

AGREEMENT BETWEEN
THE GOVERNMENT OF JAPAN AND
THE GOVERNMENT OF THE UNITED STATES OF AMERICA
ON ENHANCING COOPERATION IN PREVENTING
AND COMBATING SERIOUS CRIME

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The Government of Japan and the Government of the United States of America (hereinafter referred to as "the Parties"),

Prompted by the desire to cooperate more closely to prevent and combat serious crime, particularly terrorism,

Recognizing that more effective information sharing is an essential component in the fight against serious crime, particularly terrorism,

Recognizing the need to further facilitate secure international travel under their respective visa waiver programs, and the importance of preventing and combating serious crime, particularly terrorism, while respecting fundamental rights and freedoms, notably privacy and the protection of personal data,

Have agreed as follows:

Article 1
Definitions

For the purposes of this Agreement:

(1) "Automated querying" shall mean an online procedure for comparing fingerprint data through the national contact points designated in accordance with Article 3 for the purpose of determining, on an automated basis, whether a match exists between fingerprint data transmitted by the national contact point of the querying Party (hereinafter referred to as "the querying contact point") and fingerprint data made available by the queried Party.

(2) "Personal data" shall mean any information relating to an identified or identifiable natural person.

(3) "Serious crime" shall mean, for the purpose of implementing this Agreement, conduct constituting an offense punishable by death, life imprisonment, or deprivation of liberty for a maximum period of more than one year and that is described in Annex I of this Agreement, which forms an integral part of this Agreement, or any other conduct constituting an offense punishable by death, life imprisonment, or deprivation of liberty for a maximum period of at least three years by the laws and regulations of the country of at least one of the Parties (for Article 4 or 8, the Party that queries or uses information).

Article 2 Purpose

The Parties shall cooperate with each other under the framework established herein to exchange information, including personal data, (hereinafter referred to as "information") to be utilized for the purpose of preventing, detecting, and investigating serious crime, particularly terrorism, with the objective of enhancing the security of nationals of both countries, while further facilitating secure international travel under their respective visa waiver programs.

Article 3 National Contact Points

1. Each Party shall designate one or more national contact points that are to perform the functions provided for in this Agreement.
2. Each Party shall notify the other Party of its national contact points through diplomatic channels.
3. The national contact points of the Parties shall communicate directly with one another in accordance with this Agreement.
4. The national contact points of the Parties shall perform the functions provided for in this Agreement in conformity with the requirements of this Agreement.

Article 4 Automated Querying of Fingerprint Data

1. For providing information to prevent, detect, and investigate serious crime, each Party shall permit the other Party's national contact points to initiate automated querying.

2. For the purpose of automated querying, each Party shall make available to the other Party fingerprint data as provided for in Annex II of this Agreement, which forms an integral part of this Agreement.

3. The national contact point of each Party may initiate automated querying on fingerprint data of an individual for the prevention, detection, and investigation of serious crime only if particular circumstances give reason to inquire whether the individual will commit or has committed a serious crime.

4. An automated fingerprint identification system for automated querying shall be established by each Party in accordance with the laws and regulations of its country. When automated querying is initiated, the queried Party's system will respond automatically to the querying contact point either that there is a match, with a corresponding reference number, or that there is no match, according to the result of the comparison of the fingerprint data.

5. When there is a match, the response shall be accompanied by the fingerprint data to allow the querying contact point to confirm the result.

6. In cases where an automated query pursuant to this Article resulting in a match is not followed by a request for further information pursuant to Article 5, the national contact point of the queried Party (hereinafter referred to as "the queried contact point") may request, within a reasonable period of time, an explanation of the purpose of the automated query. The querying contact point shall respond to such request in a timely manner.

7. The technical and procedural details for automated querying pursuant to this Article shall be specified in one or more implementing arrangements between the national contact points of the Parties.

Article 5 Request for and Provision of Further Information

1. When an automated query results in a match, the querying contact point may request the queried contact point to provide further information of the individual whose fingerprint data is matched, subject to written notification of the purpose of the request and other items as specified in one or more implementing arrangements.

2. The queried contact point shall provide the querying contact point with the requested information that is available at the time of receipt of the request and that it deems relevant to the purpose specified in the request, in accordance with this Agreement and the laws and regulations of its country.

3. Information shall be provided without regard to whether the conduct that is the subject of the prevention, detection, or investigation by the querying Party would constitute a criminal offense under the laws and regulations of the country of the queried Party.

4. Requests for information in accordance with this Agreement shall not be refused only for the reason that the requests could be made through other applicable bilateral or multilateral international agreements on mutual legal assistance or through other international law enforcement cooperation, except for the requests that must be governed by those agreements.

5. If the request is refused, consistent with the laws and regulations of the country of the queried Party, the queried contact point shall inform the querying contact point of the reasons for refusal.

Article 6 Provision of Information without Request

Either Party may, without prior request, provide information to the other Party through national contact points, subject to the laws and regulations of its country for the prevention, detection, and investigation of serious crime, in individual cases when it has reason to believe that a serious crime, particularly terrorism and related conduct, will be or has been committed.

