

Edward Hasbrouck
The Identity Project
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April 18, 2011

Transportation Security Administration
FOIA Office - TSA-20
601 S. 12th Street, 11th Floor, East Tower
Arlington, VA 20598-6020

FOIA Appeal (appeal of constructive denial)
Your reference number: TSA11-0344

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

On January 31, 2011, we made a FOIA request to your agency for records related to the TSA "Certification of Identity". In response, we received a letter acknowledging receipt of our request by your agency dated February 1, 2011, and invoking a 10-day extension of time for your response. Copies of our request and your agency's letter confirming its receipt are enclosed.

We have not yet received any records in response to our request, or any notice of any substantive determination by your agency with respect to our request. It has been substantially more than 30 business days (20 days plus the 10-day extension) since our request was received by your agency. Accordingly, we deem our request to be constructively denied in its entirety.

We appeal the constructive denial of our request. As the FOIA requires, we expect that you will act on this appeal and produce responsive documents within 20 working days.

We are sending this appeal to the address above, in reliance on the attached e-mail message of April 16, 2011 from Mr. William H. Holzerland, DHS FOIA Public Liaison and Associate Director, Disclosure Policy & FOIA Program Development. We have been advised that both the address of record for the TSA FOIA office in the DHS FOIA regulations, as published at 60 *Federal Register* 4056-4069 (January 27, 2003) and codified at 6 CFR Part 5 (Transportation Security Administration, 400 Seventh Street, SW., Washington, DC 20590) and the address in the attached letter confirming receipt of this request (Kimberly Walton, Special Counselor, Office of the Special Counselor, Transportation Security Administration, 601 South 12th St., East Bldg., E7-121S, Arlington, VA 22202-4220) are invalid.

We have been told that mail for the TSA is not accepted at 400 Seventh St., SW., Washington, DC 20590 – a location that, so far as we can tell, has not been not occupied by the TSA or its FOIA Office for several years. Some of our mail as well as that of other FOIA and Privacy Act requesters and appellants addressed to the TSA with zip code 22202 has either disappeared entirely or been returned as undeliverable, and we have been advised by the U.S. Postal Service that they have been instructed by the TSA not to deliver mail for the TSA with zip code 22202. You have been aware of these facts, from our reports, for a year and half.

Your continuing knowing failure to promulgate proper notice of your address change in the *Federal Register*, updating the DHS FOIA regulations, as required by the FOIA statute, and your continuing to provide requesters with what you know to be an invalid address for FOIA appeals, are evidence of continuing bad faith by your agency in FOIA processing.

Please reply as soon as possible to confirm your receipt of this appeal, advise the reference number assigned by you to this appeal, and advise the means by which we can track its status. Since your agency has had severe difficulties with both outgoing and incoming postal mail, please send any acknowledgment or response to this appeal, the underlying request, or any of our other pending FOIA requests or appeals by e-mail as well as by postal mail.

Sincerely,

Edward Hasbrouck
Consultant on travel-related issues
The Identity Project

Edward Hasbrouck
The Identity Project
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January 31, 2011

Transportation Security Administration
Freedom of Information Act (FOIA) Division
TSA-20, 11th Floor, East Tower
601 South 12th Street
Arlington, VA 20598-6020

(by e-mail to FOIA.TSA@dhs.gov)

FOIA REQUEST

Fee benefit requested

Fee waiver requested

Dear FOIA Officer:

This is a request pursuant to the federal Freedom of Information Act, 5 U.S.C. § 552.

We request access to and copies of (1) the most recent version of the document previously described as “Transportation Security Administration Certification of Identity” , copies of which are provided to airline passengers at TSA and TSA contractor checkpoints for passengers to sign, a copy of an earlier version of which is attached, (2) any communication (including but not limited to e-mail messages in their full and complete form including all headers and fully expanded addresses) within TSA or between TSA and other agencies including OMB regarding the content of or approval for use of this form, including in particular any records related to requests for or approvals of this form by OMB, any OMB control number for any version of this form, or the potential need for such approval.

As a representative of the news media we are only required to pay for the direct cost of duplication after the first 100 pages. Through this request, we are gathering information on TSA procedures that is of current interest to the public because without this information, there is no way for members of the public 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

The Identity Project FOIA request for “Certification of ID” and related records (page 1 of 2)

site at <<http://www.papersPlease.org>>, where we have published documents obtained in response to our previous FOIA requests, 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.

