

3. Through the exercise of my official duties, I have become familiar with this civil action and the underlying FOIA request. I make the following statements based upon my personal knowledge and information made available to me in my official capacity.

4. I submit this declaration in support of Defendants' Motion for Summary Judgment in this proceeding. The purpose of this declaration is to explain and justify, to the extent possible on the public record, the actions taken by the ODNI in response to plaintiffs' request for information under the FOIA, 5 U.S.C. § 552.

I. BACKGROUND INFORMATION ON THE OFFICE OF THE DIRECTOR OF NATIONAL INTELLIGENCE

5. Congress created the position of the Director of National Intelligence (DNI) in the Intelligence Reform and Terrorism Prevention Act of 2004, Pub. L. No. 108-458, §§ 1101(a) and 1097, 118 Stat. 3638, 3643-63, 3698-99 (2004) (IRTPA) (amending Sections 102 through 104 of Title 1 of the National Security Act of 1947). Subject to the authority, direction, and control of the President, the DNI serves as both the head of the U.S. Intelligence Community (IC) and as the principal adviser to the President and the National Security Council for intelligence matters related to the national security. 50 U.S.C. §§ 3023(b)(1), (2).

6. The responsibilities and authorities of the DNI are set forth in the National Security Act of 1947, as amended. These responsibilities include ensuring that national intelligence is provided to the President, heads of the departments and agencies of the Executive Branch, the Chairman of the Joint Chiefs of Staff and senior military commanders, the Senate and House of Representatives, and committees thereof. 50 U.S.C. § 3024(a)(1). The DNI is charged with establishing the objectives of, determining the requirements and priorities for, and managing and directing the tasking, collection, analysis, production, and dissemination of national intelligence by elements of the IC. 50 U.S.C. §§ 3024(f)(1)(A)(i) and (ii).

7. In addition, the National Security Act of 1947, as amended, provides that the DNI “shall protect intelligence sources and methods from unauthorized disclosure.” 50 U.S.C. § 3024(i)(1). Consistent with this responsibility, the DNI establishes and implements guidelines for the IC for the classification of information under applicable law, Executive Orders, or other Presidential Directives, and for access to and dissemination of intelligence. 50 U.S.C. § 3024(i)(2)(A), (B).

8. Finally, the National Security Act of 1947, as amended, created the Office of the Director of National Intelligence (ODNI). The function of the ODNI is to assist the DNI in carrying out his duties and responsibilities under the Act and other applicable provisions of law, and to carry out such other duties as may be prescribed by the President or by law.

II. THE OFFICE OF THE DIRECTOR OF NATIONAL INTELLIGENCE'S JANUARY 5, 2017 REPORT, "ASSESSING RUSSIAN ACTIVITIES AND INTENTIONS IN RECENT U.S. ELECTIONS."

9. On December 6, 2016, the President of the United States, Barack Obama (hereinafter "the President"), instructed the Director of National Intelligence, James Clapper (hereinafter "DNI Clapper"), to prepare an intelligence report addressing the motivation and scope of Russian efforts to influence the 2016 US presidential election.

10. DNI Clapper assigned the task of preparing the report to the National Intelligence Council (NIC). The NIC is a key ODNI component responsible for leading analysis across the IC to inform immediate and long-term policy deliberations. In my official capacity as DDNI/II, I oversee the activities and operations conducted by the NIC.

11. National Intelligence Officers (NIOs) working within the NIC serve as the principal subject matter experts to both the DNI and to national security decision makers on all aspects of analysis related to their regional and functional roles.

12. Production of the report was led by the National Intelligence Officer for Russia and Eurasia ("NIO/Russia") and the National Intelligence Officer for Cyber Issues ("NIO/Cyber"). The NIO/Russia is a seasoned intelligence officer with 20 years of experience within the IC and extensive academic and intelligence background in Russia – including Russian intelligence activities, capabilities, and methods. The NIO/Cyber is an intelligence officer with 15 years of experience in cyber analysis and operations within the IC. He has also served as a Classification Advisory Officer in his previous roles. Both the NIO/Russia and the NIO/Cyber are qualified, competent experts with respect to identifying information that, standing alone or working in concert with other information (including unclassified information), could jeopardize U.S. intelligence sources, methods, activities, and national security if released to the public.

13. The NIO/Russia and NIO/Cyber were supervised by the Vice Chair of the NIC, an experienced intelligence officer with 30 years of service within the IC and 14 years of experience with declassification. The Vice Chair is also a qualified, competent expert with respect to identifying information that, standing alone or working in concert with other information (including unclassified information), could jeopardize U.S. intelligence sources, methods, activities, and national security if released to the public.

