

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

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----Original Message----
From: [ 62 64
Sent: Monday, October 30, 2006 9:39 AM
To: 6 6 Subject: Re: PNR implementation -- CBP letters
The undertakings limit access to contractors L
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Office of Chief Counsel (Enforcement)
US Customs and Border Protection
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---- Original Message -----
From: [ 62 66
Sent: 10/30/2006 08:31 AM
Don't have the undertakings with me - 6667
---- Original Message -----
From: Sales, Nathan C 62
To: 5 66
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Scardaville, Michael
                   C-
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Cc: K 66
Sent: Mon Oct 30 08:28:21 2006
Subject: Re: PNR implementation -- CBP letters
Cb6 I'm on travel today, so I don't have access to my files, but my recollection is
that the L
I'm copying Mike Scardaville and  L b ( )  who can fill you in on the details.
Sent from my BlackBerry Wireless Handheld
---- Original Message -----
From: L 66
To: Sales, Nathan
Cc: [ 66
Sent: Mon Oct 30 07:54:45 2006
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Subject: FW: PNR implementation -- CBP letters

Mr. Sales.

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

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

Sent: Friday, October 27, 2006 7:02 FM

To: C

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Subject: FW: PNR implementation -- CBP letters

Importance: High

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Please note the short suspense on this tasker (3 parts). Also, it appears that

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Please clarify...this could complicate matters.

Regards.

Senior Analyst

DHS Intelligence and Analysis Directorate

C 62]

From: Sales, Nathan

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

66

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 \angle

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Second, the request letter from the components to CBP includes \succeq

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

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→ 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
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<<PNR access invitation from CBF (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:
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Sent:
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To:
Subject:
                     Re: PNR implementation -- CBP letters
The undertakings limit access to contractors [ 65
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Office of Chief Counsel (Enforcement)
US Customs and Border Protection
Phone: F 62
Fax:
From: L b2 b6
                                   Sent: 10/30/2006 08:31 AM
To: [ b2 b6 2 Subject: FW: FNR implementation -- CBP letters
Don't have the undertakings with me - L 66 1
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Nathan A. Sales
Deputy Assistant Secretary for Policy Development Department of Homeland Security

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

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From: L b 6 b2 3 Sent: Friday, October 27, 2006 3:34 PM	
To: Baker, Stewart: Scardaville, Michael, Rosenzweig, Paul;	C b6 3
Subject: RE: Publishing the interpretive letter	
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Director of International Privacy Policy DHS, Privacy Office Tel. Fax' Email: The harsh reality is that data protectors run the risk of being only a to and hoes waging battle against large technocratic and bureaucratic weapons. —David Flaherty, Protection Privacy in Surveillance Socie	forces equipped with lasers and nuclear
This communication, along with any attachments, is covered by fede communications and may contain confidential and legally privileged not the intended recipient, you are hereby notified that any dissemin message is strictly prohibited. If you received this in error, please remessage. Thank you.	information. If the reader of this message is ation, distribution, use or copying of this
From: Baker, Stewart [mailto:' [62] Sent: Friday, October 27, 2006 3:29 PM To: Scardaville, Michael; Rosenzweig, Paul; [66] Subject: Publishing the interpretive letter	3
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From:	E 66 62 7
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Mike

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From: C 66 62 Sent: Friday, October 27, 2006 4:15 PM

To: Baker, Stewart; Scardaville, Michael; Rosenzweig, Paul; L 66

Subject: RE: Publishing the interpretive letter

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Senior Counsel

Department of Homeland Security

Office of the General Counsel

Washington, D.C. 20528

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Fax:

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From: Baker, Stewart [mailto: [62

Sent: Friday, October 27, 2006 3:29 PM

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Subject: Publishing the interpretive letter

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From: Sent: Monday, October 30, 2006 7:33 AM To: Subject: RE: Publishing the interpretive letter
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Deputy Associate General Counsel (Enforcement) Department of Homeland Security O: Fax:
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From: Scardaville, Michael [mailto 5 62 5] Sent: Friday, October 27, 2006 5:37 PM To: [6 5 Baker, Stewart; Scardaville, Michael; Rosenzweig, Paul; [6 6 5] Subject: RE: Publishing the interpretive letter

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To: Baker, Stewart; Scardaville, Michael; Rosenzweig, Paul;

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Subject: RE: Publishing the interpretive letter

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Senior Counsel

Department of Homeland Security

Office of the General Counsel

Washington, D.C. 20528

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Sent: Friday, October 27, 2006 3:29 PM

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Subject: Publishing the interpretive letter