Article 7 Notification of Result of Use

Upon request, the national contact point which has received information pursuant to Article 5 or 6 shall notify the national contact point which has provided the information of the result of any use of such information, including the use under subparagraph (1) of paragraph 5 of Article 8.

Article 8
Limitation on Processing of Information

1. The queried contact point shall delete the fingerprint data transmitted to it by the querying contact point immediately after making the response pursuant to Article 4. However, the queried contact point may retain the fingerprint data until it responds to the request referred to in paragraph 1 of Article 5, when an automated query results in a match.

2. The querying contact point shall delete the fingerprint data transmitted to it by the queried contact point under paragraph 5 of Article 4 immediately after determining whether or not to request further information pursuant to Article 5.

3. Each Party may use the result of automated querying solely for the purpose of determining whether or not to request further information pursuant to Article 5.

4. The queried contact point shall, in accordance with the laws and regulations of its country, retain information contained in the written notification referred to in paragraph 1 of Article 5.

5. (1) Each Party may, consistent with paragraph 8 of this Article, use the information provided under Article 5, for the following purposes in addition to the purpose notified under paragraph 1 of Article 5:

- (a) investigation of serious crime;
- (b) prevention of a serious threat to its public security; or
- (c) immigration-related purposes.

(2) If a Party deems it necessary to use the information for a purpose other than that described in paragraph 1 of Article 5 and subparagraph (1) above, it may make a written request to the other Party for prior consent to such use, by specifying the purpose of such use.

6. Each Party may use the result referred to in Article 7 solely in order to review the implementation of this Agreement.

7. Neither Party shall release the information provided to it under Articles 4 through 7, to any third State, international body, or private entity or person without the prior written consent of the other Party. The first sentence of this paragraph shall not be interpreted to affect the Parties' obligations under the laws and regulations of their respective countries, if any, to disclose the information provided under this Agreement.

8. In providing information pursuant to Articles 5 and 6, each Party may, in particular cases, impose conditions on the use of the information by the other Party. If the other Party accepts the information, it shall be bound by the conditions.

9. The Parties shall, in accordance with the laws and regulations of their respective countries, conduct processing of provided information fairly and retain the information provided under Article 5 only so long as necessary for the purpose referred to in paragraph 1 of Article 5 or the purpose for which it is used in accordance with paragraph 5 of this Article.

Article 9 Protection and Security of Information

The Parties shall ensure that organizational, technical, and other necessary measures, such as the use of appropriate technology and encryption where appropriate, are taken to protect the information provided under this Agreement, including to prevent unauthorized use of or access to such information, subject to the laws and regulations of their respective countries.

Article 10 Correction, Deletion, or Non-Disclosure of Certain Information

1. Each Party shall notify the other Party if it becomes aware that material information which it has provided to the other Party or it has received from the other Party under this Agreement is incorrect or unreliable.

2. When either Party is notified by the other Party or otherwise becomes aware that material information which it has received from the other Party under this Agreement is incorrect or unreliable, it shall take appropriate measures such as correction, deletion, or non-disclosure of the information.

Article 11 Record

1. Each Party shall maintain a record of the provision and receipt of information communicated between the Parties under this Agreement. This record shall serve to enable each Party to:

(1) ensure effective monitoring of protection of the information in accordance with this Agreement and the laws and regulations of its country;

(2) effectively carry out the provisions of paragraph 6 of Article 4, and Articles 7 and 10; and

(3) ensure the security of the information in accordance with this Agreement and the laws and regulations of its country.

2. The record shall include:

(1) the types of information which the Party has provided or received;

(2) the date and time of the provision or receipt; and

(3) identification of the authority conducting, at the time of the automated querying, the prevention, detection, or investigation of the serious crime.

3. The record shall be protected with suitable measures against inappropriate use and shall be maintained for at least two years. After the term of maintenance, each Party shall delete the record immediately, unless it is inconsistent with the laws and regulations of its country.

Article 12 Expenses

Each Party shall bear its own expenses incurred in fulfilling its respective obligations under this Agreement, such as installation, operation, and maintenance of its automated fingerprint identification system and the execution of a request made by the other Party, subject to the availability of appropriated funds.

Article 13
General Provisions

1. Nothing in this Agreement shall prevent either Party from requesting information from or providing information to the other Party in accordance with other applicable international agreements to which both of the Parties or both of their countries are parties, or pursuant to the laws and regulations of its country.
2. Nothing in this Agreement shall be construed to authorize either Party to query, request, or use information under this Agreement where such query, request, or use relates to the prevention, detection, or investigation of an act considered a political offense by that Party consistent with its international obligations.
3. This Agreement shall not give rise to or affect rights or obligations on the part of any private person, including to obtain, suppress, or exclude any evidence, or to impede the sharing of information.

