

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

| | | |
|-----------------------------|---|------------------------|
| Sophia Helena In't Veld, |) | CASE NO. 1:08-cv-01151 |
| |) | |
| Plaintiff, |) | JUDGE COLLYER |
| |) | |
| v. |) | |
| |) | |
| United States Department of |) | Declaration |
| Homeland Security, et al., |) | |
| |) | |
| Defendants |) | |
| |) | |

DECLARATION OF VANIA T. LOCKETT

I, Vania T. Lockett, hereby declare and state as follows:

(1) I am the Associate Director, Disclosure and Freedom of Information Act (FOIA) Operations within the Privacy Office, Department of Homeland Security (DHS), Washington, D.C. 20528. I assumed this position in December 2006.

(2) Prior to joining the Federal Government, I worked for McNeil Technologies, Inc. as a Project Manager and Senior FOIA Specialist in support of DHS from February 2006 through November 2006. Prior to supporting DHS, from June 1999 to February 2006, I provided FOIA and/or declassification support as a contractor to the Department of Transportation and to several Department of Defense agencies. My experience includes the review of complex FOIA and Privacy Act requests and responsive records.

(3) My current duties at DHS involve management of day-to-day operations of the DHS Headquarters Freedom of Information Act (FOIA) program, to include processing of FOIA and Privacy Act (PA) requests made pursuant to 5 U.S.C. §552 and 5 U.S.C. §552a. Due to the nature of my official duties, I am familiar with DHS's

obligations under the FOIA and PA, and the procedures followed by DHS in responding to requests. I make this declaration based on my personal knowledge and information I have received in the performance of my official duties.

DHS FOIA Processing, In General

(4) DHS is currently comprised of the Office of the Secretary and over 25 separate components. The DHS FOIA Office is responsible for processing FOIA requests received by the Office of the Secretary, by those components that do not have independent responsibility for processing FOIA requests, and in certain circumstances where a consolidated DHS response is deemed appropriate.

(5) Federal regulations codified at 6 C.F.R. § 5.3(a) instruct FOIA requesters seeking records to “write directly to the Department component that maintains those records.” 6 C.F.R. § 5.3(a). Where a requester “cannot determine where within the Department to send [a] request,” federal regulations permit the individual to send the request to my office, where my staff will make sure that the request goes to any component we believe would likely maintain responsive records. See id. If my staff determines that a component with independent responsibility for processing FOIA requests is likely to have the responsive documents, we generally refer the request to the component’s FOIA Officer, who will process the request and respond directly to the requester.

(6) If a component serviced by my office is likely to possess records responsive to the FOIA request, my office will initiate the search by instructing appropriate staff to search within their files for records that may be responsive to the request and to deliver any potentially responsive records, along with their views on potential exemptions, to my

office for processing. My office depends upon component staff to search for responsive records and provide those records to my office.

Receipt Of Plaintiff's FOIA Requests

(7) By facsimile on October 17, 2007, the Electronic Frontier Foundation submitted to DHS a request, made on behalf of Sophia Helena In't Veld (hereafter referred to as "the Plaintiff"), for records concerning the Plaintiff (including but not limited to electronic records) maintained in the Non Immigrant Information System (NIIS), Suspect and Violator Indices (SAVI), and Treasury Enforcement Communications System (TECS). (See Exhibit A).

(8) By facsimile on October 17, 2007, the Electronic Frontier Foundation submitted to U.S. Customs and Border Protection (CBP) a request, made on behalf of the Plaintiff, for records concerning the Plaintiff (including but not limited to electronic records) maintained in the Passenger module of the Automated Targeting System (ATS-P) and Advanced Passenger Information System (APIS). (See Exhibit B).

(9) By e-mail on May 15, 2008, the Electronic Frontier Foundation submitted to the Transportation Security Administration (TSA) a request, made on behalf of the Plaintiff, for all records concerning the Plaintiff (including but not limited to electronic records) maintained by TSA. (See Exhibit C).

(10) In reviewing the Plaintiffs' FOIA requests, our staff determined that no offices at DHS within our FOIA-processing responsibility would likely maintain records responsive to the request because the requests sought records maintained specifically within NIIS, SAVI, TECS, ATS-P, and APIS, systems which are under the custody and control of CBP, as well as records maintained by TSA. Nevertheless, the DHS Privacy

Office coordinated a search of CBP, TSA, and the U.S. Visitor and Immigrant Status Indicator Technology (US-VISIT) Program to provide the Plaintiff with a comprehensive response.

U.S. Customs and Border Protection's Search

(11) Within CBP, a search request was directed to the Passenger Branch Chief (Targeting and Analysis), Analysis and Targeting Division of the CBP Office of Intelligence/Operations Coordination (OI/OC). OI/OC conducted a full search of the systems identified in the Plaintiff's request within the custody and control of CBP, to include NIIS, SAVI, TECS, ATS-P, and APIS.

(12) TECS is an overarching law enforcement information collection, risk assessment, and information sharing environment. It is also a repository for law enforcement and investigative information. TECS is comprised of several modules (including the Advance Passenger Information System (APIS)) that collect, maintain and evaluate screening data, conduct targeting analysis, and make information available to appropriate law enforcement officers of the U.S. government. The Non Immigrant Information System (NIIS) data is also accessed through TECS, its data and functionality having been merged into TECS in December 2004, following the creation of DHS. To ensure that all responsive records were captured, CBP searched TECS (including APIS and NIIS) using the Plaintiff's name and passport number.

(13) The ATS-P is a module of the Automated Targeting System (ATS) and is used at all U.S. airports and seaports receiving international flights and voyages to conduct risk assessments of passengers and crewmembers prior to their arrival in or departure from the United States. It assists the CBP officer's decision-making process

about whether a passenger or crewmember should receive additional screening prior to entry or departure because the traveler may pose a greater risk for violation of U.S. law. Passenger Name Record (PNR) data that is collected by CBP from air carriers operating flights to or from the U.S. pursuant to 19 CFR 122.49d, is maintained in ATS-P. The Suspect and Violator Indices (SAVI) are accessed through ATS-P. CBP searched ATS-P and SAVI using the Plaintiff's name.

