

VIA MAIL & FOIAonline

June 12, 2017

U.S. General Services Administration
FOIA Requester Service Center (H1F)
1800 F Street, NW, Room 7308
Washington, DC 20405-0001

Dear Sir/Madam,

This letter constitutes an urgent 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 General Services Administration (“GSA”).

EPIC seeks records in possession of the agency concerning the transfer of voter data from the State of Arkansas to the Department of Defense following the June 28, 2017 letter from the Presidential Advisory Commission on Election Integrity (the “Commission”).

Background

On June 28, 2017, the Vice Chair of the Commission attempted 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.¹

The letter provides no indication that the Commission will pay fees for the receipt voter data. The Commission also indicated a website for the transmission of voter data, which has since been determined to be insecure for the receipt of personally identifiable information from the general public.² Further, the letter from the Commission indicated no familiarity with the data that may disclosed by a particular state that received the request or the procedures the Commission would be required to follow to obtain voter data from a particular state.

¹ See, e.g. Letter from Presidential Advisory Commission on Election Integrity to Hon. Elaine Marshall, Secretary of State, North Carolina (June 28, 2017), <https://www.documentcloud.org/documents/3881856-Correspondence-PEIC-Letter-to-North-Carolina.html>.

² Lewis Decl. Ex. 11., EPIC v. Commission, No. 17-1320 (D.D.C. filed July 3, 2017).

Following a proceeding brought by EPIC, *EPIC v. Commission*, No. 17-1320 (D.D.C. filed July 3, 2017) on July 7, 2017 the U.S. Department of Justice told the D.C. District Court that Arkansas transferred voter data, to the Department of Defense's SAFE Website, following the letter from the Vice Chair.³

The Arkansas Secretary of State's Office charges \$2.50 per statewide voter registration data file.⁴ A requesting party also completes a "Data Request Form" in order to obtain the file and must mail payment (in check or money order form) to the Arkansas Secretary of State offices.⁵ The Office provides three types of files, with three clearly defined sets of information:

(1) "...Voter Registration (VR) file which is a list of all registered voters within the state. The file contains the Voter ID #, county of residence, voter name, address information (residential and/or mailing), phone number, DOB, precinct information, district information, party (if applicable) and the date last voted."

(2) "Vote History information for the state. This file lists the Voter ID # and Vote History data for all Federal elections from 1996 – current election cycle" while "older elections are incomplete since some counties did not enter voter results into the previously used VR databases." And

(3) "...a combination of the Voter Registration and Vote History files (VRVH)."⁶

The files are provided in ".CSV format" and "are available in CD format for pickup at the State Capitol Building or by mail" or "can also be placed on an FTP site."⁷

EPIC seeks four categories of records from the agency concerning the Arkansas transfer of data to the Commission.

Records Requested

(1) All records indicating payment by the Commission to obtain Arkansas voter records;

(2) The completed "Data Request Forms," prepared by the Commission to obtain the Arkansas state vote records;

(3) All records indicating the types of data transferred by Arkansas to the Commission; and

³ Transcript of Temporary Restraining Order at 40, *EPIC v. Commission*, No. 17-1320 (D.D.C. filed July 3, 2017).

⁴ *Voter Data Request Form*, Arkansas.gov
<http://www.sos.arkansas.gov/elections/Documents/Data%20Request%20Form.pdf> (last visited July 12, 2017).

⁵ *Id.*

⁶ *Id.*

⁷ *Id.*

(4) All records indicating the Commission’s compliance with the Arkansas procedures to obtain state voter records.

Request for Expedition

EPIC is entitled to expedited processing of this FOIA request because this request involves a “compelling need.” 5 U.S.C. § 552(a)(6)(E)(i). Specifically, under GSA FOIA regulations a request warrants expedited processing where the information sought is (1) “urgently needed,” (2) “by an individual primarily engaged in disseminating information,” and (3) “in order to inform the public concerning actual or alleged Federal Government activity.” 41 C.F.R. § 105-60.402-2(c)(2). This request satisfies all three requirements.

First, records concerning the Arkansas voter data transfer to the SAFE website, obtained following the June 28th request, is “urgently needed.” § 105-60.402-2(c)(2). This information “has a particular value that will be lost if not disseminated quickly.” *Id.* Indeed, this request concerns *both* a “breaking news story” and an issue of significant “general public interest.” *Id.* On June 28, 2017, PACEI independently requested that fifty states and D.C. - within approximately *ten business days* – disclose sensitive, personal information individuals are often required to provide to be eligible to vote. Since that date, public interest in the PACEI’s demand for state election officials to transfer personal voter data has dominated the news cycle, driven by prompt dissent of state officials in at least two dozen states across the political spectrum and public outcry.⁸ Following PACEI’s request less than two weeks ago, “[t]en states noted at least a slight increase in citizen calls and emails, and some citizens inquired about the process to unregister to vote, or how to secure their personal information.”⁹

On July 7th, in a hearing before the D.C. District Court, the DOJ first revealed that Arkansas alone had transferred personal data to the Commission.¹⁰ There are approximately 1.7 million registered voters in the state of Arkansas potentially implicated by this transfer.¹¹ The Commission will hold its first meeting on July 19, 2017.¹² Ahead of that meeting, the public must know whether the Commission and Arkansas state officials complied with state procedures in transferring this sensitive personal data.

