U.S. Department of Justice

Office of Legislative Affairs

March 19, 2008

The Honorable Joseph I. Lieberman
Chairman
Committee on Homeland Security and Governmental Affairs
United States Senate
Washington, D.C. 20510

Dear Mr. Chairman:

Please find enclosed responses to questions arising from the October 24, 2007, appearance of Terrorist Screening Center Director Leonard Boyle before the Committee at a hearing entitled "Watching the Watch List: Building an Effective Terrorist Screening Center." We hope that information is of assistance to the Committee.

Please do not hesitate to call upon us if we may be of additional assistance. The Office of Management and Budget has advised us that from the perspective of the Administration's program, there is no objection to submission of this letter.

Sincerely,

Brian A. Benczkowski
Principal Deputy Assistant Attorney General

Enclosure

cc:    The Honorable Susan M. Collins
Ranking Minority Member

**Committee on Homeland Security and Governmental Affairs**
**United States Senate**

**"Watching the Watch List:**
**Building an Effective Terrorist Screening Center"**

**October 24, 2007**

**Responses of the Federal Bureau of Investigation to Questions for the Hearing Record**

### Questions Posed by Senator Lieberman

1.       a. **What role do fusion centers play today as part of the overall watch listing**
system?

**Response::**

> Currently, Fusion Centers (FCs) interact with the Terrorist Screening Center's
> (TSC) 24/7 Terrorist Screening Tactical Operations Center and Tactical Analysis
> Unit, have access to much of the Terrorist Screening Database (TSDB) through the
> National Crime Information Center (NCIC) and the Treasury Enforcement
> Communications System, where available, and are able to access several other
> Department of Justice (DOJ) and Department of Homeland Security (DHS)
> systems that contain terrorist watchlists or subsets thereof. At present, though, the
> FCs are not always notified of encounters with known or appropriately suspected
> terrorists.

> Generally, when a suspect is encountered by a screening agency (local law
> enforcement, U.S. Customs and Border Protection (CBP), etc.), this information is
> passed to the TSC, which determines whether the individual is a known or
> suspected terrorist. If the individual is a positive match in the TSDB, the TSC
> notifies the FBI's Terrorist Screening Operations Unit, which coordinates with the
> relevant Joint Terrorism Task Force (JTTF) to develop an appropriate response.
> FCs may be contacted by the TSC, often after the encounter, when it appears
> beneficial to tap the FC's ability to blend, analyze, and disseminate criminal
> intelligence and other information in an effort to anticipate, identify, prevent,
> and/or monitor terrorism and other criminal activity. FCs serve as a mechanism
> through which local law enforcement can share critical information with the FBI
> for further analysis, dissemination, and potential inclusion on the watchlist.

> As part of the effort to better use the FCs, the TSC is creating an Information
> Technology (IT) solution through which local FCs will be automatically notified in
> real-time of an encounter in their area of responsibility. Some states have already

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modified their NCIC query protocols so the FC is alerted when a law enforcement official's NCIC inquiry returns a watchlist hit. The TSC intends to incorporate FCs into the process more fully to ensure the FCs are made aware of encounters and have the opportunity to add value in appropriate circumstances. In another effort to integrate the FCs' critical skill set into the terrorist screening process, the TSC has initiated a pilot project in which portions of the TSDB will be provided to the New York Police Department (NYPD).

**b. What role should they play in the future?**

<u>Response:</u>

The FCs need to become formally involved in the encounter process. While individual FCs have made efforts to ensure they are notified, a more standardized approach needs to be taken by the TSC. The TSC Concept of Operations, which is scheduled to be completed in the late spring of 2008, is being refined to more clearly provide for FC integration into the terrorist screening process, including the adoption of a real-time notification process in which FCs are alerted to encounters in their areas of responsibility when they occur. As discussed above, FCs will receive real-time notification of encounters with known or appropriately suspected terrorists and will have access to much of the TSDB and to relevant DOJ and DHS systems. This will eliminate or substantially reduce the number of unreported encounters with known or appropriately suspected terrorists, facilitating more effective, efficient, and timely analysis, information flow, and intelligence development, including the development of more comprehensive analytical products to be used throughout the law enforcement and intelligence communities. The TSC will continue to provide direct phone support to local law enforcement and to the FCs. As the information sharing environment matures, TSC information will be shared with FCs according to protocols currently being developed.

