

Patriots
to restore
Checks and Balances

February 6, 2007

The Honorable Edward M. Kennedy
SR-317 Russell Senate Office Building
Washington, DC 20510-2101

Attn. Nikole Burroughs
Hearing Clerk
Senate Judiciary Committee
224 Dirksen Senate Office Building
Washington, DC 20510

IN RE: Answers to Questions of Senator Edward M. Kennedy, Regarding the Hearing "Balancing Privacy and Security: The Privacy Implications of Government Data Mining Programs," January 10, 2007

Dear Senator Kennedy:

In response to your written questions posed after the above-referenced hearing, I am pleased to provide the following answers:

Question 1. Senator Specter asked whether any of the panelists was aware of an instance where data mining had resulted in demonstrable harm? Please expand upon your answer and describe the ways in which ordinary Americans can be harmed by data mining.

Answer. In fact, government data mining has repeatedly led to well-publicized and significant harm to ordinary Americans, including residents of Pennsylvania. A Pittsburgh, Pennsylvania-based example involves data mining queries run against federal employees to determine their suitability to continue working.

As reported by National Public Radio ("NPR") on June 18, 2006 by reporter Pam Fessler, Sodexho, manager of staff for the federal courthouse and prison, placed on administrative leave two long-time employees after the Federal Protective Service (FPS) wrongly determined there were work-disqualifying events in their histories that were uncovered by data mining. Mary Broughton, one of the women erroneously fired, had served as a cook in the cafeteria for 24 years prior to her termination.

Similarly, Judy Miller was employed as a cook and cashier at the federal courthouse for 20 years prior to her termination. Both women were forced to file for unemployment.

Despite hundreds of calls by the women to the U.S. Department of Homeland Security to rectify the situation and return both to their positions, it took the intervention of U.S. Rep. Mike Doyle (D-PA) to obtain an admission by the Department of Homeland Security that its data mining query had identified the wrong women.

In a similar fashion, government data mining can lead to suspicion erroneously being placed on individuals with the same or similar names to known or suspected criminals and terrorists leading to either delays or denials of the right to travel, or the right to work.

Question 2. In your testimony, you explained how data mining infringes upon fundamental constitutional rights. Is it possible to devise safeguards and procedures that would permit the use of data mining against terrorism, without infringing upon constitutional rights? Please explain your answer. In particular, please address the due process and unreasonable search and seizure concerns and how these concerns might be addressed.

Answer. First, no data mining technique has been demonstrated to be able to identify either unknown terrorists or predict when someone might in the future commit an act of terrorism. Until this capability can be scientifically demonstrated, Congress should not pursue or permit federal agencies to pursue data mining.

Second, because of the classified nature of most terrorism investigations, there is unlikely to be any transparency permitting scrutiny of the data mining to determine whether an agency is implementing a program in a manner that is consistent with constitutional rights and privileges. Without transparency and statutory penalties, any purported procedures are meaningless because Congress, much less the public, will never become aware of abuses. Instead, we may only hear when mistakes *were* made. That having been said, any data mining Congress authorizes should only be conducted after a predicate crime or terrorist act has been committed, or where an act towards commission of a conspiracy to commit a crime or act of terrorism has been committed, so that an individual could be charged with conspiracy. Further, any data

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mining authorized should only be conducted against suspects and their known associates, and any abuses of this should lead to automatic, statutorily-mandated fines and criminal sanctions.

Finally, without transparency, any due process is unlikely to be provided (or meaningful if provided). However, any due process must be statutorily-guaranteed and provide access to review erroneous information; a meaningful and realistic ability to correct erroneous information and guaranteed government-paid recompense for any injury to the subject of the data mining.

I appreciate the opportunity to provide additional information on this very important topic, if there is anything else you need or have further questions, please do not hesitate to let me know.

With kind regards, I remain,

very truly yours,

BOB BARR

Member of Congress, 1995-2003

Chairman, Patriots to Restore Checks and Balances