

April 16, 2010

**VIA Facsimile**

National Security Agency  
Attn: FOIA/PA Office (DJP4)  
9800 Savage Road, Suite 6248  
Ft. George G. Meade, MD 200755-6248  
Fax: (301) 688-4762

RE: Freedom of Information Act Request and Request for Expedited Processing

Dear FOIA/PA 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).

EPIC seeks the “classified supplement” to the document “Advance Questions for Lieutenant General Keith Alexander, USA Nominee, United States Cyber Command,” submitted by Lt. Gen. Alexander to the Senate Armed Services Committee, and associated agency records.

**Background**

On June 23, 2009, Secretary of Defense Robert Gates established the United States Cyber Command (USCYBERCOM) as a new subordinate unified command within the Department of Defense (DOD). Robert M. Gates, Memorandum, *Establishment of a Subordinate Unified U.S. Cyber Command Under U.S. Strategic Command for Military Cyberspace Operations* (June 23 2009).<sup>1</sup> Secretary Gates ordered that the command be at “initial operating capability (IOC) not later than October 2009 and full operating capability (FOC) not later than October 2010.” *Id.* To that end, he also required an implementation plan to be submitted by September 1, 2009, and he ordered that the position of the Director of the National Security Agency (NSA) be redesignated as Commander of USCYBERCOM as well as Director of the NSA. *Id.*

Lieutenant General Keith B. Alexander, USA, was officially nominated for the new combined position of Director of the NSA, Chief of the Central Security Service, and Commander of USCYBERCOM on October 16, 2009. U.S. Dep’t of Defense, Press Release, *Flag and General Officer Announcements* (Oct. 16, 2009).<sup>2</sup>

---

<sup>1</sup> Available at [http://www.govexec.com/nextgov/0609/gates\\_cybercommand\\_memo.pdf](http://www.govexec.com/nextgov/0609/gates_cybercommand_memo.pdf).

<sup>2</sup> Available at <http://www.defense.gov/releases/release.aspx?releaseid=13051>.

On April 15, 2010, the Senate Armed Services Committee held a hearing to consider the nomination of Lt. Gen. Alexander.<sup>3</sup> In advance of that hearing, the Committee submitted a list of questions to be answered by Lt. Gen. Alexander. He provided his responses in written form. Many of his answers are available to the public in unclassified form. *Advance Questions for Lieutenant General Keith Alexander, USA, Nominee for Commander, United States Cyber Command.*<sup>4</sup> However, several of Lt. Gen. Alexander's responses are instead contained in a "classified supplement." *Id.*

Of the answers that were released, several of Lt. Gen. Alexander's responses raise concerns about the growing influence of the military in civilian cybersecurity efforts. For example, Lt. Gen. Alexander stated that "Although U.S. Cyber Command's mission will not include defense of the .gov and .com domains, given the integration of cyberspace into the operation of much of our critical infrastructure and the conduct of commerce and governance, it is the obligation of the Department to be prepared to provide military options to the President and SECDEF if our national security is threatened." *Id.* at 19. He also defended the statement that "DOD's mission to defend the nation 'takes primacy' over the Department of Homeland Security's role in some situations." *Id.*

Of greater concern may be the questions that Lt. Gen. Alexander chose to respond to in classified form. When asked if the American people are "likely to accept deployment of classified methods of monitoring electronic communications to defend the government and critical infrastructure without explaining basic aspects of how this monitoring will be conducted and how it may affect them," the Director acknowledged that the Department had a "need to be transparent and communicate to the American people about our objectives to address the national security threat to our nation – the nature of the threat, our overall approach, and the roles and responsibilities of each department and agency involved – including NSA and the Department of Defense," but then chose to include that the rest of his response to that question in the "classified supplement." *Id.* at 28–29.

Most troubling of all is the classified nature of the responses to advance questions 27b) and 27c). After responding to the question of how the internet could be designed differently to provide greater inherent security by describing vague "technological enhancements" that could enhance mobility and possibly security, Lt. Gen. Alexander responded to "Is it practical to consider adopting those modifications?" and "What would the impact be on privacy, both pro and con?" by referring the Senators to the "classified supplement." No answer to either question was provided in the public record.

In a White House speech, delivered May 29, 2009, President Obama made clear the importance of privacy protections within national cybersecurity efforts. Just weeks before the announcement of the new Cyber Command last year, he spoke at length about the importance of privacy and cybersecurity. Barack Obama, Remarks by the President on Securing our Nation's Cyber Infrastructure (May 29, 2009). Specifically, he told the American people, "Let me also be clear about what we will not do. Our pursuit of cybersecurity will not—I repeat, will not include—monitoring private sector networks or Internet traffic. We will preserve and protect the

---

<sup>3</sup> [http://armed-services.senate.gov/testimony.cfm?wit\\_id=9315&id=4505](http://armed-services.senate.gov/testimony.cfm?wit_id=9315&id=4505).

<sup>4</sup> Available at [http://www.senate.gov/~armed\\_services/statemnt/2010/04%20April/Alexander%2004-15-10.pdf](http://www.senate.gov/~armed_services/statemnt/2010/04%20April/Alexander%2004-15-10.pdf).

personal privacy and civil liberties that we cherish as Americans.” *Id.*

Given the importance that the President has placed on privacy protection for the American people in the specific context of cybersecurity policy, it is astounding that Lt. Gen. Alexander’s remarks on the impact on privacy of future modifications to the Internet under his command should be withheld from the public.

There is a clear public interest in making known the Director’s views on this critical topic.

#### Documents Requested

EPIC requests copies of the following agency records:

1. The full text of Lt. Gen. Keith B. Alexander’s responses to the Senate Armed Services Committee’s advance questions regarding his nomination to the position of Commander, United States Cyber Command, including the classified supplement.
2. All analyses and legal memoranda regarding Lt. Gen. Alexander’s responses to the committee’s advance questions.

#### Request for Expedited Processing

This request warrants expedited processing because it is made by “a person primarily engaged in disseminating information . . .” and it pertains to a matter about which there is an “urgency to inform the public about an actual or alleged federal government activity.” 5 U.S.C. § 552(a)(6)(E)(v)(II).

EPIC is “primarily engaged in disseminating information.” *American Civil Liberties Union v. Department of Justice*, 321 F. Supp. 2d 24, 29 n.5 (D.D.C. 2004).

Moreover, there is particular urgency for the public to obtain information about Lt. Gen. Alexander and his positions regarding privacy and USCYBERCOM. The Director’s nomination to the position of Commander is currently pending before the Senate.

#### Request for “News Media” 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).

Based on our status as a “news media” requester, we are entitled to receive the requested records with only duplication fees assessed. Further, 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.

Thank you for your consideration of this request. As provided in 5 U.S.C. § 552(a)(6)(E)(ii)(I), we will anticipate your determination on our request for expedited processing within ten (10) calendar days.

Sincerely,

---

Jared Kaprove  
EPIC Domestic Surveillance Counsel

---

John Verdi  
Director, EPIC Open Government Project