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# ENSURING AGENCY COMPLIANCE WITH THE FREEDOM OF INFORMATION ACT (FOIA)

## HEARING

BEFORE THE

## COMMITTEE ON OVERSIGHT AND GOVERNMENT REFORM HOUSE OF REPRESENTATIVES

ONE HUNDRED FOURTEENTH CONGRESS

FIRST SESSION

JUNE 3, 2015

**Serial No. 114–91**

Printed for the use of the Committee on Oversight and Government Reform

Available via the World Wide Web: http://www.fdsys.gov
http://www.house.gov/reform

U.S. GOVERNMENT PUBLISHING OFFICE

22–472 PDF WASHINGTON : 2017

For sale by the Superintendent of Documents, U.S. Government Publishing Office
Internet: bookstore.gpo.gov Phone: toll free (866) 512–1800; DC area (202) 512–1800
Fax: (202) 512–2104 Mail: Stop IDCC, Washington, DC 20402–0001

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# ENSURING AGENCY COMPLIANCE WITH THE FREEDOM OF INFORMATION ACT (FOIA)

**Wednesday, June 3, 2015**

HOUSE OF REPRESENTATIVES,
COMMITTEE ON OVERSIGHT AND GOVERNMENT REFORM,
WASHINGTON, D.C.

The committee met, pursuant to call, at 9:12 a.m., in Room 2154, Rayburn House Office Building, Hon. Jason Chaffetz [chairman of the committee] presiding.

Present: Representatives Chaffetz, Mica, Duncan, Jordan, Walberg, Amash, Gosar, Gowdy, Meadows, DeSantis, Mulvaney, Buck, Walker, Hice, Russell, Carter, Grothman, Hurd, Palmer, Cummings, Norton, Lynch, Connolly, Cartwright, Duckworth, Kelly, Lawrence, Watson Coleman, Plaskett, DeSaulnier, and Welch.

Chairman CHAFFETZ. The Committee on Oversight and Government Reform will come to order.

Without objection, the chair is authorized to declare a recess at any time.

We appreciate all of you being here for the third panel of this 2-day hearing, "Ensuring Agency Compliance with the Freedom of Information Act."

The President has, "committed to creating an unprecedented level of openness in government." Those were his words. That is not the case when it comes to filling FOIA requests. The backlog of FOIA claims has more than doubled since the President has taken office.

In March 2014, the Associated Press reported the Obama administration more often than any other administration had censored government files or outright denied access. Last year, the administration used exemptions to withhold information more than 550,000 times. Agencies must consult with the White House on, "all document requests that may involve documents with White House equities." Just in the last year, the government fully denied access or censored records in at least 250,000 cases, or roughly 39 percent of all requests. This is the highest number of denials in the history of FOIA.

Yesterday, we heard from individuals who waited years to get public records they requested. These requests came from media—national, reputable media organizations, as well as individuals. The witnesses yesterday told us the FOIA system is broken and probably broken by design.

In preparing for this hearing, the committee received numerous examples of delays, unreasonable redactions, and abusive fees, all of which hindered transparency.

For instance, the EPA strategically avoided disclosure under FOIA when discussing the development of the Pebble Mine in Bristol Bay, Alaska. Documents obtained by the committee show that the EPA employees contemplated and advocated for a preemptive veto of the project well before the petition was submitted to the EPA.

The IRS contacted one requester, Colin Hanna, on four separate occasions to explain it needed more time to respond to his FOIA request, but after 2 years they closed his request, asserting Mr. Hanna failed to reasonably describe his requested documents.

GSA identified 70,000 records as responsive to a FOIA request on its Green Buildings Initiative and then used the number of records as a reason to close a request from the Taxpayer Protection Alliance.

A requester waited 10 months before the DEA told him that his request for 13,000 documents related to the capture of Mexican drug lord El Chapo would cost $1.4 million.

One 26-year-old freelance journalist wrote the committee about his first experience with FOIA, saying, "I often describe the handling of my FOIA request as the single most disillusioning experience of my life."

The responses are enlightening and continue to come in. They seem to be numerous, bipartisan, across the board, consistent, and just absolutely frustrating.

We also saw unreasonable and inappropriate redactions, including many from the FCC. Unredacted documents produced by the committee show the FCC blacked out the Chairman's initials on every email he sent or received—blacked them out. In doing so, the FCC claimed a personal privacy exemption that isn't permissible for use even with lower-level staff.

The FCC also claimed that staff commentary like "wow" and "interesting" were deliberative and redacted them under a (b)(5) exemption. The time and expense that it takes to go through and do such silly, silly things is so frustrating and ridiculous. It gets very frustrating to hear anybody claim that, oh, well, we spend this exorbitant amount of money, when you are going through and blacking out "wow" and "interesting" and the name—yesterday—one of my favorites, personal favorites, is blacking out the name of the Department of Defense person who sang the national anthem, as if that is some state secret.

In one instance, simply quoting an attached press release qualified for a redaction, while the press release itself was released in full. It is amazing how many instances we have of publicly available information that is on the Department's Web site, comes back via a FOIA as redacted information. And a press release—press release—that it was publicly released is something that you have to hold back from the public? It makes no sense.

How can we trust the government's redactions when we have examples of such unnecessary and, in many cases, inappropriate redactions?

Despite significant corruption within the agency in recent years, the IRS is still obstructing taxpayers' efforts. Just getting the witness here today required a subpoena. The other four agencies we asked to invite their senior FOIA officers, they all agreed, they all showed up. Not the IRS. Nope, not the IRS. We can't have that. There is only 1 person at the IRS out of 90,000 that can testify, Mr. Koskinen. How wrong he is.

Ms. Howard, we appreciate you being here, but I should not have to issue a subpoena to get your presence here. We are talking about openness, transparency. We want to hear from you. You have dealt with this for years. But yet we had to issue a subpoena in order to get it.

And when we sent a letter to all five of the departments and agencies asking for some basic information, a one-page request, anywhere between two and eight different examples that we wanted information, Department of Justice, at least they sent us a letter, at least they gave us something. It was terribly incomplete. The IRS, no letter. Nothing.

We send a request to you, I send a subpoena to you, and you give us nothing? These other four did. I am telling you, we will drag the IRS up here every single week if we have to. You are going to respond to the United States Congress. You are going to respond to the American people. You work for the American people. You are not going to just drag us around. Because you know what? If it was the other way around, if the IRS went after an individual, you wouldn't put up with it. There is no way you would put up with this.

We expect you to respond to requests from the United States Congress. We have a right to see it. We have a constitutional duty to perform our oversight responsibilities. And for you to not respond to this committee in a timely fashion by giving us an electronic copy, which is what you were supposed to do, which the other four figured out, is not appropriate. We don't have that material, and we wanted it before the hearing. And I had to get a subpoena to drag you here, and it is wrong.

I have heard personally from multiple FOIA requesters that they wait and they wait and they wait, and, when they finally get a response, the request is either flatly denied or the pages are blacked out. We saw examples of that yesterday. So why is this necessary? And there are some cases where you do have to redact material. I understand that. I understand that. I appreciate that. But the lack of consistency is just stunning. The time that it takes is just unbelievable.

Department of Justice, as the FOIA litigator and the provider of agency-wide guidance, ought to be the model agency, but we know that it is not. The Department of Justice denied approximately 40 percent of its FOIA requests in the fiscal year 2014. Three percent of FOIA requests were denied on the basis of exemptions. Thirty-seven percent of requests were denied for other reasons. Five percent of all requests were denied on the basis of claiming documents were, "not reasonably described."

DHS is drowning in FOIA requests and needs to ensure the right resources are put towards properly clearing these backlogged cases. Department of Homeland Security receives about one-third of all

FOIA requests and is responsible for about two-thirds of the Federal backlog. So it was particularly disappointing to see the DHS FOIA program in the GAO's 2015 duplication report. Even the GAO has come in and said this is a terribly mismanaged, ill-executed system, so much so that there's highlights in the GAO's 2015 duplication report.

My disappointment grew yesterday when Lisette Garcia from the FOIA Research Center revealed to us the DHS has hired contractors for the primary purpose of closing, rather than completing, cases. We would like to explore that.

Individuals requesting records from Homeland Security might hear from contractors multiple times inquiring about whether or not they are still interested in their requests. That always cracks me up, right? A citizen, person from the media, goes out of their way to put in a FOIA request; so much time goes by that the government comes back to them and says, are you still interested? That takes time and resources.

And the State Department is as bad, if not worse, than DHS on FOIA compliance. The agency has open cases dating back for decades—decades. Last year, the State Department failed to fully respond to more than 65 percent of its requests. The Center for Effective Government graded 15 of the top FOIA agencies and gave the State Department an F on FOIA processing.

The agencies before the committee today need to bring sunshine to their FOIA programs. Agency leadership has failed to make FOIA a priority, and that makes the job of the witnesses before the committee much more difficult, if not impossible.

We know you have a tremendous amount of requests coming your direction. There are a lot of good people who work in your departments and agencies, and we thank them for their services. Not everything is bad. But it is our role and responsibility to understand how it really works, what you are up against, what you are dealing with in a very candid way so that we can help make it better and that we can understand it. And there undoubtedly have to be changes. My guess is you want to see some changes. We want to see some changes. So we want to ferret that out.

We have heard from the people that are very critical, but you are the people who are right there on the front lines, and you represent hundreds and literally thousands of people who are trying to do their job and deal with the tensions that come from political persuasions that have been on both the Democrat and Republican side of the aisle. You have career professionals who have been there through lots of different organizations. We want to hear candidly from you what is working, what is not working. But give us candid information so we can help better understand it. That is all we ask today.

We thank you again for your presence.

And, at this time, I will now recognize the ranking member, Mr. Cummings, for his opening statement.

Mr. CUMMINGS. Thank you very much, Mr. Chairman. And I thank you for holding these very important hearings on the Freedom of Information Act, which is the cornerstone of our Nation's open-government laws.

Thank you also to our agency witnesses for being with us today.

You do have a critical responsibility, which is to make Federal records available to the American public as effectively and efficiently as possible. You are also charged with implementing the directive President Obama issued on his first day in office, to implement a new presumption of openness that reverses the policy of withholding information embraced by the Bush administration.

Your job is also extremely difficult and is getting harder. You and, by implication, the President are being blamed for the increase in FOIA backlogs.

As we heard at our hearing yesterday, FOIA backlogs have increased in part as a result of cuts to agency budgets and the dwindling number of FOIA personnel forced to process record numbers of incoming requests. But we did not just only hear that. Mr. McCraw of The New York Times talked about a culture of unresponsiveness. And I hope that we will get to that and talk about that, because I agree with the chairman. In order for us to get to the bottom of this, we have to have an honest assessment of what is going on.

There were a number of witnesses that came before us yesterday that talked about a fear of people who are dealing with the FOIA requests, honoring them the way they should be, because they are afraid to get in trouble. If that is the case, we need to hear about that.

Now, going back to personnel, the number of FOIA requests skyrocketed from 2009 to 2014. In 2009, when President Obama took office, there were about 558,000 requests submitted to the Federal agencies. By 2014, that number rose to more than 714,000, a surge of 28 percent. That is quite a surge.

On the other hand, the total number of full-time agency FOIA personnel dropped to its lowest point since President Obama took office. In 2009, the number of full-time FOIA staff at Federal agencies was 4,000. In 2014, that number dropped to 3,838, a decrease of about 4 percent.

It seems obvious that Congress cannot continue to starve Federal agencies for resources through budget cuts, staffing reductions, sequestration, and government shutdowns and then blame those agencies for not being able to do their jobs effectively.

But, again, I want to go back. I want us to not only deal with the personnel issues, but this whole culture that Mr. McCraw talked about of unresponsiveness, I want to deal with that, too, because I want the total picture so that we can be effective and efficient in trying to remedy this situation.

If we want FOIA to work, we need to restore adequate funding, staffing, and training so agencies can handle the increasing workloads they will continue to face. That is another issue. Is there an issue of training? It is one thing to have personnel; it is another thing to have personnel that are properly trained.

But this is not what House Republicans are doing. Today, right now, down the hall in the Appropriations Committee, Republicans are voting to withhold nearly $700 million—hello—$700 million from the State Department's operational budget until it improves its document production processes. The operational budget includes the salaries for all—for all—of the State Department's FOIA employees.

Let me say that again. Today, with a record number of FOIA requests and with record low FOIA staffing, the answer from the Republicans is that we are going to withhold two-thirds of a billion dollars, more than all State Department FOIA staff salaries combined. How in the world is this supposed to help? It simply does not make sense.

We know that there are problems with FOIA. We know there are delays. We know that we must do better. But it is hard to imagine a more counterproductive attack on the FOIA process.

I also take issue with the claims that President Obama has not been one of the most aggressive and forward-thinking Presidents in the history in pressing for more open government. I have often said that he would never get credit for anything. If things go wrong, they blame him; if things go right, he gets no credit. Those who try to argue that President Bush took the same kind of unprecedented transparency actions as President Obama must have amnesia. There simply is no comparison—none.

Beyond ordering the presumption of openness for FOIA, the Obama administration issued a national action plan to establish a consolidated FOIA portal and enhance training for FOIA professionals. President Obama did that. It established a FOIA advisory committee to improve implementation and increase proactive disclosures of government information. President Obama did that. The administration implemented a new policy of disclosing White House visitor records. President Obama did that. It established ethics.data.gov, which posts lobbying disclosure reports, travel reports, and Federal Elections Commission filings all in one place, and it has made enormous amounts of government information available through data.gov. That is right, President Obama did that.

Finally, I suspect that some of my colleagues will continue their focus on former Secretary of State Hillary Clinton and her emails, so let's review the facts.

On December 5, 2014, Secretary Clinton provided more than 30,000—30,000—emails, totaling about 55,000 pages, to the State Department. The Department has those emails and is currently reviewing them to make them available to the public under FOIA.

This is a sharp contrast to former Secretary of State Colin Powell, who admitted that he used a personal email account for official business all the time. Unlike Secretary Clinton, Secretary Powell did not—did not—preserve any of his official emails from his personal account, and he did not turn them over to the State Department.

I am not naive; I understand the Republican focus is on Hillary Clinton as she runs for President. But if we really want to review compliance with FOIA, if we really want to review it and straighten it out and make it right and have the FOIA laws do what they are supposed to do and if we really want to be most effective and efficient, we should not do so selectively by ignoring facts based on political expediency. As I have often said, we are better than that.

To conclude, there is a major—a major—bipartisan step we can take to improve FOIA now. In February, I joined with Representative Issa—yeah, that is what I said—I joined with former Chairman Issa, our former chairman, on a bipartisan basis to introduce

the FOIA Oversight and Implementation Act. We passed it out of our committee unanimously, out of this committee, unanimously, several months ago. And I hope we can move forward in a bipartisan way to pass this bill.

Now, the chairman said yesterday to me that we are going to see what we can do to work that out, and what we need from you are suggestions. I am sure maybe all of you are familiar with 653, and if there are things that you think we can do to improve that bill to make it so that it can be more effective and efficient and that you can do your jobs better, then we want to know it.

Ladies and gentlemen, we can go around and around and around and around and around in circles, and we will be talking about this same stuff 10 years from now, and the backlog will be even greater. And so I look forward to hearing what you all have to say. Again, give us the good, the bad, and the ugly so that we can now effectively address this issue.

And, Mr. Chairman, I really thank you for your indulgence. With that, I yield back.

Chairman CHAFFETZ. I thank the gentleman.

I will hold the record open for 5 legislative days for any members who would like to submit a written statement.

Chairman CHAFFETZ. We will now recognize our first panel of witnesses. Let me introduce them.

Ms. Joyce Barr is the Chief FOIA Officer with the Department of State and has been involved in the FOIA process for the last 4 years. Ms. Barr was confirmed as the Assistant Secretary for Administration in December of 2011. As Assistant Secretary, she is responsible for the day-to-day administration of a variety of functions, ranging from logistics, records management, privacy programs, the Working Capital Fund, as well as Presidential travel.

We appreciate you being here.

Ms. Melanie Anne Pustay—did I say that properly?—is the Director of the Office of Information Policy at the Department of Justice since 2007 and has worked with FOIA for at least the last 12 years. The Office of Information Policy, sometimes referred to as OIP, is responsible for developing guidance for executive branch agencies on the Freedom of Information Act. OIP is charged with ensuring the President's FOIA memorandum and the Attorney General's FOIA guidance are fully implemented across the government. Before becoming Director, she served 8 years as the Deputy Director for OIP, where she was responsible for the Department's responses to access requests made to the Department's senior leadership offices.

Ms. Karen Neuman serves as the chief privacy officer and Chief FOIA Officer within the Department of Homeland Security. In her role as chief privacy officer, Ms. Neuman is responsible for evaluating department-wide programs, systems, technologies, and rulemaking for potential privacy impacts. She has extensive expertise in privacy law that helped inform privacy policy development both within the Department and in collaboration with the rest of Federal Government. She centralizes both FOIA and Privacy Act operations to provide policy and programmatic oversight and support implementation across the Department.

Mr. Brodi Fontenot serves as the Chief FOIA Officer and Assistant Secretary for Management in the Department of Treasury. He has served as the Chief FOIA Officer since January—for the last—which year did you become that?

Mr. FONTENOT. Just this year.

Chairman CHAFFETZ. Just this year. I wanted to make sure I had that right. January of this year.

Mr. Fontenot serves as the Secretary of Treasury on the development and execution of treasury's budget and strategic plans and the internal management of the Department and its bureaus. In January 2014, President Obama nominated him as the Treasury's Chief Financial Officer.

Ms. Mary Howard is the Director of the IRS' Privacy, Governmental Liaison, and Disclosure Division in the United States Department of Treasury. She has served in this role since January of 2014. In this role, she is responsible for managing a multifaceted privacy program and ensuring compliance with the Privacy Act, the Freedom of Information Act, and the Internal Revenue Code known as 6103. Ms. Howard represents the IRS' interests in identity theft, information protection, disclosure, and data-sharing. Ms. Howard began her career at the IRS in 1988 as a revenue agent and has served in various roles throughout the agency and throughout her career.

We appreciate you all being here.

If you would please rise and raise your right hands, pursuant to committee rules, the witnesses are to be sworn before they testify.

Do you solemnly swear or affirm that the testimony you are about to give will be the truth, the whole truth, and nothing but the truth?

Thank you.

Let the record reflect that all witnesses answered in the affirmative.

As you take your seat, we would ask that you limit your testimony to 5 minutes. Your full written statement will be made part of the record.

And, with that, we will now start with Ms. Barr, and you are now recognized for 5 minutes.

## WITNESS STATEMENTS

### STATEMENT OF JOYCE A. BARR

Ms. BARR. Thank you, Chairman Chaffetz, Ranking Member Cummings, and members of the committee. Good morning. Thank you for the invitation to appear before you today.

My name is Joyce Barr, and I serve as the Assistant Secretary for Administration as well as Chief FOIA Officer for the State Department. I am a career Foreign Service officer, with over 35 years of experience serving around the world.

Thank you for your interest in and advocacy for improving transparency to the public. We share that goal at the Department and work every day to achieve it.

In addition to providing a range of support services around the world, the Bureau of Administration is also responsible for responding to requests under FOIA as well as managing and main-

taining official department records. The State Department is committed to openness. It is critical to ensuring the public trust and to promoting public collaboration with the U.S. Government.

However, meeting our commitment to openness is very challenging. We have a large backlog of over 16,000 FOIA requests. We know this backlog is unacceptable and are working to reduce it. Last year, we achieved a nearly 23-percent reduction in our appeals backlog by streamlining case processing. We made progress; more is needed.

The backlog is due to several factors. Our caseload increased over 300 percent since 2008. In fiscal year 2008, the Department received fewer than 6,000 new FOIA requests, but in fiscal year 2014, we received nearly 20,000. Since the beginning of this fiscal year, we have already received over 15,000 new requests.

Second, many of these cases are increasingly complex. Other national security agencies are exempt from release of some information under the FOIA. As a result, requesters often come only to the Department to request information on any and all national security issues. The Department is often the public's first and only destination for documents on these issues.

These complex requests require multiple searches throughout many of our 285 missions across the globe. They involve the review of classified or highly sensitive materials and require coordination with other Federal agencies. They can generate large amounts of material that must be reviewed by State and interagency subject-matter experts across the Federal Government.

We receive many complaints about delays, but our goal is to do everything we can to complete each request as soon as possible.

Secretary Kerry recently reinforced our commitment to transparency in his March 25 letter to our inspector general. In that letter, he recognized the work that has already been done and noted the Department is acting on a number of challenges to meet its preservation and transparency obligations. The Secretary asked the inspector general to ensure we are doing everything we can to improve and to recommend concrete steps that we take to do so.

I am here as the Department's senior FOIA official to assure you that we have committed to working cooperatively with the IG with his review and any recommendations that may follow.

My testimony for the record includes information about related issues, such as our FOIA Web site and the role we play in helping the public get access to information from Presidential libraries.

Again, the Department of State is committed to public access to information.

Mr. Chairman, I thank the committee for the opportunity to testify today and would be pleased to address questions that you or any other member of the committee may have on FOIA within the State Department. Thank you.

[prepared statement of Ms. Barr follows:]

**Statement of**
**Joyce Barr**

**Assistant Secretary of Administration**
**U.S. Department of State**

**Before the**
**House Committee on Oversight and Government Reform**

**June 3, 2015**

Chairman Chaffetz, Ranking Member Cummings, and Members of the Committee, Good morning.

Thank you for the invitation to appear before you today. My name is Joyce Barr and I serve as the Assistant Secretary for Administration, as well as Chief FOIA Officer for the Department of State. I have been a member of the Foreign Service for over 35 years, serving in posts around the world, including an assignment as U.S. Ambassador to the Republic of Namibia. Thank you for your interest in and advocacy for improving transparency to the public. We share that goal at the Department and work every day to achieve it.

