



MARCH 11, 2014

# GOVERNMENT AND FREEDOM OF INFORMATION: REINVIGORATING THE FREEDOM OF INFORMATION ACT FOR THE DIGITAL AGE

U.S. SENATE, COMMITTEE ON THE JUDICIARY

ONE HUNDRED THIRTEENTH CONGRESS, SECOND SESSION

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Chairman, Senate Committee on the Judiciary

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*AVAILABLE WEBCAST(S)\*:*

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- <http://www.judiciary.senate.gov/hearings/watch?hearingid=6631eac2-5056-a032-5299-d6fc5e79f066>

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**Statement of Senator Patrick Leahy (D-Vt.),  
Chairman, Senate Judiciary Committee,  
Hearing On  
“Open Government and Freedom of Information:  
Reinvigorating the Freedom of Information Act for the Digital Age”  
March 11, 2014**

Today, the Committee holds an important hearing on the Freedom of Information Act (FOIA), one of the Nation’s most important open government laws. We also commemorate the annual celebration of openness in our democratic society known as “Sunshine Week,” which will take place next week.

For almost a half century, the Freedom of Information Act has translated our American values of government openness and accountability into practice by guaranteeing the public’s right to access information. This hearing is an opportunity to take stock of the progress we have made during the last decade on improving the FOIA process. We will also examine proposals to reform FOIA to address new technologies and the challenges that remain when citizens seek information from their government.

Five years after President Obama issued presidential directives on FOIA and open government, we have seen some progress. Backlogs of FOIA requests are on the decline, a trend that started during the first term of the Obama administration. Online tools such as Data.gov, FOIA.gov and the FOIA portal and the Obama administration's new “FOIA IT Working Group” have modernized the way that citizens can obtain government information. We are moving in the right direction, but stubborn impediments to the FOIA process remain in place and progress has come much too slow.

A new study by the Center for Effective Government - which graded the responsiveness of the 15 Federal agencies that process the most FOIA requests - found that almost half of these agencies failed to earn a passing grade. Another impediment to the FOIA process is the growing use of exemptions to withhold information from the public. According to a 2013 Secrecy Report prepared by OpenTheGovernment.org, Federal agencies used FOIA Exemption 5 to withhold information from the public more than 79,000 times in 2012 — a 41 percent increase from the previous year.

I am concerned that the growing trend towards relying upon FOIA exemptions to withhold large swaths of government information is hindering the public’s right to know. That is why I have long supported adding a public interest balancing test to the FOIA statute, so that Federal agencies consider the public interest in the disclosure of government information before invoking a FOIA exemption.

Seven years ago, Senator Cornyn and I worked together to establish the Office of Government Information Services (OGIS) to help mediate FOIA disputes and to make recommendations to Congress and to the President on how to improve the FOIA process. I am encouraged by the good work that OGIS is doing, but I worry this office does not have the sufficient independence, authority and resources to fully carry-out its work. The work of this office is critical to keeping

our government open and accountable to the American people. That is why I will continue to work to ensure that OGIS has the tools and resources that it needs to fulfill its important mission.

During both Democratic and Republican administrations, this Committee has had a proud tradition of working in a bipartisan manner to protect the public's right to know. Working together, we have enacted several bills to improve FOIA for all Americans. I value the strong partnerships that I have formed with Senator Cornyn and Ranking Member Grassley on open government matters. I hope that this bipartisan spirit will guide our work today. I look forward to a good discussion.

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# Department of Justice

STATEMENT OF

MELANIE ANN PUSTAY, DIRECTOR, OFFICE OF INFORMATION POLICY

BEFORE THE

COMMITTEE ON THE JUDICIARY, UNITED STATES SENATE

AT A HEARING ENTITLED

**“Open Government and Freedom of Information: Reinvigorating the Freedom of Information Act for the Digital Age”**

PRESENTED MARCH 11, 2014

**Melanie Ann Pustay, Director, Office of Information Policy, U.S. Department of Justice**

**Committee on the Judiciary, United State Senate**

**“Open Government and Freedom of Information: Reinvigorating the Freedom of Information Act for the Digital Age”**

**March 11, 2014**

Good morning, Chairman Leahy, Ranking Member Grassley, and Members of the Committee. I am pleased to be here today, the week before Sunshine Week, to discuss the Department of Justice’s ongoing efforts to assist agencies in improving their administration of the FOIA and to ensure that President Obama’s Memorandum on the FOIA and Attorney General Holder’s FOIA Guidelines are fully implemented. As the lead agency responsible for encouraging agency compliance with the FOIA, the Department of Justice is strongly committed to the President’s and Attorney General’s vision of open government. The Office of Information Policy (OIP) carries out the Department’s responsibility to encourage agency compliance with the FOIA. Increasing use of technology to improve the public’s access to information has been a key part of our work.

As you know, this Sunshine Week we will celebrate the fifth anniversary of the Attorney General’s FOIA Guidelines. Issued during Sunshine Week on March 19, 2009, those Guidelines address the presumption of openness that the President called for in his FOIA Memorandum, the necessity for agencies to create and maintain an effective system for responding to requests, and the need to improve timeliness and to work to reduce backlogs. Those Guidelines also directed agencies to promptly and proactively make information available to the public. Finally, both the President and the Attorney General emphasized the importance of agencies using “modern technology to inform citizens about what is known and done by their Government.”

Over the past five years, we have seen agencies embrace technology in a wide variety of ways, all designed to improve access to information. Looking ahead, we have launched a series of initiatives that are designed to modernize the FOIA even further. Through the efforts to date and those to come I believe that agencies are in the process of transforming the way in which the FOIA is administered and information is made available to the public.

I have been working in FOIA long enough that I can remember the days when agencies overwhelmingly searched by hand, for records that consisted solely of paper, and that were stored in filing cabinets or boxes. When FOIA requests were received, FOIA Offices searched for and reviewed records manually and made proposed redactions using highlighters or tape. FOIA Offices had supply cabinets filled with “El Marko” magic markers and the invention and use of “post it notes” was a real step forward. As I’ll describe, times have certainly changed since then.

As part of the Attorney General’s FOIA Guidelines, agency Chief FOIA Officers were directed by the Attorney General to review their administration of the FOIA each year and to report to the Department of Justice on the steps taken to improve transparency. OIP was given responsibility for

providing direction to agencies on the content of their reports and from the start, we asked agencies to address the topic of technology use in the administration of the FOIA. Each year we have modified the reporting requirements, building on the responses of previous years. As a result, agencies' Chief FOIA Officer Reports are a valuable resource for tracking and documenting agency use of technology over the past five years. These Reports also provide a detailed description of each agency's efforts to apply the presumption of openness, to increase efficiencies, to proactively disclose information, and to improve timeliness in responding to requests. I highly recommend that the Committee review these Reports, which are available at <http://www.justice.gov/oip/reports-fy2013.html>, to see the broad array of activities that agencies have undertaken to improve their FOIA administration.

