

Edward Hasbrouck
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August 3, 2010

Kimberly Walton, Special Counselor
Office of the Special Counselor
Transportation Security Administration
601 South 12th St., East Bldg., E7-121S
Arlington, VA 20598-6033

FOIA Appeal
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 to your agency for the TSA's current "Screening Management Standard Operating procedures" (SOP). By letter dated July 26, 2010, your agency denied my request in its entirety. Copies of my request and the denial are enclosed.

I appeal the denial of my request. The information which I have requested is clearly releasable under FOIA and, in my opinion, may not validly be protected by any of the Act's exemptions.

The letter denying my request refers to the exemption under FOIA section b(2) of material "related solely to the internal personnel rules and practices" of an agency. But the Screening management SOP does not relate *solely* to such rules and practices, but also to TSA relations with TSA contractors, the traveling public, and other third parties. Moreover, while the letter claims that "certain portions of the requested records should be withheld from disclosure" pursuant to this section, the denial letter fails to indicate which portions were withheld on this basis, whether the non-exempt portions were segregable or why they were not segregable, or why the segregable non-exempt portions were not released.

The letter denying my request also refers to FOIA section b(3) as justifying the withholding from disclosure of certain information which allegedly "would be detrimental to the security of transportation" if disclosed. But the letter fails to indicate whether any determination was actually made that all or part of the requested material would actually be

detrimental to the security of transportation if disclosed, whether any portions which it would not actually be detrimental to the security of transportation to disclose are segregable or why they are not segregable, or why the segregable non-exempt portions were not released.

Your burden in justifying a determination of a likelihood of actual detriment to the security of transportation if the requested records are disclosed, of the non-existence of exempt portions of these records, and of the non-segregability of those non-exempt portions is particularly high in this case, where (1) segregable non-exempt portions of the Screening Management SOP were released to, and published by, the Identity Project in response to our previous FOIA request and appeal TSA08-0723, and (2) an unredacted copy of the entirety of the Screening Management SOP was posted on a public Federal government website at http://www.fbo.gov/utills/dZip?base=dbf1e063790c5202ce3e7d83a5b5edc1&class=document_package&id=4be9bf2272dddc_e4d84f01ee50bafec, and is available on numerous other websites. (In this version, black boxes are coded to appear in places as a separate “layer” of the PDF document, but the text itself is unredacted in the raw file, and completely accessible to reading, selection, copying, and pasting from any PDF reader software.)

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

Edward Hasbrouck
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October 15, 2009

Transportation Security Administration
Freedom of Information Act (FOIA) Division
TSA-20, East Tower
601 South 12th Street
Arlington, VA 22202-4220

fax 571-227-1406
FOIA.TSA@dhs.gov

FOIA REQUEST

Fee benefit requested

Fee waiver requested

Expedited processing requested

Dear FOIA Officer:

Pursuant to the federal Freedom of Information Act, 5 U.S.C. § 552, I request access to and copies of the most recent version of the TSA's "Screening Management Standard Operating Procedures (SOP)", including any and all appendices, attachments, enclosures, supplements, updates, interpretive or guidance notes, usage instructions, or the like. Portions of an earlier version of this document were released by you in response to our FOIA request TSA08-0723.

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 procedures at checkpoints that is of current interest to the public because without this information, there is no way for members of the public to anticipate what to expect at TSA checkpoint or to know what actions by TSA employees or contractors or members of the public the TSA believes are permitted or required. 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 the portions of the Screening Management SOP previously released for dissemination to the general public. 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 TSA practices, and in the sections concerning airport security in future editions of my book, "The Practical Nomad: How to Travel Around the World" (Avalon Travel, 4th edition, 2007).

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, if any, rules or procedures govern activities by the TSA, TSA contractors, third parties, and the public at TSA checkpoints.

As we have reported on our Web site at <<http://www.papersplease.org/wp/2009/06/04/are-there-any-rules-at-airport-checkpoints/>>, the TSA's Chief Privacy Officer has stated publicly, in response to our questions, that he does not know if there are any rules or regulations specifying what TSA employees or contractors, or travelers, are required or permitted to do at TSA checkpoints. To the best of our knowledge, and belief, there are no statutes, rules, or regulations specifying these procedures, rights, or obligations.

In the absence of statutes or regulations, public disclosure and availability of the Screening Management SOP -- as the Identity Project intends to make through publication on our Web site -- is essential to any public understanding of TSA checkpoint operations, of what rights and authority the TSA claim, and of TSA expectations with respect to the conduct of TSA employees and contractors and of members of the public.

