



Homeland Security

Privacy Office

October 5, 2007

Ms. Marcia Hofmann
Electronic Frontier Foundation
454 Shotwell Street
San Francisco, CA 94110

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

Dear Ms. Hofmann:

Pursuant to the order of the court, this is our tenth 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 52 documents, consisting of 235 pages, responsive to your request. I have determined that 1 document, consisting of 5 pages, is releasable in its entirety; 18 documents, consisting of 121 pages, are releasable in part; and 33 documents, consisting of 109 pages, are withholdable in their entirety. 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,

A handwritten signature in black ink, appearing to read 'Vania T. Lockett', written over the word 'Sincerely,'.

Vania T. Lockett
Associate Director, Disclosure & FOIA Operations

Enclosures: 126 pages



**Homeland
Security**

Summary of New PNR Arrangement
October 27, 2006

Background

On October 19, 2006, the United States signed an interim agreement (already signed by the European Union) on the processing and transfer of passenger name record (PNR) data. This agreement was accompanied by a unilateral letter of interpretation of U.S. representations with regard to such data; this letter was negotiated by the parties and acknowledged by the EU. This new arrangement – which will expire on July 31, 2007 unless extended – enables DHS to share information in ways that were not possible under the previous interpretation of the May 11, 2004 Undertakings, which formed the basis of the earlier U.S.-EU arrangement. This memorandum outlines generally the procedures and restrictions that will apply to various categories of agencies under the interim arrangement for receipt of PNR through the Automated Targeting System-Passenger (ATS-P) system.

CBP

As under the previous arrangement, CBP – the entity that, pursuant to statute, receives PNR data from air carriers flying to and from the U.S. – will continue to access 34 PNR data elements listed in Appendix A of the Undertakings to the extent carriers store such data in their reservation and departure control systems. CBP will also have access to additional frequent flyer information under the new interpretations of the Undertakings, to the extent any of the data elements listed in Appendix A may be obtained within the frequent flier field. Although sensitive data will continue to be restricted, the new interpretations recognize that even sensitive information may be used in some instances to protect the vital interests of the data subject or others.

DHS Headquarters, Including ICE and I&A

The U.S. party to the new agreement is now DHS – which is defined to include CBP, ICE, and all DHS offices that fall under the Office of the Secretary, *i.e.*, all DHS headquarters offices. (Annex A to this memo contains a full list of these individuals and entities.) The agreement is no longer with CBP. Thus, authorized users in ICE and DHS headquarters offices will be provided with the same access to PNR that CBP currently has. Initially, this will take the form of ATS-P user accounts. New user interfaces tailored to the offices' needs are permissible under the new arrangement but shall not be implemented until a uniform, DHS-wide policy on use and protection of PNR is issued. In addition, these offices are subject to the same restrictions and protections detailed in the Undertakings issued by CBP and related CBP policy. DHS offices

may share information onward with other entities under the same rules governing further dissemination by CBP, including all accounting and auditing requirements. The operational details of this access remain to be worked out.

Other DHS Components or USG Agencies with a Counterterrorism Function

For purposes of the agreement and interpretations, the following agencies are excluded from the definition of DHS and therefore will not have unrestricted direct access to PNR: Citizenship and Immigration Services, Transportation Security Administration, United States Secret Service, the United States Coast Guard, and the Federal Emergency Management Agency. These agencies may receive PNR through a simplified mechanism described as “facilitated disclosure” or by following the status quo procedures for requesting PNR pursuant to the Undertakings. Receipt of PNR through facilitated disclosure is discussed below and the status quo is discussed in the next section.

To obtain PNR through facilitated disclosure, these components must: (1) certify that they need and would use PNR for the purposes of exercising a counterterrorism function, in order to prevent or combat terrorism or related crimes; and (2) confirm in writing that they respect standards comparable to those of DHS (as defined below).