**c. Has the Terrorist Screening Center developed guidance with respect to the use of the terrorist watch list (or its subsets) by fusion centers?**

<u>Response:</u>

To date, the TSC has not directly provided to FCs copies of terrorist watchlists or subsets thereof, though the FCs do have access to much of the information contained in the TSDB through the NCIC and the Treasury Enforcement Communications System, where available. In addition, several other DOJ and DHS systems will have this information in their data sharing systems, and these systems will be shared with users in the FCs. As noted above, however, the TSC is developing a pilot project to provide a watchlist subset to the NYPD. This may serve as a prototype by which a similar data set will be provided to FCs.

2. Please provide detailed statistics on the sources for the nominations in the Terrorist Screening Database (TSDB), including the number of records created as the result of actions by each nominating agency (e.g. CIA, NSA, DIA, DHS, FBI, Department of State), for all current TSDB records and for records created in FY 2007. (If necessary, these statistics may be transmitted to the Committee in a sensitive or classified format.)

<u>Response</u>:

> Based on the information contained in the TSDB, the TSC can only determine whether a nomination is derived from the FBI or from another government agency, since the TSC does not categorize Other Government Agency (OGA) information by specific agency. Of the approximately 906,200 records contained in the TSDB, approximately 110,200 are FBI derived and approximately 796,000 are OGA derived. As the collector of international terrorism nominations, it is possible that the National Counterterrorism Center (NCTC) may be able to provide the additional detail requested.

### Questions Posed by Senator Akaka

3. As of May 2007, the terrorist watch list had more than 750,000 records, and that number now is approximately 860,000. Just over three years ago, there were approximately 150,000 records in the watch list, and the list is growing by approximately 20,000 records per month.

With such rapid growth, I am concerned that many people with no connection to terrorism are being added to the list. This can lead to innocent people being detained at airports or by police, denied visas, or turned back at border crossings without reason. Also, extra names lead to more misidentifications, which increase costs and distract anti-terrorism and law enforcement officials from focusing on real threats.

   a. Under Homeland Security Presidential Directive 6, the Terrorist Screening Center (TSC) is directed to "maintain thorough, accurate, and current information about individuals known or appropriately suspected to be or have been engaged in conduct constituting, in preparation for, in aid of, or related to terrorism." What specific criteria are used to assess whether someone is "appropriately suspected" of ties to terrorism within that definition?

<u>Response</u>:

> The TSC has published guidance on watchlist nominations that instructs agencies to evaluate the "totality of information" in determining if an individual meets the "known or appropriately suspected" standard from Homeland Security Presidential Directive (HSPD) 6. In conducting this review, the reviewer relies on his or her own experience, the available facts, and rational inferences from those facts

(including the individual's past conduct, current actions, and credible intelligence concerning future conduct). In considering the totality of information, the reviewer is to evaluate the quality of the underlying derogatory information by considering both the specificity of the information and the reliability of the source(s).

While the TSC's guidance includes a non-exclusive list of specific types of conduct that would typically warrant watchlisting, generally a "known terrorist" is one known to be involved in activities constituting terrorism or activities in preparation for or related to terrorism, and an "appropriately suspected terrorist" is one who is suspected of having engaged in such activities under appropriate guidelines. For example, the Attorney General's Guidelines for National Security Investigations and Foreign Intelligence Collection provide the parameters under which the FBI can open a preliminary or full international terrorism investigation. If these criteria are met and an international terrorism investigation is opened, the subject of the investigation is presumptively deemed a "suspected terrorist" and may therefore be watchlisted in the TSDB.

Additionally, in order for the TSC to "maintain thorough, accurate, and current information" on known and suspected terrorists, the TSC has developed quality control measures that provide for the appropriate review of records maintained in TSC systems. These measures seek to ensure that outdated or incorrect information is culled from these records so the information received by the agencies depending on them is both accurate and current.