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 provide expedited processing of this request which concerns a matter of urgency. As a journalist and public educator, I am primarily engaged in disseminating information. 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.

TSA screening procedures are central to the duties of Administrator of the TSA. Public knowledge of current TSA screening procedures is essential for informed consideration of this nomination and for informed public input to their Senators concerning questions about these procedures to be asked, and issues to be discussed, by the Senate in advising and considering whether to consent to this appointment. I certify that my statements concerning the need for expedited processing are true and correct to the best of my knowledge and belief. Expedited processing of this request is essential if members of the public are to have time to review the current TSA screening procedures, formulate questions about them, and make those questions known to their Senators prior to the confirmation hearings or confirmation vote.

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



**Transportation
Security
Administration**

July 26, 2010

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

TSA Case Number: TSA10-0052

Dear Mr. Hasbrouck:

This letter is in response to your Freedom of Information Act (FOIA) request dated October 15, 2009, that you made to the Transportation Security Administration (TSA). You requested information pertaining to TSA's Screening Management Standard Operating Procedures (SOP)". Specifically, you requested:

- The most recent version of TSA's Screening Management Standard Operating Procedures (SOP), including any and all appendices, attachments, enclosures, supplements, updates, interpretive or guidance notes, usage instructions, or the like.

Your request was processed pursuant to the FOIA, 5 U.S.C. § 552.

A search within the Transportation Security Administration (TSA) was conducted and we have determined that the 99 page Screening Management SOP is being withheld in its entirety pursuant to Title 5 U.S.C. § 552 (b)(2)(high), and (b)(3). An explanation of each of these exemptions is outlined below.

Exemption (b)(2)

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." The courts have interpreted the exemption to encompass two distinct categories of information: (1) internal matters of a relatively trivial nature -- often referred to as "Low" 2 information; and (2) more substantial internal matters, the disclosure of which would risk circumvention of a legal requirement -- often referred to as "High" 2 information.

We have determined that certain portions of the requested records should be withheld from disclosure as "high" (b)(2) information, in that they contain sensitive materials. Sensitive materials are exempt from mandatory disclosure under "high 2" when the requested documents are predominantly internal, and disclosure significantly risks circumvention of a regulation or statute, including civil enforcement and regulatory matters.

Sensitive materials are exempt from disclosure under "high" (b)(2) when the requested document is predominantly internal, and disclosure significantly risks circumvention of a regulation or statute, including civil enforcement and regulatory matters. Whether there is any public interest in disclosure is legally irrelevant. Rather, the concern under "high" (b)(2) is that a FOIA disclosure should not benefit those attempting to violate the law and avoid detection.

Exemption (b)(3)

This information reveals Sensitive Security Information (SSI) and is exempt from disclosure under Exemption 3 of the FOIA. Exemption 3 permits the withholding of records specifically exempted from disclosure by another Federal statute. Section 114(r) of title 49, United States Code, exempts from disclosure SSI that "would be detrimental to the security of transportation" if disclosed. The TSA regulations implementing Section 114(r) are found in 49 CFR Part 1520.

Pursuant to Section 1520.5(b)(9)(i), the following information regarding security screening under aviation or maritime transportation security requirements of Federal law: any procedures, including selection criteria and comments, instructions, and implementing guidance pertaining thereto, for screening of persons, accessible property, checked baggage, U.S. mail, stores, and cargo, that is conducted by the Federal government or any other unauthorized person constitutes SSI and is exempt from disclosure under 49 C.F.R. Section 1520.15(a).

Fees

The fees incurred to process your request do not exceed the minimum threshold necessary for charge and, therefore, there is no fee associated with the processing of this request.

In the event that you may wish to appeal this determination, an administrative appeal may be made in writing to Kimberly Walton, Special Counselor, Office of the Special Counselor, Transportation Security Administration, 601 South 12th Street, East Building, E7-121S, Arlington, VA 20598-6033. Your appeal **must be submitted within 60 days** from the date of this determination. It should contain your FOIA request number and state, to the extent possible, the reasons why you believe the initial determination should be reversed. In addition, the envelope in which the appeal is mailed in should be prominently marked "FOIA Appeal." Please note that the Special Counselor's determination of the appeal will be administratively final.

If you have any questions pertaining to your request, please feel free to contact the FOIA Office at 1-866-364-2872 or locally at 571-227-2300.

Sincerely,



Kevin J. Janet
FOIA Officer
Freedom of Information Act Office