

VIA EMAIL

December 3, 2021

Catrina Pavlik-Keenan
FOIA Officer
U.S. Immigration and Customs Enforcement
Freedom of Information Act Office
500 12th Street, S.W., Stop 5009
Washington, D.C. 20536-5009
Email: ICE-FOIA@dhs.gov

Dear Ms. Pavlik-Keenan:

This letter constitutes a 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 Department of Homeland Security’s (“DHS”) Immigration and Customs Enforcement (“ICE”).

EPIC requests records related to ICE communications and contracts with ShadowDragon and purchase and use of ShadowDragon’s software. ShadowDragon produces a software called SocialNet that monitors, tracks, and compiles data about individuals from social media and other websites. DHS has contracted to purchase this software from ShadowDragon on at least two occasions.

Documents Requested

EPIC requests disclosure of the following documents:

1. All emails, communications, and memoranda:
 - a. Shared between ICE and any representative from ShadowDragon or Packet Ninjas;
 - b. Or referencing the following terms: ShadowDragon, Packet Ninjas, SocialNet;
2. All contracts, contract proposals, purchase card transaction worksheets, quotes, invoices, receipts, orders, and licenses:
 - a. Between ICE and ShadowDragon or Packet Ninjas;
 - b. Between ICE and other vendor(s) mentioning ShadowDragon, Packet Ninjas, or SocialNet;
3. All presentations and sales or marketing materials mentioning ShadowDragon or SocialNet;
4. Any training materials, handbooks, or presentations:
 - a. Mentioning ShadowDragon or SocialNet;

5. Any Privacy Impact Assessments (PIAs), Privacy Threshold Analysis (PTAs), privacy policies, instructions, directives, or other privacy analyses:
 - a. Concerning use of ShadowDragon software or SocialNet;
6. All reports, legal memoranda, white papers, talking points, and briefing materials discussing use of ShadowDragon software, SocialNet, or other social media monitoring or data collection software.

Background

On September 21, 2021, *The Intercept* reported that federal and state law enforcement were using a spyware “SocialNet,” produced by ShadowDragon.¹ ShadowDragon’s SocialNet software allows users to compile data from social media sites and other online sources to create a comprehensive profile of a targeted individual.² In describing the utility of the software, ShadowDragon’s founder Daniel Clemens expressed, “I want to know everything about the suspect: where do they get their coffee, where do they get their gas, where’s their electric bill, who’s their mom, who’s their dad, where did they go to school . . . where did they travel, what do they like?”³

ICE has contracted to purchase ShadowDragon’s Social Net on at least two occasions. In 2020, ICE awarded a contract for \$289,500 with C & C International Computers & Consultants, Inc. for SocialNet.⁴ And in 2021, ICE contracted with Panamerica Computers, Inc. for SocialNet for \$602,056.⁵ ICE’s purchase of this software poses troubling questions about ICE’s surveillance of undocumented immigrants and immigrant communities. For years, ICE has been embroiled in controversy surrounding its mistreatment of undocumented immigrants and targeting of immigrant

¹ Michael Kwet, *ShadowDragon: Inside the Social Media Surveillance Software that can Watch Your Every Move*, INTERCEPT (Sept. 21, 2021), <https://theintercept.com/2021/09/21/surveillance-social-media-police-microsoft-shadowdragon-kaseware>; see *ShadowDragon*, SHADOWDRAGON, <https://shadowdragon.io>. ShadowDragon is the sister company of Packet Ninjas, a 2005-formed technology company that first developed ShadowDragon. See *About Packet Ninjas*, PACKET NINJAS, <https://packetninjas.com/about>.

² *Id.*

³ *Id.*; *ShadowDragon – Investigative Rule 8: Bad Guys Order Pizza Too*, VIMEO (2019), <https://vimeo.com/345808418> (video showing Daniel Clemens describing the software).