The Bureau of Administration provides a range of services to our embassies and facilities around the world, including property management, publishing and library services, contracting and procurement, travel and transportation.

Another part of our mission is to respond to requests under the Freedom of Information Act, as well as to manage and maintain official records at the Department of State. I appreciate the opportunity to provide an overview of the State Department's ongoing efforts to improve our FOIA processing and administration.

The State Department is committed to openness. We recognize that openness is critical to ensuring the public trust, as well as to promoting public participation in and collaboration with the U.S. Government. Therefore, we believe that transparency will make the Department stronger – it will strengthen our ability to achieve progress in U.S. foreign policy and national security, while promoting efficiency and effectiveness in the important work we do. This is why we continue to look for ways to improve our openness to the public, solicit greater feedback through public engagements on transparency issues, and encourage the public to participate in the business of U.S. foreign policy.

That said, meeting our commitment to openness is very challenging. As you may already know the State Department is currently facing a large backlog of over 16,000 FOIA requests. We recognize this backlog is unacceptable, and are

working to reduce it. In Fiscal Year 2014, we achieved a nearly 23 percent reduction in our appeals backlog, by finding ways to streamline our case processing. While we've made progress in reducing our backlog, we are seeking to make additional strides to reduce this further.

I should note there are several factors that contribute to this backlog. First, we are struggling to keep up with a large increase in FOIA requests. Since 2008, our caseload has increased over 300 percent. In Fiscal Year 2008, the State Department received fewer than 6,000 new FOIA requests. In Fiscal Year 2014, we received nearly 20,000. Since the beginning of this fiscal year in October, we have already received over 15,000 new requests.

Second, many of these cases are increasingly complex. The State Department is the public's first, and often the only, stop for information and documents relating to National Security issues. Other national security agencies are exempt from release of some information under the FOIA. As a result, requesters often come only to the Department to request information on any and all national security issues. These requests are often a mixture of complex subject matters regarding terrorism, wars, foreign government relations, security, diplomacy - and something we have seen more of recently - pending litigation against the U.S. Government.

These complex subject matters require multiple searches throughout many of our 275 Missions across the globe, often involving the review of classified or highly sensitive materials, as well as coordination with other federal agencies. In many of these cases, searches locate voluminous amounts of paper and electronic materials that must be reviewed by State and interagency subject matter experts at various agencies in the U.S. Government. Given that FOIA requests to the Department often relate to contemporary topics, our FOIA team must consult within State and with other interagency subject matter experts regarding sensitivities and whether the release of the information would harm U.S. national security, or potentially damage relations with a foreign country.

To assist in addressing both current FOIA requests and questions about older and pending requests, the State Department has a dedicated FOIA Public Liaison team working hard to answer questions and respond to queries about the status of specific requests. The most common complaint we receive from the public is related to delays in receiving timely responses. Not surprisingly, as the number of FOIA requests has increased, so has the number of public inquiries regarding the status of those requests, and we receive such inquiries on a daily basis. Our goal

is to do everything we can to complete each request as quickly as possible, with as much responsive information as possible.

You may already be aware that Secretary Kerry recently reinforced this point with his letter of March 25 to our Inspector General. In that letter, the Secretary explained that he recognizes the work that has already been done and that the Department is already acting on a number of challenges associated with meeting its preservation and transparency obligations. The Secretary asked for an outside look by the Inspector General to ensure we are doing everything we can to improve and to recommend concrete steps that we can take to do so.

I am here as the Department's senior FOIA official, to assure you that we are committed to continuing efforts to improve and work cooperatively with the Inspector General with his review and any recommendations that may follow. The Department's FOIA experts have already met with IG review team.

I would like to also take this opportunity to share with the Committee some of the unique State Department activities, in addition to FOIA, that inform the public about foreign policy, diplomatic relations, and State operations through the release of literally millions of pages of documents.

**Website**

We are very proud of our current website and urge everyone to visit FOIA.state.gov. Some of you and your staff may have already visited this website, but if you have not done so, I highly recommend taking a look. For the past few years, we have been posting completed FOIA productions on that site in situations where we have received more than one request for the same information. The site is searchable by key word, date, region, etc.

I'm told the State Department was the first U.S. Government agency to initiate a FOIA website nearly two decades ago. Since then, we have continuously striven to enhance our FOIA website, often working with constituency requester groups to design a site that provided what they needed and wanted. In fact, the National Security Archive has publicly noted that the State Department has one of the best FOIA websites of all federal agencies.[1] Today, we have an interactive site that provides a wealth of information to the public, including the ability to search and access thousands of previously released documents.

**Opening the Historical Record of US Foreign Policy**

[1] *See* http://nsarchive.gwu.edu/NSAEBB/NSAEBB505/

Decades before the Executive Order mandate, the Department established a program for the declassification review of its most sensitive permanent historical records, transferring them to the National Archives where they are available to the public. During the past five years alone, we have declassified nearly 26 million pages, bringing the long term total to literally hundreds of millions of pages of declassified foreign policy records available to the public at the National Archives. More than 95 percent of the entire collection was declassified for public access, with the remaining percentage representing mostly the equities of other agencies.

There are 2.3 million permanent historical records available online from State's corporate electronic archive, the oldest (dating back to 1973) and only enterprise-wide collection of substantive electronic records documenting a cabinet agency's mission and activities in the Federal government. Millions of cables, diplomatic notes, and other important foreign policy documentation are available online. These actions are consistent with the Department's objective to make available to the American taxpayer, in keeping with FOIA principles, the maximum amount of documents related to our country's foreign policy activities.

**Foreign Relations of the United States (FRUS)**

The FRUS series is the official documentary historical story of major U.S. foreign policy events and significant diplomatic activities - and the decision making surrounding them. FRUS volumes contain documents compiled by the Office of the Historian not only from the State Department's archives, but from the Presidential Libraries, the Department of Defense, the National Security Council, the intelligence community, and USAID. The series also provides insightful documentary editing. Since the inception of the FRUS in 1861 under Secretary Seward, the State Department has been informing citizens about formerly classified operations and events in our foreign relations - and doing so proactively long before any other entity in the Federal government was releasing such information. Since its inception, the Department has published 501 volumes; with 42 volumes published in the past five years.

**Presidential Libraries**

There are 14 Presidential Libraries open to the public that not only provide unique insight into the personal lives of our presidents, but also serve as a collection of the records related to an administration. The public can request access to these records. The State Department is the largest single equity holder of records in the Presidential Library system. During the past five years we have processed over 3,600 requests from the Libraries, reviewing over 51,000 pages for release.

**Special Access under Executive Order 13526 and Pre-Publication Review**

Executive Order 13526 provides former presidential appointees access to records originated, reviewed, signed or received during their tenure in office. It also allows for them to designate research assistants for this purpose. Many of the Department's former principal officers, including former secretaries, request access to publish books covering their respective tenure in office, thus providing unique insights into events, decision making, people, and diplomacy. As a condition of this access, the State Department reviews manuscripts produced as the result of this access to ensure that there is no classified information in the published product.

In summary, the Department of State is committed to the public's access to information. We are working every day to improve our efforts in this regard. Again, Mr. Chairman, thank you for the opportunity to testify before you today. I would be pleased to address questions you or any other Member of the Committee may have on FOIA within the State Department.

Chairman CHAFFETZ. Thank you. I appreciate it.

Ms. Pustay, you are now recognized for 5 minutes.

If you can make sure that microphone is kind of pulled straight and tight to your—up there. If you straighten it out and turn it on, that would be great.

Ms. PUSTAY. Okay.

Chairman CHAFFETZ. Thank you.

**STATEMENT OF MELANIE ANNE PUSTAY**

Ms. PUSTAY. Are we good?

Good morning, Chairman and Ranking Member Cummings and members of the committee. I am pleased to be here today to discuss the FOIA and the Department of Justice's ongoing efforts to encourage agency compliance with a very important law.

There are several areas of success that I'd like to highlight today. Despite receiving continued record high numbers of FOIA requests and operating at the lowest staffing levels in the past 6 fiscal years, agencies have continued to find ways to improve their FOIA administration. Seventy-two out of the 100 agencies subject to the FOIA ended the fiscal year with low backlogs of fewer than 100 requests. Processing nearly 650,000 requests, the government also continued to maintain a high release rate of over 91 percent.

Agencies overall also continued to improve their processing times. For a number of years, OIP has encouraged agencies to focus on their simple track requests, with a goal of processing those requests within an average of 20 working days. And I'm very pleased to report that this past fiscal year the government's overall average was 20.5 days for those simple track requests.

And there's also many other achievements that simply can't be captured by statistics. Agencies continue to post a wide variety of information online in open formats. They're making discretionary releases of otherwise exempt information. They're utilizing technology to help improve FOIA administration.

The Department of Justice continued to work diligently throughout the year to both encourage and assist agencies in their compliance with the FOIA. I firmly believe that it's vital that FOIA professionals have a complete understanding of the law's legal requirements and the many policy considerations that contribute to successful FOIA administration. So, as a result, one of the primary ways my office encourages compliance is through the offering of a range of government-wide training programs and the issuance of policy guidance on FOIA.

In 2014 alone, my office provided training to thousands of individuals on a range of topics, including comprehensive guidance on the FOIA's proactive disclosure provisions. That guidance included strategies for identifying frequently requested records, and it also encourages agencies to post records even before receipt of a single request, in accordance with the President's and Attorney General's FOIA directives.

And I'm particularly pleased to highlight for you today the substantial progress that we have made on a number of initiatives to modernize the FOIA.

First, in collaboration with the 18F team at GSA, we've been working on the creation of a consolidated FOIA portal that will be

added to the resources that are available on FOIA.gov. This service will allow the public to make a request to any agency from a single Web site and will also include additional tools to improve the customer experience.

Second, OIP has been working on the potential content of a core FOIA regulation. We formed an interagency task force to tackle this project. We've met with civil society organizations to get their input. And our team is actually now hard at work drafting language for this important new initiative. We look forward to our engagement with both civil society and our agency colleagues as we work forward on that project.

Now, third, in an effort to improve internal best practices, we launched what we're calling a series of best practices workshops. And we started there with the very important topic of improving timeliness and reducing backlogs. These workshops provide a unique opportunity for agencies to learn from one another and to apply innovative strategies more broadly across the government.

And then, finally, just this past March, I'm very pleased that we completed our commitment to enhance FOIA training by making standard e-learning training resources available to all Federal employees. Embracing Attorney General Holder's message that FOIA is everyone's responsibility, these new training resources target the entire spectrum of Federal employees, from the newly arrived intern to the senior executive. These training resources are available to all agency personnel anywhere in the world and at no cost. They address the FOIA's many procedural and substantive requirements, but they also emphasize the importance of good communication with requesters and good customer service—very important topics. Given how important all of this is to the successful implementation of the FOIA, I'm very proud that OIP can provide these resources to all government officials across the world.

So, in closing, in the face of many challenges this past fiscal year, agencies have achieved successes in many areas. And while we certainly believe there's more work to be done and we're continually looking for ways to improve the process, we're proud of what we've done so far, and we look forward to working with the committee as we jointly pursue the goal of improving access to information.

Thank you.

[Prepared statement of Ms. Pustay follows:]

# Department of Justice

**STATEMENT OF**

**MELANIE ANN PUSTAY**
**DIRECTOR**
**OFFICE OF INFORMATION POLICY**

**BEFORE THE**

**COMMITTEE ON OVERSIGHT AND GOVERNMENT REFORM**
**U.S. HOUSE OF REPRESENTATIVES**

**AT A HEARING ENTITLED**

**"ENSURING AGENCY COMPLIANCE WITH THE FREEDOM OF INFORMATION ACT (FOIA) PART II"**

**PRESENTED**
**JUNE 3, 2015**

**Melanie Ann Pustay**
**Director**
**Office of Information Policy**
**Before the Committee on Oversight and Government Reform**
**Washington, D.C.**
**June 3, 2015**

Good morning, Chairman Chaffetz, Ranking Member Cummings, and Members of the Committee. I am pleased to be here today to discuss the Freedom of Information Act and the Department of Justice's ongoing efforts to encourage agency compliance with the statute as well as with President Obama's Memorandum on the FOIA and former Attorney General Holder's 2009 FOIA Guidelines. The Department of Justice is strongly committed to the President's and Attorney General's vision of open government. My office, the Office of Information Policy (OIP), has undertaken a range of initiatives this past year designed to assist agencies in improving their FOIA administration. Today I would like to highlight some of those efforts, provide an overview of key FOIA statistics and agency successes from this past fiscal year, and outline some of the exciting new initiatives we are undertaking that are designed to help further improve FOIA in the years ahead.

OIP takes very seriously its obligation to encourage agency compliance with the FOIA. We believe that the foundation of any FOIA program are personnel who have a complete understanding of the FOIA's legal requirements and the policy considerations set out in the President's and Attorney General's 2009 FOIA Memoranda. Accordingly, one of the primary ways OIP encourages compliance with the FOIA is through the offering of a range of government-wide training programs and the issuance of policy guidance that assists agencies in their implementation of the law. In 2014 alone, my Office provided training to thousands of individuals through a variety of training programs, including seventy-six specialized presentations given at the request of various agencies, which were designed to meet their specific FOIA training needs.

In addition to providing training on all aspects of the FOIA, OIP also issues policy guidance to agencies on the proper implementation of the law and the President's and Attorney General's 2009 FOIA Memoranda. All of the guidance issued by OIP can be found on the Guidance page of our website. Just this past March, OIP issued new guidance addressing proactive disclosures. In this guidance, OIP emphasized that when agencies make proactive disclosures they are enhancing transparency by ensuring that certain key information about the operations and activities of the government are readily and efficiently made available to everyone. In addition to discussing the FOIA's proactive disclosure requirements, the new guidance addresses ways in which agencies can take further steps to increase proactive disclosures in keeping with the President's and Attorney General's 2009 FOIA directives. The guidance provides information on methods of disclosure, strategies for identifying "frequently requested" records, and tips on ensuring that posted information is usable. To assist agencies even further, OIP included as part of its guidance a "Proactive Disclosure Checklist."

In 2014 OIP issued a series of guidance to agencies on ensuring timely determinations on requests for expedited processing, reducing backlogs and improving timeliness, and providing

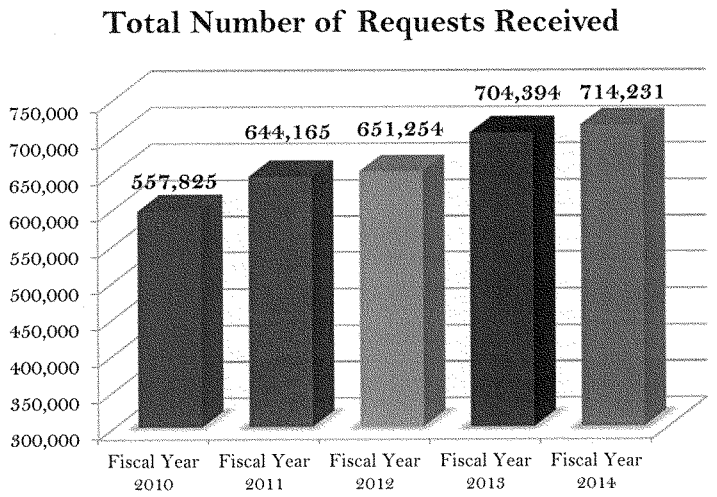
status information to requesters. As in years past, OIP also issued guidance for further improvement based on our review and assessment of agencies' 2014 Chief FOIA Officer Reports. That guidance highlighted the importance of agencies: 1) ensuring that their FOIA professionals receive substantive FOIA training, 2) adding distinct steps to their FOIA processes to identify potential discretionary disclosures, and 3) taking an active approach to making proactive disclosures.

As you know, this past March we celebrated the sixth anniversary of former Attorney General Holder's FOIA Guidelines. Issued during Sunshine Week on March 19, 2009, the Attorney General's FOIA Guidelines address the presumption of openness that the President called for in his FOIA Memorandum, the necessity for agencies to create and maintain an effective system for responding to requests, and the need to improve timeliness and to work to reduce backlogs. The Guidelines also direct agencies to promptly and proactively make information available and they emphasize the importance of agencies using "modern technology to inform citizens about what is known and done by their Government." Finally, stressing the critical role played by agency Chief FOIA Officers in improving FOIA performance, the FOIA Guidelines direct all Chief FOIA Officers to review their agencies' FOIA administration each year and to report to the Department of Justice on the steps taken to achieve improved transparency.

OIP uses the Chief FOIA Officer Reports as a vital tool in our efforts to promote accountability and encourage agency compliance with the FOIA and the President's and Attorney General's 2009 FOIA Memoranda. Each year OIP has developed guidelines for agency Chief FOIA Officer Reports. While we have maintained five key topical areas for agencies to address, each year OIP has modified the specific questions asked of agencies to build on the responses of previous years. As a result, the Chief FOIA Officer Reports have become a valuable resource for tracking and documenting agencies' efforts to improve all aspects of their FOIA administration over the past six years. I highly recommend that the Committee review these Reports, which are available at http://www.justice.gov/oip/chief-foia-officer-reports-2015, to see the broad array of activities that agencies have undertaken to improve their FOIA administration.

In 2014, for the fourth straight year, OIP conducted a formal assessment of agencies' FOIA administration by scoring all ninety-nine agencies that are subject to the FOIA on a series of milestones tied to each of the five key areas addressed in the Attorney General's 2009 FOIA Guidelines. OIP uses a wide range of milestones to capture a broad spectrum of FOIA activity, from applying the presumption of openness, to increasing use of technology and improving timeliness. We post the assessment each year on the Department's website, along with a summary of agency activity and guidance for further improvement. As agency implementation of the Attorney General's 2009 FOIA Guidelines has matured, OIP has continually refined the milestones that are assessed. We have also engaged with civil society organizations to identify new milestones to be included in the assessment. This collaboration has been very productive and we greatly appreciate the ideas and suggestions we have received. For the 2014 assessment OIP used twenty-four separate milestones. We expanded our scoring system for those milestones from three scores to five, gave overall scores for each assessed section, and added narrative information to provide greater context to the milestones.

We are currently in the process of reviewing and assessing agencies' 2015 Chief FOIA Officer Reports, which were posted this past March. Based on our initial review of those reports and our review of agency Annual FOIA Reports for Fiscal Year 2014, it is clear that agencies have persevered through a difficult year of tight resources in an effort to meet the ever-increasing demands of their FOIA administration. This past fiscal year marks another record high in terms of the numbers of requests received by agencies. During Fiscal Year 2014, agencies received 714,231 requests, which rose from the previous high of 704,394 requests received in Fiscal Year 2013. Since Fiscal Year 2010, the number of FOIA requests received by the government has increased each year.




In addition to the ever-increasing numbers of incoming requests, Fiscal Year 2014 posed other challenges for agencies' administration of the FOIA as well. During Fiscal Year 2014, the government overall reported its lowest staffing levels dedicated to FOIA in the past six fiscal years and agency FOIA offices began the year with a nearly three-week government shutdown during which time no requests could be processed. Taking into account that the government processed 647,142 requests during Fiscal Year 2014, we roughly estimate that this three-week period could have resulted in over 32,000 more FOIA requests being processed.

As a result of these challenges and the record high number of incoming requests, the government's overall backlog of pending requests increased. Given the importance of reducing backlogs, in 2014 for the first time my Office directed any agency that had a backlog of more than 1,000 pending requests which had not reduced that backlog by the end of the fiscal year, to include in its Chief FOIA Officer Report a plan for achieving backlog reduction. For the 2015 Chief FOIA Officer Reports, agencies were required to respond to this question again, and those agencies that formulated plans in 2014 were asked to describe their efforts in implementing those plans.

While there were a number of challenges that agencies worked through during Fiscal Year 2014, there were also several areas of success that I am pleased to highlight. First, the majority of agencies (72 out of 100) were able to maintain low backlogs of fewer than 100 requests. Notably, fifty-nine of these agencies had a backlog of less than twenty requests, including twenty-nine that reported having no backlog at all.

Further, when processing requests for disclosure, the government continued to maintain a high release rate of over 91%, marking the sixth straight year in which the government's release rate was above 90%. This means that records were released, either in full or in part, in response to 91% of requests where the government was in a position to make a disclosure determination. Notably, the government also continued to improve its processing times for both simple and complex track requests. OIP has for a number of years focused on agency efforts to process simple track requests within an average of twenty working days. This past fiscal year, the government overall reported an average of 20.51 days to process its simple track requests.

Agencies also continued to make marked improvements in a number of areas that are not easily captured by statistics. As evidenced by the 2015 Chief FOIA Officer Reports, as well as from prior years' Reports, agencies continue to embrace the President's and Attorney General's 2009 FOIA directives by proactively posting information online. In addition to the various examples of proactive disclosures noted in agency Chief FOIA Officer Reports, many agencies also describe the steps they have taken to make the information they post online more useful to the public. More and more agencies are posting information in open formats whenever possible and taking steps to make the information easier to find on their websites. In addition, agencies are taking steps to publicize their proactive disclosures on social media and other platforms to ensure that the public is aware of their availability. These efforts fully embrace the President's message for agencies to "use modern technology to inform citizens about what is known and done by their Government."

