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DEPARTMENT OF HOMELAND SECURITY

DHS Data Privacy and Integrity Advisory Committee

Teleconference

Tuesday, February 3, 2009

Washington, D.C.

1 P R O C E E D I N G S

2 MS. LANDESBERG: All right, everyone,
3 welcome. This is Martha Landesberg. I am the
4 executive director and designated Federal official
5 for the DHS Data Privacy and Integrity Advisory
6 Committee.

7 Welcome to this public teleconference. I
8 have a couple of announcements but want to first just
9 do a quick roll call to see whether our -- who among
10 the committee members are with us. So let me just go
11 down the list, and then we'll circle back through it
12 again.

13 Joe Alhadeff?

14 [No response.]

15 MS. LANDESBERG: Annie Anton?

16 [No response.]

17 MS. LANDESBERG: Ramon Barquin?

18 MR. BARQUIN: Here.

19 MS. LANDESBERG: Hi, Ramon.

20 Howard Beales?

21 MR. BEALES: I'm here.

22 MS. LANDESBERG: Thank you.

1 Tom Boyd?

2 MR. CAPRIO: Dan Caprio.

3 MS. LANDESBERG: Hang on just a second,

4 Dan. Is Tom here? Tom Boyd?

5 [No response.]

6 MS. LANDESBERG: Not yet. Okay, hi, Dan.

7 Thank you.

8 Renard Francois?

9 MR. FRANCOIS: I'm here.

10 MS. LANDESBERG: Thank you, Renard.

11 Reed Freeman?

12 [No response.]

13 MS. LANDESBERG: Jim Harper?

14 MR. HARPER: Here.

15 MS. LANDESBERG: Hi, Jim.

16 MR. HARPER: Hi.

17 MS. LANDESBERG: Kirk Herath?

18 MR. HERATH: Here.

19 MS. LANDESBERG: David Hoffman?

20 MR. DAVID HOFFMAN: Here.

21 MS. LANDESBERG: Thank you, David.

22 Lance Hoffman, I believe you're there?

1 MR. LANCE HOFFMAN: Here.

2 MS. LANDESBERG: Joanne McNabb?

3 MS. MCNABB: Here.

4 MS. LANDESBERG: Charles Palmer?

5 [No response.]

6 MS. LANDESBERG: Neville Pattinson?

7 MR. PATTINSON: Present.

8 MS. LANDESBERG: Hi, Neville. Thank you.

9 Larry Ponemon?

10 [No response.]

11 MS. LANDESBERG: Richard Purcell I know

12 cannot join us today.

13 John Sabo?

14 MR. SABO: Here.

15 MS. LANDESBERG: Hi, John.

16 And Lisa Sotto?

17 MS. SOTTO: Present.

18 MS. LANDESBERG: Great. All right. So we

19 can begin.

20 MS. SOTTO: I think somebody else just

21 clicked in, Martha.

22 MS. LANDESBERG: Oh, I'm sorry. I'll go

1 back through just one more time.

2 Joe Alhadeff?

3 [No response.]

4 MS. LANDESBURG: Annie Anton?

5 [No response.]

6 MS. LANDESBURG: Tom Boyd?

7 [No response.]

8 MS. LANDESBURG: Larry Ponemon?

9 [No response.]

10 MS. LANDESBURG: Okay. We can begin.

11 I just want to let all of the committee
12 members know -- well, let me begin by just restating
13 the purpose of today's call, which is to allow the
14 committee to debate, deliberate, and vote on a
15 proposed letter to Secretary Napolitano and Acting
16 Chief Privacy Officer John Kropf outlining the
17 committee's recommendations on privacy issues and
18 priorities for the department.

19 I want to remind all of you that the
20 meeting is being transcribed and, therefore, would
21 ask that every time you speak you begin by
22 identifying who you are so our court reporter can

1 take that down. And it's my understanding that if
2 you -- if there are any proposed changes in language,
3 we want to be sure that you read them into the record
4 for the court reporter.

5 MR. BEALES: All right. This is Howard
6 Beales. Thank you very much, Martha, and welcome to
7 members of the public who may be listening in.

8 This is a public meeting for listening, but
9 only members of the advisory committee can
10 participate by speaking. I think we will find this
11 suitably chaotic even with that limitation.

12 What I'd like to do is ask Lisa Sotto to
13 present the letter as drafted by the ad hoc
14 subcommittee that worked on the letter and then open
15 the floor for comments from members of the committee,
16 first general comments and then comments about
17 specific parts of the letter.

18 And what I'd like to do is once someone has
19 raised a part of the letter or a particular issue
20 let's exhaust all comments on that issue before we
21 move on to another comment in the hopes that we can
22 actually come to a consensus about a letter that

1 we'll be able to approve and send.

2 MS. LANDESBURG: Howard, if I might
3 interrupt for just a moment? I apologize. I have
4 been -- I have neglected to welcome the members of
5 the public and the press who are with us today, and I
6 just wanted to be sure that's on the record.

7 So please continue.

8 MR. BEALES: All right. Lisa Sotto?

9 MS. SOTTO: Thank you very much. This is
10 Lisa Sotto.

11 We prepared comments based on the
12 discussion that we had at the last meeting in
13 December, and Joanne McNabb, Howard Beales, and I
14 were primarily responsible for the drafting. So we
15 will take the blame for any issues that we find.

16 The letter that we drafted was intended to
17 be a letter from the committee as a whole to the
18 transition team to discuss key issues that we as a
19 committee believe deserve focus in the new
20 administration. The document reflects, I think,
21 quite closely comments that were expressed at our
22 meeting in December, and we had lots of scribes at

1 that meeting trying to take down everybody's
2 concerns, anybody who spoke up at the meeting. So I
3 think the letter reflects those issues.

