

### **Appendix 13**

David Palmer, Deputy Associate General Counsel, DHS Office of the General Counsel,  
Final Response to EPIC Regarding EPIC's FOIA request for Mary Ellen Callahan's  
Calendar, (2 pages)



# Homeland Security

August 25, 2009

Mr. John Verdi  
Director, EPIC Open Government Project  
EPIC  
1718 Connecticut Avenue, NW  
Washington, DC 20009

Re: **PRIV 09-765**

Dear Mr. Verdi:

This is the final response to your Freedom of Information Act (FOIA) request to the U.S. Department of Homeland Security, dated June 25, 2009. On behalf of the Electronic Privacy Information Center (EPIC), you requested copies of the following agency records:

- 1) All agency records concerning appointments and meetings between Mary Ellen Callahan, Chief Privacy Officer for the Department of Homeland Security, and all nongovernmental individuals or entities from the date of her appointment, March 9, 2009, to the present. Such nongovernmental individuals and entities include, but are not limited to, trade associations, industry representatives, and/or business owners. Such records include, but are not limited to, appointment books, calendars, e-mails, agendas, and letters.
- 2) All agency records concerning Ms. Callahan's appointments and meetings for May 29, 2009. Such records include, but are not limited to, appointment books, calendars, e-mails, agendas, and letters.

In our final search for records responsive to the multi-part request, we have located a total of 84 pages. Of those pages, we have determined that 40 pages can be released in their entirety and 44 pages can be partially released, but with certain information withheld pursuant to Title 5 U.S.C. § 552 (b)(2)(low), (b)(5), and (b)(6).

Explanations used in the withholding are described below.

**FOIA Exemption 2(low)** protects information applicable to internal administrative personnel matters to the extent that the information is of a relatively trivial nature and there is no public interest in the document.

**FOIA Exemption 5** protects from disclosure those inter- or intra- agency documents that are normally privileged in the civil discovery context. The three most frequently invoked privileges are the deliberative process privilege, the attorney work product privilege, and the attorney-client privilege. After carefully reviewing the responsive documents, we have determined that portions of the responsive documents qualify for protection under the deliberative process privilege. The deliberative process privilege protects the integrity of the deliberative or decision-making processes within the agency by exempting from mandatory disclosure opinions, conclusions, and recommendations included within inter-agency or intra-agency memoranda or letters. The release of this internal information would discourage the expression of candid opinions and inhibit the free and frank exchange of information among agency personnel.

**FOIA Exemption 6** exempts from disclosure personnel or medical files and similar files the release of which would cause a clearly unwarranted invasion of personal privacy. This requires a balancing of the public's right to disclosure against the individual's right to privacy. The privacy interests of the individuals in the records you have requested outweigh any minimal public interest in disclosure of the information. Any private interest you may have in that information does not factor in the aforementioned balancing test.

You have a right to appeal the above withholding determination. Should you wish to do so, you must send your appeal and a copy of this letter, within 60 days of the date of this letter, to: Associate General Counsel (Legal Counsel), U.S. Department of Homeland Security, Washington, D.C. 20528, following the procedures outlined in the DHS regulations at 6 C.F.R. § 5.9. Your envelope and letter should be marked "FOIA Appeal." Copies of the FOIA and DHS regulations are available at [www.dhs.gov/foia](http://www.dhs.gov/foia).

Provisions of the FOIA allow us to recover part of the cost of complying with your request. In this instance, because the cost is below the \$14 minimum, there is no charge. 6 CFR § 5.11(d)(4).

If you need to contact our office again about this matter, please refer to PRIV 09-765. If you have any questions, please feel free to contact me at (202) 282-9735.

Sincerely,

*David Palmer / NDG*

David J. Palmer  
Deputy Associate General Counsel - Legal Counsel  
Office of the General Counsel  
Department of Homeland Security

## Appendix 14

EPIC's Appeal to DHS for Lack of Timeliness and Lack of Responsiveness to EPIC's  
FOIA request for Mary Ellen Callahan's Calendar (10 pages)



September 17, 2009

**VIA FACSIMILE (202-282-9186)**

David J. Palmer  
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Office of the General Counsel  
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RE: Freedom of Information Act Appeal (PRIV 09-765)

Dear Mr. Palmer:

This letter constitutes an appeal under the Freedom of Information Act ("FOIA"), 5 U.S.C. § 552,<sup>1</sup> and is submitted to the Department of Homeland Security ("DHS") by the Electronic Privacy Information Center ("EPIC").

Procedural Background

On June 25, 2009 EPIC requested documents regarding appointments and meetings of Mary Ellen Callahan, Chief Privacy Officer for DHS. Specifically, EPIC requested:

1) All agency records concerning appointments and meetings between Mary Ellen Callahan, Chief Privacy Officer for the Department of Homeland Security, and all nongovernmental individuals or entities from the date of her appointment, March 9, 2009, to the present. Such nongovernmental individuals and entities include, but are not limited to, trade associations, industry representatives, and/or business owners. Such records include, but are not limited to, appointment books, calendars, e-mails, agendas, and letters.<sup>2</sup>

2) All agency records concerning Ms. Callahan's appointments and

<sup>1</sup> 5 U.S.C. § 552 (LexisNexis 2009).

<sup>2</sup> See Appendix 1

meetings for May 29, 2009. Such records include, but are not limited to, appointment books, calendars, e-mails, agendas, and letters.<sup>3</sup>

On July 2, 2009, DHS wrote to EPIC, acknowledged receipt of EPIC's FOIA Request, and invoked the 10-day extension that is permissible under FOIA.<sup>4</sup>

On July 30, 2009, DHS produced a heavily redacted copy of Ms. Callahan's calendar for the relevant time period and asserted exemptions set forth in subsections b(2)low and (b)(6).<sup>5</sup>

On August 25, 2009, DHS provided additional documents in response to EPIC's FOIA Request.<sup>6</sup> The documents consist of partially redacted emails and other communications, asserting exemptions set forth in subsections b(2)low, b(5), and (b)(6).<sup>7</sup>

#### EPIC Appeals DHS's Failure to Disclose Records in Full and its Assertions of Exemptions

EPIC is appealing both DHS's failure to disclose relevant records in its possession and DHS's overly broad assertion of statutory exemptions in the records it did disclose.

##### *1) EPIC Appeals DHS's Failure to Disclose Records in Full*

EPIC specifically asked for "All agency records concerning appointments and meetings between Mary Ellen Callahan, Chief Privacy Officer for the Department of Homeland Security, and all nongovernmental individuals or entities from the date of her appointment, March 9, 2009, to the present. Such nongovernmental individuals and entities include, but are not limited to, trade associations, industry representatives, and/or business owners. Such records include, but are not limited to, appointment books, calendars, e-mails, agendas, and letters."<sup>8</sup>

EPIC has attached a copy of the conference program for the European E-Identity Management Conference in Brussels on June 25th, at which Ms. Callahan

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<sup>3</sup> See *id.*

<sup>4</sup> See Appendix 2.

<sup>5</sup> See Appendix 3; see also Appendix 4; 5 U.S.C. § 552(b).

