

March 20, 2017

The Honorable Devin Nunes, Chairman  
The Honorable Adam Schiff, Ranking Member  
U.S. House Permanent Select Committee on Intelligence  
Capitol Visitor Center HVC-304 US  
Washington, DC 20515-6415

Dear Chairman Nunes and Ranking Member Schiff:

In advance of today's hearing on "Russian Active Measures Investigation,"<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.<sup>2</sup> EPIC has an active interest in the challenge of protecting democratic institutions against cyber attack.<sup>3</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>4</sup> EPIC is also a leading advocate for civil liberties and democratic values in the information age. EPIC is currently pursuing three Freedom of Information Act matters to learn more about the Russian interference in the 2016 Presidential election.<sup>5</sup>

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

<sup>1</sup> *Open Hearing on Russian Active Measures Investigation*, 115<sup>th</sup> Cong. (2017), H. Perm. Select Comm. on Intelligence, <http://intelligence.house.gov/calendar/eventsingle.aspx?EventID=769> (March 20, 2017).

<sup>2</sup> Letter from EPIC to Senator Lindsey Graham and Senator Sheldon Whitehouse, S. Comm. on the Judiciary (Feb. 8, 2017), *available at* <https://epic.org/foia/fbi/russian-hacking/EPIC-letter-SJC-Russia-02-08-17.pdf>.

<sup>3</sup> *See Democracy and Cybersecurity: Preserving Democratic Institutions*, EPIC, <https://epic.org/democracy/>.

<sup>4</sup> *See About EPIC*, EPIC, <https://epic.org/epic/about.html>.

<sup>5</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>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).

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>

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>9</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>10</sup>

EPIC has also filed a request with the National Security Division of the Department of Justice (“NSD”) seeking any applications made under the Foreign Intelligence Surveillance Act (FISA) for electronic surveillance of Trump Tower.<sup>11</sup> The public should be told whether the FBI pursued an investigation regarding Russian communications with a U.S. Presidential campaign. On Friday, March 17, NSD responded to EPIC, stating that it will neither “confirm nor deny” the existence of a FISA application to monitor Trump Tower.<sup>12</sup> EPIC also filed a related request for five categories of FISA applications related to the alleged surveillance of the Trump campaign.<sup>13</sup> The DOJ also stated that it could note “confirm of deny” the existence of responsive records related to that request.<sup>14</sup>

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>15</sup> The U.S. Intelligence community has reportedly shared the classified ODNI report with European governments to help limit

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<sup>8</sup> Complaint at 7, *EPIC v. FBI*, *supra* note 5.

<sup>9</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>10</sup> Complaint at 3, *EPIC v. ODNI*, *supra* note 5.

<sup>11</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>. (The EPIC FOIA Request to the DOJ regarding FISA applications for surveillance at Trump Tower is available at <https://epic.org/foia/EPIC-17-03-06-NSD-FOIA-20170306-Trump-Tower-Request.pdf>).

<sup>12</sup> Letter from Arnetta Mallory, Government Information Specialist, Dept. of Justice to EPIC (March 17, 2017), *available at* <https://epic.org/foia/L0R4UJ-EPIC-17-03-06-NSD-FOIA-20170315-response.pdf>.

<sup>13</sup> Letter from EPIC to Arnetta Mallory, FOIA Initiatives Coordinator, Dept. of Justice, (March 6, 2017), *available at* <https://epic.org/foia/EPIC-17-03-06-NSD-FOIA-20170306-Trump-Request-2%20.pdf>.

<sup>14</sup> Letter from Arnetta Mallory, Government Information Specialist, Dept. of Justice to EPIC (March 17, 2017), *available at* <https://epic.org/EPIC-17-03-06-NSD-FOIA-20170315-response-2.pdf>.

<sup>15</sup> *Declassified ODNI Assessment*, *supra* note 10, at 5.

Russian interference with their elections.<sup>16</sup> The public need to understand Russian efforts to influence democratic elections cannot be overstated.

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

Enclosures

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<sup>16</sup> Martin Matishak, *U.S. shares hacking intel with Europe as Russia shifts focus*, POLITICO Pro (Feb. 6, 2017).