September 10, 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

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 seeks the European Union-United States data protection "Umbrella Agreement" (Agreement), a framework for EU-US law enforcement cooperation.

Document Requested

The EU-US Umbrella Agreement on the data protection framework for EU-US law enforcement cooperation.

Background

According to a press release published this week, the United States and the European Union entered into an agreement for the transfer of personal data between US and EU law enforcement agencies.\(^1\) The Agreement follows from a European Parliament initiative that called for a EU-US framework for the protection of personal data transferred in law enforcement investigations.\(^2\) In May 2010, the Commission proposed a


draft mandate for negotiating such an agreement, and negotiations officially began in March of 2011. According to published news reports, EU and US officials have this week concluded negotiation over the Agreement. Further, on September 8, 2015, EU Commissioner Věra Jourová stated publicly that the parties “have finalised negotiations with the US on high data protection standards for transatlantic law enforcement cooperation.” Also on September 8, 2015, Representative James Sensenbrenner (R-WI) announced that “negotiations between the United States of America and the European Union regarding data protection standards have ended in an Umbrella Agreement.”

Significantly, the Agreement requires enactment of amendments to the US Privacy Act of 1974 before it will have legal effect. Legislation currently pending in both the United States Senate and the United States House of Representatives seeks to implement key provisions of the Agreement.

Expedited Processing

This request warrants expedited processing because (1) it is made by “a person primarily engaged in disseminating information” and (2) 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." Further, EPIC has published articles and analysis on US-EU data transfers. EPIC has advised Congress and government agencies as to proposed changes to the Privacy Act of 1974. And EPIC has recommended that the Privacy Act be amended to create legal safeguards for non-US persons whose personal information is acquired by federal agencies.

The "urgency to inform the public" is highlighted by the fact that legislation is currently pending in both the United States Senate and the United States House of Representatives that would implement key provisions of the Agreement. For the Agreement to take effect, Congress must pass a bill such as the Judicial Redress Act that would extend certain provisions of the Privacy Act of 1974 to non-US persons. Such measures have been introduced in the Senate—co-sponsored by Senator Orrin Hatch (R-UT) and Senator Chris Murphy (D-Conn.) and in the House of Representatives—co-sponsored by Rep. James Sensenbrenner (R-WI) and Rep. John Conyers (D-MI).

There is also an "urgency to inform the public" about the contents of the Agreement because the record sought concerns a framework for government transfer of personal information about Europeans and Americans in transatlantic criminal and terrorism investigations. The urgency of this issue is indicated by articles published this week concerning the Agreement. Until the Agreement is released, the public is unable to meaningfully assess the adequacy of the government’s framework for the protection of personal data, or to participate in the legislative debate now underway in Congress.

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10 *American Civil Liberties Union v. Department of Justice*, 321 F. Supp. 2d 24, 29 n.5 (D.D.C. 2004) ("[T]he Court concludes that EPIC is indeed "primarily engaged in disseminating information" for the purposes of expediting the request.").
Request for “News Media” Fee Status and Fee Waiver

EPIC is a “representative of the news media” for fee classification purposes.\(^\text{17}\) Based on EPIC’s status as a “news media” requester, EPIC is entitled to receive the requested record with only duplication fees assessed.\(^\text{18}\)

Further, because disclosure of this information will “contribute significantly to public understanding of the operations or activities of the government,” any duplication fees should be waived.\(^\text{19}\) 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 understanding of a reasonably 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 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.”\(^\text{20}\)

Conclusion

Thank you for your consideration of this request. As provided in 5 U.S.C. § 552(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 x104 or FOIA@epic.org.

Respectfully Submitted,

\[\text{Signature}\]

Fanny Hitvegi
EPIC International Privacy Fellow

John Tran
EPIC FOIA Counsel
Coordinator, Open Government Project

\(^{19}\) § 552(a)(4)(A)(iii).
\(^{20}\) See 6 C.F.R. § 5.11(k).