<sup>6</sup> See 5 U.S.C. § 552(a)(6)(LexisNexis 2009); see also Appendix 5; Appendix 6.

<sup>7</sup> See Appendix 5; see also 5 U.S.C. § 552(b).

<sup>8</sup> See Appendix 1.

was a keynote speaker.<sup>9</sup> This document falls within the relevant time frame and shows that Ms. Callahan was meeting with nongovernmental entities and individuals on that day, but on the documents disclosed to EPIC by DHS, the entire day of June 25th is wrongly redacted as “non responsive.”<sup>10</sup>

Similarly, in an email communication<sup>11</sup> with Ms. Callahan’s office, EPIC provided the agency with information regarding the May 29, 2009, which would obviously be in possession of the agency and responsive to the request for “All agency records concerning Ms. Callahan’s appointments and meetings for May 29, 2009.”<sup>12</sup> These records were also not provided.

These two examples are sufficient to establish that the agency has failed to fulfill its statutory obligation under the Act to provide records in its possession responsive to the request. DHS is required to comply with FOIA and disclose responsive documents.<sup>13</sup>

### *EPIC Appeals DHS’s Assertion of Exemptions*

#### **Exemption b(2)**

DHS’s assertion of “Exemption b(2) low” is improper. The Exemption b(2) exempts records “related solely to the internal personnel rules and practices of an agency.”<sup>14</sup> Courts have held that the threshold requirement of whether or not the records in question are “internal” is met when the material is “used for predominantly internal purposes.”<sup>15</sup> “Once the threshold requirement is met, the agency may withhold two categories of information: trivial matters that are not of genuine public interest (known as Exemption “low” 2) or matters that, if disclosed, could result in circumvention of applicable statutes or agency regulations (known as Exemption “high” 2).”<sup>16</sup> The b(2) low exemption permits agencies to withhold from disclosure “internal agency matters in which the public could not reasonably be expected to have an interest.”<sup>17</sup> The exemption also

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<sup>9</sup> See Appendix 8.

<sup>10</sup> See Appendix 4.

<sup>11</sup> See Appendix 7.

<sup>12</sup> See Appendix 1.

<sup>13</sup> 5 U.S.C. § 552(a)(2)(LexisNexis 2009).

<sup>14</sup> 5 U.S.C. § 552(b)(2); see also *Schiller v. NLRB*, 964 F.2d 1205, 1207 (D.C. Cir. 1992).

<sup>15</sup> *Id.*; see also *Crooker v. ATF*, 670 F.2d 1051, 1073 (D.C. Cir. 1981) (holding “As a threshold matter, the agency must demonstrate that it uses the information for predominantly internal purposes.”).

<sup>16</sup> *Jordan v. United States DOJ*, No. 07-02303, 2009 U.S. Dist. LEXIS 81081, at \*32 (D. Colo. Aug. 14, 2009); see also *Schiller*, 964 F.2d at 1207; *Schwanner v. Dep’t of Air Force*, 898 F.2d 793, 794 (D.C. Cir. 1990); *Founding Church of Scientology v. Smith*, 721 F.2d 828, 829-31 n.4 (D.C. Cir. 1983).

<sup>17</sup> *Schiller*, 964 F.2d at 1207.

requires that the documents be "related...to the internal personnel rules and practices of the agency."<sup>18</sup> Only documents that "manifest and implement the rules and practices" have been found to qualify for this exemption.<sup>19</sup> If the records are internal and related to personnel rules and practices, then information may be withheld only when the information is truly trivial and lacks public interest.<sup>20</sup> The burden of proof is on the agency to show that the records withheld qualify for the exemption.<sup>21</sup> "It is the agency's burden to establish that the information is too trivial to warrant disclosure,"<sup>22</sup> a requestor "need not produce dispositive evidence that there is a public interest in this information, he need only provide evidence of a genuine issue of material fact."<sup>23</sup>

The records requested by EPIC could not possibly qualify for a b(2) low exemption. EPIC requested records of meetings, recorded in a calendar maintained by a federal agency, between a government official and *external* individuals and entities,<sup>24</sup> which would certainly disqualify these records from an exemption that only applies to records "related solely to *internal* personnel rules and practices."<sup>25</sup> The records requested are neither "solely internal"<sup>26</sup> nor even "used for predominantly internal purposes"<sup>27</sup> – they are external communications and details of meetings between a public official and private parties. Additionally, the records were not "related to internal personnel rules and practices,"<sup>28</sup> even under the loosest definition of the phrase. These documents do not "manifest and implement"<sup>29</sup> any rules or practices: they are records of communications with nongovernmental, external individuals and entities, made for the purpose of scheduling meetings.

Even if the previous two requirements were satisfied, the records are, undoubtedly, the kind of records in which the public has an interest. The public has a strong interest in knowing what parties are meeting with high-level officials in federal agencies and who may be influencing agency policies. The strong public interest in knowing what parties are meeting with, and possibly influencing, policy makers, was recently acknowledged by both the White House and Ms. Callahan, herself.

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<sup>18</sup> *Schwaner*, at 795.

<sup>19</sup> *Schwaner*, at 795.

<sup>20</sup> *See Schiller* at 1207.

<sup>21</sup> *See Morley v. CIA*, 508 F.3d 1108 (D.C. Cir. 2007).

<sup>22</sup> *Id.* at 1125.

<sup>23</sup> *Id.* at 1125.

<sup>24</sup> Appendix 1.

<sup>25</sup> *Schiller* at 1207.

<sup>26</sup> *Id.*

<sup>27</sup> *Id.*

<sup>28</sup> *Id.*

<sup>29</sup> *Schwaner* at 795.



On September 4, 2009, the Administration announced a new policy of publicly posting the White House visitor access.<sup>30</sup> The White House will release, on a monthly basis, all previously unreleased access records that are 90 to 120 days old.<sup>31</sup> As President Obama explained, "Americans have a right to know whose voices are being heard in the policymaking process."<sup>32</sup> The President stated the central importance of transparency under his new Administration "We will achieve our goal of making this administration the most open and transparent administration in history not only by opening the doors of the White House to more Americans, but by shining a light on the business conducted inside it."<sup>33</sup> EPIC's request to Ms. Callahan parallels the White House's objective. EPIC is requesting records of meetings with external individuals and entities in the hopes of better understanding Ms. Callahan's priorities and what groups are having the opportunity to influence the decisions and policies of DHS and its privacy office.

Ms. Callahan, conceded that the documents EPIC is seeking have a high public interest value. In an August 26, 2009 general distribution memorandum, Ms. Callahan acknowledged President Obama's White House transparency initiative and stated:

As Chief FOIA Officer, I direct the Department and its components to include the following categories of records on their agency websites and link them to their respective electronic reading rooms:

1. Historical daily schedules of the most senior agency officials (notated to reflect that officials may have deviated from the posted schedule and abridged as appropriate for security and privacy concerns)...<sup>34</sup>

This statement acknowledges the importance of these schedules to the public. In light of this, no reasonable argument could be made by DHS that there is not a high public interest in the disclosure of the redacted information. Exemption b(2)low, which applies only to "internal agency matters in which the public could not reasonably be expected to have an interest."<sup>35</sup> would certainly not apply here.