Article 14
Consultations

1. The Parties shall hold consultations for the purpose of facilitating the implementation of this Agreement.
2. The Parties shall, if necessary, hold consultations on any matter that may arise in the interpretation or application of this Agreement.

Article 15
Entry into Force, Amendments, and Termination

1. This Agreement shall enter into force on the thirtieth day after the date on which the Parties exchange diplomatic notes informing each other that their respective internal procedures necessary to give effect to this Agreement have been completed.
2. The provisions of this Agreement shall apply to any query, request, or provision of information on or after the date upon which this Agreement enters into force, whether the relevant acts were committed before, on, or after that date.
3. Either Party may request consultation with the other Party for the purpose of amending this Agreement. This Agreement, including Annexes I and II, may be amended by written agreement of the Parties.

4. Either Party may terminate this Agreement at any time by giving three months written notice to the other Party.

5. Notwithstanding the termination of this Agreement, all information provided under this Agreement shall continue to be protected in accordance with the provisions of this Agreement.

IN WITNESS WHEREOF, the undersigned, being duly authorized by their respective Governments, have signed this Agreement.

Done at Tokyo on February 7, 2014, in duplicate, in the Japanese and English languages, both texts being equally authentic.

FOR THE GOVERNMENT OF
JAPAN:

三ツ矢憲生
古屋圭司

FOR THE GOVERNMENT OF
THE UNITED STATES OF AMERICA:

Caroline Kennedy

ANNEX I

Conduct constituting offenses falling under categories listed in this Annex, as well as attempt, conspiracy, assistance, solicitation, preparation for, or participation in, the commission of any of such offenses, only when criminalized, and which are punishable by death, life imprisonment, or deprivation of liberty for a maximum period of more than one year are within the scope of this Agreement as "serious crime."

1. terrorism or terrorism-related offenses
2. torture
3. murder or manslaughter
4. assault with intent to cause serious injury, including permanent maiming or disfigurement, or resulting in such injuries
5. racketeering, extortion, or blackmail
6. bribery or corruption
7. embezzlement
8. felony/grand theft
9. burglary
10. perjury or subornation of perjury
11. trafficking in or smuggling of human beings
12. sexual exploitation of children or child pornography-related offenses
13. illicit trafficking in, distribution of, or possession with intent to distribute narcotics, marijuana, or other controlled substance
14. illicit trafficking in firearms, munitions, explosives, or other weapons or firearms-related offenses
15. fraud or offenses involving fraudulent conduct
16. tax-related offenses

17. laundering of the proceeds of crime
18. counterfeiting currency
19. computer-related crime
20. intellectual property offenses or counterfeiting or piracy of products
21. identity theft or data privacy violations, including unlawful access to databases
22. environmental crime, including illicit trafficking in endangered animal species, endangered plant species, or their varieties
23. facilitation of unauthorized entry or residence or improper entry by aliens
24. illicit trade in human organs or tissue
25. kidnapping, illegal restraint, or hostage-taking
26. robbery
27. illicit trafficking in cultural goods, including antiques and works of art
28. forgery, including that of administrative documents such as passports and travel documents or means of payment
29. illicit trafficking in or use of or unlawful possession of biological, chemical, nuclear, or radioactive materials
30. trafficking in stolen or counterfeit goods, or stolen or fraudulent documents, including passports and travel documents, or means of payment
31. rape or other serious sexual assaults
32. arson
33. unlawful seizure of aircraft or ships or piracy on the high seas
34. sabotage

ANNEX II

1. The Government of Japan shall make available to the Government of the United States of America:

(1) the fingerprint data of individuals in the following categories that have been collected from the individuals and are held in its national system for automated fingerprint identification used for the purpose of preventing, detecting, and investigating serious crime, when an automated query indicates that it relates to an identified individual:

(a) individuals who have been convicted and sentenced by a final judgment;

(b) adults who have been arrested and, for the case relevant to the arrest, who have:

(i) been prosecuted but not received a final judgment;

(ii) received a disposition of non-prosecution pursuant to Article 248 of the Japanese Code of Criminal Procedure (Law No. 131 of 1948), as may be amended, and have not been prosecuted; or

(iii) neither been prosecuted nor received a disposition of non-prosecution, except in cases determined to be a petty crime or finally subjected to non-criminal proceedings relating to minors; and

(c) adults for whom a request of arrest has been circulated among police authorities in Japan.

(2) the fingerprint data that have been collected from individuals and are held in its national system for automated fingerprint identification used for the purpose referred to in subparagraph (1) of paragraph 1 of this Annex II, when an automated query indicates that it relates to an unidentified individual.

2. The Government of the United States of America shall make available to the Government of Japan the fingerprint data that are held in its national system for automated fingerprint identification used for the purpose referred to in subparagraph (1) of paragraph 1 of this Annex II, including but not limited to the fingerprint data of individuals in the following categories:

- (1) individuals who have been convicted;
- (2) adults who have been arrested;
- (3) adults for whom a warrant of arrest has been issued; and
- (4) known and suspected terrorists.