



**U.S. Customs and
Border Protection**

February 18, 2009

Marcia Hoffman
Staff Attorney
Electronic Frontier Foundation
454 Shotwell Street
San Francisco, CA 94110

Re: FOIA 2009F6359

Dear Ms. Hoffman:

This letter is the final response to your December 17, 2008, Freedom of Information Act (FOIA) letter of request to U.S. Customs and Border Protection (CBP) regarding complaints from travelers concerning searches, seizures and duplication of files from laptops, cell phones, digital cameras, MP3 players, and other electronic devices at U.S. Borders. A search for records produced 108 pages of information.

CBP has determined that the 108 pages are partially releasable pursuant to Title 5 U.S.C. § 552. Enclosed is the one page with certain information withheld as described below.

FOIA Exemption 2(low) protects information applicable to internal administrative personnel matters to the extent that the information is of a relatively trivial nature and there is no public interest in the document.

FOIA Exemption 2(high) protects information applicable to internal administrative and personnel matters, such as operating rules, guidelines, and manual of procedures of examiners or adjudicators, 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. Whether there is any public interest in disclosure is legally irrelevant. Rather, the concern under high 2 is that a FOIA disclosure should not benefit those attempting to violate the law and avoid detection.

FOIA Exemption 6 exempts from disclosure personnel or medical files and similar files the release of which would cause a clearly unwarranted invasion of personal privacy. This requires a balancing of the public's right to disclosure against the individual's right privacy.

FOIA Exemption 7(C) protects records or information compiled for law enforcement purposes that could reasonably be expected to constitute an unwarranted invasion of personal privacy. This exemption takes particular note of the strong interests of individuals, whether they are suspects, witnesses, or investigators, in not being

unwarrantably associated with alleged criminal activity. That interest extends to persons who are not only the subjects of the investigation, but those who may have their privacy invaded by having their identities and information about them revealed in connection with an investigation. Based upon the traditional recognition of strong privacy interest in law enforcement records, categorical withholding of information that identifies third parties in law enforcement records is ordinarily appropriate. As such, it was determined that the privacy interest in the identities of individuals in the records requested clearly outweigh any minimal public interest in disclosure of the information. Please note that any private interest the requestor may have in that information does not factor into this determination.

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.

You have a right to appeal the above withholding determination. Should you wish to do so, you must send your appeal and a copy of this letter, within 60 days of the date of this letter, to: FOIA Appeals, Policy and Litigation Branch, U.S. Customs and Border Protection, 799 Ninth St. NW, Washington, D.C. 20229, following the procedures outlined in the DHS regulations under 6 C.F.R. § 5.9. Your envelope and letter should be marked "FOIA Appeal." Copies of the FOIA and DHS regulations are available at www.dhs.gov/foia.

Provisions of the FOIA used to recover part of the cost of complying with your request are under 6 CFR § 5.11(d)(4). In this instance, there is no charge.

If you need to contact our office again about this matter, please refer to **2009F6359**. This office can be reached at (202) 352-0150.

Sincerely,


for Mark Hanson
Director
FOIA Division
Office of International Trade

Enclosures



U.S. Customs and
Border Protection

SEP 30 2008

The Honorable Richard G. Lugar
United States Senate
Washington, DC 20510

Dear Senator Lugar:

Thank you for your August 13, 2008, correspondence on behalf of your constituent, (b)(6),(b)(7)(C) who expressed concern about U.S. Customs and Border Protection's (CBP) authority to conduct searches of information at United States ports of entry.

All persons, baggage, and merchandise arriving in, or departing from, the United States are subject to inspection and search by CBP officers. Various laws enforced by CBP authorize such searches (see, for example, 8 United States Code (U.S.C.) § 1357 and 19 U.S.C. §§ 482, 1581, 1582). As part of the inspection process, CBP officers must verify the identity of persons seeking entry into the United States and determine the admissibility of aliens, as well as look for possible terrorists, terrorist weapons, controlled substances, and a wide variety of other prohibited and restricted items.

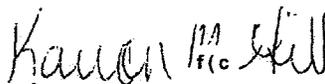
It is important to understand that CBP enforces numerous laws that concern material that may be in paper or electronic form. For example, 19 U.S.C. § 1305 prohibits, among other things, the importation of material that is obscene, that contains any threat to take the life of or inflict bodily harm upon any person in the United States, or that is treasonous or seditious. CBP also enforces trademark and copyright laws that are directed at protecting written material, among other things.

