may obtain judicial review of this decision pursuant to the provisions of 5 U.S.C. §552(a)(4)(B) in the United States District Court in the District in which you reside, in the District where the agency records are situated, or in the United States District Court for the District of Columbia.

Sincerely,



Shari Suzuki, Chief
FOIA Appeals, Policy & Litigation Branch

Enclosures