

Briefing on Department of Homeland Security proposed rules for social media screening Privacy Act of 1974, System of Records, Docket Number: DHS-2017-0038

Presented to City of Seattle Community Technology Advisory Board for consideration
October 10, 2017
By: Charlotte Lunday

Overview

This [proposed rule](#) updates and formalizes screening processes of all immigrants in the U.S. The Department of Homeland Security is responsible for determining eligibility for immigration benefits and processes applications for asylum, visas, and naturalization. The Department of Homeland Security keeps “Alien Files” on each immigrant to the United States—including lawful permanent residents and naturalized citizens. These files contain personally identifiable information such as names, addresses, social security numbers, and employment, family, and travel histories. The rule will update the list of information DHS intends to collect and the processes for storing and sharing the information. Among the information DHS seeks in the update are “social media handles and aliases, associated identifiable information, and search results.”

[According to the New York Times](#), following the San Bernardino shooting, the Obama administration began pilot programs asking individuals to voluntarily provide social media information, and the screening process for Syrian refugees uses social media information when the refugee in question is flagged in an intelligence database or the refugee raised questions during immigration interviews. In a [comment](#) to a similar rule proposed by the Department of State, the Brennan Center for Justice—a nonpartisan policy think tank based out of NYU—and several other human rights organizations cited a [DHS Office of Inspector General report from February 2017](#) describing current pilots as lacking “metrics to measure the programs’ effectiveness, concluding that existing pilots had provided little value in guiding the rollout of a department wide social media screening program.”

Despite the unclear success of these pilot programs, the Trump administration seeks to expand the programs and the program could include lawful permanent residents and naturalized citizens.

Currently, the language of the proposed rule is extremely vague. It is unclear how “social media” will be defined, what “associated identifiable information” is, or how DHS proposes to obtain search results, or even whether DHS meant to obtain search histories rather than search results. It’s also not clear what DHS intends to use this information for, or how cooperative immigrants are required to be in these screening programs.

Timeline

The deadline for comments is October 18th.

Opportunities for Action

It does not seem likely that CTAB could research, draft, and approve a comment of its own. However, I have reached out to contacts at the Brennan Center for Justice who will forward a draft of a comment the Center for Democracy and Technology (CDT) intends to submit when CDT is ready for other organizations to sign onto the comment.

Because little is known about the department policy or how social media information will be used, CTAB’s efforts to influence the policy may be more impactful by:

- Submitting Freedom of Information Act requests to obtain clarification about screening program policies (costs may be involved, but fee waivers are possible);
- Using any information gained to write op-eds to inform the public;
- Potentially filing a petition for reconsideration of the rule depending on any program specifics obtained.
- Hosting community forums to discuss "[Digital Life Skills](#)," including Privacy Management and Digital Footprints; and
- Lobbying city and state government leaders to obtain information and leverage influence where CTAB can't.

On this last note, I am brainstorming with contacts at the Brennan Center for what would be most effective. Off the top of my head, however, I believe our members of Congress could more easily gain information from the DHS than we could.