

March 15, 2017

The Honorable Lindsey Graham, Chairman
The Honorable Sheldon Whitehouse, Ranking Member
U.S. Senate Committee on the Judiciary
Subcommittee on Crime and Terrorism
224 Dirksen Senate Office
Washington, DC 20510

RE: Hearing on “The Modus Operandi and Toolbox of Russia and Other Autocracies for Undermining Democracies Throughout the World”

Dear Chairman Graham and Ranking Member Whitehouse:

In advance of today’s hearing on “The Modus Operandi and Toolbox of Russia and Other Autocracies for Undermining Democracies Throughout the World,”¹ we write to you again regarding the Subcommittee’s investigation into Russian efforts to influence democratic elections in the United States and abroad.² EPIC has an active interest in the challenge of protecting democratic institutions against cyber attack.³ We welcome your leadership on this critical issue and look forward to opportunities to work with you and your staff.

EPIC is a public interest research center established in 1994 to focus public attention on emerging privacy and civil liberties issues.⁴ EPIC is also a leading advocate for civil liberties and democratic values in the information age. EPIC is currently pursuing three Freedom of Information Act matters to learn more about the Russian interference in the 2016 Presidential election.⁵ EPIC filed these FOIA suits because we share the Subcommittee’s goal; “to the fullest extent possible,” to “shine a light on Russian activities to undermine democracy.”⁶

¹ *The Modus Operandi and Toolbox of Russia and Other Autocracies for Undermining Democracies Throughout the World*, 115th Cong. (2017), S. Comm. on the Judiciary, Subcomm. On Crime and Terrorism, <https://www.judiciary.senate.gov/meetings/the-modus-operandi-and-toolbox-of-russia-and-other-autocracies-for-undermining-democracies-throughout-the-world> (March 15, 2017).

² Letter from EPIC to Senator Lindsey Graham and Senator Sheldon Whitehouse, S. Comm. on the Judiciary (Feb. 8, 2017), available at <https://epic.org/foia/fbi/russian-hacking/EPIC-letter-SJC-Russia-02-08-17.pdf>.

³ See *Democracy and Cybersecurity: Preserving Democratic Institutions*, EPIC, <https://epic.org/democracy/>.

⁴ See *About EPIC*, EPIC, <https://epic.org/epic/about.html>.

⁵ *EPIC v. ODNI*, No. 17-163 (D.D.C. Jan. 25, 2017); *EPIC v. FBI*, No. 17-121 (D.D.C. Jan. 18, 2017).

⁶ Press Release, Sen. Lindsey Graham, Chairman of the Senate Judiciary Subcomm. on Crime and Terrorism, and Sen. Sheldon Whitehouse, Ranking Member, Joint Statement on Subcomm. Investigation into Russian Efforts to Influence Democratic Elections (Feb. 2, 2017), <https://www.whitehouse.senate.gov/news/release/whitehouse-graham-to-launch-bipartisan-investigation-into-russian-influence-on-elections>.

In *EPIC v. FBI*, EPIC seeks to understand the FBI's response to the Russian interference in the 2016 Presidential election. The FBI is the lead federal agency for investigating cyber attacks by criminals, overseas adversaries, and terrorists."⁷ Nonetheless, questions were raised about the failure of the FBI to adequately investigate the attacks on the nation's political institutions.⁸ EPIC is therefore pursuing FBI records to help the "public . . . evaluate the FBI response to the Russian interference, assess threats to American democratic institutions, and to ensure the accountability of the federal agency with the legal authority to safeguard the American people against foreign cyber attacks."⁹

In *EPIC v. ODNI*, EPIC is seeking the release of the complete ODNI report on the Russian interference with the 2016 election. A limited, declassified version of the report was published on Jan. 6, 2017.¹⁰ This report stated that Russia carried out a multi-pronged attack on the 2016 U.S. Presidential Election to "undermine public faith in the US democratic process." The report also states that "this version does not include the full supporting information on key elements of the influence campaign." However, as EPIC makes clear in the complaint, "there is an urgent need to make available to the public the Complete ODNI Assessment to fully assess the Russian interference with the 2016 Presidential election and to prevent future attacks in democratic institutions."¹¹

EPIC has also filed a request with the National Security Division of the Department of Justice seeking any applications made under the Foreign Intelligence Surveillance Act (FISA) for electronic surveillance of Trump Tower.¹² The public should be told whether the FBI pursued an investigation regarding Russian communications with a U.S. Presidential campaign.

The urgency of understanding the full scope of the Russian threat to democratic elections is clear. There are upcoming federal elections in Europe. The Dutch election takes place today. Concerns about the vulnerability of online voting systems have led the government to take the unprecedented step of adopting paper ballots after having established a system for electronic voting.¹³ The French national election is scheduled for April 23, 2017. The German national election is September 24, 2017. Russian attacks on democratic institutions are expected to

⁷ *What We Investigate, Cyber Crime*, FBI.gov, <https://www.fbi.gov/investigate/cyber>; Directive on United States Cyber Incident Coordination ("PPD 41"), 2016 Daily Comp. Pres. Doc. 495 (July 26, 2016) (setting forth the FBI's legal authority for cybersecurity threat response).

⁸ Ellen Nakashima & Adam Entous, *FBI and CIA Give Differing Accounts to Lawmakers on Russia's Motives in 2016 Hacks*, Wash. Post (Dec. 10, 2016), https://www.washingtonpost.com/world/national-security/fbi-and-cia-give-differing-accounts-to-lawmakers-on-russias-motives-in-2016-hacks/2016/12/10/c6dfadfa-bef0-11e6-94ac-3d324840106c_story.html.

⁹ Complaint at 7, *EPIC v. FBI*, *supra* note 5.

¹⁰ Office of the Dir. of Nat'l Intelligence, *Assessing Russian Activities and Intentions in Recent US Elections* (2017), https://www.dni.gov/files/documents/ICA_2017_01.pdf [hereinafter *Declassified ODNI Assessment*].

¹¹ Complaint at 3, *EPIC v. ODNI*, *supra* note 5.

¹² *EPIC Seeks Release of FISA Order for Trump Tower*, EPIC (March 6, 2017), <https://epic.org/2017/03/epic-seeks-release-of-fisa-ord.html>. (The EPIC FOIA Request to the DOJ regarding FISA applications for surveillance at Trump Tower is available at <https://epic.org/foia/EPIC-17-03-06-NSD-FOIA-20170306-Trump-Tower-Request.pdf>).

¹³ Sewell Chan, *Fearful of Hacking, Dutch Will Count Ballots by Hand*, N.Y. Times (Feb. 1, 2017), at A4.

continue.¹⁴ The U.S. Intelligence community has reportedly shared the classified ODNI report with European governments to help limit Russian interference with their elections.¹⁵ The public need to understand Russian efforts to influence democratic elections cannot be overstated.

We ask that this letter be entered in the hearing record. We will keep the Subcommittee apprised of the documents we receive in our FOIA cases and we look forward to working with you on the cybersecurity risks to democratic institutions.

Sincerely,

/s/ Marc Rotenberg
Marc Rotenberg
EPIC President

/s/ Caitriona Fitzgerald
Caitriona Fitzgerald
EPIC Policy Director

Enclosures

¹⁴ Declassified ODNI Assessment, *supra* note 10, at 5.

¹⁵ Martin Matishak, *U.S. shares hacking intel with Europe as Russia shifts focus*, POLITICO Pro (Feb. 6, 2017).