In response to the Attorney General's 2009 FOIA Guidelines, agencies have also continued to look for opportunities to make discretionary releases of information when processing records. A range of examples of discretionary releases made by agencies just this past year can be found in the 2015 Chief FOIA Officer Reports. These examples include information that could have been withheld under Exemptions 2, 5, 7(D), and 7(E) of the FOIA, with Exemption 5 material forming the majority of the discretionary releases. Of course, exemption use will fluctuate from year to year depending on the types of records that are requested and the numbers of requests that are processed. Further, the number of times an agency uses exemptions in responding to a request does not correspond with the volume of information withheld. Keeping this in mind, it is still noteworthy that during Fiscal Year 2014, the government overall reduced by 14% the number of times it cited to Exemption 5. As has been the case for many years, the most cited exemptions in Fiscal Year 2014 were the FOIA's privacy exemptions, Exemptions 6 & 7(C). When exemptions were used by agencies, the privacy exemptions were used 53% of the time. Notably, the number of times Exemption 5 was cited amounts to less than 13% of the government's entire usage of FOIA exemptions.

As to Exemption 2, the Department of Justice has been working with a number of agencies impacted by the Supreme Court's ruling in *Milner v. Department of the Navy,* 131 S. Ct. 1259 (2011), which substantially narrowed the scope of that exemption. Through those efforts we developed a thoughtful legislative proposal that does not sweep too broadly, but at the same time provides sufficient protection against circumvention of the law and the safeguarding of our national security. That proposal was recently submitted to Congress by the Department of Defense as part of its FY16 Defense Authorization Act proposal.

In addition to enhancing transparency through proactive disclosures and discretionary releases of otherwise exempt material, agencies continue to look for ways to increase their use of technology for the benefit of FOIA administration. As agencies receive more requests every year it has become even more important to find efficiencies through the use of new technologies. One area in which we have found technology to be particularly beneficial is the use of tools and applications that assist with the core tasks of processing FOIA requests, such as technology that assists in the search and review of documents, shared platforms that allow for simultaneous review and comment on documents, and electronic capabilities that automatically identify duplicative material. Automating many of the internal processes for handling FOIA requests can bring great benefits in efficiency. While some of these tools can sometimes be difficult for agencies to acquire, many agencies have reported that they are taking steps to utilize more advanced tools in order to build efficiencies in their FOIA programs.

As you can see, while facing many challenges, agencies have found a number of ways to improve their FOIA administration. I am particularly pleased to highlight for you today the substantial progress we have made on five initiatives to further modernize FOIA as part of our commitments under the United States' Second Open Government National Action Plan (NAP). Our first initiative is the creation of a consolidated online FOIA service that will allow the public to make a request to any agency from a single website and that will include additional tools to improve the customer experience. OIP has been working closely with the General Services Administration's 18F Team on this commitment and the development of a new resource to be added to the features available on FOIA.gov, the government's comprehensive resource on FOIA.

As you know, the Department launched FOIA.gov during Sunshine Week 2011 as the flagship initiative under our first Open Government Plan. FOIA.gov provides the public educational material about how the FOIA works, where to make requests, and what to expect through the FOIA process. Explanatory videos are embedded into the site and there is a section addressing frequently asked questions. The videos alone have received well over 2.5 million visitors. We also include a glossary of FOIA terms and list the contact information for each agency's FOIA Requester Service Centers and FOIA Public Liaisons. The site includes links to the over 100 FOIA offices that use online portals, making it easier for requesters to begin their request process right from FOIA.gov.

In addition, FOIA.gov serves as a visual report card on agency compliance with the FOIA by graphically displaying all of the data from agency Annual FOIA Reports and allowing users to compare the data by agency and over time. The site alerts the public to FOIA news posted by the Department of Justice and spotlights examples of FOIA releases made by agencies. As an

additional resource, the site encourages the public to first look to see what is already publicly available on agency websites before submitting a FOIA request. A search feature is provided to the public where they can use keywords to find records posted on any government website. With our continued focus on encouraging agencies to post documents proactively, enhancing the public's ability to locate that posted information is critical. We look forward to continuing to enhance the features on FOIA.gov to further improve the customer experience.

The second NAP initiative that we have been working on focuses on reviewing the feasibility and potential content of a core FOIA regulation. There are many steps in the FOIA process that are generally shared across agencies. By standardizing these common aspects we can potentially make it easier for requesters to understand the FOIA process while at the same time making it easier for agencies to publish new regulations. In 2014, OIP launched this project by meeting with both agencies and civil society to get their initial input from the very start. We then formed an interagency taskforce which began the process of exploring the streamlining of agency FOIA regulations. As part of our process we have analyzed current agency FOIA regulations in comparison to a "model FOIA regulation" provided to us by civil society. Based on that analysis, our team is now hard at work drafting initial language for a potential common regulation. We look forward to continuing our engagement with civil society as we collaborate on this project.

Our third NAP initiative is designed to improve internal agency FOIA processes by leveraging best practices and successful strategies across the government. In 2014, OIP launched a series of Best Practices Workshops. Each workshop focused on a specific topic in FOIA administration where agency representatives with particular success in that area shared their best practices and successful strategies. These workshops, which we will continue in the years ahead, provide a unique opportunity for agencies to learn from each other and to apply innovative solutions more broadly across the government. After each workshop my Office published the best practices discussed, as well as any related guidance and resources, on a designated page of our website as a reference for all agencies. Since its launch, we have had five very successful workshops on the topics of reducing backlogs and improving timeliness, proactive disclosures, implementing best practices observed by requesters, utilizing technology to improve FOIA processing, and FOIA customer service. The series has been well received by agencies and we look forward to continuing our workshops with new topics in 2015.

As part of a fourth NAP initiative, I have been serving as a government member of the newly formed FOIA Federal Advisory Committee. The FOIA Advisory Committee has met four times (June 24, 2014, October 21, 2014, January 27, 2015, and April 21, 2015) and discussed a range of issues related to FOIA administration, including assessment of fees under the statute and proactive disclosures.

Finally, the fifth initiative is one that OIP is very proud to have successfully completed. The commitment was to enhance FOIA training by making standard e-Learning resources available for all federal employees. As I mentioned at the start, I believe that it is vitally important that all agency personnel, and not just FOIA professionals, have the proper training to understand the important role they play in implementing the FOIA. Just in time for Sunshine Week, after a year of preparation, my Office released a suite of new e-learning FOIA training

resources. These resources target the entire spectrum of federal employees, from the newly arrived intern to the senior executive, to ensure that all employees know their obligations and responsibilities under the law.

The new training resources include:

- An infographic that serves as a resource on FOIA basics for all employees new to the federal workforce;
- A brief video designed specifically for senior government executives, which provides a general overview of the FOIA and emphasizes the importance of their support to their agency's FOIA program;
- An in-depth e-Learning training module specifically designed for FOIA professionals, which addresses all the major procedural and substantive requirements of the law, as well as the importance of good customer service; and
- A separate e-Learning training module for all other federal employees that provides a primer on the FOIA and highlights ways in which they can assist their agency in administering the law.

This new suite of FOIA training tools not only provides important resources for all agencies, but it reemphasizes the important message from former Attorney General Holder's 2009 FOIA Guidelines that "FOIA is everyone's responsibility."

In closing, I want to thank you for the opportunity to be here today to discuss agencies' administration of the FOIA and all of our efforts here at the Department to encourage compliance with this important law. The Department of Justice looks forward to working together with the Committee on matters pertaining to the government-wide administration of the FOIA. We are fully committed to achieving the President's and Attorney General's vision of open government. While this past fiscal year presented many challenges for agencies, we have accomplished a great deal since the issuance of the President's and Attorney General's 2009 FOIA directives. Our work is not done, however, and OIP looks forward to continuing to work diligently to help agencies achieve even greater transparency in the years ahead. I would be pleased to address any question that you or any other Member of the Committee might have on this important subject.

Chairman CHAFFETZ. Thank you.

Ms. Neuman, you are now recognized for 5 minutes.

**STATEMENT OF KAREN NEUMAN**

Ms. NEUMAN. Good morning, Chairman Chaffetz, Ranking Member Cummings, and members of the committee. My name is Karen Neuman, and I'm the Chief Privacy Officer and Chief FOIA Officer at the Department of Homeland Security. I'm very pleased to be here before you today to discuss how DHS implements the Freedom of Information Act.

DHS is composed of several distinct components, each with unique authorities and categories of records. Our components operate their own FOIA offices, staffed by FOIA professionals who respond directly to requesters seeking records.

My office has dual responsibilities to protect privacy and promote transparency. Every FOIA request deserves careful consideration to promote transparency while protecting the privacy of individuals and operationally sensitive information.

We have some significant challenges, and we also have done some good things. As you know, DHS gets the largest number of FOIA requests of any Federal agency and produces the largest number of responses. In fact, DHS received 40 percent of all FOIA requests submitted to the government in fiscal year 2014. In this 12-month period alone, we received an unprecedented 291,242 requests. As a result, we also have the largest backlog.

Since January 2009, DHS experienced a 182-percent increase in its number of FOIA requests. At the same time, our FOIA professionals have significantly increased their output to meet this increased demand. In fiscal year 2014, these professionals processed 238,031 requests.

The Department of Homeland Security takes our obligation to promote transparency and further the values of open government embodied in the statute very seriously. Nonetheless, we face serious challenges to connecting requesters with the records they seek. I'd like to briefly highlight some of the measures we have implemented to reduce these challenges, including to reduce our backlog.

The Government Accountability Office was asked by Congress to review DHS' processing of FOIA requests. In November 2014, GAO published its report with four recommendations. We concurred with all four recommendations and are taking steps to address each one.

For example, as recommended by GAO, we are in the process of finalizing our FOIA regulation, including preparing to publish a Federal Register notice seeking comment. As also recommended, we sought assistance from DOJ OIP in developing and implementing a policy to ensure that all DHS components are capturing FOIA costs consistently.

Quite apart from these recommendations, I've initiated several new measures that are designed to improve DHS FOIA operations in both the near term and the long term.

First, in January this year, I requested a top-to-bottom, independent review of six DHS component FOIA offices. That review is currently underway and is being conducted by the Office of Government Information Services, also known as OGIS.

Second, my office is establishing a short-term blanket purchase agreement for FOIA support services. This contract will be utilized as needed by our component FOIA offices that require additional help. My goal here is really to empower the components to take quick action to manage backlog surges before they get out of control.

Third, my FOIA leadership team has met with colleagues at other agencies to learn about the types of records that can be made available through technology and other routine procedures that are currently sought through a FOIA request.

Fourth, my office continues to look for greater efficiencies from the use of technology. We offer each component FOIA office the ability to use a centralized FOIA tracking, processing, and reporting case management system with customizable features. We're also working with the DHS Chief Information Officer to develop an e-FOIA mobile application that will enable the public to submit FOIA requests and check the status of these requests from a smartphone or mobile device.

As a result of these measures, we are starting to see a slow but steady reduction in our backlog. Yesterday I learned that, as of May 2015, the DHS backlog was reduced by 10 percent, from 103,480 to 92,066, since the beginning of the fiscal year.

Despite the challenges we face, I am pleased that the administrative and technological infrastructure we have put in place is resulting in a trend in the right direction. We are working hard every day to provide access under the statute, and there is room for considerable improvement. I look forward to working with you to improve FOIA at DHS, and I welcome your recommendations and look forward to taking your questions.

Thank you.

[Prepared statement of Ms. Neuman follows:]

**Testimony of Karen L. Neuman, Chief Privacy Officer and Chief FOIA Officer, Department of Homeland Security, Before the United States House of Representatives Committee on Oversight and Government Reform on "Ensuring Agency Compliance with the Freedom of Information Act (FOIA) Part II"**

June 3, 2015

2154 Rayburn House Office Building

Good morning Chairman Chaffetz, Ranking Member Cummings, and distinguished Members of the Committee. My name is Karen Neuman. I am the Chief Privacy Officer and Chief FOIA Officer at the Department of Homeland Security (DHS).[1] My office administers policies, programs, and procedures to ensure that the Department complies with FOIA[2], the Privacy Act[3], and applicable sections of the E-Government[4] and Homeland Security Act[5], as amended.

**Introduction**

I appreciate this opportunity to appear before you today to discuss how DHS implements FOIA. I will also describe what we are doing to improve access under the statute.

**The DHS FOIA Enterprise**

DHS is composed of several distinct Components, each with unique authorities and categories of records. Therefore, the Department's FOIA program takes a decentralized approach to meeting its obligations. DHS Components operate their own FOIA offices staffed by FOIA professionals who respond directly to requesters seeking records.

On August 29, 2011, the Secretary of Homeland Security delegated to the Chief Privacy Officer the authority to develop and oversee the implementation of policies within the Department and except as otherwise provided by law, carry out the functions of the agency regarding compliance with FIOA. The DHS Privacy Office coordinates among and oversees DHS Component FOIA operations. The Privacy Office, through its FOIA unit, also processes FOIA requests for most of the Department's headquarters offices.[6]

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[1] 5 U.S.C. § 552.
[2] 5 U.S.C. § 552.
[3] 5 U.S.C. § 552a.
[4] Pub. L. 107-347, § 208, 44 U.S.C. §101 note.
[5] 6 U.S.C. § 142.
[6] The DHS FOIA Office processes the Privacy Office's initial requests and those for the following 11 offices: Office of the Secretary, Citizenship and Immigration Services Ombudsman, Domestic Nuclear Detection Office,

DHS takes its missions to be open and responsive very seriously. Nonetheless, as I discuss below, there are serious systemic challenges to connecting requesters with the records they seek. I have made addressing these challenges a top priority and would like to highlight some of the initiatives I have put in place to improve FOIA at DHS.

**Increased Demand for DHS Records**

DHS receives the largest number of FOIA requests of any Federal Department or Agency and produces the greatest number of responses. Since January 2009, DHS experienced a 182 percent increase in the number of FOIA requests received. As reported in our Annual FOIA report to the Attorney General, DHS received 40 percent of all FOIA requests submitted to the Federal Government in fiscal year 2014.[7] In that twelve-month period, DHS received an unprecedented 291,242 requests. As a result, DHS also has the largest backlog. In fiscal year 2014, the backlog increased from 51,575 to 103,480.

Components that process requests seeking immigration-related records have the largest backlogs in the Department, comprising more than 90 percent of the total DHS backlog. U.S. Citizenship and Immigration Services (USCIS), U.S. Customs and Border Protection (CBP), and U.S. Immigration and Customs Enforcement (ICE) received most of these requests. These Components primarily handle requests seeking immigration records (e.g., copies of the Alien File, entry/exit records, detention, and deportation records).

**Key Considerations in Responding to Requests**

The DHS Privacy Office has dual responsibilities to protect privacy and promote transparency. Every FOIA request deserves careful consideration in order to properly protect records that should not be released to the public. These records can include the personal information of individuals we may have collected while carrying out the Department's missions, as well as information about law enforcement matters. Law enforcement records may include information about subjects of investigations, victims of crime, and the public at large.

**Providing Access to DHS Records under FOIA**

The Government Accountability Office (GAO) was asked by Congress to review DHS's processing of FOIA requests. In November 2014, GAO published the report *Freedom of*

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Office of the Executive Secretary, Office of Intergovernmental Affairs, Management Directorate, Office of Policy, Office of the General Counsel, Office of Health Affairs, Office of Legislative Affairs, and Office of Public Affairs.

[7] http://www.dhs.gov/sites/default/files/publications/dhs-chief-foia-officer-reports-fy-2014_0.pdf.

*Information Act, DHS Should Take Steps to Improve Cost Reporting and Eliminate Duplicate Processing*[8] with the following four recommendations:

1. Finalize and issue an updated DHS FOIA regulation.
2. Improve reporting of FOIA costs by including salaries, employee benefits, non-personnel direct costs, indirect costs, and costs for other offices.
3. Determine the viability of re-establishing the service-level agreement between USCIS and ICE to eliminate duplication in the processing of immigration files. If the benefits of doing so would exceed the costs, re-establish the agreement.
4. Direct USCIS and Coast Guard to fully implement the recommended FOIA processing system capabilities and the Section 508 requirement.

DHS concurred with all four of GAO's recommendations and has taken the following actions to address them:

1. The Department has made significant progress on its draft FOIA notice of proposed rulemaking. We expect to publish the notice of proposed rulemaking in the Federal Register by the end of this fiscal year. We plan to finalize the rule following receipt and consideration of public comment.
2. DHS sought assistance from the DOJ Office of Information Policy in the development and implementation of a policy to ensure that all DHS Components are capturing FOIA costs consistently. As a result of these discussions, my office developed a DHS Freedom of Information Act Office Budget Detail Worksheet. DHS Components will begin to use the Budget Detail Worksheet and provide standardized budget information in June 2015.
3. The Privacy Office established a working group to determine the feasibility of re-establishing a service-level agreement between USCIS and ICE and to determine a course of action that will eliminate duplication in the processing of requests for immigration files. While this issue is being studied, ICE has entered into a contract agreement to clear its current backlog of 56,129 requests that were referred from USCIS. As a result of this effort, since the beginning of the fiscal year the ICE FOIA backlog has decreased 30 percent from 56,129 to 39,149 as of May 8, 2015. The overall goal of this one-year contract project is to eliminate the ICE FOIA backlog by 100 percent by the end of fiscal year 2015.

[8] http://www.gao.gov/assets/670/667052.pdf.

4. On March 16, 2015, the DHS Privacy Office issued a policy memorandum laying out requirements for all DHS FOIA Offices to have a processing system with the recommended capabilities to meet the 508 requirements.[9]

In addition to implementing the GAO recommendations, we have initiated numerous new and innovative measures that are designed to improve FIOA operations in both the near and long term:

- I requested top-to-bottom review of six DHS Component FOIA Offices: CBP; the Federal Emergency Management Agency (FEMA); ICE; the Transportation Security Administration (TSA); the U.S. Coast Guard (USCG); and the U.S. Secret Service (USSS). That review is currently being conducted by the Office of Government Information Services (OGIS) at the National Archives and Records Administration and will conclude with a report to me by September 2015. I expect that as a result of this review, OGIS will recommend best practices for additional Department-wide improvements to FOIA administration.
- The Privacy Office is establishing a blanket purchase agreement contract for FOIA support services. This contract vehicle will be managed by the Privacy Office and funded as needed by the Component FOIA Offices that require additional help.
- At my direction, the Deputy Chief FOIA Officer recently met with colleagues from various agencies FOIA operations, to learn about the types of records that can be made available through technology and other routine procedures and that would not require the submission of a FOIA request.
- The DHS Privacy Office continues to provide to each Component FOIA Office an enterprise-wide FOIA tracking, processing, and reporting case management system with customizable features.
- The DHS Privacy Office is also working with the DHS Office of the Chief Information Officer (CIO) to develop an eFOIA Mobile Application. This Application will replicate the functionality of the DHS public-facing FOIA website for mobile use, including enabling members of the public to submit FOIA requests and check the status of existing requests from a mobile device.

As a result of these measures we are starting to see a slow but steady reduction in the backlog. Since the beginning of the fiscal year, the DHS backlog has been reduced by seven percent from 103,480 to 95,819 as of April 2015.

[9] http://www.dhs.gov/sites/default/files/publications/dhs-implementation-of-technology-to-address-foia-processing.pdf.

**Conclusion**

Reducing the FOIA backlog has been a top priority since I joined DHS a little over a year and a half ago. Despite the challenges outlined above, I am proud of the administrative and technological infrastructure I have put in place to improve FOIA. This infrastructure is already resulting in a trend in the right direction for reducing the backlog. Nonetheless, there is room for improvement.

As the Attorney General's 2009 FOIA guidance counseled, "the responsibility for effective FOIA administration belongs to all of us." A strong, collaborative relationship with Congress is crucial to the overall success of the Department's FOIA program. I look forward to working with the Committee to further understand and improve our FOIA processes. I welcome your recommendations and look forward to taking your questions.

Chairman CHAFFETZ. Thank you.

Mr. Fontenot.

**STATEMENT OF BRODI FONTENOT**

Mr. FONTENOT. Chairman Chaffetz, Ranking Member Cummings, distinguished members of this committee, thank you for the opportunity to testify today on Treasury's role in fostering transparency through FOIA.

My name is Brodi Fontenot, and I'm the Assistant Secretary for Management at the Department of Treasury and the designated department's Chief FOIA Officer. As such, I take compliance with FOIA seriously. Although the nine Treasury bureaus independently process FOIA requests directed to each bureau, my team is responsible for providing agency-wide guidance and training as well as monitoring Treasury FOIA performance and proposing agency-wide policy and improvements.

When I joined Treasury 6 months ago, I was pleased to discover that the Treasury team had already begun implementing new measures to improve FOIA performance and efficiency Treasury-wide. For example, at our departmental offices, beginning in 2013, my team doubled the number of full-time employees dedicated to FOIA.

We used additional capacity in two critical ways. First, we devoted focused attention on closing Treasury's oldest FOIA cases. Second, we made significant changes to procedures and staffing used to manage FOIA cases to improve efficiency and timeliness.

We have more work to do, but these initial measures are already producing results. For example, in fiscal year 2014, the Treasury-wide FOIA backlog has decreased by 8 percent. We closed 13 of our oldest 20 cases agency-wide. We also processed more FOIA cases—FOIA requests in less time. Treasury closed 73 percent of incoming cases—requests within 20 days. That's a 3-percent increase over 2013. Five of nine Treasury bureaus closed more requests than they received during the fiscal year. Four Treasury bureaus ended the year with a zero backlog. And we also released more information overall. Treasury released records in full or in part in response to 90 percent of cases in which responsive records were identified.

In sum, today, Treasury is releasing more information, processing more requests in less time, and making tangible progress on reducing its pending FOIA inventory and closing its oldest cases compared to just 18 months ago.

But we also remain committed to making further strides. My team and I will continue to lean forward to drive improvements and to provide as much information as we can, as quickly as we can, both within the spirit and the letter of FOIA.

I welcome your questions today. Thank you.

