

March 29, 2017

The Honorable Richard Burr, Chair  
The Honorable Mark Warner, Ranking Member  
U.S. Senate Select Committee on Intelligence  
211 Hart Senate Office Building  
Washington, DC 20510

## **RE: Open Hearing: Disinformation: A Primer in Russian Active Measures and Influence Campaigns**

Dear Chairman Burr and Ranking Member Warner:

In advance of the hearing on “Disinformation: A Primer in Russian Active Measures and Influence Campaigns,<sup>1</sup>” we write to you regarding the Committee’s investigation into Russian efforts to influence democratic elections in the United States and abroad. EPIC has an active interest in the challenge of protecting democratic institutions against cyber-attack.<sup>2</sup> We welcome your leadership on this critical issue and look forward to opportunities to work with you and your staff.

EPIC is a public interest research center established in 1994 to focus public attention on emerging privacy and civil liberties issues.<sup>3</sup> EPIC is also a leading advocate for civil liberties and democratic values in the information age. EPIC is currently pursuing numerous Freedom of Information Act matters to learn more about Russian interference in the 2016 Presidential election.<sup>4</sup> EPIC is pursuing these matters because, as we wrote in an op-ed in *The Hill* this week,

The public has a right to know the details when a foreign government attempts to influence the outcome of a U.S. presidential election. The public has a right to know the extent of the risk and how the government agencies, tasked with defending the nation, responded. And the public has a right to know what steps have been taken to prevent future attacks.<sup>5</sup>

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<sup>1</sup> *Disinformation: A Primer in Russian Active Measures and Influence Campaigns*, 115<sup>th</sup> Cong. (2017), S. Select Comm. on Intelligence, <https://www.intelligence.senate.gov/hearings/open-hearing-disinformation-primer-russian-active-measures-and-influence-campaigns> (March 30, 2017).

<sup>2</sup> See *Democracy and Cybersecurity: Preserving Democratic Institutions*, EPIC, <https://epic.org/democracy/>.

<sup>3</sup> See *About EPIC*, EPIC, <https://epic.org/epic/about.html>.

<sup>4</sup> *EPIC v. ODNI*, No. 17-163 (D.D.C. Jan. 25, 2017); *EPIC v. FBI*, No. 17-121 (D.D.C. Jan. 18, 2017).

<sup>5</sup> Marc Rotenberg, *Americans have a right to know what intel community knows on Russia*, *The Hill* (March 27, 2017).

In *EPIC v. FBI*, EPIC seeks to understand the FBI's response to the Russian interference in the 2016 Presidential election. The FBI is the lead federal agency for investigating cyber-attacks by criminals, overseas adversaries, and terrorists.”<sup>6</sup> Nonetheless, questions were raised about the failure of the FBI to adequately investigate the attacks on the nation’s political institutions.<sup>7</sup> EPIC is therefore pursuing FBI records to help the “public. . . . evaluate the FBI response to the Russian interference, assess threats to American democratic institutions, and to ensure the accountability of the federal agency with the legal authority to safeguard the American people against foreign cyber attacks.”<sup>8</sup> The FBI has requested a delay in that case.<sup>9</sup>

In *EPIC v. ODNI*, EPIC is seeking the release of the complete ODNI report on the Russian interference with the 2016 election. A limited, declassified version of the report was published on Jan. 6, 2017.<sup>10</sup> This report stated that Russia carried out a multi-pronged attack on the 2016 U.S. Presidential Election to “undermine public faith in the US democratic process.” The report also states that “this version does not include the full supporting information on key elements of the influence campaign.” However, as EPIC makes clear in the complaint, “there is an urgent need to make available to the public the Complete ODNI Assessment to fully assess the Russian interference with the 2016 Presidential election and to prevent future attacks in democratic institutions.”<sup>11</sup>

EPIC has also filed a request with the Department of Justice seeking any applications made under the Foreign Intelligence Surveillance Act (FISA) for electronic surveillance of Trump Tower.<sup>12</sup> In response, the DOJ stated on March 17 that “we can neither confirm nor deny the existence of records in these files responsive to your request.”<sup>13</sup> EPIC has appealed that response, stating “[b]ased on the FBI Director’s statement today... the agency may not hide behind the “neither confirm nor deny” response,” and the “agency should immediately process EPIC’s FOIA Request.”<sup>14</sup>

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<sup>6</sup> *What We Investigate, Cyber Crime*, FBI.gov, <https://www.fbi.gov/investigate/cyber>; Directive on United States Cyber Incident Coordination (“PPD 41”), 2016 Daily Comp. Pres. Doc. 495 (July 26, 2016) (setting forth the FBI’s legal authority for cybersecurity threat response).