4 We have separated the letter into two
5 sections. This first section deals with structure
6 and operations in the Privacy Office, and then the
7 second piece deals with key privacy
8 issues.

9 We've received numerous comments from the
10 subcommittee that has been working on this, and we
11 have tried to integrate most of those comments. Some
12 we did not, where, for example, they were factually
13 incorrect, and there was at least one of those. And
14 then some others where the scribes --Joanne McNabb,
15 Howard, and I -- thought that the comments probably
16 didn't reflect the tone or the spirit of what we were
17 doing.

18 So, certainly, we're delighted to listen to
19 comments today. We know that there are some comments
20 from the folks on this call, and we're all now
21 looking at the February 2nd draft of this public
22 letter and would invite comments.

1 And I think I would like to start with a
2 very, very minor point. And that is to add in the
3 "under Secretary Janet Napolitano," I just looked at
4 it and realized that we were missing the word
5 "acting" in front of Chief Privacy Officer John
6 Kropf. I would suggest adding that.

7 And then, Howard, why don't -- would you
8 like to handle taking comments?

9 MR. BEALES: Sure. Are there general
10 comments on the structure or the order of events in
11 the letter? And then I guess let's start with that.

12 [No response.]

13 MR. BEALES: If not, are there specific
14 comments on the letter?

15 MR. DAVID HOFFMAN: Hey, Howard? Howard,
16 this is David Hoffman. I just wanted to make one
17 general comment.

18 I just wanted to say that from my
19 perspective, and then the drafting committee could
20 add on if they have a different perspective, I think
21 it's important to note that this letter and the
22 intent of the letter is to signify the great respect

1 that the entire committee has for all of the hard
2 work that the Privacy Office has done over the last
3 couple of years.

4 And to get it to this point where the
5 organization can now capitalize on these different
6 opportunities, it's not to be interpreted as a
7 criticism of the Privacy Office, but more where the
8 opportunities are now to take it to the next level.

9 MR. BEALES: I certainly agree with that,
10 David. And I think we've drafted the letter fairly
11 carefully to not be critical of the Privacy Office
12 but sort of say what should happen, you know, what
13 should be done.

14 MR. DAVID HOFFMAN: And I agree with that.

15 I think the current draft does a good job of that,
16 and I just wanted to make sure that we stated that at
17 the beginning so that it was on the public record.

18 MR. BEALES: Okay. Thank you.

19 MR. SABO: It's John Sabo, Howard. I have
20 a specific comment, if you're at that point?

21 MR. BEALES: Okay.

22 MR. SABO: The draft has a section on the

1 data integrity initiative on page 2.

2 MR. BEALES: Yes.

3 MR. SABO: And I assume we're working from
4 the February 2nd draft. Is that right?

5 MR. BEALES: Yes, it is.

6 MS. SOTTO: That's right.

7 MR. SABO: So I propose a substitution
8 based on some subcommittee back-and-forth we had with
9 Ramon and some subcommittee members, and I'd be happy
10 to read the proposed substitution, if I can find it.

11 The -- here is what I'm proposing, "Data
12 Integrity Initiative. Data integrity is critical to
13 DHS programs and systems. It encompasses controls to
14 ensure that data are protected against unauthorized
15 modification, deletion, or corruption. It also
16 ensures that data used in DHS systems is governed by
17 appropriate policy requirements in such areas as
18 suitability for purpose and quality. Yet the
19 committee is not aware of any rigorous DHS-wide
20 program to address data integrity issues. The
21 committee, therefore, recommends that the Privacy
22 Office propose a specific project or program to

1 establish policies governing data integrity and to
2 bring increased focus on critical data integrity
3 issues."

4 That's my proposed substitution.

5 MR. BARQUIN: This is Ramon, and I had on
6 email indicated that I supported this substitution,
7 just wanted to make that point.

8 MR. BEALES: This is Howard again. I like
9 part of that, John, but there are other parts of it
10 where I think I like what we have already better.

11 And I guess what I would propose as the
12 compromise is that we add as a new second sentence in
13 the bullet that we've got now -- I mean, it would
14 read, "A prerequisite for privacy protection as well
15 as for extracting value from our bits and bytes is to
16 safeguard the integrity of data."

17 And then add a sentence there that says,
18 "Data integrity encompasses controls to ensure that
19 data are protected against unauthorized modification,
20 deletion, or corruption, and ensures that data use is
21 governed by appropriate policy requirements." And
22 then go on with the rest of the bullet.

1 I mean, that gets in I think most of what
2 you are trying to do and makes clearer what should be
3 part of this effort. But I like the notion that the
4 other parts of the department should be part of the
5 initiative. Although it should be led by the Privacy
6 Office, and I think that's a little bit lost in your
7 substitution.

8 MR. SABO: Yes, I'm okay with your
9 proposal. I would say that I specifically included
10 "suitability for purpose and quality" as examples,
11 and maybe that should have been clearer, of these
12 additional elements.

13 I think data integrity in the information
14 security discipline primarily focuses on
15 noncorruption, non -- that kind of thing, and I was
16 trying to expand it a little more clearly. But I
17 defer to the committee.

18 MS. SOTTO: Well, this is Lisa Sotto. I
19 think what Howard proposed retains those examples.

20 MR. SABO: Oh, okay. I didn't realize
21 that. I thought he was just saying "governed by
22 policy" and exclude the example.

1 MS. SOTTO: Why don't I read it again?
2 I've taken it down. So the new paragraph would read,
3 and this is, I think, the formal proposal.

4 "A prerequisite for privacy protection as
5 well as for extracting value from our bits and bytes
6 is to safeguard the integrity of data. Data
7 integrity encompasses controls to ensure that data
8 are protected against unauthorized modification,
9 deletion, or corruption, and ensures that data use is
10 governed by appropriate policy requirements in such
11 areas as suitability for purpose and quality."

