



Sai . &lt;saizai@gmail.com&gt;

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**Your phone message regarding your FOIA request (13-0375)**

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**Sotoudeh, Paul** <Paul.Sotoudeh@tsa.dhs.gov>  
To: tsa@saizai.com

Fri, Feb 15, 2013 at 11:57 AM

Sai,

Thank you very much for your voicemail message regarding your FOIA request. Regarding the Privacy Act authorization, you are correct - your initial request does meet the necessary criteria. You do not need to submit an additional statement.

With regard to the name used to travel, thank you for that information. Could you respond to this email in writing and reiterate the name used? We ask that all amendments or clarifications be made in writing so that no errors are made in the scope or method of the search. Once I receive that email, our office can begin work on searching for documents responsive to your request.

Thanks again for your assistance!

Paul Sotoudeh  
Freedom of Information Act Office  
Transportation Security Administration  
[\(571\) 227-1357](tel:5712271357)

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**Sai** <tsa@saizai.com>  
To: "Sotoudeh, Paul" <Paul.Sotoudeh@tsa.dhs.gov>

Fri, Feb 15, 2013 at 12:30 PM

Paul -

Thank you for your confirmation. I wonder why you wrongly rejected my request to begin with...

My full legal name is just "Sai". The name I used for Secure Flight during this trip was "MR SAI", since the TSA's system is not capable of handling mononyms properly.

I've also previously been entered as "SIR SAI" or "SAI SAI" (and probably others, though I don't recall). I don't always get to choose what someone enters when they book my flights, my name is entered differently in different systems, and given that the input is ambiguous for my name, there's nothing requiring me to use the same thing each time.

The flight for the incident mentioned was AA1551, 21Jan2013 11:30, gate B31.

While we're at it, I'd like to add one more part to my request:

Please provide any and all records that the TSA currently has on me.

This would include, for instance, any records from previous travel, any Secure Flight information, any notes on me (whether or not related to the particular incident I listed), any records about me received from other agencies, any type of record mentioned in any TSA SORN for which there is a record related to me, etc.

Simply put, don't make me guess: I want everything you have on me, no matter where it came from, whether or not it relates to this incident, whether it's held by the national office or a local office (you can presumably check my flight history for a list of airports I've been through; anything produced or received by any of those offices are of course included in the request); etc.

Sincerely,

- Sai

[Quoted text hidden]

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**Sotoudeh, Paul** <Paul.Sotoudeh@tsa.dhs.gov>

Fri, Feb 15, 2013 at 12:45 PM

To: Sai <tsa@saizai.com>

Sai, thanks for the clarification. We'll search using all four possible names (the mononym plus the other three you provided) to ensure we find any and all responsive records. On the initial request, it was just an administrative error. We missed the perjury statement you had included above your signature. Apologies for that.

As for the additional request, we do ask folks who contact us with generalized information requests about the types of contacts they've had with the agency. Do you have any other contacts with TSA (excepting the incident you've provided us) other than having traveled? Have you ever applied for employment with TSA, or for a TSA credential? Has TSA ever formally cited or fined you? If you can answer those questions for us, it will provide enough information to allow us to conduct a "reasonable search" under the Act. Thanks.

Paul Sotoudeh  
Freedom of Information Act Office  
Transportation Security Administration  
(571) 227-1357

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**Sai** <tsa@saizai.com>

Fri, Feb 15, 2013 at 1:42 PM

To: "Sotoudeh, Paul" <Paul.Sotoudeh@tsa.dhs.gov>

Thank you for your clarification; I appreciate your honesty.

I have never applied for employment with any government agency (including the TSA) nor borne any government credential. The TSA has never formally cited or fined me, nor had any legal justification to do so.

However, I have had multiple cases of harassment by TSA agents; the one I reported is merely the most recent.

For instance, on June 27, 2012, around 4pm, at LGA, Deputy Assistant Federal Security Director (A) Paul Bostic (port ID #302113857) confiscated ginger ale that I had clearly declared as a medical liquid, in direct violation of TSA's clearly stated policy. Although I showed him a printout of the TSA Special Needs Memo (from 9/25/2006), he first denied its validity, and then outright refused to obey it — and that was after escalating all the way up to him in the first

place, which means that probably a half dozen TSA agents, supervisors, TSM, etc did the same thing. I want all records related to that event, and furthermore, a clear statement about what corrective measures the TSA takes when TSA agents simply refuse to obey clearly established TSA policy.

On December 25, 2010, I was removed from a United Airlines flight out of ORD (eventually to Berlin; I don't remember what the stopover was), due in large part to my carrying with me a sealed 64oz jug of Odwalla Superfood — which I had declared as a medical liquid, and which was tested by xray plus puffer / ETD machine. I want all records related to that event, including any incident reports, police reports, or the like.

On that occasion, as with many others, my liquid nutrition was cleared only after I insisted that the agents follow TSA policy and showed them a highlighted printout of the Special Needs Memo. TSA agents have variously claimed that juice is not a medical liquid; that a prescription is required for juice; that they are allowed to ignore the policy at their discretion; that they have a right to know the nature of my disability or to judge the medical necessity of juice to me; that "suggested" actually means "required" at their whim; etc.

Though the TSA has claimed previously to have "always permitted" such items, frankly that's a lie. The TSA both currently and formerly, in actual practice by its agents, has harassed and prevented travelers with disabilities like me from travelling with perfectly legal and harmless liquids when completely adequate screening measures were available.

I note, by the way, that the TSA has since removed the SNM from its website, along with its previous clear statement that "medical liquids" specifically includes water and juice and that a prescription is NOT required. Again, this rather gives the lie to a claim to "permit" such items, and encourages TSA agents who want to simply ignore the rights of disabled travelers like me.

