Policy Number: 10082.1
FEA Number: 360-112-002b

Office of the Director

U.S. Department of Homeland Security
500 12th Street, SW
Washington, DC 20536

JUN 2 8 2012

U.S. Immigration and Customs Enforcement

MEMORANDUM FOR: Law Enforcement Personnel

FROM: John Morton
Director

SUBJECT: Use of Public and Non-Public Online Information

Purpose

This memorandum provides U.S. Immigration and Customs Enforcement (ICE) law enforcement personnel guidance on the acceptable use of online information within the scope of their law enforcement duties.

Background

On December 8, 2010, Secretary Napolitano approved a decision memorandum titled, "Use of Public and Non-Public Online Information for Law Enforcement, Situational Awareness, and Intelligence Purposes," ("The Online Information Memorandum") that adopted a recommendation whereby the Department of Homeland Security (DHS), except members of the Intelligence Community governed by Executive Order 12333, would "follow the Department of Justice (DOJ) 1999 guidelines for online investigative and situational awareness activities."

(b)(5),(b)(7)(E)

Discussion

Pursuant to the Online Information Memorandum, ICE law enforcement personnel should follow the below principles for the use of public and non-public online information, which have been adapted from the online investigative principles outlined in DOJ's 1999 Online Investigative Principles for Federal Law Enforcement Agents.[1]

[1] Law enforcement personnel are ICE employees who conduct and support criminal, civil, and administrative law enforcement investigations and operations. Examples include special agents and other law enforcement officers, law enforcement investigative support personnel, intelligence research specialists, criminal research specialists, and attorneys prosecuting criminal, civil or administrative matters.

To implement these core principles, ICE directorates and program offices may establish guidance and/or modify existing guidance, as necessary, or reference the DOJ guidance as applicable to the activities in question.

ICE Principles for Law Enforcement Use of Public and Non-Public Online Information:

1. Obtaining Information from Unrestricted Sources. Law enforcement personnel may obtain information from publicly accessible online sources and facilities under the same conditions they may obtain information from other sources generally open to the public. This principle applies to publicly accessible sources located in foreign jurisdictions as well as those in the United States.

2. Obtaining Identifying Information about Users or Networks. There are widely available software tools for obtaining publicly available identifying information about a user or a host computer network. Law enforcement personnel may use such tools in their intended lawful manner under the same circumstances in which ICE guidelines and procedures permit them to look up similar identifying information (e.g., a telephone number) through non-electronic means. However, law enforcement personnel may not use software tools, even those generally available as standard operating system software, to circumvent restrictions placed on system users.

3. Real-Time Communications. Law enforcement personnel may passively observe and log real-time electronic communications open to the public under the same circumstances in which they may attend a public meeting.

4. Accessing Restricted Sources. Law enforcement personnel may not access restricted online sources or facilities absent legal authority permitting entry into private space.

5. Online Communications Generally. Law enforcement personnel may use online services to communicate as they may use other types of communication tools, such as the telephone and the mail. Law enforcement personnel should retain the contents of a stored electronic message if they would have retained that message had it been written on paper. The contents should be preserved in a manner authorized by ICE procedures governing the preservation of electronic communications.

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No Private Right of Action

This memorandum is not intended to, does not, and may not be relied upon to create any right or benefit, substantive or procedural, enforceable at law by any party in any administrative, civil, or criminal matter.