



Ottawa, January 14, 2010

# MEMORANDUM D1-16-3

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## In Brief

### **ADMINISTRATIVE GUIDELINES FOR THE PROVISION TO OTHERS, ALLOWING ACCESS TO OTHERS AND USE OF ADVANCE PASSENGER INFORMATION (API) AND PASSENGER NAME RECORD (PNR) DATA**

This memorandum provides operational guidelines on the access and use of Advance Passenger Information (API) and Passenger Name Record (PNR) data within the Canada Border Services Agency (CBSA), as well as on the disclosure of PNR data elements to third parties and outside agencies such as federal institutions, provincial, municipal or foreign governments or agencies.





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This memorandum provides operational guidelines on the use of and disclosure of Advance Passenger Information/ Passenger Name Record (API/PNR) data for internal purposes or to external agencies such as federal institutions, provincial, municipal or foreign governments or agencies.

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## GUIDELINES AND GENERAL INFORMATION

### DEFINITIONS

**Access** – use of PAXIS by authorized CBSA officials to view and analyze PNR data elements.

**Advance Passenger Information (API)** – the following is prescribed API in respect of a person on board a commercial conveyance:

- (a) their surname, first name, and any middle name;
- (b) their date of birth;
- (c) their gender;
- (d) the type of travel of document that identifies them, the name of the country in which the document was issued and the number on the travel document;
- (e) their reservation record locator, and in case of crew members, notification of their status of a crew member.

**Commercial Carrier** – owner or operator of a commercial conveyance.

**Commercial Conveyance** – any conveyance that is used for the commercial transportation of persons or goods by air, water or land.

**Customs Information** – any information obtained by or on behalf of the Minister of Public Safety and Emergency Preparedness for the purposes of the *Customs Act* or the *Customs Tariff*, or information prepared from such information. It includes any oral statement, book, record, writing, or other document in any form, including electronic form, obtained by or on behalf of the Minister for such purposes. It also includes information obtained by an authorized person for the purposes of carrying out an agreement made under Subsection 147.1(3) of the *Customs Act*. Section 107 of the *Customs Act* regulates the disclosure, including provision and use, of CBSA information.

**Data Subject** – traveller to which the PNR data is related.

**Disclosure** – sharing of PNR data within the CBSA and externally with third parties for specified purposes.

**Foreign National** – a person who is not a Canadian citizen or permanent resident, including a stateless person is a foreign national.

**National Risk Assessment Centre (NRAC)** – work unit that facilitates and expedites the flow of information between partnering agencies to assist in the identification of high-risk travellers and goods prior to their arrival in Canada.

**Passenger Information System (PAXIS)** – means the Passenger Information System of the CBSA.

**Passenger Name Record (PNR)** – is data regarding a persons’ travel itinerary, contained within a commercial carrier’s reservation system, created once a person makes a reservation. Depersonalized PNR is a record on which data elements that identify the person are not viewable. No-name PNR is a record on which the full name of the person is blocked from the PNR and is not viewable. The following are PNR elements:

- PNR locator code
- Travel agency
- Seat information
- Date of reservation
- Travel agent
- One-way tickets
- Dates of intended travel
- Split/divided PNR information
- Any collected API
- Passenger Name
- Ticketing information

- Standby
- Other names on PNR
- Ticket number
- Check-in information
- All forms of payment information
- Seat number
- Billing Address
- Date of ticket issuance
- Contact telephone numbers
- No show information
- All travel itinerary for specific PNR
- Bag tag numbers (baggage information)
- Frequent flyer information
- Go show information

**Person** – an individual, a partnership, a corporation, a trust, the estate of a deceased individual or a body that is a society, a union, a club, an association, a commission or other organization of any kind.

**Personal Information** – information about an identifiable individual that is recorded in any form (see section 3 of the *Privacy Act*).

**Protection of Passenger Information Regulations (PPIR)**  
– Regulations enabled under the *Immigration and Refugee Protection Act* that set out how the CBSA may store, access, receive, disclose, process and use API/PNR information for immigration purposes.

