



June 25, 2015

BY U.S. MAIL AND E-MAIL

Mr. Sanjeev Bhagowalia
Deputy Assistant Secretary for Information Systems
Chief Information Officer
U.S. Department of the Treasury
1750 Pennsylvania Avenue, N.W., Rm. 12103
Washington, D.C. 20006
E-mail: sonny.bhagowalia@treasury.gov

Re: Collection of Website User Location Information

Dear Deputy Assistant Secretary Bhagowalia:

I write on behalf of Cause of Action Institute (“Cause of Action”), a nonprofit government oversight organization committed to ensuring that discretionary decision-making is accountable, transparent, and fair.¹ As you are no doubt aware, the United States federal government has suffered numerous data breaches of late, exposing the personal information of millions of Americans and raising significant national security concerns.² The risks associated with the collection and storage of personal information were highlighted, most recently, by the breach at Office of Personnel Management, which impacted the private information of roughly 18 million current or former federal employees.³ Despite these risks to personally identifiable information, your agency has, for at least approximately two years, employed geolocation tracking technology to collect personal location information from members of the public seeking to access a Bureau of the Fiscal Service (“BFS”) website located at tfm.fiscal.treasury.gov. In addition to creating unnecessary risks for the public given the issues plaguing government data security, Cause of Action believes that this practice is in violation of federal law. Accordingly, and as detailed below, Cause of Action requests that the Department of the Treasury (“Treasury”) explain the full nature of this collection and cease this practice in the interest of public privacy and government transparency.

¹ See CAUSE OF ACTION, www.causeofaction.org.

² See, e.g., Nicole Perloth, *State Department Targeted by Hackers in 4th Agency Computer Breach*, N.Y. TIMES (Nov. 16, 2014), <http://goo.gl/hLXnJJ>; Mary Pat Flaherty, Jason Samenow, & Lisa Rein, *Chinese hack U.S. weather systems, satellite network*, WASH. POST (Nov. 12, 2014), <http://goo.gl/z9afKt>; Elizabeth Weise, *U.S. Postal Service hacked, told Congress Oct. 22*, USA TODAY (Nov. 10, 2014), <http://goo.gl/zdWx9t>.

³ See Major Garrett, *Federal computer data breach larger than first suspected*, CBS NEWS (June 23, 2015), <http://goo.gl/yJIfwC>; Evan Perez & Shimon Prokupecz, *U.S. data hack may be 4 times larger than the government originally said*, CNN (June 23, 2015), <http://goo.gl/dEQMca>; David E. Sanger & Julie Hirschfeld Davis, *Hacking Linked to China Exposes Millions of U.S. Workers*, N.Y. TIMES (June 4, 2015), <http://goo.gl/eAMfyN>.

By way of background, while performing its oversight work recently, Cause of Action utilized a BFS website under the control and authority of Treasury to conduct research. Cause of Action was surprised to find that when it attempted to access the Treasury Financial Manual located at tfm.fiscal.treasury.gov, the website prompted the user to allow it access to the user's current location. Specifically, the user was presented with a message stating that the website tfm.fiscal.treasury.gov "wants to track [the user's] physical location," for example, and required the user to choose to allow the Treasury Department to access the user's location or to not allow such access. Cause of Action experienced this prompt on web browsers Google Chrome, Safari, and Internet Explorer and therefore concluded that this prompt is specific to the website and not inadvertently generated by any third party search engine or internet service provider. The prompts appeared on both desktop computers and on mobile devices.

The prompts differed depending on the browser and requested the location of the website user as follows:

Google Chrome

Prompt: "http://tfm.fiscal.treasury.gov wants to: Know your location"
Options: "Allow" or "Block"

Safari

Prompt: "http://tfm.fiscal.treasury.gov Would Like To Use Your Current Location"
Options: "Don't Allow" or "Ok"

Internet Explorer

Prompt: "tfm.fiscal.treasury.gov wants to track your physical location."
Options: "Allow Once" or "Option for this Site"

Cause of Action believes that the request by BFS constitutes an unwarranted invasion of privacy, could discourage individuals from accessing government information, and is unlawful under applicable statutes, regulations, guidance, and policy.

