

MEMORANDUM OF UNDERSTANDING (MoU)

BETWEEN

**PUBLIC SAFETY CANADA (PS), TRANSPORT CANADA (TC),
THE CANADA BORDER SERVICES AGENCY (CBSA),
THE CANADIAN SECURITY INTELLIGENCE SERVICE (CSIS) AND
THE ROYAL CANADIAN MOUNTED POLICE (RCMP)**

PASSENGER PROTECT PROGRAM

BACKGROUND

Implemented in June 2007, the Passenger Protect Program (PPP) is an essential component in Canada's multilayered approach to security. The PPP identifies individuals who may pose a threat to aviation security and disrupts their ability to cause harm, through measures such as preventing them from boarding an aircraft.

1.0 STATUTORY AUTHORITIES AND RESPONSIBILITIES

Effective February 1, 2011, the Prime Minister signed an Order in Council dividing responsibility for the PPP between the Minister of Public Safety and the Minister of Transport, Infrastructure and Communities (Minister of Transport).

1.1 Public Safety Canada

PS is responsible for leading policy development and overall governance of the PPP. The Minister of Public Safety has the authority to determine, or to delegate the authority to determine, which individuals should be specified under paragraph 4.81(1)(b) of the *Aeronautics Act* for the purpose of requiring air carriers to provide information pursuant to the *Identity Screening Regulations*. This authority has been further delegated to the: Deputy Minister; Associate Deputy Minister; Senior Assistant Deputy Minister, National Security; Director General, National Security Policy Directorate; and Director, Intelligence Policy Division, National Security Policy Directorate.

To exercise this authority, PS chairs the Specified Persons Advisory Group (Advisory Group) which includes senior representatives from PS, TC, CBSA, CSIS and the RCMP. The Advisory Group recommends persons to the Minister of Public Safety, or his/her delegate, for specification. The Department of Justice (DoJ) participates in the Advisory Group in an advisory capacity. The *Specified Persons Advisory Group: Terms of Reference* is attached at Appendix A.

The Minister of Public Safety is also responsible for the Office of Reconsideration which provides an individual who has been issued an emergency direction under the PPP with a

mechanism for requesting a review of his/her specification. The *Office of Reconsideration Terms of Reference* is attached at Appendix B.

1.2 Transport Canada

When the Minister of Transport exercises his/her authority under paragraph 4.81(1)(b) of the *Aeronautics Act*, he/she may require information from air carriers on specified individuals and issue emergency directions to respond to immediate threats to aviation security to any aircraft or aerodrome or other aviation facility, or to the safety of the public, passengers or crew members. The Minister of Transport also retains authority over the administration of the *Identity Screening Regulations*, which define the procedures that passengers and airlines must follow to facilitate screening specified individuals and related operational decisions.

1.3 Canada Border Services Agency

The CBSA administers over 90 pieces of legislation that govern the admissibility of people and goods into and out of Canada. Specifically, under the *Immigration and Refugee Protection Act*, the CBSA has the power to detain individuals who may pose a threat to Canada and to remove people who are inadmissible to Canada, including those involved in terrorism, organized crime, war crimes or crimes against humanity. The CBSA may disclose passenger information that identifies individuals who may pose a threat to aviation security to the extent that is reasonably necessary in accordance with paragraphs 8(2)(a)(f) of the *Privacy Act* and the relevant sections of the *Customs Act*.

All requests will be assessed on a case-by-case basis. Specific requirements must be met to enable the lawful disclosure of customs information. Paragraph 107(4)(e) of the *Customs Act* allows for the disclosure of customs information in exigent and imminent circumstances for the purposes of health and safety or for the protection of the environment of Canada. Paragraph 107(4)(h) of the *Customs Act* allows for the disclosure of customs information in exigent and imminent circumstances for the purposes of the national security or defence of Canada.

Paragraph 107(5)(a) of the *Customs Act* allows for the general disclosure of customs information to Canadian peace officers having jurisdiction investigating an alleged offence or investigation into an offence under any Act of Parliament subject to prosecution by indictment and solely for the purpose of the investigation.

Depending on the nature and end use of the request, the CBSA may require a court order to disclose the customs information requested for furthering a criminal investigation pursuant to Section 487.012 of the *Criminal Code*. Paragraph 107(5)(m) of the *Customs Act* allows for the lawful disclosure of customs information if the disclosure is required to comply with a *subpoena* or warrant issued by an order made by a court of record in Canada. Subsection 107(8) of the *Customs Act* allows for and requires that the disclosure of customs information be in accordance with an international convention, written collaborative agreement, or other written arrangement between the Government of Canada or an institution of the Government of Canada and the government of the foreign state, the organization, community, or the institution, solely for the purposes set out in the arrangement under the *Customs Act*.

