



August 27, 2007

Mr. Phillip M. Heneghan  
Chief Privacy Officer  
United States Agency for International Development  
1300 Pennsylvania Avenue, NW  
Office 2.12-003  
Washington, DC 20523-2120

BY ELECTRONIC MAIL TO: [privacy@usaid.gov](mailto:privacy@usaid.gov)

**Re: Notice, Privacy Act System of Records, Federal Register, Vol. 72, No. 136, July 17, 2007, Pages 39041-39044**

Dear Mr. Heneghan,

I am writing you on behalf of OMB Watch, a national nonprofit that promotes government accountability, transparency and citizen participation in public issues and decision-making. We appreciate the opportunity to submit comments on USAID's proposed Partner Vetting System (PVS), which would require applicants for USAID funds to submit extensive personal information about leaders and employees of nongovernmental organizations (NGOs) applying for USAID funds.

While we support USAID's objective of preventing its funds from supporting terrorism, we respectfully request that USAID withdraw the proposed PVS program in favor of a consultative process with NGOs that partner with USAID on its programs, as well as organizations such as OMB Watch that have a general interest in these issues. Such a process can address mechanisms to protect USAID funds that would be both more effective and less subject to mistake and abuse.

Our objections to the proposed PVS program are based on our research and advocacy relating to charities and counterterrorism programs. We have found that systems such as PVS tend to create barriers to effective delivery of aid programs, discourage small NGOs from applying for grants and alienate international partners without effectively addressing national security concerns. The proposed PVS program threatens to have all the negative results of such misguided efforts without the positive. In particular, we are concerned about:

- The drawbacks of using government watchlists as a vetting mechanism in conjunction with PVS: The inaccuracies in these lists are widely known, and little has been done to correct

---

*Celebrating 20 years: Promoting Government Accountability and Citizen Participation - 1983 - 2003.*

1742 Connecticut Ave NW  
Washington, DC 20009



tel: 202.234.8494  
fax: 202.234.8584



email: [ombwatch@ombwatch.org](mailto:ombwatch@ombwatch.org)  
web: <http://www.ombwatch.org>

them. The PVS system will generate many more false positives than real investigative leads.

- The secrecy surrounding the results of the PVS process: Grant applicants would have no idea whether or not their information has generated a "hit", no opportunity to present information to correct false positives, and no idea what the real reason for denial of a grant application may be.
- The inevitable creation of a secret USAID blacklist generated from checks against the PVS system and government watchlists
- The overly vague description of vetting for "individuals associated with terrorism"
- The general ineffectiveness of massive data gathering as a means of preventing terrorist attacks
- The lack of legal authority for USAID to implement the program and thereby collect extensive personal information about NGO leaders and employees that it is not entitled to under the Privacy Act

### **Government Watchlists and PVS**

The stated intention of PVS is to avoid purposeful and inadvertent diversion of USAID funds to terrorist activities by collecting detailed information about partnering organizations; however its ability to deliver on that promise is severely crippled by the current inaccuracy of government watchlists. Although the announcement does not describe the vetting process USAID will use, experience suggests that collected information will be referenced against the Office of Foreign Asset Control (OFAC) listing of Specially Designated Nationals and the Terrorist Screening Center's (TSC) list. If this is indeed the case, the plan should be re-considered for the following reasons:

#### *Both the OFAC and TSC lists are riddled with errors:*

There are numerous reports of cases of mistaken identity or "false positives" on government watch lists. In light of such common false positive matches, USAID should exercise extreme caution in comparing PVS generated information against current watchlists.

One of the better known watchlist errors includes the listing of the alias of Anthony Romero (Antonio Romero), the executive director of the ACLU, on the OFAC listing in 2004. But there are many more lesser known cases. According to a March 2007 report released by the Lawyers' Committee for Civil Rights of the San Francisco Bay Area (LCCR), one of the major shortcomings of the OFAC list is its extensive inclusion of common Muslim or Latino names, such as "Mohammed Ali" or "Carlos Sanchez."<sup>1</sup> Other common names such as, Patricia, Lopez, Diaz, Lucas, Gibson, and Abdul have also generated "false positives" with the OFAC listing. The LCCR report describes examples of several ordinary citizens who were flagged as suspected terrorists when attempting to purchase homes, apply for jobs or health insurance.

---

<sup>1</sup> *The OFAC List: How A Treasury Department Terrorist Watchlist Ensnarers Everyday Consumers*, Lawyers' Committee for Civil Rights of the San Francisco Bay Area, March 2007.

