

BY EMAIL

Email: ODNI_FOIA@odni.gov

October 7, 2026

Rebecca Flowers
Acting Chief, Information Management Office
ATTN: FOIA/PA
Office of the Director of National Intelligence
Washington, D.C. 20511

Dear Acting Chief Rebecca Flowers,

This letter is 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 Office of the Director of National Intelligence (“ODNI”).

EPIC seeks the public release of the March 17, 2026 Foreign Intelligence Surveillance Court (“FISC”) ruling on the annual recertification of Section 702 of the Foreign Intelligence Surveillance Act (“FISA”).¹

Background

FISA Section 702 authorizes warrantless surveillance targeting non-U.S. persons reasonably believed to be outside the United States to acquire “foreign intelligence information” with the compelled cooperation of U.S. service providers. While Section 702 is a foreign intelligence surveillance authority, the government has conceded that it also collects a significant amount of U.S. persons’ communications under Section 702 surveillance programs.

The surveillance programs conducted under Section 702 must be renewed on a yearly basis by the FISC. The most recent renewal happened on March 17, 2026. According to a report by the New York Times, the FISC ruling renewing programmatic surveillance under Section 702 also included objections by the judge to the tools used on the raw data collected via 702 surveillance. Senator Ron Wyden, a member of the Senate Intelligence Committee, speaking on the FISC ruling stated:

The Foreign Intelligence Surveillance Court found major compliance problems related to the surveillance law known as section 702. These compliance problems are directly related to Americans’ Constitutional rights.²

¹ Charlie Savage and Julian E. Barnes, “U.S. Says Wiretap Program Thwarted Attack on 2024 Taylor Swift Concert,” N.Y. Times (Apr. 9, 2026), <https://www.nytimes.com/2026/04/09/us/politics/section-702-surveillance-fisa.html>; See also Senator Ron Wyden, *Letter to colleagues regarding March 17, 2026 FISC opinion* (June 3, 2026), <https://www.cato.org/sites/cato.org/files/2026-06/wyden-dear-colleague-letter-on-fisa.pdf>.

Any significant FISC opinion must go through a declassification review and made “publicly available to the greatest extent practicable.”³ The declassification and public release of the opinion is required to occur within 180 days of the opinion being issued.⁴ The 180-day deadline passed on September 13, 2026 despite then Acting Attorney General Todd Blanche committing in July to release the opinion prior to the deadline and stating:

The Department of Justice and Office of the Director of National Intelligence have been working diligently with the Intelligence Community to process the opinion for declassification and public release as quickly and responsibly as possible.⁵

Because of the serious implications for Americans’ privacy, the general secrecy with which programs operate pursuant to Section 702, and the current ongoing debate to renew 702, the FISC ruling must be made public immediately.

Request for Expedited Processing

EPIC is entitled to expedited processing of this request under the FOIA.⁶ Specifically, EPIC’s request satisfies the agency regulation 32 C.F.R. § 1700.6(h)(2) because it involves “[a]n urgency to inform the public about an actual or alleged Federal Government activity,” and because the request is “made by a person who is primarily engaged in disseminating information.”⁷

First, there is an “urgency to inform the public about an actual or alleged Federal Government activity.”⁸ Congress has been unable to renew Section 702 as legislators consider whether additional safeguards are needed for the authority.⁹ Whether there continues to be compliance issues with FISA Section 702 is directly relevant to Congress’ ongoing renewal debate and whether additional reform is needed. Before Congress votes on renewing 702, it is vital that the March 2026 FISC order is released publicly as it speaks to “major compliance problems” that are “directly related to Americans’ Constitutional rights.”¹⁰ Given the current Congressional debate on 702 renewal, it is of the utmost urgency to release the opinion so both Congress and the public can be informed about the compliance issues with Section 702 prior to any vote on renewal.

² Press Release, Ron Wyden, *Wyden Statement on Revelation of Major Compliance Problems With FISA Section 702 Surveillance* (Apr. 10, 2026), <https://www.wyden.senate.gov/news/press-releases/wyden-statement-on-revelation-of-major-compliance-problems-with-fisa-section-702-surveillance>.

³ 50 U.S.C. § 1872.

⁴ *Id.*

⁵ Questions for the Record by Senator Adam Schiff, *Hearing on The Nomination of the Honorable Todd Blanche to be Attorney General of the United States* (July 17, 2026), https://www.judiciary.senate.gov/imo/media/doc/98781d53-bdcc-75d8-c507-1b1bca492142/2026-07-15_QFR-Responses_Blanche_687007f1-363d-40d9-b7da-356b52dc448d.pdf.

