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Congress of the United States

May 21, 2007

Committee on Education
and the Workforce

Permanent Select Committee
on Intelligence
Ranking Member
Subcommittee on Intelligence Policy

Co-Chair
Children's Environmental Health Caucus
Member
Congressional Arts Caucus
Internet Caucus
Law Enforcement Caucus
Historic Preservation Caucus

The Honorable Carlos Gutierrez
Secretary of Commerce
US Department of Commerce
Washington, D.C. 20230

Dear Secretary Gutierrez:

Homeland Security Presidential Directive #12 (HSPD-12) as written requires the creation of a government-wide standard for secure and reliable forms of identification. I am informed that your department has elected to interpret HSPD-12 as allowing for highly intrusive background investigations of employees, who risk losing their jobs if they fail to comply with these unprecedented invasions of their privacy.

Section Six of the directive states that it will be implemented "consistent with ... the Privacy Act (5 U.S.C. 552a)." By having agencies share employee fingerprints and other information with the FBI, current implementation violates that portion of the U.S. Code, which states:

"No agency shall disclose any record which is contained in a system of records by any means of communication to any person, or to another agency, except pursuant to a written request by, or with the prior written consent of, the individual to whom the record pertains."

The term "record" is defined in this law to include fingerprints, financial transactions, and medical history.

Many government employees and contractors from several Federal agencies have contacted me with serious allegations about how HSPD-12 is being implemented (e.g., the attached letter). Notably, many of these civil servants do no classified or security-related work. The practices you have established require that employees and contractors who need to be given IDs must submit to unrestricted background checks, including unprecedented reviews of their financial and medical histories. The fingerprints of these civil servants are being taken and commingled with the FBI's criminal database. After refusing to sign a waiver allowing the highly invasive background check, a long-time IT employee at one government agency was fired as a security threat and subsequently denied unemployment benefits.

Section Seven of the Directive states that its implementation must not hurt the functionality of Federal departments and agencies, yet it is clear from this case and others that great harm is already being done.

I have received several complaints from scientists who fear these expensive and distrustful practices will make it significantly harder to retain and attract necessary talent. At a time when Congress and the President have agreed that our sustained international competitiveness depends on the vitality of our scientific enterprise, I would be concerned if scientists are being discouraged from federal employment by unjustifiable invasiveness and potential violations of their civil liberties. Science thrives only in an open and free environment; it appears to me that current implementation of the Directive undermines those very principles.

The United States is absolutely dependent on having the best possible people in civil service. By fostering an environment of extreme distrust and disregard for privacy, the implementation of HSPD-12 is costing us valuable human resources and, worse, runs contrary to the values and laws we have long held as a nation. I therefore request a meeting to address the changes necessary to make implementation of this Directive an asset instead of a liability. Please respond with all due haste, as compliance deadlines are already upon us.

Sincerely,

A handwritten signature in black ink that reads "Rush Holt". The signature is written in a cursive, flowing style.

RUSH HOLT
Member of Congress

cc: NASA Administrator Michael Griffin
cc: GSA Administrator Lurita Alexis Doan

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