

February 12, 2008

VIA FACSIMILE (804-674-8531)
Virginia State Police
Public Relations Office
Attn: FOIA Officer
Post Office Box 27472
Richmond, VA 23261-7472

RE: Freedom of Information Act Request

Dear Virginia State Police,

This letter constitutes a request under the Virginia Freedom of Information Act (“FOIA”), Va. Code Ann. §§ 2.2-3700 (2007), and is submitted on behalf of the Electronic Privacy Information Center (“EPIC”).

Background

On March 20, 2005, the Virginia Fusion Intelligence Center (the “Virginia Fusion Center”) was established pursuant to Va. Code Ann. § 52-47 (2007). The Virginia Fusion Center’s stated purpose is to “receive and integrate terrorist-related intelligence and information.” Id. The Virginia Fusion Center shall “collect, analyze, disseminate, and maintain such information to support local, state, and federal law-enforcement agencies, and other governmental agencies and private organizations in preventing, preparing for, responding to, and recovering from any possible or actual terrorist attack.” Id. The Department of State Police operates the Virginia Fusion Center in cooperation with the Department of Emergency Management. Id.

The Virginia Fusion Center is one of several similar entities established by state governments throughout the United States. The Virginia Fusion Center’s operations involve contact with federal agencies, including the U.S. Department of Homeland Security and the U.S. Department of Justice, as well as other federal programs, including the National Criminal Intelligence Sharing Plan and the Criminal Intelligence Coordinating Council. The federal government has spent at least \$380 million to support the state Fusion Centers and other similar entities.

Federal guidelines state that the Virginia Fusion Center should accumulate and retain information about Virginia residents from a wide range of public and

private sources.¹ Such information includes, but is not limited to: financial records, credit reports, medical records, internet and email data, video surveillance from retail stores and sporting facilities, data from preschools, and welfare records.²

The impact of fusion centers is a matter of great public interest.³ Many newspapers, including *The Washington Post*, *The Fredericksburg Free Lance-Star*, and *The Las Vegas Sun*, have published substantial articles about fusion centers.⁴ Concerns have also been raised about HB 1007, a bill now pending in the Virginia Assembly that would limit the application of the Virginia Freedom of Information Act, and the Virginia state privacy law to the Virginia Fusion Center and to other agencies of the Commonwealth assigned to the Virginia Fusion Center.⁵

This request seeks to inform the public regarding matters of public interest relating to the Virginia Fusion Center and specifically the role of U.S. federal agencies in the recently proposed changes to Virginia's open government law, Virginia's state privacy law, and Virginia's common law right of privacy.

Documents Requested

Please provide copies of the following public records from January 1, 2004 to the present:

1. All correspondence, communications, and records of meetings between the Virginia Department of State Police ("VSP") and the U.S. Department of Homeland Security concerning the Virginia Fusion Center, including funding, development, and impact on the Virginia Freedom of Information Act and the Virginia Collections and Disseminations Practices Act.
2. All correspondence, communications, and records of meetings between the VSP and the U.S. Department of Justice concerning the Virginia Fusion

¹ United States Department of Justice, "Fusion Center Guidelines: Developing and Sharing Information and Intelligence in a New Era," (Aug. 2006), available at http://it.ojp.gov/documents/fusion_center_guidelines_law_enforcement.pdf.

² *Id.* at Appendix C ("Functional Categories").

³ See generally, EPIC, "Information Fusion Centers and Privacy," <http://epic.org/privacy/fusion/>.

⁴ Mary Beth Sheridan and Spencer S. Hsu, Localities Operate Intelligence Centers To Pool Terror Data, Wash. Post, Dec. 31, 2006, at A03, available at <http://www.washingtonpost.com/wp-dyn/content/article/2006/12/30/AR2006123000238.html>; Cheylen Davis, Bill would keep intel center data secret, The Free Lance-Star, Feb. 2, 2008, available at <http://fredericksburg.com/News/FLS/2008/022008/02022008/353419>; Jeff Garman, Fight over, all together now against terrorism, Jan. 22, 2008, available at <http://www.lasvegassun.com/news/2008/jan/22/fight-over-all-together-now-against-terrorism>.

⁵ Virginians should question bill that has all the hallmarks of 'Big Brother', Jan. 30, 2008, available at http://www.dailypress.com/news/opinion/dp-ed_vpa_col_0130jan30,0,7628740.story.

- Center, including funding, development, and impact on the Virginia Freedom of Information Act and the Virginia Collections and Disseminations Practices Act.
3. All correspondence, communications, and records of meetings between the VSP and the Institute for Intergovernmental Research concerning the Virginia Fusion Center, including funding, development, and impact on the Virginia Freedom of Information Act and the Virginia Collections and Disseminations Practices Act.

EPIC Has Standing To Make This Request

The Virginia Freedom of Information Act “guarantees citizens of the Commonwealth and representatives of the media access to public records held by public bodies, public officials, and public employees.”⁶

EPIC is a non-profit, educational organization that routinely and systematically disseminates information to the public through a web site that is easily available to Virginia residents. EPIC is a representative of the news media. EPIC v. Dep't of Defense, 241 F.Supp. 2d 5 (D.D.C. 2003).

EPIC is entitled to receive these records as a representative of the media. Va. Code Ann. § 2.2-3704(A) (2007). EPIC is also entitled to receive these records as the requester John A. Verdi is a resident of the Commonwealth of Virginia.

Because of the pending legislative proposal that impacts the rights of Virginia residents, we urge you to provide the requested documents as soon as possible.

Thank you for your assistance.

Respectfully submitted,

John A. Verdi, Esq.
Director, EPIC Open Government Project

⁶ Virginia State Police, “Freedom of Information Act (FOIA) Rights and Responsibilities,” http://www.vsp.state.va.us/Freedom_of_Information.shtm.