



Homeland Security

Privacy Office

November 30, 2007

Ms. Marcia Hofmann
Electronic Frontier Foundation
454 Shotwell Street
San Francisco, CA 94110

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

Dear Ms. Hofmann:

This is our fourteenth 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 24 documents, consisting of 64 pages, responsive to your request. I have determined that 19 documents, consisting of 53 pages, are releasable in part and 5 documents, consisting of 11 pages, are withholdable in their entirety. 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, and legal opinions. I am withholding this information pursuant to Exemptions 2, 5, and 6 of the FOIA, 5 USC §§ 552 (b)(2), (b)(5), and (b)(6).


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 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.

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,



Vania T. Lockett

Associate Director, Disclosure & FOIA Operations

Enclosures: 53 pages

[b4]

[b2]

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

From: [b2 b6]
Sent: Monday, October 30, 2006 9:39 AM
To: [b6]
Subject: Re: PNR implementation -- CBP letters

The undertakings limit access to contractors [b5]

[b6]
Office of Chief Counsel (Enforcement)
US Customs and Border Protection
Phone:
Fax: [b2]

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

From: [b2 b6]
Sent: 10/30/2006 08:31 AM
To: [b2 b6]
Subject: Fw: PNR implementation -- CBP letters

Don't have the undertakings with me - [b6]

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

From: Sales, Nathan [b2]
To: [b6 b2]
Scardaville, Michael [b2 b6]
Cc: [b6]
Sent: Mon Oct 30 08:28:21 2006
Subject: Re: PNR implementation -- CBP letters

[b6] I'm on travel today, so I don't have access to my files, but my recollection is that the [b5]

I'm copying Mike Scardaville and [b6] who can fill you in on the details.

Sent from my BlackBerry Wireless Handheld

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

From: [b6]
To: Sales, Nathan
Cc: [b6]
Sent: Mon Oct 30 07:54:45 2006
Subject: FW: PNR implementation -- CBP letters

(b6)

Mr. Sales,

On the request from components for access to PNR letter, it states that "[

b5

]

Please advise if this is something that can or cannot be changed.

From: [b6]
Sent: Friday, October 27, 2006 7:02 PM
To: []
Cc: b6
Subject: FW: PNR implementation -- CBP letters
Importance: High

[b6]
Please note the short suspense on this tasker (3 parts). Also, it appears that
[b5] Please
clarify...this could complicate matters.

Regards,
[b6]
Senior Analyst
DHS Intelligence and Analysis Directorate
[b2]

From: Sales, Nathan
Sent: Friday, October 27, 2006 6:23 PM
To: Jacksta, Bob M; Kraninger, Kathleen;

b6

Cc: Baker, Stewart; Scardaville, Michael
Subject: PNR implementation -- CBP letters
Importance: High

Team,

I am attaching three document templates to this email: (1) an invitation from CBP to the components indicating the new availability of PNR data; (2) a request from the components for access to PNR; and (3) an approval from CBP granting access to the components. My goal is for CBP and the relevant components to be able to personalize these letters by adding the requested information, and exchange them, by COB Tuesday of next week.

The letters are fairly self-explanatory, but I wanted to draw several features to the group's attention. First, please note that [

b5

]

Second, the request letter from the components to CBP includes [

b5

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A word on timing. The Secretary is personally very interested in the progress we are making on implementing the new PNR agreement. I am scheduled to brief him on our efforts

on Wednesday of next week. I need to be able to tell him [

b5

] So we really need to make this happen by Tuesday.

Thanks again. We're not to home plate yet, but I think we're rounding third. I really appreciate this group's hard work on, and dedication to, an initiative that is of the highest priority to the Secretary.

Best,
NAS

Nathan A. Sales
Deputy Assistant Secretary for Policy Development Department of Homeland Security

[b2]

<<PNR access invitation from CBP (10.27.2006).doc>> <<PNR access request from components (10.27.2006).doc>> <<PNR access approval from CBP (10.27.2006).doc>>

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From: [b2 b6]
Sent: Monday, October 30, 2006 8:39 AM
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Phone: [b2]
Fax: []

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NAS

Nathan A. Sales
Deputy Assistant Secretary for Policy Development Department of Homeland Security

[b2]

<<PNR access invitation from CBP (10.27.2006).doc>> <<PNR access request from components

[b6]

From: [b6 b2]

Sent: Friday, October 27, 2006 3:34 PM

To: Baker, Stewart; Scardaville, Michael; Rosenzweig, Paul; [b6]

Subject: RE: Publishing the interpretive letter

[b5]

[b6]
Director of International Privacy Policy
DHS, Privacy Office

Tel.
Fax: [b2]
Email:

The harsh reality is that data protectors run the risk of being only a tiny force of irregulars equipped with pitchforks and hoes waging battle against large technocratic and bureaucratic forces equipped with lasers and nuclear weapons. --David Flaherty, Protection Privacy in Surveillance Societies.

