



February 23, 2016

VIA FACSIMILE AND EMAIL

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**RE: Freedom of Information Act Request**

Dear Ms. Day:

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 Office of the Attorney General.

EPIC seeks the documents related to Department of Justice Attorney General Loretta Lynch’s meeting on January 8, 2016 with top executives from tech firms to discuss countering terrorism online.

Background

On January 8, 2016 “senior officials from the White House and across the President’s national security team [met] in Silicon Valley with representatives from a number of leading technology companies . . . .”<sup>1</sup> A number of media outlets reported that government officials in attendance at this meeting included White House Chief of Staff Denis McDonough, Chief Technology Officer Megan Smith, presidential

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<sup>1</sup> Press Release, The White House Office of the Press Secretary, Statement by NSC Spokesperson Ned Price on Updates to U.S. Government Efforts to Counter Violent Extremism (Jan. 8, 2016), available at <https://www.whitehouse.gov/the-press-office/2016/01/08/statement-nsc-spokesperson-ned-price-updates-us-government-efforts>.

counterterrorism advisor Lisa Monaco, Attorney General Loretta Lynch, FBI Director James Comey, and National Security Agency Director Mike Rogers.<sup>2</sup>

According to the White House, the focus of the meeting was to enlist Silicon Valley's major technology companies to assist in the fight against terrorism and help counter violent extremism online.<sup>3</sup> Specific topics included making it harder for terrorists to utilize the internet for their efforts, boosting content that would undercut ISIL's message, using technology to disrupt paths to online radicalization, and making it easier for law enforcement and the intelligence community to identify terrorist operatives.<sup>4</sup>

Reporting on the briefing suggest that the government is interested in using algorithms to identify terrorists and to detect and measure radicalization via social media.<sup>5</sup> Monitoring social media and using algorithms to make important decisions about people raise privacy and constitutional issues. It's imperative that there is transparency surrounding any new government initiatives that involve monitoring social media, using secret algorithms to judge who is a threat, enlisting companies to censor content, or promoting government sanctioned messages.

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<sup>2</sup> See Gardiner Harris and Cecilia Kang, *Obama Shifts Online Strategy on ISIS*, NYT (Jan. 8, 2016), <http://www.nytimes.com/2016/01/09/world/middleeast/white-house-officials-to-meet-with-tech-leaders-on-thwarting-terrorists.html>; Greg Miller and Karen DeYoung, *Obama Administration Plans Shake-up in Propaganda War Against ISIS*, Washington Post (Jan. 8, 2016), [https://www.washingtonpost.com/world/national-security/obama-administration-plans-shake-up-in-propaganda-war-against-the-islamic-state/2016/01/08/d482255c-b585-11e5-a842-0feb51d1d124\\_story.html](https://www.washingtonpost.com/world/national-security/obama-administration-plans-shake-up-in-propaganda-war-against-the-islamic-state/2016/01/08/d482255c-b585-11e5-a842-0feb51d1d124_story.html); Tony Romm, *White House Retools Anti-Terror Messaging*, Politico (Jan. 8, 2016), <http://www.politico.com/story/2016/01/white-house-retools-anti-terror-messaging-217518>.

<sup>3</sup> Press Release, The White House Office of the Press Secretary, Statement by NSC Spokesperson Ned Price on Updates to U.S. Government Efforts to Counter Violent Extremism (Jan. 8, 2016), available at <https://www.whitehouse.gov/the-press-office/2016/01/08/statement-nsc-spokesperson-ned-price-updates-us-government-efforts>.

<sup>4</sup> White House Briefing Document for Jan. 12, Counterterrorism Summit With Tech Leaders, <https://theintercept.com/document/2016/01/20/white-house-briefing-document-for-jan-12-counterterrorism-summit-with-tech-leaders/>.