14. The Vice Chair, NIO/Russia, and NIO/Cyber were supported by a team of experienced intelligence officers from the Central Intelligence Agency (CIA), the Federal Bureau of Investigation (FBI), and the National Security Agency (NSA) who assembled the report using intelligence available to the IC as of December 29, 2016.

15. The report produced by the NIC was entitled "Assessing Russian Activities and Intentions in Recent U.S. Elections" and included sensitive, national security information collected, under the control of, and provided by, the CIA, the FBI, and the NSA. The intelligence provided by the CIA, FBI, and NSA falls within the scope of one or more of the following types of information:

- a. Signal Intelligence Sources: Some of the information contained in the report consists of intelligence obtained from signal intelligence (SIGINT) collected by the NSA. The NSA produces SIGINT by collecting, processing, and analyzing foreign electromagnetic signals to obtain intelligence information necessary to U.S. national defense, national security, and conduct of foreign affairs. The SIGINT provided to the NIC by the NSA for inclusion in the report qualifies as intelligence activities, sources, or cryptology and was previously classified by NSA as either SECRET or TOP SECRET pursuant to Executive Order (EO) 13526 §§1.4(c) & (d). Release of the classified SIGINT contained in the report to the public or to foreign authorities could be reasonably expected to cause serious or exceptionally grave danger to national security.
- b. Human Intelligence (HUMINT) Sources: Some of the information contained in the report consists of intelligence gathered by clandestine human sources. These individuals are often uniquely situated to report on specific subjects and to provide critical information that cannot be otherwise obtained. The IC takes extreme, albeit reasonable and necessary, measures to ensure that human sources are not compromised because their exposure would subject them to capture, imprisonment, torture, and death. Such exposure would also impair the IC's ability to recruit similarly-situated individuals in the future. The HUMINT provided to the NIC by the CIA for inclusion in the report

qualifies as, or otherwise reveals, intelligence activities and sources with respect to Executive Order (EO) 13526 §§1.4(c) & (d) and was previously classified by CIA as either SECRET or TOP SECRET. Release of the classified HUMINT contained in the report to the public or to foreign authorities could be reasonably expected to expose human intelligence sources to serious or exceptionally grave danger and would present an equally serious or exceptionally grave danger to national security.

c. Intelligence Methods: The report also contains details that would disclose intelligence *methods*. Intelligence methods are the techniques, procedures, tradecrafts, and means by which the IC accomplishes its mission. By their very nature, intelligence methods are revealing of intelligence sources and vice versa. Accordingly, knowledge that a particular method is being employed can be used by foreign intelligence to pinpoint the availability and identity of a particular source or group of sources. Such knowledge would also allow foreign intelligence to impair or capture human assets, counter U.S. intelligence efforts, and otherwise provide entities hostile to the United States with a threatening, and possibly decisive, advantage over U.S. national interests and security. The intelligence provided to the NIC by the NSA, CIA, and the FBI for inclusion in the report qualifies as, or otherwise reveals, intelligence activities and methods with respect to Executive Order (EO) 13526 §§1.4(c) & (d) and was previously classified by NSA, CIA, or FBI as either SECRET or TOP SECRET. Release of information in the report revealing classified intelligence methods to the public or to foreign authorities could be reasonably expected to cause serious or exceptionally grave danger to national security.

d. Intelligence Activities: Intelligence *activities* are the operations that are conducted by the IC on a day-to-day basis to protect and preserve U.S. national security. Activities

rely on intelligence sources, embody intelligence methods, and reflect U.S. intelligence interests, objectives, and capabilities. Knowledge of U.S. intelligence activities provides foreign governments with information that can assist them in detecting, tracking, and exposing U.S. intelligence sources and methods as well as impairing the U.S.'s overall intelligence strategy. The intelligence provided to the NIC by the NSA, the CIA, and the FBI for inclusion in the report illustrates intelligence and/or foreign activities within the scope of Executive Order (EO) 13526 §§1.4(c) and/or (d) and was previously classified by NSA, CIA, or the FBI as either SECRET or TOP SECRET. Release of the information in the report revealing intelligence activities to the public or to foreign authorities could be reasonably expected to cause serious or exceptionally grave danger to national security.

The information falling within one or more of these four categories that was included in the text of the report was originally classified as SECRET or TOP SECRET (as determined by the providing agency) and, at present, retains this classification.

