

U.S. Department of Homeland Security

Freedom of Information Act Office  
601 South 12<sup>th</sup> Street, TSA-20  
Arlington, VA 20598-6020

February 16, 2011



**Transportation  
Security  
Administration**

Ms. Laura Rotolo  
Staff Attorney  
ACLU of Massachusetts  
211 Congress Street  
Boston, MS 02110

**TSA Case Number: TSA10-0825**

Dear Ms. Rotolo:

This letter responds to your Freedom of Information Act (FOIA) request, dated August 31, 2010, to the Transportation Security Administration (TSA) requesting:

1. Policies, procedures and training material 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 "enhanced pat-down" process.

Your request for documents was processed pursuant to the FOIA, 5 U.S.C. § 552. A search within TSA was conducted and the TSA Checkpoint Screening Standard Operating Procedures, the Screening Management Standard Operating Procedures, and the Resolution Pat-Down Standard Operating Procedures (Screening SOPs) are responsive to your request. However, all pages from the SOPs are being withheld in their entirety pursuant to Exemptions (b)(2) "High" and (b)(3). An explanation of these exemptions is outlined below. Alternatively, we have enclosed three pages that provide information regarding the new Pat-down procedures. This information, along with other valuable travel information for the general public, can be found at [www.tsa.gov](http://www.tsa.gov).

It should be noted that pat-downs are one important tool to help TSA detect hidden and dangerous items such as explosives. Pat-downs are conducted by same-gender officers, and all passengers have the right to request private screening with a witness of their choice. Our security officers have received specific training on how to conduct pat-downs, and we hold them accountable for carrying out their responsibilities professionally and respectfully.

### Exemption (b)(2)

Exemption (b)(2) exempts from mandatory disclosure records that are “related solely to the internal personnel rules and practices of an agency.” The courts have interpreted the exemption to encompass two distinct categories of information: (1) internal matters of a relatively trivial nature -- often referred to as (b)(2) “Low” information; and (2) more substantial internal matters, the disclosure of which would risk circumvention of a legal requirement -- often referred to as (b)(2) “High” information.

We have determined that the requested records should be withheld from disclosure as (b)(2) “High” information, in that they contain sensitive materials. Sensitive materials are exempt from disclosure under (b)(2) “High” when the requested document is predominantly internal, and disclosure significantly risks circumvention of a regulation or statute, including civil enforcement and regulatory matters. Whether there is any public interest in disclosure is legally irrelevant. Rather, the concern under (b)(2) “High” is that a FOIA disclosure should not benefit those attempting to violate the law and avoid detection.

### Exemption (b)(3)

Additionally, these documents reveal Sensitive Security Information (SSI) and are thus exempt from disclosure under (b)(3), which permits the withholding of records specifically exempted from disclosure by another Federal statute. Section 114(r) of Title 49, United States Code, exempts from disclosure SSI that “would be detrimental to the security of transportation” if disclosed. The TSA regulations implementing Section 114(r) are found in 49 CFR Part 1520.

Pursuant to Section 1520.5(b)(9)(i), any screening procedures conducted on people, accessible property, checked baggage, U.S. mail, stores, and cargo by the Federal government under Federal aviation transportation security laws are SSI and thus exempt from disclosure under 49 C.F.R. Section 1520.15(a). This information includes any selection criteria, instructions, and implementing guidance for the procedures as well as the procedures themselves.

### Publicly Available Information Regarding Pat-Downs

TSA has made a wide variety of information regarding pat-downs available to the public via its website at <http://www.tsa.gov> and [http://www.tsa.gov/travelers/pat\\_downs.shtm](http://www.tsa.gov/travelers/pat_downs.shtm).

### Fees

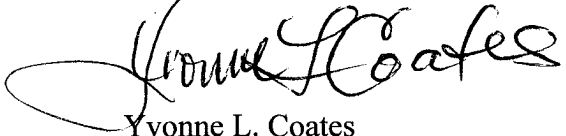
The fees incurred to process this request do not exceed the minimum threshold necessary for charge and, therefore, there is no fee associated with the processing of this request.

### Administrative Appeal

In the event that you wish to appeal this determination, an administrative appeal may be made in writing to Kimberly Walton, Special Counselor, Office of the Special Counselor, Transportation Security Administration, 601 South 12<sup>th</sup> Street, East Building, E7-121S, Arlington, VA 20598-6033. Your appeal **must be submitted within 60 days** from the date of this determination. It should contain FOIA request number **TSA11-0825** and state, to the extent possible, the reasons why

you believe the initial determination should be reversed. In addition, the envelope in which the appeal is mailed in should be prominently marked "FOIA Appeal." Please note that the Special Counselor's determination of the appeal will be administratively final. If you have any questions pertaining to your request, please feel free to contact the FOIA Office at 1-866-364-2872 or locally at 571-227-2300.

Sincerely,

A handwritten signature in black ink that reads "Yvonne L. Coates". The signature is written in a cursive style with a large, looping initial "Y".

Yvonne L. Coates  
Freedom of Information Act Officer  
Office of the Special Counselor  
Transportation Security Administration

Enclosure