12 And then we go on back to the February 2nd
13 letter to the sentence, "Continued focus."

14 MR. SABO: Thank you. That's fine.

15 MS. MCNABB: This is Joanne with a silly
16 little edit. I would take out "ensures" in the last
17 part of that new sentence because you've already got
18 an "ensure." "To ensure that data are protected,"
19 blah, blah, blah, "and that data use is governed."

20 MS. SOTTO: What would you propose, Joanne?

21 MS. MCNABB: Take out "ensures" --

22 MS. SOTTO: Oh, in "encompasses controls to

1 direct that?"

2 MR. BEALES: No, no, no.

3 MS. SOTTO: No?

4 MR. BEALES: "To ensure" goes there, but
5 the second "ensures" is deleted.

6 MS. SOTTO: And -- okay.

7 MS. MCNABB: And I'm making the edits on
8 the original here as we go.

9 MS. SOTTO: I got it. Terrific. Good.

10 Thank you.

11 MR. BARQUIN: That's fine with me -- Ramon.

12 MR. BEALES: Okay. Any other comments on
13 that paragraph?

14 [No response.]

15 MR. BEALES: Okay. Are there comments on
16 other paragraphs?

17 MR. HARPER: Jim Harper here.

18 MR. BEALES: Hello, Jim.

19 MR. HARPER: And I apologize because I had
20 a conflict for the last meeting, and so I wasn't
21 involved in much of this discussion. But as I read
22 this over, the first paragraph in particular and to

1 an extent the second struck me as something that
2 might be outside of our competence in both senses of
3 the term. That is our skill and our jurisdiction.

4 MS. SOTTO: Jim, which paragraphs are you
5 talking about?

6 MR. HARPER: The first paragraph after the
7 heading there. "Structure of the Privacy Office" is
8 the one that I'm most interested in. In our
9 organizational chart, we're below the Privacy Office.
10 We're a creation of the Privacy Office. And in this
11 letter, we seem to be recommending to the superior of
12 the Privacy Office that the Privacy Office be
13 maintained the way it is.

14 That would be like the director, someone at
15 the director level in a company advising the CEO that
16 the VP above them should be retained in their current
17 position. So it's not dreadfully important, but I
18 wonder if this is actually within our competence to
19 recommend to the Secretary?

20 Anyone who proposed this idea wants to
21 explain? Or it's not a do or die, but I think it's
22 not necessarily a good paragraph for us to include.

1 MS. SOTTO: This is Lisa Sotto. We had
2 included this because there has been talk over time
3 about merging the Privacy Office with the Office for
4 Civil Rights, and we wanted to make sure that the
5 Secretary was aware that we did not think that that
6 would serve the best purposes of the department vis-
7 à-vis privacy. So that is the genesis of this
8 paragraph.

9 Now that issue, I understand, has actually
10 been put to rest and that there is no further
11 discussion about merging those offices. So I have no
12 objection to rejiggering this paragraph.

13 MS. MCNABB: This is Joanne McNabb. We
14 report -- we make our recommendations both to the
15 office and to the Secretary. So this one is to the
16 Secretary if we wanted to keep it in. That would be
17 my contention.

18 MS. SOTTO: No, the reason to keep it in is
19 that this issue does rear its head once in a while,
20 and it's probably not a bad thing to have our
21 preference known on the public record.

22 MR. HARPER: Okay, if it's not a current

1 issue -- I mean, it certainly could come up again.
2 If it's not a current issue, it does, again, raise --
3 because the Privacy Office is our convening office,
4 we're recommending that the Privacy Office remain.
5 It's sort of self-serving type of paragraph.

6 And as a skeptical reader, I would say,
7 well, of course, they're going to recommend this
8 because this is how they have existence. So it's --

9 MS. SOTTO: Except that we don't get paid.

10 MR. HARPER: Other than if everybody likes
11 it well, then I guess it could stay in. But --

12 MR. SABO: Jim, I think it's a sense of the
13 committee, if it's adopted, about the distinction
14 between the role of the Privacy Office and the Civil
15 Rights and Civil Liberties Office.

16 MS. LANDESBURG: If I might break in for a
17 moment, this is Martha Landesberg with just a
18 reminder that all of you please introduce -- state
19 your name before you begin to speak for the court
20 reporter. Thank you.

21 MR. SABO: I'm sorry. This is John Sabo.

22 John Sabo, and I just feel it's not out of

1 our jurisdiction as an independent expert committee.

2 They can take it or leave it, and we don't
3 technically know what any decision is about combining
4 the offices or the role.

5 So I think as an expression of the
6 committee's views, I don't think it's really self-
7 serving, in my opinion. But --

8 MR. CAPRIO: This is Dan Caprio. I would
9 like to agree with John Sabo. I think -- I mean,
10 it's an important issue going forward. This has been
11 an ongoing issue with this office almost since its
12 creation.

13 And I think the distinction about the
14 advisory committee, we all serve really at the
15 pleasure of the Secretary. I mean, the specific
16 assignment is to the Privacy Office, but I don't view
17 this subcommittee really in the same way as an org
18 chart matter.

19 The issue is that we're appointed as
20 experts by the Secretary, and that's the reporting
21 relationship. So I don't find in any way that it's
22 self-serving.

1 MR. LANCE HOFFMAN: This is Lance Hoffman.

2 I think maybe this can be solved if we want to leave
3 it in, and I think it probably is a good idea to
4 leave it in, by separating the section. Currently,
5 the entire section is entitled "Privacy Office
6 Structure and Operations."

