

July 10, 2008

VIA FACSIMILE (202.663.0390)  
AND EMAIL (oigfoia@state.gov)

**ATTN: Zipora Bullard**

FOIA Office

U.S. Department of State

Office of Inspector General

Office of Counsel

Washington, DC 20522-0308

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

Dear Zipora Bullard,

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”).

### Background

Earlier this year, alarm bells went off when the passport files of presidential candidates were improperly accessed. In March 2008, the State Department announced that Senator Barack Obama’s passport data was repeatedly accessed by three different contract employees who had no legitimate reason to view the records.<sup>1</sup> Two of the employees were terminated, while the third was disciplined.<sup>2</sup> State Department Spokesman Sean McCormack stated that the agency requires all government and contract employees who log onto the passport records system to acknowledge “that the records are protected by the Privacy Act and that they are only available on a need-to-know basis.”<sup>3</sup> Senator Obama’s passport file breach was detected by a monitoring system.<sup>4</sup> The monitoring system is “tripped” when an employee accesses the record of a high-profile individual.<sup>5</sup> Later, the State Department revealed that Senator Hillary Clinton and Senator John McCain’s files had also been improperly accessed.

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<sup>1</sup> Teleconference with Patrick F. Kennedy, Under Secretary for Management and Sean McCormack, U.S. Department of State, Spokesman (March 20, 2008), <http://www.state.gov/m/rls/102460.htm>.

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

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

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

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

These breaches of passport privacy follow previous violations, including one that occurred during the 1992 presidential campaign. In that case, three State Department officials conducted a search of then-presidential candidate William Clinton's passport file during the campaign. In October 1992, the FBI investigated whether President Clinton's passport file was accessed illegally. The discovery of missing pages in his passport file prompted the investigation.<sup>6</sup> Officials concluded that Clinton's file was accessed in furtherance of a plan to influence the outcome of the presidential election.<sup>7</sup> The investigation led to the resignation of one State Department official and the dismissal of the Assistant Secretary of State for Consular Affairs.

In the wake of the recent passport privacy breaches, all three presidential candidates expressed their concern about the privacy of passport records. Senator Obama said that the breaches were "deeply disturbing" and that he expected a "full and thorough investigation." He further stated, "[o]ne of the things that the American people count on in their interactions with any level of government is that if they have to disclose personal information, that it stay personal and stay private."<sup>8</sup>

Senator Clinton's office released a statement that "Senator Clinton will closely monitor the State Department's investigation into this and the other breaches of private passport information."<sup>9</sup> Senator McCain said that "[i]f anyone's privacy was breached, then they deserve an apology and a full investigation. I believe that will take place. . . . The United States of America values everyone's privacy and corrective action should be taken."<sup>10</sup>

The Inspector General investigated the 2008 presidential passport breaches, and issued a report in July 2008. The report, entitled "Review of Controls and

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<sup>6</sup> David Johnston, *F.B.I. Investigating Possible Gaps in File On Clinton Passport*, NEW YORK TIMES, October 7, 1992, available at <http://query.nytimes.com/gst/fullpage.html?res=9E0CE3DC1531F934A35753C1A964958260>.

<sup>7</sup> Robert Pear, *State Dept. Official Who Searched Clinton's Passport Files Resigns*, NEW YORK TIMES, November 18, 1992, available at <http://query.nytimes.com/gst/fullpage.html?res=9E0CE5D71F39F93BA25752C1A964958260>.

<sup>8</sup> Obama urges inquiry into passport snooping" (March 21, 2008), <http://us.cnn.com/2008/POLITICS/03/21/obama.passport/index.html#cnnSTCVideo>

<sup>9</sup> Statement on Breach of Senator Clinton's Passport File, (March 21, 2008), <http://www.clinton.senate.gov/news/statements/details.cfm?id=295036&&>.

<sup>10</sup> CNN Video (March 21, 2008), <http://www.cnn.com/video/#/video/politics/2008/03/21/america.votes.friday.cnn?iref=videosearch>

Notification for Access to Passport Records in the Department of State's Passport Information Electronic Records System (PIERS) – AUD/IP-08-29,” was released in heavily redacted form.<sup>11</sup> The unredacted portions indicate that 127 politicians, athletes, and entertainers' passport records had been wrongfully accessed between September 2002 and March 2008.<sup>12</sup> The report notes numerous problems with the system used to protect the confidentiality of passport records and makes 22 recommendations to improve passport privacy.<sup>13</sup> The report further identifies a general lack of policies, procedures, guidance, and training regarding the prevention and detection of unauthorized access to passport and applicant information.<sup>14</sup> Also, the subsequent response and disciplinary processes taken in response to breaches was found to be inadequate.<sup>15</sup>

#### Documents Requested

EPIC requests copies of the following agency records in the possession of the Office of the Inspector General:

1. The complete, unredacted July 2008 report by the Office of Inspector General entitled “Review of Controls and Notification for Access to Passport Records in the Department of State's Passport Information Electronic Records System (PIERS) – AUD/IP-08-29.”

