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VIA EMAIL

November 6, 2020

Asuntha Chiang-Smith
Executive Director
Public Information Act Representative
6611 Kenilworth Avenue
Riverdale, MD 20737

RE: Freedom of Information Act Request

Dear Ms. Chiang-Smith,

This letter constitutes a request under the Maryland Public Information Act (MPIA), Title 4 of the General Provisions of the Maryland, and is submitted on behalf of the Electronic Privacy Information Center ("EPIC") to the Maryland National Capital Park Police ("MNCPP").

EPIC requests records related to the National Capital Region Facial Recognition Investigative Leads System ("NCR-FRILS").

Background

The National Capital Region Facial Recognition Investigative Leads System ("NCR-FRILS") is a database capable of performing facial recognition searches.[1] According to the Washington Post, the system has been used over 12,000 times since the pilot started in 2017 to search a database of 1.4 million images. The NCR-FRILS "pilot program" is a project of the Metropolitan Washington Council of Governments ("MWCOG").[2] The NCR-FRILS system runs on the Rank One Computing facial recognition platform.[3] Fairfax County Police Major Christian Quinn, runs the NCR-FRILS program for MWCOG.[4] The Fairfax County Board of Supervisors received a grant supporting the development of NCR-FRILS.[5] At least 60 people across the region are approved to use the system.[6]

The NCR-FRILS system is related to the National Capital Region Law Enforcement Information Exchange (NCR-LInX), one member of the national LInX program sponsored by the

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[1] Justin Jouvenal and Spencer S. Hsu, Facial recognition used to identify Lafayette Square protester accused of assault, Washington Post (Nov. 2, 2020) https://www.washingtonpost.com/local/legal-issues/facial-recognition-protests-lafayette-square/2020/11/02/64b03286-ec86-11ea-b4bc-3a2098fc73d4_story.html.
[2] *Id*.
[3] *See* https://www.rankone.io.
[4] Washington Post, *supra* note 1.
[5] *Id*.
[6] *Id*.

Naval Criminal Investigative Service (NCIS).[7] LInX is a national law enforcement exchange program which provides access to records from 2,000 agencies.[8] As of 2018 the system contains 1.27 billion records and 105.3 million mug shots.[9] The system provides access to local and regional documents and is integrated with the DoD Law Enforcement Data Exchange (D-DEx), the FBI's National Data Exchange (N-DEx) as well as DHS and its subcomponents, US Marshals Service, the US Capitol Police, and NCIS.[10] NCR-LInX is working with MWCOG to "test facial recognition capabilities with NCR-LInX arrest and booking photos."[11]

The NCR-FRILS system is currently in use and MNCPP have recently used it. The NCR-FRILS system was used to identify a protestor accused of assaulting a police officer during a June 1, 2020 protest in Washington, DC.[12] Maryland-National Capital Park Police performed a search using an image of the man on Twitter and fed that image into the NCR-FRILS system to identify him.[13] According to the Washington Post the agencies with access to NCR-FRILS "include the police departments in the D.C. area's core counties and some cities, as well as Metro police, the Bureau of Alcohol, Tobacco, Firearms and Explosives and the Justice Department."[14]

<u>Documents Requested</u>

EPIC requests the following documents in searchable PDF format or equivalent searchable and analyzable electronic format.

(1) All MNCPP policies, memoranda of understanding, staff guidance, and training materials regarding the use of the NCR-FRILS system;

(2) All audit logs of the NCR-FRILS system, produced every 3 weeks,[15] and/or any similar audits conducted by the MNCPP;

(3) Requests for access to the NCR-FRILS system or requests for use of the system;

(4) Emails and other communications relating to the NCR-FRILS system including but not limited to: emails between MNCPP and Catherine Miller of the Montgomery County Police Department, and emails between MNCPP and Major Christian Quinn of the Fairfax County Police Department, emails describing the pilot test of NCR-FRILS with NCR-LInX, any other emails describing or analyzing the NCR-FRILS system.

