



Homeland Security

Privacy Office

June 1, 2007

Ms. Marcia Hofmann
Electronic Frontier Foundation
1875 Connecticut Avenue, N.W.
Suite 650
Washington, DC 20009

Re: DHS/OS/PRIV 07-90/Hofmann request

Dear Ms. Hofmann:

Pursuant to the order of the court, this is our 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.

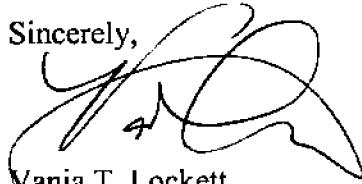
In our December 15, 2006 letter, we advised you that we had determined multiple DHS components or offices may contain records responsive to your request. The DHS Office of the Executive Secretariat (ES), the DHS Office of Policy (PLCY), the DHS Office of Privacy (PRIV), the DHS Office of Operations Coordination (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.

So far, a search at CBP has located 3 pages of records responsive to your request, which we are attaching to this letter. Information is redacted in this document pursuant to Exemptions (b)(2)

and (b)(6). Exemption 2 (low) exempts from disclosure records that are related to internal matters of a relative trivial nature, such as internal administrative tracking. 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. Therefore, after a careful balancing of the factors supporting and opposing disclosure, the redactions were made on the basis of the FOIA

We have also located 2 pages of responsive records which we are withholding in full. As will be noted on the *Vaughn* index when it is completed, this document was a legal opinion specifically requested by DHS Policy and concerns legal implications of PNR sharing. Therefore, we are withholding this under Exemption (b)(5), as attorney client material.

Our office continues to process your request, and is working to process substantially more documents for the June 15 release. If you have any questions regarding this matter, please refer to **DHS/OS/PRIV 07-90/Hofmann request**. Please note that the mailing address for this office is now: U.S. Department of Homeland Security, Privacy Office (FOIA), 245 Murray Lane, S.W., Mail Stop #0550, Washington, D.C. 20528-0550. You may also reach this office via telephone at 703-235-0790. Thank you for your patience as we proceed with your request.

Sincerely,

Vania T. Lockett

Associate Director, Disclosure & FOIA Operations

Enclosures: 3 pages

[REDACTED] (b)(6)
10/06/2006 01:04 PM

To: [REDACTED] (b)(2)
cc: [REDACTED] (b)(4)
Subject: Re: Information sharing.

Hi [REDACTED] (b)(6)

Thanks for the forward. It will be interesting to the details of the actual agreement. As seems to be the case with most news reporting, there is a mixing of APIS and PNR. I'm also interested to see what is meant by, "Under the agreement, the U.S. Department of Homeland Security no longer will have an automatic right to pull data from European airlines' computer systems, but must ask for such information." But, this is still very good news.

Have a good three-day weekend, even though it's going to be soggy :-(

(b)(6) [REDACTED]
Acting Director, Operations Coordination
Office of Anti-Terrorism
U.S. Customs and Border Protection

(b)(2)
(b)(6) [REDACTED]



[REDACTED] (b)(1)
10/06/2006 12:52 PM

To: [REDACTED] (b)(2)
cc: [REDACTED] (b)(6)
Subject: Information sharing.

(b)(6) [REDACTED] I'm sure that you have seen below - great news!!

Deal made on passenger data
POSTED: 8:00 a.m. EDT, October 6, 2006

Adjust font size:

BRUSSELS, (AP) -- The European Union and the United States concluded a new anti-terrorism agreement Friday under which information about passengers on U.S.-bound flights from Europe can be shared with the Federal Bureau of Investigation and other U.S. law enforcement agencies.

The interim deal -- reached after a nine-hour, trans-Atlantic video conference that took place nearly a week after negotiators missed an Oct. 1 deadline -- replaces a 2004 air passenger privacy agreement the EU's high court voided last May for purely technical reasons.

The agreement is valid until July 2007, after which the EU and the U.S. must have a permanent accord. The 26 EU governments are expected to give final approval to the interim deal next week. EU Justice Commissioner Franco Frattini welcomed it, saying the United States and the EU will employ "comparable standards of data protection."

He said the deal defuses fears in the European Parliament of a loss of privacy for Europeans flying to the United States. Under the agreement, the U.S. Department of Homeland Security no longer will have an automatic right to pull data from European airlines' computer systems,

but must ask for such information.

EU's U.S. Customs and Border Protection agency may disclose passenger data to other American law enforcement agencies only if "they have comparable standards of data protection," Frattini told reporters.

It said it cannot give them direct electronic access to the data and limits the duration of its storage. EU negotiator Jonathan Faull said the EU and the U.S. aim for a "broader" data-sharing deal after July 2007 that would provide for sharing of more data than the 34 details listed under the deal reached Friday.

British Home Secretary John Reid called the interim agreement "another major step in the fight against terrorism (showing that) the common alliance against terrorism is, on both sides of the Atlantic, very strong."

Negotiations collapsed last week when the EU could not agree to a request by U.S. Homeland Security Secretary Michael Chertoff for a more routine sharing of passenger data among U.S. law enforcement agencies.

The new agreement lets airlines continue to legally submit 34 pieces of data -- such as passenger names, addresses, seat number, credit card and travel details as well as their no-show records -- for transfer to U.S. authorities within 15 minutes of a flight's departure for the United States.

Frattini said there was "a concrete risk" of privacy erosion had a trans-Atlantic accord not been reached. In that case, a patchwork of bilateral agreements would have been the privacy protection basis.

EU officials said they shared Washington's concerns about terrorism, but demanded strict data protection guarantees in return for a more routine sharing of personal details of air passengers among U.S. law enforcement officials.

Washington had warned that airlines failing to share passenger data would face fines of up to US\$6,000 (EUR4,700) per passenger and the loss of landing rights.

The negotiations revealed divisions between the U.S. and the Europeans over how far governments should go in curbing personal freedoms in the name of preventing terrorist attacks.

Privacy restrictions tend to be tougher in Europe than in the United States and the Europeans wanted to deny U.S. officials the right to reach into airline reservation systems.

Martine Roure, a spokesman for the Socialists, the European Parliament's second-largest group, expressed satisfaction "there is a new agreement. The U.S. authorities must now apply all the data protection guarantees we ask of them."

(S)(b) []
Training Director
Program Management Office - Secure Border Initiative
U.S. Customs and Border Protection - DHS
Ronald Reagan Building - Suite 750

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(E) 202-344-2480