IMPLEMENTATION OF THE ELECTRONIC FREEDOM OF INFORMATION AMENDMENTS OF 1996: IS ACCESS TO GOVERNMENT INFORMATION IMPROVING?

HEARING

BEFORE THE

SUBCOMMITTEE ON GOVERNMENT MANAGEMENT, INFORMATION, AND TECHNOLOGY

OF THE

COMMITTEE ON GOVERNMENT REFORM AND OVERSIGHT HOUSE OF REPRESENTATIVES

ONE HUNDRED FIFTH CONGRESS

SECOND SESSION

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IMPLEMENTATION OF THE ELECTRONIC FREEDOM OF INFORMATION AMENDMENTS OF 1996: IS ACCESS TO GOVERNMENT INFORMATION IMPROVING?

TUESDAY, JUNE 9, 1998

HOUSE OF REPRESENTATIVES,
SUBCOMMITTEE ON GOVERNMENT MANAGEMENT,
INFORMATION, AND TECHNOLOGY,
COMMITTEE ON GOVERNMENT REFORM AND OVERSIGHT,
Washington, DC.

The subcommittee met, pursuant to notice, at 10 a.m., in room 2247, Rayburn House Office Building, Hon. Stephen Horn (chairman of the subcommittee) presiding.

Present: Representatives Horn, Sununu, and Kucinich.

Staff present: J. Russell George, staff director and chief counsel; John Hynes, professional staff member; Matthew Ebert, clerk; and Brian Cohen, minority professional staff member.

Mr. HORN. The Subcommittee on Government Management, Information, and Technology will come to order.

This hearing is about access to government information. James Madison articulated the importance of this issue in a statement that deserves all the attention it will receive here today.

He said, "A popular Government without popular information or the means of acquiring it is but a Prologue to a Farce or a Tragedy, or perhaps both. Knowledge will forever govern ignorance, and a people who mean to be the Governors, must arm themselves with the power knowledge gives."

Our purpose is to give content to the timeless wisdom of these words as we stand at the threshold of a new era. The framework for our efforts is the Freedom of Information Act of 1966, commonly called FOIA. Two years ago, Congress amended the Freedom of Information Act to make it more effective for the digital age. At this hearing, we intend to ask whether the executive branch today is living up to Mr. Madison's eloquent vision.

Specifically, we are here to examine the implementation of the Electronic Freedom of Information Act Amendments of 1996. The purpose of the 1996 amendments, and the Freedom of Information Act more generally, is to promote open, accessible government. Democracy depends on access to government information. Participation in government by private citizens and accountability of governmental officials are two pillars of representative government. These functions of participation and oversight by the public are just as

important as the checks and balances written into our Constitution.

The Electronic Freedom of Information Act Amendments of 1996 made two major changes to the Freedom of Information Act. One, the amendments provided for an increase in affirmative disclosures of government information. That is, the amended law requires agencies to make certain categories of information available, including on the internet, without waiting for individual Freedom of Information requests. Two, the amendments made changes to the Freedom of Information Act requesting process itself in an effort to make FOIA a more effective tool for accessing government information.

We wish to examine the implementation of the various provisions in the 1996 amendments that promote these two broad goals. In terms of affirmative disclosures, for example, the 1996 amendments require that agencies create electronic reading rooms on the internet. Agencies must place on-line a variety of documents, including those that are likely to be repeatedly requested under the Freedom of Information Act. This provision should have the effect of satisfying many people's information needs without going through the burden of the FOIA process, but are agencies complying with this and other affirmative disclosure requirements? A report we will discuss today by OMB Watch suggests that too many are not.

In terms of improving the FOIA process itself, the 1996 amendments require that agencies make available indices of their major information systems. This would have the effect of allowing requesters to make much more precise requests. But, again, preliminary indications suggest that agency compliance has been spotty, at best.

Does anyone doubt the importance of citizen participation in government accountability? I hope not. But if there are barriers to openness and access to government information, it is time to find them and it is time to remove them.

We have two panels today. On the first are two public interest groups, a journalist and a researcher. They will tell us about how they use government information, why it is important, and how accessible it is under current practices.

On the second panel are representatives from four Federal agencies. They will tell us about implementing the 1996 amendments to the Freedom of Information Act.

We thank all of our witnesses for being here, and we look forward to the testimony.

[The prepared statement of Hon. Stephen Horn follows:]

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INDEPENDENT

"Implementation of the Electronic Freedom of Information Act Amendments of 1996: Is Access to Government Information Improving?"

June 9, 1998

OPENING STATEMENT
REPRESENTATIVE STEPHEN HORN (R-CA)
Chairman
Subcommittee on Government Management,
Information, and Technology

This hearing is about access to Government information. James Madison articulated the importance of this issue in a statement that deserves all the attention it will receive here today:

> A popular Government without popular information or the means of acquiring it, is but a Prologue to a Farce or a Tragedy or perhaps both. Knowledge will forever govern ignorance, and a people who mean to be the governors, must arm themselves with the power knowledge gives.

Our purpose is to give content to the timeless wisdom of these words as we stand at the threshold of a new era. The framework for our efforts is the Freedom of Information Act of 1966 – commonly called FOIA. Two years ago, Congress amended the Freedom of Information Act to make it more effective for the digital age. At this hearing, we intend to ask whether the Executive Branch today is living up to Mr. Madison's eloquent vision.

Specifically, we are here to examine implementation of the Electronic Freedom of Information Act Amendments of 1996. The purpose of the 1996 amendments, and the Freedom of Information Act more generally, is to promote open, accessible government. Democracy depends on access to government information. Participation in government by private citizens and accountability of governmental officials are two pillars of representative government. These functions of participation and oversight by the public are just as important as the checks and balances written into our Constitution.

The Electronic Freedom of Information Act Amendments of 1996 made two major changes to the Freedom of Information Act. One, the amendments provided for an increase in

affirmative disclosures of Government information That is, the amended law requires agencies to make certain categories of information available – including on the Internet – without waiting for individual Freedom of Information requests. Two, the amendments made changes to the Freedom of Information requesting process itself in an effort to make FOIA a more effective tool for accessing Government information.

We wish to examine implementation of the various provisions in the 1996 amendments that promote these two broad goals. In terms of affirmative disclosures, for example, the 1996 amendments require that agencies create "electronic reading rooms" on the Internet. Agencies must place online a variety of documents, including those that are likely to be repeatedly requested under the Freedom of Information Act. This provision should have the effect of satisfying many peoples' information needs without going through the burden of the FOIA process. But are agencies complying with this and other "affirmative disclosure" requirements? A report we will discuss today by OMB Watch suggests that too many are not.

In terms of improving the FOIA process itself, the 1996 amendments require that agencies make available indexes of their major information systems. This would have the effect of allowing requesters to make much more precise requests. But again, preliminary indications suggest that agency compliance has been spotty at best.

Does anyone doubt the importance of citizen participation and Government accountability? I hope not. But if there are other barriers to openness and access to Government information, it is time to remove them.

We have two panels today. On the first are two public interest groups, a journalist and a researcher. They will tell us about how they use Government information, why it is important, and how accessible it is under current practices. On the second panel are representatives from four Federal agencies. They will tell us about implementing the 1996 amendments to the Freedom of Information Act.

Mr. HORN The routine of this committee is to bring up the first panel, to swear them in: that the testimony they are about to give us is the truth, the whole truth and nothing but the truth. When we introduce each witness in the order in which they are on the agenda, their statement automatically goes into the record without objection. We would appreciate it if the witnesses summarize their testimonies and hit the high points, because the staff and the members have read the testimony in advance, and then we can get down to a dialog when all four witnesses on the first panel are finished with their statement.

So if the first panel will come forward, we will swear in the witnesses and begin. Ms. McDermott, Mr. Tankersley, Mr. Riccio, Ms. Kirtley. Everybody has their sign in front of them. If you would, stand up and raise your right hands.

[Witnesses sworn.]

Mr. HORN. The clerk will note that all four witnesses have affirmed the oath. Please be seated.

We will first have Ms. Patrice McDermott, information policy analyst of OMB Watch. Ms. McDermott.

STATEMENTS OF PATRICE McDERMOTT, INFORMATION POLICY ANALYST, OMB WATCH; MICHAEL TANKERSLEY, SENIOR STAFF ATTORNEY, PUBLIC CITIZEN LITIGATION GROUP; JIM RICCIO, STAFF ATTORNEY, CRITICAL MASS ENERGY PROJECT, PUBLIC CITIZEN; AND JANE KIRTLEY, EXECUTIVE DIRECTOR, REPORTERS COMMITTEE FOR FREEDOM OF THE PRESS

Ms. MCDERMOTT. Thank you, Mr. Chairman.

OMB Watch is a nonprofit research and advocacy organization that works to encourage greater public participation in Federal Government decisionmaking and to promote a more open, responsive, and accountable government. We have been engaged in the arena of public access to public information since the mid-1980's and have issued a number of reports in this area.

Pursuant to your request, Mr. Chairman, OMB Watch has not received any Federal grants or contracts in the current and 2 preceding years, nor are we representing any entity today that has received such funds. We appreciate the opportunity to testify.

I am here today to talk about the report we issued in April of this year—Arming the People "with the power knowledge gives." The name of our report may sound somewhat inflammatory, but it comes from the famous quotation that you quoted in your opening remarks, Mr. Chairman. We believe it is the intent of Congress, with the 1996 EFOIA Amendments to the Freedom of Information Act, to assist the American people in arming themselves with the power of knowledge about the activities of their government.

Before I go into the details of our study and our recommendations, I want to clarify that OMB Watch conducted this study from our commitment to the public's right to know, its right to information needed to make informed personal, social, and political decisions, and our belief that the government has an affirmative responsibility to make information available and readily accessible to all the public. It was not, and is not, our intent to "bash" Federal Government agencies. It is our intent to hold them accountable to

statutory mandates for meaningful public access to the information created, collected, and/or maintained by or for those agencies.

I want to recognize the work of Jennifer J. Henderson in researching and doing the majority of writing for this study and report. Over a 3-month period between November 1, 1997, and January 31, 1998, OMB Watch examined 135 unique Federal Government EFOIA websites for 57 agencies. Some EFOIA websites represented entire agencies, while others reflected an agency division or department. In each case, we searched for the existence and completeness of four major categories of information required under the 1996 EFOIA Amendments.

Additionally, a letter requesting information recording the current status of and future plans for meeting the amendments was sent to the FOIA officers of 84 agencies and commissions listed on the DOJ's Office of Information and Privacy FOIA home page. Almost two-thirds of the agencies contacted considered our letter for information a formal FOIA request and processed it as such. Of these, about one-half sent a standard form letter acknowledging our request but sent no additional information. The other half either replied directly or sent the form letter and then followed up with other information.

In all of our research, we approached the web sites from the perspective of an average member of the public searching for information. Our intent was to separate those agencies that took the time to provide meaningful public access to their information from those that simply implemented the amendments to fulfill their obligation as quickly as possible.

Overall, this study found that agencies are moving at a great speed to provide information online. Unfortunately, this information is often unorganized, unrelated, and difficult to find. In a majority of agencies, EFOIA information is very difficult to find online, and often what appeared to be an index to the agency's major information systems was actually an index of the website.

The amendments did not require that the information be easily found, so that is not a quantified item in this report, but it is an observation.

Of the 57 agencies examined, 13, or 23 percent had, as of January 31, no EFOIA presence; 44, or 73 percent, had varying degrees of compliance with the requirements; and as of January 31, 1998, no agencies had fully complied with the amendments.

In agencies that have decentralized the responsibility for EFOIA to different units within the agency, there is often uneven dissemination of information due to a hands-off approach by the parent agency or parent organization.

Our fourth finding is that the Office of Management and Budget [OMB], which was assigned the responsibility of providing guidance on the implementation of EFOIA, did little to aid agencies in fulfilling their requirements.

The guidance that OMB did provide last year has led some agencies to be out of compliance with the law, and I can explain that later in the dialog.

Our study indicates that, overall, agency compliance with the EFOIA Amendments has been overwhelmingly inadequate. We consider that there are three overriding reasons for this.

First, Congress did not provide the necessary funding to carry out the implementation of the amendments; second, OMB did not provide adequate guidance or assistance to the agencies during the implementation process; and, third, agencies have yet to make public access to government information a priority.

We also have a set of policy recommendations that we would like to put forward.

The first of these is that the goal of EFOIA should be to make information so publicly accessible online that the Freedom of Information Act requests become an avenue of last resort; and, in this same vein, the goal should be to provide access to the records directly online to as great of an extent as feasible.

Second, although OMB has recently provided guidance to the agencies that does fulfill the letter of the EFOIA amendments, to make this guidance effective, OMB must also develop a plan for how EFOIA fits into the overall framework of Federal information policy and, in particular, public access.

Third, Congress must allocate appropriate levels of funding for ongoing implementation of the EFOIA amendments. It is difficult for agencies to make EFOIA a priority when moneys must be diverted from other important projects such as the Y2K concerns that most agencies are facing now.

Fourth, Congress must search for new ways to ensure implementation of these amendments through an enforcement mechanism. Currently, agencies that are not in compliance are not penalized.

Fifth, agencies that have decentralized responsibility for EFOIA implementation must provide a procedure for its consistent implementation across the agency. If parent agencies continue to take a hands-off approach to EFOIA obligations, the public will continue to receive uneven access to information across the agency.

Sixth, agencies must make their EFOIA information handbooks, indexes, repeatedly requested records easily identifiable and clearly described on line.

Seventh, agencies must immediately propose in the Federal Register and subsequently adopt implementing regulations which should establish the agency's definitions regarding what constitutes a repeatedly requested record which was not defined in the act, and has not been clearly defined by the agencies.

Eighth, all agencies should follow the lead of those that provide forums for submitting FOIA requests online, including GSA, the Small Business Administration, and several others.

And finally, all agencies should provide access to their information in text only as well as graphics versions for users without access to high-technology equipment, and a good example of this is the Veterans' Administration.

That concludes my summary remarks. Thank you very much.

Mr. HORN. We thank you. That was a very helpful statement and well organized.

[The prepared statement of Ms. McDermott follows:]

OMB WATCH
1742 CONNECTICUT AVENUE, NORT 'EST
WASHINGTON, D C. 20009-1171
TELEPHONE: (202) 234-8494/FAX (202) 234-8584
e-mail: ombwatch@ombwatch org
URL: http://www ombwatch org/ombwatch html

Statement of

Patrice McDermott, Ph.D.
Information Policy Analyst
OMB Watch

Before the Subcommittee on Government Management, Information and Technology
of the
House Committee on Government Reform and Oversight

On
The Implementation of the Electronic Freedom of Information Amendments of 1996

My name is Patrice McDermott and I am the information policy analyst for OMB Watch, a nonprofit research and advocacy organization that works to encourage greater public participation in federal government decision-making and to promote a more open, responsive and accountable government. We have been engaged in the arena of public access to public information since the late 1980s, and have issued a number of reports in this area. Pursuant to your request, Mr. Chairman, OMB Watch has not received any federal grants or contracts in the current and two preceding years, nor are we representing any entity today that has received such funds.

We appreciate the opportunity to testify.

I am here today to talk about the report we issued in April of this year — *Arming the People "...with the power knowledge gives."* The name of our report may sound somewhat inflammatory, but it comes from a famous quotation from James Madison, the first part of which is better known: "A popular Government without popular information or the means of acquiring it, is but a Prologue to a Farce or a Tragedy or perhaps both. Knowledge will forever govern ignorance, and a people who mean to be their own Governors, must arm themselves with the power knowledge gives." We believe it was the intent of Congress, with the 1996 "EFOIA" amendments to the Freedom of Information Act, to assist the American people in arming themselves with the power of knowledge about the activities of their government.

Before I go into the details of our study and our recommendations, I want to clarify that OMB Watch conducted this study from our commitment to the public's right to know, its right to information needed to make informed personal, social and political decisions, and our belief that the government has an affirmative responsibility to make information available and readily accessible to all the public. It was not, and is not, our intent to "bash" federal government agencies; it is our intent to hold them accountable to statutory mandates for meaningful public access to the information created, collected, and or maintained by or for those agencies.

The OMB Watch Study

I want to recognize the work of Jennifer J. Henderson in researching and doing the majority of the writing of this study and report. Over a three month period between November 1, 1997 and January 31, 1998 (mostly between November 1 and December 31, 1997), OMB Watch examined 135 unique federal government EFOIA web sites. Some EFOIA web sites represented entire agencies, while others reflected an agency division or department. The agencies, departments,

bureaus and commissions for this study were selected from the Public Citizen "Agency FOIA Handbooks and References" and Department of Justice, "FOIA Administrative and Legal Contacts at Federal Agencies" web sites. In each case, we searched for the existence and completeness of four major categories of information required under the 1996 EFOIA amendments:

- Records including *Federal Register* notices, opinions from agency adjudications, and interpretations adopted by the agency;
- An index of all major information systems;
- A FOIA guide detailing how to request records from the agency;
- An electronic reading room that contains the information listed above as well as repeatedly requested records created after November 1, 1996.

To accompany this initial research, a letter requesting information regarding the current status of and future plans for meeting the EFOIA amendments was sent to 84 agencies and commissions. Federal agency FOIA officers listed by the Office of Information and Privacy of the U.S. Department of Justice on their FOIA home page were used as a basis for this mailing list. Almost two-thirds of the agencies contacted considered our letter for information a formal FOIA request and processed it as such. Of the agencies that considered our letter a FOIA request, about one-half sent a standard form letter acknowledging our request, but sent no additional information. The other half either replied directly or sent the form letter and followed-up with information later.

The letter asked agencies to point out where we could electronically locate the four major categories of information listed above. In addition, the letter asked agency FOIA officers how they have identified which records fall into the "have become or are likely to become the subject of subsequent requests for substantially the same records" category.

When new information regarding EFOIA electronic dissemination was revealed from the agency responses, we revisited these web sites for a second look. In some cases, agencies that we initially believed were not in compliance did have the proper information, but the information was inaccessible from the agency's main home page or difficult for us to locate on the first attempt.

In all cases, we approached the web sites from the perspective of an average member of the public searching for information. In this way, we were able to separate those agencies that took the time to provide meaningful public access to their information from those that simply implemented the amendments to fulfill their obligation as quickly as possible.

Our research focused exclusively on whether agencies have made the materials required by EFOIA available on the Internet; it did not examine if agencies have made these materials available in other formats or media.

Although we considered listing which agencies fell into each category, presenting the results in this manner seems more like a finger-pointing exercise than a valuable discussion of the success and failures of implementation. Because many agencies that did not meet all of the requirements had some positive elements of electronic dissemination, and others that fulfilled most of the requirements did so in only the most minimal manner, the categories were useful only for providing an overall picture of compliance.

Findings
Overall, this study found that

- **In a majority of agencies, EFOIA information is difficult to find online.** It is rarely visible on the agency's main home page, and often takes a great deal of searching to find even a hint The Amendments did not *require* that the information be easily found, so this is not a quantified item in this report; it is an observation based on review of the 135 web sites.

- **More specifically, of the 57 agencies examined (*Appendix D of the OMB Watch report*), 13 (23%) have no EFOIA presence, 44 (73%) have varying degrees of compliance with the requirements, and, as of January 31, 1998, no agency had complied fully with the amendments (*Appendix D shows NASA as having fulfilled all the requirements, but, as they used OMB Guidance for the index of major information systems, we considered that they have not complied with the amendments.*)**

- **While the vast majority of agencies have yet to fulfill the requirements of the amendments, there are a number of exemplary EFOIA implementors that should be applauded for their work.** For example, the Department of Defense and the Federal Communications Commission maintain excellent search engines and home pages to make research easy and information accessible. Others, such as the Small Business Administration and the National Science Foundation provide forms to submit FOIA requests online, accelerating the public's access to federal government information. Still others such as the Veteran's Administration accommodate a variety of low-tech and high-tech users by using with audio-visual, and text-only sites.

- **In the best cases, agencies see the EFOIA as an opportunity to help both citizens and themselves.** Many agencies have found that when information frequently requested under FOIA is provided electronically, especially over the Internet, the number of requests for this information declines substantially and agency resources are saved.

- **In agencies that have decentralized the responsibility for EFOIA to satellite offices in different units within the agency, there is often an uneven dissemination of information due to a "hands-off" approach.** While some departments or bureaus of an agency have excellent EFOIA guides, indexes and reading rooms, others have absolutely no information disseminated online.

- **Agencies are moving at a great speed to provide information online. Unfortunately, this information is often unorganized, unrelated, and difficult to find.** In many cases, agencies may have complied with EFOIA requirements, but we were unable to verify this compliance because no clear markers for this information existed on these web sites.

- **The Office of Management and Budget (OMB), assigned the responsibility of providing guidance on the implementation of EFOIA, had done little to aid agencies in fulfilling their requirements.** Agencies, therefore, looked to the Department of Justice for detailed explanations of the amendments as well as guidance and examples of implementation and reporting. While the DOJ information is very useful, its availability does not relieve OMB of its responsibility to ensure that agencies have adequate information to implement the law.

- **The guidance that OMB *had* provided has led some agencies to be out of compliance with the law.** April 7, 1997, guidance from OMB on the index requirements of the Amendments recommended "establishing a Government Information Locator Service (GILS) presence." Eighteen agencies (32%) have taken this advice, regardless of whether their GILS "presence" met the requirements of the Amendments or not.

This study indicates that overall, agency compliance with the EFOIA amendments has been overwhelmingly inadequate. There are three overriding reasons for this conclusion:

1. Congress has not provided the necessary funding to carry out the implementation of the amendments.

2. OMB has not provided adequate guidance or assistance to agencies during the implementation process.

3. Agencies have yet to make public access to government information a priority.

What EFOIA Information Is Available?

FOIA Guides to Requesting Information

The EFOIA amendments require each agency to create a guide for the public detailing how to request information. While many agencies have provided an online guide, the best agency EFOIA web sites also explain the rights guaranteed to the public through the FOIA and its amendments, an example being the Federal Deposit Insurance Corporation (FDIC). They clearly articulate not only how to go about requesting information, but also what information can and cannot be accessed under the FOIA and EFOIA. Many FOIA web sites, however, contain legal or bureaucratic language to describe their guides, index and information holdings online..

Indexes

The 1996 EFOIA amendments require that agencies provide an index of all major information systems. Some have failed to meet this requirement because they followed OMB's April 1997 guidance (rescinded on April 23, 1998) and used their GILS as their EFOIA index. The GILS, as required by OMB Bulletin 95-1, describes "automated information systems" but does not provide "an index of all major information systems of the agency" nor "a description of major information and record locator systems maintained by the agency" as required by EFOIA. As a result many agencies have fallen short in this area. The Securities and Exchange Commission (SEC), for example, followed this advice. In their letter responding to our request for information, the SEC responded that, "the description of major information systems of the agency is available at the Commission's Government Information Locator Service." The Pension Benefit Guarantee Corporation and the Federal Energy Regulatory Commission also followed OMB's guidelines. Each provides other information required under the EFOIA amendments, but both limit their index of "major information systems" to their GILS. At the extreme, the Equal Opportunity Employment Commission seemed to take OMB's guidance more literally, posting only its GILS, but no other information required by EFOIA on its web site.

It is also often difficult to determine what online indexes are describing. Many times an index of the web site exists, but an index to all the agency's "major information systems" does not. This can be very confusing, and at times, misleading. For example users may believe they are looking at an index of all

"major information systems" when in fact they are looking only at indexes of information the agency has chosen to post on its web site

Electronic Reading Rooms and "Repeatedly Requested" Records
Under EFOIA, online Electronic Reading Rooms should include final opinions from agency adjudications, agency policy statements and interpretations adopted by the agency that are not published in the *Federal Register*, a guide on how to request information, and an index of all major information systems. While many electronic reading rooms exist, very few contain all of this information. Many contain a guide and/or index of information systems, but only a handful contain repeatedly requested documents in addition to these other items.

The Department of Interior (DOI) provides an excellent example of an agency that has met all EFOIA requirements for an electronic reading room. In its reading room, DOI clearly identified each component, "Frequently Requested FOIA Documents," "Index to Frequently Requested Documents," "Departmental Policies and Procedures," etc... Most importantly, each of the headings within this main outline contain information — actual documents or records. While this may sound simplistic, the vast majority of web sites examined have headings, an outline for the information, but *contain no actual information*. At the DOI site, a researcher can find the documents explaining policies and procedures or final opinions and adjudications, not just a heading describing them

The Nuclear Regulatory Commission (NRC) also went beyond the call of duty by using clear organization when posting its records. Instead of listing only repeatedly requested records, they also included two listings of FOIA requests: "Recent FOIAs by Subject," and "Weekly list of FOIAs." This aids the public in two important ways. First, it shows members of the public what others are requesting, pointing out interesting information they may not have know existed in the agency. Secondly, it allows the public to monitor which documents are repeatedly requested, giving them the ammunition to prompt agencies to disclose more information.

A vast majority of web sites with an electronic reading room, however, have guides or indexes outside the reading room, and other "documents" within it. This is extremely confusing as it is often difficult to understand the connection between the reading room and the EFOIA requirements explained in the guide. For example, the National Endowment for the Arts has "Freedom of Information Act Guidelines," posted online under its "Guide to the NEA." No EFOIA information, such as the index, policy statements, adjudications, or Federal Register Notices can be found here. They are under subject headings elsewhere, and their relationship to EFOIA is unexplained. Even more frustrating, the Department of Energy has a listing and description of records found in its print reading room, but does not provide electronic access to these same records.

Those agencies that post information randomly without EFOIA raise a perception problem, particularly since ***the process by which information is selected for posting remains a mystery and this information's relationship to the EFOIA cannot be identified***. Are these documents repeatedly requested by members of the public? Or, is the information selected for the web site simply good for agency public relations? It is important to remember that the EOFIA covers information that reflects both positively and negatively on an agency, department, bureau or commission. Providing only "feel good" information to the public does not benefit the public, and in the end, harms democracy.

Amendments to FOIA Regulations

Although EFOIA was enacted over 18 months ago, only a handful of agencies have proposed the amendments to their FOIA regulations that are necessary to implement the act, and even fewer agencies have actually *adopted* regulations. These regulations generally contain some statement that reflects what qualifies as "552(a)(2)" public information available through FOIA, including their selection criteria for repeatedly/frequently requested records.

Above and Beyond the Amendments

EFOIA Information Is Online, And It's Accessible

Finally, agencies such as the Veterans Administration (VA) have provided broad access to the public by implementing both audio-visual and text-only sites for their EFOIA information. By offering both options, the VA has included members of the public who do not have access to high-speed connections or high-tech equipment

Submitting FOIA Requests Online

Several forward-thinking agencies have chosen not only to describe the process of requesting information in their guidebooks, but also provide a form for requesting this information online. Since requests for information under the FOIA must be in writing, these agencies have made the process much easier for members of the public by offering online forms. EPA's Region 5 office offers this option, as does the Small Business Administration, the Farm Credit Administration, the National Science Foundation, the General Services Administration and many others. While this option is not required under EFOIA, it only makes sense to streamline the process of requesting information from the federal government. Those agencies that have made this extra effort seem to truly have the public's needs in mind.

OMB Watch's Policy Recommendations

1. **The goal of EFOIA should be to make so much information publicly available online that Freedom of Information Act Requests become an avenue of last resort.** In this same vein, the goal should be to provide the information directly online to as great an extent as feasible.

2. OMB has recently provided guidance to agencies that fulfills the letter of the EFOIA amendments. **To make this guidance effective, OMB must also develop a plan for how EFOIA fits into the overall framework of federal information policy and, in particular, public access.**

3. **Congress must allocate appropriate levels of funding for ongoing implementation of the EFOIA amendments.** It is difficult for agencies to make EFOIA a priority when monies must be diverted from other important projects.

4. **Congress must search for new ways to ensure implementation of these amendments through an enforcement mechanism.** Currently, agencies that are not in compliance are not penalized.

5. **Agencies with decentralized responsibility for EFOIA implementation must provide a procedure for the implementation of EFOIA .** While we are mindful of the organizational need to decentralize responsibility for EFOIA, this approach adds additional risk to comprehensive implementation. If "parent" agencies continue to take a "hands off" approach to EFOIA obligations, the public will continue to receive uneven access to information across the agencies.

6. **Agencies must make categories of EFOIA compliance — handbooks, indexes, repeatedly requested records — easily identifiable online.** While the findings of this study are critical of EFOIA compliance overall, information to fulfill EFOIA requirements may very well be available online, but could not be located because it was not clearly identified.
7. **Agencies must immediately propose in the *Federal Register* and subsequently adopt implementing regulations which should establish the agency's definitions regarding what constitutes a repeatedly requested record.** These definitions must be made publicly available both through the *Federal Register* and online so requesters will know whether to expect information to be posted online.

8. **All agencies should follow the lead of those that provide forms for submitting FOIA requests online.** While some agencies argue that this option will overwhelm their ability to fill the requests, if this is implemented in conjunction with the EFOIA provision for posting repeatedly requested documents, requests may actually decrease or level out.

9. **Agencies must clarify what information their online indexes describe — the web site or EFOIA information.** Until this is done, users will believe they are being provided access to all information described in EFOIA, when in reality, they may be provided only a small percentage of this information.

10. **All agencies should provide access to their information in text-only as well as graphics versions for users without access to high-tech equipment.** Although flashy web sites often get the most attention, they are not always the most user-friendly.

Mr. HORN. Mr Tankersley is the senior staff attorney for the Public Citizen Litigation Group. Mr. Tankersley.

Mr. TANKERSLEY. Thank you, Mr. Chairman, and thank you for the opportunity to appear before you today to discuss the implementation of the Electronic Freedom of Information Act Amendments of 1996.

As you indicated, I am senior staff attorney with Public Citizen Litigation Group, a nonprofit consumer organization that over the past 27 years has represented FOIA requesters in approximately 300 lawsuits challenging government secrecy. Over the past 10 years, a great deal of our work has involved litigation over access to records in electronic form, and one of our most recent suits charges that the Office of Management and Budget and a number of other prominent agencies have failed to fully implement the 1996 Amendments to the Freedom of Information Act.

Today I want to focus on two specific requirements of the 1996 amendments. Historically, FOIA has been crippled by two significant problems: First, the lack of useful, comprehensive directories of government records; and, second, the chronic delays in making records available to the public.

The two most important provisions of the 1996 amendments seek to overcome these problems by requiring agencies to make affirmative disclosures. Instead of allowing agencies to passively wait for a written requests for records, these affirmative disclosure provisions require that the agencies create and publish information that will make it easier to locate government records and make more records instantly accessible to the public in electronic form.

Unfortunately, the promise of these affirmative disclosure provisions has not been fully realized because many agencies have been slow to implement them; and because the Clinton administration, particularly the Office of Management and Budget, has not provided the leadership necessary to ensure full compliance.

First, the 1996 amendments mandate that agencies provide the public with more information on what agencies hold and how it can be obtained. Specifically, agencies are required to prepare and distribute handbooks to the public on how to request records from the agency and to compile reference materials that contain an index of the major information systems and a description of the major information and locator systems maintained by the agency. Some agencies have prepared excellent handbooks for the public that have significantly improved public access. Many agencies, however, have not done so.

For example, when Public Citizen requested a copy of the Department of Education's handbook at the end of 1997, the Department's FOIA officer responded by sending us a copy of the full committee's publication, A Citizen's Guide to Using the Freedom of Information Act, a publication that was not prepared by the Department of Education and does not describe the Department of Education's record holdings or procedures for requesting records.

Agencies have also ignored the mandate that they provide the public with indices and descriptions of the major information systems or have prepared materials that are clearly incomplete. The records of the U.S. Trade Representative illustrate this problem.

