

Visa Office
Bureau of Consular Affairs
2201 C St. NW
Washington, D.C. 20520

May 18, 2017

Via Electronic Filing

Re: Notice of Collection Under OMB Emergency Review: Supplemental Questions for Visa Applicants, Docket No. DOS-2017-0019

To Whom It May Concern,

We write to submit comments on the U.S. Department of State's (State) request to the Office of Management and Budget (OMB) to instate supplemental questions on certain immigrant and nonimmigrant visa applications. Proposed questions would include "social media platforms and identifiers, also known as handles, used during the last five years." By asking travelers to provide the government with social media identifiers that could then be used to monitor online activity, the proposal risks undermining the rights to freedom of expression, freedom of association, and privacy. State should withdraw the proposed rule change.

Access Now defends and extends the digital rights of users at risk around the world. By combining innovative policy, user engagement, and direct technical support, we fight for open and secure communications for all. As part of this mission, we fight for the right to speak freely, which is critical for demonstrating dissent, guaranteeing a free press, and defending human rights.

In 2016, when the Department of Homeland Security (DHS) published a request for comment on similar rule changes, Access Now issued a survey requesting public responses to the proposed changes. More than 2,300 individuals responded to our survey. The overwhelming majority of respondents saw the proposal as negative. One respondent explained, "I believe that requesting this information would have a chilling effect on free and open discussion on social media -- discussion that is essential to democracy." Another worried, "I am terrified that a meta-annalists [sic] of my past years search history (often helping or showing students how to search for topics due on term papers -- on both the computers at my college, and my personal ones as well) would yield a very skewed view of who I am or what I believe." Several respondents called CBP's proposal an invasion of privacy.

U.S. law guarantees the rights to freedom of expression, freedom of association, and privacy as provided for in the U.S. Constitution as well as the Universal Declaration of Human Rights and International Covenant on Civil and Political Rights. Efforts to monitor social media

activity have been shown to have a chilling effect on speech.¹ Government monitoring and analysis of social media content, even public content, can reveal a significant amount of non-public, protected information about a user and thus interfere with the right to privacy.

In addition to this comment, Access Now has joined nearly 50 other organizations in a separate joint comment responding to this proposal. As that comment explains,

...the request for social media data – “platforms and identifiers” – is fatally ambiguous and will have a deleterious impact on the speech and privacy of the applicants as well as the Americans with whom they communicate.

Surveillance of this sort has a disparate impact on users at risk, including communities of color, religious groups, LGBTQI communities, and other marginalized communities. The internet has become a space for vulnerable communities to connect with one another. Social media surveillance is especially harmful to individuals living under repressive regimes where such expressions may be unlawful and subject to harsh penalties.

In addition, there is a high likelihood of confusion as to the purpose of State’s collection and how the agency will use the data. For example, it is not immediately clear to what extent providing identifiers will impact decisions to grant immigration status to individuals entering the U.S. It is also unclear whether, how, or to what extent user data will be used by other government offices and agencies.

The stated goals of the proposed rule changes are to “more rigorously evaluate applicants for terrorism or other national security-related visa ineligibilities.”² Yet, the activity and communications of people willing to provide social media identifiers to State are least likely to be of interest because individuals whose data State and intelligence agencies seek would be unlikely to provide identifiers. We do commend the exclusion of a requirement for visa applicants to provide social media passwords, due in part to the calls that have been made to omit said requirement.³ However, requesting social media handles will have a chilling effect on free expression and is likely inefficient. Complicating matters further, large-scale analysis of social media implicit in the proposal is of questionable value due to the highly-contextual nature of expression on social media. As such, the proposal does not meet international human rights standards as articulated by the United Nations Human Rights Committee.

For more information, please contact us at the addresses below.

¹ <https://www.accessnow.org/13503-2/>

² <https://www.gpo.gov/fdsys/pkg/FR-2017-05-04/pdf/2017-08975.pdf>

³ <https://www.accessnow.org/give-us-twitter-facebook-passwords-guarding-free-expression/>

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