

U.S. Department of Homeland Security  
Washington, DC 20229



U.S. Customs and  
Border Protection

JUL 05 2007

MEMORANDUM FOR: DIRECTORS, FIELD OPERATIONS  
OFFICE OF FIELD OPERATIONS

FROM: Assistant Commissioner  
Office of Field Operations

SUBJECT: Border Search/Examination of Documents, Papers, and  
Electronic Information

The purpose of this memorandum is to provide advance notice of a comprehensive strategy for examining, copying, and disseminating documents and information in electronic devices acquired from passengers as CBP performs its law enforcement functions. The strategy includes three phases:

1. Provide interim operational guidance with respect to the review and retention of paper documents as well as information in electronic devices. The attached guidance was authored by the CBP Office of Chief Counsel and the DHS Office of General Counsel.

[Redacted]

For permanent guidance, the Office of Field Operations is engaged with the Office of Anti-Terrorism and the Office of Chief Counsel in authoring a comprehensive update to CBP Directive 3340-006A.

- 2.

[Redacted]

- 3.

[Redacted]

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This strategy will be implemented in coordination with Immigration and Customs Enforcement (ICE), both at a Headquarters and Field Office level. As phase two is

implemented, [REDACTED] shall coordinate with ICE and other appropriate agencies to establish local mechanisms to ensure thorough case development results from use of the [REDACTED]. ICE has [REDACTED], therefore you should consider this factor when developing local procedures. All Field Offices should also be aware that ICE has issued its own interim guidance regarding authorities for examining, copying, and disseminating documents and information from electronic devices. As part of the investigative process, ICE or other agencies may exercise independent authorities after CBP properly receipts evidence/property to them.

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OFO, Tactical Operations Division will work closely with the Field Offices receiving the equipment to coordinate training. It is expected that a group of select CBP Officers be identified from existing [REDACTED] teams to operate the equipment and work with responding agencies.

For additional information, please contact the Executive Director, National Targeting and Security at (202) 344-1850.

[REDACTED]

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J.P. Jayson P. Ahern

Attachments

**Interim Procedures for Border Search/Examination of Documents, Papers, and Electronic Information** [REDACTED]

The purpose of this document is to clarify operational guidance with respect to the review and retention of paper documents as well as information in electronic devices (e.g., laptop computers, cell phones, MP3 players) and electronic storage media (e.g., DVDs, CDs, diskettes, memory cards/sticks, thumbnail drives) (collectively, "electronic devices")<sup>1</sup> [REDACTED]

CBP's information handling authority under the customs laws is currently reflected in CD 3340-006A, *Procedures for Examining Documents and Papers*. CBP also has broad authority respecting documents under the immigration laws, which has not been fully integrated into CBP policy.

[REDACTED]

[REDACTED] These interim provisions incorporate CBP authority under customs, immigration, and other laws.

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**1. Initial Review.**

Absent individualized suspicion, paper documents and electronic devices may be reviewed in the course of administering customs, immigration, or other laws enforced or administered by CBP.<sup>3</sup>

**2. Copying and Transmitting**

a. Consistent with existing policy, where technical assistance is necessary to determine the existence of a violation of customs, immigration, or other law enforced or administered by CBP, officers may copy and transmit documents

<sup>1</sup> The guidance in this memorandum does not pertain to notes, reports, or other impressions recorded by CBP officers in the course or as the product of a border encounter.

<sup>2</sup> [REDACTED]

<sup>3</sup> Note that existing provisions from CD 3340-006A, and the International Mail Operations and Enforcement Handbook, CIS HB 3200-006A, remain in place regarding the opening of sealed letter class mail, including the prohibition against reading correspondence therein. With respect to information other than letter class mail, officers may read correspondence that appears to bear upon a determination under the laws enforced or administered by CBP. In addition, existing guidance from CD 3340-006A remains in place, [REDACTED] regarding attorney-client privileged information; any claim of attorney-client or attorney work product privilege with respect to information encountered in the border context should be coordinated with the appropriate Associate/Assistant Chief Counsel.

and information in electronic devices to an appropriate agency or entity *without individualized suspicion*. This may be the case where translation is required to decipher the contents of a document.

b. Except as provided in the preceding subsection, officers may copy and transmit documents and information from electronic devices only where there is *reasonable suspicion* that [REDACTED] the information may relate to, terrorist activities or other unlawful conduct. Reasonable suspicion is not required if [REDACTED] consents to copying and transmission.

[REDACTED]

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**3. Retention, Seizure, and Destruction.**

a. CBP may retain relevant information in DHS and CBP record systems such as TECS, the immigration A-file system, or related systems, to the extent authorized by law. Nothing in this policy guidance alters existing policies and procedures for retaining documents and information in the immigration A-file system or related systems.

b. Copies of documents or information from electronic devices provided to another agency or entity for the purpose of rendering technical assistance shall be returned to CBP as expeditiously as possible.<sup>4</sup> Where information is returned to CBP and determined to be of no relevance to customs, immigration, or any other laws enforced or administered by CBP, that information will be destroyed.

c. There may be situations where an agency or entity, in furtherance of its respective mission, wishes to retain or disseminate copies of the information provided to it by CBP for technical assistance. Any such retention and/or dissemination will be governed by that agency or entity's existing legal authorities and policies, including concerning periodic reviews of retained materials to evaluate and ensure continued relevancy.

\* \* \*

The above guidance does not alter the authority or ability of officers to seize, disseminate, or retain documents and information in electronic devices [REDACTED] where there is probable cause to believe that such

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<sup>4</sup> This period of time, unless otherwise approved by the DFO in consultation with the appropriate Associate/Assistant Chief Counsel, shall be not longer than 15 days from transmittal to the assisting agency, with that time period subject to extensions, in increments not longer than 7 days that are requested and justified by the assisting agency.

documents or information constitute evidence of a crime or are otherwise subject to seizure and forfeiture.

This guidance is intended to augment and clarify paragraphs 6.5.2, 6.5.3, and 6.9.11 of CBP Directive 3340-021B, *Responding to Potential Terrorists Seeking Entry Into the United States* (September 7, 2006). CBP officers and agents, in [REDACTED] and otherwise, must give particular consideration to this guidance in determining how to implement [REDACTED] [REDACTED] from other agencies regarding the collection of information from a given traveler. Field offices are responsible for the development of an appropriate mechanism to ensure the proper tracking of information processed pursuant to this memorandum. No traveler information may be reviewed or retained in contravention of the above provisions, unless approved in advance by the Director, Field Operations in consultation with the appropriate Associate/Assistant Chief Counsel.

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