

United States District Court for the District of Columbia
333 Constitution Avenue, NW, Room 1225, Washington, DC 20001

Sai¹
Plaintiff pro se
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PO Box 401159, San Francisco, CA 94110

Civil Action No.:

v.

Transportation Security Administration (TSA)
Defendant
601 S 12th St, Arlington, VA 22202

**Complaint for Declaratory Judgment, Injunctive Relief,
Statutory Damages, and Costs**

Summary

1. This is a complaint under the Freedom of Information Act ("FOIA", [5 USC § 552](#), [6 CFR § 5.3](#), [49 CFR § 7](#)), and Privacy Act ("PA", [5 USC § 552a](#), [6 CFR § 5.21](#), [49 CFR § 10](#)), challenging the failure of defendant Transportation Security Administration ("TSA") to respond to plaintiff Sai's multiple requests for records under the FOIA and PA.
2. This case seeks expedited action; declaratory relief that TSA repeatedly violated multiple FOIA and PA requirements, that Sai's requests were proper, and that Sai's requests were entitled to public interest fee waivers; injunctive relief that TSA immediately and fully comply with Sai's requests, at no cost to Sai; permanent injunction against TSA's pattern and practice of violating the FOIA and PA; statutory damages; costs, including any costs associated with fulfilling Sai's requests; etc.

¹ Note: "Sai" is plaintiff's *full* legal name.

3. TSA has had a year-long history of failing to properly respond to deadlines — both in the FOIA and PA matters that are the subject of this complaint, and in the Rehabilitation Act grievance whose records are the partial subject of one of Sai's FOIA/PA requests.
4. This complaint lists TSA's failures with respect to the Rehabilitation Act grievance to illustrate the arbitrary, capricious, intentional, and willful nature of TSA and its agents in their behavior, pattern and practice with respect to Sai's FOIA and PA requests, in order to help support the elements of this suit's claims of action under the FOIA and PA.
5. This suit is *solely* under FOIA and PA claims presented below, arising from TSA and its agents' failure to properly respond to Sai's FOIA and PA requests. TSA and its agents' actions at SFO and BOS raise entirely distinct claims that are *not* included in this suit and cannot be joined to or merged with this suit.
6. This complaint is written *pro se*. Although Sai has attempted to read and follow this Court's rules, the Federal Rules of Civil Procedure, the Department Of Justice's FOIA guide, and applicable statutes / regulations, Sai is not an attorney. As such, this suit is entitled to liberal construction in Sai's favor.
7. To the extent that the Court believes that a matter filed by Sai should be construed or interpreted differently than its facial content, Sai respectfully requests that the Court ask Sai for clarification or confirmation, so that its construction or interpretation is in keeping with Sai's intent and in Sai's favor.
8. As separately moved, Sai requests that all communications regarding this matter be sent via email to dccc@s.ai or via CM/ECF.

Jurisdiction and Venue

9. This district is the appropriate venue, and this Court has both subject matter jurisdiction and personal jurisdiction over the parties, per FOIA [5 USC § 552\(a\)\(4\)\(B\)](#) and PA [5 USC §§ 552a\(b\)\(5\)](#), [\(g\)\(5\)](#), as well as federal question jurisdiction under [28 USC § 1331](#).
10. TSA is an agency within the meaning of [5 USC § 552\(f\)](#), [5 USC § 552a\(a\)\(1\)](#), [49 CFR § 7.2](#), [49 CFR § 10.5](#), [6 CFR § 5.1\(b\)](#), and [6 CFR § 5.20\(b\)\(1\)](#).
11. Sai filed on defendant TSA multiple FOIA/PA requests, none of which have been properly responded to.
12. TSA has possession and/or control of the requested records and is responsible for fulfilling Sai's FOIA and PA requests.
13. Sai is an individual with a disability who advocates for improvement in government responsiveness and openness, for individuals' understanding of U.S. law, and for individuals' ability to effect real change in the laws governing them.
14. Sai has previously publicly published documents released under related FOIA / PA requests, such as video from San Francisco International Airport of one of the incidents underlying this complaint. This video, as well as video taken by Sai² and related information, was spread via Sai's website³, social media / blogging, and YouTube channel. Sai's videos related to the BOS and SFO incidents have received (as of writing) a combined total of over 43,000 views, and were featured on the nationally syndicated TV shows RT America News⁴ and Right This Minute

² <http://s.ai/tsa/sfo/video>

³ <http://s.ai/tsa>

⁴ <https://www.youtube.com/watch?v=NjNh8dZ5Y0g>

(twice)⁵.

15. Sai has also published other related documents, such as a shorthand guide to travelers' rights at TSA checkpoints.⁶
16. Sai's publications have been featured prominently on such widely-read sites as Forbes⁷, BoingBoing⁸, Slashdot⁹, Reddit¹⁰, and Hacker News¹¹.
17. Sai intends to release all records responsive to the FOIA/PA requests (other than private information about Sai) in a similar manner, so as to better inform the public about TSA.
18. Sai is harmed by TSA's failure to comply with the FOIA and PA because that failure reduces Sai's ability to provide full, accurate, and current information to the public on a matter of a public interest (within the meaning of [5 USC § 552\(a\)\(4\)\(A\)\(iii\)](#), [49 CFR § 7.44\(e\)](#), [6 CFR § 5.11\(k\)\(1\)](#), and [49 CFR § 10.77\(c\)](#)).
19. Sai is further harmed because TSA's failure prevents Sai's full knowledge of TSA records relating to Sai (a *prima facie* harm which the PA was created to address).
20. Sai is further harmed by TSA's failure to promptly respond (again, a *prima facie* harm under both the FOIA and PA).