⁴ *Delivery Order (DO)*, PIID No. 70CMSD20FR0000090, USA SPENDING, https://www.usaspending.gov/award/CONT_AWD_70CMSD20FR0000090_7012_HSHQDC12D00011_7001 (Delivery Order from ICE to C & C International Computers & Consultants, Inc. for \$289k with a July 16, 2020 start date).

⁵ *Delivery Order (DO)*, PIID No. 70CMSD21FR0000107, USA SPENDING, https://www.usaspending.gov/award/CONT_AWD_70CMSD21FR0000107_7012_HSHQDC12D00013_7001 (Delivery Order from ICE to Panamerica Computers, Inc. for \$602k with an August 31, 2021 start date).

communities,⁶ and intrusive surveillance technology has been a key tool in ICE's arsenal.⁷ The public must be informed about ICE's communications and contracts with ShadowDragon and its use and justifications for using SocialNet software.

Expedited Review

EPIC is entitled to expedited processing of this request because there is an urgency to inform the public about a government activity.⁸ Under DHS FOIA regulations, a request shall be expedited when there is "an urgency to inform the public about an actual or alleged federal government activity, if made by a person primarily engaged in disseminating information."⁹ EPIC's request qualifies for expedited processing on these grounds.

First, there is a clear urgency to inform the public about DHS's use of the invasive investigative software SocialNet. As evidenced by numerous media reports, the public is growing increasingly concerned by government access to technological tools that enable it to surveil individuals and collect their data.¹⁰ The public is also concerned about DHS and ICE's reputation for mistreating undocumented immigrants and migrants.¹¹ As such, there is an urgency to inform the

⁶ See, e.g., JUSTICE-FREE ZONES: U.S. IMMIGRATION DETENTION UNDER THE TRUMP ADMINISTRATION, ACLU, HRW, & NAT'L IMMIGRANT JUST CTR. (2020), https://www.hrw.org/sites/default/files/supporting_resources/justice_free_zones_immigrant_detention.pdf; Sean Sullivan & Nick Miroff, *Amid Furor over Border Images, Biden Faces Democratic Backlash on Immigration*, WASH. POST (Sept. 21, 2021), https://www.washingtonpost.com/politics/biden-immigration-democratic-backlash/2021/09/21/4de126b8-1adf-11ec-a99a-5fea2b2da34b_story.html; Eileen Sullivan & Zolan Kanno-Youngs, *Images of Border Patrol's Treatment of Haitian Migrants Prompt Outrage*, N.Y. TIMES (Sept. 21, 2021), <https://phr.org/our-work/resources/zero-protection-how-u-s-border-enforcement-harms-migrant-safety-and-health>; Jasmine Aguilera, *'Family Separation 2.0.' Parents in ICE Detention Have to Decide Whether to Keep Their Children or Release Them to Sponsors*, TIME (July 27, 2020), <https://time.com/5866659/ice-parents-children-detention-coronavirus-release>; *Family Separation Under the Trump Administration – A Timeline*, S. POVERTY L. CTR. (June 17, 2020), <https://www.splcenter.org/news/2020/06/17/family-separation-under-trump-administration-timeline>.

⁷ See, e.g., *EPIC v. ICE (Facial Recognition Services)*, EPIC, <https://www2.epic.org/foia/dhs/ice/facial-recognition-services>; *Racial and Immigrant Justice Groups Sue Government for Records of COVID-19 Data Surveillance*, ELECTRONIC FRONTIER FOUND. (Feb. 19, 2021), <https://www.eff.org/press/releases/racial-and-immigrant-justice-groups-sue-government-records-covid-19-data-surveillance>; See generally #NoTechforICE, MIJENTE, <https://notechforice.com/about> (campaign by Mijente countering technology companies' role in immigration enforcement).

⁸ 5 U.S.C. § 552(a)(6)(E)(v)(II); 6 C.F.R. § 5.5(e)(1)(ii).

