



November 14, 2013

VIA EMAIL — kathleen.e.welker.civ@mail.mil

United States Army Recruiting Command
1307 3rd Avenue
Fort Knox, KY 40121

RE: Freedom of Information Act Request

To Whom It May Concern:

This letter constitutes a request under the Freedom of Information Act (“FOIA”), 5 U.S.C. § 552, and is submitted to the United States Army Recruiting Command (“USAREC”) on behalf of the Electronic Frontier Foundation (“EFF”). We make this request as part of EFF’s Transparency Project, which works to obtain government documents and make them widely available to the public.

Sgt. Star—GoArmy.com’s virtual human guide—began in 2007 as a project of United States Army Accessions Command and is now a project of the successive agency, the United Army Recruiting Command. It was developed in conjunction with the Institute of Creative Technologies and Next IT of Spokane, Wash., This company currently serves as the vendor for the Sgt. Star project, which has expanded to mobile and social-media platforms.

Accordingly, EFF hereby requests all agency records (including, but not limited to, electronic records) created from January 1, 2007 to November 14, 2013 discussing, concerning, or reflecting Sgt. Star. These include:

- 1) The current input patterns and scripted output answers for Sgt. Star as of the date this request is received or processed by the government. In addition, we would like previous input patterns and scripted output answers that were in effect on July 1, 2007, January 1, 2008, January 1, 2009, January 1, 2010, January 1, 2011, January 1, 2012 and January 1, 2013;
- 2) The current user manual(s) for Sgt. Star, including any policies or guidelines on logging of conversations, IP addresses, or any other data associated with Sgt. Star’s interactions with the public;
- 3) All contracts and memorandums of agreement currently in effect regarding Sgt. Star; and
- 4) All annual and quarterly reports and audits of Sgt. Star, including recruitment reports with sections summarizing Sgt. Star’s efficacy, from the years 2007-2013.

- 5) All analytical data already collected concerning Sgt. Star's use and efficacy, including, but not limited to, number of conversations, duration of conversations, location of users, number of referrals, number of conversations that resulted in direct communication with a recruiter and/or recruitment and estimated manpower saved.
- 6) Any privacy policies associated with Sgt. Star beyond what is already published on the web.

Further, as explained below in support of our request for "news media" treatment, EFF is primarily engaged in disseminating information under 32 C.F.R. § 286.28(e)(7).

Request for News Media Fee Status

EFF asks that it not be charged search or review fees for this request because it qualifies as a "representative of the news media" pursuant to the FOIA and 32 C.F.R. § 286.28(e)(7). In requesting this classification, we note that the Department of Homeland Security has recognized that EFF qualifies as a "news media" requester, based upon the publication activities set forth below (*see* DHS stipulation attached hereto). In addition, the National Security Agency ("NSA") has previously determined that EFF is not only a "news media requester," but also "primarily engaged in disseminating information" for purposes of expedited processing (*see* attached EFF FOIA request and NSA response). These precedents are particularly important in light of the fact that the U.S. Court of Appeals for the D.C. Circuit has stressed that "different agencies [must not] adopt inconsistent interpretations of the FOIA." *Al-Fayed v. CIA*, 254 F.3d 300, 307 (D.C. Cir. 2001), quoting *Pub. Citizen Health Research Group v. FDA*, 704 F.2d 1280, 1287 (D.C. Cir. 1983).

EFF is a non-profit public interest organization that works "to protect and enhance our core civil liberties in the digital age."¹ One of EFF's primary objectives is "to educate the press, policymakers and the general public about online civil liberties."² To accomplish this goal, EFF routinely and systematically disseminates information in several ways.

First, EFF maintains a frequently visited web site, <https://www.eff.org>, which reports the latest developments and contains in-depth information about a variety of civil liberties and intellectual property issues. EFF posts documents received in response to its FOIA requests here, along with accompanying analysis and commentary. *See* <https://www.eff.org/issues/foia>.

EFF has also regularly published an online newsletter, the EFFector, since 1990. The EFFector currently has more than 77,000 subscribers. A complete archive of past EFFectors is available at <https://www.eff.org/effector/>.

¹ Guidestar Basic Report, Electronic Frontier Foundation, <http://www.guidestar.org/pqShowGsReport.do?npId=561625> (last visited July 8, 2009).