The standards that must be observed are:

- **Purpose limitation:** Components/Agencies may use PNR only for the purposes of preventing and combating terrorism and related crimes that they are examining or investigating.
- **Data retention:** Components/Agencies must certify that for any PNR data they receive and retain, they will observe the retention periods set forth in Paragraph 15 of the Undertakings for the duration of the interim agreement. As the shortest retention period in that paragraph is 3.5 years, and this provision is expected to be renegotiated before any destruction of data would be necessary, this standard is unlikely to have any practical impact on the retention of PNR.
- **Further disclosure:** Components/Agencies must certify that they will only disclose PNR onward to other entities as set forth in the agreement and interpretations letter – that is, only to an agency exercising a counterterrorism function for purposes of preventing or combating terrorism and related crimes in cases (broadly understood to include more generally threats, flights, and routes of concern) that it is examining or investigating. Agencies receiving PNR through facilitated disclosure will be able to further disseminate to other entities consistent with the Undertakings as interpreted. Details of the rules governing onward transmission will be covered in the agencies’ MOUs with DHS
- **Awareness and training:** CBP is to provide training and guidance on the use and disclosure of PNR, and components/agencies users will be required to complete such guidance and training before facilitated access is effected.

- Security standards and sanctions for abuse: Components/Agencies must certify generally that they have standards setting forth what constitutes improper access to and use of PNR that are comparable to those of CBP, and that they are able to sanction unauthorized access and disclosure, at least pursuant to Title 18, Sections 641, 1030, and, where applicable, 1905. For facilitated disclosure through an ATS-P account, all CBP system security requirements will remain in place and Components/Agencies will need to certify that they have policies in place to sanction personnel who improperly use or access PNR. For yet to be determined forms of disclosure comparable standards must be ensured.
- Procedures for obtaining information, lodging complaints, and correcting errors: Components must certify that they have a procedure for handling requests for information, complaints, and requests for correction. As the PNR data resides with CBP, it is expected that procedures for correction of PNR will consist of mechanisms for referral to CBP. Each component will handle complaints or requests relating to their use of PNR, but provide CBP with notice of all such complaints. Individuals submitting a complaint must retain the ability to appeal the component's/agency's decision to the DHS Chief Privacy Officer or the senior privacy official as designated by their parent Department.

At this time the process for receiving PNR under facilitated disclosure is still being developed. However, a full cataloguing of the above requirements in writing will be required.

DHS Components or USG Agencies not Exercising a Counterterrorism Function

DHS components or outside agencies not exercising a counterterrorism function remain subject to the current terms of the Undertakings (paragraphs 17 and 28-35) with regard to access to PNR and its use and onward disclosure – at least until the expiration of the interim arrangement. Thus, these entities will not be able to receive PNR through ATS-P or any other simplified electronic fashion. Instead, they will need to observe the Undertakings' restrictions on further transfer of PNR as previously interpreted, including the requirement that they obtain CBP's express authorization for any further dissemination.

The interim agreement remains consistent with the current DHS-HHS MOU on quarantinable and serious communicable diseases. Other mechanisms of data transfer between DHS and public health authorities may be permissible under the new agreement.

Annex A

The following individuals and entities are deemed part of "DHS" for purposes of the PNR arrangement:

- Deputy Secretary
- Directorate of Management
- Directorate of Science and Technology
- Directorate for Preparedness
- Office of Policy
- Office of the General Counsel
- Office of Legislative and Intergovernmental Affairs
- Office of Public Affairs
- Office of the Inspector General
- Office of Intelligence and Analysis
- Director, Operations Coordination
- Office of Counternarcotics Enforcement
- Ombudsman, Citizenship and Immigration Services
- Chief Privacy Officer
- Civil Rights and Civil Liberties Officer
- Director, Federal Law Enforcement Training Center
- Director, Domestic Nuclear Detection Office
- Federal Coordinator, Recovery and Rebuilding of the Gulf Coast Region
- Screening Coordination Office



RECEIPT FOR REVISED FIELD GUIDELINES

This certifies that I am an authorized user of Passenger Name Record (PNR) information and have received the revised final Field Guidelines dated December 01, 2005. I have read and understand the guidelines and procedures regarding flights between the United States and the European Union Countries, Iceland and Switzerland. I understand that these Guidelines are to be implemented immediately. A copy of this receipt is to be maintained by my supervisor. Additionally, my supervisor is responsible for recording this training, if haven't already done so, in TRAEN titled "REVISED GUIDELINES FOR USE OF PNR DATA," course code number 078006.

