

March 21, 2017

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

The Honorable Jeff Sessions
Attorney General
Department of Justice
Washington, DC 20530

Re: Data Provisions in Executive Orders

Dear Secretary Kelly and Attorney General Sessions:

The undersigned organizations committed to government openness and accountability, privacy, human rights, civil rights, and immigrant rights, write to express concern about certain provisions in the recent Executive Orders related to immigration and refugees.¹ The provisions call for the collection and dissemination of personal information that selectively targets certain populations and reverses decades old policy that provides certain Privacy Act protections to immigrants and foreigners.² Based on agency implementation memos,³ it appears that these provisions are being implemented in a manner that is unlawful and inconsistent with federal information quality guidelines, raising serious privacy, transparency, and accountability concerns.

We ask that you modify the implementation memos to ensure that the collection and dissemination of information required by the Orders is complete, unbiased, and consistent with federal information quality guidelines. The data collected as a result of these provisions also must be disclosed to the public in a manner consistent with privacy safeguards, open data, and data quality requirements. It is also imperative that your agencies carry out the provisions in the Orders in a manner that is consistent with all applicable laws and regulations, including proper public notice and comment procedures. We oppose the Privacy Act exclusions included in the January 25th Order, and urge you to rescind these provisions. However, should you go forward, existing law limits how you may implement such changes, and, among other things, requires issuance of System of Records Notices (SORNs) and privacy impact assessments.

Disclosure Provisions

Information collected and published by an agency must convey a sense of utility, objectivity, and integrity; as currently written, the existing provisions in the Orders do

¹ See Executive Orders [13780](#) (revised Mar. 6, 2017); [13768](#) (Jan. 25, 2017); [13767](#) (Jan. 21, 2017). Human rights groups emphasize the severe human rights consequences of these EO's. See, *i.e.* Human Rights Watch, [US: Trump's New Refugee Order Renews Old Harms](#), Mar. 6, 2017.

² See [Letter from the ACLU to the WH counsel regarding the privacy implication of EO 13768](#), Feb. 28, 2017.

³ *Memorandum for the Secretary of State, the Attorney General, the Secretary of Homeland Security, The White House*, Mar. 6, 2017.

not meet this standard.⁴ The Orders include a number of data collection and reporting requirements that target information on foreign nationals and non-U.S. citizens residing or entering the United States.⁵ Once collected, this data will have no frame of reference and, accordingly, will not give policy makers or the public a sense of how it compares to all travelers or all U.S. persons. The problem is exacerbated by the fact that, beyond the mandatory information requirements, Executive Order 13780 also gives sweeping authority to DHS and the DOJ to determine which additional categories of information and types of data they choose to collect, without providing clear definitions for such categories.⁶

The Office of Management and Budget also requires agencies to present data in an open format, complete with methodology for the information collection and dissemination and a process for the public to offer feedback and corrections.⁷ This is vital for ensuring that data is presented in an unbiased manner and offers an accurate picture to the public.⁸

Further, a provision of Executive Order 13780 calls for the disclosure and dissemination of information related to acts of gender-based violence against women, including “so-called ‘honor killings’ committed by foreign nationals.”⁹ Rather than offering a way to systematically track gender-based violence, for citizens and non-citizens alike, this order raises serious concerns in regard to protecting victims’ rights and privacy-protected sensitive information while potentially preventing immigrant women from reporting abuse.

Privacy Act Provisions

Moreover, the implementation of the Orders must adhere to the requirements of the Paperwork Reduction Act.¹⁰ Before implementing these new information collection and dissemination policies, DHS must provide public notice, and implement a public comment period in accordance with the Administrative Procedures Act.¹¹ Agencies are

⁴ [Policies for Federal Agency Public Websites and Digital Services](#), Section 11, Office of Management and Budget, M-17-06, Nov. 8, 2016.

⁵ Sec. 11, *Executive Order 13780*; Sec. 14, *Executive Order 13767*.

⁶ Sec. 11 (iv), *Executive Order 13780*.

⁷ [Policies for Federal Agency Public Websites and Digital Services](#), Section 4, Office of Management and Budget, M-17-06, Nov. 8, 2016.

⁸ On March 20, ICE issued its first weekly report, pursuant to Sec. 9(b) of EO 13768, on detainer requests it said had been refused by non-federal law enforcement agencies. The information released by ICE, however, is limited and selective; at the same time, ICE is withholding other more comprehensive detainer-by-detainer information that ICE previously released in response to Freedom of Information Act (FOIA) requests. See [ICE Refuses To Release More Comprehensive Detainer Data](#), TRAC, Mar. 20, 2017.

⁹ Sec. 11 (iii), *Executive Order 13780*.

¹⁰ The Paperwork Reduction Act, 44 U.S.C. § 3506(d)(3).

¹¹ 44 U.S.C. § 3506(c)(2).

also required to update all Privacy Impact Assessments that are implicated by this policy change.¹²

The implementation memos, however, indicate that this provision is being implemented without issuance of System of Records Notices (SORNs), privacy impact assessments, or appropriate consideration of other laws that protect individuals' privacy.¹³ Rather, these exclusions seek to remove certain Privacy Act protections from immigrants who are not U.S. citizens or lawful permanent residents, reversing decades-old policy followed by both the Bush and Obama administrations.¹⁴ Failure to comply with these legal requirements heightens the risk of federal agencies improperly disclosing personal information of citizens and immigrants, including students, asylum seekers, victims of gender-based abuse, foreign workers, and DACA recipients.

The Executive Orders on immigration raise substantial concerns about privacy protection and government accountability. Public data allows the public to hold its government accountable – but that is only possible if government information is released in a complete, consistent, unbiased, and open manner. All of these measures are integral to ensuring that the collection, dissemination and disposition of information by your agencies is carried out in accordance with the law and consistent with the tenets of government openness and accountability.

Thank you for your attention to this matter. If you have any questions, please contact Lisa Rosenberg, Executive Director of OpenTheGovernment, at lrosenberg@openthegovernment.org, or 202.332.6736.

Sincerely,

Advocacy for Principled Action in Government
African American Ministers In Action
American-Arab Anti-Discrimination Committee
American Civil Liberties Union
American Library Association
Bill of Rights Defense Committee/Defending Dissent Foundation
Center for Science and Democracy at the Union of Concerned Scientists
Detention Watch Network
Electronic Privacy Information Center
Government Accountability Project

¹² Privacy Impact Assessments (“PIAs”) are required by Section 208 of the E-Government Act for all Federal government agencies. See The Department of Justice, [E-Government Act of 2002](#), updated June 18, 2014, and The Department of Homeland Security, *Memorandum Number: 2008-02 DHS Policy Regarding Privacy Impact Assessments*, December 30, 2008.

¹³ *Memorandum for the Secretary of State, the Attorney General, the Secretary of Homeland Security, The White House*, Mar. 6, 2017.

¹⁴ Sec. 14 of *Executive Order 13768*.

Immigrant Defense Project
Interfaith Worker Justice
Legal Aid Justice Center
Liberty Coalition
National Association of Social Workers
National Center for Transgender Equality
National Council of Jewish Women
National Immigration Law Center
National Immigration Project of the National Lawyers Guild
National Latina Institute for Reproductive Health
National LGBTQ Task Force
OpenTheGovernment
Project On Government Oversight
Resilient Communities Program, New America
Society of American Archivists
Southeast Asia Resource Action Center
Sunlight Foundation

Individuals:

Alvaro Bedoya, Executive Director, Center for Privacy and Technology at Georgetown University*
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Katharina Hering, Concerned Archivists Alliance

*Affiliation for identification purposes only