



Homeland Security

Privacy Office, Mail Stop 0550

March 28, 2008

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

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

Dear Ms. Hofmann:

This is our twenty-fourth 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 telephonic calls with counsel representing the Department of Homeland Security in December 2007, you agreed to narrow the scope of your request. The Government proposed that plaintiff eliminate non-responsive material within email chains from the scope of the request. Plaintiff agreed that emails within an email chain containing no responsive material may be removed from the scope of the request, and further suggested that defendant may eliminate duplicative copies of emails that contain responsive material from the scope of the request.

As we advised you in our December 7th partial release letter, we have completed our search for responsive documents. All responsive documents have now been processed except for three documents referred outside the agency for releasability review.

Most recently, we completed our review of 64 responsive documents, consisting of 210 pages, which were being held for possible classification. I have determined that 1 document, consisting of 2 pages, is releasable in its entirety, 59 documents, consisting of 198 pages, are releasable in part, and 4 documents, consisting of 10 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 properly classified information, names, telephone numbers, email addresses, deliberative material, legal opinions, law enforcement information, and homeland security information. I am withholding this information pursuant to Exemptions 1, 2, 5, 6, and 7(E) of the FOIA, 5 U.S.C. §§ 552 (b)(1), (b)(2), (b)(5), (b)(6), and (b)(7)(E).

We also completed our review of 8 responsive documents, consisting of 79 pages, that were referred to the Department of State (DOS), the Department of Justice (DOJ), and the National Security Council (NSC) for releasability review. After carefully considering the comments from DOS, DOJ, and NSC, I have determined that those documents are withholdable in their entirety. The withheld information, which will be noted on the *Vaughn* index when completed, consists of properly classified information, names, telephone numbers, email addresses, and deliberative material. I am withholding this information pursuant to Exemptions 1, 2, 5, and 6 of the FOIA, 5 U.S.C. §§ 552 (b)(1), (b)(2), (b)(5), and (b)(6).

FOIA Exemption 1 provides that an agency may exempt from disclosure matters that are (A) specifically authorized under criteria established by an Executive Order to be kept secret in the interest of national defense or foreign policy and (B) are in fact properly classified pursuant to such Executive Order. Portions of the withheld documents concern foreign government information relating to the national security and United States government programs and are classified under §§ 1.4(b), 1.4(c), 1.4(d), and 1.4(g) of Executive Order 12958, as amended.

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.

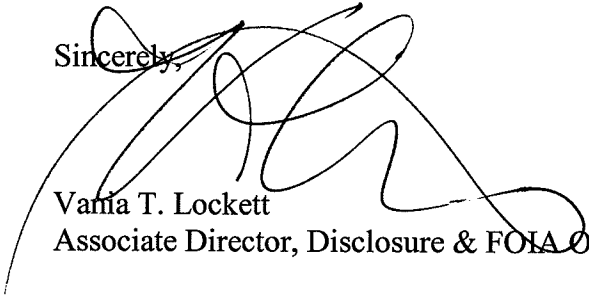
Finally, FOIA Exemption 7(E) protects records compiled for law enforcement purposes, the release of which would disclose techniques and/or procedures for law enforcement investigations or prosecutions, or would disclose guidelines for law enforcement investigations or prosecutions if such disclosure could reasonably be expected to risk circumvention of the law.

This completes our processing of your request insofar as it relates to documents that were being held for DHS classification review. Our office continues to process your request insofar as it relates to the three remaining documents that were referred outside the agency.

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: As stated, 200 pages

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EDP-3:FO:TSF:P LJ

Denise Sorasio
The Director
Directorate - General Justice Freedom and Security
Directorate D: Internal Security and Criminal Justice
Rue du Luxembourg 46 3/106, B-1049 Bruxelles
Belgium

Dear Ms. Sorasio:

Thank you for your letter of December 20, 2006 regarding the issue of the push method of obtaining Passenger Name Record (PNR) data from air carriers. While we appreciate and take your concerns very seriously, we believe that they may be the result of miscommunications or misunderstandings between Customs and Border Protection (CBP) and our European counterparts.

As you may know, CBP has been actively working with the EU carriers' Global Distribution System (Amadeus) for over two years as these air carriers migrate to a push method. Much progress has been made, including the initial testing of PNR data between CBP and Amadeus. In September 2006, CBP was notified by Amadeus that all testing must cease per a request from their clients the air carriers. Since this notification, CBP has continually requested that Amadeus resume and complete testing. On December 12, 2006, the six air carriers represented by Amadeus agreed to resume testing by the end of 2006, and as a result, testing is currently in process.