(14) As a result of CBP's searches of both TECS (including NIIS and APIS) and ATS-P (including SAVI), 28 pages of records were located and were released to the Plaintiff in part via the Department's July 9, 2008 final response. (See Exhibit D). Certain information was withheld pursuant to Exemptions 2 (low) and (high), 6, and 7C and 7E of the FOIA.

Transportation Security Administration's Search

(15) Although it was not expected that TSA would maintain records related to the Plaintiff, searches were directed to the following offices within TSA: the Office of Civil Rights and Liberties, the Office of the Ombudsman, the Office of Security Operations & Compliance Programs, the Office of Security Intelligence & Analysis, the Office of Redress, the Deputy Administrator's Office, the Office of the Executive Secretariat, the Office of the Administrator, the Transportation Security Operations Center (TSOC), the Office of Chief Counsel, and the TSA Contact Center.

(16) The Office of Civil Rights & Liberties (ORCL) conducted a search in the name of "Sophia Helena In't Veld" and "Sophie Helena In't Veld" by searching their computerized internal database, DHS Eagle. The OCRL also searched all paper files.

Additionally, the office staff searched their electronic mail for responsive documents pertaining to the Plaintiff. No responsive records were located.

(17) The Office of the Ombudsman conducted an electronic search through the Inquiry Management System (IMS). Records in IMS typically contain the following search fields: A brief summary of the nature of the contact (the reason), the date of contact, the date we called the person back, the name of the Ombudsman staff who took the initial call (intake), the name of the Ombudsman staff who worked with the individual to assist with resolution options, the date the contact was closed, issue category type, sub-issue category type, resolution method, resolution type, the contact method (i.e., phone call, letter, email, fax, etc.), and airport code. To protect the confidentiality of individuals who contact that, office, it does not maintain a record of the names of individuals who contact the office, nor does the office maintain paper files; any notes created while in discussions with an individual are destroyed after the contact is closed. No responsive records were located.

(18) The Office of Security Operations & Compliance conducted an electronic search in the name of "Sophia Helena I'nt Veld" by utilizing the Performance and Results Information System (PARIS) database. No responsive records were located.

(19) The Office of Security Intelligence & Analysis conducted an electronic search of its Watch Log database for records relating to the Plaintiff. No responsive records were located.

(20) The Office of Redress conducted an electronic search utilizing the Traveler Redress Inquiry Program (TRIP) Systems database. The Office of Redress searched by the Plaintiff's first name and last name separately. No responsive records were located.

(21) The Deputy Administrator's Office conducted an electronic email search using the following variations of the Plaintiff's name: "Sophia," "Sophie," and "Helena." No responsive records were located.

(22) The Office of the Executive Secretariat conducted a search using the following variations/combinations of the Plaintiff's name: "Sophia" + "t'Veld"; "Sophie" + "%Veld"; or "Helena" + "%Veld". The search was conducted through the internal databases Control Correspondence Management System and Access. No responsive records were located.

(23) The Office of the Administrator conducted an electronic email search using several variations and combinations of the Plaintiff's first and last names. No responsive documents were located.

(24) The Transportation Security Operations Center conducted an electronic search for records relating to the Plaintiff. The search was conducted through WEBEOC, a comprehensive database that includes all reportable incidents dating back to September 11, 2002. No responsive records were located.

(25) The Office of Chief Counsel and the Assistant Chief Counsel for International and Operational Law conducted an electronic email search for records relating to the Plaintiff. No responsive records were located.

(26) The TSA Contact Center conducted an electronic file search through the Information Management System. The search was conducted using the following variations/combinations of the Plaintiff's name: "Sophia" + "t'Veld"; "Sophie" + "%Veld"; or "Helena" + "%Veld". No responsive records were located.

The US-VISIT Program's Search

(27) In order to provide the Plaintiff with as comprehensive a response as possible, DHS voluntarily extended its search beyond the parameters of the Plaintiff's requests and directed a search of the US-VISIT Program for records relating to the Plaintiff. US-VISIT searched the two identity management databases that it manages -- the Arrival and Departure Information System (ADIS) and the Automated Biometric Identification System (IDENT).

(28) ADIS is the primary repository of data held by DHS for near real-time entry and exit status tracking throughout the immigrant and non-immigrant pre-entry, entry, status management, and exit processes, based on data collected by DHS or other Federal or foreign government agencies and used in connection with DHS national security, law enforcement, immigration, intelligence, and other DHS mission-related functions. US-VISIT searched ADIS using various name permutations and the date of birth provided in the Plaintiff's October 17, 2007 FOIA request. The search of ADIS returned 30 pages, which were provided as a courtesy to the Plaintiff with certain information withheld pursuant to Exemptions 2(low) and (high) and 7E of the FOIA.

(29) IDENT is the primary repository of biometric information held by DHS in connection with its several and varied missions and functions. IDENT enables DHS to carry out its national security, law enforcement, immigration, intelligence, and other mission-related functions by allowing DHS to positively identify an individual based on biometrics, irrespective of whether the name provided is accurate. IDENT can only feasibly be searched by using one or more of three numerical biometric indicators. While ADIS records may contain one of these biometric indicators, if the subject has been processed for biometrics, in this case, no biometric indicator was contained in the ADIS

records. Consequently, no search of IDENT was conducted. Further, the lack of a biometric indicator for the subject in ADIS suggests that no biometric records exist in IDENT for the subject.

(30) Pursuant to 6 C.F.R. § 5.3, DHS did not believe it appropriate to refer this request to any DHS components beyond CBP, TSA, and US-VISIT because it did not appear likely that any other DHS component would maintain records relating to the Plaintiff. Searches of the offices identified by the Plaintiff support that conclusion. I do not believe there are any DHS components or offices beyond those searched that would likely have records responsive to the Plaintiff's FOIA requests.

