



BY EMAIL

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January 9, 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 Jennifer L. 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 the public release of the unredacted ODNI 2017 report “Assessing Russian Activities and Intentions in Recent US Elections,” (Jan. 6, 2017. The full report was directly referenced in the redacted version and is necessarily in possession of the agency.¹

The redacted report released to the public makes clear that Russia interfered in the 2016 election to “undermine public faith in the US democratic process.”² However, the redacted report fails to provide critical technical evidence. EPIC now seeks the full, unredacted version of the 2017 ODNI report.

¹ OFFICE OF THE DIR. OF NAT’L INTELLIGENCE, ASSESSING RUSSIAN ACTIVITIES AND INTENTIONS IN RECENT US ELECTIONS (2016), https://www.dni.gov/files/documents/ICA_2017_01.pdf (stating in headers “This report is a declassified version of a highly classified assessment;... this version does not include the full supporting information on key elements of the influence campaign.”).

² *Id.* at ii.

Request for Expedited Processing

EPIC is entitled to expedited processing under the FOIA.³ Specifically, expedited processing is justified under 32 C.F.R. § 1700.12(c)(2) because this request involves an “urgency to inform the public concerning an actual or alleged Federal Government activity.. made by a person primarily engaged in disseminating information.”⁴

First, there is an “urgency to inform the public concerning an actual or alleged Federal Government activity.”⁵ The Federal Government activity at issue is the Intelligence Community’s assessment of Russian interference in the 2016 U.S. election. The IC’s assessment was called into question by the incoming administration, although there is ample evidence to support the conclusions from other sources.⁶

Moreover, EPIC has a pending FOIA request currently before the FBI that seeks to determine the Bureau’s response to the Russian cyber threat.⁷ That activity, which may be addressed in report sought, independently satisfies the second requirement for expedited processing under the ODNI procedures set out in the CFR.⁸

The Senate Armed Services Committee recently held a hearing on “Foreign Cyber Threats to the United States” that addressed the contents of

³ 5 U.S.C. § 552(a)(6)(E)(v)(II).

⁴ 32 C.F.R. § 1700.12(c)(2).

⁵ *Id.*

⁶ Karoun Demirjian & Greg Miller, *Trump’s criticism of intelligence community dividing Hill GOP*, WASHINGTON POST (Jan. 4, 2016),

https://www.washingtonpost.com/politics/trumps-criticism-of-intelligence-on-russia-is-dividing-hill-gop/2017/01/04/1ffc1a04-d2a1-11e6-a783-cd3fa950f2fd_story.html?utm_term=.00c8614fe71a;

Dmitri Alperovich, *Bears in the Midst: Intrusion into the Democratic National Committee*,

CROWDSTRIKE (JUNE 15, 2016), <https://www.crowdstrike.com/blog/bears-midst-intrusion-democratic-national-committee/>.

⁷ Letter from EPIC to FOIA officer, FBI (Dec. 22, 2016) (FOIA request regarding FBI investigation of Russian interference in U.S. election).

⁸ Eric Lipton, David E. Sanger, and Scott Shane, *The Perfect Weapon: How Russian Cyberpower Invaded the U.S.*, NY Times (Dec. 13, 2016),

<http://www.nytimes.com/2016/12/13/us/politics/russia-hack-election-dnc.html>

(describing, in part, FBI contact with DNC concerning Russian hacking). *See generally id.*

this report.⁹ Future hearings in Congress are scheduled, and legislation is anticipated.¹⁰

Therefore, the full report is urgently needed to resolve any outstanding questions about the accuracy of IC assessments and the response of the FBI, and inform the public debate over imminent Congressional action.

Second, EPIC is an organization “primarily engaged in disseminating information.”¹¹ As the Court explained in *EPIC v. Dep’t of Def.*, “EPIC satisfies the definition of ‘representative of the news media’” entitling it to preferred fee status under FOIA.¹²

In submitting this request for expedited processing, I certify that this explanation is true and correct to the best of my knowledge and belief.¹³

Request for “News Media” Fee Status and Fee Waiver

EPIC is a “representative of the news media” for fee classification purposes.¹⁴ Based on EPIC’s status as a “news media” requester, EPIC is entitled to receive the requested record with only duplication fees assessed.¹⁵

In addition, because EPIC’s request satisfies each of the two alternative standards in 32 C.F.R. §1700.6(b) for granting a fee waiver, any duplication fees should also be waived.¹⁶

⁹ *Foreign Cyber Threats to the United States*, UNITED STATES COMMITTEE ON ARMED SERVICES, <http://www.armed-services.senate.gov/hearings/17-01-05-foreign-cyber-threats-to-the-united-states> (notice of hearing Jan. 5, 2017).

