

Privacy Office DHS-D3

August 1, 2007

Mr. David L. Sobel Electronic Frontier Foundation 1875 Connecticut Avenue, N.W. Suite 650 Washington, DC 20009

Re: DHS/OS/PRIV 07-160/Sobel request

Dear Mr. Sobel:

This is our fourth partial release to your Freedom of Information Act (FOIA) requests to the Department of Homeland Security (DHS), dated November 7, 2006 and December 6, 2006, requesting DHS records concerning the Automated Targeting System (ATS). These two requests were aggregated to simplify processing. The following is a consolidated list of records requested:

- 1. All Privacy Impact Assessments prepared for the ATS system or any predecessor system that served the same function but bore a different name.
- 2. A Memorandum of Understanding executed on or about March 9, 2005 between Customs and Border Protection (CBP) and the Canada Border Services Agency to facilitate the Automated Exchange of Lookouts and the Exchange of Advance Passenger Information.
- 3. All records, including Privacy Act notices, which discuss or describe the use of personally-identifiable information by the CBP (or its predecessors) for purposes of screening air and sea travelers.
- 4. All System of Records Notices (SORNs) that discuss or describe targeting, screening, or assigning "risk assessments" of U.S. citizens by CBP or its predecessors.
- 5. All records that discuss or describe the redress that is available to individuals who believe that the ATS contains or utilizes inaccurate, incomplete or outdated information about them.
- 6. All records that discuss or describe the potential consequences that individuals might experience as a result of the agency's use of the ATS, including but not limited to arrest, physical searches, surveillance, denial of the opportunity to travel, and loss of employment opportunities.
- 7. All records that discuss or identify the number of individuals who have been arrested as a result of screening by the ATS and the offenses for which they were charged.
- 8. All complaints received from individuals concerning actions taken by the agency as a result of ATS "risk assessments" or other information contained in the ATS, and the agency's response to those complaints.
- 9. All records that discuss or describe Section 514 of the Department of Homeland Security Appropriations Act, 2007, P.L. 109-295 (H.R. 5441) and its prohibition against the development or testing of "algorithms assigning risk to passengers whose names are not on Government watch lists."
- 10. All records that address any of the following issues:
 - a. Whether a system of due process exists whereby aviation passengers determined to pose a threat are either delayed or prohibited from boarding their scheduled flights may appeal such decision and correct erroneous information contained in the ATS;

- b. Whether the underlying error rate of the government and private databases that will be used in the ATS to assign a risk level to an individual will not produce a large number of false positives that will result in a significant number of individuals being treated mistakenly or security resources being diverted;
- c. Whether the agency has stress-tested and demonstrated the efficacy and accuracy of all search tools in the ATS and has demonstrated that the ATS can make an accurate predictive assessment of those individuals who may constitute a threat;
- d. Whether the Secretary of Homeland Security has established an internal oversight board to monitor the manner in which the ATS is being developed and prepared;
- e. Whether the agency has built in sufficient operational safeguards to reduce the opportunities for abuse;
- f. Whether substantial security measures are in place to protect the ATS from unauthorized access by hackers or other intruders;
- g. Whether the agency has adopted policies establishing effective oversight of the use and operation of the system;
- h. Whether there are no specific privacy concerns with the technological architecture of the system;
- i. Whether the agency has, pursuant to the requirements of section 44903(i)(2)(A) of Title 49, United States Code, modified the ATS with respect to intrastate transportation to accommodate states with unique air transportation needs and passengers who might otherwise regularly trigger a high risk status; and
- j. Whether appropriate life-cycle estimates, expenditure and program plans exist.

Our June 29, 2007 letter summarized our processing of your request to-date. Our searches directed to the DHS Office of the Executive Secretariat (ES), DHS Office of Policy (PLCY), DHS Privacy Office (PRIV), the Transportation Security Administration (TSA), and the U.S. Customs and Border Protection (CBP) have thus far produced a combined total of 335 pages. Out of those 335 pages, we provided you with a combined total of 80 pages with certain information withheld pursuant to the FOIA. We have continued to process your request within PRIV, PLCY, the DHS Office of General Counsel (OGC), the DHS Office of the Inspector General (OIG), and CBP.

