



Homeland Security

The following document was received by the DHS Privacy Office on behalf of the DHS Data Privacy and Integrity Advisory Committee.

James P. Harrison

["Alaskans' records requests pursuant to the Privacy Act of 1974 for their data contained in the System of Records used to test Secure Flight"](#)

For more information please visit: www.dhs.gov/privacy or email the DHS Privacy Office: privacy@dhs.gov or the DHS Data Privacy and Integrity Advisory Committee: privacycommittee@dhs.gov.

Additional Contact Information:

Data Privacy and Integrity Advisory Committee
The Privacy Office
U.S. Department of Homeland Security
Washington, DC 20528
Telephone: 571-227-3813
Fax: 571-227-4171

Memo 10.13.05

To: DHS Data Privacy and Integrity Advisory Committee
From: James P. Harrison
Re: Alaskans' records requests pursuant to the Privacy Act of 1974 for their data contained in the System of Records used to test Secure Flight

Greetings Committee members,

As you know, TSA is testing Secure Flight which has the stated mission of preventing terrorists from boarding domestic commercial flights by comparing Passenger Name Records ("PNRs") provided by air carriers to "no fly" lists or other watch lists. TSA ordered all major domestic air carriers to provide their historic PNRs for the month of June, 2004, so that TSA could use it to test Secure Flight. TSA publicly noticed the creation of this System of Records as required by the Privacy Act when the Government maintains records on its citizens. In June, 2005, TSA amended their notice to address their inclusion of further data they procured from commercial data aggregators.

In May, 2005, I made four Privacy Act requests to TSA for my Alaskan clients' records contained within this System of Records. (<http://www.alaskafreedom.com/>) I specifically requested, in addition to PNR data, their commercially obtained data. In August, having exhausted their administrative remedies, the Alaskans brought an action in Federal Court in Anchorage to enjoin TSA from continuing to improperly withhold their records. Since then, hundreds have made similar records requests. (https://secure.eff.org/site/SPageServer?pagename=ADV_secureflight)

Two matters are of concern here. The first is the behavior of DHS and TSA when faced with a records request. The requests are handled by the FOIA office within DHS. (http://www.dhs.gov/dhspublic/interapp/editorial/editorial_0318.xml) TSA had to be sued by the Alaskans before they responded to their administrative appeals. Also, in TSA's June amendment to their notice, TSA stated they destroyed, and intended to further destroy, data contained in the System of Records. This was in direct violation of their own rules regarding the preservation of records requested under the Privacy Act. (http://www.dhs.gov/interweb/assetlibrary/FOIA_FedReg_Notice.pdf see section 5.28) Despite repeated requests to not destroy the records, it was not until the Alaskans commenced litigation and threatened to bring a preliminary injunction that TSA finally addressed this issue. TSA now indicates that they have ceased the destruction of data until "the resolution of the multiple Privacy Act and Freedom of Information Act requests that have been directed to the agency."

Furthermore, TSA is now unlawfully placing conditions on their processing records requests. A requester must now provide TSA with the names of the airline they flew on, the dates they flew, and other data given to the airlines including a contact phone number. (<http://action.eff.org/site/DocServer/RedactedTSAResponse1.pdf?docID=241>) To not comply within 10 days results in a TSA administrative "closing of the request." This combined behavior exhibits TSA's resistance to willingly comply with the Privacy Act of 1974.

The other matter of concern is TSA's inability to search the databases used to test Secure Flight. As of last month, TSA stated that because the records they have "are in a format originally supplied by the air carriers, TSA does not have the capability to

perform a simple computer based search to locate any responsive records.” (See previous link) The stated purpose of the Secure Flight Program is to perform computer based searches for people in data provided by the air carriers. TSA says they can’t do it despite being provided the requester’s name, address, and date and place of birth. This raises serious concerns of whether the data collected, the privacy surrendered, and the vast expenditures, will result in any heightened degree of air safety. TSA should not go forward to another stage of testing Secure Flight without meeting this basic benchmark of being able to “perform a simple computer based search.”

Finally, as I stated in Bellingham before the Committee, when conducting a legal examination of a suspicionless administrative search, such as the identification requirement to board a domestic commercial flight, some degree of effectiveness is required to justify the Fourth Amendment violation. TSA has not provided any evidence as to the effectiveness of Secure Flight. (See Electronic Frontier Foundation’s amicus brief by Lee Tien to *Gilmore vs. Gonzalez* – presently before the 9th Circuit Court of Appeals – addressing this topic <http://209.123.170.170/gilmore/dl/EFF%20Brief.pdf>) TSA should not go forward with Secure Flight without meeting the legal requirement of showing some degree of effectiveness – that the system actually works. TSA’s inability to process Privacy Act records requests casts light on the serious shortfalls they are facing here.

I hope this is helpful to you.

Sincerely,

James P. Harrison
980 9th Street, 16th Floor
Sacramento, CA 95814
jph@well.com