On the topic of technology, for the first Chief FOIA Officer Reports submitted in 2010, OIP asked agencies to answer a series of eight questions relating to their use of technology. While we knew anecdotally that agencies had been acquiring automated FOIA tracking systems and moving to greater use of technology in administering the FOIA, this was the first time that an agency-wide survey on technology use had been undertaken. The results overwhelmingly showed that agencies were harnessing technology to assist them in the core elements of FOIA processing. Virtually all agencies reported that they received and tracked requests electronically, and used technology to process records. This survey demonstrated that the old days of using El Markos and tape were coming to an end. Agencies recognized the benefits of IT and were using it to help manage their FOIA workloads. In the years since then, just as technology has rapidly changed other aspects of how the public and agencies work and communicate, in the FOIA context, technology is being used in ever more sophisticated ways to improve disclosure of information.

As agencies were expanding and adapting technology for FOIA purposes and working to implement the Attorney General's FOIA Guidelines, OIP believed that it was important to provide agencies with a forum where they could share their ideas and learn from the successes of one another. In the spring of 2010, after review of those first Chief FOIA Officer Reports, OIP convened two FOIA Working Groups, one focused on FOIA Best Practices and the second working group focused specifically on the critical area of technology. As an outgrowth of those meetings, OIP issued guidance and suggested best practices for agencies, many of which addressed increased use of technology.

OIP has continued to hold meetings of its FOIA IT Working Group, which have focused on a number of important areas where the government's FOIA administration could benefit from greater use of technology, including improving agency websites, using metadata to tag posted documents so that they are easier to locate, and using social media to make information available to the public. The Working Group will be meeting once again next week, during Sunshine Week, to review all the different topics we have covered over the past four years, and to discuss the important role of technology in FOIA. As we did last year, during Sunshine Week, we will open this meeting to interested members of the open government community, who can share their ideas and experiences with the participants.

One area in which we have found technology to be particularly beneficial is the use of tools and applications that assist with the core tasks of processing FOIA requests, such as technology that assists in the search and review of documents, shared platforms that allow for simultaneous review and comment on documents, and electronic capabilities that automatically identify duplicative material. Automating many of the internal processes for handling FOIA requests can bring great benefits in efficiency. For example, conducting an adequate search for responsive records often involves the review of both paper and electronic records originating with multiple employees throughout the agency. In turn, these searches can locate hundreds, if not thousands, of pages of material that need to be reviewed for both responsiveness and duplication before a FOIA disclosure analysis can be conducted. With the widespread use of email and the common practice of employees forwarding the same email to multiple other people,

with each employee then building still further on that email, long chains of overlapping and duplicative email are frequently created. The benefits of using technology to de-duplicate and sort and thread all those emails automatically, rather than doing so manually, are readily apparent. Employing electronic systems that can consolidate and perform any of the necessary administrative tasks associated with FOIA processing allows agency FOIA staff to focus their efforts on substantive review of the responsive material. This, in turn, has great potential to improve timeliness in responding to requests.

Significant time savings can be achieved by automating many of the administrative tasks associated with FOIA processing. Advanced technologies allow for more precise and targeted searches to be easily performed across a wide spectrum of documents in a short period of time. More sophisticated document platforms allow for enhanced capabilities in the review and processing of records, automatically creating indices and facilitating review of the material. In all of these ways, the internal processes associated with locating and processing material in response to requests can be greatly improved by using advanced technology.

OIP has hosted seminars and given presentations at our FOIA IT Working Group and other forums with the aim of enhancing awareness of the possibilities these technologies hold for increased efficiencies across the government. In the past two years, other components within the Department and other agencies have all begun using various document-management software tools for FOIA purposes. In their 2013 Chief FOIA Officer Reports a total of 68 agencies reported using some type of advanced technology to increase the efficiency of their FOIA administration. A number of agencies have implemented the use of advanced digital tools to automate the most time-consuming parts of the FOIA process, including acquiring tools to de-duplicate records. Agencies have also reported improving their records management systems to improve document retrieval in the first instance. Others are using document-sharing platforms to facilitate collaboration between and among different offices.

For example, last Fall the Department of Agriculture implemented the use of a new technology platform that allows its FOIA professionals to quickly list and catalog documents and sources; identify duplicate and near-duplicate documents and emails; search, categorize, and rank documents for ease of review; and view and group documents by the record holder. Just this past year, the Department of Homeland Security acquired de-duplication capabilities that allow FOIA staff at a number of its components to upload e-mail correspondence files and to de-duplicate them. At the Department of Defense, several components reported the implementation of advanced tools to improve searches, document sharing, and the de-duplication of records. Similarly, the Nuclear Regulatory Commission has also procured an advanced document review module to assist with the processing of voluminous records.

In addition to directly using technology to assist with internal aspects of processing FOIA requests, agencies have taken a number of steps to use technology in ways that improve the public's ability to interact with the agency and to find information. Online portals can be used by the public to make requests to more than 100 FOIA offices, of which 23 provide tracking information to the requester. For example, EPA has built a shared online portal that is currently being used by seven other agencies and which provides tracking information along with other features. The State Department created an online portal that guides requesters through a series of questions to help them better target their requests. At DOJ, we created the FOIA.gov website that, among other things, provides FOIA contact information for all agencies, eliminating the need for the public to navigate multiple websites to obtain that information. FOIA.gov also includes links to agency FOIA email accounts and online FOIA request portals, allowing the public to start making requests right from FOIA.gov.

Looking ahead, as part of this Administration's commitments under our Second Open Government National Action Plan, we have committed to improving the customer service experience even further by establishing a consolidated online FOIA portal that will not only allow for the making of



requests to all agencies from a single website, but will also include additional tools to help improve the customer experience. Such tools could, for example, help guide the requester to the right agency and help in the formulation of the request so that it could be answered more efficiently. We look forward to working with an interdisciplinary team that will seek input from both agencies and the public, will review current practices and explore new, innovative ideas, all with the aim of determining the best way to implement this consolidated FOIA service.

Both the President and Attorney General have emphasized the need for agencies to make information available to the public proactively. Making more information available online is yet another way that FOIA is adapting to the digital age. Given that proactive disclosures can satisfy public demand for information without the need to ever file a FOIA request, OIP has focused on this topic in both our written guidance and in our training for agencies. We also have included this as one of the key areas that agencies must address in their Chief FOIA Officer Reports each year.