7 And indeed, the first two things on
8 structure of the Privacy Office and Freedom of
9 Information Act could be put under "Structure," a
10 separate heading, and then the rest of them seems to
11 me could be under "Privacy Office Operations." I
12 think it might be even better to lead with "Privacy
13 Office Operations," put "Structure" either after that
14 or at the very end of the letter but retain the
15 detailed wording.

16 MR. FRANCOIS: This is Renard Francois. I,
17 you know, agree with Lance's approach because one of
18 the concerns I had in reading that first -- that
19 paragraph was that the last part of the paragraph
20 that starts with, "The chief privacy officer should
21 be" -- and it's actually a question to those who
22 drafted that portion.

1 I was curious why we inserted that in
2 because it seems to almost deal with requirements of
3 who should be or who is going to be an appropriate
4 chief privacy officer. But also, in comparison, if
5 you look at it the way the paragraph is structured,
6 it seems to -- I infer that you compare it to
7 whomever might be the head of the Office of Civil
8 Liberties and Civil Rights, that maybe they are a
9 functionary?

10 It seems to draw a comparison where I don't
11 think we really want to draw a comparison between the
12 head of the Privacy Office and the head of the Civil
13 Liberties Office. It just seems like an abrupt point
14 to insert, "Here is what the chief privacy officer
15 should be doing."

16 MS. SOTTO: I think the question is really
17 whether this is helpful at all to those who are
18 making the decision about the new CPO. And given the
19 timing of this letter, it may be that this decision
20 is already in the works, and so this is not at all
21 helpful. I just don't know the answer to that.

22 This is Lisa Sotto.

1 MS. MCNABB: This is Joanne McNabb. I
2 think I agree with Renard. I would eliminate
3 beginning with, "The chief privacy officer should
4 be," just eliminate from there on and leave the first
5 part as it is.

6 MS. SOTTO: This is Lisa Sotto. I'm very
7 comfortable with that.

8 MR. BARQUIN: Agreed. Ramon.

9 MR. BEALES: This is Howard, and I would be
10 happy with that as well.

11 MR. HARPER: Jim Harper. Having stirred up
12 the trouble in the first place, I'll take that. I
13 personally feel I'm an expert in privacy-type issues,
14 not organizational management. But I won't push any
15 further.

16 MR. BEALES: Well, Jim, this is Howard
17 again. I wouldn't have any objection to dropping the
18 whole thing either. I think it has some value, but
19 it is -- I certainly like it better without the last
20 sentence, but I think we could safely leave it out
21 and not lose anything either.

22 MR. HARPER: All right. I'll get more

1 aggressive then.

2 [Laughter.]

3 MR. HARPER: Jim Harper again. I'll
4 propose that we eliminate this paragraph.

5 MS. SOTTO: This is Lisa Sotto. The only
6 concern I have is that while this issue may be an
7 insignificant one right now because it's been managed
8 at this point in time, we've heard about this issue
9 rearing its head, I think, time and time again.

10 So I guess my concern is that I'd like to
11 see us say something publicly about the fact that we
12 think the two offices should remain independent.

13 MS. MCNABB: And this is Joanne McNabb.
14 I'm looking at our charter right now, and in the
15 scope and objective, it says, "Committee will provide
16 advice at the request of the Secretary and the chief
17 privacy officer on programmatic, policy, operational,
18 administrative, and technological issues within DHS."

19 So I think this fits into our charter as
20 programmatic or operational or administrative.
21 Operational or administrative probably.

22 MR. SABO: Yes, it's John Sabo. I agree.

1 I'm fine with cutting out the extraneous material
2 that was discussed a few minutes ago. But I think
3 this is reasonably good advice.

4 MR. LANCE HOFFMAN: This is Lance Hoffman.
5 My previous suggestion, I suggest we -- for all the
6 reasons stated prior, we leave the two paragraphs --
7 first two paragraphs of this section in minus the
8 offending last sentence of the first one and put it
9 at the end of that whole section rather than the
10 beginning.

11 MR. CAPRIO: This is Dan Caprio. I'd like
12 to support keeping the language in because I think it
13 has been an issue, and to not speak to it sort of
14 begs the question. I think we all -- it's valuable
15 advice and needs to stay in.

16 MR. BEALES: This is Howard. Is there
17 anybody else who wants to speak in favor of Jim's
18 approach?

19 [No response.]

20 MR. BEALES: Do you want to have a vote,
21 Jim, or are you happy?

22 MR. HARPER: No. No, please.

1 MR. BEALES: Okay. I guess I would support
2 Lance's approach of make this a separate section
3 that's "Privacy Office Structure" and move it to the
4 -- that would be the second section of the letter.
5 So the letter would be "Privacy Office Operations,"
6 "Privacy Office Structure," and then "Current DHS
7 Privacy Issues."

8 One of the things I like about doing that
9 is it makes the first thing in the letter what I
10 think is an important recommendation, which is the
11 recommendation about component privacy officers, as
12 opposed to something that is worth talking about but
13 is not a top current issue.

14 MS. MCNABB: So -- this is Joanne. So the
15 first section is "Privacy Office Structure," and that
16 would include what?

17 MS. SOTTO: No, no, no.

18 MR. BEALES: The first section is "Privacy
19 Office Operations."

20 MS. MCNABB: Ah.

21 MR. BEALES: And it would start with
22 component privacy officers and go through the rest of

1 that current section. The next section is "Privacy
2 Office Structure," and it would be the structure
3 paragraph and the Freedom of Information Act
4 paragraph. And then the third section is "Current
5 DHS Privacy Issues" as we have it.

6 MS. MCNABB: Got it.

7 MR. HERATH: This is Kirk Herath. Howard,
8 I agree with you. I would support that. And Lance.

9 MS. SOTTO: Lisa Sotto. I agree as well.

10 MR. BEALES: Okay? Is there any objection
11 to that?

12 [No response.]

