



Homeland Security

Privacy Office

December 14, 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 sixteenth 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 telephonic calls with counsel representing the Department of Homeland Security in December 2007, you agreed to narrow the scope of your request. The Government proposed that plaintiff eliminate non-responsive material within email chains from the scope of the request. Plaintiff agreed that emails within an email chain containing no responsive material may be removed from the scope of the request, and further suggested that defendant may eliminate duplicative copies of emails that contain responsive material from the scope of the request.

As we advised you in our December 7th partial release letter, we have completed our search for responsive documents and all responsive documents that were not referred outside the agency for declassification review or were not being held at DHS for classification review have been processed.

We completed our review of 5 responsive documents which were being held for possible classification, consisting of 16 pages. I have determined that 3 of those documents, consisting of 10 pages, are releasable in part, and 2 documents, consisting of 6 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 properly classified information, names, telephone numbers, email addresses, deliberative material, legal opinions, law enforcement information, and homeland security information. I am withholding this information pursuant to Exemptions 1, 2, 5, 6, and 7(E) of the FOIA, 5 USC §§ 552 (b)(1), (b)(2), (b)(5), (b)(6), and (b)(7)(E).

FOIA Exemption 1 provides that an agency may exempt from disclosure matters that are (A) specifically authorized under criteria established by an Executive Order to be kept secret in the interest of national defense or foreign policy and (B) are in fact properly classified pursuant to such Executive Order. Portions of the withheld documents concern foreign government information relating to the national security and United States government programs and are classified under § 1.4(b) of Executive Order 12958, as amended.

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.

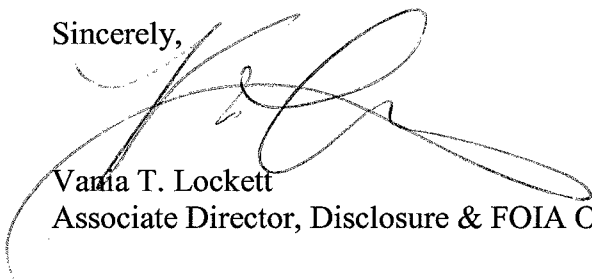
FOIA Exemption 6 exempts from disclosure records the release of which would cause a clearly unwarranted invasion of personal privacy. Weighed against the privacy interest of the individuals is the lack of public interest in the release of their personal information and the fact that the release adds 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 insofar as it relates to the documents being held for classification review. 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,

A handwritten signature in black ink, appearing to read 'V. Lockett', written over the typed name.

Vania T. Lockett
Associate Director, Disclosure & FOIA Operations

Enclosures: 10 pages



Homeland Security

September 30, 2006

Via Electronic Delivery (u)

Mr. Jonathan Faull
Director General
European Commission
Brussels, Belgium

Mr. Markus Laurent
Deputy Director General
Ministry of Foreign Affairs
Helsinki, Finland

(u) Dear Jonathan and Markus:

(u) This letter is intended to set forth our understandings with regard to the interpretation of a number of provisions of the Passenger Name Record (PNR) Undertakings issued by the Department of Homeland Security (DHS) on May 11, 2004. We seek your concurrence in the interpretations outlined below and look forward to further reviewing these and other issues in the context of future discussions toward a comprehensive, reciprocal agreement based on common principles.

Sharing and Disclosure of PNR (u)

(u) The Intelligence Reform and Terrorism Prevention Act of 2004 required the President to establish an Information Sharing Environment "that facilitates the sharing of terrorism information." Following this enactment, the President issued Executive Order 13388, directing that DHS and other agencies "promptly give access to . . . terrorism information to the head of each other agency that has counterterrorism functions" and establishing a mechanism for implementing the Information Sharing Environment.

(u) Pursuant to Paragraph 35 of the Undertakings (which requires that the Undertakes be consistent with U.S. law and allows DHS to advise the European Commission regarding the passage of any U.S. legislation which materially affects the statements made in these Undertakings), the U.S. has now advised the EU that the implementation of the Information Sharing Environment required by the Act and the Executive Order may be impeded by certain provisions of the Undertakings that restrict information sharing among U.S. agencies, particularly all or portions of paragraphs 17, 28, 29, 30, 31, and 32.

(u) In light of these developments, nothing in the Undertakings should be interpreted or applied to limit the sharing of PNR data by the Bureau of Customs and Border Protection (CBP) with other elements of the U.S. government responsible for preventing or combating of terrorism and other crimes as set forth in Paragraph 3 of the Undertakings.

(u) CBP will therefore facilitate the disclosure of PNR data to U.S. government authorities exercising a counter-terrorism function that need PNR for the purpose of preventing or combatting terrorism and

Derived from:
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Date: 10-2-2006 2-21

serious transnational crimes in cases (including threats, flights, individuals, and routes of concern) that they are examining or investigating.

