



Homeland Security

May 30, 2008

Mr. David L. Sobel
Electronic Frontier Foundation
1875 Connecticut Avenue, N.W.
Suite 650
Washington, DC 20009

Re: DHS/OS/PRIV 07-160/Sobel request

Dear Mr. Sobel:

This is the thirteenth partial release to your Freedom of Information Act (FOIA) requests to the Department of Homeland Security (DHS), dated November 7, 2006 and December 6, 2006, requesting DHS records concerning the Automated Targeting System (ATS). These two requests were aggregated to simplify processing. The following is a consolidated list of records requested:

1. All Privacy Impact Assessments prepared for the ATS system or any predecessor system that served the same function but bore a different name.
2. A Memorandum of Understanding executed on or about March 9, 2005 between Customs and Border Protection (CBP) and the Canada Border Services Agency to facilitate the Automated Exchange of Lookouts and the Exchange of Advance Passenger Information.
3. All records, including Privacy Act notices, which discuss or describe the use of personally-identifiable information by the CBP (or its predecessors) for purposes of screening air and sea travelers.
4. All System of Records Notices (SORNs) that discuss or describe targeting, screening, or assigning "risk assessments" of U.S. citizens by CBP or its predecessors.
5. All records that discuss or describe the redress that is available to individuals who believe that the ATS contains or utilizes inaccurate, incomplete or outdated information about them.
6. All records that discuss or describe the potential consequences that individuals might experience as a result of the agency's use of the ATS, including but not limited to arrest, physical searches, surveillance, denial of the opportunity to travel, and loss of employment opportunities.
7. All records that discuss or identify the number of individuals who have been arrested as a result of screening by the ATS and the offenses for which they were charged.
8. All complaints received from individuals concerning actions taken by the agency as a result of ATS "risk assessments" or other information contained in the ATS, and the agency's response to those complaints.
9. All records that discuss or describe Section 514 of the Department of Homeland Security Appropriations Act, 2007, P.L. 109-295 (H.R. 5441) and its prohibition against the development or testing of "algorithms assigning risk to passengers whose names are not on Government watch lists."
10. All records that address any of the following issues:
 - a. Whether a system of due process exists whereby aviation passengers determined to pose a threat are either delayed or prohibited from boarding their scheduled flights may appeal such decision and correct erroneous information contained in the ATS;

- b. Whether the underlying error rate of the government and private databases that will be used in the ATS to assign a risk level to an individual will not produce a large number of false positives that will result in a significant number of individuals being treated mistakenly or security resources being diverted;
- c. Whether the agency has stress-tested and demonstrated the efficacy and accuracy of all search tools in the ATS and has demonstrated that the ATS can make an accurate predictive assessment of those individuals who may constitute a threat;
- d. Whether the Secretary of Homeland Security has established an internal oversight board to monitor the manner in which the ATS is being developed and prepared;
- e. Whether the agency has built in sufficient operational safeguards to reduce the opportunities for abuse;
- f. Whether substantial security measures are in place to protect the ATS from unauthorized access by hackers or other intruders;
- g. Whether the agency has adopted policies establishing effective oversight of the use and operation of the system;
- h. Whether there are no specific privacy concerns with the technological architecture of the system;
- i. Whether the agency has, pursuant to the requirements of section 44903(i)(2)(A) of Title 49, United States Code, modified the ATS with respect to intrastate transportation to accommodate states with unique air transportation needs and passengers who might otherwise regularly trigger a high risk status; and
- j. Whether appropriate life-cycle estimates, expenditure and program plans exist.

A search directed to CBP has produced an additional 310 pages of records responsive to your request. We have determined that 297 pages are releasable to you in full or with certain information withheld pursuant to Exemptions 2 (low) and (high), 5, 6, and 7 of the FOIA, and 13 pages are withheld in their entirety pursuant to Exemptions 2 (low) and (high), 5, 6, and 7 of the FOIA.

