

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

edward@hasbrouck.org
office 510-208-7744
cell/mobile 415-824-0214

August 17, 2010

U.S. Department of Homeland Security
Privacy Office
Director, Disclosure & FOIA
245 Murray Drive SW, Building 410
STOP-655
Washington, D.C. 20528-0655

(by Express Mail and by e-mail to foia@hq.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 any and all documents and records created by DHS or other agencies or departments in the course of processing, investigation, or action on our complaint of FOIA and Privacy Act violations, copies of which are attached. This complaint was sent to DHS by e-mail on November 3, 2009, and by U.S. Postal Service on December 16, 2009.

This request includes any responsive records of (1) the DHS Privacy Office; (2) the DHS Office of the Inspector General; (3) the offices who receive e-mail addressed to DHSOIGHOTLINE@dhs.gov, foia.tsa@dhs.gov, foia@hq.dhs.gov, privacy@dhs.gov, TellTSA@dhs.gov, TSA-ContactCenter@dhs.gov, or who receive communications from or are responsible for liaison with or supervision of contractors who receive such mail; (4) any other office or agency which was consulted or contacted by those offices, or by other DHS offices, in the course of processing, investigation, or action on our complaint; and (5) any other office, agency, or department identifiable as having, or likely to have, responsive records.

I hereby waive any objections which I might be entitled to assert under the Privacy Act to the release under FOIA, in response to this request, of information pertaining to me.

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 DHS transparency and compliance with FOIA that is already the subject of extensive news coverage.

The Identity Project FOIA request for records of FOI/PA complaint processing (page 1 of 3)

On July 21, 2010, the Associated Press published an article by Ted Brindis entitled, "A Political Filter for Info requests", a copy of which is attached.

According to that article, "For at least a year, the Homeland Security Department detoured hundreds of requests for federal records to senior political advisers for highly unusual scrutiny, probing for information about the requesters and delaying disclosures deemed too politically sensitive, according to nearly 1,000 pages of internal e-mails obtained by The Associated Press.... AP obtained the 995 e-mails under FOIA after a seven-month disagreement resolved by the Office of Government Information Services, a new independent U.S. agency that mediates disputes over access to federal documents. The AP's request for the Homeland Security e-mails was itself submitted for review by the political advisers."

Only through release of the records we are requesting can we, or the public, know whether our complaint of FOIA violations was among the matters thus delayed or referred for political review.

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, 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 public to know exactly which FOIA requests have been subjected to political review or delay. The Identity Project is a nonprofit organization with no commercial interest in this information. Should our request for a total waiver of fees be denied, we agree to pay up to \$100 in duplication fees.

This information will be made available to the public. Pursuant to 44 U.S.C. 3506(d)(4)(b), neither the DHS 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, if possible) to confirm your receipt of this request. We look forward to your complete reply within 20 business days, as the statute requires.

Pursuant to 28 USC §1726, and in compliance with 6 CFR 5.21(d), I declare (certify, verify, or state) under penalty of perjury that I am Edward John Hasbrouck, the maker of the attached complaints of FOIA and Privacy Act violations, as identified in those complaints, and that the foregoing is true and correct to the best of my knowledge and belief.

Executed in the City and County of San Francisco, CA, USA, on this date:

Signature:

Edward Hasbrouck
Consultant on travel-related issues
The Identity Project

From: Edward Hasbrouck <edward@hasbrouck.org>

To: DHSOIGHOTLINE@dhs.gov

Subject: violations of FOIA by TSA

Cc: foia.tsa@dhs.gov, foia@hq.dhs.gov,
privacy@dhs.gov, TellTSA@dhs.gov,
TSA-ContactCenter@dhs.gov, ogis@nara.gov

Date: Mon, 02 Nov 2009 10:41:10 -0800

The address of the TSA FOIA office (and, I suspect, the TSA Privacy Act office), and the address for postal submission of FOIA requests to the TSA, have changed without public notice.

The TSA is not currently accepting delivery of FOIA (or, I suspect), Privacy Act) requests sent to their officially designated address.

To my knowledge, this has been the situation at least since October 16, 2009, more than two full weeks ago, and it continues today.

Because the TSA is not accepting delivery of these requests, it is impossible for requesters to obtain confirmation of receipt of their requests. Without evidence of the date of receipt, it is impossible for requesters to appeal constructive denial of their requests, or to litigate constructive denial of requests for expedited processing.