Print Name: _____

Signature: _____

Date: _____

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From: [Scardaville, Michael]
Sent: Tuesday, September 12, 2006 2:06 PM
To: Baker, Stewart
Subject: Undertaking b5

Stewart,

Below is the list of

for the last few months:

- **Sharing PNR:** The Undertakings adopted unilaterally by US Customs and Border Protection in tandem with the 2004 Agreement expressly prohibit direct access by 3rd parties, define DHS agencies other than CBP as 3rd parties and limit sharing to a case-by-case basis. b5

Further, provisions of the Undertakings requiring agencies to obtain CBP's express authorization before sharing the information onward with other agencies b5

- **The Data Retention Period:** The Undertakings limit the retention of PNR to 3.5 years (11.5 if it has since been manually accessed due to the identification of a high risk individual and then only in a "deleted items" folder). b5

- **Early Access:** the Undertakings generally prohibit CBP from doing an automated pull earlier than 72 hours before the flight and limits the number of pulls to four for any given flight. b5

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- **Restrictions on Data:** CBP is also limited to accessing only 34 of over 50 potential fields. [2] b5

- **Monitoring Provisions:** The provisions for monitoring compliance constituted a heavy burden on CBP and the Department and became a forum for efforts to interpret or elaborate on the undertakings to make them more demanding. b5

Mike

*Michael Scardaville
Special Assistant/International Policy Advisor
Office of Policy Development
U.S. Department of Homeland Security
Office:
Cellular:*

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Paragraph 13 of the Undertakings and paragraph 1 of the agreement

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Paragraphs 4 and 5



Homeland Security

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MEMORANDUM FOR: Stewart Baker, Assistant Secretary for Policy

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

FROM: Michael Scardaville, Special Assistant/International Policy Advisor

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

Purpose

Per your request, below is a preliminary summary of areas of the Undertakings DHS may want to consider changing.

Likely Top Priorities:

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INFORMATION

MEMORANDUM FOR: Stewart Baker, Assistant Secretary for Policy

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

FROM: Michael Scardaville, Special Assistant/International Policy Advisor

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

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Likely Top Priorities:

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MEMORANDUM FOR: Stewart Baker, Assistant Secretary for Policy
THROUGH: Paul Rosenzweig, Acting Assistant Secretary, PDEV and Councilor to the Assistant Secretary for Policy
FROM: JNR Working Group
SUBJECT: Summary of potential changes to seek in the PNR Undertakings

Deleted: Michael Scardaville, Special Assistant/International Policy Advisor

Purpose

Per your request, below is an assessment of areas of the Undertakings DHS should seek to change in the U.S.-EU PNR arrangement. Entering into negotiations with the EU or Member States, DHS's

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Background

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Likely Top Priorities:

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MEMORANDUM FOR: Stewart Baker, Assistant Secretary for Policy
THROUGH: Paul Rosenzweig, Acting Assistant Secretary, PDEV and
Councilor 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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Attachment 1: Detailed Assessment of Critical Issues

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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. L 7

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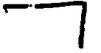
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MEMORANDUM FOR: Stewart Baker, Assistant Secretary for Policy

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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Attachment 1: Detailed Assessment of Critical Issues

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MEMORANDUM FOR: Stewart Baker, Assistant Secretary for Policy

THROUGH: Paul Rosenzweig, Acting Assistant Secretary, PDEV and
Councilor 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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Background

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Attachment 1: Detailed Assessment of Critical Issues