¹⁰ *Hearings*, U.S. SELECT COMMITTEE ON INTELLIGENCE, <http://www.intelligence.senate.gov/hearings> (listing “Open Hearing: Russian Intelligence Activities”); *Nomination Hearing*, UNITED STATES SENATE COMMITTEE ON FOREIGN RELATIONS, <http://www.foreign.senate.gov/hearings/nominations-hearing-011117p> (notice of nomination hearing Jan. 11, 2017 for Mr. Rex Tillerson); Jordain Carney, *Lawmakers preparing Russia sanctions bill*, THE HILL (Jan. 6, 2017), <http://thehill.com/blogs/floor-action/senate/313102-senators-prepping-new-russia-sanctions-for-next-week>.

¹¹ § 1700.12(c)(2).

¹² *EPIC v. Dep’t of Def.*, 241 F. Supp. 2d 5, 15 (D.D.C. 2003).

¹³ § 1700.12(b).

¹⁴ 241 F. Supp. 2d 5 at 15.

¹⁵ § 1700.6(i)(2); 5 U.S.C. § 552(a)(4)(A)(ii)(II).

¹⁶ § 1700.6(b); § 552(a)(4)(A)(iii).

EPIC satisfies §1700.6(b)(1) because “the interest of the United States Government would be served.”¹⁷ A week into a new Congress’s tenure, legislation to step up sanctions against Russia is already under way.¹⁸ The U.S. government has an interest in a full and accurate public understanding of the Russian attempts to influence the 2016 election in order to develop the appropriate U.S. response to Russia. In addition, given criticism of the IC from the incoming administration, the fullest understanding of the report’s foundation is vital to securing U.S. confidence in the IC and its assessments.¹⁹

In the alternative, EPIC also satisfies § 1700.6(b)(2) because it is “in the public interest to provide responsive records because the disclosure is likely to contribute *significantly* to the public understanding of the operations or activities of the United States Government and is not primarily in the commercial interest of the requester.”²⁰

First, disclosure of the full report “is in the public interest... because the disclosure is likely to contribute *significantly* to the public understanding of the operations or activities of the United States Government.”²¹ Because this request pertains to a joint report of the IC published by the ODNI regarding their assessments of Russian activities, it speaks to “operations or activities of the Federal government.”²² Disclosure of requested record will “contribute significantly to public understanding” of those operations because it will clarify the basis on which the IC formed its conclusions.²³ The report itself noted, it did not include “[did] not include the full supporting information,” even for the “key elements” of the interference.²⁴ As just stated, this information is required to inform the U.S. response to Russia and the public’s assessment of the IC.

¹⁷ § 1700.6(b)(1).

¹⁸ Carney, *supra* note 10.

¹⁹ Karoun Demirjian & Greg Miller, *Trump’s criticism of intelligence community dividing Hill GOP*, WASHINGTON POST (Jan. 4, 2016), https://www.washingtonpost.com/politics/trumps-criticism-of-intelligence-on-russia-is-dividing-hill-gop/2017/01/04/1ffc1a04-d2a1-11e6-a783-cd3fa950f2fd_story.html?utm_term=.00c8614fe71a.

²⁰ § 1700.6(b)(2).

²¹ *Id.*

²² *Id.*

²³ *Id.*

²⁴ *See generally* OFFICE OF THE DIR. OF NAT’L INTELLIGENCE, *supra* note 1.

Second, the request “is not primarily in the commercial interest of the requester.”²⁵ EPIC has no commercial interest in disclosure of the requested records.²⁶ EPIC is a registered non-profit organization committed to privacy, open government, and civil liberties.²⁷

For these reasons, a fee waiver should be granted.

Conclusion

Thank you for your consideration of this request. As provided in 32 C.F.R. § 1700.12(b), I will anticipate your determination on our request within ten calendar days.

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

Respectfully Submitted,

/s/ Eleni Kyriakides

Eleni Kyriakides
EPIC FOIA Fellow

²⁵ § 1700.6(b)(2).

²⁶ *Id.*

²⁷ *About EPIC*, EPIC.ORG, <https://epic.org/epic/about.html>.