Enclosed are 297 pages of releasable information. The withheld information, consists of names or initials, deliberative material, legal opinions, law enforcement information, and homeland security information. I am withholding this information pursuant to Exemptions 2, 5, 6, and 7E of the FOIA, 5 U.S.C. §§ 552 (b)(2), (b)(5), (b)(6), and (b)(7)(E).

Also enclosed are 8 blank sheets with several numbers that represent withheld documents. Each number corresponds to a page of withheld information and has the appropriate exemptions that apply to that document. In this instance, there are 13 pages of withheld information that comprise 8 documents.

Exemption 2(low) exempts from disclosure records that are related to internal matters of a relatively trivial nature, such as internal administrative tracking. Exemption 2(high) protects information 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.

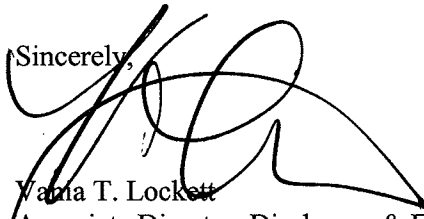
Exemption 5 protects from disclosure those inter- or intra-agency documents that are normally privileged in the civil discovery context. The deliberative process privilege protects the integrity of the deliberative or decision-making processes within the agency by exempting from mandatory disclosure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

Exemption 6 exempts from disclosure records the release of which would cause a clearly unwarranted invasion of personal privacy.

Exemption 7E 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.

As stated in the February 1, 2008 Status Report for the litigation which encompasses this FOIA request, we are continuing to process your request with regard to documents located at the following CBP Offices: Office of Field Operations, National Targeting and Security, Office of Chief Counsel, and Office of Information and Technology. If you have any questions regarding this matter, please refer to **DHS/OS/PRIV 07-160/Sobel request**. This office can be reached at 866-431-0486. Thank you for your patience as we proceed with your request.

Sincerely,

Yanna T. Lockett
Associate Director, Disclosure & FOIA Operations

Enclosures: 305 pages

emails
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.

Low (b)(2), (b)(6)
Sent: Saturday, September 16, 2006 10:04 AM
To: [REDACTED]
; Scardaville, Michael
Subject: Fw: Privacy Act matrix

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

From: "Scardaville, Michael" Low (b)(2), (b)(6)
"Scardaville, Michael" Low (b)(2), (b)(6)
[REDACTED]

emails

Low (b)(2)

(b)(5) - AC & Delib, (b)(6)

Mike

Low (b)(2), (b)(6)

Low (b)(2), (b)(6)

Sent: Saturday, September 16, 2006 5:13 PM

To: Scardaville, Michael; (b)(6)

Subject: RE: Privacy Act matrix

(b)(5) delib & AC

(b)(6)

Director of International Privacy Programs

DHS, Privacy Office

Tel. [REDACTED]

Fax: [REDACTED]

emails

Low (b)(2), (b)(6)

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From: Scardaville, Michael [Low (b)(2), (b)(6)]
Sent: Saturday, September 16, 2006 5:08 PM
To: [Redacted] Scardaville, Michael; [Redacted]
Cc: [Redacted]
Subject: RE: Privacy Act matrix

Exactly. If I put in a FOIA request for PNR related to me from my trip to Brussels last week, how would my request be adjudicated. Under what circumstance would I get it and under what would I not.

Mike

Low (b)(2), (b)(6)

From [Low (b)(2), (b)(6)]
Sent: Saturday, September 16, 2006 5:07 PM
To: Scardaville, Michael; [Redacted]
Subject: RE: Privacy Act matrix

On part 2, (b)(5) - Delib [Redacted]

(b)(6)

Director of International Privacy Programs

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emails

DHS, Privacy Office

Tel. [REDACTED]

Fax: [REDACTED]

Low (b)(2), (b)(6)

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Low (b)(2), (b)(6)

Sent: Saturday, September 16, 2006 5:04 PM

(b)(6) Scardaville, Michael; (b)(6)

Subject: RE: Privacy Act matrix

I found the first half of #1. We didn't have any data on either. Part 2 is critical, however.

