



Homeland Security

Privacy Office

August 10, 2007

Ms. Marcia Hofmann
Electronic Frontier Foundation
1875 Connecticut Avenue, N.W.
Suite 650
Washington, DC 20009

Re: DHS/OS/PRIV 07-90/Hofmann request

Dear Ms. Hofmann:

Pursuant to the order of the court, this is our sixth partial release to your Freedom of Information Act (FOIA) request to the Department of Homeland Security (DHS), dated October 20, 2006, for DHS records concerning Passenger Name Records (PNR) from May 30, 2006 to the present including:

1. Emails, letters, reports or other correspondence from DHS officials to European Union officials concerning the transfer and use of passenger data from air carriers to the US for prescreening purposes;
2. Emails, letters, statements, memoranda or other correspondence from DHS officials to U.S. government officials or employees interpreting or providing guidance on how to interpret the undertakings;
3. Records describing how passenger data transferred to the U.S. under the temporary agreement is to be retained, secured, used, disclosed to other entities, or combined with information from other sources; and
4. Complaints received from EU citizens or official entities concerning DHS acquisition, maintenance and use of passenger data from EU citizens.

In our December 15, 2006 letter, we advised you that we had determined multiple DHS components or offices may contain records responsive to your request. The DHS Office of the Executive Secretariat (ES), the DHS Office of Policy (PLCY), the DHS Privacy Office (PRIV), the DHS Office of Operations Coordination (OPS), the DHS Office of Intelligence and Analysis (OI&A), the DHS Office of the General Counsel (OGC), the Transportation Security Administration (TSA), and U.S. Customs and Border Protection (CBP) were queried for records responsive to your request. In our July 27, 2007 letter, we advised you that we expanded our search to include U.S. Immigration and Customs Enforcement (ICE).

Continued searches of the DHS components produced an additional 10 documents consisting of 70 pages of records responsive to your request. I have determined that those documents are releasable in part. The releasable information is enclosed. The withheld information, which will

be noted on the *Vaughn* index when completed, consists of names, telephone numbers, email addresses, deliberative material, recommendations, legal opinions, Law Enforcement information, and homeland security information. I am withholding this information pursuant to Exemptions 2, 5, 6, and 7(E) of the FOIA, 5 USC §§ 552 (b)(2), (b)(5), (b)(6), and (b)(7)(E).

FOIA Exemption 2(low) exempts from disclosure records that are related to internal matters of a relatively trivial nature, such as internal administrative tracking. FOIA Exemption 2(high) protects information the disclosure of which would risk the circumvention of a statute or agency regulation. Included within such information may be operating rules, guidelines, manuals of procedures for examiners or adjudicators, and homeland security information.


FOIA Exemption 5 protects from disclosure those inter- or intra-agency documents that are normally privileged in the civil discovery context. The deliberative process privilege protects the integrity of the deliberative or decision-making processes within the agency by exempting from mandatory disclosure opinions, conclusions, and recommendations included within inter-agency or intra-agency memoranda or letters. The release of this internal information would discourage the expression of candid opinions and inhibit the free and frank exchange of information among agency personnel. The attorney-client privilege protects confidential communications between an attorney and his client relating to a legal matter for which the client has sought professional advice. It applies to facts divulged by a client to his attorney, and encompasses any opinions given by an attorney to his client based upon, and thus reflecting, those facts, as well as communications between attorneys that reflect client-supplied information.

FOIA Exemption 6 exempts from disclosure records the release of which would cause a clearly unwarranted invasion of personal privacy. Weighed against the privacy interest of the individuals is the lack of public interest in the release of their personal information and the fact that the release adds no information about agency activities, which is the core purpose of the FOIA.

Finally, FOIA Exemption 7(E) protects records compiled for law enforcement purposes, the release of which would disclose techniques and/or procedures for law enforcement investigations or prosecutions, or would disclose guidelines for law enforcement investigations or prosecutions if such disclosure could reasonably be expected to risk circumvention of the law.

Our office continues to process your request. If you have any questions regarding this matter, please refer to **DHS/OS/PRIV 07-90/Hofmann request**. The DHS Privacy Office can be reached at 703-235-0790 or 1-866-431-0486. Thank you for your patience as we proceed with your request.

Sincerely,



Varina T. Lockett
Associate Director, Disclosure & FOIA Operations

Enclosures: 70 pages

[b6]

From: b6
Sent: Wednesday, July 19, 2006 4:14 PM
To: Scardaville, Michael
Cc:

b6

Scardaville, Michael;
; Rosenzweig, Paul;

Subject: Re: SummaryofPNRIssues ALT FORMAT 2

Attachments: SummaryofPNRIssues ALT FORMAT 2 [b2]. comments 7-19-06).doc;
SummaryofPNRIssues ALT FORMAT 2.doc



SummaryofPNRIssuSummaryofPNRIssu
es ALT FORMAT ... es ALT FORMAT ...

Mike--attached are CBP's updated comment on this document. Please note that in addition to making a few additional edits to the text (fairly minor), I also attempted to update the document to reflect

b5

Please let me know if you wish to discuss.