- (u) CBP will ensure that such authorities respect substantially equivalent standards of data protection to that applicable to CBP, in particular in relation to purpose limitation, data retention, further disclosure, awareness and training, security standards and sanctions for abuse, and procedures for information, complaints and rectification. Prior to commencing facilitated disclosure, each receiving authority will confirm to CBP that it respects those standards. CBP will inform the EU on the implementation of such facilitated disclosure and respect for the applicable standards before the expiry of the Agreement.

Early Access Period for PNR (u)

(C/PGI-Mod)

- (u) In determining when the initial push of data is to occur, CBP has discretion to obtain PNR more than 72 hours prior to the departure of a flight so long as action is essential to combat an offense enumerated in paragraph 3. Additionally, while there are instances in which the government may have specific information regarding a particular threat, in most instances the available intelligence is less definitive and may require the casting of a broader net to try and uncover both the nature of the threat and the persons involved. Paragraph 14 is therefore understood to permit access to PNR outside of the 72 hour mark when there is an indication that early access is likely to assist in responding to a specific threat to a flight, set of flights, route, or other circumstances associated with offenses described in Paragraph 3 of the Undertakings. In exercising this discretion, CBP will act judiciously and with proportionality.

- (u) DHS will carry out the necessary tests as soon as its technical requirements are satisfied in order to move, as soon as practicable, to a push system for the transfer of PNR data in accordance with these Undertakings.

Data Retention (u)

(c)

The Joint Review (u)

- (u) Given the extensive joint analysis of the Undertakings conducted in September 2006 and the expiration of the agreement prior to the next Joint Review, the question of how and whether to conduct a joint review in 2007 will be addressed during the discussions regarding a future agreement.

Data Elements (u)

- (u) The frequent flyer field may offer addresses, telephone numbers, email addresses; all of these, as well as the frequent flyer number itself, may provide crucial evidence of links to terrorism. Similarly, information about the number of bags carried by a passenger may have value in a counterterrorism context. The Undertakings authorize CBP to add data elements to the 34 previously set forth in Attachment "A" of the Undertakings, if such data is necessary to fulfill the purposes set forth in paragraph 3.
- (u) The U.S. has consulted under Paragraph 7 with the EU in connection with item 11 of Attachment A regarding CBP's need to obtain the frequent flier number and any data element listed in Attachment A to the Undertakings wherever that element may be found.

(c/KG1-100)

- (u) Secretary Chertoff has fully reviewed and concurs with the details of this letter.

Sincerely yours,



Stewart Baker
Assistant Secretary for Policy

[b2]

From: [b6 b2]
Sent: Wednesday, December 20, 2006 12:17 PM
To: Scardaville, Michael [b6]
Cc: [b6], Kraninger, Kathleen
Subject: RE: Question and an FYI RE: PNR and potential NTC tour

Follow Up Flag: Follow up
Flag Status: Green

Attachments: interpretations interpretation-msads (3)11 22-msads(11-28) (3) clean (2) doc



interpretations
interpretation...

As Mike requested, attached is the current version of the interpretations memo - it is not yet final, but I don't expect any major substantive changes.

[b6]
Senior Counsel
Office of General Counsel
Department of Homeland Security
Phone: [b2]
Fax: [b2]

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

From: Scardaville, Michael [mailto:[b6]]
Sent: Tuesday, December 19, 2006 3:37 PM
To: [b6], Scardaville, Michael [b6]
Cc: [b6], Kraninger, Kathleen
Subject: Re: Question and an FYI: RE: PNR and potential NTC tour

Thanks [b6]

I'm asking OGC to send you the legal memo for the record on the agreement, which covers much of this. If you need something more explicit from policy I'll write something up tonight when I get to my hotel and ask somebody to put it in memo form and get it signed and to you ASAP.

[b6]

If you're in today I'm out all week. Can you forward the legal memo for the file to this list?

Thanks

Mike

Sent from my BlackBerry Wireless handheld

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

From: [b6 b2]
To: Scardaville, Michael [b6]
Cc: [b6 b2], Kraninger, Kathleen [b6]
Sent: Tue Dec 19 11:31:11 AM
Subject: RE: Question and an FYI: RE: PNR and potential NTC tour

Mike;

I just spoke with [b6] and [b2 High b7E]

\$ Intro - New EU PNR agreement (attached) was signed on [redacted] date.

\$ This agreement specifically expands the DHS access to PNR data as referenced in the following "cut and paste" text found on page X of the agreement

\$ It should be noted that DHS Policy asserts that this agreement only expands access and does not limit existing access. [b2 High b7E]

[b2 High b7E]

\$ [b2 High b7E]

Thanks, if [b6] gets something like this he should be able to make things good again.