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From: Baker, Stewart [mailto:[b2]]
Sent: Friday, October 27, 2006 3:29 PM
To: Scardaville, Michael; Rosenzweig, Paul; [b6]
Subject: Publishing the interpretive letter

- 1.
 - 2.
 - 3.
 - a.
 - b.
- b5
-

Thoughts?

[b2]

[b6]

From: [b6 b2]
Sent: Saturday, October 28, 2006 5:37 PM
To: [b6]
Subject: Re: Publishing the interpretive letter

[b5]

[b6]
Office of Chief Counsel (Enforcement)
US Customs and Border Protection
Phone:
Fax: [b2]

----- Original Message -----
From: [b6 b2]
Sent: 10/28/2006 04:18 PM
To: [b6 b2]
Cc:
Subject: FW: Publishing the interpretive letter

[[b6] b5]

----- Original Message -----
From: Baker, Stewart [b2]
To: Scardaville, Michael [b2] b6
Rosenzweig, Paul [b2] b6
Sent: Sat Oct 28 16:15:41 2006
Subject: RE: Publishing the interpretive letter

OK, [b2]
One further question

[b5]

From: Scardaville, Michael [mailto:[b2]]
Sent: Friday, October 27, 2006 5:37 PM
To: [b6] Baker, Stewart; Scardaville, Michael; Rosenzweig, Paul; [b6]
Subject: RE: Publishing the interpretive letter

[b5]

I made a couple for pretty minor edits to [b6] text in the attached. The main one is
[b5]

Mike

[b2]

From: [b6 b2]
Sent: Friday, October 27, 2006 4:15 PM
To: Baker, Stewart; Scardaville, Michael; Rosenzweig, Paul; [b6]
Subject: RE: Publishing the interpretive letter

[b5]
[[b6]]

[b6]

Senior Counsel

Department of Homeland Security

Office of the General Counsel

[Washington, D.C. 20528

b2

Fax:]

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From: Baker, Stewart [mailto: [b2]]
Sent: Friday, October 27, 2006 3:29 PM
To: Scardaville, Michael; Rosenzweig, Paul; [b6]
Subject: Publishing the interpretive letter

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1.

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a.

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Thoughts?

]

[b6]

From: [b6 b2]
Sent: Monday, October 30, 2006 7:33 AM
To: [b6]
Subject: RE: Publishing the interpretive letter

[b5]
[b6]

[b6]
Deputy Associate General Counsel (Enforcement) Department of Homeland Security

O:
Fax: [b2]

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

From: [b6 b2]
Sent: Saturday, October 28, 2006 4:18 PM
To: [b6]
Cc: [b6]
Subject: Fw: Publishing the interpretive letter

[b5]
[b6]

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

From: Baker, Stewart [b2]
To: Scardaville, Michael [b6]
Rosenzweig, Paul [b6 b2]
Sent: Sat Oct 28 16:15:41 2006
Subject: RE: Publishing the interpretive letter

OK,
One further question

[b5]

From: Scardaville, Michael [mailto:[b2]]
Sent: Friday, October 27, 2006 5:37 PM
To: [b6] Baker, Stewart; Scardaville, Michael; Rosenzweig, Paul; [b6]
Subject: RE: Publishing the interpretive letter

[b5]

[b5]

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The main one is [b5]

Mike

[b2]

From: [b6 b2]
Sent: Friday, October 27, 2006 4:15 PM
To: Baker, Stewart; Scardaville, Michael; Rosenzweig, Paul; [b6]
Subject: RE: Publishing the interpretive letter

[b5]

[b5]
[b6]

[b6]

Senior Counsel
Department of Homeland Security
Office of the General Counsel
[Washington, D.C. 20528

b2

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From: Baker, Stewart [mailto: [b2]]

Sent: Friday, October 27, 2006 3:29 PM
To: Scardaville, Michael; Rosenzweig, Paul;
Subject: Publishing the interpretive letter

← b6 →

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1.

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Thoughts?

