



“Holding Government Accountable: The Basics of the FOIA”

Marc Rotenberg, EPIC



Class 3 - February 16, 2017

Tonight

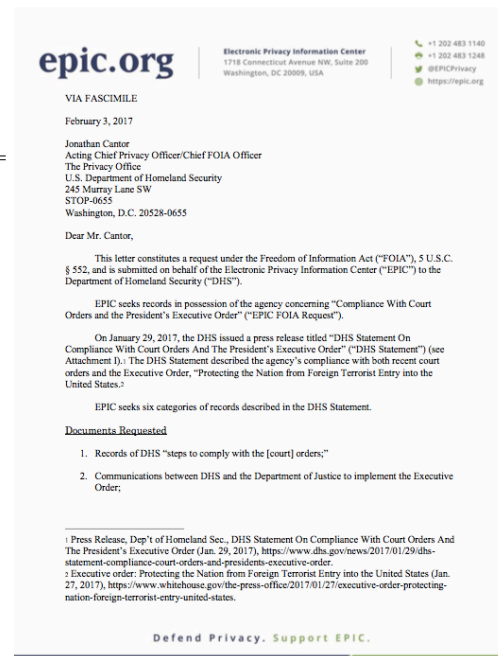
- ✦ The FOIA Statute: Key Terms, The Nine Exemptions, data about requests
- ✦ Also, news in EPIC's FOIA Request for documents about DHS Executive Order
- ✦ And a new FOIA request to the IRS about tax records

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Response from DHS

- ✦ We will look tonight at the EPIC FOIA request to DHS regarding the Immigration Executive Order
- ✦ The EPIC FOIA request to DHS is available online at: <https://epic.org/foia/EPIC-17-02-03-DHS-FOIA-20170203-Request.pdf>

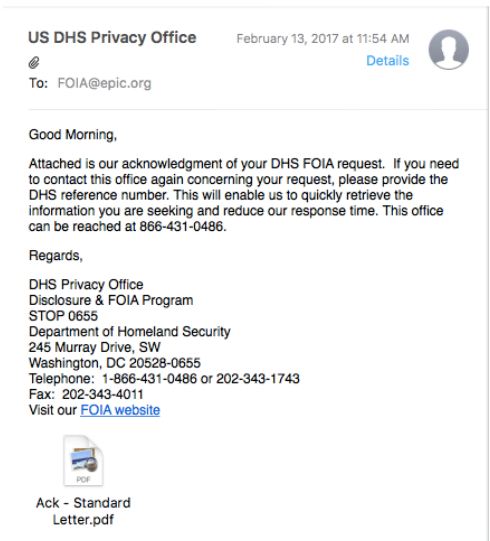
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Response from DHS

- ✦ From DHS FOIA Office
- ✦ Contact information
- ✦ Response date - Feb. 13
- ✦ Request date - Feb. 3
- ✦ Note language in EPIC request - we anticipate determination within ten calendar day

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Conclusion

Thank you for your consideration of this request. As provided in 5 U.S.C. § 552(a)(6)(E)(ii)(D) and 6 C.F.R. § 5.5(e)(4), 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 x111 or FOIA@epic.org.

Agency Response



February 13, 2017

SENT VIA E-MAIL TO: FOIA@epic.org

Ginger McCall
Director
Electronic Privacy Information Center
1718 Connecticut Avenue NW, Suite 200
Washington, DC 20009

Re: 2017-HQFO-00324

Dear Ms. McCall:

This letter acknowledges receipt of your February 3, 2017, Freedom of Information Act (FOIA) request to the Department of Homeland Security (DHS), for seeking the following records in possession of DHS concerning "Compliance With Court Orders and the President's Executive Order": 1. Records of DHS "steps to comply with the [court] orders;" 2. Communications between DHS and the Department of Justice to implement the Executive Order; 3. Communications between DHS and the Department of State to implement the Executive Order; 4. Memos and legal analyses of DHS action "ensuring that all individuals affected by the executive orders, including those affected by the court orders, are being provided all rights afforded under the law;" 5. Communications between DHS and "airline partners to prevent travelers who would not be granted entry under the executive orders from boarding international flights to the U.S.;" and 6. Records discussing the origin, development, meaning, application, or implementation of the phrase "significant derogatory information indicating a serious threat to public safety and welfare". This office received your request on February 6, 2017.

As it relates to your request for expedited processing and fee waiver, your request is granted.

