

Notification to State and Local Law Enforcement Regarding Personal Information Obtained from the European Union and its Member States

This notification is to remind United States (“U.S.”) state and local law enforcement entities of a legal framework that governs the treatment of personal information the federal government receives from the European Union (“EU”), or an EU Member State, under an agreement the federal government has concluded with the EU, regarding the sharing of personal information to prevent, detect, investigate, or prosecute criminal offenses. Because your office may receive such information periodically, you should be aware of this framework.

In an era of increased transnational crime and international terrorism, as well as widespread use of the Internet and long-distance use of financial networks, promoting information exchange among law enforcement entities is of paramount importance. Federal authorities could not be effective without the exchange of information that occurs daily with U.S. state and local counterparts. At the same time, in addition to the cooperation U.S. state and local law enforcement may receive directly from foreign partners, U.S. state and local authorities also benefit from increased cooperation the federal government carries out with foreign partners.

The federal government has concluded an international agreement with the EU that facilitates the sharing of personal information for law enforcement purposes in a manner meeting the requirements of EU and Member State privacy laws. Specifically, on February 1, 2017, the Agreement between the United States of America and the European Union on the Protection of Personal Information Relating to the Prevention, Investigation, Detection, and Prosecution of Criminal Offenses (referred to in the U.S. as the “Data Protection and Privacy Agreement” or “DPPA”, and in the EU as the “Umbrella” Agreement), entered into force. The text of the DPPA is found at <https://www.justice.gov/opcl/DPPA/download>.

The DPPA is an executive agreement entered into by the federal government. It requires U.S. federal authorities to safeguard personal information in the manner provided therein. It does not bind U.S. state and local authorities with regard to the manner in which they will handle personal information that the federal government obtains from the EU, or its Member States, and subsequently shares with U.S. state and local authorities. However, the DPPA does impose requirements on the federal government with respect to how it may share such information with U.S. state and local authorities. Specifically, in order to facilitate the greatest degree of voluntary compliance by U.S. state and local authorities with the terms of the DPPA, DPPA Article 14 requires the federal government to have in place measures by which to notify U.S. state and local authorities of the safeguards set forth in the DPPA. In addition, DPPA Article 14 requires the federal government to have measures by which to notify U.S. state and local authorities of any conditions imposed by an EU or Member State authority on the use of particular personal information transmitted to federal authorities that is further transmitted to U.S. state and local authorities.

Finally, under DPPA Article 14, the EU and its Member States reserve the right to discontinue authorizing further transmission of personal information transferred to U.S. state and local authorities that do not effectively protect the information transferred, in particular the

DPPA's requirements with respect to "purpose and use limitations" and "onward transfer" of such information. Regarding "purpose and use limitations," DPPA Article 6 provides, in essence, that any processing of the information "shall not be incompatible with the purposes for which it was transferred" by the EU, or the EU Member State, and that case-specific conditions imposed on the use of the information by the transferring authority be respected. Regarding "onward transfer," DPPA Article 7 provides, in essence, that the authority that receives information may transfer it onward to "a State not bound by the present agreement or international body only where the prior consent of the [EU, or EU Member State] authority originally sending that information has been obtained."

We know from experience that your authorities already treat information received from the federal government and foreign governments carefully. We therefore do not believe that these provisions will require significant modification of your procedures, but we wish nonetheless to bring them to your attention, so that you may take them into account in devising and carrying out relevant practices and procedures. Please review the terms of the DPPA, in particular those described immediately above, and notify law enforcement authorities within your purview accordingly.

Thank you for your assistance in this effort to enhance our cooperation among all authorities to fight crime and to protect our citizens. If you require additional guidance on the handling of material addressed in this letter, do not hesitate to contact the U.S. Department of Justice, Criminal Division, Office of International Affairs, or the U.S. Department of Justice, Office of Privacy and Civil Liberties.