A search directed to OGC has produced thus far 25 pages of records responsive to your request. Of those 25 pages, we are withholding 12 in their entirety pursuant to Exemption 5 of the FOIA. We have enclosed the remaining 13 pages with certain information withheld pursuant to Exemptions 2, 5, 6 and 7(E) of the FOIA.

A search directed to CBP has produced an additional 43 pages of records responsive to your request. Those 43 pages are enclosed with certain information withheld pursuant to Exemptions 2, 6, and 7(E) of the FOIA.

Enclosed are 56 pages with certain information withheld pursuant to Exemptions 2, 5, 6 and 7(E) of the FOIA, 5 U.S.C. §§ 552 (b)(2), (b)(5), (b)(6), and (b)(7)(E). Exemption 2 (high) protects information applicable to internal administrative matters to the extent that disclosure would risk circumvention of an agency regulation or statute, impede the effectiveness of an agency's activities, or reveal sensitive information that may put the security and safety of an agency activity or employee at risk. Exemption 2 (low) protects information applicable to internal administrative personnel matters to the extent that the information is of a relatively trivial nature. Exemption 5 exempts from disclosure certain inter- and intra-agency communications protected by deliberative process privilege, attorney work-product privilege, and attorney-client privilege. Exemption 6 exempts from disclosure records the release of which would cause a clearly unwarranted invasion of personal privacy. 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 as it pertains to PRIV, PLCY, OGC, OIG, and CBP. If you have any questions regarding this matter, please refer to **DHS/OS/PRIV 07-160/Sobel request**. This office can be reached at 866-431-0486. Thank you for your patience as we proceed with your request.

Sincerely.

Vania T. Lockett

Associate Director, Disclosure & FOIA Operations

Enclosures: 56 pages

(

From:

Knocke, William R (

Sent:

Thursday, December 07, 2006 4 29 PM

To:

Ahern, Jayson P. Isles, Adam; Rosenzweig, Paul

Cc:

Levy, Andrew

Subject: FW ATS vis a vis DHS Appropriations Act prohibition

FYI - AP is moving this story and the ACLU is pushing it hard right now. OGC is helping with a statement.

From: Sniffen, Michael [mailto:MSniffen@ap.org] Sent: Thursday, December 07, 2006 3:23 PM

To: Knocke, William R

Subject: RE: ATS vis a vis DHS Appropriations Act prohibition

Russ.

Left you voicemails at your office and cell phones. We're going ahead roday with piece in which some raise this possibility of a violation. Would very much like DHS' response in the story from the get-go. Writing the piece now.

)

Mike Sniffen AP/Washington

776-9468

From: Knocke, William R (

DG 7 Cm

Sent: Wednesday, December 06, 2006 7:56 PM

To: Sniffen, Michael

Subject: RE: ATS vis a vis DHS Appropriations Act prohibition

Let's talk tomorrow.

From: Sniffen, Michael [mailto:MSniffen@ap.org] Sent: Wednesday, December 06, 2006 4:18 PM

To: Knocke, William R; Anthony, William A

Subject: ATS vis a vis DHS Appropriations Act prohibition

Russ, Bill -

Doesn't the ATS as used by CBP violate the DHS Appropriations Act and the Anti-Deficiency Act (which carries criminal penalties)?

Asst. Commissioner Ahern told me ATS was separate from checking names on watchlists and was designed to go beyond watchlists and target suspicious people who hadn't already come to law enforcement attention.