⁹ 6 C.F.R. § 5.5(e)(1)(ii).

¹⁰ See, e.g., Elizabeth Goitein & Nessa Anwar, *Governments Have Collected Large Amounts of Data to Fight the Coronavirus. That's Raising Privacy Concerns*, CNBC (Aug. 17, 2020), <https://www.cnbc.com/2020/08/17/governments-collected-data-to-fight-coronavirus-raising-privacy-concerns.html>; Lee Fang, *FBI Expands Ability to Collect Cellphone Location Data, Monitor Social Media, Recent Contracts Show*, INTERCEPT (June 24, 2020), <https://theintercept.com/2020/06/24/fbi-surveillance-social-media-cellphone-dataminr-venntel>; Rani Molla, *Law Enforcement is Now Buying Cellphone Location Data from Marketers*, VOX RECODE (Feb. 7, 2020), <https://www.vox.com/recode/2020/2/7/21127911/ice-border-cellphone-data-tracking-department-homeland-security-immigration>; Brooke Auxier et al., *Americans and Privacy: Concerned, Confused and Feeling Lack of Control over Their Personal Information*, PEW RES. CTR. (Nov. 15, 2019), <https://www.pewresearch.org/internet/2019/11/15/americans-and-privacy-concerned-confused-and-feeling-lack-of-control-over-their-personal-information>; Louise Matsakis, *The WIRED Guide to Your Personal Data (and Who Is Using It)*, WIRED (Feb. 15, 2019), <https://www.wired.com/story/wired-guide-personal-data-collection>.

¹¹ See *supra* note 6 and accompanying text.

public about how a technology that threatens privacy rights might be wielded by ICE and CBP against immigrants, noncitizens, and immigrant communities.

Second, EPIC is an organization “primarily engaged in disseminating information” as a news media requester.¹² As the Court explained in *EPIC v. DOD*, “EPIC satisfies the definition of ‘representative of the news media’” under the FOIA.¹³ Thus, EPIC is entitled to expedited processing of this request under 6 C.F.R. §5.5(e)(1)(ii).

In submitting this request for expedited processing, EPIC certifies that this explanation is true and correct to the best of its knowledge and belief.¹⁴

Fee Waiver

EPIC is a “representative of the news media” for fee classification purposes.¹⁵ Because EPIC is a “news media” requester and, as a non-profit organization, has no commercial interest in the requested records, EPIC is entitled to receive the requested record with only duplication fees assessed.¹⁶

In addition, any duplication fees should be waived because: (1) “[d]isclosure of the requested information is in the public interest because it is likely to contribute significantly to public understanding of the operations or activities of the government”; and (2) “[d]isclosure of the information is not primarily in the commercial interest of” EPIC.¹⁷

(1) Disclosure of the requested information will contribute significantly to public understanding of government activities.

DHS components evaluate four factors to determine whether a disclosure is in the public interest: (i) whether the subject of the requested records concerns “identifiable operations or activities of the federal government”; (ii) whether the disclosure is “meaningfully informative about government operations or activities in order to be ‘likely to contribute’ to an increased public understanding of those operations or activities”; (iii) whether the disclosure contributes “to the understanding of a reasonably broad audience of persons interested in the subject”; and (iv) whether “the public’s understanding of the subject” will be “enhanced” by the disclosure to a significant extent.”¹⁸ EPIC’s request satisfies all four factors.

First, the requested records “concern identifiable operations or activities of the federal government,”¹⁹ because the government has documented in its spending data ICE’s purchases of

¹² 6 C.F.R. § 5.5(e)(1)(ii).

¹³ 241 F. Supp. 2d 5, 15 (D.D.C. 2003); *see* 6 C.F.R. § 5.5(e)(3).

¹⁴ 5 U.S.C. § 552(a)(6)(E)(vi); 6 C.F.R. § 5.5(e)(3).

¹⁵ *EPIC v. DOD*, 241 F. Supp. 2d at 15.