Sincerely,  
- Sai

On Fri, Feb 15, 2013 at 9:45 AM, Sotoudeh, Paul  
[Quoted text hidden]

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**Sotoudeh, Paul** <Paul.Sotoudeh@tsa.dhs.gov>  
To: Sai <tsa@saizai.com>

Wed, Feb 20, 2013 at 11:37 AM

Sai, thank you - we'll get the search process started.

Paul Sotoudeh  
Freedom of Information Act Office  
Transportation Security Administration  
(571) 227-1357

-----Original Message-----

From: [saizai@gmail.com](mailto:saizai@gmail.com) [<mailto:saizai@gmail.com>] On Behalf Of Sai  
[Quoted text hidden]

**Sai** <tsa@saizai.com>  
To: "Sotoudeh, Paul" <Paul.Sotoudeh@tsa.dhs.gov>

Wed, Feb 20, 2013 at 12:06 PM

Much appreciated.

Please let me know if you have any further questions or an ETA.

Thanks,  
Sai

On Wed, Feb 20, 2013 at 8:37 AM, Sotoudeh, Paul  
[Quoted text hidden]

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**Sotoudeh, Paul** <Paul.Sotoudeh@tsa.dhs.gov>  
To: Sai <tsa@saizai.com>

Thu, Feb 21, 2013 at 10:13 AM

We will, Sai. Thank you.

I don't know if we discussed this earlier, but you should be aware that we can't produce documents under the FOIA that belong to local or state government agencies, such as Massport or the airport authority with oversight over Logan Airport. FOIA is a federal statute, so we can only produce federal documents - more specifically documents that belong to TSA. You should be able to make a document request under Massachusetts open records laws to any state or local government agencies that may hold records regarding you.

Paul Sotoudeh  
Freedom of Information Act Office  
Transportation Security Administration  
(571) 227-1357

-----Original Message-----

From: saizai@gmail.com [mailto:saizai@gmail.com] On Behalf Of Sai  
[Quoted text hidden]

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**Sai** <tsa@saizai.com>  
To: "Sotoudeh, Paul" <Paul.Sotoudeh@tsa.dhs.gov>

Thu, Feb 21, 2013 at 11:35 AM

Paul -

Yes, I understand that the TSA can only produce records that it has some custody over.

However, I expect that to include

a) records for which there might be joint custody (e.g. records shared with a local airport authority or police, like a police report filed by a TSA agent and kept by both the TSA [to record the filing] and the local police [because they're the target of the report] or checkpoint surveillance video of which any TSA agent has a copy or any access);  
b) records from local TSA offices (which, though they operate within a particular airport, are still part of the federal TSA); and  
c) a list of records about me that you're aware of, which are possessed by other agencies, and any supporting records that indicate how you know that they have it (e.g. if the TSA doesn't possess a copy of surveillance video nor have access to get it, but does know who does, the response should include a listing of the custodian(s) thereof — and e.g. a contract with a local authority to do video surveillance of TSA checkpoints would be a federal work product document that's directly relevant to my question, since it specifies who is the creator and primary custodian of such records).

I'll of course file with other custodians for records that they have exclusive access to.

I just don't want to play a guessing game of everyone claiming someone else is responsible, where e.g. the TSA might claim a local agency has a record but they claim the TSA is the one that controls it, or where neither side will even confirm that they (or someone else) has the record.

Thanks,  
Sai

On Thu, Feb 21, 2013 at 7:13 AM, Sotoudeh, Paul

[Quoted text hidden]

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**Sotoudeh, Paul** <Paul.Sotoudeh@tsa.dhs.gov>

Thu, Feb 21, 2013 at 11:51 AM

To: Sai <tsa@saizai.com>

I'll address all three of your questions in order:

A. It depends. We can produce jointly held records if we created them or if we used them for a federal purpose (a typical example being local surveillance video that is provided to TSA for use in an internal investigation). If there are records that were created locally and have been shared with TSA, but not used for any kind of federal purpose, they're still local records and must be produced through local open records laws.

B. Absolutely. Local TSA offices are still part of TSA, and their records are subject to FOIA.

C. Agencies do not need to create records or do research in order to respond to a FOIA request - the Act only requires a non-overly-burdensome search for reasonably defined existing records. It would be highly unlikely that anyone in TSA has enough access to other agencies' records to even be able to produce a list like this, but even if we did, a response would be outside the scope of the FOIA because it would require records to be created. FOIA is a document-based statute - to comply with FOIA, agencies do not need to answer questions, only produce documents that already exist. In the highly unlikely event such a list already exists, then we'd produce it.

Please let me know if you need additional clarification.

Paul Sotoudeh  
Freedom of Information Act Office  
Transportation Security Administration  
(571) 227-1357

-----Original Message-----

From: saizai@gmail.com [mailto:saizai@gmail.com] On Behalf Of Sai

[Quoted text hidden]

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**Sai** <tsa@saizai.com>

Thu, Feb 21, 2013 at 12:07 PM

To: "Sotoudeh, Paul" <Paul.Sotoudeh@tsa.dhs.gov>

A. Fair enough — but if e.g. you have some record of the existence of another agency's record, that is itself a federal record (albeit a fairly small one since it's just a pointer, but I'll take what I can get).

6 CFR 5.4(a)'s standard of responsibility is whether an agency "has possession" of a record. What's the statutory basis for exempting records that the TSA does possess but did not "use for a federal purpose"? How could the TSA do something \*not\* for a "federal purpose", given that anything the TSA does is presumptively exactly

that?

B. Good.

C. Sure; I'm not asking for the creation of new records, and I understand that FOIA / Privacy Act is about producing extant documents, not doing new research per se.

But e.g. if the TSA doesn't possess checkpoint video for one of the incidents described, it's not asking for the creation of a new record to ask that the TSA provide any records it has of contracts/agreements with local authorities for them to do the video. That would be an existing federal record, and it would help me follow up with the correct local authority to obtain records that the TSA doesn't have.