This is confirmed on page 9 of the DHS privacy impact assessment, which says:

"The ATS rules and resulting risk assessments are designed to signal to CBP officers that further inspection of a person, shipment or conveyance may be warranted, even though an individual may not have been previously associated with a law enforcement action or otherwise be noted as a person of concern to law enforcement." (emphasis added)

The DHS Appropriations Act has contained the following section in 2005, 2006 and 2007 I understand. See particularly sec. 514(e) which is not limited by any reference to either TSA or Secure Flight like section 514(a) is. (I understand the 2004 appropriation had a limitation confined to TSA and CAPPS II).

Department of Homeland Security Appropriations Act, 2007, P.L. 109-295 (H.R. 5441)

TITLE V: GENERAL PROVISIONS

SEC. 514. (a) None of the funds provided by this or previous appropriations Acts

may be obligated for deployment or implementation, on other than a test basis, of the

Secure Flight program or any other follow on or successor passenger prescreening

program, until the Secretary of Homeland Security certifies, and the Government

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Accountability Office reports, to the Committees on Appropriations of the Senate and

the House of Representatives, that all ten of the conditions contained in paragraphs (1)

through (10) of section 522(a) of Public Law 108-334 (118 Stat. 1319) have been

successfully met.

(b) The report required by subsection (a) shall be submitted within 90 days after

the Secretary provides the requisite certification, and periodically thereafter, if

necessary, until the Government Accountability Office confirms that all ten conditions

have been successfully met.

(c) Within 90 days of enactment of this Act, the Secretary shall submit to the

Committees on Appropriations of the Senate and the House of Representatives a detailed

plan that describes: (1) the dates for achieving key milestones, including the date or time

frames that the Secretary will certify the program under subsection (a); and (2) the

methodology to be followed to support the Secretary's certification, as required under

subsection (a).

(d) During the testing phase permitted by subsection (a), no information gathered

from passengers, foreign or domestic air carriers, or reservation systems may be used to

screen aviation passengers, or delay or deny boarding to such passengers, except in

instances where passenger names are matched to a Government watch list.

(e) None of the funds provided in this or previous appropriations Acts may be

utilized to develop or test algorithms assigning risk to passengers whose names are not

on Government watch lists.

(f) None of the funds provided in this or previous appropriations Acts may be

utilized for data or a database that is obtained from or remains under the control of a

non-Federal entity: Provided, That this restriction shall not apply to Passenger Name

Record data obtained from air carriers.

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               Isles, Adam (
                                ba & b6
  From:
                                              )
               Thursday, December 07, 2006 7:11 PM
  Sent:
               Spero, Deborah J
  To:
  Cc:
                             ) Coldebella, Gus; Levy, Andrew
                   b6
  Subject:
               FW: ACLU 514(e) Points
  Importance: High
Debbie-
We need some help from CBP on the 514(e) issue being raised by ACLU. Would most appreciate cite to the
(separate) provision/language in our Approps Bill covering ATS.
Thanks
Adam
Adam Isles
Counselor to the Secretary
U.S. Department of Homeland Security
(bat b6) - tel
From: Coldebella, Gus (
Sent: Thursday, December 07, 2006 6:30 PM
To: Isles, Adam; Levy, Andrew; Rosenzweig, Paul; (
                                                         )'; Coldebella, Gus; Kraninger, Kathleen; Spero,
                                                   106
Deborah J; Ahern, Jayson P
                                    )
Cc: Knocke, William R; (
Subject: RE: ACLU 514(e) Points
We're putting together more full talkers now-will include.
Gus P. Coldebella
Deputy General Counsel
Office of the General Counsel
U.S. Department of Homeland Security
   ) (mobile)
     b6
From: Isles, Adam (
                          b3 1 b6
Sent: Thursday, December 07, 2006 6:30 PM
To: Levy, Andrew; Rosenzweig, Paul; ( b6
                                           ); Coldebella, Gus; Isles, Adam; Kraninger, Kathleen; Spero,
Deborah J; Ahern, Jayson P
Cc: Knocke, William R; (
Subject: ACLU 514(e) Points
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                          b5
                )
2. Looping in CBP
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(b2)

