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August 31, 2010

Transportation Security Administration  
Freedom of Information Act Office, TSA-20  
11th Floor, East Tower  
601 South 12th Street  
Arlington, VA 20598-6020

To whom it may concern:

This letter constitutes a request pursuant to the Freedom of Information Act, 5 U.S.C. § 552 made to the Transportation and Security Administration. The Request is submitted on behalf of the American Civil Liberties Union of Massachusetts and its educational arm, the American Civil Liberties Union Foundation of Massachusetts (jointly referred to as ACLUM).

### **I. BACKGROUND**

Earlier this month, news sources reported that the Transportation Security Administration is instituting an “enhanced pat down” at Logan International Airport and Las Vegas-McCarran Airport for passengers who opt out of the “full-body scanner” search.

According to one news report, the “enhanced pat down” will be carried out “using all front-of-the-hand sliding motions over greater areas of passengers’ bodies, including sensitive areas.”<sup>1</sup>

Members of the public and even TSA employees have expressed concern about the privacy impact of such enhanced searches and the effectiveness of this heightened procedure. In order to provide information to the public about these new procedures, this request seeks documents containing information about them.

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<sup>1</sup> Donna Goodison, *New Logan Searches Blasted*, The Boston Herald, Aug. 21, 2010

## **II. DOCUMENTS SOUGHT**

1. Policies, procedures and training materials regarding the screening of passengers who opt out of the Whole Body Imaging/ Backscatter Full Body Scanner.
2. Policies, procedures and training materials regarding pat-down screening of passengers, including documents addressing when a pat-down is appropriate, the procedure for pat-downs generally and the procedures for what TSA has termed the “enhanced pat-down” process.

## **III. SEARCH AND COPYING FEES**

The American Civil Liberties Union Foundation of Massachusetts (“ACLUM”) requests a waiver of search, duplication and review fees under the FOIA statute and Department of Homeland Security Regulations for two reasons. First, the requester qualifies as a representative of the news media. Second, release of the records requested is in the public interest and not in any commercial interest of the requester. In a recent related request to the TSA dated March 25, 2010, the agency granted ACLUM a fee waiver.

### **1. ACLUM is entitled to a waiver of fees because it is a representative of the news media as defined in the FOIA statute and in DHS regulations.**

The requester is a representative of the news media under both the FOIA statute and the Department of Homeland Security regulations regarding FOIA fees in that it is an organization “actively gathering news for an entity that is organized and operated to publish or broadcast news to the public,” where “news” is defined as “information that is about current events or that would be of current interest to the public.” 5 U.S.C. § 552(a)(4)(A)(ii)(II); 6 C.F.R. § 5.5(b)(6).

In addition, ACLUM meets the statutory definition of a “representative of the news media” because it is an “an entity that gathers information of potential interest to a segment of the public, uses its editorial skills to turn raw materials into a distinct work, and distributes that work to an audience.” *Nat’s Security Archive v. Dep’t of Defense*, 880 F.2d 1381, 1387 (D.C. Cir 1989). *See also Electronic Privacy Information Ctr. v. Dep’t of Defense*, 241 F.Supp. 2d 5, 10-15 (D.D.C. 2003) (finding non-profit interest group that disseminated an electronic newsletter and published books was a “representative of the media” for purposes of FOIA.)

ACLUM, a not-for-profit, non-partisan organization with over 22,000 members and supporters across Massachusetts is dedicated to the principles of liberty and equality. As the Massachusetts affiliate of the national ACLU, a not-for-profit, non-partisan

organization with over 500,000 members nationwide, ACLUM distributes information outside of Massachusetts to thousands of members of the public.

Gathering and disseminating current information to the public is a critical and substantial component of ACLUM's mission and work. ACLUM publishes newsletters, news briefings, reports and other printed materials that are disseminated to the public. These materials are widely available to everyone, including tax-exempt organizations, not-for-profit groups, law students and faculty, at no cost. ACLUM also disseminates information through its heavily subscribed website, [www.aclum.org](http://www.aclum.org), a blog, <http://www.massrightsblog.org> and regular posts on social media sites such as Facebook and Twitter. Our web postings address civil liberties issues in depth, provide features on civil liberties issues in the news, and contain hundreds of documents that relate to the issues addressed by ACLUM. The website includes features on information obtained through the FOIA. See, e.g., [www.aclum.org/ice](http://www.aclum.org/ice).

Courts have further confirmed the broad scope of the definition of news media. In a case regarding a request made by a similar advocacy organization, the Electronic Privacy Information Center, the D.C. Circuit held that "[i]t is critical that the phrase 'representative of the news media' be broadly interpreted if the act is to work as expected . . . [n] fact, any person or organization which regularly publishes or disseminates information to the public . . . should qualify for waivers as a 'representative of the news media.'" *Electronic Privacy Information Ctr. v. Dep't of Defense*, 241 F.Supp. 2d 5, 10 (D.D.C. 2003).

Other organizations similar to ACLUM have also been found to meet the statutory definition of "representative of the news media" when the organization making the request is "an entity that gathers information of potential interest to a segment of the public, uses its editorial skills to turn raw materials into a distinct work, and distributes that work to an audience." *Nat'l Security Archive v. Dep't of Defense*, 880 F.2d 1381, 1387 (D.C.Cir 1989) (finding that organization was a "representative of the news media"); See also *Electronic Privacy Information Ctr. v. Dep't of Defense*, 241 F.Supp. 2d 5, 10-15 (D.D.C. 2003) (holding that non-profit public interest group that disseminated an electronic newsletter and published books was a "representative of the media" for purposes of FOIA).

Gathering, analyzing and disseminating information that is relevant and current to issues relating to civil liberties and privacy are key components of ACLUM. The organization continually and as part of its core functions disseminates information of public interest through internet, print, television and radio. Such information reaches thousands of members of the public including students, journalists, academics, advocates, members of government and interested readers every year.

These characteristics are typically sufficient to convey "representative of the news media" status on FOIA requesters. Courts have held that "[i]t is critical that the phrase 'representative of the new media' be broadly interpreted if the act is to work as expected ... [n] fact, any person or organization which regularly publishes or disseminates

information to the public ... should qualify for waivers as a 'representative of the news media.'" *Electronic Privacy Ctr. v. Dep't of Defense*, 241 F.Supp. 2d 5, 10 (D.D.C. 2003).

On account of these factors, government agencies have waived fees for the ACLU and ACLUM on numerous occasions.<sup>2</sup>

**2. The records sought are in the public interest and the requester has no commercial interest in the disclosure.**

ACLUM is entitled to a waiver or reduction of fees because "[d]isclosure of the requested information is in the public interest because it is likely to contribute significantly to public understanding of the operations or activities of the government," and "[d]isclosure of the information is not primarily in the commercial interest of the requester." 5 U.S.C. § 552(a)(4)(A)(iii); 6 CFR § 5.5(k)(1)(i) and (ii).

This request aims at furthering public understanding of government conduct, and specifically at helping the public determine the ways in which the Transportation Security Administration, is carrying out security functions at airports. It therefore meets the component spelled out in 6 CFR § 5.5(k)(2)(iii).

There is broad demonstrated public interest in the safety, privacy impact, cost and effectiveness of new technologies and tools that TSA is implementing. 6 CFR § 5.5(k)(1)(iii). Countless news articles, opinion pieces, blogs and internet posts have been dedicated to this subject. *See e.g.* Anita Allen, *Privacy Stays Home This Year: The Moralist*, The Star-Ledger, December 10, 2006; James Bamford, *Who's in Big Brother's Database?*, The New York Times, November 5, 2009; Jeffrey Rosen, *Nude Awakening*, The New Republic, February 10, 2010; Marc Rotenberg, *Opposing View: Uniquely Intrusive Devices*, USA Today, January 12, 2010; Bruce Schneier, *Our Reaction Is the Real Security Failure*, AOL News, January 7, 2010; Bruce Schneier, *Stop the Panic on Air Security*, CNN, January 7, 2010; Spencer S. Hsu, *Scanners may not have detected alleged explosive in Detroit jet case*, GAO reports, Washington Post, March 18, 2010; Jaikumar Vijayan, *Travelers file complaints over TSA body scanners*, Business Week, March 8, 2010; Will Pavia, *Muslim woman refuses body scan at airport*, London Times Online, March 3, 2010; Jaikumar Vijayan, *Suspend airport body scanner program, privacy groups say*, Computerworld, February 26, 2010; Julie Johnsson, *Airport body*