16. The report was completed on January 5, 2017 and was classified by the NIO/Cyber as TOP SECRET. This derivative classification determination reflected the fact that some of the content of the report was classified by the providing agencies as TOP SECRET. Because the report contained information classified by other intelligence agencies holding original classification authority as TOP SECRET, the report as a whole was properly classified as TOP SECRET in accordance with ODNI's classification guidelines.

17. After reviewing the report, I believe that the classified report was properly marked as TOP SECRET in accordance with EO 13526 §1.6 and that the report remains properly classified as TOP SECRET. I make this determination both as a ratification of the NIO/Cyber's

derivative classification determination (as described in paragraph 16) and as an independent derivative classification determination based on my own experience, knowledge of the contents of the report, and my understanding that the sensitive intelligence gathered, produced, and provided to ODNI by other intelligence agencies: 1) falls within the categories of information listed in §§1.4(c) & (d) of EO 13526; 2) was originally classified by the providing agencies as SECRET or TOP SECRET in accordance with EO 13526; 3) remains, as of the date of this declaration, properly classified as SECRET or TOP SECRET in accordance with EO 13526; 4) does not fall within any of the prohibitions and limitations set-forth in EO 13526 §1.7; and 5) would be, as determined by the original classification authorities, reasonably likely to result in serious or exceptionally grave danger to national security if released to the public or foreign authorities.

**III. THE OFFICE OF THE DIRECTOR OF NATIONAL INTELLIGENCE'S
JANUARY 6, 2017 DECLASSIFIED VERSION OF THE REPORT
ASSESSING RUSSIAN ACTIVITIES AND INTENTIONS DURING THE
2016 PRESIDENTIAL ELECTION**

18. When the President instructed ODNI to prepare the intelligence report assessing Russian efforts to influence the 2016 US presidential election, it was understood by DNI Clapper that the subject matter of the report was of acute interest to the American public. Accordingly, DNI Clapper determined from the onset that the IC would proactively share with the public any and all information contained in the report that could be safely released without exposing intelligence sources, methods, and activities.

19. In December 2016, the DNI directed the NIC to prepare a declassified version of the report, "Assessing Russian Activities and Intentions in Recent U.S. Elections." For the sake of clarity, I will refer hereinafter to the original, classified version of the report concerning

Russian interference with the 2016 presidential election as "the *classified* report." The declassified version of the report will be referred to hereinafter as "the *declassified* report."

20. DNI Clapper's decision to prepare the declassified report (as opposed to a redacted version of the classified report) for public release was driven primarily by three factors:

a. First, in the interests of transparency, public perception, and the integrity of the American electoral process, DNI Clapper's intent was to release as much information to the public as possible. Accordingly, choosing between the release of a separate, declassified report versus the release of a redacted version of the classified report was based solely on which type of release would convey the greatest amount of information to the public without jeopardizing intelligence sources, methods, and activities.

b. Second, the consensus within ODNI was that releasing a redacted version of the classified report would inevitably result in *less* information being made public. As already noted, the classified report was, and remains, classified as TOP SECRET due to contents that relate to highly sensitive matters concerning intelligence sources, methods, and activities – the public release of which could be reasonably expected to cause serious or exceptionally grave damage to national security. A redacted version of the classified report would, of course, require all of these areas to be blocked-out (i.e. redacted). However, to reasonably and fully protect U.S. intelligence sources, methods, and activities, significant amounts of *unclassified* information in the classified report would also have to be redacted. To an *experienced* reader (e.g. a foreign intelligence service analyst), the unclassified information, if left non-redacted, would plainly illustrate factual associations and relationships between the redacted and non-redacted portions of the report. These associations and relationships would then provide valuable, contextual

clues to foreign intelligence organizations concerning the type, subject matter, and amount of classified intelligence the U.S. currently possesses or is capable of gathering. The only cure for this foreseeable, and *likely*, possibility would be to redact significant amounts of unclassified material as well. It might even be necessary to redact *all* of the unclassified information in order to properly conceal and protect U.S. sources, methods, and activities.

c. Third, a *declassified* report would successfully decontextualize the unclassified information – i.e. non-redacted sections of the report would not be surrounded by, or filled with, conspicuously redacted portions. Since the unclassified content would have no association or relationship with redacted (classified) content, it could be safely released in-full to the American public without jeopardizing intelligence activities, sources, and methods. This would result in a greater over-all amount of information being made available to the American public.

For these reasons, DNI Clapper directed the NIC to create a declassified report for public release.

21. The NIC worked on the classified report and the declassified report simultaneously. This provided the NIC with time to carefully and thoughtfully consider, in consultation with contributing agencies, what information could be safely disseminated to the American public without harm to national security.