⁵ <http://www.righththisminute.com/video/tsa-accused-violating-disabled-travelers-rights>
<http://www.righththisminute.com/video/update-tsa-accused-violating-disabled-travelers-rights>

⁶ http://s.ai/tsa/tsa_rights.pdf

⁷ <http://www.forbes.com/2010/12/17/tsa-body-scanner-technology-airport-security.html>

⁸ <http://boingboing.net/2013/03/31/tsa-routinely-violates-own-rul.html>
<http://boingboing.net/2011/02/19/tsa-cheat-sheet-know.html>

⁹ <http://yro.slashdot.org/story/13/03/31/0217259/fighting-tsa-harassment-of-disabled-travelers>

¹⁰ <http://redd.it/egndf> <http://redd.it/1bexdf> <http://redd.it/1bdjyf>

¹¹ <https://news.ycombinator.com/item?id=5467225>

21. Sai is further harmed because TSA's failure prevents Sai's full knowledge of TSA's compliance with U.S. law and with its own rules¹² regarding travelers with disabilities, such as Sai (e.g. the as yet undisclosed rules that are the subject of one of Sai's FOIA requests, as well as those that were violated in the SFO and BOS incidents that are the partial subject of Sai's other FOIA/PA requests). This harms the ability of Sai, as well as a wide range of other travelers with disabilities, to travel freely without being subject to *any* unlawful deprivation of their rights.
22. Sai has no duty to confer with TSA in this matter under this Court's rules, as exempted in LCvR 16.3(b)(1, 9).
23. Even if Sai *did* have a duty to confer with TSA, that duty was amply fulfilled by repeatedly reminding TSA of their duty to comply with the FOIA/PA, their failure to respond within statutory deadlines, etc. over the course of a year.

¹² As used here, "rules" is meant broadly to include rules, procedures, policies, directives, *de facto* practices, etc.

Statutory Framework

Freedom of Information Act (FOIA)

24. The FOIA requires that federal government agencies "shall make the records promptly available to any person" ([5 USC § 552\(a\)\(3\)\(A\)\(iii\)](#)).
25. The FOIA requires that agencies make an actual determination within 20 working days of receiving the request ([5 USC § 552\(a\)\(6\)\(A\)\(i\)](#), [49 CFR § 7.31](#), [6 CFR § 5.6\(b\)](#)).
26. In "unusual circumstances", this 20 working day deadline may be extended by 10 days, but the agency must provide formal notice and the expected determination date ([5 USC § 552\(a\)\(6\)\(B\)](#)).
27. Adverse determination letters must include reasons for the denial and reference to ability to appeal. ([5 USC § 552\(a\)\(6\)\(A\)\(i\)](#), [6 CFR § 5.6\(c\)](#), [49 CFR § 10.51\(a\)](#))
28. A FOIA requester "shall be deemed to have exhausted [their] administrative remedies with respect to such request if the agency fails to comply with the applicable time limit provisions" ([5 USC § 552\(a\)\(6\)\(C\)\(i\)](#)). In such cases, "the court may retain jurisdiction" to ensure proper processing of the request. (*ibidem*)
29. This Court "has jurisdiction to enjoin the agency from withholding agency records and to order the production of any agency records improperly withheld from the complainant" ([5 USC § 552\(a\)\(4\)\(B\)](#)).
30. "In such a case the court shall determine the matter *de novo*" (*ibidem*).
31. The burden of proof is on TSA to justify its actions. (*ibidem*)

Privacy Act (PA)

32. The PA requires federal agencies to release records to individuals, including the individual's own record "or to any information pertaining to [them]" ([5 USC § 552a\(d\)\(1\)](#)).
33. The PA requires that the agency "maintain all records which are used by the agency in making any determination about any individual with such accuracy, relevance, timeliness, and completeness as is reasonably necessary to assure fairness to the individual in the determination." ([5 USC § 552a\(e\)\(5\)](#)).
34. This "timeliness" provision is parallel to that of the FOIA's 20 working day rule.
35. Adverse determination letters must include reasons for the denial and reference to ability to appeal. ([5 USC § 552a\(f\)\(4\)](#), [6 CFR § 5.23\(c\)\(3\)](#), [49 CFR § 10.51\(a\)](#))
36. The PA requires that the agency account for disclosures made about an individual to that individual upon request. ([5 USC § 552a\(c\)\(3\)](#), [6 CFR § 4.27\(a\)](#), [49 CFR § 10.23\(c\)](#))
37. The PA provides for civil remedies "[w]henver any agency ...(B) refuses to comply with an individual request under subsection (d)(1) of this section; (C) fails to maintain any record concerning any individual with such accuracy, relevance, timeliness, and completeness as is necessary to assure fairness in any determination relating to the qualifications, character, rights, or opportunities of, or benefits to the individual that may be made on the basis of such record, and consequently a determination is made which is adverse to the individual; or (D) fails to comply with any other provision of this section, or any rule promulgated thereunder, in such a way as to have an adverse effect on an individual". ([5 USC §§ 552a\(g\)\(1\)](#))
38. This court has jurisdiction over such remedies (*ibidem*).
39. In a suit for failure to comply under [\(g\)\(1\)\(B\)](#), this court "may enjoin the agency from withholding

the records and order the production to the complainant of any agency records improperly withheld". "In such a case the court shall determine the matter *de novo* ... and the burden is on the agency to sustain its action." Further, the court "may assess against the United States reasonable attorney fees and other litigation costs reasonably incurred". ([5 USC § 552a\(g\)\(3\)](#)).

40. In a suit for failure to comply under [\(g\)\(1\)\(C\)](#) or [\(g\)\(1\)\(D\)](#), if the court "determines that the agency acted in a manner which was intentional or willful", the U.S. *shall* be liable to the requester for the *sum* of at least \$1,000, the costs of action, and reasonable attorney fees. ([5 USC § 552a\(g\)\(4\)](#)).
41. The burden of proof is on TSA to justify its actions. ([5 USC § 552a\(g\)\(3\)\(A\)](#))

