

LEGAL DEPARTMENT
TECHNOLOGY AND
LIBERTY PROGRAM



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Bureau of Immigration and Customs Enforcement
425 I Street, NW
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Re: Freedom of Information Act
Request

Attention:

This is a request pursuant to the Freedom of Information Act (5 U.S.C. § 552) for all agency records (including, but not limited to letters, correspondence, tape recordings, notes, data, memoranda, reports, email, computer source and object code, technical manuals, technical specifications, or any other materials) held by

AMERICAN CIVIL LIBERTIES
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RICHARD ZACKS
TREASURER

the United States Federal Aviation Administration (FAA), Department of State, the Executive Office of the President, the Department of Homeland Security (DHS), and/or the Bureau of Immigration and Customs Enforcement (BICE) regarding the discussion, development and/or implementation of biometric systems for travel documents (including, but not limited to passports, visas and border crossing cards). This request includes, but is not limited to agency records regarding the International Civil Aviation Organization and its efforts (including, but not limited to meetings, agreements, resolutions and/or decisions) to develop draft standards for travel document-related biometric systems.

Moreover, this request includes, but is not limited to:

- Travel document-related biometric facial recognition systems. This request includes, but is not limited to documents regarding the following: all documents between FAA, Department of State, Executive Office of the President, DHS and/or BICE officials and ICAO officials; all documents between ICAO officials and any private organizations providing such systems; all documents between FAA, Department of State, Executive Office of the President, DHS and/or BICE officials and any private organizations providing such systems; documents as to how any images will be selected for use in such systems; how these images will be obtained; whether and how drivers' license records will be used in such systems and criteria for inclusion of new images in such databases; any documents related to retention of any such records, including, but not limited to retained records or results, the record retention policies pertaining to these systems, any documentation of the approval of the retention policies by the FAA, the Department of State, the Executive Office of the President, DHS, BICE, ICAO and/or their contractors, documentation reflecting how any of these images will be destroyed, and documentation of any policies permitting such destruction; documents as to what will be done during and after the scanning process; the results of any tests, including, but not limited to any logs or other written descriptions of how any such systems is and/or has been used; the accuracy rates of any such systems while in operation; and the contents of any image databases related to such systems.
- Travel document-related biometric fingerprint recognition systems. This request includes, but is not limited to documents regarding the following: all documents between FAA, Department of State, Executive Office of the President, DHS and/or BICE officials and ICAO officials; all documents between ICAO officials and any private organizations providing such systems; all documents between FAA, Department of State, Executive Office of the President, DHS and/or BICE officials and any private organizations providing such systems; documents as to how any images will be selected for use in such systems; how these images

will be obtained; whether and how drivers' license records will be used in such systems and criteria for inclusion of new images in such databases; any documents related to retention of any such records, including, but not limited to retained records or results, the record retention policies pertaining to these systems, any documentation of the approval of the retention policies by the FAA, the Department of State, the Executive Office of the President, DHS, BICE ICAO and/or their contractors, documentation reflecting how any of these images will be destroyed, and documentation of any policies permitting such destruction; documents as to what will be done during and after the scanning process; the results of any tests, including, but not limited to any logs or other written descriptions of how any such systems is and/or has been used; the accuracy rates of any such systems while in operation; and the contents of any image databases related to such systems.

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- High-capacity contactless integrated circuit microchips for travel documents. This request includes, but is not limited to documents regarding the following: all documents between FAA, Department of State, Executive Office of the President, DHS and/or BICE officials and ICAO officials; all documents between ICAO officials and any private organizations providing such chips; all documents between FAA, Department of State, Executive Office of the President, DHS and/or BICE officials and any private organizations providing such chips; the actual and/or intended contents of any such chips, including, but not restricted to the images of people and/or fingerprints contained in any such chips; the range at which the contents of such chips can be transmitted and/or detected; any documents related to retention of information contained in these chips, including, but not limited to retained records or results, the record retention policies pertaining to these chips, any documentation of the approval of the retention policies by the FAA, the Department of State, the Executive Office of the President, DHS, BICE, ICAO and/or their contractors, documentation reflecting how the information contained in these chips will be destroyed, and documentation of any policies permitting such destruction; documents as to what was and/or will be done during and after the manufacturing and/or programming process for these chips; the results of any tests, including, but not limited to any logs or other written descriptions of system usage; and the accuracy rates of any such chips while in operation.
- Travel document-related Radio Frequency Identification (RFID) systems. This request includes, but is not limited to documents regarding the following: all documents between FAA, Department of State, Executive Office of the President, DHS and/or BICE officials and ICAO officials; all documents between ICAO officials and any private organizations providing such systems; all documents between FAA,

