

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION**

EDWARD HASBROUCK,)	
)	
Plaintiff,)	
)	
v.)	Civ. No.: C10-03793 RS
)	
UNITED STATES CUSTOMS AND BORDER PROTECTION,)	
)	
Defendant.)	
)	

DECLARATION OF LAURENCE CASTELLI

I, Laurence Castelli, declare as follows:

1. I am the CBP Privacy Officer and Chief of the Privacy Act Policy and Procedures Branch (Privacy Branch), Regulations and Rulings, Office of International Trade (OT), U.S. Customs and Border Protection (CBP), U.S. Department of Homeland Security (DHS). I have been with CBP for 21 years and have been the CBP Privacy Officer since my appointment to this position on September 27, 2009, and the Chief of the Privacy Branch since my appointment to this position on July 24, 2005. Prior to becoming the Chief of the Privacy Branch, I was the Senior Attorney-Advisor for the Disclosure Law Branch, a predecessor for both the Privacy Branch and the Freedom of Information Act (FOIA) Appeals, Policy and Litigation Branch. I worked in the Disclosure Law Branch for ten years, handling a variety of FOIA appeals and providing support in several litigation matters arising from those appeals. As the CBP Privacy Officer, I am the official responsible for the overall supervision of compliance with the Privacy Act for

CBP records systems. I submit this declaration in support of Defendant's Motion for Summary Judgment.

2. CBP is a law enforcement agency with enforcement responsibilities for over 400 Federal statutes, on behalf of over 40 different federal agencies. CBP's mission is to protect the borders of the United States against terrorists and the instruments of terror, enforce the customs and immigration laws of the United States, and foster our Nation's economy by facilitating lawful international trade and travel. Its mission includes the processing of passengers, conveyances, and merchandise entering, transiting and departing the United States. The creation and implementation of effective law enforcement policies and procedures is paramount to achieving this mission. The policies and procedures at issue in this case are directly related to CBP's law enforcement activities and are all used for law enforcement purposes.

3. I am familiar with the procedures followed by CBP in responding to requests for information from its systems pursuant to the provisions of 5 U.S.C. § 552 (the FOIA), and 5 U.S.C. §552a (the Privacy Act). I am familiar with Edward Hasbrouck's (hereinafter Plaintiff) request for information from CBP pursuant to the Privacy Act for records concerning CBP's records of his both his air travel to and from the United States and the submissions he made to CBP as a travel agent. All information contained herein is based upon information furnished to me in my official capacity, and the statements I make in this declaration are based on my personal knowledge, which includes knowledge acquired through, and agency files reviewed in, the course of my official duties.

4. The purpose of this Declaration is to describe CBP's handling of Plaintiff's Privacy Act request.

5. This Declaration consists of: (i) a summary of the relevant facts and correspondence regarding Plaintiff's Privacy Act request and (ii) the justification for withholding information under the Privacy Act.

I. SUMMARY OF RELEVANT FACTS AND CORRESPONDENCE CONCERNING PLAINTIFF'S PRIVACY ACT REQUEST

6. In an undated letter in 2007 (according to Plaintiff, purportedly dated June 27, 2007), Plaintiff submitted a Privacy Act Request seeking "copies of all information relating to myself contained in the system of records established for the Automated Targeting System (ATS)" including "any records relating to any risk assessments, the rules used for determining the assessments, any pointer or reference to the underlying records from other systems that resulted in the assessments, any API (Advanced Passenger Information) and PNR (Passenger Name Record) information obtained from commercial air, rail, or road carriers, CRSs (Computerized Reservation Systems), GDS (Global Distribution Systems), PNR aggregators or intermediaries, or other third parties." *See Exhibit B.*

7. The July 2007 request was received by CBP's FOIA Division, the office responsible for coordinating and responding to initial FOIA requests.