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Adam Isles
Counselor to the Secretary
U.S. Department of Homeland Security ( b) ( b) - tel
From: Levy, Andrew (
                              ba & b6
Sent: Thursday, December 07, 2006 5:36 PM
To: Rosenzweig, Paul; ( bo ) Levy, Andrew; Coldebella, Gus; Isles, Adam; Kraninger, Kathleen
                              96
Cc: Knocke, William R;
Subject: RE: ATS wash post question
Thoughts?
Andrew J. Puglia Levy
Associate General Counsel (Legal Counsel)
U.S. Department of Homeland Security
             '(work)
              (cell)
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)

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)
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           Levy, Andrew (
  From:
                               batb6
                                            )
           Thursday, December 07, 2006 5:38 PM
  Sent:
           Rosenzweig, Paul; Knocke, William R; Isles, Adam; Ahern, Jayson P; Kraninger, Kathleen
  To:
  Cc:
           Levy, Andrew; Coldebella, Gus; Scardaville, Michael; Baker, Stewart; (
                                                                                  99
                                                                                                  )
  Subject: RE: ATS vis a vis DHS Appropriations Act prohibition
                                                 )
Also, a bit of background (
                                  ps
----Original Message----
From: Rosenzweig, Paul [mailto: (
Sent: Thursday, December 07, 2006 4:47 PM
To: Knocke, William R; Isles, Adam; Ahern, Jayson P; Rosenzweig, Paul; Kraninger, Kathleen
Cc: Levy, Andrew; Coldebella, Gus; Scardaville, Michael; Baker, Stewart; (
Subject: RE: ATS vis a vis DHS Appropriations Act prohibition
Context is clearly Secure Flight
From: Knocke, William R [mailto: (
                                        bat blo
Sent: Thu 12/7/2006 4:35 PM
To: Isles, Adam; Ahern, Jayson P; Rosenzweig, Paul; Kraninger, Kathleen
Cc: Levy, Andrew; Coldebella, Gus; Scardaville, Michael; Baker, Stewart; (
                                                                                                   )
                                                                                  06
Subject: Re: ATS vis a vis DHS Appropriations Act prohibition
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(ba)

OGC is crashing on a statement but this is going to hit the wire soon, so I'll take any and all bullets (does not have to be pretty or wordy) (b5)
Sent from my BlackBerry Wireless Handheld
Original Message From: Isles, Adam To: Knocke, William R; Ahern, Jayson P; 'Rosenzweig, Paul' (bat bb); Kraninger, Kathleen Cc: 'Levy, Andrew' (bat bb): 'Coldebella, Gus' (bat bb) Scardaville, Michael; Baker, Stewart; Bartoldus, Charles; (bat bb) Sent: Thu Dec 07 16:33:52 2006 Subject: RE: ATS vis a vis DHS Appropriations Act prohibition
This is just factually wrong (b5)
Adam Isles
Counselor to the Secretary
U.S. Department of Homeland Security
(ba&ioo) - tel
From: Knocke, William R Sent: Thursday, December 07, 2006 4:29 PM To: Ahern, Jayson P; Isles, Adam; 'Rosenzweig, Paul' Cc: 'Levy, Andrew' Subject: FW: ATS vis a vis DHS Appropriations Act prohibition
FYI - AP is moving this story and the ACLU is pushing it hard right now. OGC is helping with a statement.

From: Sniffen, Michael [mailto:MSniffen@ap.org]
Sent: Thursday, December 07, 2006 3:23 PM
To: Knocke, William R
Subject: RE: ATS vis a vis DHS Appropriations Act prohibition

Russ.

Left you voicemails at your office and cell phones. We're going ahead today with piece in which some raise this possibility of a violation. Would very much like DHS' response in the story from the get-go. Writing the piece now.