<sup>7</sup> Ellen Nakashima & Adam Entous, *FBI and CIA Give Differing Accounts to Lawmakers on Russia’s Motives in 2016 Hacks*, Wash. Post (Dec. 10, 2016), [https://www.washingtonpost.com/world/national-security/fbi-and-cia-give-differing-accounts-to-lawmakers-on-russias-motives-in-2016-hacks/2016/12/10/c6dfadfa-bef0-11e6-94ac-3d324840106c\\_story.html](https://www.washingtonpost.com/world/national-security/fbi-and-cia-give-differing-accounts-to-lawmakers-on-russias-motives-in-2016-hacks/2016/12/10/c6dfadfa-bef0-11e6-94ac-3d324840106c_story.html).

<sup>8</sup> Complaint at 7, *EPIC v. FBI*, *supra* note 4.

<sup>9</sup> Consent Motion to Modify Order, *EPIC v. FBI*, No. 17-121 (D.D.C. Jan. 18, 2017).

<sup>10</sup> Office of the Dir. of Nat’l Intelligence, *Assessing Russian Activities and Intentions in Recent US Elections* (2017), [https://www.dni.gov/files/documents/ICA\\_2017\\_01.pdf](https://www.dni.gov/files/documents/ICA_2017_01.pdf) [hereinafter *Declassified ODNI Assessment*].

<sup>11</sup> Complaint at 3, *EPIC v. ODNI*, *supra* note 4.

<sup>12</sup> *EPIC Seeks Release of FISA Order for Trump Tower*, EPIC (March 6, 2017), <https://epic.org/2017/03/epic-seeks-release-of-fisa-ord.html>.

<sup>13</sup> E-mail from Arnetta Mallory, Government Information Specialist, Dept. of Justice, to Eleni Kyriakides, EPIC (March 17, 2017 10:41 EST), (<https://epic.org/foia/L0R4UJ-EPIC-17-03-06-NSD-FOIA-20170315-response.pdf>).

<sup>14</sup> Letter from Eleni Kyriakides, EPIC, to Melanie Ann Pustay, Director, Office of Information Policy, Dept. of Justice (March 20, 2017) (<https://epic.org/foia/EPIC-16-03-06-NSD-FOIA-20170320-Appeal-final.pdf>).

Regarding this week's cancelled House Intelligence Committee hearing, EPIC has also filed a FOIA request for the records concerning witnesses who were scheduled to testify. Specifically, EPIC has asked the Justice Department for the records of former Assistant Attorney Sally Yates concerning the Russian investigation. EPIC has made similar requests to the CIA for the records of the former CIA Director John Brennan, and to the ODNI for the records of former DNI James Clapper.

Finally, today EPIC renewed our FOIA request with the Internal Revenue Service (IRS) for President Trump's tax returns for 2010 forward and any other indications of financial relations with the Russian government or Russian businesses. As EPIC stated in its request,

At no time in American history has a stronger claim been presented to the IRS for the public release of tax records to "correct misstatements of fact."<sup>15</sup> If the Freedom of Information Act means anything, it means that the American public has the right to know whether records exist in a federal agency which reveal that the U.S. president has financial dealings with a foreign adversary.<sup>16</sup>

Public release of President Trump's tax returns is necessary to resolve these contradictory claims—at least some of which must constitute "misstatements of fact."

The urgency of understanding the full scope of the Russian threat to democratic elections is clear. There are upcoming federal elections in Europe. The French national election is scheduled for April 23, 2017. The German national election is September 24, 2017. Russian attacks on democratic institutions are expected to continue.<sup>17</sup> The U.S. Intelligence community has reportedly shared the classified ODNI report with European governments to help limit Russian interference with their elections.<sup>18</sup> The public need to understand Russian efforts to influence democratic elections cannot be overstated. "Further secrecy will do little to restore public confidence over the integrity of our election system."<sup>19</sup>

We ask that this letter be entered in the hearing record. We will keep the Committee apprised of the documents we receive in our FOIA cases and we look forward to working with you on the cybersecurity risks to democratic institutions.

Sincerely,

/s/ Marc Rotenberg  
Marc Rotenberg  
EPIC President

/s/ Caitriona Fitzgerald  
Caitriona Fitzgerald  
EPIC Policy Director

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<sup>15</sup> 26 U.S.C. § 6103(k)(3).

<sup>16</sup> *EPIC Pursues Release of President Trump's Tax Returns*, EPIC (March 29, 2017), <https://epic.org/2017/03/epic-pursues-release-of-presid.html>.

<sup>17</sup> Declassified ODNI Assessment, *supra* note 10, at 5.

<sup>18</sup> Martin Matishak, *U.S. shares hacking intel with Europe as Russia shifts focus*, POLITICO Pro (Feb. 6, 2017).

<sup>19</sup> Rotenberg, *supra* note 5.