A member of the public looking for the USTR's reference materials for information on the agency's records would be seriously misled because the description that the USTR provides to the public describes only six information systems and omits many other record systems that are held by the agency, including records on multilateral trade negotiations, press release compilations, reports and advisory committee files. Very few agencies have current and complete indices of the record systems, and the descriptions of agency records made available to the public, like those of USTR, omit critical records systems.

Although OMB is responsible for providing direction on agencies' implementation of these provisions of the 1996 amendments, it has done little to encourage agencies to prepare comprehensive, user-friendly handbooks.

The legislative history concerning this section shows the Congress expected OMB to ensure that agency guides follow a common format and use common terminology to describe record systems and locator systems. Instead, OMB's directions to agencies give minimal information on what the handbook should contain and discourage the use of common formats of terminology. OMB has shown little enthusiasm for encouraging full compliance with the 1996 amendments and their mandate that the agencies provide the public with descriptions of the major information systems.

Second, the 1996 amendments promise to significantly improve public access by requiring agencies to establish electronic reading rooms which will make available online agency decisions and statements concerning the application and interpretation of the law, and repeatedly requested records that have become or are likely to become the subject of subsequent requests for substantially the same information.

Despite this clear mandate, many agencies have not established electronic reading rooms; and even where the reading rooms exist, the information is sometimes arranged in ways that are confusing.

Other problems with the implementation of this provision have also arisen because agencies have sought to limit the types of records that are made available online. A few agencies have suggested that they may limit the repeatedly requested records available online based on the agency's own assessment of the importance of the records.

The Department of Justice has encouraged agencies to interpret the statute as limiting the obligation to make repeatedly requested records available online to records created by the agency, even though the statute contains no such limitation. These efforts to avoid full compliance with the reading room provision undermine public access.

Finally, full implementation of the online access requirements requires that agencies adopt better procedures for managing and preserving their electronic records. If agencies manage and preserve their electronic records only on paper, it will be more cumbersome and costly for government to make them available to the public in electronic reading rooms. However, neither the National Archives nor OMB have provided meaningful leadership on this issue, and the vast majority of Federal agencies do not have policies in place

for managing and archiving electronic records that are subject to FOIA.

In summary, although Congress can enact statutes mandating a new era of government disclosure, it is up to the agencies to make those mandates a reality. Many of the most important provisions of the 1996 amendments are not being fully implemented, and the future of this legislation will depend on real leadership from OMB, funding to promote efficient management and dissemination of electronic records, enlightened policies on electronic records from the National Archives, and a commitment from more agencies to make access to agency records a priority.

Mr. HORN. We thank you for that statement. That gives us some very good examples of where the problems are, and we appreciate that.

[The prepared statement of Mr. Tankersley follows:]

TESTIMONY BEFORE THE SUBCOMMITTEE ON
GOVERNMENT MANAGEMENT, INFORMATION AND TECHNOLOGY

Implementation of the Electronic Freedom of Information Act Amendments of 1996

Michael E. Tankersley
Senior Staff Attorney
Public Citizen Litigation Group
June 9, 1998

Introduction

Mr. Chairman and members of the Subcommittee, thank you for the opportunity to appear before you today to discuss the implementation of the Electronic Freedom of Information Act Amendments of 1996. The 1996 Amendments recognize that the proliferation of telecommunications technologies allows the public to obtain access to more information, more quickly, than has ever been possible before. The promise of the 1996 Amendments, however, remains largely unfulfilled because many agencies have been slow to implement the most dramatic and important improvements in the FOIA that Congress enacted in 1996.

Public Citizen is particularly familiar with the importance of the FOIA, and its application to electronic records. Public Citizen is a nonprofit consumer organization that, since its founding in 1971, has made extensive use of the FOIA to obtain records to support its educational programs and advocacy efforts. Public Citizen Litigation Group was founded by Ralph Nader and Alan Morrison in 1992. Over the last twenty-seven years, Litigation Group attorneys have represented FOIA requesters in approximately 300 lawsuits challenging government secrecy, far more cases than any other law firm in the nation. In recent years, much of our work has involved securing access to records created and maintained by agencies in electronic form. For example, we represented the historians, librarians, researchers and journalists who challenged the government's policies concerning electronic records in *Armstrong v. Executive Office of the President* and *Public*

Citizen v Carlin The Litigation Group also provides legal support for the Freedom of Information Clearinghouse, which provides technical and legal assistance to individuals, public interest groups, scholars and journalists who seek access to information held by government agencies.

Although the FOIA has long mandated that the public should have access to agencies' records, with the exception of those records that may be withheld from the public because they contain privileged, classified, or sensitive information, the FOIA's mandate has never been fully realized. FOIA has been crippled by two significant failures in federal information policy: the lack of useful, comprehensive directories of government records, and the chronic delays in making records available to the public. It is difficult for members of the public to sort through the complex organization of the federal bureaucracy and determine what records the government holds, which agencies hold them, and how to obtain access to them. Moreover, FOIA's directive that agencies "promptly" release records after a member of the public submits a written request has been mocked by lengthy delays in getting agencies to respond to even simple requests. There is a vast body of government records that the FOIA gives the public the right to examine because they are not subject to any restriction on disclosure, but the records are effectively unavailable to the public because it is difficult to find them, and agencies' procedures for releasing them impose prolonged and often unwarranted delays.

The most important provisions of the 1996 Amendments are those that seek to address these problems by increasing agencies' obligations to make "affirmative disclosures," that is, the provisions of the Amendments that require agencies to disclose information of obvious public interest and make it instantly accessible rather than passively waiting for the public to submit a written request for the records. These affirmative disclosure provisions have two objectives: (i)

to make agency records easier to find, and (ii) to require agencies to use computers and telecommunications technology to make more records instantly accessible to the public in electronic form. Unfortunately, many agencies have been slow to implement these provisions and the Clinton Administration, particularly the Office of Management and Budget ("OMB"), has not provided the leadership necessary to fully implement these requirements of the law.

Agencies Have Not Implemented The 1996 Amendment's Mandate That They Provide Reference Materials Describing Their Records

For the last thirty years, one of the largest obstacles to public access to records under the FOIA has been that agencies often lack adequate inventories of their records and, even if they have good descriptions of their files, they rarely make any effort to publish this information for the public. As one government task force on FOIA observed in 1995, "[t]he public has no efficient and accurate way of learning what information the agency has," and no idea "how the files are arranged, how long they are kept, or where they are stored."[1]

The 1996 Amendments to the FOIA seek to remedy this problem by requiring agencies to provide handbooks on how to request records from the agency. 5 U.S.C. § 552(g)(3). In addition to the handbook, the agency must provide reference materials or a guide that contains (1) an index of all major information systems of the agency; and (2) a description of major information and record locator systems maintained by the agency. Id. § 552(g)(1), (2). Each agency is also required to provide an index of the records that have been, or are likely to be, requested more than once. Id. § 552(a)(2)(E). These handbooks, descriptions of agency record

[1] Department of the Interior, Report of the National Performance Review Freedom of Information Act Reinvention Team, GATEWAY TO GOVERNMENT INFORMATION at 11 (Sept. 1995).

keeping systems, and indexes of repeatedly requested records should be available at the agency for the asking, and over the Internet.

Some agencies have prepared excellent handbooks for the public describing how to obtain records from the agency under the FOIA. The Federal Communications Commission and the Nuclear Regulatory Commission are examples of agencies that provide useful handbooks to the public.[2]

Many agencies, however, have been slow to comply with this requirement, or have ignored it altogether. For example, when Public Citizen requested a copy of the Department of Education's handbook at the end of 1997, the Department's FOIA Officer responded by sending a copy of the House Committee on Government Reform and Oversight's publication, "A Citizen's Guide on Using the Freedom of Information Act and the Privacy Act of 1974 to Request Government Records"[3] -- a publication that was not prepared by the Department of Education and does not describe the Department of Education's record holdings or procedures for requesting records under the FOIA. In December 1997, Public Citizen filed suit against several agencies challenging their failure to comply with Section 552(g).[4] At the time we filed suit, two of the principal components of the Executive Office of the President, the Office of the United States Trade Representative and the Office of Administration, still had not prepared handbooks as required by the 1996 Amendments. After the suit was filed, these agencies released their

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[2] United States Nuclear Regulatory Commission, Citizen's Guide to U.S. Nuclear Regulatory Commission Information (1995); Federal Communications Commission , Information Seekers' Guide: How to find information at the FCC (Jan. 1997).

[3] H.R. Rep. No. 37, 105th Cong., 2d Sess. (March 20, 1997).

[4] See Public Citizen v. Raines, D.D.C. 97-2891 SSH (filed Dec. 4, 1997).

handbooks on requesting agency records, but a number of small, less prominent agencies still do not have such handbooks.

Apart from the delay in preparing handbooks, many handbooks are poorly prepared and provide only minimal information. OMB has done little to encourage agencies to prepare comprehensive, user-friendly handbooks, and has not provided meaningful guidance on what the handbooks should contain. The legislative history concerning Section 552(g) shows that Congress expected that OMB would take steps to ensure that agency guides for requesting records follow a common format and use common terminology to describe record systems and locator systems. H. Rep. No. 795, 104th Cong., 2d Sess. 30 (1996). OMB has not undertaken such steps. Instead, OMB's guidance on handbooks for the public gives minimal information to agencies on what the handbooks should contain and discourages standardization by instructing agencies that the "'[t]ypes and categories' of available information will vary from agency to agency, and agencies should describe their information resources in whatever manner seems appropriate."[5]

The objectives of the 1996 Amendments have been further undermined by agencies' failure to fully implement the statute's directive that agencies provide the public with reference materials describing their major information systems. It should not have been difficult for agencies to prepare the public reference materials required by the 1996 Amendments because agencies have long been required to "maintain a current and complete inventory of the agency's information resources" under the Paperwork Reduction Act. 44 U.S.C. § 3506(b)(4). But many agencies have ignored this requirement that they inventory their information resources, including their

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[5] OMB Memorandum M-97-10 at 2 (April 7, 1997), and Memorandum of Franklin D. Raines on "Updated Guidance for Developing a Handbook for Individuals Seeking Access to Public Information" at 2 (April 23, 1998) (containing the same instruction)

major information systems, and very few agencies have truly current and complete inventories of their records holdings. Although Section 552(g)'s requirement that agencies provide the public with an index of the agencies' major information systems has been in effect for over a year now, most agencies have not prepared the reference materials required by the statute, and many agencies have released indices that only partially describe the agencies' holdings.

The widespread failure of agencies to comply with Section 552(g) has deprived the public of valuable information of government record holdings that are subject to the FOIA. The record holdings of the Office of the United States Trade Representative provide a dramatic example. USTR's "Public Handbook for Gaining Access to USTR Information" (http://www.ustr.gov/efoia/handbook.html) instructs the public to consult USTR's "Government Information Locator Service" or "GILS" records for an index of major information systems and locator systems. The USTR's GILS entries, however, describe only six information systems. The USTR has many other record systems -- such as manual and computerized systems on Multilateral Trade Negotiations, compilations of press releases and reports, and advisory committee files -- that are <u>not</u> described or identified in the six-item inventory that USTR makes available to the public. Only a small fraction of the record systems and records locators reflected in USTR's internal inventories are revealed in the guide that USTR has prepared for the public in response to Section 552(g). A member of the public looking to the USTR's reference materials for information on the agency's records would be sorely disappointed or seriously misled because its reference materials are woefully incomplete.

USTR is not alone in failing to provide the public with descriptions of all its major information systems. The problem is widespread. Because we consider compliance with this affirmative disclosure obligation pivotal to meaningful public access, Public Citizen has brought

suit against seven agencies for failing to prepare inventories and descriptions of major information systems as required by the Paperwork Reduction Act and the Freedom of Information Act. The agencies named as defendants in this suit are the USTR, the Office of Management and Budget, the Office of Administration, the Department of Education, the Department of Energy, the Department of Justice, and the Department of State.

The failure of agencies to implement this provision of the 1996 Amendments is attributable, in large part, to the lack of leadership on this issue by the OMB. When it took office in 1993, the Clinton Administration recognized that the lack of reference materials and finding aides for government records was a problem. Although "the federal Government spends billions of dollar collecting and processing information (e.g., economic data, environmental data, and technical information)," President Clinton observed, "many potential users do not know that it exists or do not know how to access it. We are committed to using new computer and networking technology to make this information more accessible to the taxpayers who paid for it."[6] The OMB, however, has not made inventorying agency record systems and providing the public with information on what is available a consistent priority.

First, the OMB has not pressed agencies to comply with the Paperwork Reduction Act's mandate that each agency maintain a "current and complete inventory" of their information resources. 44 U.S.C. § 3506(b)(4). Indeed, the National Archives and Records Administration estimates, based on anecdotal evidence, that only 35% to 45% of the records of Federal agencies are now inventoried and scheduled within two years of their creation.

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[6] Technology for America's Strength, A New Direction to Build Economic Strength (Feb. 1993).

Second, the OMB has done little to encourage implementation of the Government Information Locator Service or "GILS" that Congress directed OMB to establish in 1995. Like Section 552(g), GILS is intended to help the public locate government information by providing a "virtual card catalog" of agency information holdings. GILS has failed, however, because many agencies have made only nominal efforts to provide the information necessary to establish GILS, and most of the agencies that provided GILS entries do not have plans to keep their entries current. Although OMB launched GILS with considerable fanfare, it now appears to have orphaned the project. It has not made a serious effort to cure the problems with the Service, and GILS does not provide a reliable source of information on government record holdings.[7]

Third, OMB has approached implementation of the 1996 Amendments to the FOIA with the same lack of enthusiasm that has crippled GILS. Indeed, although the reference materials required by Section 552(g) are supposed to supplement GILS, for most of the past year OMB has encouraged agencies to equate the reference materials required by Section 552(g) with OMB's own, limited definition of GILS. In April, 1997, OMB told agencies that they could satisfy Section 552(g)'s requirement that they provide the public with indices and descriptions of major information systems if they provided a GILS "presence" under a 1994 OMB Memorandum that allows agencies to omit many information systems from the indices they disclose to the public.[8] A number of public interest groups, including Public Citizen, requested that OMB rescind these instructions because they were inconsistent with the statute and crippled the public's ability to

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[7] See Moen & McClure, An Evaluation of U.S. GILS Implementation (June 30, 1997); OMB Watch, Potholes on the Information Bridge to the 21st Century, 5 GOV. INF. INSIDER, No. 3, 10, A-8 (Summer/Fall, 1996).

[8] OMB Memorandum M-97-10 (April 7, 1997).

obtain access to agency records under the FOIA See Attachment A OMB did not respond to this request but, in April 1998, shortly after Public Citizen sought judicial review of these OMB instructions, the OMB rescinded this guidance and acknowledged that agencies needed to do more to comply with Section 552(g).[9] The new OMB Memorandum, however, does not underscore the importance of full compliance with Section 552(g)'s mandate that agencies provide the public with descriptions of major information systems.

Agencies Have Resisted Full Implementation of the 1996 Amendments' Mandate That Agencies Affirmatively Disclose Records Using Computer and Telecommunications Technology

The 1996 Amendments also promise to significantly improve public access by requiring agencies to make two types of records instantly available on-line if the records were created after November 1, 1996. First, agency decisions and statements concerning the application and interpretation of the law must now be made available on the Internet (or through other electronic means) if these records were created on or after November 1, 1996.[10] Second, each agency is now required to make records that "have become or are likely to become the subject of subsequent requests for substantially the same records" under the Freedom of Information Act available to the public in depositories for paper records popularly known as "Reading Rooms." If these "repeatedly requested" records were created after November 1, 1996, the agency must also make

[9] Memorandum of Franklin D. Raines on "Updated Guidance for Developing a Handbook for Individuals Seeking Access to Public Information"(April 23, 1998).

[10] The agency records that are subject to this requirement are: "(A) final opinions, including concurring and dissenting opinions, as well as orders, made in the adjudication of cases; (B) those statements of policy and interpretations which have been adopted by the agency and are not published in the Federal Register; and (C) administrative staff manuals and instructions to staff that affect a member of the public." 5 U.S.C. § 552(a)(2)(A)-(C).

them available on the Internet in an "Electronic Reading Room," or thorough some other electronic means. 5 U.S.C. § 552(a)(2)(D).

The significant benefits that these affirmative disclosure provisions provide for public access to agency records cannot be overstated. Previously, when an agency released a government document of interest to many members of the public in response to a FOIA request, the material would be available only to the individual journalist, researcher or other requester who submitted the request (unless he or she decided to share it with others). Other members of the public seeking these records would have to submit separate requests and wait weeks or months for a response, or, alternatively, would be required to travel to Washington to conduct research in the agency's "Reading Room." If the 1996 Amendments are properly implemented, however, significant agency records created after November 1, 1996 will be available to anyone with a desktop computer, and the time required to obtain the record should be no longer than it takes a modem to transfer the information to the individual's desk.

The promise of these affirmative disclosure provisions, however, has not been fully realized for a number of reasons. The principal problem is reflected in the report recently released by OMB Watch on the Implementation of the 1996 "EFOIA" Amendments to the Freedom of Information Act.[11] Many agencies have not established Electronic Reading Rooms and, even where such Reading Rooms exist, the information is sometimes arranged in ways that are confusing to the public or lack adequate search engines. A mixture of funding and attitude appear to be at the root of this problem. Agencies that have failed to establish Electronic Reading Rooms

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[11] Jennifer J. Henderson and Patrice McDermott, Arming the People "... with the power knowledge gives": An OMB Watch Report on the Implementation of the 1996 "EFOIA" Amendments to the Freedom of Information Act at 10-11 (April 1998).

usually complain that the 1996 Amendments impose unfunded mandates If an agency has made providing on-line access a priority, however, costs are not a significant barrier. The Nuclear Regulatory Commission, an agency that made a commitment to providing the public with on-line access to government information even before the 1996 Amendments to FOIA were enacted, has dismissed protests that compliance with the 1996 Amendments is prohibitively expensive, and has stated that it considers the added cost of establishing an Electronic Reading Room to be minimal. 63 Fed. Reg. 2873 (Jan. 20, 1998).

Other problems with the implementation of the Electronic Reading Room requirement have also emerged. First, a few agencies have suggested that they may limit the repeatedly requested records available on-line based on the agencies' assessment of the importance of the records. The statute sets forth two criteria for determining whether records identified in response to FOIA requests must be made available in the agency's Reading Room: records are to be placed on-line if the agency determines that the records, because of the nature of their subject matter, "have become or are likely to become the subject of subsequent requests for substantially the same records." 5 U.S.C. § 552(a)(2)(D). An important aspect of this provision is that the test of whether a record must be made available on-line does not depend on whether the record is a formal agency pronouncement, or whether the agency wants to disclose the record. Instead, the public's interest in the record is determinative and even records that the agency may be reluctant to disclose must be made available on-line under this provision.

A few agencies, however, have adopted or proposed regulations that do not strictly adhere to the "have become" and "are likely to become" criteria. These regulations state that the agency will determine on a "case-by-case" basis whether records should be made available to the public

on-line based on a series of factors [12] If the factors in regulations are used to assist the agency in determining whether records are likely to become subject to repeated requests, they will be helpful. If, however, the agencies use these factors as a basis for claiming records that have, in fact, become subject to repeated requests, need not be made available on-line because the agency does not believe that they deserve that status, these regulations will undermine the statute's mandate Similarly, if agencies do not make records that experience shows are likely to become subject to repeated requests available on-line because the records do not satisfy some additional test in the agency's regulations, the mandate of the statute will be thwarted.

Second, the Department of Justice has encouraged agencies to interpret the statute as limiting the obligation to make repeatedly requested records available on line to records created *by the agency*. Under the Department's interpretation, all repeatedly requested agency records created after November 1, 1996 would be available in the agency's regular Reading Room for paper records, but if the agency obtained the record from another agency or a private party, it would not be required to make the record on-line in the agency's Electronic Reading Room -- even if the agency received the information in electronic form.

To support this claim, the Department must read into the statute language that simply is not there. The statute states that the Electronic Reading Room requirement applies to records "created on or after November 1, 1996," but the Department insists that this language should be read to mean records "created *by the agency* on or after November 1, 1996." To date, only eight agencies have adopted or proposed regulations that limit on-line access to records created by the

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[12] See Department of Defense Regulations, 32 C.F.R. § 286.7(b)(4), 62 Fed. Reg. 35357 (July 1, 1997); AMTRAK regulations, 63 Fed. Reg. 7312 (Feb. 13, 1998) (to be codified at 49 C.F.R. § 701.4(c)); Department of Agriculture Proposed Regulations, 63 Fed. Reg. 24,469-70 (May 4, 1998) (to be codified at 7 C.F.R. 1.4(a)(4)).

agency [13] The Department's position, however, represents a major threat to full implementation of the statute because it encourages agencies not to make repeatedly requested records available on-line if the records were generated by other agencies, government contractors, or private entities.

Finally, even with respect to records that are created by agencies, full implementation of the on-line access requirements requires that agencies adopt better procedures for managing and preserving their electronic records. Five years ago, the full Committee observed that "[v]irtually all material that are printed today exist at some point in an electronic format that could also be used to support dissemination using other technologies." Committee on Government Operations, *National Historical Publications and Records Commission Authorization*, H.R. Rep. No. 215, 103d Cong., 1st Sess. 5 (1993). The 1996 Amendments to the Freedom of Information Act build on this observation by requiring agencies to make records generated on word processing systems, electronic mail networks, and database applications available on-line if the records are repeatedly requested under the FOIA. But if agencies manage and preserve these records only on paper, it will be more cumbersome and costly for the government to make them available to the public in Electronic Reading Rooms.

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[13] See Department of Defense Regulations, 62 Fed. Reg. 35,357 (July 1, 1997); Federal Reserve Board Regulations, 62 Fed. Reg. 54,357 (Oct. 20, 1997); Postal Service Regulations, 63 Fed. Reg. 64809 (Feb. 9, 1998); AMTRAK Regulations, 63 Fed. Reg. 7312 (Feb. 13, 1998); Legal Services Corporation Regulations, 63 Fed. Reg. 11,394 (March 9, 1998); National Credit Union Administration Regulations, 63 Fed. Reg. 14, 339 (March 25, 1998); International Trade Commission Regulations, 63 Fed. Reg. 29,348 (May 29, 1998); Department of Justice Regulations, 63 Fed. Reg. 29592 (June 1, 1998). The Department of Defense has stated that it intends to amend its regulation, which would limit both paper and electronic reading room records to records created by the agency, but, to date, has not published any amendment.

The National Archives and Records Administration, however, has not pressed agencies to manage their electronic records in their original format but, instead, has allowed agencies to routinely convert electronic records to paper -- a policy that undermines public access and opportunities for more efficient and widespread dissemination of government information. Public Citizen has successfully challenged this policy in a case that is currently on appeal, Public Citizen v. Carlin, C.A. No. 96-2840 PLF. At present, however, neither the National Archives nor OMB have provided meaningful leadership on this issue, and the vast majority of federal agencies do not have policies in place for managing and archiving electronic records that are subject to the FOIA.

Conclusion

The 1996 Amendments direct agencies to replace an archaic system of providing public access to agency records with a new system in which agencies actively make information accessible and available to the public in a way that befits the computer age. Although Congress can enact statutes mandating a new era in government disclosure, it is up to agencies to make those mandates a reality. Many of the most important provisions of the 1996 Amendments, however, are not being fully implemented. The future of this legislation will depend on real leadership from OMB, funding to promote the efficient management and dissemination of electronic records, and enlightened policies on electronic records from the National Archives. Most importantly, unless more agencies make implementing the 1996 Amendments a priority, FOIA's mandate that taxpayers shall have prompt, efficient access to information on what the government is doing with their money will remain an unfulfilled promise.

ATTACHMENT A
Testimony of Michael E Tankersley
on Implementation of EFOIA
June 8, 1998

September 8, 1997

Franklin D. Raines
Director
Executive Office of the President
Office of Management and Budget
New Executive Office Building, Room 9026
725 17th Street, NW
Washington, D.C. 20503

Sally Katzen
Administrator
Office of Information and Regulatory Affairs
Office of Management and Budget
Executive Office of the President
New Executive Office Building, Room 9026
725 17th Street, NW
Washington, D.C. 20503

Re: OMB Memorandum M-97-10, Guidance on Developing a Handbook for Individuals Seeking Access to Public Information

Dear Mr. Raines and Ms. Katzen:

We are writing to request that the Office of Management and Budget immediately rescind Memorandum M-97-10 because it is encouraging agencies to not fully comply with their obligations under the Electronic Freedom of Information Act Amendments of 1996.

In order to aid the public in requesting access to agency records, the Electronic Freedom of Information Act Amendments mandate that agencies provide an index and description of their major information systems, and a description of their record locator systems. 5 U.S.C. § 552(g). The statute requires that agencies make these finding aids available to the public by March 31, 1997, and amendments to Section 552(a)(2) require that the agencies also place these aids online by no later than November 1, 1997.

Memorandum M-97-10 advises agencies that this mandate can be satisfied by establishing a "Government Information Locator Service (GILS) presence" as described in OMB Bulletin 95-01. This advice is erroneous; OMB Bulletin 95-01 covers only a small subset of the major information systems that are subject to the FOIA and that must be indexed and described to comply with the 1996 Amendments. As a result, the Memorandum is crippling the public's ability to obtain access to agency records under the FOIA. The 1996 FOIA Amendments were designed to make clear that agency records in all formats are subject to public access under that statute,

and to assist the public in locating these records There are three reasons why instructing agencies that GILS satisfies their indexing obligations under FOIA frustrates these goals

First, OMB has limited the records that are covered by GILS in three critical respects. *(A)* OMB has limited GILS to an inventory of agencies' automated information systems. OMB Bulletin 95-01 4.a(1). The FOIA Amendments contain no such limitation. Instead, the Amendments require that agencies provide the public with "an index of all major information systems," including traditional paper records. 5 U.S.C. § 552(g)(1). *(B)* OMB has also instructed agencies that GILS should include locators for "information dissemination products," and has defined this term in a way that restricts GILS to catalogs of publications, maps, electronic records or other materials "disseminated by an agency to the public." Id. Thus, OMB's definition of GILS does not include locators which index records that are not disseminated, but which are nevertheless subject to disclosure under the FOIA. *(C)* Finally, OMB has specifically exempted automated electronic mail and word processing systems from GILS. Id. ¶ 2. The 1996 FOIA Amendments underscore, however, that such automated record systems are covered by the FOIA and must be identified in the agency's indexes of information systems.

Because of the limitations that OMB placed on GILS in Bulletin 95-01, where agencies have followed OMB's guidance, the GILS records are generally limited to a catalog of information systems or products that the agencies disseminate or make available to the public.[1] Agencies have not included in GILS a vast array of automated and manual agency record systems that are subject to FOIA. These record systems need to be included in the agency indexes if these indexes are to assist members of the public in identifying records that they wish to request under the statute.

OMB's own GILS records provide an excellent illustration of this problem. OMB, based on its own interpretation of Bulletin 95-01, has created only three GILS records: one for the Budget of the United States; one for OMB's Home Page on the Internet; and one for the Internet link to OMB's system of Circulars and Bulletins. These three records clearly do not represent the "index of all major information systems" that OMB must make available to the public to comply with the 1996 Amendments to the FOIA. 5 U.S.C. § 552(g)(1). OMB has numerous automated information systems for tracking budget information, proposed and approved regulations, and agency procurement and management practices, that are not identified in its GILS records. Moreover, OMB has numerous systems of paper files documenting its review and oversight of agency budgets and information management practices. OMB also has numerous systems, both manual and automated, for locating these records.

The Department of State provides another dramatic example of the problem with OMB's guidance. The State Department's compliance with the FOIA Amendments is particularly

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[1]See Moen & McClure, An Evaluation of U.S. GILS Implementation, at 61 (June 30, 1997).

important because it receives more than two thousand FOIA requests each year, and has a backlog of requests that delay responses for more than two years. A requester examining the State Department's GILS records for an index of all of its major information systems, however, would find only ninety-five entries, consisting primarily of identifiers for publications and electronic records that the Department actively disseminates. These GILS records would provide little, if any, assistance to a requester seeking to draft a FOIA request to the agency because the Department has numerous systems of automated and paper files that are not described by these GILS records. For example, the Department's internal records handbook and schedules, copies of which are enclosed here, identify specific systems of correspondence, briefing books, treaty and agreement files, claims files, and finding aids that catalog and organize agency records that are subject to the FOIA. The State Department, presumably relying on OMB's advice, is not providing an index or description that covers these information systems and locators, as required by the 1996 Amendments to FOIA.

Second, Memorandum M-97-10 frustrates the goals of the FOIA Amendments because the Congress intended for the guides and reference materials required by 5 U.S.C. § 552(g) to provide more information than the GILS program. In reporting the Amendments, the House Committee on Government Reform and Oversight specifically stated that the guide required by the 1996 Amendments "is intended to ***supplement*** other information locator systems, like the Government Information Locator System (GILS) called for in the Paperwork Reduction Act of 1995."[2] By advising agencies that the FOIA Amendments require nothing more than establishing a GILS "presence," OMB has thwarted Congress' intent that these indexes go beyond GILS and provide meaningful reference materials for requestors seeking records under the FOIA.

Indeed, the GILS program described in Bulletin 95-01 was adopted before the Paperwork Reduction Act of 1995 established a statutory mandate for GILS, and OMB has not revised its description of GILS to comply with the broader mandate set forth in 44 U.S.C. § 3511. In short, Congress' statutory directives in FOIA and the Paperwork Reduction Act require more than the GILS program described in Bulletin 95-01. By erroneously instructing agencies that following the 1994 OMB Bulletin on GILS will satisfy Congress' 1996 directive in the Electronic FOIA Amendments, OMB is obstructing Congress' effort to make more information about agency records systems available to the public.

Some agencies ***have*** devoted substantial resources to developing GILS records. The Environmental Protection Agency and Department of Defense have produced hundreds of GILS records. Their records provide a good example of how records indexes can aid FOIA requesters. These agencies, however, stand out as rare exceptions.

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[2]H. Rep. No. 795, 104th Cong., 2d Sess. 30 (1996) (italics added).

Finally, a third problem with OMB's decision to advise agencies that the FOIA Amendments require nothing more than a "GILS presence" under Bulletin 95-01 is that many agencies have disregarded the Bulletin and have never established even a minimal GILS presence.

For example, the Department of Justice, which receives more FOIA requests than any other agency, provides no GILS Core locator records to the public — even though Bulletin 95-01 required it to do so more than nineteen months ago. A FOIA requester looking to GILS for guidance on the records systems of the Department of Education or Department of Transportation would be similarly disappointed and frustrated because neither of these Cabinet agencies has established a GILS presence.

The Executive Office of the President has set a particularly bad example by largely disregarding OMB's instructions on GILS. For instance, although the enclosed records schedule shows that the Office of the United States Trade Representative has numerous information systems with automated and paper records on trade policy and initiatives that are of interest to the public, the Trade Representative has not provided any GILS entries describing these information systems. Indeed, even the President's Office of Science and Technology Policy has ignored OMB's Bulletin on GILS. The study of GILS recently issued by Moen and McClure concludes that this situation is not likely to improve. Even those agencies that have established a minimum GILS presence are not likely to add to or update their records under the GILS initiative, as it is currently being carried out.[3]

The failures of agencies to implement the GILS initiative are, in no small measure, due to OMB's lack of leadership.[4] The 1996 FOIA Amendments, which mandate that agencies provide indexes and descriptions of their locator systems, should not suffer from the same fate. Congress contemplated that OMB would play a leadership role in implementing this provision by assisting "agencies in assuring that all guides follow a common format so that a requestor picking up guides from two or more agencies can easily find the information they are seeking," and by assuring "that all agencies use common terminology in describing record systems, how to file a FOIA request, and in describing other locator systems." H. Rep. No. 795, supra at 30. So far, however, OMB has abdicated this role. OMB has not provided agencies with guidance on the format of the guides and reference materials required by 5 U.S.C. § 552(g), and the advice that OMB has provided in Memorandum M-97-10 has only served to frustrate implementation of this provision.