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<sup>30</sup> White House Voluntary Disclosure Policy Visitor Access Records, <http://www.whitehouse.gov/VoluntaryDisclosure/> (last visited September 14, 2008).

<sup>31</sup> Id.

<sup>32</sup> Posting of Norm Eisen to The White House Blog, <http://www.whitehouse.gov/blog/Opening-up-the-peoples-house/> (Sept. 4, 2008, 09:05 EST)

<sup>33</sup> Id.

<sup>34</sup> Department of Homeland Security, Proactive Disclosure and Departmental Compliance with Subsection (a)(2) of the Freedom of Information Act (FOIA), [http://www.dhs.gov/xlibrary/assets/foia/foia\\_proactive\\_disclosure.pdf](http://www.dhs.gov/xlibrary/assets/foia/foia_proactive_disclosure.pdf), August 26, 2009 (last visited September 16, 2009).

<sup>35</sup> *Schiller*, 964 F.2d at 1207.

## Exemption b(5)

The records requested would not qualify for Exemption b(5), which applies to matters that are “inter-agency or intra-agency memorandums or letters which would not be available by law to a party other than an agency in litigation with the agency.”<sup>36</sup> The purpose of this exemption was to codify the government’s common law privilege from discovery in litigation.<sup>37</sup> To qualify, a document must thus satisfy two conditions: its source must be a government agency, and it must fall within the ambit of a privilege against discovery under judicial standards that would govern litigation against the agency that holds it.<sup>38</sup> Exemption 5 applies only to inter-agency or intra-agency documents, which the D.C. Circuit Courts have defined using a “functional rather than a literal test.”<sup>39</sup> The Courts have used this test to allow documents that pass from one entity to another to be covered under Exemption 5 when there is a formalized, non-adversarial consulting relationship with the agency, and the information was prepared at the agency’s request for the benefit of its internal decision-making.<sup>40</sup> Where the outside party is not acting on behalf of the agency, the exemption does not apply.<sup>41</sup>

The documents requested by EPIC are not inter or intra-agency memorandums or letters. EPIC explicitly requested information regarding communications and meetings with external, nongovernmental individuals and entities. The documents requested by EPIC would not have qualified under even the loosest interpretation of “inter-agency or intra-agency”, because they are not documents that are part of a formalized, non-adversarial consulting relationship with the agency. The external, nongovernmental individuals and entities in question are completely independent from DHS, not consultants with the agency. Therefore, any communications and meetings they have with DHS should not qualify under Exemption b(5).

Even if the parties involved did somehow qualify as consultants, the communications themselves would still have to qualify for one of a very small number of privileges. The Supreme Court has narrowed the Exemption b(5) by holding that the rules for discovery should be applied to FOIA cases only “by way of rough analogies.”<sup>42</sup> The Supreme Court has recognized five privileges under

<sup>36</sup> Freedom of Information Act, 5 U.S.C. § 552(b)(5) (LexisNexis 2009).

<sup>37</sup> Litigation Under the Federal Open Government Laws 2008, 138 (Harry A. Hammitt, Marc Rotenberg, John A. Verdi, and Mark S. Zaid, eds., 2008) (citing H.R. Rep. No. 89-1497 (1966), S. Rep. No. 89-813 (1965), and S. Rep. No. 88-1219 6-7, 12-14 (1964)).

<sup>38</sup> See *DOI v. Klamath Water Users Protective Ass’n*, 532 U.S. 1, 8 (2001).

<sup>39</sup> Litigation Under the Federal Open Government Laws 2004 at 139 (citing *Ryan v. Dep’t of Justice*, 617 F.2d 781, 789-790 (D.C. Cir. 1980)).

<sup>40</sup> *Id.* at 139

<sup>41</sup> *Id.* (citing *County of Madison, NY v. Dep’t of Justice*, 641 F.2d 1036, 1049-42 (1st Cir. 1981)).

<sup>42</sup> *Id.* at 138 (citing *EPA v. Mink*, 410 U.S. 73, 86 (1973)).

Exemption 5; these protect deliberative processes, work product, attorney client communications, confidential commercial communications, and factual statements made to the government in the course of an air crash investigation.<sup>43</sup> Work product protects mental processes of the attorney that reveal the theory of his case or litigation strategy, while deliberative process covers documents reflecting advisory opinions, recommendations and deliberations comprising part of a process by which governmental decisions and policies are formulated.<sup>44</sup> Attorney-client privilege protects confidential communications, including facts (a) from a client to an attorney and (b) from an attorney to a client, if the communication is based on confidential information provided by the client.<sup>45</sup> Confidential commercial communications are defined as information generated by the government itself in the process leading up to awarding a contract.<sup>46</sup> Factual statements made to the government in the course of an air crash investigation is an exemption that was created to encourage witnesses and crash participants to speak freely about the facts of the incident.<sup>47</sup>

It is clear that EPIC's FOIA request to DHS does not qualify for any of these privileges. The records that EPIC has seeks do not qualify for the work product privilege. There do not appear to be any attorneys at all involved in the communications or meetings in question. Even if there were attorneys, there is still no pending litigation that would necessitate the assertion of this exemption in order to protect the attorneys' mental processes and trial strategy. The records sought are not related to any deliberative process – they are merely records of meetings, business contact information for meeting participants, and scheduling communications between Ms. Callahan's office and external individuals and entities. These records in no way reflect advisory opinions, recommendations or deliberations comprising part of a process by which governmental decisions and policies are formulated. Attorney-client privilege would also not apply here. The records that EPIC has requested could not possibly qualify for this privilege because EPIC requested information and communication regarding meetings with nongovernmental, external individuals and entities. None of the information requested would concern confidential communications between a client and an attorney. Because EPIC's request obviously does not involve any information generated by the government during the process leading up to a contract or any information regarding a plain crash, the request cannot qualify under either of the final two privileges.

EPIC's request, then, fails to meet either of the two requirements necessary for a proper b(5) Exemption.

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<sup>43</sup> *Id.* at 143.

<sup>44</sup> *See Klamath*, at 8.

<sup>45</sup> *See NLRB v. Sears, Roebuck & Co.*, 421 U.S. 132, 154 (1975).

<sup>46</sup> *See Fed. Open Mkt. Comm. of the Fed. Reserve Sys v. Merrill*, 443 U.S. 340, 360 (1979).

<sup>47</sup> *See United States v. Weber Aircraft Corp.*, 465 U.S. 792 (1984).