#### 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.” 22 C.F.R. § 171.12(b)(2).

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).

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<sup>11</sup> United States Department of State and the Broadcasting Board of Governors Office of Inspector General, *Review of Controls and Notification for Access to Passport Records in the Department of State's Passport Information Electronic Records Systems (PIERS)*, AUD/IP-08-29 (July, 2008), available at <http://www.govexec.com/pdfs/070308n2.pdf> [hereinafter, *OIG Report*].

<sup>12</sup> *Id.* at Appendix A.

<sup>13</sup> *Id.* at 4.

<sup>14</sup> *Id.* at 1-4; *See also id.* at 39-42.

<sup>15</sup> *Id.* at 1-4.

Moreover, there is a particular urgency for the public to obtain information about the federal government's failure to safeguard the privacy of passport records. Passport data breaches place citizens' privacy at severe risk, and can lead to a variety of harms, including identity theft. The monitoring system involved in Senator Obama's passport data breach helped identify prior unlawful access to personal information, but failed to prevent the actual breach. In addition, this system monitors access to only a tiny subset of passport data – information associated with “high-profile individuals.” Ordinary Americans are not provided with the same protection.

The July 2008 OIG report includes 22 recommendations for future steps to better safeguard passport privacy.<sup>16</sup> As a result of OIG redactions, the released version of the report reveals only 6 of 22 recommendations.<sup>17</sup> In the 6 visible recommendations, the OIG makes recommendations that the Bureau of Consular Affairs “consider,” “determine the feasibility of,” and “evaluate”<sup>18</sup> potential programs and policy amendments. These recommendations are not clear mandates of the sort necessary to protect Americans' passport privacy.

The news media and the public have expressed substantial interest in both the initial privacy breaches and the government's investigation of the violations. The initial breaches received widespread press coverage by, among others, *CNN*,<sup>19</sup> *The New York Times*,<sup>20</sup> and *USA Today*.<sup>21</sup> The government's investigation was also heavily covered in publications including *The Washington Post*<sup>22</sup> and the *Los Angeles Times*.<sup>23</sup>

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<sup>16</sup> *Id.*

<sup>17</sup> *Id.* at 40-42.

<sup>18</sup> *Id.*

<sup>19</sup> CNN, *Obama urges inquiry into passport snooping*, March 21, 2008, available at <http://www.cnn.com/2008/POLITICS/03/21/obama.passport/index.html>.

<sup>20</sup> Helene Cooper and Michael M. Grynbaum, *Passport Files of 3 Candidates Were Improperly Viewed*, *The New York Times*, March 21, 2008, available at <http://www.nytimes.com/2008/03/21/us/politics/21cnd-passport.html?hp>.

<sup>21</sup> Emily Bazar and Marisol Bello, *State Dept. investigating passport-data snooping*, *USA Today*, March 21, 2008, available at [http://www.usatoday.com/news/politics/election2008/2008-03-21-rice-breach\\_N.htm](http://www.usatoday.com/news/politics/election2008/2008-03-21-rice-breach_N.htm).

<sup>22</sup> Glenn Kessler, *Celebrity Passport Records Popular*, *The Washington Post*, July 4, 2008, at A01, available at <http://www.washingtonpost.com/wp-dyn/content/article/2008/07/03/AR2008070303799.html>.

<sup>23</sup> Paul Richter, *Report details snooping in celebrity passport files*, *Los Angeles Times*, July 4, 2008, available at <http://www.latimes.com/news/nationworld/nation/la-na-passport4-2008jul04,0,7942743.story>.

Request for “News Media” Status

EPIC is a non-profit, educational organization that routinely and systematically disseminates information to the public. EPIC is a representative of the news media. *EPIC v. Dep’t 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 records 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,” as described above, any duplication fees should be waived.

Thank you for your consideration of this request. As provided in 22 C.F.R. § 171.12(b)(1), I will anticipate your determination on our request for expedited processing with ten (10) calendar days.

Respectfully submitted,

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John A. Verdi  
Director, EPIC Open Government Project