



April 2, 2004

BY FACSIMILE - (571) 227-1946

Patricia Reip-Dice, Associate Director  
FOIA Headquarters Office  
Transportation Security Administration  
Office of Security and Law Enforcement Liaison  
TSA-20, West Tower  
400 Seventh Street SW  
Washington, DC 20590

1718 Connecticut Ave NW

Suite 200

Washington DC 20009

USA

+1 202 483 1140 [tel]

+1 202 483 1248 [fax]

www.epic.org

RE: Freedom of Information Act Request  
and Request for Expedited Processing

Dear Ms. Reip-Dice:

This letter constitutes an expedited request under the Freedom of Information Act ("FOIA"), 5 U.S.C. § 552, and is submitted on behalf of the Electronic Privacy Information Center ("EPIC").

We are seeking the following agency records from the time period of September 2001 to September 2002, including but not limited to records referenced in the Department of Homeland Security ("DHS") Privacy Office's February 20, 2004, report entitled "Report to the Public on Events Surrounding jetBlue Data Transfer" (including but not limited to electronic records):

1. Any records relating to JetBlue Airways Corporation;
2. Any records relating to Acxiom Corporation; and
3. Any records relating to Torch Concepts, Inc.

Request for Expedited Processing

This request warrants expedited processing because it pertains to a matter about which there is an "urgency to inform the public about an actual or alleged federal government activity," and the request is made by "a person primarily engaged in disseminating information." 6 CFR § 5.5(d)(1)(ii).

On September 18, 2003, Wired News reported that:

JetBlue Airways confirmed . . . that in September 2002, it provided 5 million passenger itineraries to a defense contractor for proof-of-concept testing of a Pentagon project unrelated to airline security -- with help from the Transportation Security Administration. The contractor, Torch Concepts, then augmented that data with Social Security numbers and other sensitive personal information, including income level, to develop what looks to be a study of whether passenger-profiling systems such as CAPPS II are feasible . . . . The TSA, which is in charge of developing a new airline passenger-screening system called CAPPS II, adamantly denied receiving or reviewing the JetBlue data in the transfer. [The TSA] also said that the data was not used to test CAPPS II or CAPPS II prototypes.

Ryan Singel, JetBlue Shared Passenger Data, Wired News, Sept. 18, 2003. According to the New York Times:

after receiving the passenger information from JetBlue, Torch Concepts matched the passenger names against a variety of databases that it had purchased from Acxiom, a large consumer research company. "For approximately 40 percent of the passengers," the report said, the Acxiom databases provided additional "demographic information," including a passenger's Social Security number, occupation, income, gender and home- and car-ownership history, as well as the number of adults and children living in the passenger's household.

Philip Shenon, JetBlue Gave Defense Firm Files on Passengers, NY Times, Sept. 20, 2003, at A1.

Despite TSA's reported denials of involvement, the Torch Concepts study included references to meetings between Torch Concepts officials and both TSA and Department of Transportation officials. Wired News reported that privacy activist and travel agent Edward Hasbrouck called

the study "a 'smoking gun' that proves that real passenger data has been used in the development of CAPPS II without attempts to get consent from passengers." Ryan Singel, JetBlue Shared Passenger Data, Wired News, Sept. 18, 2003.

In September 2003, EPIC requested from TSA records related to JetBlue, Acxiom, Torch Concepts, and SRS Technologies from September 2002 to September 2003. TSA granted expedited processing for that request and has to date released three interim responses. However, a report issued by the DHS Privacy Office on February 20, 2004 stated that meetings between Torch Concepts and TSA and DOT officials occurred in May and/or June 2002, and that a TSA employee requested on July 30, 2002, that JetBlue disclose passenger information to the Department of Defense.

The government activity at issue here – facilitating the transfer of passenger information from an airline to an agency and the potential use of actual passenger data to test CAPPS II without the knowledge or consent of those passengers – raises serious privacy implications (as the DHS Privacy Office report acknowledged). There is a particular urgency for the public to obtain information about TSA's involvement in this matter and how the data transfer relates to CAPPS II, perhaps more now than when TSA granted EPIC's September 2003 request for expedited processing regarding this matter. Developments in recent months have placed CAPPS II under tremendous scrutiny from Congress and the media.

