



U.S. Department of Justice

*United States Attorney
Northern District of California*

9th Floor, Federal Building
450 Golden Gate Avenue, Box 36055
San Francisco, California 94102

(415) 436-7155
Fax: (415) 436-6927
neill.tseng@usdoj.gov

April 25, 2012

David Greene
BRYAN CAVE LLP
560 Mission Street, 25th Floor
San Francisco, California 94105

Re: *Edward Hasbrouck v. U.S. Customs and Border Protection*
Civil No. 10-3793 RS

Dear David:

This letter follows up on the four outstanding items you identified by email after our last meet-and-confer.

Rich declaration

Enclosed is a revised draft Rich declaration. As discussed, it adds information about the predecessor to form DHS-191 in paragraph 7.

Regarding your request for more detail about how CBP prepared the accounting of disclosures when they were required under the Privacy Act (your "Juanita Jones" example), that request is beyond the scope of what the agency is required to do. The agency is required to produce any responsive, non-exempt records that are located after a reasonable search. Rich explained in her declaration that she searched and there was no TECS person subject record for plaintiff. The agency is not required to provide the requested additional information involving hypothetical people, which is beyond the scope of plaintiff's requests and this litigation.

CBP to OIOC email

Please see enclosed pages Bates numbered 000191-93. Also enclosed is an updated Vaughn index referencing those pages.

Further ATS records

Enclosed are further ATS records (not Bates numbered) with third-party names redacted, which were generated from the ATS PNR searches for HASBR! and for plaintiff's passport number.

Mr. David Greene
April 25, 2012
Page 2

Non-PNR ATS data under FOIA

We have reviewed the pages you cited in the summary judgment briefing, which make clear that plaintiff never raised this as a FOIA issue but purely as a Privacy Act issue. See Pl.'s MSJ at 20 (raising the issue in the context of the Privacy Branch search and citing to Ex. C, which references plaintiff's "Privacy Act request" "for all of his records contained in the ATS system of records"). Plaintiff stated numerous times in his summary judgment brief and declaration that his requests for ATS records were Privacy Act requests. See id. at 2-3 (describing 2007 Privacy Act request and appeal for ATS records); id. at 4-5 (describing 2009 Privacy Act request for ATS and other records); Hasbrouck Decl. ¶¶ 3, 6, 7, 20, 25, 28. Plaintiff specifically stated in his summary judgment motion that his only FOIA challenge was to "CBP's withholding the entirety of the ATS and TECS user guides under exemption (7)(E) of FOIA." Pl.'s MSJ at 10:22-23.

Similarly, plaintiff stated repeatedly in his correspondence and communications with the agency that his requests for ATS records were made under the Privacy Act. See id., Ex. A (plaintiff's request dated June 22, 2007, styled as a "Privacy Act Request" and stating, "This letter constitutes a request under the Privacy Act, 5 U.S.C. § 552a."); Def.'s MSJ, Ex. E (plaintiff's request dated October 15, 2009, styled as a "Privacy Act Request" and stating, "This letter constitutes a request under the Privacy Act, 5 U.S.C. § 552a."); Suzuki Decl. ¶ 11 ("Plaintiff insisted that his September 13, 2007 appeal be treated as a Privacy Act Appeal. Accordingly, the appeal was transferred to the Privacy Act Policy & Procedures Branch."); Castelli Decl. ¶ 10 (stating that Castelli confirmed "Plaintiff's intention that it be processed under the Privacy Act, rather than the FOIA").

Plaintiff's attempt to obtain ATS information under FOIA at this late stage is therefore improper.

Very truly yours,

MELINDA L. HAAG
United States Attorney

By:


NEILL T. TSENG
Assistant United States Attorney

Enclosures
cc: Helen Bouras (via e-mail)

