

December 4, 2008

VIA FACSIMILE (703) 235-0443 / E-MAIL (foia@dhs.gov)

FOIA REQUEST

The Privacy Office
U.S. Department of Homeland Security
245 Murray Drive SW
STOP-0550
Washington, DC 20528-0550

RE: Freedom of Information Act Request and Request for Expedited Processing

Dear FOIA Officer,

This letter constitutes a request under the Freedom of Information Act (“FOIA”), 5 U.S.C. § 552, and is submitted on behalf of the Electronic Privacy Information Center (“EPIC”) for records concerning the agency’s promotion of E-Verify.

Background

The Department of Homeland Security has purchased advertising on National Public Radio (NPR) for the E-Verify program. On November 10, 2008, NPR began running a credit on its radio stations which states “[s]upport for NPR comes from NPR stations, and the Department of Homeland Security (DHS), offering E-Verify, confirming the legal working of new hires. At DHS dot gov slash E-Verify.”¹

The Government Accountability Office, the Social Security Administration’s Inspector General, and the CATO Institute have detailed many shortcomings of E-Verify, and have highlighted high levels of inaccuracies in the databases on which the program is based, employer misuse resulting in discrimination and unlawful termination, the lack of privacy protections as well as the program's high costs.²

¹ “Should NPR Run Funding Credits from the Department of Homeland Security?” Nov. 25, 2008, <http://www.npr.org/ombudsman/> (last visited Dec. 4, 2008).

² “Employment Verification - Challenges Exist in Implementing a Mandatory Electronic Employment Verification System”, United States Government Accountability Office, June 10, 2008 *available at* <http://www.gao.gov/new.items/d08895t.pdf>; “Inspector General’s Statement on SSA’s Major Management and Performance Challenges”, Nov. 5, 2008, *available at* <http://www.socialsecurity.gov/finance/2008/IG%20Mngt%20Challenges.pdf>; Jim Harper, *E-Verify Debunking Exposes Debunking Errors*, The Cato Institute, May 21, 2008, *available at* <http://www.cato-at-liberty.org/2008/05/21/e-verify-debunking-exposes-debunking-errors/>.

The expenditure of agency funds for the promotion of a controversial program is a matter of public interest. Therefore, the full scope and extent of the agency's advertising promotion for E-Verify on NPR and other media outlets should be disclosed.

Documents Requested

EPIC requests copies of the following agency records in the possession of the Department of Homeland Security:

1. all records, including contracts and related documents, between DHS and NPR concerning the E-Verify promotion that began in November, 2008.
2. all records, including contracts and related documents, involving DHS and other media outlets concerning the promotion for E-Verify.

Request for Expedited Processing

This request warrants expedited processing because it is made by "a person primarily engaged in disseminating information ..." and it pertains to a matter about which there is an "urgency to inform the public about an actual or alleged federal government activity." 6 C.F.R. § 5.5 (d)(1)(ii).

EPIC is "primarily engaged in disseminating information." *American Civil Liberties Union v. Department of Justice*, 321 F. Supp. 2d 24, 29 n.5 (D.D.C. 2004). In accordance with *Al-Fayed v. CIA*, 254 F.3d 300, 306, (D.C. Cir. 2001), the documents should be produced as soon as practicable.

Moreover, there is a particular urgency for the public to obtain information about the federal government's use of public funds to advertise E-Verify. The funding of a federal agency requires oversight and DHS spending on E-Verify should be made public. Full and prompt disclosure promotes government transparency.

The impact of the E-Verify program is a matter of great public interest. Many newspapers, including The New York Times and The Christian Science Monitor, have published substantial coverage about the E-Verify program.³

³ Editorial, *What Social Security Isn't Meant to Do*, N.Y. Times, May. 12, 2008, available at <http://www.nytimes.com/2008/05/12/opinion/12mon1.html>; Alexandra Marks, *With E-Verify, too many errors to expand its use?* The Christian Science Monitor, July 7, 2008, available at <http://www.csmonitor.com/2008/0707/p02s01-usgn.html>.

Request for “News Media” Fee Status

EPIC is a “representative of the news media” for fee waiver purposes. *EPIC v. Department of Defense*, 241 F. Supp. 2d 5 (D.D.C. 2003). Based on our status as a “news media” requester, we are entitled to receive the requested record with only duplication fees assessed. Further, because disclosure of this information will “contribute significantly to public understanding of the operations or activities of the government,” any duplication fees should be waived.

Thank you for your consideration of this request. As provided in 6 C.F.R. § 5.5 (d)(4), I will anticipate your determination on our request for expedited processing with ten (10) calendar days.

Respectfully submitted,

Anirban Sen, Esq.
EPIC Fellow