

EXHIBIT 3

U.S. Department of Homeland Security
Freedom of Information Act Branch
601 South 12th Street
Arlington, VA 20598-6020



Transportation
Security
Administration

January 4, 2018

3600.1

Unperfected Case Number: 2018-TSUN-00001

Theodora Simon
39 Drumm St
San Francisco, CA 94111

Dear Theodora Simon:

After careful review of your Freedom of Information Act (FOIA) request dated December 20, 2017, and considering the nature of our operations and record-keeping practices, we determined that portions of your request are not reasonably described because they are either too broad in scope or did not specifically identify the records which you are seeking. Records must be described in reasonably sufficient detail to enable government employees who are familiar with the subject area to locate records without placing an unreasonable burden upon the agency. For this reason, §5.3(b) of the DHS regulations, 6 C.F.R. Part 5, require that you describe the records you are seeking with as much information as possible to ensure that our search can locate them with a reasonable amount of effort. Further, we have determined that your request meets the “Unusual Circumstances” criteria of the FOIA due to one or more of the following: There is a need to search for and collect records from separate offices; there is a need to search for, collect, and examine a voluminous amount of records; or there is a need for consultation with another or among two or more components within the same agency. Therefore, we will not be able to complete the processing of your request within 30 working days (20 working days plus 10 additional working days allowed).

What follows is the FOIA Office responses with respect to the individual items of your request:

Item 1: TSA will conduct a search for this item.

Item 2: The last sentence, which seeks “any records...generated by Covenant Aviation Security,” is not reasonably described because it is overly broad. Please specify the types of records beyond what you have already described for this item. Otherwise, for this item, TSA will conduct a search for “documentation related to the acquisition, testing, use, maintenance, and location of such equipment; any inventories of the number of each type of equipment.”

Item 3: This item is not reasonably described because it is overly broad. Various types of security equipment may be used to screen passengers and their property. The same equipment that examines electronic devices may also be used to examine a variety of other items in the security process. Therefore, logs about “any equipment” used to search or examine passengers’ electronic devices are likely to be voluminous and include far more data than what is related to

examining passengers' electronic devices. Moreover, certain information in logs related to "use" and "maintenance" of screening equipment may be Sensitive Security Information (SSI), which would be withheld from release. Please clarify the specific logs or for which equipment you are seeking logs or other information to enable TSA to conduct a search.

Item 4: This item is not reasonably described because it is overly broad as TSA maintains varied types of security equipment as part of its overall security operation. Please specify the types of communications you are seeking, e.g., communications about TSE with a nexus to the search or examination of passengers' electronic devices at SFO.

Item 5: TSA will conduct a search for this item.

For the reasons stated below, your request for expedited processing is denied.

First, your request for expedited processing does not meet the procedural requirements, which include submitting a statement that is certified to be true and correct. 6 C.F.R. § 5.5(e)(3). Since your request does not include such a certification, your request for expedited processing is deficient and must be denied.

Even if your request satisfied the procedural requirements, however, it would still be deficient. A request may qualify for expedited processing if it is determined that the requester demonstrates a compelling need involving 1) circumstances in which the lack of expedited treatment reasonably could be expected to pose an imminent threat to the life or physical safety of an individual, or 2) an urgency to inform the public about an actual or alleged federal government activity, and is made by a person primarily engaged in disseminating information. 5 U.S.C. § 552(a)(6)(E). Under DHS regulations, a request may also receive expedited processing if it involves 3) the loss of substantial due process rights, or 4) a matter of widespread and exceptional media interest in which there exist possible questions about the government's integrity which affect public confidence. 6 C.F.R. § 5.5(e).

Your request for expedited processing does not implicate "an imminent threat to the life or physical safety of an individual," and thus fails to qualify under the first basis for receiving expedited processing.

To qualify for expedited processing under the second basis, a requester must demonstrate two elements: 1) an urgency to inform the public about a federal activity; and 2) that he or she is a person primarily engaged in disseminating information. First, you have failed to demonstrate an urgency to inform the public about the activity that is the subject matter of the request. You state that the "requested records seek to inform the public about the TSA's practices regarding the search of passengers' electronic devices," but you do not explain how this creates an urgent need for public information. You also state that the "search of electronic devices at airports is a topic that has garnered significant media attention to date and continues to be of urgent public interest," but you fail to explain how routine reporting on TSA policies has any bearing on whether there is an urgency to inform the public.

Second, you have not demonstrated that you are a person primarily engaged in disseminating information so you also fail to satisfy the second basis for consideration of expedited processing.

Although the American Civil Liberties Union (ACLU) of Northern California may well engage in disseminating information, you have not demonstrated that you are “primarily engaged” in disseminating information.¹ Without such a showing, expediting processing under this basis is not warranted.

Regarding the third basis, you have not indicated that the request involves any potential loss of due process rights, substantial or otherwise. Therefore, your request does not qualify for expedited processing under that basis.

Finally, with respect to the fourth basis, while you have referenced news articles regarding TSA searches of electronic devices, you have not established that there is widespread and exceptional media interest.

Accordingly, because your request for expedited processing is procedurally deficient and fails to meet any bases for such treatment under the FOIA and applicable DHS regulations, your request is denied.

Your request for a fee waiver has been granted.

Please respond with information to clarify your request as specified above. Upon receipt of a perfected request, you will be advised as to the status of your request.

If we do not hear from you with additional clarifying information within 30 days from the date of this email, we will assume you are no longer interested in those portions of this FOIA request that TSA has determined are not reasonably described, and those portions of the case will be administratively closed. Please be advised that this action is not a denial of your request and will not preclude you from filing other requests in the future.

Your request has been assigned unperfected reference number 2018-TSUN-00001. Please refer to this identifier in any future correspondence.

Sincerely,



Deborah O. Moore
Acting FOIA Officer
Transportation Security Administration

¹ See *ACLU of N. Cal. v. U.S. Dep't of Justice*, No. 04-4447, 2005 WL 588354, at *14 (N.D. Cal. Mar. 11, 2005) (“[T]he court agrees with defendants that while dissemination of information may be *a* main activity of ACLU-NC, there is no showing that it is *the* main activity.”)