Thanks,  
- Sai

On Thu, Feb 21, 2013 at 8:51 AM, Sotoudeh, Paul  
[Quoted text hidden]

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**Sotoudeh, Paul** <Paul.Sotoudeh@tsa.dhs.gov>  
To: Sai <tsa@saizai.com>

Thu, Feb 21, 2013 at 12:14 PM

Sai, the examples you give in both A and C are outside the scope of your request. You didn't ask for "record of the existence of another agency's record" (which in and of itself would be outside the reasonableness requirement for a description of records, because there is no reasonable way to conduct a search for all records responsive to that request), nor "agreements/contracts with local authorities" for video. You asked for records concerning you and your incidents.

Paul Sotoudeh  
Freedom of Information Act Office  
Transportation Security Administration  
(571) 227-1357

-----Original Message-----

From: saizai@gmail.com [mailto:saizai@gmail.com] On Behalf Of Sai  
[Quoted text hidden]

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**Sai** <tsa@saizai.com>  
To: "Sotoudeh, Paul" <Paul.Sotoudeh@tsa.dhs.gov>

Thu, Feb 21, 2013 at 5:22 PM

Paul -

Understood; I don't intend to be making an unreasonable request.

Can you please add this to my request?

\* any contract/agreement with other agencies regarding surveillance, or maintenance of surveillance footage, at Logan airport

That's fairly specific, and shouldn't require an unreasonable search.

Thanks,  
- Sai

On Thu, Feb 21, 2013 at 9:14 AM, Sotoudeh, Paul

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**Sotoudeh, Paul** <Paul.Sotoudeh@tsa.dhs.gov>  
To: Sai <tsa@saizai.com>

Fri, Feb 22, 2013 at 10:47 AM

We've already begun search on your existing request, so this will require a new request and new request number and start date. Would you like me to have such a request opened up?

Paul Sotoudeh  
Freedom of Information Act Office  
Transportation Security Administration  
(571) 227-1357

-----Original Message-----

From: saizai@gmail.com [mailto:saizai@gmail.com] On Behalf Of Sai  
[Quoted text hidden]

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**Sai** <tsa@saizai.com>  
To: "Sotoudeh, Paul" <Paul.Sotoudeh@tsa.dhs.gov>

Fri, Feb 22, 2013 at 10:54 AM

Fair enough. Please do.

Thanks,  
Sai

On Fri, Feb 22, 2013 at 7:47 AM, Sotoudeh, Paul  
[Quoted text hidden]

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**Sai** <tsa@saizai.com>  
To: "Sotoudeh, Paul" <Paul.Sotoudeh@tsa.dhs.gov>

Fri, Feb 22, 2013 at 10:57 AM

Also, you skipped two questions in an earlier email:

6 CFR 5.4(a)'s standard of responsibility is whether an agency "has possession" of a record. What's the statutory basis for exempting records that the TSA does possess but did not "use for a federal purpose"? How could the TSA do something \*not\* for a "federal purpose", given that anything the TSA does is presumptively exactly that?

I'd like to understand the reason for your stated exemptions.

Thanks,  
Sai

[Quoted text hidden]

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**Sotoudeh, Paul** <Paul.Sotoudeh@tsa.dhs.gov>  
To: Sai <tsa@saizai.com>

Fri, Feb 22, 2013 at 11:13 AM

Sai, you're reading from the DHS regs, which cover administrative responsibility within DHS for response to a request, not what makes particular records federal and thus subject to the FOIA. FOIA is an act which covers the entire executive branch of government, and interpretations of FOIA-wide matters fall to the Department of Justice and, of course, the courts.

Possession (or creation) of a record only satisfies the first of a two-part test used to determine whether a record is a federal record subject to the FOIA. The second is what has been termed by the Supreme Court as "agency control", and there are four factors outlined by the Supreme Court to be used in determining whether an agency has control of a document, all of which go beyond possession and into the manner in which the agency obtains and utilizes a document, as well as what the intent of the document's creator was.

I'd recommend review of the Department of Justice's FOIA Guide (the most recent version is from 2009 and is readily available on the internet) and relevant caselaw if you'd like further information.

Paul Sotoudeh  
Freedom of Information Act Office  
Transportation Security Administration  
(571) 227-1357

-----Original Message-----

From: [saizai@gmail.com](mailto:saizai@gmail.com) [mailto:[saizai@gmail.com](mailto:saizai@gmail.com)] On Behalf Of Sai

[Quoted text hidden]

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**Sai** <[tsa@saizai.com](mailto:tsa@saizai.com)>  
To: "Sotoudeh, Paul" <[Paul.Sotoudeh@tsa.dhs.gov](mailto:Paul.Sotoudeh@tsa.dhs.gov)>

Sat, Feb 23, 2013 at 4:51 AM

Paul -

Thanks for the reference to the DoJ FOIA Guide; it's interesting reading.

One substantive question from earlier you didn't address: what does the TSA do to actually enforce its stated policies when its agents violate travelers' rights?

As I mentioned, I have repeatedly had experience of TSA agents of all levels either being unaware of policy and acting contrary to it, or outright denying the legitimacy of TSA policy memos and refusing to obey policy, or claiming they had unilateral authority to make up their own rules (e.g. claiming that they could \*require\* a prescription for medical liquids, or confiscate declared liquids rather than searching them).

What recourse does a traveler have in such situations, short of civil suit against the individual agents stripping qualified immunity, or a Bivens/injunction suit against the agency? What is there to make the TSA's claimed policies (e.g. of accepting medical liquids without harassment; of providing assistance to disabled travelers; etc) actually reflected on the ground, rather than just words in a memo that gets ignored?