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. The records we are requesting clearly relate to government operations and activities. It is in the public interest for the traveling public – who will of course learn of these requirements when they are announced on flights – to know in advance with what orders they will be required to conform their actions. There has been, and continues to be, extensive interest in the TSA “identity verification” process, the forms used for it, and whether those forms have been approved by OMB. The Identity Project is a nonprofit organization with no commercial interest in this information.

There are no statutes or regulations specifying these procedures. In the absence of statutes or regulations, public disclosure and availability of the requested documents is essential to any public understanding of TSA operations, of what rights and authority the TSA claim, and of TSA expectations with respect to the conduct of TSA employees and contractors, airlines, and of members of the public.

This information will be made available to the public. Pursuant to 44 U.S.C. 3506(d)(4)(b), neither the TSA nor any agency may, “except where specifically authorized by statute ... restrict or regulate the use, resale, or redissemination of public information by the public.” The FOIA statute does not authorize any such restriction on the use or redissemination of information released pursuant to FOIA, and we intend to exercise fully our rights to use and public redissemination, for public nonprofit benefit, through our Web site, of any records released in response to this request.

If our request is denied in whole or part, we ask that you justify all deletions by reference to specific exemptions of the act. We will also expect you to release all segregable portions of otherwise exempt material. We, of course, reserve the right to appeal your decision to withhold any information or to deny a waiver of fees.

Please respond as soon as possible (including by e-mail, since this request is being submitted by e-mail) to confirm your receipt of this request. We look forward to your complete reply within 20 business days, as the statute requires.

The TSA still has not published a FOIA notice in the Federal Register with a valid address for FOIA requests. Your office has claimed that requests sent to the addresses on your website have not been received “in this office” until many days after they were signed for by people representing themselves to the U.S. Postal Service as authorized to accept mail on your behalf, and many days after they were sent by e-mail. We have previously informed you of these facts. Your continuing violation of FOIA is knowing and deliberate. We have received no acknowledgment of, or response to, our complaint of this FOIA violation, which we hereby reiterate and request that you acknowledge.

Sincerely,

Edward Hasbrouck
The Identity Project

Transportation Security Administration Certification of Identity

Please provide the following information so that TSA can verify your identity and complete the passenger screening process.

PLEASE PRINT:

Full Name: _____

* Current Address: _____

* If a Current Address is unavailable, provide a Previous Address

Signature: _____ Date: _____

This information is being collected in accordance with 49 U.S.C. § 114(f) and 49 C.F.R. §§ 1540.105(a)(2), 1540.107 in order to verify your identity and complete the passenger screening process. This information may be shared with the Department of Justice or other Federal agency in the review, settlement, defense, and prosecution of claims, complaints, and lawsuits over matters in which TSA exercises jurisdiction, or for routine uses identified in TSA's systems of records, DHS/TSA 001 Transportation Security Enforcement Record System (TSERS) or DHS/TSA 002 Transportation Security Threat Assessment System (TSTAS). Disclosure of this information is voluntary; however, failure to furnish the requested information may result in an inability to complete the security screening process and, consequently, an inability to grant you access to the sterile area.

False statements may be punishable under the provisions of 18 U.S.C. Section 1001 by fine, imprisonment or both.

[For TSA Use Only] IVCC Identification Verification Reference Number: _____



**Transportation
Security
Administration**

February 1, 2011

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

Re: TSA11-0344

Dear Mr. Hasbrouck:

This letter acknowledges receipt of your Freedom of Information Act (FOIA) request to the Transportation Security Administration (TSA), dated January 31, 2011, and to your request for a waiver of all assessable FOIA fees. Your request was received in this office on February 1, 2011. Specifically, you requested access to and copies of (1) the most recent version of the document previously described as "Transportation Security Administration Certification of Identity", copies of which are provided to airline passengers at TSA and TSA contractor checkpoints for passengers to sign, (2) any communication (including but not limited to e-mail messages in their full and complete form including all headers and fully expanded addresses) within TSA or between TSA and other agencies including OMB regarding the content of or approval for use of this form, including in particular any records related to requests for or approvals of this form by OMB, any OMB control number for any version of this form, or the potential need for such approval.