A report commissioned by Congress and issued by the General Accounting Office in February 2004 stated that serious problems in CAPPS II, including those related to privacy, have not yet been addressed by TSA. AVIATION SECURITY: Computer-Assisted Passenger Prescreening System Faces Significant Implementation Challenges, GAO-04-385 (February 2004). Furthermore, the House Committee on Transportation and Infrastructure Subcommittee on Aviation recently held a hearing on the status of CAPPS II where members of Congress expressed grave concerns about the program's feasibility and noted the public controversy concerning governmental access to airline passenger data.

Furthermore, numerous news outlets have recently reported on CAPPS II's development. A search in the Lexis-Nexis

U.S. newspaper and wire database for articles on "CAPPS II" between February 12, 2004, when the General Accounting Office issued its report on CAPPS II, and April 2, 2004 returns 119 results from newspapers throughout the country (see attached search results).

The purpose of EPIC's request is to obtain information directly relevant to TSA's involvement in the transfer of data from JetBlue to the Department of Defense and the testing of CAPPS II with actual passenger data. The records requested involve the manner and extent to which TSA is involved in such activities and clearly meet the standard for expedited processing.

Further, as I explain below in support of our request for "news media" treatment, EPIC is "primarily engaged in disseminating information."

#### Request for "News Media" Fee Status

EPIC is a non-profit, educational organization that routinely and systematically disseminates information to the public. This is accomplished through several means. First, EPIC maintains a heavily visited Web site ([www.epic.org](http://www.epic.org)) that highlights the "latest news" concerning privacy and civil liberties issues. The site also features scanned images of documents EPIC obtains under the FOIA. Second, EPIC publishes a bi-weekly electronic newsletter that is distributed to over 15,000 readers, many of whom report on technology issues for major news outlets. The newsletter reports on relevant policy developments of a timely nature (hence the bi-weekly publication schedule). It has been published continuously since 1996, and an archive of past issues is available at our Web site. Finally, EPIC publishes and distributes printed books that address a broad range of privacy, civil liberties and technology issues. A list of EPIC publications is available at our Web site.

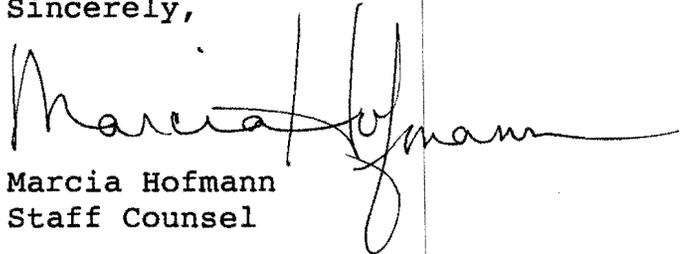
For the foregoing reasons, EPIC clearly fits the definition of "representative of the news media" contained in the FOIA and the Department of Homeland Security regulations. Indeed, the U.S. District Court for the District of Columbia has held that EPIC is a "news media" requester under the FOIA. See Electronic Privacy Information Center v. Department of Defense, 241 F. Supp. 2d 5 (D.D.C. 2003). Based on our status as a "news media" requester, we are entitled to receive the

requested records with only duplication fees assessed. Further, because disclosure of this information will "contribute significantly to public understanding of the operations or activities of the government," as described above, any duplication fees should be waived.

Thank you for your consideration of this request. As applicable Department regulations provide, I will anticipate your determination on our request for expedited processing within ten (10) calendar days. Should you have any questions about this request, please feel free to call me at (202) 483-1140 ext. 112.

Under penalty of perjury, I hereby affirm that the foregoing is true and correct to the best of my knowledge.

Sincerely,

A handwritten signature in cursive script that reads "Marcia Hofmann". The signature is written in black ink and is positioned to the right of the typed name and title.

Marcia Hofmann  
Staff Counsel