TSA and DHS are required by FOIA and the Privacy Act to publicly designate, through notices in the Federal Register, addresses at which FOIA and Privacy Act requests are accepted. Failure to designate such addresses or to accept delivery at those addresses, or instructing the Postal Service not to deliver requests sent to those addresses, are violations of FOIA and/or the Privacy Act on the part of the responsible DHS and/or TSA officials.

The most recent DHS FOIA regulations, as published in the Federal Register (60 FR 4056-4069, January 27, 2003) and codified at 6 CFR Part 5, list the TSA FOIA address as:

Transportation Security Administration
400 Seventh Street, SW.
Washington, DC 20590

I have been told by phone, on a rare occasion when the TSA FOIA or Privacy Act office answered their phone, that that address is obsolete.

The DHS.gov and TSA.gov Web sites list a different address:

Transportation Security Administration
Freedom of Information Act Office, TSA-20
601 S. 12th Street
11th Floor, East Tower
Arlington, VA 22202-4220

However, I believe that neither of these addresses is correct. The U.S. Postal Service has told me that they were unable to deliver my FOIA request sent by Express Mail to the Arlington address above.

According to the USPS, my Express Mail letter arrived in the Arlington Post Office on October 16, 2009. According to the USPS, the TSA zip code has changed to 20598, and the TSA has instructed the USPS not to deliver mail sent to that address and zip code 22202. Because the TSA has instructed the USPS not to attempt delivery of such mail, the USPS was unable to provide proof of delivery, proof of non-delivery, or proof of refusal to accept delivery, and my letter was not returned to me.

Although this happened to my letter on October 16th, more than two full weeks ago, no new TSA or DHS FOIA notice, no new TSA Privacy Act SORN for any system of records, and no update to the TSA or DHS FOIA regulations in 6 CFR Part 5 has yet been published in the Federal Register.

I presume that TSA was aware that their address was to be changed, and that it had been changed, and could have published notices of changes in advance on their Web sites and in the Federal Register. Standard operating procedures for compliance with FOIA and the Privacy Act should have provided for the issuance and publication in the Federal Register of a new FOIA notice, updates to the FOIA regulations in 6 CFR Part 5, and new SORNs, *prior* to the effective date of the change of address, and special care in instructing the USPS and TSA mailroom staff to ensure that requests continued to be delivered without interruption.

Since that was not done, and until it can be done, the USPS and other carriers should have been directed to continue delivery of requests sent to the officially designated addresses. The DHS and TSA have an affirmative legal duty under FOIA and the Privacy Act to promulgate valid addresses and ensure that they accept delivery of requests sent to those addresses. To direct that requests be sent to an address that, by TSA directive to the Postal Service, has been rendered a "black hole", constitutes de facto summary, secret denial of all such requests.

My FOIA request -- sent by e-mail and Express Mail on October 15, 2009 -- included a request for expedited processing. Under FOIA, the TSA was required to make a decision on that request for expedited processing within 10 days, that is, by October 25, 2009. Although I was eventually told by telephone that my request was received by the TSA FOIA office, and I have been promised postal and e-mail confirmation of receipt by the TSA FOIA office, I have yet to receive any written or electronic confirmation.

Under FOIA, I was entitled to commence litigation to challenge the constructive denial of my request for expedited processing 10 days after the receipt of my request. But since the TSA's refusal to accept delivery has made it impossible for me to prove when my request was received, it effectively bars the courthouse door, and prevents me from seeking judicial review of their constructive denial, or administrative review (if they had actually responded), until they provide confirmation of when they received my request.

This is an extremely grave due process violation. Until corrected through proper new federal register notices and instructions to the USPS and other delivery services, it categorically precludes FOIA and perhaps also Privacy Act requests and appeals or litigation of constructive denials.

Instead of having been able to commence litigation October 25th (if they confirmed receipt of my e-mail on October 15th) or October 26th (if they signed for my Express Mail letter on October 16th), I am still waiting for written confirmation of receipt of my request.

I believe that these actions clearly constitute mismanagement by the DHS and TSA, and violations of FOIA and probably also the Privacy Act.

I request that the Office of the Inspector General investigate this complaint and bring appropriate enforcement action for sanctions against the responsible DHS and/or TSA officials.

