

VIA E-Mail

July 4, 2017

Presidential Advisory Commission on Election Integrity
ElectionIntegrityStaff@ovp.eop.gov

Dear Sir or Madam:

This letter constitutes a 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 Presidential Commission on Election Integrity (“PACEI” or “Commission”).

This is a request for records in possession of the agency concerning the letters that were sent on or about June 28, 2017 requesting the production of state voter records and other related information.

Background

The Presidential Advisory Commission on Election Integrity was established by executive order on May 11, 2017.¹ On June 28, 2017, the Commission undertook an effort to collect detailed voter histories from all fifty states and the District of Columbia. In letters to state officials, the Commission requested:

the full first and last names of all registrants, middle names or initials if available, addresses, dates of birth, political party (if recorded in your state), last four digits of social security number if available, voter history (elections voted in) from 2006 onward, active/inactive status, cancelled status, information regarding any felony convictions, information regarding voter registration in another state, information regarding military status, and overseas citizen information.²

The Vice Chair indicated that the Commission expected a response from the states by July 14, 2017.³

Such a request to state election officials had never been made by any federal official before. Election officials across the political spectrum in at least two dozen states have already partially or fully refused to comply with PACEI’s request.⁴

¹ Exec. Order No. 13,799, 82 Fed. Reg. 22, 389 (May 11, 2017).

² Letter from Kris Kobach, Vice Chair, PACEI, to Elaine Marshall, Sec’y of State, North Carolina (June 28, 2017), <https://www.documentcloud.org/documents/3881856-Correspondence-PEIC-Letter-to-North-Carolina.html>.

³ *Id.*

⁴ Philip Bump & Christopher Ingraham, *Trump Says States Are ‘Trying to Hide’ Things from His Voter Fraud Commission. Here’s What They Actually Say*, Wash. Post (July 1, 2017),

On June 28th, the U.S. Department of Justice issued a parallel request. The DOJ wrote to all states covered by the National Voter Registration Act with a similarly unprecedented demand for information regarding compliance with state voter registration list maintenance.⁵ The DOJ gave the states 30 days to comply with the request.

EPIC seeks nine categories of records from the agency concerning the Commission's June 28th, 2017 request to state election officials.

Records Requested

- (1) All communications to state election officials regarding the request;
- (2) All communications between and amongst Commission staff and Commission members regarding the request;
- (3) All communications between the Commission staff and the Department of Justice and all communications between Commission members and the Department of Justice regarding the request;
- (4) All records concerning compliance with the E-Government Act of 2002 and the specific obligation to undertake a Privacy Impact Assessment;
- (5) All records concerning compliance with the Federal Advisory Committee Act and the failure to post a Privacy Impact Assessment;
- (6) All records concerning compliance with the Privacy Act of 1974 and the failure to undertake a Systems of Records Notice;
- (7) All records concerning the decision to use an insecure website and an insecure email address to receive state voter data;
- (8) All legal memorandum concerning the Commission's authority to request personal data from the states; and
- (9) Such other records that assess the privacy and security risks of aggregating nearly two hundred million voter records in a federal database.

https://www.washingtonpost.com/news/wonk/wp/2017/07/01/trump-says-states-are-trying-to-hide-things-from-his-voter-fraud-commission-heres-what-they-actually-say/?utm_term=.bd2ba9587f57.

⁵ See, e.g., Letter from T. Christian Herren, Jr., Chief, Voting Section, U.S. Dep'tment of Justice, to Kim Westbrook Strach, Exec. Dir., North Carolina State Bd. Of Elections (June 28, 2017), <https://www.documentcloud.org/documents/3881855-Correspondence-DOJ-Letter-06282017.html>.

Request for Expedition

EPIC is entitled to expedited processing of this FOIA request. To warrant expedited processing, a FOIA request must concern a “compelling need.” 5 U.S.C. § 552(a)(6)(E)(i). “Compelling need” is demonstrated where the request is (1) “made by a person primarily engaged in disseminating information,” with (2) “urgency to inform the public concerning actual or alleged Federal Government activity.” § 552(a)(6)(E)(v)(II). This request satisfies both requirements.

First, EPIC is an organization “primarily engaged in disseminating information.” § 552(a)(6)(E)(v)(II). As the Court explained in *EPIC v. DOD*, “EPIC satisfies the definition of ‘representative of the news media.’” 241 F. Supp. 2d 5, 15 (D.D.C. 2003).

Second, there is an “urgency to inform the public about an actual or alleged Federal Government activity.” § 552(a)(6)(E)(v)(II). The “actual...Federal Government activity” at issue is PACEI’s request to states for detailed voter history information. The PACEI concedes this activity in letters to the states.⁶

“Urgency” to inform the public about this activity is clear given the extraordinary nature of PACEI’s sweeping request for voter data.⁷ On June 28, 2017, PACEI independently requested that fifty states and D.C. - within approximately *ten business days* – disclose sensitive, personal information that individuals are often required to provide to be eligible to vote. To date, PACEI has not indicated how the information will be used, who will have access to it, or what safeguards will be established. PACEI has also not made any Privacy Impact Assessment for the collection of state voter data.