## Exemption b(6)

The records requested by EPIC also could not qualify for Exemption b(6), which applies to “personnel or medical files and similar files, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.”<sup>48</sup> While the Supreme Court has found that the phrase “similar files” has a broad meaning,<sup>49</sup> the phrase is still limited to “detailed government records on an individual which can be identified as applying to that individual.”<sup>50</sup> The documents in question must “constitute a clearly unwarranted invasion of that person’s privacy.”<sup>51</sup> In order to determine if a piece of information would constitute a clearly unwarranted invasion of personal privacy, courts use a balancing test – pitting the individual’s right to privacy against the preservation of the basic purpose of the Freedom of Information Act: “to open agency action to the light of public scrutiny.”<sup>52</sup> Exemption b(6) protects personal, but not business privacy.<sup>53</sup> Corporations, business entities and partnerships have no privacy interest in Exemption 6. The phrase “clearly unwarranted” has been interpreted to “instruct the court to tilt the balance in favor of disclosure.”<sup>54</sup> In order for a cognizable privacy interest to exist, the information must usually be “personal” or “intimate details” of a person’s life.<sup>55</sup> The following have been found to be “similar files” for the purpose of the Exemption: reports of interviews with persons who unsuccessfully sought to immigrate to the United States,<sup>56</sup> lists of names and home addresses of present government employees,<sup>57</sup> lists of names and home addresses of private citizens,<sup>58</sup> financial disclosure forms submitted to an agency by its outside consultants.<sup>59</sup> Business addresses have routinely been found to have low privacy interest.<sup>60</sup>

The records that EPIC has requested could not qualify for Exemption b(6), because they are not personnel or medical files or similar files. Much of the information redacted in the documents appears to be business or organization information, not the personal information of individuals. Any business

<sup>48</sup> Freedom of Information Act, 5 U.S.C. § 552(b)(6) (LexisNexis 2009).

<sup>49</sup> *Dep’t of State v. Washington Post Co.*, 456 U.S. 595, 599-600 (1982).

<sup>50</sup> *Id.*

<sup>51</sup> *Id.*

<sup>52</sup> *Dep’t of Air Force v. Rose*, 425 U.S. 352, 372 (1976); accord *Dep’t of State v. Ray*, 502 U.S. 164 (1994); quoting Freedom of Information Act, 5 U.S.C. § 552(b)(5) (LexisNexis 2009).

<sup>53</sup> *Wash. Post Co. v. Dep’t of Agric.*, 943 F.Supp. 31, 37 n.6 (D.C. Cir. 1996).

<sup>54</sup> *Getman v. NLRB*, 450 F.2d 670, 674 (D.C. Cir. 1971).

<sup>55</sup> S. Rep. No. 89-813, at 9 (1965); H.R. Rep. No. 89-1497, at 11 (1966).

<sup>56</sup> *Dep’t of State v. Ray*, 502 U.S. 164 (1991).

<sup>57</sup> *Dep’t of Defense v. FLRA*, 510 U.S. 487 (1994).

<sup>58</sup> *Minnis v. Dep’t of Agric.*, 737 F.2d 784, 786 (9<sup>th</sup> Cir. 1984).

<sup>59</sup> *Wash. Post Co. v. Dep’t of Health & Human Servs.*, 690 F.2d 252 (D.C. Cir. 1982).

<sup>60</sup> See *Sun-Sentinel Co. v. DHS*, 431 F. Supp. 2d 1258, 1272 (S.D. Fl. 2006); see also *Wash. Post Co. v. Dep’t of Agric.*, at 35.

information, would not qualify under this exemption, because the exemption only protects personal information. The individual information that is redacted appears to be individual's work or business contact information, which also would likely not qualify for this exemption. Work emails, addresses, and phone numbers have not been accepted as a clearly unwarranted invasion of privacy under this exemption: only home addresses have been.<sup>61</sup> Individuals' work addresses are hardly private or intimate information, courts have found that the privacy interest in these documents is low.<sup>62</sup>

This weak privacy interest is weighed against the high public interest in knowledge regarding who is meeting with Ms. Callahan and possibly influencing DHS's policies. As discussed above, the strong public interest in knowing who is meeting with key agency officials – and possibly influencing policy decisions – has been recognized by the Obama Administration in its recent implementation of the new White House transparency policy, which will disclose White House visitor records to the public,<sup>63</sup> as well as by DHS itself, in its recent announcement that it will make certain records, including senior officials' schedules, available to the public.<sup>64</sup>

#### Failure to Comply With the President's Open Government Initiative

In addition to the statutory claims, EPIC also notes that the agency has failed to comply with the open government directive that the President set out in January and the specific, and directly applicable determination made recently by the White House with respects to the records of agency officials who meet with members of the public.<sup>65</sup>

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<sup>61</sup> See *Dep't of Defense v. FLRA*, 510 U.S. 487 (1994); see also *Minnis v. Dep't of Agric.*, 737 F.2d 784, 786 (9<sup>th</sup> Cir. 1984).

<sup>62</sup> See *Sun-Sentinel Co.* at 1272; see also *Wash. Post Co. v. Dep't of Agric.*, at 35.

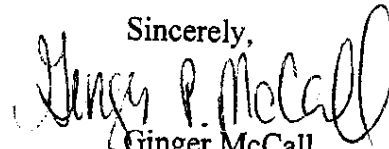
<sup>63</sup> White House Voluntary Disclosure Policy Visitor Access Records, <http://www.whitehouse.gov/VoluntaryDisclosure/> (last visited September 14, 2008).

<sup>64</sup> Department of Homeland Security, Proactive Disclosure and Departmental Compliance with Subsection (a)(2) of the Freedom of Information Act (FOIA), [http://www.dhs.gov/xlibrary/assets/foia/foia\\_proactive\\_disclosure.pdf](http://www.dhs.gov/xlibrary/assets/foia/foia_proactive_disclosure.pdf), August 26, 2009 (last visited September 16, 2009).

<sup>65</sup> Memorandum for the Heads of Executive Departments and Agencies, [http://www.whitehouse.gov/the\\_press\\_office/FreedomofInformationAct/](http://www.whitehouse.gov/the_press_office/FreedomofInformationAct/) (last visited September 17, 2009).

While we note that Ms. Callahan has advised the DHS of her intent to comply with the requirements of the White House policy, she has still failed to make available the documents that we have requested and which we are entitled by law to receive.

Sincerely,

A handwritten signature in black ink that reads "Ginger P. McCall". The signature is written in a cursive style with a large, looped "G" and "M".

Ginger McCall  
EPIC Staff Counsel

/enclosures

**Appendix 15**

Victoria Newhouse, DHS Attorney-Advisor, Letter Acknowledging Receipt of EPIC's  
FOIA Appeal regarding Mary Ellen Callahan's Calendar (1 page)



# Homeland Security

September 18, 2009

Ginger McCall  
EPIC  
1718 Connecticut Ave NW Ste 200  
Washington, DC 20009

Dear Sir or Madam:

The Department of Homeland Security has received your letter appealing the adverse determination of your Freedom of Information Act (FOIA) request by DHS Privacy regarding Mary Ellen Callahan's calendar. On behalf of the Deputy Associate General Counsel for General Law, we acknowledge your appeal request and are assigning it number DHS09-139 for tracking purposes. Please reference this number in any future communications about your appeal.

A high number of FOIA/PA requests have been received by the Department. Accordingly, we have adopted the court-sanctioned practice of generally handling backlogged appeals on a first-in, first-out basis.<sup>1</sup> While we will make every effort to process your appeal on a timely basis, there may be some delay in resolving this matter. Should you have any questions concerning the processing of your appeal, please contact Howard Plofker at the above address or at [howard.plofker@dhs.gov](mailto:howard.plofker@dhs.gov).

