

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA**

SOPHIA HELENA IN'T VELD,)	
)	
Plaintiff,)	
)	
v.)	Civil Action No. 08-1151 (RMC)
)	
DEPARTMENT OF HOMELAND SECURITY, et al.,)	
)	
Defendants.)	

**U.S. DEPARTMENT OF HOMELAND SECURITY’S REPLY
TO PLAINTIFF’S OPPOSITION AND IN SUPPORT
OF ITS MOTION FOR SUMMARY JUDGMENT**

Defendant, U.S. Department of Homeland Security (“DHS”), by and through undersigned counsel, hereby files the supplemental Declaration of David Dodson, Passenger Branch Chief, Analysis and Targeting Division, Office of Intelligence and Operations Coordination, U.S. Customs and Border Protection (“CBP”), DHS (“Dodson Decl.”) and its Reply to Plaintiff’s opposition to DHS’s motion for summary judgment. As discussed below, this Declaration provides additional support for DHS’s argument that its component, CBP, conducted an adequate search for documents responsive to Plaintiff’s Freedom of Information Act (“FOIA”) request and is, therefore, entitled to summary judgment.

ARGUMENT

I. DHS's SEARCH FOR RESPONSIVE RECORDS WAS REASONABLE

A. CBP's Search Was Conducted By An Expert

Plaintiff has submitted the Declaration of Edward Hasbrouck ("Hasbrouck Decl."), an alleged "travel expert" specializing in issues related to air travel and travel reservations, in support of her argument that CBP's search was not reasonably calculated to uncover records responsive to Plaintiff's FOIA request.¹ Hasbrouck Decl. ¶ 1. Mr. Hasbrouck suggests that whoever conducted the search in response to Plaintiff's FOIA request was incompetent. Hasbrouck Decl. ¶¶ 9, 12, 16, 19, 25.

Plaintiff's reliance on Mr. Hasbrouck's declaration is misplaced, because his knowledge is based on his experience as a travel agent, and specifically his use of PNR data as it is maintained in airline industry computer reservation systems ("CRS"). Hasbrouck Decl. ¶¶ 2, 3. Moreover, his conclusion that CBP's search "was conducted by a person or persons unfamiliar with the types of PNR and other travel data contained in [CBP's] records, or the likely variations in PNR data entry formats and transformations of names, numbers, and other information" is rebutted by the Declaration of David Dodson. As is clear from Mr. Hasbrouck's declaration, he has no experience working with CBP or DHS systems which maintain the data, including PNR data, which is the subject of Plaintiff's FOIA request. Dodson Decl. ¶¶ 15-16. He fails to consider that DHS/CBP has voluntarily limited its collection of PNR to 19 specific categories of

¹ Plaintiff had sought records from CBP concerning her (including but not limited to electronic records) maintained in the Passenger module of the Automated Targeting System ("ATS-P"), and Advanced Passenger Information System ("APIS"). While the request specifically to CBP focused on ATS-P and APIS, the request to DHS also sought records from NIIS, SAVIS and TECS, each of which is also a CBP system.

data. Dodson Decl. ¶ 19. What is more, he appears uneducated about the fact that certain types of records are not collected by DHS/CBP and, therefore, could not be searched in response to a FOIA request. Dodson Decl. ¶ 19. Additionally, he incorrectly compares DHS/CBP ATS-P system to a CRS. Dodson Decl. ¶ 6.

In contrast, Mr. Dodson, who conducted the search in response to Plaintiff's FOIA request has impeccable credentials. Dodson Decl. ¶ 10. Mr. Dodson has been employed with DHS/CBP (and its predecessor U.S. Customs Service) since 1996. Dodson Decl. ¶ 1. He worked in Passenger Operations, as well as, the Contraband Enforcement Team, the Passenger Enforcement Rover Team, and the Passenger Analysis Unit for approximately six years, and is recognized as an expert user of the Automated Targeting System – Passenger (ATS-P), and Passenger Name Record (PNR) data. *Id.* In addition, in 2004, he became a CBP program manager responsible for development of ATS-P. *Id.* As part of his duties, Mr. Dodson regularly conducts research in DHS/CBP systems, including TECS, APIS, the Non-Immigrant Information System (“NIIS”) and ATS-P and the Suspect and Violator Indices (“SAVI”). Dodson Decl. ¶ 2. He is very familiar with how to query a CRS and the differences between a CRS system and DHS/CBP proprietary systems, because he regularly used CRS systems for approximately three years to obtain PNR data for law enforcement use, prior to a change in access policy. Dodson Decl. ¶ 5.

Mr. Dodson understands and routinely uses PNR data maintained in ATS-P. Dodson Decl. ¶ 7, 9. In fact, because of his expertise, he assisted in drafting the ATS-P User's Guide and Reference Manual, which is used to instruct DHS/CBP officers and analysts in the use of the ATS-P system, including guidance regarding how to perform passenger queries, including

queries of PNR, NIIS and SAVI. *Id.* In addition he participates in DHS/CBP meetings to discuss query parameters and possible changes to the ATS-P system in order to improve the system's law enforcement functions. Dodson Decl. ¶ 8.