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[7] Kris A Peterson, Law Enforcement Information Exchange 2018 Annual Report https://pvaz.granicus.com/MetaViewer.php?view_id=5&event_id=1488&meta_id=130838.
[8] *Id* at 2.
[9] *Id*.
[10] *Id*.
[11] *Id* at 4.
[12] Jouvenal and Hsu, *supra* note 1.
[13] *Id*.
[14] *Id*.
[15] *Id*.

(5) The pilot proposal for NCR-FRILS and any report analyzing the NCR-FRILS pilot, any decision of whether MNCPP should use the NCR-FRILS system.

<u>Request for Fee Waiver</u>

EPIC is entitled a fee waiver under § 4-206(e)(2)(ii) because disclosure of the requested records is in the public interest. Under the MPIA requests for fee waivers in the public interest are evaluated as under the Freedom of Information Act 5 U.S.C. § 552.[16] EPIC seeks the requested records for a public purpose as a non-profit member of the news media. *See EPIC v. DOD*, 241 F. Supp. 2d 5, 15 (D.D.C. 2003) ("EPIC satisfies the definition of 'representative of the news media,'" under the federal Freedom of Information Act 5 U.S.C. § 552).

(1) Disclosure of the requested information is likely to contribute to the public understanding of the operations or activities of the government.

Disclosure of the requested documents is "in the public interest because it is likely to contribute significantly to public understanding of the operations or activities of the government." 5 U.S.C. § 552(a)(4)(A)(iii). First, the subject of the request concerns "operations or activities of the federal government." NCIS is a part of the Executive Branch under the Department of Defense.

Second, disclosure of the requested documents would be "meaningfully informative" because the documents will contribute to an increased understanding of government operations and activities. Specifically, disclosure will educate the public about a previously undisclosed facial recognition system and the involvement of NCIS in developing or testing that system. The use of facial recognition is a significant threat to individual privacy. The role of NCIS in promoting the use of facial recognition would increase the public understanding of how this technology is funded and deployed at a time when there is substantial pushback to the use of facial recognition.[17]

Third, disclosure will "contribute to the understanding of a reasonably broad audience of persons interested in the subject" because EPIC is a representative of the news media and therefore satisfies this condition. EPIC largely disseminates its work through its online publications and through traditional news media channels.

(2) Disclosure of the information is not primarily in the commercial interest of the requester

The "[d]isclosure of the information is not primarily in the commercial interest" of EPIC.[18] EPIC is a registered non-profit organization committed to privacy, open government, and civil liberties.[19] EPIC has no commercial interest in the requested records and does not use the information obtained through FOIA for commercial purposes.

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[16] Brian E. Frosh, *Maryland Public Information Act Manual*, Off. of the Maryland Attorney General at 7-3, 7-4 (2015) https://www.marylandattorneygeneral.gov/OpenGov%20Documents/PIA_manual_printable.pdf.

[17] *See e.g.* Russell Brandom, *Portland, Maine has voted to ban facial recognition*, The Verge (Nov. 4, 2020) https://www.theverge.com/2020/11/4/21536892/portland-maine-facial-recognition-ban-passed-surveillance.

[18] 5 U.S.C. § 552(a)(4)(A)(iii).

[19] *About EPIC*, EPIC.org, http://epic.org/epic/about.html.

As a news media requester, EPIC satisfies the public interest standard and is entitled to a full fee waiver. If the request for a waiver is denied, please advise us in writing of the reason(s) for the denial and the cost, if any, of obtaining a copy of the requested records.

Conclusion

Thank you for your consideration of this request. We anticipate your determination on our request "immediately". GP § 4-203(b)(1). For questions regarding this request, please contact Jeramie Scott at 202-483-1140 x108 or FOIA@epic.org.

Respectfully,

/s Jeramie Scott
Jeramie Scott
EPIC Senior Counsel

*/s Jake Wiene*r
Jake Wiener
EPIC Law Fellow