Department of State, Executive Office of the President, DHS and/or BICE officials and any private organizations providing such systems; the actual and/or intended contents of any such systems; the range at which the contents of such systems can be transmitted and/or detected; any documents related to retention of information contained in these systems, including, but not limited to retained records or results, the record retention policies pertaining to these systems, any documentation of the approval of the retention policies by the FAA, the Department of State, the Executive Office of the President, DHS, BICE, ICAO and/or their contractors, documentation reflecting how the information contained in these systems will be destroyed, and documentation of any policies permitting such destruction; documents as to what was and/or will be done during and after the manufacturing and/or programming process for these systems; the results of any tests, including, but not limited to any logs or other written descriptions of system usage; and the accuracy rates of any such systems while in operation.

- Digital signatures systems with a public-key infrastructure. This request includes, but is not limited to documents regarding the following: all documents between FAA, Department of State, Executive Office of the President, DHS and/or BICE officials and ICAO officials; all documents between ICAO officials and any private organizations providing such systems; all documents between FAA, Department of State, Executive Office of the President, DHS and/or BICE officials and any private organizations providing such systems; the actual and/or intended contents of any such systems; any documents related to retention of information contained in these systems, including, but not limited to retained records or results, the record retention policies pertaining to these systems, any documentation of the approval of the retention policies by the FAA, the Department of State, the Executive Office of the President, DHS, BICE, ICAO and/or their contractors, documentation reflecting how the information contained in these systems will be destroyed, and documentation of any policies permitting such destruction; documents as to what was and/or will be done during and after the manufacturing and/or programming process for these systems; the results of any tests, including, but not limited to any logs or other written descriptions of system usage; and the accuracy rates of any such systems while in operation.

This request also includes, but is not restricted to information regarding similar tests being conducted by any public and/or private agency or organization.

We request a fee waiver pursuant to 22 C.F.R. § 171.15 and Federal Aviation Administration Order No. 1270.1, § 46 because the subject matter of the requested records concerns the operations and activities of the Federal government, the disclosure is likely to contribute to an understanding of Federal

government operations or activities, disclosure of the requested information is in the public interest (meaning that the information will contribute to the understanding of the public at large, as opposed to the individual understanding of the requester or a narrow segment of interested persons), the contribution to public understanding of Federal government operations or activities will be significant, and the information is not primarily in our commercial interest.

We seek expedited review of this FOIA request because this information relates to impending policy decisions to which informed members of the public might contribute. Timely public access to these materials is necessary to fully inform the public about the issues surrounding airport security devices and related technological developments.