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Sent: Friday, October 27, 2006 4:15 PM

To: Baker, Stewart; Scardaville, Michael; Rosenzweig, Paul; 🗸 📙 💪

Subject: RE: Publishing the interpretive letter

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Senior Counsel

Department of Homeland Security

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From: Baker, Stewart [mailto: [56

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To: Scardaville, Michael; Rosenzweig, Paul; C 66

Subject: Publishing the interpretive letter

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L 66] E 66 62 _ From: Monday, October 30, 2006 9:39 AM Sent: To: 660 1 Re: FW: Publishing the interpretive letter Subject: DRAFT FR Notice for Interim PNR Agreement (CBP 2 10-3-06) 2 10 20 (2)-mseds.doc Attachments: DRAFT FR Notice for Interim PN... How about / 55 L 66 Office of Chief Counsel U.S. Customs and Border Protection Phone: Fax: 62 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. [66 b2] cc: 10/30/2006 09:33 Subject: FW: Publishing the interpretive letter AMOk, I'm not sure I L 65 \Box - [66] E 66 ____ Senior Counsel Department of Homeland Security Office of the Teneral Counsel

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Washington, D.C. 20528

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From: Scardaville, Michael [mailto: C b2

Sent: Friday, October 27, 2006 5:37 PM

To: [66] Baker, Stewart; Scardaville, Michael; Rosenzweig, Paul; [6] Subject: RE: Publishing the interpretive letter

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Senior Counsel

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(See attached file: DRAFT FR Notice for Interim PNR Agreement (CBP cc 10-3-06) 310 20 (2)-mseds.doc)

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DEPARTMENT OF HOMELAND SECURITY

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

AGENCY: A Second Customs and Border Protection, pdf

ACTION: General Notice

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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 English Security Upmember states. At the time of their issuance, these Undertakings were understood to provide the foundation upon which the European Community (1947) was able to enter into an agreement with the United States and English and the European Community (1947) was able to enter into an agreement with the United States and English and the European Community (1947) was able to enter into an agreement with the United States (1948).

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Sent:	Monday, October 30, 2006-10:17 AM
To:	と b 6 > Baker, Stewart; Scardaville, Michael; と b 6 コ 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) comments 10-30-06).doc
Here's an update	ed version to trv address the points made today and over the weekend. <
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Office of the Ger Washing B2 Fax: This communication, and legally privileged use or copying of this Thank you. From: Sent: Monday, To: Baker, Stew	along with any attachments, is covered by federal and state law governing electronic communications and may centain confidential information. If the reader of this message is not the intended recipient, you are hereby notified that any dissemination, distribution message is strictly prohibited. If you have received this in error, please reply immediately to the sender and delete the message. Coctober 30, 2006 9:45 AM art; Scardaville, Michael; LbGJ Rosenzweig, Paul; LbGJ solutions.
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DHS, Privacy O. Tel. Fax Email: The harsh reality	2 y is that data protectors run the risk of being only a tiny force of irregulars equipped with pitchfork
and noes wagin	g battle against large technocratic and bureaucratic forces equipped with lasers and nuclear

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weapons. -- David Flaherty, Protection Privacy in Surveillance Societies.

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~ 7 From: Baker, Stewart [mailto 🛴 💪 🕮 Sent: Saturday, October 28, 2006 4:16 PM To: Scardaville, Michael; に b 6 コ Rosenzweig, Paul; に b 6 コ Subject: RE: Publishing the interpretive letter OK, L One further question From: Scardaville, Michael [mailto に b ご Sent: Friday, October 27, 2006 5:37 PM Subject: RE: Publishing the interpretive letter h5 I made a couple for pretty minor edits to £64 text in the attached. The main one is £ b 5 C 62 From: [66] [mailto: [62 66 コ Sent: Friday, October 27, 2006 4:15 PM To: Baker, Stewart; Scardaville, Michael; Rosenzweig, Paul; C 66 Subject: RE: Publishing the interpretive letter C 60 67 [66] Senior Counsel Department of Homeland Security

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Fax:

Office of the General Counsel

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Washington, D.C. 20528

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DEPARTMENT OF HOMELAND SECURITY

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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, D. 65

Deletad: Department of Homeland Security:

ACTION: General Notice.

SUMMARY:

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FOR FURTHER INFORMATION COST SEE

SUPPLEMENTARY INFORMATIONS

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DEPARTMENT OF HOMELAND SECURITY

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MAN SOLETA

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

AGENCY: @architege Customs and Border Protection: [1] 18

ACTION: General Notice,

SUMMARY:

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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 Engage (Change Cultumenter States). At the time of their issuance, these Undertakings were understood to provide the foundation upon which the European Community (11) was able to enter into an agreement with the United States (hat

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SUPPLEMENTARY INFORMATION:

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ACTION: General Notice.