Thanks! b6 See attached file: SummaryofPNRIssues ALT FORMAT 2 (CBP cc comments 7-19-06).doc)

b6
Office of Chief Counsel
U.S. Customs and Border Protection
Phone
Fax: b2 b6
Email:

This document, and any attachment(s) hereto, may contain confidential and/or sensitive attorney-client privileged, attorney work-product, and/or U.S. Government information, and is not for release, review, retransmission, dissemination or use by anyone other than the intended recipient. Please consult with the CBP Office of Chief Counsel before disclosing any information contained in this e-mail.

"Scardaville,
Michael" To:

<Mike.Scardaville

b6

b6

07/14/2006 10:31
AM

Doc #1

b(6)

"Rosenzweig,
"Scardaville,

Paul"
Michael"

Subject: SummaryofPNRIssues ALT FORMAT 2

(See attached file: SummaryofPNRIssues ALT FORMAT 2.doc)

[b2]

INFORMATION

Comment [31.1]: Page: 1

Deleted: July 19, 2006

Deleted: July 14, 2006

Deleted: July 10, 2006 July 10, 2006 July 6, 2006

MEMORANDUM FOR: Stewart Baker, Assistant Secretary for Policy

THROUGH: Paul Rosenzweig, Acting Assistant Secretary, PDEV and
Councilor to the Assistant Secretary for Policy

FROM: PNR Working Group

SUBJECT: Summary of potential changes to seek in the PNR
Undertakings

Purpose

In anticipation of future negotiations with the EU on the PNR arrangement, below is an assessment of areas of the Undertakings DHS should seek to change in the US-EU PNR arrangement.

b5

As a result, the Department's top priority should be to replace or amend these provisions to allow for '

b5

Background

①

Doc # 2

b5

b7E

b2 high

b5

Discussion

b5

b7E

b2 high

b5

b7E

b2 high

(4)

b5

b7E

b2 high

(5)

Attachment 1: Detailed Assessment of Critical Issues

b5
b7E
b2 high

b5

b7E

b2 high

b5

b7E

b2 high

(3)

b5

b7E

b2 high

(2)

b 5

(10)

[b2]

INFORMATION

Comment [JL1]: Page: 1
Deleted: July 14, 2006
Deleted: July 10, 2006
Deleted: July 10, 2006
Deleted: July 6, 2006

MEMORANDUM FOR: Stewart Baker, Assistant Secretary for Policy

THROUGH: Paul Rosenzweig, Acting Assistant Secretary, PDEV and
Counselor to the Assistant Secretary for Policy

FROM: PNR Working Group

SUBJECT: Summary of potential changes to seek in the PNR
Undertakings

Purpose

In anticipation of future negotiations with the EU on the PNR arrangement, below is an assessment of areas of the Undertakings DHS should seek to change in the US-EU PNR arrangement.

b5

Background

①

Doc # 3

b5

b7E

b2 high

(2)

b5

Discussion

b5

b7E

b2 high

b5

b7E

b2 high

(4)

b5

b7E

b2 high

(5)

Attachment 1: Detailed Assessment of Critical Issues

b5
b7E
b2 high

(6)

b5

b7E

b2 high

(7)

b5

b7E

b2 high

8

b5

b7E

b2 high

(9)

b 5

(10)

[b2]

INFORMATION

Comment [JL1]:

Deleted: July 6, 2006

Deleted: June 27, 2006

MEMORANDUM FOR: Stewart Baker, Assistant Secretary for Policy

THROUGH: Paul Rosenzweig, Acting Assistant Secretary, PDEV and
Counselor to the Assistant Secretary for Policy

FROM: PNR Word [REDACTED]

SUBJECT: Summary of potential changes to seek in the PNR
Undertakings

Purpose

In anticipation of future negotiations with the EU on the PNR arrangement, below is an assessment of areas of the Undertakings DHS should seek to change in the US-EU PNR arrangement.

b5

Background

①

Doc # 4

b5

b7E

b2 high

(2)

b5

Discussion

b5

b7E

b2 high

(3)

b5

b7E

b2 high

b5

b7E

b2 high

(5)

Attachment 1: Detailed Assessment of Critical Issues

b5

b7E

b2 high

(b)

b5

b7E

b2 high

(?)

b5

b7E

b2 high

(E)

b5

b7E

b2 high

(9)

b 5

(1)

→ b(2)

U.S. Department of Homeland Security
Washington, DC 20528

□ b2



Homeland Security

June 22, 2006

Deleted: June 21, 2006
Deleted: June 13, 2006

INFORMATION

MEMORANDUM FOR: Stewart Baker, Assistant Secretary for Policy
THROUGH: Paul Rosenzweig, Acting Assistant Secretary, PDEV and Councilor to the Assistant Secretary for Policy
FROM: PNR Working Group
SUBJECT: Summary of potential changes to seek in the PNR Undertakings

Purpose

Per your request, below is an assessment of areas of the Undertakings DHS should seek to change in the US-EU PNR arrangement. ~~Entering into negotiations with the EU or Member States, DHS's~~

b5

b5

①

Doc # 5

b5

b7E

b2 high

(2)

b5

b7E

b2 high

(3)

b5

b7E

b2 high

(4)

b5

b7E

b2 high

(5)

b5

b7E

b2 high

(6)