048 Z/ CR-DCA1S219L - 49881134 SU 9876PI/RO-9CBC0F76-FARPI2VYF - 00000000
26MAR/0156Z

049 Q/ QE/FAR1S2106/16 QR1C6D4

049 Z/ CR-DCA1S219L - 49881134 SU 9876PI/RO-9CBC0F76-FARPI2VYF - 00000000
26MAR/0213Z

023/050 R/7 RM UD-301089.91

023/050 A/7 RM UD-301081.91

050 A/7 AI AN6504280700

050 A/22 AM [REDACTED] 1975 WEST EL CAMINO REALSUITE 204 MOUNTAIN VIEW,
CA 94040

third party name

050 Z/ SJ CR-WAS1S210N - 49518302 GS 2007SJ/RO-67EBA3C0-DCA1S210W -
49592222 26MAR/0724Z

#10

ELECTRONIC TICKET

1.1HASBROUCK/EDWARDJMR

MUC1A2H465O/SJC1S212D/0554 19SEP NZXEJA

1 AC7687 K FR 14OCT BOSYUL HK1 1645 1752 CABY 00

OPERATED BY/EXPLOITE PAR QK

2 AC 832 K FR 14OCT YULBRU HK1 1945 0835 CABY 00

TKT-

1.1 K19SEPMUC1A 0148709665035-36

AP FAX-

1.1 SSRAUTHAC HK/PSGI/MUC1A//19SEP1 NZXEJA0001

2.1 SSRDOCSACHK1 ////11JAN60/M//HASBROUCK/EDWARDJ

3.1 SSRFQTVACHK/ UA00168716753

4.S1 SSRRQSTACHK1 3F/NO SMOKING

5.S2 SSRRQSTACHK1 31K/NO SMOKING

GEN FAX-

1.OSIYY CTCT SJC 650 428-0700 AIRTRADE INTERNATIONAL INC.

---HISTORY---

RL-MUC1A2H465O/SJC1S212D/0554

MUC 1A RM TTY 1542Z/19SEP

MUC 1A RM 1542Z/19SEP

NO FLOWN SEGS

#11

---LX PNR---

PURGE PURGE CREATION ORIGINATOR

DATE FLT NO TIME DATE TELETYPE DUTY SIGN CITY

29OCT11 LX4245 1542 19SEP11 MUCRM1A LX

PNR ADDRESS: RJSMRU EDE945A9

NAMES

1HASBROUCK/EDWARDJMR

ITINERARY

AC7687 K 14OCT11 BOSYUL HK 1 1645-5 1752-5 Y-K I D
AC0832 K 14OCT11 YULBRU HK 1 1945-5 0835-6 Y-K I D
LX4245 H 29OCT11 LJUZRH HK 1 0745-6 0900-6 Y-H L 1AT\$01
LX0038 H 29OCT11 ZRHSFO HK 1 1315-6 1620-6 Y-H L 1AT\$01

TICKETING INFORMATION

S 1 LX 4245 H 29OCT LJUZRH
N 1P 1 HASBROUCK/EDWARDJMR
1 TKNE HK 1 0148709665035C4/035-036
S 2 LX 0038 H 29OCT ZRHSFO
2 TKNE HK 1 0148709665036C1/035-036

HOST AIRLINE FACTS

SSRNSSTLX HK 0001 LX0038 29OCT 1HASBROUCK/EDWARDJMR @44A

GENERAL FACTS

OSI YY CTCT SJC 650 428-0700 AIRTRADE INTERNATIONAL INC.

ELECTRONIC TICKET INDEX

HASBROUCK/EDWARDJMR 0148709665035

HISTORY

AS AC7687 K 14OCT11 BOSYUL HK 1 1645-5 1752-5 Y-K
AS AC0832 K 14OCT11 YULBRU HK 1 1945-5 0835-6 Y-K
AS LX4245 H 29OCT11 LJUZRH SN 1 0745-6 0900-6 Y-H L 1AT\$01
AS LX0038 H 29OCT11 ZRHSFO SN 1 1315-6 1620-6 Y-H L 1AT\$01
RLOC-MUC1A2H465O/SJC1S212D/0554235/SJC/1A/N/US//SU 19154247/091E
613E00A706/L
19SEP11 154246Z MUC1A RM
ATI LX 4245 H 29OCT LJUZRH
HASBROUCK/EDWARDJMR TKNE HK01 0148709665035C4/035-
ATI LX 0038 H 29OCT ZRHSFO
HASBROUCK/EDWARDJMR TKNE HK01 0148709665036C1/035-
RLOC-MUC1A2H465O/SJC1S212D/0554235/SJC/1A/N/US//SU 19195224
19SEP11 195223Z MUC1A RM