According to a recent article in the *Washington Post*, the federal government's terrorist screening database flagged Americans and foreigners as suspected terrorists almost 20,000 times in 2006. But only a small fraction of the people flagged were ever questioned, arrested or denied entry into the United States<sup>2</sup>. The rest were apparently false positives. This database, maintained by the Terrorist Screening Center, consolidates the TSC and ten other government watchlists.

If USAID intends to use these flawed watchlists to ascertain which persons or organizations it will partner with, then the numerous errors repeatedly made by the TSC will be unnecessarily replicated.

#### *Secrecy Compounds Error:*

In its July 20, 2007 *Federal Register* announcement,<sup>3</sup> USAID said it will not "confirm or deny whether an individual 'passed' or 'failed' screening." The notice said this secrecy is necessary to protect the government's intelligence and counterterrorism missions. This denies a grant applicant the right to know when anyone associated with it is flagged by the watchlists, and the opportunity to present information that could eliminate a false positive.

This secrecy is not necessary to protect national security. USAID can notify a grant applicant of a hit on its lists, without revealing the source of its information. Other agencies have created such programs, although they are of limited utility. TSC's "redress mechanism" requires that travelers submit a form to the Department of Homeland Security, along with copies of identification, to resolve erroneous matches. However, if a person has been erroneously listed by a specific government agency, he/she can only be cleared by that particular agency. This presents yet another obstacle for innocent travelers since the DHS does not reveal which agency originally blacklisted the person in the first place.

While recent redress mechanisms to the TSC watchlist have allowed some incorrectly listed persons to be added to TSA's "cleared" list, there remains a considerable amount of erroneous matches/information on both the TSC and OFAC watchlists<sup>4</sup>.

#### *Creation of a Secret USAID Blacklist:*

PVS will more than likely result in the creation of a secret USAID blacklist of ineligible grant applicants, based on PVS results. Organizations and individuals erroneously listed as having ties with terrorism will have no way of knowing they are deemed as such, or why. Innocent and well deserving grantees will have no formal means of appealing such decisions.

### **Unconstitutionally Vague Standard: "Individuals Associated With Terrorism"**

The proposed overly vague standard of vetting for "individuals associated with terrorism" further complicates the problems with PVS. It is not clear whether or not PVS checks would be limited to lists of people and entities officially designated as terrorists, or whether the connection would have

---

<sup>2</sup> Nakashima, Ellen, *Terror Suspect List Yields Few Results*, *Washington Post*, August 25, 2007; Page A01.

<sup>3</sup> Vol. 72, No. 139, July 20, 2007, Pages 39768 - 39770

<sup>4</sup> Privacy and Civil Liberties Oversight Board, *Progress in Improving Watchlist Quality and "Redress" Procedures*, <http://www.privacyboard.gov/press/20070402.html>, April 2, 2007.

to be direct or remote. There is no definition of "associated with" terrorism in the proposed program or in the law.

One court has held this overly vague term to be unconstitutional. In *Humanitarian Law Project v. United States Department of Treasury*<sup>5</sup> a federal district court in Los Angeles struck down provisions in Executive Order 13224 allowing designation of people and groups "otherwise associated" with terrorism because it "contains no definable criteria for designating individuals and groups... [and] imposes penalties for mere association." The same problem applies to the PVS program. USAID should not base its vetting program on an unconstitutional standard.

### **There are more effective ways to identify and avert terrorists**

The PVS proposal falls into a trap that Mike German, a former undercover FBI agent and counterterrorism expert, says should be avoided. He points out that,

*We collect vast amounts of data like stacks of hay in the hope that the needle we're looking for will somehow be found among the chaff. But putting our energies into these misguided efforts is exactly what the terrorists want us to do, and if we read what they wrote we would know this fact. Ignoring their writings and our own history is the true failure of U.S. counterterrorism policy.*<sup>6</sup>

### **USAID Lacks Legal Authority to Implement PVS**

USAID does not have the authority to impose requirements over and above those in Office of Management and Budget Circular A-110 without statutory authority or an Executive Order authorizing it. Neither exists in this case.<sup>7</sup>

### **Conclusion**

Considering the limited use of the information collected via PVS it becomes painstakingly clear that although admirable in its aim, PVS is a flawed approach that should be reconsidered in a process that includes input from the nonprofit sector.

Yours truly,



Kay Guinane, Director  
Nonprofit Speech Rights

---

<sup>5</sup> Opinion online at <http://ccr-ny.org/v2/reports/docs/USDCDoc.pdf>

<sup>6</sup> German, Mike. *Thinking Like A Terrorist*, Potomac Books, © 2007.

<sup>7</sup> 22 CFR 226.4 and 226.14