Thanks,  
Sai

On Fri, Feb 22, 2013 at 8:13 AM, Sotoudeh, Paul

[Quoted text hidden]

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**Sai** <[tsa@saizai.com](mailto:tsa@saizai.com)>  
To: "Sotoudeh, Paul" <[Paul.Sotoudeh@tsa.dhs.gov](mailto:Paul.Sotoudeh@tsa.dhs.gov)>

Sat, Feb 23, 2013 at 10:21 PM

Also, for my previous request: if the TSA does not possess responsive records, please include an answer as to whether the TSA would provide them if it had them, or if not, why and to what extent they would be considered exempt.

Thanks,  
Sai

[Quoted text hidden]



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**Sotoudeh, Paul** <Paul.Sotoudeh@tsa.dhs.gov>

Mon, Feb 25, 2013 at 9:47 AM

To: Sai &lt;tsa@saizai.com&gt;

Sai, I'm not a spokesman for the agency, so I'm not really the guy who should be answering your questions. I'd recommend calling the TSA Contact Center at [866-289-9673](tel:866-289-9673). They should be able to direct you to additional information.

Paul Sotoudeh  
Freedom of Information Act Office  
Transportation Security Administration  
[\(571\) 227-1357](tel:571-227-1357)

-----Original Message-----

From: [saizai@gmail.com](mailto:saizai@gmail.com) [<mailto:saizai@gmail.com>] On Behalf Of Sai

[Quoted text hidden]

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**Sotoudeh, Paul** <Paul.Sotoudeh@tsa.dhs.gov>

Mon, Feb 25, 2013 at 9:51 AM

To: Sai &lt;tsa@saizai.com&gt;

Sai, the creation of such a statement for response would be outside the scope of FOIA. FOIA is a document release statute, and what you're asking for here is essentially that the agency articulate a legal position on a matter.

That said, it is extremely difficult if not impossible to articulate how much FOIA protection might be afforded a hypothetical document. Any government document is potentially subject to release under the FOIA, but without knowing the specific information contained in an actual document and the context in which it was created (for example, attorney work product is protected from release under FOIA the same way it is in a litigation context), there is no way to know what would or would not be releasable.

Paul Sotoudeh  
Freedom of Information Act Office  
Transportation Security Administration  
[\(571\) 227-1357](tel:571-227-1357)

-----Original Message-----

From: [saizai@gmail.com](mailto:saizai@gmail.com) [<mailto:saizai@gmail.com>] On Behalf Of Sai

[Quoted text hidden]

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**Sai** <tsa@saizai.com>

Mon, Feb 25, 2013 at 11:29 AM

To: "Sotoudeh, Paul" &lt;Paul.Sotoudeh@tsa.dhs.gov&gt;

Paul -

I understand that FOIA isn't an interrogatory, and I have to ask for extant documents. However, surely the TSA does have policies about how to enforce its policies on its own personnel, which are themselves articulated in a document somewhere.

That document would answer my question. I think it's "reasonably described", given that I couldn't reasonably know what its specific name or document identifier is.

Regarding release of video: the TSA has previously released checkpoint video (e.g. on its youtube channel). Are there documents related to that that I can request, e.g. any internal or external communications

regarding the decision to do so?

As for spokespersonship: honestly, that's too bad. You're by far the most professional, courteous, and helpful TSA representative I've ever spoken to. TBD of course whether I agree with your formal response ;-), but as for informal assistance you've been excellent.

- Sai

On Mon, Feb 25, 2013 at 6:47 AM, Sotoudeh, Paul

[Quoted text hidden]

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**Sotoudeh, Paul** <Paul.Sotoudeh@tsa.dhs.gov>

Mon, Feb 25, 2013 at 11:54 AM

To: Sai <tsa@saizai.com>

Thanks Sai. I do what I can within my area of responsibility.

As far as employee discipline, there are a number of documents out there that cover that, not just one. There are nationally implemented management directives (which is the term some agencies use for finalized internal policies) and accompanying handbooks entitled "Employee Responsibilities and Conduct" and "Addressing Unacceptable Performance and Conduct", and the nexus between those two sets of policies may give you some sense of what the range of potential penalties is. I don't know if they will provide the specificity you're looking for - every set of facts surrounding an incident is different and the policymakers recognized that, so instead of trying to address every single possibility they wrote in more general terms to allow decision-makers some latitude.

The management directives are available on TSA's website here: <http://www.tsa.gov/research-center/management-directives>

The accompanying handbooks get a little more granular and thus may be of interest to you, but they haven't been made publicly available by TSA and thus officially I'll have to advise you to make a FOIA request to get them. There are versions of these handbooks available online from other sources, but the versions I've seen out there are from early in 2012 and both handbooks were revised later on in that year.

If there's an accompanying handbook to any directive, it will be referenced in the directive itself. So take a look at the directives on the TSA website and let me know if, after doing so, there's a handbook or handbooks you want. We'll enter that as a new FOIA request and go from there.

Paul Sotoudeh  
Freedom of Information Act Office  
Transportation Security Administration  
(571) 227-1357

-----Original Message-----

From: saizai@gmail.com [mailto:saizai@gmail.com] On Behalf Of Sai

[Quoted text hidden]

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**Sai** <tsa@saizai.com>

Mon, Feb 25, 2013 at 12:08 PM

To: "Sotoudeh, Paul" <Paul.Sotoudeh@tsa.dhs.gov>

That's actually a rather helpful pointer; I didn't notice those two MDs (though I have seen the MDs index link).

Naturally, I understand that such policies are necessarily general. Presumably I could also request internal communications relating to any particular previous incident, which might contain as-applied examples, though they might need to be redacted to remove reference to

a particular employee.

Is there some fromal class (e.g. like 1100.73-5 is in the class "Management Directives") which describes the handbooks you reference — or is "Handbooks" the class name?