**Reservation System** – any system, whether electronic or manual, that contains information relating to persons on board a commercial conveyance.

**Serious Crime** – means conduct constituting an offence punishable by a maximum deprivation of liberty of at least four years or a more serious penalty.

## PURPOSE AND SCOPE

1. The purpose of the guidelines is to provide direction for the access and provision to others of Advance Passenger Information/Passenger Name Record data. These guidelines apply to all employees of, and persons under contract with the Canada Border Services Agency.

## OVERVIEW OF THE API/PNR PROGRAM

### Carriers Required to Provide API/PNR Data

2. Upon request, all commercial carriers are required, under Canadian law, to provide the Canada Border Services Agency (CBSA) with API/PNR data for all persons on board commercial conveyances bound for Canada. The legal authority of the CBSA to obtain and compile such information is found in:

- (a) section 107.1 of the *Customs Act*;
- (b) the *Passenger Information (Customs) Regulations*;
- (c) paragraph 148(1)(d) of the *Immigration and Refugee Protection Act*; and,

(d) Regulation 269 of the *Immigration and Refugee Protection Regulations*.

## PART I – OPERATIONAL USE OF API/PNR DATA

### Identification of Persons Who May Pose a Risk

3. API/PNR data is collected by the CBSA to identify persons who:

(a) pose a risk to import goods related to, or who may be inadmissible to Canada because of their potential relationship to terrorism or terrorism-related crimes; or,

(b) may be involved with other serious crimes, including organized crime, that are transnational in nature.

4. Examples of serious crimes that may be transnational in nature include, but are not limited to:

- (a) terrorist financing activities;
- (b) importation, exportation or smuggling of child pornography;
- (c) narcotics smuggling;
- (d) human smuggling;
- (e) human trafficking.

5. API/PNR data is used by CBSA targeters or intelligence officials to identify persons who may be subject to closer questioning or examination upon arrival in Canada, or who require further investigation due to potential relation to serious transnational crime.

### Timeframes for Access to PNR Data

6. The use of and access to PNR data changes over three distinct timeframes. During each timeframe, CBSA officials authorized to access PNR data become progressively more restrictive.

7. For specific information related to what information can be accessed during specific timeframes, refer to Appendix A.

### Protection of the Privacy of PNR Data Elements

8. PNR data is personal information and is protected under the *Privacy Act*, the *Customs Act*, the *Access to Information Act* and the *Canadian Charter of Rights and Freedoms*.

9. Refer to Appendix A for specific details related to access of API/PNR by user type in the PAXIS system.

10. Pursuant to the requirement to protect the privacy of personal information, it is the policy of the CBSA:

- (a) to protect the confidentiality of API/PNR data and to manage this data in accordance with the authorities in the *Customs Act*, the *Privacy Act* and the *Access to Information Act*, as well as the relevant CBSA and

Government of Canada policies pertaining to the management and security of information;

(b) that a CBSA official may disclose, allow access to, or use API/PNR data elements only when authorized to do so by law under section 107 of the *Customs Act* for the purpose of administering and/or enforcing CBSA customs legislation, or subsection 8(2) of the *Privacy Act* and the *Protection of Passenger Information Regulations* for the purpose of performing the duties and functions of the Minister of Public Safety in administering and/or enforcing the *Immigration and Refugee Protection Act* and to the extent permitted by these interim guidelines;

(c) afford API/PNR the data protections outlined in the *Protection of Passenger Information Regulations* and re-personalize PNR with API when authorized to do so.

(d) to ensure that no additional API/PNR data is disclosed to third parties or outside agencies than are absolutely required;

(e) to direct the public to information available within the public domain when such information sources will meet their needs; and,

(f) that in limited circumstances where these guidelines provide for the disclosure of API/PNR data elements to third parties or outside agencies on an ongoing basis, the CBSA will take the necessary steps to enter into written collaborative arrangement with those third parties or outside agencies to ensure that any PNR data elements disclosed are protected in a manner consistent with these guidelines.

