

July 15, 2010

VIA Facsimile

National Security Agency
Attn: FOIA/PA Office (DJP4)
9800 Savage Road, Suite 6248
Ft. George G. Meade, MD 200755-6248
Fax: (301) 688-4762

RE: Freedom of Information Act Request and Request for Expedited Processing

Dear FOIA/PA 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).

EPIC seeks memos and contracts relating to the National Security Agency (NSA)'s cybersecurity program known as "Perfect Citizen."

Background

The Congress is currently considering legislation to establish a new model for cybersecurity in the United States.¹ This legislation, if passed, would assign responsibility to the Department of Homeland Security (DHS) for cybersecurity with respect to civilian networks and "critical infrastructure."² Under the legislation, the Department of Defense and therefore the NSA would retain cybersecurity authority over military networks, but civilian and private network security would fall under the authority of a new National Center for Cybersecurity and Communications within DHS.³

On July 8, 2010, the *Wall Street Journal* published a story describing a new program being launched by the National Security Agency, called "Perfect Citizen."⁴ According to the article's anonymous sources, the NSA recently completed a contract for the initial phase of the program with Raytheon Company, to develop "a set of sensors deployed in computer networks for critical infrastructure that would be triggered by unusual activity suggesting an impending cyber attack."⁵ The article does not indicate that the NSA has acknowledged any possibility that

¹ Protecting Cyberspace as a National Asset Act of 2010, S. 3480, H.R. 5548, 111th Cong. (2010).

² *Id.* at § 3(2).

³ *Id.* at § 242.

⁴ Siobhan Gorman, *U.S. Program to Detect Cyber Attacks on Infrastructure*, WALL ST. J., July 8, 2010, available at <http://online.wsj.com/article/SB10001424052748704545004575352983850463108.html>.

⁵ *Id.*

DHS would become responsible for defending critical civilian infrastructure, and states that some “industry and government officials familiar with the program see Perfect Citizen as an intrusion by the NSA into domestic affairs.”⁶

The article also quotes an internal email from Raytheon, stating “Perfect Citizen is Big Brother.”⁷ This conflicts dramatically with the Defense Department official quoted as saying that “any intrusion into privacy is no greater than what the public already endures from traffic cameras.”

The article notes that the \$100 million program is funded as part of the Comprehensive National Cybersecurity Initiative, a program whose legal authority remains secret, in spite of ongoing litigation with this agency over a previous FOIA request.⁸

In response to the article in the *Wall Street Journal*, the NSA released a short public statement, telling the press that the program is “purely a vulnerabilities-assessment and capabilities-development contract.”⁹ The statement, from NSA spokeswoman Judith Emmel, goes further: “There is no monitoring activity involved, and no sensors are employed in this endeavor.”

Given the conflict between the agency’s public statements and the third-party reporting, there is a clear public interest in the true nature of this program, especially in light of the pending cybersecurity legislation in Congress.

Documents Requested

EPIC requests copies of the following agency records:

1. All contracts and communications with Raytheon Company regarding the Perfect Citizen program.
2. All analyses, legal memoranda, and related records regarding the Perfect Citizen program.

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.”¹⁰

EPIC is “primarily engaged in disseminating information.”¹¹ Moreover, there is particular urgency for the public to obtain information about Perfect Citizen. The Protecting Cyberspace as a National Asset Act is currently pending before both houses of Congress and would have a huge

⁶ *Id.*

⁷ *Id.*

⁸ See NSA FOIA Case # 58987; *Elec. Privacy Info. Ctr. v. NSA*, No. 10-196 (D.D.C. filed Feb. 4, 2010).

⁹ Jim Wolf, *U.S. Eavesdropping Agency Says Private Citizen is Purely R&D*, REUTERS, July 8, 2010

¹⁰ 5 U.S.C. § 552(a)(6)(E)(v)(II) (2010).

¹¹ *Am. Civil Liberties Union v. Dep’t of Justice*, 321 F. Supp. 2d 24, 29 n.5 (D.D.C. 2004).

impact on the role that NSA is authorized to take in defending American civilian networks and critical infrastructure.

Request for “News Media” Status

EPIC is a non-profit, educational organization that routinely and systematically disseminates information to the public. EPIC is a representative of the news media.¹²

Based on our status as a “news media” requester, we are entitled to receive the requested records 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,” as described above, any duplication fees should be waived.

Thank you for your consideration of this request. As provided in 5 U.S.C. § 552(a)(6)(E)(ii)(I), we will anticipate your determination on our request for expedited processing within ten (10) calendar days.

Sincerely,

Jared Kaprove
EPIC Domestic Surveillance Counsel

John Verdi
Director, EPIC Open Government Project

¹² *Elec. Privacy Info. Ctr. v. Dep’t of Defense*, 241 F. Supp. 2d 5 (D.D.C. 2003).