Primary Facts Underlying Plaintiff's Claim for Relief

(Partial) Timeline

42. On 2013-01-21, Sai went through a TSA checkpoint at Boston Logan Airport (BOS) while rendered temporarily mute by a neurological disability.
43. On 2013-01-26, based on the events that happened at BOS, Sai filed separate ADA and Rehabilitation Act grievances¹³; FOIA and Privacy Act requests, and evidence preservation demands on TSA, Logan Airport, MA Port Authority Police, Massport, and individual TSA agents involved.
44. The 2013-01-26 FOIA and Privacy Act request included requests for expedited processing, journalistic & public interest fee waiver, and:
 - "all surveillance video from that day covering myself, TSA agents Tonge-Riley, TSA agent Kukula, and/or Officer Coleman
 - all reports related to the event, such as the TSA Incident Report that the TSA agents were required to file when contacting an officer
 - any police reports filed, whether informal or formal, by Coleman or others
 - any and all notes, correspondence, communications, etc relating to the incident by any parties, witnesses, etc
 - the copies of my documents that were made at the scene
 - any and all history of complaints against the TSA agents Tonge-Riley and/or Kukula
 - any and all history of similar complaints against any TSA, Logan police, and/or Logan Airport agent
 - any and all records of my x-ray baggage screening, such as images directly recorded by the baggage x-ray screener, surveillance tapes capturing images of the screener's monitors, manual or automated notes on its clearance status, and any other communications or records of any form that would indicate its results, whether anything looked suspicious on x-ray (and if yes, what), etc.
 - any and all records related to me held by any relevant parties
 - all documents and communication related to responding to this request, whether internal or

¹³ ADA & Rehabilitation Act grievances require a "prompt investigation" per [49 CFR § 21.11\(c\)](#). As widely implemented, the deadline for actual response is 20-30 days; e.g. [29 CFR § 1614.105\(d\)](#), [24 CFR § 8.56\(e\)\(1\)\(i\)](#).

external"

45. On the same day, TSA External Compliance confirmed receipt thereof.
46. On 2013-02-05, the TSA FOIA office assigned case number TSA13-0375 to Sai's 2013-01-26 request.
47. On 2013-02-07, TSA FOIA "administratively closed" TSA13-0375 because Sai allegedly did not "submit a signed perjury statement and respond to the Not Reasonably Describe (NRD) letter".
48. On 2013-02-08, the 10 calendar day deadline elapsed to respond to Sai's 2013-01-26 (TSA13-0375) expedited processing request.
49. On 2013-02-11, Massport representative Macon-Bell contacted Sai, stating that Massport "will take guidance from TSA headquarters" regarding the request for CCTV footage.
50. On 2013-02-12, Michelle Kalowski, Massport's Transportation Security & Aviation legal counsel responded, stating that both the requested video footage and whether or not it existed constituted sensitive security information ("SSI") and therefore would not be released.
51. Massport and Kalowski had no authority to make such a determination, as it is reserved to the Department of Transportation.
52. On 2013-02-15, TSA FOIA representative Paul Sotoudeh stated that Sai's 2013-01-26 request (TSA13-0375) was in fact properly complete under the Privacy Act.
53. On 2013-02-20, TSA FOIA stated that TSA13-0375 was being reopened with case number TSA13-0414, as well as again *knowingly and falsely* claiming that TSA "not received the perjury statement and response to the NRD letter" for TSA13-0375.
54. On 2013-02-21, Sai made a proper FOIA request to Sotoudeh for "any contract/agreement with

other agencies regarding surveillance, or maintenance of surveillance footage, at Logan airport".

55. On 2013-02-22, TSA FOIA assigned case number TSA13-0424 to Sai's 2013-02-21 FOIA request.
56. From 2013-02-25 to 2013-02-28, Sotoudeh and Sai exchanged emails regarding TSA's policies and procedures documents. Sotoudeh detailed the existence of TSA management directives, handbooks, internal policy documents, letters, bulletins, guidance, tables of offenses & penalties, etc., stating that they were all located on the TSA server ishare.tsa.dhs.gov "for easy access in one place".
57. On 2013-02-27, the 20 working day deadline elapsed to respond to Sai's 2013-01-26 request (TSA13-0375).
58. On 2013-03-01, Sai went through a TSA checkpoint at San Francisco International Airport (SFO) with two ~50oz bottles of aloe juice declared as medical liquids.
59. On 2013-03-02, the 10 calendar day deadline elapsed to respond to Sai's 2013-01-26 expedited processing request (re-assigned as TSA13-0414).
60. On 2013-03-15, based on the events at SFO, Sai filed formal ADA and Rehabilitation Act grievances; CPRA, FOIA and Privacy Act requests, and evidence preservation demands separately with TSA External Compliance and CRL offices, Sotoudeh, DoJ ADA office, San Francisco International Airport, Covenant Aviation Security, and individual TSA agents involved, as well as pointing out Massport and TSA's failure to respond to Sai's 2013-01-26 grievances and requests.
61. The 2013-03-15 FOIA and Privacy Act request included requests for expedited processing, journalistic & public interest fee waiver, and:
 - "all surveillance video from 1 March 2013 between 9:30pm and midnight which covers myself,

- any of the named TSA/Covenant agents, or Boarding Area C security area
 - any and all reports related to the event, such as TSA Incident Reports or the like
 - any and all notes, correspondence, communications, etc relating to the incident by any parties, witnesses, etc
 - any and all history of complaints against the TSA/Covenant agents named
 - any and all history of similar complaints against any TSA, Covenant, or San Francisco Airport agent
 - any and all records of my x-ray baggage screening, such as images directly recorded by the baggage x-ray screener, surveillance tapes capturing images of the screener's monitors, manual or automated notes on its clearance status, and any other communications or records of any form that would indicate its results, whether anything looked suspicious on x-ray (and if yes, what), etc.
 - any and all records related to me held by any Relevant Parties
 - any and all documents and communication related to responding to this request, whether internal or external"
62. On the same day, the TSA Office of Disability Policy and Outreach ("ODPO") acknowledged receipt.
63. The 2013-03-15 request was assigned case number TSA13-0488, though this was not disclosed to Sai until TSA's 2013-03-25 response.
64. On 2013-03-16, as per the earlier conversation with Sotoudeh, Sai sent Sotoudeh a FOIA request for *all* of TSA's policy and procedures documents — in specific detail (based on that conversation) sufficient to preclude full quoting herein — and including requests for expedited processing, journalistic and public interest fee waivers, electronic format, etc.
65. The 2013-03-16 request was assigned case number TSA13-0494, though this was not disclosed to Sai until TSA's 2013-03-25 response.
66. On 2013-03-19, San Francisco Deputy City Attorney / Airport Division Stacey Lucas responded to Sai's 2013-03-15 request to SFO, stating that she was submitting the video footage to TSA for SSI clearance.
67. On 2013-03-20, the 20 working day deadline elapsed to respond to Sai's 2013-01-26 request,

re-assigned as TSA13-0414.