[prepared statement of Mr. Fontenot follows:]

**Testimony of Assistant Secretary for Management Brodi Fontenot**
**House Oversight and Government Reform Committee**
**Ensuring Transparency through the Freedom of Information Act**

**Wednesday, June 3, 2015**

Chairman Chaffetz, Ranking Member Cummings, and distinguished members of the Committee, thank you for the opportunity to testify today on the Department of Treasury's role in fostering transparency through the Freedom of Information Act (FOIA).

As the Treasury Department's Chief FOIA Officer, I take seriously compliance with FOIA and promotion of transparency and openness in Treasury operations. Although the nine Treasury bureaus independently process FOIA requests directed to each bureau, my team is responsible for providing agency-wide guidance and training, as well as for monitoring Treasury FOIA performance, and proposing agency-wide policy and improvements.

Like many other agencies, Treasury faces challenges in the administration of FOIA. But Treasury remains steadfast in its commitment to improving its FOIA performance, and has made notable progress. Treasury-wide, the agency received an average of 15,657 requests annually between 2009 and 2014. In FY 2014, Treasury processed nearly 14,000 requests agency-wide. The scope and complexity of these requests and the resources required to respond vary greatly. As of April 30, approximately 930 requests remain pending, which is less than six percent of our average annual incoming requests.

When I joined Treasury six months ago, I was pleased to discover that the Treasury team had already begun implementing new measures to improve FOIA performance and efficiency in Departmental Offices and Treasury-wide. For example, at Departmental Offices, beginning in 2013, my team doubled the number of full time employees dedicated to FOIA. We used that additional capacity in two critical ways. First, we devoted focused attention to closing Treasury's oldest FOIA cases. In FY 2014, Treasury closed 13 of its 20 Oldest FOIA cases. So far in FY 2015, we have closed two out of our top twenty oldest, including *the* oldest FOIA request in the agency.

Second, we made significant changes to the procedures and staffing structure used to manage FOIA cases to improve efficiency and timelines. These procedures now require that a case manager be assigned as the point of contact for each request. As a result, requests are tracked more effectively. In addition, FOIA requesters can talk to the case manager assigned to their case to obtain information on the status of their case.

We have improved service to FOIA requesters and the general public through better use of technology as well. In 2013, we implemented a new online Treasury FOIA portal. Requesters can now submit requests for any Treasury bureau or Office online through Treasury.gov. We also continue to proactively post a wide variety of Treasury materials on our FOIA page on Treasury.gov.

In addition, my team, in its Treasury-wide policy and oversight capacity, is driving improved FOIA performance for Treasury's bureaus. My team monitors each bureau's key FOIA metrics, and I review FOIA performance data with bureau leadership regularly.

My team also engages directly with FOIA staff from each bureau. They hold monthly FOIA Council meetings—attended by staff of all nine Treasury bureaus—to discuss the latest guidance, best practices, and common challenges in FOIA implementation. They also promote and provide FOIA training for all bureau FOIA professionals. During the past year, 100 percent of the full-time FOIA professionals across Treasury received FOIA-specific training.

We have more work to do; but there are encouraging signs that Treasury is on the right track. For example, during FY 2014:

- The Treasury-wide FOIA backlog decreased by eight percent.
- Treasury received 14,107 requests and closed 13,991 requests – we are keeping pace with the volume of requests.
- We also processed more FOIA requests in less time. Treasury closed 73 percent of incoming requests within 20 days—that is a three percent increase over FY 2013.
- Five of the nine Treasury bureaus closed more requests than they received during the fiscal year.[1] Four Treasury bureaus ended the year with zero backlog.[2]
- We also released more information overall. Treasury released records in full or in part in response to 90 percent of cases in which responsive records were identified. Treasury was one of only nine federal agencies with such a high rate of released records.[3]

In sum, today Treasury is releasing more information, processing more requests in less time, and making tangible progress on reducing its pending FOIA inventory and closing its oldest cases, as compared to just 18 months ago. We believe we are headed in the right direction.

Applying FOIA properly remains a complex endeavor. It requires trained, experienced professionals who are expert in applying the law and knowledgeable about agency activities and records. Maintaining the right level of resources is especially challenging in light of the budget environment and the limited number of skilled FOIA professionals.

Nevertheless, Treasury has increased its investment in FOIA, even while its appropriations shrink. Treasury spent over 20 million dollars in FY 2014 on compliance with FOIA—a 28

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[1] Treasury Departmental Offices, the Bureau of the Fiscal Service, Treasury Inspector General for Tax Administration (TIGTA), the U.S. Mint, and the Alcohol and Tobacco Tax and Trade Bureau (TTB) all closed more requests than they received in FY 2014.

[2] Financial Crimes Enforcement Network, U.S. Mint, TTB and TIGTA all reported zero FOIA backlog at FY 2014 year end.

[3] According to the Department of Justice Annual FOIA Report Summary, "DOT, USDA, Department of Energy (DOE), DHS, Treasury, Department of the Interior (Interior), DOJ, DOD, and Department of Housing and Urban Development (HUD) -- released records in full or in part in response to 90% or more of the requests that they processed for exemption applicability."
http://www.justice.gov/sites/default/files/oip/pages/attachments/2015/05/01/fy_2014_annual_report_summary.pdf.

percent increase over the prior two years. Similarly, Treasury added 32 full-time equivalents to its agency-wide FOIA staff between 2012 and 2014—an increase of 21 percent. The current fiscal environment makes the availability of additional resources uncertain.

We remain committed to further improvements with existing resources. We believe the measures already implemented, as described above, will continue to improve Treasury-wide FOIA performance. My team and I will continue to lean forward to drive additional improvements and to provide as much information as we can, as quickly as we can, within both the spirit and letter of FOIA.

I welcome your questions today.

Thank you.

Chairman CHAFFETZ. Thank you.

Ms. Howard, you are now recognized for 5 minutes.

**STATEMENT OF MARY HOWARD**

Ms. HOWARD. Thank you.

Chairman Chaffetz, Ranking Member Cummings, and members of the committee, thank you for having me here today. I'm Mary Howard, and I'm the Director of IRS' privacy, governmental liaison, and disclosure operations. I'm here today to testify on the IRS' policies and procedures regarding complying with requests for information under the Freedom of Information Act.

Each year, the IRS processes thousands of FOIA requests, most of which require labor-intensive searches of both paper and electronic records. Despite this volume and complexity, the IRS closes more than 80 percent of its FOIA cases in 30 business days or less. In fact, our average cycle time generally hovers right around 21 days.

The IRS follows a standard procedure for handling each FOIA request it receives. This involves analyzing the request to determine whether it can be processed under FOIA, determining the scope of the request and searching for responsive records, reviewing material to decide what should be released or withheld, and sending a response to the requester.

Over the last several years, our FOIA operation has faced a number of challenges. For example, the size of an average FOIA request and the volume of potentially responsive documents have mushroomed as more and more requests require searching email and other electronic documents. Broad requests can easily result in the IRS needing to collect and redact thousands of documents in response to a single requester.

Another challenge involves personnel. We have managed to protect the overall staffing of the FOIA process in IRS, experiencing only a slight decline over the last few fiscal years despite financial constraints and related hiring freezes, but a high turnover rate has created some difficulties. Replacing our FOIA specialists involves not only hiring new workers but also training them to bring them up to the expert level required to handle complex FOIA requests. The cuts to our budget have had a negative impact on the timing of replacement hiring and the delivery of the training.

The net result has been a gradual loss of expertise in the FOIA area at IRS over the past several years. The problem is expected to get worse. We estimate that more than 60 percent of our FOIA professionals will be eligible to retire over the next 5 years.

Another critical aspect of the IRS' ability to adequately respond to FOIA requests involves the management of official records. Here, too, the IRS faces significant challenges. This is largely because we don't have systems that let us easily search and retrieve electronic records and emails unless they're part of the taxpayers' case records. We are also unable to categorize, label, and centrally store electronic records, including email. And I hope you'll ask me some questions so I can give you some more insight into that.

Without this capability, we must conduct an account-by-account search for documents to comply with a FOIA request. This is an extremely tedious and time-consuming process, and that's before

we get to the actual review for the exemptions. Additional funding would allow us to upgrade our infrastructure platforms and acquire more effective search capabilities. We could then respond to large document requests far more quickly than we're able to now.

So let me turn now to the events of 2013. Beginning that summer, the IRS was faced with an unprecedented number of FOIA requests related to the processing of applications for the 501(c)(4) status. In all, there were 154 requests, and that might not sound like a lot, but they were very voluminous and complex in nature. At the same time, four congressional committees, the Treasury inspector general, and the Department of Justice were all requesting large amounts of documents from IRS on the same issues.

The IRS created a special team to review and produce documents responsive to the six official investigations. This team redacted the documents required by 6103 of the Internal Revenue Code to ensure that Federal tax information was protected appropriately. Because of its experience on conducting reviews and producing documents for litigation, the IRS Office of Chief Counsel performed the 6103 reviews and the document production. That was required for all the requested documents except those going to the tax-writing committees.

While Counsel was conducting this effort, disclosure staff was addressing and responding to their regular FOIA casework that flows in at a rate of 10- to 12,000 cases per year. The IRS determined that responding to the investigations would take precedence over responding to the requests for information under FOIA. And the IRS has produced to Congress more than 1 million pages of documents for those investigations.

Given that all FOIA documents need that 6103 review, we waited until we had fulfilled the request of the investigators until we went forward. Of the 154 cases I mentioned, FOIA cases, 34 remain pending with the disclosure office.

We regret that the process has taken this long, but, given the extraordinary circumstances, we really felt there was no other way that we could respond appropriately to Congress and the investigators. The IRS remains committed to FOIA as we work through these challenges.

So this concludes my statement, and I look forward to responding to your questions.

[Prepared statement of Ms. Howard follows:]

**WRITTEN TESTIMONY OF**
**MARY HOWARD**
**DIRECTOR, PRIVACY, GOVERNMENTAL LIAISON AND DISCLOSURE DIVISION**
**INTERNAL REVENUE SERVICE**
**BEFORE THE**
**HOUSE OVERSIGHT AND GOVERNMENT REFORM COMMITTEE**
**ON THE FREEDOM OF INFORMATION ACT**
**JUNE 3, 2015**

## INTRODUCTION AND BACKGROUND

Chairman Chaffetz, Ranking Member Cummings and Members of the Committee, my testimony today will discuss IRS policies and procedures regarding requests for information under the Freedom of Information Act (FOIA).

FOIA, which went into effect in 1967, established an effective statutory right under which records of the Executive Branch of the federal government are accessible to the public. FOIA applies to records either created or obtained by an agency and under agency control at the time of the FOIA request. Importantly, the statute sets standards for determining which records must be made available for public inspection and which records (or portions of records) must or may be withheld from disclosure, and it also provides administrative and judicial remedies for those who are denied access to records.

The IRS is committed to full compliance with FOIA. The FOIA reflects fundamental values held by our society, including public accountability, while at the same time recognizing other important interests, such as safeguarding national security, enhancing the effectiveness of law enforcement agencies and the decision-making processes, and protecting sensitive business information.

The IRS follows a standard procedure for handling each FOIA request it receives, which involves: analyzing the request to determine whether it in fact requests agency records and otherwise falls within the scope of FOIA; determining the scope of the request and conducting a search for responsive records; reviewing the material collected to determine what should be released or withheld; and preparing and sending a response to the requester.

In managing its FOIA operations, the IRS follows best practices, which include:

- Contacting requesters when necessary to clarify their needs and ensure that the scope of what they are seeking will result in a relevant document set that meets their expectations;

- Providing information to taxpayer requesters through non-FOIA processes that can be used to obtain the records they seek, which may be more efficient for the taxpayer;
- Identifying the FOIA work that needs special treatment because of complexity;
- Making sure that resources and processes are in place so that our FOIA professionals can get specialized legal or technical support when needed; and
- Providing for appropriate review to ensure that the agency is consistent and correct in handling FOIA requests.

The records responsive to each FOIA request that the IRS receives must be reviewed to determine whether any or all of the information is protected by one or more of the nine exempt categories of information found in the statute. When information is exempt, however, in accordance with the President's and Attorney General's 2009 FOIA Memoranda, as well as IRS policy, IRS FOIA professionals examine that information to determine if there is a foreseeable harm in disclosure and if discretionary release is appropriate. IRS policy states that any discretionary decision to release information protected under FOIA should be made only after full and deliberate consideration of the institutional, commercial and privacy interests that could be affected by disclosure of information.

An entire record is not necessarily exempt when a record contains some information that qualifies as exempt. Instead, FOIA specifically provides that any portions of a record that can reasonably be segregated must be provided to a requester after exempt portions are redacted or withheld. FOIA requires the IRS to identify the extent of, and basis for, any redactions from documents it releases, unless including that indication would harm an interest protected by an exemption.

In its FOIA review process, the IRS must also be mindful of its unique obligation to comply with Internal Revenue Code Section 6103, a statutory exemption recognized by FOIA that authorizes disclosure of federal tax information only in specific instances.

**ONGOING CHALLENGES IN THE FOIA AREA**

Over the last several years, as increasing numbers of documents have been created in electronic form, and as email messages have been requested more frequently, the size of an average FOIA request and the volume of potentially responsive documents has mushroomed. A single request frequently can result in the IRS needing to collect and redact thousands of documents. In addition, the number of cases considered to be "complex" – containing issues or volumes of records too difficult to resolve within the statutory time frame – has increased as well. As of April 1, 2015, 31 percent of the cases in our FOIA inventory were deemed complex, compared with 17 percent in 2012.

While the size of requests and the percentage of complex FOIA cases have increased over the last several years, we have managed to maintain the number of employees able to process basic FOIA matters, even with our financial constraints and related hiring freeze. But a high turnover rate has meant fewer experienced FOIA personnel. Replacing FOIA specialists involves not only hiring new workers, but also investing in extensive training and oversight necessary to bring replacements up to the expert level required to properly process complex FOIA requests, which has been difficult given recent cuts to our budget.

The net result has been the gradual loss of a significant amount of expertise in the FOIA area over the last several years. This challenge is expected to continue, as we estimate that more than 60 percent of our FOIA professionals will be eligible to retire in the next five years.

Another critical aspect of the IRS' ability to adequately respond to FOIA requests involves the ability to efficiently identify and retrieve responsive records. Here too, the IRS has faced challenges in recent years, largely because we do not currently have systems that would allow us to easily search and retrieve electronic records and emails, unless they are part of taxpayer case records.

Without an effective automated method for searching for electronic documents, including email, the IRS must conduct an account-by-account search for documents, which is an extremely time-consuming process. Additional funding would allow us to upgrade our infrastructure platforms and acquire more effective search capabilities, which would in turn allow us to respond to document requests, even extremely large ones, much more quickly than we are able to now.

Yet another challenge in the FOIA area for the IRS involves the out-of-date software we currently use for the day-to-day management of FOIA operations. Upgrading this software would allow the IRS to more quickly process and track FOIA requests, and thus reduce the amount of time it takes to complete a case. Additional funding would allow us to acquire a state-of-the-art web-based program that is currently installed at over 150 U.S. government agencies and offices.

**ADDRESSING THE 2013 SURGE IN FOIA REQUESTS**

Each year, the IRS processes more than ten thousand FOIA requests, most of which require labor-intensive searches of paper and electronic files. Despite this volume and complexity, the IRS closes the vast majority of its FOIA cases – over 80 percent – in 30 business days or less. For example, we received a total of approximately 10,400 FOIA requests in FY 2014, and the average time it took us to close a case that year was 20 days, with 83.2 percent of cases closed within 30 days.

Beginning in the summer of 2013, the IRS was faced with an unprecedented number of FOIA requests – a total of 154 – seeking records related to the processing of applications for tax exemption under Internal Revenue Code Section 501(c)(4). This followed the release of a report in May 2013 by the Treasury Inspector General for Tax Administration (TIGTA). At the same time, six investigating entities – TIGTA, the Department of Justice (DOJ) and four Congressional committees – were making requests to the IRS for large amounts of documents also related to the processing of exemption applications.

At the time, the IRS's highest priority was responding to the investigations by the four Congressional committees, TIGTA and DOJ. Further straining the IRS's limited resources in this area were document productions related to numerous ongoing civil litigation cases involving the same subject matters.

The IRS has devoted substantial resources to complying with the Congressional requests for information, by transmitting documents and facilitating interviews in an effort to provide complete facts about the determination process for tax-exempt status under section 501(c)(4). More than 250 IRS employees have spent more than 160,000 hours working directly on complying with the investigations, at a cost of approximately $20 million, which also includes the cost of adding capacity to our limited information technology systems to accommodate the voluminous information requests.

To date, the IRS has produced to Congress more than 1 million pages of documents related to the investigations. The House Ways and Means Committee and Senate Finance Committee have received approximately 1.3 million unredacted pages of material, while the IRS has produced about 1.1 million redacted pages to the House Oversight and Government Reform Committee. The difference in the number of pages produced was largely due to the fact that individual case files, which can be voluminous, may be disclosed only to the tax-writing committees under section 6103.

Ultimately, the decision to give priority to the investigations by TIGTA, DOJ and the four Congressional committees resulted in a significant increase in inventory of FOIA casework at the IRS: the number of backlogged cases that remained open at the end of FY 2014 stood at 317, compared with 217 at the end of FY 2013, and 118 at the end of FY 2012. To put these numbers in perspective, it should also be noted that during the FY 2012-2014 period, the total number of FOIA cases closed by the IRS exceeded 33,000.

The IRS remained committed to the FOIA process even as it worked through the challenges posed by the complexity of the issues involved, the limitation on our resources, and the priority we placed on producing the documents requested by Congress and other investigators.

## IMPROVING MANAGEMENT OF ELECTRONIC RECORDS

The IRS has a long history of complying with the standards for retention of federal records set by the National Archives and Records Administration (NARA). Nonetheless, the unprecedented volume and scope of the document requests made by Congress and the public in 2013 in regard to the processing of applications for tax-exempt status highlighted the need for the IRS to continue improving its maintenance of federal records that are in electronic form, consistent with the constraints on our budget.

The IRS has been working for the last several months to revamp its records retention practices, focusing particularly on electronic records. In this effort, we have been in close consultation with NARA to ensure the best approach.

As a first step, in October 2014, we implemented an interim email retention policy for all senior IRS executives. This interim policy, which follows NARA's recommendations for email records retention, was extended to all IRS executives in December 2014. This policy is to be followed by a more fully developed enterprise solution for longer-term storage of emails. We are working to complete the development and implementation of the enterprise solution, though success will depend on funding, staffing, and prioritization against other business requirements.

Our next step, to the extent that funding is available, will be to purchase the necessary equipment and technology to allow us to securely store, search, and retrieve emails that are federal records.

While the interim policy is an important step toward a consistent policy of electronic federal records retention, the IRS ultimately intends to develop and implement more automated enterprise solutions, consistent with government-wide guidance and standards. But we cannot wait for those solutions to be fully funded. That is why we have already begun to take action using the resources available to us.

Chairman Chaffetz, Ranking Member Cummings and Members of the Committee, this concludes my statement, and I would be happy to take your questions.

Chairman CHAFFETZ. Thank you.

We will now recognize the gentleman from Michigan, Mr. Walberg, for 5 minutes.

Mr. WALBERG. Thank you, Mr. Chairman. And thank you for the hearings of the past couple days.

And as I have contemplated what we have heard from the three panels thus far on FOIA in the last 2 days, you know, I am just absolutely convinced that FOIA really isn't the problem; it is just an evidence, an outcome of the problem. The increasing size of government and the control of government is the problem.

I mean, it is an absolute fact that we have amongst the highest paid bureaucrats administering these programs and others in government anywhere in the world. We have the highest technology, at least amongst the highest technology, of anyplace in the world to administer our bureaucracy. We have the largest number of bureaucrats in the world to administer our bureaucracy.

And with the size of government like this, why would we expect anything other than a huge, huge number of FOIA requests coming from an increasing number of American citizens who feel under attack from their own government? They are regulated, they are taxed, they are supervised, they are overseen almost more than any other free country in the world.

So I look at our panel of witnesses, and I say, how in the world can you be expected to do your job in a way that satisfies not only Congress but the people of the United States? They are going to ask more because they don't trust us. They are tired of being overrun.

I will get to my questions.

Also, with all due respect, if dollars, more dollars, were the answer, then the war on poverty, the war on hunger, the war on pollution, the war on crime, the war on many other things would be ended. By the way, Fast and Furious, Benghazi, IRS-gate would be taken care of. We would know the answers. Attorney General Holder—former Attorney General Holder wouldn't have been held in contempt of Congress. Lois Lerner wouldn't have been held in contempt.

FOIA isn't the main problem. Liberty demands transparency from a limited government to succeed. And we are not succeeding in addressing the concerns of our people. Government has grown, and, thus, it is increasingly mistrusted and it will be mistrusted from all sides of the aisle, politically speaking.

And so, Mr. Chairman, I again thank you for these hearings. It just makes it clearer and clearer why we are in the battle with the budget to reduce government to the size that liberty can expand and not government.

Ms. Neuman, DHS has the largest backlog of any Federal agency. How does the duplicative process of requests contribute to—processing of requests contribute to backlog? And I refer specifically to the relationship between USCIS and ICE.

Ms. NEUMAN. Thank you. I appreciate that question.

Let me just say that, with respect to the backlog, any significant delays in processing requests don't meet my standards, and I expect to see improvement. That goes for duplication, as well. And, as you may be aware, the GAO studied that aspect of our FOIA op-

erations and made some recommendations that we are implementing in a number of ways.

USCIS and ICE receive a significant number of our FOIA requests, many of which are immigration-related. There may be instances where one or more of those components holds files—or holds records that are contained in the alien file. We do not—we do not support unnecessary duplication, and we have——

Mr. WALBERG. Will the two agencies be put back together under the arrangement that was in place before 2012, where they weren't duplicating?