13 MR. BEALES: Okay. Are there other
14 comments on the letter?

15 MR. LANCE HOFFMAN: Yes. This is Lance
16 Hoffman. I have another comment on another section.

17 This is on the "Privacy Protection
18 Innovation" section. I suggest clarifying it a bit.

19 In essence, I am proposing that we be more clear in
20 that we are proposing both research and development,
21 and I also suggest that we stress that a privacy
22 research agenda should be developed.

1 That is projects should not be funded based
2 on who asks for funding first or loudest or most
3 insistently, but rather based on some coherent plan
4 that addresses what is most needed. And to that
5 effect, I have replacement language that's the same
6 as the previous language.

7 But let me read the entire new proposed
8 paragraph, starting with, "Privacy Protection
9 Innovation. DHS should invest in research about and
10 development of new applications and technologies to
11 facilitate the protection of privacy. Research and
12 development activities should be staffed and
13 supported by the Privacy Office, the Science and
14 Technology Directorate, and other appropriate
15 components of the department. The relevant
16 activities should include developing a privacy
17 research agenda under which to procure innovative
18 research or request ideas through RFIs, grants, and
19 other mechanisms."

20 MR. BEALES: This is Howard. I have no
21 objection to that change.

22 MS. SOTTO: Lisa Sotto. Neither do I.

1 MR. BARQUIN: This is Ramon. You know, I
2 don't have a problem at all with that change.

3 However, I do want to again have us
4 reconsider whether we should add the word "lab,"
5 which was my original idea. And I know that it is
6 sort of subsumed here in the wording, but the concept
7 of a lab, I think, is very specific, very tangible
8 and that if we don't include it, it becomes -- it
9 really becomes potentially something else.

10 MR. SABO: This is John Sabo. I think the
11 lab idea makes sense. My concern is that there is an
12 implication -- and I agree with the fostering
13 research and development, but I think there is an
14 implication that this agenda isn't necessarily
15 developed in collaboration with universities and the
16 private sector.

17 And in the circulating comments from the
18 subcommittee, I proposed specifically adding language
19 "working in partnership" and in this case "with the
20 universities, academia, independent experts, and the
21 private sector."

22 And the sense of a lab, my only concern is

1 that a Government agency, unless it's NIST or an
2 entity set up to do laboratory work of any kind,
3 isn't the best place to do that. So I'm all for the
4 grants. I'm all for the research and development
5 proposals. But I don't think housing a lab in DHS is
6 the place to do it.

7 And it may be that the language is "working
8 in partnership with academia, universities,
9 independent experts, and the private sector," you
10 know, "develop the agenda and establish a laboratory
11 or laboratories to do this work." That would be fine
12 from my point of view.

13 MR. BEALES: This is Howard. I think the
14 thing I don't particularly like about the lab is that
15 it is -- it is much more structural than operation.

16 I mean, there are various parts of DHS
17 where I think this recommendation is relevant, that
18 one of the things that ought to be on their agenda of
19 the Science and Technology Directorate and other
20 components is privacy protection innovation, as
21 opposed to "the lab" sort of sounds like there ought
22 to be a freestanding entity that I'm not quite sure

1 where it goes. And I think the substance of our
2 recommendation is there ought to be R&D on these
3 questions.

4 To John's comment, I don't think there is
5 anything in the letter that would -- I mean in the
6 recommendation that would leave out private sector
7 collaboration, and I would think that would happen
8 through RFIs, grants, and -- RFIs and grants are both
9 mechanisms that would involve the private sector and
10 academia to the extent that they wanted to
11 participate. And I don't know that it needs to be
12 singled out.

13 MR. SABO: Well, Howard, my main point --
14 it's John Sabo -- is the setting of the agenda and
15 the creation of the need for certain types of
16 research is best done if it's done in collaboration
17 with experts in the private sector community,
18 universities, research, et cetera.

19 In other words, rather -- so I think the
20 implication now is that DHS in our recommendation
21 could unilaterally establish an RFI, but that doesn't
22 necessarily imply that they've elaborated in

1 identifying the kinds of research where there
2 are gaps or the kinds of research that are needed.

3 So it was the intent of involving external
4 entities in the development of the agenda and not
5 simply of receiving RFIs and grants.

6 MS. MCNABB: This is Joanne McNabb. So,
7 John, are you saying that the last sentence should
8 read, "The relevant activities should include
9 developing a privacy research agenda, in
10 collaboration with academia and the private sector,"
11 and then go on?

12 MR. SABO: Yes. Correct. Thank you.

13 MR. LANCE HOFFMAN: Can I make -- this is
14 Lance Hoffman. Can I make a friendly suggestion to
15 Joanne? "In cooperation with appropriate external
16 entities, such as academia and the private sector."

17 MR. BEALES: Do you have that, Joanne?
18 This is Howard. Okay.

19 MS. MCNABB: Yes. Got it. And the only --
20 this is Joanne McNabb again. The only change, other
21 than that sentence, is in the beginning where it
22 says, "DHS should invest in research and development

1 of new applications," et cetera?

2 MR. LANCE HOFFMAN: If you're asking me,
3 yes. I was basically cleaning up the grammar.

4 MS. MCNABB: Right.

5 MR. LANCE HOFFMAN: And the only other
6 change was I changed it from "could" to "should."

7 MS. MCNABB: Yes, I got that.

8 MR. LANCE HOFFMAN: And also putting an
9 adjective in front of "research agenda" to make it a
10 "privacy research agenda."