The remaining outstanding issue with Amadeus is CBP's need to receive an ad-hoc (or non-scheduled) push upon request. Whether it is called "interactive query capability" or an "ad-hoc query" or a "non-scheduled push," to ensure proper enforcement action is taken when there is an indication of a threat to a flight, set of flights, route or other circumstances related to terrorism or serious transnational crimes, CBP must have the ability to receive the most up-to-date PNR information upon request. We have been consistently clear that any push method must be designed to accommodate CBP's needs for access to this data outside of the 72-hour mark, whether before or in between any regular scheduled pushes, when there is an indication that such data is needed.

I detailed this system requirement to Mr. Francisco Fonseca Morillo of the European Commission in a February 2006 letter, which I understand you have reviewed and in a September 2006 letter to Mr. Arnaud Camus of International Agreements. Air France (representative for EU Amadeus carriers). More recently, the European Union's

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delegation during the 2006 negotiations acknowledged that air carriers must meet all of CBP's functional requirements when developing a push method. It is also provided for in the old and new U.S. - EU PNR Arrangement.

Based on an apparent misunderstanding of the process, the air carriers and Amadeus also have resisted the "real-time push" option, which would provide CBP with PNR initially at the 72-hour mark and again whenever changes are made to that PNR prior to the flight's departure. PNR data that has not changed between the 72-hour mark and the flight's departure need not be transmitted again, absent a pressing need by CBP.

CBP believes it has provided air carriers with viable options that meet CBP's operational needs for providing PNR data utilizing the push method, including those situations where CBP requires information outside of the 72-hour mark. CBP is actively working with air carriers to move toward that goal. We believe this approach is fully consistent with our representations in the Undertakings and under the new Agreement.

Thank you for your interest in this matter. If you have any questions please feel free to contact me at (202) 344-1220.

Sincerely,

Robert M. Jacksta
Executive Director
Traveler Security and Facilitation

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Hans Tischler Response:


Thank you for your email message of November 30, 2006 regarding the European Union (EU) air carriers' migration from the pull to a push system. Currently, there are no issues that impede U.S. Customs and Border Protection (CBP) from supporting this migration.

As you may know, CBP has been actively working with the EU carrier's Global Distribution System (Amadeus) for over two years as these air carriers migrate to a push system. Much progress has been made, including the initial testing of PNR data between CBP and Amadeus. In September 2006, CBP was notified by Amadeus that all testing must cease per their clients, that is, the air carriers. Since this notification, CBP has continually requested that Amadeus continue and complete testing. On December 12, 2006, the six air carriers represented by Amadeus have agreed to resume testing by the end of 2006.

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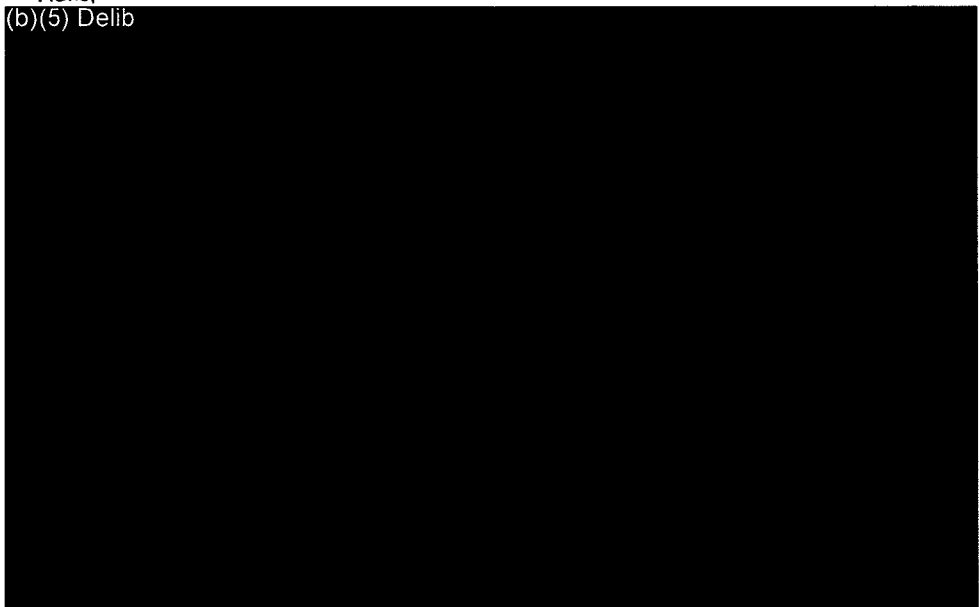
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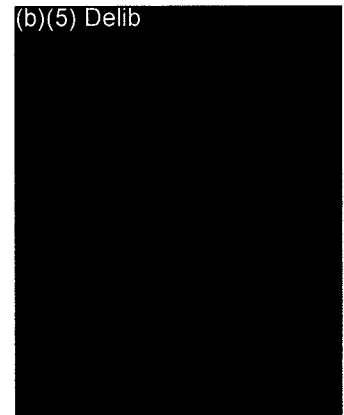
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Best Regards,

