



Via E-mail

Mr. Philip M. Heneghan
Chief Privacy Officer
United States Agency for International Development
1300 Pennsylvania Avenue, NW
Office 2.12-003
Washington, DC 20523-2120

RE: Notice, Privacy Act System of Records, Federal Register,
Vol. 72, No. 136, July 17, 2007, pages 39041-39044

Dear Mr. Heneghan:

This letter is in response to the above-referenced Notice in the *Federal Register*, proposing a new system of record collection and maintenance (the “Partner Vetting System” or “PVS”). For the reasons set forth below, the International Center for Not-for-Profit Law (“ICNL”) respectfully requests that the United States Agency for International Development (“USAID”) withdraw this Notice and reconsider its approach.

ICNL

ICNL is a 501(c)(3) organization that promotes an enabling legal environment for civil society, freedom of association, and public participation around the world. ICNL’s work is supported by a number of private and public donors, including USAID.

The Partner Vetting System

As currently envisioned, the PVS covers, *inter alia*, “[i]ndividuals who are directors, officers, or are *otherwise employed* (emphasis added) by either for-profit or not-for-profit organizations” seeking USAID funding. It establishes an open-ended data collection system, stating that information collected “includes, but is not limited to:”

- (1) Full name;
- (2) Date and place of birth;
- (3) Social security number, passport number, or other government-issued identification information;
- (4) Mailing address;
- (5) Telephone and fax numbers;
- (6) E-mail addresses;

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- (7) Country of origin;
 - (8) Country of citizenship;
 - (9) Gender; and
 - (10) Profession or other unspecified “employment data.”
- USAID will then vet these individuals against unspecified terrorist listings, and funding will presumably be curtailed if a match is found.

General Comments

ICNL has a number of concerns with the PVS. They include:

Lack of Statutory Basis

The Office of Management and Budget (OMB) Circular A-110 governs the administration of grants and cooperative agreements to for-profit and not-for-profit organizations. 22 CFR §226.1 states that “USAID shall not impose additional or inconsistent requirements except as provided in Sections 226.4 and 226.14, or unless *specifically required* by federal statute or executive order.”¹

The PVS does not fall within the terms of 22 CFR §226.4 or §226.14. Nor is it specifically required by federal statute or executive order. The Notice makes general reference to “annual foreign operations appropriation legislation,” but this legislation addresses USAID’s West Bank and Gaza program. Similarly, Executive Order 13324 empowers the Secretary of State (in consultation with the Secretary of the Treasury and the Attorney General) or the Secretary of the Treasury (in consultation with the Secretary of State and the Attorney General) the power to designate individuals and entities as Specially Designated Global Terrorists. It does not create authority for USAID to initiate the PVS or otherwise sanction non-governmental organizations (“NGOs”). In addition, if the PVS were required under Executive Order 13224, then a vetting system would apply to all federal awards, which is not the case.

Due Process Concerns

USAID will not “confirm or deny that an individual ‘passed’ or ‘failed’ screening.” *Federal Register, July 20, 2007 at 39769*. Moreover, it is unclear what lists will be checked by USAID. “Watch lists” have proved unreliable and have produced a number of false positives. In theory, an individual could contest “record procedures” to show that s/he is not the person named on the list. A catch-22 arises, however, because the individual must “identify the information to be changed” – which is impossible since USAID will neither confirm nor deny the results of the screening.

From the employer’s perspective, the process is untenable. Proposals could be declined, but the organization would not know why. It could simply be that an organization’s employee shares a name with an alleged terrorist, but the organization

¹ This regulation also contains specific procedures that must be followed before additional requirements are imposed. 22 CFR 226.4 and 22 CFR 226.12. It does not seem that these procedures have been followed in this case.

would not know which employee had this unfortunate coincidence, nor could it effectively take steps to clear the individual's good name. Rather, for opaque reasons, it would simply continue to be denied funding.

Privacy Concerns

The Privacy Act governs the federal government's collection, use, and disclosure of personal information. Among other requirements, agencies seeking to create a new system of records must inform the Office of Management and Budget and undergo a carefully crafted approval process. As a substantive safeguard, an agency is limited to solely collecting such information "as is relevant and necessary to accomplish a purpose of the agency required to be accomplished by statute or by executive order of the President." 5 U.S.C. §552a(e)(1). There is no evidence that USAID followed OMB approval procedures. Moreover, USAID is not collecting information solely to accomplish a purpose required by statute or executive order.

Simply stated, the PVS compiles a massive database of personal information (telephone numbers, country of origin, etc.) on innocent U.S. and foreign citizens. The Privacy Act was intended to cover just these cases, and it should be scrupulously followed to avoid unwarranted intrusions on civil liberties.

International Ramifications

As USAID, the Department of State, the U.S. Congress, and others have recognized, recent years have witnessed a backlash against NGOs. USAID should not provide precedential comfort to others countries that seek to curtail civil society by collecting extensive personal information on people working for NGOs. In a number of jurisdictions, such information is demonstrably subject to misuse by authorities, and may subject persons associated with NGOs, and their families, to personal danger. As the lead international development agency in the United States, USAID should carefully consider the international ramifications of its approach.

Inappropriate Burden on Development

We understand the desire to ensure that U.S. taxpayer money is not used to support terrorist activities in the United States or abroad. The PVS, however, is misplaced, unfairly burdening development assistance.

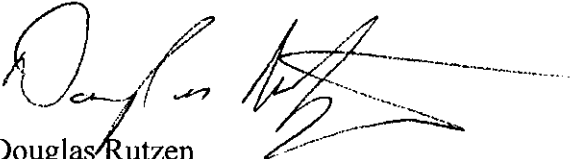
Other departments and agencies expend significantly greater amounts of taxpayer money in contracts, grants, and cooperative agreements. This is particularly true if one includes domestic funding programs, noting that terrorists also presumably reside within our borders. Nonetheless, there appears to be no uniform requirement that all government funding agencies conduct this sort of vetting procedure for all funded or contracted programs and projects, even in war zones. Unquestionably, in fact, U.S. taxpayer-funded arms, supplies, and even cash have found their way to enemy combatants in recent years, none to our knowledge derived from PVS development assistance organizations.

Despite the desire to ensure that U.S. taxpayer money is not used to support terrorist activities, it is inconceivable that the government would adopt a general rule requiring all recipients of funds to provide the name, phone numbers, e-mail addresses, country of origin, and other personal information about all individuals who are “*otherwise employed*” by the organization. It is therefore unfortunate that the PVS targets *development assistance*, which by its nature addresses the root causes of terrorism.

Conclusion and Call for Consultation

ICNL respectfully requests that USAID reconsider the PVS and engage in consultation with “partners” affected by the “Partner Vetting System.”

Sincerely,



Douglas Rutzen
President