Sincerely,

*Howard Plofker*

For/Victoria Newhouse  
Attorney-Advisor

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<sup>1</sup> Appeals of expedited treatment denials will be handled on an expedited basis.



**Appendix 16**

EPIC Appeal to DHS regarding EPIC's FOIA request for National Security Presidential Directive 54, August 4, 2009 (3 pages)



Aug. 4, 2009

VIA FACSIMILE (202-282-9186)  
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RE: Freedom of Information Act Appeal and Renewed Request For Expedited Processing

This letter constitutes an appeal under the Freedom of Information Act ("FOIA"), 5 U.S.C. § 552, and is submitted to the Department of Homeland Security ("DHS" or the "Department") by the Electronic Privacy Information Center ("EPIC").

On June 26, 2009, EPIC requested, *via* facsimile, documents regarding National Security Presidential Directive 54, otherwise referred to as The Homeland Security Presidential Directive 23 ("the Directive"). Specifically, EPIC requested:

1. The text of the National Security Presidential Directive 54, otherwise referred to as the Homeland Security Presidential Directive 23.
2. The full text, including previously unreported sections, of the Comprehensive National Cybersecurity Initiative, as well as any executing protocols distributed to the agencies in charge of its implementation.
3. All privacy policies related to either the Directive or the Comprehensive National Cybersecurity Initiative, including but not limited to, contracts or other documents describing privacy policies for information shared with private contractors to facilitate the Comprehensive National Cybersecurity Initiative.

See Appendix 1 ("EPIC's FOIA Request").

#### *Factual Background*

In January 2008,<sup>1</sup> President George W. Bush issued the Directive, but it was never released to the public. Under this Directive, the Comprehensive National Cybersecurity

<sup>1</sup> Jill R. Aitoro, *The Comprehensive National Cybersecurity Initiative*, NEXTGOV, June 1, 2009, [http://www.nextgov.com/the\\_basics/tb\\_20090601\\_8569.php](http://www.nextgov.com/the_basics/tb_20090601_8569.php).

Initiative (“CNCI”) was formed to “improve how the federal government protects sensitive information from hackers and nation states trying to break into agency networks.”<sup>2</sup> In February 2009, President Obama appointed Melissa Hathaway as the head of a 60-day review of the government’s cybersecurity efforts (“the Hathaway Report”).<sup>3</sup> In April 2009, Senator Jay Rockefeller (D-WV) introduced to Congress the Cybersecurity Act of 2009 (S. 773), which is still pending in the Senate Committee on Commerce, Science, and Transportation.<sup>4</sup>

Despite a 2008 power struggle over the CNCI, the Department of Homeland Security (“DHS”) was ultimately charged to oversee the details, with operational functions split between the National Security Agency (NSA), the Central Intelligence Agency (CIA), and the Federal Bureau of Investigation’s (FBI) Cyber Division.<sup>5</sup> Each agency under DHS is responsible to “investigate intrusions by monitoring Internet activity and ... capturing data for analysis.”<sup>6</sup> However, DHS acts as the lead agency on cybersecurity, as well as many other areas of Internet regulation.<sup>7</sup>

Though privacy is highlighted in the Hathaway Report, such considerations are noticeably absent from any practical application of the Cybersecurity Act. As Senators Joseph Lieberman and Susan Collins noted in their May 1, 2008 letter to DHS Secretary Michael Chertoff, efforts to “downgrade the classification or declassify information regarding [CNCI] would ... permit broader collaboration with the privacy sector and outside experts.”<sup>8</sup> President Obama’s recent focus on Transparency, Participation, and Collaboration between the public and executive agencies further justifies a renewed effort to disclose such information to the public. Releasing the documents sought in this request would provide the opportunity for meaningful public participation in the development of new security measures that may have a significant impact on civil liberties, such as privacy.<sup>9</sup>

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<sup>2</sup> “The CNCI – officially established in January when President Bush signed National Security Presidential Directive 54 / Homeland Security Presidential Directive 23 – is a multi-agency, multi-year plan that lays out twelve steps to securing the federal government’s cyber networks. DHS has been tasked to lead or play a major role in many of these tasks. This bold, much-needed approach to cyber security will lead to a fundamental shift in the way the Department approaches the security of U.S. networks.” Letter from Joseph I. Lieberman, Chairman, and Susan M. Collins, Ranking Member, United States Senate Committee on Homeland Security and Governmental Affairs to Michael Chertoff, Secretary, Department of Homeland Security (May 1, 2008), *available at* [http://hsgac.senate.gov/public/\\_files/5108LiebermanCollinslettertoChertoff.pdf](http://hsgac.senate.gov/public/_files/5108LiebermanCollinslettertoChertoff.pdf).

<sup>3</sup> Jaikumar Vijayan, *Obama Taps Bush Aide Melissa Hathaway to Review Federal Cybersecurity Efforts*, COMPUTER WORLD: SECURITY, Feb. 9, 2009, <http://www.computerworld.com/action/article.do?command=viewArticleBasic&articleId=9127682>.

<sup>4</sup> Jennifer Granick, *Federal Authority Over the Internet? The Cybersecurity Act of 2009*, ELECTRONIC FRONTIER FOUNDATION, Apr. 10, 2009, <http://www.eff.org/deeplinks/2009/04/cybersecurity-act>.

<sup>5</sup> *Supra* note 1.

<sup>6</sup> Ellen Nakashima, *Bush Order Expands Network Monitoring*, THE WASHINGTON POST, Jan. 26, 2009, *available at* <http://www.washingtonpost.com/wp-dyn/content/article/2008/01/25/AR2008012503261.html?wpisrc=newsletter>.

<sup>7</sup> *See, e.g.*, Department of Homeland Security, *Cybersecurity: Make it a Habit*, Oct. 20, 2008, [http://www.dhs.gov/xprevprot/programs/gc\\_1202746448575.shtm](http://www.dhs.gov/xprevprot/programs/gc_1202746448575.shtm); Department of Homeland Security, *Internet Hoaxes*, Oct. 21, 2008, [http://www.dhs.gov/xcitizens/general\\_1165337828628.shtm](http://www.dhs.gov/xcitizens/general_1165337828628.shtm); Department of Homeland Security, *DHS Privacy Office – Privacy Workshops*, June 9, 2009, [http://www.dhs.gov/xinfo/share/committees/editorial\\_0699.shtm](http://www.dhs.gov/xinfo/share/committees/editorial_0699.shtm).

<sup>8</sup> Walter Pincus, *Cybersecurity Will Take a Big Bite of the Budget*, THE WASH. POST, July 21, 2008 at A13, *available at* [http://www.washingtonpost.com/wp-dyn/content/article/2008/07/20/AR2008072001641\\_pf.html](http://www.washingtonpost.com/wp-dyn/content/article/2008/07/20/AR2008072001641_pf.html).

<sup>9</sup> *Supra* note **Error! Bookmark not defined.**

<sup>9</sup> Memoranda from Barack Obama, President of the United States, on Transparency and Open Government (January 21, 2009) *available at* [http://www.whitehouse.gov/the\\_press\\_office/TransparencyandOpenGovernment/](http://www.whitehouse.gov/the_press_office/TransparencyandOpenGovernment/).

