

April 18, 2008

VIA FACSIMILE (512-424-2649)
Texas Department of Public Safety
Public Information Office
Attn: Open Records
P.O. Box 4087
Austin, TX 78773-0170

RE: Public Information Act Request

Dear Texas Department of Public Safety,

This letter constitutes a request under the Texas Public Information Act (“TPIA”), Tex. Gov’t Code Ann. §§ 552.001-552.353 (2007), and is submitted on behalf of the Electronic Privacy Information Center (“EPIC”).

Background

On June 21, 2003, the Texas Fusion Center was established pursuant to Tex. Gov’t Code Ann. § 421.081 (2007). It is one of several similar entities established throughout the United States. According to federal guidelines, the Texas Fusion Center, and others like it, are intended to “[c]reate a collaborative environment for the sharing of intelligence and information among local, state, tribal, and federal law enforcement agencies, public safety agencies, and the private sector.”¹ The Texas Department of Public Safety operates the Texas Fusion Center.

The Texas Fusion Center’s operations involve contact with federal agencies, including the U.S. Department of Homeland Security and the U.S. Department of Justice, as well as other federal programs, including the National Criminal Intelligence Sharing Plan and the Criminal Intelligence Coordinating Council. The federal government has spent at least \$380 million to support state fusion centers and other similar entities.

Federal guidelines state that the Texas Fusion Center should accumulate and retain information about Texas residents from a wide range of public and private

¹ United States Department of Justice, “Fusion Center Guidelines: Developing and Sharing Information and Intelligence in a New Era,” (Aug. 2006), available at: http://it.ojp.gov/documents/fusion_center_guidelines_law_enforcement.pdf.

sources.² Such information includes, but is not limited to: financial records, credit reports, medical records, internet and email data, video surveillance from retail stores and sporting facilities, data from preschools, and welfare records.³ In addition, federal fusion center guidelines require “compliance with all applicable privacy laws,” because such compliance “respects our system of federalism and strengthens our security posture.”⁴

The impact of fusion centers is a matter of great public interest.⁵ Many newspapers, including *The Washington Post*, the *Austin American-Statesman*, and *The Las Vegas Sun*, have published substantial articles about fusion centers.⁶ Concerns have been raised about federal involvement in efforts to exempt fusion centers from state open government and privacy laws.⁷ EPIC recently obtained, through open government litigation, documents that reveal federal involvement in limiting the application of Virginia open government and privacy rights.⁸

This request seeks to inform the public regarding matters of public interest relating to the Texas Fusion Center, and specifically the relationship between the fusion center and federal agencies in the areas of privacy protection and open government.

² *Id.*

³ *Id.* at Appendix C (“Functional Categories”).

⁴ *National Strategy for Information Sharing: Successes and Challenges in Improving Terrorism-Related Information Sharing* at 20, October 2007, available at: http://www.whitehouse.gov/nsc/infosharing/NSIS_book.pdf.

⁵ See generally, EPIC, “Information Fusion Centers and Privacy,” <http://epic.org/privacy/fusion/>.

⁶ Robert O'Harrow Jr., Centers Tap Into Personal Databases, Wash. Post, Apr. 2, 2008, at A01, available at: <http://www.washingtonpost.com/wp-dyn/content/article/2008/04/01/AR2008040103049.html>; Juan Castillo, House embraces sweeping homeland security legislation, *Austin American-Statesman*, May 8, 2007, available at: <http://www.statesman.com/news/content/region/legislature/stories/05/08/8border.html>; Jeff Garman, Fight over, all together now against terrorism, Jan. 22, 2008, available at: <http://www.lasvegassun.com/news/2008/jan/22/fight-over-all-together-now-against-terrorism>.

⁷ See, e.g., EPIC, *EPIC v. Virginia Department of State Police: Fusion Center Secrecy Bill*, available at: http://epic.org/privacy/virginia_fusion/.

⁸ See *id.*; see also Federal Bureau of Investigation, *Memorandum of Understanding Between the Federal Bureau of Investigation and the Virginia Fusion Center*, Feb. 28, 2008, available at: http://epic.org/privacy/virginia_fusion/MOU.pdf.

Documents Requested

Please provide copies of the following public information from January 1, 2003 to the present:

1. All Memorandums of Understanding between Texas and the federal government concerning the Texas Fusion Center.
2. All correspondence, communications, and records of meetings between Texas state officials and the federal government relating to state open government laws and state privacy laws concerning the Texas Fusion Center.

Request for Waiver of All Charges

The TPIA provides that, “[a] governmental body shall provide a copy of public information without charge or at a reduced charge” if “providing the copy of the information primarily benefits the general public.” Tex. Gov’t Code Ann. § 552.267 (2007).

EPIC requests that the Texas Department of Public Safety waive all charges associated with this request, because provision of the information requested by EPIC benefits the general public. As set forth above, fusion centers are of great interest to the public, and have been covered extensively in the press. The relationship between the Texas Fusion Center and the federal government is of particular interest to the general public, because questions have been raised about the impact of federal involvement and fusion centers on state open government and privacy rights. Memorandums of Understanding concerning fusion centers, and the communications related to the Memorandums, often contain information regarding these pressing issues. The disclosure of information about the Texas Fusion Center’s relationship with the federal government therefore benefits the general public, and informs Texas citizens on matters of great public interest.

EPIC is a non-profit, educational organization that systematically disseminates information to the public through means that are easily available to Texas residents. EPIC publishes a variety of materials, including a web site, a bi-weekly electronic newsletter, and several books. EPIC is a representative of the news media. EPIC v. Dep’t of Defense, 241 F.Supp. 2d 5 (D.D.C. 2003). EPIC routinely provides copies of documents obtained under state and federal FOI laws to the public through its web site.

Request for Production Within Ten Days

Because the requested documents may impact the open government and privacy rights of Texas citizens, I urge you to provide the requested documents within ten days.

Thank you for your assistance. I look forward to receiving your reply. Please do not hesitate to contact me directly at (202) 483-1140 ext. 104.

Respectfully submitted,

John A. Verdi, Esq.
Director, EPIC Open Government Project