For instance, [http://www.tsa.gov/video/pdfs/mds/TSA\\_MD\\_1100\\_75\\_3\\_FINAL\\_090102.pdf](http://www.tsa.gov/video/pdfs/mds/TSA_MD_1100_75_3_FINAL_090102.pdf) links to <https://ishare.tsa.dhs.gov/Offices/HumanCapital/HumanCapPolicy/Pages/HumanResourcesLetters,BulletinsGuidance.aspx>, but the latter is not available (presumably it's an internal server). "Bulletins Guidance" and "Letters" sound like they may refer to whole classes of documents.

For that matter, so would "all documents currently on [ishare.tsa.dhs.gov](https://ishare.tsa.dhs.gov)"...

Thanks,  
Sai

On Mon, Feb 25, 2013 at 8:54 AM, Sotoudeh, Paul

[Quoted text hidden]

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**Sotoudeh, Paul** <Paul.Sotoudeh@tsa.dhs.gov>  
To: Sai <tsa@saizai.com>

Mon, Feb 25, 2013 at 12:41 PM

Any "ishare" link is internal only - so if you see that indicator you know it won't be available externally.

If you have a specific incident, you can absolutely request internal communication regarding that incident. That said, there's a very fine line on privacy matters with regard to the releasability of such communication when a specific low-level employee is targeted or accused. While emails are not Privacy Act records because they are not stored in a Privacy Act system of records, the investigative or disciplinary status of a low-level employee falls very much under information that is protected under FOIA Exemption (b)(6), and communication that could potentially reveal that status to a third party is nearly always going to be heavily redacted if not withheld entirely. The target's privacy interest is paramount in those cases. Additionally, internal discussion of whether or not to pursue a particular course of action - investigative or otherwise - is deliberative in nature and thus often falls under the type of information withheld under FOIA Exemption (b)(5).

The "letters, bulletins, and guidance" page is the internal name of the pages with supplementary policies - such as the handbooks we discussed - on them. Within HR, the handbooks are the only recent thing of any substance that gets created anymore in that vein - actual documents entitled "letters", "bulletins", and "guidances" were more common 4 or 5 years ago and further back, but all those policies eventually got rolled up into handbooks to make it easier to find everything. There is a "Table of Offenses and Penalties" which would certainly be of interest to you - that gets as granular, if not more so, than the "Addressing Unacceptable Performance" handbook does. That, along with the relevant handbooks, is something you may want to ask for. Beyond that, there's entirely internal technical guidance like holiday pay rules, an FMLA fact sheet, rules on light duty for injured employees, and so forth.

The only categories for the management directives are the ones you see as the headers on that page - "1100" is the series for Human Capital. I'm not entirely sure what you mean by this question.

If you asked for "all documents currently on ishare", I'd have to get a fee estimate done - the rate charged to individual FOIA requesters is \$41/hour for search and 10 cents per page, with the first 2 hours of search and 100 pages free (commercial requesters get charged more) - and you'd have to send me a check upfront before work got started. I think it's reasonable to assume that the fee would be astronomical :)

Paul Sotoudeh  
Freedom of Information Act Office  
Transportation Security Administration  
(571) 227-1357

-----Original Message-----

From: saizai@gmail.com [mailto:saizai@gmail.com] On Behalf Of Sai

[Quoted text hidden]

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Sai <tsa@saizai.com>

Tue, Feb 26, 2013 at 12:22 AM

To: "Sotoudeh, Paul" <Paul.Sotoudeh@tsa.dhs.gov>

Paul -

I understand that employees have a privacy interest in their disciplinary proceedings; I'm not interested in exposing low-level employees. I am however interested in

a) the general as-applied policy for disciplining employees, especially supervisors or higher, who think they can simply make up and enforce their own further burdens on travelers' rights — something I find reprehensible in the extreme as an abuse of petty power against a population mostly unable to effectively fight back, and  
b) the complaint or enforcement histories of the two STSOs involved in my recent incident at BOS, which I think is already included in my first FOIA/PA request and thus not what I'm asking about here.

Re. emails: by "are not Privacy Act records", do you mean that TSA internal emails are not records controlled by the TSA available to request under FOIA?

I appreciate your clarification re "letters, bulletins, and guidance" and the "Table of Offenses and Penalties"; I'll add that to my next request.

Re. classification: I think I was unclear; I wasn't asking about subcategories of MD. To rephrase: a Handbook is not, as I understand, a Management Directive; e.g. if I asked for all "1100 series MDs" you probably wouldn't include the handbook. Is "Handbooks" a clear enough description that it would include similar guides to other MDs / SDs / etc?

Re. costs:

a) Is \$41/hr the salary of the lowest paid employee capable of doing the search? If not, why the higher cost? If yes, why so high? I expect that most data clerks or the like don't make nearly that much.

b) Why does it take any "search" time at all, given that you already have ishare readily indexed and available?

A single console command could list all its files. If anything, asking for everything on it would require \*less\* search time than asking for a part of it, which would require filtering. ;-)

c) Why does the TSA incur actual costs at 10¢/page for server-to-server transfer of files that are already online?

File transfer does not cost on a per page basis (TCP doesn't know what a "page" is :-P); it might cost on a per gigabyte basis. I am not asking for printouts, after all (quite the opposite) — and I'm happy to either provide a server for file transfer or to get the files directly from yours (which could probably count as "inspection" rather than "copying").

d) to help in estimating costs of a bulk transfer — for each of these types of document, approximately how many documents are there, and how many gigabytes are they in total size?