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[3] Moen & McClure, An Evaluation of U.S. GILS Implementation at 61-62 (June 30, 1997).

[4] See, id. at 66-67; and OMB Watch, Potholes on the Information Bridge to the 21st Century at 12-16 (January 1997).

Accordingly, we urge you to rescind Memorandum M-97-10, and promptly issue new guidance to agencies so that agencies prepare and provide indexes describing all of their information systems and locator systems. Moreover, OMB's new guidance should include instructions on common terminology and format. OMB's leadership is important to effective implementation of this provision, which should not be delayed or frustrated any further.

Sincerely yours,

American Federation of State, County, & Municipal Employees (AFSCME)
Congressional Accountability Project
Center for Media Education
Consumer Project on Technology (CPT)
Data Center
Electronic Privacy Information Center (EPIC)
Federation of American Scientists
Government Accountability Project
Information Trust
Libraries for the Future
National Coordinating Committee for the Promotion of History
National Security Archives
National Writers' Union
OMB Watch
Public Citizen
Service Employees International Union (SEIU)
Urban Coalition

Enclosures:

Records Management Handbook of the Department of State, Appendix A.
Department of State Requests for Records Disposition Authority, December 31, 1996.
Comprehensive Records Control Schedule for the Office of the United States Trade Representative, Feb. 8, 1990.
Potholes on the Information Bridge to the 21st Century. OMB Watch, January 1997.

Mr HORN Mr Jim Riccio is the staff attorney, Critical Mass Energy Project of Public Citizen.

Mr. RICCIO. Good morning, Mr. Chairman. Thank you for inviting us to testify regarding the implementation of the Electronic Freedom of Information Act Amendments of 1996.

Public Citizen is a nonprofit, nonpartisan organization founded in 1971 by Ralph Nader to safeguard the public health and safety. Public Citizen's Critical Mass Energy project was founded in 1974.

Public Citizen's Critical Mass Energy Project has been a strong voice for a more rational energy policy, a phaseout of nuclear reactors and a move toward cleaner, safer, more renewable sources of energy. We have been a forceful critic of the Nuclear Regulatory Commission and the nuclear industry both here on Capitol Hill and throughout the country. Through our research, reports, and publications, we seek to inform the public so that they may better participate in the government decisions that affect their future. Public Citizen's Critical Mass Energy Project works with hundreds of grassroots activists around the country to better help regulate the nuclear industry and the radioactive waste they produce.

The subcommittee has asked that we address the importance of the Electronic Freedom of Information Act Amendments of 1996 or EFOIA for research. One of the key provisions of the amendments was to broaden the access of government information by placing it online. My experience basically is with the Nuclear Regulatory Commission, and it is my understanding that they are pretty much ahead of the curve in this regard, but the provision has substantially increased the amount of information and timeliness of information and has made it much more readily available to members of the public.

This is important because meaningful public participation can only occur when there is timely access to information. In meeting the mandate of the EFOIA, the U.S. Nuclear Regulatory Commission has improved both the timeliness and the accessibility of information.

In the past, access to NRC's information was limited to those who would brave the wilds of the public document room, spending hours digging through microfilms or paper files. For members of the public, this type of research will be both time consuming and expensive. While the NRC has a local public document room located in the counties where NRC is licensed for reactors to split atoms, any thorough research usually would entail a trip to the District of Columbia in order to make use of the NRC's public document room.

Merely receiving a transcript of an NRC meeting would usually take weeks and cost as much as $100 to reproduce. While this may not seem like a lot of money to a K Street law firm, for a local, nonprofit grassroots organization, it can impose a serious impediment to participation.

Now, most transcripts of commission meetings are available within a few days and can be downloaded over the internet in a few minutes. Concerned citizens now have the ability to access information concerning the status of the nuclear power plants on a daily basis. They have NRC inspection reports, enforcement his-

tories of every reactor, licensee event reports, and even the regulations that govern the splitting of atoms.

Through the use of the online Federal Register, citizens can more easily participate in the administrative process that governs nuclear reactors. They have more timely access to the proposed rules governing the nuclear industry and the proposed license amendments that affect those reactors. Since many comment periods of proposed rules and licensing amendments are only for 30 days, this instantaneous access to a proposed rule or amendment is imperative if the public is to have time to digest the information and formulate well-researched comments and responses.

Although the NRC still has a long way to go to improve the quality of participation in the regulations of nuclear power plants, the improvements in the availability of information have made the limited opportunity to participate more meaningful.

While the EFOIA has undoubtedly increased the availability of information, placing information online is not a panacea. In the move from paper to computer, the government must be vigilant not to lose information in the transition. We at the Critical Mass Energy Project are aware of one case where this has already occurred.

Several years ago, we became aware of errors in the data base used to track the number and severity of violations in the NRC regulations. According to NRC, as much as a third of the data was missing and half of the data concerning severity levels was incorrect. To their credit, they have gone back in and repaired that data base, but if NRC could not match a paper copy of the violation to the computer record, the computer record would be deleted. This has undoubtedly resulted in a loss of information.

Furthermore, the shift over to computer-based information should not be used as a pretext for either closing the document rooms or failing to maintain their libraries. While there has been a great increase in the amount of information available over the internet, it does not include all the documented information which helped to make up the licensing basis for each of the nuclear power plants. This is important because, absent that licensing basis, the NRC cannot determine that any reactor operating in the United States is safe.

In conclusion, the Electronic Freedom of Information Act Amendments of 1996 have resulted in a substantial increase in timeliness and amount of information available to the public and has furthered the goals of the Freedom of Information Act by allowing citizens to more meaningfully participate in the governmental decisions that affect their lives.

Thank you for the opportunity to present our views; and if you have any questions, I would be happy to try to answer them.

Mr. HORN. Well, thank you. You have given us some helpful examples, and you have pointed us in the direction of where there is a failure in leadership, and I appreciate that.

[The prepared statement of Mr. Riccio follows:]

Buyers Up • Congress Watch • Critical Mass • Global Trade Watch • Health Research Group • Litigation Group
Joan Claybrook, President

Statement of James Riccio
Staff Attorney
Public Citizen's Critical Mass Energy Project

Before the
Committee on Government Reform and Oversight
Subcommittee on Government Management, Information and Technology

June 9, 1998

Good Morning Mr. Chairman and members of the Subcommittee. Thank you for inviting Public Citizen's Critical Mass Energy Project to testify regarding the implementation of the Electronic Freedom of Information Amendments of 1996.

Public Citizen is a non-profit, non-partisan organization founded in 1971 by Ralph Nader to safeguard the public health and safety. Public Citizen's Critical Mass Energy Project was founded in 1974. Since then, Critical Mass has been a strong voice for a more rational energy policy, a phase-out of nuclear reactors and a move toward cleaner, safer and more renewable sources of energy. We have been a forceful critic of the Nuclear Regulatory Commission and the nuclear industry both here on Capitol Hill and through out the country. Through our research, reports and publications we seek to inform the public so that they may better participate in the government decisions that effect their future. Public Citizen's Critical Mass Energy Project works with hundreds of grassroots activists around the country to help better regulate the nuclear industry and the radioactive wastes they produce.

The Subcommittee has asked that Public Citizen address the importance of the Electronic Freedom of Information Amendments of 1996 or "EFOIA" for research. One of the key provisions of the 1996 Amendments was to broadened public access to government information by placing it on-line. This provision has resulted in a substantial increase in the amount and timeliness of information that is readily available to members of the public.

This is important because meaningful public participation can only occur when there is timely access to information. In meeting the mandate of the Electronic Freedom of Information Amendments of 1996, the U.S. Nuclear Regulatory Commission has improved both the timeliness and accessibility of information.

Ralph Nader, Founder
215 Pennsylvania Ave SE • Washington, DC 20003 • (202) 546-4996 • www.citizen.org

In the past, access to NRC information was limited to those who would brave the wilds of the public document room spending hours digging through microfiche and paper files. For members of the public this type of research would be both time consuming and expensive. While the NRC has local public document rooms located in the county where NRC has licensed a nuclear reactor to split atoms, any through research usually would entail a trip to Washington in order to make use of the NRC's main public document room. Merely receiving a transcript of a Nuclear Regulatory Commission meeting would usually take weeks and could cost as much as a hundred dollars to reproduce. While this may not be a lot of money to a "K" street law firm, for a local, non-profit, grassroots organization it could impose a serious impediment to participation.

Now, most transcripts of Commission meetings are available within a few days and can be downloaded over the Internet in a few minutes. Concerned citizens now have the ability to access information concerning the status of the nuclear power plant operating in their backyards on a daily basis. They have access to NRC inspection reports, enforcement histories of every reactor, licensee event reports, and the regulations that govern the splitting of atoms.

Through the on-line use of the Federal Register, Citizens can more easily participate in the administrative process that governs nuclear reactors. They have more timely access to proposed rules governing the nuclear industry as well as proposed license amendments affecting the nuclear reactors in their backyard. Since many comment periods on proposed rules and license amendments are only for 30 days, instantaneous access to the proposed rule or amendment is imperative if the public is to have the time to digest the information and formulate thoughtful well researched comments.

Although the NRC still has a long way to go to improve the quality of public participation in the regulation of nuclear power plants, the improvements in the availability of information have made the limited opportunity to participate more meaningful.

While the Electronic Freedom of Information Amendments of 1996 has undoubtedly increased the availability of information, placing more information on-line is not a panacea. In the move from paper to computer, the government must be vigilant that information is not lost in the transition. We at the Critical Mass Energy Project are aware of one case where this has already occurred.

Several years ago, we became aware of errors in the data base used to track the number and severity of violations of NRC regulation. According to NRC, as much as one third of the data was missing and half of the data concerning severity of the violation was incorrect. When repairing this data base, if the NRC could not match a paper copy of the violation to the computer record, the computer record would be deleted.
This undoubtedly resulted in a loss of information.

Furthermore, the shift over to computer based information should not be used as a pretext for either closing the document rooms or failing to maintain their libraries. While there has been a great increase in the amount of information available over the Internet it does not include all the docketed information which help to make up the licensing basis for each of the nuclear power plants in the country.

In conclusion, the Electronic Freedom of Information Amendments of 1996 has resulted in a substantial increase in the timeliness and amount of information available to the public and has furthered the goals of the Freedom of Information Act by allowing citizens to more meaningfully participate in the governmental decisions that effect their lives.

Thank you for the opportunity to present our views. If you have any questions I'd be happy to try to answer them.

Mr HORN. Ms Jane Kirtley, executive director, Reporters Committee for Freedom of the Press. Thank you for being here again.

Ms. KIRTLEY. Thank you, Mr. Chairman. It is a pleasure to be here. We know that this subcommittee has been our ally in trying to get EFOIA to become a reality, and we are really delighted that you are continuing to maintain your interest in how well it is being implemented.

I would like to take a couple of minutes to talk about this statute in terms of what it has promised and, to a certain extent, what it has delivered. To a certain extent, we are disappointed because a lot of Federal agencies, as the previous panelists have pointed out, have missed their deadlines for compliance with the act in much the same way that they have been missing FOI deadlines for many decades.

To start at the most fundamental level, they still don't, for the most part, have implementing regulations. The DOJ guidance only became final at the end of last month, after a lengthy clearance process at OMB, and so many of the agencies have not even issued their proposed regulations at this time. Most of them have not yet established the electronic reading rooms that we had all anticipated, and those that do exist are often, although not always, information poor.

From a journalist's perspective, we look at backlogs as still being a continuing and seemingly intractable problem. The new 20-day time limit, which was supposed to be meaningful, we were told, unlike the 10-day time limit, that really hasn't happened. The only difference for most of the journalists we talk to now is that the agencies now say they can't get the records to requesters in 20 days, as opposed to 10 days.

Having said those negative things, I would have to also say that it is not all business as usual. There have been some important changes, and we hope that they will become more widespread. We have seen some of the agency FOI officers who have really become quite enthusiastic about filling up their web pages with useful information, and they have been working with their colleagues in information resources to get the electronic information online and accessible.

A couple of agencies that we have heard praise of from a number of reporters include the Department of Transportation and EPA. These are two agencies that have good track records for disseminating information, and their sites are being heavily used by journalists.

One of our reporter colleagues said that the reverse is often true and that those agencies that don't have a great track record historically aren't doing really well now either, which I guess proves the point that there is a certain amount of resistance in this area that seems to be endemic.

In terms of FOI processing, some agencies, although not all of them, have adopted the multitrack processing option, and journalists are excited about not only the fact that it exists but that agencies are actually working with them to help them tailor their requests so that they can move into the quick-processing track. Time, of course, is always of the essence for any requester, but especially for journalists.

I think that other issues that we dealt with here as recently as 5 years ago such as whether electronically stored information is really a record, whether retrieving information is creating a record, seemed to have resolved themselves for the most part; and the horror stories that we have told in the past of journalists getting 80-pound printouts of paper rather than a disk or a tape seem at last to have been put to rest, and I am delighted to tell you that.

In terms of other reform, though, I think that there are two things that we would particularly like to point out. First, again, the issue of timely responses, the issue of dealing with permanent backlogs or seemingly permanent backlogs and trying to do something about them. I am sure we will be hearing about that on the second panel.

Very few of the reporters that we work with have actually been granted expedited review, although it seems like it ought to be available to them. Again, one of the reasons for this may simply be that most agencies haven't adopted the implementing regulations so they just don't have expedited review in place in a meaningful way as yet. But we really haven't seen a shift in processing time, and we hope that Congress will keep a close eye on these provisions that are intended to reduce delays and take whatever actions are necessary, including greater appropriations, to try to resolve this problem.

Finally, there is one other issue that is very close to my heart at the Reporters Committee. One of the important findings when Congress enacted this legislation was that the Freedom of Information Act was intended to serve any purpose, and this is a finding that has been ignored, I would say, by the executive branch and certainly by the judicial branch.

As I am sure you recall, this sad situation all began back in 1989 in our case, the Reporters Committee case, where the Supreme Court, in trying to strike a balance between privacy and public access, essentially said that if a request would not meet the core purpose of FOIA to ensure government's activities to be open to public scrutiny, then privacy would essentially trump access. There have been a variety of decisions since then that have followed that rule, and happily, in 1996, Congress said that this was not its intent.

Unfortunately, that intent is ignored. There is a case that we are going to be filing, a friend of the court brief, in the eleventh circuit very shortly called *O'Kane* v. *U.S. Customs Service* where a Federal district court held that if Congress had indeed intended to significantly enlarge the scope of the public interest served by FOIA, it could have taken a more clear and direct approach, most likely by amending the exemptions themselves. This Congress did not do that and the court therefore held that because this particular request for forfeiture of records did not shed light on Custom's statutory performance of its duties, it was not in the public interest and the request was denied.

I think that this is a classic example of the courts not being inclined to take direction from Congress, and it is something that I hope Congress will address in whatever way it deems appropriate.

We are very grateful for the opportunity to discuss these issues with you, and I will be happy to answer any questions that you might have.

[The prepared statement of Ms. Kirtley follows:]

SUMMARY OF TESTIMONY
BY JANE E. KIRTLEY, EXECUTIVE DIRECTOR
REPORTERS COMMITTEE FOR FREEDOM OF THE PRESS
BEFORE
THE HOUSE COMMITTEE ON GOVERNMENT REFORM AND OVERSIGHT
SUBCOMMITTEE ON GOVERNMENT MANAGEMENT, INFORMATION AND TECHNOLOGY

June 9, 1998

The Reporters Committee for Freedom of the Press welcomes this subcommittee's interest in the status of the Electronic Freedom of Information Act. We view federal agencies' response to the Act's requirements as slow. Many agencies have not yet adopted implementing regulations, much less the electronic reading rooms and other reforms required by the Act.

The Act has nonetheless caused some positive change to promote government openness: It has made clear that electronic records are subject to the Freedom of Information Act. It has eliminated questions about whether agencies must conduct electronic searches. It has spelled out definitively that requesters may choose to receive records in an electronic format if the agency maintains them in that format or can easily produce them in that form.

We see from the early innovators in government FOI offices that there is great promise for what agencies can do. They can put useful information up on government Websites. We are especially impressed that some agencies provide FOI request letter generators on their Websites.

Likewise we see promise in the expedited review provisions although we have been disappointed that they are not yet fully operational.

Our greatest disappointment in the Act has been the refusal of the Executive Branch and the Courts to recognize the Act's first finding, that the FOI Act is meant to permit responses to requests that serve any purpose, not just the public's interest in government operations and activities.

Mr. Chairman and members of the subcommittee: My name is Jane Kirtley, and I am Executive Director of the Reporters Committee for Freedom of the Press, a voluntary association of news reporters and editors dedicated to helping journalists exercise their First Amendment and freedom of information rights to gather and cover the news.

The Reporters Committee and I thank you for the invitation to discuss the Electronic Freedom of Information Act of 1996. We know that we find in this subcommittee a strong ally in the quest for better access to government information. We have not forgotten how this subcommittee pushed long-anticipated electronic FOI legislation to enactment in late 1996. We are very pleased that, having brought the measure to life, the subcommittee maintains an interest in its continuing good health.

I would like to talk about this statute in terms of what it promises, not what it has delivered. This is important because so far, and for the most part, federal agencies have missed their deadlines for compliance with the Act in the same way they have been missing FOI deadlines for decades.

Many problems addressed by EFOIA are not yet cured by it

To begin at the most fundamental level, most agencies still do not have implementing regulations for the EFOIA. Proposed rules by the Department of Justice, which assumes the lead in FOI matters, became final only in late May after many months in the

clearance process at the Office of Management and Budget. A majority of agencies have not even issued proposed implementing regulations.

We are told that some agencies still delete E-mail as if it were not a federal record. Some who now realize that electronic mail is significant still print it out in order to respond to FOI requests, rather than provide it in electronic format asked for by many requesters.

Most have not yet established the comprehensive electronic reading rooms the Act anticipated. Existing electronic reading rooms are often information poor.

Backlogs are the rule rather than the exception. The new 20-day time limit, which was supposed to be "meaningful" unlike its 10-day predecessor (which was honored in the breach), has caused no noticeable improvement in agency response times. The only difference is that now a requester receives a phone call or letter saying the agency can't get you the records within 20 days, as opposed to 10 days in the past. It still takes weeks or months or years to finally get the records.

The EFOIA has triggered core reforms in electronic processing

But all is not business as usual. We already have seen some dramatic and core changes to the ways in which FOI requests are handled in the agencies, and we are certain that more will follow -- quickly we hope.

We have watched some experienced agency FOI officers respond enthusiastically to the mandates of the Act, building robust Web

pages filled with useful information. They have worked closely with information resource managers to develop electronic information that is easily accessible to users and that will meet their needs. By affirmatively making useful information routinely available, they will reduce the burdens involved in processing formal FOI requests. We hope these creative and innovative people will reap just rewards for their efforts.

Reporters tell us that these sites are set up by agencies, such as the Department of Transportation and the Environmental Protection Agency, that have good track records for disseminating information. These sites are heavily used by journalists. (One reporter observed that the reverse is also true, that the inadequate Websites of other agencies may reflect the suspicious and non-communicative nature they demonstrate in their day-to-day dealings with the public.)

We have seen some agencies voluntarily set up interactive sites that invite electronic requests and help requesters to write them, prodding for helpful details that will speed up response.

We also have seen core changes in FOI processing. Before passage of the EFOIA, seasoned agency FOI lawyers told us that agency electronic records were supposed to be covered by the FOI Act. Perhaps that should have been the case, but it often was not. If records did not exist on paper, there was a very good chance they would not be released under the FOI Act. Agencies which once excluded electronic records from FOI coverage would

not dream of doing so today.

Until passage of the EFOIA, many agencies called an electronic search of their records that retrieved requested data from a database "creating a record." They would routinely assert that the FOI Act did not require them to "create" records. Today they would not make that assertion as grounds to refuse to conduct an electronic search. They would simply conduct the search.

The EFOIA requirement that agencies make reasonable efforts to provide records in the format requested has clearly expanded the usefulness of the Act. Until passage of EFOIA, agencies appropriated the choice of format for providing records. They made those choices for their own convenience and not in accordance with the requester's preference. We remember horror stories of reporters who had requested tapes or discs receiving boxes and boxes of unedited, unsorted printed materials that were virtually useless to them.

Until the Electronic FOI Act made clear that electronic search capabilities available to agencies must also be available to requesters, agencies could simply elect not to perform an electronic search of their databases to locate responsive information.

When Bill Dedman was researching his Pulitzer-Prize winning series *The Color of Money* for the Atlanta Constitution, a series that changed that city's racially discriminatory banking practices forever, one agency conducted an electronic search of

its databases to retrieve electronically the information he needed. Another provided him an 80-pound printout instead. It may never again be necessary for requesters to spend the countless hours Dedman did to retrieve information by hand from that mammoth document.

Other reform measures have been less effective

The EFOIA legislation also sought to allay the two other most severe problems faced by requesters trying to use the FOI Act: the failure of agencies to provide responses timely enough to be useful, and a serious misinterpretation of Congress' purpose in enacting the FOI Act that has led to overuse of the privacy exemptions to the Act.

Measures to reduce delay need close monitoring

The new Act attempted to address delays in several ways. It provides for expedited review in compelling circumstances. It provides for multitrack processing which allows shorter, less cumbersome requests to be processed in order of receipt on one track while longer requests are processed on another. And although the Act extends the timeframe for responding to requests, it does so with the caveat that routine backlogs are not "exceptional circumstances" justifying delay.

Provisions in EFOIA for expedited review offer agencies an opportunity to provide information right away when it is obvious that the requester has a compelling need for the information. In our view the legislation is based on sound principles, mandating priority processing when a compelling need exists, particularly

when the public needs to be promptly informed about a matter of urgency, such as a rapidly approaching governmental decision.

Unfortunately, we know of few cases in which reporters actually have been granted expedited review to date. This may be because most agencies are behind in adopting implementing regulations.

Additionally, we have not noticed the pace quicken as a result of the multitrack processing provisions, although it appears that requirements for agencies to communicate with requesters to suggest how they can be placed on a "fast track" have been useful to the reporters with whom we deal. Some agencies are choosing not to avail themselves of multitrack processing.

As we stated earlier, we do not believe that agencies are complying with the 20-day time limits or that they have made any effective changes to reduce processing times.

We hope that Congress will keep a close eye on provisions intended to reduce delays, and take whatever action is necessary to ensure that its laudable intentions to reduce or eliminate delays will be realized.

Executive branch, courts have ignored critical "finding"

Finally, we are very disappointed that Congress' finding in this legislation that the FOI Act was intended to serve "any purpose" has been virtually ignored by both the Executive Branch and the courts.

As confirmed by the Amendment's legislative history, the

language in the Findings section was meant to rebut the intent attributed to Congress in the Supreme Court's decision in a 1989 case involving the Reporters Committee. The high court rejected a request for information on a government contractor's rap sheet, saying "this is not the kind of public interest for which Congress enacted the FOIA." The court said the FOI Act's "central purpose is to ensure that the *Government's* activities be opened to the sharp eye of public scrutiny, not that information about *private citizens* that happens to be in the warehouse of the Government be so disclosed." The high court reached this conclusion on its own; the government had not argued this position. *Department of Justice v. Reporters Committee,* 489 U.S. 749 (1989)

In that decision and in many which have followed, courts have said that because Congress enacted the FOI Act in order to shed light on government operations and activities, a balancing test weighing privacy and public interests will tip in favor of privacy unless the records directly reveal what the government is up to.

As a practical matter, the high court's interpretation of Congress' intent has locked up information in any government files that happen to contain the names of identifiable individuals. When the public can learn nothing about how government affects or is affected by individuals, it can learn very little from its FOI requests.

For example, in an excellent series on defaulters on loans

of $1 million or more from the Farmers Home Administration, Washington Post reporter Sharon LaFraniere showed that the agency allowed persons to write off loans up to $13 million and that they lived very, very well on the money they had received from taxpayers' dollars. She was unable to learn the identities of these government-funded millionaires from the agency because the agency said that would have intruded upon the privacy of the defaulters. She still got her story, using other means to uncover the identities of some of the defaulters, but it should have been easier. How many stories like hers will never be told, concealed under the guise of protecting personal privacy?

In the Electronic FOI Act, Congress unambiguously set the record straight on its intentions in passing a law to require open government records.

It states:

> The Congress finds that (1)the purpose of section 552 of title 5, United States Code, popularly known as the Freedom of Information Act, is to require agencies of the Federal Government to make certain agency information available for public inspection and copying and to establish and enable enforcement of the right of any person to obtain access to the records of such agencies, subject to statutory exemptions, for any public or private purpose;[Emphasis added]

The legislative history makes clear that this language was intended to clarify the misinterpretation of congressional purpose articulated in the Reporters Committee case.

Unfortunately, Congress' intent continues to be summarily ignored. For instance, in a case involving customs forfeiture

records, a federal District Court recently held that if Congress had intended to "significantly enlarge the scope of the public interest served by FOIA," it could have taken "a more clear and direct approach, most likely by amending the exemptions themselves. This they did not do." That lower court held that the plaintiff's public interest could not be considered because it "does not shed light on Customs' performance of its statutory duties," and does not otherwise let citizens know what the agency "is up to." *O'Kane v. U.S. Customs Service,* No.95-0683-CIV-MORENO (S.D. Fla. Nov. 6, 1997)

Again, the Reporters Committee is grateful for the opportunity to discuss the issues with the subcommittee and is grateful for the subcommittee's continued interest in these matters that are of vital importance to the public.

BIOGRAPHY

JANE E. KIRTLEY is Executive Director of The Reporters Committee for Freedom of the Press, a voluntary, unincorporated association of reporters and editors founded in 1970 which is devoted to protecting the First Amendment and freedom of information interests of the news media. Since 1985 she has overseen the legal defense and publications efforts of the Reporters Committee, as well as supervising the group's fund-raising activities. Ms. Kirtley also edits the Committee's quarterly magazine, *The News Media & The Law*.

Ms. Kirtley has prepared numerous friend-of-the-court briefs on behalf of the Reporters Committee and other news media organizations, including *Reno v. ACLU*, *Hustler Magazine v. Falwell*, *The Florida Star v. B.J.F.*, and *Dept. of Justice v. Tax Analysts*. She writes and speaks frequently on media law and freedom of information issues in the United States and abroad, including in Russia, Mongolia, Belarus, Bulgaria, Latvia, Romania, Poland, the Czech Republic, Japan, Chile, the United Kingdom and Canada. Ms. Kirtley also writes "The Press and the Law" column each month for *American Journalism Review*. Ms. Kirtley has appeared on nationally-broadcast programs such as *Nightline*, *All Things Considered*, *The Jim Lehrer News Hour*, *Good Morning America*, *Today*, *Donahue!*, *Crossfire*, *Burden of Proof*, *CNN & Co.* and the BBC's *Law in Action*. She has been an adjunct professor with the American University School of Communications Graduate Program since 1989.

Before coming to the Reporters Committee in 1984, Ms. Kirtley was associated with the law firm of Nixon, Hargrave, Devans & Doyle. She is a member of the New York, District of Columbia and Virginia bars. Ms. Kirtley worked as a reporter for the *Evansville Press*, the *Oak Ridger* and the *Nashville Banner*.

Ms. Kirtley obtained her J.D. degree in 1979 from Vanderbilt University School of Law, where she served as Executive Articles Editor of the Vanderbilt *Journal of Transnational Law*. She received bachelor's and master's degrees from Northwestern University's Medill School of Journalism in 1975 and 1976.

She serves on many advisory boards and committees, including the Freedom Forum's First Amendment Center, the ABA National Conference of Lawyers and Representatives of the Media, the Libel Defense Resource Center, the Student Press Law Center and the editorial board of *Government Information Quarterly*. In 1993, Ms. Kirtley received the Distinguished Service Award from the Newspaper Division of the Association for Education in Journalism and Mass Communication, and in 1994, The John Peter Zenger Award for Freedom of the Press and the People's Right to Know from the University of Arizona. In 1996, she was one of 24 individuals inducted into The FOIA Hall of Fame, established to commemorate the 30th anniversary of the signing of the Freedom of Information Act.

Mr. HORN. Well, we thank you very much We will start with the last point you made, and that is the FOIA was designed for public rather than private purposes, and in your written testimony you have just cited the *O'Kane* case as an example of the courts ignoring the intent of Congress and giving preference to public purposes.

Now, how did the court justify ignoring the clear intent of Congress?

Ms. KIRTLEY. I think it was that the court found that because this was simply something that was stated in the findings rather than in the legislation, or as an amendment to the existing legislation, it did not need to give the same weight to it that I think all of us had hoped that it would. I would hate to think that intent just stands or falls on where you place it in the report, but frankly, the court did not seem convinced by the fact that it was in the findings and was therefore sufficient to overrule the Supreme Court's holding.

Mr. HORN. In other words, that problem is basically solved by further amendments that put it into the law rather than the report?

Ms. KIRTLEY. Well, we are hopeful that the eleventh circuit might correct this in its review of this case; but yes, in terms of the legislative solution, I think that is probably the answer.

Mr. HORN. Well, I can't really blame the courts, because often Congress paves over things in conference between the other body and us, and if we are serious, we should put it into the law.

Ms. KIRTLEY. There is something to be said for that. On the other hand, I think the language and the findings were very clear. I think the courts will read into this what they want until they get a clear mandate.

Mr. HORN. To your knowledge, are there other cases like the *O'Kane* case that are in process?

Ms. KIRTLEY. Yes. There are several more that are percolating around and we are trying to keep an eye on them. At this point they are all at the district court level.

Mr. HORN. Could you give us an insert for the record?

Ms. KIRTLEY. Yes.

[The information referred to follows:]

Report on Responses and Non-Response

Of the Executive and Judicial Branches

To Congress' Finding

That the FOI Act Serves 'Any Purpose'

Prepared by The Reporters Committee for Freedom of the Press

By Request
Of the Chairman, Subcommittee on Government Management,
Information and Technology

Of the House Committee on Government Reform and Oversight

July 2, 1998

On June 9, 1998, during its hearing on the status of enforcement of the Electronic Freedom of Information Act, this subcommittee asked Jane E. Kirtley, executive director of the Reporters Committee for Freedom of the Press, for this report detailing the failure of the executive branch and of the courts to recognize the intent of Congress, through passage of the Electronic FOI Act, to clear up and set right a long-standing misconception of Congressional purpose for enacting the FOI Act.

Application of Privacy Exemptions Prior to 1989

Since the FOI Act became law in 1966 and until the decision in Department of Justice v. Reporters Committee, 489 U.S. 749 (1989), the federal government deferred to the legislative history of the Act, which called for a balance of public and private interests in deciding whether the Privacy Exemption (Exemption 6) should be invoked.

In 1974, Congress reined in the rampant use of the law enforcement exemption by narrowing it. The amended exemption provided that law enforcement information could be withheld only if any of six specified harms would occur from disclosure, one of which would be intrusion on personal privacy. To use the privacy arm of the exemption (Exemption 7(C)), agencies and courts have employed a balancing test very similar to that which is used for Exemption 6.

Congress amended the 1966 FOI Act several times before 1989 but it did not alter the privacy exemption or seek to remedy its implementation or enforcement.

The Reporters Committee Case

In 1989, the U.S. Supreme Court ruled *sua sponte* in Reporters Committee that Congress envisaged a "core purpose" behind the enactment of the FOI Act. It said that Congress intended the statute to shed light on the operations and activities of government. The high court then said that this was the only purpose that could be considered in deciding whether certain information would be disclosed, or would be withheld for privacy reasons.