68. On 2013-03-21, the 20 working day deadline elapsed to respond to Sai's 2013-02-21 request (TSA13-0424).
69. On 2013-03-21, Sai reminded TSA External Compliance, TSA ODPO, and TSA Civil Rights & Liberties (CRL) offices about their failure to respond.
70. On 2013-03-21, Lucas and Sotoudeh confirmed that SFO (like BOS) explicitly defers to TSA on whether the video requested is SSI.
71. On 2013-03-25, the 10 calendar day deadline elapsed to respond to Sai's 2013-03-15 (TSA13-0488) expedited processing request.
72. On 2013-03-25, TSA FOIA Operations Manager Aeron J. Piñeiro mailed Sai a letter determining that 2013-03-16 request (TSA13-0494) was "too broad in scope or did not specifically identify the records", but specifically noting that the letter was not a denial of the request, and not stating any final determination or venue for appeal.
73. On 2013-03-25, Piñeiro also mailed Sai a letter determining the same of the 2013-03-15 request (TSA13-0488) in part, and stating that TSA would begin processing other parts.
74. On 2013-03-26, the 10 calendar day deadline elapsed to respond to Sai's 2013-03-16 (TSA13-0494) expedited processing request.
75. On 2013-03-30, Sai published to YouTube self-taken video of the SFO incident.¹⁴
76. On 2013-04-01, Sai emailed Sotoudeh in response to TSA's 2013-03-25 letters, specifically contesting their claim that the requests were not reasonably described, and pointing out ambiguity in the response to the 2013-03-15 request.

¹⁴ <http://s.ai/tsa/sfo/video>

77. On 2013-04-01, Lucas stated that TSA had approved release of the SFO video requested in Sai's 2013-03-15 FOIA request.
78. On 2013-04-01, Sai was interviewed on the nationally syndicated TV show RT America News about the SFO incident, together with broadcast of video thereof.¹⁵
79. On 2013-04-03, Sai received and published to YouTube SFO's CCTV video.
80. On 2013-04-04, Sai was interviewed on the nationally syndicated TV show RightThisMinute about the SFO incident, together with broadcast of video thereof.¹⁶
81. On 2013-04-05, TSA ODPO finally acknowledged Sai's complaints.
82. On 2013-04-08, in a written statement to RightThisMinute (accompanying a second nationally broadcast interview¹⁷), TSA Public Affairs Manager Nico Melendez admitted that "TSA did not follow[] its procedures recently at San Francisco International Airport when [Sai] was not permitted to travel with liquids he declared as medically necessary."¹⁸
83. On 2013-04-11, TSA ODPO wrote Sai to open Rehabilitation Act resolution and promising a

¹⁵ <https://www.youtube.com/watch?v=NjNh8dZ5Y0g>

¹⁶ <http://www.rightthisminute.com/video/tsa-accused-violating-disabled-travelers-rights>

¹⁷ <http://www.rightthisminute.com/video/update-tsa-accused-violating-disabled-travelers-rights>

¹⁸ Again, please note that the *substance* of the SFO incident, BOS incident, and Rehabilitation Act grievance thereof form no part of the claims in this suit. This suit is about TSA's completely unjustified, arbitrary, capricious, intentional, and willful refusal to obey *FOIA and PA* statutory requirements.

TSA only began responding to Sai's grievance (months late) as a direct consequence being embarrassed on national TV. Despite quickly providing a statement on national TV *admitting fault*, TSA has not disclosed their already-written response to the formal grievance covering the same incident, *months* after the 180-day Rehabilitation Act deadline (even *after* TSA's unlawful initial delay), and well over the 20 working day 2013-11-23 FOIA / PA request deadline (which included a demand for release of that same response).

TSA's failure to respond to Sai's Rehabilitation Act grievance, despite clear knowledge and public admission of fault, is illustrative of an entire *pattern and practice* of non-compliance.

response within 180 days (as required by statute).

84. On 2013-04-12, the 20 working day deadline elapsed to respond to Sai's 2013-03-15 request (TSA13-0488).
85. On 2013-04-12, the 20 working day deadline elapsed to respond to Sai's 2013-03-16 request (TSA13-0494).
86. On 2013-04-16, Kalowski wrote Sai, stating that Massport had forwarded Sai's request for CCTV footage to TSA for SSI review.
87. On 2013-08-05, 2013-08-08, 2013-08-16, and 2013-09-17, Sai wrote TSA asking for updates and estimated response times on all of the above matters.
88. On 2013-09-18, TSA ODPO wrote Sai, stating that "Both written responses [to the Rehabilitation Act grievance] are currently under review."
89. On 2013-10-18, Sai wrote to Sotoudeh, requesting an update on requests TSA13-0424, TSA13-0414, TSA13-0414, and TSA13-0488; complaining of the lack of response to Sai's response to TSA's rebuttal and clarification of TSA's letters of response and the lack of any substantive response; etc.
90. On 2013-10-21, TSA FOIA officer Gerri Lewis and Sotoudeh responded, stating that TSA case number 2013-TSFO-01179 "is being process[ed]"; that case numbers 2013-TSFO-01096 and 2013-TSFO-01088 "are still waiting on documents".
91. On the same day, Sai requested clarification of these new case numbers. Lewis and Sotoudeh were unable to provide a correspondence between them and the previous case numbers (TSA13-0414, TSA13-0424, and TSA13-0488).
92. On 2013-10-28, TSA's promised 180 day response time (under [6 CFR § 15.70\(g\)\(1\)](#)) elapsed,

without any substantive response.