8. In a letter dated August 13, 2007, CBP responded to the request (file number 2007F4114) releasing 16 pages of documents (erroneously described in the cover letter as 14 pages), in which certain portions were stated as exempt from disclosure pursuant to 5 U.S.C. 552(b)(2), as administrative markings, and 5 U.S.C. 552(b)(7)(C), as names of individuals the disclosure of which would constitute an unwarranted invasion of personal privacy. *See Exhibit C.*

9. On February 2, 2009, following a telephone call from the Plaintiff, an electronic

copy of a letter dated September 13, 2007, containing FOIA/Privacy Act Appeal of CBP's response to the initial request (file 2007F4114) was emailed by the Plaintiff to Shari Suzuki, Chief of CBP's FOIA Appeals, Policy and Litigation Branch, the office responsible for coordinating and responding to FOIA appeals. In particular, the Plaintiff, through his attorney, requested the following records:

- A. ATS and PNR records relating to Mr. Hasbrouck's travel prior to June 23, 2003;
- B. PNRs containing data entered by, or otherwise identifiable with, Mr. Hasbrouck in his capacity as travel agent. These include, but are not limited to, PNRs from the Sabre computerized reservation system showing PNR history entries from pseudo-city code A787 and agent sines A24 or AEH, and all records identifiable with ARC/IATA travel agency ID number 05626515 and agent "EH" or "EDWARD";
- C. Portions of responsive PNRs not displayed on the "face" (front page) or "history" (audit trail) of the PNR;
- D. Split/divided PNRs identifiable with Mr. Hasbrouck;
- E. Risk assessments pertaining to Mr. Hasbrouck;
- F. The rules used for determining risk assessments to Mr. Hasbrouck;
- G. API data pertaining to Mr. Hasbrouck from air, rail and road carriers.

See Exhibit D.

10. On February 2, 2009, the request was referred to the Privacy Act Policy and Procedures Branch for response, and was assigned case file number H051659.

Subsequently, I spoke to the Plaintiff by telephone, confirming both receipt of the document and the Plaintiff's intention that it be processed under the Privacy Act, rather than the FOIA.

11. On February 5, 2009, the Privacy Branch received an email from the Chief, Passenger Branch, Office of Intelligence and Operations Coordination (OIOC), attaching unredacted PNR records for Edward Hasbrouck that were responsive to the Plaintiff's initial request.

12. On February 25, 2009, the Chief, Passenger Branch, OIOC, was contacted to

clarify the scope of the Appeal and convey the additional alpha-numeric identifiers provided by the Plaintiff for records transmitted in his capacity as travel agent. The Chief, Passenger Branch, OIOC agreed to search for all responsive records.

13. On March 30, 2009, the Chief, Passenger Branch, OIOC, indicated that methodology of the searches being conducted was intensive and encompassing and that additional time was required to ensure an accurate response. The initial search for PNR records relating to the Plaintiff in his capacity as a travel agent was conducted using the following criteria:

pseudo-city code = A787 AND agent sine = A24;
pseudo-city code = A787 AND agent sine = AEH;
ARC/IATA travel agency ID number = 05626515 AND agent EH;
ARC/IATA travel agency ID number = 05626515 AND agent EDWARD

These search terms were terms that plaintiff specifically requested be searched. *See* Exhibit D (Plaintiff's letter dated September 13, 2007, titled Freedom of Information Act/Privacy Act Appeal, CBP File number 2007F4114). Additionally, to ensure that all files likely to contain responsive records were searched, CBP's Office of Information of Technology (OIT) was contacted to perform a search to locate each instance in which the following criteria appeared in any PNR record in the ATS database: "A787", "Edward", "EH", "05626515 Edward" and "05626515 EH". Upon completion, the Chief, Passenger Branch, OIOC, was provided with PNR locator codes for all PNR records containing the five search terms. Using the PNR locator codes provided by OIT, the Chief, Passenger Branch, OIOC manually retrieved PNR records from the system, reviewed each one to identify PNR responsive to the request, and separated the responsive documents into word files for transmission to me along with the recommended redaction of fields containing personally identifying information belonging to persons other than the

requestor. No printout or search log of search terms was saved because the responsive records retrieved reflected the search terms used.