Due to the increasing number of FOIA requests received by this office, we may encounter some delay in processing your request. Per Section 5.5(a) of the DHS FOIA regulations, 6 C.F.R. Part 5, the Department processes FOIA requests according to their order of receipt. Although DHS' goal is to respond within 20 business days of receipt of your request, the FOIA does permit a 10-day extension of this time period. As the subject matter of your request is of substantial interest to two or more components of this Department or of substantial interest to another agency, we will need to consult with those entities before we issue a final response. Due to these unusual circumstances, TSA will invoke a 10-day extension for your request, as allowed by Title 5 U.S.C. § 552(a)(6)(B). If you care to narrow the scope of your request, please contact our office. We will make every effort to comply with your request in a timely manner.

As it relates to your fee waiver request, your request will be held in abeyance pending the quantification of responsive records. The DHS FOIA Regulations, 6 CFR § 5.11(k)(2), set forth six factors to examine in determining whether the applicable legal standard for a fee waiver has been met: (1) Whether the subject of the requested records concerns "the operations or activities of the government;" (2) Whether the disclosure is "likely to contribute" to an understanding of government operations or activities; (3) Whether disclosure of the requested information will contribute to the understanding of the public at large, as opposed to the individual understanding of the requestor or a narrow segment of interested persons; (4) Whether the contribution to public understanding of government operations or activities will be "significant;" (5) Whether

the requester has a commercial interest that would be furthered by the requested disclosure; and (6) Whether the magnitude of any identified commercial interest to the requestor is sufficiently large in comparison with the public interest in disclosure, that disclosure is primarily in the commercial interest of the requestor. If any responsive records are located, we will consider these factors in our evaluation of your request for a fee waiver.

In the event that your fee waiver is denied, we shall charge you for records in accordance with the DHS FOIA regulations. You will be promptly notified once a determination is made regarding your fee waiver request.

You have the right to appeal the determination to deny your fee waiver 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 22202-4220. 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 the Special Counselor's determination will be administratively final. Your envelope and letter should be marked "Freedom of Information Act Appeal." The implementing Department regulations establish the criteria under which the FOIA is administered. Copies of the FOIA and regulations are available at www.DHS.gov.

Your request has been assigned reference number **TSA11-0344**. Please refer to this identifier in any future correspondence. If you have any questions, or would like to discuss this matter, please feel free to contact this office at 866.364.2872.

Sincerely,

TSA FOIA Officer
Freedom of Information Act

17 Apr 2011

Subject: **Fw: request for confirmation of TSA FOIA appeal address**
Date sent: **Sun, 17 Apr 2011 13:58:24 -0400**
From: **"Holzerland, William" <William.Holzerland@dhs.gov>**
To: **<edward@hasbrouck.org>**
Copies to: **"FOIA" <FOIA.tsa@dhs.gov>**

Mr. Hasbrouck, I'm not certain what happened here, but it appears my colleagues at TSA may have inadvertently used old language re: the address in the attached letter. I suggest sending correspondence regarding same via email to the address copied above, or via mail to the address published at www.dhs.gov/foia, which is as follows: TSA, FOIA Office - TSA-20, 601 S. 12th Street, 11th Floor, East Tower, Arlington, VA 20598-6020. Regards, Bill

William H. Holzerland, CIPP/G
U.S. Department of Homeland Security
Associate Director,
Disclosure Policy & FOIA Program Development
(703) 235-0790

----- Original Message -----

From: Edward Hasbrouck [<mailto:edward@hasbrouck.org>]
Sent: Saturday, April 16, 2011 10:54 PM
To: Holzerland, William <William.Holzerland@dhs.gov>
Subject: request for confirmation of TSA FOIA appeal address

Before I send my appeal of the constructive denial of my request TSA11-0344, could you please confirm whether the appeal address in the attached acknowledgment letter is correct -- or whether the TSA has yet again resumed sending acknowledgment letters directing appeals to an obsolete zip code that will get them sent into a black hole and never acted on?

Sincerely,

Edward Hasbrouck

Edward Hasbrouck
<edward@hasbrouck.org>
<<http://hasbrouck.org>>
1130 Treat Ave., San Francisco, CA 94110, USA
+1-415-824-0214

consultant to The Identity Project (IDP),
a program of the First Amendment Project
<<http://www.papersplease.org>>