The Paperwork Reduction Act ("PRA")⁴ prohibits the collection of information by an agency from ten or more persons unless that agency has sought public comment on the collection and submitted the proposed collection for review and approval by the Office of Management and Budget ("OMB").⁵ OMB regulations define information as "any statement or estimate of fact or opinion, regardless of form or format, whether in numerical, graphic, or narrative form, and whether oral or

⁴ 44 U.S.C. § 3501, *et seq.*

⁵ 44 U.S.C. §§ 3502, 3506; *see also* 5 C.F.R. § 1320; Memorandum from Clay Johnson III, Deputy Dir. for Mgmt., for Heads of Executive Departments and Agencies Regarding Policies for Federal Public Websites (M-05-04) (Dec. 17, 2004) ("Your agency is already required under the Paperwork Reduction Act to manage information collections from the public or State and local governments (including website surveys or questionnaires) in the manner prescribed in OMB's guidance in 5 CFR section 1320."), *available at* <https://goo.gl/o0t02K>; Memorandum from Cass R. Sunstein, Adm'r, Office of Mgmt. & Budget, for Heads of Executive Departments and Agencies, and Independent Regulatory Agencies Regarding Information Collection Under the Paperwork Reduction Act (Apr. 7, 2010), *available at* <https://goo.gl/3nNFEP>.

maintained on paper, electronic or other media.”⁶ Information that is collected beyond what is necessary to navigate or customize a website is subject to the PRA.⁷

Moreover, the Privacy Act⁸ limits the information that an agency can collect from an individual to only such information that “is relevant and necessary to accomplish a purpose of the agency required to be accomplished by statute.”⁹ The Privacy Act also requires the agency to disclose the authority which authorizes the collection, the principal purpose of the collection, and the routine uses for the information.¹⁰ Further, under the privacy protections afforded in the E-Government Act of 2002, agencies are prohibited from using persistent cookies or any other means to track visitors’ activity unless there is a “compelling need”¹¹ and only then if the agency has posted clear notice about the nature of the information collected, the purpose of the collection, and the privacy safeguards applied to the information collected.¹²

Cause of Action is concerned that BFS is collecting data on the location of website users without any public comment, without OMB approval, without demonstrating how collection of this information is relevant or necessary to fulfilling its statutory obligations, without demonstrating a compelling need for the information, and without providing notice as to the purpose or use of the information sought in this specific website question. Indeed, it is entirely unclear why BFS or Treasury would need to access the geographic location of an individual who is merely seeking to access the Treasury Financial Manual in order to fulfil its statutory obligations. The website’s request for the user’s physical location is particularly suspect since BFS acts as the debt collector for the federal government, adding an appearance of impropriety to the request for a user’s exact location.¹³ Cause of Action attaches herein captured images of the information collection questions for your review.¹⁴

Additionally, web-based interactive technologies such as the one employed by BFS may create new federal information that must be managed and protected like other agency information resources.¹⁵ Cause of Action is concerned that Treasury is not taking the requisite steps under the

⁶ 5 C.F.R. § 1320.3(h).

⁷ See Memorandum from Cass R. Sunstein, Adm’r, Office of Mgmt. & Budget, for Heads of Executive Departments and Agencies, and Independent Regulatory Agencies Regarding Social Media, Web-Based Interactive Technologies, and the Paperwork Reduction Act (Apr. 7, 2010), *available at* <https://goo.gl/06jZm7>.

⁸ 5 U.S.C. § 552a.

⁹ *Id.* § 552a(e)(1).

¹⁰ *Id.* § 552a(e)(3).

¹¹ Indeed, in 2000, during his tenure as OMB Director, the Honorable Jacob J. Lew himself issued a Memorandum stating that “[b]ecause of the unique laws and traditions about government access to citizens’ personal information, the presumption should be that ‘cookies’ will not be used at Federal web sites.” Memorandum from Jacob J. Lew, Dir., Office of Mgmt. & Budget, for the Heads of Executive Departments and Agencies Regarding Privacy Policies and Data Collection on Federal Web Sites (M-00-13) (June 22, 2000), *available at* <https://goo.gl/uaLfLs>.