### **Re-Personalization of PNR Data**

11. Limited access to both API and PNR data is available after 72 hours, and is restricted after 2 years' retention in PAXIS. In order to re-personalize PNR with API these requirements must be met:

(a) After 72 hours: only where the intelligence officer reasonably believes that the name of the person is required in order to proceed with an investigation relating to paragraph three of this memorandum.

(b) After 2 years: data elements which could serve to identify the person to whom the information relates will be available for viewing only if approved by the President of the CBSA to identify persons related to paragraph three of this memorandum.

### **Physical Security of PNR Data**

12. To ensure the security of PNR data elements, a limited to a number of CBSA officials are authorized to access PAXIS. Access to particular PNR data within the system is restricted on a need-to-know basis to authorized officials.

13. These officials access PAXIS in secure work locations that are inaccessible to unauthorized employees as well as to members of the public.

14. Each query and review of passenger data elements in PAXIS is audited.

## **PART II – CBSA POLICY ON THE DISCLOSURE OF API/PNR DATA**

### **Legal Authority to Disclose API/PNR Data**

15. Although the legislation (section 107 of the *Customs Act*, subsection 8(2) of the *Privacy Act*, and the *Protection of Passenger Information Regulations*) authorizes the disclosure of API/PNR data on a discretionary basis, it does not establish an obligation that API/PNR data be disclosed.

16. Accordingly, CBSA officials should be satisfied that the request meets the criteria for disclosure.

17. The CBSA will include in the criteria for disclosing API/PNR the requirements enshrined in Article 1 and the Annex of the Commission of European Communities Decision of September 6, 2005 on the adequate protection of personal data contained in the Passenger Name Record of air passengers transferred to the Canada Border Service Agency (C(2005) 3248).

18. The authority for the CBSA to disclose API/PNR data for a purpose relating to the administration and/or enforcement of the *Customs Act* is found in section 107 of the *Customs Act*. All disclosures must be made in accordance with Interim Memorandum D1-16-2, *Interim Administrative Guidelines for the Provision to Others, Allowing Access to Others, and Use of Customs Information – Section 107 of the Customs Act*.

19. The authority for CBSA to disclose API/PNR data for a purpose relating to the administration and/or enforcement of the *Immigration and Refugee Protection Act* without the consent of the data subject is provided pursuant to provisions outlined in the *Protection of Passenger Information Regulations*.

20. Inasmuch Interim Memorandum D1-16-2 will provide administrative guidance on the disclosure of customs information, this memorandum will specifically address the disclosure of API/PNR pursuant to the *Customs Act*, *Protection of Passenger Information Regulations*, *Privacy Act*, Interim Memorandum D1-16-2, and the criteria set out in this memorandum.

### **Identifying Applicable Disclosure Legislation**

21. For each request for disclosure of API/PNR data, the disclosing official must first identify whether the disclosure is being made for purposes aligned with either the customs or immigration programs, thereby identifying the predominant purpose for the disclosure:

Consider the following: when performing an activity, the predominant purpose would be the main objective of the activity. Therefore, if an activity has many objectives, the predominant activity is identified as the overriding intent of the activity and the goals attempting to be achieved.

22. An example of an external disclosure can be where a provincial police officer is conducting an investigation of a trafficking offence under the *Controlled Drugs and Substance Act*. This investigation is aligned with the CBSA customs program, and as such, the response will be made pursuant to the disclosure of information authorities in the *Customs Act*.

23. An example of an “immigration program” disclosure of API/PNR would be, upon written request by an RCMP officer investigating individuals for offences relating to human trafficking.

24. CBSA officials may consult the Director, Intelligence Development and Field Support Division, Intelligence Directorate, CBSA HQ, for additional guidance and information on determining the appropriate disclosure authority.