1.4 Canadian Security Intelligence Service

CSIS, under section 12 of the *CSIS Act*, is required to collect, by investigation or otherwise, to the extent that is strictly necessary, information respecting activities that may on reasonable grounds be suspected of constituting threats to the security of Canada and, in relation thereto, shall report to and advise the Government of Canada.

Under subsection 19(2) of the *CSIS Act*, CSIS may disclose information obtained in the performance of its duties and functions where the information may be used for the purpose of the performance of its duties and functions under the *CSIS Act*.

1.5 Royal Canadian Mounted Police

The RCMP is Canada's national police service with a primary responsibility for national security law enforcement. The duties of the RCMP and its investigative mandate are stipulated in the *RCMP Act* and the *Security Offences Act*. Of note, it has law enforcement responsibilities to investigate threats to the security of Canada, as defined in the *CSIS Act*, and to conduct investigations related to terrorist offences and activities, as defined in the *Criminal Code*.

The RCMP may disclose information to the extent that is reasonably necessary for the performance of its duties and functions in accordance with subsection 8(2) of the *Privacy Act* and other relevant legislation.

1.6 Department of Justice

2. PURPOSE

This MoU establishes the terms and conditions for mutual cooperation and information sharing between PS, TC, CBSA, CSIS and the RCMP, herein referred to as participants, with respect to the implementation of the PPP. The participants intend to work together given their respective legislative mandates and responsibilities under the PPP.

3. RESPONSIBILITIES AND OBLIGATIONS

3.1 Participants are required to fulfill the following responsibilities and obligations to ensure the successful delivery of the PPP, in accordance with section 1.

3.2 PS will:

- a) convene meetings of the Advisory Group every 30 days or less and provide meeting materials to all members two business days in advance of the meeting;
- b) provide TC and all members of the Advisory Group with the names of all specified individuals every 30 days or less and summaries of information discussed by the Advisory Group;
- c) provide TC with the names of individuals to be specified in exigent circumstances and other supporting information in cooperation with members of the Advisory Group as soon as possible;
- d) coordinate and manage the reconsideration process as required; and
- e) provide information and supporting documents as required to facilitate the reconsideration process.

3.3 TC will:

- a) provide air carriers with the name(s), date of birth and gender of specified individuals. This information will be transmitted and stored within the confines of a secure informatics system. When an air carrier identifies a specified individual, TC will advise PS, CBSA, CSIS and the RCMP and provide relevant information as required;
- b) support the issuance of emergency directions by the Minister of Transport and to provide information to specified individuals. TC will coordinate with Advisory Group members, share information and provide advice when air carriers identify a specified individual. At this time, nominating agencies will be required to provide information related to the immediacy of the threat to facilitate the decision by TC to issue an emergency direction and determine an appropriate response. When TC issues an emergency direction, it will notify PS, CBSA, CSIS and the RCMP;
- c) identify and nominate individuals to the Advisory Group when they are of the opinion that there are or there are no longer reasonable grounds to suspect that individuals may pose a threat to aviation security, in the manner and form outlined in the *Specified Persons Advisory Group: Terms of Reference*;
- d) participate in Advisory Group meetings for the purpose of presenting proposed individuals for specification or de-specification, providing advice and sharing any new information on each specified person. A TC official will attend Advisory Group meetings for the purpose of providing operational advice about the PPP;
- e) confirm at 30-day intervals or less that the information shared pursuant to subparagraph a) above is accurate and current. Participants will also provide updates when necessary;
- f) recommend the specification of individuals in exigent circumstances and will provide PS and the relevant officials within TC with supporting information as required, as per the *Specified Persons Advisory Group: Terms of Reference*; and
- g) provide information and supporting documents as required to facilitate the reconsideration process.

3.4 CBSA, CSIS and RCMP will each:

- a) identify and nominate individuals to the Advisory Group when they are of the opinion that there are or there are no longer reasonable grounds to suspect that individuals may pose a threat to aviation security, in the manner and form outlined in the *Specified Persons Advisory Group: Terms of Reference*;
- b) participate in Advisory Group meetings for the purpose of presenting proposed individuals for specification or de-specification, providing advice and sharing any new information on each specified person;
- c) confirm at 30-day intervals or less that the information shared pursuant to subparagraph a) above is accurate and current. Participants will also provide updates when necessary;
- d) coordinate with Advisory Group members, share information and provide advice when air carriers identify a specified individual. At this time, nominating agencies will be required to provide information related to the immediacy of the threat to facilitate the decision by TC to issue an emergency direction and determine an appropriate response;
- e) recommend the specification of individuals in exigent circumstances and will provide PS and the relevant officials within TC with supporting information as required, as per the *Specified Persons Advisory Group: Terms of Reference*; and
- f) provide information and supporting documents as required to facilitate the reconsideration process.

