



Homeland Security

Privacy Office

August 24, 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 seventh 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 Privacy Office (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. In our July 27, 2007 letter, we advised you that we expanded our search to include U.S. Immigration and Customs Enforcement (ICE).

Continued searches of the DHS components produced an additional 18 documents consisting of 59 pages of records responsive to your request. I have determined that 2 of those documents, consisting of 15 pages, are releasable in part. The releasable information is enclosed. The

withheld information, which will be noted on the *Vaughn* index when completed, consists of names, telephone numbers, email addresses, deliberative material, legal opinions, Law Enforcement information, and homeland security information. I am withholding this information pursuant to Exemptions 2, 5, 6, and 7(E) of the FOIA, 5 USC §§ 552 (b)(2), (b)(5), (b)(6), and (b)(7)(E).

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.

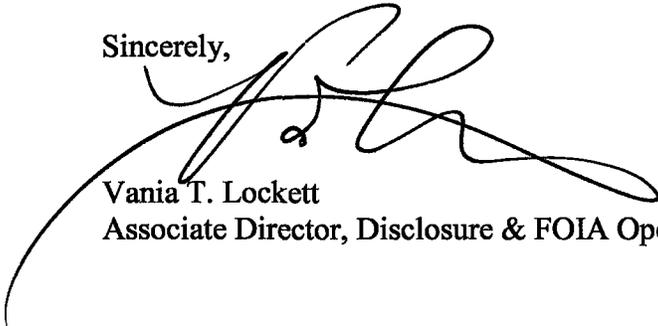
FOIA Exemption 5 protects from disclosure those inter- or intra-agency documents that are normally privileged in the civil discovery context. The deliberative process privilege protects the integrity of the deliberative or decision-making processes within the agency by exempting from mandatory disclosure 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. 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.

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. 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: 15 pages

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From: Baker, Stewart () b2
 Sent: Wednesday, December 13, 2006 1:28 PM
 To: b6 ; Levy, Andrew; Isles, Adam; AGEN. JARROD; Baker, Stewart; White, Brian M;
 Rosenzweig, Paul; Sales, Nathan; Coldebella, Gus;
 Cc: Knocke, William R; Kraninger, Kathleen
 Subject: Re: EU press release on ATS/PNR b6

b5

 Stewart Baker
 Typed with my thumbs, so please make allowances for curtness and typos.

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

b2 From: Levy, Andrew b6/b2
 To: Adam ; Baker, Stewart ; Isles, Adam b2 ; AGEN, Jarrod ; White, Brian M ; Sales, Nathan ; Isles, Adam ; Rosenzweig, Paul b2 ; White, Brian M Sales, Nathan ; Isles, Adam
 Cc: Knocke, William R Kraninger, Kathleen
 Sent: Wed Dec 13 13:18:09 2006
 Subject: RE: EU press release on ATS/PNR

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DP
Att-Client

Senior Attorney b6
 Office of Chief Counsel
 U.S. Customs and Border Protection
 Phone:
 Fax: b2
 email: b6/b2

This document and any attachment(s) hereto, may contain confidential and/or sensitive attorney-client privileged, attorney work-product, and/or U.S. Government information, and is not for release, review, retransmission, dissemination or use by anyone other than the intended recipient. Please consult with the CBP Office of Chief Counsel before disclosing any information contained in this e-mail.

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

b2
 From: Levy, Andrew [mailto:]
 Sent: Wednesday, December 13, 2006 1:08 PM
 To: Isles, Adam; AGEN, Jarrod; Baker, Stewart; White, Brian M; Isles,

1/18/2007

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Adam; Rosenzweig, Paul; Sales, Nathan; Coldebella, Gus;

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Cc: Knocke, William R;

Kraninger, Kathleen

Subject: RE: EU press release on ATIS/PNR

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DP
Attorney-Client

Andrew J. Puglia Levy

Associate General Counsel (Legal Counsel)

U.S. Department of Homeland Security

(work)

(cell)

(fax)

b2

From: Isles, Adam

Sent: Wednesday, December 13, 2006 11:54 AM

To: Agen, Jarrod; Baker, Stewart; White, Brian M; Isles, Adam; Rosenzweig, Paul; Sales, Nathan; Coldebella, Gus; Levy, Andrew;

b6

Cc: Knocke, William R

Kraninger, Kathleen

b6

1/18/2007

Subject: RE: EU press release on ATS/PNR

Looping in OGC too ...

Adam Isles

Counselor to the Secretary

U.S. Department of Homeland Security

- tel

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From: Agen, Jarrod [mailto: ;
Sent: Wednesday, December 13, 2006 11:52 AM
To: Baker, Stewart; White, Brian M; Isles, Adam; Rosenzweig, Paul;
Sales, Nathan
Cc: Knocke, William R; Kraninger, Kathleen
Subject: EU press release on ATS/PNR
Importance: High

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EU pushed out this release today - getting several press calls here.