Mike

Low (b)(2), (b)(6)

Low (b)(2), (b)(6)

Sent: Saturday, September 16, 2006 5:02 PM

To: Scardaville, Michael; (b)(6)

Subject: RE: Privacy Act matrix

Importance: High

Mike and all,

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emails

Here is the 5pm version that incorporates two sets of revisions by OGC/CBP or OGC/OGC and Mike. Hope we're close. I'd like to take a mental health break and go get some dinner.

On Policy's questions.

(b)(5) - Delib & AC
[Redacted]

I'm not familiar with them can we look for Monday or maybe (b)(6) know.

2. We need to more thoroughly explain (b)(5) - Delib & AC
[Redacted]

Done

3. He wants this for his own background, (b)(5) - Delib, (b)(6)
[Redacted]

First draft in circulation with Policy.

(b)(6)
[Redacted]

Director of International Privacy Programs

DHS, Privacy Office

Tel. [Redacted]

Fax: [Redacted]

Low (b)(2), (b)(6)
[Redacted]

emails

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From: Scardaville, Michael Low (b)(2), (b)(6)
Sent: Saturday, September 16, 2006 2:17 PM
To: (b)(6); Scardaville, Michael
(b)(6)
Subject: RE: Privacy Act matrix

A few more thoughts in the attached.

Also, Stewart just came by my cube and looked over quickly and has a couple of requests for this document.

(b)(5) - Delib & AC
[Redacted]

(b)(5) - Delib
[Redacted]

(b)(5) - Delib, (b)(6)
[Redacted]

Also, looking forward (but not for this weekend) we need to consider
(b)(5) - Delib
[Redacted]

Mike

emails

Low (b)(2), (b)(6)

Low (b)(2), (b)(6)

Sent: Saturday, September 16, 2006 12:48 PM

(b)(6) Scardaville, Michael

(b)(6)

Subject: RE: Privacy Act matrix

Attached is the revised version. It incorporates nearly all of OGC/CBP changes and added one section on retention. Please review and revise as needed without open ended questions. Thanks. Also attaching background SORN and new draft SORN and PIA that covers PNR. Call with any questions.

Home cell is Low (b)(2), (b)(6)

(b)(6)

Director of International Privacy Programs

DHS, Privacy Office

Tel. [REDACTED]

Fax: [REDACTED]

Low (b)(2), (b)(6)

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Low (b)(2), (b)(6)

Sent: Saturday, September 16, 2006 10:04 AM

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emails

Low (b)(2), (b)(6)

Sent: Saturday, September 16, 2006 10:04 AM

To: (b)(6)

;Scardaville, Michael

Subject: Fw: Privacy Act matrix

Low (b)(2), (b)(6)

[Redacted content]

"Scardaville, Michael" Low (b)(2), (b)(6)

"Scardaville, Michael" Low (b)(2), (b)(6)

emails

Low (b)(2) [REDACTED]

OK. It's gone.

Mike

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

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

Sent: Saturday, September 16, 2006 4:57 PM

To: Scardaville, Michael; (b)(6) [REDACTED]

(b)(6) [REDACTED]

Subject: RE: Talkers Best Efforts now "in a manner consistent"

I tend to agree with (b)(6), (b)(5) - Delib [REDACTED]

[REDACTED]
Director of International Privacy Programs

DHS, Privacy Office

Tel. [REDACTED]

Fax: [REDACTED]

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

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From: Scardaville, Michael [Low (b)(2), (b)(6)] emails

Sent: Saturday, September 16, 2006 4:54 PM

To: (b)(6) Scardaville, Michael; (b)(6)

Subject: RE: Talkers Best Efforts now "In a manner consistent"

While it may be nearly useless, (b)(5) - Delib

Mike

[Low (b)(2), (b)(6)]

[Low (b)(2), (b)(6)]

Sent: Saturday, September 16, 2006 4:46 PM

To: (b)(6) Scardaville, Michael; (b)(6)

Subject: RE: Talkers Best Efforts now "in a manner consistent"

Agree—can I also take out of matrix?

