



Department of Justice

STATEMENT OF

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DEPARTMENT OF JUSTICE**

BEFORE THE

**COMMITTEE ON OVERSIGHT AND REFORM
UNITED STATES HOUSE OF REPRESENTATIVES**

FOR A HEARING ENTITLED

**“FOIA: EXAMINING TRANSPARENCY UNDER THE TRUMP
ADMINISTRATION”**

PRESENTED ON

MARCH 13, 2019

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Good morning, Chairman Cummings, Ranking Member Jordan, and Members of the Committee. I am pleased to be here today to discuss the Freedom of Information Act (FOIA) and the Department of Justice’s ongoing efforts to encourage agency compliance with the statute. My office, the Office of Information Policy (OIP), has undertaken a range of initiatives designed to assist agencies in improving their FOIA administration and today I am pleased to highlight some of those efforts.

OIP Guidance & Training

One of the primary means by which my Office fulfills the Department’s statutory responsibility of encouraging government-wide compliance with the FOIA is through the issuance of policy guidance and the training of government personnel. Over the years, we have issued guidance to agencies on a range of topics involving all aspects of FOIA administration.

Adjudicating Administrative Appeals under the FOIA

Most recently, on February 14, 2019, OIP issued comprehensive [guidance](#) to agencies on adjudicating administrative appeals under the FOIA. As one of the agencies that receives and processes the most FOIA appeals across the government, we have seen firsthand the positive benefits a robust administrative appeals process can have for both agencies and requesters. For a requester, the FOIA administrative appeals process provides a simple-to-use mechanism to seek review of the initial action taken on the request. The existence of this mechanism increases their confidence in the FOIA process. For agencies, an effective appeals process provides an opportunity to review, and reevaluate if necessary, the initial response made to a FOIA request, to provide clarification, and correct any mistakes, thereby obviating unnecessary judicial review.

OIP’s guidance encourages agencies to establish procedures in their FOIA regulations for the filing and handling of administrative appeals. It also discusses the importance of the appellate authority conducting an independent, *de novo* review while at the same time engaging with the FOIA professionals who initially handled the request to ensure greater consistency and fewer repetitive appeals in the future. The guidance also covers a number of other topics focused on the appeals process, such as maintaining an adequate administrative record, communicating

effectively with requesters, offering requesters the option to appeal interim responses, and several techniques for effectively managing the agency's appeals docket.

The Importance of Quality Requester Services: Roles and Responsibilities of FOIA Requester Service Centers and FOIA Public Liaisons

While the administrative appeals process offers a formal mechanism for requesters to seek a second review of the action taken on their requests, agencies often interact with the public in more informal ways through their FOIA Requester Service Centers and FOIA Public Liaisons. On June 12, 2018, OIP issued [guidance](#) to agencies that addresses the importance of quality requester services and provides an overview of the roles and responsibilities of these two critical resources as they engage with the public during all stages of the FOIA process. OIP's guidance stresses the importance of maintaining "a spirit of cooperation" and ensuring good communication with requesters. This guidance complements two other guidance articles OIP published in [2010](#) and [2013](#) focused on the importance of good communications with requesters.

Memorandum to Agency General Counsels and Chief FOIA Officers Regarding Chief FOIA Officer Designations

Agency Chief FOIA Officers oversee all of agencies' FOIA operations. DOJ's [FOIA Guidelines](#) have long stated that "[i]mproving FOIA performance requires the active participation of agency Chief FOIA Officers." The Department addressed this critical aspect of FOIA administration by issuing a [memorandum](#) on January 30, 2019, directed to all agency General Counsels and Chief FOIA Officers. This memorandum emphasized the significant role of the Chief FOIA Officer and the importance of ensuring that this position is properly designated. As the memorandum notes, the FOIA requires that the role of the Chief FOIA Officer be handled by a senior agency official at the Assistant Secretary level or equivalent. In the January 30, 2019 memorandum, the Department requested that each agency review its Chief FOIA Officer designation and make any necessary adjustments to ensure that the designated official is at the appropriate level. The Department also required agencies to report on whether their designations meet this statutory requirement in their 2019 Chief FOIA Officer Reports.