Ms. NEUMAN. Well, that's really not my decision to make. I also want to tell you——

Mr. WALBERG. Whose decision is it?

Ms. NEUMAN. I—it's up to the Members of Congress who write the statute.

I will also tell you that we've implemented technology measures that——

Mr. WALBERG. But I don't understand that that is our responsibility. It worked before 2012; at least they worked in that nonduplicative arrangement. Why can't it be put back in there? Who is responsible? And it's not Congress.

Ms. NEUMAN. So my focus is really, as the Chief FOIA Officer, on connecting requesters with their records. And I have got to spend my time looking at, the way the agency is constructed now, what inefficiencies, if any, are preventing us from meeting our transparency mission——

Mr. WALBERG. So the answer is you're not going to do anything to put the two component parts back together to stop duplication.

Ms. NEUMAN. I am focussing on connecting requesters with their records.

Mr. WALBERG. Mr. Chairman, my time has expired, and I didn't get the answer. Or I guess I did.

Chairman CHAFFETZ. I thank the gentleman.

We'll now recognize the gentleman from Massachusetts, Mr. Lynch, for 5 minutes.

Mr. LYNCH. Thank you, Mr. Chairman and the ranking member, for your courtesy this morning and for holding this hearing. I want to thank the witnesses for your help in addressing this issue.

Ms. Barr, there has been a lot of discussion up to now about Secretary Clinton and her use of personal email for official business. It's my understanding from the documents that we have here that Secretary Rice, Condoleezza Rice, did not use a personal email account for official business. Is that right?

Ms. BARR. Yes, that's what I understand. She has told us that she did not conduct a lot of official business over email, but when she did she used a State Department account.

Mr. LYNCH. Okay. How about Secretary of State Colin Powell? In his autobiography he admits that he used his personal email account for official business all the time. I have a great quote here. He says, and this is a quote from former Secretary of State Colin Powell: "To complement the official State Department computer in my office, I installed a laptop computer on a private line. My personal email account on the laptop allowed me direct access to anyone online. I started shooting emails to my principal assistants, to

individual ambassadors, and increasingly to my foreign minister colleagues who, like me, were trying to bring their ministries into the 186,000-mile-per-second world, the speed of light."

So do we have any emails from Secretary Powell?

Ms. BARR. No, we do not have any emails from Secretary Powell. We did ask him if he had any official records. He noted when he came back to us that he started at what was then the beginning of the State Department's email age, but he did not have any records to return to us.

Mr. LYNCH. There was some critical decisions made. His speech before the U.N. About the existence of weapons of mass destruction, we don't have any emails regarding that decision and how those statements were made?

Ms. BARR. I have no personal knowledge about that, sir.

Mr. LYNCH. Yeah. Okay. You know, this is troubling because it seems like in the case of Secretary Clinton the way people handled their emails, at least it's been suggested, that really determined her fitness of whether or not she can be President. That's basically the statement that's being made today.

And I'm puzzled because Secretary Rice did not perform in that manner, Secretary Colin Powell did not perform in that manner, and I'm just wondering if we have a uniform standard here. It doesn't seem from the Federal Records Act that it requires people to not use personal email.

Ms. BARR. When we are dealing with the Federal Records Act of course we have to work with employees to maintain records. But with regard to using nongovernment email services, if people do that we ask that they capture those records by copying their official account.

We are working very hard looking forward to make sure that people understand what their requirements are. Under the Federal Records Act if, for example, they are out and their BlackBerry stops working, to make sure that they copy their accounts. But overall I would say that what is most important to us is that we have that collection now and we are processing it for——

Mr. LYNCH. Right. I appreciate that. Let me just say—I only have a little bit of time left here—it's my understanding that former Secretary Clinton delivered about 55,000 pages in emails.

Ms. BARR. That's correct.

Mr. LYNCH. Yeah. Have any of the other Secretaries of State, during your time, and you've been there a while, Secretary Rice, Secretary Colin Powell?

Ms. BARR. No, only from Secretary Clinton.

Mr. LYNCH. All right. That's about my time.

Mr. Chairman, I yield back. Thank you.

Chairman CHAFFETZ. Thank you.

I'll now recognize myself for 5 minutes.

Ms. Howard, the White House on April 15, 2009, sent a directive out from Gregory Craig, Counsel to the President. It says: "This is a reminder that executive agencies shall consult the White House Counsel's Office on all document requests that may involve documents with White House equities." He goes on and says: "This need to consult with the White House arises with respect to all types of

document requests, including congressional committee requests, GAO requests, judicial subpoenas, and FOIA requests."

So my question to you, Ms. Howard, when Congress sends you a request for information, what percentage of that do you share with the White House?

Ms. HOWARD. To the extent that I've been involved in responses to Congress or responses to FOIA, we have never shared information with the White House. I became aware of this memo when we were asked for some information actually to demonstrate how many times we had this interaction. It was a FOIA request. I was curious as to why we were getting a FOIA request since we don't have interaction with the White House on FOIAs, and I was presented with this memo.

Chairman CHAFFETZ. So you've never sent anything to the White House?

Ms. HOWARD. I can't speak for the entire IRS. I mean, that would be a question for Chief Counsel or the Commissioner. I can simply speak for the Disclosure Office and the FOIA process. We do not interact with the White House.

Chairman CHAFFETZ. So if you get a subpoena form the United States Congress, you get a subpoena from me, in the Oversight Committee, you don't share that with the White House?

Ms. HOWARD. The fact that it exists? Yeah, we may share the information that we got the subpoena, we may share the fact that we're working on a subpoena, but the actual documents that were being produced for the subpoena?

Chairman CHAFFETZ. Yeah.

Ms. HOWARD. We would produce those documents and redact them for 6103. Again, that might involve Chief Counsel——

Chairman CHAFFETZ. What percentage of those do you share with the White House?

Ms. HOWARD. What percentage do I share with the White House——

Chairman CHAFFETZ. Yeah.

Ms. HOWARD. —would be zero.

Chairman CHAFFETZ. Within the IRS, you do not share those, to the best of your knowledge, you don't share——

Ms. HOWARD. To the best of my knowledge, the Disclosure Office does not consult the White House.

Chairman CHAFFETZ. The White House told you you're supposed to do it. The White House directed you to do that. You're telling us that you didn't comply with the White House request?

Ms. HOWARD. Well, you know, I'm kind of towards the end of my career, so I'll be real honest with you. I saw this memo. I was amazed to see the memo. It's written to agency counsel, which is not me. I looked through the procedures that we have in our Internal Revenue Manual, which are basically how we run our operations with FOIA and I never saw this. I never saw any evidence that this is incorporated, and I ignored it.

Chairman CHAFFETZ. When you respond to a letter from Congress or there's a response to a subpoena from Congress, who sees that before we get it?

Ms. HOWARD. In most instances, counsel would look at something like that, the chief of staff or the Commissioner. But again that's

really a question for the Commissioner in terms of what that process is like.

Chairman CHAFFETZ. So Lois Lerner, Lois Lerner, requests for documents for Lois Lerner——

Ms. HOWARD. Uh-huh.

Chairman CHAFFETZ. —who saw those documents? Who did you have to get clearance from before we get those documents? Because we still don't have them all.

Ms. HOWARD. The 6130 redactions, as I said in my testimony, were done by Chief Counsel, the Office of Chief Counsel. We may have redacted some of those documents for—well, you don't get the FOIA——

Chairman CHAFFETZ. I'm asking what signatures do you need to see on there before you send it back to us?

Ms. HOWARD. I'm not certain because I'm not the one doing the sending. That would be——

Chairman CHAFFETZ. But you're the Director of this, and you've heard of Lois Lerner, I would hope, by now.

Ms. HOWARD. I know Ms. Lois Lerner, yeah.

Chairman CHAFFETZ. Yeah. So who do you have to check off with before we get those documents?

Ms. HOWARD. Again, sir, with all due respect, that was not a process that I was personally involved in, nor was my disclosure operation.

Chairman CHAFFETZ. If you had to guess that maybe we would ask about Lois Lerner.

Ms. HOWARD. Which is why the Commissioner thought that perhaps he might be the best to answer your question.

Chairman CHAFFETZ. But you're the director. It's your job and role and responsibility.

Ms. HOWARD. No, sir. My job is the FOIA program.

Chairman CHAFFETZ. Your title, correct, Director, Privacy, Governmental Liaison, and Disclosure.

Ms. HOWARD. Right.

Chairman CHAFFETZ. That's your title.

Ms. HOWARD. That is my title.

Chairman CHAFFETZ. And you're telling me you're not responsible for the governmental liaison and disclosure part of that?

Ms. HOWARD. Not in the context that you're asking me.

Chairman CHAFFETZ. Why? Because it's Lois Lerner?

Ms. HOWARD. No, I think because it was an unprecedented, voluminous——

Chairman CHAFFETZ. Wait. What was unprecedented about asking for information about Lois Lerner? What's unprecedented about that?

Ms. HOWARD. I think that Lois Lerner was the tip of the iceberg. Really? So do we.

Ms. HOWARD. I think that that request included far more than just one person.

Chairman CHAFFETZ. So what makes you think it's the tip of the iceberg?

Ms. HOWARD. In terms of the way the request was structured.

Chairman CHAFFETZ. What was so striking about it? It's pretty simply. I mean, in this electronic age, we're asking for all of her

emails in a certain timeframe. How hard is that? I mean, that should take about 10 seconds, right? What's so hard about producing those documents? Why has it taken so long? It's taken years.

Ms. HOWARD. And, again, I cannot talk to the specific documents about Lois Lerner, but what I can give you is some insight into how we——

Chairman CHAFFETZ. Okay. So when the request came, both in a letter and then in a subpoena, who does that go to?

Ms. HOWARD. The Commissioner.

Chairman CHAFFETZ. It doesn't go to you?

Ms. HOWARD. No. Not first.

Chairman CHAFFETZ. But when we send these documents over, this doesn't land on your desk?

Ms. HOWARD. It does not land on my desk.

Chairman CHAFFETZ. Does it land on any of your staff's desks?

Ms. HOWARD. No. It landed on the desk of the Commissioner and the Chief Counsel.

Chairman CHAFFETZ. So they are solely responsible for the fulfillment of that request and for the subpoenas, correct? I mean, if it doesn't go to you, you're the Director of Privacy, Governmental Liaison, and Disclosure, and you're telling me that your department, your group doesn't get that because it came from Congress, right?

Ms. HOWARD. No, no, because we made a business decision that because of the scope of that request we would set up a special project team, and that special project team——

Chairman CHAFFETZ. Who decided that? I want some names here. Mr. Koskinen?

Ms. HOWARD. I think it was before his time, so I guess the Acting Commissioner.

Chairman CHAFFETZ. Right.

Ms. HOWARD. It was before my time too. So, you know, whatever I tell you is just hearsay. But it was my understanding that the Commissioner——

Chairman CHAFFETZ. We expect a little bit more.

Ms. HOWARD. Again, it was not directed towards my division.

Chairman CHAFFETZ. So it doesn't come through your office, your department, your group, whatever you want to call it.

Ms. HOWARD. We might be involved in it, but so are the IT people.

Chairman CHAFFETZ. Was the Lois Lerner case dealt with differently than anything else? You said it was unprecedented. I want to know why.

Ms. HOWARD. Well, I think because there were a lot of other 501—504(c)(3)—(c)(4) documents that were requested at the same time.

Chairman CHAFFETZ. So anything that had to deal with those documents, the (c)(4) documents——

Ms. HOWARD. Uh-huh.

Chairman CHAFFETZ. —went a different direction than normally?

Ms. HOWARD. It went into sort of a project team where we felt that we could handle——

Chairman CHAFFETZ. So there is a special project team that's set up?

Ms. HOWARD. There was at the time. I don't believe it's still functioning.

Chairman CHAFFETZ. Why was there a special team set up?

Ms. HOWARD. Because of the volume of the——

Chairman CHAFFETZ. It didn't have anything to do with volume. It had to do with the topic, didn't it?

Ms. HOWARD. I don't believe so, no. I think it was a business reason of how we would best use our resources. In actuality, looking back on it from my perspective, it was a very positive thing for the Disclosure Office because we could do all of our regular FOIA work, except for those particular topics.

Chairman CHAFFETZ. So, I mean, what you're telling me is, anything that came in on this topic, (c)(4), not just Lois Lerner, but (c)(4), went in a different route. It went to the Commissioner and it went to the General Counsel. There's only two political appointees in all of the IRS, the Commissioner and the General Counsel. Those are the only two out of 90,000. And you're telling me that those requests went a different route than normally anything else does, and it went to them, correct? That's exactly what you told me.

Ms. HOWARD. I don't want to go on record as saying that I know specifically where requests went to. My understanding is that requests from Congress are given a certain level of respect and concern so that they go to the Commissioner's office first and are parceled out as to who's going to work them after that.

Chairman CHAFFETZ. Do you know who the lead of that special project team was?

Ms. HOWARD. I do not.

Chairman CHAFFETZ. My time has expired. We'll now recognize Mr. Cummings?

Mr. CUMMINGS. Yeah. Thank you.

Chairman CHAFFETZ. Mr. Cummings for 5 minutes.

Mr. CUMMINGS. Thank you very much.

Ms. Neuman, you have said that there was room for improvement. Can you tell us what those improvements might be that you were talking about?

Ms. NEUMAN. Yes.

Mr. CUMMINGS. I want to get to the bottom line and be effective and efficient. So tell me.

Ms. NEUMAN. As do I, Congressman Cummings.

One of the things I did when I first came aboard was to try to understand where some of the bottlenecks were in the Department in terms of the component backlogs and understand what the reasons for those backlogs might be. In doing so, I did identify some of the systemic challenges and decided that we really did need to address in the long term an independent comprehensive review of what these systemic challenges are, what the reasons for these backlogs are, and then get some best practices in place for dealing with those.

In the interim, I decided that I could implement some more immediate measures to address some of these challenges. For example——

Mr. CUMMINGS. I want to know what still needs to be done to improve. I don't have a lot of time.

Ms. NEUMAN. Sure. I personally believe that we can leverage technology and deploy much more advanced technology throughout the Department that can be used to address the backlog.

Mr. CUMMINGS. And what's it going to take to make that happen?

Ms. NEUMAN. Well, we're in the process of doing that already. We are in the process. We've rolled out a successful pilot that's intended to reduce the backlog and duplication. It's been adopted by 11 components thus far, and other components are in line to adopt it as well.

Mr. CUMMINGS. How many components are there?

Ms. NEUMAN. Well, there are 15 components that process FOIA requests. Eleven of these components have adopted this technology——

Mr. CUMMINGS. So you need four more, is that right?

Ms. NEUMAN. Yes, sir.

Mr. CUMMINGS. You have four to go. When do you expect that to happen?

Ms. NEUMAN. I personally don't—I'm not aware of the timeframe. I would be happy to confer with my staff and get back to you on that.

Mr. CUMMINGS. Confer. I would appreciate it if you would confer——

Ms. NEUMAN. Absolutely.

Mr. CUMMINGS. —and get back to me and let me know as when that's going to happen.

Ms. NEUMAN. I'd be happy to.

Mr. CUMMINGS. I would also like for you to—because I don't have a lot of time, I'm going to ask that you—you all—give us your recommendations.

You know, as I listen here it seems like everything—you all make everything sound so rosy, and I want to try to get to the bottom line of what the problems are. We heard a lot of testimony yesterday. In all fairness to you, I think all of you all are probably doing a whole lot of good things. But at the same time, we have to balance that against what we have heard over the last day or so.

Will you do that for me, Ms. Neuman?

Ms. NEUMAN. Yes, I will.

Mr. CUMMINGS. And other witnesses?

Ms. NEUMAN. Yes, I will.

Mr. CUMMINGS. Ms. Barr, I want to ask you some key questions because I want to follow up on what Mr. Lynch was talking about. And I want to thank you for being here.

For the past several months there have been intense discussion about former Secretary of State Hillary Clinton and her use of personal email for official business. However, new documents—new documents—which we received late last night raise significant questions about the email usage of former Secretaries of State Condoleezza Rice and Colin Powell. The State Department sent a letter to these former Secretaries of State last fall requesting information about their use of personal email for official business.

On December 5, 2014, Secretary Clinton and her attorneys responded by providing more than 30,000 emails totaling 55,000

pages. The State Department now has those emails and is currently reviewing them to make them available to the public under FOIA.

Is that correct, everything I just said?

Ms. BARR. Yes, sir.

Mr. CUMMINGS. All right. Neither Secretary Rice nor Secretary Powell provided any emails to the Department in response to that request. Is that correct?

Ms. BARR. Yes, sir.

Mr. CUMMINGS. Not one. We know that Secretary Powell used a personal email account for work because he wrote about this in his biography, and Mr. Lynch talked about that. But unlike Secretary Clinton, Secretary Powell did not preserve any of these emails. Is that correct, to your knowledge.

Ms. BARR. Yes, he told us he did not have access to those anymore.

Mr. CUMMINGS. So that means you didn't have access to them?

Ms. BARR. No.

Mr. CUMMINGS. Last night, the committee received new documents regarding former Secretary of State Condoleezza Rice. In 2007, the watchdog group Citizens for Responsibility and Ethics in Washington submitted a FOIA request seeking State Department policies governing the use of Secretary Rice's email accounts. CREW also requested copies of emails from her official account as well as, "email messages that have been sent by the Secretary of State from any private mail account and that pertain to official government business."

We received the State Department's response to this inquiry last night. It states that although the Department officials are still looking, "no responsive material was found."

So, Ms. Barr, are you aware of any emails that have been identified from Secretary Rice's email account, any?

Ms. BARR. No, I'm not aware. Well, I want to make sure that I understand your question. Are you asking me if I'm aware of any emails from her account that should be regarded as responsive material to this request?

Mr. CUMMINGS. That's right.

Ms. BARR. Okay. No, I'm not aware of any that are responsive to this particular request.

Mr. CUMMINGS. All right. And we already know you don't have emails from Secretary Powell. Is that right?

Ms. BARR. Yes, that is correct.

Mr. CUMMINGS. So between the two of them, do you have emails?

Ms. BARR. You mean personal?

Mr. CUMMINGS. No, no, no, no, no, no. In response to your request. You sent the request. You all sent the request. Do you have any emails with regard to the request?

Ms. BARR. No.

Mr. CUMMINGS. So, Ms. Barr, as you stated today, can you tell us with certainty whether Secretary Rice even had an official State Department email account?

Ms. BARR. Yes. It is my understanding that she had an official State Department request.

Mr. CUMMINGS. Account.

Ms. BARR. Account.

Mr. CUMMINGS. Account. Okay.

Ms. BARR. Sorry. But I would like to also say that emails are not the only way we capture records. We have cables, memos, agendas, we have lots of other ways that we capture official records. So while in these two instances we did not have emails to respond to requests, we have other types of records that we maintain that are looked at to see if we have responsive materials when people ask us through the FOIA process.

Mr. CUMMINGS. Well, I appreciate that. Right now, though, I'm just talking about emails.

Ms. BARR. Okay.

Mr. CUMMINGS. You don't have any emails from Secretary Powell?

Ms. BARR. That are responsive to the request?

Mr. CUMMINGS. Yes, ma'am. And you have none from Secretary Rice?

Ms. BARR. That is true. That's correct.

Mr. CUMMINGS. It's amazing. Secretary Powell and Secretary Rice served during critical times in this Nation's history, during 9/11 attacks, the war in Afghanistan, and the war in Iraq, yet as far as we can tell State Department officials don't have their emails from this 8-year critical period.

Ms. Barr, Secretary Powell has been straightforward about his failure to preserve his emails, but Secretary Rice has never spoken publicly about hers. In response to the State Department's letter last fall, her representative responded by proclaiming: "Secretary Rice did not use a personal email account for official business."

Do you know if Secretary Rice's attorney conducted a thorough review of her personal email account like Secretary Clinton's did, do you know?

Ms. BARR. I am not personally familiar with what her attorney did to respond to that request, sir.

Mr. CUMMINGS. Well, my time has run out. But these new revelations are startling, so I hope that we will look at that era just like we've been looking at the present era with regard to these emails. All right.

Chairman CHAFFETZ. I thank the gentleman.

We'll recognize the gentleman from North Carolina, Mr. Meadows, for 5 minutes.

Mr. MEADOWS. Thank you, Mr. Chairman.

Ms. Pustay, let me come to you. Did you watch the testimony yesterday where we had 12 different witnesses across two panels talking about FOIA requests?

Ms. PUSTAY. I didn't. I didn't watch it, but I was keeping up with it throughout the afternoon.

Mr. MEADOWS. So you are aware of their less than flattering testimony as it relates to your particular involvement with FOIA requests, maybe not yours personally but the Justice Department. Are you aware of that, that it was less than flattering?

Ms. PUSTAY. I don't know if I'd agree with that. I respectfully don't agree with that characterization. I understand, though, let me say this, I understand that requesters have examples of things that are frustrating experiences.

Mr. MEADOWS. So what you're saying is that the testimony that we heard yesterday was just a few examples of frustrating, because that's not what I got from that, and I would characterize it as less than flattering.

I'm having a hard time reconciling your opening testimony with the testimony of a number of witnesses yesterday with regards to the Department of Justice and your responsiveness, because your opening testimony provided very glowing terms. So I guess my question for you is, on scoring different agencies on how they respond, who gets the best marks and who gets the worst marks on your scoring? Because I understand you score.

Ms. PUSTAY. Right. We do an assessment every year.

Mr. MEADOWS. Just who gets the best ones—I've got 5 minutes—so who gets the best scores and who gets the worst scores?

Ms. PUSTAY. Well, we have, if you look at the assessment, you'll see we have a range of milestones, over 20-some milestones, so we rank and score agencies on a whole bunch of things.

