

VIA EMAIL

February 7, 2018

Raynell Lazier, FOIA Manager
CFPB, Attn: Chief FOIA Officer
1700 G Street NW
Washington, D.C. 20552
CFPB_FOIA@consumerfinance.gov

Dear Ms. Lazier,

This letter constitutes an urgent request under the Freedom of Information Act (“FOIA”), 5 U.S.C. § 552(a)(3), and is submitted to the Consumer Financial Protection Bureau (“CFPB”) on behalf of the Electronic Privacy Information Center (“EPIC”).

EPIC seeks records concerning the decision of Acting Director Mike Mulvaney to terminate the CFPB’s investigation of the 2017 Equifax data breach that exposed the sensitive personal data of over 143 million Americans.¹

Documents Requested

EPIC seeks all records in possession of the CFPB directly concerning:

- (1) Acting Director Mick Mulvaney’s investigation of the 2017 Equifax data breach;
- (2) Communications, including but not limited to email, text messages, and phone records, between Acting Director Mick Mulvaney and Equifax officials or representatives, Equifax counsel, representatives of the Consumer Data Industry Association, or any person outside the agency who expressed views regarding the CFPB’s investigation of Equifax;
- (3) Records of meetings, including but not limited to calendar entries, briefing memos, and agenda items, between Acting Director Mick Mulvaney and Equifax officials or representatives, Equifax counsel, representatives of the Consumer Data Industry Association, or any person outside the agency who expressed views regarding the CFPB’s investigation of Equifax;

¹ Craig Timberg, Elizabeth Dwoskin, & Brian Fung, *Data of 143 Million Americans Exposed in Hack of Credit Reporting Agency Equifax*, The Washington Post (Sept. 7, 2017), https://www.washingtonpost.com/business/technology/equifax-hack-hits-credit-histories-of-up-to-143-million-americans/2017/09/07/a4ae6f82-941a-11e7-b9bc-b2f7903bab0d_story.html.

- (4) Memorandums, letters, or any other record concerning the agency’s decision to halt, pause, stop, or otherwise delay the investigation of the 2017 Equifax data breach.

Background

On September 7, 2017, credit reporting agency Equifax reported a massive data breach that jeopardized the sensitive personal data of over 143 million Americans.² Equifax learned of the breach on July 29, 2017³ but waited approximately six weeks to inform the American public that their personal information was compromised. The data that was disclosed included names, social security numbers, birth dates, addresses, and driver’s license numbers — personal information that is used to authenticate identity and that also enables financial fraud and identity theft.⁴

On October 17, 2017, EPIC President Marc Rotenberg testified before the Senate Banking Committee and emphasized that the Equifax data breach “is one of the most serious in the nation’s history, on par with the breach at Office of Personnel Management in 2015 that impacted 22.5 million federal employees, their friends and family members.”⁵

Shortly after Equifax’s announcement, the Federal Trade Commission, the Senate Finance Committee, CFPB, and over 34 state attorney generals opened investigations into the attack.⁶ And the CFPB specifically warned servicemembers to protect their identities after the Equifax breach.⁷

However, a recent news report states that CFPB Acting Director Mulvaney has halted the agency’s investigation into the Equifax breach.⁸ According to a Reuters news report, Acting Director Mulvaney failed to seek subpoenas or sworn testimony from executives, and ended plans to test Equifax’s security systems.⁹ Additionally, Acting Director Mulvaney rejected offers from

² Press Release, Equifax, Equifax Announces Cybersecurity Incident Involving Consumer Information (Sept. 7, 2017), <https://www.prnewswire.com/news-releases/equifax-announces-cybersecurity-incident-involving-consumer-information-300515960.html>.

³ *Id.*

⁴ *Id.*

⁵ Marc Rotenberg, EPIC President, *Consumer Data Security and the Credit Bureaus*, Testimony, 115th Cong. (2017), S. Comm. on Banking, Housing, and Urban Affairs (Oct. 17, 2017), <https://epic.org/privacy/testimony/EPIC-Testimony-SBC-10-17.pdf>.

⁶ Tara Siegel Bernard, *Prosecutors Open Criminal Investigation Into Equifax Breach*, The New York Times (Sept. 18, 2017), <https://www.nytimes.com/2017/09/18/business/equifax-breach-federal-investigation.html>

⁷ Patrick Campbell, *Servicemembers Should Secure Their Identity After the Equifax Data Breach*, Consumer Finance Protection Bureau (Sept. 18, 2017), <https://www.consumerfinance.gov/about-us/blog/servicemembers-should-secure-their-identity-after-equifax-data-breach/>

⁸ Patrick Rucker, *Exclusive: U.S. Consumer Protection Officials Puts Equifax Probe on Ice – Sources*, Reuters (Feb. 5, 2018, 1:14 AM), <https://www.reuters.com/article/us-usa-equifax-cfpb/exclusive-u-s-consumer-protection-official-puts-equifax-probe-on-ice-sources-idUSKBN1FP0IZ>.