² *Id.*

Furthermore, EFF publishes a blog that highlights the latest news from around the Internet. DeepLinks (<https://www.eff.org/deeplinks/>) reports and analyzes newsworthy developments in technology. It also provides miniLinks, which direct readers to other news articles and commentary on these issues.³

In addition to reporting high tech developments, EFF staff members have presented research and in-depth analysis on technology issues in no fewer than eighteen white papers published since 2002. These papers, available at <https://www.eff.org/wp/>, provide information and commentary on such diverse issues as electronic voting, free speech, privacy and intellectual property.

EFF has also published several books to educate the public about technology and civil liberties issues. *Everybody's Guide to the Internet* (MIT Press 1994), first published electronically as *The Big Dummy's Guide to the Internet* in 1993, was translated into several languages, and is still sold by Powell's Books (<http://www.powells.com>). EFF also produced *Protecting Yourself Online: The Definitive Resource on Safety, Freedom & Privacy in Cyberspace* (HarperEdge 1998), a "comprehensive guide to self-protection in the electronic frontier," which can be purchased via Amazon.com (<http://www.amazon.com>). Finally, *Cracking DES: Secrets of Encryption Research, Wiretap Politics & Chip Design* (O'Reilly 1998) revealed technical details on encryption security to the public. The book is available online at <http://cryptome.org/cracking-des.htm> and for sale at Amazon.com.

EFF also records and releases podcasts of interviews with EFF staff and outside experts. *Line Noise* is a five-minute audio broadcast on EFF's current work, pending legislation, and technology-related issues. A listing of *Line Noise* podcasts is available at <feed://www.eff.org/rss/linenoisemp3.xml> and <feed://www.eff.org/rss/linenoiseogg.xml>.

Due to these extensive publication activities, EFF is a "representative of the news media" under the FOIA and agency regulations. See 32 C.F.R. § 286.28(e)(7).

Request for a Public Interest Fee Waiver

EFF is entitled to a waiver of search and duplication fees because disclosure of the requested information is in the public interest within the meaning of 5 U.S.C. § 552(a)(4)(a)(iii) and 32 C.F.R. § 286.28. To determine whether a request meets this standard, regulations require USAREC to assess whether "[d]isclosure of the requested information . . . is likely to contribute significantly to public understanding of the operations or activities of the Department of Defense," and whether such disclosure "is not primarily in the commercial interest of the requester." 32 C.F.R. § 286.28(d)(1). This request clearly satisfies these criteria.

First, because USAREC is a component of the federal government, information concerning Sgt. Star and Army recruitment clearly and directly relates to the "operations or activities of the government." See 32 C.F.R. § 286.28(d)(3)(i)(A).

³ These figures include hits from RSS feeds through which subscribers can easily track updates to DeepLinks and miniLinks.

Second, disclosure of the requested information will “contribute significantly to public understanding of operations or activities of the Department of Defense.” *See* 32 C.F.R. § 286.28(d)(1). EFF has requested information that will shed light on the Sgt. Star and Army rec. The requested information is not in the public domain and, therefore, will necessarily contribute to a more robust public understanding of the subject. *See* 32 C.F.R. § 286.28(d)(3)(i)(B).

Third, the requested material will contribute to “public understanding” of Sgt. Star and Army recruitment. *See* 32 C.F.R. § 286.28(d)(3)(i). This information will contribute not only to EFF’s understanding, but to the understanding of a reasonably broad audience of persons interested in the subject. EFF will make the information obtained under the FOIA available to the public and the media through its web site and the EFF newsletter, which highlight developments concerning privacy and civil liberties issues. Because EFF is a representative of the news media, EFF’s request presumptively satisfies this criterion. *See* 32 C.F.R. § 286.28(d)(3)(i)(C).

Fourth, the disclosure will “contribute significantly” to the public’s knowledge and understanding Sgt. Star and Army recruitment. *See* 32 C.F.R. § 286.28(d)(3)(i). This information will help inform the public about the type and quality of information provided to prospective service members, the return-on-investment for this government program and the new ways in which artificial intelligence is being used by public agencies. As such, the response to this FOIA request will undoubtedly enhance the public’s understanding of the subject. *See* 32 C.F.R. § 286.28(d)(3)(i)(D).

Finally, a fee waiver is appropriate here because EFF has no commercial interest in the disclosure of the requested records. *See* 32 C.F.R. § 286.28(d)(3)(ii). EFF is a 501(c)(3) nonprofit organization, and will not derive commercial benefit from the information at issue here.

Thank you for your consideration of this request. As the FOIA provides, I will anticipate a determination with respect to the disclosure of requested records within 20 working days. If you have any questions or concerns, do not hesitate to contact me at 1-415-436-9333 x151 or dm@eff.org.

Sincerely,

Dave Maass
Media Relations Coordinator