22. The declassified report was made public on January 6, 2017. This report contained the unclassified content of the classified report including all of the conclusions regarding Russian interference with the U.S. 2016 presidential election.

IV. PLAINTIFF'S JANUARY 9, 2017 FREEDOM OF INFORMATION REQUEST TO THE OFFICE OF THE DIRECTOR OF NATIONAL INTELLIGENCE FOR PRODUCTION OF THE CLASSIFIED JANUARY 5, 2017 REPORT ASSESSING RUSSIAN ACTIVITIES AND INTENTIONS IN THE 2016 PRESIDENTIAL ELECTION

23. On January 9, 2017, plaintiff, the Electronic Privacy Information Center (EPIC), transmitted an electronic request to ODNI pursuant to the Freedom of Information Act (FOIA) for a copy of the ODNI report, "Assessing Russian Activities and Intentions in Recent U.S. Elections." See Exhibit 1. This request was understood by ODNI to seek a copy of what has been referred to in this declaration as the *classified report*.

24. On January 17, 2017, ODNI acknowledged receipt of EPIC's request. See Exhibit 2.

25. Following receipt of the plaintiff's January 9, 2017 FOIA request and the filing of Civil Action 17-163, the NIC was tasked with re-evaluating the contents of the classified report to determine if it could be publicly released in-part (with appropriate redactions) or if the request must be denied in full to preserve U.S. national security interests.

26. The NIC subject matter experts, including the NIO/Russia, the NIO/Cyber, and the Vice Chair of the NIC, based on their experience with classification standards, their direct and comprehensive knowledge of the sensitive information contained in the classified report, and their understanding of the capabilities of foreign intelligence service operations to uncover classified information by pairing the declassified report with a partially, or even fully, redacted version of the classified report, concluded that release of a redacted version of the classified report would assist foreign intelligence operations with developing and enhancing their understanding of U.S. intelligence sources, methods, and activities. It was further concluded that release of a redacted report would be of particular assistance to Russian intelligence, which,

armed with both the declassified report and a redacted copy of the classified report, would be able to discern the volume of intelligence the U.S. currently possesses with respect to Russian attempts to influence the 2016 election. This would reveal the maturity of the U.S.'s intelligence efforts and expose information about the IC's capabilities (including sources and methods) that could reasonably be expected to cause serious or exceptionally grave danger to US national security.

27. For these reasons, the NIC concluded that the FOIA request for production of the classified report must be denied in full to preserve and protect classified U.S. intelligence sources, methods, and activities.

28. On May 2, 2017, ODNI denied EPIC's FOIA request in full. See Exhibit 3. ODNI's decision to deny the production of the classified report was based on the fact that the classified report contains:

- a. information that is currently and properly classified pursuant to EO 13526, §1.4(c) and (d); and
- b. information that is exempt from disclosure under the National Security Act of 1947, 50 U.S.C. §3024(i)(1), because it pertains to intelligence sources and methods.

29. Plaintiff filed the instant case, Civil Action 17-163, on February 10, 2017 to compel production of the classified report.

V. ODNI's RESPONSE TO CIVIL ACTION 17-163

30. Based on my 27 years of experience as an intelligence officer, and in my capacity as an original classification authority with responsibilities delegated to me by the Director of National Intelligence pursuant to Executive Order 13526, I agree with the NIC that a heavily, or even *fully*, redacted version of the classified report can not be publicly released without

jeopardizing national security information properly classified as SECRET or TOP SECRET under EO 13526. Accordingly, I believe that full denial of EPIC's January 9, 2017 request is reasonable and necessary under FOIA's national security exception, 5 U.S.C. §552(b)(1), as well as under FOIA exemption 3 (5 U.S.C. §552(b)(3)), which recognizes the DNI's statutory obligation under the National Security Act of 1947, as amended, to protect intelligence sources and methods from unauthorized disclosure. See 50 USC §3024(i)(1). In reaching this conclusion, I note that the classified report remains currently and properly classified as TOP SECRET as of the date of this declaration. This is a derivative-classification determination which I base on my review of the classified and unclassified reports and my reliance on the original classification determinations made by other intelligence agencies that provided the SECRET and TOP SECRET contents of the classified report.