Although the CNCI has been the primary source of cybersecurity rules since 2008, neither it nor the authorizing Directive have been released in full.<sup>10</sup> Gregory Garcia (then DHS Assistant Secretary of Cybersecurity and Telecommunications) stated in February 2009 that “too much was kept secret.”<sup>11</sup> The policy goals in the Directive, and the implementation of those goals in the CNCI, have directed virtually all cybersecurity regulation. The Senate Committee on Homeland Security and Governmental Affairs recognizes that cyber security initiatives must include actions to “...reassure [the public] that efforts to secure cyber networks will be appropriately balanced with respect for privacy and civil liberties.”<sup>12</sup> The government cannot meaningfully make such assurances without making public the foundational documents underpinning the CNCI.

### *Procedural Background*

On June 25, 2009, EPIC transmitted EPIC’s FOIA Request to the DHS Management Directorate. *See* Appendix 1. The letter contained a request for expedited processing. *Id.* This request was re-transmitted on June 26, 2009, on the request of DHS.

On June 26, 2009, the DHS Management Directorate wrote to EPIC to acknowledge receipt of EPIC’s FOIA Request and to announce a transfer of the request to the DHS Headquarters & Privacy Office. *See* Appendix 2. The DHS did not make any determination regarding EPIC’s FOIA Request at that time. *See* 5 U.S.C. § 552(a)(6); *see also* Appendix 2.

On July 9, 2009, the DHS Headquarters & Privacy Office wrote to EPIC, acknowledging receipt of EPIC’s FOIA Request, and notifying EPIC of its determination to refer the request to the DHS National Protection and Programs Directorate (“NPPD”), but did not make any determination regarding the substance of EPIC’s FOIA Request. *See* Appendix 3; *see also* 5 U.S.C. § 552(a)(6).

### *EPIC Appeals the DHS’s Failure to Disclose Records*

EPIC hereby appeals the DHS’s failure to make a timely determination regarding EPIC’s FOIA Request. An agency must make a determination regarding a FOIA request within twenty working days. 5 U.S.C. § 552(a)(6); *see also Wash. Post v. Dep’t of Homeland Sec.*, 459 F. Supp. 2d 61, 74 (D.D.C. 2006) (citing *Payne Enterprises v. U.S.*, 837 F.2d 486, 494 (D.C. Cir. 1998)) (stating “FOIA was created to foster public awareness, and failure to process FOIA requests in a timely fashion is ‘tantamount to denial.’”). If a FOIA request is submitted for expedited processing, an agency must make a determination regarding the FOIA request within 10 calendar days. 5 U.S.C. § 552(a)(6)(E)(ii)(I).

### *EPIC Renews Its Request for Expedited Processing*

There is particular urgency for the public to obtain information about the Initiative. The Cybersecurity Act of 2009 is presently under consideration by the Senate Committee on Commerce, Science, and Transportation (S. 773). In order for EPIC to make meaningful public

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<sup>10</sup> *See supra* note 1.

<sup>11</sup> *Id.*

<sup>12</sup> *Supra* note **Error! Bookmark not defined.**

comment on this or subsequent security measures, EPIC and the public must be aware of current programs. DHS has not provided information on measures adopted to safeguard the privacy of citizens' personal information in connection to the directive or CNCI. The public should be informed of DHS' ongoing role in the Initiative prior to passage of the Cybersecurity Act currently under consideration. *See* 6 C.F.R. § 5.5(d). Therefore, EPIC renews its request for expedited processing. 5 U.S.C. § 552(a)(6)(E)(ii)(I).

*EPIC Renews Its Request for "News Media" Fee Status*

EPIC renews its request for "news media" fee status. EPIC is a non-profit, educational organization that routinely and systematically disseminates information to the public. EPIC is a representative of the news media. *EPIC v. Dep't of Defense*, 241 F. Supp. 2d 5 (D.D.C. 2003).

EPIC's status as a "news media" requester entitles it to receive records with only duplication fees assessed. In addition, because disclosure of this information will "contribute significantly to public understanding of the operations or activities of the government," as described above, any duplication fees should be waived.

*Conclusion*

Thank you for your prompt response to this appeal. As the FOIA expedited processing rules provide, I anticipate that you will produce responsive documents within 10 working days. If you have any questions, please feel free to contact EPIC at (202) 483-1140 or [verdi@EPIC.org](mailto:verdi@EPIC.org).

Sincerely,

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Amie L. Stepanovich  
EPIC Clerk

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John Verdi  
Director, EPIC Open Government Project

/enclosures

## Appendix 17

Jordan Grossman, e-mail to Emily Lantz requesting follow-up information about EPIC's  
Two June 2009 FOIA requests, June 29, 2009 (3 pages)

**Sandweg, John**

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**From:** Callahan, Mary Ellen [REDACTED]  
**Sent:** Tuesday, June 30, 2009 9:10 AM  
**To:** Sandweg, John  
**Subject:** Fw: (FOIA) Please reply by tomorrow COB.

Fyi. The mtg is tomorrow at 2pm if you can make it. Txl

Mary Ellen Callahan  
Chief Privacy Officer  
Department of Homeland Security  
[REDACTED]

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**From:** Lockett, Vania  
**To:** Callahan, Mary Ellen  
**Cc:** Kropf, John; Holzerland, William; Lockett, Vania ; Lantz, Emily  
**Sent:** Tue Jun 30 08:49:09 2009  
**Subject:** FW: (FOIA) Please reply by tomorrow COB.

Mary Ellen,

FYI – below is the list of FOIA-related questions from the Front Office for this week. Note, one of the questions is whether we know why EPIC would be interested in your meetings on May 29, 2009 specifically. Any thoughts?

Thanks.

Vania

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**From:** Grossman, Jordan  
**Sent:** Monday, June 29, 2009 7:58 PM  
**To:** Lantz, Emily <CTR>  
**Cc:** Fox, Julia  
**Subject:** (FOIA) Please reply by tomorrow COB.

Hi,

Below are this week's follow up questions for the weekly report:

In addition to the questions listed, could you add status updates to all of the below items?

What is Operation Desert Safeguard?

- **6/18:** Jesse Franzblau of *The National Security Archive* in Washington requested from ICE all documents pertaining to Operation Desert Safeguard, a cooperative effort between the U.S. and Mexico to reduce migrant deaths in the Sonora Desert area.
- **6/19:** Jesse Franzblau of *The National Security Archive* in Washington requested from ICE and CBP all documents related to deaths of Mexican migrants in the Arizona-Sonora area in 2003, and any safety or security measures taken in response to these incidents.

Does this mean all assessments of DHS intelligence activities made by the President's Intelligence Advisory Board? In plain language, what are these EOs about?

- **6/19:** Nathan Cardozo of *Electronic Frontier Foundation* in San Francisco requested from OIG:

- 1) All DHS records, including but not limited to electronic records, all reports submitted to the Intelligence Oversight Board (IOB) pursuant to Section 2.4 of Executive Order 12863 from 2/25/2008 to 2/29/2008; 2) All reports submitted to the IOB or the Director of National Intelligence pursuant to Section 1.7(d) of Executive Order 12333 from 2/29/2009 to the present; and 3) All reports of assessments or reviews of intelligence activities by the President's Intelligence Advisory Board to DHS pursuant to Section 4(a)(ii) of Executive Order 13462 from 2/29/2008 to the present.