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Comment [JL1]: Page: 1

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INFORMATION

MEMORANDUM FOR: Stewart Baker, Assistant Secretary for Policy
THROUGH: Paul Rosenzweig, Acting Assistant Secretary, PDEV and
Councilor 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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Background

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Attachment B

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INFORMATION

MEMORANDUM FOR: Stewart Baker, Assistant Secretary for Policy

THROUGH: Paul Rosenzweig, Acting Assistant Secretary, PDI, 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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Attachments:

1. Detailed Assessment of Critical Issues
2. List of Sensitive Terms

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Attachment 1: Detailed Assessment of Critical Issues

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Attachment 2

"Sensitive Data"

Codes

<u>Description</u>	<u>Data Field type</u>	<u>Code</u>
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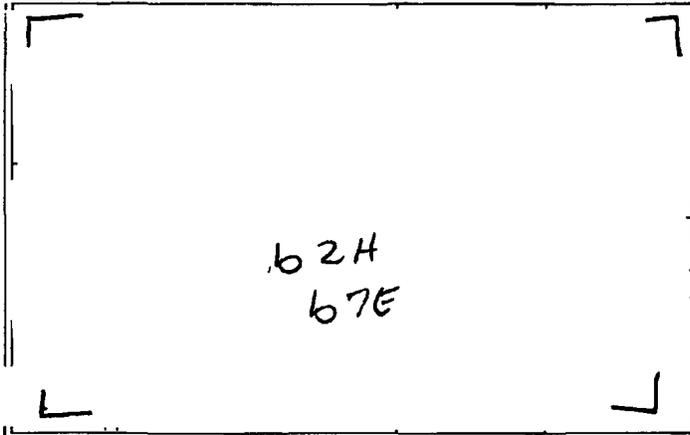


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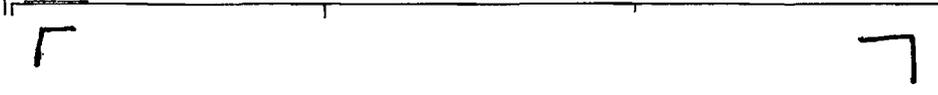


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Attachment B

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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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Background

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Attachments:

1. Detailed Assessment of Critical Issues
2. List of Sensitive Terms

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Attachment 1: Detailed Assessment of Critical Issues

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Attachment 2

"Sensitive Data"

Codes

Description	Data Field type	Code
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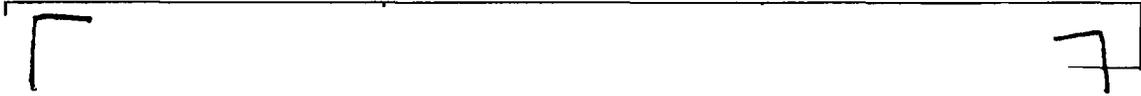
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Attachment D

[b2]

INFORMATION

MEMORANDUM FOR: Stewart Baker, Assistant Secretary for Policy
THROUGH: Paul Rosenzweig, Acting Assistant Secretary, PDEV and
Councilor 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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Background

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Discussion

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Attachments:

- 1. Detailed Assessment of Critical Issues**
- 2. List of Sensitive Terms**

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Attachment 1: Detailed Assessment of Critical Issues

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Attachment 2

"Sensitive Data"

Codes

Description	Data Field type	Code
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[Agency Point of Contact or Agency Official Requesting Access]
[Agency Name]
[Agency Address]

[Salutation]

As a result of the interim agreement between the United States and the European Union on the processing and transfer of passenger name record (PNR) data, dated October 19, 2006, CBP is now permitted to provide direct access to PNR through its Automated Targeting System – Passenger (ATS-P) to officers of U.S. Immigration and Customs Enforcement (ICE) and DHS offices that fall under the Office of the Secretary.

[Agency/Office Name] has been identified as an agency or office that may qualify for access to PNR through ATS-P.