¹² Memorandum from Joshua Bolten, Dir., Office of Mgmt. & Budget, for Heads of Executive Departments and Agencies Regarding OMB Guidance for Implementing the Privacy Provisions of the E-Government Act of 2002 (Sept. 26, 2003), *available at* <https://goo.gl/8v0ax5>.

¹³ See BUREAU OF THE FISCAL SERVICE, <https://goo.gl/0Gw1S5> (last visited June 23, 2015). In 2014, Bureau of the Fiscal Service collected more than \$6.91 billion in delinquent debt on behalf of federal agencies. See, *At a Glance*, BUREAU OF THE FISCAL SERVICE, <https://goo.gl/8dsdqC> (last visited June 23, 2015).

¹⁴ See Exhibit A.

¹⁵ Memorandum from Howard Shelanski, Adm’r, Office of Info. & Regulatory Affairs, for the Heads of Executive Departments and Agencies, and Independent Regulatory Agencies Regarding Web-based Interactive Technologies: Data Search Tools, Calculators, and the Paperwork Reduction Act (Sept. 5, 2014), *available at* <https://goo.gl/Utw9a6>.

Sanjeev Bhagowalia

June 25, 2015

Page 4

Privacy Act to maintain and account for this system of records.¹⁶ With the recent data breach at Office of Personnel Management, it is important now, more than ever, that the federal government remain compliant with congressionally-mandated data standards and fully disclose to the public the nature of the information maintained. For this reason, Cause of Action is submitting a request under the Freedom of Information Act concurrently with this letter in order to further investigate this collection of information.¹⁷

Cause of Action requests that the Office of the Chief Information Officer (“OCIO”) at Treasury disclose the OMB control number authorizing the collection of this information and explain to Cause of Action (and the general public) by way of a letter response the nature of the information being collected, the purpose of the collection, and the statutory authority for the collection. To the extent that Treasury is unable to do this, Cause of Action requests that OCIO cease the unauthorized collection of information at tfm.fiscal.treasury.gov, review the propriety of this collection of information, and submit this matter to the Office of the Inspector General for investigation.

Cause of Action looks forward to a response to its letter on or before July 10, 2015. Please do not hesitate to contact me at erica.marshall@causeofaction.org or (202) 803-6068 should you have any questions or wish to discuss this matter further.

Best Regards,



ERICA L. MARSHALL
COUNSEL
CAUSE OF ACTION

cc:

The Honorable Jacob J. Lew, Secretary, Department of the Treasury
Ms. Sheryl Morrow, Commissioner, Bureau of the Fiscal Service
Mr. Steve Manning, Assistant Commissioner and CIO, Information Security Services,
Bureau of the Fiscal Service

¹⁶ See 5 U.S.C. § 552a.

¹⁷ See Letter from Cause of Action to Ryan Law, FOIA Public Liaison, Dep’t of the Treas., and Cynthia Sydnor, FOIA Public Liaison, Bureau of the Fiscal Service (June 25, 2015) (on file with Cause of Action).



