

VIA FASCIMILE

March 24, 2017

Office of the Attorney General
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Dear Ms. Day,

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 Department of Justice (“DOJ”).

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

Former Acting Attorney General Sally Q. Yates 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

Ms. Yates previously oversaw the investigation at the Department of Justice, and reportedly informed the White House in January about contacts between members of the Trump

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.”).

team and the Russian ambassador.³ She was called to testify before the Committee because of her specific expertise concerning the Russian interference with the election.

Documents Requested

All records, including communications, memos, and reports, in the possession of the Department of Justice concerning former Acting Attorney General Sally Q. Yates and the Department'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 28 C.F.R. § 16.5(e)(1)(ii) 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." § 16.5(e)(1)(ii).

First, there can be no question that there is an "urgency to inform the public" about the details of the DOJ investigation into the Russian interference - "an actual or alleged federal government activity." § 16.5(e)(1)(ii). 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.⁴ 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 Ms. Yates' work on this matter.

Second, EPIC is an organization "primarily engaged in disseminating information." § 16.5(e)(1)(ii). 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).

³ Adam Entous, Ellen Nakashima, & Philip Rucker, *Acting AG Warned White House on Michael Flynn's Dealings with Russia*, Boston Globe (Feb. 14, 2017), <https://www.bostonglobe.com/news/nation/2017/02/14/acting-attorney-general-sally-yates-had-warned-white-house-michael-flynn-dealings-with-russia/4yeShlgSuj6J9mscGpzrLN/story.html>.

⁴ 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>.

In submitting this request for expedited processing, I certify that this explanation is true and correct to the best of my knowledge and belief. § 16.5(e)(3); § 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. 5 U.S.C. § 552(a)(4)(A)(ii)(II).

Further, any duplication fees should also be waived because disclosure of the requested information “is in the public interest because it is likely to contribute significantly to public understanding of the operations or activities of the government and is not primarily in the commercial interest” of EPIC. 28 C.F.R. § 16.10(k)(1); § 552(a)(4)(A)(iii). EPIC’s request satisfies the three DOJ’s factors for granting a fee waiver. § 16.10(k)(2).

First, disclosure of former Acting Attorney General Yates’ Russian investigation records is “concerns identifiable operations or activities of the Federal Government with a connection that is direct and clear, not remote or attenuated.” § 16.10(k)(2)(i). The requested documents self-evidently involve identifiable operations and activities of the DOJ; these records touch the very core of the DOJ’s responsibility for public safety, protecting the rule of law, and enforcement. *Id.*

Second, disclosure would be “would be likely to contribute significantly to public understanding of those operations or activities” according to the two sub-factors. § 16.10(k)(2)(ii)(A-B). As to the first sub-factor, disclosure would be “meaningfully informative about government operations or activities” because neither DOJ nor the administration have provided the public with full details about the Russian interference investigation. § 16.10(k)(2)(ii)(A). As to the second sub-factor, disclosure will “contribute to the understanding of a reasonably broad audience of persons interested in the subject,” because, as stated in the DOJ FOIA regulations, components will “presume that a representative of the news media will satisfy this consideration.” § 16.10(k)(2)(ii)(B).

Third, disclosure of the requested information is not “primarily in the commercial interest” of EPIC according to the two sub-factors. § 16.10(k)(2)(iii)(A-B). As to the first sub-factor, EPIC has no “commercial interest...that would be furthered by the requested disclosure.” § 16.10(k)(2)(iii)(A). EPIC is a registered non-profit organization committed to privacy, open government, and civil liberties.⁵ As to the second sub-factor, “the component must determine whether that is the primary interest furthered by the request” because, as stated in the FOIA regulations, DOJ components “ordinarily will presume that where a news media requester has satisfied [the public interest standard], the request is not primarily in the commercial interest of the requester.” § 16.10(k)(2)(iii)(B). As already described above, EPIC is a news media requester and satisfies the public interest standard.

⁵ About EPIC, EPIC.org, <http://epic.org/epic/about.html>.

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); 28 C.F.R. § 16.5(e)(4).

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

Respectfully submitted,

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