Management Directives  
 Standard Operating Procedures  
 Operations Directives  
 Security Directives  
 Emergency Amendments  
 Information Circulars  
 Memoranda  
 Handbooks

Unless it truly is an astronomical actual cost to transfer all the files, I would indeed like to ask for all of them. And, honestly, I simply don't believe that there's any significant cost to providing the files. I deal with very large data transfers professionally on a daily basis and am rather familiar with the actual costs and difficulties involved. My request could be served by a single rsync command left to run overnight.

As an example, Amazon's S3 storage service (<https://aws.amazon.com/s3/pricing/>) charges 5.5-9.5¢ per GB-month of storage, 1¢ per 1,000 uploads, \$0 for data transfer in, and 5-12¢ per GB of data transfer out. I consider that to be a perfectly reasonable cost, and would expect the TSA's actual costs of providing the files to me to be roughly similar.

To eclipse even \$100 of actual cost, we'd have to be talking about terabytes of data or around a quarter million 2MB PDF documents... and for your sake, I really hope that you don't have \*that\* many policy documents. ;-)

Regarding fee category & waivers:

- a) I am not a commercial requester; I would not make any money the publication of these records, and only a minority of them are related to my own case
- b) I am very capable of ensuring the hosting and publication all received documents online to the general public at no charge, and intend to do so, as well as to publicize highlights of the contents of the documents through multiple online publications; as such, I am a representative of the news media and entitled to waiver of search fees
- c) I believe the documents are of significant public interest entitled to waiver of duplication fees, since
  - as above, I both am able and intend to disseminate the files widely
  - they affect essentially everyone who flies (or who is otherwise affected by post-9/11 security policy); as such, the breadth of benefit beyond my own is rather large
  - they would quite obviously contribute to the public understanding of the operations & activities of the TSA, in that they are formal descriptions of exactly that
  - the documents are not currently readily available, and I intend to exclude from the request any documents already on the TSA's "electronic reading room" page
  - they are likely to be requested by others
- d) as mentioned above, I'm explicitly \*not\* asking for any actual duplication other than direct server-to-server file transfer (which is essentially free)

The FOIA doesn't authorize fees beyond the Agency's actual costs; any kind of per-page cost regulation is clearly based on cost to duplicate paper records, not on cost for servicing electronic records, and therefore doesn't apply.

If you want a demonstration of the breadth of interest in these documents, that can be easily arranged. I think you'd probably rather deal with me than a potentially very large number of individual requesters, though; most of them are unlikely to be as informed about or interested in the legal and procedural niceties, and it'd be more burden on you to serve a mass of requests.

Similarly, I'd like to say again that I sincerely appreciate the degree of professionalism, helpfulness, and courtesy you've shown me so far in our conversation. However, if you intend to charge me some crazy per-page fee for the transfer to my server of documents that are already on your server and are of significant public interest to disclose, I will appeal that decision in court. ;-)

I'd strongly prefer not have to go that route; I'd much rather work cooperatively with you to get this done, and I am happy to be of as much assistance as I can.

Thanks,  
Sai

On Mon, Feb 25, 2013 at 9:41 AM, Sotoudeh, Paul

[Quoted text hidden]

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**Sotoudeh, Paul** <Paul.Sotoudeh@tsa.dhs.gov>  
To: Sai <tsa@saizai.com>

Tue, Feb 26, 2013 at 11:29 AM

Costs on FOIA aren't set by TSA. I'll refer you to DOJ and the DHS regs for more specifics, but those fees are government-wide, and in practicality at least a supervisory person needs to review and verify the search to ensure that the requester is getting everything they asked for.

On requester status, I'll refer you back to the DOJ FOIA Guide. Taking documents received via FOIA and posting them online does not qualify a requester for "media" status. Congress included a definition of "news media" in the statute a few years ago to make it clear - a media requester must use their "editorial skills to turn the raw materials into a distinct work". You have the option of presenting evidence that you should receive that status at the time you submit your request. This is not the forum for that - you should do so when your request is actually submitted - but as advice I'll tell you you'll need to show much more than you have here. If you provide prior examples of your journalistic work, that will help you.

There are a lot of things on iShare that are not policy documents - it's a massive internal website, not just a policy repository. If you want just the policy documents from a certain part of iShare, especially if you clarify that you want everything from a certain office or offices, I'd expect that's something we'd be able to work with.

Paul Sotoudeh  
Freedom of Information Act Office  
Transportation Security Administration  
(571) 227-1357

-----Original Message-----

From: [saizai@gmail.com](mailto:saizai@gmail.com) [mailto:[saizai@gmail.com](mailto:saizai@gmail.com)] On Behalf Of Sai  
Sent: Tuesday, February 26, 2013 12:22 AM  
To: Sotoudeh, Paul

Subject: Re: Your phone message regarding your FOIA request (13-0375)

Paul -

[Quoted text hidden]

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Sai <tsa@saizai.com>  
To: "Sotoudeh, Paul" <Paul.Sotoudeh@tsa.dhs.gov>

Tue, Feb 26, 2013 at 12:12 PM

On Tue, Feb 26, 2013 at 8:29 AM, Sotoudeh, Paul  
<Paul.Sotoudeh@tsa.dhs.gov> wrote:

> Costs on FOIA aren't set by TSA. I'll refer you to DOJ and the DHS regs for more specifics, but those fees are government-wide, and in practicality at least a supervisory person needs to review and verify the search to ensure that the requester is getting everything they asked for.

That's still not a \*per-page\* cost, though. ;-)

And mind that redaction is not a permitted cost (or basis for waiver determination), only search and duplication.

> On requester status, I'll refer you back to the DOJ FOIA Guide. Taking documents received via FOIA and posting them online does not qualify a requester for "media" status. Congress included a definition of "news media" in the statute a few years ago to make it clear - a media requester must use their "editorial skills to turn the raw materials into a distinct work". You have the option of presenting evidence that you should receive that status at the time you submit your request. This is not the forum for that - you should do so when your request is actually submitted - but as advice I'll tell you you'll need to show much more than you have here. If you provide prior examples of your journalistic work, that will help you.

