

AUG 26 2010



Homeland
Security

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

SUBJECT: Freedom of Information Act Request No. 2010-167
REFERRAL FROM: Privacy Office, 10-1019

Dear Mr. Hasbrouck:

This is in response to your Freedom of Information Act (FOIA) request to the U.S. Department of Homeland Security (DHS) Privacy Office (PRIV), dated August 17, 2010. PRIV referred your request to the Office of Inspector General (OIG), which OIG received on August 24, 2010 and assigned the above-referenced tracking number.

The OIG conducts independent investigations, audits, inspections, and special reviews of DHS personnel, programs, and operations to detect and deter waste, fraud, and abuse, and to promote integrity, economy, and efficiency within the Department. In response to your request, a search of the OIG's Office of Investigations was performed using your name, Edward Hasbrouck. The search resulted in the attached database tracking forms which provide the following information: a narrative summary of your complaint submitted to the OIG's National Hotline Service (NHS) Call Center; an assigned case file number; and an indication that your case was closed without investigation by the OIG and referred to the Transportation Security Administration (TSA). Also attached is a copy of the email referring your complaint to that office.

Records retrieved from the OIG Office of Investigations are maintained in the system of records DHS-OIG-002 - "Enforcement Data System" (EDS). The EDS is a Privacy Act system of records; therefore, disclosure is governed by the Privacy Act, 5 U.S.C. § 552a. The Privacy Act permits agencies to exempt from first party disclosure, information received or compiled for law enforcement purposes. 5 U.S.C. §§ 552a (j)(2) and (k)(2). The OIG has so exempted the EDS records. See 74 Federal Register 55569 (Oct. 28, 2009). Therefore, disclosure of these records to you is not required under the Privacy Act, but we have reviewed them under the FOIA to determine whether they may be accessed under the FOIA's provisions. Based on that review, this office is providing the following:

6 page(s) are being released in full (RIF);
5 pages are being released in part (RIP);
 page(s) are withheld in full (WIF);
 pages were referred to another agency.

The exemption(s) cited for withholding records or portions of records are marked below.

Freedom of Information Act, 5 U.S.C. § 552			Privacy Act, 5 U.S.C. § 552a
<input type="checkbox"/> 552(b)(1)	<input type="checkbox"/> 552(b)(4)	<input type="checkbox"/> 552(b)(7)(B)	<input checked="" type="checkbox"/> 552a(j)(2)
<input type="checkbox"/> 552(b)(2)	<input type="checkbox"/> 552(b)(5)	<input checked="" type="checkbox"/> 552(b)(7)(C)	<input checked="" type="checkbox"/> 552a(k)(2)
<input type="checkbox"/> 552(b)(3)	<input checked="" type="checkbox"/> 552(b)(6)	<input type="checkbox"/> 552(b)(7)(D)	<input type="checkbox"/> 552a(k)(5)
	<input type="checkbox"/> 552(b)(7)(A)	<input type="checkbox"/> 552(b)(7)(E)	<input type="checkbox"/> Other:

OIG redacted from the enclosed documents, names and identifying information of third parties to protect the identities of these individuals. Absent a Privacy Act waiver, the release of such information concerning the third parties named in these records would result in an unwarranted invasion of personal privacy in violation of the Privacy Act, 5 U.S.C. § 552a. The information excised is also protected from disclosure pursuant to exemption (b)(6) of the FOIA.

Exemption 6, 5 U.S.C. § 552(b)(6)

Exemption 6 allows withholding of “personnel and medical files and *similar files* the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.” 5 U.S.C. § 552(b)(6). OIG is invoking Exemption 6 to protect the names of private citizens, DHS employees, and any information which could reasonably be expected to identify such individuals.

Exemption 7(C), 5 U.S.C. § 552(b)(7)(C)

Exemption 7(C) protects from public disclosure “records or information compiled for law enforcement purposes...[if disclosure] could reasonably be expected to cause an unwarranted invasion of personal privacy.” *See* 5 U.S.C. § 552(b)(7)(C). The OIG is invoking Exemption 7(C) to protect the identities of lower level employees, third parties mentioned or referenced in investigative files, and any information that could reasonably be expected to identify such individuals.

Appeal

This is the final action this office will take concerning this matter. You have the right to appeal this response. Your appeal must be in writing and **received** within 60 days of the date of this response. Please address any appeal to:

Associate General Counsel (General Law)
Department of Homeland Security
Washington, D.C. 20528

Both the envelope and letter of appeal must be clearly marked, “Freedom of Information Act/Privacy Act Appeal.” Your appeal letter must also clearly identify the OIG’s response.