11 MS. MCNABB: Got it. Do you want me to
12 read the whole thing through? This is Joanne McNabb.

13 MS. SOTTO: Yes, please.

14 MS. MCNABB: So now it says, "Privacy
15 Protection Innovation. DHS should invest in research
16 and development of new applications and technologies
17 --

18 MS. SOTTO: Joanne, stop. "DHS should
19 invest in research about?"

20 MS. MCNABB: "Research and development of?"

21 MR. LANCE HOFFMAN: No, no. "Research
22 about."

1 MS. MCNABB: "Research about?"

2 MS. SOTTO: "And development of." I think
3 that was Lance's suggestion.

4 MS. MCNABB: Okay. All right.

5 MS. SOTTO: Okay. Keep going.

6 MS. MCNABB: "And development of new
7 applications and technologies to facilitate the
8 protection of privacy. Any such research and
9 development activity should be staffed and supported
10 by the Privacy Office, the Science and Technology
11 Directorate, and other appropriate components of the
12 department. The relevant activities should include
13 developing a privacy research agenda in collaboration
14 with appropriate external entities, such as academia
15 and the private sector, under which to procure
16 innovative research or request ideas through RFIs,
17 grants, and other mechanisms."

18 MR. LANCE HOFFMAN: This is Lance. I
19 forgot. There was one other minor change I made.
20 The second sentence. So I deleted the "any." So
21 rather than saying, "Any such research," "such
22 research."

1 MS. MCNABB: Got it. Okay.

2 MR. BEALES: Okay. Are there any -- this
3 is Howard. Are there any objections to that set of
4 changes in that paragraph or further comments on that
5 paragraph?

6 [No response.]

7 MR. BEALES: All right. Is there further
8 comment on the letter?

9 MR. PATTINSON: This is Neville Pattinson.

10 I have a comment on the section of "Component
11 Privacy Officers." From what I can recall, some of
12 the examples that we have in the second sentence,
13 there are already privacy officers present, but
14 they're at a different level within the organization.

15 So I would propose the addition of a few
16 words in the sentence that begins, "Examples of the
17 components that should have privacy officers,"
18 inserting "at the indicated reporting level,"
19 continuing, "are Customs and Border Protection," et
20 cetera.

21 MS. SOTTO: So, "Examples of components
22 that should have privacy officers at the --"

1 MR. PATTINSON: "Indicated reporting
2 level."

3 MS. MCNABB: I got it. And then, this is
4 Joanne McNabb. I understand from Martha that FEMA
5 now has one at the indicated reporting level? I
6 don't know about that.

7 MR. BEALES: Martha?

8 MS. LANDESBERG: Yes. That is correct.
9 This is Martha Landesberg.

10 MS. MCNABB: And FEMA's reports to the head
11 of FEMA? Right?

12 MS. LANDESBERG: We're not exactly sure of
13 the reporting direction. This is just a very recent
14 development. If you're unclear, just leave FEMA in.

15 MS. MCNABB: Yes, leave them in.

16 MS. LANDESBERG: That would be my suggestion.

17 MS. SOTTO: So we're adding only five words
18 in that paragraph.

19 MS. MCNABB: Got it.

20 MS. SOTTO: So you're reporting to the --
21 at least that's the way I heard her say.

22 MS. MCNABB: I don't think it hurts to

1 leave it in. This is Joanne McNabb.

2 MS. SOTTO: I would agree. This is Lisa.

3 MR. BEALES: Okay. Is there any objection
4 to that addition about the indicated reporting level
5 or further comment on that paragraph?

6 [No response.]

7 MR. BEALES: All right. Are there further
8 comments on the letter?

9 MR. HARPER: I have one. Jim Harper. The
10 last paragraph on REAL ID is a wonder to behold, and
11 thank you for -- to all of you for its inclusion.

12 I wonder, though, if we might also include
13 some -- not necessarily a separate paragraph because
14 it's a lot of work, and this is a short phone call.
15 But include some of the concerns with the passport
16 card and the enhanced driver's licenses, which are
17 similar to the problems with REAL ID, but less
18 further along in development.

19 Folks who are interested, you might want to
20 check out the video that's up these days about the
21 guy driving around San Francisco collecting the
22 serial numbers from RFID-enhanced driver's licenses.

1 And I think we should sort of press the department
2 to be aware of those issues and maybe let us give the
3 same review to these programs as we did to REAL ID in
4 a report.

5 So I would suggest adding to the end of the
6 REAL ID paragraph the following. It's strictly
7 amenable to amendment, of course. "Passport cards
8 and enhanced driver's licenses have similar problems
9 and raise similar concerns. These programs should be
10 reviewed carefully in light of their privacy and data
11 security consequences."

12 MS. SOTTO: Can you read that one more
13 time, a little bit more slowly?

14 MR. HARPER: Sure. "Passport cards and
15 enhanced driver's licenses have similar problems and
16 raise similar concerns. These programs should be
17 reviewed carefully in light of their privacy and data
18 security consequences."

19 MS. SOTTO: "These programs should be
20 reviewed carefully --"

21 MR. HARPER: "-- in light of their privacy
22 and data security consequences."

1 MS. SOTTO: Thank you.

2 MS. MCNABB: Jim, this is Joanne McNabb.
3 You mean like WHTI?

4 MR. HARPER: Yes. Maybe WHTI as a whole
5 or, more narrowly, the cards and card-reading system
6 and so on and so forth. But I think we could speak
7 about them in general terms. If you want to include
8 WHTI specifically, I'd be fine with that, of course.

9 MS. MCNABB: That's fine. I understand.

10 MS. SOTTO: Jim, this is Lisa. I'm
11 comfortable with the idea. I just am a little
12 concerned that we're being really ambiguous here and
13 not really providing any information other than to
14 say there's a problem with passport cards and
15 enhanced driver's licenses and not really providing
16 any detail about what those issues are.