Departmental Response

(31) By letter, dated July 10, 2008, 58 pages of responsive documents that were identified as a result of searches within CBP and US-VISIT were released to the Plaintiff's counsel with appropriate redactions. (See Exhibit D). Portions of the documents were withheld and redactions were made pursuant to exemptions 2(low), 2(high), 6, 7(C), and 7(E) of the FOIA, 5 U.S.C. § 552(b)(2)(low), (b)(2)(high), (b)(6), (b)(7)(C), and (b)(7)(E).

(32) A complete Vaughn Index for documents released in part to the Plaintiff is appended to this declaration. (See Exhibit E). The Vaughn Index includes a description of the withheld information and an explanation of the FOIA exemptions claimed over the documents.

Exemptions Cited and Basis for Withholding

A. Exemption (b)(2): information related solely to the internal personnel rules and practices of an agency

(33) Section 552(b)(2) of Title 5 of the U.S. Code exempts from mandatory

disclosure matters that are "...related solely to the internal personnel rules and practices of an agency." Exemption (b)(2) encompasses two distinct categories of information: (a) internal matters of a relatively trivial nature, sometimes referred to as "low 2" information, and (b) more substantial internal matters the disclosure of which would risk circumvention of a legal requirement, sometimes referred to as "high 2" information. With respect to "high 2" information, the intent of exemption (b)(2) is that disclosure should not benefit those attempting to violate the law and avoid detection. The use of Exemption (b)(2) in this case involves both "low 2" and "high 2" information.

(34) The "low 2" information withheld pursuant to Exemption (b)(2) consists of administrative markings such as codes indicating inspection results, referring officer codes, record identification numbers, terminal identification numbers, intranet addresses and computer function codes that instruct TECS, ATS-P, ADIS, and other computer system users on how to navigate their way through the system.

(35) These markings are purely internal and are utilized by DHS to assist in the access, use and control of DHS databases. These markings are used exclusively for the purposes of indexing, storing, locating, retrieving and distributing information in the databases. As access to the file and computer systems is restricted from the public, the public has little or no interest in this information such as the internal identification codes, record identification numbers and computer codes. In addition, knowledge of internal agency computer system codes could facilitate improper access to sensitive DHS records and interfere with DHS's ability to maintain control of its information systems. Additionally, disclosure of this information would not in any way fulfill the purposes of the FOIA—which is to open agency action to the light of public scrutiny.

(36) The “high 2” information withheld pursuant to Exemption (b)(2) is predominantly internal and does not impact, in any substantive manner, upon plaintiff. This “high 2” information consists of internal matters and includes examination and inspection procedures, internal reporting requirements and instructions on how to process international travelers. Disclosure of this information would permit potential violators to whom the documents may be disclosed, to develop countermeasures to evade detection, inspection and targeting methods. Public awareness of this operational information would aid those who seek to circumvent DHS operations and thus harm the agency’s ability to enforce the laws of the U.S. Any further detailed description of the information withheld pursuant to high (b)(2) would divulge to Plaintiff the examination and inspection procedures, internal reporting requirements and instructions on how to process international travelers, the very information that DHS seeks to protect. Not only are we asserting that this information is exempt from disclosure under high (b)(2), we are also asserting that the documents as a whole are representative of law enforcement techniques, coordination and reporting and is protected by high (b)(2) because disclosure would reveal DHS examination and inspection procedures and permit potential violators to whom the documents may be disclosed to develop countermeasures to evade detection, inspection and targeting methods.

B. Exemption (b)(6): information about individuals in personnel, medical and similar files the disclosure of which would constitute an unwarranted invasion of personal privacy

(37) Section 552(b)(6) of Title 5 of the U.S. Code exempts from disclosure personnel and medical files and similar files the release of which would constitute a clearly unwarranted invasion of personal privacy. This protection is afforded to

information that would infringe on the personal privacy of individuals about whom it pertains. The United States Supreme Court in United States v. Washington Post Co., 456 U.S. 595 (1982) stated in reliance on legislative history of the FOIA that the phrase “personnel and medical and similar files” was to be broadly interpreted. Once the threshold requirement is met, Exemption (b)(6) requires a balancing of the public’s right to know against an individual’s right to privacy to determine whether disclosure of the records at issue would constitute a clearly unwarranted invasion of a person’s privacy. U.S. Dep’t of the Air Force v. Rose, 425 U.S. 352 (1976).

(38) In this case, the federal employees’ (including CBP employees and officers) and third parties’ right to have his or her name, social security numbers/badge numbers and other identifying information withheld from disclosure outweighs the public’s interest in knowing this information. Plaintiff has not demonstrated any public interest in the disclosure of the identifying information. The privacy consideration here is to protect federal personnel and third parties, as individuals, from unnecessary, unofficial questioning, harassment and stigmatization. Further, disclosing the information redacted pursuant to (b)(6) in this case does not shed light on how CBP performs its statutory duties. Thus, Exemption (b)(6) is applied to withhold the names social security and badge numbers and other identifying markings of federal personnel and third parties.

C. Exemption (b)(7): records or information compiled for law enforcement purposes

(39) Section 552(b)(7) of Title 5 of the U.S. Code provides that FOIA applies to “records or information compiled for law enforcement purposes, but only to the extent that the production of such law enforcement records or information . . . (C) could reasonably be expected to constitute an unwarranted invasion of personal privacy, [or] . .

. (E) would disclose techniques and procedures for law enforcement investigations or prosecutions, or would disclose guidelines for law enforcement investigations or prosecutions if such disclosure could reasonably be expected to risk circumvention of the law.”

(40) DHS has a mission to lead the unified national effort to secure America, to prevent and deter terrorist attacks, and to protect against and respond to threats and hazards to the nation. This includes identifying threats, assessing vulnerabilities, and safeguarding our people, critical infrastructure, property, and the economy of our Nation from terrorism, natural disasters, or other emergencies.

