

VIA E-MAIL

Oct. 5, 2017

Sam Kaplan  
Chief Privacy Officer/Chief FOIA Officer  
Privacy Office, Dept. of Homeland Security  
245 Murray Lane SW  
STOP-0655  
Washington, D.C. 20528-0655  
[foia@hq.dhs.gov](mailto:foia@hq.dhs.gov)

Dear Mr. Kaplan,

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 Department of Homeland Security (“DHS”).

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 Homeland Security, in coordination with other agencies, shall lead “the development and implementation of appropriate technical architectures and corresponding policy frameworks to advance the integration, sharing, and use of identity attributes and associated derogatory information for each individual category of evaluated national security threat actor information described in the annex to 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.

---

<sup>1</sup> President Donald J. Trump, *National Security Presidential Memorandum*, WhiteHouse.gov (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 DHS's FOIA regulations. 5 U.S.C. § 552(a)(6)(E)(v)(II); 6 C.F.R. § 5.5(e)(1)(ii). 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 who is primarily engaged in disseminating information.” § 5.5(e)(1)(ii).

First, there is an “urgency to inform the public about an actual or alleged federal government activity.” § 5.5(e)(1)(ii). 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.” § 5.5(e)(1)(ii). 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. § 5.5(e)(3).

## 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) “disclosure of the requested information is in the public interest because it is likely to contribute to the public understanding of the operations or activities of the government” and (ii) “disclosure of the information is not primarily in the commercial interest” of EPIC, the requester. 6 C.F.R. § 5.11(k)(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>

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

---

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

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

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

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 or [Kyriakides@epic.org](mailto:Kyriakides@epic.org), cc: [FOIA@epic.org](mailto:FOIA@epic.org).

Respectfully submitted,

/s/ Eleni Kyriakides

Eleni Kyriakides

EPIC Fellow