FOIA Training

The Department firmly believes that quality training is fundamental to any successful FOIA program. Such training ensures that the law is properly and consistently implemented across the government. As part of our efforts to encourage government-wide compliance with the FOIA, every year FOIA experts from OIP provide training to thousands of FOIA professionals across the government.

In 2018, OIP held multiple training programs, including:

- *Introduction to the Freedom of Information Act,*
- *The Freedom of Information Act for Attorneys and Access Professionals,*
- *Advanced Freedom of Information Act Seminar,*
- *Continuing FOIA Education, and*
- *FOIA Litigation Seminar.*

In 2018, OIP also continued its [Best Practices Workshops](#) series, hosting a workshop entitled *Reducing Backlogs and Improving Timeliness*. In addition to these regularly-scheduled courses, upon request, OIP also provides specialized FOIA training to agencies to meet their specific FOIA training needs.

Promoting Agency Accountability

In addition to encouraging government-wide compliance with the FOIA through guidance and training, OIP engages in a number of efforts to keep agencies accountable and to help them move forward in their administration of the Act.

All agencies file two reports each year addressing their FOIA administration – an Annual FOIA Report and a Chief FOIA Officer Report. To assist agencies with their statutory reporting obligations, on October 4, 2018, OIP updated its comprehensive [Annual FOIA Report Handbook](#). The Handbook includes all of the legal, procedural, and technical requirements concerning agency Annual FOIA Reports. Additionally, on September 21, 2018, OIP once again issued new [guidance](#) to agencies on the content of their 2019 Chief FOIA Officer Reports.

The Department's [FOIA Guidelines](#) call on agency Chief FOIA Officers to review their agencies' FOIA administration annually and to report to the Department of Justice on the steps taken to achieve improved transparency. Each year OIP provides guidance to agencies on the content of this report, which covers five key areas of FOIA administration: (1) applying a presumption of openness; (2) ensuring that there are effective and efficient systems in place to respond to requests; (3) increasing proactive disclosures; (4) utilizing technology; and (5) reducing backlogs and improving timeliness.

As in previous years, OIP adjusted the questions for the 2019 Chief FOIA Officer Report Guidelines based on agencies' successes in meeting a number of milestones over the years. OIP also solicits feedback from the larger FOIA community. For 2019 we included a targeted question on FOIA search procedures as a result of a recommendation made by the FOIA Advisory Committee that is chaired by the Office of Government Information Services (OGIS) at the National Archives and Records Administration (NARA). Updating the questions each year allows OIP, as well as the agencies themselves, to identify new best practices and common challenges as we continue to refine our FOIA processes. This marks the tenth year that agencies have submitted to OIP their Chief FOIA Officer Reports describing the steps taken to improve their FOIA operations and facilitate information disclosure.

As agencies submit their Annual and Chief FOIA Officer Reports to DOJ, OIP conducts a detailed review and assessment of agencies' progress in improving transparency and implementing the Department's [FOIA Guidelines](#). Agencies are scored on a variety of milestones providing a visual snapshot on progress being made and areas in need of improvement. As a result of this past year's review and assessment, on July 19, 2018, OIP issued [guidance](#) for all agencies to assist them in making additional improvements in the years ahead.

Chief FOIA Officer Council

As you know, the *FOIA Improvement Act of 2016* established a Chief FOIA Officer Council as another means by which agencies can collaboratively improve FOIA administration. I co-chair the Council with the Director of the Office of Government Information Services within NARA. During this past year, we held two meetings of the Council. Our next session is scheduled for August 5, 2019. The Council meetings provide OIP with yet another opportunity to highlight and reinforce its guidance. OIP makes all material related to the Chief FOIA Officer Council, including recordings of the meetings and minutes, available on its [website](#).

