



VIA EMAIL
FOIA@fcc.gov

March 8, 2017

Federal Communications Commission
445 12th Street, S.W., Room 1-A836
Washington, D.C. 20554

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 Communications Commission (“FCC”).

As detailed below, EPIC seeks records relating to communications between Chairman Pai and President Trump on Monday, March 6, 2017.

Documents Requested

1. Any records regarding the meeting between Chairman Ajit Pai and President Donald Trump on Monday, March 6, 2017, including memos, briefing papers, emails, and talking points.

Expedited Processing

EPIC’s FOIA request should be granted expedited processing. A FOIA request warrants expedited processing where (1) it is made by “a person primarily engaged in disseminating information” and (2) it pertains to a matter about which there is an “urgency to inform the public about an actual or alleged federal government activity.”¹ This request satisfies both requirements.

First, EPIC is “primarily engaged in disseminating information.”²

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

² *American Civil Liberties Union v. Department of Justice*, 321 F. Supp. 2d 24, 29 n.5 (D.D.C. 2004) (“[T]he Court concludes that EPIC is indeed “primarily engaged in disseminating information” for the purposes of expediting the request.”).

Second, because meetings between heads of federal agencies and the President are extremely significant, there is an acute “urgency to inform the public” about those meetings. President Trump has described the media as “enemies of the people.”³ Many of these same media organizations have business before the FCC. Unless this request is processed expeditiously, these organizations would be deprived of information necessary to fully represent the First Amendment interests of the media and the American public in these matters.

Furthermore, Congress is currently considering using the Congressional Review Act to overturn the FCC’s Privacy Rules, and petitions for reconsideration of the Privacy Order are currently pending before the Commission. Last year, EPIC urged the FCC to adopt strong privacy rules that applied to Internet Service Providers (“ISPs”) and edge providers alike.⁴ Chairman Pai indicated in his dissent to the Privacy Order that he advocated for a very different rule than the one the FCC adopted:

The era of Big Data is here. The volume and extent of personal data that edge providers collect on a daily basis is staggering So if the FCC truly believes that these new rules are necessary to protect consumer privacy, then the government must now move forward to ensure uniform regulation of all companies in the Internet ecosystem at the new baseline the FCC has set.⁵

On March 1, 2017, the FCC issued a stay of parts of the Privacy Order.⁶ Expeditious processing is necessary to preserve the public’s right to meaningfully participate in the fate of a rule that impacts millions of consumers and businesses.

Request for “News Media” Fee Status and Fee Waiver

EPIC is a “representative of the news media” for fee classification purposes.⁷ Based on EPIC’s status as a “news media” requester, EPIC is thus entitled to receive the requested records without being assessed search or review fees.⁸

In addition, because disclosure of the requested communications will “contribute significantly to public understanding of the operations or activities of the government,”

³ Julie Hirschfeld Davis & Michael M. Grynbaum, *Trump Intensifies Criticism of F.B.I. and Journalists*, N.Y. Times, Feb. 25, 2017, at A1.

⁴ EPIC Statement, *FCC Overreach: Examining the Proposed Privacy Rules*, hearing before the House Committee on Energy and Commerce, Subcommittee on Communications and Technology, Jun. 13, 2016; Letter from Marc Rotenberg, Exec. Dir., EPIC, to Tom Wheeler, Chairman, FCC (Jan. 20, 2016), <https://epic.org/privacy/consumer/EPIC-to-FCC-on-Communications-Privacy.pdf>.

⁵ *Protecting the Privacy of Customers of Broadband and Other Telecommunications Services*, dissenting statement of Commissioner Ajit Pai, WC Docket No. 16-106.

⁶ *Protecting the Privacy of Customers of Broadband and Other Telecommunications Services*, Order Granting Stay Petition in Part, WC Docket No. 16-106 (Mar. 1, 2017).

⁷ *EPIC v. Department of Defense*, 241 F. Supp. 2d 5 (D.D.C. 2003).

⁸ 5 U.S.C. § 552(a)(4)(A)(ii)(II).

all duplication fees should be waived.⁹ Here, the requested communications between the FCC and the President clearly concern “the operations or activities of the government.”¹⁰ Further, the disclosure of those communications will “likely to contribute to an understanding of government operations or activities,” by offering unfiltered insight into the relationship between the President and an independent federal agency responsible for regulation of the media. Lastly, because the requested communications would be of interest to all consumers and commercial firms with an interest in the FCC’s regulation of the media, this request will “contribute to public understanding as opposed to the individual understanding of the requester or a narrow segment of interested persons.”¹¹

Conclusion

Thank you for your consideration of this request. I will anticipate your determination on our request within ten business days.¹² For questions regarding this request I can be contacted at 202-483-1140 x104 or FOIA@epic.org.

Respectfully Submitted,

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⁹ § 552(a)(4)(A)(iii).

¹⁰ See 47 C.F.R. § 0.470(e)(2)(i).

¹¹ See 47 C.F.R. § 0.470(e)(2).

¹² See 5 U.S.C. § 552(a)(6)(E)(ii)(I).