

May 5, 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 “Russian Interference in the 2016 United States Election”

Dear Chairman Graham and Ranking Member Whitehouse:

In advance of the hearing on “Russian Interference in the 2016 United States Election,”¹ we write to you again regarding Russian efforts to influence elections in the United States and abroad.² EPIC has an active interest in the challenge of protecting democratic institutions against foreign adversaries and cyber attack. After reports emerged about Russian interference with the 2016 election, EPIC launched a new project on Democracy and Cybersecurity.³ We welcome your leadership on this 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 four 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 *Russian Interference in the 2016 United States Election*, 115th Cong. (2017), S. Comm. on the Judiciary, Subcomm. On Crime and Terrorism, <https://www.judiciary.senate.gov/meetings/russian-interference-in-the-2016-united-states-election> (May 8, 2017).

² Letter from EPIC to Senator Lindsey Graham and Senator Sheldon Whitehouse, S. Comm. on the Judiciary (Mar. 15, 2017), *available at* <https://epic.org/testimony/congress/EPIC-SJC-Russia-Mar2017.pdf>; 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 EPIC, *Democracy and Cybersecurity: Preserving Democratic Institutions*, <https://epic.org/democracy/>.

⁴ See EPIC, *About 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. ODNI*, EPIC is seeking the release of the complete intelligence report on the Russian interference with the 2016 election. A limited, declassified version of the report was published on Jan. 6, 2017.⁷ 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.”

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 on democratic institutions.⁸ The Declassified ODNI Assessment failed to provide critical information about the extent and nature of the Russian interference and leaves significant questions unanswered. For example, while the report notes that “Russian actors” had been “targeting or compromising” democratic institutions including “state or local election boards” since “early 2014,” the report provides no further detail on these intrusions or the extent of the damage or future threats involved. The Declassified ODNI Assessment also did not identify which systems in the United States were attacked, whether voter records of Americans were obtained, the ongoing risks to U.S. political parties and other democratic institutions, or whether similar activities could impact democratic institutions in other countries.

This week the Director of National Intelligence provided a “non-responsive response” to EPIC. The intelligence agency was required to release all “non-exempt portions” of the report to EPIC on May 3, 2017. However, the agency withheld the entire document, refusing to provide even partial information that should have been released to EPIC under the Freedom of Information Act.⁹ EPIC will challenge the agency’s response as the litigation continues in federal district court in Washington, DC.

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 in the United States by criminals, overseas adversaries, and terrorists.”¹⁰ Nonetheless, questions were raised about the failure of the FBI to adequately investigate the attacks on the nation’s political institutions.¹¹ 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.”¹²

⁷ 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].

⁸ Complaint at 3, *EPIC v. ODNI*, *supra* note 5.

⁹ 5 U.S.C. 552(a)(8)(A)(ii).

¹⁰ *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).

¹¹ 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.

¹² Complaint at 7, *EPIC v. FBI*, *supra* note 5.

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.¹³ The public should be told whether the FBI pursued an investigation regarding Russian communications with a U.S. Presidential campaign. Following EPIC's appeal¹⁴ of a decision to "neither confirm nor deny" the existence of a FISA application to monitor Trump Tower¹⁵, the Justice Department took the unusual step of submitting the matter for declassification review.¹⁶ We will alert the Subcommittee about further developments in this matter.

Lastly, on April 15, 2017, EPIC filed a Freedom of Information Act lawsuit against the IRS to enable the public release of the tax records of President Donald J. Trump.¹⁷ As EPIC stated in the original FOIA request to the agency:

At no time in American history has a stronger claim been presented to the IRS for the public release of tax records to "correct misstatements of fact."¹⁸ If the Freedom of Information Act means anything, it means that the American public has the right to know whether records exist in a federal agency which reveal that the U.S. president has financial dealings with a foreign adversary.¹⁹

As a general matter, tax records are protected under federal privacy laws. However, EPIC uncovered a key provision in the Internal Revenue Code that permits the release of tax records in certain circumstances to correct misstatements of fact. The provision was enacted to ensure the "integrity and fairness [of the IRS] in administering the tax laws following the impeachment proceedings against President Richard M. Nixon."²⁰ It allows the IRS to release tax records "with respect to any specific taxpayer to the extent necessary for tax administration purposes to correct a misstatement of fact."²¹

¹³ EPIC, *EPIC Seeks Release of FISA Order for Trump Tower* (Mar. 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>).

¹⁴ EPIC, *EPIC Appeals DOJ Response to "Neither Confirm nor Deny" FISA Order on Trump Tower* (Mar. 20, 2017), <https://epic.org/2017/03/epic-appeals-doj-response-to-n.html>.

¹⁵ EPIC, *EPIC FOIA: DOJ will neither "confirm nor deny" existence of FISA Application for Trump Tower* (Mar. 18, 2017), <https://epic.org/2017/03/epic-foia-doj-will-neither-con.html>.

¹⁶ EPIC, *Following EPIC Appeal, Justice Department Submits Trump Wiretap Claims for Declassification Review* (Apr. 28, 2017), <https://epic.org/2017/04/following-epic-appeal-justice-.html>.

¹⁷ Press Release, EPIC, *EPIC v. IRS: A Freedom of Information Act Lawsuit to Obtain the Tax Returns of Donald J. Trump* (Apr. 15, 2017), <https://epic.org/foia/irs/trump-taxes/EPIC-v-IRS-Press-Release-Apr-2017.pdf>; *EPIC v. IRS*, No. 17-670 (D.D.C. filed Apr. 15, 2017).

¹⁸ 26 U.S.C. § 6103(k)(3).

¹⁹ FOIA Request from EPIC to IRS (Feb. 16, 2017), <https://epic.org/foia/irs/trump-taxes/EPIC-17-02-16-IRS-FOIA-20170216-Request.pdf>.

²⁰ *Confidentiality of Tax Return Information: Hearing Before the Comm. on Ways and Means*, 94th Cong. 22–23 (1976) (statement of Donald C. Alexander, Commissioner of Internal Revenue).

²¹ 26 U.S.C. § 6103(k)(3).

Many individuals, including the President, have published conflicting statements of fact about the contents of Donald J. Trump's tax returns and the extent of his business dealings with the Russian government. Individual taxpayers have also raised concerns about the "fairness and integrity" of the tax system and cited statements, made by the President, about his own tax returns. These are also circumstances contemplated by the Internal Revenue Code that would permit the release of taxpayer returns.

The urgency of understanding the full scope of the Russian threat to democratic elections is clear. There are upcoming federal elections in Europe. The French national election takes place this weekend. The German national election is September 24, 2017. Russian attacks on democratic institutions are expected to continue.²² The U.S. Intelligence community has reportedly shared the classified ODNI report with European governments to help limit Russian interference with their elections.²³ The public has "the right to know" the extent of Russian interference with democratic elections and the steps that are being taken to prevent future attacks.²⁴ The need to understand Russian efforts to influence democratic elections cannot be overstated.

We ask that this Statement from EPIC be entered in the hearing record. EPIC will keep the Subcommittee apprised of the documents we receive in our FOIA cases. 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

Enclosure

²² Declassified ODNI Assessment, *supra* note 7, at 5.

²³ Martin Matishak, *U.S. shares hacking intel with Europe as Russia shifts focus*, POLITICO Pro (Feb. 6, 2017).

²⁴ "A people who mean to be their own Governors must arm themselves with the power knowledge gives," James Madison. See generally EPIC, *Open Government*, https://epic.org/open_gov/.