Noted, though I've seen case law that disagrees, stressing the dissemination aspect. See e.g. National Security Archive vs. Department of Defense 880 F @d 1381 (DC Cir 1989); EPIC vs. Department of Defense 241 F Supp 2d 5 (DDC 2003); Hospital & Physician Publishing Inc. vs Department of Defense No. 98-4117 (SD Ill. June 22, 1999); Judicial Watch vs. Department of Justice 133 F Supp 2D 52 (DDC 2000).

But I'll be sure to address that; thanks.

> There are a lot of things on iShare that are not policy documents - it's a massive internal website, not just a policy repository. If you want just the policy documents from a certain part of iShare, especially if you clarify that you want everything from a certain office or offices, I'd expect that's something we'd be able to work with.

I'm glad to hear that.

Is "all Management Directives, Standard Operating Procedures, Operations Directives, Security Directives, Emergency Amendments, Information Circulars, Memoranda, Handbooks, Letters, Bulletins, and Guidance" reasonably specified enough?

It's a large number of documents, sure, but they should already all be indexed in an easy way and available on iShare in digital form. That should make both the cost of search and the cost of duplication fairly minimal.

What other kinds of documents are on iShare? What parts does it have?

Thanks,  
Sai

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Sotoudeh, Paul <Paul.Sotoudeh@tsa.dhs.gov>

Tue, Feb 26, 2013 at 12:24 PM

To: Sai <tsa@saizai.com>

Sai, I'm happy to keep working with you here, but being that I'm one of seven people in this office and we have over 500 open requests at the moment, please understand that there's only so much time I can continue to offer you here. The iShare page contains literally anything that might be of interest to TSA employees - from news stories to phone directories to policies to a description of literally every office and component within the agency. Polls, an idea and discussion board, multiple blogs - it's incredibly expansive. I'd guess millions of pages of documents.

You are free to submit that request, but I would guess that it will be rejected on breadth grounds and they'd ask you to clarify by specifying subject matter or a program office. At best, someone will need to compile all that information (which counts as search) onto a CD, and you'd be paying for that person's time.

Paul Sotoudeh  
Freedom of Information Act Office  
Transportation Security Administration  
(571) 227-1357

-----Original Message-----

From: saizai@gmail.com [mailto:saizai@gmail.com] On Behalf Of Sai  
Sent: Tuesday, February 26, 2013 12:12 PM  
To: Sotoudeh, Paul  
Subject: Re: Your phone message regarding your FOIA request (13-0375)

[Quoted text hidden]

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**Sai** <tsa@saizai.com>  
To: "Sotoudeh, Paul" <Paul.Sotoudeh@tsa.dhs.gov>

Thu, Feb 28, 2013 at 12:52 AM

Paul -

I appreciate that you're busy, and I appreciate your time to help with this. I realize that I'm asking for a lot of documents, and I would like to make the process as smooth as possible for both of us — and to save overall both your time and my money. ;-)

You again refer to "pages" of documents and to CDs, when I've very clearly said I don't want either — I want a direct server to server transfer.

"Search" is the time to \*find\* information. Putting information that's in a known location onto a storage medium is surely "duplication".

I don't see anything in the FOIA that justifies a rejection for merely asking for a lot of records. The only limitation is "reasonable description" and "reasonable segregation" — both of which are clearly fine with my specification; it's both exactly described and already fully segregated on your systems. If it's anything close to a sane filing system, it's probably just the entire contents of a few directories.

It may be a lot of policy documents, but courts have been pretty clear that that is no barrier. Rather, the case law I've seen talking about "breadth" are doing so on the basis of \*description\*; that is, if someone asks for something that is too vague or would require too intensive a search, that's a reasonable basis for rejection.

I do intend to request this, and to argue for both waiver exemption



and non-page-based fee calculation.

So, some fairly practical fee related questions:

0. Is this the forum for fee discussion, or do I first need to submit a formal request? I would like to tailor the request appropriately.
1. Is the TSA technically capable of using FTP, SFTP, rsync, or similar server-to-server file transfer protocols?
2. Approximately how many documents would "all Management Directives, Standard Operating Procedures, Operations Directives, Security Directives, Emergency Amendments, Information Circulars, Memoranda, Handbooks, Letters, Bulletins, and Guidance" include?
3. Approximately how many gigabytes of data do they take up?
4. Approximately what fee would the TSA ask, and how calculated?
5. Does the TSA have the documents segregated? Are they all on ishare?
6. Can the TSA provide an index of the documents (e.g. filename, document title, file size) without that having to be a separate FOIA request first?
7. What does the TSA consider an indication that something is likely to be requested enough times to qualify as being of "public interest"? Consider, for instance, if 5, 10, 20, 100, 500, ... people submitted an identical request to mine, made in their own name. How many would be required before it counted as an indicator of public interest enough to qualify for fee waiver?

Sincerely,  
Sai

On Tue, Feb 26, 2013 at 9:24 AM, Sotoudeh, Paul

[Quoted text hidden]

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**Sotoudeh, Paul** <Paul.Sotoudeh@tsa.dhs.gov>  
To: Sai <tsa@saizai.com>

Thu, Feb 28, 2013 at 10:21 AM

Sai, I'm just trying to help informally to save you work on the back end. Any and all formal requests for fee waivers, requester category status, or similar such questions should be tied into a formal FOIA request.

One more informal piece of information - I don't know this for certain, but I would speculate, based on the extensive restrictions on employee computer use here, that it is highly likely that any file transfer setup to an unknown offsite server would violate DHS and TSA IT security rules.