[b6]

From: [b6 b2]
Sent: Monday, October 30, 2006 8:41 AM
To: [b6]
Subject: Re: Publishing the interpretive letter

[b5]

[b6]
Office of Chief Counsel (Enforcement)
US Customs and Border Protection
Phone: [b2]
Fax: [b2]

----- Original Message -----
From: [b6 b2]
Sent: 10/30/2006 08:34 AM
To: [b6 b2]
Subject: Fw: Publishing the interpretive letter

On the first part, what do you think? [b5] [b6]

----- Original Message -----
From: Baker, Stewart [b2]
To: Scardaville, Michael [b2 b6]
Rosenzweig, Paul [b2 b6]
Sent: Sat Oct 28 15:15:41 2006
Subject: RE: Publishing the interpretive letter

OK, [b2]
One further question

[b5]

From: Scardaville, Michael [mailto:[b2]]
Sent: Friday, October 27, 2006 5:37 PM
To: [b6] Baker, Stewart; Scardaville, Michael; Rosenzweig, Paul; [b6]
Subject: RE: Publishing the interpretive letter

[b5]

(11)

I made a couple for pretty minor edits to [b6] text in the attached. The main one is

[b5]

Mike

[b2]

From: [b6] [mailto:[b2]]
Sent: Friday, October 27, 2006 4:15 PM
To: Baker, Stewart; Scardaville, Michael; Rosenzweig, Paul; [b6]
Subject: RE: Publishing the interpretive letter

[b5]
[[b6]]

[b6]

Senior Counsel
Department of Homeland Security
Office of the General Counsel
Washington, D.C. 20528

b2

Fax: []

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To: Scardaville, Michael; Rosenzweig, Paul; [b6]
Subject: Publishing the interpretive letter

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3.

a.

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Thoughts?

[b6]

From: [b6 b2]
Sent: Monday, October 30, 2006 9:39 AM
To: [b6]
Subject: Re: FW: Publishing the interpretive letter
Attachments: DRAFT FR Notice for Interim PNR Agreement (CBP [b6] 10-3-06) [b6] 10 20 (2)-mseds.doc



DRAFT FR Notice
for Interim PN...

How about [b5]

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

[b6 b2]

To: [b6 b2]

cc:
Subject: FW: Publishing the interpretive

letter

10/30/2006 09:33

AM

Ok, I'm not sure I [b5]
- [b6]

[b6]

Senior Counsel
Department of Homeland Security
Office of the General Counsel
Washington, D.C. 20528

b2]

Fax: [b2]

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From: Scardaville, Michael [mailto:[b2]]
Sent: Friday, October 27, 2006 5:37 PM
To: [b6] Baker, Stewart; Scardaville, Michael; Rosenzweig, Paul; [b6]
Subject: RE: Publishing the interpretive letter

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Mike

[b2]

From: [b6] b2
Sent: Friday, October 27, 2006 4:15 PM
To: Baker, Stewart; Scardaville, Michael; Rosenzweig, Paul; [b6]
Subject: RE: Publishing the interpretive letter

[b5]
[b6]

[b6]
Senior Counsel

Department of Homeland Security

Office of the General Counsel

[Washington, D.C. 20528

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From: Baker, Stewart [mailto:[b2]
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To: Scardaville, Michael; Rosenzweig, Paul; [b6]
Subject: Publishing the interpretive letter]

We need to decide whether to

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Thoughts?

(See attached file: DRAFT FR Notice for Interim PNR Agreement (CBP cc 10-3-06) 10 20 (2)-mseds.doc)

b6

DEPARTMENT OF HOMELAND SECURITY

Interim Agreement Between the European Union and the United States Regarding the Transfer of Passenger Name Record Data

AGENCY: Customs and Border Protection

ACTION: General Notice

SUMMARY:

EFFECTIVE DATES: [unclear]

FOR FURTHER INFORMATION, CONTACT:

SUPPLEMENTARY INFORMATION:

Background

On July 9, 2004, a General Notice was published in the Federal Register (69 FR 41543) advising that the Department of Homeland Security (DHS), Customs and Border Protection (CBP), had issued a document on May 11, 2004 (referred to as the "Undertakings") containing a set of representations regarding the manner in which CBP would handle certain Passenger Name Record (PNR) data relating to flights between the United States and European Union member states. At the time of their issuance, these Undertakings were understood to provide the foundation upon which the European Community (EC) was able to enter into an agreement with the United States that

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permitted the transfer of PNR data to CBP consistent with applicable law. However,

a diplomatic note presented on July 3, 2006 [

[

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Both the interim agreement and the Undertakings shall terminate on July 1,

2007, unless extended.

