



June 4, 2014

VIA FACSIMILE and EMAIL

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RE: Freedom of Information Act Request

Dear FOIA Officer:

This letter constitutes 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 Federal Bureau of Investigation ("FBI").

EPIC seeks all of the FBI's privacy assessments not already published online.

Background

The E-Government Act of 2002 requires agencies to perform Privacy Impact Assessments ("PIAs") under certain circumstances. For example, PIAs are required when "developing or procuring information technology that collects, maintains, or disseminates information that is in an identifiable form" or "initiating a new collection of information" that contains identifiable information.¹ Additionally, the PIAs are required to be made public if practicable.²

The Department of Justice ("DOJ") provides additional guidance to DOJ components on performing privacy assessments, including the PIAs required by the E-Government Act of 2002. Specifically, the DOJ's Office of Privacy and Civil Liberties ("OPCL") describes when to do an Initial Privacy Assessment ("IPA"), a precursor to the PIA, and provides guidance on doing a PIA if the initial assessment requires it. The IPA, which has replaced the Privacy Threshold Analysis ("PTA"), "is a tool used to facilitate the identification of potential privacy issues; assess whether additional privacy documentation is required; and ultimately, to ensure the Department's

¹ E-GOVERNMENT ACT OF 2002, PL 107-347, Dec. 17, 2002, 116 Stat. 2899 § 208(b)(1)(A)(i)-(ii); *See also* M-03-22, OMB Guidance for Implementing the Privacy Provisions of the E-Government Act of 2002, *available at* http://www.whitehouse.gov/omb/memoranda_m03-22.

² *Id.* at § 208(b)(1)(B)(iii).

compliance with applicable privacy laws and policies."³ The IPA "identif[ies] privacy concerns that may necessitate changes to the system and [determines] whether additional privacy analysis and documentation are required, such as a system of records notice (SORN) or collection notice under the Privacy Act, or a Privacy Impact Assessment (PIA) under the E-Government Act."⁴ According to OPCL, the "IPA should be completed at the beginning of development of an information system, before commencement of any testing or piloting."⁵

The OPCL assesses all IPAs to determine if a PIA is needed. "Once OPCL provides a component with a determination that a PIA is required, a PIA should be conducted."⁶ According to the OPCL, the PIA should be conducted during development, "with sufficient lead time to permit final Departmental approval and public website posting on or before the commencement of any system operation (including before any testing or piloting)."⁷ PIAs are required for national security systems too. It is the DOJ's "policy that PIAs must also be conducted for national security systems and submitted to OPCL for review and approval by the CPCLO."⁸

As DOJ documentation notes, the PIA "helps promote trust between the public and the Department by increasing transparency of the Department's systems and missions."⁹ PIAs provide an important means for the public to assess the government's efforts to protect its privacy and serve as a check against the encroachment on privacy by the government. Specifically, PIAs allow the public to see how new programs and technology the government implement affect their privacy and assess whether the government has done enough to mitigate the privacy risks.

Over the past several years, the FBI has indicated it was going to do a number of PIAs that of the writing of this FOIA request are not publicly available. On July 18, 2012, the Senate Subcommittee on Privacy, Technology and the Law held a hearing on "What Facial Recognition Technology Means for Privacy and Civil Liberties."¹⁰ At that hearing, Jerome Pender, the Deputy Assistant Director of the Information Services Branch for Criminal Justice Information Services Division of the FBI, was one of the witnesses. In his statement for the record, Mr. Pender stated, "the 2008 Interstate Photo System PIA is currently in the process of being renewed by way of Privacy Threshold Analysis (PTA), with an emphasis on Facial Recognition. An updated PIA is planned and will address all evolutionary changes since the preparation of the

³ United States Department of Justice Office of Privacy and Civil Liberties (OPCL), Initial Privacy Assessment (IPA) Instructions & Template, 1 (Mar. 2010), *available at* <http://www.justice.gov/opcl/initial-privacy-assessment.pdf>.