93. On 2013-11-04, Sai again requested an update, and again reminded TSA that they were in excess of their statutory response deadlines. TSA did not respond.
94. On 2013-11-15, TSA Assistant Administrator for Legislative Affairs Sarah Dietch wrote to Senator Pelosi: "As indicated in our previous letter, several offices within the [TSA] are reviewing both of these complex matters."
95. On 2013-11-23, Sai wrote to TSA ODPO, CRL, External Compliance, and FOIA offices, demanding release of the already-written responses. The same email simultaneously filed a California Public Records Act (CPRA), FOIA, and Privacy Act request for all documents related to both incidents; a list of all documents that TSA failed to preserve and/or that they are aware of but do not possess; a demand for original format and response by e-mail or other electronic file transfer, and journalistic and public interest fee waiver exemption.
96. On 2013-11-27, TSA agent Aeron J. Piñeiro, Operations Manager, Freedom of Information Act Branch, Office of Civil Rights & Liberties, Ombudsman and Traveler Engagement acknowledged the 2013-11-23 FOIA/PA request.
97. Piñeiro failed to give Sai a case number for the 2013-11-23 request.
98. On 2013-12-03, the 10 calendar day deadline elapsed to respond to Sai's 2013-11-23 expedited processing request.
99. On 2013-12-18, Deitch wrote substantially the same update to Senator Pelosi.
100. On 2013-12-23, the 20 working day deadline elapsed to respond to Sai's 2013-11-23 request.
101. On 2013-12-28, Sai again reminded Piñeiro, as well as TSA ODPO, FOIA, External Compliance, and CRL offices that they had failed to obey a statutory deadline, and stated intent

to file suit in DC Circuit Court.

102. On 2014-01-06, Piñeiro emailed Sai, stating that he would "provide estimated dates of completion for all three of your open FOIA requests by midday tomorrow, January 7".

103. As of this writing, Piñeiro still has not done so.

104. Piñeiro was also mistaken; there are *five* FOIA / PA requests outstanding in which no final determination has been made.

Partial summary of legal facts

105. On 2013-01-26 (TSA13-0375 / TSA13-0414), 2013-02-21 (TSA13-0424), 2013-03-15 (TSA13-0488), 2013-03-16 (TSA13-0494), and 2013-11-23, Sai properly asked for records within TSA's control under the FOIA.
106. On 2013-01-26 (TSA13-0375 / TSA13-0414), 2013-03-15 (TSA13-0488), and 2013-11-23, Sai properly asked for records within TSA's control under the PA.
107. On 2013-02-07, TSA wrongfully closed TSA13-0375, by their own admission.
108. In their email assigning TSA13-0375 a new case ID, TSA *knowingly lied* about the reason for its closure.
109. On 2013-03-25, TSA improperly and non-finally made adverse determinations parts of the 2013-03-15 (TSA13-0488) request, and promised to fulfill other parts of the request.
110. On 2013-03-25, TSA improperly and non-finally made adverse determinations the 2013-03-16 (TSA13-0494) request.
111. TSA has wrongfully failed to respond to Sai's counter-arguments and clarifications to TSA's 2013-03-25 adverse, non-final determinations on the 2013-03-15 (TSA13-0488) and 2013-03-16 (TSA13-0494).
112. TSA wrongfully failed to issue any final determination or reference to right of appeal in those requests.
113. The same TSA agent, Operations Manager Aeron J. Piñeiro, improperly responded and/or failed to timely respond to Sai's 2013-03-15 (TSA13-0488), 2013-03-16 (TSA13-0494), and 2013-11-23 FOIA / PA requests.
114. Piñeiro received a copy by email of the bulk of correspondence with TSA ODPO regarding Sai's

grievances and previous FOIA/PA requests and was specifically aware of Sai's demand for release of TSA's written, unreleased, and statutorily untimely responses to formal Rehabilitation Act resolution.

115. By context, Sai's 2013-11-23 FOIA / PA request clearly incorporated and reiterated the contents of Sai's previous requests, as well as requesting the unreleased Rehabilitation Act responses and all records held by TSA about Sai.
116. Massport, acting explicitly on TSA's direction, improperly refused to disclose video of the 2013-01-21 incident — or even to acknowledge its existence — based on the false claim that even its existence is SSI.
117. TSA has previously authorized release CCTV footage as not containing SSI, and authorized San Francisco to release SFO footage in response to Sai's 2013-03-15 FOIA request to SFO.
118. TSA is estopped from arguing the opposite as to Massport's video, and is required to tell Massport that the video is not SSI and should be released.
119. TSA personnel, and Massport personnel explicitly acting at TSA's direction, violated multiple statutory requirements under the FOIA and PA throughout their correspondence with Sai, despite multiple reminders.
120. TSA repeatedly told Nancy Pelosi's office that "several offices within the [TSA] are reviewing these complex matters" — even after the 180 calendar day deadline for response under [6 CFR § 15.70\(g\)\(1\)](#) and 20 working day deadlines for response to Sai's FOIA requests had elapsed, and even after acknowledging that their response had been written.
121. TSA only responded to the Rehabilitation Act grievances underlying parts of Sai's requests *months* late, and then only because Sai was on national TV about the issue.

122. TSA wrongfully refused to release the Rehabilitation Act grievance responses that they have already composed, past the statutory deadlines of the Rehabilitation Act, FOIA, *and* PA.¹⁹
123. TSA has not produced *any* records, nor produced any explicit or justified claim for exemption, in *any* of the above requests.
124. TSA has failed to respond *at all* to any of Sai's requests for expedited processing or for public interest and journalistic fee waivers.
125. TSA repeatedly failed to obey *any* of the FOIA's deadlines for expedited processing determinations.
126. TSA repeatedly failed to obey *any* FOIA or PA deadlines for releasing records.
127. TSA has failed to make *any* final determinations in any of Sai's requests.
128. TSA acted in bad faith in *all* of the above matters.
129. TSA has burden of proof to sustain its actions in *all* of the above matters.
130. Sai has constructively exhausted administrative remedies in *all* of the above requests, due to TSA's complete failure to obey statutory deadlines for response.

