



One Hundred Ninth Congress
U.S. House of Representatives
Committee on Homeland Security
Washington, DC 20515

July 25, 2006

The Honorable Michael Chertoff
Department of Homeland Security
Mail Stop MS 0150
Office of Legislative Affairs
Attn: Secretary
Washington, DC 20528

Dear Secretary Chertoff:

I am writing to express my deep concern over your recent decision to select Hugo Teufel III to serve as the Department's new Privacy Officer.

In a time when it is hard to pick up a newspaper without reading about the government's failure to protect the personally-identifiable information of veterans, government employees, and civilians at numerous agencies, the American people deserve an advocate who will ensure that privacy is truly "operationalized" at the Department. Specifically, the public needs an advocate to assure it that the Department is keeping faith with the U.S. Constitution and relevant privacy laws and working to avoid jettisoning costly programs because of privacy concerns that arise late in developmental processes. As demonstrated by the CAPPs II and Secure Flight debacles, failing to consider privacy during the early stages of programs can cost hundreds of millions of taxpayer dollars and harm public trust. This is precisely why Congress statutorily mandated the Chief Privacy Officer position. It is also why I am so troubled by Mr. Teufel's appointment.

When Congress created the Chief Privacy Officer, it was with the intent that the position would be filled by a qualified and experienced privacy expert. Nuala O'Connor Kelly, the first (and last) Chief Privacy Officer for the Department, fit this bill as she had both worked in a private sector environment tackling privacy and technology issues and served as the privacy officer at the Department of Commerce. Maureen Cooney, who was the interim Privacy Officer, also had years of experience working on privacy issues at the Federal Trade Commission and as O'Connor Kelly's Chief of Staff and Director of International Privacy Policy. Both are respected among government, private sector, and privacy experts and brought credibility to the position. They did so by putting their responsibility to advocate for the American people and their privacy rights ahead of pleasing the Departmental leadership. Putting aside that Mr. Teufel obviously lacks the expertise in privacy law possessed by both of these individuals, I am concerned that you

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chose someone whose last position was advocating for Departmental policies. It is hard to envision Mr. Teufel directly challenging the same policies that he vigorously protected and promoted as would need to be done, at times, by a Chief Privacy Officer. Even a casual observer could foresee a conflict between his previous tenure at the Department and his current role.

In his former position as Associate General Counsel for General Law at the Department, Mr. Teufel was intimately involved with the recently publicized Shirlington Limousine scandal. As you know, that scandal was a black eye for the Department that we believe involved a rigged bidding process that essentially guaranteed that Shirlington Limousine alone would win a lucrative Department transportation contract.

To better understand the circumstances surrounding this procurement, Committee staff requested a broad array of information from the Department, including documents reflecting communications relating to the application and bidding process. Committee staff had no interest in receiving highly personal information on employees of both Shirlington Limousine and the contractor that preceded it. Yet General Counsel staff, under Mr. Teufel's direction, readily provided documents with employees' names, Social Security Numbers, and driver's license numbers last month. Neither Mr. Teufel nor his staff ever indicated to Committee staff that he had reservations about sharing this information or even suggested that the Social Security Numbers of contractor employees and applicants be redacted. Indeed, the sharing of this sensitive information without even consulting the Committee to determine if the information was needed seems to be in violation of the Department's own "*Homeland Security Strategic Vision*," which states:

Protecting vital and sensitive information, thus ensuring the privacy of American citizens, is important to the safety of the Nation. We will eliminate inappropriate access to confidential data to preserve the privacy of Americans.

Indeed, under Sec. 222 of the Homeland Security Act of 2002, the Chief Privacy Officer's statutory duties include "(1) assuring the use of technologies sustain, and do not erode, privacy protections relating to the use, collection, and disclosure of personal information;" and "(3) evaluating legislative and regulatory proposals involving collection, use, and disclosure of personal information by the Federal Government." In light of the Committee's experience to date with Mr. Teufel regarding sensitive information, I am certain you can understand my hesitation in endorsing Mr. Teufel in the role of the Chief Privacy Officer.

Unfortunately, the sharing of information with Committee staff is not the only incident that raises concerns regarding Mr. Teufel's qualifications. I am aware of Mr. Teufel's experience at the Department of Interior (DOI) and his service as the primary legal counsel on the Teresa Chambers whistleblower case. Ms. Chambers was removed from her position as the U.S. Park Police Chief after telling the media that she did not have the necessary staff or funding to properly protect the national monuments. She ultimately lost her lawsuit, but the poor handling of the issue by the DOI led to a media

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circus. In light of the Chambers' case, I would like assurances that Mr. Teufel's service as Chief Privacy Officer will not impede the protections accorded to whistleblowers within the Department.

As a general matter, I must say that I continue to share the concerns of other Members, including Congressman Kendrick Meek (D-FL), over the reporting relationship for the Chief Privacy Officer. By having the Chief Privacy Officer report directly to the Secretary, rather than to Congress, that individual's ability to be an independent assessor of the Department's progress is diminished. It is sure to be difficult for the Privacy Officer to act as an independent watchdog, in a manner similar to how the Inspector General operates, when he or she is a political appointee whose work must be approved by your office. Indeed, I understand from speaking to past staff of the Privacy Office that the annual report to Congress, due more than a year ago, is currently in the "clearance" process, awaiting your approval. The last annual report to Congress, which was also late, only covered activities through June 2004. That is two years ago, before you even arrived at the Department. This is simply unacceptable.

The Department's Chief Privacy Officer, as designed by Congress, is responsible for ensuring that the agency, in its efforts to secure our homeland, does so in a manner that protects the privacy rights of Americans, as afforded by the U.S. Constitution and laws. We recognized that developing homeland security initiatives must be consistent with our society's guarantees of privacy, due process, and civil liberties. As our government develops post 9/11 homeland security initiatives in such areas as immigration, intelligence collection, law enforcement, and begins using new technologies, it must thoroughly and carefully review their impact on our fundamental freedoms. As the Gilmore Commission found in its December 2003 report, "[g]overnments must look ahead at the unintended consequences of policies in the quiet of the day instead of the crisis of the moment." To do so, requires both leadership and an evaluative framework to guide the government.

In sum, I am deeply concerned by your appointment of Mr. Teufel to fulfill the role of Chief Privacy Officer within the Department. If our nation's privacy and civil liberties are to be protected, we need an independent and experienced voice within the agency to assess the Department's performance. Please give me a call, at your earliest convenience, to explain this decision.

Sincerely,

A handwritten signature in black ink that reads "Bennie G. Thompson". The signature is written in a cursive, flowing style with a large initial "B".

Bennie G. Thompson
Ranking Member
Committee on Homeland Security