Due to the increasing number of FOIA requests received by this office, we may encounter some delay in processing your request. Consistent with 6 C.F.R. § 5.5(a) of the DHS FOIA regulations, the Department processes FOIA requests according to their order of receipt. Although DHS' goal is to respond within 20 business days of receipt of your request, FOIA does permit a 10-day extension of this time period in certain circumstances. As your request seeks documents that will require a thorough and wide-ranging search, DHS will invoke a 10-day extension for your request pursuant to 5 U.S.C. § 552(a)(6)(B). If you would like to narrow the scope of your request, please contact our office. We will make every effort to comply with your request in a timely manner.

We have queried the appropriate component(s) of DHS for responsive records. If any responsive records are located, they will be reviewed for determination of releasability. Please be assured that

- ❖ (EPIC contact information not correct)
 - ❖ Request received Feb. 6, 2017
 - ❖ Request for expedited processing -GRANTED
 - ❖ Request for fee waiver - GRANTED
 - ❖ 20 days + 10 days
 - ❖ Next key date - March 8, 2017
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Exemptions - Examples

- ❖ Agencies have the right to assert exemptions
 - ❖ But requesters have the right to challenge exemptions
 - ❖ You can challenge exemptions in administrative appeals
 - ❖ You can also challenge exemptions in court
 - ❖ Most FOIA disputes concern the assertion of exemptions
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Entities that Could Receive Information From Social Media Monitoring

Distribution List Name:	Members:
MMAC IOI Distro	(b) (5) @hq.dhs.gov
	(b) (5) @dhs.gov
	(b) (5) @associates.hq.dhs.gov
	(b) (5) @hq.dhs.gov
	(b) (5) @HQ.DHS.SOV
	(b) (5) @hq.dhs.gov
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In response to an EPIC Freedom of Information Act request, the Department of Homeland Security disclosed a single heavily redacted three-page document listing public and private entities to which DHS could disclose information about social media users. The disclosed document contains a list of 230 e-mail addresses. 190 were redacted under a claim of FOIA exemption b(6), a "clearly unwarranted invasion of personal privacy."

The Nine Exemptions

- ❖ (b)(1) national security
- ❖ (b)(2) internal agency rules
- ❖ (b)(3) exempted by statute
- ❖ (b)(4) trade secret
- ❖ (b)(5) inter/intra communication
- ❖ (b)(6) personal privacy
- ❖ (b)(7)(A)-(F) law enforcement
- ❖ (b)(8) financial institutions
- ❖ (b)(9) oil wells

In the near future, [redacted] (b)(5)

stored Information Applications

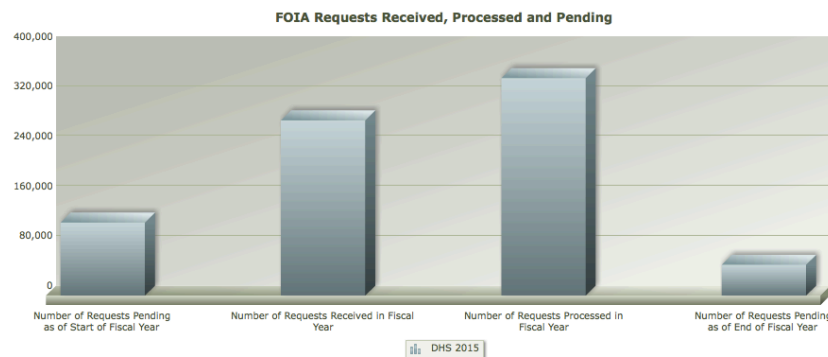
o Real-time access to and decryption of stored electronic information secured by hardware-based encryption could be performed utilizing the "clipper" technique. [redacted] (b)(5)

o Technical solutions, such as they are, will only work if they are incorporated into all encryption products. To ensure that this occurs, legislation mandating the use of Government-approved encryption products or adherence to Government encryption criteria is required. [redacted] (b)(5)

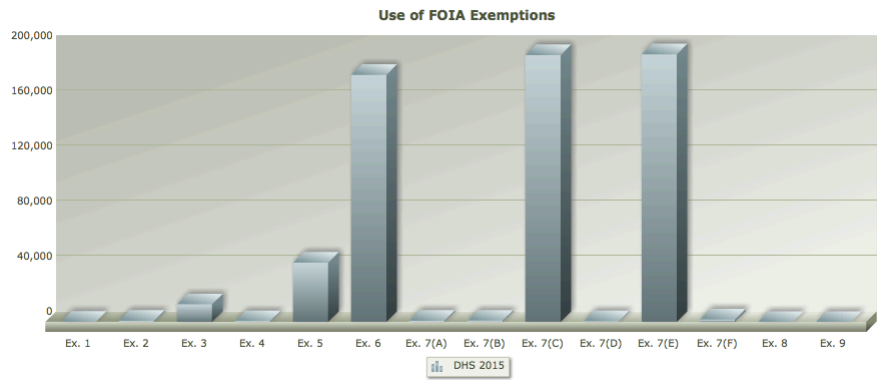
The attached chart provides a graphic representation of the information and summary provided above.