¹⁹ Again, please note that TSA's wrongful actions regarding the ADA / Rehabilitation Act grievance are listed here only as background towards substantiating TSA and its agents' entire pattern of arbitrary, capricious, willful and intentional refusal to obey the FOIA and PA.

Claims for Relief

1. TSA failed to produce records under FOIA

131. Sai re-alleges and incorporates by reference all preceding paragraphs.

132. Sai properly made multiple FOIA requests to TSA.

133. Many of the records sought fall within the definition of [49 CFR § 7.5\(a\)](#).

134. Such records must be made available to the public ([49 CFR § 7.7\(a\)](#); [49 CFR § 7.13\(a\)](#), [\(b\)](#)), kept in electronic format in central locations ([49 CFR § 7.10](#)), and kept reasonably segregable ([49 CFR § 7.13\(a\)](#)).

135. TSA repeatedly violated FOIA's mandate to release agency records in a timely manner. ([5 USC § 552\(a\)\(6\)\(A\)\(i\)](#), [49 CFR § 7.31](#), [6 CFR § 5.6\(b\)](#))

136. TSA's failure has risked the destruction of records sought.

137. FOIA's *prima facie* harm of failure to promptly release records entitles Sai to expedited processing of this proceeding, regardless of *pro se* or IFP status.

138. Sai has exhausted administrative remedies. ([5 USC § 552\(a\)\(6\)\(C\)\(i\)](#))

139. Sai is entitled to declaratory relief declaring that TSA has wrongfully withheld records.

140. Sai is entitled to injunctive relief enjoining TSA from withholding records and ordering the production of the agency records. ([5 USC § 552\(a\)\(4\)\(B\)](#))

141. Sai is entitled to reasonable attorney fees and other litigation costs. ([5 USC § 552\(a\)\(4\)\(E\)\(i\)](#))

142. Sai is entitled to injunctive relief, enjoining TSA from assessing any search fees on these requests. ([5 USC § 552\(a\)\(4\)\(A\)\(viii\)](#))

143. Sai is entitled to the Court retaining jurisdiction, to ensure that TSA complies promptly and fully

with these FOIA requests.

144. TSA has burden of proof to sustain its actions. ([5 USC § 552\(a\)\(4\)\(B\)](#))

2. TSA failed to rule on, or to obey, requests for expedited processing and journalistic & public interest fee waivers

145. Sai re-alleges and incorporates by reference all preceding paragraphs.

146. TSA failed to make determinations of expedited processing and journalistic & public interest fee waivers in *any* of Sai's requests.

147. TSA failed to respond to the expedited processing requests within the timeframe required. ([5 USC § 552\(a\)\(6\)\(E\)\(ii\)\(I\)](#), [49 CFR § 7.31\(c\)\(4\)](#), [6 CFR § 5.5\(d\)\(4\)](#))

148. Sai is entitled to declarative relief that Sai's requests do qualify for expedited processing ([5 USC § 552\(a\)\(6\)\(E\)\(i\)](#), *ibidem*) as well as public interest and journalistic fee waivers. ([5 USC § 552\(a\)\(4\)\(A\)\(iii\)](#), [49 CFR § 7.44\(e\)](#), [6 CFR § 5.11\(k\)\(1\)](#), [49 CFR § 10.77\(c\)](#))

149. Sai is entitled to expedited processing of the requests.

150. Such relief is subject to review *de novo*. ([5 USC § 552\(a\)\(4\)\(A\)\(vii\)](#), [5 USC § 552\(a\)\(4\)\(B\)](#))

151. TSA has burden of proof to sustain its actions. ([5 USC § 552\(a\)\(4\)\(B\)](#))

3. TSA wrongfully claimed that the 2013-03-16 (TSA13-0494) FOIA request was "too broad in scope or did not specifically describe" the records sought.

152. Sai re-alleges and incorporates by reference all preceding paragraphs.

153. The records described in the 2013-03-16 (TSA13-0494) request were the direct result of a very detailed conversation with TSA representative Sotoudeh.

154. Sotoudeh specifically confirmed the location and names of many of the records specified in the request.
155. The request specifically described the records sought, including specific references to the names and locations given by Sotoudeh.
156. "The sheer size or burdensomeness of a FOIA request, in and of itself, does not entitle an agency to deny that request on the ground that it does not 'reasonably describe' records within the meaning of 5 U.S.C. § 552(a)(3)(A)" ([FOIA Update, Vol. IV, No. 3, at 5](#)).
157. TSA failed to specify *which portions* of the very detailed request were purportedly "not reasonably described", and was obligated to fulfill the remainder.
158. TSA failed to respond to Sai's response to the negative determination letter, thereby failing to fulfill their duty to work with Sai to clarify the request.
159. TSA failed to make a *final* determination in their response, did not deny the request, and did not give reference to ability to appeal. ([5 USC § 552\(a\)\(6\)\(A\)\(i\)](#), [49 CFR § 10.51\(a\)](#), [6 CFR § 5.6\(c\)](#))
160. Sai is entitled to discovery, to determine TSA's indexing and classification procedures as well as their failure to segregate the request. ([Vaughn v. Rosen, 484 F.2d 820, 826-28 \(D.C. Cir. 1973\)](#); [Heily v. Department of Commerce, 69 F. App'x 171, 174 \(4th Cir. 2003\)](#); [49 CFR § 7.1\(c\)](#))
161. Sai is entitled to declaratory relief that the records sought were "reasonably described" ([5 USC § 552\(a\)\(2\)\(E\)\(ii\)\(3\)\(A\)\(i\)](#), [49 CFR § 7.14\(c\)\(1\)](#), [6 CFR § 5.3\(b\)](#)).
162. Sai is entitled to injunctive relief requiring TSA to release the records sought.
163. Such relief is subject to review *de novo*. ([5 USC § 552\(a\)\(4\)\(B\)](#))

164. TSA has burden of proof to sustain its actions. (*ibidem*)

4. *TSA wrongfully claimed that the 2013-03-15 (TSA13-0488) FOIA / PA request was "too broad in scope or did not specifically describe" the records sought.*

165. Sai re-alleges and incorporates by reference all preceding paragraphs.

166. The request enumerated 8 bullet points of records sought.

167. TSA's response enumerated only 5 bullet points of the request, specifically omitting any mention of the following items, which were properly within TSA's control:

- "all surveillance video from 1 March 2013 between 9:30pm and midnight which covers myself, any of the named TSA/Covenant agents, or Boarding Area C security area
- any and all reports related to the event, such as TSA Incident Reports or the like
- any and all notes, correspondence, communications, etc relating to the incident by any parties, witnesses, etc"

168. TSA's response claimed that "items 4 through 6" of the request were "too broad in scope or did not specifically describe" the records sought.