(41) CBP is a component of DHS with enforcement responsibilities for over 400 Federal statutes, on behalf of over 40 different federal agencies. CBP’s mission is to protect the borders of the United States against terrorists and the instruments of terror, enforce the customs and immigration laws of the United States, and foster our Nation’s economy by facilitating lawful international trade and travel. Its mission includes the processing of passengers, conveyances, and merchandise entering, transiting and departing the United States. The creation and implementation of effective law enforcement systems and procedures is paramount to achieving this mission.

(42) TECS (including APIS and NIIS), ATS-P (including SAVI), and ADIS maintain records directly related to law enforcement activities and are all used for law enforcement purposes. As previously mentioned, TECS is an overarching law enforcement information collection, risk assessment, and information sharing environment; ATS-P’s purpose is to assist CBP personnel in making decisions about whether a passenger or crewmember should receive additional screening prior to arrival

in or departure from the United States because the traveler may pose a greater risk for violation of U.S. law; ADIS serves as the central repository for storing, reconciling, and reporting on immigrant and non-immigrant traveler arrivals and departures across air, sea, and land ports of entry and matches arrivals with departures to identify illegal overstays. The responsive records found are used for law enforcement purposes.

(43) US-VISIT was established in order to accurately record the entry and exit of aliens to the United States by collecting biographic and biometric information (e.g. digital fingerprints and photographs). It has, subsequently, been provided administratively with the authority to manage ADIS and the Departmental biometrics system, IDENT. US-VISIT, as a program and office, provides a continuum of identity management services and security measures that begin overseas, continue through an alien's arrival and stay in the United States, and conclude with the alien's departure from the country.

(44) As mentioned previously, data from ADIS is used in connection with DHS national security, law enforcement, immigration, intelligence, and other DHS mission-related functions. ADIS also sometimes contains commentary from immigration enforcement officers, which includes references to active criminal and other immigration enforcement investigations and contains other confidential data fields used for enforcement purposes. These records are used for law enforcement purposes.

(1) 5 U.S.C. § 552(b)(7)(C): records or information compiled for law enforcement purposes which could reasonably be expected to constitute an unwarranted invasion of personal privacy

(45) Section 552(b)(7)(C) of Title 5 of the U.S. Code exempts from mandatory disclosure "records or information compiled for law enforcement purposes" the

disclosure of which “could reasonably be expected to constitute an unwarranted invasion of personal privacy.” In asserting this exemption, each piece of information was scrutinized to determine the nature and strength of any individual’s privacy interest. In withholding the information, the individual’s privacy interest is balanced against the public’s interest in disclosure. In each instance, it was determined that whatever public interest there might be, if any, in knowing the personally identifying information of the individuals identified in the relevant records, that public interest did not outweigh the privacy interests of said individuals. This exemption protects the identity of law enforcement personnel and third parties referenced in files compiled for law enforcement purposes. The exemption is intended to protect law enforcement personnel from harassment and annoyance in their private lives due to the conduct of their official duties, which could conceivably result from public disclosure of their identity. The exemption is also intended to protect third parties, whose identities are revealed in law enforcement files, from comment, speculation, and stigmatizing connotation associated with being identified in a law enforcement record. “[S]trong privacy interests [are] inherent in law enforcement records,” and the categorical withholding of information contained in law enforcement records that identify third parties is well-established. *Summers v. U.S. Dep’t of Justice*, 517 F.Supp.2d 231, 243 (D.D.C. 2007) (quoting *SafeCard Servs., Inc. v. S.E.C.*, 926 F.2d 1197, 1206 (D.D.C. 1991)).

(46) In this case, the federal employees’ (including CBP employees) right to have his or her identifying information (including social security numbers and badge numbers) withheld from disclosure outweighs the public’s interest in knowing this information. Plaintiff has not demonstrated any public interest in the disclosure of the identifying

information. The privacy consideration here is to protect federal personnel and third parties as individuals from unnecessary, unofficial questioning, harassment and stigmatization. Further, disclosing the information redacted pursuant to (b)(7)(C) in this case does not shed light on how DHS or CBP performs its statutory duties. Thus, Exemption (b)(7)(C) is applied to withhold the identifying markings of federal personnel.

(2) 5 U.S.C. § 552(b)(7)(E): records or information compiled for law enforcement purposes which would disclose techniques and procedures for law enforcement investigations or prosecutions, or would disclose guidelines for law enforcement investigations or prosecutions if such disclosure could reasonably be expected to risk circumvention of the law

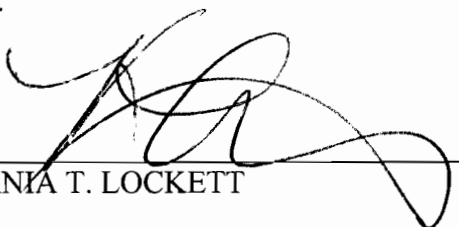
(47) Section 552(b)(7)(E) of Title 5 of the U.S. Code exempts from mandatory disclosure “records or information compiled for law enforcement purposes” the disclosure of which “would disclose techniques and procedures for law enforcement investigations or prosecutions, or would disclose guidelines for law enforcement investigations or prosecutions if such disclosure could reasonably be expected to risk circumvention of the law.” In this case, DHS has withheld information that would reveal DHS’s investigative techniques, disclosure of which would reveal DHS examination and inspection procedures, internal reporting requirements and instructions on how to process international travelers, which could be used by potential violators to develop countermeasures to evade detection, inspection and targeting methods. Public awareness of this operational information would aid those who seek to circumvent DHS operations and thus harm the agency’s ability to enforce the laws of the U.S. Any further detailed description of the information withheld pursuant to (b)(7)(E) would divulge to Plaintiff the examination and inspection procedures, internal reporting requirements and

instructions on how to process international travelers, the very information that DHS seeks to protect.

JURAT CLAUSE

I declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge and belief.

Signed this 15th day of September, 2008.