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Additional information on CBP's search authority, including a copy of CBP's policy on the border search of information, can be found at www.cbp.gov/xp/cgov/travel/admissability.

I appreciate your interest in U.S. Customs and Border Protection. If we may offer further assistance, please contact me at (202) 344-1760.

Sincerely,


L. Seth Statler
Acting Assistant Commissioner
Office of Congressional Affairs



U.S. Customs and
Border Protection

NOV 19 2008

The Honorable Richard G. Lugar
United States Senate
Washington, DC 20510

Dear Senator Lugar:

Thank you for your October 14, 2008, correspondence on behalf of your constituent, (b)(6),(b)(7)(C) regarding U.S. Customs and Border Protection's (CBP) practice of conducting a border search of information at U.S. ports of entry.

All persons, baggage, and merchandise arriving in, or departing from, the United States are subject to inspection and search by CBP officers. Various laws enforced by CBP authorize such searches (see, for example, 8 United States Code (U.S.C.) § 1357 and 19 U.S.C. §§ 482, 1581, 1582). As part of the inspection process, CBP officers must verify the identity of persons seeking entry into the United States and determine the admissibility of aliens as well as look for possible terrorists, terrorist weapons, controlled substances, and a wide variety of other prohibited and restricted items.

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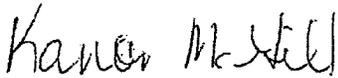
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The Honorable Richard G. Lugar
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I appreciate your interest in U.S. Customs and Border Protection. If we may offer further assistance, please contact me at (202) 344-1760.

Sincerely,



for L. Seth Statler
Acting Assistant Commissioner
Office of Congressional Affairs



U.S. Customs and
Border Protection

AUG 15 2008

Mr. Seta Low
President, American Anthropological Association
2200 Wilson Boulevard, Suite 600
Arlington, Virginia 22201-3357

Dear Mr. Low:

Thank you for your July 25, 2008, correspondence regarding U.S. Customs and Border Protection's (CBP) inspection of electronic devices at U.S. ports of entry.

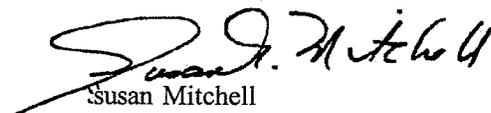
All persons, baggage, and other merchandise arriving in or leaving the United States are liable to inspection and search by CBP officers. Various laws enforced by CBP authorize such searches (see, for example, 19 United States Code (U.S.C.) 482, 1581, 1582). As part of the inspection process, CBP officers must verify the identity of persons, determine the admissibility of aliens, and look for possible terrorists, terrorist weapons, controlled substances, and a wide variety of other prohibited and restricted items.

It is important to understand that CBP enforces numerous laws that concern material that may be in paper or electronic form. For example, 19 U.S.C. 1305 prohibits, among other things, the importation of material that is obscene, or that contains any threat to take the life of or inflict bodily harm upon any person in the United States, or that is treasonous or seditious. CBP also enforces trademark and copyright laws that are directed at written material, among other things.

To enforce the above laws, CBP officers sometimes inspect hardcopy material and also laptops and other electronic devices that persons are attempting to bring into the United States. In conducting such border searches, CBP officers strictly adhere to all constitutional and statutory requirements, including those that are applicable to privileged, personal, and business confidential information. For example, the Trade Secrets Act (18 U.S.C. 1905) prohibits Federal employees from disclosing, without lawful authority, business confidential information that they obtain access to as part of their official duties. Moreover, CBP has strict policies and procedures that implement these constitutional and statutory safeguards.

Thank you for your letter and for providing us an opportunity to comment upon the issues of concern to you. If we may offer further assistance, please contact (b)(6),(b)(7)(C) Director, Tactical Operations, at (202) 344-3783.

Sincerely,


Susan Mitchell
Executive Director, Operations
Office of Field Operations



U.S. Customs and
Border Protection

ALJG 0 8 2008

The Honorable Mazie K. Hirono
U.S. House of Representatives
5-104 Prince Kuhio Federal Building
Honolulu, Hawaii 96850

Dear Representative Hirono:

Thank you for your July 16, 2008, correspondence on behalf of your constituent, regarding U.S. Customs and Border Protection's (CBP) inspection of electronic devices at U.S. ports of entry.

