



VIA EMAIL

September 15, 2016

Federal Bureau of Investigation  
Attn: FOI/PA Request  
Record/Information Dissemination Section  
170 Marcel Drive  
Winchester, VA 22602-4843  
Email: foiparequest@ic.fbi.gov

**RE: Freedom of Information Act Request**

Dear FOIA Officer,

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 Federal Bureau of Investigation (“FBI”).

EPIC seeks all documents related to data transfer agreements between the FBI and foreign countries and international organizations that govern the transfer of biometric and related biographic, biometric, and event information in the Next Generation Identification (“NGI”) database.

Documents Requested

1. All documents implementing NGI-related biometric-transfer agreements with foreign countries or international organizations, including but not limited to documents pertaining to the Foreign Biometric Exchange program and Agreements on Preventing and Combating Serious Crime.
2. All documents, including final memos and guidance, describing the nature, type, and circumstances in which information is disclosed pursuant to NGI-related transfer agreements with foreign countries or international organizations.
3. All documents related to any privacy and civil liberties protections, risks, or mitigation techniques implemented or required in connection with or by biometric transfer agreements with foreign countries or international organizations.

## Background

The FBI employs NGI, a biometric identification system. The program grew out of the FBI's Automated Fingerprint Identification System ("IAFIS"), a fingerprint database described by the FBI as "the world's largest person-centric database."<sup>1</sup> Today's NGI vastly exceeds the original scope of IAFIS, encompassing additional types of biometric data, quick and easy search capabilities, and notification systems.<sup>2</sup> NGI's biometric data spans fingerprints, iris scans, palm prints, photos, and voice data.<sup>3</sup> These records are also frequently linked with other identifying data such as detailed biographic information, including criminal histories, physical characteristics of the individual, and employer name and contact information.<sup>4</sup> Furthermore, the database logs the personal information of a wide variety of individuals, reaching beyond merely those formally accused of criminal conduct.<sup>5</sup>

Additionally, the FBI discloses biometric information in the NGI database with foreign governments and organizations pursuant to transfer agreements. For instance, under Preventing and Combating Serious Crime (PCSC) program agreements between the U.S. government and foreign nations, each partner country is able to query one another's fingerprint databases for criminal justice purposes.<sup>6</sup> Similarly, under the FBI's Foreign Biometric Exchange program, individuals "associated with or appropriately suspected of terrorist activity, egregious crimes, or transnational criminal activity" have

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<sup>1</sup> FBI, *Next Generation Identification (NGI)*, FBI.GOV (Sept. 7, 2016), <https://www.fbi.gov/services/cjis/fingerprints-and-other-biometrics/ngi>.

<sup>2</sup> *Id.*; FBI, *FBI Announces Biometrics Suite's Full Operational Capability*, FBI.GOV (Sep. 23, 2014), <http://www.fbi.gov/news/stories/2014/september/fbi-announces-biometrics-suites-full-operational-capability/fbi-announces-biometrics-suites-full-operational-capability>.

<sup>3</sup> *FBI's Next Generation Identification Biometrics Database*, ELECTRONIC FRONTIER FOUNDATION (Sept. 7, 2016), <https://www.eff.org/foia/fbis-next-generation-identification-biometrics-database>.

<sup>4</sup> NGI SORN at 27,285; Richard W. Vorder Bruegge, *Facial Recognition and Identification Initiatives*, FBI BIOMETRIC CENTER FOR EXCELLENCE (Sept. 7, 2016), [https://www.eff.org/files/filenode/vorder\\_bruegge-facial-recognition-and-identification-initiatives\\_0.pdf](https://www.eff.org/files/filenode/vorder_bruegge-facial-recognition-and-identification-initiatives_0.pdf).

<sup>5</sup> NGI SORN at 27,285 (describing records maintained in the NGI database, including data maintained relating to civil actions, received from foreign entities under data transfer agreements, and logged pursuant to an individual's request or consent, among others); FBI, *NGI Rap Back Service Overview*, NATIONAL COUNCIL OF STATE BOARDS OF NURSING (May 21, 2014), [https://www.ncsbn.org/NGI\\_Rap\\_Back\\_Overview\\_Presentation\\_for\\_National\\_Council\\_of\\_State\\_Boards\\_of\\_Nursing\\_2014\\_05\\_21.pdf](https://www.ncsbn.org/NGI_Rap_Back_Overview_Presentation_for_National_Council_of_State_Boards_of_Nursing_2014_05_21.pdf) (a presentation document to this entity explaining the benefits of the NGI Rap-Back service, in which employers voluntarily sign up to collect and submit fingerprints to facilitate ongoing background checks of civil applicants, employees, volunteers, and licensees).