Bob

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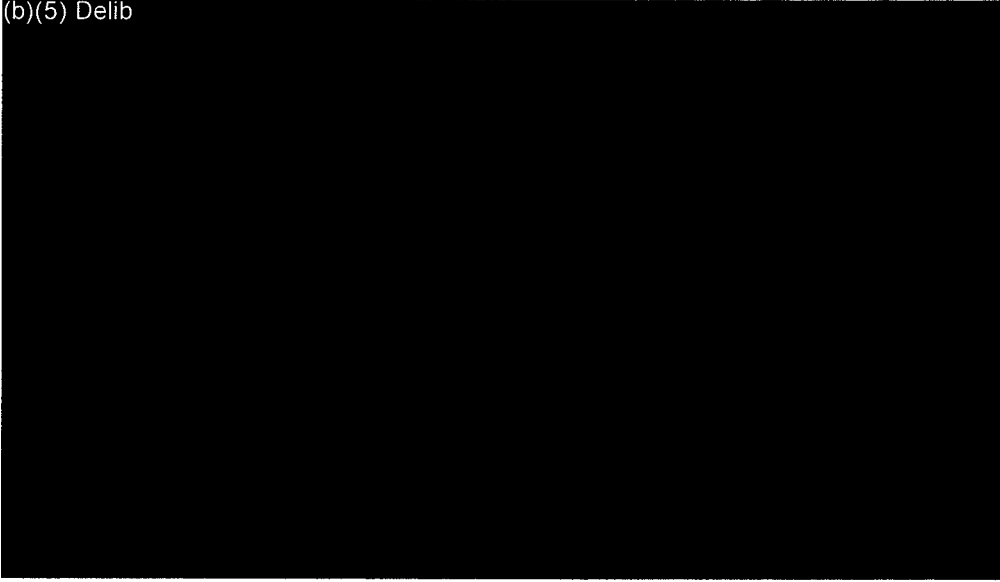
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Best Regards,

Bob



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U.S. Department of
Homeland Security
Washington, DC 20535



Homeland
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September 6, 2002

MEMORANDUM FOR: Stewart Baker
Assistant Secretary for Policy

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

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Homeland Security

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INFORMATION

MEMORANDUM FOR: Stewart Baker
THROUGH: Marisa Lino
FROM: Michael Scardaville
SUBJECT: Critique of the EU's proposed PNR Undertakings

Overview

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cc: Paul Rosenzweig

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U.S. Department of Homeland Security
Washington, DC 20528



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INFORMATION

MEMORANDUM FOR: Stewart Baker
THROUGH: Marisa Lino
FROM: Michael Scardaville
SUBJECT: Critique of the EU's proposed PNR Undertakings

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cc: Paul Rosenzweig

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U.S. Department of Homeland Security
Washington, DC 20528



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INFORMATION

MEMORANDUM FOR: Stewart Baker
THROUGH: Marisa Lino, Senior Advisor, PLCY/OIA
FROM: Michael Scardaville, Deputy Director for European Affairs
SUBJECT: Key Issues for the May 3, 2007 PNR VTC

Overview:

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Background

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Strategic Issues:

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Specific Issues:

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EU-USA PNR DOCUMENT
11.5. Assessment of the [b5] 2004 Undertakings
adopted by U.S. Customs and Border Protection
U.S. Department of Homeland Security

[b2]

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Pursuant to the conclusions of the September 18, 2001 EU-USA negotiating session on a replacement PNR agreement, the United States offers the following [b5]

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2 [b5] The Undertakings generally prohibit CBP from doing an automated pull earlier than 72 hours before the flight and limit the number of pulls to four for any given flight, unless CBP obtains advance information that persons of concern may be traveling. [b5]

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3 [b5] The Undertakings limit the retention of PNR to 3.5 years (11.5 if it has since been manually accessed and then only in a "deleted items" folder). [b5]

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approved by U.S. federal security authorities, longer periods are generally applied for data with national security implications. For example, FBI national security case records are held for 30 years after the case is closed, Treasury Enforcement Communications System data (TECS) records are retained for 40, and Terrorist Screening Center and FBI fingerprint cards are held for 90 years.