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<sup>2</sup> The following are examples of requests in which government agencies did not charge the ACLU or ACLUM fees associated with responding to a FOIA request: (1) Immigration and Customs Enforcement granted the ACLU of Massachusetts a waiver of all search fees for a request submitted on Jan. 25, 2007; (2) The Office of Science and Technology Policy in the Executive Office of the President told the ACLU that it would waive the fees associated with a FOIA request submitted by the ACLU in August 2003; (3) The Federal Bureau of Investigation did not charge the ACLU fees associated with a FOIA request submitted by the ACLU in August 2002; (4) The Office of Intelligence Policy and Review did not charge the ACLU fees associated with a FOIA request submitted by the ACLU in August 2002; and (5) The Office of Information and Privacy in the Department of Homeland Security did not charge the ACLU fees associated with a FOIA request submitted by the ACLU in August 2002.

scanners have critics, including Pope, Chicago Tribune, February 23, 2010; Thomas Frank, *Airport-security plan calls for 500 body scanners in '11*, USA TODAY, February 3, 2010; *European Union Puts Off Reply to U.S. Body Scanner Request*, AFP, January 21, 2010; *Body Scanners Risk Right to Privacy Says UK Watchdog*, BBC, January 20, 2010; *The Body Scanner Scam*, The Wall Street Journal, January 18, 2010; *The Fight Against Full-Body Scanners in Airports*, Los Angeles Times, January 13, 2010; *Mixed Signals on Airport Scanners*, The New York Times, January 12, 2010; *Body Scanners Can Store, Send Images, Group Says*, CNN, January 11, 2010; *European Response Mixed to New U.S. Security Demands*, Business Week, January 4, 2010; *Schiphol Buys 60 Body Scanners, Denies Lax Security*, Reuters, January 4, 2010; *New Scanners Break Child Porn Laws*, The Guardian, January 4, 2010; *TSA Tries to Assuage Passengers' Concerns About Full Body Scans*, The Washington Post, January 4, 2010; *Brown Gives Go-Ahead for Full Body Scanners at Britain's Airports*, The Guardian, January 4, 2010; *Former Homeland Security Chief Argues for Whole-Body Imaging*, The Washington Post, January 1, 2010; *150 More Full-Body Scanners to go in U.S. Airports*, CNN, December 31, 2009; *Calls for Full-Body Scanners Re-Ignite Privacy Concerns*, Fox News, December 31, 2009; *Body Scanners Not 'Magic Technology' Against Terror*, CNN, December 31, 2009; *Wide Use of U.S. Airport Body Scanners Depends on Obama*, Reuters, December 30, 2009; *Do Airport Imagers Invade Privacy*, The San Francisco Chronicle, December 29, 2009; *No more getting naked for the TSA*, The Examiner, May 20, 2009; *X-Ray Body Scanner Stirs Controversy*, Fox Washington DC, May 18, 2009; *Airport scanners take 'naked' pics, group says*, CNN.com, Monday, May 18, 2009; Kai Jackson, *Total Body Scans At Airports Cause Controversy*, Channel 13 Baltimore, May 18, 2009; *Whole Body Imaging is Wholly Frightening*, Manolith.com, Monday, May 18, 2009; *Commentary: Whole-Body imaging invades privacy*, CNN.com, May 19, 2009; *Privacy Advocates Take Issue With 'Whole Body Imaging' Airport Security Technology*, All Headline News, May 19, 2009; *Airport scanners take 'naked' pics, group says*, CNN.com, Monday, May 18, 2009; *Airport body scans: An issue of privacy*, The Windsor Star (Canadian), Tuesday, May 12, 2009; Anice Tibbetts, *Airport officials make plans to conduct virtual strip searches*, CanWest News Service, May 6, 2009; David Copeland, *Scanner finds hidden objects, not flesh*, Boston.com, April 27, 2009; *Herald Poll: Porn at the airport?* Daily Herald, April 24, 2009; *Chaffetz wants ban on airport whole body imaging*, ABC Channel 4 (Salt Lake City), April 22, 2009; William Saletan, *Deeper Digital Penetration*, Slate, April 8, 2009; Sean O'Neill, *TSA: Whole-body scanners to replace metal detectors*, Budget Travel, April 7, 2009; Joe Sharkey, *Whole-Body Scans Pass First Airport Tests*, N.Y. Times, April 6, 2009; Jeremy Hsu, *Airport body scans reveal all*, MSNBC, Apr. 1, 2009; *New security scan at DFW Airport has privacy advocates worried*, Dallas Morning News, June 16, 2008; Thomas Frank, *TSA looks into using more airport body scans*, USA Today, October 7, 2007; William Saletan, *Digital Penetration*, Slate, Mar. 3, 2007; *Controversial X-ray machine to make national debut Friday at Sky Harbor*, Associate Press, February 21, 2007; *Phoenix Airport to Test X-Ray Screening*, Associate Press as reported on Privacy.org, December 1, 2006; Joe Sharkey, *Airport screeners could see X-rated X-Rays*, New York Times, May 24, 2005; Thomas Frank, *Airports roll out high-tech security*, USA Today, May 16, 2005; Ryan Single, *New Screening Technology Is Nigh*, Wired News, May 19, 2005; Bryon Okada, *TSA official says machine, not screeners, at fault*, Star-Telegram, May 1, 2005; Michael

Grabell, *Airport plans to screen for explosives this fall Machines at D/FW*, Dallas News, May 1, 2005; Ryan Single, *Passenger Screening, Take 10*, Wired News, January 31, 2005; 'Nice Bombs Ya Got There', Associated Press, Wired News, June 26, 2003; Megan Lisagor, *TSA awards passenger screening contract*, Federal Computer Week, March 10, 2003; Megan Lisagor, *TSA prepares passenger screening system*, Federal Computer Week, February 26, 2003; *Smart Check-In Cuts Airport Lines*, Wired News, February 5, 2001.

Specifically, there has been much media attention around the implementation of the “enhanced pat-down” procedure. A selection of articles is included in Exhibit A. See Donna Goodison, *New Logan Searches Blasted*, The Boston Herald, Aug. 21, 2010; Donna Goodison, *Passengers shocked by new touchy-feely TSA screening*, The Boston Herald, Aug. 24, 2010; *TSA Launches ‘Enhanced Patdown,’ Draws Critics*, America Online, Aug. 24, 2010, at <http://news.travel.aol.com/2020/08/24-tsa-launches-enhanced-patdown-draws-critics/>; Rachel Slajda, *TSA Testing New, More Invasive Pat-Downs for Those Who Refuse Scans*, Talking Points Memo, Aug. 24, 2010, at [http://tpmmuckraker.talkingpointsmemo.com/2010/08/tsa\\_testing\\_new\\_more\\_invasive\\_pat-downs.php](http://tpmmuckraker.talkingpointsmemo.com/2010/08/tsa_testing_new_more_invasive_pat-downs.php); Kelly Holt, *TSA Test Markets More Aggressive Frisking*, The New American, Aug. 25, 2010; Aubrey Cohen, *How personal should airport screeners get?*, Aerospace News, Aug. 24, 2010 at <http://blog.seattlepi.com/aerospace/archives/219194.asp>; Andrew Hickey, *ACLU Comes Out Strong Against ‘Enhanced Patdown’ of Air Travelers*, Aug. 23, 2010, at <http://blog.cheapoair.com/news/aclu-comes-out-strong-against-enhanced-patdown-of-air-travelers.aspx>; Aubrey Cohen, *How personal should airport screeners get?*, Seattle Post-Intelligencer, Aug. 24, 2010 at <http://blog.seattlepi.com/print.asp?entryID=219194>; Ben Mutzabaugh, *Hands on: TSA tests ‘enhanced patdowns’*, USA TODAY, Aug. 24, 2010; Alana Gomez, *Logan Airport Conducts More Hands-On Pat Downs*, WBZ News, Aug. 21, 2010, at <http://wbztv.com/local/pat-downs.airport.2.1872376.html>; Katie Johnston Chase, *Ahead of the Line*, The Boston Globe, Aug. 29, 2010; Bill Anderson, *TSA to grope flyers who don’t want to submit to naked X-rays*, The New York Post, Aug. 27, 2010; Chris Moran, *TSA’s ‘Enhanced’ Pat-Down Procedure Lets Their Fingers Do the Searching*, The Consumerist, Aug. 30, 2010; Jen Phillips, *TSA’s Frisky New Pat-Downs*, Mother Jones, Aug. 24, 2010.

