

**29th International Conference of Data Protection and Privacy Commissioners
Montreal, Canada, 26-28 September 2007**

Resolution on the urgent need for global standards for safeguarding passenger data to be used by governments for law enforcement and border security purposes

Proposer: Der Bundesbeauftragte für den Datenschutz und die Informationsfreiheit (Germany)

Co-sponsors: Österreichische Datenschutzkommission (Austria)
Office of the Privacy Commissioner of Canada
Office of the Information and Privacy Commissioner of British Columbia
Office of the Information and Privacy Commissioner of Ontario
European Data Protection Supervisor (European Union)
La Commission Nationale de l'Informatique et des Libertés (France)
Landesbeauftragte für Datenschutz und die Informationsfreiheit Nordrhein-Westfalen (Germany - regional)
Garante per la protezione dei dati personali (Italy)
College Bescherming Persoonsgegevens (Netherlands)
Autoritatea Națională de Supraveghere a Prelucrării Datelor cu Caracter Personal (Romania)
Agencia de Protección de Datos (Spain)
Federal Data Commissioner (Switzerland)
Information Commissioner (UK)

The conference recalls:

- the communiqué adopted at its 24th international conference in Cardiff in 2002;
- the resolution on the transfer of passengers' data adopted at its 25th international conference in Sydney in 2003; and
- the declaration on the protection of personal data and privacy in a globalised world adopted at its 27th international conference in Montreux in 2005;

which recognise the balance that needs to be struck between the legitimate fight against terrorism and international crime, and the data protection and privacy rights of individuals.

The conference notes that:

- passenger data is increasingly being sought by governments to be used in the fight against terrorism, illegal immigration, and other crimes without sufficient regard to the privacy and human rights of passengers;
- some passenger data can be used to make inferences about religion, ethnicity and other highly sensitive matters;
- many governments around the world are increasingly asking for more and more data from carriers;
- carriers collect passenger data for commercial purposes and are being asked to provide it for law enforcement purposes;
- carriers increasingly have to meet many and varied demands for data and comply with many and varied systems for transferring the data, which creates uncertainty among carriers and passengers about their rights and obligations, making it difficult for passengers to understand how their data is being used and creating risk that carriers may transfer data inappropriately;
- these many and varied demands and systems incur costs for both airlines and passengers;
- for carriers to meet these demands requires legal and technical consistency;
- some carriers are still not fully complying with their obligations to inform passengers of the use and disclosure of their data; and
- other global arrangements have been put in place to facilitate international air travel and there is an urgent need to develop global solutions that facilitate international travel while respecting the privacy rights of passengers.

The conference reaffirms that:

- data protection and privacy rights, as enshrined in Art. 12 of the Universal Declaration of Human Rights and other legal instruments, protect individuals and their personal data and must be considered along with other rights in any proposals involving the transfer and use of passenger data for law enforcement purposes;
- the processing of passenger data should be carried out within a framework that takes account of accepted data protection principles and standards;
- any government proposals to use passenger data should show they are:
 - demonstrably necessary to address a specific problem;
 - demonstrably likely to address the problem;
 - proportionate to the security benefit; and
 - demonstrably less privacy invasive than alternative options; andshould be regularly reviewed to ensure the measures are still proportionate;
- the need to safeguard personal privacy in any developments remains an essential task not only for the worldwide data protection community, but all who are concerned about fundamental rights and freedoms; and
- if governments do not take an approach which correctly weighs data protection and privacy concerns, there is a real danger they will start to undermine the very fundamental freedoms they are seeking to protect.

In the pursuit of global data protection standards for safeguarding passenger data to be used by governments for law enforcement and border security purposes, the conference calls for:

- international organisations (such as IATA and ICAO), governments and carriers to work with data protection and privacy commissioners to adopt binding global solutions with appropriate data protection safeguards;
- all government proposals to use passenger data to ensure that they are:
 - demonstrably necessary to address a specific problem;
 - demonstrably likely to address the problem;
 - proportionate to the security benefit; and
 - demonstrably less privacy invasive than alternative options; andshould be regularly reviewed to ensure the measures are still proportionate;
- any government programmes using passenger data should provide for data minimisation; explicit limits on use, disclosure and retention appropriate to the purpose of the programme; data accuracy; rights of access and correction; and independent review;
- any solutions to take account of the legal, technical, financial and efficiency issues of carriers and authorities;
- governments to be open and transparent about the purposes for which data is collected and used and to make sure all passengers, regardless of their citizenship or country of origin, are provided with access to their personal information and appropriate redress mechanisms;
- carriers to adequately inform their passengers about any use and disclosure of their data to governments and law enforcement agencies, any use of no-fly or other watch lists, and the availability of redress with respect to use and accuracy of passenger data and related personal information; and
- data protection and privacy commissioners to continue to work together to ensure appropriate data protection and privacy safeguards and to press for binding global solutions.

Explanatory note

Increasingly, the governments of different countries have sought to use passenger data as a tool to tackle terrorism, transnational crime and other crimes. This has led to differences in the data items demanded, the uses of the data, and the level of safeguards.

The character of international travel is such that a global approach is needed, and a global solution is urgently required to ensure appropriate levels of security and to inspire passenger confidence, while providing proportionate measures that include the necessary data protection and privacy safeguards.

While data protection and privacy concerns are the paramount issues that need to be addressed in any global solution, it also provides the opportunity for other legal, technical, financial and efficiency concerns of airlines and passengers to be taken into account.

Global standards can ensure fairness, consistency, legal certainty and safeguards for passengers and carriers alike. It is clear that carriers, law enforcement agencies, international organisations, civil society groups and data protection and privacy experts all need to be involved to come to this global solution, and the commitment of the data protection and privacy commissioners in taking the lead in pressing for such a solution is essential if any progress is to be made.