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.	)	
	)	

SUPPLEMENTAL DECLARATION OF LAURENCE CASTELLI

I, Laurence Castelli, declare as follows:

1.   I incorporate by reference each and every one of the statements made in my initial declarations as though fully set forth herein. I submit this supplemental declaration in support of Defendant's Motion for Summary Judgment and as a rebuttal of many of the allegations made by Plaintiff in his Cross Motion for Summary Judgment and Plaintiff's Supporting Declaration.

2.   This Declaration consists of: (i) a description of the circumstances surrounding the transmission of the Plaintiff's Privacy Act Appeal by the Privacy Act Policy and Procedures Branch, (ii) a detailed account of the methodology utilized to identify the responsive records, and (iii) the details pertaining to the transmission of the responsive documents to the Plaintiff.

I.   TRANSMISSION OF THE APPEAL TO THE PRIVACY BRANCH

3.   On February 2, 2009, an electronic copy of a letter dated September 13, 2007,

containing the Plaintiff's FOIA/Privacy Act Appeal of CBP's response to the initial request (file 2007F4114) was emailed by the Plaintiff to Shari Suzuki, Chief of CBP's FOIA Appeals, Policy and Litigation Branch. Upon receipt and review by that branch, the request was further transmitted to the Privacy Branch by Ms. Suzuki via an email addressed to me, dated February 2, 2009. This email is the only record that documents the transfer of Plaintiff's letter dated September 13, 2007 from the FOIA Appeals, Policy and Litigation Branch and no other records relating to the inter-office transfer exist. A processing record, such as this email, is not accessible to Plaintiff under the Privacy Act. The system in which such a record resides is exempt from the access provision of the Privacy Act and likely would also be withheld pursuant to exemption 2 of the FOIA relating to internal matters of a relatively trivial nature.

4   Upon receipt by the Privacy Act Policy and Procedures Branch, the appeal letter was assigned case file number H051659. In accordance with Plaintiff's stated instructions, this Appeal was processed under the Privacy Act which unlike the FOIA, contains no provisions addressing processing procedures or deadlines. Therefore, a letter of acknowledgement with a corresponding case file number was neither statutorily required nor sent to the Plaintiff.

II.   METHODOLOGY USED TO IDENTIFY RESPONSIVE RECORDS

5.   The location of the records to be searched was dictated by the language of the request and our assessment of where responsive records were likely to be located given the nature of Plaintiff's request. Plaintiff requested PNR (Passenger Name Record) records, and CBP queried the ATS-P (ATS-Passenger) module, which collects and maintains the PNR data that is provided to airlines and travel agents by or on behalf of

2

passengers seeking to book travel into or out of the United States.

6.   CBP's Privacy Branch performed a reasonable search relating to Plaintiff's appeal letter dated September 13, 2007 and assigned case file number H051659. In retrieving records responsive to the Plaintiff's Privacy Act Appeal, a series of queries of ATS-P were made by the Chief, Passenger Branch, Office of Intelligence and Operations Coordination (OIOC).[1] The first query of ATS-P made by the Chief, Passenger Branch, OIOC used the search term "Edward" AND "Hasbrouck." As a frame of reference for this and subsequent searches described herein, the database system is not cap-sensitive, the quotation marks were not used in the actual searches, and the Boolean "AND" operative represents a condition of the search and not an actual search term. As a result of this search, 20 pages of records pertaining to the Plaintiff in his capacity as a passenger were identified and were transmitted to the Privacy Branch via email on February 5, 2009.

8.   To locate records pertaining to the Plaintiff in his capacity as a travel agent, the Chief, Passenger Branch, OIOC made a second query of ATS-P data using the ATS end user interface (via a user desk-top computer). In conducting the search, the Chief, Passenger Branch, used all of the search terms that were specifically identified by the Plaintiff in his appeal letter dated September 17, 2007, in the four specific search combinations he specifically requested, namely:

pseudo-city code = A787 AND agent sine = A24;
pseudo-city code = A787 AND agent sine = AEH;
ARC/IATA travel agency ID number = 05626515 AND agent EH; and
ARC/IATA travel agency ID number = 05626515 AND agent EDWARD

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[1]   Since the filing of the initial Declaration, the office has been renamed and is currently titled the "Office of Intelligence and Investigative Liaison." However, for the sake of consistency throughout the litigation, it will be referred to by its former name.