FOIA.gov and the National FOIA Portal

One of the major new provisions of the *FOIA Improvement Act of 2016* was the requirement that OMB and DOJ ensure the operation of a consolidated online request portal that allows members of the public to submit a request for records to any agency from a single website. The law expressly states that creation of this new portal should not alter the power of any other agency to create or maintain an independent request portal. In order to achieve this, the amendments directed OMB to establish standards for interoperability between the portal and agency FOIA case management systems.

Last March, we were very pleased to “go live” with our first iteration of the National FOIA Portal which resides on an upgraded FOIA.gov, the government’s central FOIA website. Since the release of the National FOIA Portal, FOIA.gov has received over a million page views and nearly 9000 requests have been submitted to various agencies through the site.

Building on this achievement, on February 12, 2019, DOJ and OMB issued [joint guidance](#) to agencies on becoming fully interoperable with the National FOIA Portal. This joint directive provides two ways for agencies to achieve interoperability based on how they are currently tracking and managing their FOIA requests.

Unless granted an exception by OMB and DOJ, agencies with automated case management systems will be required to achieve interoperability with the National FOIA Portal by accepting a structured Application Programming Interface (API). This will allow for direct ingestion of a request from the National FOIA Portal into the agency’s case management system. Agencies with non-automated solutions will be required to continue accepting FOIA requests through the National FOIA Portal via a formal, structured e-mail to a designated e-mail box.

In addition to addressing interoperability, the directive also requires agencies to regularly update their FOIA.gov accounts and annually certify to DOJ that they have done so.

We are very pleased with the positive feedback the National FOIA Portal has received from both the public and agencies. We continue to encourage user feedback and have already made a number of improvements to the site based on the suggestions we received. After the initial launch of the National FOIA Portal, FOIA.gov now includes new features such as individual agency pages containing a description of each agency’s mission, their key FOIA

resources, and their average processing times for simple and complex requests. The website also provides updated contact information for each agency, including their FOIA Requester Service Centers and FOIA Public Liaisons, which agencies can update themselves as needed.

FOIA.gov also provides tools to assist the public in locating the right agency and aids to assist in making a request. For each agency, we provide a customized request form that incorporates any specific regulatory requirements of that agency to ensure that the requester provides the agency with all the required information right at the outset of the request process. The request forms all follow a similar pattern to bring more consistency to the request-making process.

FOIA.gov continues to provide the public with useful information about how the FOIA works, where to make requests, and what to expect throughout the FOIA process. Explanatory videos are embedded into the website and the site contains a section addressing frequently asked questions, as well as a glossary of FOIA terms. Even before making a request, FOIA.gov provides requesters the ability to search across government websites to see what information is already publicly available. All of these features are designed to educate the public, simplify the process, and improve FOIA administration overall.

Finally, FOIA.gov continues to be a central resource for shedding light on agency FOIA administration by maintaining and graphically displaying all of the Annual FOIA Report data agencies publish every year. The site allows users to search and sort this data in any way they want so comparisons can be made between agencies and over time.

Looking Ahead

With finite resources and an ever-increasing volume of requests, particularly complex requests, requiring multiple searches, consultations, or the review of large numbers of records, the challenges facing many agencies implementing the FOIA are, at times substantial. Immediate litigation has become a feature of FOIA administration, rather than a last resort and as a result, requests made by average citizens can get moved further back in an agency's queue. Every request is important. Yet for some agencies, the strain on their systems is acute. OIP is fully committed to its responsibility of encouraging government-wide compliance with the FOIA both in terms of exploring new ways to meet these current challenges and in helping to ensure that agencies have a proper understanding of FOIA law and policy. We look forward to continuing to assist agencies in improving the government's FOIA administration through all of the efforts I have described today.

In closing, I want to thank you for the opportunity to be here today to discuss OIP's work in encouraging agencies' compliance with the FOIA. I would be pleased to address any question that you or any other Member of the Committee might have on this important subject.