169. As neither the request, nor the portion of it enumerated in the response, consisted of 6 items, the response is vague and unclear on its face.

170. All items described in the request were reasonably described.

171. TSA completely failed to even mention, let alone address, 3 categories of records sought by the request.

172. TSA failed to respond to Sai's response to the negative determination letter, thereby failing to fulfill their duty to work with Sai to clarify the request.

173. TSA failed to make a *final* determination in their response, did not deny the request, and did not give reference to ability to appeal. ([5 USC § 552\(a\)\(6\)\(A\)\(i\)](#), [5 USC § 552a\(f\)\(4\)](#), [6 CFR §](#)

[5.6\(c\)](#), [49 CFR § 10.51\(a\)](#), [6 CFR § 5.23\(c\)\(3\)](#), [49 CFR § 10.51\(a\)](#))

174. Sai is entitled to declaratory relief that the records sought were "reasonably described" ([5 USC § 552\(a\)\(2\)\(E\)\(ii\)\(3\)\(A\)\(i\)](#), [5 USC § 552a\(d\)\(1\)](#), [6 CFR § 5.3\(b\)](#), [6 CFR § 5.20\(b\)\(1\)](#), [49 CFR § 10.31\(b\)](#)).

175. Sai is entitled to injunctive relief requiring TSA to release the records sought.

176. Such relief is subject to review *de novo*. (5 USC §§ [552\(a\)\(4\)\(B\)](#), [552a\(g\)\(3\)\(A\)](#))

177. TSA has burden of proof to sustain its actions. (*ibidem*)

5. TSA personnel acted arbitrarily and capriciously with respect to the FOIA withholdings

178. Sai re-alleges and incorporates by reference all preceding paragraphs.

179. TSA personnel had no legal basis to fail to produce determinations or to fail to produce documents in any of the above requests.

180. Sai is entitled to declaratory relief finding that the circumstances²⁰ surrounding the withholdings raise questions²¹ whether TSA personnel acted arbitrarily or capriciously with respect to the withholding. ([5 USC § 552\(a\)\(4\)\(F\)\(i\)](#))

181. Sai is entitled to discovery, to determine the extent of TSA's arbitrary or capricious failure to obey FOIA requirements.

182. TSA has burden of proof to sustain its actions. ([5 USC § 552\(a\)\(4\)\(B\)](#))

²⁰ The "circumstances" include TSA's untimely response to Sai's Rehabilitation Act grievance, especially as the (already-composed) response is the partial subject of one of Sai's FOIA/PA requests.

²¹ Please note that the statute does not require a determination of *actual* arbitrary and capricious behavior by agency personnel, but merely the far lesser standard that the circumstances surrounding the withholdings "*raise questions*" as to such behavior, which is clearly met here.

6. *TSA failed to produce records under the Privacy Act*

183. Sai re-alleges and incorporates by reference all preceding paragraphs.

184. Sai properly made multiple Privacy Act requests to TSA.

185. Sai's Privacy Act requests included requests for accounting of any disclosure made by TSA about

Sai. ([5 USC § 552a\(c\)\(3\)](#), [6 CFR § 4.27\(a\)](#), [49 CFR § 10.23\(c\)](#))

186. TSA has not produced any records, any final determination, nor any explicit or justified claim for

exemption. ([5 USC § 552a\(d\)\(1\)](#), [49 CFR § 10.35\(b\)](#))

187. Sai has exhausted administrative remedies.

188. TSA has violated Privacy Act's mandate to release agency records in a timely manner. ([5 USC §](#)

[552a\(e\)\(5\)](#))

189. TSA's failure has risked the destruction of records sought.

190. PA's *prima facie* harm of failure to promptly release records entitles Sai to expedited processing

of this proceeding, regardless of *pro se* or IFP status.

191. Sai is entitled to declaratory relief declaring that TSA has wrongfully withheld records.

192. Sai is entitled to injunctive relief enjoining TSA from withholding records and ordering the

production of the agency records. ([5 USC § 552a\(g\)\(3\)\(A\)](#))

193. Sai is entitled to reasonable attorney fees and other litigation costs. ([5 USC § 552a\(g\)\(3\)\(B\)](#))

194. Sai is entitled to the Court retaining jurisdiction, to ensure that TSA complies promptly and fully

with these PA requests.

195. Such relief is subject to review *de novo*. ([5 USC § 552a\(g\)\(3\)\(A\)](#))

196. TSA has burden of proof to sustain its actions. (*ibidem*)

7. *TSA acted in a manner which was both intentional and willful with respect to the PA withholdings.*

197. Sai re-alleges and incorporates by reference all preceding paragraphs.

198. TSA knew that they were violating the Privacy Act's provisions under [5 USC § 552\(g\)\(1\)\(C\)](#) and [\(g\)\(1\)\(D\)](#).

199. TSA had no legal basis to fail to produce determinations or to fail to produce documents in Sai's Privacy Act requests.

200. TSA violated multiple statutory requirements throughout their correspondence with Sai, despite multiple reminders and self-admitted evidence that multiple offices within TSA knew of and were actively reviewing Sai's requests.

201. TSA admitted that their "administrative closure" of Sai's Privacy Act request TSA13-0375 was wrongful, and then knowingly lied about that same closure.