All persons, baggage, and other merchandise arriving in or leaving the United States are liable to inspection and search by CBP officers. Various laws enforced by CBP authorize such searches (see, for example, 19 United States Code (U.S.C.) 482, 1581, 1582). As part of the inspection process, CBP officers must verify the identity of persons, determine the admissibility of aliens, and look for possible terrorists, terrorist weapons, controlled substances, and a wide variety of other prohibited and restricted items.

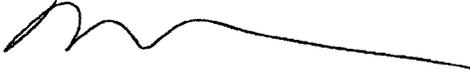
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The Honorable Mazie K. Hirono
Page 2

I appreciate your interest in U.S. Customs and Border Protection. If we may offer further assistance, please contact me at (202) 344-1760.

Sincerely,



fn: L. Seth Statler
Acting Assistant Commissioner
Office of Congressional Affairs



U.S. Customs and
Border Protection

SEP 09 2008

The Honorable Ron Wyden
United States Senate
Washington, DC 20510

Dear Senator Wyden:

Thank you for your August 7, 2008, letter on behalf of your constituent, (b)(6),(b)(7)(C) who raised concerns about U.S. Customs and Border Protection's (CBP) inspection of electronic devices at United States ports of entry.

All persons, baggage, and merchandise arriving in or leaving the United States are subject to inspection and search by CBP officers. Various laws enforced by CBP authorize such searches (see, for example, 8 United States Code (U.S.C.), Section 1357 and 19 U.S.C., Sections 482, 1581, and 1582). As part of the inspection process, CBP officers must verify the identity of persons seeking entry into the United States, determine the admissibility of aliens as well as look for possible terrorists, terrorist weapons, controlled substances, and a wide variety of other prohibited and restricted items.

It is important to understand that CBP enforces numerous laws that concern material that may be in paper or electronic form. For example, 19 U.S.C., Section 1305, prohibits (among other things) the importation of material that is obscene, that contains any threat to take the life of or inflict bodily harm upon any person in the United States, or that is treasonous or seditious. CBP also enforces trademark and copyright laws that are directed at protecting written material.

To enforce laws including those mentioned above, CBP officers may perform a border search that includes inspecting material in paper form, laptops, or other electronic devices that persons attempt to bring into the United States. In conducting such border searches, CBP officers strictly adhere to all constitutional and statutory requirements, including those that are applicable to privileged, personal, or business confidential information. For example, the Trade Secrets Act (18 U.S.C., Section 1905) prohibits Federal employees from disclosing, without lawful authority, business confidential information to which they obtain access as part of their official duties. Moreover, CBP has strict policies and procedures that implement these constitutional and statutory safeguards.

I appreciate your interest in U.S. Customs and Border Protection. If we may offer further assistance, please feel free to contact me at (202) 344-1760.

Sincerely,

A handwritten signature in cursive script that reads "L. Seth Statler".

L. Seth Statler
Acting Assistant Commissioner
Office of Congressional Affairs



U.S. Customs and
Border Protection

SEP 15 2008

The Honorable Donald A. Manzullo
U.S. House of Representatives
Washington, DC 20515

Dear Representative Manzullo:

Thank you for your August 15, 2008, correspondence on behalf of your constituent, (b)(6),(b)(7)(C) regarding U.S. Customs and Border Protection's (CBP) practice of conducting a border search of information at U.S. ports of entry.

All persons, baggage, and merchandise arriving in, or departing from, the United States are subject to inspection and search by CBP officers. Various laws enforced by CBP authorize such searches (see, for example, 8 United States Code (U.S.C.) § 1357 and 19 U.S.C. §§ 482, 1581, 1582). As part of the inspection process, CBP officers must verify the identity of persons seeking entry into the United States, determine the admissibility of aliens as well as look for possible terrorists, terrorist weapons, controlled substances, and a wide variety of other prohibited and restricted items.

It is important to understand that CBP enforces numerous laws that concern material that may be in paper or electronic form. For example, 19 U.S.C. § 1305 prohibits, among other things, the importation of material that is obscene, that contains any threat to take the life of or inflict bodily harm upon any person in the United States, or that is treasonous or seditious. CBP also enforces trademark and copyright laws that are directed at protecting written material, among other things.