The ATS-P end user's interface yielded no records for these terms, a probable occurrence resulting from a timing out of the database processes when conducting large-scale text string searches of common terms, such as those requested by the Plaintiff.

9. Recognizing the limitations of the ATS-P system's end user query in conducting the search for the common terms and combinations requested by the Plaintiff, to ensure that all files likely to contain records pertaining to the Plaintiff (both as a passenger and a travel agent) were searched, the Chief, Passenger Branch, OIOC contacted the Office of Information Technology (OIT) and requested that it perform a "back-end" search, or more intensive technical extraction from the underlying data tables for the ATS-P database, to obtain the PNR locator codes for every PNR record in the ATS-P database that contained any of the following five search terms:

"A787"

"Edward"

"EH"

" 05626515" AND "Edward"

"05626515" AND "EH"

10. Using the list of locator codes provided by OIT, the Chief, Passenger Branch, OIOC, manually queried the ATS-P end user interface and manually retrieved every PNR to determine if it was responsive to the Plaintiff's request. This process involved a manual search of each PNR for the presence of the following terms, identified by the Plaintiff as responsive, and the context in which it was found:

"HASBROUCK"

"05626515"

"A24"

"AEH"

The context of each of these terms was the determining factor in identifying the responsiveness of each record. For example, a PNR record with the term "A24" as part of a flight code within an itinerary but not contained as the agent/contact information would be determined as non-responsive to the Plaintiff's request. Because the PNR records in ATS-P consist of information that is supplied either directly by the traveler or at his/her direction (*i.e.,* through a travel agent), it is unlikely that the Plaintiff would misspell his own name. Nevertheless, because each PNR record was manually reviewed for relevancy, any variation on the spelling of the Plaintiff's last name would have been examined. No such records were discovered.

11.   This manual search revealed responsive records, 20 pages of which were duplicative of those previously forwarded to the Privacy Branch, as they pertained to the Plaintiff in his capacity as a passenger, and further identified an additional 27 pages that pertained to the Plaintiff in his capacity as a travel agent. In an email dated April 2, 2009, these 27 pages of documents were transmitted to the Privacy Branch. To obtain the responsive documents transmitted to the Plaintiff, the technical extraction process required eight days to complete. The manual review of each record and compilation of data required six hours.

III.   TRANSMISSION OF RESPONSIVE RECORDS TO THE PLAINTIFF

12.   In a letter dated September 15, 2010, the Privacy Act Policy and Procedures Branch issued its decision in connection with the Privacy Act appeal. The decision letter was addressed to James P. Harrison, the attorney identified by the Plaintiff as his legal

representative, and clearly marked with the case file number H051659 in the upper right-hand corner of the page. Accompanying the decision letter were 47 pages of responsive records.

13.   The 47 pages of responsive records were composed of 20 pages of PNR records pertaining to the Plaintiff in his capacity as a passenger and 27 pages of PNR records pertaining to the Plaintiff in his capacity as a travel agent. The internal email correspondence between me and the Chief, Passenger Branch, OIOC, that was incident to the Appeal was not included in the package of released material as it was neither requested in the Plaintiff's Privacy Act Appeal, dated September 13, 2007, nor responsive to that request. However, assuming for the sake of argument that such a request had been made, the system in which such correspondence resides is exempt from the access provision of the Privacy Act and likely would also be withheld pursuant to the deliberative process privilege as applied under the Freedom of Information Act.

14.   I am aware that the DHS Chief Privacy Officer (who serves the dual functions of DHS Chief Privacy and FOIA Officer) has requested that "significant FOIA activities" be reported to her office on a weekly basis. However, this weekly report pertains only to FOIA requests and appeals and not to Privacy Act appeals. I did not report Plaintiff's Privacy Act appeal to the DHS Chief Privacy Officer.

15.   The Privacy Branch did not search for any "audit records" as they were neither requested in the Plaintiff's 2007 Privacy Act Appeal nor responsive to that request. Moreover, audit records are not accessible under the Privacy Act because it would be contained within a system of records for which an exemption is claimed pursuant to 5 U.S.C. 552a(j)(2) and (k)(2). See Castelli Initial Declaration, paragraph 17 (describing

applicable implementing regulations for the SORNs relating to PNR data).

I declare under penalty of perjury that the forgoing is true and correct to the best of my knowledge, information and belief.

Signed this 15th day of July, 2011, in Washington, D.C.

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Laurence Castelli
CBP Privacy Officer
Office of International Trade
U.S. Customs and Border Protection
U.S. Department of Homeland Security

7