

BY EMAIL

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March 24, 2017

Office of the Director of National Intelligence
Attn: FOI/PA Request
Jennifer L. Hudson
Director, Information Management Division
Office of the Director of National Intelligence
Washington, D.C. 20511

Dear Director Hudson,

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 record in possession of the agency concerning the investigation of the Russian interference with the 2016 Presidential election, as described below.

Former Director of National Intelligence James Clapper was scheduled to testify at a public hearing on Tuesday, March 28, 2017 before the House Permanent Select Committee on Intelligence concerning the Committee’s investigation into the Russian interference with the 2016 Presidential Election.¹ But on Friday, March 24, 2017, the Committee Chairman, Rep. Devin Nunes (R-Calif.), abruptly announced the cancellation of that public hearing.²

Mr. Clapper previously oversaw the ODNI during the U.S. intelligence community investigation of the Russian interference. He was called to testify before the Committee because of his specific expertise concerning the Russian interference with the election.

Documents Requested

¹ Patricia Zengerle, *House intelligence panel leaders split over session on Russia*, Reuters (Mar. 24, 2017), <http://www.reuters.com/article/us-usa-trump-russia-idUSKBN16V29I>.

² @RepAdamSchiff, Twitter (Mar. 24, 2017, 11:16 AM), <https://twitter.com/RepAdamSchiff/status/845293157055107072> (“BREAKING: Chairman just cancelled open Intelligence Committee hearing with Clapper, Brennan and Yates in attempt to choke off public info.”).

All records, including communications, memos, and reports, in the possession of the ODNI concerning former Director Clapper and the ODNI's investigation into the Russian interference with the 2016 Presidential Election.

Request for Expedited Processing

EPIC is entitled to expedited processing of this request under the FOIA. 5 U.S.C. § 552(a)(6)(E)(v)(II). Specifically, EPIC's request satisfies the agency regulation 32 C.F.R. § 1700.12(c)(2) because this request involves an "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." § 1700.12(c)(2).

First, there can be no question that there is an "urgency to inform the public" about the details of the ODNI investigation into the Russian interference - "an actual or alleged federal government activity." § 1700.12(c)(2). On Monday, March 20, 2017, at the House Intelligence Committee's first public hearing on the matter, FBI Director James Comey announced publicly that the agency was not only investigating Russian efforts to undermine the election, but has an active investigation into possible contacts and collaboration between members of the Trump Team and Russia.³ There are few issues of greater national importance than the integrity of the United States' electoral process and the potential coordination between a U.S. political campaign and a foreign government. The fact that the House Intelligence Committee has cancelled an important public hearing underscores the need for independent public disclosure of Mr. Clapper's work on this matter.

Second, EPIC is an organization "primarily engaged in disseminating information." § 1700.12(c)(2). 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. 241 F. Supp. 2d 5, 15 (D.D.C. 2003).

In submitting this request for expedited processing, I certify that this explanation is true and correct to the best of my knowledge and belief. § 1700.12(b); § 552(a)(6)(E)(vi).

Request for "News Media" Fee Status and Fee Waiver

EPIC is a "representative of the news media" for fee classification purposes. *EPIC v. Dep't of Def.*, 241 F. Supp. 2d 5 (D.D.C. 2003). Based on EPIC's status as a "news media" requester, EPIC is entitled to receive the requested record with only duplication fees assessed. 32 C.F.R. § 1700.6(i)(2); 5 U.S.C. § 552(a)(4)(A)(ii)(II).

³ Matthew Rosenberg, Emmarie Huetteman, & Michael S. Schmidt, *Comey Confirms FBI Inquiry on Russia; Sees No Evidence of Wiretapping*, N.Y. Times (Mar. 20, 2017), <https://www.nytimes.com/2017/03/20/us/politics/intelligence-committee-russia-donald-trump.html>.

Further, any duplication fees should also be waived because disclosure of the requested information “is in the public interest” because, first, “the disclosure is likely to contribute *significantly* to the public understanding of the operations or activities of the United States Government,” and, second, disclosure “is not primarily in the commercial interest” of EPIC, the requester. § 1700.6(b)(2).; § 552(a)(4)(A)(iii). EPIC’s request satisfies the three ODNI’s factors for granting a fee waiver. § 1700.6(b)(2).

First, disclosure of former DNI Clapper’s Russian investigation records “is likely to contribute *significantly* to the public understanding of the operations or activities of the United States Government.” § 1700.6(b)(2). The requested documents self-evidently involve the “operations or activities of the ODNI.” *Id.* these records touch the very core of the ODNI’s duties to integrate U.S. intelligence community and offer strong, valuable intelligence. The requested records are also “likely to contribute *significantly* to the public understanding” of these activities because neither the ODNI nor the administration have provided the public with full details about the Russian interference investigation.

Second, disclosure of the requested information also “is not primarily in the commercial interest” of EPIC. § 1700.6(b)(2). EPIC has no commercial interest in disclosure of the requested records. EPIC is a registered non-profit organization committed to privacy, open government, and civil liberties.⁴

For these reasons, a fee waiver should be granted.

Conclusion

Thank you for your consideration of this request. I anticipate your determination on our request within ten calendar days. 5 U.S.C. § 552(a)(6)(E)(ii)(I); 32 C.F.R. § 1700.12(b).

For questions regarding this request I can be contacted at 202-483-1140 x111 or FOIA@epic.org.

Respectfully submitted,

/s/ Eleni Kyriakides

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⁴ *About EPIC*, EPIC.org, <http://epic.org/epic/about.html>.