<sup>5</sup> See, e.g., Jenna McLaughlin, *The White House Asked Social Media Companies to Look for Terrorists. Here's Why They'd #Fail*, The Intercept (Jan. 20, 2016), <https://theintercept.com/2016/01/20/the-white-house-asked-social-media-companies-to-look-for-terrorists-heres-why-theyd-fail/>; Jacob Kastrenakes, *Tim Cook and Other Tech Executives Meeting with White House to Discuss Terrorist Use of Social Media*, The Verge (Jan. 7, 2016), <http://www.theverge.com/2016/1/7/10734356/tech-execs-white-house-meeting-online-terrorism-recruitment-prevention>.

## Documents Requested

EPIC hereby request the following documents:

1. All records, including but not limited to final memos and talking points prepared for the Jan. 8, 2016 meeting between White House Officials and tech company executives.
2. All records, including but not limited to meeting notes, presentations, slides, and memoranda distributed at the January 8, 2016 meeting between White House Officials and tech company executives.

## Request for “News Media” Fee Status

EPIC is a “representative of the news media” for fee classification purposes.<sup>6</sup> Based on EPIC’s status as a “news media” requester, EPIC is entitled to receive the requested records with only duplication fees assessed.<sup>7</sup>

Consistent with DOJ regulations, any duplication fees should be waived because (1) disclosure of the documents 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 (2) “[d]isclosure of the information is not primarily in the commercial interest” of EPIC.<sup>8</sup>

The first fee waiver requirement is met because (i) the subject of the request concerns the “operations or activities of the Federal Government”; (ii) disclosure is “likely to contribute” to an understanding of government operations or activities and the information is not already in the public domain; (iii) the disclosure will “contribute to the understanding of a reasonably broad audience of persons interested in the subject,” and EPIC has the “expertise in the subject area” and the “ability and intention to effectively convey information to the public” (As the agency notes, “[i]t shall be presumed that a representative of the news media will satisfy this consideration.”); and, (iv) the public’s understanding will “be enhanced by the disclosure to a significant extent.”<sup>9</sup> This FOIA request involves the government’s efforts to enlist tech companies in its effort to combat terrorism—efforts that have privacy and Constitutional implications. Responsive documents will hold a great informative value regarding activities of the government that will have a significant public impact.

Further, EPIC routinely and systematically disseminates information to the public. EPIC maintains several heavily visited websites that highlight breaking news implicating privacy and civil liberties issues. Two of EPIC’s websites, EPIC.org and PRIVACY.org, consistently appear at the top of search engine rankings for searches related to “privacy.” EPIC also publishes a bi-weekly electronic newsletter, the EPIC Alert, which is

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<sup>6</sup> *EPIC v. Department of Defense*, 241 F.Supp.2d 5 (D.D.C. 2003).

<sup>7</sup> *See* 28 C.F.R. § 16.10(k) (2016).

<sup>8</sup> *Id.* at (k)(1)(i)-(ii).

<sup>9</sup> *See Id.* at (k)(2)(i)-(iv).

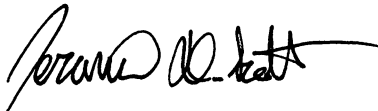
distributed to around 20,000 readers, many who report on technology and privacy issues for major news outlets.<sup>10</sup>

The second fee waiver requirement is also satisfied. EPIC is a non-profit, public interest research center that was established in 1994 to direct public attention to emerging civil liberties issues and to protect privacy, the First Amendment, and constitutional values.<sup>11</sup> EPIC's work is distributed freely through our website and through the EPIC Alert newsletter. EPIC has no commercial interest that would be furthered by disclosing the requested records.

### Conclusion

Thank you for your consideration of this request. As provided in 5 U.S.C. § 552(a)(6)(E)(ii)(I), we will anticipate your response within 20 business days. Should you require additional information, please contact Jeramie Scott at 202-483-1140 x108 or foia@epic.org.

Respectfully Submitted,



Jeramie D. Scott

EPIC National Security Counsel

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<sup>10</sup> See EPIC: EPIC Alert, <http://epic.org/alert/>.

<sup>11</sup> *About EPIC*, EPIC (2015), <http://epic.org/epic/about.html>.

TRANSMISSION VERIFICATION REPORT

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