Even if these violations were to be corrected by new notices in the Federal Register tomorrow, the damage of several weeks during which the TSA refused to accept properly addressed FOIA requests has been done, and I request that you proceed with your investigation of this complaint.

Most requesters, of course, will not even know that their request was not delivered, and may never know why they never receive a response. As part of your investigation, I request that you attempt to determine how many other such requests may not have been delivered. And I urge that the TSA

and DHS be required, as part of their mitigation of their violations of the law, to publish prominent notices -- through their usual press release distribution channels and on the DHS and TSA home pages and FOIA and Privacy Act Web pages -- that requests may not have been delivered, and advising past requesters of the need to re-send their requests.

My request for expedited processing was made as a journalist, and I have reported publicly on this incident at:

<http://www.papersplease.org/wp/2009/10/27/tsa-sends-our-foia-request-into-a-black-hole/>

Please reply to confirm your receipt of this report and complaint, and any tracking or reference number assigned to this complaint and/or to your investigation. Please advise me of the outcome of this complaint and provide me with a copy of any report produced by your office in response to this complaint and your investigation. Please feel free to contact me if you need any additional information from me, or if I can be of any assistance to you in investigating and prosecuting this complaint.

I am also copying this complaint to the TSA and DHS privacy offices, with a request that it be logged in TSA and DHS complaint statistics, investigated, and acted on as a complaint of violation of FOIA and potentially the Privacy Act by TSA and DHS officials.

Sincerely,

Edward Hasbrouck
1130 Treat Ave.
San Francisco, CA 94110
telephone 415-824-0214

-- End --

The Identity Project

www.PapersPlease.org

1736 Franklin Street, 9th Floor
Oakland, CA 94612
510-208-7744 (office)
415-824-0214 (cell/mobile)

December 16, 2009

Privacy Office
Department of Homeland Security
245 Murray Drive, S.W.
Washington, DC 20528

DHS Office of Inspector General/MAIL STOP 2600
Attention: Office of Investigations - Hotline
245 Murray Drive, SW, Building 410
Washington, DC 20528

Complaint of violation of FOIA and criminal violation of the Privacy Act by TSA

The addresses of the TSA FOIA office and the TSA Privacy Act office, and the address for postal submission of FOIA and Privacy Act requests to the TSA, have changed without public notice.

The TSA is not currently accepting delivery of FOIA or, we suspect, Privacy Act requests sent to their officially designated addresses.

To our knowledge, this has been the situation at least since October 16, 2009, and we believe that it continues today.

Because the TSA is not accepting delivery of these requests, it is impossible for requesters to obtain confirmation of receipt of their requests. Without evidence of the date of receipt, it is impossible for requesters to appeal constructive denial of their requests, or to litigate constructive denial of requests or appeals.

TSA and DHS are required by FOIA and the Privacy Act to publicly designate, through notices in the Federal Register, addresses at which FOIA and Privacy Act requests are accepted. Failure to designate such addresses or to accept delivery at those addresses, or instructing the Postal Service not to deliver requests sent to those addresses, are violations of FOIA and/or the Privacy Act on the part of the responsible DHS and/or TSA officials.

The most recent DHS FOIA regulations, as published in the Federal Register (60 FR 4056-4069, January 27, 2003) and codified at 6 CFR Part 5, list the TSA FOIA address as:

Transportation Security Administration
400 Seventh Street, SW.
Washington, DC 20590

We have been told by phone, on a rare occasion when the TSA FOIA or Privacy Act office answered their phone, that that address is obsolete.

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601 S. 12th Street
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Arlington, VA 22202-4220

However, we believe that neither of these addresses is correct. The U.S. Postal Service has told me that they were unable to deliver our FOIA request sent by Express Mail to the Arlington address above.

According to the USPS, my Express Mail letter arrived in the Arlington Post Office on October 16, 2009. According to the USPS, the TSA zip code has changed to 20598, and the TSA has instructed the USPS not to deliver mail sent to that address and zip code 22202. Because the TSA has instructed the USPS not to attempt delivery of such mail, the USPS was unable to provide proof of delivery, proof of non-delivery, or proof of refusal to accept delivery, and our letter was not returned to us.

Although this happened to our letter on October 16th, no new TSA or DHS FOIA notice, no new TSA Privacy Act SORN for any system of records, and no update to the TSA or DHS FOIA regulations in 6 CFR Part 5 has yet been published in the Federal Register.