VANIA T. LOCKETT

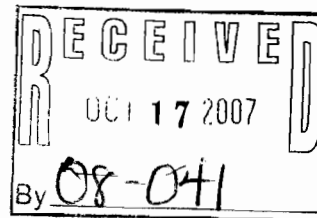
Exhibit A



454 Shotwell Street
San Francisco, CA 94110
+1 415 436 9333 (tel)
+1 415 436 9993 (fax)

FAX COVER SHEET

DATE: October 17, 2007
TO: Catherine M. Papoi, DHS
Fax Number: (703) 235-0443
FROM: Marcia Hofmann, Electronic Frontier Foundation
RE: Freedom of Information Act Request
Pages sent: 4 including cover page



COMMENTS:

NOTICE This fax is intended for the use of the individual or entity to which it is addressed and may contain information that is privileged, confidential, and exempt from disclosure. If you are not the intended recipient or his or her agent, you are hereby notified that any dissemination, distribution or copying of this communication is strictly prohibited and asked to please notify us immediately by telephone. Thank you.

PLEASE CALL IF THERE IS A PROBLEM



Electronic Frontier Foundation

October 17, 2007

BY FACSIMILE — (703) 235-0443

Catherine M. Papoi
CIPP/Deputy Chief FOIA Officer
Director, Disclosure & FOIA
The Privacy Office
U.S. Department of Homeland Security
245 Murray Drive SW, Building 410 STOP-0550
Washington, DC 20528-0550

RE: Freedom of Information Act Request

Dear Ms. Papoi:

This letter constitutes a request under the Freedom of Information Act ("FOIA"), 5 U.S.C. § 552, and is submitted to the Department of Homeland Security ("DHS") on behalf of the Electronic Frontier Foundation's client, Sophia Helena In 't Veld, a citizen of the Netherlands and member of the European Parliament.

We are seeking all records concerning Sophie In 't Veld (including but not limited to electronic records) maintained in the Non Immigrant Information System (NIIS), Suspect and Violator Indices (SAVI), and Treasury Enforcement Communications System (TECS).¹

Enclosed is a statement executed by Ms. In 't Veld authorizing DHS to release information maintained under her name to EFF as required by Department of Homeland Security regulation 6 C.F.R. § 5.3(a). To assist DHS in its search for responsive records, Ms. In 't Veld has also provided such verification of her identity as would be necessary for a Privacy Act request under 6 C.F.R. § 5.21 (even though we recognize that Ms. In 't Veld, as a foreign national, is not legally entitled to access her records under the Privacy Act).² In accordance with 28 U.S.C. § 1746, she has made her statement under penalty of perjury in lieu of notarization.

¹ In addition these records, Ms. In 't Veld has submitted separate requests to other agencies seeking Passenger Name Record (PNR) data maintained in the Automated Targeting System ("ATS") and information in other databases analyzed by ATS to assess the risk posed by Ms. In 't Veld, including personal data in the Advanced Passenger Information System (APIS), the Department of State visa databases, and information from the consolidated and integrated terrorist watch list maintained by the Terrorist Screening Center.

² Such verification is, however, not required under the FOIA or DHS regulations governing FOIA requests.

454 Shotwell Street, San Francisco, CA 94110 USA
+1 415 436 9333 (v) +1 415 436 9993 (f) www.eff.org

Freedom of Information Act Request

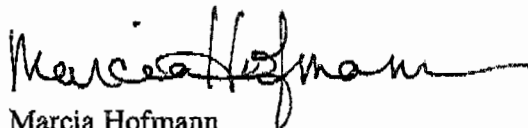
October 17, 2007

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For purposes of fee assessments, Ms. In 't Veld is an individual requester who is not seeking the requested records for commercial use. She agrees to pay up to \$25 for the processing of this request; however, should DHS estimate that this request will be assessed a greater amount, please let me know before you impose any such fee.

Thank you for your consideration of this request. If you have any questions or concerns, please do not hesitate to contact me at (415) 436-9333 x. 116. As the FOIA provides, I will anticipate a determination on this request from your office within 20 working days.

Sincerely,

A handwritten signature in black ink that reads "Marcia Hofmann". The signature is written in a cursive style with a long horizontal flourish at the end.

Marcia Hofmann
Staff Attorney

Enclosure

**VERIFICATION OF IDENTIFICATION AND
AUTHORIZATION TO DISCLOSE INFORMATION**

I, Sophia Helena In 't Veld, hereby authorize this agency to disclose records concerning me to the Electronic Frontier Foundation (EFF), which has submitted the accompanying Freedom of Information Act request on my behalf. In order to verify my identity and assist you in locating responsive information, I am providing the following identifying data:

Full name: Sophia Helena In 't Veld

Current address: [REDACTED]

Date of birth: [REDACTED]

Place of birth: [REDACTED]

In accordance with 28 U.S.C. § 1746, I hereby affirm under penalty of perjury that the foregoing is true and correct.

17-10-2007
Date

[REDACTED]

Sophia Helena In 't Veld

Exhibit B



**454 Shotwell Street
San Francisco, CA 94110
+1 415 436 9333 (tel)
+1 415 436 9993 (fax)**

FAX COVER SHEET

DATE: October 17, 2007
TO: FOIA Officer, CBP
Fax Number: (202) 344-2791
FROM: Marcia Hofmann, Electronic Frontier Foundation
RE: Freedom of Information Act Request
Pages sent: 4 including cover page

COMMENTS:

NOTICE This fax is intended for the use of the individual or entity to which it is addressed and may contain information that is privileged, confidential, and exempt from disclosure. If you are not the intended recipient or his or her agent, you are hereby notified that any dissemination, distribution or copying of this communication is strictly prohibited and asked to please notify us immediately by telephone. Thank you.

PLEASE CALL IF THERE IS A PROBLEM



October 18, 2007

BY FACSIMILE — (202) 344-2791

FOIA/PA Unit
Office of Field Operations
Customs and Border Protection
Room 5.5-C
1300 Pennsylvania Avenue, NW
Washington, DC 20229

RE: Freedom of Information Act Request

Dear Sir or Madam:

This letter constitutes a request under the Freedom of Information Act (“FOIA”), 5 U.S.C. § 552, and is submitted to Customs and Border Protection (“CBP”) on behalf of the Electronic Frontier Foundation’s client, Sophia Helena In ’t Veld, a citizen of the Netherlands and member of the European Parliament.