As the federal government implements these new “enhanced” security screenings, the public has demanded answers to a host of questions. How necessary are these procedures? Do they violate the privacy of travelers? Do they work? Many of these answers can only be gained through an analysis of the documents requested here. For these reasons, the disclosure is very “‘likely to contribute’ to an understanding of government operations or activities” and this contribution is likely to be “significant” given the lack of publicly available information on the subject. 6 C.F.R. § 5.5(k)(2)(ii) and (iv).

Lastly, ACLUM is a non-profit organization whose purposes are the protection of civil rights and liberties and to advance a just, democratic, and pluralistic society. As such, the requesters have no “commercial interest” in the information. 6 CFR § 5.5(k)(1)(ii).

#### **IV. APPLICATION FOR EXPEDITED PROCESSING**

ACLUM respectfully seeks expedited processing of its request for public records for the reasons laid out below and in a certified statement attached as Exhibit B.

We request expedited processing pursuant to 5 U.S.C. § 552(a)(6)(E) and 6 C.F.R. § 5.5(d). There is an urgency to inform the public about the government activities addressed in the request and the requester is an organization primarily engaged in disseminating such information. *See* 6 C.F.R. § 5.5(d)(1)(ii).

**1. There is an urgency to inform the public about a federal government activity.**

The records sought relate to “an alleged government activity” – the “enhanced pat-down” procedures announced and recently implemented by TSA. 6 C.F.R. § 5.5(d)(1)(ii).

There is an urgent need to inform the public about this government activity because it implicates core privacy concerns, but many unanswered questions remain. The public has raised questions regarding the standards that guide or limit these new technologies, including whether they are potentially invasive, necessary or subject to abuse. Without disclosure of the records sought, the public will remain in the dark about TSA’s operations, and cannot assess for itself whether the program is necessary, effective, or subject to sufficient limits and oversight.

The urgent need for information is demonstrated by the numerous news articles, opinion pieces, blogs and internet posts that have been dedicated to this subject in the recent months. A selection of such articles is included in Exhibit A.

As the sustained public interest concerning TSA’s methods clearly attests, there is an “urgent need to inform the public” about this federal governmental activity. 6 C.F.R. § 5.5(d)(1)(ii).

**2. ACLUM is an organization primarily engaged in disseminating information to inform the public.**

ACLUM is an organization “primarily engaged in disseminating information” within the meaning of the FOIA statute and DHS regulations. 5 U.S.C. § 552(a)(6)(E)(v)(II); 6 C.F.R. § 5.5(d)(1)(ii). Obtaining information about government activity, analyzing that information, and widely publishing and disseminating that information to the press and public are critical and substantial components of ACLUM’s work and one of its primary missions. *See ACLU v. Dep’t of Justice*, 321 F. Supp. 2d 24, 30 n.5 (D.D.C. 2004) (finding non-profit public interest group that “gathers information

of potential interest to a segment of the public, uses its editorial skills to turn the raw material into a distinct work, and distributes that work to an audience” to be “primarily engaged in disseminating information” (internal citation and quotation marks omitted)).<sup>3</sup>

ACLUM publishes newsletters, news briefings, reports and other printed materials that are disseminated to the public. ACLUM also disseminates information through its heavily subscribed website, [www.aclum.org](http://www.aclum.org), a blog, <http://www.massrightsblog.org> and regular posts on social media sites such as Facebook and Twitter.

ACLUM regularly publishes reports about government activity and civil liberties issues based on its analysis of information derived from various sources, including information obtained from the government through FOIA. This material is broadly circulated to the public and widely available to everyone for no cost or, sometimes, for a small fee. Many ACLUM reports include a description and analysis of government documents obtained through FOIA.<sup>4</sup>

As the state affiliate of the national ACLU organization, ACLUM also disseminates information through the ACLU. Since 2007 alone, ACLU national projects have published and disseminated over 30 reports. The ACLU regularly publishes books, “know your rights” publications, fact sheets, and educational brochures and pamphlets designed to educate the public about civil liberties issues and government policies that implicate civil rights and liberties.<sup>5</sup>

The ACLU operates a widely-read blog where original editorial content reporting on and analyzing civil rights and civil liberties news is posted daily.<sup>6</sup> The ACLU also creates and disseminates original editorial and educational content on civil rights and civil liberties news through multi-media projects, including videos, podcasts, and interactive features.<sup>7</sup> The ACLU has also produced an in-depth television series on civil liberties called “The Freedom Files.”<sup>8</sup>

The ACLU also publishes, analyzes, and disseminates information through its heavily visited website, [www.aclu.org](http://www.aclu.org). The website addresses civil rights and civil liberties issues in depth, provides features on civil rights and civil liberties issues in the news, and contains many thousands of documents relating to the issues on which the ACLU is focused. The ACLU’s website also serves as a clearinghouse for news about

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<sup>3</sup> Notably, courts have found organizations with missions similar to the ACLU and that engage in information dissemination activities similar to the ACLU to be “primarily engaged in disseminating information.” See, e.g., *Leadership Conference on Civil Rights v. Gonzales*, 404 F. Supp. 2d 246, 260 (D.D.C. 2005) (Leadership Conference on Civil Rights); *ACLU v. Dep’t of Justice*, 321 F. Supp. 2d at 30 n.5 (Electronic Privacy Information Center).

<sup>4</sup> See e.g. *Detention and Deportation in the Age of ICE*, available at [www.aclum.org/ice](http://www.aclum.org/ice) and the accompanying document gallery of FOIA documents at <http://aclum.org/ice/gallery.php>.

<sup>5</sup> A recent search of Amazon.com produced over 60 books published by the ACLU.

<sup>6</sup> See <http://www.aclu.org/blog>.

<sup>7</sup> See <http://www.aclu.org/multimedia/index.html>.

<sup>8</sup> See <http://aclu.tv/>.



ACLU cases, as well as analysis about case developments, and an archive of case-related documents. Through these pages, the ACLU also provides the public with educational material about the particular civil liberties issue or problem; recent news about the issue; analyses of Congressional or executive branch action on the issue; government documents obtained through FOIA about the issue; and more in-depth analytic and educational multi-media features on the issue.<sup>9</sup>

The ACLU website includes many features on information obtained through the FOIA.<sup>10</sup> For example, the ACLU's "Torture FOIA" webpage, <http://www.aclu.org/accountability/released.html>, contains commentary about the ACLU's FOIA request, press releases, analysis of the FOIA documents, and an advanced search engine permitting webpage visitors to search the documents obtained through the FOIA, and advises that the ACLU in collaboration with Columbia University Press has published a book about the documents obtained through the FOIA.

The ACLU has also published a number of charts that collect, summarize, and analyze information it has obtained through FOIA. For example, through compilation and analysis of information gathered from various sources—including information obtained from the government through FOIA—the ACLU has created an original chart that provides the public and news media with a comprehensive index of Bush-era Office of Legal Counsel memos relating to interrogation, detention, rendition and surveillance which describes what is publicly known about the memos and their conclusions, who authored them and for whom, and whether the memos remain secret or have been released to the public in whole or in part.<sup>11</sup> Similarly, the ACLU produced a chart of original statistics about the Defense Department's use of National Security Letters based on its own analysis of records obtained through FOIA.<sup>12</sup> Currently, the ACLU is producing a chart of documents regarding government surveillance obtained through FOIA and state public records requests around the country. The first chart in the series including d obtained by ACLUM in Massachusetts.<sup>13</sup>

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<sup>9</sup> For example, the ACLU's website about national security letter ("NSL") cases, [www.aclu.org/nsl](http://www.aclu.org/nsl), includes, among other things, an explanation of what NSLs are; information about and document repositories for the ACLU's NSL cases, links to documents obtained through FOIA about various agencies' use of NSLs; NSL news in the courts, Congress, and executive agencies; links to original blog posts commenting on and analyzing NSL-related news; educational web features about the NSL gag power; public education reports about NSLs and the Patriot Act; news about and analysis of the Department of Homeland Security Inspector General's reviews of the FBI's use of NSLs; the ACLU's policy analysis and recommendations for reform of the NSL power; charts with analyzed data about the government's use of NSL; myths and facts documents; and links to information and analysis of related issues.

<sup>10</sup> See, e.g., <http://www.aclu.org/accountability/released.html> (Torture FOIA); <http://www.aclu.org/accountability/olc.html> (OLC Memos); <http://www.aclu.org/national-security/csrt-foia> (CSRT FOIA); <http://www.aclu.org/national-security/aclu-v-doj-lawsuit-enforce-nsa-warrantless-surveillance-foia-request> (NSA FOIA); <http://www.aclu.org/national-security/patriot-foia> (Patriot Act FOIA); [http://www.aclu.org/national-security\\_technology-and-liberty/spy-files](http://www.aclu.org/national-security_technology-and-liberty/spy-files) (Spy Files).