Paul Sotoudeh  
Freedom of Information Act Office  
Transportation Security Administration  
(571) 227-1357

-----Original Message-----

From: saizai@gmail.com [mailto:saizai@gmail.com] On Behalf Of Sai

[Quoted text hidden]

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**Sai** <tsa@saizai.com>  
To: "Sotoudeh, Paul" <Paul.Sotoudeh@tsa.dhs.gov>

Thu, Feb 28, 2013 at 11:20 AM

Paul -

Can you provide a fee estimate, estimation of files size, or file index — or do I have to first file formally?

As for IT security rules: any such rule would be about the

exfiltration of data. While normally that'd not be allowed, if the whole point of this is to get me data, then surely that is not merely permissible but mandatory. (Not to mention that the FOIA demands both using methods of my choice that are reasonably possible to do, and using the cheapest available methods; in this case what I'm asking for \*is\* the cheapest possible option).

Thanks,  
- Sai

On Thu, Feb 28, 2013 at 7:21 AM, Sotoudeh, Paul  
[Quoted text hidden]

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**Sotoudeh, Paul** <Paul.Sotoudeh@tsa.dhs.gov>  
To: Sai <tsa@saizai.com>

Thu, Feb 28, 2013 at 11:41 AM

In order to formally provide a fee estimate, we'd need to know what the boundaries of the request are - so we'd need a formal request. Otherwise I can only estimate for you informally.

On the file transfer issue, like I said, it's just speculation. I don't know of one, but there might be something out there that would allow for the transfer of data in a manner that meets the significant security guidelines for TSA's servers. But if such a setup doesn't already exist, I know for certain that the agency is not required to create one in order to respond in a FOIA requester's medium of choice.

Paul Sotoudeh  
Freedom of Information Act Office  
Transportation Security Administration  
(571) 227-1357

-----Original Message-----

From: saizai@gmail.com [mailto:saizai@gmail.com] On Behalf Of Sai  
[Quoted text hidden]

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**Sai** <tsa@saizai.com>  
To: "Sotoudeh, Paul" <Paul.Sotoudeh@tsa.dhs.gov>

Thu, Feb 28, 2013 at 12:15 PM

An informal first pass would be appreciated.

Such secure transfer methods very definitely exist; I use them professionally all the time. Personally, rsync over ssh or scp is what I would use; SFTP may be easier to use from a Windows machine, and is about as secure (it doesn't support intelligent file resuming however).

Thanks,  
- Sai

On Thu, Feb 28, 2013 at 8:41 AM, Sotoudeh, Paul  
[Quoted text hidden]

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**Sotoudeh, Paul** <Paul.Sotoudeh@tsa.dhs.gov>  
To: Sai <tsa@saizai.com>

Thu, Feb 28, 2013 at 12:51 PM

I can't give you an informal pass at a fee estimate for a request of that breadth. If there were only one or two offices I needed to talk to, I'd be happy to call my POCs and ask for a quick estimate of their time. However, every office within TSA owns their own policies for FOIA search purposes, so for a request like what you're suggesting, I'd have to make 20-25 calls - one to each TSA HQ office - just to get even a ballpark. Then I'd have to do it again, this time formally and with paperwork, once your actual request came in.

You're free to file the request and ask for an estimate within the request, then amend if you so choose based on the response.

Paul Sotoudeh  
Freedom of Information Act Office  
Transportation Security Administration  
(571) 227-1357

-----Original Message-----

From: [saizai@gmail.com](mailto:saizai@gmail.com) [mailto:[saizai@gmail.com](mailto:saizai@gmail.com)] On Behalf Of Sai

[Quoted text hidden]

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**Sai** <[tsa@saizai.com](mailto:tsa@saizai.com)>  
To: "Sotoudeh, Paul" <[Paul.Sotoudeh@tsa.dhs.gov](mailto:Paul.Sotoudeh@tsa.dhs.gov)>

Thu, Feb 28, 2013 at 1:08 PM

Hm. Why do you need to coordinate with 20-25 offices?

My understanding was that a) all the documents I was asking for are national level, and b) they're all already on the same ishare server.

Am I incorrect?

Thanks,  
Sai

On Thu, Feb 28, 2013 at 9:51 AM, Sotoudeh, Paul

[Quoted text hidden]

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**Sotoudeh, Paul** <[Paul.Sotoudeh@tsa.dhs.gov](mailto:Paul.Sotoudeh@tsa.dhs.gov)>  
To: Sai <[tsa@saizai.com](mailto:tsa@saizai.com)>

Thu, Feb 28, 2013 at 2:27 PM

Just because the docs are all stored for easy access in one place does not mean the same office owns all the documents on that particular page. Like I said, iShare is an agency-wide internal website. For example, Human Capital's policies are not "owned" by our public affairs shop (which runs the website) or the IT office. They host the policies, but to properly conduct a complete search under FOIA, we need to go to the office which promulgated and controls the records.

Paul Sotoudeh  
Freedom of Information Act Office  
Transportation Security Administration  
(571) 227-1357

-----Original Message-----

From: [saizai@gmail.com](mailto:saizai@gmail.com) [mailto:[saizai@gmail.com](mailto:saizai@gmail.com)] On Behalf Of Sai

[Quoted text hidden]

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**Sai** <[tsa@saizai.com](mailto:tsa@saizai.com)>  
To: "Sotoudeh, Paul" <[Paul.Sotoudeh@tsa.dhs.gov](mailto:Paul.Sotoudeh@tsa.dhs.gov)>

Thu, Feb 28, 2013 at 9:53 PM

I see.

I guess that next step is to file; then we can talk in the context of formal fee waiver determination and fee estimation.

1/21/2014

Gmail - Your phone message regarding your FOIA request (13-0375)

Thanks again for all your help.

Sincerely,  
Sai

On Thu, Feb 28, 2013 at 11:27 AM, Sotoudeh, Paul  
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