We are seeking all records concerning Ms. In ’t Veld (including but not limited to electronic records) maintained in the Passenger module of the Automated Targeting System (ATS-P) and Advanced Passenger Information System (APIS).¹

Enclosed is a statement executed by Ms. In ’t Veld authorizing CBP to release information maintained under her name to EFF as required by Department of Homeland Security regulation 6 C.F.R. § 5.3(a). To assist CBP in its search for responsive records, Ms. In ’t Veld has also provided such verification of her identity as would be required for a Privacy Act request under 6 C.F.R. § 5.21 (even though we recognize that Ms. In ’t Veld, as a foreign national, is not legally entitled to access her records under the Privacy Act).² In accordance with 28 U.S.C. § 1746, she has made her statement under penalty of perjury in lieu of notarization.

¹ In addition to this request, we have filed separate requests seeking records in other databases analyzed by ATS to assess the risk posed by Ms. In ’t Veld, including personal data maintained in the Non Immigrant Information System (NIIS), Suspect and Violator Indices (SAVI), the Department of State visa databases, Treasury Enforcement Communications System (TECS), and the consolidated and integrated terrorist watch list maintained by the Terrorist Screening Center.

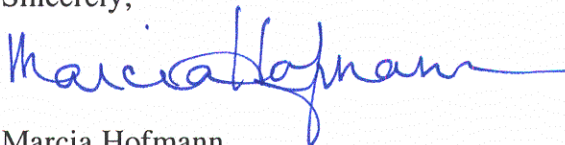
² Such verification is, however, not required under the FOIA or Department of Homeland Security regulations governing FOIA requests.

Freedom of Information Act Request
October 17, 2007
Page 2

For purposes of fee assessments, Ms. In 't Veld is an individual requester who is not seeking the requested records for commercial use. She agrees to pay up to \$25 for the processing of this request; however, should CBP estimate that this request will be assessed a greater amount, please let me know before you impose any such fee.

Thank you for your consideration of this request. If you have any questions or concerns, please do not hesitate to contact me at (415) 436-9333 x. 116. As the FOIA provides, I will anticipate a determination on this request from your office within 20 working days.

Sincerely,



Marcia Hofmann
Staff Attorney

Enclosure

**VERIFICATION OF IDENTIFICATION AND
AUTHORIZATION TO DISCLOSE INFORMATION**

I, Sophia Helena In 't Veld, hereby authorize this agency to disclose records concerning me to the Electronic Frontier Foundation (EFF), which has submitted the accompanying Freedom of Information Act request on my behalf. In order to verify my identity and assist you in locating responsive information, I am providing the following identifying data:

Full name: Sophia Helena In 't Veld
Current address: [REDACTED]
Date of birth: [REDACTED]
Place of birth: [REDACTED]

In accordance with 28 U.S.C. § 1746, I hereby affirm under penalty of perjury that the foregoing is true and correct.

17-10-2007
Date

[REDACTED]

Sophia Helena In 't Veld

TRANSMISSION VERIFICATION REPORT

TIME : 10/17/2007 14:52

| | |
|--------------|-------------|
| DATE, TIME | 10/17 14:51 |
| FAX NO./NAME | 12023442791 |
| DURATION | 00:01:00 |
| PAGE(S) | 04 |
| RESULT | OK |
| MODE | STANDARD |
| | ECM |

Exhibit C



Electronic Frontier Foundation
Protecting Rights and Promoting Freedom on the Electronic Frontier

May 15, 2008

BY E-MAIL — FOIA.TSA@dhs.gov

Transportation Security Administration, TSA-20, East Tower
FOIA Division
601 South 12th Street
Arlington, VA 22202-4220

TSA FOIA DIVISION - 571-227-2300

FOIA CASE NO: _____

RECEIVED: _____

SUSPENSE DATE: _____

SPECIAL INSTRUCTIONS:

RE: Freedom of Information Act Request

This letter constitutes a request under the Freedom of Information Act ("FOIA"), 5 U.S.C. § 552, and is submitted to the Transportation Security Administration ("TSA") on behalf of the Electronic Frontier Foundation's client, Sophie in't Veld, a citizen of the Netherlands who is a member of the European Parliament.

We are seeking all records concerning Sophie in't Veld (including but not limited to electronic records) maintained by TSA.

Enclosed is a statement executed by Ms. in't Veld authorizing TSA to release information maintained under her name to EFF as required by 6 C.F.R. § 5.3(a). To assist the agency in its search for responsive records, Ms. in't Veld has also provided such verification of her identity as would be required for a Privacy Act request under 6 C.F.R. § 5.21(d) (even though we recognize that Ms. in't Veld, as a foreign national, is not legally entitled to access her records under the Privacy Act).¹ In accordance with 28 U.S.C. § 1746, she has made her statement under penalty of perjury in lieu of notarization.

For purposes of fee assessments, Ms. in't Veld is an individual requester who is not seeking the requested records for commercial use. She agrees to pay up to \$25 for the processing of this request; however, should TSA estimate that this request will be assessed a greater amount, please let me know before you impose any such fee.

Thank you for your consideration of this request. If you have any questions or concerns, please do not hesitate to contact me at (202) 797-9009 x. 104. As the FOIA provides, I will anticipate a determination on this request from your office within 20 working days.

Sincerely,

David L. Sobel
Senior Counsel

Attachment

¹ Such verification is, however, not required under the FOIA or Department of Homeland Security regulations governing FOIA requests.