31. Within the classified report, SECRET and TOP SECRET information is interwoven with unclassified information throughout the document. Even if the SECRET and TOP SECRET information were to be blocked-out (i.e. redacted), a qualified reviewer could still use the unclassified, non-redacted portions, and the context they provide, to identify the nature and substance of the redacted portions, including, among other things, the relative strengths, availabilities, and maturity of U.S. HUMINT and SIGINT capabilities. This could be readily achieved simply by pairing a redacted version of the classified report with the contents of the declassified report. Through this pairing, the subject matters of the redacted texts could be identified, and from there, the volume of the redactions would reveal the relative strength and maturity of U.S. intelligence sources, methods, and activities. Even if the actual word-for-word content of the redacted portions could not be fully identified by foreign intelligence organizations, this would still constitute a significant and detrimental exposure of U.S.

intelligence activities, sources, and methods. Also revealed would be the comparative weight of the U.S.'s HUMINT and SIGINT capabilities – i.e. it is likely that a skilled reviewer could determine whether the U.S. currently has human or signal intelligence sources in specific areas. Russia would be in a better position to allocate its counter-intelligence resources to address critical areas where the U.S. intelligence capabilities are revealed to be the strongest (as evidenced by the amount and volume of redacted text) and could also tailor its countermeasures to account for the type of intelligence (e.g. HUMINT or SIGINT) the U.S. has been able to collect.

32. The NIC's conclusion that release of the classified report, though heavily, or even fully, redacted, would not only be very helpful to Russian intelligence in the midst of their ongoing efforts to interfere with the U.S. electoral process, but would also jeopardize the safety and effectiveness of the intelligence community's critical, valuable, and in some cases, *vulnerable*, sources, methods, and activities, is, based on my years of experience, reasonable. Because the intelligence that Russia could gain from acquiring even a redacted copy of the classified report can be reasonably expected to impair or expose U.S. intelligence sources, methods, and activities, or otherwise assist Russia with future attempts at interfering with the U.S. electoral process, release of the classified report must be regarded as a serious or exceptionally grave danger to U.S. national security.

33. In addition, the *specific* information that EPIC hopes to uncover through release of the classified report would be extremely detrimental to U.S. national security and is *precisely* the type of information contemplated by, and protected under, EO 13526 §1.4(c) and (d). As plainly described in EPIC's Amended Complaint (A.C.) in paragraphs 10 through 13, EPIC's concerns focus on the extent and nature of Russian interference with the 2016 U.S. election (A.C. at ¶10);

details of the U.S.'s understanding of Russian intrusions and the future threats they pose (A.C. at ¶11); the identities of U.S. systems that were compromised and what voter records were obtained (A.C. at ¶12); and what personal information the Russians may have obtained about members of the American public (A.C. at ¶13). Publicly revealing any information that would assist foreign intelligence with understanding the U.S.'s knowledge, understanding, and basic situational awareness in any of these areas would shed light on U.S. HUMINT and SIGINT capabilities as well as our specific knowledge of Russian actions. Such public revelation could, and in all likelihood, *would*, result in the compromise of existing U.S. intelligence sources and methods and would pose immediate and grave danger to U.S. national security. It would also give the Russians the opportunity to change their tactics in order to avoid U.S. detection while continuing to pursue their geopolitical ambitions. As EPIC correctly describes in its amended complaint, the American public is most certainly concerned about, and interested in, all of these activities. However, release of the specific information EPIC seeks could prove fatal to U.S. human intelligence sources and would roll-back U.S. HUMINT, SIGINT, and other intelligence activities designed to protect U.S. national security – including the protection of our electoral process.

CONCLUSION

34. For all of the foregoing reasons, after reviewing the classified and declassified reports, and based on my knowledge and experience with intelligence operations, classification, and established methods of gleaning useful intelligence information from seemingly benign, innocuous records (or portions thereof), it is my reasoned opinion that release of a properly redacted version of the classified report, while providing the American public with no information not already available in the declassified report, would certainly provide foreign

intelligence services with valuable information that could be used, alone or in conjunction with other information, to jeopardize the physical safety of U.S. human intelligence sources, uncover U.S. intelligence methods, and identify, understand, and impair critical U.S. intelligence activities – including our continued attempts to prevent foreign actors from interfering with our electoral process. This would reasonably cause serious or exceptionally grave damage to U.S. intelligence efforts and U.S. national security. Accordingly, the FOIA request for a copy of the January 5, 2017 classified report must continue to be denied in full in the interests of national security and consistent with ODNI's statutory obligation to protect classified sources and methods pursuant to 50 USC 3024(i)(1).

35. I certify under penalty of perjury that the foregoing is true and correct to the best of my knowledge and belief.

Executed this 23 day of June, 2017.