In the Reporters Committee case, which involved a request for the criminal history "rap sheet" of a Defense contractor with close ties to a corrupt congressman, the high court said that because the records would not shed light on government operations and activities, the privacy interest of the contractor would outweigh any public interest in them, justifying withholding under Exemption 7(C).

Ever since that decision, the balancing test has been heavily skewed in favor of privacy. When requested government information concerns individuals, a privacy exemption is almost always invoked by the government. Any asserted public interest that does not fit the Supreme Court's narrow definition of "core

purpose" is simply not considered in the balance.

Congressional clarification was badly needed. Rigid adherence to the courts' Reporters Committee interpretation has very nearly crippled the use of the Act, resulting in senseless decisions that shield government-held information from public scrutiny.

For example, when former hostage Terry Anderson, the Associated Press reporter held by the Islamic Jihad for seven years, asked for records concerning his captivity from the FBI and other agencies, he was told that because disclosure would intrude upon the personal privacy of his captors, he must first obtain their written waiver of their "privacy" interests before the information would be provided. The government has dropped its very typical privacy claims in this case (the records continue to be withheld as "classified"), probably in response to public disdain for this transparently absurd decision.

We have received hundreds of inquiries from reporters who have been unable to report adequately on important public issues because the federal government overuses the privacy exemptions. Reporters are denied the names of persons who offer their views to the government in response to an agency call for comments. They have been denied land appraisal records for property purchased from the government, lists of prisoners, and records of persons who default on huge government loans. One reporter told us that an agency even redacted names on public court decisions

it gave him in response to his FOI request.

Congress Acts to Clarify the FOI Act's Purpose

In 1996, Congress acted to correct the Court's misinterpretation of its purpose in enacting the FOI Act. Its first finding in the Electronic FOI Act states that the FOI Act is intended to establish and enable enforcement of the right of any person to obtain access to government records, subject to the exemptions, for "any public or private purpose." In the legislative history it makes clear that this finding means that Congress did *not* intend the narrow interpretation of "core purpose" articulated by the high court in Reporters Committee.

We cannot cite a single instance or case since passage of the Electronic FOI Act in which the government or a court has now accepted that the "purpose" of the FOI Act is to serve "any purpose." In at least one case, discussed at length later in this report, the government flatly rejected that finding and a court has upheld its decision. It has been business as usual with respect to the interpretation of "public interest" purpose at both the agencies and the courts.

After Congress passed the Electronic FOI Act but before it was signed by the President, the federal District Court in Washington, D.C., acknowledged in a footnote that the new legislation would "effectively overrule" the U.S. Supreme Court's holding in Reporters Committee. However, because the President

had not signed the bill at the time of that decision, the court continued to rely on the Reporters Committee standard in evaluating the public interest in disclosure of FBI records. Voinche v. Federal Bureau of Investigation, 940 F. Supp. 323 (D.D.C. 1996).

The President signed the Electronic FOI Act in October 1996 while the U.S. Supreme Court had before it a petition for *certiorari* in a case from the Ninth Circuit involving the Bureau of Land Management's denial of a mailing list for a newsletter issued by BLM's Oregon State Office based on the privacy exemption. In May 1996, the appeals court affirmed a lower court ruling that an environmental group could have the mailing list in order to send out its own mailings that in some cases would challenge the information in the government's newsletter. The lower courts had agreed with the environmental group that the public has an interest in knowing to whom the government is directing information or "propaganda" and that this interest outweighs any privacy interest that would justify withholding.

But the high court never heard arguments in Bibles v. Oregon Natural Desert Assn., 119 U.S. 335 (1997). Instead, in February 1997, four months after passage of the Electronic FOI Act, but several weeks before its effective date, the Supreme Court issued a one-page summary opinion overturning the Ninth Circuit decision, saying the appellate decision was "inconsistent" with its 1989 pronouncement in Reporters Committee. We do not know if

the high court was made aware of Congress' clear expression to the contrary in its finding.

But there is no question that the finding in the Electronic FOI Act was called to the government's attention and a court's attention in two subsequent District Court cases.

Several agencies denied *Nimby News (Tex.)* editor Jack McNamara information on former local sheriff Rick Dee Thompson and his associate Robert Glynn Chambers. Thompson and Chambers had pled guilty to narcotics charges after federal law enforcement officials seized a horse trailer belonging to Thompson which contained 2,500 pounds of cocaine. They were convicted in 1992.

Claiming that even acknowledging that records on the two existed would intrude upon the privacy of the convicts, the government refused to either confirm or deny whether it held records on the two in its files. It claimed that McNamara's strong interest in informing the public about spiraling drug activity along the Mexico and Texas border did not constitute a public interest that could be balanced against these purported privacy concerns.

McNamara sued for the records.

While his lawsuit was before the federal District Court in Pecos, the President signed the Electronic FOI Act. McNamara then argued before the District Court that Congress' finding should alter the government's balance of public and private

interests. In its brief, the government claimed, in a footnote, that because McNamara had argued that his complaint would meet the Reporters Committee standard, he could not also claim that the finding in the Electronic FOI Act negated the 1989 ruling. The agency called his assertions "questionable in substance" but said that they were "irrelevant to this case regardless of their accuracy."

The judge did not respond to McNamara's claim that the finding in the new Act and the legislative history behind it changed the balancing test, stating only that the public interest cited by McNamara fell outside the "core purpose" articulated in Reporters Committee. (McNamara v. Department of Justice, 974 F. Supp. 946 (W.D. Tex.1997)

Florida immigration attorney Michael O'Kane also invoked the new finding in his lawsuit seeking access to names and addresses of individuals whose property had been seized by the U.S. Customs Service. He intended to use the information to solicit clients. He told the federal District Court in Miami that there is a strong public interest in apprising persons of their right to legal counsel, an interest that could be served in part by directing attorney advertising to them. That public interest would outweigh the fairly minimal intrusion that would occur from the disclosure of addresses, he said.

The government's response to O'Kane's Cross Motion for Summary Judgment addressed the finding at length, suggesting that

Congress amend the exemptions themselves if it intends to alter the Reporters Committee holding.[1]

The Department of Justice gave no deference to Congress' finding, stating:

> [P]laintiff is asserting that the Supreme Court's holding in Bibles v. Oregon Natural Desert Assn. ____ U.S. ____, 117 S.Ct. 795 (1997) is no longer valid law due to the enactment of the "Electronic Freedom of Information Act Amendments of 1996." The holding in Bibles arises from the long-standing precedent of U.S. Dept. of Justice v Reporters Committee, 489 U.S. 749 , 772-75 (1989), where the Supreme Court held that the public interest to be balanced is limited to the public's interest in being informed about "what their government is up to."
>
> Plaintiff is relying on a general purpose statement which he cites in his cross motion to argue that Amendments to the FOIA have overturned long-standing Supreme Court precedent. However, there is nothing in the legislative history which indicates any intent on the part of Congress to effect such a change. See Pub.L. 104-231. If it had intended such a drastic impact by its general statement of purpose in the Amendments, Congress surely would have stated so.
>
> If it had intended to alter the balancing of interests with regard to the privacy-related exemptions, Congress could have amended the exemptions themselves. The exemptions applicable here, FOIA exemptions 6 and 7(C), 5 U.S.C. ç552(b)(6) and

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[1]We note that neither of the privacy exemptions includes any statutory language at all regarding balancing of interests. The balancing test is purely a creature of the legislative history of Exemption 6:

> The phrase "clearly unwarranted invasion of personal privacy" enunciates a policy that will involve a balancing of interests between the protection of an individual's private affairs from unnecessary public scrutiny, and the preservation of the public's right to government information. S. Rep. No. 813, 89th Cong., 1st Sess. (1965) at 9. See also H.R. Rep. No. 1497, 89th Cong. 2d Sess. (1966).

(b)(7)(C), were not amended.

Also, although, as plaintiff points out, Bibles was decided on February 18, 1997, several weeks before the effective date of the Amendments, the Amendments were enacted October 2, 1996, more than four months before the Bibles decision. If the enactment of the Amendments had undercut the Court's ruling in Reporters Committee, one of the most significant and frequently cited decisions of the Supreme Court regarding the FOIA, the Supreme Court would surely have taken note. Yet, there is no mention of the Amendments in the Bibles decision.

Plaintiff's cross motion has failed to show that the disclosure of the addresses of private individuals which he is seeking would further a public purpose as defined under Reporters Committee. The public interest which would be served by dissemination of information through attorney advertising is distinct from and unrelated to the public interest in being informed as to the operations of the government. Therefore, it is not the type of public interest which is relevant to the issues in this case. Defendant's Response To Plaintiff's Cross Motion For Summary Judgment at 4, O'Kane v. U.S. Customs Service, No. 95-0683-CIV-MORENO (S.D. Fla. Nov. 6, 1997)

The "core purpose" argument continues to be utilized in numerous other cases decided since passage of the Electronic FOI Act. Summaries of these cases are collected in the Appendix at the end of this report. Not one of the decisions acknowledges Congress' finding.

Conclusion

In the legislative history to the FOI Act in 1965 and 1966, Congress discussed the privacy exemption to the FOI Act in terms of balance between private and public interests. There is no reason to believe that Congress changed its mind in the years to come. By 1989 it had amended the FOI Act several times without

addressing the privacy exemption or, after 1974, the law enforcement privacy exemption.

In Reporters Committee, the Supreme Court without any suggestion from Congress or the Executive Branch, gave a new and crabbed interpretation of Congress' purpose in enacting the FOI Act, one that has critically impaired the ability of requesters to receive government information.

It is notable that in Congress' first legislative amendment to the FOI Act following that decision, it tried to set the record straight: it simply had not intended what the Supreme Court said it had intended.

The government has argued that on such an important "change," Congress cannot just say what it meant, it must instead amend the language of the privacy exemptions. We do not believe that should be necessary. Congress said what it meant, in 1966, and in 1998 said that it meant what it said. The Court had read it wrong, Congress said. That should be enough.

APPENDIX

The "core purpose" continues to be utilized in the following cases decided since passage of the Electronic FOI Act. None of the decisions acknowledge the finding.

"The release of names, addresses, and similar "private" information reveals little, if anything, about the operations of the Department of Veterans Affairs." "[I]n this case, providing the requested information -- the names and addresses of the individual workers -- would not enhance agency enforcement of prevailing wage laws." Sheet Metal Workers International Association, Local Union No. 19 v. United States Dep't of Veterans Affairs, 135 F.3d 891 (3d Cir. 1998).

The U.S. Court of Appeals in Washington, D.C. relied on the Reporters Committee declaration that a request for personal information in government files, unless it is for the narrow purpose of shedding light on the operations of the government cannot be in the public interest. Kimberlin v. Department of Justice, 139 F.3d 944 (D.C. Cir. 1998).

In January 1997, a federal district court in Washington, D.C. cited Reporters Committee for the proposition that "the public interest is in shedding light on the agency's performance of its duties, not the individual's interest in obtaining particular information." Butler v. Department of the Treasury, 1997 WL 138720 (D.D.C. 1997).

Relying on the Reporters Committee standard, the federal district court in Washington, D.C. held that the Army must disclose records of flawed HIV vaccine research conducted in 1991-1993. The "substantial" public interest in alleged misrepresentations and scientific misconduct regarding results of the testing outweighed the research project director's "generally minimal" privacy interests. Lurie v. Department of the Army, 970 F. Supp. 19 (D.D.C. 1997).

The federal district court in Washington, D.C. followed the Reporters Committee public interest standard when it ruled that Drug Enforcement Administration records were properly withheld. "[The requester] does not explain how acquiring access to the withheld documents would enable him to shed light on the DEA's functions." Reiter v. Drug Enforcement Administration, 1997 WL 470108 (D.D.C. 1997).

Evaluating the public interest in the disclosure of data submitted to the Bureau of Alcohol, Tobacco and Firearms by federally licensed gun dealers in several states, the district court in Washington, D.C. acknowledged that "[t]here must be some public interest in disclosure, and it must reflect FOIA's core purpose of 'shedding light on an agency's performance of its statutory duties.'" The court held that the public interest did outweigh "miniscule [sic] privacy interests." Center to Prevent

Handgun Violence v U S Dep't of the Treasury, 981 F. Supp. 20 (D.D.C. 1997).

In a case involving a request for communications regarding the case of alleged former Nazi guard John Demjanjuk, a federal district court in New York relied on the Reporters Committee standard: "The Supreme Court has repeatedly held that the public interest in disclosure in all FOIA cases is derived from the purpose of the Act - promoting public scrutiny of agency action. [] Disclosure furthers this statutory purpose only when the official information 'sheds light on an agency's performance of its statutory duties.' [] If the information sought through FOIA does not "shed light" on agency conduct, but rather focuses on isolated low-level, alleged government wrongdoers, it does not serve a substantial public interest." Ligorner v. Reno, 1998 WL 142334 (S.D.N.Y. 1998).

A federal district court in North Carolina relied on Reporters Committee when assessing the public interest in the disclosure of "the names of lower-level IRS employees." "The only relevant public interest in the FOIA balancing analysis is the extent to which disclosure of the information sought would shed light on an agency's performance of its statutory duties or otherwise let citizens know what their government is up to," the court said. Cujas v. Internal Revenue Service, 1998 U.S. Dist LEXIS 6466 (M.D.N.C. 1998).

Denying a criminal defendant's FOI Act request, a federal district court in Texas acknowledged that although the requester "arguably has a private interest in the records which reveal the identities of the confidential informants who helped build the criminal case against him, this court sees little or no `public interest' in these particular records." The court based this holding on the limited characterization of the public interest found in Reporters Committee. McQueen v. United States, 1998 WL 312720 (S.D. Tex. 1998).

Mr. HORN. Does anyone else have any experience on this, either as a friend of the court or actual litigant? Well, we will rely on your list and the American Law Division to search what is going on out there in the desert of law.

Let me ask Ms. McDermott, in your report, in your written testimony, you mentioned that two-thirds of the Federal agencies treated your survey as a formal FOIA request. What does that really reveal? Did they put you in line for 4 years?

Ms. MCDERMOTT. Well, half of them didn't get back to us at all. Some of them, we called and said, we think you misunderstood. It was partly our fault by the way we phrased the letter. I mean, it was open to that interpretation. One of the immediate interpretations we took was that they didn't read it very carefully, because if you read on, it was fairly clear what we were asking for; and it was not a request for records, it was a request for information about their implementation. But some of them we still have not heard back from, so I think it is in a backlog somewhere, and 5 years from now we will.

Mr. HORN. Well, it is nice to know that it is not only Congress they spend their time not replying to, but it is also the average citizen who should be replied to.

You suggested an alternative enforcement mechanism. Could you elaborate on that? What did you have in mind?

Ms. MCDERMOTT. We have been trying to puzzle that through, and I know that your committee, your subcommittee, has held hearings in the past on separating the various portions of OMB, the management and the budget portion.

We have been very concerned about the OIRA, the Office of Information and Regulatory Affairs, because historically the regulatory aspect of that has taken very high precedence over the information aspect of that office. But it has been a puzzle to us at OMB Watch, and among other public interest groups, just how this should be handled in terms of greater enforcement and oversight of information policy.

OMB historically has not been very good on information policy. One agency person has described them as a launch-and-forget organization in terms of information issues. So, we have concerns about placing it at OMB, but there is really no other place in the executive branch where it appropriately belongs.

The other organizations or other interorganizational councils that are developing have no public accountability, such as the Chief Information Officers' Council and some of the others, so we don't recommend that. So we are puzzled ourselves. We really don't have a good, firm recommendation, but we would like to see the information portion of OIRA significantly strengthened, and we would hope that when the nominee to replace Ms. Katzen comes forward that the information aspect of that agency, or the administration, will be seriously enforced, emphasized.

Mr. HORN. Well, we will soon be introducing our legislation to separate management into an office of management and an office of budget. Obviously this function, and several others I can think of, would go in the office of management, so they can give it full attention and not just be worn out by the budget considerations. I don't care who is President, what their ideology is, let's face it,

when we have a $5.3 trillion national debt and you have to balance the budget, OMB has focused most of their energy at the highest level strictly on the budget, and I can understand that.

So we want to give the President a group, a very small group of people that are involved in some of these proposals.

Now, we do have other options. You have the General Services Administration that runs the Advisory Council law; you have—and we will be discussing this later—part of the Department of Justice, which has been involved in this; and the question is, is it best in an executive office, part of the Executive Office of the President, or should it go out to an agency? I personally think it should be in the Executive Office of the President, but good people might have different solutions to the problem.

Ms. McDERMOTT. Exactly.

Mr. HORN. Well, that is very helpful.

Let me ask you all, what do you regard as the major issue under the 1996 amendments that has not been reached? And what would you say the biggest problem is and the biggest frustration is? We will just go down the line and get it on the record. I think it is pretty similar, but I want to make sure.

Ms. McDERMOTT. Well, I think for OMB Watch—and we are not FOIA litigators, so our emphasis is a little different—I think the biggest frustration is the very clear indication that OMB and the agencies in general—not every agency, some are very, very good and some have done an excellent job on information research management on this and other aspects—but in general, the agencies do not put, and it is evident that they do not put a priority on providing public access to what is public information and that the public has a right to. As Mike Tankersley mentioned, OMB puts a very low priority on this and does not devote any resources to it beyond what is minimally required.

Mr. HORN. Mr. Tankersley.

Mr. TANKERSLEY. Mr. Chairman, I would agree with that. I think in answer to your question, the biggest disappointment from our perspective is that the affirmative online disclosure requirements are being treated in a number of agencies not as requirements, but as something to be aspired to at some indefinite point in the future; and that is our biggest disappointment with the implementation of the amendments so far.

Mr. HORN. Is that disappointment also the largest problem we have?

Mr. TANKERSLEY. Yes, I believe so. I think that has the biggest effect in terms of the amount of information that is out there. In contrast to the experience with agencies like the NRC, there are many other agencies that are not treating those provisions as something that they are required to do now.

Mr. HORN. Mr. Riccio.

Mr. RICCIO. I guess our greatest concern is that the amendments not be used as a pretext for wiping out the underlying files or closing the document rooms.

For example, because of all of the problems that have occurred in Connecticut with their reactors, eight different utilities ordered the entire docket of their nuclear power plant to be copied and sent to them. Now, with a shift of that information over to electronic

format, we are afraid that a lot of information will be lost, and that is of great concern to us since it is those documents that determine whether or not a reactor is safe.

Mr. HORN. Are you worried then that in moving this printed and paper record around that you won't have that trend of information from an earlier year?

Mr. RICCIO. It is very important that that information remain in one place for litigation or for other purposes, that it still exists, and I believe the intent is to try to do away with it. They are going to try to shift it over to electronic format, but still, having an underlying library is imperative.

Mr. HORN. Ms. Kirtley.

Ms. KIRTLEY. Well, I think everything flows from the lack of implementing regulations to a great extent, and since the people I represent are journalists, I have to say that we still have as our biggest complaints: delays and the lack of speed in processing. Again, there was a lot of promise in these EFOIA amendments, multitrack processing and so forth that just hasn't come into play yet, and I think it is mostly because the regulations just aren't there.

Mr. HORN. Do we know—well, I was just talking to Mr. Hynes who is working on this for us. Do we know the degree to which these agencies have pursued multitrack processing?

Ms. KIRTLEY. Of those that have put out implementing regulations, I believe the majority of them have entertained it as at least a possibility, and in a couple of cases they are actually doing it. But a couple of agencies—we just filed comments, I think, with Agriculture the other day and it doesn't seem to have included that in its proposed regulations. Of course, it is not mandatory, but I think it serves everybody's interest to try to get it into play.

Mr. HORN. Any other ideas on what is the biggest problem we need to deal with and put it in the law rather than in the reports?

Ms. MCDERMOTT. Enforcement.

Mr. HORN. Yes, enforcement is——

Ms. KIRTLEY. Yes. I recall when we were dealing with the issue of the expansion of the processing time to 20 days, a lot of the discussion was, it is going to be 20 days and we are really going to mean it, but there doesn't really seem to be any enforcement provision in the amendments that gives that any teeth, so once again, we are dealing with a provision that is being honored in the breach.

Mr. HORN. Very good. Are there any other things that we did not bring up either in the written testimony or in questions? What are we missing? Anything?

Well, if you think of it on the way back to the office today, let us know, and we will put it at this point in the record without objection.

Ms. KIRTLEY. Thank you.

Mr. HORN. Well, we thank you all for coming. You have done some really firm, fine examples in your testimony and we appreciate that. Thank you.

Ms. MCDERMOTT. Thank you very much.

Mr. HORN. Next we have Mr. Richard Huff, Codirector, Office of Information and Privacy, Department of Justice; Mr. John

Collingwood, Assistant Director, Office of Public and Congressional Affairs, FBI; Ms. Patricia Riep-Dice, Freedom of Information Officer, NASA; and Mr. Abel Lopez, Acting Director, Freedom of Information Division, Department of Energy.

If the panel would please come forward and be sworn.

[Witnesses sworn.]

Mr. HORN. The clerk will note all four witnesses affirmed.

We will begin with Mr. Huff, who, as I noted, is the Codirector, Office of Information and Privacy, Department of Justice. Welcome.

STATEMENTS OF RICHARD L. HUFF, CODIRECTOR, OFFICE OF INFORMATION AND PRIVACY, DEPARTMENT OF JUSTICE; JOHN E. COLLINGWOOD, ASSISTANT DIRECTOR, OFFICE OF PUBLIC AND CONGRESSIONAL AFFAIRS, FEDERAL BUREAU OF INVESTIGATION; PATRICIA M. RIEP-DICE, FREEDOM OF INFORMATION OFFICER, NATIONAL AERONAUTICS AND SPACE ADMINISTRATION; AND ABEL LOPEZ, ACTING DIRECTOR, FREEDOM OF INFORMATION DIVISION, DEPARTMENT OF ENERGY

Mr. HUFF. Thank you. I am pleased to be here this morning to address the subject of the Freedom of Information Act, as amended by the Electronic Freedom of Information Act Amendments of 1996, which is the principal statute governing public access to Federal Government records and information.

Under the Attorney General's leadership, we have worked diligently to implement EFOIA and to reduce FOIA backlogs within the Department of Justice. We have revised our FOIA and Privacy Act regulations, we have prepared a FOIA reference guide, a manual that provides helpful information to the public regarding available resources and specific procedures for making FOIA requests to the Department. This reference document is available electronically on the Department of Justice's FOIA home page.

Our FOIA home page, which can be accessed directly from the Department's home page by hitting the FOIA button, contains research tools, a listing of FOIA contacts for all Federal agencies, a direct link to the electronic FOIA sites of other Federal agencies, a listing of the principal FOIA contacts of the Department's components, and a direct link to the components' electronic reading rooms.

In these electronic reading rooms, for example, one can electronically browse traditional reading room materials such as the U.S. attorneys' manual and bulletins, infrequently requested records, such as the Americans with Disabilities Act settlement agreements.

In pursuit of EFOIA's goal of reducing backlogs of pending requests, the Department has made significant progress. Most significant is the progress made by the Federal Bureau of Investigation in reducing its large backlog of FOIA requests, which is being discussed by a representative of the FBI here this morning. I want to emphasize that other components of the Department, such as the DEA, the Bureau of Prisons, the Executive Office for U.S. Attorneys, and the Marshals Service, have also greatly reduced their backlogs.

Because the administration of the Freedom of Information Act is decentralized throughout the executive branch, each individual

Federal agency, including the Department of Justice, is responsible for implementing the FOIA and the provisions of EFOIA within it. As you know, the Department of Justice also works to encourage governmentwide compliance with the FOIA in accordance with subsection (e) of the act, and it has taken a number of steps to aid other agencies in the implementation of EFOIA.

First, upon enactment of EFOIA, the Department disseminated to all agencies, through our FOIA Update publication, detailed discussions of the new statutory provisions and a chart outlining the different effective dates of those provisions. In discussing both the substantive and procedural aspects of EFOIA's implementation, we strongly encouraged all agencies to develop websites in order to most efficiently meet EFOIA's new electronic availability requirements.

Second, we have addressed a variety of questions about the provisions of EFOIA and their implementation as they have been raised by agency FOIA personnel. We have done so through the Department's FOIA counselor service, through written guidance on more than two dozen amendment questions in the FOIA Update, and through governmentwide training sessions on the amendments, including a conference for principal agency FOIA officers to review EFOIA implementation questions.

Third, we issued guidance to all Federal agencies on the preparation and submission of annual FOIA reports under the new procedures established by EFOIA.

On a governmentwide basis, there appears to have been little or no significant disputes arising between agencies and FOIA requesters regarding the new choice of format, electronic search, or expedited processing obligations that the amendments place on agencies. To be sure, though, it has been observed that many agencies have had a more difficult time in their websites implementing the electronic availability provisions of EFOIA. This is an area of FOIA administration that is relatively unfamiliar to Federal agencies, and the process of individual agency website development for the most efficient implementation of FOIA's electronic availability provisions is a continuing one.

The Department will continue to urge all Federal agencies to focus on the importance of their efforts in this and other areas of EFOIA implementation.

In conclusion, the Department of Justice looks forward to continuing to work together with the subcommittee on matters pertaining to the implementation of the Freedom of Information Act, and I would be pleased to try to answer any questions that you or any other member of the subcommittee may have on this subject.

Mr. HORN. Thank you, Mr. Huff. That is very helpful.

[The prepared statement of Mr. Huff follows:]

Mr. Chairman and Members of the Subcommittee:

I am pleased to be here this morning to address the subject of the Freedom of Information Act (FOIA), 5 U.S.C. § 552 (1994), as amended by the Electronic Freedom of Information Act Amendments of 1996, which is the principal statute governing public access to Federal Government records and information. This statute, which now has been in effect for more than thirty years, has become an essential part of our democratic system of government -- a vital tool used by our citizens to learn about their government's operations and activities.

Attorney General Janet Reno has been strongly committed to the Freedom of Information Act, to its proper implementation, and to the principles of openness in government that it embodies. She has fostered this commitment throughout the Department of Justice and its many component organizations. Under her leadership, we have placed a sustained priority on our responsibility under the FOIA to improve our service to the American public by making available as much government information as possible.

The Freedom of Information Act was strengthened two years ago when Congress passed and President Clinton signed into law the Electronic Freedom of Information Act Amendments of 1996. These amendments -- referred to as "EFOIA" -- brought the FOIA into the electronic information age by treating information maintained by agencies in electronic form in generally the same way as paper records. EFOIA promotes the use of advanced information technology in order to achieve efficient disclosure of information to the public by electronic means.

Briefly, EFOIA addresses electronic record issues, the timeliness of agency responses to FOIA requests, and other procedural matters under the Act. EFOIA requires agencies to search for information in electronic form in response to a FOIA request according to a "reasonable efforts" standard, and it requires agencies to produce information in the particular form or format that a FOIA requester prefers according to that same standard. It requires that records processed for disclosure under the Act that may be the subject of additional FOIA requests be placed in agency reading rooms, and it requires that newly created reading room records be available to the public electronically as well.

EFOIA also addresses the timing of agency responses to FOIA requests and agency backlogs of FOIA requests with provisions that increase the initial time for responding to FOIA requests from 10 to 20 working days; authorize agencies to process FOIA requests in multiple tracks; encourage agencies to negotiate the scope of FOIA requests and response times with requesters; and establish higher standards governing court-ordered extensions of time for FOIA cases in litigation. Another important provision establishes a mechanism for the "expedited processing" of FOIA requests filed by members of the news media. Additionally, EFOIA requires agencies to maintain a FOIA reference guide for use by potential FOIA requesters, and institutes a new reporting scheme for the annual FOIA reports that are filed by all agencies.

Under the Attorney General's leadership, we have worked diligently to implement EFOIA and reduce FOIA backlogs within the Department of Justice. We have revised our FOIA and Privacy Act regulations. We have prepared a FOIA Reference Guide, a user-friendly manual that provides helpful information to the public regarding available resources and specific procedures for making FOIA requests to the Department. It also identifies each

component of the Department, its principal missions, and descriptions of the multi-track FOIA processing queues that are used by components. This reference document, which has already been updated once, is available electronically on the Department's FOIA home page. Our FOIA home page -- which can be accessed directly from the Department's home page by hitting the FOIA button -- contains research tools, a listing of the FOIA contacts for all Federal agencies, a direct link to the electronic FOIA sites of other Federal agencies, a listing of the principal FOIA contacts of the Department's components, and a direct link to the components' electronic reading rooms.

In these electronic reading rooms, for example, one can electronically browse traditional reading room materials such as the United States Attorneys' Manual and Bulletins, decisions of the Board of Immigration Appeals, policy statements of the United States Marshals Service, and the Attorney General's Procedures for Lawful, Warrantless Monitoring of Verbal Communications. Additionally, we have available on our web site frequently requested records such as Americans with Disabilities Act settlement agreements, the Office of Intelligence Policy and Review's Annual Foreign Intelligence Surveillance Report, and the

Inspector General's executive summary of his report on the FBI's investigation of Aldrich Ames.

In pursuit of EFOIA's goal of reducing backlogs of pending FOIA requests, the Department has made significant progress. Most significant is the progress made by the Federal Bureau of Investigation in reducing its large backlog of FOIA requests, which is being discussed by a representative of the FBI here this morning. I want to emphasize that other components of the Department have also significantly reduced their backlogs. For example, the Drug Enforcement Administration has reduced its backlog from 467 requests to 30; the Bureau of Prisons has reduced its backlog from 705 to 153; the Executive Office for United States Attorneys has reduced its backlog from 614 to 24; and the United States Marshals Service has reduced its backlog from 479 to 5. This demonstrates the Attorney General's strong commitment to FOIA requesters.

Make no mistake, some components of the Department have only moderately reduced their backlogs. The Immigration and Naturalization Service -- which received over 100,000 requests last year -- has reduced its backlog by 16%. Although this is

not an inconsiderable reduction, the Attorney General remains greatly concerned about the size of the INS backlog. In an effort to further reduce its backlog, INS recently launched its FOIA Information Processing System, which should streamline its FOIA operations through automation.

Because the administration of the Freedom of Information Act is decentralized throughout the Executive Branch, each individual Federal agency, including the Department of Justice, is responsible for implementing the FOIA and the provisions of EFOIA within it. As you know, the Department of Justice also works to encourage governmentwide compliance with the FOIA, in accordance with subsection (e) of the Act, and it has taken a number of steps to share its expertise to aid other agencies in the implementation of EFOIA. They include the following:

First, upon enactment of EFOIA, the Department disseminated to all agencies, through our FOIA Update publication, detailed discussions of the new statutory provisions and a chart outlining the different effective dates of those provisions. In discussing both the substantive and procedural

aspects of EFOIA's implementation, we strongly encouraged all agencies to develop web sites in order to most efficiently meet EFOIA's new electronic availability requirements. We drew particular attention to distinctions between an agency's conventional "paper" reading room and its new "electronic" reading room under EFOIA.

Second, we have addressed a variety of questions about the provisions of EFOIA and its implementation as they have been raised by agency FOIA personnel. We have done so through the Department's FOIA Counselor service, through which we respond to agency questions by telephone. We also have disseminated written guidance on more than two dozen amendment implementation questions through our FOIA Update publication, which is publicly available through our web site. We have published a compilation of implementation guidance points for the ready reference of all agency FOIA personnel, and have conducted several governmentwide and public training sessions on the amendments, including a conference for principal agency FOIA officers to review EFOIA implementation questions. We revised our "Justice Department Guide to the Freedom of Information Act" to address all EFOIA provisions. We added a new section to this "FOIA Guide" dealing

with FOIA reading rooms, including electronic reading rooms. On the subject of electronic reading rooms, we have also discussed the development of agency web sites in FOIA Update, pointing to good examples of agency web sites for FOIA purposes.