**VERIFICATION OF IDENTIFICATION AND
AUTHORIZATION TO DISCLOSE INFORMATION**

I, Sophia Helena In 't Veld, hereby authorize this agency to disclose records concerning me to the Electronic Frontier Foundation (EFF), which has submitted the accompanying Freedom of Information Act request on my behalf. In order to verify my identity and assist you in locating responsive information, I am providing the following identifying data:

Full name: Sophia Helena In 't Veld

Current address: [REDACTED]

Date of birth: [REDACTED]

Place of birth: [REDACTED]

Visa records:

Visa application made at U.S. Foreign Service Post in : Brussels, Belgium

Type of VISA: non-immigrant (A2)

Date of issuance: 21 June 2005

In accordance with 28 U.S.C. § 1746, I hereby affirm under penalty of perjury that the foregoing is true and correct.

18.02.2008

Date

[REDACTED]

Sophia Helena In 't Veld

Exhibit D

U.S. Department of Homeland Security
Washington, DC 20528



Homeland
Security

July 10, 2008

Mr. David L. Sobel
Electronic Frontier Foundation
1875 Connecticut Avenue, N.W.
Suite 650
Washington, DC 20009

Re: **DHS/OS/PRIV 08-041**

Dear Mr. Sobel:

This is the final response from the Department of Homeland Security to your three Freedom of Information Act requests to DHS and its components, U.S. Customs and Border Protection and the Transportation Security Administration, dated October 17, 2007, October 17, 2007, and May 15, 2008, respectively. The following is a consolidated list of records you requested:

1. All records concerning Sophie In't Veld (including but not limited to electronic records) maintained in the Non Immigrant Information System (NIIS), Suspect and Violator Indices (SAVI), and Treasury Enforcement Communications System (TECS);
2. All records concerning Ms. In't Veld (including but not limited to electronic records) maintained in the Passenger module of the Automated Targeting System (ATS-P) and Advanced Passenger Information System (APIS); and
3. All records concerning Sophie In't Veld (including but not limited to electronic records) maintained by TSA.

In response to your administrative appeal concerning the request described at Item 1 above, the DHS Office of the General Counsel notified you, via letter dated June 26, 2008, that this request was remanded to CBP for processing. As Department counsel advised you on July 3, 2008, the Department has decided to extend its search for documents related to Ms. In't Veld beyond the parameters of her original request described above. While we were not required to so expand our search, we did so voluntarily in order to provide Ms. In't Veld with as fulsome a response as possible.

A search by CBP produced 28 pages of records, which were identified after a full search of the systems identified in your request (Items 1 and 2) within the custody and control of CBP (i.e. NIIS, SAVI, TECS, ATS-P, and APIS). We have determined that 28 pages are releasable to you in full or with certain information withheld pursuant to Exemptions 2(low) and (high), 6, and 7C, and 7E of the FOIA.

A search by the U.S. Visitor and Immigrant Status Indicator Technology (US-VISIT) program returned 30 pages of records from the Advanced Departure Information System (ADIS). While these records are not responsive to your requests at Items 1-3 above, we have determined that these pages are releasable with certain information withheld pursuant to Exemptions 2(low), 2 (high), and 7E of the FOIA, and are providing them to you as a courtesy.

In addition, we searched TSA records for material responsive to Item 3 above. That search did not produce any responsive records.

Enclosed are 58 pages of releasable information. The withheld information within those 58 pages consists of internal, administrative and law enforcement information. We are withholding this information pursuant to Exemptions 2(low), 2(high), 6, 7C and 7E of the FOIA, 5 U.S.C. §§ 552 (b)(2)(low), (b)(2)(high), (b)(6), (b)(7)(C) and (b)(7)(E).

Exemption 2(low) exempts from disclosure records that are related to internal matters of a relatively trivial nature, such as internal administrative tracking. Exemption 2(high) protects information the disclosure of which would risk the circumvention of a statute or agency regulation. Included within such information may be operating rules, guidelines, manuals of procedures for examiners or adjudicators, and homeland security information.

Exemption 6 exempts from disclosure records the release of which would cause a clearly unwarranted invasion of personal privacy.

Exemption 7(C) protects records or information compiled for law enforcement purposes that could reasonably be expected to constitute an unwarranted invasion of personal privacy. This exemption takes particular note of the strong interests of individuals, whether they are suspects, witnesses, or investigators, in not being unwarrantably associated with alleged criminal activity. That interest extends to persons who are not only the subjects of the investigation, but those who may have their privacy invaded by having their identities and information about them revealed in connection with an investigation. Based upon the traditional recognition of strong privacy interest in law enforcement records, categorical withholding of information that identifies third parties in law enforcement records is ordinarily appropriate. As such, I have determined that the privacy interest in the identities of individuals in the records you have requested clearly 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 this determination.

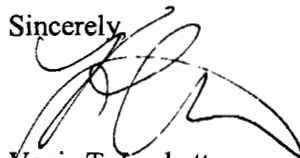
Exemption 7E protects records compiled for law enforcement purposes, the release of which would disclose techniques and/or procedures for law enforcement investigations or prosecutions, or would disclose guidelines for law enforcement investigations or prosecutions if such disclosure could reasonably be expected to risk circumvention of the law.

You have the right to appeal the above withholdings and the determination that no records exist within TSA that would be responsive to your request. Should you wish to do so, you must send your appeal and a copy of this letter, within 60 days of the date of this letter, to: Associate General Counsel (Legal Counsel), U.S. Department of Homeland Security, Washington, D.C. 20528, following the procedures outlined in the DHS FOIA regulations at 6 C.F.R. § 5.9. Your envelope

and letter should be marked "FOIA Appeal." Copies of the FOIA and DHS regulations are available at www.dhs.gov/foia.

If you have any questions regarding this matter, please refer to **DHS/OS/PRIV 08-041**. This office can be reached at 866-431-0486.

Sincerely,

A handwritten signature in black ink, appearing to read 'V. Lockett', written over a horizontal line.

