

JUNE 28, 2007

**RESOLUTION OF CANADA'S PRIVACY COMMISSIONERS & PRIVACY ENFORCEMENT
OFFICIALS**

PASSENGER PROTECT—CANADA'S AVIATION NO-FLY LIST

1. The *Aeronautics Act* does not provide a clear or adequate legislative framework to support the Passenger Protect Program as it has been described by Transport Canada in the Regulatory Impact Analysis Statement accompanying the Identity Screening Regulation;
2. Neither the *Aeronautics Act* nor any regulations passed under it: define or circumscribe the creation, administration, and maintenance of a no-fly list; provide for criteria for inclusion on a no-fly list; set out the procedures governing a listing decision; or establish a right to appeal a listing decision or seek redress for injuries associated with a listing decision;
3. The *Privacy Act* requires reform and offers no adequate protection nor remedies to meet the privacy risks resulting from this type of initiatives;
4. Transport Canada has not provided assurances that the Specified Person Lists will not be shared with foreign governments or their agents;
5. The Program involves the collection, use, and disclosure of excessive as well as sensitive personal information of travelers by Transport Canada, law enforcement, intelligence agencies, air carriers, and others;
6. The Program creates real risk of harm to individuals as a result of inaccurate or unreliable information, noting that the U.S. Department of Homeland Security recently acknowledged a significant concern about the quality of data and its underlying intelligence in U.S. lists;
7. The Program involves the secretive use of this information in arriving at determinations impacting on the legal rights and interests of persons traveling by air within Canada and abroad including their fundamental rights and freedoms;
8. The Program contemplates the Department of Transport establishing a “reconsideration” office that cannot and will not provide for a legally enforceable right of appeal, independent adjudication, the right to know and answer the case to meet, a right to an oral hearing, the right to written reasons, or the right to compensation for out of pocket expenses or other losses or injuries;
9. Transport Canada has indicated that air carriers operating in Canada are using and may use the no-fly lists of other unspecified countries, as well as the no-fly lists of the United States of America;

10. Given the purpose of the no-fly list, which has an international dimension, it is possible that the information could be compelled under foreign law, despite Canadian privacy and other laws.

RECALLING THAT:

1. Privacy is a fundamental human right related to and interdependent with other fundamental human rights including freedom of association and expression, the right to mobility, the right to life, liberty, and security of the person and the right not to be deprived thereof except in accordance with the principles of fundamental justice; and
2. In September 2003, the 25th International Conference of Data Protection and Privacy Commissioners passed a “Resolution concerning the Transfer of Passengers’ Data”, calling on countries to pay full regard to data protection principles in their responses to terrorism including those involving the regular international transfer of personal data;
3. In September 2003, the 25th International Conference of Data Protection and Privacy Commissioners also passed a “Resolution on Data Protection and International Organizations”, calling on international and supra-national bodies to provide for strong privacy protections in their handling of personal information and their establishment of standards, rules or common practices which affect personal data handling within the jurisdictions of their constituent members;
4. In September 2005, the 27th International Conference of Data Protection and Privacy Commissioners issued the “Montreux Declaration” which recognized “the need in a democratic society to efficiently fight terrorism...., but reminding that this purpose can be achieved in the best possible way when human rights and in particular dignity are respected;
5. In November 2006, the 28th International Conference of Data Protection and Privacy Commissioners issued a “Closing Communique” which emphasized that:

“...unseen, uncontrolled or excessive surveillance activities also pose risks that go much further than just affecting privacy. They can foster a climate of suspicion and undermine trust. The collection and use of vast amounts of personal information by public and private organizations leads to decisions which directly influence peoples’ lives. By classifying and profiling automatically or arbitrarily, they can stigmatize in ways which create risks for individuals and affect their access to services. There is particularly an increasing risk of social exclusion.”

THE UNDERSIGNED CANADIAN PRIVACY COMMISSIONERS AND PRIVACY ENFORCEMENT OFFICIALS CALL ON:

1. The Government of Canada and the Parliament of Canada to:
 - (a) Refer the Program to a Parliamentary committee for comprehensive public scrutiny, debate and report to Parliament on:

- (i) the justification for the Program, including any evidence that the Program is reasonably likely to assist in the detection, prevention or investigation of terrorist threats to aviation security;
- (ii) the use of the no-fly lists of other countries on flights originating in and passing through Canadian airports;
- (iii) the impact of no-fly lists on fundamental rights and freedoms; and
- (iv) the adequacy of the current legal framework, any inadequacies of the framework and recommendations respecting any inadequacies;

(b) Enact comprehensive legislative criteria, procedures and powers to govern:

- (i) the use of Canadian and foreign no-fly lists in Canada;
- (ii) the listing of persons on Canadian watch lists;
- (iii) Independent adjudication to ensure that individuals have legal rights to appeal listing decisions, to be removed from watch lists and to obtain compensation for injuries flowing from listing decisions;

(c) Confer on an appropriate oversight body that is independent of government the duty and function of regularly reviewing and reporting on the use and operation of no-fly lists (including the Program) in Canada, their capacity to promote public safety, and their impact on fundamental rights and freedoms; and

(d) Suspend the operations of the Program and the Identity Screening Regulations, pending the completion of the foregoing or, in the alternative, ensure that the Program functions under strict ministerial scrutiny with regular public reports to Parliament until such time as Parliament completes the foregoing review and report.

2. The International Civilian Aviation Organization and the International Air Transport Association to:

- (a) Defend and advance privacy principles, transparency and strong privacy protections in their establishment of any standards, rules or common practices governing the screening of travelers using watch lists or other passenger assessment programs which affect personal data handling within the jurisdictions of their constituent members;
- (b) Ensure that travelers are given timely written notice of which no-fly lists are in operation on each airline or air route, with the notice including at a minimum a clear description of the purposes of any related collection, use or disclosure of personal information, the contact information for the government agencies with legal responsibility for the creation and administration of the listing regime, and information setting out the nature of and contact information for available administrative and legal redress mechanisms; and
- (c) Include representation from the privacy and data protection community.