



**One Hundred Tenth Congress**  
**U.S. House of Representatives**  
**Committee on Homeland Security**  
**Washington, DC 20515**

September 25, 2007

Commissioner W. Ralph Basham  
Department of Homeland Security  
U.S. Customs & Border Protection  
1300 Pennsylvania Avenue, N.W.  
Washington, D.C. 20229

Dear Commissioner Basham:

In November 2006, The Department announced its intention to utilize the Automated Targeting System (ATS) to perform a risk-based analysis of passengers traveling in and out of the United States. Following this announcement, I wrote to you expressing several concerns regarding the legal basis for the program, especially as ATS relates to the rights and liberties of the traveling public.

Recently, ATS documents requested through the Privacy Act have been made public. If those documents are an accurate reflection of the kind of information that is routinely collected about the American traveling public, there is a need for further consideration of this program.

In a letter to you dated January 17, 2007, I specifically asked about data elements used in risk analysis under this program. In your February 21, 2007, reply, you stated:

“ATS-P has mechanisms in place to block the use of passenger’s health, race, religion, sexual preference, or political beliefs in assessing risk.... Such terms can be unblocked only on a case-by-case basis in rare circumstances, upon a showing of particular need and with the approval of the CBP Deputy Commissioner. To date, there have been no requests to view sensitive terms that have been blocked in Passenger Name Records (PNR)”.<sup>1</sup>

However, according to the publicly-released ATS records,<sup>2</sup> the traveler’s race and a notation that he is not Hispanic is clearly reflected on the Privacy Act-requested documents. This fact appears to be in direct contradiction to your assertion that the system does not document and retain the race and ethnicity of the individual traveler.

Moreover, in addition to collecting and retaining information about race and ethnicity, it appears that notations were made regarding the title of the book the passenger was carrying.

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<sup>1</sup> Letter from Commissioner W. Ralph Basham, Commissioner of U.S. Customs & Border Protection, to Chairman Bennie G. Thompson, Chairman, U.S. House of Representatives Committee on Homeland Security (February 21, 2007) (on file with the House Committee on Homeland Security).

<sup>2</sup> See The Identify Project, *Homeland Security’s Data Vacuum Cleaner in Action*, September 19, 2007.

September 25, 2007

Page 2

Certainly, an individual's reading choice is protected by the First Amendment and should not be subject to additional government scrutiny, unless there is a clear nexus between the reading material and imminent harm to others.

Further, while the stated purpose of ATS is to "target and identify travelers who may require further scrutiny or examination when they present themselves for admission to the United States," it appears that the Privacy Act documents referred to herein, involve the journey of an American who traveled solely within Europe. Needless to say, such routine collection of information about Americans traveling overseas, gathered without a clear and rational basis to prevention or investigation of criminal activity violates fundamental American notions.

There is a bold, albeit thin, line between lawful risk analysis and unlawful surveillance. The Constitution and laws of this country have made that demarcation manifest. It appears that the incidents relayed, if accurate, reflect an intention to blur what is otherwise clear.

To eliminate some of the ambiguities that have arisen as a result of this situation, I would therefore request that you provide responses to the following questions:

1. If CBP "does not engage in racial, ethnic, or religious profiling," as you have previously stated, what is the purpose of collecting and storing information regarding the race and ethnicity of individual travelers?
2. Please explain the contradiction between your answer reprinted herein and the documents obtained through the Privacy Act that indicate the race of the traveler was unblocked without a showing of particularized need.
3. Does ATS track the travel patterns of Americans *after* they have left the United States and travel on flights that do not enter United States airspace? If so, please provide the legal basis for this kind of tracking of Americans. Please state whether the Department will release a revised Statement of Records Notice (SORN) to indicate this type of tracking, which is currently outside of the scope of the existing ATS SORN. If there is a Department-run program other than ATS that monitors this type of travel, please state the name of the program and the date of its inception.
4. Does CBP utilize information contained in the PNR in its entirety? If it does, how is this information utilized? If CPB does not utilize this data, what are the procedures for blocking information that is not used?
5. Is PNR data that is not used stored and retained in the ATS database, or any other database maintained by the Department? If so, who would have access to such data and what safeguards are in place to assure that these data stores cannot be breached.
6. Is the data of individuals that are not suspected of any terrorist or criminal behavior retained by the Department, and if so how long, if it is not how soon after travel is it destroyed?

September 25, 2007

Page 3

7. Who determined the necessary fields for the ATS "Inspection Remarks" form? Was this form vetted through the Department's Office of General Counsel and/or the Department's Privacy Office? If the form was vetted, what formed the basis for the decision to include information on race and ethnicity, if the form was not vetted please explain the basis for that decision?

Pursuant to Rule X(3)(g) and Rule XI of the Rules of the House of Representatives, please respond to the above requests no later than October 9, 2007. In addition, please have a member of your staff contact Etienne Singleton of the Committee Staff to schedule a meeting to discuss the redacted portions of the released documents in a classified setting.

If you have any questions, please contact Cherri Branson, Chief Oversight Counsel to House Committee on Homeland Security, at (202) 226-2616. Thank you for your cooperation.

Sincerely,

A handwritten signature in black ink that reads "Bennie G. Thompson". The signature is written in a cursive, flowing style with a large initial "B".

Bennie G. Thompson  
Chairman

BGT/ts