Edward Gistaro
Deputy DNI for Intelligence Integration

DF-2017-00129

JAN 10 2017

epic.org | ELECTRONIC PRIVACY INFORMATION CENTER

BY EMAIL

Email: dni-foia@dni.gov

January 9, 2017

Office of the Director of National Intelligence
Attn: FOI/PA Request
Jennifer L. Hudson
Director, Information Management Division
Office of the Director of National Intelligence
Washington, D.C. 20511

Dear Director Jennifer L. Hudson:

This letter is 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 the public release of the unredacted ODNI 2017 report "Assessing Russian Activities and Intentions in Recent US Elections." (Jan. 6, 2017). The full report was directly referenced in the redacted version and is necessarily in possession of the agency.¹

The redacted report released to the public makes clear that Russia interfered in the 2016 election to "undermine public faith in the US democratic process."² However, the redacted report fails to provide critical technical evidence. EPIC now seeks the full, unredacted version of the 2017 ODNI report.

¹ OFFICE OF THE DIR. OF NAT'L INTELLIGENCE, *ASSESSING RUSSIAN ACTIVITIES AND INTENTIONS IN RECENT US ELECTIONS* (2016), https://www.dni.gov/files/documents/ICA_2017_01.pdf (stating in headers "This report is a declassified version of a highly classified assessment;... this version does not include the full supporting information on key elements of the influence campaign.").

² *Id.* at ii.

Request for Expedited Processing

EPIC is entitled to expedited processing under the FOIA.³ Specifically, expedited processing is justified under 32 C.F.R. § 1700.12(c)(2) because this request involves an “urgency to inform the public concerning an actual or alleged Federal Government activity.. made by a person primarily engaged in disseminating information.”⁴

First, there is an “urgency to inform the public concerning an actual or alleged Federal Government activity.”⁵ The Federal Government activity at issue is the Intelligence Community’s assessment of Russian interference in the 2016 U.S. election. The IC’s assessment was called into question by the incoming administration, although there is ample evidence to support the conclusions from other sources.⁶

Moreover, EPIC has a pending FOIA request currently before the FBI that seeks to determine the Bureau’s response to the Russian cyber threat.⁷ That activity, which may be addressed in report sought, independently satisfies the second requirement for expedited processing under the ODNI procedures set out in the CFR.⁸

The Senate Armed Services Committee recently held a hearing on “Foreign Cyber Threats to the United States” that addressed the contents of

³ 5 U.S.C. § 552(a)(6)(E)(v)(II).

⁴ 32 C.F.R. § 1700.12(c)(2).

⁵ *Id.*

⁶ Karoun Demirjian & Greg Miller, *Trump’s criticism of intelligence community dividing Hill GOP*, WASHINGTON POST (Jan. 4, 2016),

https://www.washingtonpost.com/politics/trumps-criticism-of-intelligence-on-russia-is-dividing-hill-gop/2017/01/04/1ffc1a04-d2a1-11e6-a783-cd3fa950f2fd_story.html?utm_term=.00c8614fe71a; Dmitri Alperovich, *Bears in the*

Midst: Intrusion into the Democratic National Committee,

CROWDSTRIKE (JUNE 15, 2016), <https://www.crowdstrike.com/blog/bears-midst-intrusion-democratic-national-committee/>.

⁷ Letter from EPIC to FOIA officer, FBI (Dec. 22, 2016) (FOIA request regarding FBI investigation of Russian interference in U.S. election).

⁸ Eric Lipton, David E. Sanger, and Scott Shane, *The Perfect Weapon: How Russian Cyberpower Invaded the U.S.*, NY Times (Dec. 13, 2016),

<http://www.nytimes.com/2016/12/13/us/politics/russia-hack-election-dnc.html>

(describing, in part, FBI contact with DNC concerning Russian hacking). *See generally id.*

this report.⁹ Future hearings in Congress are scheduled, and legislation is anticipated.¹⁰

Therefore, the full report is urgently needed to resolve any outstanding questions about the accuracy of IC assessments and the response of the FBI, and inform the public debate over imminent Congressional action.

Second, EPIC is an organization “primarily engaged in disseminating information.”¹¹ As the Court explained in *EPIC v. Dep’t of Def.*, “EPIC satisfies the definition of ‘representative of the news media’” entitling it to preferred fee status under FOIA.¹²

In submitting this request for expedited processing, I certify that this explanation is true and correct to the best of my knowledge and belief.¹³

Request for “News Media” Fee Status and Fee Waiver

EPIC is a “representative of the news media” for fee classification purposes.¹⁴ Based on EPIC’s status as a “news media” requester, EPIC is entitled to receive the requested record with only duplication fees assessed.¹⁵

In addition, because EPIC’s request satisfies each of the two alternative standards in 32 C.F.R. § 1700.6(b) for granting a fee waiver, any duplication fees should also be waived.¹⁶

⁹ *Foreign Cyber Threats to the United States*, UNITED STATES COMMITTEE ON ARMED SERVICES, <http://www.armed-services.senate.gov/hearings/17-01-05-foreign-cyber-threats-to-the-united-states> (notice of hearing Jan. 5, 2017).