202. TSA intentionally and willfully stalled and refused to comply with Sai's Privacy Act requests.

203. Sai is entitled to \$1,000 in minimum statutory damages for *each* of the Privacy Act requests (i.e. \$3,000), *plus* the costs of the action and reasonable attorney fees. ([5 USC § 552\(g\)\(4\)](#))

204. Sai is entitled to discovery, to determine the extent of TSA's intentional or willful violation of the Privacy Act.

205. Such relief is subject to review *de novo*. ([5 USC § 552a\(g\)\(3\)\(A\)](#))

206. TSA has burden of proof to sustain its actions. (*ibidem*)

8. *TSA wrongfully failed to authorize the release of Massport's CCTV video to Sai.*

207. Sai re-alleges and incorporates by reference all preceding paragraphs.

208. Sai is entitled to the release of the BOS video.

209. Massport explicitly deferred to and requested TSA's approval to release the CCTV video that was part of the 2013-01-26 request.

210. Massport is a "covered person" under [49 CFR 15.7\(a\)](#).

211. Massport was contracted by TSA to maintain CCTV video for TSA. ([49 CFR § 10.27](#))

212. Massport's deferral to TSA and request to TSA constitute a "referral" under the FOIA, PA, and [49 CFR 15.9\(a\)\(3\)](#).

213. Massport's relationship with TSA places the responsibility on TSA to approve Sai's request for CCTV video at BOS.

214. TSA failed to approve the release of that video.

215. TSA is estopped from doing so, as it has previously authorized release of similar CCTV video, including the video released to Sai by SFO.

216. TSA has repeatedly published equivalent video, *sua sponte*, on its *own* YouTube channel, when the release suited TSA's public relations strategy — thus establishing a presumption that such video is *not* intrinsically SSI, and that any blanket denial is based on an unlawful desire to manage bad PR rather than on a legitimate determination of SSI.²²

217. Sai is entitled to injunctive relief requiring TSA to authorize and order Massport to release the video to Sai.

²² <http://youtube.com/watch?v=2YUSPmveMj0> <http://youtube.com/watch?v=-Jzyp-1fhzE>
<http://youtube.com/watch?v=XXIMbsR0MMc> <http://youtube.com/watch?v=dPAHqsUO9ZE>
<http://youtube.com/watch?v=zCzh3tcZ13s> <http://youtube.com/watch?v=qN9u94ZihgI>
http://youtube.com/watch?v=885bSlu2_b0 <http://youtube.com/watch?v=X-YFZJS1sRM>
<http://youtube.com/watch?v=sj1ET8he5yo> <http://youtube.com/watch?v=-qfCXVLi3Uk>
http://youtube.com/watch?v=_m_9C_G5Bfw http://youtube.com/watch?v=CA0icGRZG_M
<http://youtube.com/watch?v=BN-wZC1v4dc>

218. TSA has burden of proof to sustain its actions. ([5 USC § 552\(a\)\(4\)\(B\)](#))

9. *TSA has a pattern and practice of violating the FOIA and PA*

219. Sai re-alleges and incorporates by reference all preceding paragraphs.

220. TSA has demonstrated a pattern and practice of arbitrarily, capriciously, willfully and intentionally violating the FOIA and PA.

221. There is strong probability that TSA's illegal conduct will recur in the future. ([Long v. United States Internal Revenue Service](#), 693 F.2d 907, 909 (9th Cir. 1982))

222. Sai is entitled to discovery, to determine the extent of TSA's pattern or practice of violating the FOIA or PA. ([Gilmore v. United States Department of Energy](#), 33 F. Supp. 2d 1184, 1189 (N.D. Cal. 1998))

223. Sai is entitled to declaratory and injunctive relief, permanently enjoining TSA from continued violation of the FOIA and PA. ([Hajro v. United States Citizenship and Immigration Services](#), 832 F. Supp. 2d 1095, 1120)

224. Such relief is subject to review *de novo*. (5 USC §§ [552\(a\)\(4\)\(B\)](#), [552a\(g\)\(3\)\(A\)](#))

225. TSA has burden of proof to sustain its actions. (*ibidem*)

Prayer for Relief

226. *Therefore*, Sai respectfully requests that the Court:

227. (1) Declare that TSA violated the FOIA and PA in all of Sai's requests by failing to respond in a timely fashion, make determinations of fee waivers, respond to clarification of scope, provide responsive documents, provide reference to appellate remedy, etc.;

228. (2) Declare that all of Sai's requests "reasonably described" the records sought;

229. (3) Declare that all of Sai's requests are entitled to journalistic and/or public interest fee waivers;

230. (4) Declare that the circumstances surrounding the FOIA withholdings raise questions whether TSA personnel acted arbitrarily or capriciously with respect to the withholding;

231. (5) Declare that TSA acted in bad faith with regard to all of Sai's requests;

232. (6) Order TSA to release all records responsive to all of Sai's requests, at no cost to Sai, within ten days of the order;

233. (7) Order TSA to tell Massport to release the requested CCTV video, within ten days of the order;

234. (8) Order TSA to submit to pre-judgment discovery, interrogatories, and depositions to determine the identities of all people involved in the above matters and their involvement therein; all non-privileged communication to or from TSA or its agents regarding any of the above matters or Sai²³; TSA's policies and practices for responding to FOIA and PA requests; TSA or its agents' willful, intentional, capricious, or arbitrary failures to properly respond under the FOIA or PA; TSA's pattern or practice of violating the FOIA or PA; TSA's indexing and classification of records; TSA's segregation of FOIA and PA requests; the unreasonableness of

²³ giving an unredacted copy to Sai and a copy on the record redacted to protect Sai's privacy

TSA's denials and delays; TSA's bad faith; the elements of the claims of action pled; etc.

235. (9) Retain jurisdiction of this action to ensure TSA responds promptly, completely, and without improperly withholding any records;
236. (10) Award Sai attorney fees, plus all litigation costs and other costs of this action;
237. (11) Award Sai \$3,000 in statutory damages;
238. (12) Expedite this action, under 28 USC § 1657(a);
239. (13) Declare that TSA has a pattern and practice of violating the FOIA and PA;
240. (14) Permanently enjoin TSA from further violations of the FOIA and PA; and
241. (15) Grant such other and further relief as the Court may deem just and proper.

Respectfully submitted,

Sai, *plaintiff pro se*

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