Additional information on submitting an appeal is set forth in the Department of Homeland Security regulations at 6 C.F.R. § 5.9.

Sincerely,

A handwritten signature in black ink, appearing to read "Kath R Gallo". The signature is fluid and cursive, with the first name "Kath" and last name "Gallo" clearly distinguishable.

Katherine R. Gallo
Assistant Counsel to the Inspector General

FOIA/PA Analyst: Aneet Thind
Phone Number: (202) 254-4373

Requester's Name: Edward Hasbrouck

FOIA/PA NO.: 2010-167

MIXED DOCUMENTS

6 (RIF)

5 (RIP)

 (WIF)

 (DUP)

 (REFERRED)

 (NR)



Enforcement Data System v1.1.0

Office of Inspector General

Logged In As: [REDACTED] b6,7C

Home About Help Log
Thursday, August 28, 20

Role: Rollline Mana

Hotline

Complaint # - C1002135 Complaint Title - NHS Call Center Complaint Uploaded On: N... Status - Closed Not Converted

Initiation People Location Notes Upload Documents Generate Letters Log Collaterals Complaint-Action

Action

Action

Agency Referred To

Referred Date *

Date Closed *

* Required Field

Home
Initiate Complaint
DHS Employee Search
Search Case Data
Search Special Skills
Reports
Resources



Office of Inspector General

Logged in As [REDACTED] b6, 7C

Home About Help Log
Thursday, August 28, 20

Hotline

Role: Hotline Manager

Complaint # - C1002135 Complaint Title - NHS Call Center Complaint Uploaded On: Nov 5 2009 12:00PM Status - Closed Not Converted

Initiation People Location Notes Upload Documents Generate Letters Log Collaterals Complaint-Action

Initiate Complaint

[Return](#)

Complaint Title

NHS Call Center Complaint Uploaded On: Nov 5 2009 12:00PM

Chars left 142

[Spell Check](#)

Other Reference Number

DHS091104031

[Add More](#)

Primary Office

Washington, DC

Date of Incident

Date Received

11/4/2009

Date Initiated

11/5/2009

Dollar Loss

\$0.00

Privacy Violation Complaint

☐

Special Designation

☐

Confidential

☐

Receive Method

Hotline

Bureau Received From

DHS Agency Effectuated

Transportation Security Administration

Allegation Type

Failing to abide by laws

Narrative

Identified Complainant telephoned the hotline to report the Transportation Security Administration (TSA) for violating the Freedom of Information Act (FOIA) and for "criminal" violations of the Privacy Act. Complainant explained he/she sent an expedited FOIA request to the TSA 10/15/09. After the Complainant did not receive a response by 10/28, he/she went to the post office requesting information on the whereabouts of his/her package. Complainant alleged he/she was told by the post office that his/her package was not delivered to the address and could not be found. Complainant later found the TSA-FOIA office he/she sent his/her request to had relocated.

Chars left 3338

[Spell Check](#)

[Save](#)

[Cancel](#)

* Required Field

Home

Initiate Complaint

DHS Employee Search

Search Case Data

Search Special Skills

Reports

Resources



Office of Inspector General

Logged In As [REDACTED] b6, 7C

Home About Help Log

Thursday, August 20, 20

Role: Hotline Maria

Hotline

Complaint # - C1002135 Complaint Title - NHS Call Center Complaint Uploaded On: N/A Status - Closed Not Converted

Initiation People Location Notes Upload Documents Generate Letters Log Collaterals Complaint-Action

Subject/Victim/Complainant/Witness

Subjects(0)

New Subject

Name
<input type="text"/>
No records to display.
Ready

Victims(0)

New Victim

Name
<input type="text"/>
No records to display.
Ready

Complainants(1)

New Complainant

Name
<input type="text"/>
Hastrouk, Edward
Edid
Quinn
Ready

Witnesses(0)

New Witness

Name
<input type="text"/>
No records to display.
Ready

Home

Initiate Complaint

DHS Employee Search

Search Case Data

Search Special Skills

Reports

Resources



COMPLAINT INTAKE FORM

Department of Homeland Security-Office of Inspector General
Office of Investigations

Complaint Number: DHS091104031

Date: 11/4/09

Time: 6:48 p.m.