As he points out, contrary to what Mr. Hasbrouck suggests, the ATS-P system is not a CRS, does not maintain complete replicas of all PNR data stored in air carrier CRSs, and is not queried in the manner in which CRSs operate. Dodson Decl. ¶ 6. DHS/CBP has access to PNR data from the reservation/departure control systems of over 130 airlines. *Id.* However, there is a significant difference between CBP's interaction with the airlines compared to those of Mr. Hasbrouck. *Id.*

B. CBP's Search Was More Than Adequate

In responding to Plaintiff's FOIA request, Mr. Dodson applied highly effective search techniques, including searching multiple name and travel document permutations. Dodson Decl. ¶ 11. Notwithstanding Mr. Hasbrouck's comments, [Hasbrouck Decl. ¶¶ 14-19], Mr. Dodson used the same techniques that he uses on a daily basis to query DHS/CBP's systems for individuals whose names contain multiple words, spaces or hyphenation in name and travel document number fields. Dodson Decl. ¶ 11. Mr. Dodson searched ATS-P using various permutations of Plaintiff's name, based on his experience conducting searches for similar compound names. Dodson Decl. ¶ 12. These terms included (1) Last Name "intveld"/First Name "soph%" (which yielded the records that were subsequently redacted); (2) Last Name "Intveld"/First Name "soph%"; (3) Last Name "In Tveld"/First Name "Soph%"; and (4) Last Name "In T Veld"/First Name "Soph%". These searches yielded eight (8) pages of PNR records maintained in ATS-P. Dodson Decl. ¶ 12.

Moreover, he subsequently ran searches in the other relevant DHS/CBP systems for records associated with various permutations of Plaintiff's name, which further yielded two document numbers (in this case, passport numbers). The name-based search terms included (1) Last Name "Intveld"/First Name "Sophia"; (2) Last Name "Intveld"/First Name "Sophie"; (3) Last Name "Int Veld"/First Name "Sophia"; (4) Last Name "Int Veld"/First Name "Sophie"; (5) Last Name "In T Veld"/First Name "Sophia"; (6) Last Name "In T Veld"/First Name "Sophie"; (7) "In Tveld"/First Name "Sophia"; and (8) "In Tveld"/First Name "Sophie." Dodson Decl. ¶ 13. In fact, these name-based and document number searches yielded the remaining 20 pages of records released to Plaintiff. *Id.*² Mr. Dodson's search of DHS/CBP's relevant systems was not restricted by any date or data field parameters, but rather searched for all responsive records regarding the Plaintiff which were contained in relevant DHS/CBP systems at the time the search was conducted. Dodson Decl. ¶ 14.

Finally, Mr. Hasbrouck's alleged identification of a discrepancy between the passport numbers on records released to Plaintiff is meritless. Hasbrouck Decl. ¶ 13. As Mr. Dodson points out, the passport numbers on the pages referenced by Mr. Hasbrouck (pages 1 and 29 of the DHS production) are the same. Dodson Decl. ¶ 17. Two of the records cited in Mr. Hasbrouck's declaration as referencing a different passport number [Hasbrouck Decl. ¶ 15, pointing to pages 29 and 57 of the DHS production] were produced by US-VISIT [Dodson Decl. Fn 3.], and Plaintiff has not challenged the adequacy of the US-VISIT search. Mr. Dodson indicates that based on his experience, this discrepancy might well have occurred because of the

² A total of 28 pages of record were either released in full or redacted and provided to Plaintiff on July 9, 2008. *See* Lockett Declaration at ¶ 14.

issuance of a new travel document. Dodson Decl. ¶ 17. In any event, it does not create a genuine issue of material fact or a basis for denying DHS summary judgment.

II. DHS IS ENTITLED TO SUMMARY JUDGMENT

Plaintiff has not challenged the exemptions invoked by DHS. Plff. Opp. Fn 1. Nor has she challenged the adequacy of the searches conducted by other DHS components. Plff. Opp. at 6. Moreover, as discussed above, her challenge to CBP's search has been strongly rebutted by the Declaration of David Dodson.

In responding to a FOIA request, an agency is under a duty to conduct a reasonable search for responsive records. *Oglesby v. U.S. Dept. of Army*, 920 F.2d 57, 68 (D.C. Cir. 1990); *Weisberg v. U.S. Dept. of Justice*, 705 F.2d 1344, 1352 (D.C. Cir. 1983). This "reasonableness" standard focuses on the method of the search, not its results, so that a search is not unreasonable simply because it fails to produce relevant material. *Id.* at 777 n.4. An agency is not required to search every record system, but need only search those systems in which it believes responsive records are likely to be located. *Oglesby*, 920 F.2d at 68. In this case, Plaintiff requested records which were specifically contained in the systems searched by DHS/CBP. Defendant DHS has fulfilled its FOIA obligations and met its burden to explain in reasonable detail the scope and method of the search conducted by the agency. *See Morley v. CIA*, 508 F.3d 1108, 1121 (D.C. Cir. 2007); *Perry v. Block*, 684 F.2d 121, 127 (D.C. Cir. 1982). Accordingly, DHS is entitled to summary judgment in this matter.

Conclusion

For the foregoing reasons and those set forth in DHS's motion for summary judgment, DHS's motion for summary judgment should be granted.

Respectfully submitted,

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