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Background

SUMMARY:

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 Egg planting a set of representations. At the time of their issuance, these Undertakings were understood to provide the foundation upon which the European

Community (1), was able to enter into an agreement with the U (1) that

DEPARTMENT OF HOMELAND SECURITY

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Interim Agreement Between the European Union and the United States Regarding

the Transfer of Passenger Name Record Data

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	basis under European Union law.		
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[insert text of interim agreement]

 $\boldsymbol{\mathcal{L}}$ 66 Scardaville, Michael 1 C From: 62 二 Tuesday, October 17, 2006 6:36 PM Sent: に b 6 コ Sales, Nathan; Scardaville, Michael; こ ь 6 To: _1 Re: PNR - very rough draft of checklist Subject: A11, I don't think this or the draft letter from the requesting component covers \subset The business center is closed (its after midnight here) so I will summarize the highlights below: CBP use - C 65 Ice and DHS use - c 65 フ Other DHS entities - first we need to note C 65 Mike Sent from my BlackBerry Wireless Handheld ---- Original Message -----From: [b6 b2
To: Sales, Nathan [
Michael [b2 ☐ 3cardaville, 62

This has quick cbp edits, and I incorporated $\angle bb > 0$ comment 7 into the text, but probably want a thorough scrub on this all around before going forward - - 663

6

Subject: RE: PNR - very rough draft of checklist

Sent: Tue Oct 17 16:23:20 2006

C b C > Senior Counsel

Department of Homeland Security

Office of the General Counsel

Washington, D.C. 20528

62

Fax:

This communication, along with any attachments, is covered by federal and state law governing electronic communications and may contain confidential and legally privileged information. If the reader of this message is not the intended recipient, you are hereby notified that any dissemination, distribution, use or copying of this message is strictly prohibited. if you have received this in error, please reply immediately to the sender and delete the message. Thank you.

From: Sales, Nathan [mailto: [b 2]

Sent: Tuesday, October 17, 2006 1:44 PM

To: L b6 3 Scardaville, Michael; L b6 Subject: RE: PNR - very rough draft of checklist

Here are my edits, Cbb) 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

1 62 3

From: C 66 62

Sent: Tuesday, October 17, 2006 12:06 PM

Cc: Sales, Nathan

Subject: PNR - very rough draft of checklist

A11 - C

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Senior Counsel

Department of Homeland Security

Office of the General Counsel

Washington, D.C. 20528

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66 From: Scardaville, Michael 62 \mathcal{L}_{ω} Wednesday, October 18, 2006 6:27 AM Sent: Sales, Nathan To: Subject: Re: PNR - very rough draft of checklist Thanks Nathan, I guess I'm a bit confused about the next step. L h5 Mike Sent from my BlackBerry Wireless Handheld ---- Original Message -----From: Sales, Nathan _ b 2
To: Scardaville, Michael _
Sales, Nathan _ b 2 b 6
Sent: Tue Oct 17 19:22:59 2006 1 Subject: RE: PNR - very rough draft of checklist Mike, thanks for staying up late in Brussles to share your thoughts with us. reactions below. I agree with much of this, but have a few qualifications. (1) I think we need to keep in mind what -65 ⇒ I think we can put some of Mike's proposed changes on hold for the time being and address them in the context of the CBP field guidance. (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 C 65 ___ (4) 55 it's an important issue, but I don't think we need to resolve it here.

1

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Agree on the need for a record of all requests.

Agree that we should say other igsim

(5)

L 65	Z
Best, NAS	
Nathan A. Sales Deputy Assistant Secretary for Policy Development Department of Homeland Security	
From: Scardaville, Michael [mailto: [b 2] Sent: Tuesday, October 17, 2006 6:36 PM To: [b 6] Sales, Nathan; Scardaville, Michael; [b 6] Subject: Re: PNR - very rough draft of checklist	
All,	
I don't think this or the draft letter from the requesting component covers 5 The business center is closed (its after midnight here will summarize the highlights below:	os I
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Mike	
Sent from my BlackBerry Wireless Handheld	

---- Original Message -----

From: \Box b b b \Box To: Sales, Nathan \Box b b b b \Box Michael \Box b b b \Box Sent: Tue Oct 17 16:23:20 2006

Subject: RE: PNR - very rough draft of checklist

This has quick cbp edits, and I incorporated $Cbbb \supset comment 7$ into the text, but probably want a thorough scrub on this all around before going forward - Cbb1

