



United States Department of the Interior

OFFICE OF THE SOLICITOR

Washington, D.C. 20240

April 8, 2015

IN REPLY REFER TO:
Appeal No. 2015-067

Ginger McCall
Electronic Privacy Information Center
1718 Connecticut Ave., N.W., Ste. 200
Washington, DC 20009

Dear Ms. McCall:

This responds to the February 16, 2015, Freedom of Information Act (“FOIA”) appeal (“appeal”) that you filed with the Department of the Interior (“Department”), which it received on March 10, 2015, and that you filed on behalf of the Electronic Privacy Information Center (“EPIC”). Your appeal, assigned as **Appeal Number 2015-067**, concerns EPIC’s February 5, 2015, FOIA request that sought certain contracting documents and guidelines related to the Defense Advanced Research Project Agency’s, Department of Defense, “Robust Automatic Transcription of Speech” program. In the FOIA request, EPIC also requested classification as a “representative of the news media” for the purpose of assessing fees.¹ However, as justification for the requested fee category, EPIC offered only a footnote reference to a court case, i.e., “*EPIC v. Department of Defense*, 241 F. Supp. 2d 5 (D.D.C. 2003),” with no additional information explaining what the case related to.

The Office of the Secretary (“OS”), which is processing EPIC’s February 5, 2015, FOIA request, did not address EPIC’s request for classification as a “representative of the news media” and, instead, determined to place EPIC in the “other-use requester” fee category without explanation. You filed the appeal to challenge OS’s determination and you offer additional information in support of EPIC’s request for classification as a “representative of the news media,” including information that discusses what the case referenced in the footnote of the FOIA request was about---the Court found that EPIC was properly classified as a “representative of the news media” for fee assessment purposes.

For your future information, please be aware that the burden is on EPIC to provide sufficient information in its FOIA request to establish that it is entitled to placement in the “representative of the news media” fee category. EPIC’s mere reference to a case citation in the FOIA request with no additional information explaining what the case related to did not meet EPIC’s burden. Though, the Department notes that since EPIC had requested placement in the “representative of the news media” fee category, OS should have mentioned the requested fee placement in its letter and it could have reached out to EPIC to clarify the issue (since EPIC’s entitlement to such fee placement was not clear from the FOIA request)² before dismissing the requested fee classification without explanation.

Nonetheless, you have provided information in the appeal regarding the decision from the District Court in the District of Columbia detailing how EPIC qualifies for classification as a “representative of the news media” for fee assessment purposes. As there is no information on the record before the Department that establishes that anything has changed since the issuance of the Opinion on that case

¹ See 5 U.S.C. § 552(a)(4)(A)(ii)(I)- (III) (discussing the various fee categories).

² 43 C.F.R. § 2.7(c).

regarding EPIC's news media status, the Department concludes that EPIC is properly classified as a "representative of the news media" for the processing of its February 5, 2015, FOIA request.

Accordingly, your appeal is **GRANTED**. By copy of this letter, OS is directed to:

- **Classify EPIC as a "representative of the news media" for the purpose of assessing fees related to the February 5, 2015, FOIA request and limit the assessable fees to only duplication costs (with the first 100 pages without charge).**

OS will reference EPIC's placement in the "representative of the news media" fee category in any future correspondence that it sends regarding the FOIA request.

This completes the Department's response to your appeal. If you have any questions regarding this matter, please call the FOIA Appeals Office at (202) 208-5339.

Sincerely,



Darrell R. Strayhorn
FOIA Appeals Officer
Department of the Interior

cc: Clarice Julka, FOIA Officer, OS (**FOR ACTION**)
Cindy Cafaro, Departmental FOIA Officer