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January 21, 2016

Karen Neuman, Chief FOIA Officer  
The Privacy Office  
U.S. Department of Homeland Security  
245 Murray Lane SW, STOP-0655  
Washington, D.C. 20528-0655

(by mail and by e-mail to foia@hq.dhs.gov)

**FOIA REQUEST**

**Fee benefit requested**

**Fee waiver requested**

Dear Ms. Neuman:

This is a request pursuant to the federal Freedom of Information Act, 5 U.S.C. § 552.

We request (1) access to and copies of all records of or pertaining to individuals presenting driver's licenses that are or were not considered compliant, or from states or territories that are or were not considered compliant, with the REAL-ID Act of 2005, for purpose of accessing Federal facilities and/or passing through checkpoints at airports or elsewhere, including any records of the numbers of such individuals, statistical or descriptive records pertaining to such incidents, email messages pertaining to such incidents or reports, and any instructions regarding handling and/or reporting of such incidents, and (2) any records pertaining to the legal basis for denial or potential denial of access to Federal facilities, denial of passage through checkpoints at airports, or denial of transport by airlines or surface transportation carriers, on the basis of the REAL-ID Act of 2005, including any reports analyzing these issues and any email messages pertaining to them.

This request includes any responsive records of the DHS or any DHS component agency identifiable as having, or likely to have, responsive records, including any email messages or other communications within the DHS and any of its components or between the DHS or DHS components and other agencies, departments, contractors, airlines or other carriers, or other parties.

We request that all responsive records be provided in electronic form.

With respect to any records held in electronic form, we request that they be provided in the original electronic form in which they are held on workstations, servers, and/or backup, archival, or other storage media or devices, as complete bitwise digital copies of the original email message files,

The Identity Project FOIA request for records pertaining to the REAL-ID Act of 2005 (page 1 of 3)

spreadsheet files, word processor document files, PDF files, or other electronic files, including any file names, file headers, embedded metadata, file system information, and all other file content. All such data is subject to FOIA and is expressly included within the scope of this request for records.

We specifically request that you not create new documents in response to this request, not create “documents” such as page-view images or print views from digital records, and not substitute such newly-created “documents”, images, or views for requested records held by you as digital files.

In this regard, we call to your attention the recent OGIS report on TSA FOIA processing practices, available at <<https://ogis.archives.gov/Assets/Transportation+Security+Administration+%28TSA%29+Freedom+of+Information+Act+%28FOIA%29+Compliance+Report.pdf>> :

During our review, we also noted TSA converted all records into a PDF format prior to processing, making it difficult for TSA to meet FOIA’s requirement that agencies provide records “in any form or format requested by the person if the record is readily reproducible by the agency in that form or format.” PDF is an image format; converting a spreadsheet or information from a database into a PDF is akin to taking a page-sized picture of the information. In order for all of the information in the record to be seen in the PDF, the FOIA processor must make sure that text is not hidden by another cell and that the text fits within the page’s margins. Converting databases into PDFs also limits their use to the public, because the data in the record cannot be sorted or combined with other sources. In one particular instance, we noted a requester had specifically asked for a database in a “non-PDF” format; the requester specifically mentioned formats that would allow him or her to sort or otherwise use the data. TSA provided the requester with an alternative image -- based format -- TIFF, a format that is generally less searchable than PDF. We recommend that TSA look into how records can be processed and released in their native format when requested and incorporating any new processes into its SOPs.

According to “REAL ID Act of 2005 Implementation: An Interagency Security Committee Guide”, available at <[http://www.dhs.gov/sites/default/files/publications/isc-real-id-guide-august-2015-508\\_0.pdf](http://www.dhs.gov/sites/default/files/publications/isc-real-id-guide-august-2015-508_0.pdf)>, Section 4.4, “Reporting Requirements”:

Your agency should also have a process for recording the number of encounters of individuals presenting driver’s licenses from noncompliant states for purpose of accessing Federal facilities. This data should be sent monthly to DHS (OSIIS@hq.dhs.gov) for collection no later than the tenth day of each month. DHS will use this data to evaluate the impact of REAL ID enforcement on the public. See Appendix E for a sample report template.

The records responsive to this request include the reports produced in response to this guidance. The scope of the search for responsive records should be from the date of enactment of the REAL-ID Act of 2005 through the date when the search for responsive records is conducted.

This information is being sought on behalf of The Identity Project (“IDP”). IDP provides advice, assistance, publicity, and legal defense to those who find their rights infringed or their legitimate activities curtailed by demands for identification, and builds public awareness about the

effects of ID requirements on fundamental rights. IDP is a program of the First Amendment Project, a nonprofit organization providing legal and educational resources dedicated to protecting and promoting First Amendment rights.

As a representative of the news media we are only required to pay for the direct cost of duplication after the first 100 pages. Through this request, we are gathering information on DHS policies and procedures that is of current interest to the public as part of widespread public interest in implementation of the REAL-ID Act and DHS policies, procedures, and practices related to access to public facilities and access transportation by airlines and other transportation carriers, and what if any legal basis, in what circumstances, the DHS believes exist for denial of access to facilities and/or transportation. This information is being sought on behalf of The Identity Project (“IDP”). IDP is a program of the First Amendment Project, a nonprofit organization providing legal and educational resources dedicated to protecting and promoting First Amendment rights.

This information will be made available to the public. The principal activity of IDP is publication of the informational and educational Web site at <<http://www.papersPlease.org>>, where we have published documents obtained in response to our previous FOIA requests.

Please waive any applicable fees. Release of the information is in the public interest because it will contribute significantly to public understanding of government operations and activities. The records we are requesting clearly relate to government operations and activities in the management and control of access to Federal facilities and transportation by Federally-licensed air carriers. It is in the public interest for the public to know about the policies and practices which affect public access to public facilities, and the legal basis or lack thereof for these policies and practices. The Identity Project is a nonprofit organization with no commercial interest in this information.

If our request is denied in whole or part, we ask that you justify all deletions by reference to specific exemptions. We will also expect you to release all segregable portions of otherwise exempt material. We, of course, reserve the right to appeal your decision to withhold any information or to deny a waiver of fees. Please respond as soon as possible to confirm your receipt of this request and to advise the expected date of completion of Departmental action with respect to this request. We look forward to your complete reply within 20 business days, as the FOIA statute requires.

Sincerely,

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Edward Hasbrouck  
Consultant on travel-related issues  
The Identity Project