14. On April 2, 2009, the Chief, Passenger Branch, OIOC, forwarded all responsive PNR documents to me in the Privacy Branch, which I reviewed. Based upon my review of the file pertaining to this request for records, I confirmed that all files containing responsive materials were searched.

15. By letter dated September 15, 2010, CBP released 47 pages of documents to the Plaintiff under the Privacy Act, comprised of 20 pages of records pertaining to the Plaintiff in his capacity as a passenger that were released in their entirety and 27 pages of records pertaining to the Plaintiff in his capacity as a travel agent that were released subject to redaction. Of these 27 pages, three pages contained no redactions. Attached hereto as Exhibit P (Bates-stamped US00015-16) is a true and correct copy of a letter dated September 15, 2010, from myself to James P. Harrison.

II. JUSTIFICATION FOR WITHHELD MATERIAL

16. In total, CBP has released to Plaintiff 20 pages of records pertaining to the Plaintiff in his capacity as a passenger that were released in their entirety and 27 pages of records pertaining to the Plaintiff in his capacity as travel agent that were subject to redaction (of these 27, three pages contained no redactions). The redacted material consisted of PNR data that contained personally identifying information pertaining to individuals other than the Plaintiff which may include some combination of the following types of information: names; date(s) of intended travel; available frequent flier and benefit information; other names on PNR, including number of travelers on PNR, all available contact information; all available payment/billing information; travel itinerary

for specific PNR; travel agency/travel agent; code share information; split/divided information; travel status of passenger (including confirmation and check in status) and relevant travel history; ticketing information including ticket number; seat information, including seat number; open text fields; and Advanced Passenger Information Data, including passport number and country of issuance. The PNR data pertaining to individuals other than the Plaintiff was withheld as non-responsive to the Plaintiff's request. Although the Privacy Act provides an individual access to his/her own records, it protects the personally identifying information of other person(s) from disclosure in the absence of prior written consent from those other person(s).

17. Information regarding the rules used by ATS for determining a risk assessment, as well as any risk assessment pertaining to, or identifiable with, the Plaintiff, was withheld in its entirety as information contained within a system of records for which an exemption is claimed pursuant to 5 U.S.C. 552a(j)(2) and (k)(2). *See* 6 C.F.R. Pt. 5, App. C, par. 45 (DHS amended its regulations to exempt among others certain records pertaining to risk assessment analyses and business confidential information received in the PNR from the air and vessel carriers and typically found in the ATS-Passenger (ATS-P) module of ATS); *see also* 75 FR 5487 (Feb. 3, 2010) (Final Rule for Privacy Act Exemptions); 72 FR 43650 (Aug. 6, 2007) (SORN); 72 FR 43567 (Aug. 6, 2007) (Notice of Proposed Rulemaking). As explained in the regulations, DHS needs these exemptions in order to protect information relating to law enforcement investigations from disclosure to subjects of investigations and others who could interfere with investigatory and law enforcement activities. *See* 6 C.F.R. Pt. 5, App. C, par. 45. These exemptions are standard law enforcement exemptions exercised by a large number of federal law

enforcement agencies. *Id.* CBP is a law enforcement agency charged with screening all persons crossing U.S. borders to ensure compliance with U.S. laws. ATS exists to assist CBP in identifying persons who, and cargo that, may pose a higher risk for violating U.S. law while not impeding the flow of legitimate travelers, cargo and conveyances. CBP has asserted Privacy Act exemptions 552a(j)(2) and 552a(k)(2) to protect information maintained in a law enforcement system.

JURAT CLAUSE

I declare under penalty of perjury that the forgoing is true and correct to the best of my knowledge, information and belief.