In the five years since issuance of the Attorney General's FOIA Guidelines, agencies have embraced proactive disclosures by posting a wide variety of material that is of high public interest. As reported in the 2014 Chief FOIA Officer Reports, for example, the Department of Homeland Security reports that it has proactively posted over 63,000 pages since October 2010, including daily schedules of senior leaders and procurement records. The Department of the Air Force posts aircraft accident reports. The Department of Education posts Federal Student Aid data, while the Department of the Interior's Bureau of Safety and Environmental Enforcement is posting certain oil and gas production data. The Federal Deposit Insurance Corporation posted documents considered at Board of Directors' meetings and the SEC posted investment and money market information. In an example of how agencies are targeting proactive disclosures to those members of the public who typically frequent their website, the National Park Service posted information on the shooting of a grizzly bear at Grand Teton National Park. At the Department of Justice, the FBI continues to post information of interest in its online *Vault*, posting records this past year on subjects as diverse as Neil Armstrong and Spiro Agnew.

Beyond proactively posting new information online, agencies also continue to take steps to make the information on their websites more useful to the public. For example, the Department of the Interior's Bureau of Ocean Energy Management posted an interactive map displaying and describing its renewable energy-related activities in the United States. The FBI's *Vault* has a robust search capability and users are able to submit feedback and suggestions on how to make the site easier to navigate. At the Department of Agriculture, the Food and Safety Inspection Service uses an interactive resource called "Ask Karen" to provide information to consumers about preventing foodborne illness, safe food handling and storage, and safe preparation of meat, poultry and egg products. In another effort, Amtrak teamed up with Google to create an interactive train locator map, which allows the public to check on the status of its trains by showing where they are in route, the speed at which they are traveling, and estimated times of arrival. Finally, the Department of Transportation's National Highway Traffic Safety Administration (NHTSA) has enhanced its website's performance and usability by continuously obtaining public feedback and analyzing various web metrics. Based on visitor feedback, NHTSA has enhanced SaferCar.gov by adding a new car seat sizing chart and functionality that compares 5-Star Safety Ratings by specific vehicles and classes.

Finally, FOIA.gov continues to revolutionize the way in which FOIA data is made available to the public. The website was initially undertaken by the Department of Justice in response to a strong interest by open-government groups to have a "dashboard" that illustrates statistics collected from agencies' Annual FOIA Reports, such as the numbers of FOIA requests received and processed each year, and the time taken to do so. The Department created FOIA.gov to serve as that dashboard.

In order to display all the detailed agency statistics in an open, interactive format, we created an Annual FOIA Report Tool for all agencies to use that converts their FOIA data into a NIEM-XML format which is then uploaded into FOIA.gov. We once again took advantage of the capabilities of technology by including within that tool built-in math checks and other features that assist agencies in ensuring the accuracy of their reports. This past year, we revised the tool even further so that it now produces not just the machine-readable version of the data, but also a human-readable Annual FOIA Report. This technological improvement to the tool enhances the quality of the human-readable reports by ensuring that they are compiled from the same set of data that is used for the machine-readable version.

Once the data is loaded onto FOIA.gov, it is displayed graphically, so it can be readily and easily reviewed by the public. FOIA.gov allows users to search and sort the data in any way they want, so that comparisons can be made among agencies and over time. This year we will be adding the comprehensive data from agencies' Fiscal Year 2013 Annual FOIA Reports to the website, so our body of data continues to grow.

This is not all FOIA.gov provides. From the start, the Department of Justice realized that FOIA.gov could be much more than a dashboard and so we created additional features to make the website more robust. To help educate the public about the FOIA, we included useful information on FOIA.gov about how the FOIA works, where to make requests, and what to expect through the FOIA process. We also included a glossary of FOIA terms and listed each agency's FOIA Requester Service Centers and FOIA Public Liaisons, as well as their Chief FOIA Officers. We created explanatory videos that guide the public through a series of questions about the FOIA. Since the launch of FOIA.gov, those videos have themselves received more than 2.5 million visitors.

To make it easier for the public to locate material that agencies have been proactively disclosing, the Department expanded the scope of services offered by FOIA.gov by adding a search feature, which allows users to enter search terms on any topic of interest. FOIA.gov then searches for material on that topic across all federal government websites. The "Find" feature captures not just those records posted in agency FOIA Libraries, but also records that are posted anywhere on an agency's website. Further, in the year ahead we will be building on our guidance issued last year at this time on the use of metadata tagging for FOIA. With increased use of metadata tags for posted material, the search capability of FOIA.gov will be enhanced even further by allowing for more targeted searches. In this way FOIA.gov will continue to provide the public with an easy way to locate information that has already been made available by agencies. With our continued focus on encouraging agencies to post documents proactively, enhancing the public's ability to locate that posted information is critical.

As you can see, the FOIA has indeed been adapting to the digital age. Yet there is still more that we can do to improve and advance the administration of the FOIA. In the next two years we have committed to five initiatives that are designed to modernize the FOIA as part of the Second Open Government National Action Plan. As mentioned, the first of these initiatives is the creation of a consolidated online FOIA service that will allow the public to make a request to any Federal agency from a single website and will include additional tools to improve the customer experience. Second, given that many steps in the FOIA process are generally shared across Federal agencies, and to streamline and simplify the request-making process for the public, an interagency team lead by OIP is reviewing the feasibility and potential content of a core FOIA regulation that could be both applicable to all agencies and retain flexibility for agency-specific requirements. Third, as agencies have been working to improve their FOIA practices these past five years, OIP is organizing a series of targeted Best Practices Workshops where agencies will systematically share lessons learned in implementing the Attorney

General's FOIA Guidelines, including increasing proactive disclosures, using technology and reducing backlogs and improving timeliness, with the goal of scaling those successes across the government. Fourth, to ensure that all employees, not just FOIA professionals, have a proper understanding of the FOIA, OIP is creating a suite of e-learning FOIA training resources which we will make available to all agencies, which target discrete groups of employees, from the newly arrived intern to the senior executive, to ensure that all employees know their obligations and responsibilities under the law. Lastly, OIP will be supporting and participating in a FOIA Modernization Advisory Committee that is being established at the National Archives and Records Administration to foster dialogue between agencies and the requester community and to develop consensus recommendations for improving FOIA administration.

In addition to all our work on these initiatives, the Department of Justice will also be continuing its work in encouraging and overseeing agency compliance with the law. We have been actively engaged in a variety of initiatives to inform and educate agency personnel on the requirements of the FOIA, as well the policy directives from the President and the Attorney General. Over the past five years, OIP has provided training to thousands of agency personnel, including training by video conferencing to reach employees outside the Washington area.