Mike Sniffen

AP/Washington

776-9468

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Sent: Wednesday, December 06, 2006 7:56 PM

To: Sniffen, Michael

Subject: RE: ATS vis a vis DHS Appropriations Act prohibition

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To: Knocke, William R; ()

Subject: ATS vis a vis DHS Appropriations Act prohibition

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-0-

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SEC. 514. (a) None of the funds provided by this or previous appropriations Acts may be obligated for deployment or implementation, on other than a test basis, of the Secure Flight program or any other follow on or successor passenger prescreening program, until the Secretary of Homeland Security certifies, and the Government Accountability Office reports, to the Committees on Appropriations of the Senate and the House of Representatives, that all ten of the conditions contained in paragraphs (1) through (10) of section 522(a) of Public Law 108-334 (118 Stat. 1319) have been successfully met.

- (b) The report required by subsection (a) shall be submitted within 90 days after the Secretary provides the requisite certification, and periodically thereafter, if necessary, until the Government Accountability Office confirms that all ten conditions have been successfully met.
- (c) Within 90 days of enactment of this Act, the Secretary shall submit to the Committees on Appropriations of the Senate and the House of Representatives a detailed plan that describes: (1) the dates for achieving key milestones, including the date or time frames that the Secretary will certify the program under subsection (a); and (2) the methodology to be followed to support the Secretary's certification, as required under subsection (a).

- (d) During the testing phase permitted by subsection (a), no information gathered from passengers, foreign or domestic air carriers, or reservation systems may be used to screen aviation passengers, or delay or deny boarding to such passengers, except in instances where passenger names are matched to a Government watch list.
- (e) None of the funds provided in this or previous appropriations Acts may be utilized to develop or test algorithms assigning risk to passengers whose names are not on Government watch lists.
- (f) None of the funds provided in this or previous appropriations Acts may be utilized for data or a database that is obtained from or remains under the control of a non-Federal entity: Provided, That this restriction shall not apply to Passenger Name Record data obtained from air carriers.

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               Coldebella, Gus
  From:
               Thursday, December 07, 2006 11:48 AM
  Sent:
                   b6
  To:
  Cc:
               Levy, Andrew
               FW: ATS Follow-Up
  Subject:
  Importance: High
(b6)
Working with Andrew, will you summarize what we learned today (concentrating on the question Adam posed
below)? Thanks.
Gus
Gus P. Coldebella
Deputy General Counsel
Office of the General Counsel
U.S. Department of Homeland Security
                office)
                mobile)
From: Isles, Adam [mailto: (
                                 188.b6
Sent: Thursday, December 07, 2006 11:48 AM
                     Rosenzweig, Paul; Coldebella, Gus; Kraninger, Kathleen
To: [
Cc: l
                      Scardaville, Michael; (
                                                                    ): Sweet, Chad; Schwien, Fred; Sales,
                                                    66
Nathan; Ahern, Jayson P; Spero, Deborah J
Subject: ATS Follow-Up
Importance: High
Attached is my list of outstanding ATS items, as well as potential owners - feel free to supplement;

    Consolidate answers to USA Today questions (PUBLIC AFFAIRS)

                                                                                                   )

    Develop talking points on redress (

                                                                 bs
                              ) - (can POLICY take this on, perhaps working with SCO?)
              05

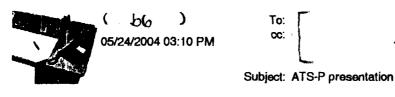
    Confirm understanding of ATS and its relationship to TECS, API, PNR (OGC)

    Obtain Commissioner memo on ATS performance (I will discuss with CBP - S-1 has requested it)

