



Transportation  
Security  
Administration

JAN 27 2005

Ms. Barbara Elias  
The National Security Archive-GWU  
Gelman Library, Suite 701  
2130 H Street NW  
Washington, DC 20037

**Re: FOIA Case Number TSA04-969 (APPEAL)**

Dear Ms. Elias:

This letter is in response to your Freedom of Information Act (FOIA) appeal dated October 15, 2004, regarding TSA's determination to withhold certain Federal Aviation Administration (FAA) Information Circulars (ICs) that are mentioned in the 9-11 Commission Report.

I have conducted a review of the ICs by comparing them to the information published in the 9-11 Report and have determined to make a supplemental release of limited information at this time. Our review shows that the Commission published the complete IC numbers and titles. In addition, the Commission Report included a brief excerpt from the June 22, 2001 IC. TSA's supplemental release will thus parallel the information published by the 9-11 Commission, however, I am otherwise affirming the continued withholding of any other information from these records for the reasons stated in TSA's denial letter dated September 29, 2004.

My review also took into consideration the press briefing held by National Security Advisor Condoleezza Rice on May 16, 2002, in which she discusses various U.S. Government responses to terrorist threats pre 9-11, including the FAA ICs. My review of the press briefing transcript establishes that Ms. Rice only discussed the ICs generally and did not disclose any specific details from those records. General public discussion of a subject by agency officials does not lead to a waiver of the agency's ability to claim an exemption to protect more detailed information.

Your appeal also references an Executive Order dated August 27, 2004, claiming that it "requires the TSA release unclassified copies of these documents." The referenced Order, Executive Order 13356, strictly pertains to the preparation of terrorist information for maximum distribution within the Intelligence Community, other agencies having counterterrorism functions, and, where appropriate, with authorities at the state and local level. As such, it has no direct bearing on TSA determinations made under the FOIA. As stated in the Order: "[t]his order is intended only to improve the internal management of the Federal Government and is not intended to, and does not, create any rights or benefits, substantive or procedural, enforceable at law or in equity by a party against the United States, its departments, agencies, instrumentalities, or entities, its officers, employees, or agents, or any other person." Exec. Order No. 13356, Sec. 7(b).