[b6]

-----Original Message-----
From: Scardaville, Michael (mailto:[b2])
Sent: Friday, December 15, 2006 8:42 PM
To: [b6] Scardaville, Michael
Cc: [b6]
Subject: Re: Question and an FYI: RE: PNR and potential NTC tour

Thanks [b6]

[b2 High b7E] As I mentioned to [b6] the intent of the redefinition of DHS was to expand those with access not contracted. [b6]

[b2 High b7E]

I'm out next week, but feel free to give me a ring on my cell (work: [b2] or personal [b2])

Mike

Sent from my BlackBerry Wireless Handheld

----- Original Message -----
From: [b6 b2]
To: Scardaville, Michael [b2]
Cc: [b6 b2]
Sent: Fri Dec 15 19:57:36 2006
Subject: Re: Question and an FYI: RE: PNR and potential NTC tour

Mike-

Happy Holidays to you!

[b2 HqsL b7E]

Of course we will host any delegation you have coming over involved in our line work; I am copying [b6] who handles all this but we will appreciate.

I need to separately follow up with you on a like issue per [b6] from Chief Counsel here at CBP as well.

Best, [b6]

-----"Scardaville, Michael" [b2] wrote: -----

To: [b6 b2]
From: "Scardaville, Michael" [b2]
Date: 12/15/2006 10:31AM
cc: [b6 b2]
Subject: Question and an FYI: RE: PNR and potential NTC tour

Happy Holidays [b6]

A quick question and an FYI for you.

[First, last Friday [b6] told me that [b2 HqsL b7E]]

Second, I was in Berlin with Paul Rosenzweig Tuesday and Wednesday meeting with the Germans on a potential information sharing deal. [b5] State invited them to visit the "SC" in January or February. We suggested they also visit NTC to see how such information is actually employed for border screening and we know how you love dog and pony shows. We don't have any rates yet, but as this develops who should I work with on your staff to get this up?

Thanks

Mike

Michael Scardaville

Deputy Director, European & Multilateral Affairs

Office of International Affairs

U.S. Department of Homeland Security

Office: [b2]

Cellular: [b2]

Fax: [b2]

[b6]

From: [b6 b2] on behalf of
Sent: Thursday, January 18, 2007 1:24 PM
To: [b6 b2]
Subject: Re: PNR implementation plan
Attachments: PNR implementation chart (10.06.2006).doc



PNR implementation chart (10.0...

[b6]

To [b6 b2]
10/12/2006 02:21 PM cc

Subject
PNR implementation plan

[b6] we had a meeting at the NAC yesterday to discuss the taskings below. Nathan Sales recommended that you chair the meeting mentioned in bullet (4) to discuss any technical issues (database interfacing, internet vs. intranet). If there are no technical issues regarding giving people access to PNR data, then you may want to state that and that no meeting is necessary. It can be a conference call the POC's are noted in the listing document attached. Let me know if you have any more questions

[b6]

PROGRAM MANAGER
OFFICE OF FIELD OPERATIONS
U.S. CUSTOMS AND BORDER PROTECTION
WASHINGTON, DC

[b2]

----- Forwarded by [b6] on 10/12/2006 02:16 PM -----

----->
"Sales, Nathan" |

[b2]

10/06/2006 11:11 |
AM

To: "Jacksta, Bob M" [b2

] "Kraninger, Kathleen"

b6 b2

cc: "Baker, Stewart" [b2] "Barth, Richard"

[b2] "Rosenzweig, Paul"

[b2] "Scardaville, Michael" [b2]

Subject: PNR implementation plan

As I'm sure many of you have heard by now, last night DHS reached an agreement with the EU on PNR information. In light of this development, we have been given the go-ahead to begin preparations for the sharing of PNR data within DHS. Attached please find the final version of the PNR implementation plan.

As we've discussed, this plan sets a three-week horizon for PNR information-sharing. The following are the tasks that are scheduled to be completed within seven days - i.e., by Friday, October 13:

- Components will determine which personnel require immediate access to PNR data. Components will report the names and total number to CBP.

- * Each component will designate a data-access point of contact and provide to CBP. CBP will provide the name of its POC to other components.
- * An IT group, comprising representatives from CBP and other components, will be convened to resolve all technical issues surrounding access to PNR data. The IT group will have an initial organizational meeting.
- * CBP OCC will draft a request letter template for use by other components seeking access to PNR/ATS-P. The letter will include, among other things, a description of the purpose for which the request is being made (by office or individual as appropriate), the number and names of individuals to receive access, a POC for managing the component's access including enforcing accountability for use, and training requirements. CBP will share the draft with the components.
- * CBP OCC will draft a request approval letter detailing the obligations the agency and its officers accept by accessing the system, POCs for scheduling training, etc. CBP will share the draft with the components.

I think it's important to keep as close to the schedule as possible, so please let me know about any timing problems as soon as they develop. (Hopefully there won't be any!) Thanks again for all your help in making PNR information-sharing a reality.

Best,

NAS

Nathan A. Sales

Deputy Assistant Secretary for Policy Development

Department of Homeland Security

[b 2]

(See attached file: PNR implementation chart (10.06.2006).doc)