¹⁰ *Hearings*, U.S. SELECT COMMITTEE ON INTELLIGENCE, <http://www.intelligence.senate.gov/hearings> (listing “Open Hearing: Russian Intelligence Activities”); *Nomination Hearing*, UNITED STATES SENATE COMMITTEE ON FOREIGN RELATIONS, <http://www.foreign.senate.gov/hearings/nominations-hearing-011117p> (notice of nomination hearing Jan. 11, 2017 for Mr. Rex Tillerson); Jordain Carney, *Lawmakers preparing Russia sanctions bill*, THE HILL (Jan. 6, 2017), <http://thehill.com/blogs/floor-action/senate/313102-senators-prepping-new-russia-sanctions-for-next-week>.

¹¹ § 1700.12(c)(2).

¹² *EPIC v. Dep’t of Def.*, 241 F. Supp. 2d 5, 15 (D.D.C. 2003).

¹³ § 1700.12(b).

¹⁴ 241 F. Supp. 2d 5 at 15.

¹⁵ § 1700.6(i)(2); 5 U.S.C. § 552(a)(4)(A)(ii)(II).

¹⁶ § 1700.6(b); § 552(a)(4)(A)(iii).

EPIC satisfies §1700.6(b)(1) because “the interest of the United States Government would be served.”¹⁷ A week into a new Congress’s tenure, legislation to step up sanctions against Russia is already under way.¹⁸ The U.S. government has an interest in a full and accurate public understanding of the Russian attempts to influence the 2016 election in order to develop the appropriate U.S. response to Russia. In addition, given criticism of the IC from the incoming administration, the fullest understanding of the report’s foundation is vital to securing U.S. confidence in the IC and its assessments.¹⁹

In the alternative, EPIC also satisfies § 1700.6(b)(2) because it is “in the public interest to provide responsive records because the disclosure is likely to contribute *significantly* to the public understanding of the operations or activities of the United States Government and is not primarily in the commercial interest of the requester.”²⁰

First, disclosure of the full report “is in the public interest... because the disclosure is likely to contribute *significantly* to the public understanding of the operations or activities of the United States Government.”²¹ Because this request pertains to a joint report of the IC published by the ODNI regarding their assessments of Russian activities, it speaks to “operations or activities of the Federal government.”²² Disclosure of requested record will “contribute significantly to public understanding” of those operations because it will clarify the basis on which the IC formed its conclusions.²³ The report itself noted, it did not include “[did] not include the full supporting information,” even for the “key elements” of the interference.²⁴ As just stated, this information is required to inform the U.S. response to Russia and the public’s assessment of the IC.

¹⁷ § 1700.6(b)(1).

¹⁸ Carney, *supra* note 10.

¹⁹ Karoun Demirjian & Greg Miller, *Trump’s criticism of intelligence community dividing Hill GOP*, WASHINGTON POST (Jan. 4, 2016), https://www.washingtonpost.com/politics/trumps-criticism-of-intelligence-on-russia-is-dividing-hill-gop/2017/01/04/1ffc1a04-d2a1-11e6-a783-cd3fa950f2fd_story.html?utm_term=.00c8614fe71a.

²⁰ § 1700.6(b)(2).

²¹ *Id.*

²² *Id.*

²³ *Id.*

²⁴ *See generally* OFFICE OF THE DIR. OF NAT’L INTELLIGENCE, *supra* note 1.

Second, the request “is not primarily in the commercial interest of the requester.”²⁵ EPIC has no commercial interest in disclosure of the requested records.²⁶ EPIC is a registered non-profit organization committed to privacy, open government, and civil liberties.²⁷

For these reasons, a fee waiver should be granted.

Conclusion

Thank you for your consideration of this request. As provided in 32 C.F.R. § 1700.12(b), I will anticipate your determination on our request within ten calendar days.

For questions regarding this request I can be contacted at 202-483-1140 or FOIA@epic.org.

Respectfully Submitted,

/s/ Eleni Kyriakides

Eleni Kyriakides
EPIC FOIA Fellow

1718 Connecticut Ave, N.W.
Suite 200
Washington, DC 20009
202.483.1140
FOIA@epic.org

²⁵ § 1700.6(b)(2).