Signed this 3rd day of June, 2011, in Washington, D.C.



Laurence Castelli
CBP Privacy Officer
Office of International Trade
U.S. Customs and Border Protection
U.S. Department of Homeland Security

799 9th Street NW
Washington, DC 20229



**U.S. Customs and
Border Protection**

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DIS-4-01 OT:RR:RD:PA
H051659 KKV

Mr. James P. Harrison
First Amendment Project
1736 Franklin St., 9th Floor
Oakland, CA 94560

RE: Privacy Act Request for ATS records for Edward John Hasbrouck

Dear Mr. Harrison:

This letter is in response to your appeal under the Privacy Act of 1974 (received by our office on February 2, 2009), filed on behalf of your client, Edward John Hasbrouck [initial request file number 2007F4114] for access to all responsive CBP records contained in the Automated Targeting System (ATS). We apologize for the delay in responding to this appeal and as a result, are reviewing the procedures for mail transfers to our office. In particular, you seek access to the following records:

- a. ATS and PNR records relating to Mr. Hasbrouck's travel prior to June 23, 2003;
- b. PNRs containing data entered by, or otherwise identifiable with Mr. Hasbrouck in his capacity as a travel agent [entries from pseudo-city code A787 and agent sines A24 or AEH and records identifiable with ARC/IATA ID number 05626515 and agent "EH" or "EDWARD"], including PNR data from the SABRE computerized reservation system;
- c. Portions of PNR that are not displayed on the "face" (front page) or "history" of the PNR;
- d. Split/divided PNRs identifiable with Mr. Hasbrouck;
- e. Risk assessments pertaining to Mr. Hasbrouck or risk assessment records identifiable with Mr. Hasbrouck;
- f. The rules used for determining the risk assessment; and
- g. API data concerning Mr. Hasbrouck received from air, rail and road carriers.

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With regard to the ATS records originally provided to Mr. Hasbrouck, CBP provided a total of 16 pages of records in its FOIA response. With respect to the exemptions asserted in connection with the records previously released, we note that because the prior System of Record Notice (SORN) (published at 71 FR 64543), did not provide access to these records under the Privacy Act, the previous request was processed under the Freedom of Information Act (FOIA).

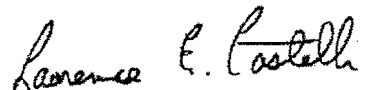
Since the processing of Mr. Hasbrouck's initial request, CBP has issued a new SORN for ATS (published at 72 FR 43650) which permits access to an individual's Passenger Name Record (PNR). As such, CBP performed a new search for PNR records in which Mr. Hasbrouck was identified as a traveler in ATS, which contains PNR records dating from 2002 to the present. Insofar as the applicable SORN for ATS now provides for access under the Privacy Act, these records, totaling 20 pages, are hereby released in their entirety.

With regard to those records containing data entered by or otherwise identifiable with Mr. Hasbrouck in his capacity as a travel agent, insofar as Mr. Hasbrouck has provided CBP with appropriate numerical/alphabetical identifiers, CBP has now located and hereby provides the responsive records totaling 27 pages. CBP has redacted personally identifiable information pertaining to other persons from these records, as non-responsive information.

With regard to any risk assessments pertaining to, or risk assessment records identifiable with Mr. Hasbrouck, or the rules for determining a risk assessment, such records are exempt from the access provisions of the Privacy Act as specified in the Systems of Record Notice (SORN) published in connection with this system ((72 FR 43650).

With regard to that portion of your request that pertains to Advance Passenger Information (API), we note that ATS collects only that API that is initially captured by a carrier within its PNR; otherwise such information is contained in a different data system – the Advance Passenger Information System (APIS). However, to the extent that any such information appears within the responsive records referenced above, it is hereby provided.

Sincerely,



Laurence E. Castelli
Chief, Privacy Act Policy
and Procedures Branch