Advocates for Government Accountability

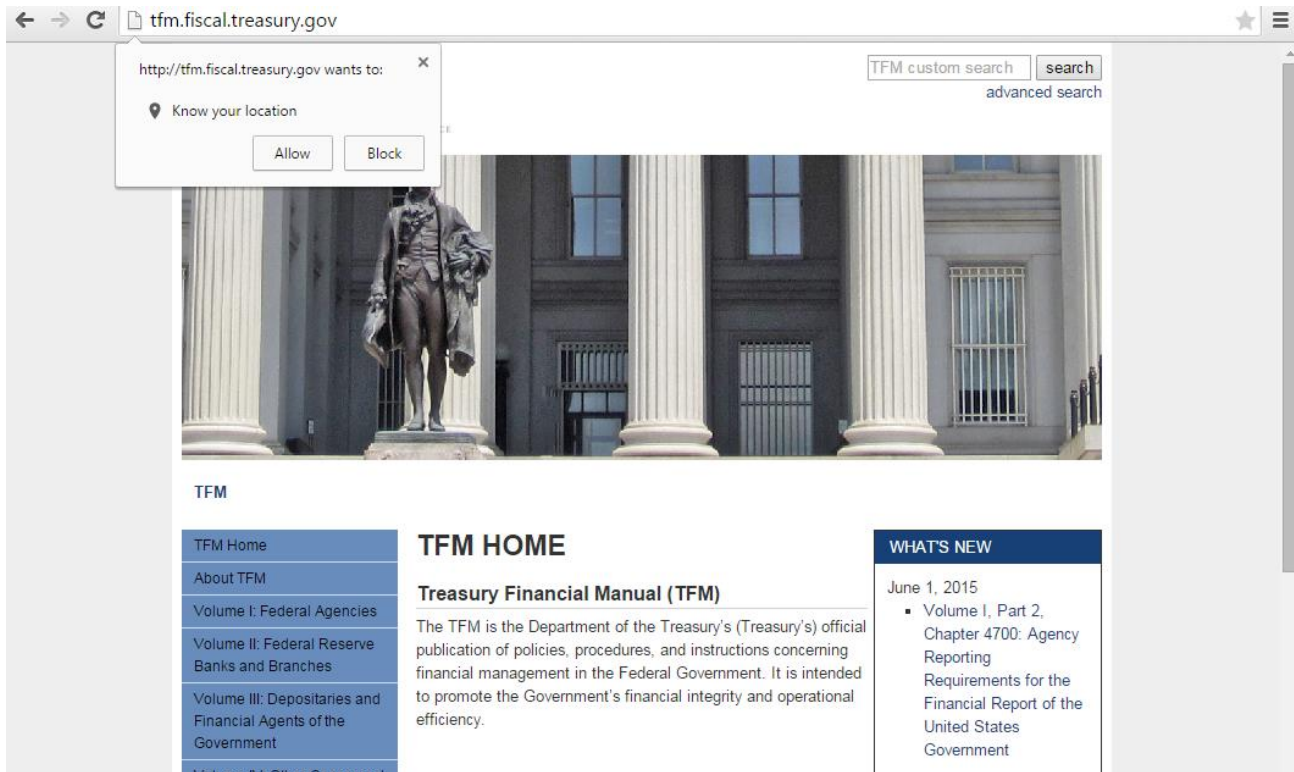
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EXHIBIT A

Google Chrome

Prompt: “http://tfm.fiscal.treasury.gov wants to: Know your location”

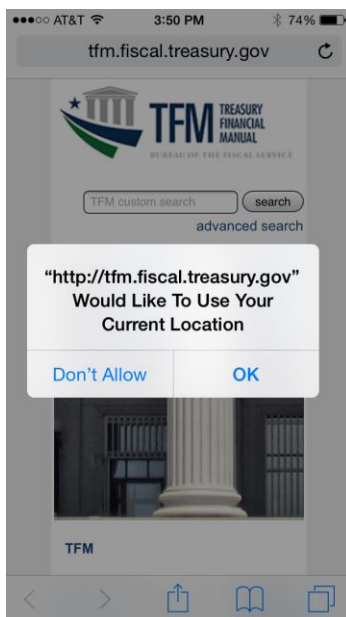
Options: “Allow” or “Block”



Safari

Prompt: “http://tfm.fiscal.treasury.gov Would Like To Use Your Current Location”

Options: “Don’t Allow” or “OK”



Internet Explorer

Prompt: "tfm.fiscal.treasury.gov wants to track your physical location."

Options: "Allow Once" or "Option for this Site"

The screenshot displays the Treasury Financial Manual (TFM) website in Internet Explorer. The browser's address bar shows the URL <http://tfm.fiscal.treasury.gov/>. The page header includes the TFM logo and a search bar with a "search" button. Below the header is a large image of a statue in front of a classical building. The main content area is titled "TFM HOME" and includes a description of the TFM as the Department of the Treasury's official publication of policies, procedures, and instructions concerning financial management in the Federal Government. A "Quick Links" section is visible, and a "WHAT'S NEW" section lists updates from June 1, 2015, and April 14, 2015. A notification bar at the bottom of the browser indicates that "tfm.fiscal.treasury.gov wants to track your physical location." with options to "Allow once" or "Options for this site".