[insert text of interim agreement]

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[b6]

From: [b6 b2]
 Sent: Monday, October 30, 2006 10:17 AM
 To: [b6] Baker, Stewart; Scardaville, Michael; [b6] Rosenzweig, Paul
 Subject: RE: Publishing the interpretive letter
 Attachments: DRAFT FR Notice for Interim PNR Agreement (CBP cc 10-3-06) 10 20 (2)-mseds 1030 (2) (3) comments 10-30-06).doc

Here's an updated version to try address the points made today and over the weekend. <

b5

] [b6]

[b6]
 Senior Counsel
 Department of Homeland Security
 Office of the General Counsel
 Washington, D.C. 20528

Fax: b2]

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 To: Baker, Stewart; Scardaville, Michael; [b6] Rosenzweig, Paul; [b6]
 Subject: RE: Publishing the interpretive letter

We could say [

] b5

[b5]

[b6]
 Director of International Privacy Policy
 DHS, Privacy Office
 Tel.
 Fax: [b2]
 Email:

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[b2]

From: Baker, Stewart [mailto: [b 2]]
Sent: Saturday, October 28, 2006 4:16 PM
To: Scardaville, Michael; [b 6] Rosenzweig, Paul; [b 6]
Subject: RE: Publishing the interpretive letter

OK, [

One further question

b5

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Subject: RE: Publishing the interpretive letter

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[

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[b 6]

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[b 6]
Senior Counsel
Department of Homeland Security
Office of the General Counsel
[Washington, D.C. 20528

Fax: b 2]

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Subject: Publishing the interpretive letter

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>

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b5

}

Thoughts?

[b2]

OFFICE OF
REGISTRATION
AND IDENTIFICATION

DEPARTMENT OF HOMELAND SECURITY
BUREAU OF CUSTOMS AND BORDER PROTECTION

18 SEP 2004

**Interim Agreement Between the European Union and the United States Regarding
the Transfer of Passenger Name Record Data**

AGENCY: Bureau of Customs and Border Protection, DHS

ACTION: General Notice.

SUMMARY:

EFFECTIVE DATE: This Notice is effective as of the date of publication in the
FEDERAL REGISTER.

FOR FURTHER INFORMATION CONTACT:

SUPPLEMENTARY INFORMATION:

Background

On July 9, 2004, a General Notice was published in the Federal Register (69 FR
41543) advising that the Department of Homeland Security (DHS), Customs and Border
Protection (CBP), had issued a document on May 11, 2004 (referred to as the
"Undertakings") containing a set of representations regarding the manner in which CBP
would handle certain Passenger Name Record (PNR) data relating to flights between the
United States and European Union (EU) member states. At the time of their issuance,
these Undertakings were understood to provide the foundation upon which the European
Community (EC) was able to enter into an agreement with the United States that

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Notice to Announce Interim
Arrangement

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Security

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July 12, 2004
2004-09-09
2004-09-09

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DEPARTMENT OF HOMELAND SECURITY
Department of Homeland Security

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BY: [Signature]

Interim Agreement Between the European Union and the United States Regarding the Transfer of Passenger Name Record Data

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AGENCY: Department of Homeland Security, Customs and Border Protection (CBP)

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ACTION: General Notice

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SUMMARY:

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EFFECTIVE DATES: This notice is effective from July 12, 2004 through the date of publication in the FEDERAL REGISTER.

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FOR FURTHER INFORMATION CONTACT:

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DEPARTMENT OF HOMELAND SECURITY
BUREAU OF CUSTOMS AND BORDER PROTECTION

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PNR

Interim Agreement Between the European Union and the United States Regarding the Transfer of Passenger Name Record Data

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AGENCY: Bureau of Customs and Border Protection, DHS

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ACTION: General Notice

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SUMMARY:

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FOR FURTHER INFORMATION CONTACT:

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SUPPLEMENTARY INFORMATION:

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[b6]

]

From: Scardaville, Michael [b2]
Sent: Tuesday, October 17, 2006 6:36 PM
To: [b6] Sales, Nathan; Scardaville, Michael; [b6]
Subject: Re: PNR - very rough draft of checklist

All,

I don't think this or the draft letter from the requesting component covers [b5] The business center is closed (its after midnight here) so I will summarize the highlights below:

CBP use - [b5]

Ice and DHS use - [b5]

b5

]

Other DHS entities - first we need to note [b5]

[b5]

Mike

Sent from my BlackBerry Wireless Handheld

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

From: [b6 b2]
To: Sales, Nathan [b2 b6] Scardaville,
Michael [b2 b6]
Sent: Tue Oct 17 16:23:20 2006
Subject: RE: PNR - very rough draft of checklist

This has quick cbp edits, and I incorporated [b6] comment 7 into the text, but probably want a thorough scrub on this all around before going forward - [b6]

[b6]
Senior Counsel

Department of Homeland Security

Office of the General Counsel

[Washington, D.C. 20528

b2

Fax:]

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From: Sales, Nathan [mailto:[b2]]
Sent: Tuesday, October 17, 2006 1:44 PM
To: [b6] Scardaville, Michael; [b6]]
Subject: RE: PNR - very rough draft of checklist

Here are my edits, [b6] I think this is pretty close. As we discussed on the phone, the majority of my comments are line edits, but there are two bigger-ticket items as well.