We also continue to reach out to the public and the requester community. In 2009, OIP teamed with the Office of Government Information Services to begin holding "requester roundtable" meetings with interested members of the FOIA requester community to engage in a dialogue and share ideas for improving FOIA administration. OIP has also, on multiple occasions, issued policy guidance to all agencies specifically in response to feedback from the requester community. Last year, for example, based on input from requesters, we issued revised guidance addressing the importance of good communication with FOIA requesters. One of the key points addressed in the guidance was the need for agencies to use technology to communicate with requesters when it is feasible to do so. We advised agencies to use electronic communication as the default and to alert the public to any limitations on the use of technology in communicating with the public.

In addition to our work encouraging agency compliance with the FOIA statute and with the Attorney General's FOIA Guidelines, OIP has undertaken several initiatives to increase agency accountability. Last year, for the first time, OIP instituted a new quarterly reporting requirement for all agencies that allowed for a more real-time assessment of the flow of FOIA requests handled by the government throughout the year. During the course of each fiscal year, agencies are now required to publicly report on the numbers of requests received, processed, and in an agency's backlog for that quarter, as well as the status of the agency's ten oldest pending requests. We, in turn, post that information on FOIA.gov. The Department has continued to focus on the importance of agencies closing their oldest pending requests and this additional reporting requirement was yet another way to bring attention to that issue.

In 2013, for the third straight year, OIP conducted a formal assessment of agencies' FOIA administration by scoring all 99 agencies that are subject to the FOIA on a series of milestones tied to each of the five key areas addressed in the Attorney General's FOIA Guidelines. Because each agency inevitably faces different challenges in meeting the demands of its FOIA operations, OIP uses a wide range of milestones to more completely capture every agency's efforts. We post on the Department's website the assessment each year, along with a summary of agency activity and guidance for further improvement. As agency implementation of the Attorney General's FOIA Guidelines has matured, OIP has been continually refining the milestones that are assessed. We have also engaged with the open-government community to identify new milestones to be included in the assessment. This collaboration

has been very productive and we greatly appreciate the ideas and suggestions we have gotten.

As you know, Sunshine Week is the time when agencies complete their Chief FOIA Officer Reports. Based on our initial review of those reports for 2014 and our review of agency Annual FOIA Reports for Fiscal Year 2013, it is clear that agencies have persevered through a difficult year of limited resources and tough fiscal times to meet the ever-increasing demands of their FOIA administration and to continue to improve public access to information. This past fiscal year marks yet another year in which the government received record high numbers of incoming requests. During Fiscal Year 2013, agencies received 704,394 requests, which rose from the previous high of 651,254 requests received in Fiscal Year 2012. Notably, since Fiscal Year 2009, the number of FOIA requests received by the government has increased each year. In Fiscal Year 2013, the government received 26 % more requests than the 557,825 received in Fiscal Year 2009. As described above, in accordance with the President's and Attorney General's FOIA directives, we have encouraged agencies to make proactive disclosures and to anticipate the public's need for information in advance of any FOIA requests. Agencies have responded to these directives by posting a wide variety of material. While we had hoped that this increased focus on proactive disclosures would reduce the number of incoming requests, to date that has not been the case. Of course, it is likely that the increase would be even higher in the absence of the many proactive disclosures that were made. It is also likely that our increased focus on the important role that transparency plays in our democracy has itself made more members of the public interested in seeking access to records under the FOIA.

In response to the increased numbers of incoming requests, agencies were able to increase the total number of requests processed this past fiscal year, processing 678,391 requests. As to backlogs of pending requests, out of the 99 agencies subject to the FOIA, 73 agencies reported having a backlog of fewer than 100 requests. Of those, 29 agencies reported no backlog at the end of the fiscal year. Further, 55 agencies reduced their backlog or continued to maintain no backlog of FOIA requests. Of the 40 agencies that had an increase in their backlog, 25 had a backlog of 100 requests or fewer. Given the importance of reducing significant agency backlogs, for the first time this year, OIP directed any agency that had a backlog of more than 1000 pending requests, and had not reduced that backlog by the end of the fiscal year, to include in its 2014 Chief FOIA Officer Report a plan for achieving backlog reduction in the year ahead.

Even in the face of these challenging times agencies did find ways to improve their administration of the FOIA this past year. As highlighted earlier, the 2014 Chief FOIA Officer Reports contain many, varied examples of proactive disclosures made by agencies and their increasing use of technology to find efficiencies in their administration of the law. Agencies also made improvements to their websites to make them more useful and are increasingly using social media to disseminate information to even wider segments of the public. Agencies have also continued to maintain a high release rate. Indeed, during Fiscal Year 2013, the government released records in full or in part in response to 91.4% of requests where records were processed for disclosure, marking the fifth straight year in which the government's release rate was above 90%.

Like the majority of agencies, the Department of Justice was also faced with the challenge of finding ways to do more with less. This past fiscal year the Department received a record high number of over 70,000 incoming requests. In an effort to meet this high demand, and despite an over 5% reduction in FOIA staffing, the Department processed over 68,000 requests, including its ten oldest requests from the prior fiscal year, while continuing to release records in full or in part in response to over 93% of requests that were processed for disclosure. We also continued to make proactive disclosures of information and to improve the capabilities of our website. For example, OIP revamped the webpage that contains our summaries of FOIA court decisions to make them more easily searchable, posted material in an open format, and converted our *Department of Justice Guide to the FOIA* to a

“living” document that can be updated on a rolling basis.

In closing, the Department of Justice looks forward to working together with the Committee on matters pertaining to the government-wide administration of the FOIA. We are fully committed to achieving the new era of open government that the President and Attorney General envision. We have accomplished a great deal over these past five years, but OIP will continue to work diligently to help agencies achieve even greater transparency in the years ahead. Increasing our use of technology will be a key part of those efforts. Employing advanced digital tools to help internal processes, increasing proactive disclosures, expanding search capabilities of websites and improving their functions, and creating a consolidated online FOIA service that helps improve the customer experience are all exciting initiatives we will be undertaking in the year ahead.

I would be pleased to address any question that you or any other Member of the Committee might have on this important subject.

**Statement  
Of  
Amy Bennett  
Assistant Director  
OpenTheGovernment.org**

Before the United States Committee on the Judiciary

On:

Open Government and Freedom of Information:  
Reinvigorating the Freedom of Information Act for the Digital Age

Thank you, Chairman Leahy, Ranking Member Grassley, and Members of the Committee, for the opportunity to speak today about reinvigorating the Freedom of Information Act and for your unwavering commitment to protecting and strengthening the public's right to know. My name is Amy Bennett and I am the Assistant Director of OpenTheGovernment.org, a coalition of more than eighty organizations dedicated to openness and accountability.