(b)(6)

Director of International Privacy Programs

DHS, Privacy Office

[Low (b)(2), (b)(6)]

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delete the message. Thank you.

emails

Low (b)(2), (b)(6)

Sent: Saturday, September 16, 2006 4:43 PM

To: (b)(6) Scardaville, Michael; (b)(6)

Cc: (b)(6)

Subject: RE: Talkers Best Efforts now "in a manner consistent"

(b)(6), (b)(5) - AC and Delib

(b)(6)

Senior Counsel

Department of Homeland Security

Office of the General Counsel

Low (b)(2)

Low (b)(2), (b)(6)

Low (b)(2), (b)(6)

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From Low (b)(2), (b)(6)

Sent: Saturday, September 16, 2006 4:37 PM

To: Scardaville, Michael; (b)(6)

emails

Cc: (b)(6)
Subject: RE: Talkers Best Efforts now "in a manner consistent"

Mostly fiddles. (b)

(b)(6)

Senior Counsel

Department of Homeland Security

Office of the General Counsel

Low (b)(2)

Low (b)(2), (b)(6)

Low (b)(2), (b)(6)

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From: Scardaville, Michael [Low (b)(2), (b)(6)]
Sent: Saturday, September 16, 2006 4:29 PM
To: (b)(6) Scardaville, Michael
Cc: (b)(6)
Subject: RE: Talkers Best Efforts now "in a manner consistent"

I'm still working on mine. Don't worry.

Mike

emails

Low (b)(2), (b)(6)

Low (b)(2), (b)(6)

Sent: Saturday, September 16, 2006 4:28 PM

To: (b)(6) Scardaville, Michael

Cc: (b)(6)

Subject: RE: Talkers Best Efforts now "in a manner consistent"

Two more seconds pls?

(b)(6)

Senior Counsel

Department of Homeland Security

Office of the General Counsel

Low (b)(2)

Low (b)(2), (b)(6)

Low (b)(2), (b)(6)

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Low (b)(2), (b)(6)

Sent: Saturday, September 16, 2006 4:27 PM

To: (b)(6) Scardaville, Michael

Cc: (b)(6)

Subject: RE: Talkers Best Efforts now "in a manner consistent"

emails

Mike,

Can you run with (b)(6) edits? I'm fine with them. (b)(5) - Delib

Don't feel strongly about this sentence and it can come out if you want. Turning to version 3 of the matrix.

(b)(6)

Director of International Privacy Programs

DHS, Privacy Office

Tel. (b)(6)

Fax: (b)(6)

Low (b)(2), (b)(6)

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Low (b)(2), (b)(6)

Sent: Saturday, September 16, 2006 4:21 PM

To: (b)(6)

Cc: Scardaville, Michael (b)(6)

Subject: Re: Talkers Best Efforts now "In a manner consistent"

Thanks (b)(6) -here are my comments (b)

emails

(b)(6)

Office of Chief Counsel
U.S. Customs and Border Protection

Low (b)(2), (b)(6)

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.

Low (b)(2), (b)(6)

wrote: -----

To: "Scardaville, Michael" Low (b)(2), (b)(6)

Date: 09/16/2006 03:47PM

cc: Low (b)(2), (b)(6)

Subject: Talkers Best Efforts now "in a manner consistent"

Mike, and all

Attached is a first draft of Talkers (much of it based on the matrix with legalese removed). It could be more talkerfriendly, but I'll leave it to Policy to massage.

On matrix, I will incorporate Mike and (b)(6)'s latest comments and send out shortly.

Director of International Privacy Programs DHS, Privacy Office

Low (b)(2), (b)(6)

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emails
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: Scardaville, Michael Low (b)(2), (b)(6)
Sent: Saturday, September 16, 2006 2:17 PM
To: (b)(6) Scardaville, Michael
Cc: (b)(6)
Subject: RE: Privacy Act matrix

A few more thoughts in the attached.