⁶ 5 U.S.C. §§ 552(a)(6)(E)(i)(I), 552(a)(6)(E)(v)(II).

⁷ 32 C.F.R. § 1700.6(h)(2).

⁸ *Id.*

⁹ Eric McDaniel, *A key U.S. spy tool has lapsed — now what?* (June 13, 2026), <https://www.npr.org/2026/06/12/nx-s1-5856291/fisa-702-surveillance-expiration-bill-pulte>.

¹⁰ Wyden, *supra* note 2.

Second, as the Court explained in *EPIC v. DOD*, “EPIC satisfies the definition of ‘representative of the news media’” entitling it to preferred fee status under FOIA.¹¹ EPIC is a non-profit organization committed to privacy, open government, and civil liberties that consistently discloses documents obtained through FOIA on its website, EPIC.org, and its online newsletter, the *EPIC Alert*.¹²

In submitting this request for expedited processing, EPIC certifies that this explanation is true and correct to the best of its knowledge and belief.¹³

Request for “News Media” Fee Status and Fee Waiver

EPIC is a “representative of the news media” for fee classification purposes.¹⁴ Based on EPIC’s status as a “news media” requester, EPIC is entitled to receive the requested record with only duplications fees assessed.¹⁵ In addition, because EPIC’s request satisfies the standard in 32 C.F.R. §1700.9(a)(1) for granting a fee waiver, any duplication fees should also be waived.¹⁶

EPIC satisfies §1700.9(a)(1) because the “interest of the United States Government would be served.”¹⁷ Congress has so far failed to reauthorize Section 702 of FISA and the foreign surveillance authority has lapsed in large part due to a bipartisan push for reform stemming from past misuse and abuse of the authority.¹⁸ The public release FISC’s most recent reauthorization order will provide necessary transparency about any ongoing compliance issues that is needed to facilitate Congress coming together around a path to reauthorize Section 702, which is in the utmost interest of the U.S. Government.

Additionally, EPIC also satisfies 5 U.S.C. § 552(a)(4)(A)(iii) because disclosure is “in the public interest because it is likely to contribute significantly to public understanding of the operations or activities of the United States Government and is not primarily in the commercial interests of” EPIC, the requester.¹⁹

First, disclosure is “likely to contribute significantly to public understanding of the operations or activities of the United States Government.”²⁰ Because the request pertains to a FISC 702 certification ruling regarding United States Government foreign intelligence surveillance, it speaks to “operations or activities of the Federal government.”²¹ Disclosure would “contribute significantly to public understanding” of those operations because there no publicly available information about the government’s compliance with Section 702 of FISA. Disclosure of the records requested will provide the public with a better and more comprehensive understanding of the nature

¹¹ 241 F. Supp. 2d 5, 15 (D.D.C. 2003).

¹² See EPIC, *About EPIC*, <https://epic.org/epic/about.html>.

¹³ 5 U.S.C. § 552(a)(6)(E)(vi); 32 C.F.R. §1700.6(j).

¹⁴ *EPIC v. DOD*, 241 F. Supp. 2d 5, 15 (D.D.C. 2003).

¹⁵ 5 U.S.C. § 552(a)(4)(A)(ii)(II); 32 C.F.R. §1700.9(h).

¹⁶ 32 C.F.R. §1700.9(a)(1).

¹⁷ 32 C.F.R. §1700.9(a)(1).

¹⁸ McDaniel, *supra* note 9.

¹⁹ 5 U.S.C. § 552(a)(4)(A)(iii).

²⁰ *Id.*

²¹ *Id.*

of the Federal Government's surveillance activities pursuant to Section 702, as well as a fuller picture of the government's compliance, or lack thereof, with constitutional and statutory safeguards.²²

Second, disclosure of the requested information is "not primarily in the commercial interest" of EPIC.²³ Again, EPIC is a non-profit organization committed to privacy, open government, and civil liberties.²⁴ As demonstrated above, EPIC is a news media requester and satisfies the public interest standard under agency regulations.

For these reasons, a fee waiver should be granted.

Conclusion

Thank you for your consideration of this request. EPIC anticipates your determination on its request within ten calendar days.²⁵ 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

Jeramie Scott

Senior Counsel

Director, EPIC Surveillance Oversight Program

²² *Id.*

²³ *Id.*

²⁴ *See* EPIC, *supra* note 12.

²⁵ 5 U.S.C. § 552(a)(6)(E)(ii)(I).