Third, we issued guidance to all Federal agencies on the preparation and submission of annual FOIA reports under new procedures established by EFOIA. These guidelines, which were developed in consultation with the Office of Management and Budget and disseminated to all Federal agencies prior to the beginning of this fiscal year, provide a uniform approach for all agencies to follow in the compilation and organization of statistics and other information in their annual FOIA reports. They also address the process by which agencies will submit their annual reports to the Department of Justice for public availability through a single web site as of February of next year.

On a governmentwide basis, there appear to have been little or no significant disputes arising between agencies and FOIA requesters regarding the new choice-of-format obligations that the amendments place on agencies. This is likewise so with

respect to the new obligations on agencies to conduct electronic searches according to FOIA requesters' specifications. These are the major electronic record provisions of the amendments pertaining to the handling of FOIA requests. Nor do there appear to have been significant difficulties or disagreements regarding use of the new "expedited processing" provision of EFOIA by members of the news media. We continue to encourage agencies to work as cooperatively as possible with all FOIA requesters in matters pertaining to the timing of agency responses to FOIA requests.

To be sure, though, it has been observed that many agencies have had a more difficult time in their development of web sites implementing the electronic availability provisions of EFOIA. This is an area of FOIA administration that is relatively unfamiliar for Federal agencies, and the process of individual agency web site development for the most efficient implementation of EFOIA's electronic availability provisions is a continuing one. To further facilitate this process, the Department is planning to hold a FOIA Officers Conference -- a gathering of the principal FOIA administrative officers of Federal agencies -- next month. At this conference, we plan to review particular

points of effective web site development for FOIA purposes and to address any questions that agencies may have on this important subject. The Department will urge all Federal agencies to focus on the importance of their continued efforts in this and other areas of EFOIA's implementation.

In conclusion, the Department of Justice looks forward to continuing to work together with the Subcommittee on matters pertaining to the implementation of the Freedom of Information Act, and I would be pleased to try to answer any question that you or any other Member of the Subcommittee may have on this subject.

Mr HORN. Mr Collingwood.

Mr. COLLINGWOOD. Mr. Chairman, thank you for the opportunity to testify.

Two of your earlier witnesses on the panel that came before us identified backlogs as one of the two significant problems facing FOIA and the implementation of EFOIA. It is our view, as we testified to 2 years ago in front of your committee, and it remains our view that the FBI's level of backlogs in our FOIA process remains intolerably high.

At the risk of agreeing with Ms. Kirtley, the journalist on the previous panel, delay in the FOIA process is, in fact, a tremendously significant problem for the Bureau. But I am pleased to report today that we are making some substantial progress.

It remains our view that responsiveness under FOIA is a critical and important factor in the degree of confidence and in maintaining public confidence in the FBI and our ability to investigate under the rule of law. The vast majority of our requesters, nearly 75 percent, are the people that you have identified as average citizens who are seeking information from the FBI, and we want them to be sure that we are investigating violations of the law in the manner that is intended under the rule of law, and we think and we believe that FOIA is a critical to that confidence, and responding on a timely basis is a critical part of that process.

I can assure you that the Attorney General and the Director personally are committed to eliminating the backlog that the FBI has. They both are personally involved in that process, and they both are committed to providing increased public access to FBI records.

Since we were here last time, over the last 18 months, we have taken a number of actions that have streamlined both the operation of our FOIA process and enhanced the efficiency with which we process FOIA requests; and we have managed to eliminate 28 percent of our backlog as well as handle the 13,000 new requests that we get every year for information. We probably have made even greater progress when we count pages and the pages that are in our backlog.

For the very first time since the enactment of the original FOIA, I am pleased to announce to you and I am pleased to tell you that we are absolutely not only committed to eliminating our backlog, but confident that we will, in fact, be able to eliminate our backlog.

In regard to EFOIA, EFOIA, we believe, will greatly assist us in that endeavor. It not only will have all of the benefits that the previous panel described, but it will help us as an agency process our records in a more efficient manner; and it ultimately, we believe, will reduce the workload by making records more accessible online and making records more available in electronic format.

Anybody that has any doubts about the importance of full implementation of EFOIA and the necessity for revising the way in which we do business under FOIA to convert to the electronic format need only watch their school kids do research for school projects and know that they spend considerably more time on computers than they do in libraries. And there is a balancing here that clearly there is a different mindset in America today, and it is one that we need to be prepared with and the FBI needs to be prepared to deal with in that regard.

We have two projects under way that I think are very, very significant in that regard. One is the project to develop within the FBI end-to-end electronic processing of records to make them available in electronic format, and all of our reading room material available in electronic format with most of it available online, as public access would indicate is necessary.

We have two very simple goals, Mr. Chairman. One is to eliminate the backlog as quickly as we can and the other is to produce our records in whatever format best meets the needs of our thousands of requesters. We have a long way to go. We recognize that we have a long way to go, but we are committed to achieving those ends. We are seeing progress toward achieving those ends, and we believe in the end, EFOIA will greatly assist us in that regard.

Finally, I would like to add my thanks to you, your committee, our appropriations committees, and Congress as a whole for providing us not only the tools, but the resources we need to accomplish that.

Mr. HORN. Well, we appreciate that. We are going to get into the question of sufficient resources for all of you, and it sounds like you will have a good report to make on that.

[The prepared statement of Mr. Collingwood follows:]

CHAIRMAN HORN AND MEMBERS OF THE SUBCOMMITTEE, I GREATLY APPRECIATE THE OPPORTUNITY TO APPEAR HERE TODAY. I LOOK FORWARD TO DISCUSSING THE FBI'S EFFORTS TO BE MORE RESPONSIVE TO THE PUBLIC AND OUR MANY REQUESTORS SEEKING INFORMATION PURSUANT TO THE FREEDOM OF INFORMATION AND PRIVACY ACTS--AND TO DISCUSSING OUR PROGRESS IN IMPLEMENTING EFOIA. THIS IS MY FIRST OPPORTUNITY TO APPEAR BEFORE YOU ON WHAT WE BELIEVE IS AN ISSUE THAT ULTIMATELY IS IMPORTANT TO OUR ABILITY TO EFFECTIVELY INVESTIGATE CRIME. I NOTE IT HAS BEEN ALMOST TWO YEARS SINCE THE FBI LAST APPEARED BEFORE THIS PANEL.

SINCE WE WERE LAST HERE, MR. CHAIRMAN, THE FBI HAS MADE SIGNIFICANT STRIDES IN BECOMING MORE RESPONSIVE TO THE PUBLIC BY REDUCING AN

INTOLERABLY HIGH BACKLOG OF PENDING REQUESTS, BY INCREASING OUR EFFICIENCY IN PROCESSING REQUESTS, AND BY MAKING OUR RECORDS AVAILABLE TO THE PUBLIC IN ELECTRONIC FORMAT. WHILE WE STILL HAVE A LONG WAY TO GO TO BE WHERE WE NEED TO BE--THAT IS, NO BACKLOG AND ELECTRONIC PROCESSING END TO END--THE PROGRESS THAT WE HAVE MADE IS DIRECTLY ATTRIBUTABLE TO THE STRONG SUPPORT WE HAVE RECEIVED FROM CONGRESS AND THE SHARED PERSONAL COMMITMENT OF ATTORNEY GENERAL RENO AND DIRECTOR FREEH. THIS SUPPORT IS ENABLING US BOTH TO VASTLY INCREASE OUR RESPONSIVENESS TO THE PUBLIC AND THE EFFICIENCY WITH WHICH WE PROCESS RECORDS. WE ALL SHARE THE VIEW THAT AN EFFECTIVE FOIA FUNCTION CAN ONLY HELP TO INCREASE THE PUBLIC'S CONFIDENCE IN THE FBI AND OUR ABILITY TO INVESTIGATE VIOLATIONS OF THE LAW CONSISTENT WITH

THE RULE OF LAW.

IN LATE OCTOBER, 1996, WITH THE FULL SUPPORT OF ATTORNEY GENERAL RENO AND THE CONSENT OF CONGRESS, DIRECTOR FREEH MOVED THE FOIA FUNCTION TO MY OFFICE. HE DID THIS TO RAISE THE PROFILE OF THE FUNCTION WITHIN THE FBI AND TO PROVIDE FOR GREATER EXECUTIVE INVOLVEMENT AND OVERSIGHT OF THE FUNCTION. IN ADDITION, OUR APPROPRIATIONS COMMITTEES AND ULTIMATELY CONGRESS IN FISCAL YEAR 1997 PROVIDED ADDITIONAL RESOURCES. ADDITIONAL RESOURCES WERE PROVIDED IN FY 1998. THE MESSAGE FROM BOTH ATTORNEY GENERAL RENO AND DIRECTOR FREEH AND FROM CONGRESS WAS CLEAR: THE FBI MUST REVERSE THE DECADE-LONG TREND OF AN INCREASING BACKLOG OF REQUESTS. I AM PLEASED TO REPORT THAT WE HAVE DONE THAT BUT, AGAIN, WE

RECOGNIZE THAT WE HAVE A LONG WAY TO GO TO BE WHERE WE NEED TO BE.

PLEASE ALLOW ME TO DESCRIBE A FEW OF THE HIGHLIGHTS SINCE THE FBI WAS LAST HERE.

* WE HAVE ESTABLISHED MONTHLY AND YEARLY GOALS DESIGNED TO ELIMINATE THE BACKLOG BY 2001, AND WE ARE MEETING THESE GOALS.

* THE BACKLOG OF PENDING REQUESTS PEAKED AT 16,426. IT NOW STANDS AT 11,889, A 28 PERCENT REDUCTION. THIS IS IN ADDITION TO HANDLING THE APPROXIMATELY 13,000 NEW REQUESTS WE RECEIVE EVERY YEAR. THERE HAS BEEN AN EVEN GREATER REDUCTION IN THE NUMBER OF TOTAL PAGES IN THE BACKLOG WAITING TO BE

PROCESSED.

* WE HAVE ESTABLISHED A BACKLOG MANAGER WHOSE SOLE FUNCTION IS TO LOOK FOR WAYS TO INCREASE THE EFFICIENCY WITH WHICH WE PROCESS REQUESTS; TO BETTER MANAGE THE FLOW OF PENDING REQUESTS; AND TO ORGANIZE AND MAINTAIN THE REQUEST QUEUES CONSISTENT WITH EFOIA.

* WE HAVE ESTABLISHED A PUBLIC INFORMATION OFFICER WHO FUNCTIONS TO HELP THE PUBLIC IDENTIFY RECORDS, MAKE REQUESTS AND ACQUIRE INFORMATION.

* WE HAVE ESTABLISHED A NEGOTIATION TEAM, CONSISTENT WITH EFOIA, TO HELP MEET THE

NEEDS OF REQUESTORS ON A MORE TIMELY BASIS.

* WE HAVE FOCUSED HARD ON OUR OLDEST CASES TO GET THEM PROCESSED AND CLOSED.

* WE HAVE ESTABLISHED A HELP DESK TO EXPEDITE THE PROCESSING OF FBI RECORDS HELD BY OTHER AGENCIES SO THAT THEIR FOIA REQUESTS ARE NOT DELAYED BY THE FBI. IN SOME INSTANCES THIS DESK HAS REDUCED TURNAROUND TIME FROM YEARS TO DAYS OR HOURS.

* WE HAVE REORGANIZED AND STREAMLINED OPERATIONS TO SUBSTANTIALLY INCREASE THE PRODUCTIVITY OF THE ANALYSTS WHO PROCESS

OUR RECORDS FOR RELEASE.

* WE HAVE ESTABLISHED A LITIGATION FUNCTION TO RELIEVE LINE ANALYSTS OF THE BURDEN OF HANDLING LITIGATION, THUS INCREASING THE TIME AVAILABLE FOR PROCESSING.

* WE HAVE INTENSIFIED TRAINING OF OUR EMPLOYEES TO MAKE THEM MORE EFFECTIVE IN THEIR ASSIGNED AREAS OF RESPONSIBILITY.

* WE HAVE HIRED ALL OF THE NEW PEOPLE CONGRESS FUNDED IN FISCAL YEAR 1997 AND ASSIGNED THEM TO WORK IN NON-MANAGEMENT POSITIONS THAT CONTRIBUTE DIRECTLY TO OUR BACKLOG REDUCTION EFFORTS.

THESE ARE A FEW OF THE THINGS WE HAVE DONE, AND WE ARE PLEASED THAT THEY HAVE HAD A MEASURABLE IMPACT. REALISTICALLY, THERE ARE MANY POSSIBLE FUTURE FACTORS THAT COULD ADVERSELY AFFECT OUR CONTINUED SUCCESS-SUCH AS INCREASES IN LITIGATION OR DRAMATIC INCREASES IN THE NUMBER OF REQUESTS. BUT WE ARE CONFIDENT NOW THAT THE 10-YEAR TREND OF AN INCREASING BACKLOG IS PERMANENTLY REVERSED. WE ARE CONFIDENT THAT THE BACKLOG WILL BE ELIMINATED.

IN REGARD TO COMPLIANCE WITH EFOIA, I AM LIKEWISE PLEASED TO REPORT THAT WE HAVE SOME EXCITING ADVANCES UNDERWAY. WE ARE FULLY COMMITTED TO BOTH THE LETTER AND SPIRIT OF THIS NEW LAW, AND WE BELIEVE THAT ULTIMATELY ITS PROVISIONS WILL DECREASE NOT INCREASE OUR

WORKLOAD MANY OF THE PROVISIONS CODIFY WHAT ALREADY IS OUR PRACTICE.

AGAIN, I WOULD LIKE TO PROVIDE SOME HIGHLIGHTS.

* THE FBI IS COMMITTED TO PLACING ITS FOIA PUBLIC READING ROOM ON THE FBI'S WEB SITE. TO DATE, WE HAVE PLACED 37 OF OUR MOST REQUESTED CASES ON-LINE, ENCOMPASSING OVER 19,000 PAGES OF TEXT. SO FAR THIS YEAR THESE CASES HAVE BEEN ACCESSED BY THE PUBLIC OVER 1.4 MILLION TIMES. WE HAVE BOTH THE TECHNOLOGY AND RESOURCES TO EFFECTIVELY CONTINUE THIS PROCESS.

* WE HAVE EXAMINED MANY POSSIBLE AUTOMATED SYSTEMS FOR RECORD PROCESSING AND RELEASE OF DOCUMENTS IN AN

ELECTRONIC FORMAT AND BELIEVE WE HAVE IDENTIFIED AN EFFECTIVE AND EFFICIENT SYSTEM. WE WILL TEST A PILOT OF THIS SYSTEM IN THE NEAR FUTURE TO ENSURE ITS VIABILITY. WE HAVE BOTH THE RESOURCES AND PEOPLE TO FULLY AUTOMATE THE PROCESS.

* WE HAVE FULLY ADOPTED THE MULTI-TRACK PROCESSING REGIMEN.

* WE ARE CREATING AN ELECTRONIC INDEX OF ALL THE MATERIAL IN OUR PUBLIC READING ROOM AND WILL MAKE THAT AVAILABLE ON OUR WEB SITE.

* WE HAVE A FULLY FUNCTIONING NEGOTIATION TEAM IN PLACE THAT IS SUCCESSFULLY

WORKING WITH REQUESTORS TO MORE EFFECTIVELY MEET THEIR NEEDS.

* NEW CASES ADDED TO OUR READING ROOM WILL BE ADDED IN AN ELECTRONIC FORMAT.

MR. CHAIRMAN, RESPONSIVENESS UNDER FOIA IS AN IMPORTANT FACTOR IN MAINTAINING THE TRUST AND CONFIDENCE OF THE AMERICAN PEOPLE. WE VERY MUCH APPRECIATE THIS COMMITTEE'S ATTENTION TO THE ISSUE AND THE SUPPORT CONGRESS HAS GIVEN US. I CANNOT STATE THAT ALL OF OUR PROBLEMS ARE SOLVED, BUT WE ARE CONFIDENT THAT THE COURSE WE ARE PURSUING

WILL ELIMINATE OUR BACKLOG. MORE THAN ANY OTHER ACHIEVEMENT, WE BELIEVE THIS IS THE MOST IMPORTANT TASK BEFORE US.

Mr. HORN. Ms. Riep-Dice.

Ms. RIEP-DICE. Good morning. I would like to thank you for the opportunity to appear before this committee to discuss NASA's implementation of the EFOIA.

NASA is a civilian agency dedicated to research and development in space and aeronautics. Unlike the other members of this panel, NASA is not an enforcement or regulatory agency. We are chartered through the National Aeronautics and Space Act to provide for the widest practicable and appropriate dissemination of information concerning its activities. We take this very seriously.

Beyond this obligation, NASA, like all other Federal agencies and departments, is obligated to provide information to the public under the FOIA unless the information meets one of the statutory exceptions. The enactment of the EFOIA is the next logical step to ease public access to government information.

After the enactment of EFOIA, NASA analyzed the EFOIA mandates. We then met with the appropriate officials at the Department of Justice and received their full support and encouragement to proceed. Listed below is a chronology of the major events.

In April 1997, all NASA FOIA offices and offices of chief counsel were notified of the final passage of the EFOIA. We established an electronic FOIA reading room on the NASA headquarters FOIA home page, which had been in existence for over a year. A FOIA guide for requesters was posted on the headquarters FOIA home page. NASA created this guide to be informal and user friendly. The NASA headquarters FOIA home page was relocated to the entrance level of both the NASA headquarters home page and the agency home page to facilitate public access.

In May 1997, at NASA's annual FOIA conference, headquarters notified all NASA center FOIA offices of the steps that headquarters had taken and provided them with the guidelines necessary for the establishment of the center FOIA home pages.

In June 1997, the chief information officer, in coordination with the Offices of Public Affairs and General Counsel, issued a CIO executive notice, 21–97, directing each center to establish and maintain an electronic reading room on the World Wide Web by November 1, 1997. The notice also directed each center to establish a FOIA home page with an electronic mail address to each site, beginning with FOIA at the appropriate center.nasa.gov. The notice further directed that the FOIA home page must reside prominently on each center's home page so that the general public could easily access it.

These FOIA home pages satisfy several of the requirements of the EFOIA. They contain electronic reading rooms, instructions on processing a FOIA request, links to other NASA sites, both FOIA and the front entrances, and other information as deemed appropriate by a center. The Office of Public Affairs provides guidance on the information to be placed in the electronic reading rooms.

In June 1997, NASA headquarters employees were notified via an electronic message and the center public affairs directors, via a memorandum by the acting associate administrator for public affairs, of the establishment of the electronic reading room on the NASA headquarters FOIA home page as a result of the enactment of the EFOIA. By early this summer, NASA will publish our re-

vised FOIA regulations which will reflect all changes required by the EFOIA.

NASA headquarters, we are proud to say and are fairly confident in saying, was the first U.S. Government agency to establish a FOIA home page which satisfied the EFOIA reading room requirement, approximately 8 months in advance of the November 1997 deadline. Today, all of our centers have a FOIA home page on the web. Although they may vary in design, all of the home pages contain the information required by the EFOIA.

In addition, NASA began accepting electronic FOIA requests in May 1997. While this is not a requirement of the EFOIA, we believe it facilitates public access.

Since January 1998, the NASA headquarters FOIA office has received approximately 500 electronic FOIA requests. Many of those requests are for documents that are already publicly available without submitting a FOIA request.

During May 1998, the NASA headquarters FOIA home page received a total of 162,911 visitors. We are proud that NASA FOIA home page has been recognized in the trade publications during the last year, such as Government Executive, Government Computer Magazine, and the Department of Justice FOIA update, as a leader in meeting the needs of the public through the innovative use of information technology.

The establishment of the electronic reading rooms has reduced the number of FOIA requests for documents that are consistently requested through FOIA, because they are directly accessible by the public. While it is too early to tell whether the overall number of FOIA requests will be reduced as a result of establishing the electronic reading room, we believe this is a promising trend.

Although the FOIA home page has reduced the number of requests for certain frequently requested documents, it has increased the number of electronic requests. NASA believes that with the passage of time and the electronic medium replacing paper, this could create a cost savings in the future while improving public access to NASA's information.

Mr. Chairman, this concludes my testimony, and I will be happy to answer any questions you may have.

[The prepared statement of Ms. Riep-Dice follows:]

Hold for Release
Until Presented by Witness
June 9, 1998

Statement of

Patricia M Riep-Dice
Freedom of Information Act Officer
National Aeronautics and Space Administration

before the
Subcommittee on Government Management, Information and Technology of the
Committee on Government Reform and Oversight

Good morning, Mr. Chairman and Members of the Subcommittee. I would like to thank you for the opportunity to appear before you today to discuss NASA's implementation of the Electronic Freedom of Information Act Amendments (E-FOIA).

The National Aeronautics and Space Administration (NASA) is a civilian agency dedicated to research and development in space and aeronautics. Unlike the other members of this panel, NASA is not an enforcement or regulatory agency. NASA is chartered, through the National Aeronautics and Space Act, to provide for the widest practicable and appropriate dissemination of information concerning its activities. We take this obligation seriously. Beyond this obligation, NASA, like all other federal agencies and departments, is required to provide information to the public under the Freedom of Information Act unless the information meets one of the statutory exceptions. The enactment of the E-FOIA is the logical next step to ease public access to government information.

After the enactment of the E-FOIA, NASA analyzed the E-FOIA mandates. We then met with the appropriate officials at the Department of Justice, and received their full support and encouragement to proceed. Listed below is a chronology of major events:

- In April 1997, all NASA FOIA Offices and Offices of Chief Counsel were notified of the final passage of the E-FOIA.
- In April 1997, we established an Electronic FOIA Reading Room on the NASA Headquarters (HQ) FOIA Homepage, which had been in existence for over a year.
- In April 1997, a "FOIA Guide for Requesters" was posted on the HQ FOIA Homepage. NASA created this Guide to be informal and user-friendly.
- In April 1997, the HQ FOIA Homepage was relocated to the entrance level of both the NASA HQ Homepage (http://www.hq.nasa.gov) and Agency Homepage (http://www.nasa.gov) to facilitate public access.

- In May 1997, at NASA's Annual FOIA Conference, Headquarters notified all NASA Center FOIA Offices of the steps that HQ had taken and provided them with the guidelines necessary for their establishment of Center FOIA Homepages.
- In June 1997, the Chief Information Officer (CIO), in coordination with the Offices of Public Affairs and General Counsel, issued CIO Executive Notice 21-97, directing each Center to establish and maintain an Electronic Reading Room on the World Wide Web by November 1, 1997. The Notice also directed each Center to establish a FOIA Homepage with an electronic mail address to each site beginning with FOIA@(appropriate Center abbreviation).nasa.gov. The Notice further directed that the FOIA Homepage must reside prominently on each Center Homepage so that the general public could access it easily.

  These FOIA Homepages satisfy several of the requirements of the E-FOIA. They contain the Electronic Reading Rooms, instructions on processing a FOIA request, links to other NASA sites (both FOIA and front entrances) and other information, as deemed appropriate by a Center. The Office of Public Affairs provides guidance on the information to be placed in the Electronic Reading Rooms. Security against improper access to NASA Information Systems is provided by each Center's information technology organization, consistent with the Agency's information technology security policies, architectures, and standards. In this respect, we try to ensure an appropriate balance between our obligation to disseminate information to the public, the public's right to access appropriate information, and our duty to protect sensitive information and systems from unauthorized disclosure, alteration, or loss.
- In June 1997, the NASA Headquarters employees were notified via electronic message and the Center Public Affairs Directors via a memorandum from the Acting Associate Administrator for Public Affairs, of the establishment of the Electronic Reading Room on the NASA Headquarters FOIA Homepage as a result of the enactment of the E-FOIA.
- By early this summer, NASA will publish our revised FOIA regulations which will reflect all changes required by the E-FOIA.

NASA Headquarters was the first U.S. Government agency to establish a FOIA Homepage which satisfied the E-FOIA Reading Room requirement, approximately 8 months in advance of the November 1997 deadline. Today all of our Centers have a FOIA Homepage on the Web. Although they may vary in design, all of the Homepages contain the information required by the E-FOIA.

In addition, NASA began accepting electronic FOIA requests in May 1997. While this is not a requirement of the E-FOIA, we believe it facilitates public access. Since January 1998, the NASA Headquarters FOIA Office has received approximately 500 electronic FOIA requests. Many of those requests are for documents that are already publicly available without submitting a FOIA request .

During May 1998 the NASA HQ FOIA Homepage has received a total of 162,911 visitors. We are proud that NASA's FOIA Homepage has been recognized in trade publications during the last year, i.e., Government Executive, Government Computer Magazine and the Department of Justice FOIA Update, as a leader in meeting the needs of the public through the innovative use of information technology.

The establishment of the Electronic Reading Room has reduced the number of FOIA requests for documents that are consistently requested through FOIA (i.e. Impact Credit Card Listing, Shuttle Mixed Fleet Manifest and Unidentified Flying Objects) because they are directly accessible by the public. While it is too early to tell whether the overall number of FOIA requests will be reduced as a result of establishing the Electronic Reading Room, this is a promising trend.

Although the FOIA Homepage has reduced the number of requests for certain frequently requested documents, it has increased the number of electronic requests. NASA believes that with the passage of time and the electronic medium replacing paper, this could create cost savings in the future while improving public access to NASA information.

Mr. Chairman, this concludes my testimony. I would be happy to answer any questions you or other Members of the Subcommittee may have.

Mr. HORN. Well, thank you very much. I appreciate that.

Mr. Abel Lopez is the Acting Director, Freedom of Information Division, Department of Energy. Glad to have you with us.

Mr. LOPEZ. Pleased to be here, Mr. Chairman. I'm here to discuss the Department of Energy's progress in implementing the Electronic Freedom of Information Act Amendments of 1996.

Following the President's call upon all Federal agencies and departments to renew their commitment to the Freedom of Information Act, the Department aggressively sought ways to improve its responsiveness to requesters under that act and to support the underlying principles of openness in government.

Since 1993, the Department has made significant changes to increase the direct availability of information on its past and current operations to the public without imposing a burden on its stakeholders to go through the FOIA process.

In July 1996, the Openness Advisory Panel was convened by the Secretary of Energy to assess the Department's progress, and it made recommendations for additional improvements toward its goal of responsible openness. The panel's recommendations focused on three general areas: the classification and declassification processes; improving the availability of information; and changing the culture of secrecy.

While all three of these areas are important, the one most directly related to the FOIA program is improving public accessibility to information. For example, one of the panel's recommendations on improving accessibility included continuation of the development and dissemination of finding aids. In response, the Department is enhancing public access to its information and records in a number of ways, including the redesign of its web home page to provide better pointers to its online document sources and identifying the feasibility of putting existing hard copy finding aids on the internet.

This commitment to openness has resulted in dramatic improvements in the Freedom of Information Act Program. In 1994, our backlog at headquarters was 658 pending cases, a substantial number of which predated 1990. In addition, we could not rely on our data concerning median case processing times and average case age. Our delivery system was so sluggish that requesters sometimes gave up expecting that a response would ever be made.

The situation has been reversed. Now we can accurately report a reduction of more than one-third in the size of the headquarters cases that are in the backlog. We can also report the elimination of all except four requests in the pre-1990 backlog and close to the elimination of the 1990 to 1992 backlog. Many of those requests involved classified information and information that is being reviewed by other agencies.

These improvements reflect a change in attitude toward our obligations to the public to be responsive and efficient. We believe these improvements demonstrate our commitment to openness and to the Freedom of Information Act.

The Department's implementation of the EFOIA amendments requirements is an integral part of the Department's plans for continued and enhanced openness. While much has been accomplished in terms of making records available to the public online in electronic format, challenges remain to improve the system. The Department

is firmly committed to the implementation of the act in order to better serve the American public and our shared objectives of openness in government.

As you know, the EFOIA requires the Department to have implemented certain changes to the public reading rooms to make information more accessible. We have done so.

With respect to the requirement for reading room treatment of Freedom of Information Act disclosures that are likely to become the subject of subsequent inquiries, we are making these records available in those reading rooms. At headquarters these are available electronically within those reading rooms.

With respect to the requirement that records be provided in the formal format requested if readily reproducible in such a format, such as electronic, this has been the Department's procedure for 8 years.

With respect to the requirement that we make reasonable efforts to search for the records in electronic form or format, we currently utilize all available sources to identify and search for responsive records, including electronic data bases.

With respect to the requirement that the Department indicate on records the amount of information deleted, FOIA personnel have been instructed to follow this procedure and the FOIA office ensures that its cases adhere to that procedure as well.

With respect to the requirement that reading room records created on or after November 1, 1997, be made available by electronic means, at Department headquarters; we have processed these records into an imaging system that can be accessed in the reading room, and this is the first step to placing these records online.

We have also adhered to the provisions of the EFOIA relating to the time limit for responses, provisions permitting extensions of time, and multitrack processing of requests. Based on the amount of time to process, we have made reasonable efforts to estimate the volume of entire records or entire pages of information that have been denied to a requester. We also have made improvements to certain other procedural matters such as management of cases, but more needs to be done.

Apart from our progress in implementing the EFOIA and our plans to fulfill requirements that have not yet come due, more work remains to achieve our broader objective of responsible openness.

We intend to promulgate regulations that provide for multitrack processing of requests based on the amount of work or time involved to process those cases, and to implement regulations that provide for expedited processing of requests that demonstrate a compelling need. These are important activities and we plan to have final regulations promulgated by the end of 1998.

Additionally, the Department's Freedom of Information Act Office, working with the Department's Office of Information Management, in working to develop a corporatewide information system that will fully automate the FOIA process and network our headquarters and field sites. However, we must still solve technical and system problems to provide the capacity to post those reading rooms records on the internet.

Our strategic information management process, a front-end corporate analysis of DOE-wide information technology needs, will be completed by the end of the year, and we will identify our alternatives and recommended courses of action for electronic FOIA. Any major corporate investment necessary to implement this system will be tracked through our information technology investment portfolio system.

The Department is also developing a single source inventory and index of all major information systems. This inventory will be further developed by incorporating key identifying information from all major systems within the framework of the Government Information Locator Service, which will be accessible through a revised DOE home page. The Department's GILS application is planned to be operational this month, and followup activities will be continued in the third and fourth quarter of the fiscal year.

Thank you, Mr. Chairman. I am pleased to answer any questions for you.

[The prepared statement of Mr. Lopez follows:]

Mr Chairman and Members of the Subcommittee

I am pleased to appear before you today to discuss the Department of Energy's progress in implementing the Electronic Freedom of Information Act Amendments of 1996. My name is Abel Lopez, and I am the Acting Director of the Department of Energy's Freedom of Information Act Office.

Background

Following the President's call upon all Federal departments and agencies to renew their commitment to the Freedom of Information Act in October 1993, the Department of Energy aggressively sought ways to improve its responsiveness to requesters under that Act and to support the underlying principles of government openness. We fully supported the President's Openness Initiative, and we are proud of the progress and improvements we have made since that time.

Since 1993, the Department has made significant changes to increase the direct availability of information on its past and current operations to the public, without imposing a burden on its stakeholders to go through the FOIA process.

In July 1996, the Openness Advisory Panel was convened by the Secretary of Energy to assess

the Department's progress, and it made recommendations for additional improvement toward its goal of responsible openness in September 1997. The Panel's recommendations focused on three general areas:

- The Classification and Declassification Processes
- Improving the Accessibility of Information
- Changing the Culture of Secrecy

While all three of these areas are important, the one most directly related to the FOIA program is improving public accessibility. For example, one of the Panel's recommendations on improving accessibility included continuation of the development and dissemination of "Finding Aids." In response, the Department is enhancing public access to its information and records in a number of ways, including the redesign of its Web Home Page to provide better pointers to its "on-line" document sources and identifying the feasibility of putting existing hard copy finding aids on the Internet.

This commitment to openness has resulted in dramatic improvements in the Freedom of Information Act program. In 1994, our backlog at headquarters was 658 pending cases; a substantial number of which pre-dated 1990. In addition, we could not rely on our data concerning median case processing times and average case age. Our delivery system was so sluggish that requesters sometimes gave up expecting that a response would ever be made.