Best,

NAS

Nathan A. Sales

Deputy Assistant Secretary for Policy Development

Department of Homeland Security

[b2]

From: [b6] b2]
Sent: Tuesday, October 17, 2006 12:06 PM
To: Scardaville, Michael; [b6]]
Cc: Sales, Nathan
Subject: PNR - very rough draft of checklist

All - C

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]C66]

C b6]

Senior Counsel

Department of Homeland Security

Office of the General Counsel

[Washington, D.C. 20528

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[b6]

From: Scardaville, Michael [b2]
Sent: Wednesday, October 18, 2006 6:27 AM
To: Sales, Nathan
Subject: Re: PNR - very rough draft of checklist

Thanks Nathan,

I guess I'm a bit confused about the next step. [

[
b5
]

Mike

Sent from my BlackBerry Wireless Handheld

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

From: Sales, Nathan [b2]
To: Scardaville, Michael [b2] b6
Sales, Nathan [b2] b6
Sent: Tue Oct 17 19:22:59 2006
Subject: RE: PNR - very rough draft of checklist

Mike, thanks for staying up late in Brussles to share your thoughts with us. Quick reactions below. I agree with much of this, but have a few qualifications.

(1) I think we need to keep in mind what [

b5

put some of Mike's proposed changes on hold for the time being and address them in the context of the CBP field guidance. > I think we can

(2) I don't think it's necessary to spell out the restrictions that apply to CBP. CBP already knows what it has to do, and the audience for this document is other components and agencies.

(3) Agree on the [

b5

(4) [b5
need to resolve it here.

> it's an important issue, but I don't think we

(5) Agree on the need for a record of all requests.

(6) Agree that we should say other [

b5

19

From: [b6 b2]
To: Sales, Nathan [b6 b2] Scardaville,
Michael [b6 b2]
Sent: Tue Oct 17 16:23:20 2006
Subject: RE: PNR - very rough draft of checklist

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[b6]

Senior Counsel

Department of Homeland Security

Office of the General Counsel

[Washington, D.C. 20528

b2

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Best,

NAS

Nathan A. Sales

Deputy Assistant Secretary for Policy Development

Department of Homeland Security

[b2]

From: [b6 b2]
Sent: Tuesday, October 17, 2006 12:06 PM
To: Scardaville, Michael; [b6]
Cc: Sales, Nathan
Subject: PNR - very rough draft of checklist

All - c

[

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]

[b6]

Senior Counsel

Department of Homeland Security

Office of the General Counsel

[Washington, D.C. 20528

b2

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] b6

From: [] b6
Sent: Sunday, July 30, 2006 1:32 PM
To: Baker, Stewart
Subject: Re: Latest PNR Draft

Ok - []

b5

] b6

Sent from my BlackBerry Wireless Handheld

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

From: Baker, Stewart
To: [] Scardaville, Michael;

Jacksta, Bob M;

Rosenzweig, Paul;

Sent: Sun Jul 30 11:08:39 2006
Subject: RE: Latest PNR Draft

] b6

[] b6

May I ask you to []

b5

]]

Stewart

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

b6

From: []
Sent: Sat 7/29/2006 10:26 PM
To: [] Scardaville, Michael;

Jacksta, Bob M:

] Rosenzweig, Paul;

] b6

Cc: Baker, Stewart
Subject: RE: Latest PNR Draft

[Mike]- here are some preliminary observations:

[]

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[b6]

Senior Counsel
Department of Homeland Security
Office of the General Counsel
Washington, D.C. 20528

b2

Fax:]

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From: [Scardaville, Michael]
Sent: Saturday, July 29, 2006 9:05 PM
To: [

b6

Jacksta, Bob M;

b6

] Rosenzweig, Paul; [

Scardaville, Michael;
Cc: Baker, Stewart
Subject: Latest PNR Draft

All,

Attached is NSC's draft paper for the DC with my initial edits [b5] Please review and send me any additional edits, comments or suggestions by 11:00 Monday at the latest. This paper will be the subject of the afternoon's PCC, which Stewart and Paul will be attending.

Stewart, Paul, [b6]

A word version is sitting in your siprnet accounts if you want it. If others on this list have siprnet accounts and want me to forward future docs to you, please let me know what your address is.