⁴ *Id.*

⁵ *Id.*

⁶ Office of Privacy and Civil Liberties United States Department of Justice, Privacy Impact Assessments: Official Guidance, 4 (Mar. 2012), *available at* <http://www.justice.gov/opcl/docs/2012-doj-pia-manual.pdf>.

⁷ *Id.*

⁸ *Id.*

⁹ *Id.* at 3.

¹⁰ <http://www.judiciary.senate.gov/meetings/what-facial-recognition-technology-means-for-privacy-and-civil-liberties>.

2008 IPS PIA.”¹¹ No updated PTA, IPA, or PIA is publicly available regarding the FBI's use of facial recognition technology.

On June 19, 2013, the Senate Judiciary Committee held a hearing on “Oversight of the Federal Bureau Investigation.”¹² During the hearing, FBI Director Robert Mueller had the following exchange with Senator Chuck Grassley:

Sen. Grassley: Does the FBI own or currently use drones and if so, for what purpose?

Director Mueller: Yes, and for surveillance.¹³

Later during that same exchange, Senator Grassley asked whether the FBI uses drones for domestic surveillance and whether the FBI had considered the privacy impact of its use of drones.

Sen. Grassley: So instead of asking a question, I think I can assume since you do use drones, that the FBI has developed a set of policies, procedures, and operational limits on the use of drones. And whether or not any privacy impact on American citizens?

Director Mueller: We are in the initial stages of doing that. I will tell you that our footprint is very small, we have very few, and of limited use, and we are exploring not only the use but also the necessary guidelines for that use.

Sen. Grassley: Does the FBI use drones for surveillance on U.S. soil.

Director Mueller: Yes.¹⁴

No PTA, IPA, or PIA is publicly available regarding the FBI's use of drones.

In FOIA documents received by EPIC last year,¹⁵ emails from February 2012 indicate that the FBI is required to do a PIA for its license plate reader (“LPR”) program and make the document publicly available.¹⁶ Additionally, the emails indicated a draft PIA existed for the LPR

¹¹ *What Facial Recognition Technology Means for Privacy and Civil Liberties: Hearing Before the Subcomm. on Privacy, Technology and the Law of the S. Comm. on the Judiciary*, 112th Cong. 3 (2012) (statement of Jerome Pender, Deputy Assistant Director, FBI).

¹² <http://www.judiciary.senate.gov/hearings/hearing.cfm?id=36ffa9c8160f81a25730563dc7e8c551>.

¹³ C-SPAN, Federal Bureau of Investigation Operations and NSA Surveillance Programs 43:40 <http://www.c-span.org/video/?313425-1/ASurv>.

¹⁴ *Id.* at 44:26.

¹⁵ See EPIC FOIA: Automated License Plate Readers (FBI), <http://epic.org/foia/epic-foia-fbi-lpr-program.html>.

¹⁶ FOIA Documents: February 2012 Emails re: FBI's LPR Program, FBI-819-ALPRS, available at <http://epic.org/foia/Emails-re-LPRs-Feb-2012.PDF>.

program.¹⁷ Two years later, no PTA, IPA, or PIA for the FBI's LPR program is publicly available.

Documents Requested

1. All Privacy Impact Assessments the FBI has conducted that are not publicly available at <http://www.fbi.gov/foia/privacy-impact-assessments/department-of-justice-federal-bureau-of-investigation>.¹⁸
2. All Privacy Threshold Analysis documents and Initial Privacy Assessments the FBI has conducted since 2007 to present.

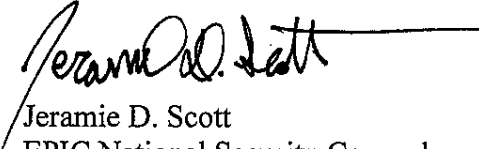
Request for "News Media" Fee Status

EPIC is a "representative of the news media" for fee waiver purposes.¹⁹ As such, EPIC is entitled to receive the requested record for the cost of duplication only. Because disclosing this information will "contribute significantly to public understanding of the operations or activities of the government," any duplication fees should be waived.²⁰

Conclusion

Thank you for your consideration of this request. As provided in 5 U.S.C. § 552(a)(6)(E)(ii)(I), I will anticipate your response within 20 business days. Should you require additional information, I can be contacted at 202-483-1140 x108 or foia@epic.org.

