



BY FAX AND BY EMAIL

Fax: 202-343-4011

Email: foia@hq.dhs.gov

September 22, 2015

Karen Neuman  
Chief Privacy Officer/Chief FOIA Officer  
The Privacy Office  
U.S. Department of Homeland Security  
245 Murray Lane SW  
STOP-0655  
Washington, D.C. 20528-0655

1718 Connecticut Ave NW

Suite 200

Washington DC 20009

USA

+1 202 483 1140 [tel]

+1 202 483 1248 [fax]

[www.epic.org](http://www.epic.org)

Dear Ms. Neuman:

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 Department of Homeland Security (“DHS”).

EPIC’s request pertains to the Priority Enforcement Program (“PEP”) designed and implemented by the DHS. PEP allows the DHS to take custody of individuals considered “priorities,” with the help of local and state law enforcement agencies.

Document Requested

1. All records including, but not limited to, communications, memos, and reports regarding PEP prepared or sent by the Office of Civil Rights and Civil Liberties since November 20, 2014;
2. All records including, but not limited to, documents, communications and reports regarding PEP prepared or sent by the Assistant Secretary for Intergovernmental Affairs; and
3. All communications between the agency and the Los Angeles County Sheriff’s Office and local officials in Los Angeles regarding PEP.

## Background

On November 20, 2014, the Secretary of the DHS, Jeh Johnson, stated in a memo, “The Secure Communities program, as we know it, will be discontinued.”<sup>1</sup> The Secure Communities program (“SCOMM”), launched in March 2008, essentially identified deportable immigrants in local and state jails.<sup>2</sup> Under this program, fingerprints of individuals booked into local and state jails were sent not only to the Federal Bureau of Investigation (“FBI”), but also to the U.S. Immigration and Customs Enforcement (“ICE”).<sup>3</sup> The SCOMM was to be replaced by the PEP after facing a great deal of public hostility.<sup>4</sup> To that end, Secretary Johnson directed the Office of Civil Rights and Civil Liberties “to develop and implement a plan to monitor state and local law enforcement agencies participating in such transfers.”<sup>5</sup> In addition, he directed the Assistant Secretary for Intergovernmental Affairs “to formulate a plan and coordinate an effort to engage state and local governments about [PEP] and related changes to our enforcement policies.”<sup>6</sup>

According to Johnson’s statement on the DHS’ blog, posted July 20, he is working with the “Sheriff’s Office and local elected officials in Los Angeles and across the country to implement PEP in a way that supports community policing and public safety while ensuring that ICE takes custody of dangerous individuals before they are released into the community.”<sup>7</sup>

At the heart of PEP lies the collection of data.<sup>8</sup> Under PEP, local and state law enforcement agencies send the biometric data of individuals booked into their jails to ICE.<sup>9</sup> While the collection of this data may be a necessary element in law enforcement, there is always a temptation and a risk of data misuse. For example, DHS may use the database to take custody of individuals that are not considered “priority.”

---

<sup>1</sup> Memorandum from Secretary of Department of Labor to Acting Director of U.S. Immigration and Customs Enforcement, Officer of Officer of Civil Rights and Civil Liberties, and Assistant Secretary for Intergovernmental Affairs (Nov. 20, 2014) (available at [http://www.dhs.gov/sites/default/files/publications/14\\_1120\\_memo\\_secure\\_communities.pdf](http://www.dhs.gov/sites/default/files/publications/14_1120_memo_secure_communities.pdf)).

<sup>2</sup> *Secure Communities: A Fact Sheet*, AMERICAN IMMIGRATION COUNCIL, <http://www.immigrationpolicy.org/just-facts/secure-communities-fact-sheet> (last modified Nov. 29, 2011).

<sup>3</sup> *Id.*

<sup>4</sup> *Id.*

<sup>5</sup> Memorandum from Secretary of Department of Labor to Acting Director of U.S. Immigration and Customs Enforcement, Officer of Officer of Civil Rights and Civil Liberties, and Assistant Secretary for Intergovernmental Affairs (Nov. 20, 2014) (available at [http://www.dhs.gov/sites/default/files/publications/14\\_1120\\_memo\\_secure\\_communities.pdf](http://www.dhs.gov/sites/default/files/publications/14_1120_memo_secure_communities.pdf)).