### **Criteria for Disclosure of API/PNR Data Elements for Specified Purposes**

25. The criteria for disclosure of API/PNR data are:

- (a) The disclosure must be for a specific authorized purpose;
  - (i) In accordance with the relevant enabling legislation pertaining to the disclosure of API/PNR data by customs / immigration officials; and,
  - (ii) Consistent with preventing terrorism or terrorism-related crimes, including organized crime that is transnational in nature; or,
  - (iii) Necessary for the protection of important interests of the data subject or of other persons, particularly regarding significant health risks; or,
  - (iv) To comply with a subpoena or warrant issued, or an order made by a court, person or body with jurisdiction to compel the production of information, or for the purposes of any judicial proceedings;
- (b) API/PNR data will be disclosed on a case-by-case basis and not on a bulk basis;
- (c) Limited to the minimum number of PNR data required for that purpose;
- (d) Disclosed to or accessed by individuals with an operational need to see them;
- (e) PNR data elements disclosed must be destroyed or returned to the CBSA once they have been used or

ceased to be of administrative use, in accordance with the CBSA and Treasury Board information management policy guidelines.

### **Tracking of Disclosures for Audit Purposes**

26. The tracking of disclosures is required for all disclosures of API/PNR data for accountability and other audit purposes. The appropriate tracking records must be retained and filed in accordance with existing CBSA policies and practices pertaining to information management.

27. For disclosures of API/PNR that are processed by CBSA officials pursuant to the *Customs Act*, Form E675 *Provision Access and Use of Customs Information Report (section 107 of the Customs Act)* must be completed and retained for tracking purposes.

28. For disclosures of API/PNR data that are processed by CBSA officials pursuant to the PPIR, refer to the relevant immigration program guidelines and policies on information management regarding tracking purposes.

29. API/PNR data is classified as Protected B information by the CBSA. Therefore, physical disclosure records must be stored as follows:

Approved security container (file cabinet or safe) with approved combination lock in an operations zone. Operations Zone is defined as an area where access is limited to personnel who work there and to properly escorted visitors.

30. Physical disclosure records, including the API/PNR data disclosed, must be destroyed after 3 ½ years’ retention by the CBSA or, should 3 ½ years have already expired and API/PNR data remains necessary for an investigative purpose, destroyed two years after these records ceased to be used for an administrative/investigative use in accordance with the requirements on destruction of records set out in legislation and policies governing the CBSA, for example: the *Privacy Act* or Treasury Board policies on privacy and data protection.

### **PART III – OPERATIONAL GUIDELINES FOR THE DISCLOSURE OF API/PNR DATA BY CBSA OFFICIALS**

#### **Requesting a Disclosure of API/PNR Data**

31. Requests for API/PNR data must specify the data required and the purpose for which they will be used, including any applicable legislative references.

32. Requests must be in writing and include an undertaking that the data will only be used for the stated purposes and will not be shared with a third party.

## Where to Direct Requests for API/PNR Data Elements

33. Requests for API/PNR data must be made in writing and must be directed to the attention of officials who are authorized to disclose the information, in accordance with Appendix B of these guidelines.

34. Copies of all requests for API/PNR information received by the CBSA must be forwarded to the Director, Intelligence Development and Field Support Division, Intelligence Directorate, HQ, for information management and accountability purposes, unless otherwise specified in these guidelines for example other disclosure requests made to officials in Appendix B.

## Processing a Request for Disclosure of PNR Data

35. The CBSA official assigned to process the request must confirm that the circumstances for disclosure as outlined in these guidelines apply. Authorizations for disclosure, or actual disclosures, must be accompanied by a written response to the request that confirms the legal authority to disclose the data and specifies the following:

- (a) the data to be provided;
- (b) the purposes for which the information can be used;
- (c) who may have access to it; and,
- (d) how it is to be disposed of after use.

36. Responses to requests for API/PNR data must be made in writing except in exigent circumstances, in which case they must be documented after the fact.

37. Written responses must be provided if the request is turned down, stating the reason why, and offering alternatives, if applicable.