<sup>11</sup> The chart is available at [http://www.aclu.org/safefree/general/olcmemos\\_chart.pdf](http://www.aclu.org/safefree/general/olcmemos_chart.pdf).

<sup>12</sup> The chart is available at [http://www.aclu.org/safefree/nationalsecurityletters/released/nsl\\_stats.pdf](http://www.aclu.org/safefree/nationalsecurityletters/released/nsl_stats.pdf).

<sup>13</sup> The chart is available at <http://www.aclu.org/spy-files-massachusetts>

Once released, ACLUM plans to make the information sought here available to the public through several formats, as it has done consistently with responses to FOIA requests in the past. Accordingly, expedited processing is appropriate in this case.

## **V. CONCLUSION**

If our request is denied in whole or part, we ask that you justify all deletions by reference to specific exemptions of the FOIA and that you release all segregable portions of otherwise exempt material. We reserve the right to appeal a decision to withhold any information or to deny a waiver of fees or expedited processing.

We look forward to your reply to the Request within twenty (20) business days, as required under 5 U.S.C. § 552(a)(6)(A)(i). Please reply to this request to by contacting Laura Rótolo at the address above, (617) 482-3170 x311 or through email at [lrotolo@aclum.org](mailto:lrotolo@aclum.org).

Thank you for your prompt attention to this matter.

Sincerely,

  
Laura Rótolo  
Staff Attorney

**FOIA REQUEST BY  
ACLU OF MASSACHUSETTS**

**SEPTEMBER 3, 2010**

**EXHIBIT A**

## New Logan searches blasted TSA tests frisky frisking policy

By Donna Goodison | Saturday, August 21, 2010 | <http://www.bostonherald.com> | Business & Markets

Logan airport security just got more up close and personal as federal screeners launched a more aggressive palms-first, slide-down body search technique that has renewed the debate over privacy vs. safety.

The new procedure - already being questioned by the ACLU - replaces the Transportation Security Administration's former back-of-the-hand patdown.

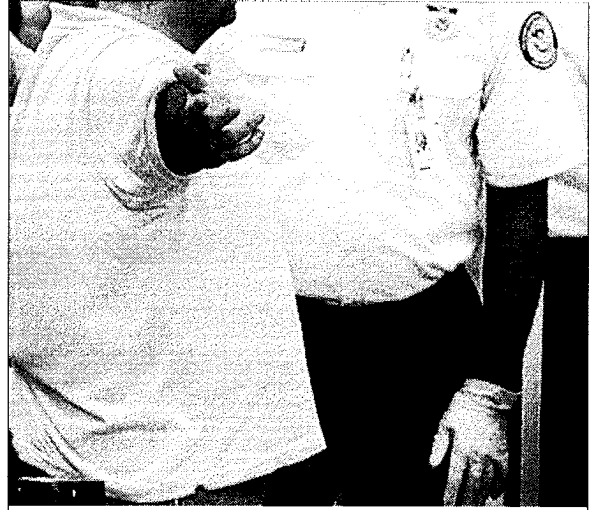


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## Passengers shocked by new touchy-feely TSA screening

By Donna Goodison | Tuesday, August 24, 2010 | <http://www.bostonherald.com> | Business & Markets

Airline passengers from coast to coast are decrying the Transportation Security Administration's more aggressive body searches, calling screeners' new front-of-the-hand, slide-down technique not only invasive but an example of Big Brother run amok.

Rob Webster said he was subjected to a head-to-toe body search that "did not miss an inch" and even included a "probing and pushing" of his genital area when flying home from Las Vegas to Seattle last week.

"If anybody ever groped me like that in real life, I would have punched them in their nose," the 50-year-old said. "It was extremely invasive. This was a very probing-type touching - not just patting over all your areas, but actually probing and pushing and seeing if I was concealing something in my genital area."

Webster was subjected to the body search at McCarran-Las Vegas International Airport after he opted not to walk through a full-body scanner. He objects to the scanners because of the revealing X-ray images they produce and concerns about health effects.

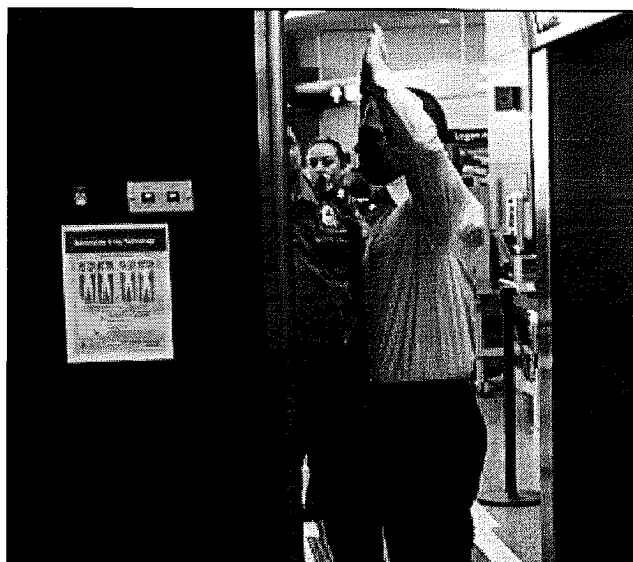


Photo by Ted Fitzgerald

"They said they were going to pat me down, it was going to be very invasive, and they were going to touch every part of my body," Webster said. "And they asked if I had any injuries that might be painful when they were touched."

Webster described himself and his wife as just "normal Americans traveling."

"If they think there are explosives, have a dog there to sniff (passengers) when they come through," he said. "Last time I checked, on 9/11 there were no blond, blue-eyed people who caused the problems. Someone needs to stop these people."

The TSA says it's fielded "very few" formal complaints about the new search techniques - which have raised red flags among civil liberties advocates including the American Civil Liberties Union of Massachusetts - and will continue to use them.

As first reported by the Herald on Saturday, the TSA has started doing the new body searches at Boston's Logan International Airport and McCarran in advance of a national rollout.

The agency said it "constantly evaluates and updates screening procedures to stay ahead of evolving threats." Previously, screeners used pat-down motions of their hands to search passengers over their clothes, switching to the backs of their hands when touching certain "sensitive" body areas.

Danielle Riendeau, an online communications coordinator for the ACLU of Massachusetts, also experienced one of the new body searches after she, too, opted not to walk through a full-body scanner when flying out of Logan.

"Two female TSA screeners took me aside, and it was almost like a medical procedure the way the doctor will explain how they're going to touch you before they touch you," Riendeau said.

The TSA screeners used the palms of their hands to search her face, hair, torso and directly underneath and between her breasts, she said.

"I'm not generally squeamish, but I wasn't aware that this was (going to be) the advanced pat-down," she said. "I thought it was the usual thing that would happen when you set off a metal detector, where they would sort of pat your arms and pat your pockets."

"Next time, I'm probably going to ask to be screened in private, just because it's a busy terminal and it's not necessarily the place you want it to happen," she added.

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## TSA Launches 'Enhanced Patdown,' Draws Critics

The Transportation Security Administration (TSA) is testing a new "enhanced patdown" at airports in Boston and Las Vegas that has officials of the American Civil Liberties Union (ACLU) raising privacy concerns.

The Boston Herald reports officers at Logan International Airport have started doing a "more aggressive palms-first, slide-down the body" search. Previously screeners used the back of their hands on sensitive areas such as the torso.

The ACLU of Massachusetts is "concerned about this seemingly constant erosion of privacy, and we wonder whether or not it's really going to be effective," spokesman Christopher Ott says of the new technique.

The same new procedure is also being tested at McCarran International Airport in Las Vegas prior to a planned national roll-out.

The airports were chosen because they have the largest number of full-body scanners in the country, the newspaper reports.

