

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

ELECTRONIC PRIVACY INFORMATION CENTER)
1718 Connecticut Avenue, N.W.)
Suite 200)
Washington, DC 20009,)
)
)
Plaintiff,)
)
)
v.) Civil Action
)
TRANSPORTATION SECURITY ADMINISTRATION)
400 Seventh Street, S.W.)
Washington DC 20590,)
)
and)
)
DEPARTMENT OF TRANSPORTATION)
400 Seventh Street, S.W.)
Washington DC 20590,)
)
Defendants.)
)

COMPLAINT FOR INJUNCTIVE RELIEF

1. This is an action under the Freedom of Information Act ("FOIA"), 5 U.S.C. § 552, for injunctive and other appropriate relief, and seeking the release of agency records concerning airline passenger "watchlists" and requested by plaintiff from defendants Transportation Security Administration and Department of Transportation.

Jurisdiction and Venue

2. This Court has both subject matter jurisdiction over this action and personal jurisdiction over the parties pursuant to 5 U.S.C. §§ 552(a)(4)(B). This court also has jurisdiction over this action pursuant to 28 U.S.C. § 1331. Venue lies in this district under 5 U.S.C. § 552(a)(4)(B).

Parties

3. Plaintiff Electronic Privacy Information Center ("EPIC") is a public interest research organization incorporated as a not-for-profit corporation in Washington, DC. EPIC's activities include the review of federal law enforcement activities and policies to determine their possible impacts on civil liberties and privacy interests. Among its other activities, EPIC publishes books, reports and a bi-weekly electronic newsletter. EPIC also maintains a heavily-visited site on the World Wide Web containing extensive information on privacy issues, including information EPIC has obtained from federal agencies under the FOIA.

4. Defendant Transportation Security Administration ("TSA") is a component of defendant Department of Transportation. TSA is an agency within the meaning of 5 U.S.C. § 552(f).

5. Defendant Department of Transportation ("DOT") is a Department of the Executive Branch of the United States Government. DOT is an agency within the meaning of 5 U.S.C. § 552(f).

The Transportation Security Administration and
Airline Passenger Watchlists

6. Subsequent to the terrorist attacks of September 11, 2001, the Aviation Security and Transportation Act of 2001 ("the Act") was enacted and, inter alia, created TSA. Section 101(a) of the Act, codified at Title 49 U.S.C. Chapter 1, provides that TSA shall:

- (1) enter into memoranda of understanding with Federal agencies or other entities to share or otherwise cross-

check as necessary data on individuals identified on Federal agency databases who may pose a risk to transportation or national security;

(2) establish procedures for notifying the Administrator of the Federal Aviation Administration, appropriate State and local law enforcement officials, and airport or airline security officers of the identity of individuals known to pose, or suspected of posing, a risk of air piracy or terrorism or a threat to airline or passenger safety;

(3) in consultation with other appropriate Federal agencies and air carriers, establish policies and procedures requiring air carriers--

(A) to use information from government agencies to identify individuals on passenger lists who may be a threat to civil aviation or national security; and

(B) if such an individual is identified, notify appropriate law enforcement agencies, prevent the individual from boarding an aircraft, or take other appropriate action with respect to that individual; and

(4) consider requiring passenger air carriers to share passenger lists with appropriate Federal agencies for the purpose of identifying individuals who may pose a threat to aviation safety or national security.

Plaintiff's FOIA Request

7. By letter to defendant TSA dated October 3, 2002, plaintiff requested under the FOIA "all records concerning any lists maintained by the agency, pursuant to the Aviation Security and Transportation Act of 2001 (hereinafter, 'watchlists')."

Specifically, plaintiff requested:

- (a) All memoranda of understanding with other federal agencies or other entities to share data as required by 49 U.S.C. § 114(h)(1).
- (b) The notification procedures required under 49 U.S.C. § 114(h)(2).
- (c) The policies and procedures required under 49 U.S.C. § 114(h)(3).
- (d) The number of names on the watchlists as of the date this request is processed.
- (e) Policies or procedures concerning how names are placed on and/or removed from the watchlists.
- (f) Policies and procedures regarding who [may] have access to the watchlists, and
- (g) All complaints or communications from members of the public who claim to have been mistakenly placed on the watchlists.

8. Plaintiff's request was in conformance with the requirements for such requests set forth in defendant DOT's regulations.

Defendant's Failure to Timely Respond

9. By letter to plaintiff dated October 18, 2002, defendant TSA acknowledged receipt of plaintiff's FOIA request. The letter stated that plaintiff's request had been received by TSA on October 17, 2002.

10. By letter to plaintiff dated October 25, 2002, defendant DOT acknowledged receipt of plaintiff's FOIA request. The letter stated that plaintiff's request had been received by DOT on October 4, 2002.

11. To date, defendants TSA and DOT have not provided the records requested by plaintiff in its FOIA request, notwithstanding the FOIA's requirement of an agency response within twenty (20) working days.

12. Plaintiff has exhausted the applicable administrative remedies.

13. Defendants TSA and DOT have wrongfully withheld the requested records from plaintiff.

Requested Relief

WHEREFORE, plaintiff prays that this Court:

A. order defendants to disclose the requested records in their entireties and make copies available to plaintiff;

B. provide for expeditious proceedings in this action;

C. award plaintiff its costs and reasonable attorneys fees incurred in this action; and

D. grant such other relief as the Court may deem just and proper.

Respectfully submitted,

DAVID L. SOBEL
D.C. Bar No. 360418

MARC ROTENBERG
D.C. Bar. No. 422825

ELECTRONIC PRIVACY INFORMATION CENTER
1718 Connecticut Avenue, N.W.
Suite 200
Washington, DC 20009
(202) 483-1140

Counsel for Plaintiff