Also, Stewart just came by my cube and looked over quickly and has a couple of requests for this document.

(b)(5) - Delib & AC
[Redacted]

(b)(5) - Delib & AC
[Redacted]

(b)(5) Delib, (b)(6)
[Redacted]

Also, looking forward (but not for this weekend) we need to consider

(b)(5) - Delib & AC
[Redacted]

Mike

Low (b)(2), (b)(6)
[Redacted]

Low (b)(2), (b)(6)
[Redacted]

emails

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Home cell is Low (b)(2), (b)(6)

(b)(6)

Director of International Privacy Programs

DHS, Privacy Office

Tel: (b)(6)

Fax: (b)(6)

Low (b)(2), (b)(6)

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Low (b)(2), (b)(6)

Sent: Saturday, September 16, 2006 10:04 AM

To: (b)(6)

Scardaville, Michael

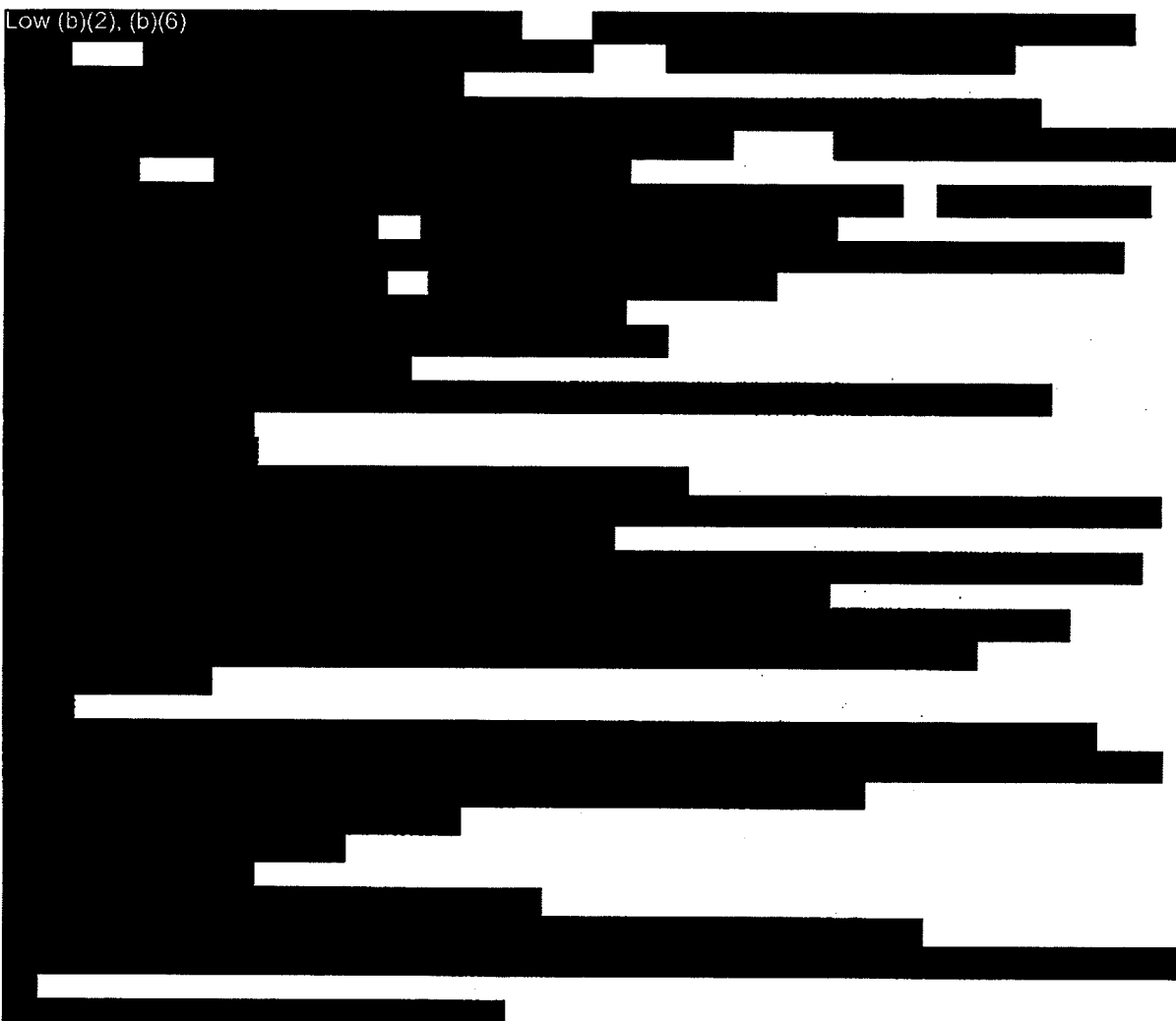
Subject: Fw: Privacy Act matrix

Low (b)(2)

emails
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From: (b)(6)
Sent: Saturday, September 16, 2006 10:04 AM
To: (b)(6)
Cc: (b)(6); Scardaville, Michael
Subject: Fw: Privacy Act matrix

Low (b)(2), (b)(6)

A large rectangular area of the document is completely redacted with black ink, obscuring the main content of the email. The redaction covers approximately 80% of the page's width and 50% of its height.

emails

Low (b)(2)

OK, we're getting somewhere. Attached are my edits (more additions really) plus (b)(5).

A few big issues remain:

(b)(5) - AC and Delib

(b)(5) - AC and Delib

(b)(5) - AC and Delib

(b)(5) - AC and Delib

(b)(5) - AC and Delib

6. Retention: (b)(6) I didn't understand your comment.

Thanks everyone for all the rush work on both docs.

Mike

Low (b)(2), (b)(6)

emails

Low (b)(2), (b)(6)
Sent: Saturday, September 16, 2006 4:43 PM
To: (b)(6) Scardaville, Michael; (b)(6)
Cc: (b)(6)
Subject: RE: Talkers Best Efforts now "in a manner consistent"

(b)(5) - AC and Delib, (b)(6)

(b)(6)

Senior Counsel

Department of Homeland Security

