

Microsoft Outlook

From: Greenberg, Randi L
Sent: Friday, October 01, 2010 4:51 PM
To: (b)(6) (b)(7)(C) (b)(6) (b)(7)(C)
Subject: FW: Voluntary memo

Importance: High

Attachments: Clarification of Vol Part in IDENT-IAFIS Inter.pdf



Clarification of Vol
Part in I...

(b)(6) (b)(7)(C) (b)(6) (b)(7)(C)

Need some assistance. Can either of you locate the attached memo in Sharepoint (OESIMS) and determine if and when it was routed up to OAS for Morton's review and concurrence?

Per the email string below, this would have happened sometime around December 16, 2009. We believe we received a verbal statement in return from Director Morton that he agreed with the memo but was not planning to sign. We'd like to confirm that the memo was actually routed up to OAS.

Any help is appreciated as Mr. Venturella is requesting this information.

Thanks!

Randi Greenberg
(b)(6) (b)(7)(C) (Desk)
(b)(6) (b)(7)(C) (BB)

-----Original Message-----

From: Canty, Rachel E [mailto:(b)(6) (b)(7)(C)]
Sent: Wednesday, December 16, 2009 12:28 PM
To: Greenberg, Randi L
Subject: FW: Voluntary memo

-----Original Message-----

From: (b)(6) (b)(7)(C)
Sent: Wednesday, December 16, 2009 11:33 AM
To: Canty, Rachel E
Cc: (b)(6) (b)(7)(C)
Subject: Voluntary memo

Good Morning Rachel,

This is the version that went forth.

Thanks,

(b)(6) (b)(7)(C)



**U.S. Immigration
and Customs
Enforcement**

MEMORANDUM FOR: John T. Morton
Assistant Secretary

THROUGH: (b)(6) (b)(7)(C)
Acting Deputy Assistant Secretary, Operations

FROM: Marc A. Rapp /s/
Acting Director, Secure Communities

SUBJECT: Clarification of Voluntary Participation in IDENT/IAFIS
Interoperability

Purpose

To request your concurrence on a clarified definition of “voluntary” participation to explain that the choice that local law enforcement agencies have is whether or not they wish to be informed of the subject’s immigration status, not whether or not the fingerprints they collect will be sent to IDENT for an immigration status query.

Background

Since October 2008, the Secure Communities initiative has deployed Automated Biometric Identification System (IDENT)/ Integrated Automated Identification System (IAFIS) Interoperability to nearly 100 jurisdictions in eleven states across the nation. Through this deployment, criminal justice and immigration status information is shared among the Federal Bureau of Investigation (FBI), the Department of Homeland Security (DHS), and state and local law enforcement agencies. This allows for the identification and subsequent removal of dangerous criminal aliens. As part of the regular course of duty, when a local law enforcement agency takes a subject into custody, it sends the subject’s fingerprints to the FBI’s IAFIS database for a criminal records check. However, once IDENT/IAFIS Interoperability is activated, that submission also goes to US-VISIT’s IDENT database which in turn relays the immigration status of the subject to the FBI, ICE, and through the state identification bureau to the contributing local law enforcement agency.

To date, Secure Communities has stated in various arenas, including Congress, that state and local participation in IDENT/IAFIS Interoperability is voluntary. It may be inferred from this statement that if a jurisdiction elects not to participate, then IDENT/IAFIS Interoperability

would not be activated for that jurisdiction, and fingerprints submitted to IAFIS would not be submitted to IDENT. Recently, Secure Communities program management office leaders received a briefing from the FBI that indicated that IDENT/IAFIS Interoperability, including activation and automatic fingerprint submissions to IDENT, will be fully operational and mandatory by 2013. As a result, Secure Communities is seeking to officially clarify its definition of voluntary participation by state and local jurisdictions.

Discussion

Pursuant to government-wide information sharing initiatives, IDENT and IAFIS will be fully interoperable by 2013. FBI and US-VISIT have been working diligently on this effort and are confident that this milestone will be achieved on time. Once mandated interoperability is activated, all biometric data submitted to IAFIS will automatically also be routed to IDENT, and agencies submitting data will have no choice in the matter. In turn, both the FBI and ICE will receive the results. However, a local law enforcement agency will still be able to elect not to receive information about a subject's immigration status. Therefore, Secure Communities plans to explain its definition of "voluntary" participation by clarifying that law enforcement participation in *receiving the results* of an individual's immigration status is voluntary, although the fingerprints' submission to IAFIS and IDENT via interoperability is not. There needs to be a clear understanding that the law enforcement agency cannot elect whether the fingerprints they collect will be sent to IDENT for an immigration status query and that, in the event that a local law enforcement agency elects not to receive the immigration status information, it is still transmitted to ICE, the FBI, and the state identification bureau.

Recommendation

I recommend that you concur with the need to clarify the definition of "voluntary" participation to mean that local law enforcement agencies may elect to receive or not to receive information about a subject's immigration status, and that this definition **does not mean** that the fingerprints they collect will not be sent to IDENT for an immigration status inquiry.

Please indicate your decision below:

Approve _____ Disapprove _____

Modify _____ Needs more discussion _____

Attachment:

Appendix A: Relevant Laws, Plans, Directives, and Memoranda

- Intelligence Reform and Terrorism Prevention Act of 2004, Public Law 108-458, Section 1016, Information Sharing Environment
 - Ensures that DHS has a place in the Information Sharing Environment
- 2008 Department of Homeland Security Information Sharing Strategy
 - Emphasized technical solutions to facilitating information sharing
 - Encourages interoperability between DHS systems and those used by DHS partners, including federal partners
- 2007 Policy for Internal Information Exchange and Sharing (“One DHS”)
 - DHS personnel shall have timely access to information they need in order to perform their duties
- 28 U.S.C. § 534. Acquisition, preservation, and exchange of identification records and information; appointment of officials
 - U.S. Attorney General is authorized to collect criminal identification information, including fingerprints
 - Federal government has information sharing agreements with states and locals through a series of compacts
- 42 U.S.C. § 14615. Enforcement and implementation
 - The federal government can enforce compact agreements
- 42 U.S.C. § 14616. National Crime Prevention and Privacy Compact and 42 U.S.C. § 14611. Findings
 - There are reasons above and beyond “traditional” criminal justice information sharing needs, such as need to know immigrants status, that may necessitate information sharing between federal, state, and local entities
- 2005 Department of Homeland Security Appropriations Conference Report, Title II, Security, Enforcement and Investigations
 - It is necessary for IAFIS and IDENT to be interoperable