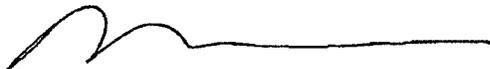
To enforce laws including those mentioned above, CBP officers may perform a border search that includes inspecting material in paper form, laptops, or other electronic devices that persons attempt to bring into the United States. In conducting such border searches, CBP officers strictly adhere to all constitutional and statutory requirements, including those that are applicable to privileged, personal, or business confidential information. For example, the Trade Secrets Act (18 U.S.C. § 1905) prohibits federal employees from disclosing, without lawful authority, business confidential information to which they obtain access as part of their official duties. Moreover, CBP has strict policies and procedures that implement these constitutional and statutory safeguards.

Additional information on CBP's search authority, including a copy of CBP's policy on the border search of information, can be found at <http://www.cbp.gov/xp/cgov/travel/admissibility>.

The Honorable Donald A. Manzullo
Page 2

I appreciate your interest in U.S. Customs and Border Protection. If we may offer further assistance, please contact me at (202) 344-1760.

Sincerely,



fx. L. Seth Statler
Acting Assistant Commissioner
Office of Congressional Affairs



U.S. Customs and
Border Protection

Commissioner

September 12, 2008

The Honorable Bennie G. Thompson
Chairman
Committee on Homeland Security
U.S. House of Representatives
Washington, DC 20515

Dear Chairman Thompson:

Thank you for your July 1, 2008, correspondence pertaining to your request for information regarding U.S. Customs and Border Protection (CBP) completing a border search of information at U.S. ports of entry, which may include an examination of electronic or digital storage devices. I apologize for the delay in responding formally to your letter, but we have been working closely with your staff on briefings and tours on this topic and I wanted to respond after those had been completed.

All persons, baggage, and merchandise arriving in, or departing from, the United States are subject to inspection and search by CBP officers. Various laws enforced by CBP authorize such searches (see, for example, 8 United States Code (U.S.C.) § 1357 and 19 U.S.C. §§ 482, 1581, 1582). As part of the inspection process, CBP officers must verify the identity of persons seeking entry into the United States, determine the admissibility of aliens as well as look for possible terrorists, terrorist weapons, controlled substances, and a wide variety of other prohibited and restricted items.

In determining who is selected for examination, CBP does not treat any group of people differently based on their racial, ethnic or religious background. In addition, it is important to understand that CBP enforces numerous laws that concern material that may be in paper or electronic form. For example, 19 U.S.C. § 1305 prohibits, among other things, the importation of material that is obscene, that contains any threat to take the life of or inflict bodily harm upon any person in the United States, or that is treasonous or seditious. CBP also enforces trademark and intellectual property laws that are directed at protecting copyrights material.

To enforce laws, including those mentioned above, CBP officers may perform a border search that includes inspecting material in paper form, laptops, or other electronic devices that persons attempt to bring into the United States. In conducting such border searches, CBP officers strictly adhere to all constitutional and statutory requirements, including those that are applicable to privileged, personal, or business confidential information. For example, the Trade Secrets Act (18 U.S.C. § 1905) prohibits federal employees from disclosing, without lawful authority, business confidential information to which they obtain access as part of their official duties.

The Honorable Bennie G. Thompson

Page 2

Moreover, CBP has strict policies and procedures in place that ensure the integrity of these constitutional and statutory safeguards.

On July 24, 2008, CBP and U.S. Immigration and Customs Enforcement (ICE) briefed your Committee's staff and staff from the House Permanent Select Committee on Intelligence regarding the search and seizure of electronic media. Additionally, on August 29, 2008, members of your Committee's staff had an opportunity to tour CBP and ICE operations at Dulles International Airport.

Additional information on CBP's search authority, including a copy of CBP's policy on the border search of information, can be found at <http://www.cbp.gov/xp/cgov/travel/admissibility>. we have attached a copy to this letter and have provided it previously to your staff.

I appreciate your interest in U.S. Customs and Border Protection. If we may offer further assistance, please contact me at (202) 344-1760.