L 66 3

Senior Counsel

Department of Homeland Security

Office of the General Counsel

Washington, D.C. 20528

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Fax: (

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From: Sales, Nathan [mailto 62]
Sent: Tuesday, October 17, 2006 1:44 PM
To: 56 3 Scardaville, Michael; 56 5
Subject: RE: PNR - very rough draft of checklist

Best,

NAS

Nathan A. Sales

Deputy Assistant Secretary for Policy Development

Department of Homeland Security

C 62]

From: L 6 6 2

Sent: Tuesday, October 17, 2006 12:06 PM
To: Scardaville, Michael; L 6 6 1
Cc: Sales, Nathan
Subject: PNR - very rough draft of checklist

All - C

Senior Counsel

Department of Homeland Security
Office of the General Counsel

Washington, D.C. 20528

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Fax:

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66 From: Sunday, July 30, 2006 1:32 PM Sent: Baker, Stewart To: Re: Latest PNR Draft Subject: Ok - -05 ゴ (7 66 Sent from my BlackBerry Wireless Handheld ---- Original Message -----From: Baker, Stewart To: [Scardaville, Michael; ___. Jacksta, Bob M; Rosenzweig, Paul; 99 Sent: Sun Jul 30 11:08:39 2006 Subject: RE: Latest PNR Draft May I ask you to C 65 Stewart ----Original Message----From: | Sent: Sat 7/29/2006 10:26 PM To: \Scardaville, Michael; Jacksta, Bob M:

Dacksta, BOD M:

Rosenzweig, Paul;

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

[Mike] - here are some preliminary observations:

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Senior Counsel

Department of Homeland Security

Office of the General Counsel

Washington, D.C. 20528

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Fax: _____

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

Jacksta, Bob M;

1 Rosenzweig, Paul;[

26

Scardaville, Michael; Cc: Baker, Stewart

Subject: Latest PNR Draft

All,

Attached is NSC's draft paper for the DC with my initial edits 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, こb6ゴ

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

Thanks

TMike

Michael Scardaville

Special Assistant/International Policy Advisor

Office of Policy Development

U.S. Department of Homeland Security

Office: (62

Cellular:

56 From: Sunday, July 30, 2006 1:37 PM Sent: Baker, Stewart To: Re: Latest PNR Draft Subject: Presume we'd want these before tomorrow's pcc if possible? Sent from my BlackBerry Wireless Handheld ---- Original Message -----16 From: Baker, Stewart To: Scardaville, Michael; Jacksta, Bob M; ___ Rosenzweig, Paul; L Senc: Sun Jul 30 11:08:39 2006 Subject: RE: Latest PNR Draft 66 May I ask you to L 65 Stewart ----Original Message----66 From: Sent: Sat 7/29/2006 10:26 PM To: Scardaville, Michael; æ, Jacksta, Bob M; . Rosenzweig, Paul; Cc: Baker, Stewart Subject: RE: Latest PNR Draft 66 Mike - here are some preliminary observations: 72 L ______ , P2 L

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Senior Counsel

Department of Homeland Security

Office of the General Counsel

Washington, D.C. 20528

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

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Jacksta, Bob M:

;]Rosenzweig, Paul:

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

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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: (62

Cellular: _.

Sent: Saturday, July 2 To: Scardaville, Micl	9, 2006 10:26 PM nael; Jacksta. Bob M:		
Cc: Baker, Stewart Subject: RE: Latest PNR Mike here are some prelim	1 4		5/ 6
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Senior Counsel Department of Homeland Se Office of the General Counse Washington, D.C. 20	el e e e e e e e e e e e e e e e e e e		

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5/6 From Scardaville, Michael Sent: Saturday, July 29, 2006 9:05 PM To:^r , Jacksta, Bob M; Rosenzweig, Pau! Scardaville, Michael; Cc: Baker, Stewart Subject: Latest PNR Draft AII. Attached is NSC's draft paper for the DC with my initial edits / 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, Lb6] 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:
Cellular.

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From Sent:	•		<i>t lo</i> 2 ember 13, 200) 06 12:45	PM		
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Senior Attorney
Office of Chief Counsel
U.S. Customs and Border Protection
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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.

