

June 7, 2011

BY CERTIFIED MAIL

The Privacy Office
U.S. Department of Homeland Security
245 Murray Drive SW, Building 410
STOP-0655
Washington, D.C. 20528-0655

RE: Freedom of Information Act Request and Request for Expedited Processing

Dear FOIA Officer,

This letter constitutes a request under the Freedom of Information Act ("FOIA"), 5 U.S.C. § 552, and is submitted on behalf of the Electronic Privacy Information Center ("EPIC"). EPIC seeks agency records in the possession of the Department of Homeland Security ("DHS") concerning those federal, state, local, and foreign governments and private sector entities which the agency may choose to disclose information that is procured from DHS's social media monitoring initiatives.

Background

The "Publicly Available Social Media Monitoring and Situational Awareness Initiative" ("the Initiative") is a program that is to be carried out by the National Operations Center ("NOC") under the Office of Operations Coordination and Planning ("OPS") as a part of DHS.¹ DHS claims that the Initiative is consistent with "OPS[']s] statutory responsibility (Section 515 of the Homeland Security Act (6 U.S.C. § 321d(b)(1)) to provide situational awareness and establish a common operating picture for the federal government."² The program consists of NOC monitoring social media services and acquiring publicly available information without any

¹ See DHS, PRIVACY IMPACT ASSESSMENT FOR THE OFFICE OF OPERATIONS COORDINATION AND PLANNING: PUBLICLY AVAILABLE SOCIAL MEDIA MONITORING AND SITUATIONAL AWARENESS INITIATIVE UPDATE, *available at* http://www.dhs.gov/xlibrary/assets/privacy/privacy_pia_ops_publiclyavailablesocialmedia_update.pdf.

² *Id.* at p. 2.

direct interaction, which would then be stored and used by the agency. DHS has provided a representative, but likely not exclusive list of the social media services that will be monitored.³

The original Privacy Impact Assessment ("PIA") for the Initiative was released on June 22, 2010 and stated that the program would generally avoid collecting "Personally Identifiable Information" ("PII"), though DHS acknowledged that PII might be involved in some way.⁴ The updated PIA, released on January 6, 2011, however, stated that the Initiative would now be able to acquire and release PII that falls into certain categories.⁵ DHS plans to retain the personal data for five years. The acquisition and disclosure of information by DHS raises questions about its compliance with the Privacy Act, as well as the privacy risks raised by the program's broad scope.⁶

Documents Requested

EPIC requests the following agency records (including but not limited to electronic records):

1. Any list of those federal, state, local, and foreign governmental entities which DHS plans to or may choose to disclose information that is procured through social media monitoring.
2. Any list of those private sector entities which DHS plans to or may choose to disclose information that is procured through social media monitoring.
3. Any records setting out DHS's legal authority to disclose information that is procured through social media monitoring, including memos, communications, and reports.

Request for Expedited Processing

This request warrants expedited processing because it has been filed by "a person primarily engaged in disseminating information" and it pertains to a matter about which there is an "urgency to inform the public about an actual or alleged federal government activity." 5 U.S.C. §552(a)(6)(E)(v)(II)(2009); *Al-Fayed v. CIA*, 254 F.3d 300, 306 (D.C. Cir. 2001). EPIC is "primarily engaged in disseminating information." *American Civil Liberties Union v. Department of Justice*, 321 F. Supp. 2d 24, 29 n.5 (D.D.C. 2004).

Moreover, there is particular urgency for the public to obtain information about the privacy implications of social media monitoring because government surveillance has a direct

³ See *id.* at p. 14–18.

⁴ See DHS, PRIVACY IMPACT ASSESSMENT FOR THE OFFICE OF OPERATIONS COORDINATION AND PLANNING: PUBLICLY AVAILABLE SOCIAL MEDIA MONITORING AND SITUATIONAL AWARENESS INITIATIVE, available at http://www.dhs.gov/xlibrary/assets/privacy/privacy_pia_ops_publiclyavailablesocialmedia.pdf.

⁵ See DHS, *supra* note 1, at p. 3 (listing the categories under which PII may be collected according to DHS).

⁶ See EPIC, *Comments of the Electronic Privacy Information Center to the Department of Homeland Security: "Systems of Records Notice"*, available at <http://epic.org/privacy/socialmedia/Comments%20on%20DHS-2011-0003-1.pdf>.

impact on the civil rights and civil liberties of American citizens. This request will serve to fill in gaps in publicly available information, and clarify the entities which DHS could disclose procured information to. The request is particularly salient given recent changes and reevaluations of governmental privacy policies and techniques.⁷ The public should be informed.

Request for "News Media" Fee Status

EPIC is a "representative of the news media" for fee waiver purposes. *Electronic Privacy Information Center v. Department of Defense*, 241 F. Supp. 2d 5 (D.D.C. 2003). EPIC is a non-profit, educational organization that routinely and systematically disseminates information to the public. EPIC maintains a heavily visited Web site (<http://www.epic.org>) that highlights the "latest news" concerning privacy and civil liberties issues. The site also features documents EPIC obtains under the FOIA. EPIC also publishes a biweekly electronic newsletter that is distributed to over 15,000 readers, many of whom report on technology issues for major news outlets. The newsletter reports on relevant policy developments of a timely nature (hence the bi-weekly publication schedule). The newsletter has been published continuously since 1996, and an archive of past issues is available at EPIC's web site. Finally, EPIC publishes and distributes printed books that address a broad range of privacy, civil liberties, and technology issues. A list of EPIC publications is available on its website. Based on its status as a "news media" requester, EPIC is entitled to receive the requested records with only duplication fees assessed. Further, because disclosure of this information will "contribute significantly to public understanding of the operation or activities of the government," as described above, any duplication fees should be waived.

Thank you for your consideration of this request. As provided in 5 U.S.C. §552(a)(6)(E)(ii), EPIC anticipates your determination on its request for expedited processing within ten (10) calendar days.

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⁷ See White House Website Privacy Policy, <http://www.whitehouse.gov/privacy> (last modified Jun. 3, 2011).