

January 4, 2017

The Honorable John McCain, Chairman
The Honorable Jack Reed, Ranking Member
U.S. Senate Committee on Armed Services
Russell Senate Building, Room 228
Washington, DC 20510

Dear Chairman McCain and Ranking Member Reed:

We write to you regarding the hearing on “Foreign Cyber Threats to the United States” that will be held before the Senate Armed Services Committee on Thursday, January 5, 2017. The Electronic Privacy Information Center (“EPIC”) would like to bring to your attention an expedited Freedom of Information Act request that EPIC filed with the Bureau to determine the agency’s response to the specific threat that a foreign government posed to the 2016 U.S. Presidential election.

EPIC is a public-interest research center established in 1994 to focus public attention on emerging privacy and civil liberties issues. The EPIC Advisory Board includes leading experts in data protection, encryption, cyber security, and election integrity. Many of the EPIC Advisory Board members have been at the forefront of efforts to ensure the integrity, stability, and security of the network technology on which this country depends. It is for this reason that we have a long-standing interest in foreign threats, committed by means of cyber attack, to our election system. We appreciate your interest and the interest of the other members of the Senate Armed Services Committee in this vital issue of national security.

On December 22, 2016, EPIC submitted an urgent Freedom of Information Act request to the Federal Bureau of Investigation, seeking records pertaining to the agency’s response to Russian interference in the 2016 Presidential election.¹ EPIC’s FOIA request is attached. In summary:

- The U.S. Intelligence Community has officially attributed the cyber attacks on both the Democratic National Committee (DNC) and Republican National Committee (RNC) to the Russian government.²

¹ EPIC, *EPIC Seeks FBI Records on Russian Interference in 2016 Presidential Election*, (Dec. 22, 2016), <https://epic.org/2016/12/epic-seeks-fbi-records.html>. (The EPIC FOIA Request to the FBI regarding the Russian interference with the 2016 Presidential Election is available at <https://epic.org/privacy/cybersecurity/EPIC-16-12-22-FBI-FOIA-20161222-Request.pdf>).

² *Statement on Requests for Additional Information on Russian Interference in the 2016 Presidential Election*, Dir. of Nat’l Intel. (Dec. 16, 2016), <https://www.dni.gov/index.php/newsroom/press-releases/215-press-releases-2016/1460->

- The FBI “is the lead federal agency for investigating cyber attacks by criminals, overseas adversaries, and terrorists.”³ This authority is set forth in Presidential Policy Directive-41.⁴
- Questions have been raised about the failure of the FBI to adequately investigate the attacks on both the DNC and RNC. News reports indicate that the FBI first contacted the DNC about potential cyber threats in September 2015.⁵ However, until the FBI met with party officials in March 2016, the FBI’s response was limited to one telephone call to an I.T. contractor and several voicemail messages. By March 2016, a second group of hackers began targeting DNC officials and others involved in the party. The New York Times reported that the RNC’s computer systems were also attacked.⁶
- The FBI is entrusted with protecting the cybersecurity of the public and its institutions. The American public has a great interest in understanding the nature of the FBI’s response to the Russian interference with the 2016 Presidential election, as well as the agency procedures for responding to unlawful hacks.

EPIC believes that the information that we are seeking from the FBI will also be helpful to the Senate Armed Services Committee as you investigate foreign cyber threats to the United States.

We ask that this letter and the attached FOIA Request be entered into the hearing record.

Sincerely,

Marc Rotenberg

Marc Rotenberg
EPIC President

John Tran

John Tran
EPIC FOIA Counsel
Director, EPIC FOIA Project

Caitriona Fitzgerald

Caitriona Fitzgerald
EPIC Policy Director

statement-on-requests-for-additional-information-on-russian- interference-in-the-2016-presidential-election.

³ *What We Investigate*, Cyber Crime, FBI, (last visited Jan. 4, 2017), <https://www.fbi.gov/investigate/cyber>.

⁴ PPD-41 (July 26, 2016), <https://www.whitehouse.gov/the-press-office/2016/07/26/presidential-policy-directive-united-states-cyber-incident>.

⁵ Eric Lipton, David E. Sanger, and Scott Shane, *The Perfect Weapon: How Russian Cyberpower Invaded the U.S.*, NY Times (Dec. 13, 2016), <http://www.nytimes.com/2016/12/13/us/politics/russia-hack-election-dnc.html>.

⁶ David E. Sanger and Scott Shane, *Russian Hackers Acted to Aid Trump in Election, US Says*, NY Times (Dec. 9, 2016), <http://www.nytimes.com/2016/12/09/us/obama-russia-election-hack.html>.