



**U.S. CUSTOMS AND BORDER PROTECTION
BORDER SEARCH OF ELECTRONIC DEVICES CONTAINING
INFORMATION TRAINING:**

**ASSESSMENT AND RECOMMENDATIONS
August 20, 2010**

PURPOSE

In August 2009, the U.S. Department of Homeland Security (DHS) released new U.S. Customs and Border Protection (CBP) and U.S. Immigration and Customs Enforcement (ICE) directives to enhance and clarify the procedures and processes for searches of laptops and other electronic devices at United States' ports of entry. In conjunction with the release of the directives, the Department also released a Privacy Impact Assessment on the privacy implications of the new directives in order to enhance public awareness of the policies, procedures, and authorities guiding CBP and ICE officers while conducting searches of electronic devices. The Office for Civil Rights and Civil Liberties will also complete a Civil Rights/Civil Liberties Impact Assessment to assess the civil rights and civil liberties' implications of the directives.

As a result of the release of the directive, CBP, the DHS Privacy Office, the CBP Privacy Office, and the Office for Civil Rights and Civil Liberties collaborated to assess training materials and course matter on the border search of electronic devices containing information and provide recommendations. This review examines the training methods used to educate CBP officers on the guidance specified in the directive, the number of CBP Office of Field Operations (OFO) officers trained, and the scope of the Border Search of Electronic Information (Border Search) training course.

This assessment and recommendation addresses CBP's implementation of training related to the CBP directive. For purposes of searches at the border, the term "electronic device" encompasses any device that may contain information, such as:

- Laptop computers
- Disks



- Drives
- Tapes
- Mobile phones and other communication devices
- Cameras
- Music and other media players

BACKGROUND

The CBP Border Search of Electronic Information training course was released for CBP use on November 24, 2009, through CBP's Virtual Learning Center. The Virtual Learning Center is a component-wide module for personnel to participate in a variety of subject matter training. This computer-based course educates CBP OFO officers on the processes and procedures required to conduct a border search of electronic devices. The course is derived from the requirements of the *Border Search of Electronic Devices Containing Information* directive dated on August 20, 2009, and the objectives of the course are designed to teach officers how to:

- Conduct a border search of information on an electronic device;
- Identify special handling procedures for business or commercial information, attorney-client privileged material, medical records, and work-related information carried by journalists;
- Identify CBP procedures for detaining electronic devices;
- Follow CBP procedures for seeking assistance from other government agencies;
- Follow CBP procedures for the retention and sharing of electronic information;
- Identify the requirements for reporting a border search of an electronic device; and
- Identify the supervisory responsibilities for overseeing the handling of an electronic device.

Since the release of the training on November 24, 2009, approximately 95% CBP OFO officers have completed the course through June 2010. CBP OFO officers employed at the time of the release of the border search directives were notified via memorandum and musters about the release of the new directives, and were required to complete the Border Search of Electronic Information course before March 31, 2010. In addition, new officers take the course during new employee orientation and training.



As part of CBP's ongoing educational program, all CBP OFO officers are required to complete the Border Search of Electronic Information training course annually. The Border Search training course is one of a variety of training courses taken by CBP employees throughout the year. Officers also receive training in other areas, such as cultural awareness, privacy, and operational procedures, along with initial and recurrent basic officer training. Receiving the Border Search training in conjunction with the other courses provides CBP officers a comprehensive educational experience that enhances officer efficacy and professionalism during interactions with the public, and promotes protection of the public's privacy, civil rights, and civil liberties.

ASSESSMENT

The Border Search training course is divided into eight lessons. Six of the lessons provide substantive training on the subject matter, and the remaining two lessons encompass the overview and summary of the course. The objectives for each lesson are presented at the outset of each module, and each lesson has between one to three "knowledge checks." Knowledge checks are questions designed to verify understanding of information presented in the lesson. The course is currently ungraded; however, in order to receive credit for the course, the CBP officers must complete all knowledge checks in each of the lessons. In light of the release of the new directives and the necessity to provide education on the requirements of those directives to CBP OFO officers, implementation of a non-graded course, which need not be the subject of collective bargaining, was the method by which those responsible for executing the directives could receive instruction quickly. Before CBP can convert the Border Search course from a non-graded course into a graded course, CBP management and employee representatives must negotiate the implementation of the course.