Thanks

[Mike

Michael Scardaville
Special Assistant/International Policy Advisor
Office of Policy Development
U.S. Department of Homeland Security
Office: [b2]
Cellular:]

b6

From: []
Sent: Sunday, July 30, 2006 1:37 PM b6
To: Baker, Stewart
Subject: Re: Latest PNR Draft

Presume we'd want these before tomorrow's pcc if possible? [] b6

Sent from my BlackBerry Wireless Handheld

----- Original Message -----
From: Baker, Stewart
To: Scardaville, Michael;

b6

Jacksta, Bob M;

[] Rosenzweig, Paul; []

Sent: Sun Jul 30 11:08:39 2006
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b5

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b6

Rosenzweig, Paul;

Cc: Baker, Stewart
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[Mike]- here are some preliminary observations: b6

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[b6]

Senior Counsel
Department of Homeland Security
Office of the General Counsel
Washington, D.C. 20528

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]

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From: [Scardaville, Michael]
Sent: Saturday, July 29, 2006 9:05 PM
To: [

bb

bb

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Thanks

[Mike

Michael Scardaville
Special Assistant/International Policy Advisor
Office of Policy Development
U.S. Department of Homeland Security
Office: [b2
Cellular: --]

[] b/6

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[] b/6

[b/6]
Senior Counsel
Department of Homeland Security
Office of the General Counsel
Washington, D.C. 20528

Fax: []

[b2]

22

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, Jacksta, Bob M;

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Cc: Baker, Stewart
Subject: Latest PNR Draft

Rosenzweig,
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Thanks

[Mike]

[Michael Scardaville
Special Assistant/International Policy Advisor
Office of Policy Development
U.S. Department of Homeland Security
Office: [b2]
Cellular:]

[b2]

(b6)

From: (b6 & b2)
Sent: Wednesday, December 13, 2006 12:45 PM
To: Levy, Andrew
Subject: Fw: EU press release on ATS/PNR

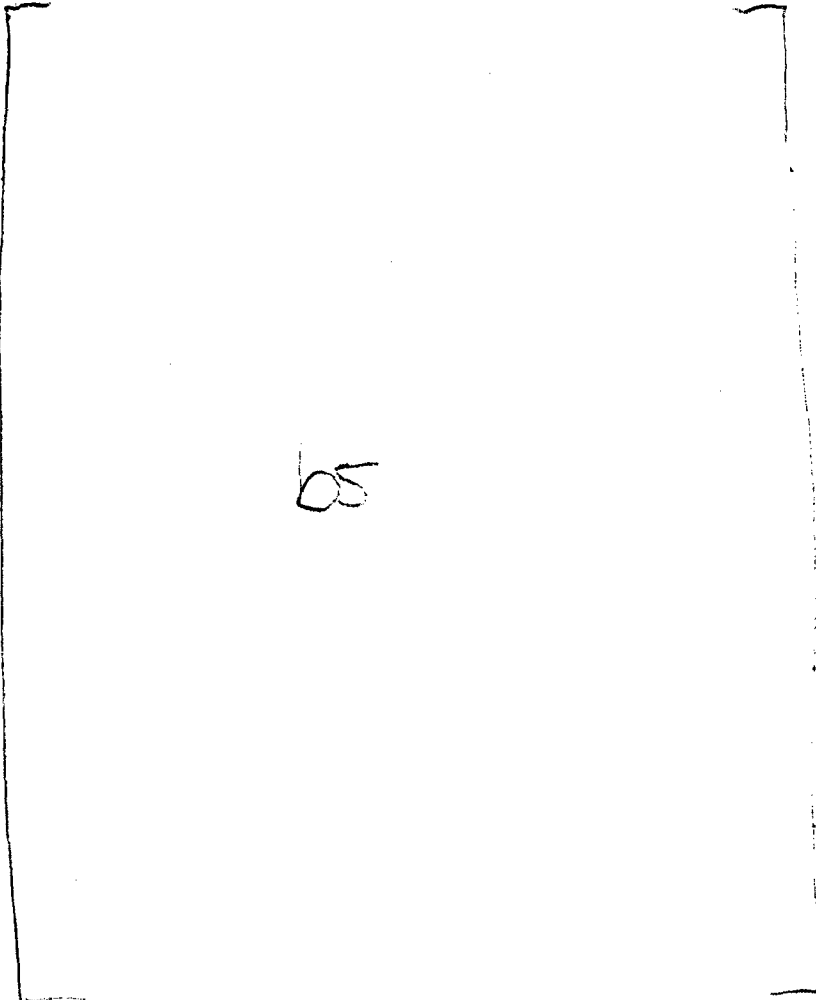
Some background on how we tried to address the pnr issues in the som and pia (b6)

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

From: [redacted]
To: Hr [redacted] b2 & b6]
Cc: [redacted]
Sent: Wed Dec 13 12:16:00 2006
Subject: RE: EU press release on ATS/PNR

[redacted] b5 [redacted]

(b2/cv)



(b5)
Senior Attorney
Office of Chief Counsel
U.S. Customs and Border Protection
Phon [b5]
Fax: [b5]
email: [b5]

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

From: (b5) (b5)
Sent: Wednesday, December 13, 2006 11:59 AM

(b5 (u))

Russ, Jarrod: I'm sorry for the short notice but I literally just got this. The EU today issued a statement on how PNR data is being used in the Automated Targeting System.