Complaint Received By: (TELEPHONE, WRITTEN, FAX, OTHER) Telephone

COMPLAINANT: (NAME, TITLE, AGENCY, CONTACT INFORMATION, ADDRESS OR DUTY LOCATION, PAY GRADE, CITY, STATE)

Edward Hasbrouk

415-824-0214

edward@hasbrouck.org

COMPLAINT IS:

Anonymous

☒

Confidential

☐

Open Source

☐

SUBJECT(s) of Complaint: (REQUIRES SAME INFORMATION AS COMPLAINANT)

Not Applicable

DETAILS Identified Complainant telephoned the hotline to report the Transportation Security Administration (TSA) for violating the Freedom of Information Act (FOIA) and for "criminal" violations of the Privacy Act. Complainant explained he/she sent an expedited FOIA request to the TSA 10/15/09. After the Complainant did not receive a response by 10/26, he/she went to the post office requesting information on the whereabouts of his/her package. Complainant alleged he/she was told by the post office that his/her package was not delivered to the address and could not be found. Complainant later found the TSA-FOIA office he/she sent his/her request to had relocated. Complainant provided the office's address as TSA -FOIA Division, East Tower, 601 S. 12th St., Arlington, VA 22202-4220 and explained he/she was only provided with the zip code of the new location, which is 20598. Complainant stated it is against federal law to not update the federal registry with the office's new address. Complainant e-mailed his/her original report 11/2, but has not received a response and opted to file a report through the hotline as well. Complainant said he/she would resend his/her e-mail if necessary and requested contact as soon as possible.

Law Enforcement Sensitive

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WITNESSES/VICTIMS

Not Applicable

Information received by: (NAME/TITLE OF PERSON TAKING REPORT, AGENCY? COMPANY, CONTACT INFORMATION)

b6,
7C

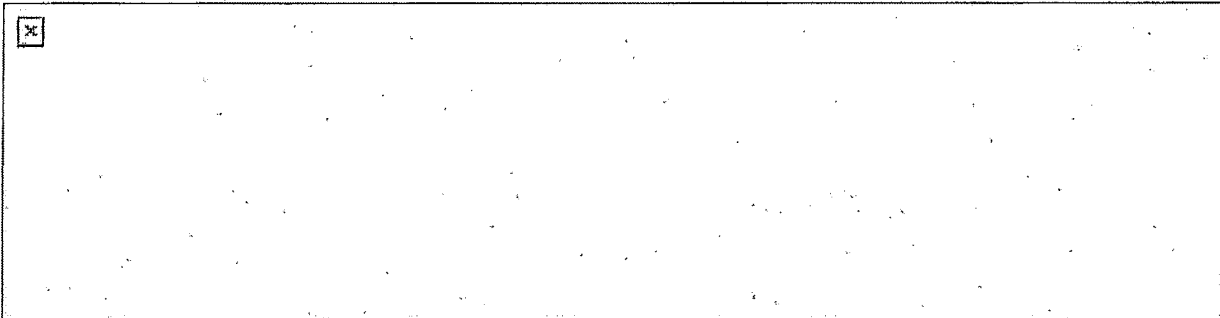
Law Enforcement Sensitive

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b6, 7C

From: DHSOIGHOTLINE
Sent: Monday, August 23, 2010 3:02 PM
To: 'dhs@hotlines.com'
Subject: FW: violations of FOIA and the Privacy Act by TSA
Attachments: Attachment information; pa-complaint-16dec2009.pdf

From: DHSOIGHOTLINE
Sent: Monday, August 23, 2010 10:04 AM
To: 'TSAInspectionHotline'
Subject: FW: violations of FOIA and the Privacy Act by TSA



The below information is furnished for whatever administrative action or inquiry you consider appropriate. Should your office take any administrative or personnel action in response to this information, you are requested to report the final result of that action within 30 business days of its conclusion.

If your review of this matter discloses evidence of previously unreported criminal misconduct that is reportable under Management Directive 0810.1, you are required to notify this office of that information before any additional investigative steps are taken.

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

From: Edward Hasbrouck [mailto:edward@hasbrouck.org]
Sent: Tuesday, August 17, 2010 3:27 PM
To: DHSOIGHOTLINE, DHSOIG
Subject: Re: violations of FOIA and the Privacy Act by TSA

I have received no acknowledgment of, or response to, the attached complaint. Please advise the status of this complaint.

Sincerely,

Edward Hasbrouck

Edward Hasbrouck

8/26/2010

<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>>

"Congress shall make no law ... abridging ... the right of the
people peaceably to assemble" (U.S. Constitution, Amendment 1)

"Everyone has the right to freedom of movement and residence
within the borders of each state. Everyone has the right to leave
any country, including his own, and to return to his country."
(Universal Declaration of Human Rights, Article 13)

"Liberty of movement is an indispensable
condition for the free development of a person,"
(United Nations Human Rights Committee,
General Comment No. 27)

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.

The DHS.gov and TSA.gov Web sites have listed a different FOIA request address:

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