This situation has been reversed. Now, we can accurately report a reduction of more than one-third in the size of the headquarters case backlog from 1994. We can also report the elimination

of all except four requests in the pre-1990 backlog and close to the elimination of the 1990-92 backlog. Many of these requests involved classified information and information that is being reviewed by other agencies.

These improvements reflect a change in attitude toward our obligations to the public to be responsive and efficient. We also believe these improvements demonstrate our commitment to openness and to the Freedom of Information Act.

The Department's implementation of the Electronic Freedom of Information Act Amendements of 1996 requirements is an integral part of the Department's plans for continued and enhanced openness to the public. While much has been accomplished in terms of making records available to the public on-line in electronic format, challenges remain to improve the system. The Department is firmly committed to implementation of the Electronic Freedom of Information Act Amendments in order to better serve the American public and our shared objectives of openness in government.

Progress To Date

As you know, the Electronic Freedom of Information Act Amendments require the Department of Energy to have implemented certain changes to the Public Reading Rooms to make information more accessible to the public. We have done so.

- With respect to the requirment for Reading Room treatment of Freedom of Information Act disclosures that are likely to become the subject of

subsequent inquiries, we are making these records available in the Public Reading Rooms At Headquarters, these are available electronically.

- With respect to the requirement that records be provided in any form or format requested if readily reproducible in such a format, such as an electronic format, this has been Department of Energy procedure for eight years.
- With respect to the requirement that we make reasonable efforts to search for the records in electronic form or format, we currently utilize all available sources to identify and search for responsive records, including electronic databases.
- With respect to the requirement that the Department indicate on records the amount of any information deleted, Freedom of Information Act personnel have been instructed to follow this procedure and the Freedom of Information Act Office ensures that its cases adhere to the procedure.
- With respect to the requirement that Reading Room records created on or after November 1, 1997 be made available by electronic means, at Department Headquarters, we have processed these records into an electronic imaging system that can be accessed in the Public Reading Room.
- We have also adhered to the provisions in the FOIA Amendments relating to the time limit for responses, provisions permitting extensions of time, and multi-track processing of requests. Based on the amount of time necessary to process, we have made reasonable efforts to estimate the volume of entire records or entire pages of information that have been denied to a requester, and we have made improvements to certain other procedural matters such as the management of cases.

These changes reflect major progress, but there is more to be done

Next Steps

Apart from our progress in implementing the Electronic Freedom of Information Act Amendments and our plans to fulfill requirements that have not yet come due, more work remains to be done to achieve our broader objective of responsible openness.

We intend to promulgate regulations that provide for multi track processing of requests based on the amount of work or time involved to process cases, as well as regulations that provide for expedited processing for the requests demonstrating compelling need (threat to life or physical safety and urgency concerning actual or alleged government activity). These are important activities and we plan to have final regulations promulgated by the end of 1998.

Additionally, the Freedom of Information Office, working with the Department's Office of Information Management, is working to develop a corporate-wide information system that will fully automate the FOIA process and network our headquarters and field sites.

We still must solve the technical and system problems to provide the capacity to post headquarters and field reading room records on the Internet. Our Strategic Information Management Process, a front-end corporate analysis of DOE-wide information technology needs will be completed by the end of the year and will identify our alternatives and recommended courses of action for Electronic FOIA. Any major corporate investment necessary to implement this system will be tracked through our Information Technology Investment Portfolio System.

The Department is also developing a single source inventory and index of all major information systems. This inventory will be further developed by incorporating key identifying information from all major Department systems within the framework of the Government Information Locator Service (GILS), which will be clearly accessible through a revised DOE Home Page. The Department's GILS application is planned to be operational this month. Follow-on activities to assure that all major information systems are identified through the GILS application are planned for the third and fourth quarter of this fiscal year.

At this point, I believe we have made substantial progress towards compliance with all the Electronic FOIA requirements to date and anticipate to be in compliance with future requirements as they come into effect.

This completes my statement, Mr. Chairman. I would be pleased to answer any questions you may have.

Mr. HORN. We thank you, Mr Lopez. Let me just ask you one technical question that might be just a typo that you have in your testimony. You noted in your written statement, and orally just a minute ago, that DOE provides electronic access to reading room records created after November 1, 1997. The law, however, puts the cutoff at November 1, 1996, and I just wonder, is that a typo——

Mr. LOPEZ. That was a typo.

Mr. HORN [continuing]. Or does Energy have a different interpretation?

Mr. LOPEZ. It was my own typing.

Mr. HORN. You mean we're down to that in Energy now? The executives have to do their own work, that's the new age.

Mr. Sununu and I are going to alternate about 5 minutes each to get through a rather broad questioning agenda and other questions that we have. But let's start with the simple ones.

I'm going to first ask you, Mr. Huff, describe for me the role of your particular office within the Department of Justice. Besides advice, is there any encouragement your office can give to the various operating agencies of Justice? How does that office work?

Mr. HUFF. Our office conducts a number of functions. The primary function in terms of our manpower is to adjudicate all administrative appeals from denials of the Department of Justice. And last year we received 3,300 appeals, and that was on a 9-month reporting period; annualized that would be approximately 4,400 administrative appeals.

Within the Federal Government, we do give advice, as I had mentioned in my testimony, and we encourage agencies to comply. Within the Department itself, a large part of the information and the encouragement that we give to our own components is done two ways: one, through administrative appeals, and when we're acting on an action where a component is being required to release additional information, we of course talk with that component about why they need to release that, and hopefully that particular issue won't come up so frequently in the future. So that's one of the ways.

The other way is we can conduct training, not only government-wide, but we occasionally will hold training seminars within the Department of Justice itself in which we speak to the FOIA leadership of the different components of the Department of Justice. Those are the principal ways.

Mr. HORN. You basically also review that booklet which we print every so many years through the committee, I take it?

Mr. HUFF. We have had an opportunity to review that, and we have been delighted to do that.

Mr. HORN. You have done an excellent job on that. The reason I ask is, I hear complaints about the Immigration and Naturalization Service in terms of backlog. I just wonder, who in the hierarchy can talk—have a little chat—with the Commissioner, shall we say, and see how we can solve these problems? Who would that be in Justice that has operational control there?

Mr. HUFF. Well, I think first of all it would be the Commissioner herself. One of the actions that the Attorney General has taken during the past year was to have a backlog coordinator assigned, and that person, who works in our office, is a senior person whose

principal obligation is to look at backlogs, at all of the different components of the Department of Justice, check to see how they are being reduced, give them reasonable goals for cutting them.

We've had a number of success stories that are mentioned in my testimony. And you certainly pointed out, other than the FBI, I think right now our biggest concern is the Immigration and Naturalization Service. So Ms. Sessions, the backlog coordinator in our office, deals with the Attorney General and deals with the components, with their backlog problems. So I think there is a connection through those two, if I completely understand your question.

Mr. HORN. Yes. I was wondering, who can give some guidance, encouragement, perhaps advice as to how they can solve their problem in a place like Immigration and Naturalization?

Mr. HUFF. I think Ms. Sessions, and I think also people within Immigration itself are working toward improving the quality of that. They have, in fact, lowered their backlog, it's just not being lowered enough. They are going to be—they are receiving more personnel and more resources.

Mr. HORN. Well, on that point I can yield to Mr. Sununu now. We'll start in on a number of areas we want to explore.

Mr. Sununu, 5 minutes.

Mr. SUNUNU. Thank you, Mr. Chairman.

Why don't we begin with Mr. Lopez, but this is a general question for each of the panelists.

One of the requirements of the 1996 amendments was that if a document is subject to more than one request, that it be put online in the so-called electronic reading room. My question is, how do you determine exactly whether a document fits that description, and what is the total number of documents that have been put online as a result of this requirement?

Mr. LOPEZ. At the moment we have not issued departmentwide guidance on that, but what we have been using as procedure, and we have instructed our FOIA offices in the field to do as well——

Mr. SUNUNU. It seems like a pretty straightforward requirement. Why haven't you issued departmentwide guidelines?

Mr. LOPEZ. We issued oral guidance, and I haven't issued—because of the fact we are decentralized through the field, and the nature of some of the information that is in some of those field offices, we are trying to develop something that can be both standard to be used across a Department complex, across the country, as well that takes into account those specific information needs of that particular field office.

However, we have for many years been placing information and imaging information that is frequently identified, particularly that deals with health, safety, and environmental issues at the Department, even if there was just one request for it. Other areas of interest to the public that we have put—made it frequently available or available in our reading rooms, are documents which relate to particular actions or activities that the Department may be taking in certain areas of the country, such as the West.

Mr. SUNUNU. Do you have plans to issue a formal document?

Mr. LOPEZ. Yes, we do.

Mr. SUNUNU. When would that be?

Mr LOPEZ We're hoping to issue this in conjunction with the issuing of our draft FOIA regs which will be coming out in the next 6 weeks.

Mr. SUNUNU. Does NASA have a formalized system?

Ms. RIEP-DICE. We have an annual conference which we had in April of this year. At that conference, we informed all of the FOIA officers of the basic documents that they would have online. Anything additional that they choose, they were capable of doing themselves. We told them that anything over two requests would automatically go online. So we have told them formally at the conference that that's how they were to proceed.

Mr. SUNUNU. Approximately how many documents have been put online subject to the multiple request requirement?

Ms. RIEP-DICE. At the moment I can only answer for headquarters. I'm not sure about our centers. Headquarters has six documents online now that we've had multiple requests for.

Mr. SUNUNU. And as a result, do you sense, at least at headquarters, that this has reduced the number of requests?

Ms. RIEP-DICE. Yes, sir.

Mr. SUNUNU. Putting additional documents?

Ms. RIEP-DICE. Yes, several of the requests. One is the impact credit card list, which, and I'm sure most agencies get them. We would get up to five a week. We don't get them any more. People will just call us and say do you have them online?

Mr. SUNUNU. Mr. Collingwood, do you have a formalized system?

Mr. COLLINGWOOD. We have a system for identifying those cases, yes, Congressman. For us it's—really a short answer to a complicated situation is that we are, as far as our electronic reading room goes, identifying those cases and putting them online based on how often they're requested, to cut down on the number of requests. And we've had 1.4 million instances where people have downloaded those files.

On the current requests that we have, we do have a process for identifying those. In all honesty, our effort right now is to reduce the backlog because it's so high. And we do intend to identify cases as they're requested, multiple requests, and put them online. The first case that probably will fall in that category is Andrew Cunanan, the investigation.

Mr. SUNUNU. How high is the backlog?

Mr. COLLINGWOOD. The backlog currently is 11,889 requests, which is astronomical, I understand, but down substantially from where it was.

Mr. SUNUNU. And, to be clear, are you saying you do impose a two-or-more request rule to put something in the reading room?

Mr. COLLINGWOOD. We have not yet, simply because if we did that, it would have such a substantial impact on our ability to reduce the backlog that we can't do that. Once the backlog is completely manageable and dropping at a satisfactory rate, then, yes, we're prepared to do that.

Mr. SUNUNU. One question that I have is to what extent would putting in place a rule and carrying it out help reduce the backlog? It would seem that a number of the 11,000 requests are probably for those documents that have multiple requests. Or are you sug-

gesting that there are 11,000 requests for individual documents and they're all unique requests?

Mr. COLLINGWOOD. No, they're not all unique requests. There are many that would fall in that category. We have the ability to identify those and put them aside and put them on that. We have a process ongoing for developing a system to do that.

What we don't want to do at this point is do anything that will negatively impact on our ability to reduce the backlog. We are at the same time developing an end-to-end automated process that will allow us to do this very, very easily, simply by inserting a disk and uploading the information onto a website.

Mr. SUNUNU. Are you suggesting that the backlog is a result of a lack of resources?

Mr. COLLINGWOOD. I'm suggesting that the backlog came about for several reasons; the lack of resources, which has now been generously cured by Congress, was one of those reasons. There were some inefficiencies in those processes that we're confident we have now addressed.

Mr. SUNUNU. Thank you, Mr. Chairman.

Mr. HORN. Let me pursue where Mr. Sununu left off here. What is the average time it takes now to fulfill a request? When you last appeared before us, it was 4 years, as I remember. What is it now?

Mr. COLLINGWOOD. In an average, it's approximately 895 days, but that's somewhat deceiving because we have fully embraced and adopted the multiple queue scheme, which I think has greatly expedited the smaller cases to where we're producing many of those in the 1996, 1997 timeframe. Some of the older project cases that are an enormous number of documents are still in all honesty quite old, but we're aggressively addressing those as well.

Mr. HORN. What is the situation in the FBI that might be quite different than the requests in the Department of Energy, for example, or NASA? It seems that a lot of those requests are people looking at their individual files, and you wouldn't really have, unless it was a case that had notoriety or something, you really wouldn't have a request for 2, 3, 10, 20, I assume, with that file. Is that true, or what is the nature of the requests you receive?

Mr. COLLINGWOOD. That is true. Seventy-five percent of our requests come from individual requesters; 14 to 15 percent come from prisoners. Many of our requests are precisely that, individuals wanting to know if the FBI has information about them, and they are definitely a priority, and that more than anything else, Mr. Chairman, I believe is what we need to address. We need to be as timely as possible in addressing individual requesters.

Mr. HORN. Well, just going down the line, what do you think is the major problem in the law that prevents you from fulfilling the 1996 amendments? Mr. Huff, do you see any major problem or is it just resources?

Mr. HUFF. I think in terms of the difficulties we have in complying with the law, it is twofold. One is resources. In the Department of Justice, we are increasing our resources through a wide variety of components, and we are also taking other avenues to increase resources, other than just personnel, to address the backlog. That's certainly one.

The other one, quite candidly, is the fact that information technology and the requirements in how we go about getting a document online is something that still occasionally bedevils us, when we have a document in one format and we've got to move it into another format and we've got to get it up online. And I'm sure that there are 16-year-olds that can do that in minutes, but I'm sad to say for some of us it takes far longer to do that, and that is one of the aspects.

Also one of the techniques that OMB Watch suggested that can be done in terms of better linkage back and forth between a home page—a FOIA home page, an electronic reading room and back and forth, is something that almost every one of our components has now incorporated, something that we hadn't done before.

So these are some of the things where it may be—I don't mean to suggest that only OMB Watch has a 16-year-old helping them with respect to that—where we have now said, yes, this is a good idea and we're doing that.

But the information technology problem is our second one. And I do want to agree with Mr. Collingwood, backlogs are still I think No. 1. But the two of them I see are both concerns.

Mr. HORN. Do you have sufficient modern scanning equipment that can move it from one form into the other?

Mr. HUFF. In some parts of the Department of Justice, we do. I think we need—my own view is we need more. There are parts of the Department of Justice—and as you know, we've got over 30 different components of the Department of Justice; two of those components, the INS and the FBI, have 50 field offices or district offices that make disclosures themselves. So we have got in excess of 100 different entities that are FOIA offices.

And the answer to your question is: Do you in every case? The answer is no, not in every case.

Mr. HORN. Is there any way to share some of the latest equipment, because these go through fairly rapid generations, with other portions of the Department of Justice or even throughout the government? Is there some way we could solve that by a good technology and share it?

Mr. HUFF. That's something that we are certainly working on. Our Justice Management Division is an area where I think we are most likely to find the most sophisticated equipment, and I think that we are still working on getting greater availability of that. Certainly that equipment has other requirements on it as well as FOIA, but——

Mr. HORN. Mr. Collingwood, any additions to the resources and the technology aspects that Mr. Huff has suggested?

Mr. COLLINGWOOD. I think for the FBI it came down to three things: One is eliminating the backlog, which is streamlining and resource issues. Those have both been addressed either by us or by Congress. Two is absolute commitment to get this job done and be more responsive to the public. That has been addressed by both the Attorney General and the Director. Three is what Dick says is technology. There is a lot of technology out there. It's changing very rapidly. Some of the systems that were developed to address FOIA are now grossly outdated even though they're only a couple of years old.

I would like to mention to the committee—and the Bureau is in the process of adopting and automating our system, which will greatly facilitate both the reduction of the backlog and making records publicly available—I would like to just briefly mention that there is one project that's in the academic community called the digital library, which is developing technology that will be very, very useful for placing our reading room material on our website and we are adopting that technology and receiving substantial support for doing that. So we're very excited about that.

Mr. HORN. Ms. Riep-Dice, do you have any suggestions as to what are the principal barriers to the full implementation of EFOIA that you've encountered?

Ms. RIEP-DICE. Mr. Chairman, I believe I'm probably one of the few FOIA officers that can really say I work for a very high-technology agency. So I was very lucky in going back to my management and telling them what we needed and the support, the majority of the support was already there, just it was something that the FOIA office had not really been using to its greatest extent. We had a tracking system, but that was about it. So I feel that I was a lucky person and the agency was lucky in that we didn't have a hard time with it.

Mr. HORN. Do you have a backlog in NASA?

Ms. RIEP-DICE. Very little.

Mr. HORN. What are we talking about?

Ms. RIEP-DICE. Oh, we probably throughout the whole agency we have less than 100 backlog, and we're talking backlog of between 20 and 40 days.

Mr. HORN. Between 20 and 40 days?

Ms. RIEP-DICE. Yes, sir.

Mr. HORN. And 100 requests?

Ms. RIEP-DICE. In that 20- to 40-day timeframe.

Mr. HORN. Well, anything else?

Ms. RIEP-DICE. No, sir.

Mr. HORN. So resources is not a problem, even though Mr. Goldin's budget was cut twice, $5 billion each time, by the President? He didn't take it out of your unit, then?

Ms. RIEP-DICE. No, sir. The FOIA office within NASA does not have its own budget. So maybe then I'm a little bit lucky in that respect. We have a budget within the Office of Public Affairs, and it's not on paper budget. I just kind of go and ask them and they evaluate it.

Mr. HORN. Good. Mr. Lopez, what about Energy?

Mr. LOPEZ. I would concur with Mr. Huff that the Department of Energy needs resources as well, both for the acquisition of a fully integrated technical system, as well as resources and personnel to carry on the work of the FOIA.

Mr. HORN. What's your backlog now?

Mr. LOPEZ. The headquarters backlog is 419.

Mr. HORN. Four hundred and nineteen requests?

Mr. LOPEZ. Yes, sir.

Mr. HORN. How many days does it take on the average?

Mr. LOPEZ. It takes us, the processing time is about 495 days.

Mr. HORN. Four hundred and ninety-five days?

Mr. LOPEZ. Yes.

Mr. HORN. Every year?

Mr. LOPEZ. Yes, because some of those cases involve declassification review, again, in coordination with other agencies.

Mr. HORN. And you decide that within the agency itself?

Mr. LOPEZ. Well, the cases that involve classified information or information that has been generated by other agencies are sent to the other agencies, and we continue to carry them on our case load until it's closed up by the other agencies.

Mr. HORN. In other words, the redactions, as they call them lovingly, those are strictly agency decisions then——

Mr. LOPEZ. Yes, sir.

Mr. HORN [continuing]. Or are they sometimes kicked over to other security?

Mr. LOPEZ. They're kicked over to other security because of other security issues.

Mr. HORN. You relate to the Department of Defense very closely.

Mr. LOPEZ. Department of Defense and other agencies as well.

Mr. HORN. Yes. I won't ask where's the Roswell file. I'm tempted, but that's another day.

Mr. SUNUNU. Mr. Chairman, if I could just interrupt on that point for clarification. Mr. Lopez, you're saying that the declassification process somehow interferes with Freedom of Information Act requests?

Mr. LOPEZ. Well, the declassification—well, this is part of the work that is done by the Office of Declassification under the Executive order. There are also responsibilities to declassify or review certain information and so, yes.

Mr. SUNUNU. But your group is the Freedom of Information Division, correct?

Mr. LOPEZ. That's correct.

Mr. SUNUNU. So again, what impact does the declassification have on your work?

Mr. LOPEZ. The impact is that the Office of Declassification is the only office that has the authority to review classified information and to declassify it if it no longer falls within the scope of the provisions of either the Executive order or the Atomic Energy Act classification.

Mr. SUNUNU. But your office isn't asked to review all of these documents that have been declassified?

Mr. LOPEZ. That's right.

Mr. SUNUNU. So the 450 or so backlog requests that you spoke of—how many of those are projects that have been initiated by the declassification group?

Mr. LOPEZ. I don't have that exact number, but I will supply it for the record, if I may.

Mr. SUNUNU. Roughly, how many?

Mr. LOPEZ. I'd say more than 100 of those cases.

Mr. HORN. So you have 419 requests and you're saying over 100 of those involve review for declassification?

Mr. LOPEZ. That's correct.

Mr. HORN. And that takes you 495 days?

Mr. LOPEZ. As an average.

Mr. HORN. As an average. We're talking basically five quarters.

Mr. LOPEZ. Right.

Mr. HORN. Go ahead.

Mr. SUNUNU. But over 400 backlog requests in your office?

Mr. LOPEZ. No, no. Let me clarify that. The Freedom of Information Act office has two ways of processing the FOIA requests. One, we serve as that office which tracks and assigns FOIA cases to other offices within the Departments who have custody of the documents. Two, a centralized system which we entered into 2 years ago, in which we actually process those requests. That average for those cases is about 180 days.

Mr. HORN. I guess I'm a little confused. The 180-day average, what type of request is that? It involves no declassification?

Mr. LOPEZ. That is correct.

Mr. HORN. Give me an idea of a few documents like that.

Mr. LOPEZ. Well, the Department 2 years ago engaged in a central—in piloting a centralized system in which the FOIA office actually would obtain the documents from the program offices, which could include requests for—from the Office of Environment, Health and Safety, radioactive waste, Civilian Radioactive Waste. Those documents are sent to the FOIA office and reviewed within the FOIA office, the deletions are made, and any other concurrence is coordinated within the Department.

The average time for processing of those requests is about 180 days. For those requests the FOIA office does not process, does not actually review the documents and do the deletion, it is 495 cases—495 days.

Mr. HORN. So when the operating divisions have it, they take a lot longer?

Mr. LOPEZ. That is correct.

Mr. HORN. And do you nudge them every once in a while?

Mr. LOPEZ. Yes. The office has improved its processing or tracking of those requests by requiring monthly status reports on that. We also have formed, in the last 2 years, access teams which go into the program offices and assist those program offices on their particular backlogs. We do monthly reports now, weekly and monthly reports, on those cases.

Mr. HORN. So a reporter going in to ask for certain information, they can check with you every month to see where the file is and if it's coming?

Mr. LOPEZ. Yes.

Mr. HORN. So you've got the responsibility? I think it's an interesting idea to use your resources to go down there and say, "Hey, folks, what's the problem, why can't we get this freed up?"

Mr. LOPEZ. And that's how those access teams have been used to assist those offices. We routinely make those available to program offices when they—their backlog seems to increase.

Mr. HORN. When you've got 495 days, it seems to me you need some more resources, don't you?

Mr. LOPEZ. Yes, sir, and that's why I started my response with resources is an issue for us.

Mr. HORN. Mr. Sununu.

Mr. SUNUNU. One, of the requirements of the 1996 amendments was to create or to make available an index of all of your agency information systems. And I'd just like a response from each as to

whether or not you've made that index and a description of the information systems available yet. Mr. Huff.

Mr. HUFF. On behalf of the Department, we have only partially complied with that. We have substantial work that we need to do, very substantial work to do.

Mr. SUNUNU. Given that it's just an index and the description of the system, what's the problem with making it available?

Mr. HUFF. That requirement comes from the Paperwork Reduction Act, and the requirements that the Paperwork Reduction Act places on agencies and the language that EFOIA subsection (g) picked up on said agencies are required to put out major indexes and inventories of major information systems along with a guide. Most certainly we have done a reference guide, and I think we've got a very fine product on that.

But in terms of the other—the major information systems that are required under the Paperwork Reduction Act, that's something that the Department of Justice is—needs to put a lot more time in on, and is beginning to do that and to make that effort. Once we are able to satisfy the obligation of that statute, that will be transferred, and we will immediately or within a very short period of time make it available electronically. That's an area where we need to do a lot more.

Mr. SUNUNU. How many information systems does the Justice Department have?

Mr. HUFF. I don't know. I'm not sure that anyone knows at this time. That is part of the problem.

Mr. SUNUNU. With all due respect, I mean this very sincerely, isn't it your job to know?

Mr. HUFF. It is——

Mr. SUNUNU. The Office of Information and Privacy, it would seem to me that if I had a list of however many thousand people that work at Justice and I wanted to find the one person who could tell me how many information systems Justice had under their auspices, you would be the man.

Mr. HUFF. I would advise you that the Justice Management Division is the component of the Department of Justice that works with information systems, and that is the component of the Department of Justice that does have the responsibility in this area. And that's the component that is right now moving toward that right away. What we—if I may.

Mr. SUNUNU. Sure.

Mr. HUFF. What we did with regard to the initial guidance that we received with respect to what subsection (g) did require us to do in connection with a reference guide, is that we were required to put on the GILS presence, and that was something that the Department did have. We did have a bit, and I don't mean to overstate that at all, a small bit of records, major records systems that we did have. And those were what we received from the Justice Management Division, and we put those in our reference guide in connection with subsection (g).

Subsequently, OMB has revised its guidance on that, but I don't mean to suggest that exclusively because the guidance was changed, that was our problem. Our problem was an underlying problem with the compliance with the Paperwork Reduction Act.

Mr. SUNUNU. Is the reference guide available electronically?

Mr. HUFF. Yes, sir.

Mr. SUNUNU. And, again, speaking about information systems that are due to be indexed and described, are we talking about a dozen information systems or 100 information systems?

Mr. HUFF. I very much suspect it is larger than 100, considerably larger. And the answer is I don't know. But that's what I suspect.

Mr. SUNUNU. Could I ask you to find out, just for the record, for this hearing?

Mr. HUFF. We can get you—if we were given a little bit more time, we will supplement the record on that, and I think that as our Justice Management Division works on that, we will be able to give you a far more accurate answer. And the answer to your question is yes.

Mr. SUNUNU. Mr. Lopez, have you put together the index and the descriptions?

Mr. LOPEZ. No, that has not been completed. We hope to have part of that operation within this month. And we will be having some of it actually within the next 2 weeks as we complete the revision of the DOE Web page.

Mr. SUNUNU. Do you have an approximate number of information systems or know of the approximate number of information systems that are going to be indexed?

Mr. LOPEZ. No, and I wouldn't want to mislead you, but I will provide that for the record.

Mr. SUNUNU. Ms. Riep-Dice.

Mr. HORN. Without objection, at this point, it will be included.

Ms. RIEP-DICE. We have the NASA GILS online, which is similar to the government locator system. We have NDOIS, which is the NASA directives online. We have listed all the documents in our reading room alphabetically. Although they cannot be searched, they are listed alphabetically where someone can click on that particular document and get it. As far as the number of information systems, I have no idea. But I can supply that.

[The information referred to follows:]

NASA has 61 information systems.

Mr. SUNUNU. Last question from me for each of the panelists here: Can FOIA requests be made to your respective agencies online, electronically? Mr. Lopez.

Mr. LOPEZ. Not at the moment, but that is part of the redesign of the Web page which we hope to be up in 2 weeks, that will include an electronic format.

Mr. SUNUNU. At NASA?

Ms. RIEP-DICE. Yes, sir, they can.

Mr. SUNUNU. And at Justice?

Mr. LOPEZ. Not at this time.

Mr. SUNUNU. And at this time?

Mr. COLLINGWOOD. Not at this time.

Mr. SUNUNU. And Justice and FBI, do you have plans for implementing online requests?

Mr. HUFF. We don't have plans, but I think that is something we're working toward. I don't want to say we have an outline for doing that, but I know that is something we're working toward.

Mr. COLLINGWOOD The same with us. I mean our focus now is reducing the intolerably high backlog but, yes, we do intend at some point to accept them.

Mr. SUNUNU. I take it you would be happy to have a backlog of 400 requests?

Mr. COLLINGWOOD. That is less than 2 weeks of work, sir.

Mr. SUNUNU. Thank you very much, Mr. Chairman.

Mr. HORN. Thank you. You all, I think, are knowledgeable about the year 2000 problem, and what effect that might have, if any, on various information systems within your department. Is that a problem for any of you, since dates are involved, in going past that '00 day, and what kind of situation does that make for you in Justice?

Mr. HUFF. I'm going to give you the same sort of answer I gave to Congressman Sununu. That is something that our Justice Management Division is working on, and I think they are far—much farther ahead on that.

Mr. HORN. Does the Justice Management Division handle information management or just management?

Mr. HUFF. Yes—I think they—I'm not certain.

Mr. HORN. OK, we will check that. But to which Assistant Attorney General do they report?

Mr. HUFF. Steve Colgate, Stephen Colgate, who is the Assistant Attorney General for Administration.

Mr. HORN. OK.

Mr. HUFF. Justice Management Division.

Mr. HORN. And how you maintain your records in the FBI, particularly individual files, birth dates, so forth, is there any problem on the requests, that you can't get them or something because for some reason there might be a date, let's say a prison term that goes past the year 2000? Does that prove to be a problem for any of you in terms of your record requests?

Mr. COLLINGWOOD. At this point, Mr. Chairman, we don't believe so. Our information is managed by our Information Resources Division that has also our technical computer people. They have identified those computer systems within the FBI that will be affected by the year 2000 problem, including those that are at risk now and those that are not at risk, and they have developed and are implementing a plan to address those. And it's my understanding that as far as FOIA goes, the issue will not cause a problem for us.

Mr. HORN. OK. How about NASA?

Ms. RIEP-DICE. No. That was one of the things I had checked on, and that has all been worked out, so we shouldn't have a problem at all.

Mr. HORN. OK. How about Energy?

Mr. LOPEZ. Yes, like Mr. Huff, I am not versed in that particular area because it's not the responsibility of my office. But we are working with the office which has responsibility to identify what that impact will be.

Mr. HORN. What is that office?

Mr. LOPEZ. It's Office of Information Management.

Mr. HORN. OK. Really they're running the computer systems within the department, I take it?

Mr. LOPEZ. That's part of their responsibility.

Mr. HORN. OK. Let me ask Mr Collingwood, when an individual requests his or her own FBI file, is this strictly a FOIA request or does the Privacy Act come into play?

Mr. COLLINGWOOD. We consider that a request under the Privacy Act, and there's a different standard applied to it.

Mr. HORN. Yes. So would that mean if it's a Privacy Act question, that would lead to the lengthening of the time it takes to get that file?

Mr. COLLINGWOOD. Actually, it shortens the time.

Mr. HORN. If it's the individual requesting their own file, I mean.

Mr. COLLINGWOOD. Right. As I mentioned, we have fully embraced the multiple queue concept, broken down both with Freedom of Information Act and Privacy Act. A great many of people who write in for their own files find either that we don't have a file, much to their relief, I think, or the file that we do have is relatively short, it goes in the smallest queue and gets processed relatively quickly.

Mr. HORN. So for the individual there's hope that, what, a couple of months go by or something, then they will hear something?

Mr. COLLINGWOOD. Unfortunately, I think we're still measuring it in years as opposed to months, but it is an area where we made dramatic improvement. Everybody understands in the section how important the individual requester is, and in some cases we are seeing turnaround in months. But, you know, we remain confident that they will be the first group of individuals who will benefit from no delay.

Mr. HORN. Those individuals that are seeking their own file, do they have to file on a special form that the FBI has, or is it simply a letter where they give you maybe the Social Security number, their address, so forth?

Mr. COLLINGWOOD. It's a letter, but it requires some proof of who they are, either through a notarized signature or otherwise.

Mr. HORN. Right. Let me move back now to the lack of resources for a minute, or just resources generally. Let me start with you, Mr. Huff. Who makes up the budget request for your particular office?

