



## INFORMATION BULLETIN

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**DATE: August 20, 2008**

**SUBJECT: Retention of personal information**

**SOURCE: Washington Post**

The federal government has been using its system of border checkpoints to greatly expand a database on travelers entering the country by collecting information on all U.S. citizens crossing by land, compiling data that will be stored for 15 years and may be used in criminal and intelligence investigations.

Officials say the Border Crossing Information system, disclosed last month by the [Department of Homeland Security](#) in a Federal Register notice, is part of a broader effort to guard against terrorist threats. It also reflects the growing number of government systems containing personal information on Americans that can be shared for a broad range of law enforcement and intelligence purposes, some of which are exempt from some Privacy Act protections.

While international air passenger data has long been captured this way, Customs and Border Protection agents only this year began to log the arrivals of all U.S. citizens across land borders, through which about three-quarters of border entries occur.

The volume of people entering the country by land prevented compiling such a database until recently. But the advent of machine-readable identification documents, which the government mandates eventually for everyone crossing the border, has made gathering the information more feasible. By June, all travelers crossing land borders will need to present a machine-readable document, such as a passport or a driver's license with a radio frequency identification chip.

In January, border agents began manually entering into the database the personal information of travelers who did not have such documents.

The disclosure of the database is among a series of notices, officials say, to make DHS's data gathering more transparent. Critics say the moves exemplify efforts by the Bush administration

in its final months to cement an unprecedented expansion of data gathering for national security and intelligence purposes.

The data could be used beyond determining whether a person may enter the United States. For instance, information may be shared with foreign agencies when relevant to their hiring or contracting decisions.

Public comments are being taken until Monday, when the "new system of records will be effective," the notice states.

"People expect to be checked when they enter the country and for the government to determine if they're admissible or not," said Greg Nojeim, senior counsel at the Center for Democracy & Technology. "What they don't expect is for the government to keep a record for 15 years of their comings into the country."

But DHS spokesman [Russ Knocke](#) said the retention period is justified.

"History has shown, whether you are talking about criminal or terrorist activity, that plotting, planning or even relationships among conspirators can go on for years," he said. "Basic travel records can, quite literally, help frontline officers to connect the dots."

The government states in its notice that the system was authorized by post-Sept. 11 laws, including the Enhanced Border Security and Visa Reform Act of 2002, the Aviation and Transportation Security Act of 2001, and the Intelligence Reform and Terrorism Prevention Act of 2004.

Nojeim said that though the statutes authorize the government to issue travel documents and check immigration status, he does not believe they explicitly authorize creation of the database.

"This database is, in a sense, worse than a watch list," he said. "At least in the watch-list scenario, there's some reason why the name got on the list. Here, the only thing a person does to come to the attention of DHS is to lawfully cross the border. The theory of this data collection is: Track everyone -- just in case."

Under the system, officials record name, birth date, gender, date and time of crossing, and a photo, where available, for U.S. travelers returning to the country by land, sea or air. The same information is gathered about foreign travelers, but it is held for 75 years.

DHS and other agencies are amassing more and more data that they subject to sophisticated analysis. A customs document issued last month stated that the agency does not perform data mining on border crossings to glean relationships and patterns that could signify a terrorist or law enforcement threat. But the Federal Register notice states that information may be shared with federal, state and local governments to test "new technology and systems designed to enhance border security or identify other violations of law." And the Homeland Security Act establishing the department calls for the development of data-mining tools to further the department's objectives.

That raises concerns, privacy advocates say, that analyses can be undertaken that could implicate innocent people if appropriate safeguards are not used.

The border information system will link to a new database, the Non-Federal Entity Data System, which is being set up to hold personal information about all drivers in a state's database. States that do not agree to allow customs to have such large amounts of information may allow the agency to query their databases in real time for information on a traveler.

Because of privacy concerns, Washington state earlier this year opted for the queries-only approach. The Canadian government made the same decision. "There was absolutely no way they should have the entire database," said Ann Cavoukian, Ontario's privacy commissioner, who learned about the Canadian government's decision in April.

"Once you have data in a database you don't need, it lends itself to unauthorized use," she said. "You have no idea of the data creep."

Vermont opted to allow access to its driver's licenses because the state could not guarantee the "nanoseconds" response time DHS required, said Bonnie L. Rutledge, the state's commissioner of motor vehicles. She said drivers are informed up front of the data sharing.

"A person opts to go over the border, their information is going to be collected and held anyway," she said. "If you don't want to go over the border, you don't have to."

The notice states that the government may share border records with federal, state, local, tribal or foreign government agencies in cases where customs believes the information would assist enforcement of civil or criminal laws or regulations, or if the information is relevant to a hiring decision.

They may be shared with a court or attorney in civil litigation, which could include divorce cases; with federal contractors or consultants "to accomplish an agency function related to this system of records"; with federal and foreign intelligence or counterterrorism agencies if there is a threat to national or international security or to assist in anti-terrorism efforts; or with the news media and the public "when there exists a legitimate public interest in the disclosure of the information."

Homeland Security is proposing to exempt the database from some provisions of the 1974 Privacy Act, including the right of a citizen to know whether a law enforcement or intelligence agency has requested his or her records and the right to sue for access and correction in those disclosures.

A traveler may, however, request access to records based on documents he or she presented at the border. The [notice](#) is posted at the Government Printing Office's Web site.