Access to PNR data may be provided to appropriate personnel in your agency/office upon [Agency/Office Name]'s certification that it will: 1) comply with the terms of the PNR Undertakings, as interpreted in an October 6, 2006 letter from Assistant Secretary Stewart Baker to the European Commission and European Union Presidency (attached as Annex A); and 2) ensure that all personnel authorized to access ATS-P adhere to CBP's PNR Field Guidelines for Use and Disclosure of PNR (attached as Annex B) and are disciplined for any improper activity in a manner consistent with the Undertakings and Field Guidance. A form request letter that contains the necessary requirements for this certification is attached for your consideration and use (Annex C). A CBP Form 7300 (attached as Annex D) will also need to be completed on behalf of any individual for whom your Agency/Office seeks access to ATS-P.

All activity within ATS-P is monitored and audited and there are serious consequences for violation of the PNR Field Guidance. As set forth in these policies, CBP considers PNR information to be law enforcement sensitive, confidential personal information of the data subject ("Official Use Only" Administrative Classification"), and confidential commercial information of the air carrier, exempt from disclosure pursuant to 5 U.S.C. 552 (b)(2), (b)(4), (b)(6), and (b)(7)(C). PNR records may also be protected under the Privacy Act if the subject of the record is a U.S. citizen or permanent resident (5 U.S.C. 552a). Furthermore, the Trade Secrets Act (18 U.S.C. 1905) prohibits federal employees from disclosing information defined in that section without authorization and imposes personal sanctions on employees who do so. Per CBP policy, all disclosures must be accounted for in CBP's system.

If [Agency/Office Name] is interested in obtaining access for certain of its employees who have a specific need for this data in connection with their official duties, please carefully review the attached documents and, if appropriate, return a completed request letter, along with a CBP Form 7300 for each employee for whom you seek access to ATS-P. CBP will promptly review your request and provide access, as appropriate, following the completion of all required CBP training and other conditions for access.

If you have any questions, please contact [b6] at [b2]

Sincerely,

[Executive Director, National Targeting and Security]

Enclosure [Field Guidelines for Use and Disclosure of PNR]

DHS Intent:

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EU Primary Substantive Issues:

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Miscellaneous Issues:

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Homeland Security

September 6, 2006

MEMORANDUM FOR: Stewart Baker
Assistant Secretary for Policy

FROM: Nathan A. Sales
Deputy Assistant Secretary for Policy Development

SUBJECT: *b5* [] Uses of Passenger Name Records

b5 []

- **Enhanced Link Analysis.** Because of the strict limitations on sharing PNR information outside of CBP, other DHS components are required to make case-by-case requests for PNR information. In addition, the Undertakings currently limit CBP's access to 34 PNR data elements; a carrier's system may include many more fields, such as frequent flier information (beyond miles flown and the passenger's address), phone numbers, credit card information, and other people traveling on the same reservation. []

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- **Earlier and More Frequent Access to Vital Information.** Under today's restrictions, CBP cannot conduct an automated "pull" of PNR data from airlines more than four times, nor can it receive more than four "pushes" from airlines, during the 72 hours prior to the departure of a U.S.-bound flight. Manual access can occur prior to this 72 hour window and more than four times if a CBP officer obtains authorization from a supervisor. Still greater access can be obtained by working through law enforcement channels.

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- Investigations of Crimes Other than Terrorism. Under the current Undertakings, DHS is precluded from using or sharing PNR information for matters that are not related to terrorism or serious "transnational" crimes.

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[] b6

From: []
Sent: Friday, August 04, 2006 4:09 PM
To: Rosenzweig, Paul; [] b6
Cc:

Jacksta, Bob M; b6
; Scardaville, Michael;

Subject: RE: URGENT
Importance: High

~~INTER-AGENCY; INTERNAL DELIBERATIVE; NOT FOR DISTRIBUTION OUTSIDE USG~~

Paul,
Here are the consolidated comments of those components that responded. They've been organized into Answers to NSC Questions, Legal/Factual Corrections and Substantive Changes. If Policy approves, I can send on the classified system (although none of this material is classified). NSC extended deadline until COB today.