## Disclosure of API/PNR in Specific Circumstances

38. In general, all disclosure requests for API/PNR information should be made in writing and to the appropriate authority. It is understood that in certain circumstances spontaneous disclosures may be required as the exception to this rule. Specific authorities for disclosure of API/PNR data exist for the following circumstances:

- (a) For the purpose of health and safety of an individual: s.107(4)(e) of the *Customs Act*;
- (b) For the purposes of national security or the defence of Canada: s. 107(4)(h) of the *Customs Act* or s. 9(a)(i) of the *Protection of Passenger Information Regulations*. For further information, see paragraphs 44 and 50;
- (c) On written request from, or to inform the Financial Transaction and Reports Analysis Centre of API/PNR

relating to terrorist financing activities or serious crimes transnational in nature: s. 107(5)(k). For further information, see paragraph 46 of this memorandum;

(d) For internal use/disclosure of API for the purpose of administering the *Immigration and Refugee Protection Act* – sections 5(1)(a) and 5(1)(b) of the *Protection of Passenger Information Regulations*;

(e) For internal use/disclosure of PNR for the purpose of administering the *Immigration and Refugee Protection Act* under the *Protection of Passenger Information Regulations*:

(i) 0-72 hours: s.7(1)(a)&(b)

(ii) 72hrs – 2 years: re-personalized for the specified purposes and uses in s.7(2)(a)&(b)

(iii) 2-3.5 years: re-personalized with API for purposes specified in s.7(4)(a), or no-name PNR for use by CBSA intelligence analysts.(7)(4)(b);

(f) Provision of API/PNR under a Canadian court order: s.107(5)(m) of the *Customs Act*, s.9(a)(ii)(A) of the *Protection of Passenger Information Regulations* or Commitment 12 under the Canada-EU Agreement

(g) For the purpose of criminal proceedings in a foreign court of record, the provision of API/PNR is pursuant to a foreign court order accepted by Canada under the *Mutual Legal Assistance In Criminal Matters Act*: s.107(5)(n) of the *Customs Act*, s.9(a)(ii)(A) of the *Protection of Passenger Information Regulations* or Commitment 19 under the Canada-EU Agreement

(h) Provision of API/PNR under a foreign written collaborative arrangement: s.107(8) of the *Customs Act*, sections 10 & 11 of the *Protection of Passenger Information Regulations* or Commitment 16 under the Canada-EU Agreement. For further information, see paragraph 57;

(i) When API and/or PNR is reasonably necessary as evidence relating to an arrest and offence under an Act of Parliament at a Port of Entry: s.107(5)(a) of the *Customs Act*, or s.9(a)(i)(A) of the *Protection of Passenger Information Regulations*. For further information, see paragraphs 41 and 42.

(j) When a CBSA official is testifying in legal proceedings and API and/or PNR is necessary as evidence: s.107(4)(a) of the *Customs Act*, Commitment 12 under the Canada-EU Agreement,

(k) On written request from the individual (or data subject) to whom the information relates. For further information, see Part IV of this memorandum.

### **Disclosures to Law Enforcement Agencies**

39. API/PNR data may be disclosed to law enforcement officials as illustrated in paragraph 38(i), when the information solely relates to an offence under an Act of Parliament (see section 4 for examples of offences) leading to prosecution by way of indictment if the data is evidence relating to an arrest and offence made at a Port of Entry.

### **Criminal Cases Under Investigation**

40. If an official designated under any Act of Parliament other than the *CBSA Act* to conduct investigations to determine penal liability, requests API/PNR data related to investigating an offence under section 3, the investigating official must obtain a court order, subpoena, production order or warrant outlining the data they wish to receive.

41. In response to a request in the above circumstances, a CBSA official may acknowledge that the CBSA is in possession of relevant API/PNR information to enable the requesting official whether to elect to proceed in obtaining a court order.

