

SENSITIVE SECURITY INFORMATION

U.S. Department of Homeland Security
Office Of Security Operations
601 South 12th Street
Arlington, VA 20598



**Transportation
Security
Administration**

Action Memo

TO: Kelly C. Hoggan *KCH*
Assistant Administrator
Office of Security Operations

THROUGH: Joseph Salvator *JS*
Deputy Assistant Administrator
Office of Security Operations

FROM: Melanie Harvey *MHarvey* - 11.14.2013
Division Director, Threat Assessment Division
Office of Security Operations

SUBJECT: Behavioral Indicator Reference Guide Language Revision

Purpose

To gain approval to move forward with legally required revisions to the Behavioral Indicator Reference Guide and Screening of Passengers by Observation Technique (SPOT) Scoresheet.

Background

The SPOT Scoresheet is used by Behavioral Detection Officers (BDOs) conducting SPOT to document the basis for when a passenger is subjected to additional screening or to a LEO referral. The scoresheet provides a list of all assessable behaviors which can lead to additional screening, but does not provide descriptions of the type of behavior each indicator is intended to encompass. The Behavioral Indicator Reference Guide (BIRG) elaborates on the SPOT scoresheet and provides descriptions and examples of assessable and non-assessable behaviors.

A recent review by the Department of Homeland Security Office of General Counsel (DHS OGC) of documents used by the Behavior Detection and Analysis Program (BDA) raised concerns that two of the behavioral indicators included in SPOT could be interpreted by outside readers as violative of the First Amendment right of passengers to freedom of speech. As they appear on the scoresheet and in the BIRG, the two indicators as currently written appear to permit BDOs (b)(3):49 U.S.C. § 114(r)

(b)(3):49 U.S.C. § 114(r)

WARNING: This record contains Sensitive Security Information that is controlled under 49 C.F.R. parts 15 and 1520. No part of this record may be disclosed to persons without a "need to know," as defined in 49 C.F.R. Parts 15 and 1520, except with the written permission of the Administrator of the Transportation Security Administration or the Secretary of Transportation. Unauthorized release may result in civil penalty or other action. For U.S. government agencies, public disclosure is governed by 5 U.S.C. 552 and 49 C.F.R. Parts 15 and 1520.

~~SENSITIVE SECURITY INFORMATION~~

(b)(3):49 U.S.C. § 114(r)

Because assessing these indicators could lead to additional screening, or possibly a law enforcement notification, DHS OGC recommended that TSA revise the indicators to make it clear that BDOs do not engage in impermissible retaliation against passengers for lawfully expressing displeasure with TSA or screening procedures.

Discussion

(b)(3):49 U.S.C. § 114(r)

Revising the language of the two indicators in the Behavioral Indicator Reference Guide and scoresheet will also more clearly align each document with existing training for BDOs. An OCC review determined that current BDO training, which uses the Behavioral Indicator Reference Guide as a starting point and then elaborates on when to assess each indicator, does not raise First Amendment concerns. However, the Behavioral Indicator Reference Guide's descriptive language, when read alone, is more ambiguous. An outside reviewing official, who may lack the context of how TSA trains its BDOs to observe for these indicators, might misperceive the indicators as approving of retaliatory screening procedures for individuals who voice opinions at the screening checkpoint. Additionally, if the indicators were challenged in court, a judge could base an adverse ruling solely on the language of the scoresheet and the BIRG, regardless of how BDOs are trained. The revisions in the attachments reduce the chances for any such misperceptions and adverse interpretations.

DHS OGC has approved the revised language.

Recommendation

Approve the language provided in the attached documents for two SPOT indicators to ensure that the Behavioral Indicator Reference Guide and SPOT scoresheet are consistent with First Amendment requirements and BDO training.

Approve	<u>Ky C. Ag</u>	/ 11/10/13	Disapprove	_____	/
		Date			Date
Modify	_____	/	Needs more discussion	_____	/
		Date			Date

~~WARNING: This record contains Sensitive Security Information that is controlled under 49 C.F.R. parts 15 and 1520. No part of this record may be disclosed to persons without a "need to know," as defined in 49 C.F.R. Parts 15 and 1520, except with the written permission of the Administrator of the Transportation Security Administration or the Secretary of Transportation. Unauthorized release may result in civil penalty or other action. For U.S. government agencies, public disclosure is governed by 5 U.S.C. 552 and 49 C.F.R. Parts 15 and 1520.~~

~~SENSITIVE SECURITY INFORMATION~~

OCC Language Change Request:

Section 2 – Observation and Behavior Analysis

Currently Language states

(b)(3):49 U.S.C. § 114(r)

Legal requires it to state

(b)(3):49 U.S.C. § 114(r)

Section 4 – Signs of Deception

Current Language States

(b)(3):49 U.S.C. § 114(r)

Legal requires it to state

(b)(3):49 U.S.C. § 114(r)

WARNING: This record contains Sensitive Security Information that is controlled under 49 CFR parts 15 and 1520. No part of this record may be disclosed to persons without a "need to know", as defined in 49 CFR parts 15 and 1520, except with the written permission of the Administrator of the Transportation Security Administration or the Secretary of Transportation. Unauthorized release may result in civil penalty or other action. For U.S. government agencies, public disclosure is governed by 5 U.S.C. 552 and 49 CFR parts 15 and 1520.