



The American-Arab Anti-Discrimination Committee
Comments and Recommendations to the
U.S. Department of Homeland Security
U.S. Customs and Border Protection
on Implementation of Exemptions for Border Crossing
Information System of Records

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To: Karen L. Neuman
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I am writing to you on behalf of the American-Arab Anti-Discrimination Committee (ADC), the country's largest Arab-American organization. ADC is committed to protecting civil rights, promoting mutual understanding, and preserving the Arab cultural heritage. ADC has protected the Arab-American community for thirty five years against defamation, discrimination, racism, and stereotyping. ADC has standing commitment to open government, and government transparency and accountability. ADC respectfully takes this opportunity to submit the following comments and recommendations to the United States Department of Homeland Security (DHS) - Customs and Border Protection (CBP).

This notice of rulemaking proposes to exempt from new categories of records from the Advance Passenger Information Systems in connection with the DHS/CBP-007 Border Crossing Information (BCI) System of Records under the Privacy Act. The new categories being requested for exemption includes biometric information such as digital fingerprints, photographs, and iris scans, as well as information regarding scars, marks, tattoos and palm prints. DHS is claiming exemption based on criminal, civil, and administrative enforcement requirements.

ADC strongly opposes the blanket exemptions under the Privacy Act (c)(3), (d), (e)(8), and (g) that DHS/CBP is claiming for access and sharing of this information collected in this rulemaking, DHS-2015-0075. The rulemaking provides "*In appropriate circumstances, when compliance would not appear to interfere with or adversely affect the law enforcement purposes of this system and the overall law enforcement process, the applicable exemptions may be waived on a case by case basis.*"

Privacy Act protections including notice on individuals must be the rule not the exception, but this rulemaking makes Privacy Act protections – basic right to notice and access to records (due process) – the exception. Instead of providing for a waiver to limit privacy protections based on a legitimate exemption on a case by case basis, this rulemaking does the opposite and actually requires a waiver to ensure and enforce privacy protections. While there may be legitimate instances where disclosure to subjects of investigation may interfere with investigatory and law enforcement activities, those cases should be evaluated on a case by case basis and exemptions applied where appropriate, not the reverse.

The Privacy Act and the regulations implemented under the statute were put in place to address and prevent misuse and abuse of private information by law enforcement. However, this rulemaking is actually counterproductive and contrary the purpose of the Privacy Act. Under this rulemaking, the burden on DHS to demonstrate legitimate need to restrict access and share this private information is effectively removed. Additionally, this rulemaking attempts to restrict most individuals only recourse to remedy agency refusal to comply with requests and rights afforded under the Privacy Act, and mistakes, misuse and abuse of information collected by seeking exemption from subsection (g) of the Privacy Act of 1974. There are also serious concerns that DHS request for blanket exemption under this rulemaking will amount to only mass sharing of personal and private information that is not relevant, necessary and/or accurate, and without adequate privacy protections in place on retention and disposal.