Office of the General Counsel

Low (b)(2)

Low (b)(2), (b)(6)

Low (b)(2), (b)(6)

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emails

Mostly fiddles. (b)

(b)(6)

Senior Counsel

Department of Homeland Security

Office of the General Counsel

Low (b)(2)

Low (b)(2), (b)(6)

Low (b)(2), (b)(6)

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Cc: (b)(6)

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Low (b)(2), (b)(6)

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Two more seconds pls?

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Senior Counsel

Department of Homeland Security

Office of the General Counsel

[Redacted]

[Redacted]

[Redacted]

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Page 151

002943

emails

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(b)(6)

Director of International Privacy Programs

DHS, Privacy Office

Tel. [REDACTED]

Fax: [REDACTED]

Low (b)(2), (b)(6)

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Sent: Saturday, September 16, 2006 4:21 PM

To: (b)(6)

Cc: Scardaville, Michael; (b)(6)

(b)(6)

Subject: Re: Talkers Best Efforts now "in a manner consistent"

Thanks (b)(6) here are my comments. (

(b)(6)

Office of Chief Counsel

U.S. Customs and Border Protection

emails

Low (b)(2), (b)(6)

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Low (b)(2), (b)(6)

To: "Scardaville, Michael" Low (b)(2), (b)(6)

Date: 09/16/2006 03:47PM

Low (b)(2), (b)(6)

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(b)(6)

Director of International Privacy Programs DHS, Privacy Office

Tel. [REDACTED]

Fax: [REDACTED]

Low (b)(2), (b)(6)

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From: Scardaville, Michael [Low (b)(2), (b)(6)]
Sent: Saturday, September 16, 2006 2:17 PM
To: (b)(6); Scardaville, Michael
Cc: (b)(6)
Subject: RE: Privacy Act matrix

A few more thoughts in the attached.

