



July 17, 2014

VIA CERTIFIED MAIL

Defense Freedom of Information Division
1155 Defense Pentagon
Washington, DC 20301-1155

Re: Freedom of Information Act Request

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") to the Department of Defense ("DOD").

EPIC seeks documents concerning the DOD's Federal Voting Assistance Program, including records related to functionality and security of electronic voting systems.

Background

The Federal Voting Assistance Program (FVAP) is administered by the DOD and is tasked with ensuring that Service members, their eligible family members and overseas citizens are aware of their right to vote and have the tools and resources to vote from around the world.

In 2010 the FVAP launched the Electronic Voting Support Wizard program and for 2011/2012, the subsequent Electronic Absentee Systems for Elections (EASE) grants to the States to enable online ballot marking "wizards" and online voting systems for mock elections.¹ While the Request for Proposal for the EASE grants stated that these systems are not to be used for the online return of voted ballots in real elections, the systems in question can in fact enable such options for mock elections.² Further, the systems' architecture allows them to be configured to allow electronic return of voted ballots if the states choose to permit that.³

¹ Catalogue of Federal Domestic Assistance, Department of Defense, EASE Grants, <https://www.cfda.gov/index?s=program&mode=form&tab=core&id=e39800c9dd3b827d52ed6fd73d07f94>

² 2012 Hearing on the Federal Voting Assistance Program before the House Subcommittee on Military Personnel of the Committee on Armed Services, Sept. 13, 2012, Testimony of Pamela Smith, President, VerifiedVoting.org, <http://www.gpo.gov/fdsys/pkg/CHRG-112hhrg76216/pdf/CHRG-112hhrg76216.pdf>

³ *Id.*

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In a Hearing on the Federal Voting Assistance Program before the House Subcommittee on Military Personnel of the Committee on Armed Services, Representative Susan Davis (D-CA) and Pamela Mitchell, Acting Director of FVAP, discussed the existence of functionality and security tests for online ballots and internet voting systems.⁴

Mrs. Davis: In 2011, the Federal Voting Assistance Program (FVAP) arranged for the voting system testing laboratories to perform functionality and security testing on both online ballot marking systems and Internet voting systems. The results of these tests were to be made available to the public but as we rapidly approach the 2012 elections, these reports have yet to be published. These online ballot marking systems will be used in States across the country in the November elections, and election administrators could benefit from the results of these reports. What are FVAP's plans for releasing these test reports?

Ms. Mitchell: These tests are at different stages of ongoing review. The early release of these results without a full vetting of issues and a thorough assessment would lead to incomplete and potentially inaccurate results. The first of the assessments will be released in December 2012, with all of the assessments being released by the end of the 2nd quarter.

The documents referenced by Ms. Mitchell have not ever been publicly released.

Documents Requested

We hereby request the following original documents:

- 1.) "FVAP Voting System Testing Laboratory Functionality and Security Testing
- 2.) "VSTL Functionality and Security Testing"
- 3.) "Penetration Testing of Simulated Election"
- 4.) All other documents regarding system functionality and security testing of online ballots and internet voting systems;

Please note that documents (1) through (3) are described by DOD in FOIA Request 12-00001.⁵

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

⁴ 2012 Hearing on the Federal Voting Assistance Program before the House Subcommittee on Military Personnel of the Committee on Armed Services, Sept. 13, 2012, Questions Submitted by Members Post Hearing, Sept. 13, 2012.

⁵ Letter to Susan Greenhalgh (Apr. 26, 2012).

there is an “urgency to inform the public about an actual or alleged federal government activity.”⁶

EPIC is “primarily engaged in disseminating information.”⁷

There is a particular urgency for the public to obtain information about the viability and security of online voting systems. As indicated in testimony before the Subcommittee on Military Personnel of the Committee on Armed Services, the FVAP has been promoting the use of online voting equipment and has represented to Congress that these systems have been security tested. Congressmembers have expressed intense interest in the results of these tests and agency personnel have represented that the results would be available almost two years ago. Moreover, election officials who will be conducting elections in their states this election cycle with this equipment have asked FVAP for the release of these test reports.

Fair voting is a core democratic principle and right. These test results will indicate to the public whether or not government administered systems are secure and produce accurate, fair election results.

Request for “News Media” Fee Status

EPIC is a “representative of the news media” for fee waiver purposes.⁸ 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.

Conclusion

Thank you for your consideration of this request. As provided in 5 U.S.C. §552(6)(e)(2), I will anticipate your determination on our request for expedited processing within 10 business days. For questions regarding this request I can be contacted at 202-483-1140 ext. 111 or FOIA@epic.org.

Respectfully Submitted,

Ginger McCall, Director
EPIC Open Government Project

⁶ 5 U.S.C. § 552(a)(6)(E)(v)(II) (2008); *Al-Fayed v. CIA*, 254 F.3d 300, 306 (D.C. Cir. 2001).

⁷ *American Civil Liberties Union v. Department of Justice*, 321 F. Supp. 2d 24, 29 n.5 (D.D.C. 2004).

⁸ *EPIC v. Department of Defense*, 241 F. Supp. 2d 5 (D.D.C. 2003).