



May 29, 2015

VIA FACSIMILE & E-MAIL

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Re: Freedom of Information Act Request

Dear FOIA Coordinator:

This letter constitutes a request under the Freedom of Information Act¹ (“FOIA”) and is submitted on behalf of the Electronic Privacy Information Center (“EPIC”) to the U.S. Coast Guard (“USCG”).

EPIC seeks documents concerning the Nationwide Automatic Identification System (“NAIS”).

Background

The Maritime Transportation Security Act of 2002 (“MTSA”) instructs the Secretary of Homeland Security to “implement a system to collect, integrate, and analyze information concerning vessels operating on or bound for waters subject to the jurisdiction of the United States”² The USCG has fulfilled this directive largely through NAIS,³ a network that collects and processes information about vessels in coastal and territorial waters. Transceivers located near 58 ports and 11 coastal areas gather information from ships equipped with AIS, a ship-to-ship collision avoidance system that is used worldwide.⁴

A vessel equipped with AIS broadcasts a regular stream of voiceless data, including the ship’s “name, course and speed, classification, call sign, registration

¹ 5 U.S.C. § 552 (2012).

² 46 U.S.C. § 70113 (2012).

³ *United States Coast Guard Record of Decision: Nationwide Automatic Identification System Project*, United States Coast Guard Acquisition Directorate (Oct. 27, 2006), available at http://www.uscg.mil/acquisition/nais/documents/ROD_Final.pdf.

⁴ *Nationwide Automatic Identification System*, United States Coast Guard Acquisition Directorate (Feb. 12, 2015), <http://www.uscg.mil/acquisition/nais/default.asp>.

number,” and Maritime Mobile Service Identity.⁵ Most vessels over 65 feet that operate in U.S. waters are required to carry AIS,⁶ and owners of smaller craft may also opt to use it. Once NAIS transceivers receive AIS data from a vessel, that information is stored, processed, and transmitted to the USCG and other entities.⁷ NAIS currently receives about 92 million AIS messages a day from 12,700 unique vessels.⁸

The first phase of NAIS, which relied primarily on existing infrastructure,⁹ was implemented in 2006 and 2007.¹⁰ In the second phase, the USCG has worked with Northrop Grumman,¹¹ *inter alia*, to configure permanent transceivers capable of transmitting data out to 24 nautical miles and receiving data from out to 50 nautical miles.¹² These installations are expected to conclude by the end of 2015.¹³ Ultimately the USCG plans to expand coverage out to 2,000 miles by using “satellite communications and VHF services on offshore platforms and deep ocean buoys.”¹⁴ The USCG has already sought information from contractors about integrating AIS satellite data into NAIS.¹⁵

⁵ *Automatic Identification System Overview*, United States Coast Guard Navigation Center (July 30, 2014), <http://www.navcen.uscg.gov/?pageName=AISmain>.

⁶ 33 C.F.R. § 164.46(a)(1) (2015).

⁷ Ralph Naranjo, *Big Brother on the Water: The Coast Guard's Maritime Domain Awareness Program Chips Away at our Boating Freedoms*, Practical Sailor, Feb. 2011, at 28, available at http://www.practical-sailor.com/issues/37_2/features/Is_AIS_Chipping_Away_at_Our_Freedoms_10135-1.html.

⁸ *Nationwide Automatic Identification System*, *supra* note 4.

⁹ *Id.*

¹⁰ *Nationwide Automatic Identification System Stands Up Increment 1*, Delivering the Goods: News from U.S. Coast Guard Acquisition (Nov. 2007), available at <http://www.uscg.mil/acquisition/newsroom/pdf/cg9newsletternov07.pdf>.

¹¹ *Northrop Grumman Delivers Maritime Safety and Security System to U.S. Coast Guard*, Nasdaq Global Newswire (July 23, 2012), <http://globenewswire.com/news-release/2012/07/23/274100/262951/en/Northrop-Grumman-Delivers-Maritime-Safety-and-Security-System-to-U-S-Coast-Guard.html#sthash.YhpWlZiA.dpuf>; see also *Northrop Grumman Space & Mission Systems Corp. HSCG2309CADP001*, USAspending.gov, <https://www.usaspending.gov/transparency/Pages/TransactionDetails.aspx?RecordID=B619F361-4095-C497-4384-ABF319904813> (last visited May 29, 2015).

¹² *Nationwide Automatic Identification System*, *supra* note 4.

¹³ *Acquisition Update: Coast Guard Purchases Equipment To Complete NAIS Deployment*, United States Coast Guard Acquisition Directorate (Jan. 30, 2015), <http://www.uscg.mil/acquisition/newsroom/updates/nais013015.asp>.

¹⁴ *Project Overview*, The Guardian: The Nationwide Automatic Identification System Newsletter (June 2007), <http://www.uscg.mil/acquisition/nais/documents/NAIS-Newsletter-Issue1-3QFY07.pdf>.