It says: "The information published by the DHS reveals significant differences between the way in which PNR data are handled within the Automated Targeting System on the one hand and the stricter regime for European PNR data according to the Undertakings given by the DHS."

The EU is sending DHS a letter asking for clarification and hints that this all could negatively affect renewal of the PNR agreement.

I'm doing a story on this for today. My deadline is 1:30pm. Again, sorry for the late notice but this literally just broke. Please email me or call me at 202-413-2212 with comment. The EU's full statement follows below. Chris

This is a press release from the European Commission
Vice President Franco Frattini
European Commissioner responsible for Justice, Freedom and Security

"Data protection and transfer of PNR data"

European Parliament

Strasbourg, 13 December 2006

On 19th October the European Union and the United States concluded an agreement for the processing and transfer of passenger name record data by air carriers to the United States Department of Homeland Security. The US Government confirmed a set of Undertakings which guarantee the protection and security of PNR data.

Against this background concern has been expressed in recent days following information published last month by the Department of Homeland Security on the "Automated Targeting System". This is a security screening system making a risk assessment of international travellers relying, among other things, on PNR data. The information published by the DHS reveals significant differences between the way in which PNR data are handled within the Automated Targeting System on the one hand and the stricter regime for European PNR data according to the Undertakings given by the DHS.

The Council Presidency and Commission have sent today a letter to the US Government to request formal confirmation that the way EU PNR data are handled in the ATS is the one described in the Undertakings.

The current EU-US Agreement on PNR data will expire in July of next year. The Commission will, at the beginning of 2007, recommend to Council to mandate the Presidency, assisted by the Commission, to negotiate a new PNR agreement with the United States. I am sure that any new agreement will provide for a high level of data protection for all PNR data transferred under the agreement while protecting the security of our citizens.

I will keep the EP informed about the mandate and the progress of

(b2 (x))

negotiations. COM expects to receive a mandate from Council before March next year.

I have always taken the position that travellers must be informed when their PNR data may be transferred to competent authorities of third countries. The DHS Undertakings expressly acknowledge this. We need an international agreement with the support of the public on both sides of the Atlantic and of the democratic representatives of the peoples.

I have often said that there is an important balance to be struck between measures to ensure security on the one hand and the protection of non-negotiable fundamental rights on the other. The Commission, assisting the Presidency in the negotiation of future PNR agreements with third countries, will ensure that security issues are properly addressed through the transfer and appropriate use of PNR data, while protecting personal data guaranteed by Article 8 of the Charter of Fundamental Rights.

Finally, a high level Contact Group was set up at the EU-US JLS Ministerial troika on 6 November 2006 to discuss information sharing and protection of personal data for law enforcement purposes. There is a clear need on both sides of the Atlantic to work more closely together on these issues.

I would personally be in favour of close contacts between the above High Level Group and both the European Parliament and the US Congress.

We need a broader perspective and a long-term vision to tackle, together with the US, the terrorist threat without putting at risk the fundamental rights of individuals.

I am also firmly committed to continue encouraging the Council to make progress on the Framework Decision on data protection in the Third Pillar. I hope the incoming German Presidency will be able to make substantial progress on that.

We do have a common problem and threat - terrorism - which will continue to exist in the coming months and years. Only a very solid strategy, and a balanced cooperation with our main international transatlantic partner, will allow reducing, if not eliminating, this modern form of 'totalitarianism' against democracy.

[b2]

From: Agen, Jarrod [b2]
Sent: Wednesday, December 13, 2006 1:31 PM
To: Baker, Stewart; [b6] Levy, Andrew; Isles, Adam; AGEN, JARROD; White, Brian M; Rosenzweig, Paul; Sales, Nathan; Coldebella, Gus; [b6]
Cc: Knocke, William [b6] Kraninger, Kathleen
Subject: RE: EU press release on ATS/PNR

Follow Up Flag: Follow up
Flag Status: Green

Agreed -- I am staying general, but this is good to have in case pressed.
Thanks.

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

From: Baker, Stewart [mailto:[b2]]
Sent: Wednesday, December 13, 2006 1:28 PM
To: [b6] Levy, Andrew; Isles, Adam; AGEN, JARROD; Baker, Stewart; White, Brian M; Rosenzweig, Paul; Sales, Nathan; Coldebella, Gus; [b6]
Cc: Knocke, William R; [b6] Kraninger, Kathleen
Subject: Re: EU press release on ATS/PNR

[b5]

Stewart Baker
Typed with my thumbs, so please make allowances for curtness and typos.