### **Disclosures to Security Intelligence Agencies**

42. API/PNR data may be disclosed, on a case-by-case basis, to security intelligence officials, in Canada, the Canadian Security Intelligence Service (CSIS), where the purpose of disclosure is reasonably and demonstrably related to identifying risks to the national security of Canada:

(a) on request by a CSIS official pursuant to the criteria at paragraph 25, or;

(b) to enable a CBSA intelligence official to proactively seek advice of CSIS on the inadmissibility of an individual to whom the information relates.

43. A CBSA official may spontaneously disclose API/PNR in exigent and imminent circumstances to CSIS if the official has reasonable grounds to believe the provision of API/PNR is necessary to mitigate the risk to the national security or the defence of Canada. This does not include disclosure of API/PNR for the purpose of an ongoing investigation.

### **Disclosures to Financial Transactions and Reports Analysis Centre (FINTRAC)**

44. API/PNR data elements may be disclosed to FINTRAC pursuant to s. 107(5)(k) of the *Customs Act* if the information is related to section 18, Part II, of the *Proceeds of Crime (Money Laundering) and Terrorist Financing Act* and is reasonably necessary for a purpose relating to identifying terrorist financing activities, or other serious crimes, including organized crime, that are transnational in nature, by an official of FINTRAC.

### **Spontaneous Disclosure When Providing Evidence in Court**

45. Every effort should be taken, with litigation counsel in proceedings, to ensure that the PNR data is relevant when providing evidence or testimony, an information has been laid, or an indictment has been preferred for a criminal proceeding commenced under an Act of Parliament.

### **Threat to Health or Safety**

46. Where there is reason to suspect the information relates to a threat to the life, health and safety of an individual API/PNR data may be disclosed to relevant agencies under paragraphs 107(6)(a) and 107(4)(e) of the *Customs Act*.

47. This disclosure provision, for example, authorizes CBSA officials to disclose API/PNR information public health agencies or agencies responsible for public safety when a health or other collective concern is identified.

### **National Security Investigations**

48. API/PNR data may be electively disclosed on written request to agencies with a mandate for responding to matters relating to or investigating offences relating to the national security of Canada. In order to disclose, a requesting official or a CBSA intelligence official must have reasonable and demonstrable grounds to suspect the API/PNR data relates to a matter of national security or defence of Canada (paragraph 107(4)(h) of the *Customs Act*; section 9(a)(i) PPIR)

49. These officials may be, for example, members of the Department of National Defence, or the Royal Canadian Mounted Police.

50. As demonstrated in paragraph 39(b), a CBSA official who believes that an imminent and exigent threat exists to the national security or defence of Canada may spontaneously disclose API/PNR to the appropriate official with a mandate for national security matters. Exigent and imminent circumstances do not include situations where the officials in paragraph 48 may request API/PNR for the purpose of an ongoing investigation.

### **Disclosures of API/PNR for investigations by CBSA Intelligence Directorate**

51. In circumstances where PNR data is required to proceed with a CBSA intelligence investigation to identify a data subject posing a risk to be involved with terrorism, terrorism related crime, or serious transnational crime, API/PNR information may be copied and retained in a CBSA enforcement database subject to the following conditions:

(a) PNR may be retained in the enforcement database for not longer than the time that it continues to be

required for the purpose for which it was copied, up to a maximum of period of six years after the time it was first received; and,

(b) During that period, access to PNR may be provided only to CBSA intelligence officials whose duties such access for the purpose referred to in section 3 and section 2 of the PPIR;

(c) However, where API and PNR is retained in an enforcement database for a period longer than six years, access to that information may be provided during that longer period for the purposes of retention and correction under the *Access to Information Act* or the *Privacy Act*.

### **Disclosures of API/PNR to CBSA Criminal Investigations Division**

52. A CBSA intelligence official designated under Appendix B of this memorandum may provide access to or provide API/PNR data to officials of the CBSA for the purpose of conducting an investigation for offences under the *Immigration and Refugee Protection Act* and the *Customs Act*. These disclosures are done in accordance to s 107(3)(a) and 107(4)(c) of the *Customs Act*, paragraph 149(a) of IRPA and sections 3 and 9 of the PPIR and are subject to the following conditions:

(a) The purpose of the request is to conduct an investigation of a serious crime transnational in nature that is subject to prosecution under either the *Customs Act* or the *Immigration and Refugee Protection Act*;

(b) Officials abide by the requirements set out in paragraph 42 of this memorandum.

