

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA**

<p>ELECTRONIC PRIVACY INFORMATION CENTER</p> <p style="padding-left: 40px;">Plaintiff,</p> <p style="padding-left: 40px;">v.</p> <p>UNITED STATES DEPARTMENT OF HOMELAND SECURITY</p> <p style="padding-left: 40px;">Defendant.</p>	<p>)</p> <p>)</p> <p>)</p> <p>)</p> <p>)</p> <p>)</p> <p>)</p> <p>)</p> <p>)</p> <p>)</p> <p>)</p> <p>)</p>	<p>No. 1:09-cv-2084 (RMU)</p>
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**PLAINTIFF’S STATEMENT OF MATERIAL FACTS NOT IN GENUINE
DISPUTE**

In accordance with LCvR 7(h), Plaintiff the Electronic Privacy Information Center submits this statement of material facts not in genuine dispute in support of its cross motion for summary judgment.

1. On April 14, 2009, EPIC transmitted, via certified mail, a written Freedom of Information Act (“FOIA”) request to DHS for agency records. (“EPIC’s First FOIA Request”) EPIC requested the following agency records:
 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.

Janet Aff. at ¶4.
2. On July 2, 2009, EPIC transmitted, via certified mail, a written FOIA request

(“EPIC’s Second FOIA Request”) to DHS for agency records. EPIC requested the following agency records:

1. all unfiltered or unobscured images captured using Whole Body Imaging technology;
2. all contracts entered into by DHS pertaining to Whole Body Imaging systems, including contracts for hardware, software, or training
3. all documents detailing the technical specifications of Whole Body Imaging hardware, including any limitations on image capture, storage, or copying;
4. all documents, including, but not limited to, presentations, images, and videos, used for training persons to use Whole Body Imaging systems;
5. all complaints related to the use of Whole Body Imaging and all documents relating to the resolution of those complaints; and
6. all documents concerning data breaches of images generated by Whole Body Imaging technology.

Janet Aff. at ¶7.

3. The DHS failed to make a timely determination concerning EPIC’s First FOIA Request and EPIC’s Second FOIA Request (“EPIC’s FOIA Requests”), and failed to disclose any records within the FOIA’s deadline. *Janet Aff.* at ¶¶8-9.
4. EPIC filed suit concerning EPIC’s First FOIA Request on November 5, 2009, initiating this lawsuit. *Complaint*, Dkt. No. 1.
5. EPIC filed suit concerning EPIC’s Second FOIA Request on January 13, 2010. *EPIC v. DHS*, No. 10-0063 (D.D.C. filed Jan. 13, 2010).
6. Due to the overlapping subject matter of the two suits, the parties requested, and the Court ordered, the cases to be consolidated in the present action. Dkt. No. 16.
7. The TSA made its first disclosure in response to EPIC’s FOIA requests on December 1, 2009. *Janet Aff.* at ¶9.

8. The agency has since completed its search for, and production of, records responsive to EPIC's FOIA Requests. *Janet Aff.* at ¶¶11-14.
9. The DHS has withheld "2,000 test images" and "376 pages of training documents" concerning airport body scanners pursuant to FOIA Exemptions 2 and 3. Defendant's Motion for Summary Judgment at 4-5; *Janet Aff.* at ¶15; *Roberts Aff.* at ¶¶16-21.

Respectfully submitted,

/s/ John Verdi

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