As we all know too well, currently the FOIA is anything but an effective and efficient tool that the public can use to get timely access to government records. Members of the public must contend with delays, mind-boggling technical barriers, and a tradition of bureaucratic resistance to disclosure of information because some agency officials believe it belongs to the agency, not the people.

We certainly can make changes to the process that will make the system work better, and I want to thank this Committee for its long history of bipartisan support for improving the FOIA, and for shining a bright light on some of these issues over the past few years by advancing Chairman Leahy and Senator Cornyn's bill, FASTER FOIA. We agree a comprehensive review of agency backlogs in processing FOIA requests is long overdue, and we hope to see Congress require that the soon-to-be-established Federal Advisory Committee on FOIA Modernization or some other body complete this important study.

Later in this testimony, I will address some of the changes that the open government community believes will make the most positive difference for requesters. I am also appending a much more comprehensive list of reforms that the open government community would like to see the Committee act on.

There is no doubt that technology is a part of the solution: technology has proven to be extremely useful in speeding FOIA processing while also making it easier for the public to use and re-use government information. In recent years, technical innovations like FOIAonline, the central portal currently used by several agencies to accept and fulfill requests, have made it simpler for the public to track and manage requests, and receive usable documents. We are optimistic about the Administration's recent commitments to expand the use of a single portal for FOIA requests and to create a Federal Advisory Committee on FOIA Modernization, and hope to see fruits of these commitments soon.

Technology is not the entire answer, however, and I want to use my time before you today to speak about the need for Congress to weigh-in in favor of requesters on some of the natural tensions embedded in the law. These are tensions that the Judiciary Committee is uniquely suited to address, and we hope that the Committee will approve amendments to the FOIA addressing the issues raised below.

Foremost among these, the open government community would like to see Congress put tighter boundaries around the government's over-use of FOIA's Exemption 5, or as many FOIA requesters refer to it, the "We don't want to give it to you" exemption. Exemption 5 is intended to protect the government's deliberative process, among other things, and was intended to have – as are all FOIA Exemptions – narrow application. Over time, federal agencies have expanded the scope of material they consider subject to Exemption 5 to the point that it covers practically anything that is not a final version of a document. In one particularly egregious example of the government's over-use of Exemption 5, the Central Intelligence Agency (CIA) denied a request from our coalition partner the National Security Archive for the last secret volume of the CIA's internal history of the 1961 Bay of Pigs disaster. The request was denied despite the fact that the draft is connected to no policy decision by CIA and related to events that occurred more than 50 years ago.<sup>1</sup> Exemption 5 has also recently been invoked to deny the public access to copies of opinions by the Office of Legal Counsel related to the legality of controversial programs like the use of drones to kill American citizens abroad<sup>2</sup> and the Federal Bureau of Investigation's ability to access American's telephone records beyond what the letter of the public law allows.<sup>3</sup> While we understand the need to allow the President's advisors the freedom to give the President off-the-record advice, we cannot sanction the government's use of secret interpretations of the law to instruct the operations of executive agencies. Moreover, such practices erode the public's trust in the executive branch and its decisions.

For organizations like mine that care about accountability and reporters like those represented by Mr. Cuillier, pre-decisional documents are critical to understanding how a policy has changed and who is influencing the government's decisions. In terms of needed reforms to Exemption 5, we can draw two lessons from the above examples. One, Exemption 5 needs a public interest balancing test. If the government were not convinced that the requested documents would advance the public interest, a requester would still have the opportunity to ask a Court to independently weigh the government needs in invoking the privilege against the needs of the requester. Two, there needs to be a time limit. Currently, a President's records are only protected from release for twelve years from the end of that presidency. Surely, we should not accord more secrecy to agency business than we accord the President of the United States.

The next critical issue relates to the Office of Government Information Services (OGIS) at the National Archives and Records Administration (NARA). As you know, the open government community strongly supported the creation of the office, and we very much appreciate this Committee's leadership in creating the office and giving it early crucial support. OGIS is doing great things, and OGIS staff has a strong working relationship with members of my community. You likely will not be surprised, however, when I tell you OGIS continues to struggle to meet its dual roles as FOIA mediator and as the office charged with reviewing agency compliance with the FOIA and recommending changes to Congress and the President.

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<sup>1</sup> <http://www2.gwu.edu/~nsarchiv/NSAEBB/NSAEBB450/>

<sup>2</sup> <http://pogoblog.typepad.com/pogo/2011/11/foia-friday-justice-dept-denies-foia-request-for-awlaki-assassination-memo.html>

<sup>3</sup> <https://www.eff.org/press/archives/2011/05/19>

The first limitation faced by OGIS should be abundantly clear to this Committee thanks to Senator Grassley's sharp questioning during last year's FOIA oversight hearing: OGIS does not have the freedom to report directly to Congress or the President. It should not take a threat by a Senator to drive down to the Office of Management and Budget (OMB) to ensure that OGIS's recommendations are delivered in a timely fashion. Giving OGIS direct reporting authority would allow the office to provide information more freely to you and the President as to problems OGIS consistently sees during its mediation and review efforts, and advise on how these issues should be addressed.

The second limitation is the age-old problem of resources. Right now the office consists of a staff of seven – seven people to deal with more than 99 different agency FOIA offices and to help the hundreds of thousands of members of the public who file FOIA requests. Thankfully, we understand OGIS soon will be adding three new staff who will be responsible for helping set and execute OGIS' review of agency compliance with FOIA. This will help OGIS maintain its position as a neutral arbiter in its casework. However, OGIS needs several more bodies, as well as new resources to help promote and support the office's work. My community believes that at least two new positions should be approved to include a Director of Enforcement and a Director of Operations. This would strengthen OGIS' ability to implement its dual roles. We also urge Congress to designate at least one of the newly-created positions at OGIS as exempt from federal hiring rules to ensure qualified experts from outside the government can be fully considered.

The third and final limitation currently faced by OGIS that I will discuss today is its lack of authority to compel agencies to participate in the mediation process. Currently, OGIS and a requester that seeks OGIS's assistance must rely on the good will of an agency involved in a dispute. The most recent report on OGIS by the Government Accountability Office (GAO) documents OGIS's inability to provide mediation services to a requester because the agency declined to cooperate with OGIS.<sup>4</sup> For OGIS to serve all requesters who seek mediation services, Congress should require agencies to cooperate with OGIS and to provide information if requested.

