

VIA FACSIMILE

January 27, 2017

National Security Agency  
Attn: FOIA/PA Office  
9800 Savage Road, Suite 6932  
Ft. George G. Meade, MD 20755-6932  
Fax: (443) 479-3612

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”) to the National Security Agency (“NSA”).

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 32 C.F.R. § 299.5(f)(2) because this request involves “information . . . urgently needed by an individual primarily engaged in

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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).

disseminating information to inform the public about actual or alleged Federal Government activity.”<sup>6</sup>

First, the Directive is “urgently needed . . . to inform the public about 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> The Trump administration is moving quickly with respect to cybersecurity policy and the Directive holds “a particular value that will be lost if not disseminated quickly.”<sup>9</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>10</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>11</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>12</sup>

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

EPIC is a “representative of the news media” for fee classification purposes.<sup>13</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>14</sup>

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<sup>6</sup> 32 C.F.R. § 299.5(f)(2).

<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> § 299.5(f)(2).

<sup>10</sup> *Id.*

<sup>11</sup> *EPIC v. Dep’t of Def.*, 241 F. Supp. 2d 5, 15 (D.D.C. 2003).

<sup>12</sup> § 299.5(f).

<sup>13</sup> *EPIC v. Department of Defense*, 241 F. Supp. 2d 5 (D.D.C. 2003).

<sup>14</sup> 5 U.S.C. § 552(a)(4)(A)(ii)(II).

Disclosure of this information will contribute significantly to public understanding of the operations or activities of the government and disclosure is not primarily in EPIC's commercial interest. The request pertains to a directive establishing the coordination of cybersecurity policy and would inform the public about how the Trump administration plans to coordinate cybersecurity policy

For these reasons, a fee waiver should be granted.

### Conclusion

Thank you for your consideration of this request. As provided in 32 C.F.R. § 299.5(f)(5), 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.

Respectfully submitted,

Jeramie D. Scott  
EPIC National Security Counsel