¹⁵ *Request for Information (RFI) for Nationwide Automatic Identification System (NAIS) Support Services for the AIS Receive Satellite Coverage in Alaska*, FedBizOpps.gov (Jun. 27, 2014), <https://www.fbo.gov/index?s=opportunity&mode=form&tab=core&id=2be119d55f98f8344bac42c4623b0029>.

NAIS is advertised as a tool to “improve[e] maritime security, marine and navigational safety, search and rescue, and environmental protection services.” However, the system also poses a significant threat to privacy. The USCG has stated, for example, that information collected through NAIS is “combined with other government intelligence and surveillance information to form a holistic, over-arching view of maritime traffic”¹⁶

What this practice entails is not fully known. Under USCG policy, NAIS data is divided into three levels subject to different information-sharing restrictions.¹⁷ Level C includes any data more than 96 hours old, which may be obtained by members of the public through the ordinary FOIA process.¹⁸ Level B includes filtered data less than 96 hours old, which may be shared with a variety of governmental and authorized non-governmental entities.¹⁹ Level A includes unfiltered data less than 96 hours old, which may only be shared with U.S. or foreign government agencies for “legitimate internal government use.”²⁰

Yet the USCG has not disclosed the specific agencies and entities with which real-time NAIS data has been shared. Likewise, it has not explained how such information is stored, analyzed, and/or combined with other intelligence data.

The USCG has also indicated that NAIS data is used to “detect[] anomalies, monitor[] suspicious vessels, and pinpoint[] the location of potential threats.”²¹ This raises questions as to how “anomalies,” “suspicious vessels,” and “potential threats” are identified; who makes such identifications; and what effect these designations carry.

Accordingly, EPIC requests the following categories of documents:

Documents Requested

1. All technical specifications, progress reports, and statements of work associated with contract number HSCG2309CADP001 (a contract between the Department of Homeland Security/USCG and Northrop Grumman Space & Mission Systems Corp.);
2. All USCG policies and procedures for the collection, storage, analysis, use, retention, and deletion of data obtained through NAIS;

¹⁶ Naranjo, *supra* note 7.

¹⁷ Levels of NAIS Real-Time and Historical Data, United States Coast Guard Navigation Center, <http://www.navcen.uscg.gov/?pageName=NAISdisclaimerPop> (last visited May 28, 2015) (citing U.S.C.G. Commandant Instruction 5230.80).

¹⁸ *Id.*

¹⁹ *Id.*

²⁰ *Id.*

²¹ Naranjo, *supra* note 7.

3. All policies and procedures concerning the sharing of Level A or Level B NAIS data with other agencies, governments, non-governmental entities, and individuals;
4. All records detailing the agencies, governments, non-governmental entities, and individuals with whom Level A or Level B NAIS data has been shared and how often it has been shared with them; and
5. All civil rights & civil liberties impact assessments of NAIS, whether prepared by the Office for Civil Rights and Civil Liberties or another unit.

Request for Expedited Processing

Expedited processing is justified because the request: 1) is made by an organization “primarily engaged in disseminating information”; and 2) covers information about which there is an “urgency to inform the public about an actual or alleged federal government activity.”²² EPIC is an organization “primarily engaged in disseminating information.”²³

There is an “urgency to inform the public” about NAIS, a confirmed government surveillance system. NAIS is actively tracking the movements of thousands of vessels on U.S. waters every day,²⁴ and its reach is set to expand in the future.²⁵ The documents requested by EPIC will inform the public as to how NAIS collects information; how that information is analyzed, used, stored, and shared; and whether the current state of NAIS is consonant with the Fourth Amendment and its authorizing statute.

Request for “News Media” Fee Status

EPIC is a “representative of the news media” for fee waiver purposes.²⁶ 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

²² See 5 U.S.C. § 552(a)(6)(E)(v)(II) (2012); *Al-Fayed v. CIA*, 254 F.3d 306 (D.C. Cir. 2001).

²³ *American Civil Liberties Union v. Department of Justice*, 321 F. Supp. 2d 24, 29 n.5 (D.C. Cir. 2004).

²⁴ *Nationwide Automatic Identification System*, *supra* note 4.

²⁵ *Project Overview*, *supra* note 14.

²⁶ *EPIC v. Department of Defense*, 241 F. Supp. 2d 5 (D.D.C. 2003).

Thank you for your consideration of this request. As provided for by federal regulation,²⁷ 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 or FOIA@epic.org.

Respectfully Submitted,

A handwritten signature in black ink, appearing to read "John Davisson", with a long horizontal flourish extending to the right.

John Davisson
IPIOP Law Clerk

John Tran
EPIC FOIA Counsel
Coordinator, Open Government Project

²⁷ 6 C.F.R. § 5.5(d)(4) (2015).