

VIA E-MAIL

Oct. 5, 2017

Bobbie Parsons  
FOIA Officer, Immediate Office of the Secretary  
Office of Privacy and Open Government  
Room 52010  
1401 Constitution Avenue, NW  
Washington, D.C. 20230

Dear Mr. Parsons,

This letter constitutes an urgent request under the Freedom of Information Act (“FOIA”), 5 U.S.C. § 552(a)(3), and is submitted on behalf of the Electronic Privacy Information Center (“EPIC”) to the U.S. Department of Commerce.

On October 5, 2017, the White House released the “National Security Presidential Memorandum.” (“NSPM-7” or “Presidential Memorandum”).<sup>1</sup> The Presidential Memorandum describes an “Annex” that lists categories of “identity attributes and associated information about individuals, organizations, groups, or networks assessed to be a threat to the safety, security, or national interests of the United States.” According to NSPM-7, these categories comprise “national security threat actor information.”<sup>2</sup> The Presidential Memorandum further states that the Secretary of Commerce, acting through the Director of National Institute of Standards and Technology and in coordination with the Director of National intelligence, shall “lead a standing interagency effort, which shall include relevant elements of the Intelligence Community, to establish specific models for information exchange and corresponding application profiles for identity attributes relevant to the implementation of this memorandum.”<sup>3</sup>

The Presidential Memorandum was posted on the White House website on October 5, 2017. However, the annex was not released to the public.

### Document Requested

EPIC seeks the annex to the “National Security Presidential Memorandum” released October 5, 2017.

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<sup>1</sup> President Donald J. Trump, National Security Presidential Memorandum (dated Oct. 4, 2017, released Oct. 5, 2017), <https://www.whitehouse.gov/the-press-office/2017/10/05/national-security-presidential-memorandum>.

<sup>2</sup> *Id.*

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

## Request for Expedited Processing

EPIC is entitled to expedited processing of this request under the FOIA and the Department of Commerce FOIA regulations. 5 U.S.C. § 552(a)(6)(E)(v)(II); 15 C.F.R. § 4.6(f)(1)(iv). This request involves an “urgency to inform the public about an actual or alleged Federal Government activity,” and the request is “made by a person primarily engaged in disseminating information.” § 4.6(f)(1)(iv).

First, there is an “urgency to inform the public about an actual or alleged Federal Government activity.” § 4.6(f)(1)(iv). This request concerns a presidential memorandum mandating “the integration, sharing, and use of identity attributes and associated derogatory information for...individual categor[ies] of evaluated national security threat actor information.”<sup>4</sup> A “plan to implement this memorandum” must be submitted to the president within “270 days.”<sup>5</sup>

Second, EPIC is an organization “primarily engaged in disseminating information.” § 4.6(f)(1)(iv). As the Court explained in *EPIC v. DOD*, “EPIC satisfies the definition of ‘representative of the news media’” entitling it to preferred fee status under FOIA. 241 F. Supp. 2d 5, 15 (D.D.C. 2003).

In submitting this request for expedited processing, I certify that this explanation is true and correct to the best of my knowledge and belief. § 4.6(f)(4).

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

EPIC is a “representative of the news media” for fee classification purposes. *EPIC v. DOD*, 241 F. Supp. 2d 5 (D.D.C. 2003). Based on EPIC’s status as a “news media” requester, EPIC is entitled to receive the requested record with only duplication fees assessed. 5 U.S.C. § 552(a)(4)(A)(ii)(II).

Any duplication fees should also be waived because (i) “[d]isclosure of the requested information is in the public interest because it is likely to contribute significantly to public understanding of the operations or activities of the Government,” and (ii) “[d]isclosure of the information is not primarily in the commercial interest” of EPIC, the requester. 15 C.F.R. § 4.11(l)(1). § 552(a)(4)(A)(iii). The subject of the request concerns federal implementation of a presidential memorandum; the key driver of implementation and framework for the memorandum policy – the annex – has not been released to the public. As a news media requester, release of the annex to EPIC will contribute to the understanding of a broad audience. EPIC also has no commercial interest in the requested records; EPIC is a registered non-profit organization committed to privacy, open government, and civil liberties.<sup>6</sup>

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<sup>4</sup> *Id.*

<sup>5</sup> *Id.*

<sup>6</sup> *About EPIC*, EPIC.org, <http://epic.org/epic/about.html>.

For these reasons, a full fee waiver should be granted for EPIC's request.

Conclusion

Thank you for your consideration of this request. As provided in 5 U.S.C. § 552(a)(6)(E)(ii)(I), I anticipate your determination on our request within ten calendar days. I can be contacted at 202-483-1140 x111 for questions regarding this request. Please email correspondence to [Kyriakides@epic.org](mailto:Kyriakides@epic.org), cc: [FOIA@epic.org](mailto:FOIA@epic.org).

Respectfully submitted,

*/s/ Eleni Kyriakides*  
Eleni Kyriakides  
EPIC Fellow