After the introductory lesson explaining the nature and purpose of the course, the content of the lessons closely tracks the *Border Search of Electronic Devices Containing Information* directive. Lesson 2 clearly explains CBP's authority to conduct searches at the border as specified in the directive, as well as addresses the scope of the directive. Subsequent lessons address handling and review of business confidential information, attorney-client information, medical information, and work-related information. Time frames for detaining an electronic device are definitively enumerated, and the appropriate methods for destroying information are addressed and cross-referenced to related CBP guidance on the destruction of information. The training also addresses when CBP may seek assistance from subject matter experts in other agencies, and the time frame for



response from those agencies. Importantly, the course addresses management and reporting requirements related to the search of electronic devices at the border. Forms to be completed by CBP OFO officers as part of the border search of an electronic device are listed specifically by name and/or number.

The Border Search training course provides a thorough explanation of the procedures related to the search of information contained in an electronic device and provides CBP OFO officers with the requisite understanding of how to correctly implement guidance outlined in the directive; however, the course does not directly address how an electronic device should be searched. The *Border Search of Electronic Devices Containing Information* directive, as well as the Border Search training course, addresses CBP's long-standing authority to enforce U.S. law at the border, including by detecting evidence related to terrorism and other national security threats, human and cash smuggling, contraband, child pornography, and financial and commercial crimes. When CBP officers find evidence of these crimes, this course provides clear instruction on the protocol to follow. The course does not, however, address the operational step that occurs before information is discovered --- the actual search of the device.

As OFO officers complete the course, some lessons reference other laws, guidance, policies, or directives that apply to operational procedures at the border. These materials may be accessed via the CBP intranet. The Border Search training course also provides further explanation of key topics in a lesson through the use of clickable links that produce pop-up boxes. The pop-up boxes provide more detailed information on topics ranging from other component directives related to border searches to how to seek guidance from a superior when questions arise. For example, if a lesson addresses how to properly provide notice of a detention of an electronic device to an individual, a pop-up box is available to explain what information should be included in the notification.

It should be noted that CBP has developed another training course designed to provide instruction on triage of electronic devices at the border. This course complements the Border Search training course by providing instruction on the mechanics of physically searching a device. It provides comprehensive instruction on electronic and mobile technology, and CBP officers will have the requisite knowledge to adequately search an electronic device upon completion. However, this course has only seen limited distribution across the ports of entry. The limited distribution does not necessarily indicate that the officers are unprepared to conduct a sufficient examination of an electronic device; triage of electronic devices is frequently undertaken by more senior CBP OFO officers who receive training on an as needed basis before assignment to triage duty. The assessment team asserts that both courses are more effective when taken in conjunction.



RECOMMENDATIONS

In order to increase the usefulness of the Border Search of Electronic Devices training course, the assessment team recommends the following actions:

1. Implement a notification system by which CBP officers who must take the training receive individualized reminders from the Virtual Learning Center that relate to each employee's personalized learning plan.
2. Implement accountability measures for CBP officers who fail to complete the course annually.
3. Within one year, develop an implementation plan outlining a time frame for component-wide availability of the course on triage of electronic devices.

As previously stated, the Border Search of Electronic Devices training course is an annual requirement for CBP OFO officers. Currently CBP OFO officers are notified of training requirements via email and memoranda en masse, and do not receive individualized automatic reminders that the annual requirement due date is approaching. The assessment team recommends that officers receive individualized email updates reminding them about the duty to complete the Border Search training course at his or her particular annual intervals. An individualized notification method will reduce the likelihood that CBP officers are not included in the memorandum distribution or disregard the mass email notice, thereby failing to complete the course annually.

While Border Search training is an annual requirement for CBP officers, there are currently no accountability measures for those who fail to complete the training. The assessment team recommends that CBP develop accountability and auditing measures for officers who fail to complete the required training. Implementation of these measures will help increase training compliance, and reinforce the importance of adhering to the new border search directives.

The assessment team also recommends that an implementation plan for the component-wide roll out of the training course related to triage of electronic devices be completed within one year. The Border Search training course provides instruction on topics related to the authority to conduct a search, how to review and handle information, how to detain a device and seek other federal agency assistance, how to retain



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information, and how to meet all reporting requirements related to the search. However, the triage course complements the Border Search training course by providing clear guidance on *how* to search an electronic device. Taken together, OFO officers whose job duties include searching electronic devices will have a more robust education in the electronic device search process.