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DISCUSSION DOCUMENT

U.S. Assessment of the [b5] 2004 "Undertakings"
adopted by U.S. Customs and Border Protection
U.S. Department of Homeland Security

[b2]

Pursuant to the conclusions of the September 18, 2006 EU-U.S. negotiating session on a replacement PNR agreement, the United States offers the following <

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- [b5] the Undertakings generally prohibit CBP from doing an automated pull earlier than 72 hours before the flight and limit the number of pulls to four for any given flight. <

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- [b5] 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). <

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records retention schedules approved by U.S. federal records authorities, longer periods are used for data with national security applications. For example, FBI national security case records are held for 30 years after the case is closed. Treasury Enforcement Communications System data (TECS) records are retained for 40, and Terrorist Screening Center and FBI fingerprint cards are held for 99 years.

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DISCUSSION DOCUMENT

U.S. Assessment of the [b5] 2004 "Undertakings"
adopted by U.S. Customs and Border Protection
U.S. Department of Homeland Security

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1 [b2]

(u) Pursuant to the conclusions of the September 18, 2006 EU-U.S. negotiating session on a replacement PNR agreement, the United States offers the following [b5 b2(H) b7E]

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2. [b5] The Undertakings generally prohibit CBP from doing an automated pull earlier than 72 hours before the flight and limit the number of pulls to four for any given flight, unless CBP obtains advance information that persons of concern may be traveling. [b5 b2(H) b7E]

1. [b5] The Undertakings limit the retention of PNR to 3.5 years (11.5 if it has since been manually accessed and then only in a "deleted items" folder). [b5 b2(H) b7E]
Under records retention schedules

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approved by U.S. federal records authorities, longer periods are generally applied for data with national security applications. For example, FBI national security case records are held for 30 years after the case is closed, Treasury Enforcement Communications System data (TECS) records are retained for 40, and Terrorist Screening Center and FBI fingerprint cards are held for 99 years.

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DISCUSSION DOCUMENT
U.S. Assessment of the [b5] 2004 "Undertakings"
adopted by U.S. Customs and Border Protection
U.S. Department of Homeland Security

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(U) Pursuant to the conclusions of the September 18, 2006 EU-U.S. negotiating session on a replacement PNR agreement, the United States offers the following [

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- [b5] The Undertakings generally prohibit CBP from doing an automated pull earlier than 72 hours before the flight and limit the number of pulls to four for any given flight, unless CBP obtains advance information that persons of concern may be traveling. [

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- [b5] The Undertakings limit the retention of PNR to 3.5 years (11.5 if it has since been manually accessed and then only in a "deleted items" folder). [

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Under records retention schedules approved by U.S. federal records authorities, longer periods are generally applied for data with national security applications. For example, FBI national security case records are held for 30 years after the case is closed, Treasury Enforcement Communications System data (TECS) records are retained for 40, and Terrorist Screening Center and FBI fingerprint cards are held for 99 years.

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DISCUSSION DOCUMENT
U.S. Assessment of the [b5] 2004 "Undertakings"
adopted by U.S. Customs and Border Protection
U.S. Department of Homeland Security

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(U) Pursuant to the conclusions of the September 18, 2006 EU-U.S. negotiating session on a replacement PNR agreement, the United States offers the following [b5 b2(H) b7E]

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(U) • [b5] the Undertakings generally prohibit CBP from doing an automated pull earlier than 72 hours before the flight and limit the number of pulls to four for any given flight. [b5 b2(H) b7E]

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(U) • [b5] 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 b2(H) b7E]

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Under records retention schedules approved by U.S. federal records authorities, longer periods are used for data with national security applications. For example, FBI national security case records are held for 30 years after the case is closed. Treasury Enforcement Communications System data (TECS) records are retained for 40, and Terrorist Screening Center and FBI fingerprint cards are held for 99 years.