### **International Written Collaborative Arrangements**

53. A mutual and bilateral written collaborative arrangement is necessary to facilitate the disclosure of API/PNR data to a foreign state, or an agency of that foreign state, that is consistent with the sections 10 and 11 of the *Protection of Passenger Information Regulations*.

54. Pursuant to section 10 and 11 of the *Protection of Passenger Information Regulations*, the CBSA may disclose API/PNR to a foreign government or an institution of a foreign government with the following requirements:

(a) the foreign state is a member of the European Union or that the foreign government has received an adequacy finding, adopted by the European Commission pursuant to Article 25(6) of Directive 95/46EC, or is covered by one;

(b) the CBSA discloses only the minimal data elements contained in the information that are necessary for that purpose of request;

(c) the CBSA is in possession of evidence that directly links the request to the investigation or prevention of

terrorism or transnational crimes referred to in section 3 of the PPIR; and,

(d) that the foreign government undertakes to provide the information with the same type of protection as that provided by the CBSA.

55. Pursuant to section 13 of the *Canada Border Services Agency Act*, the CBSA may, with the approval of the Governor In Council and on the recommendation on the Minister of Public Safety and the Minister of Foreign Affairs, enter into a written collaborative arrangement for the purposes of disclosing and exchanging API/PNR data for administrating and/or enforcing customs or immigration legislation.

### **Ongoing Arrangements for the Provision of PNR Data Elements**

#### **Written Arrangement Required**

56. When it is evident that a disclosure may lead to a series of similar disclosures to the same requestor, whether internal or external, the Director General of Enforcement Programs Directorate and the Director General of Intelligence Directorate may enter into discussions with the requestor to establish a written collaborative arrangement such as a memorandum of understanding (MOU).

57. Such written collaborative arrangements must:

(a) list the specific API/PNR data elements to be disclosed for limited purposes (subject to amendment by mutual agreement);

(b) include the terms and conditions to ensure security for (including limitation on access) and the timely destruction of the data once they have been used for the purpose requested;

(c) include the provision that the use of PNR data elements be subject to audit;

(d) the CBSA will only disclose API/PNR where the proposed recipients undertake to afford it the same protections which are afforded to API/PNR by the CBSA; and,

(e) the CBSA requires, as a matter of practice and as a condition precedent to disclosure, that Canadian federal or provincial law enforcement authorities undertake not to further disclose the information received, without the permission of the CBSA, unless required by law.

#### **Delegation**

58. The Minister may authorize an officer or a class of officers to exercise powers or perform duties of the Minister, including any judicial or quasi-judicial powers or duties of the Minister, under the *CBSA Act*.

## **PART IV – REDRESS**

### **Rights of Canadian Citizens and Foreign Nationals to Access PNR Records**

59. Pursuant to the *Privacy Act* and the *Access to Information Act* (ATIA), the following can access their API/PNR records held by the CBSA:

- (a) a Canadian citizen,
- (b) a permanent resident within the meaning of subsection 2(1) of the *Immigration and Refugee Protection Act*,
- (c) A foreign national present in Canada,
- (d) A person present in Canada with the consent of the foreign national not present in Canada,

60. Anyone present in Canada has the right to access personal information and request corrections or notations.

61. In addition, the CBSA will afford access, correction and notation rights related to API/PNR data to persons that are not in Canada. The disclosure request must be made using form BSF153, *Travellers API/PNR Request*, available on the CBSA website.

62. In all cases outlined above, requests for access to API/PNR data held by the CBSA will be directed to the ATIP and Disclosure Policy Division at the CBSA.

