July 6, 2016

United States Department of Justice
ATTN: Privacy Analyst, Privacy and Civil Liberties Office
National Place Building
1331 Pennsylvania Ave. NW, Suite 1000
Washington, DC 20530

Re: The Federal Bureau of Investigation's proposal to exempt the Next Generation Identification System from certain provisions of the Privacy Act (CPCLO Order No. 003-2016 and No. 002-2016)

Submitted by: OpenTheGovernment.org with 18 endorsing organizations

OpenTheGovernment.org has joined a coalition of civil rights, human rights, immigrant rights, privacy and transparency organizations, and companies in opposing the FBI proposal to exempt its biometrics database – the Next Generation Identification (NGI) system – from virtually every key provision of the Privacy Act. This system deserves stronger privacy and transparency measures, not weakened ones.

Since the launch of NGI in 2008, the public has waited for the FBI to publish basic privacy notices about this database, including a System of Records Notice (SORN) and/or a Privacy Impact Assessment (PIA). On May 5, 2016, the FBI finally published a SORN for NGI. The same day, the FBI asked for exemptions to key public protections of the Privacy Act, specifically provisions that allow people to: (1) find out if they are in the NGI database; (2) request the FBI promptly fix errors and inaccurate information in their files; and (3) obtain information (so long as it would not impede law enforcement) about whether their information is being shared with other parts of the government.

OpenTheGovernment.org strongly opposes the FBI's proposal to exempt the NGI database from specific requirements of the Privacy Act; specifically, its proposal to be exempt from the part of the law that allows citizens to enforce *any* Privacy Act violation (5 U.S.C. § 552a(g)) – *even violations of requirements from which the FBI is not exempt*. For example, the Privacy Act generally bars the government from creating databases about the political activities of its citizens (5 U.S.C. § 552a(e)(7)). Under the FBI's proposal, the FBI could violate that rule – and private citizens would be denied redress to hold the FBI to account for any such violations.

The FBI's proposal to exempt the NGI system from important provisions of the Privacy Act is a matter of serious concern, especially given the lack of proper public oversight for the FBI's use of facial recognition technology. A recent GAO report has concluded that the FBI has not completed audits to oversee the use of its facial recognition programs, and determined that without conducting these audits, FBI officials "cannot be sure they are implementing face recognition capabilities in a manner that protects individuals' privacy." Further, GAO notes, the FBI has failed to provide timely updates to the public through Privacy Impact Assessments required by law – assessments that are essential to informing the public on how the FBI mitigates the privacy risks associated with its information systems. [2]

The secrecy surrounding the FBI's largest domestic database is an area of serious concern for open government groups and civil rights advocates alike. There is a need for greater transparency about the FBI NGI system, and the public has a right to the protections and redress afforded by the Privacy Act. We object to any measure that would deprive us of these crucial protections.

If you have any questions or would like to discuss this issue further, please contact Patrice McDermott, Executive Director of OpenTheGovernment.org at 202-332-6736 or pmcdermott@openthegovernment.org.

Endorsed by:

American Library Association
Bill of Rights Defense Committee
Campaign for Accountability
Cause of Action Institute
Center for Media and Democracy
ColorOfChange
Demand Progress
Defending Dissent Foundation
Free Speech Coalition
Government Accountability Project
National Immigration Law Center
National Immigration Project of the National Lawyers Guild
National Security Archive
National Security Counselors
Privacy Times
Project On Government Oversight
Public Citizen
Sunlight Foundation

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OpenTheGovernment.org is a coalition transcending party lines of more than 90 consumer and good government groups, librarians, environmentalists, labor, journalists, and others – focused on pushing back governmental secrecy and promoting openness.

[1] United States Government Accountability Office, *Face Recognition Technology, FBI Should Better Ensure Privacy and Accuracy*, GAO-16-267, May, 2016: http://www.gao.gov/assets/680/677098.pdf.
[2] Ibid.