Testimony to the House Oversight and Government Reform Committee on the Freedom of Information Act and the Increasing Lack of Transparency Among U.S. Government Agencies

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Thank you for the invitation to appear before this panel today and for the opportunity to do so with journalistic colleagues whose diligence and professional tenacity I greatly admire and respect.

The fact we have come here represents a stark departure from our usual routine as journalists. While we may frequently be found writing about hearings such as this, we do not, as a rule, participate in them. Our mandate to remain objective as journalists demands that we stay well above the political fray and cover stories from all angles, notwithstanding whatever our privately held opinions might be.

The larger problem we now face is that our role of objectively collecting and reporting the facts has been increasingly and aggressively blocked by those who would seek to separate journalists – and the public – from the information to which we are lawfully entitled. In my job as a senior writer and finance editor for *Newsweek,* I have been surprised by the number of government agencies that will stonewall even the most basic requests for information that readers and the public have a right to.

Take a look around – how many high-ranking Washington editors do you see here? None. What the journalists and editors who are not appearing today will not tell you is that they worry that to even speak to Congress about this issue will create still a further chilling effect that could impede their reporting. This is what I heard directly from several news outlets and writers in Washington who wanted to be here today but were concerned about the consequences. This, I think, speaks to the seriousness of the matter.

Collectively, the journalists who appear before you today have covered major events in this country for decades and have dealt with plenty of blowback. Yet never before have we seen so many government agencies that have turned themselves into veritable black boxes – where information flows in and nothing comes out. What we are now witnessing in terms of obstructionism and obfuscation is truly unprecedented in our careers. The issues surrounding the Freedom of Information Act, in my opinion, are symptomatic of a much wider problem.

Our job, which is to inform the public about issues crucial to our democracy and to the national discourse, relies on our ability to gather and check facts in a timely fashion. It should be understood that it is the job of journalists to have no agenda other than to get answers to important questions for our readers – we aren't just answerable to the public, we *are* the public.

Last I checked, our government works for the public and is paid for by the U.S. taxpayer. You'd think the public service mission of journalists and the government would make our relationships somewhat symbiotic. But, as we know, this is far from the case. The fact we even are here, journalists speaking to members of the House, is proof that our widely held notion of a government accountable to its people is broken.

While my colleagues are much more accustomed to problems relevant to the Freedom of Information Act, I am here to offer broader context about what we face every day as we try to do our jobs. (To be completely honest, I come from a generation of journalists who were told, upon entering the newsroom, 'If you want to know what you're going to be writing about in three years, file a FOIA.' So, if I want to write about something in less than three years, I do not file a FOIA.)

The long waiting times, heavy redactions, and lack of accountability and culture of concealment that seems to pervade the FOIA process also carries over into all aspects of dealing with government agencies for journalists.

Once upon a time, you could call a government agency, talk to someone with a real first and last name with contact information, tell them what you were writing about and set up an interview with a knowledgeable human being who could discuss it with you. Sometimes, they would have no comment, which is fair enough, but everyone knew who they were dealing with and the process was about as honest and straightforward as anyone could expect it to be. In other words, there was a modicum of responsiveness and accountability.

These days, when I call a federal agency, what I am dealing with can only be compared to an offshore call center, with a constantly rotating cast of people answering the phones, who are trained not to give their names, who can tell you nothing of who is knowledgeable on the topic about which you are researching and, nine times out of ten, ask you to send an email to a generic info@government.gov address –which, as all journalists can attest, is the kiss of death. I don't think this is the fault of these staffers. In my opinion, most staff at these government agencies are no longer empowered by their superiors to have even the most rudimentary exchanges with journalists.

The next time you read a news article that involves a government agency, count how many names of actual people you see and actual quotes from that agency that did not come from an already published public statement, a

press conference or congressional testimony. You will see that quotes from sources with full names at agencies are rarer than hen's teeth.

