

## AN INTRODUCTION TO THE ISE PRIVACY GUIDELINES

**The Program Manager for the Information Sharing Environment (ISE), Ambassador Thomas E. McNamara released privacy guidelines on December 4<sup>th</sup> 2006**

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This document serves as an introduction to the Guidelines to Implement Information Privacy Rights and Other Legal Protections in the Development and Use of the Information Sharing Environment (“ISE Privacy Guidelines”), and is intended to provide background and context information for how the guidelines were developed and the role they will play in the development and use of the ISE. More information and guidance will be made available on the website for the Information Sharing Environment, [www.ise.gov](http://www.ise.gov).

On November 22, 2006, the White House informed the heads of departments and agencies that the President approved the issuance of the ISE Privacy Guidelines. Protecting privacy and civil liberties is a core tenet of the Information Sharing Environment (ISE). The ISE Privacy Guidelines provide the framework for enabling information sharing while protecting privacy and other legal rights. To achieve this, the Guidelines strike a balance between consistency and customization, substance and procedure, oversight, and flexibility. The Guidelines build upon existing resources within executive agencies and departments for implementation.

**Overview.** Information helps protect us from terrorist attack only if it is available to the people who need it to perform their missions. We must take care to share terrorism information in a way that preserves the freedoms on which our nation was founded. In the words of the 9/11 Commission: there is a “need for balance as our government responds to the real and ongoing threat of terrorist attacks... [W]hile protecting our homeland, Americans should be mindful of threats to vital personal and civil liberties. This balancing is no easy task, but we must constantly strive to keep it right.”<sup>1</sup> Meeting the dual imperatives of protecting privacy and sharing information is at the core of the approach taken to establishing the ISE.

The ISE Privacy Guidelines implement the requirements of Section 1016 of the Intelligence Reform and Terrorism Prevention Act of 2004 (IRTPA), and of Section 1 of Executive Order 13388, Further Strengthening the Sharing of Terrorism Information to Protect Americans. They establish a framework for sharing information in the ISE in a manner that protects privacy and civil liberties. The framework balances the dual imperatives of sharing information and protecting privacy by establishing uniform

<sup>1</sup> 9/11 Commission Report, 394.

procedures to implement required protections in unique legal and mission environments. In addition, the framework establishes an ISE privacy governance structure for deconfliction, compliance, and continuous development of privacy guidance.

**Drafting Process.** On December 16, 2005, the President issued a Memorandum to the Heads of Executive Departments and Agencies on the Guidelines and Requirements in Support of the Information Sharing Environment, which specified tasks, deadlines and assignments necessary for the ISE's development. Included in that Memorandum was Guideline 5, which directed the Director of National Intelligence (DNI) and the Attorney General to develop and recommend guidelines designed to be implemented by executive departments and agencies to ensure that the information privacy and other legal rights of Americans are protected in the development and use of the ISE, including in the acquisition, access, use, and storage of personally identifiable information. The DNI's Civil Liberties Protection Officer and the Department of Justice's Privacy and Civil Liberties Officer co-chaired the interagency drafting process, which included a review of existing privacy rules that could impact federal information sharing, and built on the work of other groups and subject matter experts. The Privacy and Civil Liberties Oversight Board was briefed and consulted during the drafting process.

**Compliance with Law.** The Guidelines provide a consistent framework for identifying information that is subject to privacy protection, assessing applicable privacy rules, implementing appropriate protections, and ensuring compliance. A panoply of laws, directives, and policies provide substantive privacy protections for personally identifiable information. The content of those protections will depend on the rules that apply to particular agencies and the information that they are proposing to share. Continued compliance with these and other laws and policies is fundamentally important, and is required by the ISE Privacy Guidelines. However, as described below, the Guidelines do more than direct agencies to comply with the law.

**Core Principles.** The Guidelines build on a set of core principles that executive agencies and departments will follow. These principles require specific, uniform action across these entities and reflect basic privacy protections and best practices, requiring agencies to, among other things: identify any privacy-protected information to be shared, enable other agencies to determine the nature of the information (e.g., whether it contains information about U.S. persons), assess and document applicable legal and policy rules and restrictions, put in place security, accountability and audit mechanisms, implement data quality and, where appropriate, redress procedures, identify an ISE Privacy Official to ensure compliance with the guidelines, document privacy protections in an ISE privacy policy, and facilitate public awareness of these protections as appropriate.

**Privacy Governance.** Successful implementation of the Guidelines requires a governance structure, both to monitor compliance and to iterate guideline development as lessons are learned. The Guidelines require departments and agencies to designate an “ISE Privacy Official” to directly oversee implementation of the Guidelines. The Guidelines also provide for an ISE Privacy Guidelines Committee, consisting of ISE Privacy Officials. Pursuant to the Guidelines, the Program Manager of the ISE has designated Alexander Joel and Jane Horvath to serve as co-chairs of the ISE Privacy Guidelines Committee. Alexander Joel is the Civil Liberties Protection Officer for the Director of National Intelligence, and Jane Horvath is the Department of Justice's Privacy and Civil Liberties Officer. Both previously co-chaired the interagency working group that drafted the ISE Privacy Guidelines. Working closely with the Privacy and Civil Liberties Oversight Board, the committee will seek to ensure consistency and standardization (where feasible) in implementation, as well as serve as a forum to share best practices and resolve inter-agency issues. As the ISE develops and specific sharing mechanisms institutionalized, the ISE Privacy Guidelines Committee, in consultation with the Privacy and Civil Liberties Oversight Board, will continually refine privacy guidance.

**Non-Federal Entities.** The ISE Privacy Guidelines provide that the Program Manager’s office will work with agencies to ensure that non-Federal entities (state, local and tribal governments, the private sector, and foreign partners and allies) develop and implement appropriate policies and procedures that provide protections that are at least as comprehensive as those contained in the Guidelines. More guidance on this process will be forthcoming.

**Ongoing Implementation Support.** An experienced team has been identified, organized, and funded to provide implementation support such as creating and distributing guides, methodologies, and other tools, and providing mechanisms for obtaining feedback, responding to common questions, and sharing best practices and lessons learned. For example, guidance in the form of Frequently Asked Questions will be posted on [www.ise.gov](http://www.ise.gov). That FAQ document will be periodically updated to reflect feedback, lessons learned, and updated guidance.

**Conclusion.** The ISE Privacy Guidelines are critical to creating the trusted information sharing environment that is the ISE. Implementing the Guidelines will enable information to be shared in a manner that protects the information privacy rights and other legal Rights of Americans.