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VIA CERTIFIED MAIL

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Dear Ms. Callahan:

This letter constitutes a request under the Freedom of Information Act ("FOIA"), 5 U.S.C. § 552, and is submitted on behalf of the Electronic Privacy Information Center ("EPIC").

EPIC seeks documents concerning the development and deployment of "body scanner" (or "Whole Body Imaging," "Advanced Imaging Technology," "Millimeter Wave," or "Backscatter") technology by law enforcement agencies in surface transit and in street-roaming vans.

Background

In 2005, the Transportation Security Administration ("TSA"), a Department of Homeland Security ("DHS") component, began testing passenger imaging technology to screen air travelers.<sup>1</sup> Passenger imaging is often called "body scanner" technology. The initial tests involved body scanner systems based on backscatter technology.<sup>2</sup> In October 2007, the TSA began testing body scanner systems based on millimeter wave technology.<sup>3</sup> However, the use of body scanners raises serious privacy concerns. These systems produce detailed, three-dimensional images of individuals. Security experts have described whole body scanners as the equivalent of "a physically invasive strip-search."<sup>4</sup>

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<sup>1</sup> TSA: Imaging Technology, [http://www.tsa.gov/approach/tech/imaging\\_technology.shtm](http://www.tsa.gov/approach/tech/imaging_technology.shtm) (last visited February 3, 2010).

<sup>2</sup> TSA: Imaging Technology, *supra* note 1.

<sup>3</sup> *Id.*

<sup>4</sup> Joe Sharkey, *Whole-Body Scans Pass First Airport Tests*, N.Y. Times, Apr. 6, 2009 available at [http://www.nytimes.com/2009/04/07/business/07road.html?\\_r=1](http://www.nytimes.com/2009/04/07/business/07road.html?_r=1); *see also* Schneier on Security, June 9, 2005, [http://www.schneier.com/blog/archives/2005/06/backscatter\\_x-r.html](http://www.schneier.com/blog/archives/2005/06/backscatter_x-r.html) ("[whole body imaging] technology is incredibly intrusive. I don't think that people should be subjected to strip searches before they board airplanes.").

In March 2010, the Department of Homeland Security released a Surface Transportation Security Priority Assessment which detailed the agency's plans to conduct risk assessment and implement new technology in America's surface transportation systems, including "Mass Transit, Highways, Freight Rail, and Pipelines..."<sup>5</sup> One of the stated goals of DHS is "Creating a more stringent, less opportunistic environment for terrorist attack planning (e.g., non-intrusive inspection devices, canine teams, random bag checks, VIPRs, and counter-surveillance)."<sup>6</sup>

Body scanner devices have previously been tested at surface transportation stations in both the U.S. and abroad. In 2006, millimeter wave machines were tested at a New Jersey train station. Before getting on the train at the Exchange Place station in New Jersey, PATH train riders had to pass through a body scanner machine.<sup>7</sup> The Department of Homeland Security has acknowledged that both passive and active millimeter wave technology was employed in this setting.<sup>8</sup> In the summer of 2009, the PATH train system, in conjunction with the Department of Homeland Security, once again tested body scanner technology on PATH travelers.<sup>9</sup>

Manufacturers of body scanner technology have long envisioned its use in subway terminals. Pacific Northwest National Laboratory, the company responsible for the development of the L-3 millimeter wave machine has pitched the technology as providing "a new level of safety and security to public arenas, such as airports and subway terminals..."<sup>10</sup>

Recent news stories have also documented the implementation of body scanner technology in vans that are able to scan other vehicles while driving down public roadways.<sup>11</sup> These vans, known as "Z Backscatter Vans," are capable of seeing through vehicles and clothing and routinely store the images that they generate.<sup>12</sup>

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<sup>5</sup> U.S. Department of Homeland Security, *Surface Transportation Security Priority Assessment*, March 2010, available at [http://www.whitehouse.gov/sites/default/files/rss\\_viewer/STSA.pdf](http://www.whitehouse.gov/sites/default/files/rss_viewer/STSA.pdf).

<sup>6</sup> *Id.*

<sup>7</sup> Security Solutions, *Train Passengers Subjected to Infrared Body Scans*, July 14, 2006, <http://securitysolutions.com/news/TrainBodyScans/>.