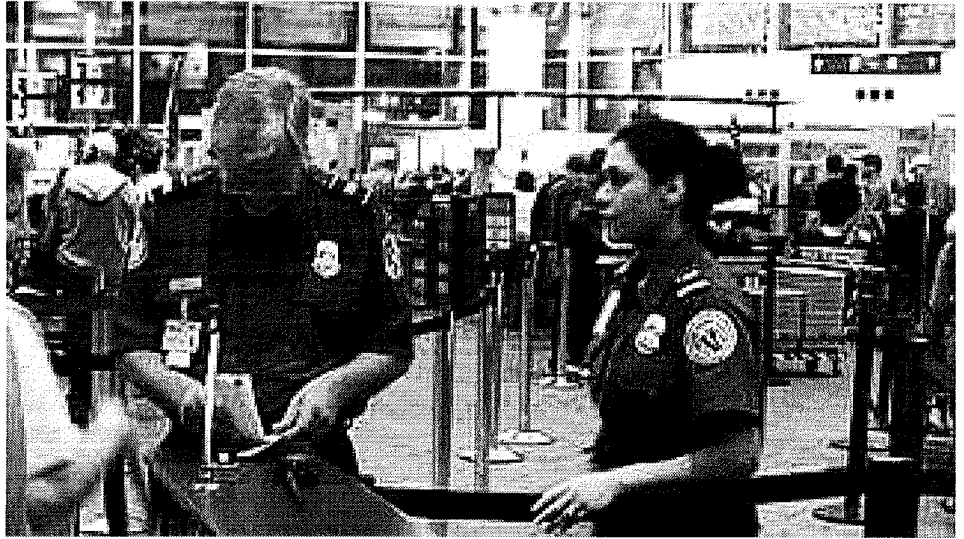
Passengers who choose not to go through the controversial scanning machines, which release a small amount of radiation, can opt instead for a hand search and screening with a standard metal detector.

Patdowns are also conducted on a random basis.

"Patdowns are designed to address potentially dangerous items, like improvised explosive devices and their components, concealed on the body," says TSA spokeswoman Ann Davis.

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## TSA Testing New, More Invasive Pat-Downs For Those Who Refuse Scans

Rachel Slajda | August 24, 2010, 6:22PM

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A man looks at the body scan of a subject at the activation of the first body scanner for international flights at Fiumicino airport in Rome.

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Another search subject, Danielle Riendeau, works for the ACLU of Massachusetts, which opposes the use of the scanners.

The TSA screeners used the palms of their hands to search her face, hair, torso and directly underneath and between her breasts, she said.

The TSA told the Herald that they've received few complaints and will continue with the searches.

Opposition to the scanners has been part about privacy -- despite the TSA's assurances, the machines are apparently capable of storing scans -- and part about the health effects of radiation.

(H/T Mother Jones)

Those who refuse to walk through the new full-body scanners at the airport could be subject to a new style of pat-down, one that's much more invasive and, well, probing than before.

The Boston Herald reports that the Transportation Security Administration is testing the new pat-downs in Boston and Las Vegas, but plans to institute the searches nationwide.

From man on the street Rob Webster, who said he was a subject of the new search when flying out of McCarren-Las Vegas International last week:

"If anybody ever groped me like that in real life, I would have punched them in their nose," the 50-year-old said. "It was extremely invasive. This was a very probing-type touching - not just patting over all your areas, but actually probing and pushing and seeing if I was concealing something in my genital area."

Webster said that bomb-sniffing dogs and racial profiling would be a better option.

"Last time I checked, on 9/11 there were no blond, blue-eyed people who caused the problems. Someone needs to stop these people," he told the Herald.

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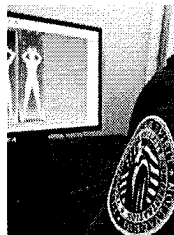
Written by Kelly Holt

Wednesday, 25 August 2010 09:50

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Front-of-hand frisking by police was once reserved for criminals caught in the act. But now the ACLU is questioning a new technique being tested at Boston Logan Airport. In an unbelievable move, the Transportation Security Administration's (TSA) new policy is fueling the debate of privacy over safety with its aggressive palms first, slide-down body search technique, according to the BostonHerald.com Business on August 21. Donna Goodison wrote that the new procedure replacing the TSA's back-of-the-hand patdown and being implemented in Boston and Las Vegas McCarran, is a test before a planned national rollout.

"We're all for good effective security measures," Massachusetts ACLU Massachusetts spokesman Christopher Ott said. "But, in general, we're concerned about this seemingly constant erosion of privacy, and we wonder whether or not it's really going to be effective."

He continued, "Accepting these kinds of searches may keep people safer in some situations, but not in every situation, and we're encouraging people to stop and think about what is the right balance between privacy and security,"

Last week, Ann Davis, TSA spokeswoman for the Northeast Region, confirmed the switch to what the agency calls an "enhanced patdown."

"TSA is in the process of implementing an enhanced patdown at security checkpoints as one of our many layers of security. Patdowns are designed to address potentially dangerous items, like improvised explosive devices and their components, concealed on the body."

Previously, TSA screeners used patdown motions of their hands to search passengers over their clothes, switching to the backs of their hands over sensitive body areas, such as the torso.

Now the searches will be done using all front-of-the-hand sliding motions over greater areas of passengers' bodies, including sensitive areas.

"The pat down just (because I) was wearing jewelry seems like overkill," one woman wrote on Logan's Twitter account last week.

Same-gender TSA officers perform the body searches, and passengers can request private screenings at any time.

The TSA implemented the new body-search procedures at Boston and Las Vegas airports because they're using the greatest number of walk-through full-body scanners. Those scanners use low-dose X-rays to produce two-sided, head-to-toe images of passengers' bodies — including discernible but not distinct images of their private parts - but blur facial features.

Passengers who opt out of the full-body scanners — which have also been assailed by privacy advocates - must instead walk through a metal detector and submit to body searches. If the full-body scanners detect an image on a person's body that screeners can't decipher, that passenger is also subjected to a body search.

If there is no full-body scanner at a security checkpoint, passengers go through a metal detector and are subjected to body searches if the alarm sounds. The TSA also subjects random passengers to body searches.

The argument for privacy violation via the full-body scanners has revealed the TSA has been caught lying about the storage capability of the scanners. Images CAN be stored and exported. (See TNA.)

"Enhanced patdown" isn't much more than a euphemism for sanctioned groping, and at best is causing passengers to feel very nervous. Would that unauthorized border-crossers were checked as thoroughly.

But Justine Griffin, a senior vice president at Rasky Baerlein Communications and frequent flier, said last week, "The most important thing is to have an effective patdown. If using the back of the hand is less effective, then security trumps niceties."

One hears that argument sometimes, but this writer doesn't buy it. The right to privacy is inherent and protected by the Fourth Amendment. People claim, as did Griffin, that the violation of rights is justified when somebody — in this case the government says it is "for our safety." But this thinking is a basic misunderstanding of this Constitutional tenet: Each of the first ten amendments, including the Fourth, was outlined for the purpose of protecting that right when it was threatened, not when it wasn't.

A popular quotation usually attributed to Benjamin Franklin (but valid no matter who originated it) maintains: "Those who would give up Essential Liberty to purchase a little Temporary Safety deserve neither Liberty nor Safety."

Protected rights aren't granted by government, and can't be repealed by government. The protection of rights isn't for when times are safe and calm, but when times are not. The protections are especially needed when threatened. That's what they're for. Like now. When full-on body searches are forced on us.

Why this basic observation goes unobserved is beyond me. If people are sufficiently outraged over this, one wonders if they will be more likely to accept the full-body scan, which in comparison, could seem less intrusive after all.

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# ACLU Comes Out Strong Against 'Enhanced Patdown' of Air Travelers

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## Does new airport patdown go too far?

Full-body scanning machines have been nothing short of controversial since they started being installed in airports nationwide.

Groups against the expensive pieces of machinery have come out strongly complaining they not only are a matter of privacy, but perhaps even a health issue as well.

If you do not want to use the full-body scanners you have the option to instead receive a patdown from a Transportation Security Administration employee.

However now that even is coming under fire with the American Civil Liberties Union of Massachusetts asking whether or not "enhanced patdowns" should be allowed.

The new technique being used by YSA workers at airports in Boston and Las Vegas use what the *Associated Press* describes as a "palms-forward, slide-down search procedure on passengers' bodies."

The TSA says the new procedure will be used in more airports in the near future. The ACLU wonders whether the new method will justify what is being dubbed a "seemingly constant erosion of privacy."

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### How personal should airport screeners get?

The Boston Herald has been reporting on a new pat-down procedure that Transportation Security Administration screeners are using for passengers who decline to go through the new body scanners.

While the body scanners provide a very intimate look (with faces blurred) to a screener in a separate room, the new pat down is a palm-forward feel that leaves no part unfelt, according to the Herald, which said the TSA is trying the procedure out in Boston and Las Vegas.

The Herald followed up an initial report from Saturday with a story Tuesday that included the account of Seattle resident Rob Webster, who opted out of the full-body scan on his way home from Las Vegas and said the resulting physical search included a "probing and pushing" of his genital area.

My problem with all of this (and not just the new pat downs) is that I think safety gained doesn't make up for the cost -- in terms of money spent on all of the screening, time spent in line and screening and privacy lost to machines or hands.