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DISCUSSION DOCUMENT
U.S. Assessment of the ~~C b5~~ 2004 "Undertakings"
adopted by U.S. Customs and Border Protection
U.S. Department of Homeland Security

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• ~~C b5~~ ↳ The Undertakings limit the retention of PNR to 3.5 years (11.5 if it has since been manually accessed). ~~C~~

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[b5 b2(High) b7E] Under records retention schedules approved by U.S. federal records authorities, longer periods are generally applied for data with national security applications. For example, FBI national security case records are held for 30 years after the case is closed. Treasury Enforcement Communications System data (TECS) records are retained for 40, and Terrorist Screening Center and FBI fingerprint cards are held for 99 years.

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DISCUSSION DOCUMENT

U.S. Assessment of the C 65 2004 "Undertakings"
adopted by U.S. Customs and Border Protection
U.S. Department of Homeland Security

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2 (U) C 65 The Undertakings generally prohibit CBP from doing an automated pull earlier than 72 hours before the flight and limit the number of pulls to four for any given flight, unless CBP obtains advance information that persons of concern may be traveling. [b5 b2 (Hsh) b7E]

3 (U) C 65 The Undertakings limit the retention of PNR to 3.5 years (11.5 if it has since been manually accessed and then only in a "deleted items" folder) [b5 b2 (Hsh) b7E]
Under records retention schedules

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approved by U.S. federal records authorities, longer periods are generally applied for data with national security applications. For example, FBI national security case records are held for 30 years after the case is closed, Treasury Enforcement Communications System data (TECS) records are retained for 40, and Terrorist Screening Center and FBI fingerprint cards are held for 99 years.

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DISCUSSION DOCUMENT

U.S. Assessment of the [b5] 2004 "Undertakings"
adopted by U.S. Customs and Border Protection
U.S. Department of Homeland Security

Deleted: September 19, 2006

1 [b2]

(u) Pursuant to the conclusions of the September 18, 2006 EU-U.S. negotiating session on a replacement PNR agreement, the United States offers the following [b7E b5 b2/HQK]

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(u) 2. [b5] : The Undertakings generally prohibit CBP from doing an automated pull earlier than 72 hours before the flight and limit the number of pulls to four for any given flight, unless CBP obtains advance information that persons of concern may be traveling. [b5 b2(HQK) b7E]

(u) 3. [b5] : The Undertakings limit the retention of PNR to 3.5 years (11.5 if it has since been manually accessed and then only in a "deleted items" folder) [b5 b2(HQK) b7E]

] Under records retention schedules

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approved by U.S. federal records authorities, longer periods are generally applied for data with national security applications. For example, FBI national security case records are held for 30 years after the case is closed, Treasury Enforcement Communications System data (TECS) records are retained for 40, and Terrorist Screening Center and FBI fingerprint cards are held for 99 years.

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DISCUSSION DOCUMENT
DHS Objectives and Critical Factors in Renegotiating the US-EU PNR Arrangement
Department of Homeland Security

Deleted: August 31, 2006

[b 2]

1. Issue: To explain DHS objectives and establish a negotiating position for the United States government in discussions with the European Union on a potential replacement PNR arrangement

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3. FBI national security case records are held for 30 years after the case is closed, Advance Passenger Information System records are retained for 40, and Terrorist Screening Center and FBI fingerprint cards are held for 99 years.

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DISCUSSION DOCUMENT
DHS Objectives and Critical Factors in Renegotiating the US-EU PNR Arrangement
Department of Homeland Security

October 3, 2006 September 1, 2006

1. Issue: To explain DHS objectives and establish a negotiating position for the United States government in discussions with the European Union on a potential replacement PNR arrangement

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- 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).² [

[b5 b2 High b7E]

¹ Paragraphs 3 (through the narrow use definition), 17, 28 and 31.

² Paragraph 15.

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Dated: September 1, 2006
Declassify: 3 Oct. 2011

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[b5 b2 (high) b7c]

> FBI national security case records are held for 30 years after the case is closed, Treasury Enforcement Communications System data (TECS) records are retained for 40, and Terrorist Screening Center and FBI fingerprint cards are held for 99 years.

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Deleted: June 9, 2006

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INFORMATION

(u) 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

(u) Per your request, below is a preliminary summary of areas of the Undertakings DHS may want to consider changing. I intend to work with CBP, OGC, TSA and Privacy to address these issues in more detail next week. My goal is provide you with a prioritized and justified list of changes to guide an eventual dialogue with the Europeans.

Background

(u) [65] In addition, some requirements, such as the audit standards, actually improved the overall operation of the program and others reflect existing policy (i.e., redress opportunities).

Discussion

Likely Top Priorities:

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