Mr. MEADOWS. So how does the Justice Department score on those milestones?

Ms. PUSTAY. The Justice Department scores quite well on those milestones.

Mr. MEADOWS. Okay. Would you suggest that if you're setting the milestones and you're scoring the milestones, that the testimony from all these other folks, who if they set milestones they wouldn't give you high marks, how do you give yourself high marks?

Ms. PUSTAY. I actually for the past 2 years, Congressman, have been working collaboratively with representatives from civil society to set the milestones. It's actually been a joint effort.

Mr. MEADOWS. Okay. So let me ask you this then. Ms. Attkisson gave us an example of requesting a FOIA request and it taking 10 years. Her daughter was 8. She was 18 by the time the FOIA request. Would you say that that is a great response?

Ms. PUSTAY. Right. No, of course not, of course not.

Mr. MEADOWS. Okay. Would you say that that response is unique, that there are none others like that throughout all the FOIA requests?

Ms. PUSTAY. No, of course not as well.

Mr. MEADOWS. So what part of violating the FOIA law that is very clear—I mean, you know the FOIA law, I would assume, and it gives particular responses—what part of violating the FOIA law does the Department of Justice condone?

Ms. PUSTAY. Right. I think that it's important to look at areas that need improvement in FOIA.

Mr. MEADOWS. Okay. So what part of the law does the Justice Department condone?

Ms. PUSTAY. We don't—we endorse——

Mr. MEADOWS. So you don't condone violating the law?

Ms. PUSTAY. Of course not.

Mr. MEADOWS. Okay.

Ms. PUSTAY. Of course not.

Mr. MEADOWS. So I would think that would be your answer.

Do you violate the law.

Ms. PUSTAY. Of course not. We work hard——

Mr. MEADOWS. So you've never violated the FOIA law?

Ms. PUSTAY. We work hard, we work very hard at my office——

Mr. MEADOWS. I believe that. So the question is——

Ms. PUSTAY. —to promote transparency and promote compliance with the law.

Mr. MEADOWS. I believe that. So the question, under sworn testimony today, is the Justice Department does not violate—has never violated the FOIA law. Is that your testimony?

Ms. PUSTAY. I think what you're asking me is, do we ever respond to requests beyond 20 working days?

Mr. MEADOWS. Is that the law?

Ms. PUSTAY. The law allows for extensions of time in unusual circumstances.

Mr. MEADOWS. Okay. So with the extensions have you ever gone beyond the law?

Ms. PUSTAY. So I wouldn't characterize it as going beyond the law because the law actually recognizes, in many different aspects, the FOIA recognizes the reality, Congressman, of the need for agencies to take more time to respond to certain requests that are voluminous, for example.

Mr. MEADOWS. All right. So let me ask it a different way. Is there anything in the law that would ever give you waivers to allow 10 years to respond to a FOIA request? Because I can't find it. Can you show——

Ms. PUSTAY. Sure.

Mr. MEADOWS. Direct me to where——

Ms. PUSTAY. Sure.

Mr. MEADOWS. —it would be 10 years?

Ms. PUSTAY. Sure. The way the timing provision is set out in the FOIA is it's in section 6. There's a basic response time of 20 working days. There's a provision to ask for 10 additional days.

Mr. MEADOWS. Right.

Ms. PUSTAY. And then there's a whole series of steps that agencies can take if they need beyond the additional 10 days. There's a whole series of things that agencies can do.

Mr. MEADOWS. So can you direct me to the actual paragraph——

Ms. PUSTAY. Absolutely.

Mr. MEADOWS. —and send that to me where it says it's okay for 10 years?

Ms. PUSTAY. Absolutely. I'll send you the paragraph that says——

Mr. MEADOWS. So do you believe it's in there for 10 years?

Ms. PUSTAY. What I know is in there is a provision that allows for an extension beyond 30 working days.

Mr. MEADOWS. I yield back. Thank you.

Chairman CHAFFETZ. Thank you.

And we would be interested if you'd send that to the committee and help articulate that for us. That it would be most helpful. Thank you.

Ms. PUSTAY. Of course.

Chairman CHAFFETZ. We'll now recognize the gentleman from Virginia, Mr. Connolly, for 5 minutes.

Mr. CONNOLLY. Thank you, Mr. Chairman.

Ms. Barr, I must say I am reeling from the stunning revelation that you have no emails from two former Secretaries of State who covered the entirety of the Bush administration. And I want to make sure I understood your answers to Mr. Cummings very clearly. You are the top FOIA official at the Department of State. Is that correct?

Ms. BARR. Yes, sir.

Mr. CONNOLLY. And if I understand your sworn testimony, you're saying that as of right now the State Department has not been able to identify any emails from Secretary Powell or Secretary Rice. Is that correct?

Ms. BARR. What I was saying is that the State Department did not have any emails that were responsive to the request.

Mr. CONNOLLY. Do you have other emails?

Ms. BARR. I know that we have other emails for Secretary Rice. I'm not sure what we have in our collection for Secretary Powell. My statements were based on what I understood to be a summary of how we had requested a number of former Secretaries to come back to us with whether they had official records.

Mr. CONNOLLY. Well, now, Ms. Barr, my time is limited.

Ms. BARR. Okay.

Mr. CONNOLLY. I'm going to help you clarify your testimony.

Ms. BARR. Okay.

Mr. CONNOLLY. So are you saying you actually do have emails from Secretary Powell, they just——

Ms. BARR. I'm not sure if I have actual emails from Secretary Powell in general. Is that what you're asking me?

Mr. CONNOLLY. I'm asking is there any evidence at all of any emails from Secretary Powell on his official or personal email accounts that you have access to as the head FOIA official for the Department of State?

Ms. BARR. I know that he did not provide any copies of emails of official records after——

Mr. CONNOLLY. Really, for 4 long years?

Ms. BARR. Please let me finish, okay?

Mr. CONNOLLY. Yes. But please do so in a concise fashion. I only have 5 minutes.

Ms. BARR. Yes, sir.

Mr. CONNOLLY. Go ahead.

Ms. BARR. We don't have any emails that were responsive to our request.

Mr. CONNOLLY. No, you keep on using that phrase. Do you have any emails from Colin Powell that you have access to?

Ms. BARR. Because my personal knowledge of what we might have, in general, I'm not sure.

Mr. CONNOLLY. You're not sure.

Ms. BARR. But I thought that the question that was asked of me before was much more specific.

Mr. CONNOLLY. Do you have access to any—since you're not sure about Colin Powell, which I still find stunning—there's no evidence of any, but you're not sure. What about Secretary Condoleezza Rice, do you have——

Ms. BARR. I know that she used a state.gov account.

Mr. CONNOLLY. So you have access——

Ms. BARR. And I'm sure we have access to them. But I thought that the question was in the context of responsive material or——

Mr. CONNOLLY. What do you mean by responsive material?

Ms. BARR. Because we had a request.

Mr. CONNOLLY. Yeah.

Ms. BARR. That's what I thought.

Mr. CONNOLLY. And your testimony was there is no evidence of extant emails from her responsive to the request.

Ms. BARR. Yes.

Mr. CONNOLLY. None.

Ms. BARR. We didn't provide any.

Mr. CONNOLLY. So what happened to them?

Ms. BARR. Well, if it's not responsive we don't supply it. But that doesn't mean that there are no emails, period, from her.

Mr. CONNOLLY. But there are some emails from her. You're not sure about Colin Powell, but you are sure about Secretary Rice?

Ms. BARR. I know that Secretary Rice used a state.gov account.

Mr. CONNOLLY. Which means they're preserved somewhere.

Ms. BARR. Somewhere.

Mr. CONNOLLY. Have you ever seen one?

Ms. BARR. No, not personally.

Mr. CONNOLLY. I find that amazing as well. Does the Federal Records Act apply to both Secretaries Powell and Secretary Rice?

Ms. BARR. Yes. It applies to all. But again Federal records can be more than email.

Mr. CONNOLLY. I understand that, but let's stick with emails for a minute.

Ms. BARR. Okay.

Mr. CONNOLLY. So is it compliant with the Federal Records Act to in fact wipe out emails——

Ms. BARR. No.

Mr. CONNOLLY. —whether they are on your personal account or your official account?

Ms. BARR. It is not. We ask each employee to preserve official records, and that's a responsibility for every employee.

Mr. CONNOLLY. Right.

Ms. BARR. And we have to depend on individual employees to carry out their responsibilities.

Mr. CONNOLLY. So just to summarize, and please correct me if I get it wrong, your testimony is you're unaware of any surviving emails from Secretary Powell responsive——

Ms. BARR. You said personally.

Mr. CONNOLLY. I understand. But you have a title. Presumably you'd know, if anyone knew. But we'll use your phrase, responsive to the request.

Ms. BARR. Yes.

Mr. CONNOLLY. In that lane, there are no surviving emails from Secretary Colin Powell that you're aware of?

Ms. BARR. That are responsive to the request.

Mr. CONNOLLY. And with respect to Secretary Rice, similarly, you're unaware of any surviving emails from Secretary Rice responsive to the request?

Ms. BARR. That is correct.

Mr. CONNOLLY. There may be or, in fact, your guess is there are surviving emails from her, but they are outside that lane of responsive to the request?

Ms. BARR. Yes, sir.

Mr. CONNOLLY. Thank you.

Chairman CHAFFETZ. I thank the gentleman.

We now recognize the gentleman from Georgia, Mr. Hice, for 5 minutes.

Mr. HICE. Thank you, Mr. Chairman.

Yesterday, as you well know, each of you, this committee heard testimony from several esteemed members of the press and outside groups who've experienced tremendous problems with FOIA requests. And, quite frankly, I was shocked and astonished by the testimony we heard yesterday.

Several comments stick to my mind, one in particular by Tom Fitton, the president of Judicial Watch, who used the phrase "criminal obstruction" to describe the manner in which the IRS has handled FOIA requests having to do with the IRS' targeting of conservative groups. He also said that an agency official actually told him that if you scrutinize the government, the government will scrutinize you.

Moments ago, Ranking Member Cummings said that all of you are making things sound rosy. We're not talking about a rosy situation here. We have a mess with potential criminal obstruction taking place.

Ms. Howard, is that what Tom Fitton described common practice with the IRS?

Ms. HOWARD. It's not my experience that it's any practice within the IRS. I see no evidence of criminal wrongdoing or of any intent to do anything but make records available.

Mr. HICE. So you see no targeting take place. You would deny what has come out pretty nationally.

Ms. HOWARD. Outside of my area of expertise. I can only speak to the records production.

Mr. HICE. If someone makes a FOIA request to the IRS is that person potentially now a target for retaliation?

Ms. HOWARD. No, sir.

Mr. HICE. Okay. So you would deny that there has been any type of retaliation, audits, that type of thing from the IRS because of people are so-called scrutinizing?

Ms. HOWARD. I'm simply saying that in my experience the way in which FOIA requests come in, they are logged into a system. The folks who work the FOIA requests have access to that system. The rest of the IRS has no need to have access to that system. So I'm not sure that it's common knowledge——

Mr. HICE. That's not my question. My question is, has the IRS participated in retaliation through audits or whatever because people are requesting FOIA information or what may be perceived as scrutinizing the IRS?

Ms. HOWARD. I have no direct knowledge of the audit side of the house. That's not my area of expertise or familiarity.

Mr. HICE. But you do have knowledge of the FOIA side of things?

Ms. HOWARD. I have knowledge of the FOIA side of things.

Mr. HICE. And you're denying there would be any such retaliation.

Ms. HOWARD. I have not shared any information with anyone who would be in a position to retaliate.

Mr. HICE. Okay. Well, let me go further to a comment you said, made a little bit earlier in discussion with the chairman regarding Lois Lerner.

Are you saying—and I just want to clarify your testimony here today—are you saying that there was no special treatment that was given to her for protection, in spite of the fact that you yourself said that her case was the tip of the iceberg?

Ms. HOWARD. What I meant was that the request for her emails was just part of the request that this committee and other investigators made for information on the (c)(4) issue.

One of things I do want to clarify——

Mr. HICE. Please be quick.

Ms. HOWARD. Okay. Is that the title Governmental Liaison in my title really is not the liaison with Congress. It's liaison with State and other Federal agencies and the data exchanges that we do with them. That's where my area of responsibility is, in addition to FOIA. So a lot of the requests that would come from Congress would not automatically land on my desk.

Mr. HICE. We're not talking about requests from Congress.

Ms. HOWARD. You're talking about FOIA requests.

Mr. HICE. We're talking about FOIA requests and other requests. We're trying to get to the bottom of what appears to be outright obstruction, and we're getting a rosy picture that, quite frankly, is not an accurate picture.

I want to shift over, Ms. Neuman, to you. In your testimony you mentioned that your agency avoids FOIA requests that might be operationally sensitive material. Is that a correct——

Ms. NEUMAN. No, it's not. We don't avoid any FOIA requests, but we do consider FOIA requests that may be seeking information that is operationally sensitive and may be protected.

Mr. HICE. Is operationally sensitive, does that include anything that your agency would not want the public to know or see?

Ms. NEUMAN. No, no. It would include information about law enforcement, investigatory techniques, for example, national security issues. And when we get a request——

Mr. HICE. So there would be no other case where information is denied. Listen, we had testimony one after another after another. And I don't know where you guys get some of your information, quite frankly. We had people all over the board saying the average wait is years to get FOIA responses.

I wish I had more time. My time is running out. But the FOIA request is absolutely essential to government transparency and the constitutional rule of law, and the evidence is abundant that it is at least being avoided, if not totally obstructed, and this is an issue we have got to get to the bottom of, get to the root of, and you folks here are part of the problem.

Mr. Chairman, I yield back.

Chairman CHAFFETZ. Thank you.

I now recognize the gentlewoman from Illinois, Ms. Duckworth, for 5 minutes.

Ms. DUCKWORTH. Thank you, Mr. Chairman.

Ms. Barr, in September of 2012 the OIG for the State Department issued a report on the Department's FOIA program. I'm looking at it now. It's "Inspection of the Bureau of Administration, Global Information Services, Office of Information Programs and Services." And the report states: "The Department's FOIA process is inefficient and ineffective."

Are you familiar with this report?

Ms. BARR. Yes, I am.

Ms. DUCKWORTH. I know you had only been on the job just a few months when it was issued. But I wanted to ask you a little bit more about it. The report focused on the Office of Information Programs and Services. That office is within the Bureau of Administration, I understand, and you serve as the Assistant Secretary for that Bureau. Is that correct?

Ms. BARR. Yes, that is correct.

Ms. DUCKWORTH. I'd like to go through some of the issues raised in the report. It said about the Office of Information Programs and Services, and I just want to quote the report, it says: "Persistent neglect of fundamental leadership responsibilities and management practices has had profound consequences in IPS. The OIG team's observations, discussions with IPS staff, and the responses to OIG's questionnaires indicated an office with problematic morale, perceptions of favoritism, micromanagement practices, and confused lines of authority."

This really concerns me. And I understand that you'd only been on the job just 6 months, so this investigation probably took place before you got there. But how did you respond to those findings?

Ms. BARR. Well, I took those, that OIG report, very, very seriously. It was within the first 6 months of my tenure, and I immediately became involved in doing everything I could to address the issues.

In addition to just devoting my personal time to doing whatever I could to make sure that employees received proper leadership training, that there were more clear lines of authority, we actually moved some people around. One part of the problem was that there were supervisors who were not physically located close to the employees that they were supervising.

In addition to that, at that time I did have some positions that I was able to reallocate to that section. We also had a number of vacancies. And, in fact, at the beginning of that period when the report was being released we were able to hire a new director who made a huge difference in that section.

It is something that I am always involved with, with any of my units, but this report was like the first very negative report I'd received on one of my units when I started, so I took it very seriously.

Ms. DUCKWORTH. Would you say that this is an ongoing process for you? Are you still dealing with the issues in the report?

Ms. BARR. Yes. We've closed most of the recommendations, but some of the recommendations that involved other bureaus, we are still working on it. We have to do a quarterly report to the IG, so it's something that I talk to the senior management in that section about all the time.

Ms. DUCKWORTH. Okay. The report also found flaws in the Department's records management, and it stated that the Department's records management infrastructure is inefficient and ineffective. It also said that failure to develop and implement electronic systems has resulted in poor performance.

Is the State Department overall taking steps to improve its records management processes?

Ms. BARR. Yes, we are. First of all, we are participating in a government-wide working group that is dealing with records management. And I have been in a couple of those meetings myself, and I can assure you that there are very passionate and involved people working very hard on this.

In addition to that, as I mentioned earlier in my oral testimony, the Secretary himself is very much committed to preservation and transparency and has asked the OIG to look into a number of issues, and what we are doing on records management is one of those issues.

Ms. DUCKWORTH. Thank you. Well, I hope that the State Department will continue to make these priorities a top goal for the agency. FOIA is certainly a critical tool for Americans to demand the accountability that they deserve from their government, and I'm sure you know that this—I'm sure this committee and myself personally will be following up to make sure that that process continues. Thank you.

I yield back, Mr. Chairman.

Chairman CHAFFETZ. I thank the gentlelady.

And we'll now recognize the gentleman from Georgia, Mr. Carter, for 5 minutes.

Mr. CARTER. Thank you, Mr. Chairman.

Mr. Chairman, members of the panel, in preparation for this hearing I actually used my search engine on my computer to look up FOIA requests, and I was quite surprised and somewhat disappointed, I have to be honest with you, that one of the results is what I hold in my hand. And this is a handout from the Web site of the minority leader, the minority party leader in the Senate, Senator Harry Reid. It is a document that encourages deferred action applicants to file FOIA requests, to file FOIA requests for criminal records and immigration files so that the lawful permanent residents who are here now can actually find out and be prepared when their parents or their children file for deferred status.

I was really shocked. It is quite impressive. It offers tips as to what they should do to file the FOIA request, but it clearly states in this handout, it clearly states that ICE, that the United States Citizenship and Immigration Services is not currently accepting any applications because of the court order that we are all familiar with. Yet it still encourages them in this document to go ahead and file. It still encourages them to do that.

Ms. Neuman, I want to ask you, in the last fiscal year the FOIA backlog at DHS has more than doubled. Why is this? Do you know why it's more than doubled?

Ms. NEUMAN. Congressman, the FOIA backlog has more than doubled in part because we've received an enormous increase in the number of requests for fiscal year 2014. ICE and USCIS are the

recipients of most of these requests as many of these requests seek immigration-related records.

Mr. CARTER. So you do think that it's a result of people encouraging these applicants to file FOIA requests.

Ms. NEUMAN. No, sir, I don't. I can't speak to the many events that take place outside of DHS that trigger searches in requests. We do focus on trying to fulfill those requests.

Mr. CARTER. But you do admit that those requests have been related to immigration requests.

Ms. NEUMAN. I am saying, if I understand your question correctly, that a significant number of the requests received by the Department are requests for immigration records.

Mr. CARTER. Okay. Fair enough. Okay.

In your opening statement you said that the number of requests through DHS has increased over 182 percent since——

Ms. NEUMAN. Since 2009.

Mr. CARTER. Since President Obama took office, that's correct. Is that correct?

Ms. NEUMAN. Since he issued his open government directive.

Mr. CARTER. Since he issued his open government directive.

Ms. NEUMAN. 2009, yes, sir.

Mr. CARTER. So you think it is a result of the deferred action program.

Ms. NEUMAN. Again, I can't speak to the many events and activities outside of the Department that may trigger a surge in FOIA requests. I can't speak to whether or not anyone is encouraging requests and whether those words of encouragement might increase the filing.

Mr. CARTER. Ms. Neuman, are you familiar with the G–639 form?

Ms. NEUMAN. I can't say that I am off the top of my head.

Mr. CARTER. Okay. When did you take over in this department?

Ms. NEUMAN. At the end of fiscal year 2013.

Mr. CARTER. Okay. The G–639 form I believe was just introduced in your Department this year, so I would think that you would be familiar with it.

Ms. NEUMAN. And if you might remind me what that is.

Mr. CARTER. Okay. Well, it has to do with the applicants that—it was created for the FOIA requests from those who were seeking information on DACA and DAPA to help expedite that. Do you know whether that form has been used, the increase in the usage of that form?

Ms. NEUMAN. I personally don't have awareness of the specific form that you're talking about. I would be happy to consult with my staff and get back to you.

Mr. CARTER. Well, I hope you will. I would think that you would have complete awareness of that, being the director, if there was a new form implemented in order to expedite some of the FOIA requests that are coming through.

Ms. NEUMAN. I'm not aware of specifics with respect to the processing of specific cases or specific types of cases.

Mr. CARTER. Okay. Well, can you get back with us on that——

Ms. NEUMAN. Absolutely.

Mr. CARTER. —and please provide for this, not only that, but what it's used for specifically?

Ms. NEUMAN. Absolutely.

Mr. CARTER. Because that's what I understand it's used for. And if that form has been used and how much it's increased.

Ms. NEUMAN. I'd happy to do that.

Mr. CARTER. Thank you. I appreciate that.

I want to mention to you as well, Ms. Neuman. I have a bill, H.R. 1615, that I am introducing to address the backlog of FOIA requests at DHS. As you know, the majority of FOIA request backlogs exist at DHS, majority throughout the government, so this is something. I hope that you will look at it. I hope it will be something that can assist you and help you and help us to eliminate this backlog as best we can.

Ms. NEUMAN. Thank you.

Mr. CARTER. Thank you, Mr. Chairman, and I'll yield back.

Chairman CHAFFETZ. Thank you.

I will now recognize the gentlewoman from the Virgin Islands, Ms. Plaskett, for 5 minutes.

Ms. PLASKETT. Thank you very much, Mr. Chairman.

Good morning, witnesses, good morning to you all, and thank you for the information that you're providing to us.