    Touch base with FBI on ATS – (

                                                                                                         )
                            65
Thanks
Adam Isles
Counselor to the Secretary
U.S. Department of Homeland Security
(100 1 th ) tel
```

(ba)



(b6)

This is the presentation I will use for the briefing.



BTS Presentation 3-4-04final.p

(b6)
Office of Field Operations
Border Security and Facilitation
Border Targeting and Analysis
(b3 \$ b6)



Targeting in the Passenger Environment

4 March 2004



Automated Targeting System (ATS)

- ATS is designed to assist Inspectors and by helping them to focus on inbound and outbound passengers and cargo shipments that most warrant their attention
- ATS receives much of its data in real time from various Customs mainframe systems, such as the Treasury Enforcement Communication System (TECS), the Automated Commercial System (ACS) and the Automated Export System (AES), as well as from non-Customs sources as is the case for Passenger Name Records (PNRs)
- This data consists of electronically filed manifests and other data for arriving and departing passengers; bills, entries, and entry summaries for cargo imports; and shippers' export declarations and transportation bookings and bills for cargo exports



Automated Targeting System (cont.)

- ATS consists of the following modules:
 - ATS/P Passenger
 - ATS/N Inbound Cargo
 - ATS/AT Outbound Cargo
 - ATS/L Land Border
 - ATS/M Marine
- Each module employs rules and methods to:
 - Examine all of the data
 - Identify passengers or cargo that are associated with data anomalies or high risk factors
 - Rank order these results

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ATS Program Alignment to DHS Goals

PDHS Goal	Key Program Features	Results
Create smart borders		
Identify trustworthy people	Automated review of inbound and outbound passengers	Identify high risk passengers for terrorist links or smuggling while facilitating low risk passengers
Identify trustworthy cargo	Tools for analysis of cargo & shipping documents for anti-terrorism, narcotics, other contraband and Container Security Initiative (CSI) Decision Support	More trustworthy inbound cargo. Export control of controlled commodities
Increase security of shipping containers	Planned tracking of movement of seagoing containers	Provide more secure maritime trade environment
Improve detection of weapons	Tools for analysis of cargo documents for anti- terrorism	Better export control of weapons and weapon components, hazardous materials and FAA violations

ATS Program Alignment to DHS Goals (cont.)

DHS Goal	Key Program Features	Results
Integrate information sharing across Federal Government	Support to all agencies	Targeting support to CBP, ICE, FBI, Secret Service, Dept of State, IRS, Coast Guard, federal & state task forces
Provide people & processes to rapidly field new technology	Interactive, friendly web interface. () bahsh & b7(E)	Easy to learn web interface for new users



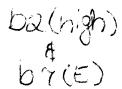
Targeting Strategies

Targeting Strategies (cont.)



ATS Key Capabilities

- Evaluates large data sets
- Identifies high risk inbound and outbound passengers and cargo for terrorist links, smuggling of WMD, drugs, currency and other contraband