¹⁶ 5 U.S.C. § 552(a)(4)(A)(ii)(II); 6 C.F.R. § 5.11(c)(2).

¹⁷ 6 C.F.R. § 5.11(k)(1)(i)–(ii); *see also* 5 U.S.C. § 552(a)(4)(A)(iii).

¹⁸ 6 C.F.R. § 5.11(k)(2).

¹⁹ *Id.* § 5.11(k)(2)(i).

ShadowDragon's SocialNet.²⁰ It is therefore "direct and clear" that the federal government has purchased SocialNet.²¹

Second, disclosure of the requested records is "likely to contribute' to an increased public understanding of . . . government operations or activities."²² Disclosure would be "meaningfully informative about government operations or activities" because the government has not been transparent about its communications with ShadowDragon and other vendors of SocialNet, nor has it openly disclosed how it uses SocialNet.²³

Third, disclosure will "contribute to the understanding of a reasonably broad audience of persons interested in the subject," because ICE must "presume[] that a representative of the news media," such as EPIC, "will satisfy this consideration."²⁴ The requested records will reach a large audience through EPIC's website and its online newsletter, the *EPIC Alert*.²⁵ EPIC's FOIA work is also frequently covered by major media outlets.²⁶

Fourth, "[t]he public's understanding of the subject in question" will be "enhanced by the disclosure to a significant extent."²⁷ Very little is known or published about the nature of ICE's relationship with ShadowDragon or use of SocialNet.²⁸ Disclosure of the requested records will help the public better understand how ICE is using this technology, as well as whether and how ICE is safeguarding privacy rights while using this software.

(2) Disclosure of the information is not primarily in the commercial interest of the requester.

EPIC's request satisfies the "commercial interest" condition for a fee waiver because disclosure of the requested information is "not primarily in the commercial interest" of EPIC, the requester.²⁹ EPIC has no "commercial interest that would be furthered by the requested disclosure."³⁰ EPIC is a registered non-profit organization committed to open government, privacy, and civil liberties.³¹ DHS regulations state that DHS components "ordinarily shall presume that where a news media requester has satisfied the public interest standard, the public interest will be the interest primarily served by disclosure to that requester."³² As described above, EPIC is a news media requester and satisfies the public interest standard.

For these reasons, EPIC's request for a fee waiver should be granted.

²⁰ See *supra* notes 4-5 and accompanying text.

²¹ § 5.11(k)(2)(i).

²² *Id.* § 5.11(k)(2)(ii).

²³ See *Kwet, supra* note 1 (discussing how "[t]he inner workings of the product are generally not known to the public," describing ShadowDragon as "part of a shadowy industry," and reporting only ICE's purchases of ShadowDragon and not any other information concerning the connection between ICE and ShadowDragon).

²⁴ *Id.* § 5.11(k)(2)(iii).

²⁵ See EPIC, *About EPIC*, <https://epic.org/epic/about.html>.

²⁶ See EPIC, *EPIC in the News*, https://epic.org/news/epic_in_news.php/.

²⁷ 6 C.F.R. § 5.11(k)(2)(iv).

²⁸ See *supra* note 23 and accompanying text.

²⁹ § 5.11(k)(1)(ii).

³⁰ *Id.* § 5.11(k)(3)(i).

³¹ EPIC, *About EPIC* (2019), <https://epic.org/epic/about.html>.

³² 5.11(k)(3)(ii).

Conclusion

Thank you for your consideration of this request. EPIC anticipates your determination on its request within ten calendar days.³³ For questions regarding this request contact Jeramie Scott at (202) 483-1140 x108 or FOIA@epic.org, cc:jscott@epic.org.

Respectfully submitted,

/s Jeramie Scott
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EPIC Senior Counsel

/s Dana Khabbaz
Dana Khabbaz
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³³ 5 U.S.C. § 552(a)(6)(E)(ii)(I).