



**ELECTRONIC FRONTIER FOUNDATION**

Protecting Rights and Promoting Freedom on the Electronic Frontier

April 28, 2009

Hon. Patrick J. Leahy  
Chairman  
Senate Judiciary Committee  
224 Dirksen Senate Office Building  
Washington, DC 20510

Dear Chairman Leahy:

I am writing to you concerning the Federal Bureau of Investigation's Investigative Data Warehouse ("IDW"), a massive repository that holds hundreds of millions of records, many of which contain personal information about American citizens. As you know, the IDW was one of the systems that the Justice Department described in its July 2007 report submitted to the Judiciary Committee pursuant to Section 126 of the USA PATRIOT Improvement and Reauthorization Act of 2005, Pub. L. No. 109-177. Upon review of that report, you said it "raises more questions than it answers" and noted that "[u]nfortunately, the Congress and the American public know very little about these and other data mining programs, making them ripe for abuse."

Since October 2006, the Electronic Frontier Foundation ("EFF") has pursued litigation under the Freedom of Information Act ("FOIA") in order to make public details about the IDW. Our efforts have been motivated by the fact that the FBI has published neither a "system of records notice" (as required by the Privacy Act) nor a "privacy impact assessment" (as required by the E-Government Act) for the IDW, thus depriving the public of the kind of accountability that usually comes with the creation and maintenance of large database systems containing sensitive personal information.

Using information released as a result of our FOIA litigation, EFF has now published a report surveying what is publicly known about this massive data collection, and I am attaching a copy of our report to this letter. As you will see, many questions still remain unanswered. For instance, the FBI has identified only 38 of the 53 "data sources" from which the Bureau obtains material that feeds into the IDW. This is precisely the sort of information that Congress intended would be made available to the public when it enacted the Privacy Act and mandated that agencies must disclose, among other things, "the categories of sources of records in [a] system" containing information about an individual. 5 U.S.C. § 552a(e)(4)(I). The report also discusses the FBI's efforts to avoid "raising congressional consciousness levels and expectations" about privacy impact assessments for the IDW.

Although the FBI has withheld from disclosure many details concerning the collection, maintenance and use of personal information contained in the IDW, the Department of

1875 Connecticut Avenue NW, Suite 650 • Washington, DC 20009

*voice* +1 202 797 9009    *fax* +1 202 797 9066    *web* [www.eff.org](http://www.eff.org)    *email* [information@eff.org](mailto:information@eff.org)

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Justice recently informed the court that no additional material will be disclosed in our FOIA lawsuit, notwithstanding President Obama's commitment to transparency and Attorney General Holder's directive that agencies should make "discretionary releases" of requested information whenever possible. In light of that position, it appears that the only vehicle by which additional information about the IDW might be made available to the American people is comprehensive congressional oversight. It has been almost two years since you observed that a lack of information concerning DOJ and FBI data mining systems render them "ripe for abuse." In that time, EFF has exhausted the remedies available to us under the FOIA. We therefore respectfully request that the Judiciary Committee examine the IDW closely and provide the public with needed assurances concerning its potential impact on the privacy rights of citizens.

Thank you for your continuing attention to this matter. If your staff would like additional information concerning EFF's research and litigation concerning the IDW, they should feel free to contact my colleague Kurt Opsahl at <kurt@eff.org> or me at <sobel@eff.org>.

Sincerely,

A handwritten signature in black ink, appearing to read "David L. Sobel". The signature is fluid and cursive, with the first name "David" being the most prominent.

David L. Sobel  
Senior Counsel

cc: Hon. Arlen Specter  
Hon. Russell D. Feingold  
Hon. Tom Coburn

attachment