



October 3, 2013

VIA CERTIFIED MAIL

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Re: Freedom of Information Act Request

Ms. James,

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 U.S. Department of Justice ("DOJ") National Security Division ("NSD").

EPIC seeks records regarding the semiannual reports on the use of pen registers and trap and trace devices for national security purposes that the Attorney General is required to submit to Congress.¹ EPIC requests reports and associated records from 2001 to the present. This request includes the actual reports as well as all other records used in the preparation of these reports.

Background

Pen registers and trap and trace devices collect metadata from calls coming in to and going out of specific phone lines, respectively.² There are two federal statutes governing the application for and the execution of such recording devices, the Electronic Communications Privacy Act ("ECPA")³ and the Foreign Intelligence Surveillance Act ("FISA").⁴ Under the FISA, pen registers and trap and trace devices can be used "for any investigation to obtain foreign intelligence information not concerning a United States person or to protect against international terrorism or clandestine intelligence activities."⁵

¹ 50 U.S.C. § 1846 (2012).

² EPIC, *Foreign Intelligence Surveillance Act (FISA)*, available at <http://epic.org/privacy/terrorism/fisa/>.

³ 18 U.S.C. §§ 3121 – 3127.

⁴ 50 U.S.C. §§ 1841 – 1846.

⁵ 50 U.S.C. § 1842.

The Attorney General is required to make a semiannual report to the Permanent Select Committee on Intelligence of the House of Representatives and the Select Committee on Intelligence of the Senate, and the Committee on the Judiciary of the House of Representatives and the Committee on the Judiciary of the Senate that would include a summary of all uses of pen registers and trap and trace devices obtained under the FISA.⁶ The report should include the number of applications granted and the number of applications modified under the FISA, as well as the total number of installations approved and denied under emergency circumstances.⁷

Pen registers and trap and trace devices traditionally collect metadata from specific, suspicious, telephone lines for a set period of time. However, a recently disclosed report reveals that the pen register and trap and trace provisions have been used to justify the collection of metadata from internet communications.⁸ An unnamed senior intelligence officer told the Washington Post that the NSA “no longer” conducts internet metadata searches under the pen register or trap and trace provisions.⁹

The DOJ has released limited information reporting on “combined” authorizations that attached Section 215 orders to pen register and/or trap and trace orders.¹⁰ However, the DOJ has not released the comprehensive reports as required by the FISA set forth in 50 U.S.C. § 1846. EPIC recognizes the importance of such public reports, as Representative Heather Wilson recognized in 2007 when she requested that the Attorney General fulfill his duties under FISA and brief Congress on the DOJ’s “Terrorist Surveillance Program.”¹¹ Therefore, EPIC seeks documents related to the reports required by 50 U.S.C. § 1846.

Documents Requested

EPIC seeks all records related to the Attorney General’s required semiannual reports between 2001 and the present under 50 U.S.C. § 1846.

1. All reports made to the Permanent Select Committee on Intelligence in the House of Representatives and the Select Committee on Intelligence in the Senate, detailing the

⁶ 50 U.S.C. § 1846(a)-(b).

⁷ 50 U.S.C. § 1846(b)(3).

⁸ Office of the Director of National Intelligence, *Report on the National Security Agency’s Bulk Collection Program for USA PATRIOT Act Reauthorization 3* (2009),

http://www.dni.gov/files/documents/2009_CoverLetter_Report_Collection.pdf (“Under the program based on the pen-trap provisions in FISA, the government is authorized to collect similar kinds of information about electronic communications – such as “to” and “from” lines in e-mail and the time an e-mail is sent . . .”).

⁹ Barton Gellman, *U.S. Surveillance Architecture Includes Collection of Revealing Internet, Phone Metadata*, Washington Post, (June 15, 2013), available at http://www.washingtonpost.com/investigations/us-surveillance-architecture-includes-collection-of-revealing-internet-phone-metadata/2013/06/15/e9bf004a-d511-11e2-b05f-3ea3f0e7bb5a_story_3.html.

¹⁰ Glen A. Fine, *The FBI’s Use of National Security Letters and Section 215 Orders for Business Records*, April 15, 2008, available at <http://www.justice.gov/oig/testimony/t0804/>.

¹¹ *Rep. Wilson Writes to Attorney General Gonzales Requesting Briefing on Terrorist Surveillance Program Agreement*, 2007 WLNR 1148277 (January 19, 2007).

total number of orders for pen registers or trap and trace devices granted or denied, and detailing the total number of pen registers or trap and trace devices installed pursuant to 50 U.S.C. § 1843.

2. All information provided to the aforementioned committees concerning all uses of pen registers and trap and trace devices.
3. All records used in preparation of the above materials, including statistical data.

Request for “News Media” Fee Status

EPIC is a “representative of the news media” for fee waiver purposes.¹² Based on our status as a “news media” requester, we are entitled to receive requested record 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,” any duplication fees should be waived.

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.”¹³

EPIC is “primarily engaged in disseminating information.”¹⁴

There is a particular urgency for the public to obtain information about the use of pen registers and trap and trace devices for national security purposes. The many recent leaks regarding the scope of National Security Agency programs have prompted extensive news coverage and drawn public attention to the tools used in obtaining foreign intelligence.¹⁵ In the wake of these revelations, public opinion has become more concerned about the security benefits these tools provide relative to the inherent risks they pose to civil liberties.¹⁶ The public has an urgent need to obtain any information regarding the use of surveillance technologies for national security purposes to better understand the scope of authority the government possesses and how this authority is being employed in practice.

¹² *EPIC v. Department of Defense*, 241 F. Supp. 2d 5 (D.D.C. 2003).

¹³ 5 U.S.C. § 552(6)(E)(ii).

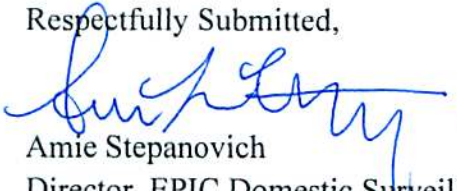
¹⁴ *EPIC v. Department of Defense*, 241 F. Supp. 2d 5.

¹⁵ See, e.g., Glenn Greenwald, *NSA Collecting Phone Records of Millions of Verizon Customers Daily*, *The Guardian*, June 5, 2013, available at <http://www.theguardian.com/world/2013/jun/06/nsa-phone-records-verizon-court-order>;

¹⁶ Jon Cohen and Dan Balz, *Poll: Privacy Concerns Rise After NSA Leaks*, *Washington Post*, July 23, 2013, available at http://www.washingtonpost.com/politics/poll-privacy-concerns-rise-after-nsa-leaks/2013/07/23/3a1b64a6-f3c7-11e2-a2f1-a7acf9bd5d3a_story.html.

Thank you for your consideration of this request. We will anticipate a determination within 10 working days. Please send any questions regarding this request to FOIA@epic.org.

Respectfully Submitted,



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Liz Hempowicz
2013 EPIC Summer Clerk

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