Given this is out of Frattini's office - do you have guidance on how you want me to push back?

Are we confident that ATS system is covered in Undertakings?

From: Strohm, Chris [mailto:CStrohm@nationaljournal.com]
Sent: Wednesday, December 13, 2006 11:42 AM
To: AGEN, JARROD; Knocke, William R
Subject: Seeking immediate comment for story
Importance: High

Russ, Jarrod: I'm sorry for the short notice but I literally just got this. The EU today issued a statement on how PNR data is being used in the Automated Targeting System.

It says: "The information published by the DHS reveals significant differences between the way in which PNR data are handled within the Automated Targeting System on the one hand and the stricter regime for European PNR data according to the Undertakings given by the DHS."

The EU is sending DHS a letter asking for clarification and hints that this all could negatively affect renewal of the PNR agreement.

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I'm doing a story on this for today. My deadline is 1:30pm. Again, sorry for the late notice but this literally just broke. Please email me or call me at 202-413-2212 with comment. The EU's full statement follows below. Chris

This is a press release from the European Commission
Vice President Franco Frattini
European Commissioner responsible for Justice, Freedom and Security

"Data protection and transfer of PNR data"

European Parliament

Strasbourg, 13 December 2006

On 19th October the European Union and the United States concluded an agreement for the processing and transfer of passenger name record data by air carriers to the United States Department of Homeland Security. The US Government confirmed a set of Undertakings which guarantee the protection and security of PNR data.

Against this background concern has been expressed in recent days following information published last month by the Department of Homeland Security on the "Automated Targeting System". This is a security screening system making a risk assessment of international travellers relying, among other things, on PNR data. The information published by the DHS reveals significant differences between the way in which PNR data are handled within the Automated Targeting System on the one hand and the stricter regime for European PNR data according to the Undertakings given by the DHS.

The Council Presidency and Commission have sent today a letter to the US Government to request formal confirmation that the way EU PNR data are handled in the ATS is the one described in the Undertakings.

The current EU-US Agreement on PNR data will expire in July of next year. The Commission will, at the beginning of 2007, recommend to Council to mandate the Presidency, assisted by the Commission, to negotiate a new PNR agreement with the United States. I am sure that any new agreement will provide for a high level of data protection for all PNR data transferred under the agreement while protecting the security of our citizens.

I will keep the EP informed about the mandate and the progress of negotiations. COM expects to receive a mandate from Council before March next year.

I have always taken the position that travellers must be informed when their PNR data may be transferred to competent authorities of third countries. The DHS Undertakings expressly acknowledge this. We need an international agreement with the support of the public on both sides of the Atlantic and of the democratic representatives of the peoples.

I have often said that there is an important balance to be struck between measures to ensure security on the one hand and the protection of non-negotiable fundamental rights on the other. The Commission, assisting the Presidency in the negotiation of future PNR agreements with third countries, will ensure that security issues are properly addressed through the transfer and appropriate use of PNR data, while

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protecting personal data guaranteed by Article 8 of the Charter of Fundamental Rights.

Finally, a high level Contact Group was set up at the EU-US JLS Ministerial troika on 6 November 2006 to discuss information sharing and protection of personal data for law enforcement purposes. There is a clear need on both sides of the Atlantic to work more closely together on these issues.

I would personally be in favour of close contacts between the above High Level Group and both the European Parliament and the US Congress.

We need a broader perspective and a long-term vision to tackle, together with the US, the terrorist threat without putting at risk the fundamental rights of individuals.

I am also firmly committed to continue encouraging the Council to make progress on the Framework Decision on data protection in the Third Pillar. I hope the incoming German Presidency will be able to make substantial progress on that.

We do have a common problem and threat - terrorism - which will continue to exist in the coming months and years. Only a very solid strategy, and a balanced cooperation with our main international transatlantic partner, will allow reducing, if not eliminating, this modern form of 'totalitarianism' against democracy.

~~July 14, 2006~~~~July 14, 2006~~~~July 10, 2006~~~~July 10,~~
~~2006~~~~July 6, 2006~~

INFORMATION

MEMORANDUM FOR: Stewart Baker, Assistant Secretary for Policy

THROUGH: Paul Rosenzweig, Acting Assistant Secretary, PDEV and
Counselor to the Assistant Secretary for Policy

FROM: PNR Working Group

SUBJECT: Summary of potential changes to seek in the PNR
Undertakings

Purpose

In anticipation of future negotiations with the EU on the PNR arrangement, below is an assessment of areas of the Undertakings DHS should seek to change in the US-EU PNR arrangement.

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As a result, the Department's top priority should be to replace or amend these provisions to allow for

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Background

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Discussion

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Attachment 1: Detailed Assessment of Critical Issues

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