Also, Stewart just came by my cube and looked over quickly and has a couple of requests for this document.

(b)(5) - Delib & AC
[Redacted]

(b)(5) - Delib & AC
[Redacted]

(b)(5) - Delib, (b)(6)
[Redacted]

Also, looking forward (but not for this weekend) we need to consider

(b)(5) - Delib & AC
[Redacted]

Mike

[Low (b)(2), (b)(6)]

[Low (b)(2), (b)(6)]
Sent: Saturday, September 16, 2006 12:48 PM
To: (b)(6); Scardaville, Michael
Cc: (b)(6)

emails

Subject: RE: Privacy Act matrix

Attached is the revised version. It incorporates nearly all of OGC/CBP changes and added one section on retention. Please review and revise as needed without open ended questions. Thanks. Also attaching background SORN and new draft SORN and PI that covers PNR. Call with any questions.

Home cell is (b)(6)

(b)(6)

Director of International Privacy Programs

DHS, Privacy Office

Low (b)(2), (b)(6)

Low (b)(2), (b)(6)

Low (b)(2), (b)(6)

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From Low (b)(2), (b)(6)

Sent: Saturday, September 16, 2006 10:04 AM

To: (b)(6)

Cc: (b)(6); Scardaville, Michael

Subject: Fw: Privacy Act matrix

- Best Efforts Talkers-ms (b)(6) doc

Low (b)(2), (b)(6)

emails

Subject: Re: Talkers Best Efforts now "in a manner consistent"

Low (b)(2), (b)(6)

Low (b)(2), (b)(6)

"Scardaville, Michael"

DeliveredDate: 09/16/2006 05:11:09 PM

You're right - my bad.

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

From: Low (b)(2), (b)(6)

Scardaville, Michael Low (b)(2), (b)(6)

Sent: Sat Sep 16 17:08:50 2006

Subject: RE: Talkers Best Efforts now "in a manner consistent"

(b)(5) - Delib & AC

(b)(6)

Director of International Privacy Programs

DHS, Privacy Office

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emails

Tel: [REDACTED]

Fax: [REDACTED]

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

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From: Low (b)(2), (b)(6) [REDACTED]
Sent: Saturday, September 16, 2006 5:07 PM
(b)(6) [REDACTED]; Scardaville, Michael; (b)(6) [REDACTED]
Subject: RE: Talkers Best Efforts now "In a manner consistent"

(b)(5) - Delib. AC, (b)(6) [REDACTED]

(b)(6) [REDACTED]

Senior Counsel
Department of Homeland Security
Office of the General Counsel

Low (b)(2) [REDACTED]

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

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

emails

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From: Low (b)(2), (b)(6)
Sent: Saturday, September 16, 2006 5:03 PM
To: Scardaville, Michael; (b)(6)
Subject: RE: Talkers Best Efforts now "in a manner consistent"

OK, put it back in. Sorry, I just took out of the matrix. For that matter, (b)(5) - Delib. AC

(b)(6)

Director of International Privacy Programs

DHS, Privacy Office

Tel. [REDACTED]

Fax: [REDACTED]

Low (b)(2), (b)(6)

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From: Scardaville, Michael; Low (b)(2), (b)(6)
Sent: Saturday, September 16, 2006 5:00 PM
(b)(6) Scardaville, Michael; (b)(6)

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emails

(b)(6)

Subject: RE: Talkers Best Efforts now "in a manner consistent"

(b)(5) - Delib, (b)(6)

Mike

Low (b)(2), (b)(6)

From Low (b)(2), (b)(6)

Sent: Saturday, September 16, 2006 4:59 PM

To: Scardaville, Michael; (b)(6)

Subject: RE: Talkers Best Efforts now "in a manner consistent"

(b)(5) - Delib, AC, (b)(6)

(b)(6)

Senior Counsel

Department of Homeland Security

Office of the General Counsel

Low (b)(2)

Low (b)(2), (b)(6)

Low (b)(2), (b)(6)

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