As noted already, state officials in over two dozen states have partially or fully opposed PACEI’s demand.⁸ Mississippi Secretary of State Delbert Hosemann stated, “They can go jump in the Gulf of Mexico.”⁹ California Secretary of State Alex Padilla added that he would “not provide sensitive voter information to a committee that has already inaccurately passed judgment that millions of Californians voted illegally. California’s participation would only serve to legitimize the false and already debunked claims of massive voter fraud.”¹⁰ Kentucky’s Secretary of State

⁶ See Letter from Kris Kobach to Elaine Marshall, *supra* note 2.

⁷ *Voter Privacy and the PACEI*, Epic.org, <https://epic.org/privacy/voting/pacei/>.

⁸ See Philip Bump & Christopher Ingraham, *supra* note 4.

⁹ Editorial Board, *Happy Fourth of July! Show Us Your Papers*, N.Y. Times (July 3, 2017), <https://mobile.nytimes.com/2017/07/03/opinion/voter-fraud-data-kris-kobach.html>.

¹⁰ Press Release, Secretary of State Alex Padilla Responds to Presidential Election Commission Request for Personal Data of California Voters (June 29, 2017), <http://www.sos.ca.gov/administration/news-releases-and-advisories/2017-news-releases-and-advisories/secretary-state-alex-padilla-responds-presidential-election-commission-request-personal-data-california-voters/>.

Alison Lundergan Grimes concluded, “There's not enough bourbon here in Kentucky to make this request seem sensible.”¹¹

Fifty technical experts and legal scholars and twenty organizations expert in election integrity, voting verification, and voter privacy also recorded opposition to PACEI’s request. In a letter to state officials, they explained: “As custodians of voter data, you have a specific responsibility to safeguard voter record information.”¹²

This request concerns a matter of widespread public concern; the right to vote is protected by the U.S. Constitution. U.S. Const. amends. XV, XIX, XXIV, XXVI. Voter privacy and the secret ballot are unquestionably integral to American democracy.

States have only days left to respond to PACEI’s request. There is an urgent public need for immediate release of information explaining the PACEI’s unprecedented decision to collect, en masse, voters’ personal information from the states. Moreover, the coincidental request by the DOJ for similar information from the states raises substantial concerns that the PACEI request was part of a coordinated undertaking.¹³

In submitting this detailed statement in support of expedited processing, I certify that this explanation is true and correct to the best of my knowledge and belief. § 552(a)(6)(E)(vi).

Request for “News Media” Fee Status and Fee Waiver

EPIC is a “representative of the news media” for fee classification purposes. *EPIC v. Dep’t of Def.*, 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).

Further, any duplication fees should also be waived because disclosure of the requested information “is in the public interest” because (1) “it is likely to contribute significantly to public understanding of the operations or activities of the government,” and (2) disclosure “is not primarily in the commercial interest” of EPIC. § 552(a)(4)(A)(iii).

First, disclosure of the requested PACEI records concerning the June 28th request to states for detailed voter histories “is likely to contribute significantly to public understanding of the operations or activities of the government.” § 552(a)(4)(A)(iii). The requested PACEI records self-evidently concerns “operations or activities of the government.” *Id.* This request concerns a direct

¹¹ Max Greenwood, *Kentucky secretary of state: 'Not enough bourbon in Kentucky' to make me release voter data*, Hill (June 30, 2017), <http://thehill.com/homenews/state-watch/340331-kentucky-secretary-of-state-not-enough-bourbon-in-kentucky-to-make-me>.

¹² Letter from Organizations and Individual Experts to National Association of State Secretaries (July 3, 2017), <https://epic.org/privacy/voting/pacei/Voter-Privacy-letter-to-NASS-07032017.pdf>.

¹³ See Letter from Eleni Kyriakides, EPIC Law Fellow, to Nelson Hermilla, Chief, FOIA/PA Branch, Civil Rights Div. (June 30, 2017), <https://epic.org/privacy/voting/EPIC-17-06-30-DOJ-20170630-Request.pdf>

request from a presidential commission to state officials to obtain state voter information. Disclosure of the PACEI records is also “likely to contribute significantly to public understanding” of the Commission’s activities because, despite the extraordinary nature of PACEI’s demand, the Commission has not explained how it plans to use, protect, or dispose of the sensitive personal data requested. § 552(a)(4)(A)(iii). Any additional information about how and why PACEI is seeking this data would “contribute significantly” to the public’s understanding of PACEI’s activities.

Second, disclosure of the requested information is not “primarily in the commercial interest” of EPIC. § 552(a)(4)(A)(iii). EPIC has no commercial interest in the requested records. EPIC is a registered non-profit organization committed to privacy, open government, and civil liberties.¹⁴

For these reasons, a fee waiver should be granted.

Conclusion

Thank you for your consideration of this request. I anticipate your determination on our request within ten calendar days 5 U.S.C. § 552(a)(6)(E)(ii)(I). For questions regarding this request I can be contacted at 202-483-1140 x111 or FOIA@epic.org, cc: Kyriakides@epic.org.

Respectfully submitted,

/s/ Eleni Kyriakides
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EPIC Law Fellow

¹⁴ *About EPIC*, EPIC.org, <http://epic.org/epic/about.html>.