²⁶ *Id.*

²⁷ *About EPIC*, EPIC.ORG, <https://epic.org/epic/about.html>.

OFFICE OF THE DIRECTOR OF NATIONAL INTELLIGENCE
WASHINGTON, DC 20511

JAN 17 2017

Eleni Kyriakides
EPIC FOIA Fellow
1718 Connecticut Ave. N.W.
Suite 200
Washington, DC 20009

Reference: ODNI Case DF-2017-00129

Dear Eleni Kyriakides:

This acknowledges receipt of your email dated 9 January 2017 (Enclosure), received in the Information Management Division of the Office of the Director of National Intelligence (ODNI) on 10 January 2017. Pursuant to the Freedom of Information Act (FOIA), 5 U.S.C. § 552, as amended, you requested the public release of the unredacted ODNI 2017 report "Assessing Russian Activities and Intentions in Recent US Elections," Jan. 6, 2017.

We will initiate searches and contact you as soon as possible if additional information or clarification is needed to process your request. **All fees associated with the processing of this request have been waived.**

With respect to your request for expedited processing, please be advised that ODNI handles all requests in the order we received them on a "first-in, first-out" basis. We make exceptions to this rule only when a requester establishes a compelling need under the standards in our regulations. A "compelling need" exists: 1) when the matter involves an imminent threat to the life or physical safety of an individual, or 2) when a person primarily engaged in Disseminating information makes the request and the information relevant to a subject of Public urgency concerning an actual or alleged Federal government activity. Your request does not demonstrate a "compelling need" under these criteria and, therefore, we deny your request for expedited processing.

We may be unable to provide a response within the 20 working days stipulated by the FOIA. If we have not responded to you by the 20th working day, you have the right to consider our inability to meet the 20 day requirement for a response as a denial, and may appeal to the ODNI, Information Management Division, Washington, DC 20511 within 90 days of that date. **It would seem more reasonable, however, to allow us sufficient time to continue processing your request and respond as soon as we can.** You will have the right to appeal any denial of records/information at that time.

If you have any questions, please feel free to email our Requester Service Center at DNI-FOIA@dni.gov or call us at (301) 243-1499. You can also contact ODNI's FOIA Liaison at DNI-FOIA-Liaison@dni.gov.

Sincerely,



Sally A. Nicholson
Chief, FOIA Branch
Information Management Division

Enclosure

**THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA**

_____)	
ELECTRONIC PRIVACY)	
INFORMATION CENTER,)	
)	
Plaintiff,)	
)	
v.)	
)	Case No. 17-cv-0163 RC
OFFICE OF THE DIRECTOR)	
OF NATIONAL INTELLIGENCE)	
Washington, D.C. 20511)	
)	
Defendant.)	
_____)	

DECLARATION OF EDWARD GISTARO

EXHIBIT 3

OFFICE OF THE DIRECTOR OF NATIONAL INTELLIGENCE
WASHINGTON, DC 20511

MAY 02 2017

Eleni Kyriakides
EPIC FOIA Fellow
1718 Connecticut Ave., N.W.
Suite 200
Washington, DC 20009

Reference: ODNI Case DF-2017-00129

Dear Eleni Kyriakides,

This responds to your request dated 9 January 2017, received in the Information Management Division of the Office of the Director of National Intelligence on 10 January 2017. Pursuant to the FOIA, 5 U.S.C. § 552, as amended, you requested the unredacted ODNI 2017 report "Assessing Russian Activities and Intentions in Recent US Elections".

Your request was processed in accordance with the FOIA, 5 U.S.C. § 552, as amended. A search of our records and databases located the document responsive to your request. After thorough review, we have determined that the document must be denied in full pursuant to the following FOIA exemptions:

- (b)(1), which applies to information that is currently and properly classified pursuant to Executive Order 13526, Section 1.4 (c), (d) and,
- (b)(3) - which applies to information exempt from disclosure by statute. The relevant statute is the National Security Act of 1947, as amended, 50 U.S.C. § 3024(i)(1), which protects information pertaining to intelligence sources and methods

If you have any questions, your attorney may contact Trial attorney Jennie Kneedler at Jennie.L.Kneedler@usdoj.gov or (202) 305-8662. Please refer to the reference number shown above and the civil action number 17-cv-163 on all correspondence about this case.

Sincerely,



Sally A. Nicholson
Chief, FOIA Branch
Information Management Division



National Security Archive,
Suite 701, Gelman Library, The George Washington University,
2130 H Street, NW, Washington, D.C., 20037,
Phone: 202/994-7000, Fax: 202/994-7005, nsarchiv@gwu.edu