⁹ *Id.*

the Federal Reserve, the Federal Deposit Insurance Corp, and the Office of the Comptroller of the Currency to assist with the investigation.¹⁰

On February 6, 2018, EPIC sent an urgent letter to the Chairman and Ranking Member of the Senate Committee on Banking, Housing, and Urban Affairs, recommending that the Committee open an investigation into the CFPB's failure to pursue the Equifax investigation.¹¹ EPIC warned the Senate Committee that “[i]f the reports are accurate, Director Mulvaney’s failure to pursue a thorough investigation of the Equifax matter verges on malfeasance.¹²

Request for Expedited Processing

EPIC is entitled to expedited processing of this request. 12 C.F.R. § 1070.17; 5 U.S.C. § 552(a)(6)(E)(v)(II). There is (1) “urgency to inform the public about an actual or alleged Federal government activity,” and (2) this request is “made by a person who is primarily engaged in disseminating information.” § 1070.17(b)(2)(ii).

First, there is an “urgency to inform the public about an actual or alleged federal government activity.” § 1070.17(b)(2)(ii). This request concerns the CFPB delaying the investigation of one of the most significant data breaches in U.S. history. Over half the U.S. population had their sensitive data compromised and are at an increased risk for identity theft. Moreover, Equifax was the subject of more consumer bureau complaints than any financial service company in 2017.¹³ The CFPB has the authority and the tools to investigate a data breach like Equifax yet news reports have surfaced that the Acting Director Mulvaney has not ordered subpoenas against Equifax or sought sworn testimony from executives and has put a hold on plans to test how Equifax protects its data.¹⁴ Release of this information is critical for the public to understand what the agency’s plans are moving forward with this investigation.

Second, EPIC is an organization “primarily engaged in disseminating information.” § 1070.17(b)(2)(ii). As the Court explained in *EPIC v. DOD*, “EPIC satisfies the definition of ‘representative of the news media’” entitling it to preferred fee status under FOIA. 241 F. Supp. 2d 5, 15 (D.D.C. 2003).

In submitting this request for expedited processing, I certify that this explanation is true and correct to the best of my knowledge and belief. § 1070.17(b)(3); § 552(a)(6)(E)(vi).

¹⁰ *Id.*

¹¹ Letter from EPIC to Hon. Michael Crapo, Chairman, S. Comm. on Banking, Housing, and Urban Affairs, et. al (Feb. 6, 2018), <https://epic.org/EPIC-SBC-CFPBinvestigation-Feb2018.pdf>.

¹² *Id.*

¹³ Sylvan Lane, *Equifax Subject of Most Consumer Bureau Complaints in All But One State: Analysis*, The Hill (Jan. 11, 2018, 3:47 PM), <http://thehill.com/policy/finance/368562-equifax-subject-of-most-consumer-bureau-complaints-in-all-but-one-state>.

¹⁴ Patrick Rucker, *supra* note 8.

Request for “News Media” Fee Status and Fee Waiver

EPIC is entitled to receive a fee waiver because a waiver of fees “is likely to contribute significantly to the public understanding of the operations or activities of the government” and “the information is not primarily in the commercial interest of the requester. 12 C.F.R. § 1070.22(e)(1)(iii).

Any fees should be waived, including duplication fees, because disclosure of the requested information “is in the public interest because it is likely to contribute significantly to public understanding of the operations or activities of the government; and is not primarily in the commercial interest” of EPIC. § 1070.22(e)(2)(iii); § 552(a)(4)(A)(iii). As stated previously, the subject of the request concerns the CFPB’s investigation into the Equifax data breach, a data breach that has affected over 143 million Americans. As a news media requester, release of these records to EPIC will both enhance and contribute to the understanding of a broad audience into the extent of CFPB’s investigation and whether the CFPB has halted its investigation into the Equifax data breach. EPIC also has no commercial interest in the requested records; EPIC is a registered non-profit organization committed to privacy, open government, and civil liberties.¹⁵

Further, it shall be presumed that a representative of the news media will satisfy the consideration for a fee waiver. § 1070.22(e)(3)(ii). EPIC is a “representative of the news media” for fee classification purposes. *EPIC v. DOD*, 241 F. Supp. 2d 5 (D.D.C. 2003). Based on EPIC’s status as a “news media” requester, EPIC is entitled to receive the requested records without any processing or duplication fees. § 1070.22(e)(2)(iii); § 1070.22(e)(3)(ii); 5 U.S.C. § 552(a)(4)(A)(ii)(II)

For these reasons, a full fee waiver should be granted for EPIC’s request.

Conclusion

Thank you for your consideration of this request. As provided in 5 U.S.C. § 552(a)(6)(E)(ii)(I), I anticipate your determination on our request within ten calendar days. I can be contacted at 202-483-1140 x104 for questions regarding this request. Please mail correspondence to Enid Zhou, or submit via email to Zhou@epic.org, cc: FOIA@epic.org.

Respectfully submitted,

/s/ Enid Zhou

Enid Zhou

EPIC Open Government Fellow

¹⁵ *About EPIC*, EPIC.org, <http://epic.org/epic/about.html>.