Answers to NSC questions

Pages 1-2

[] b5]

Page 2

[] b5]

Page 3

Is "ICE" Immigration and Customs Enforcement? Yes.

Page 6

Please make change using bolded language, [] b5]

Legal/Factual Corrections

Page 1

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Page 2

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Page 3

Page 4

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┌ CBP does have authority to pull PNR prior to 72 hours
if it gets information that a person of specific concern may be traveling on the flight--it is only required to use
normal LE channels if "practicable".

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Page 5

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SUBSTANTIVE CHANGE

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[b6]
Director of International Privacy Programs
DHS, Privacy Office
Tel.:
Fax: [b2]
Email:

This communication, along with any attachments, is covered by federal and state law governing electronic communications and may contain confidential and legally privileged information. If the reader of this message is not the intended recipient, you are hereby notified that any dissemination, distribution, use or copying of this message is strictly prohibited. If you received this in error, please reply immediately to the sender and delete the message. Thank you.

From: Rosenzweig, Paul
Sent: Friday, August 04, 2006 1:22 PM b6
To:
Cc:

Jacksta, Bob M; J

Scardaville, b6

Michael;
Subject: RE: URGENT

Please send all comments to [b6] ASAP for inclusion. He will clear with me and we will send to NSC. Deadline was nominally noon, so be quick ...

[b5]
P

Paul Rosenzweig
[b2]

From: [b6]
Sent: Friday, August 04, 2006 12:32 PM b6
To: Rosenzweig, Paul; [b6]
Cc:

Jacksta, Bob M; J

Scardaville, b6

Michael;
Subject: RE: URGENT
Importance: High

Here's the Memo and covering email. (I had to reformat in Adobe).

[b6]
Director of International Privacy Programs
DHS, Privacy Office
Tel.:
Fax: [b2]
Email:

This communication, along with any attachments, is covered by federal and state law governing electronic communications and may contain confidential and legally privileged information. If the reader of this message is not the intended recipient, you are hereby notified that any dissemination, distribution, use or copying of this message is strictly prohibited. If you received this in error, please reply immediately to the sender and delete the message. Thank you.

From: Rosenzweig, Paul
Sent: Friday, August 04, 2006 11:48 AM
To: [redacted]]
Cc: [redacted]

b6

Jacksta, Bob M;

Scardaville, Michael;

Rosenzweig, Paul;

b6

Subject: URGENT
Importance: High

Apparently there is a paper on PNR on the SIPRnet. Pls get it and try to arrange for circulation to the group in a way that they can colorably comment ASAP. It is hard, I think, to work this documents at a classified level.

P

Paul Rosenzweig
Counselor to the Asst. Secy. (Policy Directorate) and
Acting Assistant Secretary for Policy Development
Dept. of Homeland Security
Washington, DC 20528

Ph:
E:

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FOR NSC

[b6]

I will send comments via SIPRNET but as back-up, I'm sending DHS's comments to the August 7 Draft DC Discussion paper. Below are DHS comments:

Page 1-

Page 2 -

Page 2 .

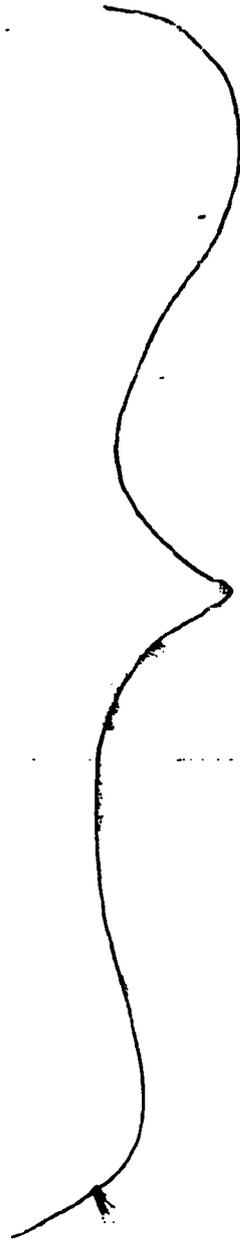
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Page 5 -

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p. 6 -

Page 6 -

Page 7 -



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Sent on behalf of:

DHS

Paul Rosenzweig

Counselor to the Asst. Secy. (Policy Directorate) and

Acting Assistant Secretary for Policy Development Dept. of Homeland Security Washington,
DC 20528

Ph.