Another long-standing issue facing FOIA advocates that needs your attention is the frequent appearance of new statutes that allow agencies to withhold information relying on Exemption 3 of the FOIA. According to data compiled by the Sunshine in Government Initiative and made available by ProPublica, a list of watermelon growers and handlers that submit information about the size of their business in order to participate in the National Watermelon Promotion Board, and information concerning the specific location of significant caves are just some of the 100-odd types of information that have been withheld from FOIA requesters using provisions of laws that are otherwise unrelated to the public's right to know.<sup>5</sup> These provisions are often introduced as only a few lines of text in a massive spending or authorization bill and, because they do not amend the FOIA, Committees with expertise like this one are not given the opportunity to weigh in on the need for or potential scope of the provision.

Recently Congress took the common-sense approach of including a public interest balancing test in a provision that excluded information about the Department of Defense's critical infrastructure. This balancing test will ensure the public's ability to access documents like water quality reports that are critical to human health and safety. Congress should amend Exemption 3 to say that no information may be withheld under this section

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<sup>4</sup> <http://www.gao.gov/products/GAO-13-650>

<sup>5</sup> <http://projects.propublica.org/foia-exemptions/>



unless the prospective harm to the interest of the government clearly outweighs the value of disclosure to the public. In addition, Congress can help eliminate unnecessary withholding statutes by requiring each such statute include a sunset. This sunset should give agencies sufficient time to make sure information that truly needs ongoing protection can continue to be withheld.

A fourth reform is both rhetorically important and a common-sense solution to make FOIA a more efficient public access tool: requiring agencies to make all records they process for release publicly available. While FOIA is called a public access tool, a lot of the documents that go through the FOIA process are never made publicly available. The only person who ever sees the documents is the person who filed the request. With a few exceptions, released documents are not required to be publicly available until they have been requested, or are expected to be requested, three times. In practice, this requirement is essentially meaningless as few agencies have a reliable method for tracking how many times a record has been released. Furthermore, we know a single agency sometimes reviews the same document multiple times and makes different withholding decisions each time.<sup>6</sup> Having an agency process a document multiple times wastes our scarce government resources. Simply by mandating that a release to one is a release to all, Congress can make sure that the general public has the ability to benefit from the release of documents through FOIA and can eliminate all of this unpredictability and wasteful duplication of efforts.

Of course, we also recognize that FOIA requesters should be rewarded in some way for their initiative in requesting information, and the picture is complicated by the fact some FOIA requesters must pay fees to have their requests processed. It is particularly important for journalists and other organizations to be able to have some time when they have exclusive access to the information. The process for releasing all reviewed documents recently adopted by the Department of State respects the need for exclusivity by posting its records quarterly, meaning recipients have up to three months before the document is publicly available. FOIAonline also gives the agency the option to make all of the released records public on a large central repository. People interested in seeing what has been released on a particular issue can search the repository; requesters are sent a direct link to the released documents.

The last reform I want to discuss is another common-sense solution to bringing more certainty into the FOIA process, and making a strong statement in favor of the public's right to know: codifying a strong presumption of openness. As you know, recent Administrations have taken different approaches in how they instruct agencies about when to withhold information from the public. Under President Bush, agencies were encouraged to use any exemption that allowed them to withhold information, with a promise the Department of Justice would defend those withholdings. President Obama's memo on FOIA, on the other hand, directs agencies to apply FOIA with a presumption that the information should be released. Congress has been far more consistent in its view of FOIA by recognizing, through the findings of the OPEN Government Act,<sup>7</sup> the FOIA's presumption of openness.

Writing the presumption of openness into the law would encourage agencies to faithfully and consistently be more open. Congress should also stress that information that can be released without causing harm should be released. This can be accomplished by specifying that an agency may withhold information only if it reasonably

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<sup>6</sup> <http://www2.gwu.edu/~nsarchiv/NSAEBB/NSAEBB420/>

<sup>7</sup> <http://www.gpo.gov/fdsys/pkg/PLAW-110publ175/html/PLAW-110publ175.htm>

foresees a specific identifiable harm to an interest protected by an exemption, or if disclosure is prohibited by law, and requiring the agency to identify specifically and document that harm.

OpenTheGovernment.org and our Partners are eager to work with you to craft a strong bill that makes FOIA work better for the public. As I referenced earlier, I have appended a longer list of possible reforms that the open government community would like to see enacted to this testimony. Additionally, we think there are several good ideas to improve FOIA in the bill recently passed by the House. Attached to this testimony is a letter signed by more than twenty-five organizations, including OpenTheGovernment.org, endorsing the bill and calling attention to particularly good provisions.

Thank you for the opportunity to speak about this critical issue, and I look forward to answering any of your questions.

## Attachment A: List of Reforms Supported by the Open Government Community

### *Improving Implementation of past FOIA reforms*

- **Require online posting of all released records.** Agencies use a lot of resources reviewing the same record for release under the FOIA multiple times before it is posted publicly. The **E-FOIA Amendments of 1996** required agencies to post “frequently requested” records, which the Department of Justice defines as “three or more” requests for the same or essentially similar record. However, many agencies do not have a reliable system to track how many times a document has been released and overall there is haphazard compliance with OMB’s interpretation of “frequently requested.” We recommend the Committee amend the text to require agencies to post any document that has been released under the FOIA.
- **Close the fee loophole.** Despite the clear intent of Congress in the **2007 OPEN Government Act**, agencies have been exploiting a loophole in the law to charge requesters fees after the agency has missed its statutory deadline to respond. We recommend the Committee amend the language to clarify that if an agency claims there are “unusual or exceptional circumstances” preventing it from meeting the 20-day deadline, the agency cannot charge fees if it fails to respond within the 10-day extension.
- **Improve FOIA tracking.** Agency efforts to meet the **OPEN Government Act’s** requirement to provide requesters with a way to track FOIA requests have been uneven. Agencies should be required to have an online tracking system that enables users to immediately locate where the request is in the process, who is responsible for processing the requests (once assigned), how to contact the reviewer, and a realistic estimate of a release date.
- **Make FOIA everyone’s job.** Despite Congress expressing an interest in including FOIA performance in federal employee job reviews in the **OPEN Government Act**, the Administration has yet to take any positive steps in that direction. We recommend the Committee include language that would create an incentive for program officers and other agency personnel to understand their obligations under FOIA, and cooperate with FOIA offices.
- **Codify a strong presumption of openness.** Through the findings of the **OPEN Government Act**, Congress recognized the FOIA’s presumption of openness. Codifying the presumption in the law would encourage agencies to faithfully and consistently apply the presumption. We strongly recommend that the Committee codify the current Administration’s presumption of openness into the law, and specify an agency may withhold information only if it reasonably foresees a specific identifiable harm to an interest protected by an exemption, or if disclosure is prohibited by law.
- **Strengthen OGIS.** Congress created the Office of Government Information Services (OGIS) in the **OPEN Government Act** to mediate FOIA disputes and make recommendations for improving the government’s FOIA process. As was apparent during the Judiciary Committee’s 2012 oversight hearing, OGIS lacks sufficient independence, authority, and resources to fully complete its dual mission. In order to strengthen OGIS and make sure it can carry out its statutory purpose, we recommend:
  - **Increase independence.** OGIS has the statutory responsibility to make recommendations for improving FOIA processing to the Congress and the President. During the Judiciary Committee’s 2012 oversight hearing, the Committee raised the lengthy delay in the Office of Management and Budget’s (OMB) review of OGIS’ recommendations. In order to make sure OGIS is able to provide timely recommendations, we recommend the Committee give OGIS the ability to report directly to the Congress and the President.