4. ACCURACY OF INFORMATION

All participants will use their best efforts to verify the accuracy and completeness of the information provided to each other. They will promptly notify each other when they become aware that inaccurate or potentially unreliable information about a specified person may have been provided or received, and take all reasonable, remedial steps to prevent any re-occurrence.

5. USE, DISSEMINATION AND PROTECTION OF INFORMATION

5.1 All participants will use, disseminate and protect the information pertaining to the PPP in accordance with the *Privacy Act*, the *Security of Information Act*, the *Aeronautics Act*, the *Identity Screening Regulations*, Treasury Board's *Policy on Government Security*, Treasury Board's *Operational Security Standard for Physical Security* and the conditions described herein.

5.2 All participants may receive and disclose personal information, in accordance with the *Aeronautics Act* and subsection 8(2) of the *Privacy Act*, and to the degree necessary, section 107 of the *Customs Act*. Restrictions on disclosure set out in subsection 4.81(9) of the *Aeronautics Act* take precedence over the *Privacy Act*. All participants will use the information obtained under this MoU in accordance with their respective legislative and administrative authorities and mandates, as described above.

5.3 Specifically, all participants will:

- a) treat information received from other participants in confidence and take all reasonable measures to preserve its confidentiality and integrity and to safeguard the information against accidental or unauthorized access, use or disclosure;
- b) mark the information provided with the appropriate security classification, according to recognized administrative standards and practices;
- c) abide by all conventional information management processes and conditions including need-to-know, caveats, third-party rule and terms and conditions attached to the information;
- d) store and disseminate information received from the other participants in accordance with the security markings and caveats on it, and undertake to provide equivalent protection to it while it is in the receiving participant's possession; and
- e) administer, maintain, transfer, contain, archive and destroy protected or classified information shared in relation to this MoU in compliance with all relevant laws and policies.

5.4 PS will use, disseminate and protect information to support the Minister of Public Safety with respect to his/her authorities under the PPP, as stated above.

5.5 TC will use, disseminate and protect information to support the Minister of Transport with respect to his/her authorities under the PPP, as stated above.

5.6 Personal information banks are or will be created for the purposes of the PPP in each participant's organization as follows:

- a) PS – (To be established)
- b) TC – Passenger Protect Program – Specified Persons List – TC PPU 001
- c) CBSA – Secure Tracking System – CBSA PPU 033
- d) CSIS – Passenger Protect Program – Specified Persons List – CSIS PPU 070
- e) RCMP – Operational Case Records – RCMP PPU 005
- f) DoJ – Civil Procedure and Legal Services – JUS PPU 010

6. DISCLOSURE OF INFORMATION

6.1 Disclosure of information will take place according to restrictions named in the *Aeronautics Act* and other relevant legislation. In addition, each participant will:

- a) treat as confidential and protect from disclosure all data and information created, shared, obtained or received pursuant to this MoU where it pertains to, as applicable, national security, investigations, policing, security or otherwise as confidential information of a third party, unless it is required by law including where the public interest requires disclosure;
- b) immediately notify and consult the participant who supplied information under this MoU if they receive a request pursuant to the *Privacy Act*, the *Access to Information Act*, or any other lawful authority, before disclosing information. The

Privacy Act allows certain individuals to gain access to personal information a government institution is holding about them. Participants will endeavour to protect the information from disclosure to the extent permitted by law; and

- c) administer, maintain, and dispose of the information disclosed under this MoU in accordance with the law, policies and guidelines which apply to each participant's information management practices and procedures.

6.2 No participant will disclose any information shared under this MoU to third parties except in accordance with applicable laws, or with the consent of the originator of the information.

7. FUNDING

Each participant will assume its own operating costs.

8. IMPLEMENTATION

Designated officers from the participating organizations will meet periodically to discuss the workload generated by the PPP, to review the accomplishments of the PPP and any other relevant matters. Such meetings will occur as necessary, in a format agreed to by all participants, and may be held separately from the monthly Advisory Group meetings.

9. REVIEW AND AMENDMENTS

9.1 The participants will meet to review and assess the operational effectiveness of this MoU as required.

9.2 This MoU may only be amended with the written consent of all participants.

10. TERMINATION

A participant may terminate this MoU by providing a 60-day written notice to the other participants. Termination does not release a participant from any obligations which accrued while the MoU was in force.

