November 14, 2012

VIA FACSIMILE (443)-479-3612
National Security Agency
ATTN: FOIA/PA Office (DJ4)
9800 Savage Road, Suite 6248
Ft. George G. Meade, MD 20755-6248

Re: Freedom of Information Act Request

To Whom it May Concern:

This letter constitutes a request under the Freedom of Information Act. This request is submitted on behalf of the Electronic Privacy Information Center (“EPIC”) to the National Security Agency (“NSA”). EPIC requests the public release of Presidential Policy Directive 20.

Background


The Washington Post reported that previous attempts at a Presidential Directive to expand the military’s cybersecurity authority had been dismissed as posing “unacceptable

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3 Obama signs secret cybersecurity directive, allowing more aggressive military role, supra n. 2.
4 Id.
risks” of “harmful unintended consequence[s].” In addition, PPD 20 may violate federal law that prohibits military deployment within the United States without congressional approval. The Washington Post reports that, following the issuance of PPD 20, the Pentagon is “expected to finalize new rules of engagement that would guide commanders when and how the military can go outside government networks to prevent a cyberattack that could cause significant destruction or causalities.”

In 2008, President Bush issued National Security President Directive 54 (“NSPD 54”), which defined the cybersecurity authority of the National Security Agency. Despite a FOIA lawsuit filed by EPIC in 2009, that Directive has remained secret. Since the issuance of NSPD 54, the NSA has been directly involved with the development of cybersecurity policy. EPIC noted that NSPD 54 is equivalent to “secret law,” the very thing the FOIA seeks to prevent.

Transparency in cybersecurity is crucial to the public’s ability to monitor the government’s national security efforts and ensure that federal agencies respect privacy rights and comply with their obligations under the Privacy Act. EPIC has previously testified to Congress on the need for privacy protections in cybersecurity efforts. EPIC has also provided extensive comments under the Administrative Procedure Act to both the Department of Homeland Security and the Department of Defense on agency cybersecurity programs. EPIC’s pursuit of NSPD 54 under the Freedom of Information Act has specifically challenged the NSA’s ability to promulgate secret cybersecurity laws.

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6 Obama signs secret cybersecurity directive, allowing more aggressive military role, supra n. 2.
Documents Requested


Request for News Media Fee Status

EPIC is a "representative of the news media" for FOIA purposes. 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 will "contribute significantly to public understanding of the operations or activities of the Department of Defense," any duplication fees should be waived. Consistent with the Department of Defense regulations, disclosure of the records requested herein "is in the public interest because it is likely to contribute significantly to public understanding of the operations or activities of the Government," and "disclosure of the information 'is not primarily in the commercial interest of [EPIC]'". This FOIA request involves information on the National Security Agency's authority to invade civilian Internet networks. Responsive documents will hold a great informative value regarding activities of the government that will have a significant public impact.

EPIC routinely and systematically disseminates information to the public. EPIC maintains several heavily visited websites that highlight breaking news concerning privacy and civil liberties. Two of EPIC's websites, EPIC.org and PRIVACY.org, consistently appear at the top of search engine rankings for searches on "privacy." EPIC also publishes a bi-weekly electronic newsletter, the EPIC Alert, which is distributed to around 20,000 readers, many who report on technology and privacy issues for major news outlets.

In addition, EPIC's FOIA documents have routinely been the subject of national news coverage. On a related matter, EPIC submitted a FOIA request to the Department of Justice ("DOJ") for documents concerning the Bush-era warrantless wiretapping program. EPIC's request forced disclosure of two legal memos that provided new details on the program, including portions of the Bush Administration's justification for

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16 32 C.F.R. § 286.28(d).
17 Id.
the program. EPIC was able to disseminate those documents to the public at large, which resulted in numerous news stories.

EPIC is a non-profit, public interest research center that was established in 1994 to focus public attention on emerging civil liberties issues and to protect privacy, the First Amendment, and constitutional values. EPIC's work is distributed freely through our website and through the bi-weekly EPIC Alert newsletter. EPIC has no clients, no customers, and no shareholders. Therefore, EPIC has no commercial interest that would be furthered by disclosing the requested records.

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."

EPIC is "primarily engaged in disseminating information."

There is a particular urgency for the public to obtain information about the NSA’s cybersecurity activities within the United States. As previously discussed, numerous bills are currently being considered by Congress to address U.S. cybersecurity policy. In order for meaningful public comment on these bills, as well as subsequent cybersecurity measures, the public must be aware of the authority that the President’s Directive establishes.

In addition, the public has a further urgency to receive information about the NSA’s authority to monitor domestic Internet networks. The NSA has an almost boundless capacity to intercept private communications. The need to establish effective oversight for government surveillance, including matters involving national security, is well-understood and a long-standing concern.

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25 See Cybersecurity Bills, supra n. 5.
27 Id. at 30.
Conclusion

As provided in the FOIA, I will anticipate a determination within ten (10) calendar days. For questions regarding this request I can be contacted at 202-483-1140, ext. 104, or FOIA@epic.org.

Respectfully Submitted,

[Signature]
Amie Stepanovich
Associate Litigation Counsel
Electronic Privacy Information Center

[Signature]
Ginger P. McCall
Director, Open Government Project
Electronic Privacy Information Center