17 Now if it's truly --

18 MR. PATTINSON: This is Neville. You could
19 reference the report that we did in 2007 I think it
20 was. You could reference that report.

21 MS. MCNABB: We do reference it.

22 MS. SOTTO: The 2007-01?

1 MS. MCNABB: Yes.

2 MS. SOTTO: Well, maybe we can somehow tie
3 it into that.

4 MR. BEALES: This is Howard. Let me ask a
5 slightly different question. Are passport cards and
6 enhanced driver's licenses something that is either
7 issued by or regulated by the department?

8 MR. HARPER: Well, enhanced driver's
9 licenses are a DHS product in cooperation with
10 States, of course. And passport cards --

11 MS. MCNABB: Could you repeat that, please?
12 We can't hear you.

13 MR. HARPER: Sorry. Jim Harper, once
14 again, in response to Howard. Enhanced driver's
15 licenses are a DHS product. That is they are
16 approved by DHS, working with States. Passport
17 cards, of course, are issued by the State Department,
18 but they're used comprehensively by DHS operations
19 and control, ICE.

20 MR. LANCE HOFFMAN: This is Lance Hoffman.
21 I think this might be -- I'm comfortable with the
22 general thrust of this. I think it might be helpful

1 if the title was changed to something like "REAL ID
2 and Other Identification Systems." And then mainly
3 talking about REAL ID, but adding in that sentence at
4 the end that can cite the other examples, and you can
5 even say "and similar systems" or something like
6 that.

7 MR. PATTINSON: This is Neville Pattinson.
8 Perhaps you should do REAL ID and border crossing
9 cards?

10 MS. SOTTO: Yes, but enhanced driver's
11 licenses are not border crossing cards.

12 MR. HARPER: They are intended to be, I
13 believe.

14 MS. SOTTO: I think keeping the title a
15 little bit open is a good idea. This is Lisa Sotto.
16 "REAL ID and Other Identification Methods." Is
17 "systems" the right word? Methods?

18 MS. MCNABB: Cards.

19 MS. SOTTO: Means? Cards would be good.

20 MS. MCNABB: This is Joanne McNabb. What
21 we talked about at the meeting was REAL ID.

22 MR. LANCE HOFFMAN: What meeting are you

1 talking about, Joanne? This is Lance Hoffman.

2 MS. MCNABB: The last one. The one in
3 December.

4 MR. LANCE HOFFMAN: Okay.

5 MS. MCNABB: When we were articulating our
6 concerns.

7 MR. HARPER: Jim Harper. Does that
8 preclude the inclusion of additional concerns from
9 people who weren't able to attend?

10 MS. MCNABB: Not necessarily.

11 MR. LANCE HOFFMAN: The REAL ID -- this is
12 Lance Hoffman again. Jim is just making a good point
13 that we're just a little further along on REAL ID,
14 but similar -- other systems like this have
15 similarities and have the exact same problem. So
16 there is really no need for the department to go and
17 reinvent the wheel every single time.

18 MR. HARPER: Like they could get ahead of
19 it on EDLs and passport cards by asking us questions
20 early rather than late.

21 MS. MCNABB: This is Joanne McNabb again.
22 I would suggest that we say then "REAL ID and Other

1 Identification Cards" because we have another section
2 on credentialing, and this is -- which is more the
3 process, the system. This is cards.

4 MS. SOTTO: We can also be more vague --
5 Lisa Sotto -- and say something like whatever rules
6 are derived from REAL ID could serve as a base for
7 privacy protections for other programs, such as
8 passport cards and enhanced driver's licenses.

9 MS. LEVIN: Let me just -- this is Toby
10 Levin, who is also listening -- that the enhanced
11 driver's licenses and pass cards are already being
12 issued. So they chronologically have preceded REAL
13 ID. So you have to be careful that you phrase this
14 so it's chronological. If you put -- REAL ID cards
15 have not yet been issued.

16 MS. SOTTO: Thank you, Toby.

17 MR. BEALES: Hey, this is Howard. To me,
18 it seems like that argues for leaving this out. We
19 have a report on REAL ID where we have a set of
20 recommendations that it makes sense to go back to.
21 If this is a -- and I guess what we're talking about
22 in other places is things that are -- other issues

1 that are on the table now?

2 And it sounds like what passports and --
3 passport cards and enhanced driver's licenses would
4 be is to -- is a recommendation to go back and
5 revisit an operational program, which I don't think
6 any of the rest of these are. And I don't know that
7 I disagree with that, but I don't know that I know
8 enough to recommend that. I mean, it's just we
9 haven't heard about it.

10 MR. LANCE HOFFMAN: Well, but -- this is
11 Lance Hoffman. If not us, who?

12 MR. HARPER: If not now, when? Jim Harper.
13 Sorry.

14 MS. SOTTO: That was a natural.

15 MR. HARPER: The -- Jim Harper again.
16 Sorry to bring this late, of course. But I would
17 recommend, if you want to right now, I've got it up
18 at Tech Liberation, a few posts down, a video of a
19 guy driving around San Francisco collecting serial
20 numbers from assumedly enhanced driver's licenses. I
21 don't think he knows that they're enhanced driver's
22 licenses because of the distinctive numbering.

1 It's an issue that I think -- it's the kind
2 of issue that this group was constituted to raise --

3 MS. SOTTO: -- what he's talking about?

4 MS. MCNABB: The WHTI -- I think it's the
5 other State.

6 MR. HARPER: The enhanced driver's license
7 is, I think, underneath WHTI. DHS goes into
8 agreements with States to issue them. The State of
9 Washington issues them now. I actually found a
10 document. It will serve as an identity and
11 citizenship document starting on June 1, 2009.

12 So it's a real and running program, but
13 just because it's up and running doesn't mean we
14 shouldn't be telling them about what they're running
15 into.

