

U.S. Department of Homeland Security
Freedom of Information Act Office
601 South 12th Street
Arlington, VA 20598-6020



Transportation
Security
Administration

AUG - 6 2010

FOIA Case Number: TSA10-0248

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

Dear Mr. Hasbrouck:

This is in response to your Freedom of Information Act (FOIA) request dated January 16, 2010, in which you are requesting, "...access to and copies of most recent version of the document described in these blogs as SD 1544-09-06, as well as any and all appendices, attachments, enclosures, supplements, updates, change notices, revisions, interpretive or guidance notes, usages instructions, FAQ's or the like." Your request was received in this office on January 19, 2010 and is being processed under the FOIA, 5 U.S.C. § 552.

A search within the Transportation Security Administration (TSA) was conducted and we have determined that the three pages responsive to your request are being withheld in their 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 any 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 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 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. 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.

Exemption (b)(3)

These document(s) or portions of documents reveal Sensitive Security Information (SSI) and are 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)(2)(i), any Security Directive or order: issued by TSA under 49 CFR 1542.303, 1544.305, 1548.19, or other authority constitutes SSI and is exempt from disclosure under 49 CFR 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.

Administrative Appeal

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