

May 11, 2015

Associate General Counsel (General Law)
Department of Homeland Security
Mail Stop 0655
Washington, D.C., 20528
202-343-4011 (fax)

Re: Freedom of Information Act Appeal, DHS Case 2015-STFO-051

Dear Associate General Counsel:

This letter constitutes an appeal under the Freedom of Information Act (FOIA), 5 U.S.C. § 552, and is submitted to the Department of Homeland Security on behalf of the Electronic Information Privacy Center (EPIC).

EPIC appeals DHS's determination that EPIC is not entitled to a fee waiver.

Procedural Background

In a letter dated April 14, 2015, EPIC requested via fax, documents related to the Violent Intent Modeling and Simulation (VIMS) program.

In a letter dated April 24, 2015, DHS acknowledged receipt of EPIC's FOIA request and assigned it case number 2015-STFO-051.¹ DHS denied EPIC's fee waiver request stating that EPIC "[has] not presented a convincing argument that [EPIC] is entitled to a blanket waiver of fees," because it failed the Agency's third and fourth fee waiver factors. Specifically, DHS states that EPIC failed to show that (1) "disclosure of the requested information will contribute to the understanding of the public at large" and (2) that the contribution to public understanding of government activities would be "significant."

EPIC Appeals the Agency's Determination of EPIC's Fee Waiver

EPIC reiterates all arguments that it should be granted "news media" fee status. EPIC is a non-profit, educational organization that routinely and systematically disseminates information to the public. Therefore, EPIC is a

¹ Letter from Katrina Hagan, FOIA Officer, DHS, to Ginger McCall, Open Government Project Director, EPIC (Apr. 24, 2015) (Appendix A).

representative of the news media.² EPIC's status as a "news media" requester entitles it to receive requested records with only duplication fees assessed. In addition, 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.

The DHS erroneously determined that EPIC is not entitled to a fee waiver. First, DHS states that EPIC failed to show that "the requested information will contribute to the understanding of the public at large, as opposed to the individual understanding of the requestor or a narrow segment of interested persons." The intrusive nature of the VIMS program, and the Agency's own privacy assessment of the program, make it abundantly clear that the requested documents would benefit the public at large. The Privacy Impact Assessment (PIA) for the program states that the Agency will collect personally identifiable information (PII) about groups, which are selected based on publicly available information and "ideological statements of the group."³ Thus, the program's scope extends beyond the interests of any individual or narrow segment of interested persons. Every group in the U.S. that has made an "ideological statement," or about which there is public information is at risk of getting swept up in the program. Thus, it is clear that EPIC's request satisfies the DHS's third factor.

Second, information about a government study of groups—selected based on Internet inquires and "ideological statements"—would "significantly" contribute to the public's understanding of the government. The DHS's contrary conclusion defies logic. Eighty percent of adult Americans report that they are concerned intrusive government monitoring of Internet communications.⁴ There is also widespread concern that government agencies are unfairly targeting groups based on the group's ideology.⁵ Thus, it is crystal clear that public knowledge and understanding of the VIMS program would significantly contribute to the public debate on these government activities.

Conclusion

Thank you for your prompt response to this appeal. As provided by FOIA, I will anticipate your determination within 20 working days.⁶ For questions regarding this request I can be contacted at 202-483-1140 or FOIA@epic.org.

² *EPIC v. DOD*, 241 F. Supp. 2d 5 (D.D.C. 2003).

³ Dep't Homeland Security, *Privacy Impact Assessment for Violent Intent Monitoring System*, at 4 (Apr. 25, 2008), http://www.dhs.gov/xlibrary/assets/privacy/privacy_pia_gvim.pdf.

⁴ Mary Madden, *Public Perceptions of Privacy and Security in the Post-Snowden Era*, Pew Research Center (Nov. 12, 2014), <http://www.pewinternet.org/2014/11/12/public-privacy-perceptions/>.

⁵ See Maya Rhodan, *Emails Point to IRS Official's Role in Targeting Conservative Groups*, Time (Apr. 9, 2014), <http://time.com/56760/irs-lois-lerner-crossroads/>.

⁶ 5 U.S.C. § 552(a)(6)(A)(ii).

Respectfully Submitted,

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