One of the things that I really wanted us to focus on is my colleagues here discussed that there is a problem, and everyone is aware that there is a problem. I don't think that you sitting here are the problems. I think that there are processes and directives and issues that have happened within your agencies that create these backlogs that we're talking about, and I'd really like to try and get to the root of what is the reason for this.

We've talked about in some instances, Ms. Pustay, as the Director of the Office of Information Policy, that agencies are receiving more and more FOIA requests, correct? And you highlighted in your testimony that the Federal Government received 714,231 new FOIA requests in fiscal year 2014. Is that correct?

Ms. PUSTAY. That's correct.

Ms. PLASKETT. In the beginning of fiscal year 2009, I understand that there were 557,000.

Ms. PUSTAY. Right.

Ms. PLASKETT. That's an increase of 28 percent.

Ms. PUSTAY. Exactly.

Ms. PLASKETT. So that's one variable that becomes a problem for us, which is the increase in the number of FOIA requests.

Ambassador Barr, you spoke as well, and I understand that the Department of State has an increase in over 300 percent of FOIA requests. Is that correct?

Ms. BARR. Yes, since 2008.

Ms. PLASKETT. So that's one side of the equation. I think what we haven't really talked about is the other side, which is the amount of resources that you have. And I would have hoped that you all would have brought that to light in some of your testimonies. So I wanted to dig into that a little bit as well.

So in 2009 the Open Government Directive instructed agencies with sizeable FOIA backlogs to try and reduce those by 10 percent. Was that a directive that was given to each one of you?

Ms. PUSTAY. Yes.

Ms. PLASKETT. Yes?

Ms. PUSTAY. Correct. That's issued to everyone.

Ms. PLASKETT. Was everyone issued that?

And, Ms. Pustay, you mentioned the government shutdown in your testimony, and you said: "We roughly estimate that this 3-week period could have resulted in 32,000 more FOIA requests being processed." Right?

Ms. PUSTAY. That's correct.

Ms. PLASKETT. What are the resources? Have you increased the resources that you have to address these backlogs?

Ms. PUSTAY. Well, I can tell you that the challenges that we've identified, that agencies are facing with backlogs are, number one, as you already have mentioned, the steady increase in incoming requests. Secondly, staffing has been at its lowest level. This past fiscal year it was lower than it's been for 6 years. So resources, hiring freezes, government shutdowns where requests can come in but there is no one at the government that can process them, they all impact backlog.

Ms. PLASKETT. So, Ms. Pustay, with that, you're talking about the decreases.

Ms. PUSTAY. Right.

Ms. PLASKETT. Your Office of Information Policy during fiscal year 2014, there were 3,838 full-time FOIA staff devoted to the administration of FOIA throughout the government. We understand that that is a 9 percent decrease in the amount of full-time FOIA staff from the year before. Does that figure sound correct?

Ms. PUSTAY. Well, it's certainly not the size of OIP. We're about 43 people at OIP. I think you're talking about——

Ms. PLASKETT. Throughout government to handle FOIA requests.

Ms. PUSTAY. Yes. So definitely the staffing levels across the government have decreased.

Ms. PLASKETT. And how does that impact the processing of these FOIA requests?

Ms. PUSTAY. We are trying very hard to find ways to gain efficiencies in processing, utilizing technology, and that's a big factor that we've been—a big area where we've been putting a lot of emphasis. And there are efficiencies to be gained with technology. But at the end of the day you do need trained FOIA professionals who can analyze documents for disclosability, and so there's just no substitute for personnel to actually handle requests.

Ms. PLASKETT. So it's your belief that having additional staff to process these backlogs as well as the additional FOIA requests that come in would be the best way in which to handle these backlogs.

Ms. PUSTAY. I think having resources for both staff and technology together would be a very effective way.

Ms. PLASKETT. Ms. Neuman, would you agree that that would help your agency?

Ms. NEUMAN. In my case, I don't want to get too far ahead of the independent review that I mentioned, we also are deploying technology because doing so does create efficiencies. But I can't dispute at this point the value of staff resources along with the enhanced use of technology.

Ms. PLASKETT. And Secretary Barr, Ambassador Barr, would you say that would assist you as well?

Ms. BARR. Yes, I do believe it would assist me. But I think that within many agencies we are all trying to meet our priorities and——

Ms. PLASKETT. So are the FOIA requests a priority?

Ms. BARR. Yes, it is a priority.

Ms. PLASKETT. So what would be the best way to address that priority?

Ms. BARR. I think we have to continue to work with technology to see if we can gain additional efficiencies. But I also see that the increasing requests are also part of the American public's increasing interest in what we do, and I don't expect that to abate any time soon.

Ms. PLASKETT. So then how do you address it? With the technology alone or with staff as well?

Ms. BARR. Some staff as well. But I know we are all competing for resources——

Ms. PLASKETT. Well, that's what you come to Congress for, is to ask us for those resources. So you have an opportunity here to do that, and I would think that you would avail yourself of that opportunity.

Ms. BARR. Yes, ma'am.

Ms. PLASKETT. I yield back my time.

Chairman CHAFFETZ. Before you yield back, if you will yield me a moment.

Ms. PLASKETT. Of course, Mr. Chairman, always. Well, not always, but in this instance, yes.

Chairman CHAFFETZ. Let's get to the question first, and then we'll see, yeah.

Ms. Pustay, you said across government that resources are done, if I heard you correct.

Mr. Fontenot, can you please clarify, from your perspective, what's happening? You wrote in your testimony something different than that.

Mr. FONTENOT. Yes. Treasury-wide, over the past several years, we've increased our resources related to FOIA. Specifically, at the end of 2014 we had 151 full-time equivalent employees working in FOIA, and that's a 21 percent increase over the prior 2 years.

Chairman CHAFFETZ. So to say that personnel resources across the board government-wide, Ms. Pustay, are down is not accurate. In fact, Mr. Fontenot wrote in his testimony: "Beginning in 2013, my team doubled the number of full-time employees dedicated to FOIA." That's not a decrease. It's an increase quite dramatic, actually.

We appreciate the dedication and commitment that you've made, Mr. Fontenot.

Ms. PUSTAY. Mr. Chairman, if I could just correct the characterization. When I'm giving the figure about staffing being decreased, I'm giving an overall number. The number of requests overall has increased, overall staff has decreased.

Chairman CHAFFETZ. I understand the requests, but you were talking about personnel to deal with those. And some agencies have

evidently prioritized it more than others because they doubled the number of personnel at the Department of Treasury.

Ms. PUSTAY. I am giving the figure for overall. Each agency reports in their annual FOIA report their number of FOIA staffing, so it's very easy to look, right on foia.gov, to see which agencies increased, which decreased, the exact numbers for all of them. It's all publicly available.

Chairman CHAFFETZ. You said they all decreased, and Mr. Fontenot said he doubled it.

Ms. PUSTAY. My statement is, and I'm sorry that it's misunderstood, was that overall staffing has decreased. Government figure overall. That's what I'm talking about.

Mr. CUMMINGS. Would the gentleman yield?

Chairman CHAFFETZ. Sure.

Mr. CUMMINGS. Just real quick. I understand what you were saying about overall because I said it in my opening statement.

Ms. PUSTAY. Thank you.

Mr. CUMMINGS. And I just wanted to make sure we are clear. Although there are agencies that may have increased, overall government with regard to FOIA personnel has decreased.

Ms. PUSTAY. Absolutely. Thank you.

Chairman CHAFFETZ. And further yielding, part of my point is some think it's in their best interest to just slow this think down, just ride it out, and others have given it more priority. But anyway, we'll continue the discussion.

We'll now recognize the gentleman from Pennsylvania, Mr. Cartwright, for 5 minutes.

Mr. CARTWRIGHT. Thank you, Mr. Chairman.

Mr. Chairman, in the wake of the Edward Snowden revelations, obviously there has been a debate and public outcry over what some are seeing as the government's overly aggressive reaches into people's personal lives. I don't think most people would question that the need for the government to retain secrecy in certain areas to protect our national security is important. In my mind, though, there is still an important role for FOIA requests to shine a light on government actions that might not be in line with the core values that make our country great.

Ms. Neuman, I want to ask you, with decreased funding and a shrinking number of FOIA staff, what has the effect been on the public's ability to maintain that visibility and that transparency and to hold judicial, legislative, and executive branches accountable?

Ms. NEUMAN. Well, certainly with the backlog, that has impacted the speed with which we can respond to requests and fulfill those requests. I will say that DHS processed 238,031 requests, up from 204,332 in fiscal year 2013, so that's a 16 percent increase in the number of processed FOIA requests from the previous fiscal year.

Is it where I would like to see it? No, of course not. I would like to see greater improvements precisely to fulfill the values of transparency and shining a light on executive branch operations, as you know, that's embodied in the statute.

Mr. CARTWRIGHT. Great.

Ms. NEUMAN. And our professionals are working very hard to fulfill those requests and shine that light.

Mr. CARTWRIGHT. It wouldn't hurt to have more professionals doing this man and woman power work, right?

Ms. NEUMAN. Well, let answer that this way. These are lean times for all Federal agencies, as you know.

Mr. CARTWRIGHT. Well, you're being very diplomatic, Ms. Neuman, and appreciate it, but I have to move on.

In his testimony, David McCraw says that there are three primary areas of FOIA delays that need to be addressed. First, the culture of unresponsiveness; second, agencies deferring responses to other agencies; and third, that there are times when the information being requested has been submitted by companies to regulators, and so the agency has had to resolve private industry privacy concerns.

Congress has been working on legislation to expedite the sharing of cyber threat information, not just between private companies but also within the government. Now, here on this committee we have passed out of this committee with approval H.R. 653. This committee reported it out with approval this year.

Ms. Pustay, would you comment on 653? Are you familiar with that legislation?

Ms. PUSTAY. I'm not prepared to comment on any specific legislation, Congressman.

Mr. CARTWRIGHT. Okay.

Ms. PUSTAY. I certainly can speak to some of the concepts that you just mentioned.

Mr. CARTWRIGHT. Well, let's do that. Do you have recommendations on how these efforts might be applied to increasing government transparency?

Ms. PUSTAY. Well, I think one of the key things that we've been doing, just to take an example, after meeting with civil society representatives during my tenure as Director of OIP, I have been very impacted by the fact that the basic concept of better communication can really go a long way to making the FOIA process seem more understandable and flow more smoothly and prevent disputes from happening.

So in that sense it has been a focus of mine. I have done two separate guidance articles on the importance of good customer service and making sure that requesters understand what's happening with their request, that they have a point of contact at an agency.

Mr. CARTWRIGHT. Well, good. I don't mean to cut you off.

Ms. PUSTAY. Yes, sir.

Mr. CARTWRIGHT. But would you forward those to my office?

Ms. PUSTAY. Absolutely. Absolutely.

Mr. CARTWRIGHT. Thank you for that.

I want to conclude by following up on something Mr. Connolly from Virginia was talking about. He was talking about Secretary of State Condoleezza Rice's emails. And, Ms. Barr, you were testifying that your understanding is that she used an official account to do emails, although you had not ever seen one of those emails from her on that account or any other.

My information is that Secretary Rice has not disclosed whether she used a personal email account for official business. She has not disclosed whether she used a private email account for official business. And, Ms. Barr, can you confirm or deny that? Do you know

either way on that question? It's a yes or no, and I have to hurry. Yes or no, do you know?

Ms. BARR. Secretary Rice told us that she did not use personal email for official business.

Mr. CARTWRIGHT. Well, I'm going to invite my dear friend from South Carolina, who I know is looking into the question of emails of Secretaries of State to really delve into the question of whether Secretary Condoleezza Rice used private email accounts for official business.

And with that, Mr. Chairman, I yield back.

Chairman CHAFFETZ. I thank the gentleman.

I now recognize the gentleman from South Carolina, Mr. Gowdy.

Mr. GOWDY. Thank you, Mr. Chairman.

Good morning to all of our witnesses.

Ms. Barr, you previously testified that the former Secretary's email arrangement with herself was not acceptable. Those are the words you used, not acceptable. What made it not acceptable to you?

Ms. BARR. I know that in my oral statement today I was talking about it. Our backlogs were not acceptable. But I think in my former testimony that was being asked if I thought in general it was okay to use—if any employee would use a private email account.

Mr. GOWDY. Right. No, you are exactly right. It was in response to a question when you testified before the Senate. And I am sure the circumstances were, was it okay to exclusively use personal email with which to conduct public business, and you used the phrase not acceptable. So I am not asking about the backlog. I am asking about the exclusive use of personal email with which to conduct public business. What makes it not acceptable?

Ms. BARR. What we want to make sure that we do under the Federal Records Act is to capture official records so that they are available to be a history of what we do and how we come to those decisions. We don't like for records to be separated from the agency, so we were very pleased to have these records back in our possession so that they are part of our collection and that we can make them available to the public.

Mr. GOWDY. Do you recall why former Secretary Clinton said she availed herself of a personal server and used exclusively personal email? Do you recall the explanation given? Or have you been given an explanation for why she went that route?

Ms. BARR. I can't speak to that authoritatively. My understanding is that the Secretary said that she did it as a matter of convenience. I don't know that personally, sir.

Mr. GOWDY. Well, that is my understanding too, in part because that is what she said. I guess my next question would be, if it was solely for convenience, why not return the records the day you separated from the State Department?

Ms. BARR. I have no information on that, sir.

Mr. GOWDY. Has she provided any explanation for why she retained care, custody, and control of those public records for almost 2 years after she separated?

Ms. BARR. I am not aware of that, sir. I'm aware that we have them now.

Mr. GOWDY. Do you know what prompted the former Secretary to return those public records to the public domain?

Ms. BARR. We sent a letter to Secretary Clinton, as well as to Secretaries Rice, Powell, and Albright, and asked them if they had any records that might have been generated on non-Department systems that should be part of our official records.

Mr. GOWDY. How were you able to comply with FOIA requests in that almost 2-year interim between the time you wrote the letter and the time that she retained care, custody, and control of all of those public records?

Ms. BARR. Sir, emails are not the only records that we use.

Mr. GOWDY. Right. But it's part of the record. So if you received a FOIA request that would have included emails, how would you have been able to comply with that FOIA request given the fact that you had neither care, custody, nor control of those records?

Ms. BARR. Well, we would still search all of our records, and we would still look at things like cables, decision memos, other types of documents that we keep to provide a record of what we do, agendas.

Mr. GOWDY. So you would have given what you had, but you would have made no representation that what you provided was complete, because necessarily it could not have been complete because you didn't have the full panoply of public records.

Ms. BARR. Well, we always look at what we have, sir.

Mr. GOWDY. Right. You can't give it if you don't have it, which then raises the next question I have. I was listening to my friend from Maryland and my friend from Virginia make note of the fact the former Secretary did return emails. What guarantee can you give my fellow citizens that what you have now is the complete public record? Have you been through all of her records to determine what's public and what's private?

Ms. BARR. We are processing them now. And, no, we have not completed our review.

Mr. GOWDY. You're processing what was originally on the server or are you processing what she provided to you?

Ms. BARR. We are processing what she provided to us.

Mr. GOWDY. Do you know what mechanism she would have gone through to determine herself what was public record and what was private or what may have been a mixed use? Do you know who made that initial determination for the former Secretary?

Ms. BARR. She has told us that erred on the side of inclusion.

Mr. GOWDY. So did she tell you that she personally reviewed all of the emails or did she retain counsel to do so?

Ms. BARR. I am not aware of whether she personally did it or if she retained counsel.

Mr. GOWDY. Well, I thank you for answering my questions. I am over time. Suffice it to say I have a number of additional questions in this area, and perhaps at some point I will able to ask them.

Mr. CUMMINGS. Will the gentleman yield just for a moment?

Mr. GOWDY. I am out of time. But if the chairman says I'm not, then I'm not.

Mr. CUMMINGS. Just one question. Ms. Barr, what emails are you processing for Secretary Powell and Secretary Rice? You said you are processing emails.

Ms. BARR. For Clinton.

Mr. CUMMINGS. Yeah. But what emails are you processing for Secretary Powell and—listen to me—Secretary Powell? Any?

Ms. BARR. No.

Mr. CUMMINGS. Are you processing any for Secretary Rice?

Ms. BARR. No.

Mr. CUMMINGS. All right. Thank you.

I yield back.

Chairman CHAFFETZ. I now recognize the gentlewoman from the District of Columbia, Ms. Norton, for 5 minutes.

Ms. NORTON. I understand, Ms. Barr, while we have Secretary Clinton's, we don't have any from Secretary Powell because he didn't save his. Is that right?

Ms. BARR. Yes, ma'am.

Ms. NORTON. Thank you.

Now, when we get a chronic problem like this that keeps coming back, we often set up an officer or another department or another part of government to help us out. So I of course noticed, indeed, in fact, in H.R. 653 there is the creation of a Chief FOIA Officers Council. It would be run jointly by the DOJ's Office of Information Policy and the Office of Government Information.

This question is initially for Ms. Pustay because your office would be tasked to run the Office of Government Information Services. Do you support the notion of a Chief FOIA Officers Council.

Ms. PUSTAY. I'm not prepared today to answer any specific questions about a specific legislative proposal. But what I can tell you is that chief FOIA officers, who are designated high-level officials within each agency, designated by law with the FOIA as it currently exists, I think really hold the key to helping improve FOIA across the government, and we do a lot to work with chief FOIA officers. Because the idea there is that you want a high-level official in every agency who has authority and responsibility to make sure that the FOIA operations have sufficient staffing, have sufficient attention, have the resources that they need to operate.

And gearing off that important role that a chief FOIA officer plays, starting in 2009 with Attorney General Holder's guidelines, we created a mechanism called the Chief FOIA Officer Report, and every year we ask, we at OIP, at the Department of Justice, we ask chief FOIA officers to report to us every year on the steps they have taken to improve FOIA compliance. And we address a range of issues, use of technology, proactive disclosures, timeliness in responding to a request. And every year we have been changing the metrics that we ask and the questions that we ask of those chief FOIA officers, because as we see FOIA processes improve, or as we see steps taken to improve FOIA, we want to keep pushing agencies to do more and to do better. So it is an evolving process for us.

So I think that we have a lot of really good mechanisms in place right now that take advantage of the position of the chief FOIA officer.

Ms. NORTON. Well, let me turn to the chief FOIA officers. How do each of you feel about the notion of a Chief FOIA Officers Council? Would it be beneficial to you in any way?

Ms. NEUMAN. It is an interesting idea. I would have to give that some thought. And after doing so, I would be happy to share my thoughts with you.

Ms. NORTON. Have you given any thought to that? You are the ones that it seems to me ought to be consulted about this.

Mr. FONTENOT. Yes, ma'am. I have not given thought to this as of now, but I am happy to take that back.

Ms. NORTON. Well, I think the committee would benefit from your advice and counsel, particularly since there has been a subcommittee hearing here. The Subcommittee on Government Operations had a FOIA hearing and heard from Frederick Sadler. He has previously served as a FOIA officer at the Food and Drug Administration. Let me read to you what he says. "It would seem appropriate to require agency representation at the highest level possible when the individual is also the most knowledgeable. Past experience has shown that not every chief FOIA officer has the skill set, since this is by definition not necessarily that individual's specialty."

Ms. Barr, I will start with you. Do you agree with Mr. Sadler's comment.

Ms. BARR. I think it would depend on how that person—each agency organizes this issue differently. For the State Department, I am the chief FOIA officer, but I also have a lot of other responsibilities. So I have a deputy assistant secretary that is an expert in these issues, and I consult very closely with that person.

Ms. NORTON. What about the exchange of ideas across agency lines? Do you believe that sharing of information about agency experience and their ideas, their own best practices, what they have done right or wrong, would improve the implementation of FOIA? Would the FOIA officers have a view on that?

Ms. PUSTAY. I mean, I can certainly tell you that we definitely think that's incredibly important, and we have many mechanisms to share best practices. We have what I mentioned in my testimony, was the creation of a Best Practices Workshop Series where the whole idea is to identify a topic. And as I mentioned, our very first topic was improving timeliness and reducing backlogs. And then identify agencies that have achieved success in that area, and then have them come and speak to a gathering of anyone, every interested agency employee, and share their best practices so that we can leverage success across the government.

Then what we have done at OIP is take that even further in that we have created a dedicated Web page on OIP's Web site connected to the Best Practices Workshop Series where we list the best practices that came out of each of these sessions. We have also issued guidance in relation to the best practices.

So it's something that we have been doing already for a full year now, and we feel that it's been very successful, and it's a very important way to have agencies be able to capitalize on the good things and the innovations that one another is doing.

Chairman CHAFFETZ. Thank the gentlewoman.

I now recognize the gentleman from North Carolina for 5 minutes.

Mr. WALKER. Thank you, Mr. Chairman. I would like to yield my time to the gentleman from South Carolina.

Mr. GOWDY. I thank my friend from North Carolina.

Ms. Barr, I appreciate you talking with me earlier. I want to pick back up where we were. I was seeking some level of assurance from you, to the extent that you could give one, that what was produced to the State Department did, in fact, represent the full universe of what would be public records. And, again, I have no interest in private documents. I really could care less. I am interested in making sure the whole public universe is complete.

So what assurance can you give the public that the State Department has everything that would be considered a public record from her tenure as Secretary of State?

Ms. BARR. She has assured us that she gave us everything she had. And like we do with other Federal employees, we have to depend on them to provide that information to us. So we have the documents, and we have accepted her assurance that she has given us everything that she had which should be a part of our official records.

Mr. GOWDY. Well, you mentioned other Federal employees, which got me wondering. And I wrote down a list of some of the other Cabinet-level folks that I have worked with in my time here. Attorney General Holder, did he have his own server?

Ms. PUSTAY. Are you asking me?

Mr. GOWDY. I am asking whoever can answer it.