E: [b2]

[b6]

Director of International Privacy Programs

DHS, Privacy Office

Tel.

Fax: [b2]

Email:

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TALKING POINTS

BACKGROUND

This is to provide a European audience with an explanation of the privacy protections provided by the PNR interim agreement.

BEGIN TALKING POINTS

- DHS is committed to applying privacy protections for European travelers that are similar to those provided for U.S. citizens and lawful permanent residents.
- As Secretary Chertoff has said, "If we want to protect the privacy of our own citizens, we are going to have to be willing to protect the privacy of our international partners and their citizens."¹
- The protections we provide European travelers follow the fair information practices embodied in the U.S. Privacy Act of 1974.
- In fact, Europe and the U.S. share many of the same privacy principles. For example, 15 of the 25 EU members have signed onto the 1980 OECD *Guidelines on the Protection of Privacy and Transborder Flows of Personal Data*. The OECD guidelines follow the fair information practices.

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- The same fair information practices are embodied in the interim PNR agreement.
- We can offer a point-by-point summary of these principles [

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- **Collection Limitation/Purpose Specification.** Similar to any collection on U.S. persons, the interim agreement requires DHS to define and limit

the purpose for collecting personal information. [

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o **Notice/Openness.**

- The European public will be given notice of PNR information collected and maintained by DHS by publishing a System of Records Notice [

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] in the

U.S. Federal Register.

- DHS is currently working to ensure that the System of Records Notice for the system maintaining PNR reflects the most current procedures. This will soon appear in the Federal Register.
- As an example [b5] DHS has already made [b5] commitments for data collected through the US-VISIT program. This system contains records on over 51 million individuals who are not U.S persons.

o **Use Limitations.** Access is limited to those officers and employees of DHS that have a need to know in accordance with their duties and to other

[

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] and in response to the vital interests of the individual or others who, for instance, may have been exposed to a dangerous communicable disease.

-
- **Data Quality.** The Privacy Act [b 5] require all agencies to maintain data in an accurate, relevant, timely, and complete fashion in order to protect individual privacy.
 - **Safeguards.**
 - The agreement requires DHS to maintain technical and physical safeguards to ensure the security and confidentiality of records and to protect against any anticipated threats or hazards to their security or integrity which could result in substantial harm, embarrassment, inconvenience, or unfairness to any individual on whom information is maintained.
 - The agreement requires DHS to train its employees in the rules of [b 5] with access to the PNR system of records and provide continuous guidance with respect to such rules and the [b 5]
 - **Accountability.** The interim agreement requires DHS to keep an audit log of the date, nature, and purpose of each disclosure of a record to any person or to another agency.
 - **Access.** If any data subject, regardless of whether they are U.S. person, wants to see PNR information maintained about him or her it is possible to obtain that information under FOIA. Any individual, regardless of nationality, may pursue this right in U.S. courts.
 - **Redress.**

-
- The agreement requires CBP to establish an administrative process to accept requests from the public to access their records and opportunities for redress. If an individual has a concern after working through the administrative process with CBP, they may seek further consideration from DHS's Chief Privacy Officer.
 - [Optional: C b5
] Since May 2004, when the agreement has been in place, we have not received one request.]
 - [Optional: While non-U.S. persons may not seek redress under the Privacy Act in U.S. Courts, they may access U.S. Courts under the Freedom of Information Act.]

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¹ Secretary Chertoff's prepared remarks delivered before the DHS Privacy Advisory Committee, December 6, 2005, available online at: http://www.dhs.gov/dhspublic/interapp/editorial/editorial_0765.xml