

U.S. Department of Homeland Security

Freedom of Information Act Office
Arlington, VA 20598-6020



Transportation
Security
Administration

DEC - 1 2009

Mr. John Verdi
EPIC Open Government Project
1718 Connecticut Ave. N. W., Suite #200
Washington, DC 20009

FOIA Case Number: TSA09-0510

Dear Mr. Verdi:

This is an interim response to your Freedom of Information Act (FOIA) request to the Transportation Security Administration (TSA), dated April 14, 2009, and received by this office on May 4, 2009. Specifically, you requested to the following:

1. "All documents concerning the capability of passenger imaging technology to obscure, degrade, store, transmit, reproduce, retain, or delete images of individuals;
2. All contracts that include provisions concerning the capability of passenger imaging technology to obscure, degrade, store, transmit, reproduce, retain, or delete images of individuals; and
3. All instructions, policies, and/or procedures concerning the capability of passenger imaging technology to obscure, degrade, store, transmit, reproduce, retain, or delete images of individuals."

We conducted a search of files for records that would be responsive to your request and located (286) pages responsive to item two of your request. Of these records located, we have determined that (279) pages of the records are releasable in their entirety and (7) pages are partially releasable pursuant to Title 5 U.S.C. § 552, (b)(2)(low), (b)(2)(high), (b)(3), (b)(5) and (b)(6). In response to item one and three, please be advised that we are still continuing our review of additional documents. Once our review is complete and a determination has been made, we will respond to you accordingly.

Upon receipt of the request on or around May 4, 2009, I contacted you to discuss the overall scope of your request and to determine whether there were particular types of records and/or subject matters of interest to you that would enable TSA to narrow the scope of search. With respect to item 2 pertaining to "[a]ll contracts" for passenger imaging technology, it was agreed that TSA would focus its search to records that defined the scope of work, operational requirement and any subsequent modifications thereto. By doing so, TSA eliminated the lengthy and time consuming "submitter notice process" wherein TSA would consider contractor claims of confidential business information (CBI). Accordingly, rather than asserting exemption b(4) for CBI, TSA has, in limited circumstances, identified and withheld certain information as non responsive that would typically be forwarded to contractors as part of the submitter notice process.

www.tsa.gov

Exemption (b)(2)

Exemption (b)(2) of the FOIA exempts from mandatory disclosure records that are “related solely to the internal personnel rules and practices of an agency.” The courts have interpreted the exemption to encompass two distinct categories of information: (1) internal matters of a relatively trivial nature -- often referred to as “Low” 2 information; and (2) more substantial internal matters, the disclosure of which would risk circumvention of a legal requirement -- often referred to as “High” 2 information.

Exemption “low” 2 of the FOIA protects from disclosure internal matters of a relatively trivial nature. The Supreme Court has held that the very task of processing and releasing some requested records would place an administrative burden on the agency that would not be justified by any genuine public benefit. Low 2 serves to relieve the agency from the administrative burden of processing FOIA requests when internal matters are not likely to be the subject of public interest. For example, routine internal personnel matters, such as information relating to performance standards and leave practices, are included within the scope of the exemption.

Exemption 2 has also been construed to permit the nondisclosure of mundane, yet far more pervasive administrative data -- such as file numbers, mail routing stamps, initials, data processing notations, brief references to previous communications, and other similar administrative markings.

We have determined that certain portions of the requested records are properly withheld from disclosure as “High” 2 information, in that they contain sensitive materials. Sensitive materials are exempt from disclosure under “High” 2 when the requested document is predominantly internal, and disclosure significantly risks circumvention of a regulation or statute, including civil enforcement and regulatory matters. Whether there is any public interest in disclosure is legally irrelevant. Rather, the concern under “High” 2 is that a FOIA disclosure should not benefit those attempting to violate the law and avoid detection.

Exemption (b)(3)

Portions of these documents are considered Sensitive Security Information (SSI) and those portions are exempt from disclosure under Exemption 3 of the FOIA. Exemption 3 permits the withholding of records specifically exempted from disclosure by another Federal statute. Section 114(r) of title 49, United States Code, exempts from disclosure of Sensitive Security Information that “would be detrimental to the security of transportation” if disclosed. The TSA regulations implementing Section 114(r) are found in 49 CFR Part 1520.

Pursuant to 49 C.F.R. Section 1520.5(b)(4)(i), “any performance specification and any description of a test object or test procedure, for any device used by the Federal government or any other person pursuant to any aviation or maritime transportation security requirements of Federal law for the detection of any person, and any weapon, explosive, incendiary, or destructive device, item, or substance” is SSI. This information is exempt from disclosure under 49 C.F.R. Section 1520.15(a).

Exemption (b)(6)

Exemption 6 of the FOIA permits the government to withhold all identifying information that applies to a particular individual when the disclosure of such information "would constitute a clearly unwarranted invasion of personal privacy." This requires a balancing of the public's right to disclosure against the individual's right to privacy. After performing this analysis, we determined that the privacy interest in the identities of individuals in the records you have requested outweigh any minimal public interest in disclosure of the information. Please note that any private interest you may have in that information does not factor into the aforementioned balancing test.

Administrative Appeal

You have a right to appeal the above withholding determination. 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 20598-6033. 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 "FOIA Appeal."

If you need to contact our office again about this matter, please refer to **TSA09-0510**. This office can be reached at 1-866-FOIA-TSA (364-2872).

Sincerely,

A handwritten signature in blue ink, appearing to read "Kevin J. Janet", with a long horizontal flourish extending to the right. Below the signature, the initials "KJ" are written.

Kevin J. Janet
FOIA Officer
Freedom of Information Act Office

Enclosure(s): Release Documents, (286) pages