

August 5, 2011

VIA E-MAIL (stfoia@dhs.gov) and U.S. MAIL (CERTIFIED DELIVERY)

Department of Homeland Security
Science and Technology Directorate
Washington, D.C. 20528
Attn: Diane Saunders, Acting FOIA Officer/Requester Service Center

RE: Freedom of Information Act Request and Request for Expedited Processing

Dear Ms. Saunders:

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”). EPIC seeks records in possession of the Department of Homeland Security (“DHS”) regarding the Department’s Future Attribute Screening Technology (“FAST”) Project.

Background

DHS’s Science and Technology Directorate (“S&T”) is the sponsor of FAST, an ongoing research program, which aims to develop a means to remotely view and analyze a subject to assess the likelihood that the subject will commit a crime.

On July 13, 2011, in response to a previous FOIA request from this office (FOIA number 11-0003.32), Marshall Caggiano sent 16 responsive documents (see Attachment A). Mr. Caggiano’s letter included an inventory sheet (see Attachment B). Among the responsive documents listed in Attachment B is Document 22, identified as “POA&M #1” (see Attachment C). Document 22 identifies a work product titled the “Privacy Threshold Analysis,” which was developed, submitted, and, on October 7, 2010, approved. EPIC now seeks this record.

Documents Requested

EPIC requests copies of the following agency records:

1. FAST Project Privacy Threshold Analysis; and
2. Record of review and approval of the Privacy Threshold Analysis by DHS Privacy Officer.

Request for Expedited Processing

This request warrants expedited processing because it is made by “a person primarily engaged in disseminating information . . .” and it pertains to a matter about which there is an “urgency to inform the public about an actual or alleged federal government activity.” 5 U.S.C. § 552(a)(6)(E)(v)(II).

EPIC is “primarily engaged in disseminating information.” *American Civil Liberties Union v. Department of Justice*, 321 F. Supp. 2d 24, 29 n.5 (D.D.C. 2004). Moreover, there is particular urgency for the public to obtain information about the FAST Project, as the Project has recently been field-tested in the northeastern United States, with future field-testing “in the works.”¹ The FAST Project is designed to gather “physiological and behavioral signals,”² and may have already collected this personal information from members of the public without legal consent.³

Request for “News Media” Status

EPIC is a non-profit, educational organization that routinely and systematically disseminates information to the public. EPIC is a representative of the news media. *Epic v. Dep’t of Defense*, 241 F. Supp. 2d 5 (D.D.C. 2003).

Based on our status as a “news media” requester, we are entitled to receive the requested records with only duplication fees assessed. Further, because disclosure of this information will “contribute significantly to public understanding of the operations or activities of the government,” as described above, any duplication fees should be waived.

¹ Weinberger, *supra* note 1.

² U.S. Department of Homeland Security, Human Factors/Behavioral Sciences Projects, http://www.dhs.gov/files/programs/gc_1218480185439.shtm#6, last reviewed/modified on May 27, 2011.

³ Weinberger, *supra* note 1.

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 determination on our request for expedited processing within ten (10) calendar days.

Sincerely,

John Verdi
Director
EPIC Open Government Project

Alex Stout
EPIC Summer Law Clerk