<sup>8</sup> U.S. Department of Homeland Security, *Privacy Impact Assessment for the Rail Security Pilot Study Phase II at PATH*, July 12, 2006, available at [www.dhs.gov/xlibrary/assets/privacy/privacy\\_pia\\_st\\_railpilot.pdf](http://www.dhs.gov/xlibrary/assets/privacy/privacy_pia_st_railpilot.pdf).

<sup>9</sup> Paul Cox, *Port Authority Tests Security Technology at PATH Stations*, NJ.com, June 9, 2009, [http://www.nj.com/news/index.ssf/2009/06/port\\_authority\\_tests\\_security.html](http://www.nj.com/news/index.ssf/2009/06/port_authority_tests_security.html).

<sup>10</sup> United States Department of Energy, *A Decade of Discovery, Millimeter Wave Technology Scans for More than Just Security*, [http://www.energy.gov/discovery/millimeter\\_wave\\_technology.html](http://www.energy.gov/discovery/millimeter_wave_technology.html); Pacific Northwest National Laboratory, *Millimeter Wave Technology Meets the Market*,

<sup>11</sup> Andy Greenberg, *Full Body Scan Technology Deployed in Street-Roving Vans*, Forbes, Aug. 24, 2010, <http://blogs.forbes.com/andygreenberg/2010/08/24/full-body-scan-technology-deployed-in-street-roving-vans/?boxes=Homepagechannels>.

<sup>12</sup> *Id.*

## Documents Requested

EPIC requests copies of the following agency records:

1. All documents detailing plans by federal law enforcement agencies to implement body scanner technology in the surface transportation context.
2. All contracts, proposals, and communications with private transportation and shipping companies (including, but not limited to NJ PATH, Amtrak, and Greyhound) regarding the implementation of body scanner technology in surface transit.
3. All contracts, proposals, and communications with states, localities, tribes, and territories (and their subsidiaries or agencies) regarding the implementation of body scanners in surface transportation.
4. All documents detailing plans by federal law enforcement agencies to use “Z Backscatter Vans” or similar technology.
5. All contracts, proposals, and communications with the manufacturers of the “Z Backscatter Vans” or similar technology.
6. All contracts, proposals, and communications with states, localities, tribes, and territories (and their subsidiaries or agencies) regarding the implementation of “Z Backscatter Vans” or similar technology.
7. All images generated by the “Z Backscatter Vans” or body scanner technology that has been used in surface transit systems.

## Request for Expedited Processing

This request warrants expedited processing because it is made by “a person primarily engaged in disseminating information ...” and it pertains to a matter about which there is an “urgency to inform the public about an actual or alleged federal government activity.” 5 U.S.C. § 552(a)(6)(E)(v)(II) (2008); *Al-Fayed v. CIA*, 254 F.3d 300, 306 (D.C. Cir. 2001).

EPIC is “primarily engaged in disseminating information.” *American Civil Liberties Union v. Department of Justice*, 321 F. Supp. 2d 24, 29 n.5 (D.D.C. 2004).

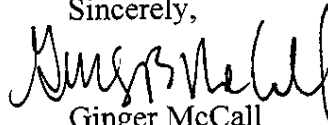
As described above, the use of body scanner technology is growing more widespread. The documents requested by EPIC will inform the public regarding the capabilities, uses, and effectiveness of these controversial scanners. Questions regarding the implementation of body scanner technology in a variety of contexts are being debated on a national and international level in the wake of the decision by DHS to deploy body scanner devices in U.S. airports.

Request for "News Media" Fee Status

EPIC is a "representative of the news media" for fee waiver purposes. *EPIC v. Department of Defense*, 241 F. Supp. 2d 5 (D.D.C. 2003). Based on our status as a "news media" requester, we are entitled to receive the requested record with only duplication fees assessed. Further, because disclosure of this information will "contribute significantly to public understanding of the operations or activities of the government," any duplication fees should be waived.

Thank you for your consideration of this request. As 28 C.F.R. § 16.5(d)(4) provides, I will anticipate your determination on our request within ten (10) calendar days.

Sincerely,



Ginger McCall

Assistant Director

EPIC Open Government Project