

# United States Senate

WASHINGTON, DC 20510

February 9, 2017

The Honorable John F. Kelly  
Secretary  
Department of Homeland Security  
Washington, DC 20528

Dear Secretary Kelly:

The Executive Order entitled *Enhancing Public Safety in the Interior of the United States* (January 25, 2017) contains a distressing provision that may have broad, negative implications for many living within our borders. Section 14 seeks to remove Privacy Act protections from immigrants who are not U.S. citizens or lawful permanent residents, including students, asylum seekers, foreign workers, and “dreamers.” This reverses a policy issued by the George W. Bush Administration providing Privacy Act protections to these immigrants in certain circumstances, which codified the longstanding practice of federal agencies. These Privacy Act exclusions could have a devastating impact on immigrant communities, and would be inconsistent with the commitments made when the government collected much of this information.

The Privacy Act of 1974 governs federal government databases and how federal agencies are tasked with collecting, maintaining, and sharing individuals’ personal information. This Act also allows individuals to request access to their own records and to make corrections to them, as necessary. Disclosure of any personal information is limited to when an individual gives written consent, subject to certain exceptions.

Although the Act makes exception for agencies to share information in law enforcement contexts, this Executive Order provision removes administrative hurdles, such as formal documentation, to this information exchange. This provision could also make it easier for executive agencies, such as Immigrations and Customs Enforcement, to share personal information on non-citizens with Congress, and even with the general public. Conversely, it could now be harder for those excluded from the Privacy Act to access and correct their own records. Section 14 might also endanger protections for U.S. citizens’ data when they travel abroad because it may cause foreign governments to remove reciprocal protections for data collected from Americans while entering their countries.


This provision recalls a disturbing moment in American history when the Census Bureau provided the names and addresses of Japanese-Americans to the Treasury Secretary to assist in finding those who had avoided interment. We should not be looking to recreate this tragic moment in history, nor to discourage reporting of personal information to the government for legitimate purposes.


We respectfully request your written response to the following questions by February 24, 2017:

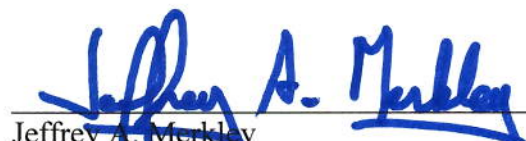
1. Does the Department of Homeland Security (DHS) plan to use agency databases, including the Deferred Action for Childhood Arrivals (DACA) database and Department of Health and Human Services databases, for immigration enforcement purposes or any other purposes? If yes, please list all databases, what information would be obtained from them, the procedures that will be followed to access this information, and how this information would specifically be used. In addition, please provide the Department's authority to use information from databases in this manner, including existing policies that place limits on such use.
2. Does DHS plan to release the private data of individuals affected by this provision to Congress or to the general public? If yes, for what purposes and by what means?
3. Will individuals affected by this provision be allowed unfettered access to their own immigration records without going through a Freedom of Information Act (FOIA) process? If no, why not? Will these individuals be allowed to request correction to their own records? If no, why not?
4. Does DHS intend to redact the names and personal information of individuals affected by this provision in cases where such information is requested through FOIA or other avenues?
5. How will DHS effectively identify citizens and lawful permanent residents to ensure that the Privacy Act as it still applies to them is enforced and covered individuals do not have their private information improperly released? Specifically, what policies will DHS apply to mixed databases containing the information of covered and non-covered individuals?
6. Will agencies go through a notice and comment period to implement this change in policy in order to provide an opportunity for feedback on potential concerns? In addition, will agencies be updating all Privacy Impact Assessments that are implicated by the change in policy?
7. How will agencies treat the information of individuals who are currently citizens or lawful permanent residents, but were previously one of the categories of individuals no longer protected under the Privacy Act? Will all of their information be protected, including information generated before they became citizens or lawful permanent residents?
8. What impact will this provision have on the Judicial Redress Act and the Privacy Shield agreement that the United States has with the European Union?
9. Does the provision change any of the protections that are given to individuals who are not green card holders or citizens under Presidential Policy Directive 28?
10. What is the estimated cost that will be needed to implement this change?

Thank you for your attention to this matter. If you have any questions, please have a member of your staff contact Joseph Wender in Senator Markey's office at 202-224-2742.

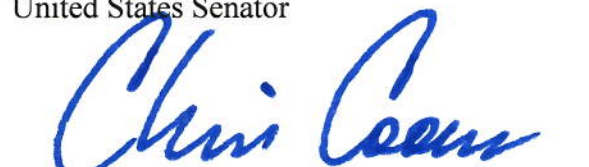
Sincerely,


  
Edward J. Markey  
United States Senator

  
Ron Wyden  
United States Senator

  
Jeffrey A. Merkley  
United States Senator

  
Al Franken  
United States Senator

  
Christopher A. Coons  
United States Senator

  
Mazie K. Hirono  
United States Senator