- **Require cooperation.** According to a recent report on OGIS by the Government Accountability Office (GAO), OGIS was not able to provide mediation services to a requester because the agency declined to cooperate with OGIS.<sup>8</sup> In order to make sure OGIS is able to serve all requesters who seek mediation services, we recommend the Committee require agencies to cooperate with OGIS and to provide information if requested.
- **Increase resources.** A report by the National Archives and Records Administration (NARA) Inspector General (IG) on OGIS stated that additional resources could significantly improve OGIS's ability to address and meet its dual mission of providing mediation services and recommendations.<sup>9</sup> In particular, the report identifies OGIS' need for additional staff so that OGIS staff working with agencies who request OGIS assistance can be segregated from OGIS staff reviewing agencies' FOIA policies, procedures, and compliance with FOIA. We recommend that the Committee increase OGIS' resources by adding additional required staff, and that Congress require the creation of specific positions, including a Director of Enforcement and a Director of Operations. Congress should also designate some of the newly-created position at OGIS as exempt from federal hiring rules to ensure that qualified experts from outside the government can be considered.
- **Newly-proposed b(3) provisions must cite the FOIA.** Not all proposed b(3) provisions are complying with **OPEN FOIA Act of 2009's** requirement that all new b(3) provisions to cite the FOIA. We recommend the Committee include language in its bill directing agencies to give no effect to newly-passed b(3) provisions that do not cite FOIA.
- **Clarify the definition of a financial institution in Exemption 8.** In a recent court decision, a judge warned that language included in **S. 3717** (passed and signed into law in 2010) to narrow the overly-broad b(3) exemption for the SEC included in the Dodd-Frank Act is being used by the SEC to inappropriately withhold information.<sup>10</sup> We recommend repealing 15 U.S.C. § 78x(e), which defines any entity regulated, supervised, or examined by the SEC as a "financial institution" for the purpose of Ex. 8 and has proved far too broad in scope. If that proves too difficult, we might consider narrowly defining which specific entities should be entitled to *per se* recognition as "financial institutions."
- **Update of FOIA regulations.** As the Judiciary Committee highlighted in its 2013 hearing, a recent audit by the National Security Archive revealed a majority of agencies do not have updated regulations that reflect the latest changes to law and Administration policy,. Agencies should be required to review and update all FOIA regulations so that they conform with the updated presumption of openness, and all other requirements of the law. Agencies should be required to update their regulations within 180 days of an amendment to the FOIA. Agencies also should be required to consult with OGIS on proposed updates and gather public input through the regular notice and comment process.

***Reforms to make processing more efficient:***

- **Require all agencies to perform a declassification review.** The Departments of Defense, Justice and Homeland Security currently review records for declassification prior to asserting Exemption b(1). This practice helps ensure

<sup>8</sup> <http://www.gao.gov/products/GAO-13-650>

<sup>9</sup> <http://www.archives.gov/oig/pdf/2012/audit-report-12-14.pdf>

<sup>10</sup> This section was amended by P.L.111-257 to replace an earlier, broader exemption, with the intent to ensure that hedge funds would be treated as financial institutions, but the SEC has since relied upon it to shield information relating to the Financial Industry Regulatory Authority. See *Public Investors Arbitration Bar Ass'n v. SEC*, No. 11-2285, 2013 WL 987769, at \*9, Slip Op. at \*17 (D.D.C. Mar. 14, 2013) ("This amendment, passed by Congress in 2010, was intended to improve transparency" at the SEC but "appears to have done just the opposite" (internal quotation marks omitted)).

the agency does not deny the public access to records that are marked classified, even if the information does not meet the standards for classification laid out in Executive Order 13526 governing classified national security information. This should be the practice at all agencies that hold classified information.

- **Simplify fees.** We recommend amending the statute to include within the definition of “educational institution” any organization recognized by the Internal Revenue Service as a 501(c)3 organization. This will ensure the fee categories are applied as Congress intended.
- **Reduce the number of b(3) provisions.** Exemption b(3) provisions make it easy to deny access to information the public needs. We need a better understanding of what provisions are in existing laws and a better way to identify newly-proposed provisions to guard against b(3) provisions that hurt public health and safety or other interests.

In order to create a definitive inventory of b(3) provisions already in statutes and a systematic way to know when new b(3) provisions are added, we recommend the Government Accountability Office (GAO) perform an audit of all existing b(3) statutes, and their use by agencies. The GAO’s results should be available to the public and should form the basis of a newly required online log of existing and proposed b(3) statutes to be maintained by the Department of Justice (DOJ) on FOIA.gov or a similar website.

- **Create a Chief FOIA Officers Council.** We strongly recommend the creation of a Chief FOIA Officers Council to monitor agency implementation of the law and recommend changes in agency policy and practices. This body will be a permanent structure that will ensure Chief FOIA Officers are engaged in their agencies’ FOIA operations. OGIS and the Office of Information Policy should co-chair the Council; this will afford OGIS a direct line of communication to the agency Chief FOIA officers, which it currently lacks.
- **Mandate a centralized FOIA portal.** FOIAonline is a promising effort to centralize the FOIA process for requesters and streamline processing for the government. However, it, or any other centralized portal, will only be successful if participation is mandated. The Committee should require agencies to participate. If an agency is using proprietary software, the switch to the centralized portal would happen at contract expiration. A small amount of funding will be contributed from each participating agency, allowing for significant upgrades to the functionality of the platform.
- **Reduce the FOIA burden by identifying and proactively disclosing whole record categories.** The Environmental Protection Agency (EPA) noted that it was receiving a substantial number of FOIA requests for environmental hazard information related to specific properties being considered for real estate transactions. The agency created an online tool (via MyPropertyInfo) to give the public direct access to such records. As a result, the agency charted a 27% reduction in “no records” responses. The practice of identifying categories of records that are commonly requested and making those records proactively available should be both more common and systematic. We recommend that the Committee require that within 180 days agencies that receive more than 1,000 requests per year analyze a random sample of their FOIA logs to determine what two categories of records are most often requested by non-commercial requesters and what one category of records is most requested by commercial requesters. The identified categories and supporting analysis must be submitted to OGIS for review and approval. Once approved, each agency should be required to begin proactively posting the three categories of information online within two years. Additionally, agencies should submit three additional categories to OGIS for approval two years after enactment of the bill, and make the approved categories available within two years. Five years after enactment of this bill, OGIS should be required to report to Congress on the progress agencies are making.