We presume that TSA was aware that their address was to be changed, and that it had been changed, and could have published notices of changes in advance on their Web sites and in the Federal Register. Standard operating procedures for compliance with FOIA and the Privacy Act should have provided for the issuance and publication in the Federal Register of a new FOIA notice, updates to the FOIA regulations in 6 CFR Part 5, and new SORNs, *prior* to the effective date of the change of address, and special care in instructing the USPS and TSA mailroom staff to ensure that requests continued to be delivered without interruption.

Since that was not done, and until it can be done, the USPS and other carriers should have been directed to continue delivery of requests sent to the officially designated addresses. The DHS and TSA have an affirmative legal duty under FOIA and the Privacy Act to promulgate valid addresses and ensure that they accept delivery of requests sent to those addresses. To direct that requests be sent to an address that, by TSA directive to the Postal Service, has been rendered a "black hole", constitutes *de facto* summary, secret denial of all such requests.

One of our FOIA requests -- sent by e-mail and Express Mail on October 15, 2009 -- included a request for expedited processing. Under FOIA, the TSA was required to make a decision on that request for expedited processing within 10 days, that is, by October 25, 2009. Although we were eventually told by telephone that our request was received by the TSA FOIA office, we received no written or electronic confirmation until after the deadline for expedited processing of our request.

Under FOIA, we were entitled to commence litigation to challenge the constructive denial of our request for expedited processing 10 days after the receipt of our request. But since the TSA's refusal to accept delivery made it impossible for us to prove when our request was received, it effectively barred the courthouse door, and prevented us from seeking judicial review of their constructive denial, or administrative review (if they had actually responded), until they provided confirmation of when they received our request.

This is an extremely grave due process violation. Until corrected through proper new Federal Register notices and instructions to the USPS and other delivery services, it categorically precludes FOIA and Privacy Act requests and appeals or litigation of constructive denials.

We believe that these actions clearly constitute mismanagement by the DHS and TSA, and violations of FOIA and probably also the Privacy Act.

We request that the Office of the Inspector General and the DHS Privacy and FOIA offices investigate this complaint and bring appropriate enforcement action for sanctions against the responsible DHS and/or TSA officials.

Even if these violations were to be corrected by new notices in the Federal Register tomorrow, the damage of several months during which the TSA refused to accept properly addressed FOIA requests has been done, and I request that you proceed with your investigation of this complaint.

Most requesters, of course, will not even know that their request was not delivered, and may never know why they never receive a response. As part of your investigation, we request that you attempt to determine how many other such requests may not have been delivered. And I urge that the TSA and DHS be required, as part of

their mitigation of their violations of the law, to publish prominent notices -- through their usual press release distribution channels and on the DHS and TSA home pages and FOIA and Privacy Act Web pages -- that requests may not have been delivered, and advising past requesters of the need to re-send their requests.

Our request for expedited processing was made as a news media organization, and we have reported publicly on this incident at:

<http://www.papersplease.org/wp/2009/10/27/tsa-sends-our-foia-request-into-a-black-hole/>

We originally sent this complaint by e-mail on November 2, 2009 to <privacy@dhs.gov>, <DHSOIGHOTLINE@dhs.gov>, <foia.tsa@dhs.gov>, and <foia@hq.dhs.gov>, and have repeatedly attempted to report it by phone to those offices as well as the Postal Service (who referred it to the USPS Office of the Inspector General). We were told that our complaint had been assigned case #CA100394971 by the Postal Service, and DHS OIG report #DHS091104031. But as of today, we have received no written acknowledgment or response.

Please reply to confirm your receipt of this report and complaint, and any tracking or reference number assigned to this complaint and/or to your investigation. Please advise us of the outcome of this complaint and provide us with a copy of any report produced by your office in response to this complaint and your investigation. Please feel free to contact me if you need any additional information from us, or if we can be of any assistance to you in investigating and prosecuting this complaint. Please also confirm that this complaint has been logged as a complaint of violation of FOIA and the Privacy Act, and will be included in your reporting of statistics regarding such complaints.

We are copying this complaint to the OIG and to TSA and DHS privacy offices, with a request that it be logged in OIG, TSA, and DHS complaint statistics, investigated, and acted on as a complaint of violation of FOIA and (criminal) violation of the Privacy Act by TSA and DHS officials.

Sincerely,

Edward Hasbrouck
The Identity Project