

December 1, 2008

VIA U.S. MAIL (CERTIFIED DELIVERY)
FOIA Requester Service Center
The Federal Bureau of Investigation
170 Marcel Drive
Winchester, VA 22602-4843

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”).

Background

The Attorney General issued draft guidelines for domestic FBI operations on September 29, 2008.¹ The draft guidelines were made public on October 3, 2008.² The guidelines have since been finalized with an effective date of today, December 1, 2008.³

The guidelines pertain to the Bureau’s investigation of federal crimes, assessment of threats to national security, foreign intelligence development, intelligence collection, analysis, planning, and information sharing.⁴ The Attorney General's Guidelines for Domestic FBI Operations pertain to the conduct of field operatives while performing domestic investigations.

The guidelines grant the FBI broad authority to conduct domestic surveillance of many individuals suspected of no crime. Therefore it is necessary that the legal authority is made available to the public. The FBI has stated that the guidelines were revised in the wake of discussions with lawmakers, privacy organizations, and the press.⁵ Senators Richard Durbin, Edward Kennedy, and Russ Feingold sent a letter urging significant

¹ Federal Bureau of Investigation, U.S. Department of Justice, Attorney General's Consolidated Guidelines, (Oct. 3, 2008), *available at* <http://www.usdoj.gov/ag/readingroom/guidelines.pdf>.

² *Id.*

³ Memorandum from Attorney General Michael B. Mukasey to Heads of Department Components re: The Attorney General's Guidelines for Domestic FBI Operations, (Oct. 3, 2008), *available at* <http://www.usdoj.gov/ag/readingroom/guidelines-memo.pdf>.

⁴ *Id.*

⁵ Congressional Testimony of Valerie Caproni – General Counsel, FBI; and Elisebeth Collins Cook – Assistant Attorney General, Office of Legal Policy, DOJ, (Sept. 23, 2008), *available at* <http://www.fbi.gov/congress/congress08/caproni092308.htm>.

revisions to the guidelines.⁶ The Senators also urged the Attorney General to make the draft guidelines public to allow for more meaningful input.

The final guidelines need to be made public. It is necessary that the final guidelines are released in complete and unredacted form so that the FBI's domestic authority can be analyzed by the public.

Document Requested

EPIC requests copies of the following agency record in the possession of the Department of Justice on December 1, 2008:

- The complete and unredacted final version of the Attorney General's Guidelines for Domestic FBI Operations.

Request for Expedited Processing

This request warrants expedited processing because it is made 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.” 28 C.F.R. § 16.5(d)(1)(ii).

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). In accordance with *Al-Fayed v. CIA*, 254 F.3d 300, 306, (D.C. Cir. 2001), the documents should be produced as soon as practicable.

Moreover, there is a particular urgency for the public to obtain information about the federal government's basis for conducting domestic surveillance. Under the law, a person may not be investigated without probable cause. It is necessary that the guidelines incorporate meaningful privacy safeguards to ensure that field agents honor constitutional values and civil liberties while conducting domestic surveillance.

The impact of the Attorney General's Guidelines is a matter of great public interest. Many newspapers, including The Washington Post and The New York Times, have published substantial coverage about the guidelines.⁷

⁶ Durbin Statement on Announcement of New FBI Guidelines, (Oct. 3, 2008), <http://durbin.senate.gov/showRelease.cfm?releaseId=304117> (last visited Dec. 1, 2008).

⁷ Editorial, *Another Invitation to Abuse*, N.Y. Times, Oct. 18, 2008, available at <http://www.nytimes.com/2008/10/19/opinion/19sun2.html>; Carrie Johnson, *Guidelines Expand FBI's Surveillance Powers*, The Washington Post, Oct. 4, 2008, available at <http://www.washingtonpost.com/wp-dyn/content/article/2008/10/03/AR2008100303501.html>.

Request for “News Media” Fee Status

EPIC is a “representative of the news media” for fee waiver purposes, *EPIC v. Department of Defense*, 241 F. Supp. 2d 5 (D.D.C. 2003). Based on our status as a “news media” requester, we are entitled to receive the requested record with only duplication fees assessed. Further, because disclosure of this information will “contribute significantly to public understanding of the operations or activities of the government,” any duplication fees should be waived.

Thank you for your consideration of this request. As provided in 28 C.F.R. § 16.5(d)(4), I will anticipate your determination on our request for expedited processing with ten (10) calendar days.

Respectfully submitted,

Anirban Sen, Esq.
EPIC Fellow