Respectfully Submitted,


Jeramie D. Scott
EPIC National Security Counsel

¹⁷ FOIA Documents: March 2012 Emails re: FBI's LPR Program, FBI-1215-ALPRS—FBI-1216-ALPRS, *available at* <http://epic.org/foia/Emails-re-LPRs-March-2012.PDF>.

¹⁸ See Attachment 1.

¹⁹ *EPIC v. Dep't of Defense*, 241 F. Supp. 2d 5 (D.D.C. 2003).

²⁰ 5 U.S.C. § 552(a)(6)(E)(v)(II) (2008); *Al-Fayed v. CIA*, 254 F.3d 300, 306 (D.C. Cir. 2001).

Attachment 1

FBI Privacy Impact Assessments Available Online as of June 4, 2014



FBI Records: Freedom of Information/Privacy Act

Home · FBI Records/FOIA · Privacy Impact Assessments

Department of Justice/FBI Privacy Impact Assessments (PIAs)

Atlanta Division's Bank Robbery Database

Background Investigation Contract Services Dictaphone Express

Biometrics-Reviewer Website/Database

Child Victim Identification Program (CVIP) Innocent Images National Initiative (IINI)

Computer Aided Facial Recognition Project

Contract Linguist Automated Support System

DOJ/FBI-DHS Interim Data Sharing Model (iDSM)

eGuardian

Electronic Questionnaire for Investigations Processing (E-QIP)

Enterprise Process Automation System (EPAS)

FBI Routine Databases

Fingerprint Identification Records System (FIRS) Integrated Automated Fingerprint Identification System (IAFIS) Outsourcing for Noncriminal Justice Purposes – Channeling

Firearms Information, Registration, & Shooter Tracking Application (FIRST)

Integrated Automated Fingerprint Identification System National Security Enhancements

Integrated Automated Fingerprint Identification System/Next Generation Identification Biometric Interoperability

Integrated Automated Fingerprint Identification System /Next Generation Identification Repository for Individuals of Special Concern

International Biosecurity and Prevention Forum

Internet Tip Line (ITL)

Law Enforcement National Data Exchange (N-DEX)

Mortgage Fraud Database

Mortgage Fraud - Property Flipping Database

National Crime Information Center (NCIC) Identity Theft File

National Dental Image Repository

National DNA Index System (NDIS)

Next Generation Identification - Interstate Photo System

Philadelphia/Camden High Intensity Drug Trafficking Area (P/C HIDTA) Computerized Search Request System

Security Management Information System (SMIS)

Something For Every Child (SOFEC) Database

Staged Accident Data Mining Initiative

Violent Criminal Apprehension Program (VICAP)

Voluntary Appeal File

WebTA

FOIA Index

[FOIA Home](#)

[Contact Us](#)

[Records Available Now](#)

- Hot Topics
- The Vault | Alphabetical List
- Check Status of Your FOI/PA Request
- FBI Headquarters Reading Room

[Records Available by Request](#)

- Overview
- Sample FOIA Request Letter
- U.S. Department of Justice Form 361, Certification of Identity (pdf)

[What Happens After Making a Request](#)

- How Long It Takes to Receive Information
- What You Will Receive
- Appeals

[Understanding FBI Records](#)

- A Guide to Conducting Research in FBI Records
- FBI Privacy Act Systems
- Privacy Impact Assessments

[Prepublication Review Office](#)

[Resources](#)

- Code of Federal Regulations for FOIA
- U.S. Department of Justice FOIA website
- U.S. Department of Justice Reference Guide
- U.S. Department of Justice Privacy & Civil Liberties website

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