Mr. HUFF. For my office as opposed to the Department?

Mr. HORN. Yes. Well, your office within the Department, do you make that budget up, or who does?

Mr. HUFF. Our office is rather unique in that we have—we are a totally reimbursable component, and we don't set up or make a budget request as such. We are reimbursed for all of our costs by the components.

The FBI certainly is very well aware of that, because based on the number of hours we spend on administrative appeals for each of our components, those components then have the joy of paying our bills for occasionally reversing some of their opinions and/or determinations. So right now we have a budget of $3.6 million, but we don't have an annual submission because we are a reimbursable component.

Mr. HORN. Was that in the law when your office was set up, or do you have a general statute that permits that?

Mr. HUFF. I don't believe that is anywhere in the Freedom of Information Act. It is the manner in which the Department of Justice

set up the appeals function in the Department of Justice, I believe in the neighborhood of 1975 or 1976 when the predecessor of our office was first created. Our office that carries out that function and under the statute, it is the head of the agency that acts on all administrative appeals. Most agency heads delegate that to the general counsel's office. In the Department of Justice it is delegated to the Office of Information and Privacy.

Mr. HORN. Well, on a request, now, do you work in overhead for other offices like management, Justice Management? Do they have an overhead on your bill to Mr. Collingwood?

Mr. HUFF. No.

Mr. HORN. Or to any citizen?

Mr. HUFF. No, it is just the cost that we have for our employees and for our rent and for the cost of our paper. That is—those are the portions of the costs that Mr. Collingwood's office makes.

Mr. HORN. So there aren't any FTEs outside of your area that are covered by that particular payment?

Mr. HUFF. No. All of the FTEs are on the fifth floor and seventh floor of our office building, and they work for us.

Mr. HORN. How much was your budget, let's say, 3 years ago? It's $3.6 million now. What was it 3 years ago? Roughly a million?

Mr. HUFF. No, no, sir. I think probably in the neighborhood of $3 million. It's $3.6 million now.

Mr. HORN. It's been fairly consistent over the last few years now?

Mr. HUFF. It's been a fairly similar increase. I should note that just during this past year we have increased the number of FTEs, we made a request for that. In addition to receiving the backlog coordinator, we asked for five additional personnel, and we were given that, and we are in the process of hiring. We've already hired some of them. We had another one just accept a position earlier this week, and we still have more to fill.

Mr. HORN. So your office has how many full-time equivalent people now?

Mr. HUFF. We are—I think right now we have 42, with 1 more that has accepted a position, and we have the capability of 46 full-time equivalents. We have several part-time people, so the number of people is slightly higher than that. But the FTEs, I do believe we are now entitled to 46.

Mr. HORN. Yes. So you're in pretty good shape, then, in terms of resources?

Mr. HUFF. I believe so.

Mr. HORN. OK. How about the FBI? How many FTEs do you have now, today, to solve this problem?

Mr. COLLINGWOOD. Oh, I don't have the precise figure with me. In fiscal year 1997, Congress gave us an additional 129 positions. In fiscal year 1998, they gave us an additional 234 positions.

Mr. HORN. An additional 234?

Mr. COLLINGWOOD. Yes, sir.

Mr. HORN. Really? And give me that base year again. In fiscal year 1997, what was it?

Mr. COLLINGWOOD. We were at 255 and, we have received increases from that of 129 in fiscal year 1997 and 239 new positions in fiscal year 1998. I believe combined that will give us an FTE total of 669. To show you how optimistic we are, we had a request

in for more than that in fiscal year 1998, and concluded based on the streamlining we will not need all of those resources. So we cut back to the 239 request, and we're now confident that we have sufficient resources to address the backlog.

Mr. HORN. Now, was that—did that request initiate in your office, or did it initiate elsewhere in Justice?

Mr. COLLINGWOOD. It initiated in our office.

Mr. HORN. In your office?

Mr. COLLINGWOOD. It had strong support from the Department of Justice.

Mr. HORN. So they didn't cut you at the Attorney General's level, then?

Mr. COLLINGWOOD. No, sir.

Mr. HORN. And how about OMB? How were you treated by them?

Mr. COLLINGWOOD. We survived the entire process, and got full support from our appropriations committees.

Mr. HORN. So they didn't cut your request at all?

Mr. COLLINGWOOD. No, sir.

Mr. HORN. You must have lucky charms. You're about the only member of the administration, probably in this and the last three administrations, that can have a smile on your face when it comes to resources. And how about Congress? We didn't slash you, did we, or did we?

Mr. COLLINGWOOD. No, sir, Congress was very generous. We have adequate resources.

Mr. HORN. So they got the message it is a 4-year wait and they're trying to do something about it?

Mr. COLLINGWOOD. Yes, sir.

Mr. HORN. OK. Well, that's good. How about NASA? What's your history fiscally in being able to get the resources to do the job?

Ms. RIEP-DICE. We have been pretty good about retaining a sufficient number of employees to process. We don't really receive anything compared to the FBI. The agency's annual requests are 3,000 a year.

Mr. HORN. I'm sorry, NASA requested what, now, in resources for this function?

Ms. RIEP-DICE. Nothing, it was zero.

Mr. HORN. Nothing new. How many full-time equivalents do you have?

Ms. RIEP-DICE. Ten.

Mr. HORN. Ten, OK. And that's been pretty stable over the years?

Ms. RIEP-DICE. Yes, sir.

Mr. HORN. So you're not requesting any more?

Ms. RIEP-DICE. We just requested one, and we got a part-time person at the beginning of this year for headquarters; and our centers, one of the centers had requested a part-time person and received that.

Mr. HORN. How many centers do you have around the country?

Ms. RIEP-DICE. Nine.

Mr. HORN. Nine. Is that based on regional offices?

Ms. RIEP-DICE. They're in different areas.

Mr. HORN. Or is it particular facilities?

Ms. RIEP-DICE. It's the facilities We have a FOIA office in each one of our NASA centers, and they're located in Texas and Florida.

Mr. HORN. Cape Canaveral, Texas, and so forth?

Ms. RIEP-DICE. Yes.

Mr. HORN. How about Energy? What's your budget picture?

Mr. LOPEZ. Well, we have remained constant for the last 3 or 4 fiscal years. We have not had an increase. We have nine employees within the FOIA office, and we do not control that—the budget amount. It's just a part of a larger budget request for the Office of Human Resources and Administration.

Mr. HORN. But you presumably give the head of that office what you need?

Mr. LOPEZ. Yes.

Mr. HORN. Have they supported you?

Mr. LOPEZ. Yes, the office has directly been supported, it's just been in the larger budget issues of the department.

Mr. HORN. And has your request survived the Secretary's level?

Mr. LOPEZ. Yes.

Mr. HORN. And how about OMB?

Mr. LOPEZ. They have, as I said, because they've been constant. So we had the support we needed, not enough, but it has been what we requested.

Mr. HORN. In other words, you requested, you got nine FTEs over there now?

Mr. LOPEZ. Right.

Mr. HORN. Is that the total Department, how many FTEs?

Mr. LOPEZ. No, that—I do not have that exact figure because that—again, like NASA we have field offices, and they vary from field office to field office, but I will provide it for the record.

Mr. HORN. We will leave a space in the record, and without objection, it will be included. Your total FTEs, where they are, and so forth; and also, did you ask for more, and what did the Secretary's office do with that, what did OMB do with it, and what did Congress do with it? That will be the question to be answered here.

[The information referred to follows:]

COMMITTEE HOUSE GOVERNMENT REFORM AND OVERSIGHT SUBCOMMITTEE

DATE: June 9, 1998

WITNESS: Abel Lopez
PAGE 96, LINE 2189

INSERT FOR THE RECORD

The total current FTEs for the Department of Energy FOIA Program is 42. The distribution of the FTEs at the FOIA offices of the Department are as follows:

Headquarters FOIA Office	9 FTEs
Albuquerque FOIA Office	3 FTEs
Idaho FOIA Office	3 FTEs
Nevada FOIA Office	2 FTEs
Oak Ridge FOIA Office	3 FTEs
Oakland FOIA Office	2 FTEs
Richland FOIA Office	3 FTEs
Savannah River FOIA Office	1 FTE
Golden Field FOIA Office	1 FTE
Ohio Field FOIA Office	1 FTE
Rocky Flats FOIA Office	1 FTE
National Petroleum Technology Office (Tulsa)	1 FTE
Federal Energy Technology Office (M WV)	1 FTE
Federal Energy Technology Office (Pittsburgh)	1 FTE
Office of Scientific Technology Institute	1 FTE
Bonneville Power Administration	2 FTEs
Southeastern Power Administration	1 FTE
Southwestern Power Administration	1 FTE
Western Power Administration	1 FTE
Strategic Petroleum Reserve Project Office	2 FTEs
Alaska Power Administration	2 FTEs

In FY 97, a Reduction in Force (RIF) was initiated at Headquarters. Although the Headquarters FOIA Office was not required to conduct a RIF for its staff, normal attrition resulted in a staff reduction in the FOIA Office by three FTEs that year. To address this staff reduction in the FOIA Office, additional support was obtained by transferring three staff employees from other Headquarters offices. Two of these employees are now permanent staff positions in the FOIA Office and are included in the nine FTEs. In FY 97 and 98, funding was requested and obtained for one part-time contractor support staff. This part-time employee was converted to a full-time position in FY 99

Although the Department has had fewer resources in the Headquarters Departmental Administration Account, the FTE level for the FOIA Office has been sustained. At present, staffing levels for the FOIA Office is at the maximum staff level for FY 99.

In FY 98, the Oak Ridge Operations Office and the Rocky Flats Field Office requested and obtained additional staffing. In FY 99, additional personnel was granted to the Oak Ridge Operations Office; however, a request by Rocky Flats was denied at the Operations Office level.

Mr HORN I now yield to my colleague, the ranking member on the committee, Mr. Kucinich.

Mr. KUCINICH. Thank you very much, Mr. Chairman. I apologize for being late. I was at the White House for the Kim Tae-chung reception, and you know how difficult it is to be in two places at once. I'm glad to be here right now.

I wanted to first of all take note of the testimony that I read that indicates that the FBI has been working to clear out its backlog. That 28-percent reduction is impressive, and I urge you to continue on that track.

One of the things that I was wondering, any of the witnesses can answer, is there any particular problem that comes up as you transition from paper to the computers? Are you able to protect all the information to make sure you don't lose anything? How do you do that?

Mr. COLLINGWOOD. First of all, thank you very much for the comment. No, I don't believe that it is an issue. We have as an agency a project, a substantial project under way internally to convert our recordkeeping system to an automated recordkeeping system. And during that transition, as we do that, information is captured both on paper and electronically to ensure that no information is lost.

Mr. KUCINICH. Specifically what do you do, though, to make sure that in that transition period you don't lose anything? What are the protocols?

Mr. COLLINGWOOD. I don't hold myself out as an expert on that, but by using the systems, I note currently the protocols are that the information is captured electronically and on paper, and that will continue until we have a high degree of confidence and full development of the electronic system.

Mr. KUCINICH. Well, since the passage of the Electronic Freedom of Information law, have you had to increase the resources available or the resources that are devoted to information requests from your agency, putting more money into that?

Mr. COLLINGWOOD. We have, and we are in the process of putting substantially more resources into it, both from a technology standpoint and from an employee standpoint. It's a process that began before the enactment of EFOIA, but it will allow us to fully implement EFOIA.

Mr. KUCINICH. Now the 1996 law that requires agencies to file annual reports with the Attorney General providing information on number of requests completed, median time to complete requests, total number of pending requests and median time those requests have been pending, those reports, I understand, are due within the next year. Have you received guidance from OMB on these reports?

Mr. COLLINGWOOD. I would defer, if I could, to Mr. Huff who will speak on behalf of the entire Department.

Mr. HUFF. Rather than OMB, we, the Office of Information and Privacy, have given out guidance to all Federal agencies through our FOIA Update publication which is also available online. And we have set out exactly what Congress requires in each of the individual elements, and then we have gone on beyond that and have even included an area that says if your own agency or component wishes to add additional information, in terms of either backlog reduction efforts or any other matters that you would just want to

add on that would be helpful to the public, there's even a specific provision for that. But we have gone down all of the points that Congress has required and we have set that out in our guidance.

Mr. KUCINICH. Now the 1996 law, as I understand it, had provisions through which requesters could make expedited requests. Have you had any requesters file for expedited requests?

Mr. HUFF. Yes, we have. And if I may, our experiences may be somewhat different from Ms. Kirtley, who testified earlier with respect to the Reporters Committee, and the reporters that she works with.

We have seen relatively few requests at the administrative appeal level, which is where I see them, where somebody, a reporter or somebody who is an information disseminator has been denied expedited treatment. We have seen very few of those, those appeals. In fact, I should say I haven't seen any of those.

We have seen other appeals that have been requested to be expedited where there's a threat to life, and particularly a number of individuals who have death sentences that have been imposed on them and have sought either their FBI or their Drug Enforcement Administration files. If that is so, we expedite those requests. The FBI does those.

We very rarely in the past several years have seen an appeal from somebody where they didn't expedite that. They may withhold some information and then they ask us to expedite the administrative appeal and we do that.

Mr. KUCINICH. Is there a relationship between you and the DEA on vetting?

Mr. HUFF. Pardon me, on what topic? We act on their administrative appeals. If the Drug Enforcement Administration or the FBI or the Antitrust Division or any other component of the Department of Justice denies a Freedom of Information Act request, the statute requires they be given appeal rights, administrative appeal rights. Those go to my office, and last year, we had 3,300 administrative appeals, 4,400 on an annualized basis. And DEA is one of our components. Yes.

Mr. KUCINICH. OK. I'm glad to establish that. I have a little personal matter relating to an issue that I sent a letter I want you to know about to DEA. And how long ago was that letter sent? I sent a letter to DEA in late September, early October on a matter, questioning them with respect to the policy on the use of Prozac prescribed for children.

Mr. HUFF. Yes.

Mr. KUCINICH. It's now June, and I have not received a response from DEA. Perhaps they're busy working on the Freedom of Information Act requests and not responding to Members of Congress, but I thought I'd use this opportunity to——

Mr. HORN. I thought they only did that to the majority, you mean they do that to the minority too?

Mr. KUCINICH. I want to tell you they are equal opportunity in their lack of response.

Mr. HUFF. I will pass that on to the Department of Justice, and we will be sure that DEA becomes aware of your concern.

Mr. KUCINICH. This is my last name, in case you need the files. I appreciate that. I would like to hear from you about that.

Mr. HUFF. If I may, that was a request for information as a Member rather than a FOIA request? Please give me copies of documents you have?

Mr. KUCINICH. No, but that's a good idea, too.

Mr. HUFF. Well, in terms of the Freedom of Information Act——

Mr. KUCINICH. Now I know how to do it, I got it back here, I just read it.

Mr. HORN. The secret is you have to bring it up in a hearing, you see. That's why I finally got Mr. Collingwood aware of a file that I was after for several years, and it was finally transmitted, and I said, "I'm going to call a hearing on it, folks," and I meant it.

Mr. KUCINICH. When I first submitted the letter, I wasn't the ranking member of this committee. Now that I am, I don't know what that means. If it means anything at all, I would like an answer.

Mr. HORN. It does not mean a free cup of coffee in the House dining room.

Mr. KUCINICH. Thank you, Mr. Horn, and thank you for your work on helping to open up information from the government. Thank you.

Mr. HORN. Well, we always appreciate your questioning. You get right to the heart of the matter.

I will be right behind him.

Now, let me ask a few questions on some other areas that have come up, and that is the backlog situation in a few agencies. I realize you can't speak for any agency but your own, and I understand that, but I am hoping to learn from your experience as to what we might do and find out on surveys, or we could at least ask a decent question on the survey, maybe working in cooperation as we do on the year 2000 with the Office of Management and Budget.

I guess I would just ask this for the record. You might have said it already, but I want to find it in one place when I am after it, and that is, how many FOIA requests do you currently have pending? Let us just go down the line. Do you have any in your office, or is it simply advisory to the offices that do have it?

Mr. HUFF. My office also processes initial requests for the leadership offices of the Department of Justice.

Mr. HORN. If you want something from the Attorney General such as a memorandum that she might have had, does your office deal with that?

Mr. HUFF. That is correct. I don't know the number right now.

Mr. HORN. Is it 100,000, 200,000? Ball park?

Mr. HUFF. I would imagine we have a total of perhaps 200 to 300 pending.

Mr. HORN. OK. FBI, how many pending?

Mr. COLLINGWOOD. Our current backlog is 11,889.

Mr. HORN. OK. Gee, it hasn't changed.

Ms. Riep-Dice, what about NASA?

Ms. RIEP-DICE. I don't have an exact figure, but I would assume it is somewhere between 50 to 100, and that would be somewhere in the timeframe of 20 to 40 days. We have very few that would be over 40 days.

Mr. HORN. Mr. Lopez, what is Energy's situation?

Mr. LOPEZ. Four hundred and nineteen.

Mr. HORN. Four hundred and nineteen, OK. And how long do you think it will take for any recently received communication request? What are we talking about for one that is filed today? What hope do they have that they won't be on Medicare, for example? Or they can read it while they are on Medicare? So what are we talking about there in Energy? If I would walk in today, how long can I sit around and wait, go wait in the waiting room?

Mr. LOPEZ. If it is not classified information?

Mr. HORN. Yeah, right.

Mr. LOPEZ. We are looking at, at the moment, at 495 days.

Mr. HORN. How many now?

Mr. LOPEZ. Four hundred and ninety-five.

Mr. HORN. Four hundred and ninety-five days. OK. How many for NASA?

Ms. RIEP-DICE. The average response time is 24 days.

Mr. HORN. Twenty-four days for NASA. How about for the FBI now?

Mr. COLLINGWOOD. Again, Congressman, it is going to depend on what the volume of responsive records are because of the queue system that we have, so it could vary anywhere from a little over a year for a small request up to 4 or 5 years if it is a major request of thousands and thousands of documents.

Mr. HORN. Give me an idea or name a case where it would take 4 to 5 years. What kind of thing are we talking about?

Mr. COLLINGWOOD. We have currently pending, for example, approximately 140 what we call project cases that are requests for major investigations that have spanned multiple years and have, in response to that, request, tens of thousands of pages; organized crime or some of the older investigations of the 1950's and 1960's where they went on for years and years.

Mr. HORN. Is that an author doing a book, or is it a class action suit, or what?

Mr. COLLINGWOOD. Most of those are researchers or authors doing books. Now, I would take this opportunity to give a big plug to one aspect of EFOIA and that is the negotiation aspect. In response to that, we have established a negotiation team that works specifically with those kinds of requesters, because what most requesters find, despite the huge or the voluminous amount of records that are substantially responsive to their requests, what they really want are some specific items out of those. We have very successfully responded to a number, over 300 different requesters, in identifying and rapidly processing a very limited amount of information that gave them precisely what they were looking for.

Mr. HORN. Very good. How about your office and the leadership offices at Justice? What are we talking about?

Mr. HUFF. It varies a tremendous amount, depending on the type of the request. We have many requests that we are going to be able to respond with very little difficulty at all within the 20 working days.

On the other hand, we have, I believe we have received 1 request in the last few months that has had in excess of 100 subparts to it, which asks for information on specific topics in specific individuals' offices who are senior people in the department, and we have got to conduct searches and have those people conduct searches of

their own offices for particular information. Simply, some of those requests take a tremendously long time to conduct all of the searches, to gather all of the information, and then to process it.

I am familiar with at least one of those examples of a request of that general nature in which we attempted to do just as Mr. Collingwood has noted that he has had good success with, and we often do as well, where we will call a requester and talk about it. We have attempted to communicate with the requester and the requester doesn't want to communicate with us at all on it, and the case has proceeded to litigation.

Mr. HORN. Can they receive some materials over the 4- and 5-year delay?

Mr. HUFF. Oh, yes. I don't mean to suggest that—the answer is yes, they do receive partial disclosures as we are going along. I don't mean to suggest that that request is a 5-year request. It is a very lengthy one, it is a very large one. And there are other issues involved in that case involving other procedural matters as well.

Mr. HORN. OK. The Justice testimony that you gave, essentially you noted, as I did in the questions, that the Immigration and Naturalization Service has a significant backlog. Do you have the data on the INS in particular with you?

Mr. HUFF. I have a little bit of information on the Immigration and Naturalization Service. I have——

Mr. HORN. Well, I am interested in what is a typical request there and how many are pending? What is the standard delay in time and so forth?

Mr. HUFF. I don't have an exact answer, and one of the reasons is the INS has in excess of 50 different offices, some of which, and I just glanced at our annual report for last year, some such as Los Angeles and Miami will have in excess of 1,000 cases in which they have denied information; others will literally have 1 or 2 where they have denied. In terms of that, I very much suspect the answer is very minimal on those smaller ones.

It also should be noted with INS that in many of their cases they are able to look at the particular file, an individual's A file, alien file, look at that, there is no law enforcement going on with respect to the file, we are able to process it and provide a complete grant, and those move quite quickly. So the backlog varies throughout INS, depending on the particular offices.

Mr. HORN. Following from that, I realize we have to probably send GAO into the INS. It is the only way I know to get at some of this. But thinking back to when we were working on those amendments in 1996, the Attorney General sent a memo to the heads of all agencies and departments and asked for the information on the FOIA backlogs at that point. Have you requested any update on this information since then?

Mr. HUFF. No, we haven't. And one of the reasons that we haven't is that I think we are going to get extremely detailed data that will be available February 1 next year. I think the agencies are now compiling that data for the revisions to the annual reports that are going to be made available electronically, and I think it should be—I certainly hope it is going to be very easy to compare one component within the department to another component, and

compare the FBI to the Department of Energy or—excuse me, Agriculture with Energy or one agency with another, or components within an agency, and I think that should be very easy at that time.

Mr. HORN. Who is in charge of getting that report?

Mr. HUFF. The Office of Information and Privacy.

Mr. HORN. In other words, your office?

Mr. HUFF. Our offices.

Mr. HORN. Within Justice?

Mr. HUFF. Yes, sir.

Mr. HORN. Is that being done at all throughout the executive branch, or just in Justice, to your knowledge?

Mr. HUFF. No, that is a requirement that the statute imposes on all agencies and all agencies are required to submit it to the Attorney General. In our guidance——

Mr. HORN. So you are going to followup to encourage that?

Mr. HUFF. Encourage it, and say, exactly here are the data that you are required to submit; here is additional data if you wish to submit, you may; and here is where you are to send it and you are to give us a website. If you don't have a website, if you are a very small agency, you should get in touch with us in advance and we can work with you on that. I assume we are going to have just links, probably in alphabetical order.

Mr. HORN. Have you already sent out the questionnaire or the survey?

Mr. HUFF. Oh, yes. We did that, we were required by the statute to submit it prior to October 1 of last year, and we did submit it last summer to all of the agencies.

Mr. HORN. How many pages is that?

Mr. HUFF. I think the particular portion on that guidance I believe is four pages long.

Mr. HORN. OK. Without objection, it will be put in the record at this point.

Mr. HUFF. Yes. We have already submitted it to the staff. We will submit another copy, if you would like.

Mr. HORN. Submit it for the record and we will put it right here.

Mr. HUFF. Certainly we will.

Mr. HORN. That is helpful.

[The information referred to follows:]

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FOIA UPDATE

Agencies Develop Web Sites for FOIA

Under the provisions of the Electronic Freedom of Information Act Amendments of 1996, 5 U.S.C.A. §552(a)(2) (West 1996 & Supp. 1997), all federal departments and agencies are required, as of November 1 of this year, to use electronic information technology to enhance the public availability of their FOIA "reading room" records. At the same time, throughout the executive branch of the federal government, federal agencies are now rapidly developing electronic sites on the Internet and World Wide Web for a wide variety of different purposes.

Spurred by the Electronic FOIA amendments, and by the potential efficiency of providing FOIA-related information online and using "electronic reading rooms" on the World Wide Web, agencies have increasingly incorporated FOIA considerations into their Web site design and development. All agencies should be developing World Wide Web sites to include one or more electronic "home pages" for FOIA purposes, and there are many models that can be looked to in this process.

National Aeronautics and Space Administration

Perhaps the most advanced agency in the development of its World Wide Web site, and in its use for FOIA purposes, is the National Aeronautics and Space Administration. NASA was one of the first agencies to develop a "FOIA home page." The development of a FOIA home page benefits both FOIA requesters and the agency. For example, when members of the public contact agencies with basic "how to" questions about the FOIA administrative process, these questions consume the time and attention of FOIA personnel. Now, potential FOIA requesters who have access to the World Wide Web can find basic, instructional information on how to submit a FOIA request through use of an agency's FOIA home page.

To reach NASA's FOIA home page, the user must go to NASA's World Wide Web site (at http://www.nasa.gov), select "Organization," scroll down to select "NASA HQ," and then select "Freedom of Information." Listed in the central body of NASA's FOIA home page are the main topics of interest applicable to the entire agency. Listed vertically in the expanded left margin of the page are the various NASA space flight centers, research centers, and test facilities. Each will eventually have its own subsidiary FOIA home page and electronic reading room.

NASA's FOIA home page is organized so that the user can move from one subsidiary home page to another by clicking on the area of interest. For example, a user can move from the Lewis Research Center to the Kennedy Space Center and from there back to NASA Headquarters with just a click. There is a separate entry on making a FOIA request that appears somewhere on every screen; a user does not have to return to the FOIA home page to find it.

NASA's FOIA home page provides basic instructions on obtaining information through the FOIA. Requesters are advised to provide as much information as possible about the documents they seek in order to facilitate record processing. An electronic "link" is provided to a list of NASA's

On Agency Practice

various FOIA offices--with names of FOIA officers, telephone numbers, and fax numbers. There is also a link to NASA's FOIA regulations published in the Federal Register. NASA also provides links to government reference materials that may be of interest to a requester.

NASA Headquarters has had an electronic reading room operational since May 1 of this year. In addition to being the location at which NASA maintains its newly created FOIA reading room records, it has a link to the Government Information Locator System (GILS), which is a collection of agency-based information locators. NASA's electronic reading room also has a link to NASA's "Directives Library," its "Mixed Fleet Manifest," "UFO Information," and "Impact Card Information." The latter entry, for example, lists the names, telephone numbers, and organizations of NASA officials who hold this government credit card and have the authority to procure goods and services with it. Before that information went online, NASA received several FOIA requests per week for it. Now, NASA may simply refer requesters to the pertinent Web page for ready access.

Department of Justice

The Department of Justice has formed a core team of computer services personnel and library personnel to design and manage the content of its World Wide Web site. This team has been joined by a representative from each of the Justice Department's components in order to develop guidelines for its Web site and home pages. Additionally, each component has designated a "content manager" who is responsible for the accuracy, consistency, and accessibility

Cont'd on next page

. . . Electronic "Links" and "Home Pages"

Cont'd from preceding page
of the information on its home page.

The Justice Department's FOIA home page will soon be accessible by a link directly from the Department's Web site (at http://www.usdoj.gov). The FOIA home page is being designed to meet the needs of all users, whether they are first-time users curious about some aspect of disclosure law, experienced requesters, or federal employees who respond to requests for access to information.

As planned, the first entry on the main menu on the Justice Department's FOIA home page will be an introductory text on the FOIA and the Privacy Act. Following that will be the Justice Department's FOIA Reference Guide, its FOIA and Privacy Act regulations, and the texts of both the FOIA and the Privacy Act. The next entry will be a list of Justice Department components and their FOIA offices. By choosing this topic, users will be able to link directly to the FOIA home page of each Justice Department component--Federal Bureau of Investigation, Office of Legal Counsel, Civil Division, etc. Each component will post the name, address, and telephone number of its principal FOIA officer, a brief description of its functions, and an itemization of the types of information it makes publicly available--and it also will specify if any special information is required to make a FOIA request for particular types of records. Components that maintain their own conventional FOIA reading rooms will specify the locations of those reading rooms.

The Justice Department's electronic reading room will be organized by individual agency components. As required by the Electronic FOIA amendments, it will contain the FOIA reading room materials created by the agency on or after November 1, 1996--final opinions rendered in the adjudication of administrative cases, specific agency policy statements, and administrative staff manuals. It also will contain FOIA-processed copies of frequently requested records under the new fourth reading room category.

One Justice Department component, the Federal Bureau of Investigation, has already placed on the Web many records of popular interest that have been previously processed for release under the FOIA. The list of available subjects includes ones such as Elvis Presley, Amelia Earhart, Jackie Robinson, Project Blue Book (a UFO study), and Klaus Barbie. When a portion of a record has been excised, a code appears in the margin or at the place of deletion. These codes may be matched up to an "Explanation of Exemptions" narrative that is also accessible electronically.

Finally, the Justice Department's FOIA page will include many reference publications of interest to those who use the FOIA, such as the "Freedom of Information Act Guide," the "Privacy Act Overview," FOIA Update, and the "Citizen's Guide to the FOIA" that is issued by Congress. The Department made such publications available electronically through the Internet prior to developing its World Wide Web site. See FOIA Update, Winter 1995, at 2.

At the FDIC

Other federal agencies, both large and small, are finding that their World Wide Web sites can be an efficient way of both meeting their Electronic FOIA amendment obligations and making information readily available to the public. The Federal Deposit Insurance Corporation opens its FOIA home page (at http://www.fdic.gov) by telling online readers that "a wealth of information" is available at their fingertips. It recommends that users first look at the "FDIC Public Information Page," where there are many documents available for reading and downloading. Next, users can browse the "Public Information Center," where there is a list of documents available by mail or for inspection and copying at the FDIC's Washington, D.C. Headquarters.

The FDIC's FOIA home page is organized conventionally, with a central body of text and an expanded left margin that contains seven vertical boxes or options for the user to click on. Indeed, the first subdivision of this home page is "Popular FOIA Records," which contains the FDIC's electronic reading room materials. The FDIC has begun to place records in its electronic reading room. Inside the electronic reading room, there are multiple options for records, including a link in some instances to more information about the record.

Additionally, the FDIC's FOIA home page contains its FOIA fee schedule, followed by information on submitting a FOIA request, answers to frequently asked questions, a description of FOIA exemptions, and an explanation of the administrative appeal process. In a separate option, called "Other Non-FOIA Links," the FDIC also provides links to other federal departments and agencies that may have information of interest to potential FOIA requesters.

In complying with the requirements of the Electronic FOIA amendments, agencies should continue to develop and refine World Wide Web sites that are both comprehensive and user-friendly. The use of available electronic resources, such as FOIA home pages and electronic links, can make information publicly accessible in a way that is cost-efficient for all federal agencies.

FOIA UPDATE

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Co-Directors
Richard L. Huff
Daniel J. Metcalfe
Deputy Director
Margaret Ann Irving
Managing Editor
Pamela Maida

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FOIA UPDATE

OIP Guidance

Guidelines for Agency Preparation and Submission of Annual FOIA Reports

In enacting the Electronic Freedom of Information Act Amendments of 1996, Pub. L. No. 104-231, 110 Stat. 3048, Congress made major revisions to the part of the Freedom of Information Act, subsection (e), that pertains to the submission of annual reports by federal agencies on their administration of the Act. Congress revised the list of basic required elements for annual FOIA reports, altered the timetable and procedure for submitting them, and provided that the Department of Justice, in consultation with the Office of Management and Budget, would issue these guidelines for annual FOIA report preparation and submission. See 5 U.S.C. § 552(e), as amended by Electronic Freedom of Information Act Amendments of 1996, 5 U.S.C.A. § 552(e) (West Supp. 1997). Congress also addressed this subject in the House Report accompanying the amendments. See H.R. Rep. No. 104-795, at 27-29 (1996). These changes come into effect for the annual FOIA reports that will be prepared by federal agencies for the 1998 fiscal year. See FOIA Update, Fall 1996, at 11 (describing statutory changes).