This is because of the environment in which we're operating as journalists. Most agencies will not work with the journalist unless they can remain unnamed or anonymous while contributing to our stories. In these cases, the agency or staff member will comment only on condition that they are not identified, effectively attempting to make it impossible for readers to know who is feeding them information – and we the journalists, are expected to be enablers and stewards of this process, a process I find to be the opposite of what journalism is for.

One example: While investigating high-frequency trading and whether it was disrupting the nation's markets as finance editor for *Newsweek* last spring, the U.S. Securities and Exchange Commission repeatedly told me that I could not quote its market experts, even after conducting extensive interviews with them and agreeing to allow them to check their quotes for accuracy before we went to print. This is the government agency tasked with overseeing the nation's stock markets.

The SEC also informed me that while I could use the information it had given me, I could not say where I had gotten it in my story. In other words, I was not to say I had received it from the SEC. I was expected to present the information to the public as incontrovertible fact and conceal that it came from the SEC. Ethically, journalists cannot agree to such terms except under rare circumstances – usually ones entailing the security or protection of an individual, not a large government agency. But these agencies want this kind of special treatment every day.

In the case of the SEC story, I did not agree to the terms and, as a result, an SEC staffer asked to speak with my editor. The message here was clear: if I did not do as I was told, the situation would be escalated in a retaliatory fashion. My editor was not amused and, days after my story went to print, the SEC's chairman announced an investigation into high-frequency trading and whether it was disrupting the nation's markets.

In the past year alone, I have worked with around two dozen government agencies that have wanted to dictate to me how to write my stories, what I can say and cannot say and seem to think that this is entirely reasonable when, in fact, it is quite extraordinary. If I do not agree to the terms, the result might be waiting days or weeks for answers to questions, or getting no answers at all.

While one might chalk this up to a basic lack of media training among these agencies, it is curiously lacking in exactly the same way, with the same tendency toward zero-accountability anonymity – and it is getting worse.

Late last year, the Internal Revenue Service emailed me a quote from what they said was "a spokesman" in response to a question I'd asked. No name was given, however. When I asked who the quote came from, the IRS informed me that it did not matter who said it, because I did not need a name. Yes, we do need names. That is how journalism works. Otherwise, how do we know the person is real? Last month, the Congressional Budget Office told me that they don't "do" quotes at all anymore, either named or unnamed, because they would prefer to cut and paste congressional testimony into emails and send that to journalists. How is this in any way even remotely accountable to the taxpayer?

The most concerning agency to me of all is the U.S. Department of Justice. This agency, which has collected billions in recent years from Wall Street settlements, plays a crucial role in our nation's justice system and security, but too often will just not answer questions. For the past year, the DOJ has informed me it is unable to verify how much money it has collected from Wall Street settlements since the financial crisis began, or how these funds have been spent or allocated, including how much consists of restitution to the millions of Americans who lost their homes. This information is retrievable and it should be retrieved in order to determine whether Americans have benefitted directly from these settlements or if the DOJ has primarily enriched itself.

These are issues not just of gamesmanship in the form of delays and denials of critical information, but a desire on the part of our agencies to remain in the shadows while anonymously influencing the news received by the voting public. It is my hope that by appearing today, the House might consider taking steps to put in place such standards that might help to restore accountability.

To directly address what can be done regarding FOIA and the broader problems of which I speak, Congress may want to consider legislating an enforceable set of core standards by which Americans can seek and receive information in a timely fashion from identifiable sources within their government in response to questions – rather than the cloak-and-dagger games that now beleaguer even the most basic efforts to get at facts.

Until such standards are imposed – and enforced – I believe the games will continue.

Lastly, if you are wondering, do I expect there to be consequences in my own work for speaking here today, the answer is yes. But I believe if journalists don't stand up and speak with one voice on this matter, the problem will only get worse and our jobs will only get harder.

Thank you for your time and, again, for your kind invitation.