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VIA FACSIMILE: 703-874-8910

FOIA Officer
Office of the Director of National Intelligence
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Re: Freedom of Information Act Request

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 Office of the Director of National Intelligence ("ODNI").

EPIC seeks documents referenced in the Guidelines for Access, Retention, Use, and Dissemination by the National Counterterrorism Center and Other Agencies of Information in Datasets Containing Non-Terrorism Information, ("NCTC Guidelines") that describe the terms and conditions of the National Counterterrorism Center's ("NCTC") acquisition of and access to databases and disputes related to this sharing of information.

Background

On March 22, 2012, the New York Times reported that Attorney General Eric Holder had signed new guidelines for the NCTC which would relax restrictions on how counterterrorism analysts may retrieve, store, and search information about Americans.¹ The Washington Post corroborated this.²

The NCTC Guidelines allow the NCTC to access and make copies of entire datasets then data mine those copies using complex algorithms.³

¹ Charlie Savage, *U.S. Relaxes Limits on Use of Data in Terror Analysis*, New York Times, Mar. 22, 2012, http://www.nytimes.com/2012/03/23/us/politics/us-moves-to-relax-some-restrictions-for-counterterrorism-analysis.html?_r=1

² Sari Horwitz and Ellen Nakashima, *New Counterterrorism Guidelines Permit Data on U.S. Citizens to be Held Longer*, Mar. 22, 2012, http://www.washingtonpost.com/world/national-security/new-counterterrorism-guidelines-would-permit-data-on-us-citizens-to-be-held-longer/2012/03/21/gIQAFm7TS_story.html?wprss=

³ Charlie Savage, *U.S. Relaxes Limits on Use of Data in Terror Analysis*, New York Times, Mar. 22, 2012, http://www.nytimes.com/2012/03/23/us/politics/us-moves-to-relax-some-restrictions-for-counterterrorism-analysis.html?_r=1

Section (B)(2)(a) of the NCTC Guidelines details the process by which the NCTC can obtain and copy datasets:

For access to or acquisition of specific datasets, the DNI, or the DNI's designee, shall collaborate with the data provider to identify any legal constraints, operational considerations, privacy or civil rights or civil liberties concerns or protections, or other issues, and to develop appropriate Terms and Conditions that will govern NCTC's access to or acquisition of datasets under these Guidelines.⁴

Section (B)(2)(d) of the NCTC Guidelines also establishes the procedures by which the heads of departments or agencies can raise objections to the NCTC's requests for data:

If the head of the department or agency providing the information or the DNI objects to providing data to NCTC, objects to the "track" under which NCTC intends to acquire the data, or objects to the Terms and Conditions developed after consultation..., the head of the department or agency or the DNI may raise any concerns, in writing, with the other party...Failing resolution, either party may refer a dispute concerning constitutional or other legal matters to the Attorney General and may seek the resolution of any other disputes through the National Security Council. In connection with any such disputes, the Attorney General or National Security Council may seek the advice of the Privacy and Civil Liberties Oversight Board.⁵

EPIC now requests all Terms and Conditions and related documents, as described in Section (B)(2)(a) of the NCTC Guidelines, as well as any documents related to disputes, as described under Section (B)(2)(d) of the NCTC Guidelines. Because the ODNI is the parent agency of the NCTC, we direct this request to you.⁶

Documents Requested

EPIC requests the following documents:

1. Terms and Conditions and related documents, as described in Section (B)(2)(a) of the NCTC Guidelines;
2. All documents related to disputes between department and agency heads and DNI, as described under Section (B)(2)(d) of the NCTC Guidelines.

⁴ United States Department of Justice, Office of the Attorney General, Guidelines for Access, Retention, Use, and Dissemination by the National Counterterrorism Center and Other Agencies of Information in Datasets Containing Non-Terrorism Information, p. 5 (March 22, 2012), available at: <https://www.documentcloud.org/documents/327629-nctc-guidelines.html>

⁵ *Id.* at 6.

⁶ Office of the Director of National Intelligence, homepage, <http://www.dni.gov/index.html>

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

EPIC is “primarily engaged in disseminating information.” *American Civil Liberties Union v. Department of Justice*, 321 F. Supp. 2d 24, 29 n.5 (D.D.C. 2004).

There is a particular urgency for the public to obtain information about the NCTC’s new Guidelines. Many national news media outlets⁷ covered this development because the sharing of these datasets has profound privacy implications for U.S. persons and marks a strong departure from earlier guidelines.

Request for “News Media” Fee Status

EPIC is a “representative of the news media” for fee waiver purposes.⁸ Based on our status as a “news media” requester, we are entitled to receive the 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.

Thank you for your consideration of this request. As provided in 6 C.F.R. § 5.5(d)(4), I will anticipate your determination on our request within ten (10) calendar days. For questions regarding this request I can be contacted at 202-483-1140 ext. 102 or FOIA@epic.org.

Respectfully Submitted,



Ginger P. McCall
Director, EPIC Open Government Project

⁷ *Supra*, n. 1, 2

⁸ *EPIC v. Department of Defense*, 241 F. Supp. 2d 5 (D.D.C. 2003).