- Supports alert and lookout functions
- Facilitates low risk passengers and cargo for expedited clearance or entry
- Analysis allows limited inspectional resources to focus on higher risk passengers or cargo





ATS Key Capabilities (cont.)

- banigh by (E
- Continually updates its assessments of passengers and cargo as new data becomes available.
- Every passenger and cargo shipment is subjected to the level of scrutiny that an experienced inspector would perform under favorable conditions.
- Results of the ATS evaluations are presented to inspectors for final decision.

Definitions

- Rule A procedure that returns a finding when a set of constraints is satisfied
 - Uniquely identified so it can be used within rule sets
- Rule Set (Weight Set) A group of rules defined for a particular targeting or analytical purpose
 - Comprised of rules that are assigned specific weights in accordance with their importance within context of the rule set

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Definitions (cont.)

- Sweep An evaluation of all current passengers or cargo against rule sets
 - Results of Sweeps are presented to all targeters through the ATS interface



ATS Targeting Approach

bahigh \$ b7(E)



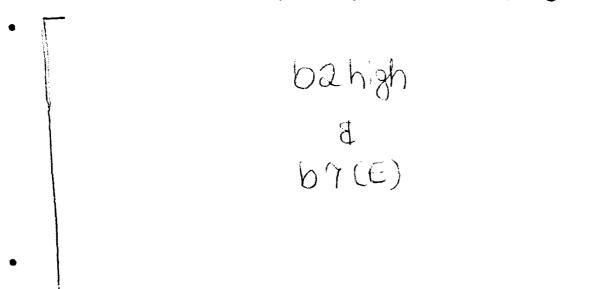
ATS Targeting Approach (cont.)

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Name Matching Factors

• Names appearing in source records (e.g., passenger manifests and other documents/records) are compared with names in target records (e.g., other data sets such as TECS, NCIC, SAVI records, target/watch lists, etc.).





Name Matching Types

bahigh a b7(E)



"Probable" Fuzzy Match Examples

62 hgh 8 67(E)



"Possible" Fuzzy Match Examples

bahigh \$ b7(E)



Matching Types (cont.)



bahigh \$ b7E



Passenger Name Matching Example

bahigh \$ b7(E)



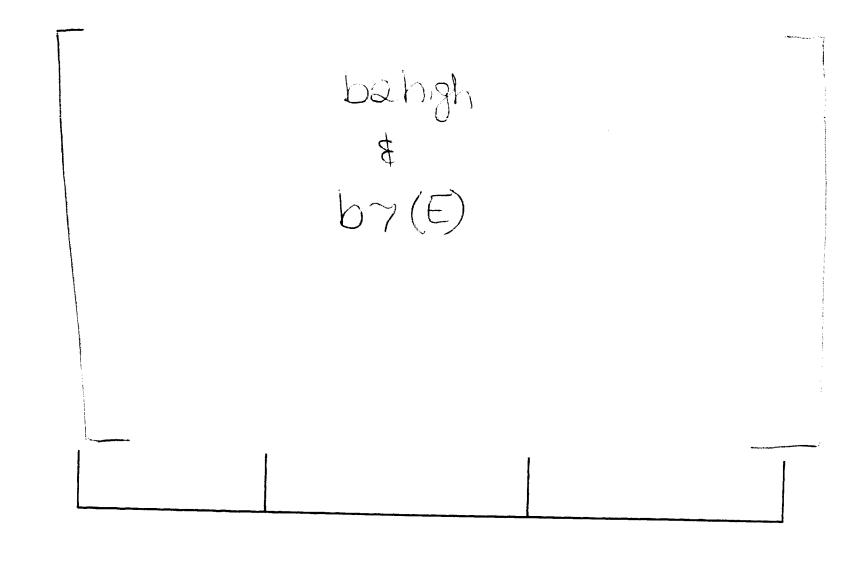
Multipart First, Middle and Last Names

bâ high 8 67(E)



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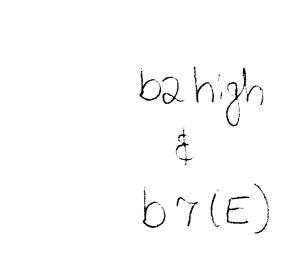




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ATS Passenger Overview





ATS Passenger Database

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ATS Passenger Rule Groups

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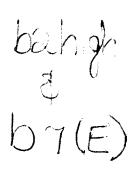


ATS Passenger Rule Groups (cont.)

bahyh \$ b7(E)



ATS Passenger Rule Groups (cont.)





ATS Passenger Rule Groups (cont.)

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Passenger Evaluation Process

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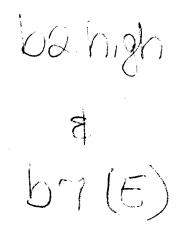


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Future ATS Passenger Enhancements

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Future ATS Passenger Enhancements (cont.)





Future ATS Passenger Enhancements (cont.)





ATS Passenger Demonstration

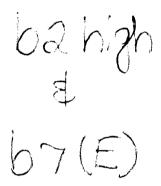


ATS Passenger Examples

Start Page

Start Page (cont.)

Passenger Sweep



Passenger Sweep "Drill Downs"

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ba high

\$

67(E)



Passenger Arriving Flights - Risk Scored





b2 high \$ b7 (E)

