



June 15, 2012

VIA FACSIMILE: 703-874-8910

FOIA Officer
Office of the Director of National Intelligence
Washington, DC 20511

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 guidelines and legal memoranda relating to the National Counterterrorism Center's ("NCTC") access and acquisition of data as described in the March 22, 2012 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").¹

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.² The Washington Post corroborated this.³

¹ Guidelines for Access, Retention, Use, and Dissemination by the National Counterterrorism Center and Other Agencies of Information in Datasets Containing Non-Terrorism Information (Mar. 22, 2012), <https://www.documentcloud.org/documents/327629-nctc-guidelines.html>.

² 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

³ 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=

1718 Connecticut Ave NW

Suite 200

Washington DC 20009

USA

+1 202 483 1140 [tel]

+1 202 483 1248 [fax]

www.epic.org

The NCTC Guidelines allow the NCTC to make more copies of entire datasets then data mine those copies using complex algorithms.⁴

The NCTC Guidelines create multiple standards for determining whether information and/or datasets are may be accessed or acquired by NCTC. NCTC may permanently retain, use, or disseminate it if it is “reasonably believed to constitute terrorism information,”⁵ defined to mean if, “based on the knowledge and experience of counterterrorism analysts as well as the factual and practical considerations of everyday life on which reasonable and prudent persons act, there are facts giving rise to a reasonable, articulable suspicion that the information is terrorism information.”⁶ NCTC, in coordination with data providers, will identify datasets that are “reasonably believed to contain terrorism information.”⁷ And NCTC may acquire and replicate entire portions of datasets or entire datasets when the Director of NCTC or a Designee determines that a dataset is “likely to contain significant terrorism information.”⁸

Documents Requested

EPIC requests the following documents:

1. Any guidelines or legal memoranda discussing NCTC’s understanding and interpretation of the following standards used in the NCTC Guidelines discussed above: “reasonably believed to constitute terrorism information,” “reasonably believed to contain terrorism information,” and “likely to contain significant terrorism information.”

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 concerning actual or alleged federal government activity.”⁹

EPIC is “primarily engaged in disseminating information.”¹⁰

There is a particular urgency for the public to obtain information about the NCTC’s new Guidelines. Many national news media outlets¹¹ covered this development

⁴ 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

⁵ Guidelines, *supra* note 1 at 4.

⁶ *Id.*

⁷ *Id.* at 5.

⁸ *Id.* at 9.

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

¹⁰ *American Civil Liberties Union v. Department of Justice*, 321 F. Supp. 2d 24, 29 n.5 (D.D.C. 2004).

¹¹ *Supra* note 1 at 2.

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

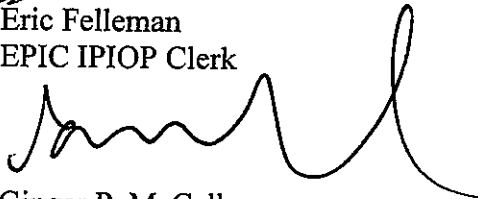
EPIC is a "representative of the news media" for fee waiver purposes.¹² Based on our status as a "news media" requester, we are entitled to receive the requested record with only duplication fees assessed. Further, because disclosure of this information will "contribute significantly to public understanding 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,



Eric Felleman
EPIC IPIOP Clerk



Ginger P. McCall
Director, EPIC Open Government Project

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