**Homeland
Security**

Privacy Office, Mail Stop 0550

February 22, 2008

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 twenty-first 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 have been processed except for the
documents being held at DHS for classification review and the classified documents that were
referred outside the agency for releasability review.

We completed our review of 17 responsive documents, consisting of 48 pages, which were being held for possible classification. I have determined that 16 documents, consisting of 41 pages, are releasable in part, and 1 document, consisting of 7 pages, is withholdable in its 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, deliberative material, and legal opinions. I am withholding this information pursuant to Exemptions 1, 5, and 6 of the FOIA, 5 U.S.C. §§ 552 (b)(1), (b)(5), and (b)(6).

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), 1.4(c), 1.4(d), and 1.4(g) of Executive Order 12958, as amended.

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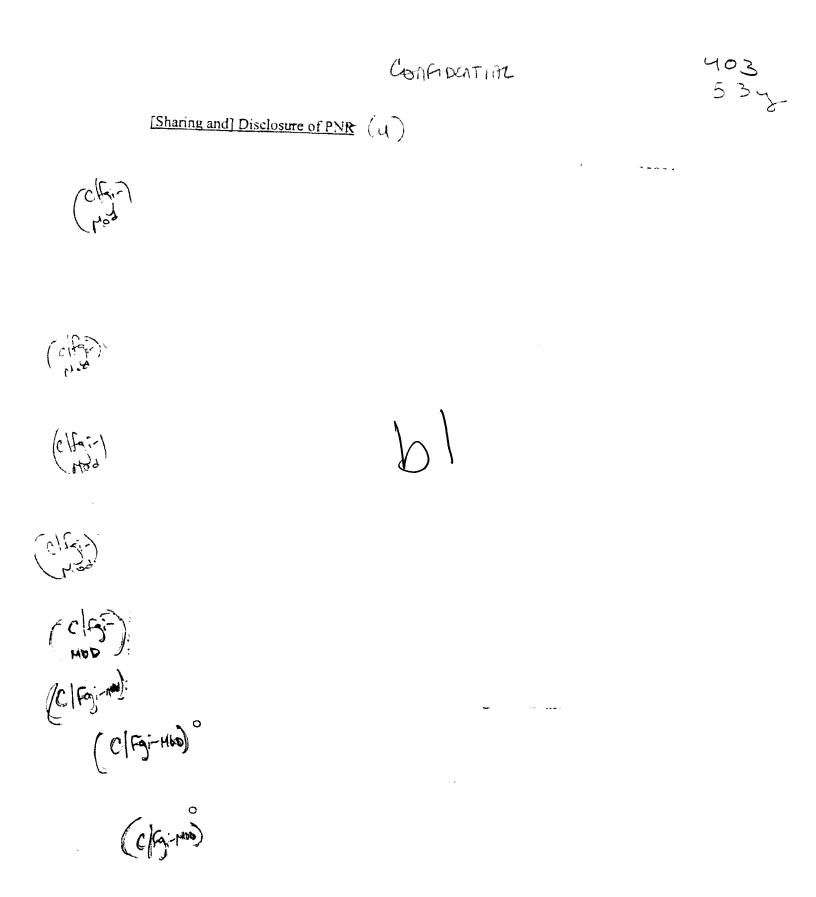
FOIA Exemption 6 exempts from disclosure records the release of which would cause a clearly unwarranted invasion of personal privacy. Weighed against the privacy interest of the individuals is the lack of public interest in the release of their personal information and the fact that the release adds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

Our office continues to process your request insofar as it relates to the classified documents referred outside the agency and the remaining documents being held for DHS 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,

Vania T. Lockett
Associate Director, Disclosure & FOIA Operations

Enclosures: As stated, 41 pages

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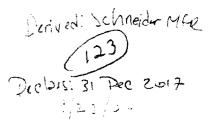(C/fgi-Mod) 1.

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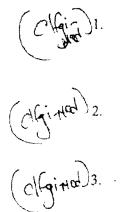Ned

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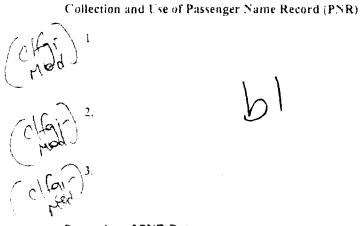[b5]   9/12/2006 9:50:00 AM

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Page 2: [23] Comment [m8]	michael.scardaville	9/12/2006 11:22:00 AM
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Page 2: [25] Comment [m9]	michael.scardaville	9/12/2006 11:22:00 AM
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Page 2: [27] Comment [m10]	michael.scardaville	9/12/2006 11:22:00 AM
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Page 2: [28] Comment [m11]	michael.scardaville	9/12/2006 11:22:00 AM
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Page 3: [29] Comment [b6]	[b6]	9/12/2006 11:22:00 AM
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The handwritten annotations "clfg-mod" appear in margins, and "b1" markings throughout.

clfg-mod (handwritten margin notes throughout)

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Page 3: [32] Comment [m15]   michael.scardaville   9/12/2006 11:22:00 AM

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ELEMENTS OF A COOPERATIVE SYSTEM FOR COLLECTING AND USING PNR DATA

Collection and Use of Passenger Name Record (PNR)

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Protection of PNR Data

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International Cooperation

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Page 2: [2] Comment [m4]	michael.scardaville	9/11/2006 3:16:00 PM
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Page 2: [4] Comment [m5]	michael.scardaville	9/11/2006 3:16:00 PM
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Page 2: [6] Comment [m6]	michael.scardaville	9/11/2006 3:16:00 PM
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ELEMENTS OF A COOPERATIVE SYSTEM FOR COLLECTING AND USING PNR DATA

Collection and Use of Passenger Name Record (PNR)

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Protection of PNR Data

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