What was this meeting about? Was it a public/open press event?

- **6/19: Steven Emerson of SAE Productions** in Washington requested from USCIS records pertaining to the February 2009 meeting between the Council on American-Islamic Relations' Civil Rights Director and USCIS.

What documents exactly are being requested related to the testing – testing results or documents pertaining to the testing process?

- **6/22: Michael Rey with CBS News** in New York requested from FEMA air quality testing conducted by the CDC/Agency for Toxic Substances and Disease Registry (ASTDR) relating to formaldehyde and FEMA travel trailers in Purvis, MS, and copies of communications between CDC/ATSDR and FEMA between 8/1/2007 and 11/2/2007.

Do we have any more details on this contract?

- **6/22: Holbrook Mohr with AP** in Jackson, MS requested from FEMA any and all documents, including itemizations for room rates and room service expenditures, related to a \$1,414,500 contract for hotel rooms pertaining to Hurricane Katrina.
- **6/22: Brad Heath with USA Today** in Washington requested from FEMA data on Public Assistance applications and awards from 2004 to the present, including location of projects, the disaster number, and the amount of funding obligated.

What is this agreement?

- **6/22: Jesse Franzblau of The National Security Archive** in Washington requested from ICE all documents related to the "Local Arrangement for Repatriation of Mexican Nationals" agreement between the U.S. and Mexico.

Will this will be handled as other USSS requests of this type are – pending court decisions?

- **6/22: Anne Weismann of Citizens for Responsibility and Ethics in Washington** requested from USSS all records relating to visits by specific representatives of pharmaceutical, health insurance, and other healthcare-related companies, to the White House or the residence of the Vice President from 1/21/2009 to the present.
- **6/23: Travis Loller of AP** in Brentwood, TN requested from ICE copies of e-mails sent from ICE to the Davidson County Sheriff's Office (TN) that describe plans by ICE to no longer detain illegal immigrants identified under the local 287(g) program who are arrested for traffic violations other than DUIs.
- **6/23: John Greenwald, Jr. of The Black Vault Radio Show** in Northridge, CA requested from the USCG records relating to Operation Distant Shore.

[Do we know why they are interested in 5/29/2009 specifically?]

- **6/25: John Verdi of Electronic Privacy Information Center** in Washington requested from DHS all agency records concerning appointments and meetings between Chief Privacy Officer Mary Ellen Callahan and non-governmental individuals or entities from the date of her appointment, 3/9/09, to the present, as well as all agency records concerning Ms. Callahan's 5/29/09 appointments and meetings.
- **6/25: Emily Ramshaw of The Dallas Morning News** in Austin requested from ICE the following, as they pertain to a provided list of Texas detention facilities: 1) All inspection/conditions reports



since 1/1/2007; 2) The number of abuse, neglect or exploitation allegations at each of these facilities in each of the last two years, and the percentage that were confirmed; 3) The number of psychiatrists or psychologists currently employed at each of these facilities.

What does this directive say?] Is this Directive unclassified?

- **6/25: John Verdi of Electronic Privacy Information Center in Washington** requested from DHS MGMT National Security Presidential Directive 54, and related records in possession of the agency.

Thanks!

Jordan Grossman  
Special Assistant to the Chief of Staff  
Office of the Secretary  
U.S. Department of Homeland Security



## Appendix 18

Vania T. Lockett, Acting Departmental Disclosure Director, e-mail response to Jordan Grossman regarding Grossman's requests for information about EPIC's two June 2009 FOIA requests, June 30, 2009 (4 pages)

Sandweg, John

From: Shlossman, Amy [REDACTED]  
Sent: Tuesday, June 30, 2009 2:57 PM  
To: Sandweg, John  
Cc: Grossman, Jordan  
Subject: FW: FOIA submission status updates

From: Grossman, Jordan  
Sent: Tuesday, June 30, 2009 2:53 PM  
To: Shlossman, Amy  
Subject: FW: FOIA submission status updates

They really hate us.

From: Lockett, Vania  
Sent: Tuesday, June 30, 2009 2:49 PM  
To: Grossman, Jordan  
Cc: Fox, Julia; Callahan, Mary Ellen; Holzerland, William  
Subject: FOIA submission status updates

Jordan,

Below are the status updates that you requested. Please note that, as FOIA professionals, we are not subject matter experts. Going forward, any substantive questions regarding the records should be directed to the respective program offices. I look forward to meeting you tomorrow, and we can discuss this further.

Thanks.

Vania

FOIA Case / Additional Questions	Status Update
<p>6/18: Jesse Franzblau of <i>The National Security Archive</i> in Washington requested from ICE all documents pertaining to Operation Desert Safeguard, a cooperative effort between the U.S. and Mexico to reduce migrant deaths in the Sonora Desert area.</p> <p>- What is Operation Desert Safeguard?</p>	<p>ICE: currently conducting a search of the ICE Office of Detention and Removal Operations and the ICE Office of Investigations for responsive records.</p> <p>- Operation Desert Safeguard is a joint U.S. - Mexico operation which aims to reduce the number of people who die trying to cross the Sonoran Desert that extends from Mexico's state of Sonora into the state of Arizona. The CBP Border Patrol assigned 150 agents to this desert corridor, including agents from the</p>

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<p>6/19: Jesse Franzblau of <i>The National Security Archive</i> in Washington requested from ICE and CBP all documents related to deaths of Mexican migrants in the Arizona-Sonora area in 2003, and any safety or security measures taken in response to these incidents.</p>	<p><i>Border Patrol Tactical Unit and specialized agents from the Border Patrol's Search, Trauma, and Rescue Team (BORSTAR).</i></p> <p>CBP: A request has been sent out to the Office of Border Patrol to search for any responsive documents.</p> <p>ICE: currently conducting a search of the ICE Office of Detention and Removal Operations and the ICE Office of Investigations for responsive records.</p>
<p>6/19: Nathan Cardozo of <i>Electronic Frontier Foundation</i> in San Francisco requested from OIG:</p> <p>1) All DHS records, including but not limited to electronic records, all reports submitted to the Intelligence Oversight Board (IOB) pursuant to Section 2.4 of Executive Order 12863 from 2/25/2008 to 2/29/2008; 2) All reports submitted to the IOB or the Director of National Intelligence pursuant to Section 1.7(d) of Executive Order 12333 from 2/29/20098 to the present; and 3) All reports of assessments or reviews of intelligence activities by the President's Intelligence Advisory Board to DHS pursuant to Section 4(a)(ii) of Executive Order 13462 from 2/29/2008 to the present.</p> <p>- Does this mean all assessments of DHS intelligence activities made by the President's Intelligence Advisory Board? In plain language, what are these EOs about?</p>	<p>OIG: currently in the administrative stage of preparing a case file and responding initially to the requester.</p> <p>- the EOs in question provide guidance to all agencies to provide the IOB with quarterly reports of all information and intelligence that is contrary to Executive Order, not being adequately handled within an agency, or not being appropriately handled by the Attorney General, the Director of National Intelligence, or the head of an agency. The requester seeks both records submitted to the IOB as well as records produced by the OIB in response to DHS submissions.</p>
<p>6/19: Steven Emerson of <i>SAE Productions</i> in Washington requested from USCIS records pertaining to the February 2009 meeting between the Council on American-Islamic Relations' Civil Rights Director and USCIS.</p> <p>- What was this meeting about? Was it a public/open press event?</p>	<p>USCIS: has received and is in the process of reviewing documents related to the request.</p> <p>- The meeting was a public event held by the USCIS Office of Communications as well as the Community Relations Division. The meeting focused on a presentation by FDNS, statistical information on N-400 applications and I-485 applications, Fee Waiver Report Summaries, and a small question and answer session.</p>
<p>6/22: Michael Rey with <i>CBS News</i> in New York requested from FEMA air quality testing conducted by the CDC/Agency for Toxic Substances and Disease Registry (ASTDR) relating to formaldehyde and FEMA travel trailers in Purvis, MS, and copies of communications between CDC/ATSDR and FEMA between 8/1/2007 and 11/2/2007.</p> <p>- What documents exactly are being requested</p>	<p>FEMA: This request was sent as a referral from the CDC with documents for FEMA's review and release. FEMA has no further account of the records released other than what they have in hand, which are email strings with FEMA equities.</p> <p>- The submission description of records is verbatim from the request. As FEMA is only</p>