Sincerely,



W. Ralph Basham
Commissioner



U.S. Customs and
Border Protection

SEP 24 2008

The Honorable Richard G. Lugar
United States Senate
Washington, DC 20510

Dear Senator Lugar:

Thank you for your September 8, 2008, correspondence on behalf of your constituent, (b)(6),(b)(7)(C) who expressed concern about U.S. Customs and Border Protection's (CBP) authority to conduct searches of information at United States ports of entry.

All persons, baggage, and merchandise arriving in, or departing from, the United States are subject to inspection and search by CBP officers. Various laws enforced by CBP authorize such searches (see, for example, 8 United States Code (U.S.C.) § 1357 and 19 U.S.C. §§ 482, 1581, 1582). As part of the inspection process, CBP officers must verify the identity of persons seeking entry into the United States and determine the admissibility of aliens, as well as look for possible terrorists, terrorist weapons, controlled substances, and a wide variety of other prohibited and restricted items.

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I appreciate your interest in U.S. Customs and Border Protection. If we may offer further assistance, please contact me at (202) 344-1760.

Sincerely,

A handwritten signature in black ink that reads "L. Seth Statler".

L. Seth Statler
Acting Assistant Commissioner
Office of Congressional Affairs



U.S. Customs and
Border Protection

SEP 23 2008

The Honorable Ron Wyden
United States Senate
Washington, DC 20510

Dear Senator Wyden:

Thank you for your August 21, 2008, correspondence on behalf of your constituents, (b)(6), (b)(7)(C) regarding U.S. Customs and Border Protection's (CBP) authority to conduct searches of information at U.S. ports of entry.

All persons, baggage, and merchandise arriving in, or departing from, the United States are subject to inspection and search by CBP officers. Various laws enforced by CBP authorize such searches (see, for example, 8 United States Code (U.S.C.) § 1357 and 19 U.S.C. §§ 482, 1581, 1582). As part of the inspection process, CBP officers must verify the identity of persons seeking entry into the United States and determine the admissibility of aliens, as well as look for possible terrorists, terrorist weapons, controlled substances, and a wide variety of other prohibited and restricted items.

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I appreciate your interest in U.S. Customs and Border Protection. If we may offer further assistance, please contact me at (202) 344-1760.

Sincerely,

A handwritten signature in blue ink, appearing to read "L. Seth Statler".

L. Seth Statler
Acting Assistant Commissioner
Office of Congressional Affairs



U.S. Customs and
Border Protection

SEP 23 2008

The Honorable David R. Obey
U.S. House of Representatives
Washington, DC 20515

Dear Representative Obey:

Thank you for your August 27, 2008, correspondence on behalf of a constituent regarding U.S. Customs and Border Protection's (CBP) authority to conduct searches of information at U.S. ports of entry.

All persons, baggage, and merchandise arriving in, or departing from, the United States are subject to inspection and search by CBP officers. Various laws enforced by CBP authorize such searches (see, for example, 8 United States Code (U.S.C.) § 1357 and 19 U.S.C. §§ 482, 1581, 1582). As part of the inspection process, CBP officers must verify the identity of persons seeking entry into the United States and determine the admissibility of aliens, as well as look for possible terrorists, terrorist weapons, controlled substances, and a wide variety of other prohibited and restricted items.

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L. Seth Statler
Acting Assistant Commissioner
Office of Congressional Affairs



U.S. Customs and
Border Protection

DEC 3

The Honorable Frank R. Wolf
U.S. House of Representatives
Washington, DC 20515

Dear Representative Wolf:

Thank you for your letter of October 10, 2008, on behalf of your constituent, (b)(6),(b)(7)(C) who has concerns regarding U.S. Customs and Border Protection's (CBP) practice of conducting a border search of information at U.S. ports of entry.

All persons, baggage, and merchandise arriving in, or departing from, the United States are subject to inspection and search by CBP officers. Various laws enforced by CBP authorize such searches (see, for example, 8 United States Code (U.S.C.) § 1357 and 19 U.S.C. §§ 482, 1581, 1582). As part of the inspection process, CBP officers must verify the identity of persons seeking entry into the United States, determine the admissibility of aliens, as well as look for possible terrorists, terrorist weapons, controlled substances, and a wide variety of other prohibited and restricted items.

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The Honorable Frank R. Wolf
Page 2

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Sincerely,

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L. Seth Statler
Acting Assistant Commissioner
Office of Congressional Affairs