<sup>6</sup> *Id.*

<sup>7</sup> *Priority Enforcement Program – How DHS is Focusing on Deporting Felons*, DEPARTMENT OF HOMELAND SECURITY, <http://www.dhs.gov/blog/2015/07/30/priority-enforcement-program-%E2%80%93-how-dhs-focusing-deporting-felons> (last modified Jul. 20, 2015).

<sup>8</sup> *See Fixing Our Broken Immigration System Through Executive Action – Key Facts*, DEPARTMENT OF HOMELAND SECURITY, <http://www.dhs.gov/immigration-action> (last modified Aug. 19, 2015).

<sup>9</sup> *Id.*

## Expedited Processing

Expedited processing is justified because the request: 1) is made by an organization “primarily engaged in disseminating information”; and 2) covers information about which there is an “urgency to inform the public about an actual or alleged federal government activity.”<sup>10</sup>

EPIC is an organization “primarily engaged in disseminating information.”<sup>11</sup> Further, EPIC has previously published articles and analysis on various aspects of SCOMM.<sup>12</sup> EPIC previously urged the Inspector General of the Department of Justice to review SCOMM.<sup>13</sup>

There is an “urgency to inform the public” about the newly implemented PEP. Last month, more than 200 immigrants in Los Angeles were taken into custody after an ICE raid. According to ICE, 56 percent of those in custody were serious or violent offenders and 44 percent had previous convictions for “significant or multiple misdemeanors.”<sup>14</sup> However, due to lack of transparency, the public cannot verify the accuracy of this statement. Without any safeguards, PEP is being used to deport immigrants as local and state law enforcement agencies as deportation agents. There is a strong concern among the public that this program is a mere continuation of the failed SCOMM with same deficiencies.<sup>15</sup>

## Request for “News Media” Fee Status and Fee Waiver

EPIC is a “representative of the news media” for fee classification purpose.<sup>16</sup> Based on EPIC’s status as a “news media” requester, EPIC is entitled to receive the requested record with only duplication fees assessed.<sup>17</sup>

Further, because disclosure of this information will “contribute significantly to public understand of the operations or activities of the government,” any duplication fees should be waived.<sup>18</sup> According to the agency’s regulations, a fee waiver should be granted because (i) the subject of the request concerns “the operations or activities of the 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 understand of a reasonable broad audience of persons interested in the subject,” and EPIC has the “Expertise in the subject area and ability and intention to effectively convey information to the

---

<sup>10</sup> 5 U.S.C. § 552(a)(6)(E)(v)(II); *Al-Fayed v. CIA*, 254 F.3d 306 (D.C. Cir. 2001).

<sup>11</sup> *American Civil Liberties Union v. Department of Justice*, 321 F. Supp. 2d 24, 29 n.5 (D.C. Cir. 2004).

<sup>12</sup> *See id.*

<sup>13</sup> *Secure Communities and Privacy*, EPIC (2015), [https://epic.org/privacy/secure\\_communities/](https://epic.org/privacy/secure_communities/) (last modified Nov. 24, 2014).

<sup>14</sup> Sid Garcia, *244 Undocumented Immigrants Arrested Across SoCal in 4-Day Ice Raid*, ABC 7 EYEWITNESS NEWS, Aug. 31, 2015, <http://abc7.com/news/244-undocumented-immigrants-arrested-in-4-day-ice-raid/964350/>.

<sup>15</sup> *See Priority Enforcement Program –Why ‘PEP’ Doesn’t Fix S-Comm’s Failings*, NATIONAL IMMIGRATION LAW CENTER, <http://www.nilc.org/PEPnotafix.html> (last modified Jun. 2015).

<sup>16</sup> *EPIC v. Department of Defense*, 241 F. Supp. 2d 5 (D.D.C. 2003).

<sup>17</sup> 5 U.S.C. § 552(a)(4)(ii)(II).

<sup>18</sup> § 552(a)(4)(ii)(II).

public” (As the agency notes, “[i]t shall be presumed that a representative of the news media will satisfy this consideration.”); and, (iv) the disclosure is likely “to contribute ‘significantly’ to public understanding of government operations or activities.”<sup>19</sup>

Conclusion

Thank you for your consideration of this request. As provided in 5 U.S.C. § 522(a)(6)(E)(ii)(I), I will anticipate your determination on our request within ten business days. For questions regarding this request, I can be contacted at 202-483-1140 or FOIA@epic.org.

Respectfully submitted,



Zaneta Kim  
EPIC Student Intern

John Tran  
EPIC FOIA Counsel  
Coordinator, Open Government Project

---

<sup>19</sup> See 6 C.F.R. § 5.11(k).