Safety versus cost is always a trade off, just not always one we make rationally. If we did, we'd worry a lot more about highway safety and less about prodding genitals.

Oh, and I'd be remiss if I didn't note that Webster isn't the best representative of the cause of civil liberties.

After describing himself and his wife as just "normal Americans traveling," he told the Herald: "Last time I checked, on 9/11 there were no blond, blue-eyed people who caused the problems."

So invasive pat downs of Muslim-looking people are OK, as long as you leave the blond, blue-eyed people alone?

Posted by **Aubrey Cohen** at August 24, 2010 2:33 p.m.

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Hands on: TSA tests 'enhanced patdowns'

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By [Ben Mutzabaugh](#), USA TODAY

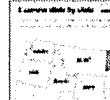
The Transportation Security Administration has started performing what it calls

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"enhanced patdowns" at two of the country's busiest airports, the [Boston Herald](#) reports. The newspaper says the "more aggressive palms-first, slide-down body search technique ... has renewed the debate over privacy vs. safety."

The Herald writes "previously, TSA screeners used patdown motions of their hands to search passengers over their clothes, switching to the backs of their hands over certain 'sensitive' body areas, such as the torso."

The TSA says the effort is being tested at the Boston Logan and Las Vegas McCarran airports ahead of "a national rollout," [The Associated Press](#) reports. The American Civil Liberties Union is now questioning the procedure.

"We're all for good effective security measures," Christopher Ott, a spokesman for the ACLU of Massachusetts, says to the Herald. "But, in general, we're concerned about this seemingly constant erosion of privacy, and we wonder whether or not it's really going to be effective."

Ann Davis, TSA spokeswoman for the Northeast region, confirmed the procedure to the Herald, telling the paper the "enhanced patdowns" are part of the agency's constantly evolving efforts to enhance "our many layers of security."

In a follow-up article mostly critical of the TSA's effort, the Herald offers this description of the procedure from 50-year-old Las Vegas passenger Rob Webster: "It was extremely invasive. This was a very probing-type touching - not just patting over all your areas, but actually probing and pushing and seeing if I was concealing something in my genital area."

Today's talker: Is this a necessary evil or security? Or is it one step too far? [Share your thoughts on this topic.](#)

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**justme2010** (0 friends, [send message](#)) wrote: 6d 20h ago

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Aug 21, 2010 6:16 pm US/Eastern

## Logan Airport Conducts More Hands-On Pat Downs



BOSTON (WBZ) — [Boston](#) Logan security checks are taking a more hands-on approach.

Boston is one of two cities testing out a new pat-down procedure that some think is too invasive.

Reporting  
Alana Gomez

The tweaked technique involves a sliding approach versus a pat-down motion.

It also involves TSA officials using the front of their hand for the whole screening, whereas previously, the back of the hand was used for a passenger's private areas.

The TSA is calling it the "enhanced pat-down."

A spokesperson released a statement writing: "...pat-downs are designed to address potentially dangerous items, like improvised explosive devices and their components, concealed on the body."

While the TSA says it takes passenger privacy very seriously, the ACLU is already condemning the changes.

"We really question the assumption that we can all be safe if we just give up enough privacy," wrote Christopher Ott, spokesperson for the ACLU [Massachusetts](#).

Passengers like Dana Carmo agreed.

"I would feel violated," said Carmo, waiting to board his flight to Las Vegas, the other city implementing the new pat-down. "If I wanted a physical I would make an appointment with my doctor."

Others said it was a small sacrifice for safety.

"I know that a lot of people may be uncomfortable with that but I know that it's not a sexual thing," said Becky Park. "I know that it's not for that purpose it's trying to make sure you don't have anything on you."

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## Ahead of the line

*The Boston Globe*

### Logan puts lessons from 9/11 to work, moving to forefront of airport security

**By Katie Johnston Chase, Globe Staff | August 29, 2010**

It has been nearly a decade since Al Qaeda terrorists hijacked two planes that took off from Logan International Airport and flew them into the World Trade Center. Now, Logan is viewed as one of the safest airports in the country — a distinction that can be both a blessing and a curse.

It was the first US airport to test an Israeli technique for identifying suspicious passengers, the first to arm its police with submachine guns, and the only one to train all its front-line employees to identify suspicious behavior. Even the fishermen digging for clams on the airport's shores and the workers in the terminal shops have been enlisted to watch for security threats.

Because of efforts like these, Transportation Security Administration administrator John Pistole recently called Logan "one of the best, most secure airports in the country."

The security at Logan — and across the nation — has evolved dramatically since the Sept. 11, 2001, terrorist attacks that killed nearly 3,000 people. Before then, the bulk of security at US airports was provided by metal detectors and bomb-sniffing dogs, security lines were manned by private contractors, and checked bags were loaded onto planes without being scanned for explosives. Today, with the US government in charge of security checkpoints, passengers have to remove their shoes and are sometimes subjected to pat-downs and X-rays that reveal their naked bodies, and all checked luggage — and cargo traveling on passenger planes — is now screened.

Logan, which was heavily scrutinized after 9/11, has gone above and beyond what is required by the government, including instituting a daily 8:30 a.m. security meeting and installing concrete barriers in front of the terminals and shatter-proof glass in the windows. In addition to the 1,100 TSA workers at Logan, several hundred employees are dedicated solely to security at the airport. And Massport said it considers all 14,000 airport workers to be part of its security team, with everyone from gate agents to bus drivers to janitors trained by the State Police to keep an eye out for suspicious behavior as part of its Logan Watch program.

"There isn't any part of the wide list of vulnerabilities that we had in 2001 that hasn't been addressed to some degree," said George Naccara, TSA's federal security director at Logan, which in 2004 was recognized by the trade publication Air Safety Week as the inaugural winner of its Exceptional Performance in Airport Security award.

But being at the forefront of the nation's airport security efforts also means Logan — the nation's 20th-busiest airport, serving 25.5 million passengers last year — is among the first to draw criticism from passengers and privacy advocates when it rolls out controversial new security measures.

In March, the airport sparked privacy concerns after it installed full-body scanners that show naked images of passengers' bodies — the first airport to be a part of this year's widespread rollout of the machines. This month, Logan was blasted again after it became one of the first two airports to use an enhanced pat-down in which agents slide the palms of their hands along passengers' bodies, including their groins. Both measures were rolled out in the aftermath of a Nigerian man's attempt to blow up a Northwest Airlines flight from Amsterdam to Detroit using explosives concealed in his underwear.

The American Civil Liberties Union of Massachusetts has weighed in on the enhanced security measures, criticizing the "seemingly constant erosion of privacy" that may not actually be doing anything to prevent a terrorist attack.

"There are reports that terrorists already have methods that can get around these measures, such as implanting explosives in people's bodies," said local ACLU spokesman Christopher Ott. "We really question the assumption that we can all be safe if we just give up enough privacy."



Passengers have lashed out about the invasion of privacy, too. All told, the TSA receives about 100 calls per month from Logan passengers, ranging from complaints about full-body scanners to inquiries about items missing from their checked luggage.

Logan officials acknowledge that some of the security measures are intrusive, but they say it's a necessary step as security techniques — and terrorist threats — evolve.

"We are more secure with this pat-down, but it comes at some cost," said Dennis Treece, director of corporate security for the Massachusetts Port Authority, which runs Logan. "We all knew that right after 9/11, the biggest vulnerability we had was our freedoms."

And despite the increasingly intrusive screening methods, the number of complaints against Logan has gone down over the years, said TSA's Naccara, as travelers have gotten used to the heightened security.

Kendall Romine is one of those passengers. Romine, an 18-year-old Stanford University soccer player, got an enhanced pat-down from a female TSA agent at Logan last week because her foot is in a cast with metal parts. While the experience was "awkward" and "very uncomfortable," she said, she knows it's all in the name of safety.

"It seems a little extreme, but I understand why they're going through such measures," Romine said.

Still, not everyone is convinced that all these extra layers of security make the airport safer. Security specialist Bruce Schneier said Logan's efforts are merely "security theater" that simply prevent terrorists from doing something they have already done.

"The car ride to the airport is still, by far, the most dangerous part of the trip," Schneier said. "Exactly two things have made us safer since 9/11: reinforcing the cockpit door and passengers realizing they have to fight back. Everything else has been a complete waste of money."

But airport security measures continue to increase. By the end of the year, 450 full-body scanners are expected to be in place across the country, and 500 more are on the books for next year. The TSA is in the process of working with technology companies to develop new software that shows a generic stick figure instead of an actual image of a passenger's body as it scans for weapons and explosives. The TSA is also upgrading its checkpoint technology, improving X-ray machines and explosive trace detection swabs, adding liquid scanners to screen medically necessary liquids, and streamlining its system for screening checked baggage.

