

The Identity Project

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Darrell E. Issa, Chairman
Elijah E. Cummings, Ranking Minority Member
Committee on Oversight and Government Reform
U.S. House of Representatives
2157 Rayburn House Office Building
Washington, DC 20515-6143

Dear Chairman Issa and Ranking Member Cummings:

We were pleased to learn from press reports that your Committee is investigating the processing of FOIA requests by DHS, particularly DHS policies and practices of requiring higher-level political review and approval, prior to their release, of responses to FOIA requests by journalists, activist groups, or “watchdog organizations”.

The Identity Project is among the organizations whose FOIA requests to DHS have been subjected to this unlawful political interference and delay.

In an email message to the Chief FOIA Officers of all DHS component agencies on December 23, 2009, Catherine Papoi, DHS Deputy Chief FOIA Officer and Director of Departmental Disclosure and FOIA, included one of our requests for information about TSA policies in a list of requests to be reported to the DHS White House liaison and reviewed by the “DHS HQ Front Office” prior to any response or release of records, regardless of the deadlines for responses and release of responsive records set by FOIA.

According to this email message, underlined and in boldface in the original for double emphasis, “It is very important that your office not send the response to the requester until I notify you that the response has been reviewed and is cleared to be sent to the requester.” This message, a copy of which is attached, was one of the email messages released by the DHS to the Associated Press.

This message, it should be noted, was not merely a *reporting* directive but a direct unlawful order to all DHS FOIA officers *not to respond to our FOIA request* without prior “Front Office” approval, regardless of the statutory deadline for that response.

Presumably as a result, in part, of this order, we did not receive any notice of a determination with respect to this request (TSA10-0134) until late December, 2010, almost a year after the statutory deadline for an initial response.

As soon as we learned of the DHS program of political review of responses to “sensitive” FOIA requests, we suspected – correctly, it was later confirmed – that ours were among the affected requests. In August, 2010, we submitted a FOIA request (TSA10-0676) for all records generated in the course of processing of our FOIA requests. When we received no response to that request, we appealed (TSA11-0323) its constructive denial. We still have received no response to that request, no response to our appeal, and no records responsive to that request.

We also wish to bring to your attention that numerous DHS and component FOIA and Privacy Act offices have moved or changed addresses since the issuance of the current DHS “Interim” FOIA Regulations, as codified at 6 CFR § 5. No updates to those regulations have been promulgated since 2003, and many of the addresses of record for FOIA requests in the current regulations are no longer valid.

As a result, requests sent to many of the addresses of record in the CFR will not be delivered to the responsible office (or, in some cases, to any DHS office). Requesters who rely in good faith on the officially promulgated addresses for FOIA requests will wait patiently, forever, for responses that will never come because their requests have gone into a “black hole” rather than reaching any responsible office.

Similarly, many DHS offices designated by duly promulgated System Of Records Notices (SORNs) as responsible for responding to Privacy Act requests have changed addresses without the promulgation of new SORNs with valid addresses.

The knowing operation of each such system of records without the prior promulgation of a valid SORN including a valid address for Privacy Act requests is a *criminal* violation of the Privacy Act on the part of the responsible agency staff.

We have reported and formally complained of these violations of FOIA and the Privacy Act to DHS Privacy Offices and the DHS Office of the Inspector General. So far as we can tell, no investigation of these complaints or violations has been conducted.

We would be happy to discuss our experiences with you or your staff, or to testify about our experiences at any hearings you may hold concerning DHS FOIA practices.

Sincerely,

Edward Hasbrouck
Consultant on travel-related civil liberties and human rights issues
The Identity Project