Specifically, we request expedited access pursuant to 22 C.F.R. § 171.12(c)(2), which allows such processing when a requester "primarily engaged in disseminating information shows an urgency to inform the public of an actual or alleged Federal government activity." We further note that this "exceptional need or urgency for the records" is such that it "beyond the public's right generally to know about government activity" and "warrants prioritization" of this request "over other requests that were made earlier." (See Federal Aviation Administration Order No. 1270.1, § 32(c)(2); OSTP Freedom of Information Act Page, OFFICE OF SCIENCE & TECHNOLOGY POLICY (last visited Aug. 5, 2003) <http://www.ostp.gov/html/foia.html#FOIA%20Requests>.) Airport security (including issues related to travel documents) is a matter of great importance because it raises serious questions as to the government's willingness to protect individual privacy and civil liberties. A considerable amount of press coverage indicates the "urgency to inform the public" on this issue. (See, e.g., *Gov't Tightens Rules for Travel Through U.S.*, ASSOCIATED PRESS, Aug. 2, 2003; Vandana Sinha, *U.S. passports to add facial biometrics*, GOVERNMENT COMPUTER NEWS, July 16, 2003; *Airport Visa Loopholes Closed*, SAN FRANCISCO CHRONICLE, May 20, 2003, at A1; Vandana Sinha, *U.N. aviation group approves biometrics for the fast lane*, GOVERNMENT COMPUTER NEWS, June 16, 2003; Paul Hoversten, *Biometrics companies see combined technologies for U.S. border control*, INT'L BIOMETRIC GROUP, June 25, 2003; Zachary Coile, *Tight new controls for U.S. Visitors: Visa scans, address checks start in January*, *Airport Alert For New Terror Trick*, CBS NEWS, Aug. 4, 2003; ASSOCIATED PRESS, Aug. 2, 2003; *New Screening Plan Taking Flight*, CBS NEWS, July 31, 2003; *An Eye On Security At JFK Airport*, ASSOCIATED PRESS, Nov. 15, 2002.) Any delays in responding to this request for records would compromise a significant recognized interest to and throughout the American general public.

Moreover, the American Civil Liberties Union Foundation (ACLU Foundation) meets the criterion laid out in *National Security Archive v. Department of Defense*, where a representative of the news media is defined as an entity that "gathers information of potential interest to a segment of the public" and "uses

its editorial skills to turn raw materials into a distinct work, and distributes that work to an audience." 881 F. 2d at 1387. The ACLU Foundation publishes newsletters, frequent press releases, news briefings, right to know handbooks, and other materials that are disseminated to the public. Its material is widely available to everyone including tax exempt organizations, not-for-profit groups, law students and faculty through its public education department. The ACLU Foundation disseminates information through publications available on-line at www.aclu.org as well. Thus the organization meets the pertinent regulatory requirements for expedited access.

We have enclosed certification (for the purposes of expedited access) with this letter. If our request is denied in whole or part, we ask that you justify all deletions by reference to specific exemptions of the act. We expect you to release all segregable portions of otherwise exempt material, and we wish to have copies made and furnished of all such material. We reserve the right to appeal your decision to withhold any information or to deny a waiver of fees.

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We look forward to your reply within ten calendar days, as required under 22 C.F.R. § 171.12(e)(2) and Federal Aviation Administration Order No. 1270.1, § 32(c)(3).

Sincerely,

Christopher T. Chiu

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CERTIFICATION

To whom it may concern:

I certify that the following facts are true and correct to the best of my knowledge and belief:

1. The American Civil Liberties Foundation (ACLU Foundation) meets the criterion laid out in *National Security Archive v. Department of Defense*, where a representative of the news media is defined as an entity that "gathers information of potential interest to a segment of the public" and "uses its editorial skills to turn raw materials into a distinct work, and distributes that work to an audience." 881 F. 2d at 1387. The ACLU Foundation publishes newsletters, frequent press releases, news briefings, right to know handbooks, and other materials that are disseminated to the public. Its material is widely available to everyone including tax exempt organizations, not-for-profit groups, law students and faculty for no cost or for a nominal fee through its public education department. The ACLU Foundation disseminates information through publications available on-line at www.aclu.org as well.
2. The requested information, i.e. all agency records (including, but not limited to letters, correspondence, tape recordings, notes, data, memoranda, email, computer source and object code, technical manuals, technical specifications, or any other materials) held by the United States Federal Aviation Administration (FAA), Department of State, the Executive Office of the President, the Department of Homeland Security (DHS), and/or the Bureau of Immigration and Customs Enforcement (BICE) regarding the discussion, development and/or implementation of biometric systems for travel documents (including, but not limited to passports, visas and border crossing cards). This request includes, but is not limited to agency records regarding the International Civil Aviation Organization and its efforts (including, but not limited to meetings, agreements, resolutions and/or decisions) to develop draft standards for travel document-related biometric systems.

