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Kimberly Walton, Special Counselor
Office of the Special Counselor
Transportation Security Administration
601 South 12th St., East Bldg., E7-121S
Arlington, VA 20598-6020

FOIA Appeal (appeal of denial of expedited processing)
Your reference number: TSA10-0052

Dear Counselor Walton:

This is an appeal under the Freedom of Information Act, 5 U.S.C. § 552.

On October 15, 2009 I made a FOIA request by e-mail (received, I presume, the same day) to FOIA.TSA@dhs.gov and by Express Mail (which should have been delivered the next day, October 16, 2009) to your agency for the TSA's "Screening Management Standard operating Procedures (SOP)". Today, November 3, 2009, I received by e-mail a copy of a letter dated October 26, 2009 from your agency denied my request for expedited processing on the grounds that "You failed to demonstrate a particular urgency to inform the public about government activity involved in the request beyond the public's right to know about government activity generally. Your letter was conclusory in nature and did not present any facts to justify a grant of expedited processing under the applicable standards." Copies of my request and the denial of expedited processing are enclosed.

I appeal the denial of expedited processing of my request.

With respect to the urgency to inform the public, contrary to the claim that my request was "conclusory in nature and did not present any facts", I stated in my request that, "The public has an urgent need for information about TSA screening procedures because on September 17, 2009, President Obama nominated Erroll G. Southers to be to be an Assistant Secretary of Homeland Security for Transportation Security and Administrator of the TSA, as reported at <http://www.whitehouse.gov/the_press_office/Presidential-nominations-sent-to-the-Senate-9/17/09/>. Hearings on this nomination will be scheduled imminently in the Senate. "

One hearing on the nomination of Mr. Southers was held by the Senate Commerce and Transportation Committee the same day as my original request, as reported at <http://commerce.senate.gov/public/index.cfm?FuseAction=Hearings.Hearing&Hearing_ID=d23a8966-0f34-4dde-9acd-19b5b6d94932> and as we reported on our Web site at <<http://www.papersplease.org/wp/2009/10/21/softball-questions-for-tsa-nominee/>>.

A second hearing has now been scheduled for November 10, 2009, by the Senate Committee on Homeland Security, as announced at <http://hsgac.senate.gov/public/index.cfm?FuseAction=Hearings.Hearing&Hearing_id=2739634c-ff5f-4ad5-9c7d-5ba05043bc39> and as we have reported on our Web site at <<http://www.papersplease.org/wp/2009/11/02/tsa-nominee-up-for-senate-questioning-november-10th/>>.

That hearing on November 10th, just a week from today, will likely be the final opportunity for Senators, on behalf of the public, to ask questions about the views of nominee concerning issues of public concern, including TSA policies contained in the documents at issue, before the Senate votes on whether to approve the nomination.

The most common interaction of the TSA with the public is at screening checkpoints at airports, and both the most important and the most controversial of TSA policies and practices are the checkpoint procedures described in the “Screening Management SOP” which is the subject of this request. The public needs to know what is in the Screening Management SOP before November 10th, in order to evaluate the position of the nominee concerning the SOP, to formulate questions for their Senators to ask at the hearing, and to inform their opinions and recommendations to their Senators concerning whether to approve the nomination.

The importance of screening procedures to public evaluation of the TSA, and public input concerning questions to be asked of the nominee for TSA administrator, was further highlighted this week by the release of a GAO report raising questions about TSA screening procedures, <<http://www.gao.gov/new.items/d10128.pdf>>. That report received widespread news coverage such as the Associated Press report, “Audit: Airport screening needs more risk study”, by Eileen Sullivan, October 29, 2009, available at <<http://www.msnbc.msn.com/id/33540543/ns/travel-news/>>.

A single incident at a screening checkpoint, which the TSA itself acknowledged in its official blog was “in the news”, prompted 574 comments from the public on two entries in the TSA’s official blog at <<http://www.tsa.gov/blog/2009/06/st-louis-incident-update.html>> and <<http://www.tsa.gov/blog/2009/04/incident-at-st-louis-international.html>>. Most of those comments directly concerned the question of what are TSA standard operating procedures.

Numerous other checkpoint incidents have generated news reports, public interest and questions concerning TSA’s checkpoint and screening procedures.

There is a specific, imminent deadline and planned Congressional action, and a particularized public interest in relation to that Congressional debate and decision, in the specific information that is the subject of this request. Expedited processing is thus warranted.

I certify that my statements concerning the need for expedited processing are true and correct to the best of my knowledge and belief.

As I have made this request in the capacity of a journalist, and the very reason for this appeal is that time is of the essence, and because the TSA has already delayed beyond the statutory limits in acting on my request and providing notice of its receipt and action on my request (I did not receive confirmation of receipt of my request or notice of the denial of my request for expedited processing until today, 19 days after I assume the TSA received my e-mail on October 15th), I would appreciate your expediting the consideration of my appeal in every way possible. In any case, I will expect to receive your decision within 20 business days, as required by the statute.

Sincerely,

Edward Hasbrouck

Consultant on travel-related issues
The Identity Project