



# Homeland Security

*Privacy Office, Mail Stop 0655*

October 11, 2018

Alan Butler  
EPIC  
Senior Counsel  
1718 Connecticut Ave NW, Suite 200  
Washington, DC 20009

**Re: 2019-HQFO-00028  
NPPD FOIA Case Number 2018-NPFO-00373  
EPIC v. DHS 1:18-cv-01268 (D.D.C)**

Dear Mr. Butler:

This is the Department of Homeland Security (DH) final response to your Freedom of Information Act (FOIA) request, dated April 13, 2018, to the National Protection and Program's Directorate (NPPD) seeking copy of Privacy Impact Assessment conducted for the April 3, 2018 solicitation for "Media Monitoring Services", and associated agency records including but not limited to policy guidelines, memoranda, email communications, and Privacy Threshold Analysis related to "Media Monitoring Services"; all awarded contracts for "Media Monitoring Services" and is currently the subject of litigation EPIC v. DHS, 1:18-cv-01268 (D.D.C). While processing your request, NPPD located records that fall under the purview of the Department of Homeland Security (DHS). Accordingly, your request and 238 pages of responsive records were referred to this office for processing and direct response to you. This office received your request on August 2, 2018.

Of those pages, I have determined that seven pages of the records are releasable in their entirety, 66 pages are partially releasable, and 157 pages are withheld in their entirety pursuant to Title 5 U.S.C. § 552 (b)(4), (b)(5), and (b)(7)(C), FOIA Exemptions 4, 5, 6, b7(C).

Enclosed are 230 pages of records with certain information withheld as described below.

**FOIA Exemption 4** protects trade secrets and commercial or financial information obtained from a person that is privileged or confidential. The courts have held that this subsection protects (a) confidential commercial information, the disclosure of which is likely to cause substantial harm to the competitive position of the person who submitted the information and (b) information that was voluntarily submitted to the government if it is the kind of information that the provider would not customarily make available to the public. I reviewed the responsive documents, the submitter's objections to release, and relevant case law, and I determined that

portions are exempt from disclosure under subsection (b)(4) of the FOIA and must be withheld in order to protect the submitter's proprietary interests.

**FOIA Exemption 5** protects from disclosure those inter- or intra-agency documents that are normally privileged in the civil discovery context. The three most frequently invoked privileges are the deliberative process privilege, the attorney work-product privilege, and the attorney-client privilege. After carefully reviewing the responsive documents, I determined that [portions of] the responsive documents qualify for protection under the Deliberative Process Privilege. The deliberative process privilege protects the integrity of the deliberative or decision-making processes within the agency by exempting from mandatory disclosure opinions, conclusions, and recommendations included within inter-agency or intra-agency memoranda or letters. The release of this internal information would discourage the expression of candid opinions and inhibit the free and frank exchange of information among agency personnel.

**FOIA Exemption 6** exempts from disclosure personnel or medical files and similar files the release of which would cause a clearly unwarranted invasion of personal privacy. This requires a balancing of the public's right to disclosure against the individual's right to privacy. The privacy interests of the individuals in the records you have requested outweigh any minimal public interest in disclosure of the information. Any private interest you may have in that information does not factor into the aforementioned balancing test.

**Exemption 7(C)** protects records or information compiled for law enforcement purposes that could reasonably be expected to constitute an unwarranted invasion of personal privacy. This exemption takes particular note of the strong interests of individuals, whether they are suspects, witnesses, or investigators, in not being unwarrantably associated with alleged criminal activity. That interest extends to persons who are not only the subjects of the investigation, but those who may have their privacy invaded by having their identities and information about them revealed in connection with an investigation. Based upon the traditional recognition of strong privacy interest in law enforcement records, categorical withholding of information that identifies third parties in law enforcement records is ordinarily appropriate. As such, I have determined that the privacy interest in the identities of individuals in the records you have requested clearly outweigh any minimal public interest in disclosure of the information. Please note that any private interest you may have in that information does not factor into this determination.

We are also referring four pages of records to the FOIA Officer for FEMA, Eric Neuschaefer, and four pages the Department of State, for processing and direct response to you. You may contact those offices at:

Federal Emergency Management Agency  
FOIA Officer, Eric Neuschaefer  
500 C Street, S.W., Mailstop 3005  
Washington, D.C. 20472  
[fema-foia@fema.dhs.gov](mailto:fema-foia@fema.dhs.gov)  
202-646-3323

U.S. Department of State

Office of Information Programs and Services  
A/GIS/IPS/RL  
SA-2, Suite 8100  
Washington, DC 20522-0208

You have a right to appeal the above withholding determination. Should you wish to do so, you must send your appeal and a copy of this letter, within 90 days of the date of this letter, to: Privacy Office, Attn: FOIA Appeals, U.S. Department of Homeland Security, 245 Murray Lane, SW, Mail Stop 0655, Washington, D.C. 20528-0655, following the procedures outlined in the DHS FOIA regulations at 6 C.F.R. Part 5 § 5.8. Your envelope and letter should be marked "FOIA Appeal." Copies of the FOIA and DHS FOIA regulations are available at [www.dhs.gov/foia](http://www.dhs.gov/foia).

If you need any further assistance or would like to discuss any aspect of your request, please contact the analyst below who processed your request and refer to **2019-HQFO-00028**. You may send an e-mail to [foia@hq.dhs.gov](mailto:foia@hq.dhs.gov), call 202-343-1743 or toll free 1-866-431-0486, or you may contact our FOIA Public Liaison in the same manner. Additionally, you have a right to right to seek dispute resolution services from the Office of Government Information Services (OGIS) which mediates disputes between FOIA requesters and Federal agencies as a non-exclusive alternative to litigation. If you are requesting access to your own records (which is considered a Privacy Act request), you should know that OGIS does not have the authority to handle requests made under the Privacy Act of 1974. You may contact OGIS as follows: Office of Government Information Services, National Archives and Records Administration, 8601 Adelphi Road-OGIS, College Park, Maryland 20740-6001, e-mail at [ogis@nara.gov](mailto:ogis@nara.gov); telephone at 202-741-5770; toll free at 1-877-684-6448; or facsimile at 202-741-5769.

Sincerely,



Angela Washington  
Appeal and Litigation

Enclosure(s): Responsive Documents, 230 pages