

## Meeting Summary for the 7 May 2009 ITDS Legal Policy Meeting

Larry Castelli, Chief of the Privacy Act Policy and Procedures Branch with U.S. Customs and Border Protection (CBP), Office of International Trade, Regulations and Rulings presented CBP's proposal for addressing Participating Government Agency (PGA) concerns regarding third party sharing. Mr. Castelli stated that CBP has crafted a position that broadens the definition of third parties to allow PGAs to identify partners or legal responsibilities in the agency's Data Memorandum of Understanding/Agreement (MOU/A) to reduce the burden of third party requests for routine and regular sharing of information. Specifically, he prescribed that PGAs can:

1. Identify other agencies (e.g., federal, tribal, state, local, and foreign entities – not limited to agencies using ACE or participating in ITDS) that a PGA would normally partner with to accomplish their mission that are currently defined by MOU/A, contract, or other written documentation
2. Identify laws, regulations, or rulings that provide authorization for third party sharing

Mr. Castelli provided an excerpt from the Federal Motor Carrier Safety Administration's (FMCSA) CBP Automated Commercial Environment (ACE) Data MOU as an example of acceptable language to identify third party partners:

- 5.1.4 FMCSA agrees that the information obtained from CBP will only be used solely for enforcing FMCSA laws and regulations and will not be disseminated to third parties outside of the FMCSA without the express written permission of CBP.

Appendix F

### GLOSSARY

"Third Parties" – Generally, individuals other than the signatory agencies or departments. For the purposes of this agreement, the definition of third parties will exclude those authorized officials performing motor carrier safety activities. These activities include, but are not limited to, access required for: data inspections, investigations, resource allocation and planning, and other law enforcement/ compliance activities.

Within Appendix A of the Data MOU, the PGA should provide the partner, legal authority, and specific data or entire business process area (e.g., Manifest, Entry, Entry Summary), if appropriate, to document their access to data. However, access to data is not necessarily limited to the data the agency can provide clear legal authority for. Mr. Castelli agreed that a PGA may present a business case to CBP for possible approval to access additional data outside of their documented legal authority that would improve their ability to accomplish their agency's mission.

In response to a question regarding third party sharing of data in cases where legal authority is shared by an agency and CBP, Mr. Castelli stipulated that CBP has always take the position that Entry information is confidential, protected by the Trade Secrets Act, and therefore would continue to review those requests on a case by case basis. The approval process typically takes one to two weeks but can be fast-tracked, when necessary.