### ***Transformative changes to improve the FOIA***

- **Narrow the application of Exemption b(5).** Agencies use exemption b(5) to withhold a broad swath of material that is crucial to understanding what the government has done and why. We recommend the statute be revised to require agencies to consider the public interest in disclosure and balance that interest against the agency interest in withholding. We further recommend that the application of the exemption be limited to 12 years after the record was created to ensure the reach of b(5) under the FOIA is no greater than the protection afforded presidential records under the Presidential Records Act.
- **Public interest balancing test for all b(3) provisions.** Based on the precedent Chairman Leahy set in recent b(3) provisions, the incorporation of a public interest balancing test. In addition, b(3) provisions should have a sunset to ensure unnecessary ones are not continued. The sunset should give agencies sufficient time to make sure information that truly needs protection is withheld.
- **Create an Advisory Committee on Open Government that is required to conduct the study included in FASTER FOIA.** A standing Advisory Committee on Open Government would create an infrastructure to help make sure that open government work continues in spite of the Executive Branch's loss of enthusiasm or even disdain for transparency. We recommend that the Committee add a new title to the bill that directs the General Services Administration or the National Archives and Records Administration to establish an Advisory Committee on Open Government charged with advising the government on how to improve FOIA and government transparency. The advisory committee should include representatives certain members of the public,<sup>11</sup> the Department of Justice, OGIS, and the Advisory Committee should be composed of no more than 50 percent government members. We also support the bill by Senators Leahy and Cornyn to establish an advisory panel to examine agency backlogs in processing FOIA requests and provide recommendations to Congress for legislative and administrative action to enhance agency responses to such requests. The new Advisory Committee on Open Government should be required to conduct the study mandated by FASTER FOIA.
- **Direct fees to support OGIS and encourage agency compliance.** In addition to being a major sticking point for agencies and requesters, the collection of fees is not currently correlated with any efforts to process requests, or reduce the systemic backlogs that prevent the public from getting timely access to government records through the FOIA. The Senate version of the OPEN Government Act (S. 1090), included a provision that would have allowed an eligible agency that met the 20 day statutory deadline to keep half of the fees charged for processing the request. We recommend that the Committee include similar language, and that the proposal be expanded so that a percentage of the fees associated with any request that was not processed by the statutory deadline be directed to OGIS.

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<sup>11</sup> At least one representative of the media, frequent public interest FOIA requester, frequent commercial FOIA requester, public interest representative with expertise in FOIA, public interest representative with expertise in information technology, and three public interest representatives with expertise in government openness and transparency.

**Attachment B: Letter Endorsing HR 1211**

Members of Congress  
U.S. House of Representatives  
Washington, DC 20515

February 24, 2014

Dear Representative,

We, the undersigned organizations, are pleased to support H.R. 1211, the FOIA Oversight and Implementation Act of 2014, a bill to amend the Freedom of Information Act (FOIA) to promote greater government transparency and accountability. The bipartisan bill is cosponsored by House Oversight and Government Reform Chairman Darrell Issa (R-Calif.), Ranking Member Elijah Cummings (D-Md.), and Representative Mike Quigley (D-Ill.). We urge you to vote in favor of this open government legislation.

The FOIA has yet to become an effective and efficient tool for the public to access government information, and the experience of the past few years makes clear the need for reform to ensure the law is implemented as Congress intended. Particular reforms included in H.R. 1211 that we support include advancing the online portal for FOIA requests, establishing an open government advisory committee, requiring all agencies to update their FOIA regulations, and providing the Office of Government Information Services with the ability to submit reports and testimony directly to Congress and the President. The bill also encourages more proactive disclosures, and puts into statute the current administrative policy of a “presumption of openness” with which agencies should review FOIA requests.

This bill has also been a catalyst for administrative reform. We welcome the Obama Administration’s commitments to similar significant reforms to FOIA in the U.S. National Action Plan for the Open Government Partnership. Similar to H.R. 1211, the President has pledged to create a central, online FOIA portal, establish an advisory committee for modernizing FOIA, and improve agency FOIA practices to reduce backlog. We also appreciate the President’s promise to harmonize the current confusing patchwork of FOIA regulations. While we are working to support the fulfillment of these commitments, we believe that these efforts will be strengthened when supported in statute. We will work with Congress and the Administration to ensure that any final FOIA reform legislation will do just that.

While the House bill reflects several of our recommendations to improve FOIA for the American people, there is still more that must be done. We look forward to working with the Senate Judiciary Committee to advance legislation with additional reforms, including provisions to curb the overuse and abuse of certain exemptions—particularly Exemption 3 and Exemption 5. At a minimum, the application of Exemption 5 should be narrowed to promote greater transparency and be subject to the same time limits as the President’s records, and a public interest balancing test should be used when applying Exemption 3. Additionally, we hope that the Senate Judiciary Committee will put in place a much stronger requirement that agencies make all records that have been reviewed for release available to the public.

We urge you to vote for H.R. 1211 and then join us in supporting House and Senate FOIA champions to produce a final bill with robust Freedom of Information Act reforms.

Sincerely,

American Association of Law Libraries

American Library Association

American Society of News Editors

Association of Alternative Newsmedia

Association of Research Libraries

Center for Effective Government

Center for Media and Democracy

Delaware Coalition for Open Government

Delaware League of Women Voters

Government Accountability Project – GAP

iSolon.org

James Madison Project

Liberty Coalition

Mine Safety and Health News

Security Counselors

OpenTheGovernment.org

Project On Government Oversight (POGO)

Public Citizen

Public Employees for Environmental Responsibility  
(PEER)

Sage Information Services

Society of American Archivists

Society of Professional Journalists

Sunlight Foundation

Tully Center for Free Speech at Syracuse University

Vermont Press Association