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

From: [b6] [b2]
To: Levy, Andrew [b2] Isles, Adam [b2] AGEN, Jarrod [b2]
[b2] Baker, Stewart [b2] White, Brian M [b2]
[b2] Isles, Adam [b2] Rosenzweig, Paul [b2]
[b2] Sales, Nathan [b2] Coldebella, Gus [b2]
Cc: Knocke, William R [b6] [b2] Kraninger, Kathleen [b2]
[b6] [b2]
Sent: Wed Dec 13 13:18:09 2006
Subject: RE: EU press release on ATS/PNR

[b5]

[b6]
Senior Attorney
Office of Chief Counsel
U.S. Customs and Border Protection
Phone [b2]
Fax:
email: [b6] [b2]

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

From: Levy, Andrew [mailto:] [b2]
Sent: Wednesday, December 13, 2006 1:22 PM
To: Isles, Adam; Agen, Jarrod; Baker, Stewart; White, Brian M; Isles, Adam; Rosenzweig, Paul; Sales, Nathan; Coldebella, Gus; [b6]
Cc: Knoke, William R; [b6] [] Kravinger, Kathleen
Subject: RE: EU press release on ATS/PNR

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]

Andrew J. Puglia Levy
Associate General Counsel (Legal Counsel)
U.S. Department of Homeland Security

[b2] (work)
[b2] (cell)
[b2] (fax)
[b2] []

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2

Cc: Knocke, William R; [b6
Subject: RE: EU press release on ATS PNR

] Kraninger, Kathleen

Looping in OGC too ...

Adam Isles

Counselor to the Secretary

U.S. Department of Homeland Security

[b2]

From: Agen, Jarrod [mailto: [b2]
Sent: Wednesday, December 13, 2006 11:52 AM
To: Baker, Stewart; White, Brian M; Isles, Adam; Rosenzweig, Paul; Sales, Nathan
Cc: Knocke, William R; [b6] Kraninger, Kathleen
Subject: EU press release on ATS/PNR
Importance: High

EU pushed out this release today - getting several press calls here.

Given this is out of Frattini's office - do you have guidance on how you want me to push back?

Are we confident that ATS system is covered in Undertakings?

From: Strohm, Chris [mailto:CStrohm@nationaljournal.com]
Sent: Wednesday, December 13, 2006 11:42 AM
To: AGEN, JARROD; Knocke, William R
Subject: Seeking immediate comment for story
Importance: High

Russ, Jarrod: I'm sorry for the short notice but I literally just got this. The EU today issued a statement on how PNR data is being used in the Automated Targeting System.

It says: "The information published by the DHS reveals significant differences between the way in which PNR data are handled within the Automated Targeting System on the one hand and the stricter regime for European PNR data according to the Undertakings given by the DHS."

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European Commissioner responsible for Justice, Freedom and Security

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European Parliament

Strasbourg, 13 December 2006

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I will keep the EP informed about the mandate and the progress of negotiations. COM expects to receive a mandate from Council before March next year.

I have always taken the position that travellers must be informed when their PNR data may be transferred to competent authorities of third countries. The DHS Undertakings expressly acknowledge this. We need an international agreement with the support of the public on both sides of the Atlantic and of the democratic representatives of the peoples.

I have often said that there is an important balance to be struck between measures to ensure security on the one hand and the protection of non-negotiable fundamental rights on the other. The Commission, assisting the Presidency in the negotiation of future PNR agreements with third countries, will ensure that security issues are properly addressed through the transfer and appropriate use of PNR data, while protecting personal data guaranteed by Article 8 of the Charter of Fundamental Rights.

Finally, a high level Contact Group was set up at the EU-US JLS Ministerial troika on 6 November 2006 to discuss information sharing and protection of personal data for law enforcement purposes. There is a clear need on both sides of the Atlantic to work more closely together on these issues.

I would personally be in favour of close contacts between the above High Level Group and both the European Parliament and the US Congress.

We need a broader perspective and a long-term vision to tackle, together with the US, the terrorist threat without putting at risk the fundamental rights of individuals.

I am also firmly committed to continue encouraging the Council to make progress on the Framework Decision on data protection in the Third Pillar. I hope the incoming German Presidency will be able to make substantial progress on that.

We do have a common problem and threat - terrorism - which will continue to exist in the coming months and years. Only a very solid strategy, and a balanced cooperation with our main international transatlantic partner, will allow defeating, if not eliminating, this modern form of 'totalitarianism' against democracy.