### **Investigation of Complaints by Privacy Commissioner**

63. The Privacy Commissioner has the authority to investigate the extent to which the CBSA is complying with the *Privacy Act* with respect to the collection, retention, use, disclosure and disposal of personal information.

64. The Office of the Information Commissioner of Canada has the authority to investigate complaints from persons who believe they have been denied rights under the *Access to Information Act*, including their rights to access to personal information such as API/PNR data.

## APPENDIX A

## API/PNR AUTHORIZED CBSA OFFICIALS AND ACCESS LEVEL

Authorized Users	API Data Access	PNR Data Access		
		Immediate	Short Term	Long Term
		0- 72 hrs	72 hrs - 2 yrs	2 - 3.5 yrs
Air Passenger Targeter / Supervisor	X	X		
NRAC Program Officer / Supervisor	X	X	R	
Intelligence Officer** / Chief	X	X	R	
Intelligence Analyst	X		D	D
HQ Targeting Program Officer	X	X	R	
IS&T PAXIS Program Support	X	X	R	
Mangers HQ Targeting, Intelligence & NRAC	X	X	R	R*

\*\* User must either be working in or in direct support of:

- An air passenger targeting operation or;
- The Intelligence Directorate

**X:** Full access to data

**D:** De-personalized PNR data only (no traveller information)

**R:** Re-personalized PNR data with justification

**R\*:** Access to Long Term Re-personalized PNR data requires CBSA Presidential approval

## APPENDIX B

## REFERENCE GUIDE TO APPROVING DISCLOSURES OF API/PNR

Designated Officials	API/PNR Imminent and Exigent Circumstances*	API	PNR		
			PNR 0 – 72 hours	PNR 72 hours – 2 years	2 – 3.5 years
President	E	N/A	N/A	N/A	C
Executive Vice President	E	N/A	N/A	N/A	-
Vice President Operations Branch HQ	E	N/A	N/A	N/A	-
Vice President Enforcement Branch HQ	E	N/A	W	W	C
Director General – Intelligence Directorate HQ	E	X C W	X C W	X C W	C
Directors –Intelligence Directorate HQ	E	X C W	X C W	X C W	C
Regional Director General Operations	E	C	C	C	-
Program Manager (Region or HQ)	E	C	C	C	-
Regional Director Intelligence	E	X C	X C	X C	-
Intelligence Chief or Manager	E	X C	X C	X C	-
Intelligence Officer	E	X	X	X	-
Intelligence Analyst	E	X	-	-	-
Air Passenger Targeting Supervisor	E	X	X	X	-
Air Passenger Targeting Officer	E	-	-	-	-

\*: exigent and imminent circumstances – see paragraphs 39 (a) & (b)

E: Enabled to spontaneously disclose API/PNR in exigent and imminent circumstances

X: Designated to authorize the provision of API/PNR for internal CBSA uses

C: Designated recipient of court order requiring the provision of API/PNR for external uses: i.e. prosecution, investigation unrelated to CBSA program legislation

W: Designated to authorize the provision of API/PNR to a foreign third party pursuant to a written collaborative arrangement.

N/A: not applicable

- : No authority to approve disclosure

## REFERENCES

<p><b>ISSUING OFFICE –</b></p> <p>Intelligence Development and Field Support Division Intelligence Directorate CBSA Headquarters</p>	<p><b>HEADQUARTERS FILE –</b></p>
<p><b>LEGISLATIVE REFERENCES –</b></p> <p>Agreement Between the Government of Canada and the European Community on the Processing of Advance Passenger Information and Passenger Name Record Data; Memorandum D2-5-11; European Union Commission Decision C(2005) 3248; <i>Immigration and Refugee Protection Act; Immigration and Refugee Protection Regulations; Protection of Passenger Information Regulations; Section 107, Disclosure of Information, Customs Act; Passenger Information (Customs) Regulations</i></p>	<p><b>OTHER REFERENCES –</b></p>
<p><b>SUPERSEDED MEMORANDA “D” –</b></p>	

Services provided by the Canada Border Services Agency are available in both official languages.