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- the President, DHS and/or BICE officials and ICAO officials; all documents between ICAO officials and any private organizations providing such systems; all documents between FAA, Department of State, Executive Office of the President, DHS and/or BICE officials and any private organizations providing such systems; documents as to how any images will be selected for use in such systems; how these images will be obtained; whether and how drivers' license records will be used in such systems and criteria for inclusion of new images in such databases; any documents related to retention of any such records, including, but not limited to retained records or results, the record retention policies pertaining to these systems, any documentation of the approval of the retention policies by the FAA, the Department of State, the Executive Office of the President, DHS, BICE, ICAO and/or their contractors, documentation reflecting how any of these images will be destroyed, and documentation of any policies permitting such destruction; documents as to what will be done during and after the scanning process; the results of any tests, including, but not limited to any logs or other written descriptions of how any such systems is and/or has been used; the accuracy rates of any such systems while in operation; and the contents of any image databases related to such systems.
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- Digital signatures systems with a public-key infrastructure. This request includes, but is not limited to documents regarding the following: all documents between FAA, Department of State, Executive Office of the President, DHS and/or BICE officials and ICAO officials; all documents between ICAO officials and any private organizations providing such systems; all documents between FAA, Department of State, Executive Office of the President, DHS and/or BICE officials and any private organizations providing such systems; the actual and/or intended contents of any such systems; any documents related to retention of information contained in these systems, including, but not limited to retained records or results, the record retention policies pertaining to these systems, any documentation of the approval of the retention policies by the FAA, the Department of State, the Executive Office of the President, DHS, BICE, ICAO and/or their contractors, documentation reflecting how the information contained in these systems will be destroyed, and documentation of any policies permitting such destruction; documents as to what was and/or will be done during and after the manufacturing and/or programming process for these systems; the results of any tests, including, but not limited to any logs or other written descriptions of system usage; and the accuracy rates of any such systems while in operation.

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This request also includes, but is not restricted to information regarding similar tests being conducted by any public and/or private agency or organization.

The disclosure of this information is likely to contribute significantly to the public understanding of the activities of the government. The ACLU Foundation is a nonprofit 501(c)3 research and education organization working to increase citizen participation in governance issues. The ACLU Foundation is making this request specifically for the public's enhanced understanding of airport surveillance, its relationship to constitutional guarantees of privacy as well as an understanding of global technological developments in systems that facilitate and expedite such surveillance. The public's interest is particularly pertinent in light of advancing airport security technology and the large numbers of people who use the nation's air transport network.

3. The tremendous amount of continuing media coverage about airport security systems provides strong evidence of the "urgency to inform the public" on this issue. Airport security (including issues related to travel documents) is a matter of great importance because it raises serious questions as to the government's willingness to protect individual privacy

and civil liberties. A considerable amount of press coverage indicates the "urgency to inform the public" on this issue. (See, e.g., *Gov't Tightens Rules for Travel Through U.S.*, ASSOCIATED PRESS, Aug. 2, 2003; Vandana Sinha, *U.S. passports to add facial biometrics*, GOVERNMENT COMPUTER NEWS, July 16, 2003; *Airport Visa Loopholes Closed*, SAN FRANCISCO CHRONICLE, May 20, 2003, at A1; Vandana Sinha, *U.N. aviation group approves biometrics for the fast lane*, GOVERNMENT COMPUTER NEWS, June 16, 2003; Paul Hoversten, *Biometrics companies see combined technologies for U.S. border control*, INT'L BIOMETRIC GROUP, June 25, 2003; Zachary Coile, *Tight new controls for U.S. Visitors: Visa scans, address checks start in January*, *Airport Alert For New Terror Trick*, CBS NEWS, Aug. 4, 2003; ASSOCIATED PRESS, Aug. 2, 2003; *New Screening Plan Taking Flight*, CBS NEWS, July 31, 2003; *An Eye On Security At JFK Airport*, ASSOCIATED PRESS, Nov. 15, 2002.) Any delays in responding to this request for records would compromise a significant recognized interest to and throughout the American general public. In addition, the requested material may provide answers to serious questions regarding the government's willingness to protect individual privacy and civil liberties.

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Christopher T. Chiu

August 22 2003
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