

epic.org

APR 15 2014

April 8, 2014

VIA CERTIFIED MAIL

Sabrina Burroughs
FOIA Officer/Public Liason
Customs and Border Protection
90 K Street NE, 9th Floor
Washington, D.C. 20229-1181

1718 Connecticut Ave NW
Suite 200
Washington DC 20009
USA
+1 202 483 1140 [tel]
+1 202 483 1248 [fax]
www.epic.org

Dear Ms. Burroughs,

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"). EPIC seeks records regarding the Analytical Framework for Intelligence ("AFI").

Background

On June 1, 2012, DHS released a Privacy Impact Assessment for AFI.¹ The stated goal for this program is to "enhance[e] DHS's ability to identify, apprehend, and prosecute individuals who pose a potential law enforcement or security risks, and ai[d] in the enforcement of customs and immigration laws, and other laws enforced by DHS at the border."² AFI attempts to achieve this goal by allowing analysts to search several databases at once using automated processes, rather than manually entering search terms.³ To support the development of this program, CBP allocated \$51.5 million between 2011 and 2013.⁴

In addition to indexing databases currently utilized by DHS and other federal agencies, the program "permits DHS AFI analysts to upload and share information that may be relevant from other sources, such as the Internet or traditional news media, into projects, responses to RFIs, or final intelligence products."⁵ Individuals have strong expressive interests in their online activity. If expressive activity is used as the basis for increased scrutiny at the border, serious First Amendment concerns may be implicated. The public should be informed about what types of information is being uploaded, from what sources, and how such information is being used.

¹ U.S. Department of Homeland Security, Privacy Impact Assessment for the Analytical Framework for Intelligence, June 1, 2012, available at http://www.dhs.gov/xlibrary/assets/privacy/privacy_pia_cbp_afi_june_2012.pdf.

² *Id.* at 1.

³ *Id.* at 2-4.

⁴ Mickey McCarter, *Federal/State/Local Nebraska Ave.: Looking Ahead In DHS IT*, HSToday (August 20, 2012), <http://www.hstoday.us/channels/federalstatelocal/single-article-page/nebraska-ave-looking-ahead-in-dhs-it/735e462b9d2c3a2f9a829f09fd5605b2.html>.

⁵ Privacy Impact Assessment, *supra* note 1, at 3.

AFI also allows for searches against external data sources, including commercial data aggregators.⁶ The public should be informed as to which data aggregators are providing information to DHs, what types of information they are providing, and how such information is used.

In order to ensure compliance with the privacy safeguards in place, the DHS Privacy Office initiated a Privacy Compliance Report in August of 2013.⁷

Documents Requested

EPIC requests copies of the following agency records:

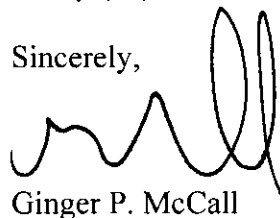
1. All AFI training modules, request forms, and similar final guidance documents that are used in, or will be used in, the operation of the program;
2. Any records, memos, opinions, communications, or other documents that discuss potential or actual sources of information not currently held in DHS databases, or potential or actual uses of information not currently held in DHS databases;
3. Any records, contracts, or other communications with commercial data aggregators regarding the AFI program;
4. The Privacy Compliance Report initiated in August of 2013.

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 records with only duplication fees assessed. Further, because disclosure of this information will "contribute significantly to the public understanding of the operations or activities of the government," any duplication fees should be waived.

Thank you for considering our request. As provided in 5 U.S.C. § 552(a)(6)(a), we will anticipate your determination on our request within twenty (20) business days. I can be contacted at 202-483-1140 x 111 or foia@epic.org.

Sincerely,



Ginger P. McCall
Associate Director, EPIC
Director, EPIC Open Government Project

⁶ *Id.* at 4.

⁷ Department of Homeland Security, 2013 Data Mining Report to Congress, February 2014, at 31, available at <http://www.dhs.gov/sites/default/files/publications/dhs-privacy-2013-dhs-data-mining-report.pdf>.