



**Homeland
Security**

RECEIVED MAY 11 2009

Decision

MEMORANDUM FOR: Janet Napolitano
Secretary

FROM: Mary Ellen Callahan
Chief Privacy Officer *M E C*

SUBJECT: Congressional Briefing on Additional Privacy and Civil Liberties
Safeguards of National Applications Office (NAO)

Purpose

To decide whether to contact key Congressional leaders regarding proposed new privacy and civil liberties safeguards for the NAO.

Background

You requested that the Privacy Office (PRIV) and the Office of Civil Rights and Civil Liberties (CRCL) review the National Applications Office (NAO) to determine whether increased privacy and civil liberties safeguards should be implemented when sensitive and/or personally identifiable information may be impacted.

Discussion

In response to nearly two years of intense Congressional scrutiny, PRIV and CRCL have issued Privacy Impact and Civil Liberties Assessments on NAO. Nevertheless, NAO continues to be the subject of criticism that it does not sufficiently protect privacy and civil liberties. In response thereto, PRIV and CRCL offer that an additional layer of safeguards could be implemented when NAO receives a request that may impact personally identifiable information. Examples of such requests where such additional privacy safeguards would apply include when an individual is identified in the request by name or home address, or when the image to be provided is so detailed as to display identifiable features of an individual.

As I understand the current NAO memorandum process, all incoming requests undergo no less than five distinct legal reviews to confirm compliance with NAO operating rules and the law and policy applicable to each entity involved. For requests that may impact sensitive and/or personally identifiable information, PRIV and CRCL would recommend an additional review to assess the likelihood that the request could be fulfilled in a manner compliant with to-be-determined privacy (or civil liberties) standards. Where compliance is deemed likely, the request will be processed. Once processed (either as originally proposed or as modified to enhance compliance), an exit privacy (or civil liberties) review would be performed. This exit review would be to confirm that

these to-be-determined standards were properly applied prior to sending the final product to the customer.

PRIV and CRCL believe that this "entry-exit" review would provide the necessary level of privacy and civil liberties protection for sensitive and personally identifiable information. PRIV and CRCL, however, have not yet fully designed this entry-exit review because it is not clear that even this layered approach will be satisfactory to NAO critics. PRIV and CRCL will start to design it once the proposal has been vetted with Congressional leaders.

N.B., even if this entry-exit approach is deemed to be acceptably protective of privacy and civil liberties concerns, there are several questions that would remain regarding NAO:

- **Authority to service law enforcement requests:** Congress repeatedly has questioned the legal authority for DHS to provide NAO support to law enforcement activities. That issue is off the table for now, given that the NAO Charter directs that the NAO accept requests only for Homeland Security and Civil Applications purposes. Support to Law Enforcement activities may only commence when the Policy and Legal Working Group has considered and resolved all the legal, privacy, civil rights, civil liberties, and policy issues surrounding Law Enforcement support to the satisfaction of the NSC, HSC and Deputies. The Privacy Impact Assessments (PIA) and Civil Liberties Impact Assessment (CLIA) will be updated for any future commencement of support for Law Enforcement activities.
- **Additional requirements due to evolving technologies or legislation:** The Privacy Impact Assessments (PIA) and Civil Liberties Impact Assessments (CLIA) will be updated as necessary, together with attendant modification to the privacy and civil liberties standards, based upon the evolution of IC technologies. Additional procedural requirements may also arise out of appropriating or authorizing legislation.
- **Status of NAO's response to recommendations contained in the CLIA:** DHS Office of Intelligence and Analysis (I&A) issued a memo on NAO Plans to Address Recommendations in the NAO Civil Liberties Impact Assessment. NAO should provide CRCL with an update on actions taken to implement this plan. If sufficient progress has been made, these actions could be useful in demonstrating progress to critics.
- **Continued scrutiny from advocates, regardless of privacy and civil liberties protections.**

Recommendation

Attempt to determine preliminary Congressional interest in the entry-exit approach -- including whether it significantly ameliorates initial privacy and civil liberties concerns -- by sending a trusted emissary to informally vet the proposal to key Congressional leaders.

Approve J. M. 5-17-09 Disapprove _____
Modify _____ Needs more discussion _____



Homeland Security

March 10, 2009

MEMORANDUM FOR: Secretary Janet Napolitano

FROM: Roger Mackin 
Acting Under Secretary for Intelligence and Analysis

SUBJECT: Response to Chairwoman Jane Harman and Chairman Norm Dicks regarding the National Applications Office (NAO)

Forwarded for your approval and signature are letters to Chairwoman Jane Harman and Chairman Norm Dicks in response to their February 24, 2009 letter regarding their concerns with the transfer of Civil Applications Committee functions into the National Applications Office (NAO), as well as recommending closure of the NAO.

The proposed response informs them of your intention to be thoroughly briefed on this topic before making a decision on the best way ahead.

My points of contact on this action are Jim Chaparro, Deputy Under Secretary for Mission Integration, and Marty Eckes, Director, National Applications Office. This action has been reviewed by I&A Counsel Judy Boyd.

Recommendation:

I recommend that you sign the attached letter.

Attachment

Executive Secretariat Clearance:


~~Fred L. Schwien~~
C. J. Button

March 18, 09
Date



Homeland Security

May 18, 2009

MEMORANDUM FOR: Secretary Janet Napolitano

FROM: Bart R. Johnson 
Acting Under Secretary for Intelligence and Analysis

SUBJECT: Response to Letter from Representatives Thompson and Harman
Regarding the National Applications Office (NAO)

Forwarded for your approval and signature is a draft response to a letter dated May 6, 2009, from Representatives Bennie Thompson and Jane Harman, in which they expressed "strong reservations" about the mission and format of the NAO. They urged you to make a final determination quickly on the NAO's status.

(b) (5)

This proposed response has been coordinated within my component as well as with I&A Counsel Judy Boyd and NAO Legal Advisor Curt Heidtke. My point of contact on this action is Deputy Under Secretary for Mission Integration, James Chaparro.

Recommendation:

I recommend that you sign the attached letter.

Attachment

Executive Secretariat Clearance:



Christopher Button

5/25/09

Date