

VIA EMAIL

January 27, 2017

Jonathan Cantor  
Acting Chief Privacy Officer/Chief FOIA Officer  
The Privacy Office  
U.S. Department of Homeland Security  
245 Murray Lane SW  
STOP-0655  
Washington, D.C. 20528-0655  
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Dear Mr. Cantor,

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”) to the Department of Homeland Security (“DHS”).

EPIC seeks the public release of the National Security Presidential Directive-1 signed by President Trump.

On January 27, 2017 the media reported on a draft Executive Order requiring reviews of U.S. cyber vulnerabilities, adversaries, and capabilities.<sup>1</sup> The draft Executive Order references the National Security Presidential Directive-1 established January 21, 2017.<sup>2</sup> The directive describes a change in the interagency process for cybersecurity “policy coordination, guidance, dispute resolution, and periodic in-progress review.”<sup>3</sup> Cybersecurity is possibly the single most important issue facing the Congress.<sup>4</sup> It is imperative that the administration provide the utmost transparency regarding cybersecurity policy.

### Request for Expedited Processing

EPIC is entitled to expedited processing under the FOIA.<sup>5</sup> Specifically, expedited processing is justified under 6 C.F.R. § 5.5(e)(1)(ii). because this request involves “an urgency to

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<sup>1</sup> Eric Geller, *Trump Poised to Order Sweeping Cyber Review*, Politico Pro (January 27, 2017), <https://www.politicopro.com/cybersecurity/story/2017/01/trump-orders-sweeping-cyber-review-145322>.

<sup>2</sup> Draft Executive Order, Strengthening U.S. Cyber Security and Capabilities, <https://assets.documentcloud.org/documents/3424611/Read-the-Trump-administration-s-draft-of-the.pdf>.

<sup>3</sup> *Id.*

<sup>4</sup> See *Foreign Cyber Threats to the United State: Hearing Before the S. Comm. on the Armed Services*, 115th Cong. (2017);

<sup>5</sup> 5 U.S.C. § 552(a)(6)(E)(v)(II).

inform the public about an actual or alleged federal government activity . . . made by a person who is primarily engaged in disseminating information.”<sup>6</sup>

First, there is an “urgency to inform the public about an actual or alleged federal government activity.”<sup>7</sup> The federal government activity at issue here is the restructuring of the White House’s approach to address perhaps the most pressing issue of the day—cybersecurity policy. The issue of cybersecurity has become an important topic of public interest in light of the Russian’s interference with the 2016 Presidential election. The Senate Armed Services Committee recently held a hearing on “Foreign Cyber Threats to the United States” that addressed the issue of cybersecurity and interference with the political system.<sup>8</sup>

How the Trump administration responds to the ongoing Russian cyber threat, including how the President changes cybersecurity policy coordination, is of the utmost importance to the American people.

Second, EPIC is an organization “primarily engaged in disseminating information.”<sup>9</sup> As the Court explained in *EPIC v. Dep’t of Def.*, “EPIC satisfies the definition of ‘representative of the news media’” entitling it to preferred fee status under FOIA.<sup>10</sup>

In submitting this request for expedited processing, I certify that this explanation is true and correct to the best of my knowledge and belief.<sup>11</sup>

## Request for “News Media” Fee Status and Fee Waiver

EPIC is a “representative of the news media” for fee classification purposes.<sup>12</sup> Based on EPIC’s status as a “news media” requester, EPIC is entitled to receive the requested record with only duplication fees assessed.<sup>13</sup>

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.<sup>14</sup> EPIC’s request satisfies the DHS’s factors for granting a fee waiver.<sup>15</sup> First, disclosure

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<sup>6</sup> 6 C.F.R. § 5.5(e)(1)(ii).

<sup>7</sup> *Id.*

<sup>8</sup> *Foreign Cyber Threats to the United States*, UNITED STATES COMMITTEE ON ARMED SERVICES, <http://www.armed-services.senate.gov/hearings/17-01-05-foreign-cyber-threats-to-the-united-states> (notice of hearing Jan. 5, 2017).

<sup>9</sup> § 5.5(e)(1)(ii).

<sup>10</sup> *EPIC v. Dep’t of Def.*, 241 F. Supp. 2d 5, 15 (D.D.C. 2003).

<sup>11</sup> § 5.5(e)(3).

<sup>12</sup> *EPIC v. Department of Defense*, 241 F. Supp. 2d 5 (D.D.C. 2003).

<sup>13</sup> 5 U.S.C. § 552(a)(4)(A)(ii)(II).

<sup>14</sup> § 552(a)(4)(A)(iii).

<sup>15</sup> 6 C.F.R. § 5.11(k).

“is not primarily in [EPIC’s] commercial interest.”<sup>16</sup> EPIC is a registered non-profit organization committed to privacy, open government, and civil liberties.

Second, disclosure of the Agreement is “in the public interest because it is likely to contribute significantly to public understanding of the operations or activities of the government.”<sup>17</sup> Because this request pertains to a directive establishing the coordination of cybersecurity policy, it speaks to “identifiable operations or activities of the Federal government.”<sup>18</sup>

Disclosure of the Directive would be “meaningfully informative about government operations or activities,” because disclosure of the document, which is not in the public domain, would inform the public about how the Trump administration plans to coordinate cybersecurity policy and will “contribute to the understanding of a reasonably broad audience of persons interested in the subject” because cybersecurity policy is something that impacts all Americans.<sup>19</sup> Further, as the DHS’s regulations note, “[i]t shall be presumed that a representative of the news media will satisfy this consideration.”<sup>20</sup> As noted, EPIC is a “news media” organization under the FOIA. Lastly, release of the Directive will enhance the public’s understanding “to a significant extent” as to the Administration’s coordination of cybersecurity policy.<sup>21</sup>

For these reasons, a fee waiver should be granted.

## Conclusion

Thank you for your consideration of this request. As provided in 6 C.F.R. § 5.5(e)(4), I will anticipate your determination on our request within ten calendar days.

For questions regarding this request I can be contacted at 202-483-1140 x108 or [FOIA@epic.org](mailto:FOIA@epic.org).

Respectfully submitted,

Jeramie D. Scott  
EPIC National Security Counsel

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<sup>16</sup> § 5.11(k)(1)(ii).

<sup>17</sup> § 5.11(k)(1)(i).

<sup>18</sup> § 5.11(k)(2)(i).

<sup>19</sup> § 5.11(k)(1)(ii)-(iii).

<sup>20</sup> § 5.11(k)(2)(iii).

<sup>21</sup> § 5.11(k)(2)(iv).