Homeland Security

b2

INFORMATION

Comment (11)
Deleted: June 27, 2006
Deleted: June 26, 2006
Deleted: June 26, 2006/June 22, 2006/June 22, 2006/June 21, 2006/June 13, 2006

MEMORANDUM FOR: Stewart Baker, Assistant Secretary for Policy

THROUGH: Paul Rosenzweig, Acting Assistant Secretary, PDEV and Councilor to the Assistant Secretary for Policy

FROM: PNR Working Group

SUBJECT: Summary of potential changes to seek in the PNR Undertakings

Purpose

Per your request, below is an assessment of areas of the Undertakings DHS should seek to change in the US-EU PNR arrangement.

Summary

In anticipation of future negotiations with the EU on the PNR Agreement, DHS's priority should be

b5

b5

Background

b5

(1)

Doc # 6

b5

b7E

b2 high

(2)

b5

b7E

b2 high

(3)

b5

b7E

b2 high

(4)

b5
b7E
b2 high

(5)

b5

b7E

b2 high

(6)

b 5

b 7 E

b 2 high

13

b 5

(2)



Homeland Security

b2

INFORMATION

Comment [DL1]:

Deleted: June 22, 2006

Deleted: June 22, 2006

Deleted: June 21, 2006

Deleted: June 13, 2006

MEMORANDUM FOR: Stewart Baker, Assistant Secretary for Policy

THROUGH: Paul Rosenzweig, Acting Assistant Secretary, PDEV and Councilor to the Assistant Secretary for Policy

FROM: PNR Working Group

SUBJECT: Summary of potential changes to seek in the PNR Undertakings

social
isot

Purpose

Per your request, below is an assessment of areas of the Undertakings DHS should seek to change in the U.S.-EU PNR arrangement. Entering into negotiations with the EU or Member States, DHS's

b5

b5

Background

b5

(1)

Doc # 7

b5

b7E

b2 high

(2)

b5

b7E

b2 high

(3)

b5

b7E

b2 high

(9)

b5

b7E

b2 high

(5)

b5

b7E

b2 high

(6)

b5

b7E

b2 high

(3)



Homeland Security

b2

INFORMATION

Deleted: June 22, 2006
Deleted: June 21, 2006
Deleted: June 13, 2006

MEMORANDUM FOR: Stewart Baker, Assistant Secretary for Policy
THROUGH: Paul Rosenzweig, Acting Assistant Secretary, PDEV and Councilor to the Assistant Secretary for Policy
FROM: PNR Working Group
SUBJECT: Summary of potential changes to seek in the PNR Undertakings

Deleted: Michael Scardaville, Special Assistant/International Policy Advisor

Purpose

Per your request, below is an assessment of areas of the Undertakings DHS should seek to change in the US-EU PNR arrangement, Entering into negotiations with the EU or Member States, DHS's

Deleted: preliminary summary
Deleted: may want to consider

b5

Background

General

b5

①

Doc # 8

b5

b7E

b2 high

(2)

b5

b7E

b2 high

(3)

b5

b7E

b2 high

(4)

b5

b7E

b2 high

(5)

b5

b7E

b2 high

(6)

b5

b7E

b2 high

(7)



Homeland Security

b2

Deleted: June 21, 2006
Deleted: June 13, 2006

INFORMATION

MEMORANDUM FOR: Stewart Baker, Assistant Secretary for Policy

THROUGH: Paul Rosenzweig, Acting Assistant Secretary, PDEV and Councilor to the Assistant Secretary for Policy

FROM: PNR Working Group

SUBJECT: Summary of potential changes to seek in the PNR Undertakings

b5

Purpose

Per your request, below is an assessment of areas of the Undertakings DHS should seek to change in the U.S.-EU PNR arrangement. Entering into negotiations with the EU or Member States, DHS's

b5

b5

Background

General

b5

①

Doc #9

b5

b7E

b2 high

(2)

b5

b7E

b2 high

(3)

b5

b7E

b2 high

(4)

b5

b7E

b2 high

(5)

b5

b7E

b2 high

(6)

b5

b7E

b2 high

(7)



Homeland Security

b2
INFORMATION

MEMORANDUM FOR: Stewart Baker, Assistant Secretary for Policy

THROUGH: Paul Rosenzweig, Acting Assistant Secretary, PDEV and Councilor to the Assistant Secretary for Policy

FROM: Michael Scardaville, Special Assistant/International Policy Advisor

SUBJECT: Summary of potential changes to seek in the PNR Undertakings

Purpose

Per your request, below is a preliminary summary of areas of the Undertakings DHS may want to consider changing. I intend to work with CBP, OGC, TSA and Privacy to address these issues in more detail next week. My goal is provide you with a prioritized and justified list of changes to guide an eventual dialogue with the Europeans.

Background

b5
In addition, some requirements, such as the audit standards, actually improved the overall operation of the program and others reflect existing policy (i.e., redress opportunities).

Discussion

Likely Top Priorities:

b5

①

Doc # 10

b5

b7E

b2 high

b 5

3