From: () () Sent: Wednesday. December 13, 2000 11:59 AM

To: (Subject: Fw: EU press release on ATS/PNR
Adding ats gurus (blo)
From: Isles, Adam To: Agen, Jarrod White, Brian M Rosenzweig, Paul Levy, Andrew Levy, Andrew Co: Knocke, William R (Kathleen (Sent: Wed Dec 13 11:54:73 2006 Subject: RE: EU press release on ATS/PNR
Looping in OGC too
Adam Isles
Counselor to the Secretary
U.S. Department of Homeland Security
(BS) - tel
From: Agen, Jarrod [mailto:] (2) Sent: Wednesday, December 13, 2006 11:32 AM To: Baker, Stewart: White, Brian M: Isles, Adam: Rosenzweig, Paul: Sales, Nathan Cc: Knocke, William R: (40) 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."

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

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.

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                      Agen, Jarrod C
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From:
                      Wednesday, December 13, 2006 1:31 PM
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                      Baker, Stewart; 📛 😼 🗇 Levy, Andrew; Isles, Adam; AGEN, JARROD; White, Brian
To:
                      M; Rosenzweig, Paul; Sales, Nathan; Coldebella, Gus; に しる
                      Knocke, William _ 6 & RE: EU press release on ATS/PNR

☐ Kraninger, Kathleen

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Subject:
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Follow Up Flag:
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Agreed -- I am staying general, but this is good to have in pase pressed.
Thanks.
----Original Message----
From: Baker, Stewart [mailto: L b2
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Sent: Wednesday, December 13, 2006 1:28 PM
                     Levy, Andrew: Isles, Adam; AGEN, JARROD; Baker, Stewart; White,
Brian M; Rosenzweig, Paul; Sales, Nathan; Coldebella, Gus; 🗸 💪 🗅
Cc: Knocke, William R; C 6 6
Subject: Re: EU press release on ATS/PNR
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Stewart Baker
Typed with my thumbs, so please make allowances for curtness and typos.
---- Original Message ----
From: L
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To: Levy, Andrew
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                       Baker, Stewart
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                                                 62
                                                            Rosenzweig, Paul
                          Isles, Adam
                            Sales, Nathan Z
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Cc: Knocke, William R
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Sent: Wed Dec 13 13:18:09 2006
Subject: RE: EU press release on ATS/PNR
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Senior Attorney
Office of Chief Counsel
U.S. Dustoms and Border Protection
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----Gridina. Message-----From: Levy, Andrew [mailto: [b2]
Sent: Wednesday, December 13, 1006 1:19 FM
To: Isles, Adam; Agen, Tarrod; Baker, Stewart; White, Brian M; Isles, Adam; Rosenzweig, Paul; Sales, Narhan; Toloobella, Gus; [b]
Co: Knocke, William R; [b]

Xraninjer, Kathleen

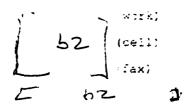
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Andrew J. Puglia Levy

Associate General Counsel (Legal Counsel)

Subject: RE: EU press release on ATS/PNR

U.S. Department of Homeland Security



From: Isles, Adam

Sent: Wednesday, December 13, 2006 11:54 AM

To: Agen, Jarrod; Baker, Stewart; White, Brian M; Isles, Adam; Posenzweig, Paul; Sales, Nathan; Coldebella, Gus; Levy, Andrew; E 66]

Co: Knocke, William R: C 66 Supsage: RE: El pross relosse of Alb the Transmit, Kathleen

Looping in OGC toc ...

Adam Isles

Coinselar to the Gerretary

U.S. Department of Homeland Security

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From: Agen, Jarrod imailto: -62 Sent: Wednesday, December 13, 2006 11:52 AM

To: Baker, Stewart; White, Brian M; Isles, Adam: Rosenzweig, Paul; Sales, Nathan

Kraninger, Kathleen

Cc: Knocke, William R; C 6 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 Frattimi's office - do you have guidance on now 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 PNP data are handled within the Automated Tailering System on the one hand and the structer reduce for European Flat astal actorating to the indictakings 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 an 012-413-2212 with comment. The EO's full statement follows relow. Orris

This is a press release from the European Commission Vice Fracinent Franco Fractini

European Commissioner responsible for Justice, Freedom and Jenurity

"Data protection and transfer of FNR data"

European Parliament

security of PNR data.

Strasbours, 13 December 2006

On 19th Ortober the European Union and the United States discluded an agreement for the processing and transfer of passenger name record that by air carriers to the United States Department of Homeland Security.

The US Government confirmed a set of the Process and the Figure the transfer the procession and

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 stripter 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 nigh 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 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 spone High Level Group and both the European Parliament and the US Congress.

We need a broader perspective and a long-term vision to taukle, 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 nope 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 congeration with our main international transational partner, will allow reducing, of not eliminating, this modern form of 'totalitariansm' against democracy.