<p><i>related to the testing – testing results or documents pertaining to the testing process?</i></p>	<p><i>processing records received from the CDC, no search for records will be conducted.</i></p>
<p><b>6/22: Holbrook Mohr with AP in Jackson, MS</b> requested from FEMA any and all documents, including itemizations for room rates and room service expenditures, related to a \$1,414,500 contract for hotel rooms pertaining to Hurricane Katrina.</p> <p><i>- Do we have any more details on this contract?</i></p>	<p><b>FEMA:</b> currently in the administrative phase of the case; the request has been acknowledged and FEMA is in the process of gathering records.</p> <p><i>- This contract can be identified under contract number GSHSFED0506P7847. The vendor for this contract is Hilton Head Marriott Beach and Golf Resort in New Orleans, Louisiana. The time period for this contract is between 10/1/2005 and 9/3/2006.</i></p>
<p><b>6/22: Brad Heath with USA Today in Washington</b> requested from FEMA data on Public Assistance applications and awards from 2004 to the present, including location of projects, the disaster number, and the amount of funding obligated.</p>	<p><b>FEMA:</b> currently in the administrative phase of the case; the request has been acknowledged and FEMA is in the process of gathering records.</p> <p><i>- [REDACTED] is not requesting records of a specific contract, but rather a listing of Public Assistance projects that "would include, but is not limited to, the name and location of the applicant, a description of the project, the category of Public Assistance funding, the relevant disaster number and the date on which the application was made. It would also include the amount of funding requested and obligated, as well as any information about milestones in the review process such as the dates and dollar values of subsequent worksheet versions, administrative appeals, recoupments or other modifications."</i></p>
<p><b>6/22: Jesse Franzblau of The National Security Archive in Washington</b> requested from ICE all documents related to the "Local Arrangement for Repatriation of Mexican Nationals" agreement between the U.S. and Mexico.</p> <p><i>- What is this agreement?</i></p>	<p><b>ICE:</b> currently conducting a search of the ICE Executive Secretariat and the ICE Office of International Affairs for responsive records.</p> <p><i>- Signed 6/27/2006, this agreement between DHS/CBP/ICE and the Instituto Nacional de Migracion, part of the Mexican Secretariat of Governance, and the Mexican Consulate in Texas, allowed for the implementation of a pilot program in El Paso, Texas and Chicago, Illinois for the safe, humane, and orderly repatriation of Mexican nationals as part of the Security and Prosperity Partnership (SPP) program.</i></p>
<p><b>6/22: Anne Weismann of Citizens for Responsibility and Ethics in Washington</b> requested from USSS all records relating to visits by</p>	<p><b>USSS:</b> this request is being reviewed by the USSS Office of Chief Counsel.</p>

<p>specific representatives of pharmaceutical, health insurance, and other healthcare-related companies, to the White House or the residence of the Vice President from 1/21/2009 to the present.</p> <p><i>- Will this will be handled as other USSS requests of this type are— pending court decisions?</i></p>	<p><i>- This request will be handled as a "pending litigation" request. A letter to the requester indicating this is pending within the USSS FOIA Office.</i></p>
<p><b>6/23: Travis Loller of AP in Brentwood, TN</b> requested from ICE copies of e-mails sent from ICE to the Davidson County Sheriff's Office (TN) that describe plans by ICE to no longer detain illegal immigrants identified under the local 287(g) program who are arrested for traffic violations other than DUIs.</p>	<p>ICE: currently conducting a search of the ICE Office of Detention and Removal Operations and the ICE Office of State and Local Coordination for responsive records.</p>
<p><b>6/23: John Greenwald, Jr. of The Black Vault Radio Show in Northridge, CA</b> requested from the USCG records relating to Operation Distant Shore.</p>	<p>USCG: request is pending acknowledgment by USCG.</p>
<p><b>6/25: John Verdi of Electronic Privacy Information Center in Washington</b> requested from DHS all agency records concerning appointments and meetings between Chief Privacy Officer Mary Ellen Callahan and non-governmental individuals or entities from the date of her appointment, 3/9/09, to the present, as well as all agency records concerning Ms. Callahan's 5/29/09 appointments and meetings.</p> <p><i>- Do we know why they are interested in 5/29/2009 specifically?</i></p>	<p>PRIV: Compiling records and issuing acknowledgement letter to the requester.</p> <p><i>- EPIC's Privacy Coalition invited the CPO to their monthly meeting on 5/29/2009, to which the CPO did not attend. EPIC wishes to see what the CPO had on her agenda that prevented her from attending.</i></p>
<p><b>6/25: Emily Ramshaw of The Dallas Morning News in Austin</b> requested from ICE the following, as they pertain to a provided list of Texas detention facilities: 1) All inspection/conditions reports since 1/1/2007; 2) The number of abuse, neglect or exploitation allegations at each of these facilities in each of the last two years, and the percentage that were confirmed; 3) The number of psychiatrists or psychologists currently employed at each of these facilities.</p>	<p>ICE: currently conducting a search of the ICE Office of Detention and Removal Operations for responsive records.</p>
<p><b>6/25: John Verdi of Electronic Privacy Information Center in Washington</b> requested from DHS MGMT National Security Presidential Directive 54, and related records in possession of the agency.</p> <p><i>- What does this directive say? Is this Directive unclassified?</i></p>	<p>MGMT: This request was referred to PRIV for direct response on 6/26/2009.</p> <p><i>- This directive is classified Top Secret and concerns a series of efforts to protect Government systems and reduce potential vulnerabilities, protect against intrusion attempts, and anticipate future threats through cyber security and monitoring.</i></p>

Vania T. Lockett, CIPP/G  
Acting Departmental Disclosure Officer