



June 20, 2012

VIA FACSIMILE: (571) 227-1406  
 Yvonne Coates  
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**RE: Freedom of Information Act Request and Request for Expedited Processing**

Dear Ms. Coates:

This letter constitutes a 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”). EPIC seeks documents relating to the Secure Flight program.

#### Background

On April 13, 2012, the Transportation Security Administration (“TSA”) published a Privacy Impact Assessment Update for Secure Flight.<sup>1</sup> The Secure Flight program screens individuals before they enter restricted access airline areas or board aircraft. Secure Flight screens individuals by comparing them to various federal agency watch lists, including the No Fly and Selectee List of the Terrorist Screening Center Database, and a list of individuals whom Centers for Disease Control and Prevention (“CDC”) “has identified to DHS [Department of Homeland Security] as persons who should not be permitted to board an aircraft due to public health concerns.”<sup>2</sup> The TSA also “leverages CBP’s [Customs and Border Protection] ATS [Automated Targeting System] to identify individuals requiring enhanced screening prior to boarding an aircraft.”<sup>3</sup>

The Privacy Impact Assessment (“PIA”) Update states that TSA “will create and maintain a watch list of individuals who are disqualified from receiving expedited screening for some period of time or permanently because they have been involved in violations of security regulations of sufficient severity or frequency.”<sup>4</sup> Further, the PIA Update “provides notice that . . . TSA creates and provides risk-based, intelligence-driven, scenario rules to CBP for use in ATS to identify international travelers requiring enhanced screening. TSA receives from CBP a continuously updated watch list of these individuals for use in Secure Flight.”<sup>5</sup>

<sup>1</sup> U.S. Dep’t of Homeland Sec., DHS/TSA/PIA-018 (e), Secure Flight (Apr. 13, 2012) (hereinafter “PIA Update”).

<sup>2</sup> *Id.*

<sup>3</sup> *Id.* at 3. See also U.S. Dep’t of Homeland Sec., DHS/TSA/PIA-018 (b), Secure Flight (Aug. 15, 2011).

<sup>4</sup> PIA Update at 3.

<sup>5</sup> *Id.*

### Documents Requested

EPIC requests the following agency records in possession of the TSA:

1. A complete list of all databases or watch lists used by Secure Flight.
2. All criteria and guidelines for inclusion in, and/or removal from databases or watch lists used by Secure Flight.
3. Any memoranda of understanding, information sharing agreements, or any other documents between TSA and CDC, CBP, or other federal agencies concerning the exchange of data about individuals that are on Secure Flight program watch lists.
4. All documents relating to the current number of individuals on each Secure Flight program watch list.

### Request for Expedited Processing

This request warrants expedited processing because it is made by “a person primarily engaged in disseminating information . . . ” and it pertains to a matter about which there is an “urgency to inform the public about an actual or alleged federal government activity.” 5 U.S.C. § 552(a)(6)(E)(v)(II) (2008); *Al-Fayed v. CIA*, 254 F.3d 300, 306 (D.C. Cir. 2001).

EPIC is “primarily engaged in disseminating information.” *American Civil Liberties Union v. Department of Justice*, 321 F. Supp. 2d 24, 29 n.5 (D.D.C. 2004).

There is a particular urgency for the public to obtain information about the criteria used to place individuals on Secure Flight program watch lists, as well as the sizes of these lists, because of the large number of individuals who fly aboard aircraft each year. The Research and Innovative Technology Administration’s Bureau of Transportation Statistics reports that from March 2011 until February 2012, 642 million revenue passengers flew aboard U.S. aircraft.<sup>6</sup> Given the large number of Americans who partake in flying, the potential impact of the Secure Flight program watch lists is enormous. The documents that EPIC requests will inform the public about the effectiveness of these lists and the potential for being adversely affected by these watch lists.

### Request for “News Media” Fee Status

EPIC is a “representative of the news media” for fee waiver purposes. *EPIC 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, as addressed above, Secure Flight watch lists can potentially affect millions of people who board aircraft daily. Release of the requested records will “contribute significantly to public understanding of the operations or activities of the government” because the records will inform the public about, *inter alia*, the effectiveness of these lists and the potential for being adversely affected by them.

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<sup>6</sup> Research and Innovative Technology Administration Bureau of Transportation Statistics, TranStats, <http://www.transtats.bts.gov/> (last visited June 6, 2012).

Thank you for your consideration of this request. As 6 C.F.R. § 5.5(d)(4) provides, we will anticipate your determination on our request within ten (10) calendar days. For questions regarding this request, please contact 202-483-1140 ext. 102 or foia@epic.org.

Respectfully submitted,



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Director  
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