



February 23, 2016

VIA FAX

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RE: Freedom of Information Act Request

Dear Ms. Bolling:

This letter constitutes as 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 the Army.

EPIC seeks records related to the Army’s investigation into the October 28, 2015 unmooring of the JLENS surveillance blimp from the Aberdeen Proving Ground in Maryland.

Background

The Army’s JLENS—or Joint Land Attack Cruise Missile Defense Elevated Netted Sensor Systems—consists of “two tethered, 74-meter helium-filled aerostats connected to mobile mooring stations and a communications and processing groups.”¹ In 2014, amid controversy over the blimps’ surveillance capabilities, the Army deployed a pair of JLENS blimps 45-miles from Washington, D.C. at the Aberdeen Proving Grounds in Maryland.²

On October 28, 2015, one of the two blimps became untethered and floated across the northeastern United States, eventually losing altitude and landing in

¹ Raytheon, *JLENS*, <http://www.raytheon.com/capabilities/products/jlens> (last accessed Feb. 22, 2016).

² Craig Timberg, *Blimplike Surveillance Craft Set to Deploy over Maryland Heighten Privacy Concerns*, Wash. Post (Jan. 22, 2014), https://www.washingtonpost.com/business/technology/blimplike-surveillance-crafts-set-to-deploy-over-maryland-heighten-privacy-concerns/2014/01/22/71a48796-7ca1-11e3-95c6-0a7aa80874bc_story.html.

rural Pennsylvania.³ The runaway blimp dragged behind it 6,700 feet of cable, snapping power lines and leaving 27,000 people without power.⁴

On February 11, 2016, Pentagon officials released a six-sentence summary of an investigation into the cause of the blimp's unmooring, and acknowledged the existence of an underlying report.⁵ The Army, however, declined to release the report.

Documents Requested

1. All final reports on the Army's investigation into the October 28, 2015 unmooring of the JLENS blimp from the Aberdeen Proving Ground.

Request for "News Media" Fee Status and Fee Waiver

EPIC is a "representative of the news media" for fee status purposes.⁶ As such, EPIC is entitled to receive the requested record for the cost of duplication only. However, because disclosing this information will "contribute significantly to public understanding of the operations or activities of the government," EPIC should be granted a fee waiver, eliminating any duplication fees.⁷

According to the DOD FOIA regulations, fees "shall be waived or reduced" where two criteria are satisfied: (1) "when the Component determines that waiver or reduction of the fees is in the public interest because furnishing the information is likely to contribute significantly to public understanding of the operations or activities of the Department of Defense," and (2) waiver "is not primarily in the commercial interest of the requester."⁸

EPIC satisfies the second element of the fee waiver standard. 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.⁹ EPIC's work is distributed freely through

³ Ian Duncan, *Balloon Escape is Latest Problem for Troubled Army Program*, Baltimore Sun (Oct. 28, 2015), <http://www.baltimoresun.com/news/maryland/harford/aberdeen-havre-de-grace/bs-md-jlens-program-20151028-story.html>.

⁴ *Id.*

⁵ David Willman, *Missing Batteries Among Issues that Caused Army's Runaway Blimp*, L.A. Times (Feb. 14, 2016), <http://www.latimes.com/nation/la-na-runaway-missile-defense-blimp-20160214-story.html>; Ian Duncan, *Defense Secretary Backs Raising Balloons Over APG Again*, Baltimore Sun (Feb. 11, 2016), <http://www.baltimoresun.com/news/maryland/harford/aberdeen-havre-de-grace/bs-md-jlens-balloon-investigation-20160211-story.html>.

⁶ *EPIC v. Dep't of Defense*, 241 F. Supp. 2d 5 (D.D.C. 2003).

⁷ 5 U.S.C. § 552(a)(6)(E)(v)(II) (2008); *Al-Fayed v. CIA*, 254 F.3d 300, 306 (D.C. Cir. 2001).

⁸ *Id.* at 66.