Vania T. Lockett
Associate Director, Disclosure & FOIA Operations

Enclosures: 58 pages

Exhibit E

DOCUMENTS RELEASED IN PART*Sophie Helena In't Veld v. U.S. Department of Homeland Security, et al.*

Civil Action No 1:08-cv-01151

| Doc #s | Doc Type | Description/Justification | Exemptions | Data Withheld | # Pgs |
|----------------|----------|--|---------------------|--|-------|
| 000001, 000028 | TECS | <p>TECS II - I-94 Arrival/Departure Query</p> <p>These documents are derived from the Treasury Enforcement Communications System (TECS), which is an overarching law enforcement information collection, risk assessment, and information sharing environment. It is also a repository for law enforcement and investigative information. TECS is comprised of several modules (including the Non-Immigrant Inspection System (NIIS) that collect, maintain and evaluate screening data and makes information available to appropriate law enforcement officers of the U.S. government. TECS II Non-Immigrant Information System (TECS/NIIS) is a centralized U.S. Department of Homeland Security (DHS) mainframe application designed to create, update, and report non-immigrant arrivals and departures to and from the United States. TECS NIIS serves as a central repository for I-94A arrival and I-94D departure records collected at all U.S. ports of entry (POEs).</p> | 2(low), 2(high), 7E | <p>The computer codes, printer location numbers and internal identification codes are redacted pursuant to Exemption (b)(2) (low 2) which allows the withholding of internal agency matters of a relatively trivial nature. The document sets forth CBP investigative procedures and methods in regard to how an individual is processed through CBP and such information is withheld pursuant to Exemption (b)(2) (high 2) that allows for the withholding of information consisting of internal matters the disclosure of which would reveal CBP examination or inspection procedures and permit potential violators to whom the documents may be disclosed, to develop countermeasures to evade detection, inspection and targeting methods. As stated above, the record sets forth CBP procedures, methods, intra/inter-agency coordination (if any) in regard to how an individual is processed through CBP and such information is withheld pursuant to Exemption (b)(7)(E) because disclosure would reveal CBP examination or inspection procedures and permit potential violators to whom the documents may be disclosed, to develop countermeasures to evade detection, inspection and targeting methods.</p> | 2 |

| Doc #s | Doc Type | Description/Justification | Exemptions | Data Withheld | # Pgs |
|---------------|----------|--|---------------------|---|-------|
| 000002 | TECS | TECS II - I-94 Query Results (see description above) | 2(low), 2(high), 7E | The computer codes, printer location numbers and internal identification codes are redacted pursuant to Exemption (b)(2) (low 2) which allows the withholding of internal agency matters of a relatively trivial nature. The document sets forth CBP investigative procedures and methods in regard to how an individual is processed through CBP and such information is withheld pursuant to Exemption (b)(2) (high 2) that allows for the withholding of information consisting of internal matters the disclosure of which would reveal CBP examination or inspection procedures and permit potential violators to whom the documents may be disclosed, to develop countermeasures to evade detection, inspection and targeting methods. As stated above, the record sets forth CBP procedures, methods, intra/inter-agency coordination (if any) in regard to how an individual is processed through CBP and such information is withheld pursuant to Exemption (b)(7)(E) because disclosure would reveal CBP examination or inspection procedures and permit potential violators to whom the documents may be disclosed, to develop countermeasures to evade detection, inspection and targeting methods. | 1 |
| 000003-000007 | TECS | TECS II - I-94 Arrival/Departure Display Detail View (see description above) | 2(low), 6, 7C | The computer codes, printer location numbers and internal identification codes are redacted pursuant to Exemption (b)(2) (low 2) which allows the withholding of internal agency matters of a relatively trivial nature. Badge and/or social security numbers (SSNs) of federal employees are redacted pursuant to Exemption (b)(6) because release would be considered a clearly unwarranted invasion of privacy; and Exemption (b)(7)(C), because this document was generated for general law enforcement purposes and disclosure of the badge/SSNs could reasonably be expected to be an unwarranted invasion of personal privacy. | 5 |

| Doc #s | Doc Type | Description/Justification | Exemptions | Data Withheld | # Pgs |
|---------------|----------|---|----------------------------|--|-------|
| 000008-000019 | TECS | <p>TECS Record Display (Advance Passenger Information (API) data). These records include details from the passenger and crew manifests for international travel. The API information is collected in advance of a passenger/crew member's arrival or departure from the United States in order to perform law enforcement queries to identify security risks to the aircraft or vessel, to its occupants, or to the United States and in order to expedite CBP processing.</p> | 2(low), 2(high), 6, 7C, 7E | <p>Computer codes, record numbers, internal identification codes and printer location numbers are redacted pursuant to Exemption (b)(2) (low 2) which allows the withholding of internal agency matters of a relatively trivial nature. The documents set forth CBP investigative procedures, methods, intra/inter-agency coordination (if any) and such information is withheld pursuant to Exemption (b)(2) (high 2) that allows for the withholding of information consisting of internal matters the disclosure of which would reveal CBP examination or inspection procedures and permit potential violators to whom the documents may be disclosed, to develop countermeasures to evade detection, inspection and targeting methods. The social security numbers of federal employees are redacted pursuant to Exemption (b)(6) because release would be considered a clearly unwarranted invasion of privacy; and Exemption (b)(7)(C), because this document was generated for general law enforcement purposes and disclosure of the social security numbers could reasonably be expected to be an unwarranted invasion of personal privacy. As stated above, the documents sets forth CBP procedures, methods, intra/inter-agency coordination (if any) and internal routing procedures in regard to how an individual is processed through CBP and such information is withheld pursuant to Exemption (b)(7)(E) because disclosure would reveal CBP examination or inspection procedures and permit potential violators to whom the documents may be disclosed, to develop countermeasures to evade detection, inspection and targeting methods.</p> | 12 |
| 000024 | PNR | <p>Passenger Name Record (PNR). Passenger Name Record (PNR) data is data provided to commercial air carriers, by or on behalf of air passengers seeking to book travel. CBP has required air carriers to transmit PNR for flights to and from the U.S. to CBP since June, 25, 2002. PNR is maintained in the Automated Targeting System – Passenger (ATS – P)</p> | 6 | <p>Names of third parties and other personally identifiable information associated with third parties are withheld pursuant to Exemption (b)(6) because release would be considered a clearly unwarranted invasion of privacy.</p> | 1 |