**b. When a person on the watch list is encountered, questioned, and either released or permitted to enter the country rather than detained or arrested, is the information obtained used to review whether it is appropriate for that person to remain on the watch list?**

Response:

When an individual listed in the TSDB is positively identified during an encounter with law enforcement, the TSC's Encounter Management Application assembles relevant information, including the facts and circumstances of the encounter, in an "encounter packet," which is then reviewed by the TSC's Tactical Analysis Unit. This review includes an assessment of whether the individual is appropriately watchlisted, and if watchlisting appears unwarranted for any reason a quality assurance ticket is issued and the record is referred for additional review. If this further review determines that continued watchlisting is unwarranted, a process exists to have the record removed from the TSDB

**c. On average, how many records does the TSC remove from the watch list each month?**

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<u>Response</u>:

Since the inception of the TSC, a total of 163,937 records have been removed from the TSDB. The TSC removed 76,802 records between April and October 2007 during an internal records review, an average of 10,971 records per month.

**4. The TSC and Department of Homeland Security (DHS) are working to finalize guidelines for private sector entities to use the watch list to screen critical infrastructure employees. As Mr. Rosenzweig's testimony highlighted, critical infrastructure employers come from a wide variety of sectors, including agriculture, food, water, public health, emergency services, government, defense industrial base, information and telecommunications, energy, transportation, banking and finance, chemical industry and hazardous materials, postal and shipping, and national monuments and icons. Greater dissemination of the watch list information poses serious privacy concerns.**

**a. Please describe in detail what safeguards exist to protect private information in the watch lists that is being shared outside of the federal government.**

<u>Response</u>:

The TSC and DHS are currently working to develop the means by which private sector entities can conduct TSDB terrorist screening checks securely, protecting this sensitive information. It is currently envisioned that private sector entities will not be given a copy of the TSDB, but will instead be invited to provide names to DHS, which will forward these names to the TSC for vetting.

Because DHS is the lead agency for developing further policy and procedures with respect to private sector screening, that agency may be able to provide additional information in response to this inquiry.

**b. What entities currently have access to the watch lists?**

<u>Response</u>:

The TSC currently provides to the Transportation Security Administration the No-Fly list and Selectee list for distribution only to those airlines that travel into, out of, or within the United States. It is not envisioned that any other private sector entities will be given access to the TSDB.

As noted above, because DHS is the lead agency for developing further policy and procedures with respect to private sector screening, that agency may be able to provide additional information in response to this inquiry.

**c. What entities will have access when the guidelines are finalized?**

<u>Response</u>:

As noted above, because DHS is the lead agency for developing further policy and procedures with respect to private sector screening, that agency may be able to provide information in response to this inquiry.

**5. The Government Accountability Office (GAO) report released in conjunction with this hearing states that the State Department has approached all visa waiver countries and two non-visa waiver countries with a proposal to exchange terrorist screening information. Your testimony states that six nations have signed such information sharing agreements with the United States. What are the principal barriers to negotiating additional agreements?**

<u>Response</u>:

While various U.S. Government agencies already share terrorist screening information with visa waiver countries through long-established liaisons, this information sharing is being enhanced and formalized through bilateral agreements. The abilities of various countries to reach these agreements consistent with their own laws may vary, but the execution of six agreements is indicative of the importance that both the United States and other countries place on institutionalizing terrorist screening information sharing.

HSPD 6 tasks the Department of State with leading the effort to negotiate terrorist screening information sharing agreements with foreign partners. The TSC has a full-time Department of State representative on staff to facilitate the development of these agreements with our foreign partners. Within the Department of State, this responsibility rests with the Bureau of Consular Affairs, Office of Policy Coordination and Public Affairs, which may be able to provide additional information in response to this inquiry.

**6. Your written testimony states that the TSC participates in a working group to identify how to better use biometric data to enhance security screening.**

**a. Is biometric data currently incorporated into the records where it is available? For example, is biometric data included in watch list records when someone on the watch list submits fingerprints and photographs with a visa application?**

<u>Response</u>:

Currently, the TSDB contains limited biometrics and biometric indicators. In the example given, the photograph would be stored in the record but the fingerprints would not be; the fingerprints would be placed on the watchlist of DHS's

Automated Biometric Identification System (the IDENT fingerprint system) and the fingerprints of visa applicants, applicants for admission to the U.S., individuals seeking immigration or credentialing benefits, and those encountered while attempting illegal U.S. border crossings would be checked against this DHS system. The TSC recognizes the importance of using biometrics in the terrorist screening process and has been working with its interagency partners to develop the capability to store and disseminate the biometric identifiers used by government screening organizations and to otherwise integrate biometrics into the terrorist watchlisting process, recognizing the need to employ appropriate safeguards to protect the privacy and civil liberties of those involved.