And Logan, which this fall is adding hundreds of closed-circuit TV cameras to increase surveillance in terminals, checkpoints, and baggage handling areas, plans to continue to push to be a leader in airport security. "It happened here. Two of our airplanes were hijacked, many of our citizens were killed," said Thomas Kinton, Massport president. "It's an ownership of an event, if you will, that was life-changing."

Logan security director Treece imagines a "checkpoint of the future," developed in part by Logan's Center of Excellence, the airport's program for testing new security technology. In this futuristic checkpoint, passengers will simply be scanned as they walk down a corridor, with no machines or humans invading their privacy.

Treece said his dream is, "You walk from the curb to the airplane and you don't take anything off and you don't put anything down."

*Katie Johnston Chase can be reached at [johnstonchase@globe.com](mailto:johnstonchase@globe.com). ■*



## TSA to grope flyers who don't want to submit to naked X-ray scans

By BILL SANDERSON

Last Updated: 1:05 PM, August 27, 2010

Posted: 1:05 PM, August 27, 2010

If you don't want airport screeners to see a picture of you naked, expect a thorough personal groping instead.

The TSA is trying out a new, more aggressive pat-down procedure at airports in Boston and Las Vegas. If it's successful, the procedure will be used around the country alongside new head-to-toe electronic body scanners, say sources.

Among those who could expect to be groped are people who don't want to submit themselves to the new body scanning machines, which seek weapons beneath flyers' clothing, say sources.

Newark Airport will get the electronic scanners next month, and Kennedy and LaGuardia are expected to get them by year's end.

The TSA says the "enhanced" palms-forward patdowns, which will cover sensitive areas that were previously searched with the backs of screeners' hands, are necessary for security.

"Pat-downs are designed to address potentially dangerous items, like improvised explosive devices and their components, concealed on the body," the agency said in a statement.

TSA tried out similar aggressive patdowns in 2004, but abandoned the idea after the American Civil Liberties Union began investigating.

Imposing the patdowns on people who won't submit to full-body electronic scans would be "punitive," said ACLU legislative counsel Chris Calabrese.

"It seems like another erosion of privacy — yet another indignity the traveling public has to endure," Calabrese said.

"Modesty and decency seem to count for very little, but security seems to count for everything."

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[\\_mode=register&blog\\_id=1&return\\_to=http%3A%2F%2Fconsumerist.com%2F2010%2F08%2Ftsas-enhanced-pat-down-procedure-lets-their-fingers-do-the-searching.html](#))

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Short URL: <http://con.st/10010620> (<http://con.st/10010620>)

[touch sensitive](#) ([javascript:void\(0\)](#))

## TSA's "Enhanced" Pat-Down Procedure Lets Their Fingers Do The Searching (<http://consumerist.com/2010/08/tsas-enhanced-pat-down-procedure-lets-their-fingers-do-the-searching.html>)

By [Chris Morran](#) ([http://consumerist.com/cgi-bin/mt/mt-cp.cgi?\\_mode=view&blog\\_id=1&id=1531140](http://consumerist.com/cgi-bin/mt/mt-cp.cgi?_mode=view&blog_id=1&id=1531140)) on August 30, 2010 4:15 PM 0 views

([frankieleon](http://www.flickr.com/photos/armydr2008/4313801825/) (<http://www.flickr.com/photos/armydr2008/4313801825/>))



In an effort to make air travel safer but less appealing, the TSA has begun using an "enhanced" pat-down procedure for those who would rather not subject themselves to a full-body scan. And if you're a fan of having strangers touch you all over, then you should just get straight in line for this one.

According to the Chicago Tribune, the TSA has confirmed the existence of the enhanced pat-down, but wouldn't budge on specifics about details of the procedure, nor would they say at which airports it is being used.

"We are in the process of evaluating and updating our procedures at airports across the country," a TSA spokesman explained/

But the ACLU in Massachusetts has already begun hearing negative feedback from travelers at Boston's Logan Airport who claim to have felt the full force of the new and improved pat-down.

"To call it a pat-down is a euphemism," said a spokesman for the ACLU in Massachusetts. "They really go for it."

He says that -- unlike the antiquated pat-down, which required TSA screeners to use the back of their hands when searching sensitive regions of your person -- the enhanced pat-down allows them to use their palms and fingers to feel and prod passengers.

One traveler who got the deluxe treatment at Logan sums it up thusly: "If anybody ever groped me like that in real life, I would have punched them in their nose."

In addition to Logan, the Tribune says there are reports of the procedure being used in Las Vegas.

Have any Consumerist readers been the recipient of one of these new-fangled, touchy-feely pat-downs? Should they be charging a fee for the manhandling?

**Airline industry sees improvement, yet fees keep coming** (<http://www.chicagotribune.com/travel/la-fi-travel-briefcase-20100830.0.590981.story>) [Chicago Tribune]

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<http://consumerist.com/2010/08/tsas-enhanced-pat-down-procedure-lets-their-fingers-do-the-searching.html>

Mother Jones

# TSA's Frisky New Pat-Downs

*Would you rather be groped? Or graphically scanned?*

By [Jen Phillips](#) | Tue Aug. 24, 2010 1:43 PM PDT

If you're traveling this summer and don't want a TSA agent to see your graphic full-body scan, you might have to opt for a grope. Reports have surfaced that passengers who've refused to go through the TSA's expensive and invasive body scanners have been treated to a more rigorous pat-down. "If anybody ever groped me like that in real life, I would have punched them in their nose," one male traveler told the *Boston Globe*. "It was extremely invasive.. actually probing and pushing and seeing if I was concealing something in my genital area."

The new "enhanced" pat-downs are different in that screeners are using the front of their hands to probe sensitive areas instead of the backs of their hands as they had previously. Another difference is screeners will use a sliding motion to move their hands over passengers' bodies instead of a patting motion. As one female passenger [said](#) <sup>[1]</sup>, screeners touched her face, hair, and underneath and between her breasts in their search for weapons. These new pat-downs are currently being used at Boston's Logan airport and Las Vegas's McCarran airport, but the TSA plans to roll them out nationally. And in case there was any doubt, these touchy-feely pat-downs are just for those who refuse to have their bodies scanned. If you go through a regular metal detector, [one source says](#) <sup>[2]</sup>, you would only get the regular, back-of-hand pat-down.

I can't say which I'd prefer less: being personally probed and prodded by a TSA agent, or having my body graphically scanned knowing the image has the [potential to be saved](#) <sup>[3]</sup>. Despite the TSA blog's [bold declaration](#) <sup>[4]</sup> that "TSA has not, will not and the machines cannot store images of passengers at airports," a lawsuit turned up evidence from DHS that the machines had indeed stored more than 2,000 images for "test purposes." The Electronic Privacy Information Center has [filed a motion](#) <sup>[5]</sup> to immediately halt TSA's use of scanners pending an investigation, but until then, the agency's stance is clear: get scanned or face the consequences.

**Source URL:** <http://motherjones.com/blue-marble/2010/08/tsas-new-gropey-pat-downs>

## Links:

[1] <http://www.bostonherald.com/business/general/view.bg?>

[&articleid=1276565&format=&page=1&listingType=biz#articleFull](#)

[2] <http://www.consumertraveler.com/today/tsa-admits-to-punishing-travelers/comment-page-1/>

[3] [http://epic.org/privacy/airtravel/backscatter/epic\\_v\\_dhs.html](http://epic.org/privacy/airtravel/backscatter/epic_v_dhs.html)

[4] <http://blog.tsa.gov/2010/08/tsa-response-to-feds-admit-storing.html>

[5] [http://epic.org/privacy/body\\_scanners/epic\\_v\\_dhs\\_suspension\\_of\\_body.html#links](http://epic.org/privacy/body_scanners/epic_v_dhs_suspension_of_body.html#links)

**FOIA REQUEST BY  
ACLU OF MASSACHUSETTS**

**SEPTEMBER 3, 2010**

**EXHIBIT B**

**Certified Statement of Laura Rótolo in Support of**  
**Application for Expedited Processing**

My name is Laura Rótolo. I am a Staff Attorney at the American Civil Liberties Union Foundation of Massachusetts (ACLUM), which is making this request for public records under the Freedom of Information Act.

I make this statement in support of ACLUM's request for expedited processing, as required by 6 C.F.R. § 5.5(d)(ii)(3). The following is an explanation of the basis for ACLUM's request for expedited processing.

