



February 28, 2014

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RE: Freedom of Information Act Request

Dear FOIA Officer:

This letter constitutes as 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 the FBI’s updated Privacy Threshold Analysis (“PTA”) and Privacy Impact Assessment (“PIA”) related to facial recognition technology.

Background

The E-Government Act of 2002 requires agencies to perform 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 Furthermore, the PIAs are required to be made public if practicable.²

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 privacy assessments, which as of the writing of this FOIA request are not publicly available, including a renewed PIA for facial recognition.

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 E-GOVERNMENT ACT OF 2002, PL 107-347, Dec. 17, 2002, 116 Stat. 2899 § 208(b)(1)(B)(iii).

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.”³ 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 2008 IPS PIA.”⁴

No updated PTA or PIA addressing the FBI’s use of facial recognition is publicly available.

Documents Requested

1. The updated Privacy Threshold Analysis and the Privacy Impact Assessment that replaces the 2008 Interstate Photo System PIA.

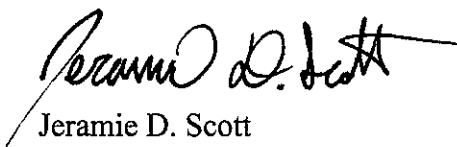
Request for “News Media” Fee Status

EPIC is a “representative of the news media” for fee waiver purposes.⁵ 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.⁶

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

³ <http://www.judiciary.senate.gov/hearings/hearing.cfm?id=daba530c0e84f5186d785e4894e78220>.

⁴ *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).

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

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