

**Office of Chief Counsel
Internal Revenue Service
memorandum**

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Third Party Communication: None
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date: September 22, 2008

to: Juliana T. Padilla
FCO Program Analyst
(SB/SE Excise Headquarters)

from: Richard G. Goldman
Chief, Branch 6
(Procedure and Administration)

subject: SBSE Fuel Compliance Officer GPS Memorandum of Understanding

This memorandum responds to your request for assistance. This advice may not be used or cited as precedent.

ISSUES

Under the Privacy Act, 5 USC 552a, can the Internal Revenue Service disclose to the Department of Treasury the home addresses of IRS Fuel Compliance Officers, so that the Department of Treasury can track the operation of the government vehicles driven by the Fuel Compliance Officers?

CONCLUSION

Yes, the disclosure of the home addresses of IRS Fuel Compliance Officers to the Department of Treasury is permitted under the Privacy Act.

FACTS

Fuel Compliance Officers (FCOs) are employees of the Internal Revenue Service who administer the tax laws and regulations pertaining to the fuel distribution in the United States. FCOs are located around the country to ensure voluntary compliance with fuel tax laws. Because their job involves extensive driving, FCOs use government vehicles and are authorized to garage the vehicles at their private residences.

A new program is being implemented which places Global Positioning Systems (GPS) in the FCOs' vehicles. Currently, the Small Business / Self Employed Division of the Service has just entered into a Memorandum of Understanding with the National Treasury Employees Union establishing the parameters of the GPS program.

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In conjunction with this new program and as a result of the ongoing administration of the government vehicles used by the FCOs, the Department of Treasury has requested reports from the Service regarding the FCOs' vehicles. These reports ask for information including but not limited to the location where the FCOs' vehicles are garaged. Because the FCOs house the vehicles at their personal residences, these reports would require the Service effectively to disclose the personal addresses of the FCOs. You have requested the assistance of the Office of Chief Counsel to determine whether giving the personal information of the FCOs to the Department of Treasury through these reports raises any concern under the Privacy Act.

LAW AND ANALYSIS

Barring an exception, the Privacy Act prohibits the disclosure of an agency's record to another agency or person unless a written request or the written consent of the individual to whom the record pertains is obtained. 5 USC 552a(b). A record is defined as follows under the Privacy Act:

any item, collection, or grouping of information about an individual that is maintained by an agency, including, but not limited to, his education, financial transactions, medical history, and criminal or employment history that contains his name, or the identifying number, symbol, or other identifying particular assigned to the individual, such as a finger or voice print or a photograph.

5 USC 552a(a)(4). The Service maintains information pertaining to which FCO is driving which vehicle. Maintenance of that information constitutes a record for Privacy Act purposes. Barring an exception, disclosure of this information would be prohibited under the Privacy Act.

Amongst other exceptions, the Privacy Act permits an agency to disclose a record to an officer or employee of the agency which maintains the record who have a need for the record in the performance of their duties. 5 USC 552a(b)(1). For purposes of the Privacy Act, an agency is defined by 5 USC 552(f) as any "executive department, military department, Government corporation, Government controlled corporation, or other establishment in the executive branch...". For the purpose of the Privacy Act, the agency maintaining the record is the executive department, here, the Department of Treasury. As such, the Department of Treasury is considered the agency in the Service's Privacy Act matters, and the Service is a component of the Treasury. Thus the disclosure would be within the agency that maintains the record.

Under subsection (b)(1) of the Privacy Act, the Service is permitted to disclose, intra-agency, records to the Department of Treasury in order for an officer or employee therein to perform their duties. We assume that the Department of Treasury may be seeking the information relating to the FCOs' vehicles in order to monitor their use and to ensure that they are not misused. This monitoring of government vehicle use is a

proper duty of a Department of Treasury employee and knowing where these vehicles are being driven would certainly seem necessary to that employee's job function. Because this information is necessary for an employee to track the location of government vehicles, a disclosure of the record containing the personal information of a FCO may be disclosed by the Service to the Department of Treasury under the Privacy Act.

CASE DEVELOPMENT, HAZARDS AND OTHER CONSIDERATIONS

The Service has not yet created or produced these reports to the Department of Treasury. Once these reports are created, they will constitute a record under the Privacy Act as described above. Please contact our office when these records are created so we may advise you on the Privacy Act requirements for maintenance of these records.

This writing may contain privileged information. Any unauthorized disclosure of this writing may undermine our ability to protect the privileged information. If disclosure is determined to be necessary, please contact this office for our views.

Please call (202) 622-7950 if you have any further questions.