⁹ *About EPIC*, EPIC (2016), <http://epic.org/epic/about.html>.

our website and through the EPIC Alert newsletter. EPIC has no commercial interest that would be furthered by disclosing the requested records.

EPIC also satisfies the first element of the fee waiver standard. In assessing this element, the DOD considers four factors: (A) “the subject of the request”; (B) “the informative value of the information to be disclosed”; (C) “the contribution to an understanding of the subject by the general public likely to result from disclosure”; and (D) “the significance of the contribution to public understanding.”¹⁰ Since their deployment, the JLENS surveillance blimps have garnered significant coverage from national news outlets.¹¹ Likewise, the news of the blimp’s October 28th unmooring has been widely covered by national news media.¹² With reports indicating that Secretary of Defense Ash Carter has approved plans to resume the deployment of the JLENS blimps,¹³ the public has a tremendous interest in understanding the cause of the destructive blimp’s errant release. And because congressional action is required to resume JLENS testing, the public is owed all information necessary to participate in an informed debate. The brief public statements provided by a Pentagon spokesperson provide little practical detail, and are no adequate substitute for the Army’s investigative report itself. Because the investigative report will contribute significantly to the public’s understanding of the safety concerns surrounding the JLENS blimps, a fee waiver should be granted.

¹⁰ 32 C.F.R. § 286.28

¹¹ Dan Froomkin, *Billion Dollar Surveillance Blimp to Launch Over Maryland*, Intercept, (Dec. 17, 2014), <https://theintercept.com/2014/12/17/billion-dollar-surveillance-blimp-launch-maryland/>; Jeremy Bender, *The Army Is Launching A Pair Of Billion-Dollar Surveillance Blimps Over I-95*, Business Insider (Dec. 17, 2014), <http://www.businessinsider.com/army-launching-two-surveillance-blimps-next-week-2014-12>; Bonnie Berkowitz, Todd Lindeman and Gene Thorp, *Surveillance Aircraft Flying High Above Maryland*, Wash. Post, (Jan. 22, 2014), <https://www.washingtonpost.com/apps/g/page/local/the-us-armys-blimplike-surveillance-aircraft-is-on-the-loose-over-the-east-coast/1862/>; Matthew Hay Brown, *Officials Present Radar Blimp Plans for Aberdeen Proving Ground*, Baltimore Sun (Jan. 16, 2014), http://articles.baltimoresun.com/2014-01-16/news/bs-md-aberdeen-proving-ground-jlens-blimps-20140116_1_aberdeen-proving-ground-blimps-edgewood-area.

¹² Andrea Peterson, *The Stupidly Simple Reason Why the Military Lost Control of a Giant Surveillance Blimp*, Wash. Post (Feb. 16, 2016), <https://www.washingtonpost.com/news/the-switch/wp/2016/02/16/the-stupidly-simple-reason-why-the-military-lost-control-of-a-giant-surveillance-blimp/>; David Willman, *Missing Batteries Among Issues That Caused Army's Runaway Blimp*, L.A. Times (Feb. 14, 2016), <http://www.latimes.com/nation/la-na-runaway-missile-defense-blimp-20160214-story.html>; Sean Gallagher, *Radar Blimp Went Rogue Because Auto-Deflation System Had No Batteries*, Ars Technica (Feb. 15, 2016), <http://arstechnica.com/information-technology/2016/02/radar-blimp-went-rogue-because-auto-deflation-system-had-no-batteries/>.

¹³ Robert Burns, *Pentagon Supports Restarting JLENS Blimp Tests*, Associated Press (Feb. 17, 2016), <http://www.militarytimes.com/story/military/2016/02/17/pentagon-supports-restarting-jlens-blimp-tests/80492054/>.

Conclusion

Thank you for your consideration of this request. As provided in 5 U.S.C. § 552(6)(A)(i), I will anticipate your determination of our request for expedited processing within 20 business days. For questions regarding this request, I can be contacted at 202-483-1140 x123 or tran@epic.org.

Respectfully Submitted,

John Tran
EPIC FOIA Counsel

TRANSMISSION VERIFICATION REPORT

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