**1. There is an urgency to inform the public about a federal government activity.**

The records sought relate to “an alleged government activity” – the “enhanced pat-down” procedures announced and recently implemented by TSA. 6 C.F.R. § 5.5(d)(1)(ii).

There is an urgent need to inform the public about this government activity because it implicates core privacy concerns, but many unanswered questions remain. The public has raised questions regarding the standards that guide or limit these new technologies, including whether they are potentially invasive, necessary or subject to abuse. Without disclosure of the records sought, the public will remain in the dark about TSA's operations, and cannot assess for itself whether the program is necessary, effective, or subject to sufficient limits and oversight.

The urgent need for information is demonstrated by the numerous news articles, opinion pieces, blogs and internet posts that have been dedicated to this subject in the recent months. A selection of such articles is included in Exhibit A.

As the sustained public interest concerning TSA's methods clearly attests, there is an “urgent need to inform the public” about this federal governmental activity. 6 C.F.R. § 5.5(d)(1)(ii).

**2. ACLUM is an organization primarily engaged in disseminating information to inform the public.**

ACLUM is an organization “primarily engaged in disseminating information” within the meaning of the FOIA statute and DHS regulations. 5 U.S.C. § 552(a)(6)(E)(v)(II); 6 C.F.R. § 5.5(d)(1)(ii). Obtaining information about government activity, analyzing that information, and widely publishing and disseminating that information to the press and public are critical and substantial components of ACLUM's work and one of its primary missions. *See ACLU v. Dep't of Justice*, 321 F. Supp. 2d 24,

30 n.5 (D.D.C. 2004) (finding non-profit public interest group that “gathers information of potential interest to a segment of the public, uses its editorial skills to turn the raw material into a distinct work, and distributes that work to an audience” to be “primarily engaged in disseminating information” (internal citation and quotation marks omitted)).<sup>1</sup>

ACLUM publishes newsletters, news briefings, reports and other printed materials that are disseminated to the public. ACLUM also disseminates information through its heavily subscribed website, [www.aclum.org](http://www.aclum.org), a blog, <http://www.massrightsblog.org> and regular posts on social media sites such as Facebook and Twitter.

ACLUM regularly publishes reports about government activity and civil liberties issues based on its analysis of information derived from various sources, including information obtained from the government through FOIA. This material is broadly circulated to the public and widely available to everyone for no cost or, sometimes, for a small fee. Many ACLUM reports include a description and analysis of government documents obtained through FOIA.<sup>2</sup>

As the state affiliate of the national ACLU organization, ACLUM also disseminates information through the ACLU. Since 2007 alone, ACLU national projects have published and disseminated over 30 reports. The ACLU regularly publishes books, “know your rights” publications, fact sheets, and educational brochures and pamphlets designed to educate the public about civil liberties issues and government policies that implicate civil rights and liberties.<sup>3</sup>

The ACLU operates a widely-read blog where original editorial content reporting on and analyzing civil rights and civil liberties news is posted daily.<sup>4</sup> The ACLU also creates and disseminates original editorial and educational content on civil rights and civil liberties news through multi-media projects, including videos, podcasts, and interactive features.<sup>5</sup> The ACLU has also produced an in-depth television series on civil liberties called “The Freedom Files.”<sup>6</sup>

The ACLU also publishes, analyzes, and disseminates information through its heavily visited website, [www.aclu.org](http://www.aclu.org). The website addresses civil rights and civil liberties issues in depth, provides features on civil rights and civil liberties issues in the news, and contains many thousands of documents relating to the issues on which the

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<sup>1</sup> Notably, courts have found organizations with missions similar to the ACLU and that engage in information dissemination activities similar to the ACLU to be “primarily engaged in disseminating information.” See, e.g., *Leadership Conference on Civil Rights v. Gonzales*, 404 F. Supp. 2d 246, 260 (D.D.C. 2005) (Leadership Conference on Civil Rights); *ACLU v. Dep’t of Justice*, 321 F. Supp. 2d at 30 n.5 (Electronic Privacy Information Center).

<sup>2</sup> See e.g. *Detention and Deportation in the Age of ICE*, available at [www.aclum.org/ice](http://www.aclum.org/ice) and the accompanying document gallery of FOIA documents at <http://aclum.org/ice/gallery.php>.

<sup>3</sup> A recent search of Amazon.com produced over 60 books published by the ACLU.

<sup>4</sup> See <http://www.aclu.org/blog>.

<sup>5</sup> See <http://www.aclu.org/multimedia/index.html>.

<sup>6</sup> See <http://aclu.tv/>.

ACLU is focused. The ACLU's website also serves as a clearinghouse for news about ACLU cases, as well as analysis about case developments, and an archive of case-related documents. Through these pages, the ACLU also provides the public with educational material about the particular civil liberties issue or problem; recent news about the issue; analyses of Congressional or executive branch action on the issue; government documents obtained through FOIA about the issue; and more in-depth analytic and educational multi-media features on the issue.<sup>7</sup>

The ACLU website includes many features on information obtained through the FOIA.<sup>8</sup> For example, the ACLU's "Torture FOIA" webpage, <http://www.aclu.org/accountability/released.html>, contains commentary about the ACLU's FOIA request, press releases, analysis of the FOIA documents, and an advanced search engine permitting webpage visitors to search the documents obtained through the FOIA, and advises that the ACLU in collaboration with Columbia University Press has published a book about the documents obtained through the FOIA.

The ACLU has also published a number of charts that collect, summarize, and analyze information it has obtained through FOIA. For example, through compilation and analysis of information gathered from various sources—including information obtained from the government through FOIA—the ACLU has created an original chart that provides the public and news media with a comprehensive index of Bush-era Office of Legal Counsel memos relating to interrogation, detention, rendition and surveillance which describes what is publicly known about the memos and their conclusions, who authored them and for whom, and whether the memos remain secret or have been released to the public in whole or in part.<sup>9</sup> Similarly, the ACLU produced a chart of original statistics about the Defense Department's use of National Security Letters based on its own analysis of records obtained through FOIA.<sup>10</sup> Currently, the ACLU is producing a chart of documents regarding government surveillance obtained through FOIA and state public records requests around the country. The first chart in the series including d obtained by ACLUM in Massachusetts.<sup>11</sup>

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<sup>7</sup> For example, the ACLU's website about national security letter ("NSL") cases, [www.aclu.org/nsl](http://www.aclu.org/nsl), includes, among other things, an explanation of what NSLs are; information about and document repositories for the ACLU's NSL cases, links to documents obtained through FOIA about various agencies' use of NSLs; NSL news in the courts, Congress, and executive agencies; links to original blog posts commenting on and analyzing NSL-related news; educational web features about the NSL gag power; public education reports about NSLs and the Patriot Act; news about and analysis of the Department of Homeland Security Inspector General's reviews of the FBI's use of NSLs; the ACLU's policy analysis and recommendations for reform of the NSL power; charts with analyzed data about the government's use of NSL; myths and facts documents; and links to information and analysis of related issues.

<sup>8</sup> See, e.g., <http://www.aclu.org/accountability/released.html> (Torture FOIA) ; <http://www.aclu.org/accountability/olc.html> (OLC Memos); <http://www.aclu.org/national-security/csrt-foia> (CSRT FOIA); <http://www.aclu.org/national-security/aclu-v-doj-lawsuit-enforce-nsa-warrantless-surveillance-foia-request> (NSA FOIA); <http://www.aclu.org/national-security/patriot-foia> (Patriot Act FOIA); [http://www.aclu.org/national-security\\_technology-and-liberty/spy-files](http://www.aclu.org/national-security_technology-and-liberty/spy-files) (Spy Files).

<sup>9</sup> The chart is available at [http://www.aclu.org/safefree/general/olcmemos\\_chart.pdf](http://www.aclu.org/safefree/general/olcmemos_chart.pdf).

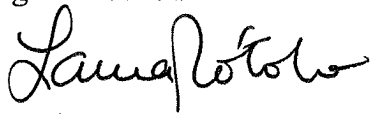
<sup>10</sup> The chart is available at [http://www.aclu.org/safefree/nationalsecurityletters/released/nsl\\_stats.pdf](http://www.aclu.org/safefree/nationalsecurityletters/released/nsl_stats.pdf).

<sup>11</sup> The chart is available at <http://www.aclu.org/spy-files-massachusetts>



Once released, ACLUM plans to make the information sought here available to the public through several formats, as it has done consistently with responses to FOIA requests in the past. Accordingly, expedited processing is appropriate in this case.

I certify that the foregoing statement is true and correct to the best of my knowledge and belief.

Signed: 

Date: 9/3/2010