**b. If not, is TSC moving forward with plans to incorporate biometric data into watch list records?**

Response:

The TSC has been working through the NCTC's Interagency Coordination Group on identity management and biometrics to develop a plan to integrate biometrics into the terrorist watchlisting process. The interagency subgroup on interoperability has proposed a data exchange model under which the TSC will store biometric data (or pointers to the actual biometric data) in the TSDB and will provide this information to its screening customers.

**7. An October 2007 article in the Los Angeles Times reported that the Identity Project, a privacy-rights organization, obtained Customs and Border Protection (CBP) records containing information about such things as the book that someone carried or a passenger's profession.**

**a. Was this information incorporated in the watch list records or in some other database that CBP uses? If the latter, which database?**

**b. Is this type of information incorporated in watch list records and, if so, why?**

Response to subparts a and b:

Non-identifying information, including information regarding a traveler's reading materials, is NOT incorporated into the TSDB. The TSDB contains only the watchlisted person's identifying information, such as name, date of birth, passport number, and driver's license number. A person's profession may be included in the TSDB as information that may help to identify the proper individual during screening or to rule out a person who may merely have the same or a similar name.

When additional identifying data on a watchlisted person is obtained during screening by CBP or other agencies, it is passed to the NCTC for possible inclusion in the Terrorist Identities Datamart Environment and, if appropriate, passed to the TSC for inclusion in the TSDB. By enhancing the identifying information in the watchlist, it becomes easier for government screeners to distinguish watchlisted persons from those who may merely have the same or a similar name, minimizing the inconvenience to the traveling public. The FBI and TSC are not able to address what information CBP retains in its data systems.

## Question Posed by Senator Warner

**8. We are privileged in the Commonwealth of Virginia to have the National Ground Intelligence Center, and I visit quite frequently, and they are on the cutting edge of the biometrics. And somehow it has come to my attention - I am not sure of the accuracy - that the Terrorist Screening Center presently does not have a number of these capabilities. Are you leveraging it from other areas to incorporate it? Are you planning to get it? Or do you think it should be made a part of the program?**

<u>Response</u>:

The National Ground Intelligence Center (NGIC) is a cutting-edge operational unit that supplies soldiers in the field with actionable information related to biometric match reports taken from biometric signatures captured in their theater of operations. The TSC has a mission similar to that of the NGIC, as the TSC supplies real-time operational information to screening organizations upon their encounters with screened individuals. Encounter information is also shared with appropriate law enforcement personnel who can benefit from the details of the encounter.

As indicated in response to Question 6, above, the TSDB currently contains limited biometrics and biometric indicators. The TSC recognizes the importance of using biometrics in the terrorist screening process and has been working with its interagency partners to develop the capability to store and disseminate the biometric identifiers used by government screening organizations and to otherwise integrate biometrics into the terrorist watchlisting process. For example, the TSC has been collaborating closely with the Department of Defense, including the NGIC, on interagency efforts. As more robust biometric capabilities are designed for government use, the TSC will continue to look at successful biometric implementations, such as the accomplishments of the NGIC, to identify "best practices."

(The following question originally was posed to DHS witness
Paul Rosenzweig but was referred by DHS to the TSC for response)

9. You (Ms. Larence) note in your testimony that the decision on whether or not to place someone on the watch list is often somewhat subjective. There are individuals apparently on the watch list who are terrorists, suspected terrorists, but there are also some there who are simply being investigated for some other reason. My question is: Are there clear enough rules out there for determining who should and who should not be on the list and who ultimately makes the decision and what does he or she base their decision on? That is not a question for you (Ms. Larence). You are the one who made the point. I believe that would be a question, I think, for the Secretary, and if you would respond to that for the record, I would be grateful.

Response:

Please see the response to Question 3a, above.