11. DISAGREEMENTS

Any disagreement regarding the interpretation or application of this MoU will be resolved by consultations between the designated officers set out below and/or senior officials within the relevant departments and agencies. The matter will neither be referred to a third party, nor a tribunal for resolution.

12. NOTICE AND DESIGNATED OFFICERS

Any notices, questions or requests related to this MoU may be directed to the designated officers identified below. These officers are responsible for the coordination and management of this MoU.

Public Safety Canada

Director General, National Security Policy Directorate (Advisory Group)
269 Laurier Avenue West, 16th Floor
Ottawa, ON K1A 0P8

Director General, National Security Operations (Office of Reconsideration)
340 Laurier Avenue West, 11th Floor
Ottawa, ON K1A 0P8

Transport Canada

Director General, Aviation Security
Place de Ville, Tower C
330 Sparks Street, 13th Floor
Ottawa, ON K1A 0N5

Canada Border Services Agency

Director General, Enforcement and Intelligence Operations
300 Slater Street, JETN, 11th Floor, B1135
Ottawa, ON K1A 0L8

Canadian Security Intelligence Service

P.O. Box 9732, Postal Station "T"
Ottawa, ON K1G 4G4

Royal Canadian Mounted Police


Director General, Federal Policing Criminal Operations
National Security Criminal Investigations and Protective Policing
73 Leikin Drive
Ottawa, ON K1A 0R2

13. EFFECTIVE DATE

This MoU comes into effect upon signing by the participants. This arrangement may be executed in counterparts, each of which will be deemed to be an original, but all of which, taken together, will constitute one and the same arrangement.

14. SIGNATORIES


14.1 Signed on behalf of Public Safety Canada



John Davies
Director General
National Security Policy Directorate (Advisory Group)

PROCESSED BY CBSI UNDER THE
PROVISIONS OF THE PRIVACY ACT AND/OR
ACCESS TO INFORMATION ACT.
REVISÉ PAR LE CBSI EN VERTU DE LA LOI
SUR LA PROTECTION DES RENSEIGNEMENTS
PERSONNELS ET/OU LA LOI SUR L'ACCÈS
À L'INFORMATION.

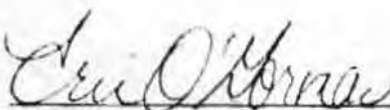
29/1/13
Date



Michael MacDonald
Director General
National Security Operations Directorate (Office of Reconsideration)

Jan 30/13
Date

14.2 Signed on behalf of Transport Canada




Erin O'Gorman
Director General
Aviation Security

PROCESSED BY CBSI UNDER THE
PROVISIONS OF THE PRIVACY ACT AND/OR
ACCESS TO INFORMATION ACT.
REVISÉ PAR LE CBSI EN VERTU DE LA LOI
SUR LA PROTECTION DES RENSEIGNEMENTS
PERSONNELS ET/OU LA LOI SUR L'ACCÈS
À L'INFORMATION.

17 Jan 13
Date

14.3 Signed on behalf of the Canada Border Services Agency



Geoff Leckey
Director General
Enforcement and Intelligence Operations

2013.01.23
Date

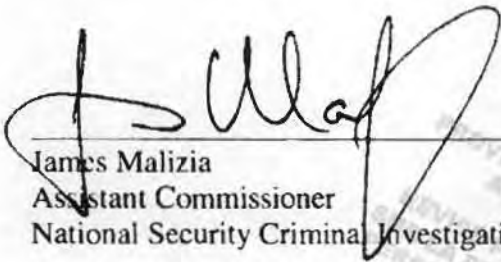
14.4 Signed on behalf of the Canadian Security Intelligence Service

PROCESSED BY CSIS UNDER THE
PROVISIONS OF THE PRIVACY ACT AND/OR
ACCESS TO INFORMATION ACT.
RÉVISÉ PAR LE SCRS EN VERTU DE LA LOI
SUR LA PROTECTION DES RENSEIGNEMENTS
PERSONNELS ET/OU DE LA LOI SUR L'ACCÈS
À L'INFORMATION.

13/01/21

Date

14.5 Signed on behalf of the Royal Canadian Mounted Police



James Malizia
Assistant Commissioner
National Security Criminal Investigations and Protective Policing

2013-01-17

Date

PROCESSED BY CSIS UNDER THE
PROVISIONS OF THE PRIVACY ACT AND/OR
ACCESS TO INFORMATION ACT.
RÉVISÉ PAR LE SCRS EN VERTU DE LA LOI
SUR LA PROTECTION DES RENSEIGNEMENTS
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