The following basic required elements for annual FOIA reports are specified in the statute, as amended:

(1) The number of requests for records pending before the agency as of the end of the fiscal year.

(2) The median number of days that such requests had been pending before the agency as of that date.

(3) The number of requests for records received by the agency.

(4) The number of requests that the agency processed.

(5) The median number of days taken by the agency to process different types of requests.

(6) The number of determinations made by the agency not to comply with requests for records made to the agency.

(7) The reasons for each such determination.

(8) A complete list of all statutes that the agency relies upon to authorize the agency to withhold information under subsection (b)(3).

(9) A description of whether a court has upheld the decision of the agency to withhold information under each such statute.

(10) A concise description of the scope of any information withheld under each such statute.

(11) The number of appeals made by persons under subsection (a)(6).

(12) The result of such appeals.

(13) The reason for the action upon each appeal that results in a denial of information.

(14) The total amount of fees collected by the agency for processing requests.

(15) The number of full-time staff of the agency devoted to processing requests for records under the Act.

(16) The total amount expended by the agency for processing such requests.

ANNUAL REPORT GUIDANCE OUTLINE

So that all federal agencies' annual FOIA reports follow a relatively uniform approach and "similar format" for comparison purposes, H.R. Rep. No. 104-795, at 29 (1996), all agencies should prepare them along the lines of the following content outline:

I. Basic Information Regarding Report

A. Name, title, address, and telephone number of person(s) to be contacted with questions about the report.

B. Electronic address for report on the World Wide Web.

C. How to obtain a copy of the report in paper form.

II How to Make a FOIA Request

- Agencies may either include descriptions here or provide them by cross-reference to their FOIA reference guides (which should be electronically linked for convenient electronic reference purposes).

A. Names, addresses, and telephone numbers of all individual agency components and offices that receive FOIA requests.

B. Brief description of the agency's response-time ranges.

C. Brief description of why some requests are not granted.

III. Definitions of Terms and Acronyms Used in the Report (to be included in each report)

A. Agency-specific acronyms or other terms.

B. Basic terms, expressed in common terminology.

1. FOIA/PA request -- Freedom of Information Act/Privacy Act request. A FOIA request is generally a request for access to records concerning a third party, an organization, or a particular topic of interest. A Privacy Act request is a request for records concerning oneself; such requests are also treated as FOIA requests. (All requests for access to records, regardless of which law is cited by the requester, are included in this report.)

2. Initial Request -- a request to a federal agency for access to records under the Freedom of Information Act.

3. Appeal -- a request to a federal agency asking that it review at a higher administrative level a full denial or partial denial of access to records under the Freedom of Information Act, or any other FOIA determination such as a matter pertaining to fees.

4. Processed Request or Appeal -- a request or appeal for which an agency has taken a final action on the request or the appeal in all respects.

5. Multi-track processing -- a system in which simple requests requiring relatively minimal review are placed in one processing track and more voluminous and complex requests are placed in one or more other tracks. Requests in each track are processed on a first-in/first-out basis. A requester who has an urgent need for records may request expedited processing (see below)

6. Expedited processing -- an agency will process a FOIA request on an expedited basis when a requester has shown an exceptional need or urgency for the records which warrants prioritization of his or her request over other requests that were made earlier.

7. Simple request -- a FOIA request that an agency using multi-track processing places in its fastest (nonexpedited) track based on the volume and/or simplicity of records requested.

8. Complex request -- a FOIA request that an agency using multi-track processing places in a slower track based on the volume and/or complexity of records requested.

9. Grant -- an agency decision to disclose all records in full in response to a FOIA request.

10. Partial grant -- an agency decision to disclose a record in part in response to a FOIA request, deleting information determined to be exempt under one or more of the FOIA's exemptions; or a decision to disclose some records in their entireties, but to withhold others in whole or in part.

11. Denial -- an agency decision not to release any part of a record or records in response to a FOIA request because all the information in the requested records is determined by the agency to be exempt under one or more of the FOIA's exemptions, or for some procedural reason (such as because no record is located in response to a FOIA request).

12. Time limits -- the time period in the Freedom of Information Act for an agency to respond to a FOIA request (ordinarily 20 working days from proper receipt of a "perfected" FOIA request).

13. "Perfected" request -- a FOIA request for records which adequately describes the records sought, which has been received by the FOIA office of the agency or agency component in possession of the records, and for which there is no remaining question about the payment of applicable fees.

14. Exemption 3 statute -- a separate federal statute prohibiting the disclosure of a certain type of information and authorizing its withholding under FOIA subsection (b)(3).

15 Median number -- the middle, not average, number For example, of 3, 7, and 14, the median number is 7.

16. Average number -- the number obtained by dividing the sum of a group of numbers by the quantity of numbers in the group. For example, of 3, 7, and 14, the average number is 8.

IV. Exemption 3 Statutes

A. List of Exemption 3 statutes relied on by agency during current fiscal year.

1. Brief description of type(s) of information withheld under each statute.

2. Statement of whether a court has upheld the use of each statute. If so, then cite example.

V. Initial FOIA/PA Access Requests
- This should include all access requests, whether first-party or third-party.
- Both large and small agencies should provide information in the format presented below.
- Agencies may additionally use chart format for breakdown by multiple agency components.

A. Numbers of initial requests.
- Total of the numbers in Lines 1 and 2, minus the number in Line 3, should equal the number in Line 4.

1. Number of requests pending as of end of preceding fiscal year _____

2. Number of requests received during current fiscal year _____

3. Number of requests processed during current fiscal year _____

4. Number of requests pending as of end of current fiscal year _____ (Enter this number also in Line VII.B.1.)

B. Disposition of initial requests.

1. Number of total grants _____

2. Number of partial grants _____

3. Number of denials _____

a. number of times each FOIA exemption used (counting each exemption once per request)

(1) Exemption 1 _____

(2) Exemption 2 _____

(3) Exemption 3 _____

(4) Exemption 4 _____

(5) Exemption 5 _____

(6) Exemption 6 _____

(7) Exemption 7(A) _____

(8) Exemption 7(B) _____

(9) Exemption 7(C) _____

(10) Exemption 7(D) _____

(11) Exemption 7(E) _____

(12) Exemption 7(F) _____

(13) Exemption 8 _____

(14) Exemption 9 _____

4. Other reasons for nondisclosure (total) _____

a. no records _____

b. referrals _____

c. request withdrawn _____

d. fee-related reason _____

e. records not reasonably described _____

f. not a proper FOIA request for some other reason _____

g. not an agency record _____

h. duplicate request _____

i. other (specify) _____

VI. Appeals of Initial Denials of FOIA/PA Requests
- This should include all access requests, whether first-party or third-party.
- Both large and small agencies should provide information in the format presented below.
- Agencies may additionally use chart format for breakdown by multiple agency components.

A. Numbers of appeals.

1. Number of appeals received during fiscal year

_____

2 Number of appeals processed during fiscal year _____

B. Disposition of appeals.

1. Number completely upheld _____

2. Number partially reversed _____

3. Number completely reversed _____

a. number of times each FOIA exemption used (counting each exemption once per appeal)

(1) Exemption 1 _____

(2) Exemption 2 _____

(3) Exemption 3 _____

(4) Exemption 4 _____

(5) Exemption 5 _____

(6) Exemption 6 _____

(7) Exemption 7(A) _____

(8) Exemption 7(B) _____

(9) Exemption 7(C) _____

(10) Exemption 7(D) _____

(11) Exemption 7(E) _____

(12) Exemption 7(F) _____

(13) Exemption 8 _____

(14) Exemption 9 _____

4. Other reasons for nondisclosure (total) _____

a. no records _____

b. referrals _____

c. request withdrawn _____

d. fee-related reason _____

e. records not reasonably described _____

f. not a proper FOIA request for some other reason _____

g not an agency record _____

h duplicate request _____

i. other (specify) _____

VII. Compliance with Time Limits/Status of Pending Requests

- If an agency believes that "average time" is a better measure of its performance, it should include that as well.
- For decentralized agencies, calculating an agency-wide median may be difficult; a reasonable estimate may be used instead.
- Both large and small agencies should provide information in the format presented below.
- Agencies may additionally use chart format for breakdown by multiple agency components.
- Agencies should count days from the time at which a request is "perfected."
- Agencies should separately report each track of a multi-track system, as well as an "expedited processing" track, and may report any other type of request at their option.
- Example for calculation of median: Given 7 requests completed during the fiscal year, aged 10, 25, 35, 65, 75, 80, and 400 days from date of perfection to date of completion, the total number of requests completed during the fiscal year would be 7 and the median age of the completed requests would be 65 days.
- Example for calculation of median: If there were 6 pending cases aged 10, 20, 30, 50, 120, and 200 days from date of perfection to date of completion, the total number of requests completed would be 6 and the median age would be 40 days (the average of the 2 middle numbers).

A. Median processing time for requests processed during the year.

1. Simple requests (if multiple tracks used).

a. number of requests processed _____

b. median number of days to process _____

2. Complex requests (specify for any and all tracks used).

a. number of requests processed _____

b. median number of days to process _____

3. Requests accorded expedited processing.

a. number of requests processed _____

b median number of days to process _____

B. Status of pending requests.
- Agencies using multiple tracks may provide numbers for each track, as well as totals.

1. Number of requests pending as of end of current fiscal year _____ (Enter this number from Line V.A.4.)

2. Median number of days that such requests were pending as of that date _____

VIII. Comparisons with Previous Year(s) (Optional)
- Agencies should state comparisons both in total numbers and in percentage of change.
- Note that the agency's annual report for 1997 covers a partial calendar year.

A. Comparison of numbers of requests received _____

B. Comparison of numbers of requests processed _____

C. Comparison of median numbers of days requests were pending as of end of fiscal year _____

D. Other statistics significant to agency _____

E. Other narrative statements describing agency efforts to improve timeliness of FOIA performance and to make records available to the public (e.g., backlog-reduction efforts; specification of average number of hours per processed request; training activities; public availability of new categories of records) _____

IX. Costs/FOIA Staffing
- Both large and small agencies should provide information in the format presented below.
- Agencies may additionally use chart format for breakdown by multiple agency components.

A. Staffing levels.

1. Number of full-time FOIA personnel _____

2. Number of personnel with part-time or occasional FOIA duties (in total work-years) _____

3. Total number of personnel (in work-years) _____

B. Total costs (including staff and all resources).

1. FOIA processing (including appeals) _____

2. Litigation-related activities (estimated) _____

3. Total costs _____

4. Comparison with previous year(s) (including percentage of change) (optional) _____

C. Statement of additional resources needed for FOIA compliance (optional) _____

X. Fees
- This includes charges for search, review, document duplication, and any other direct costs permitted under agency regulations.

A. Total amount of fees collected by agency for processing requests _____

B. Percentage of total costs _____

XI. FOIA Regulations (Including Fee Schedule)
- Agencies should provide electronic link for availability in electronic form and attach copy in paper form.

ANNUAL REPORT SUBMISSION PROCEDURE

Agencies should prepare their annual FOIA reports in this format beginning with their annual reports covering the period October 1, 1997 to September 30, 1998. Congress changed the annual reporting period from a calendar year to a fiscal year as of fiscal year 1998--which leaves a nine-month reporting period for calendar year 1997 reports to Congress under the old timetable and reporting requirements. See FOIA Update, Winter 1997, at 6 (advising that new reporting requirements and timetable apply to neither 1996 nor 1997 annual reports).

Under the Electronic FOIA amendments, agencies are given four months to prepare their annual reports after the conclusion of each fiscal year. The amendments provide that by February 1 of each year (beginning February 1, 1999), each agency must complete its annual FOIA report and submit it to the Department of Justice. See 5 U.S.C. § 552(e)(1). The Department of Justice, in turn, will make all annual reports available "at a single electronic access point" and notify Congress that this is done. 5 U.S.C. § 552(e)(3). The statute strongly compels all agencies to make their annual reports available to the public electronically, through placement on their own World Wide Web sites. See 5 U.S.C. § 552(e)(2); see also H.R. Rep. No. 104-795, at 28 (1996).

To facilitate this process, each agency should simply send a copy of its annual report to the Office of Information and Privacy by no later than February 1 of each year, with an indication of its location on the World Wide Web. (Any agency unable to do so should contact OIP in advance.) The Department of Justice will establish and maintain a World Wide Web site devoted to the compilation of all annual FOIA reports as of February 1999.

U S Department of Justice
Office of Information and Privacy

Washington, D C 20530

FOIA Training Opportunities

DEPARTMENT OF JUSTICE

Legal Education Institute "Freedom of Information Act for Attorneys and Access Professionals," **October 14-15**, 600 E Street, N.W., Washington, D.C.; **November 4-5**, New Orleans, LA. Contact: Monica Veney, (202) 616-6700. No charge.

Legal Education Institute: "Privacy Act Seminar," **October 16**, 600 E Street, N.W., Washington, D.C.; **November 6**, New Orleans, LA. Contact: Monica Veney, (202) 616-6700. No charge.

Office of Information and Privacy: "Annual Update Seminar on the Freedom of Information Act," **October 16**, 9:00 a.m. to 1:00 p.m., FBI Main Auditorium, 10th Street and Pennsylvania Avenue, N.W., Washington, D.C. Contact: Bertina Adams, (202) 514-1010. No charge.

Legal Education Institute: "Introduction to the Freedom of Information Act," **November 13**, 8 15 a m to 2 p m , 600 E Street, N W , Washington, D C Contact Monica Veney, (202) 616-6700 No charge

Office of Information and Privacy: "Advanced Seminar on the Freedom of Information Act," **December 3**, 600 E Street, N.W., Washington, D.C. Contact: Bertina Adams, (202) 514-1010. No charge.

Office of Information and Privacy: "Freedom of Information Act Administrative Forum," **December 4**, 600 E Street, N.W., Washington, D.C. Contact: Bertina Adams, (202) 514-1010. No charge.

GRADUATE SCHOOL, USDA

Southeast Training Center: "Freedom of Information and Privacy Act Workshop," **September 22-23**, Atlanta, GA. Contact: Registration Unit, (404) 331-3513. Cost: $315.

"Information Access Laws," **October 16-17**, 600 Maryland Avenue, S W , Washington, D C Contact Eric Friedfeld, (202) 401-9194, Ext 9592 Cost $325

Midwest Training Center "Freedom of Information and Privacy Act Workshop," **October 30-31**, 230 South Dearborn Street, Chicago, IL. Contact: Joseph Antonik, (312) 353-2919. Cost: $325.

"The Freedom of Information Act and the Privacy Act," a correspondence course scheduled to begin at any time. Contact: Correspondence Program, (202) 720-7123. Cost: $201.

NONGOVERNMENT

American Society of Access Professionals: "Business Information Day/ Annual Symposium," **November 17-19**, Doubletree Hotel, 1750 Rockville Pike, Rockville, MD. Contact: Joyce Gary, (202) 223-9669. Cost of Business Day only: $110 (members); $130 (nonmembers). Cost of Symposium: $215 (members); $235 (nonmembers).

Mr. HORN. So in other words, you think by February 1, 1999 a lot of our questions will be answered?

Mr. HUFF. Yes. All of those on the number of FTEs, backlogs, average number, median number of days, yes.

Mr. HORN. And you will have comparability there, I assume, based on those instructions?

Mr. HUFF. We very much hope so.

Mr. HORN. OK. On electronic access to information, which the 1996 amendments were all about, have you made available online just in your own operations a guide for the public explaining how to locate or request information?

Mr. HUFF. Yes, we have. We have a reference guide that is available in paper copy and it is also available online.

Mr. HORN. So they could go to a computer, press the Windows and all of that?

Mr. HUFF. Go to Department of Justice, and then look at Department of Justice FOIA button and that is going to lead you to it. If you hit the FOIA button, it will lead you to an FOIA home page and that guide is on there.

Mr. HORN. You can do that through the internet also, or is it simply that they have to go to one of your electronic reading rooms?

Mr. HUFF. No, no, they can do that through the internet.

Mr. HORN. OK. And websites and all that?

Mr. HUFF. Yes.

Mr. HORN. Mr. Collingwood, is that your situation, too?

Mr. COLLINGWOOD. Yes. We are under the umbrella of the Department of Justice, the sites are linked and we are encompassed by theirs, which covers all of the components.

Mr. HORN. How about NASA? Is that generally the way you are functioning?

Ms. RIEP-DICE. Yes, sir. We have a guide that we established.

Mr. HORN. OK. How about Energy?

Mr. LOPEZ. No. That is part of our DOE web page design which we hope to have up in a couple of weeks.

Mr. HORN. Are outside consultants essentially doing that for you or do you do it internally?

Mr. LOPEZ. Up to this point we have done it internally, but we are talking to an outside consultant with respect to the other components of the program.

Mr. HORN. So what is the status, then, of your electronic reading rooms? I take it with your exception they are all in place, are they, right now?

Ms. RIEP-DICE. Yes.

Mr. HORN. Do I see three nodding heads, almost three nodding heads?

Mr. HUFF. If I may, almost every one of ours are in place.

Mr. HORN. OK. Now, Mr. Lopez, staff informs me that the Department of Energy is providing electronic access only for those who actually go to DOE headquarters, is that correct?

Mr. LOPEZ. That is correct.

Mr. HORN. Now, that defeats the purpose of electronic access, doesn't it?

Mr. LOPEZ. Yes; and that is why we are moving hopefully—well, part of it will be accomplished within the next 2 weeks with the DOE web page design, and the other part, as I mentioned in the testimony, will become operational later this month with respect to information data bases and references, and we hope to complete the other part by the end of the fiscal year.

Mr. HORN. OK. And this will be on the internet?

Mr. LOPEZ. Yes, sir.

Mr. HORN. OK. How about your guidance, Mr. Huff, to that report that comes in in 1999? Is it saying you have to be on the internet?

Mr. HUFF. I think the answer is yes, you have to be on the—I am sorry, I want to be sure I understand the question.

The annual reports have to be——

Mr. HORN. No, no; just your guidance to the agencies on what we are asking in that report, we need to know who is on the Internet. Is it felt in carrying out the full spirit of the law that they all be on the internet?

Mr. HUFF. We have strongly encouraged them all to be on the internet. I believe that the statute may permit in rare cases an agency to merely make information in some categories electronically available, which may be through a CD–ROM, but that is not at all the emphasis that the Department of Justice has put on it, and I think that as Energy has suggested, they are moving exactly in the direction of a website and that is exactly what we have urged and recommended to all agencies.

Mr. HORN. OK. I understand Mr. Sununu asked the last question I was going to ask in this group, and that is, does your agency make it possible for requesters to submit the FOIA requests online, and I take it you can or you can't?

Mr. HUFF. We cannot yet at most components of the Department of Justice.

Mr. HORN. OK. How about the FBI?

Mr. COLLINGWOOD. No; we cannot. We are moving in that direction, but we cannot.

Mr. HORN. How about NASA?

Ms. RIEP-DICE. Yes, sir; we can.

Mr. HORN. How about Energy?

Mr. LOPEZ. Again, we hope in the next 2 weeks.

Mr. HORN. Two weeks, that is terrific. We are making a little progress here.

Now, repeatedly requested documents have been brought up by some earlier, but just to make sure I have everything covered, the 1996 amendments to FOIA require that documents likely to be the subject of more than one FOIA request be placed in an agency's electronic reading room. Now, we heard the two-per figure in terms of NASA, I believe, that if there are two requests, you would then put it in your electronic reading room; maybe I am missing the agency or something?

Ms. RIEP-DICE. No; that is correct, sir.

Mr. HORN. That is right; two requests. So does that seem like a reasonable rule to the other three of you, or do you feel there should be a greater volume before you put it on?

Mr. HUFF. Our advice is just slightly different from that. Ours says once you have a request and you process documents and make them available, if in the FOIA officer's judgment you are going to receive future requests, which means two more requests, then in your judgment, that is the FOIA officer's judgment, that he or she should have it put in the reading room. If it is paper that is older than November 1996, it would go just in the paper reading room. If it was created after that date, it would be available electronically and it would be available in the paper reading room as well, and that is the way we have approached that.

Once in a while, a FOIA officer just might have—his or her judgment might not be correct and he or she might say I don't think we are going to get any more, and lo and behold, by the time we receive the third one, then that is the trigger that in almost every case would then lead you to say, I do need to put it up electronically.

Mr. HORN. Now, is that true throughout the executive branch, that rule, sort of two and three?

Mr. HUFF. That is the advice we have given: If you have one and you suspect you are going to receive multiple requests, more than one beyond that, then you should put it up. That is the advice the Department of Justice has given out in FOIA updates.

Mr. HORN. Is that being followed by the FBI?

Mr. COLLINGWOOD. Yes, Mr. Chairman. We also have the caveat that we are doing some analysis here to see what volume the records historically would result in, because we don't want to end up with so many records in our public reading room that it loses its effectiveness. So we are in the process of developing not only the process to get them into the reading room and up electronically, but also remove them from the reading room when they are not looked at for some length or period.

Mr. HORN. That is a good question. That is a question every librarian asks about the shelves, and as a book collector, I go around to libraries and buy their surplus books. So what do you plan when, let's say, either through longevity and assume death and no calls on it, when are you going to take it off the electronic site? Is it just going in a disk for future reference, or how are we handling that?

Mr. COLLINGWOOD. Yes; once it is captured electronically, it is on a CD–ROM, and then it would be readily available for anyone who would request it. We have not yet confronted the situation of what to take down from our web site because it is no longer requested. For our paper reading room, the rule of thumb we use is if we have no requests for 5 years, then we take it out and replace it with more current material.

Mr. HORN. So if I am reincarnated as a space alien 400 years from now, I can go to a cave and I am going to find that disk, is that it? I mean, are we going to put them in caves? Or where are we going to store the disks?

Mr. COLLINGWOOD. Well, I am not certain. Storing the disks, though, is going to be a lot easier than storing the paper records because they are captured forever, and that is one of the huge advantages of electronic process, the actual electronic processing of documents, as opposed to just scanning them, because when they

are processed electronically, if the standards change or they need to be reprocessed or certainly if they need to be reproduced, it is very simply done as opposed to the very cumbersome process of doing it on paper.

Mr. HORN. Just think, if the agencies don't fix up their year 2000 problem and the private and public grid goes out in America, we might clear out the backlog that way.

How many documents generally do you have on the internet? Do you have all of them, are they all going on the internet in the case of NASA?

Ms. RIEP-DICE. I wouldn't know if it is exactly that for centers. I can tell you on headquarters, anything that we have had over two we have put on there. NASA headquarters does not get the same type of document requests that our centers do. The majority of our centers get requests for contracts and procurement type documents, where headquarters gets more of the administrative, so the centers get more of the multiple requesters than we do.

Mr. HORN. Now, has this type of affirmative disclosure required in the law reduced the number of FOIA requests? I mean, do we have any feel for that now, or is it just too early to tell?

Mr. HUFF. It may be too early to tell on a widespread basis. We have some anecdotal evidence, and in our Civil Rights Division, our FOIA officer is firmly convinced that putting up the Americans with Disabilities Act settlements online has significantly cut down on requests for that category of records his office has, and he speaks highly of it. Again, it is just a portion of his requests, but that portion is now practically minimal. Once in a while he will have to print one out because somebody doesn't have the electronic capability of getting it.

Mr. HORN. Let me move to index of major information systems. In 1996, the amendments to FOIA required that each agency make available an index of all major information systems of the agency, a description of major information and record locator systems maintained by the agency. Have each of you complied with that index? If we went over to your office, what could we find out? Just the types of information channels or communications that they have, or are you categorizing as the National Archives might do, in particular, for lines of inquiry? How does it work?

Mr. HUFF. I believe that is the same sort of—similar to the same question Congressman Sununu asked, and my answer is that we still have a very long ways to go at the Department of Justice to comply with essentially the Paperwork Reduction Act matters, which will then be immediately used under subsection (g) of the FOIA. As soon as we have that to satisfy the Paperwork Reduction Act requirements, then we will plug those in and use those. The answer is we have a long way to go at the Department of Justice.

Mr. HORN. In your guidance to the rest of the executive branch, do we have chronological series, do we have topical series? What are we doing in that area?

Mr. HUFF. That is an area where I believe the committee's guidance in its report gave that to OMB to give the advice, and they have give—they have the obligation to give advice under subsection (g), and OMB has given out two sets of guidance on that. So the

answer is, that is one area where we don't have that responsibility of guidance. We do of compliance.

Mr. HORN. So you feel generally you have complied with those requirements on the index?

Mr. HUFF. No; I think that that overstates it. I don't think that we have—we still have a lot of work to go with regard to the requirements, meeting the obligations under the Paperwork Reduction Act. And that is something that we are working on, and it is something that the Justice Management Division is working on now, and they are trying to do that.

Mr. HORN. Are they trying to do it then Departmentwide?

Mr. HUFF. In very large part it will be Departmentwide. Yes; it will, and that is something that we owe a communication to your committee on as soon as we can get a projection. Congressman Sununu asked about that, and as soon as we can get a good projection on when we can do that and the volume that we might have, that is something that we will get to your committee.

Mr. HORN. So without objection, either at the place Congressman Sununu raised this, or at this particular place, we will put it in at one or both.

[The information referred to follows:]

U.S. Department of Justice
Office of Legislative Affairs

Office of the Assistant Attorney General

Washington, D.C. 20530

October 19, 1998

The Honorable Stephen Horn
Chairman
Subcommittee on Government Management,
Information, and Technology
Committee on Government Reform and Oversight
U.S. House of Representatives
Washington, D.C. 20515

Dear Mr. Chairman:

During your Subcommittee's hearing on June 9, 1998, concerning implementation of the Electronic Freedom of Information Amendments of 1996, both you and Congressman Sununu asked Mr. Richard Huff, Co-Director of the Office of Information and Privacy, Department of Justice, how many information systems in the Department of Justice are required to be indexed, described and published under the provisions of the Electronic Freedom of Information Act Amendments of 1996, 5 U.S.C. § 552(g) (E-FOIA). Mr. Huff indicated that he would inquire and provide that information to the Subcommittee. Although the precise number of affected information systems is not yet known, this response is provided to complete the hearing record and to provide additional information concerning the efforts currently underway within the Department of Justice to determine that number and to comply fully with the E-FOIA requirements.

In June of 1998, the Management and Planning Staff within the Justice Management Division (JMD) of the Department of Justice (DOJ), assembled a small task force of DOJ employees to review the Department's compliance with the requirements of Section 11 of the Electronic Freedom of Information Act Amendments of 1996, 5 U.S.C. § 552(g). Specifically, the task force was assigned responsibility for coordinating the compilation, description and indexing of "major information systems" within the Department. Once completed, the task force was also assigned responsibility for ensuring that the required information was published on the Internet.

After performing the requisite background research, the task force, together with JMD management, developed a three-step strategy to ensure full DOJ compliance with the indexing, description, and publication requirements of the E-FOIA. First, the task force would work with two pilot components (the Federal Bureau of Investigation and the Antitrust Division) to define,

identify, and describe their major information systems Second, using the exemplars from the pilot components as models, the remaining DOJ components would then be asked to supply similar information for their major information systems. Finally, information about these major information systems would be reviewed, formatted and published on each component's FOIA webpage and linked to the Department's FOIA homepage under "Reference Guide."

It was decided at initial stages of the project that the Department would provide this information by component, rather than at the Department level, because of the diverse nature of DOJ components, both in terms of size and mission. In choosing the prototype components, the task force selected the Antitrust Division, as representative of the Department's litigating components, and the Federal Bureau of Investigation, as representative of the Department's large law enforcement activities. It was felt that the use of these two totally different components would produce a more representative sample of typical major information systems for use by all DOJ components than prototypes involving only the large law enforcement components, such as the Federal Bureau of Investigation, the Immigration and Naturalization Service, or the Bureau of Prisons.

Since the task force began its work in June, task force members have met with representatives of both components and the prototype work with the Federal Bureau of Investigation and the Antitrust Division is near completion. Both components have provided draft descriptive lists of their major information systems to the task force. The Federal Bureau of Investigation and the Antitrust Division have tentatively identified six major information systems within their organizations. Their information is being incorporated into a formal information request to the remaining components in the Department, each of which will be asked for input about its major information systems for the project. With thirty-six additional components to be canvassed, it is expected that the list of major information systems will grow substantially as components respond to the information request.

Simultaneously, the task force has already been working with technical personnel within JMD to develop appropriate enhancements to existing Departmental webpages to allow inclusion of information about the major information systems. Within the next few weeks, the task force will complete its developmental work on the webpages, and with the assistance of the two pilot components, will begin publishing information about their major information systems on the Department's website on their respective FOIA webpages. As information becomes available from the other components, it will be published on the Internet in the

The Honorable Stephen Horn
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same manner. The estimated completion date by which the Department expects to have all of its major information systems identified, indexed, described and published on the Internet is March 31, 1999.

I trust this information is responsive to the questions raised at the hearing. If you would like additional information on this or any other matter, please do not hesitate to contact me.

Sincerely,

L. Anthony Sutin
Acting Assistant Attorney General

cc: The Honorable Carolyn B. Maloney
Ranking Minority Member

Mr. HORN. When might that come, that document that gives us a bird's eye view?

Mr. HUFF. I suspect that within the next month that we should be able to have some sort of estimate. I am not certain, but I believe so.

Mr. HORN. That will give us time to meet our printing process.

Mr. HUFF. If I had more than 1 month, I would like it.

Mr. HORN. No; that month is great. We will expect it.

Now, are the indices, and I realize you are mostly concerned with Justice, but you have a broader view than most of us in this room—is most of it being made available on the internet, the indices themselves, not just the procedure of how you access a file, but the possibility of what you might want to get into?

Mr. HUFF. I don't have any direct knowledge on that. OMB Watch I think noted that there were in some agencies and many agencies needed work. I don't personally have any basis to contradict that.

Mr. HORN. Well, that is why we want to look at how we get the management in this area so the whole executive branch is involved in it. Does the online index you have so far, even if it is pretty much just in-house, identify the documents available online or all major document systems? How is this dealt with as to where they can find it? Is that part of being online?

Mr. HUFF. That is part of the project that we are working on. What we do have, if I may, in our reference guide we have discussions of each component of the Department of Justice, and then we will have a paragraph that will say, here are the main categories of work, of missions that this component has. And you can look at that paragraph not to see the major information systems but to see the general categories of responsibility that that component has, so that you would know if you were looking for antitrust materials, you would, of course, look in the Antitrust Division; if you were looking for another issue, you would look in another place. But the answer to your question directly is we still have a long way to go to do what you have asked on that.

Mr. HORN. Well, just let me ask one last question. You have been very patient. Is there anything you would like to get on the record that you felt, "Gee, you know, I would like to have said this to this particular question," but we didn't call on you because we focused on the person we were asking the question to? Any additional points you want to make?

Mr. HUFF. No, sir.

Mr. COLLINGWOOD. No, sir.

Ms. RIEP-DICE. No.

Mr. LOPEZ. No, sir.

Mr. HORN. Well, thank you very much for coming. We appreciate your testimony. We will be working on this over the next few months, and we look forward to that survey of the government at large, at least the executive branch of the government at large. Thank you.

The staff whom I would like to acknowledge on this are J. Russell George, staff director and chief counsel, seated against the flag at the wall there; Mr. John Hynes is the professional staff member responsible for the hearing; Matthew Ebert is the clerk responsible

for processing all the incoming and outgoing paper wherever it is found around here; Mason Alinger, staff assistant; and then three interns, Betsy Damus, Mark Urciuolo, and David Graff. For the minority, we have Brian Cohen for the professional staff; Earley Green, staff assistant; and Jean Gosa, the clerk for the minority. And then our court reporters, both Julie Bryan and Cindy Sebo.

With that, this hearing is adjourned.

[Whereupon, at 12:30 p.m., the subcommittee was adjourned.]