Obtained by the Electronic Privacy Information Center under the Freedom of Information Act

DHS FOIA Requests (2015)

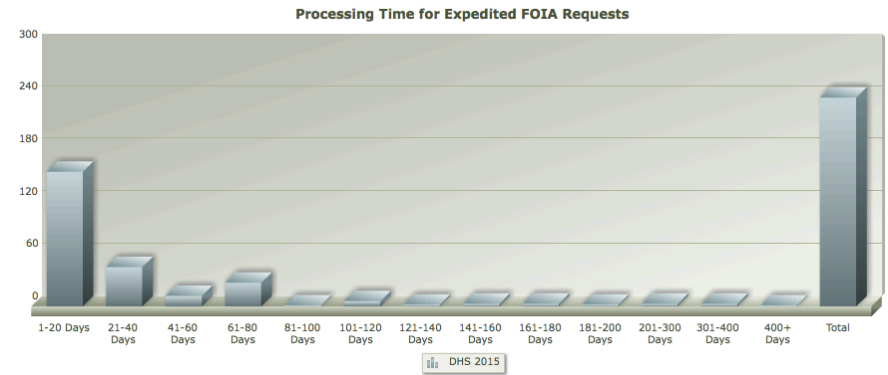


DHS FOIA Exemptions (2015)



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DHS FOIA Processing Time -Expedited (2015)



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New FOIA Request

- * The President's Tax Returns
- * Difficult request
- * Why? (b)(3) exemption
- * Still worth pursuing
- * Recall purpose of FOIA
- * What about ethics of request for private information?

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VIA FASIMILE

February 16, 2017

IRS FOIA Request
Stop 93A
Post Office Box 621506
Atlanta GA 30362-3096
Fax: 877-891-6035

Dear FOIA Officer,

Electronic Privacy Information Center
1718 Connecticut Avenue NW, Suite 200
Washington, DC 20009, USA

+1 202 483 1140
+1 202 483 1248
@EPICPrivacy
https://epic.org

¹ Press Release, Sen. Richard Burr, Chairman of the Senate Select Comm. on Intelligence, and Sen. Mark Warner, Vice Chairman, Joint Statement on Comm. Inquiry into Russian Intelligence Activities (Jan. 13, 2017), <https://www.burr.senate.gov/press/releases/joint-statement-on-committee-inquiry-into-russian-intelligence-activities>.

² Letter of Resignation, Michael Flynn, Former Nat'l Sec. Advisor (Feb. 13, 2017), <https://assets.documentcloud.org/documents/5461323-Michael-Flynn-Resignation-Letter.pdf>.

³ Gary Langer, *Public Splits on Trump's Ethics Compliance; Three-Quarters Want Tax Returns Released (POLL)*, ABC News (Jan. 16, 2017), <http://abcnews.go.com/Politics/public-splits-trumps-ethics-compliance-quarters-tax-returns/story?id=44811545>.

⁴ *Id.*

⁵ *Id.*

⁶ *Id.*

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") to the Internal Revenue Service ("IRS").

EPIC seeks all of Donald J. Trump's individual income tax returns for tax years 2010 forward, and any other indications of financial relations with the Russian government or Russian businesses.

Allegations of the President's and his associates' ties to Russia are currently the subject of Congressional investigation and widespread public interest.¹ Weeks into his presidency, undisclosed communications with Russia led to the resignation of National Security Advisor Flynn.² A recent poll by ABCNews shows broad public support for the release of the President's tax returns.³ According to ABC, three-quarters of Americans said he should release his tax returns.⁴ In contrast, during the election season in May "only 64 percent said he should release the returns," and, "in September, 63 percent said he was not justified in withholding them," reported ABC.⁵ The news organization also found "[t]he one key support group for Trump, noncollege-educated white men, 58 percent say he should release the tax returns," and "69 percent in the red states -- those Trump won -- say he should release these records."⁶

Defend Privacy. Support EPIC.