<sup>6</sup> 2015 CJIS ANNUAL REPORT 20 (2015), [https://www.fbi.gov/file-repository/2015\\_cjis\\_annual\\_report-1.pdf/view](https://www.fbi.gov/file-repository/2015_cjis_annual_report-1.pdf/view)

their biometrics collected and disclosed to foreign partners.<sup>7</sup> In 2015, 201,855 fingerprint records from foreign countries were collected by the FBI's CJIS under this program.<sup>8</sup>

The FBI's collection of the personal information of millions of individuals via the NGI program raises significant security and civil liberties concerns. Moreover, the collection and disclosure of biometric data and connected identifying information to and from foreign entities raises unique privacy issues. Recent and ongoing revelations about the indiscriminate surveillance of foreign persons by the U.S., and the corresponding lack of legal protection and legal recourse that those foreign persons have in the U.S. system, has created a serious breach of trust between the citizens of other nations and the U.S. government. The consequences are still playing out abroad and bear heavily on the fate of the U.S. as a global economic and political actor.<sup>9</sup>

In order to build trust and accountability into U.S. handling of the personal information of domestic and international public, a better public understanding of how and what biometric and associated personal information is transferred between the FBI and foreign entities is required.

The FBI has acknowledged that one of the categories of records maintained in the FBI NGI database are "fingerprint images with related biographic, biometric and event information received from foreign countries or international organizations pursuant to sharing agreements."<sup>10</sup>

#### Request for "News Media" Fee Status and Fee Waiver

EPIC is a "representative of the news media" for fee status and waiver purposes.<sup>11</sup> As such, EPIC is entitled to waiver of search and review charges.

Duplication fees should also be waived in accordance with FOIA and federal regulations because the disclosure of these requested documents will "contribute significantly to public understanding of the operations or activities of the government."<sup>12</sup> As a request for disclosure of FBI operational information, the requested documents of the FBI self-evidently concern "the operations or activities of the Federal government."<sup>13</sup> Further, these documents will "likely to contribute" to an increased public understanding of those operations or activities" by meaningfully supplementing public

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<sup>7</sup> *Id.*

<sup>8</sup> *Id.*

<sup>9</sup> *See, e.g., Epic – Max Schrems v. Irish Data Protection Commission (Safe Harbor)*, EPIC.ORG (Sept. 8, 2016), <https://epic.org/privacy/intl/schrems/> (describing a 2015 Court of Justice of the European Union decision invalidating a data transfer agreement between the EU and US, concluding US provides inadequate privacy protection to support the agreement).

<sup>10</sup> NGI SORN at 27,285.

<sup>11</sup> *EPIC v. Dep't of Def.*, 241 F. Supp. 2d 5 (D.D.C. 2003); 5 U.S.C. § 552(a)(4)(A)(ii)(II) (2016); 28 C.F.R. § 16.10(c)(1)(i), (c)(3) (2015).

<sup>12</sup> § 552(a)(4)(A)(iii); § 16.10(k)(1)(i).

<sup>13</sup> § 16.10(k)(2)(i).

knowledge about the FBI's policies and procedures in carrying out the NGI program.<sup>14</sup> Additionally, the requested documents are of interest to the public at large, who are potential or current subjects of the NGI program, and to commercial entities that may participate in features of the program such as the Rap-Back program. Thus, these requested documents would "contribute to a reasonably broad audience of persons interested in the subject," although the agency "shall [] presume[] that a representative of the news media will satisfy this consideration."<sup>15</sup> Finally, given that public knowledge about international data transfer through the NGI program is limited, disclosure will "significantly" enhance public knowledge.<sup>16</sup>

### Conclusion

Thank you for your consideration of this request. As provided in 5 U.S.C. § 552(a)(6)(A)(i), we will anticipate your response within 20 business days. Should you require additional information, please contact 202-483-1140 x111 or [foia@epic.org](mailto:foia@epic.org).

Respectfully submitted,

Jeramie D. Scott  
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<sup>14</sup> § 16.10(k)(2)(ii).

<sup>15</sup> § 16.10(k)(2)(iii).

<sup>16</sup> § 16.10(k)(2)(iv).