⁸ 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), 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.

⁹ Dylan Wells & Saisha Talwar, *Some voters un-registering following Trump administration's data requests*, ABC News (July 11, 2017), <http://abcnews.go.com/Politics/voters-registering-trump-administrations-data-requests/story?id=48578555>.

¹⁰ Transcript of Temporary Restraining Order at 40, *supra* note 3.

¹¹ *Registered Voters [As of 6/1/16]*, Arkansas.gov <http://www.sos.arkansas.gov/elections/Documents/ARRegisteredVoters6-1-16.pdf> (last visited July 12, 2017).

¹² Meeting notice, 82 FR 31063 (July 5, 2017).

Second, EPIC is an organization “primarily engaged in disseminating information,” § 105-60.402-2(c)(2). As the Court explained in *EPIC v. Dep’t of Def.*, “EPIC satisfies the definition of ‘representative of the news media’” entitling it to preferred fee status under FOIA. 241 F. Supp. 2d 5, 15 (D.D.C. 2003).

Third, this request involves “actual... federal government activity.” § 105-60.402-2(c)(2). This FOIA concerns PACEI’s request to states for detailed voter history information, conceded by PACEI in letters to the states,¹³ and the transfer of Arkansas voter data to PACEI via the SAFE website, conceded by the DOJ to the D.C. District Court.¹⁴

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. § 105-60.402-2(c); § 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); 41 C.F.R. § 105-60.305-10(d)(2).

Further, any duplication fees should also be waived because disclosure of the requested information “would contribute significantly to public’s understanding of the operations or activities of the Government and would not be primarily in the commercial interest” of EPIC. § 105-60.305-13; § 552(a)(4)(A)(iii). The GSA evaluates four considerations to determine whether this standard is met: (1) “Whether the subject of the requested records concerns ‘the operations or activities of the Government,’” (2) “Whether the disclosure is ‘likely to contribute’ to an understanding of Government operations or activities,” (3) “Whether disclosure of the requested information will contribute to [the] ‘public’s understanding,’” and (4) “Whether the requester has a commercial interest that would be furthered by the requested disclosure; and if so: whether the magnitude of the identified commercial interest of the requester is sufficiently large, in comparison with the public’s interest in disclosure, that disclosure is ‘primarily in the commercial interest of the requester.’” § 105-60.305-13(a)(1-4). EPIC’s request satisfies these four GSA considerations for granting a fee waiver. § 105-60.305-13(a)(1-4).

First, disclosure of the requested GSA records concerning Arkansas transfer of voter data following PACEI’s June 28th request self-evidently concerns “the operations or activities of the Government.” § 105-60.305-13(a)(1). This request involves a direct request from a presidential commission to a state officials to obtain state voter information, and the transfer of data to a federal website following that request.

Second, “disclosure is ‘likely to contribute’ to an understanding of Government operations or activities.” § 105-60.305-13(a)(2). The requested information about the Arkansas data transfer is

¹³ See Letter from Kris Kobach to Elaine Marshall, *supra* note 1.

¹⁴ Transcript of Temporary Restraining Order at 40, *supra* note 3.

not “already in the public domain.” *Id.* Few details surrounding the transfer have been disclosed to the public, and the existence of the transfer was first made public mere days ago.

Third, “disclosure of the requested information will contribute to [the] ‘public’s understanding” § 105-60.305-13(a)(3). As stated in the GSA FOIA regulations, the “identity and qualifications of the requester should be considered to determine whether the requester is in a position to contribute to public’s understanding through the requested disclosure.” *Id.* As already indicated, EPIC is a news media requester. EPIC regularly disseminates information obtained through the FOIA as a part of its public interest mission through website EPIC.org, a bi-weekly “EPIC Alert,” and other publications.¹⁵

Fourth, EPIC has no “commercial interest that would be furthered by the requested disclosure.” § 105-60.305-13(a)(4). EPIC is a registered non-profit organization committed to privacy, open government, and civil liberties.¹⁶

For these reasons, a fee waiver should be granted.

Conclusion

Thank you for your consideration of this request. I anticipate your decision concerning EPIC’s request for expedited processing within five working days. 41 C.F.R. § 105-60.402-2(d). 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

Eleni Kyriakides
EPIC Law Fellow

¹⁵ *About EPIC*, EPIC.org, <http://epic.org/epic/about.html>.

¹⁶ *Id.*