16 MS. MCNABB: This is --

17 MR. BEALES: This is Howard. Jim, it
18 sounds like what you've got is an anecdote that's
19 maybe a compelling anecdote and may be worth more
20 attention and may be something we ought to put on our
21 agenda for our next meeting.

22 But it's --

1 MR. HARPER: So it's like it should be
2 reviewed in light of the privacy and data security
3 consequences, which is what I proposed in that
4 sentence.

5 MS. LANDESBURG: This is Martha Landesberg.
6 I would just interject if you're not speaking,
7 perhaps it's best to put your phone on mute. We're
8 hearing some side conversations.

9 MS. MCNABB: This is Joanne. How about if
10 we add at the end language that begins, "We note that
11 passport cards," if that's the right term, "and
12 enhanced driver's licenses have similar problems and
13 raise similar privacy and data security concerns."

14 MR. HARPER: I'm fine with that. Jim
15 Harper.

16 MR. BEALES: I'm fine with that. Are there
17 other comments on this paragraph?

18 MS. MCNABB: Is "passport card" the right
19 term?

20 MR. HARPER: It is. That's the commonly
21 used term in DHS documentation.

22 MS. MCNABB: Okay.

1 MR. LANCE HOFFMAN: Lance Hoffman. The
2 only question now is do you want to have a little
3 more broad title than "REAL ID," or do you want to
4 just still call this "REAL ID" by itself? And I
5 don't have strong opinion on that.

6 MR. HARPER: I did like your suggestion,
7 Lance -- this is Jim Harper again -- of "REAL ID and
8 Other Identification Systems." I'd certainly be
9 amenable to "cards."

10 MR. BEALES: This is Howard. I definitely
11 like "cards" better than "systems" because of the
12 credentialing programs issue. And I'd like to keep
13 this clearly separate.

14 MR. HARPER: That's fine then. "REAL ID
15 and Other Identification Cards."

16 MS. MCNABB: Got it. Cards.

17 MR. BEALES: Okay. Are there other
18 comments on this paragraph?

19 [No response.]

20 MR. BEALES: Are there other comments on
21 the letter?

22 MR. HARPER: The language was adopted, I

1 take it?

2 MR. BEALES: Yes, I think so.

3 MR. HARPER: Okay. You're lost, man.

4 You're lost. Thanks.

5 MR. BEALES: Are there other comments on
6 the letter?

7 [No response.]

8 MR. BEALES: Well, in that case, is there a
9 motion to approve the letter?

10 MR. BARQUIN: I so move. Ramon.

11 MS. SOTTO: I'll second. Lisa Sotto.

12 MR. BEALES: Martha, could you please call
13 the roll? I don't know of another way to vote in
14 this circumstance.

15 MS. LANDESBURG: That's fine. I will
16 certainly do so. And the question is whether to
17 issue as final the letter as amended through the
18 discussion today? Just answer yes or no.

19 Ramon Barquin?

20 MR. BARQUIN: Yes.

21 MS. LANDESBURG: Okay. Howard Beales?

22 MR. BEALES: Yes.

1 MS. LANDESBURG: Dan Caprio? Dan Caprio?

2 [No response.]

3 MS. LANDESBURG: Renard Francois?

4 MR. FRANCOIS: Yes.

5 MS. LANDESBURG: Jim Harper?

6 MR. HARPER: Yes.

7 MS. LANDESBURG: Okay. Kirk Herath?

8 MR. HERATH: Yes.

9 MS. LANDESBURG: David Hoffman?

10 MR. DAVID HOFFMAN: Yes.

11 MS. LANDESBURG: Lance Hoffman?

12 MR. LANCE HOFFMAN: Yes.

13 MS. LANDESBURG: Joanne McNabb?

14 MS. MCNABB: Yes.

15 MS. LANDESBURG: Neville Pattinson?

16 MR. PATTINSON: Yes, on the provision of

17 recusing myself on the REAL ID discussion.

18 MS. LANDESBURG: Okay. John Sabo?

19 MR. SABO: Yes.

20 MS. LANDESBURG: Lisa Sotto?

21 MS. SOTTO: Yes.

22 MS. LANDESBURG: Okay. I'm just going to

1 go back through to see if --

2 MR. BOYD: You forgot Tom Boyd. Yes.

3 MS. LANDESBURG: Oh, thank you, Tom. I
4 didn't know you had joined us. Great.

5 And Dan Caprio, are you with us now?

6 [No response.]

7 MS. LANDESBURG: Okay. Well, the motion
8 has carried, and we will proceed now to formalize the
9 letter and prepare it for transmittal.

10 MS. MCNABB: I will send it now.

11 MS. LANDESBURG: Beg your pardon?

12 MS. MCNABB: I will send it right now to
13 you and Lisa and Howard.

14 MS. LANDESBURG: Thank you very kindly.
15 Thank you very much.

16 MR. BEALES: All right. This is Howard. I
17 want to thank the members of the committee, and we
18 look forward to seeing you here in 3 weeks now, I
19 guess. And thank you to the members of the public
20 who listened in, and I hope we were suitably
21 entertaining.

22 MS. LANDESBURG: Yes, and thank you,

1 Howard.

2 If I may, just before I adjourn the
3 meeting, I want the record to reflect the members of
4 the Privacy Office staff who have also been
5 listening, with my apologies for not having
6 introduced them earlier.

7 That is John Kropf, our Acting Chief
8 Privacy Officer; Toby Levin, Senior Advisor and
9 Director of Policy; Rose Bird, Director of Incidents
10 and Inquiries; and William Holzerland, who is
11 Associate Director Disclosure Policy and FOIA Program
12 Development.

13 To all of you, I am now adjourning the
14 meeting.

15 [End of audio.]

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