Ms. PUSTAY. I can let you know that Attorney General Holder used an official DOJ account.

Mr. GOWDY. He did. How about new Attorney General Lynch, does she have a personal server?

Ms. PUSTAY. Same as well. She is using an official DOJ account.

Mr. GOWDY. What about President Obama, is there any indication? Because if you are going to pursue the theory of convenience, I can't really imagine a busier person on the globe than President Obama. Did he have his own personal server?

Ms. Barr?

Ms. BARR. I have no knowledge.

Mr. GOWDY. Well, the reason I am asking is because you said that you are doing it the exact same way you would with any other public official. And my point is, because of this arrangement that the former Secretary had with herself, you are not in a position to do it the same as you would with any other public official because Vice President Biden and President Obama don't have their personal attorneys going through their emails to decide what to return and what not to return.

I assume your position is an apolitical, nonpolitical, unbiased position. Am I correct in that assumption?

Ms. BARR. Yes, sir.

Mr. GOWDY. And I believe the Department of State has an inspector general. Am I right?

Ms. BARR. Yes, and we have asked the inspector general to look into some of these issues. We are cooperating with them.

Mr. GOWDY. I know you have, and I didn't mean to suggest otherwise. Do you know who nominated the current inspector general?

Ms. BARR. I don't have that information at my fingertips, but I can get back to you.

Mr. GOWDY. You don't have to, because it was President Obama. Do you know who controlled the Senate when he was confirmed? Do you know what the vote was? It was unanimous.

Ms. BARR. I knew you were going to give me that information.

Mr. GOWDY. It was unanimous. Those may be the only questions I can answer today, but I do know the answer to those two. President Obama nominated the current inspector general, and he was unanimously confirmed by a Senate controlled at the time by Democrats, which makes me think that he, like you, is a neutral, detached arbiter who is solely interested in separating what should be in the public domain from what should be purely personal.

So why not let the inspector general look at all the records just to make absolutely sure, and that way we are not in a position of having to take someone's lawyer's word for it? Why not do that?

Ms. BARR. Well, it was my understanding that—you are talking about the email collection, not the entire process?

Mr. GOWDY. No. I am talking about—I mean, you have been put in the position of having to take a lawyer's word that you have all the public records. And perhaps it is just the cynicism of actually being a lawyer. I am just wondering who with a fiduciary duty to the public can make sure that the public record is complete. Instead of the former Secretary hiring an attorney to do it, why can't the attorney that works for all of us, why can't the inspector general do it?

Ms. BARR. So you are asking me why can't the inspector general make the determination of whether we received all of the emails?

Mr. GOWDY. Yes.

Ms. BARR. I really can't speculate on that.

Mr. GOWDY. Well, I am out of time. Hopefully I will get some more time, and we can speculate together after that.

I yield back to the chairman.

Chairman CHAFFETZ. Thank you.

I now recognize Mr. Duncan for 5 minutes.

Mr. DUNCAN. Mr. Chairman, thank you for having these hearings. This is very, very important. And I would simply say that the testimony we heard in here yesterday, the record on these FOIA requests is simply horrendous. We heard in here yesterday Sharyl Attkisson say that FOIA is a pointless, useless shadow of its former self. She testified that it took over 10 years, 10 or 11 years, to get a request that she submitted.

Another witness, Mr. Leopold, said that the Pentagon told him it would take 15 years to give him material, and they said they would only give it to him if he would agree never to file another FOIA request. And, of course, then the court ruled in his favor and said it was ridiculous that they came up with that 15-year business.

Mr. McCraw from The New York Times who said that The New York Times, just that one business, had to file eight different lawsuits last year, FOIA lawsuits. And I am told there were 422 FOIA lawsuits just in 2014.

We had another witness, Cleta Mitchell, who told about the years she had spent litigating FOIA and brought in here numerous, looked like about 10 or 12 notebooks full of pages that finally were sent to her with practically everything, thousands of pages, with

100 percent on most of those pages totally redacted. And it really was just useless.

I can tell you the American people think the Federal Government is already far too big, too out of control, and far too secret. And the American people are not going to stand for more secrecy from the Federal Government.

And I would say to each of you and to any FOIA officers that might be listening that if you don't start doing better this committee, this Congress, is going to have come down very, very hard and come up with some legislation that I am sure none of you are going to want to live with at all.

Ms. Pustay, can you assure me that if Chairman Chaffetz calls a hearing a year from now that we are going to hear a much better story than we have heard these past couple of days? I mean, you talked about timeliness and all these things that sound good, but surely you don't accept or don't defend a system that takes 10 or 15 years to grant simple requests?

Ms. PUSTAY. No, of course not. What we do every day at OIP is work very hard to try to help agencies improve their administration of the FOIA, and we do that through a number of ways. And we want fundamentally for all agency professionals who are handling FOIA requests to understand the law and understand their obligations. And that is why we focus so much on training and why we're so happy that we were able to complete e-learning training resources that are now available to anyone, anywhere in the world, free of charge, because at its foundation we need trained FOIA professionals.

But we also want to make sure that there is good customer service, as I mentioned, so that requesters understand the process and know what's happening. We also want to use technology to find greater efficiencies in processing FOIA requests so that we can proceed more quickly.

So there are a lot of things that we can do, and we are trying very hard to help agencies do better.

Mr. DUNCAN. Well, I'm assuming that there are some requests that are granted without—I hope that there are some requests being granted without forcing lawsuits over it, but I am told that almost all of these lawsuits, these FOIA lawsuits have ended up with rulings in favor of the plaintiffs and against the Department.

Ms. PUSTAY. I mean, respectfully, Congressman, that is really just not accurate. The number of lawsuits is really small in comparison to the number of requests we get, 700,000 requests, 400-some lawsuits. So it is like 1 percent of requests go to lawsuits.

We don't want anybody to have to go. It is an important right to have a judicial review of an agency's action, but of course we don't want requesters to feel that that is where they have to go.

Mr. DUNCAN. Well, do you agree that you need to do better, that this system must be improved and must be faster?

Ms. PUSTAY. We're constantly looking for ways to improve it, and we constantly want things to be faster.

I just also want to say that in terms of the results of litigation, the Administrative Conference on U.S. Courts, ACUS, did a study of just that exact point, of who prevails and who doesn't prevail in FOIA lawsuits, and they found that year after year the government

prevailed in FOIA lawsuits over 80 percent of the time. So I want to correct that misstatement that was conveyed to you.

Mr. DUNCAN. But you do accept the fact that when we have requests that are taking 10 or 15 years to grant, that the system is broken?

Ms. PUSTAY. It is not that the system is broken. The system works well for many requesters. And, I mean, since 2009 agencies have responded to nearly 4 million requests. So every time a student gets their information for their paper or a reporter gets information for his article, that's a success story for FOIA.

But at the same time I'm not saying there are not problems, and I'm not saying there are not areas where we can improve, and that is what I try to focus on in my office really every single day, is to try to help agencies improve.

Mr. DUNCAN. Well, we heard yesterday about some problems that we shouldn't have been hearing about, I can tell you that.

Thank you, Mr. Chairman.

Chairman CHAFFETZ. I thank the gentleman.

I now recognize the gentleman from Ohio, Mr. Jordan, for 5 minutes.

Mr. JORDAN. I thank the chairman.

Ms. Howard, you had an exchange earlier—I apologize, I couldn't be here—but you had an exchange with the chairman where you referenced a special project team that was created to deal with requests for information concerning the targeting and a former employee at the Internal Revenue Service, Lois Lerner. I just had some basic questions. When did the special project team start?

Ms. HOWARD. My understanding was that it started soon after the request came from Congress and other investigators asking for documents around this whole issue. So that would have been somewhere in the spring, early summer of 2013.

Mr. JORDAN. About 2 years ago, okay, a little over 2 years. And that was the reason why, to deal with requests from Congress? Or was it also requests from outside folks, people like we heard from yesterday, who represented groups who had been targeted, was it to deal with that as well?

Ms. HOWARD. It was, because there was a recognition that most of the documents would be responsive to both Congress, the investigators, and the FOIAs, and so we centralized the process for gathering them and redacting them——

Mr. JORDAN. And was that unusual, for the IRS to do such a thing, to create such an entity?

Ms. HOWARD. I think it was a normal response to an unusual situation. I see the IRS doing this on an ongoing basis, when we have surges of work——

Mr. JORDAN. So it is not unusual for them to put together a special team?

Ms. HOWARD. It is not unusual for us to gather together resources that are going to be focused on achieving——

Mr. JORDAN. Are they called special teams? I mean, I am using the words you——

Ms. HOWARD. Yeah. And if I gave you the impression that there was a title called special team, that's probably not correct.

Mr. JORDAN. I'm just using what you said, special project team.

Ms. HOWARD. It was a project team put together——

Mr. JORDAN. Okay. And who was on that team?

Ms. HOWARD. My firsthand knowledge of that is none.

Mr. JORDAN. You can't tell us who was on it?

Ms. HOWARD. I can't tell you who was on it, no. I know that it was made up mostly of chief counsel, their attorneys. They pulled them offline to work on them. We took resources that were familiar with 6103.

Mr. JORDAN. Okay, I'm going to me stop you there. You mentioned chief counsel. So was the Chief Counsel at the Internal Revenue Service part of the special project team created shortly after it became known that there was targeting going on approximately 2 years ago?

Ms. HOWARD. I have no personal knowledge. You would have to ask him or the Commissioner that.

Mr. JORDAN. Well, I mean, we will do that. Is it your assumption or do you believe—you're the one who brought up special counsel both in your response to Mr. Chaffetz earlier—not special counsel, but chief counsel. Do you think the Chief Counsel was part of the team?

Ms. HOWARD. I think there were hundreds of attorneys that were part of the team, and I think that it was a production team. It was a way to amass documents and mass produce them.

Mr. JORDAN. All right. And you were asked by the chairman earlier about do you have any interaction with the White House before you release information, and I am quoting from your response. "To the extent that I have been involved in responses to Congress or to FOIA, we have never shared information with the White House." Accurate? That was your response?

Ms. HOWARD. Yes.

Mr. JORDAN. You go on to say in that same answer to the chairman: "I can't speak for the entire IRS. That would be a question for the Chief Counsel or the Commissioner. I can simply speak for the Disclosure Office in FOIA progress. We do not interact with the White House."

Do you know if the special project team that was put together, gathering all this information, most likely had the Chief Counsel on it, do you know if they were checking with the White House before they gave information to Congress and/or other FOIA requests?

Ms. HOWARD. I have no personal knowledge of how that team acted, except that I know that they amassed hundreds of attorneys to go through the documents and redact them for 6103.

Mr. JORDAN. Do you think it's likely that the Chief Counsel talked with the White House before he gave the information to Congress?

Ms. HOWARD. I think it's unlikely, but I don't know.

Mr. JORDAN. You think it's unlikely. Well, that would be in direction contradiction to the memo sent to every chief counsel back when this administration first started, April 15, 2009: "The need to consult with the White House arises with respect to all types of document requests, including congressional committee requests, GAO requests, judicial subpoenas, and FOIA requests."

So we have this memo from Greg Craig to all chief counsels. You're telling me it's likely the Chief Counsel of the IRS was part of this special project team created just to deal with requests about the targeting and Lois Lerner. And then you're saying you think it's unlikely that they actually checked with the White House, which would be a direct contradiction to what they were told to do by the White House Chief Counsel.

Ms. HOWARD. Except that the memo does specify documents with White House equities. I'm not sure that the documents we had——

Mr. JORDAN. You don't think the White House has an interest in knowing about information related to the Internal Revenue Service targeting people? You don't think they have an interest in that? Equities is an interest, right? They have an interest in that. This is all document requests that may involve—may involve—White House interests. That's pretty broad.

And then the next paragraph gives clarification of that and says congressional committee requests, which you said is the reason the special project team was created, not to mention GAO requests, judicial responses, and FOIA requests.

So I would say if the Chief Counsel, who is most likely part of this special project team, which is something I think we are going to find out, and the chairman will be pushing for that, if he is likely part of this special project team, he wouldn't be following the memo if he wasn't consulting with the White House. Do you agree?

Ms. HOWARD. Sir, the special project team was put together not because the responses were due to Congress, but because of the volume and the number of investigators and the scope of the documents that were needed. It was a business reason, a business process.

Mr. JORDAN. Well, I'm out of time. Thank you, Mr. Chairman.

Chairman CHAFFETZ. I thank the gentleman.

I am going to now recognize myself. I have a series of questions I need to do before we wrap up, and members may have some other questions.

Ms. Howard, I want to give you an opportunity to talk about the IT challenges that the IRS has and what you are dealing with. What sort of software are you dealing with, and how bad is it?

Ms. HOWARD. I believe it was Congressman Carter when he was speaking referred to the fact that he had an opportunity to go onto a search engine on his personal computer. He put in a few key words that had to do with FOIA. He pushed a button, and he got all kinds of responses. That is just not the way it works in IRS. We don't have that library of electronic documents that we can go in and search through a Google or Bing or any of the other search engines that you might have. We need the ability to actually tag those records so that we know what they are, who created them, how they were created.

Chairman CHAFFETZ. Can you do key word searches?

Ms. HOWARD. We can do key word searches within accounts. So that means if you're going to look for emails, I would have to look at your account, my account, anyone's account that might be involved, account by account, and then look within each of those emails.

Chairman CHAFFETZ. You can't do a massive look into——

Ms. HOWARD. It involves downloading everything into some sort of massive database.

Chairman CHAFFETZ. What software do you use?

Ms. HOWARD. That would be a question for the IT person.

Chairman CHAFFETZ. You don't know what software you use on your computer?

Ms. HOWARD. What software I use on my computer?

Chairman CHAFFETZ. Yeah.

Ms. HOWARD. Well, I have a Microsoft suite of products, including Outlook Exchange.

Chairman CHAFFETZ. So you use Outlook.

Ms. HOWARD. Uh-huh.

Chairman CHAFFETZ. You can't type a word into Outlook and search your database?

Ms. HOWARD. I can my own account.

Chairman CHAFFETZ. We'll have to dive deeper into this. And I'd like actually if each of you, each of the five of you can help us understand how bad or how good you think the IT situation is.

Ms. HOWARD. I just want to add too that once you get the documents you still have to go through line by line by line to look for 6103 redactions and then the other exemptions within FOIA. So it is not just about the IT, but certainly that's a huge thing in IRS.

Chairman CHAFFETZ. Ms. Neuman, you mentioned the budget detail worksheet that would be released in June of this year, which will be any time. Do you have that yet, and if so, can you provide it to this committee?

Ms. NEUMAN. I do not have that yet.

Chairman CHAFFETZ. Sorry, you've got to be a little closer to the mic there. Go ahead.

Ms. NEUMAN. I'm sorry. I am not aware that it has been completed yet. I will check with my Deputy Chief FOIA Officer, and if it has, I will be happy to certainly provide it to you.

Chairman CHAFFETZ. When it is complete, and you didn't represent that it was complete, but when it is complete, can you please share that with this committee?

Ms. NEUMAN. Absolutely.

Chairman CHAFFETZ. One of the questions we have is about the charges that are given to the public and the expenses that they have.

Let me start with you. Let me go back to Ms. Howard here. Oftentimes people are frustrated because the law says you need to respond within 20 days. You can give another 10-day extension. But then oftentimes it's months before they hear again. How do you pick those dates?

Ms. HOWARD. I think mainly they are just an approximation of when we think the document production will be done. Certainly in the case of the (c)(4) issues or the (c)(4) cases we had just no idea of the volume of documents that would be required and how long it would actually take for the responses to Congress and the investigators to be completed.

Chairman CHAFFETZ. So when you do the search, do you send a request out to anybody you think might have it and you count on them to individually do it? You're not able to——

Ms. HOWARD. Yes.

Chairman CHAFFETZ. There is not a FOIA officer that can get in there and do a search term, pull up every relevant email or document?

Ms. HOWARD. No, because there is no library. There is no massive——

Chairman CHAFFETZ. Well, there is, there is. This is a fallacy. It's wrong to say there is no library. It's called email. And the reason we moved away from carbon copies and big warehouses with stacks and volumes of file folders is because electronically you can push a button, do a search, and generate that. This is the year 2015 here. We are not in the stone ages trying to knock something out and copy it on a stone. So don't tell me there is not a database. It's called email, and it's called Microsoft. They're a big company.

Ms. HOWARD. It's folder by folder by folder by folder, account by account by account by account.

Chairman CHAFFETZ. And it's magic. You get a 28-year-old IT person in there and they can find that in a couple hours. And that's why we don't believe you. This is why we don't believe. Don't say there's not a database. It's called email. Right?

Ms. HOWARD. My understanding is that the capabilities of the system we have do not enable us to do that except account by account by account.

Chairman CHAFFETZ. And I just fundamentally and totally do not understand that.

And I don't understand how you all pick dates. Can you please try to explain—we don't have time, because, I mean, it would take you 10 minutes each to try to explain this.

The frustration for so many people is they don't get exposure, they don't know when. And sometimes they last months and years. Sometimes it's very legitimate. They need some exposure to that, but there seems to be this great deal of mystery as to why you say, well, it'll be July, and then July comes, the next thing you know it's October. It just seems like a slow walk. So can you help explain to us why and how you pick the dates?

I also would appreciate from Homeland Security if they could help us understand the new rulemaking that they're involved with, with FOIA. The FOIA law is the law, so why do you have to develop new rulemaking, and what in the world is that going to look like?

Ms. NEUMAN. Are you asking me a question?

Chairman CHAFFETZ. Yeah.

Ms. NEUMAN. So the GAO report recommended that we finalize our interim FOIA regulation which embodies FOIA policy and guidance at the Department. The rulemaking process is underway. We are preparing to issue it for public comment, after which we will review the comments very carefully and the rule will be finalized.

Chairman CHAFFETZ. We will be watching that, because if Homeland Security thinks that they are going to come up with a whole nother new set of rules that's different, this is again one of the frustrations. FOIA is what FOIA is, but every time you go to a different department and agency they got a whole set of standards. They got different rules. They don't have standards where you just plug and play and operate equally, and that's a frustration.

Ms. NEUMAN. And the rule is really an implementing regulation. It is not intended, nor do I believe——

Chairman CHAFFETZ. We are fascinated to see it.

The other thing I am terribly frustrated at is we talked about the scorecard. And I believe this is put out by the Department of Justice, right, you come in and do this evaluation. And there is a color-coded scheme here, and it is different categories of presumption of openness, effective system in place for responding, proactive disclosure, improved timeliness, and backlog reduction.

Ms. NEUMAN. Right.

Chairman CHAFFETZ. And if you sat and listened to the sum testimony of today and compare it to yesterday, I mean, we had as wide array of people as you can possibly have, from individuals, to the New York Times, to the ACLU, to a former CBS News reporter, to Vice. I mean, we got as wide of a swath of people as we possibly could, and there wasn't anybody that believed that in general things were going well. And yet when you do your own scorecard, for instance at the Department of Justice, you're solid green. You gave yourself 5 out of 5 on presumption of openness, 5 out of 5 in an effective system in place for responding.

Proactive disclosure, are you kidding me? The Department of Justice gives themselves a 5 out of 5 on proactive disclosure? Do you think anybody in the world believes the Department of Justice is the most, they are at the top of their game, they got an A-plus, 5 for 5, do you really believe that.

Ms. PUSTAY. I do. I absolutely do.

Chairman CHAFFETZ. Man, you live in la la land. That's the problem.

Ms. PUSTAY. I live in the real world, Congressman.

Chairman CHAFFETZ. You live in fantasy land, because it ain't working.

You're a very nice person, and I'm sure most of the people are very nice people. It ain't working. Five hundred and fifty thousand times Americans put forward a request and got a rejection saying doesn't qualify. Do you think that's working? Is that a presumption of openness? Do you think that's proactive disclosure? I beg to differ. I think it is absolutely fundamentally wrong. We are at the heart of why I think there is a problem, because you all think you're doing a great job.

Ms. PUSTAY. Right. We are constantly evaluating, not just how we do at DOJ——

Chairman CHAFFETZ. And your evaluation says you have no room for improvement.

Ms. PUSTAY. That's not true at all.

Chairman CHAFFETZ. Then why do you give yourself 5 out of 5?

Ms. PUSTAY. You aren't looking at the whole of all the different categories.

Chairman CHAFFETZ. Yes, I am. I will go through each and every one of them. I just read the different disclosures, and here it is in green, all green.

Ms. PUSTAY. We have green for proactive disclosures. Proactive disclosures are making available to the public information——

Chairman CHAFFETZ. Presumption of openness

Ms. PUSTAY. Exactly.

Chairman CHAFFETZ. Effective system in place for responding.

Ms. PUSTAY. Responding to requests.

Chairman CHAFFETZ. Really, you have got an effective system for—we can argue about this. I beg to differ. We had 11, 12 people yesterday that absolutely differ. On a bipartisan way, I don't think there is anybody that would agree with you. Across the board most every one of you got great scores, and I just don't buy that.

I want to ask specifically about the Department of Justice. Are you able to conduct an electronic search or do you rely on the individual agency employees to proactively give you the information?

Ms. PUSTAY. What you are talking about, I think, is a really important improvement to FOIA administration, and we do have within OIP the tools that are more sophisticated tools that are used in the e-discovery context which allow individual email accounts to be dumped or to be collected into one bucket.

Chairman CHAFFETZ. So you searched the universal index, is that right?

Ms. PUSTAY. Well, I don't think it's called a universal index, but we have tools that allow us——

Chairman CHAFFETZ. The UNI?

Ms. PUSTAY. We have tools that allow us to search multiple email custodians simultaneously.

Chairman CHAFFETZ. Do you search the electronic case files?

Ms. PUSTAY. We do sometimes. We would only search case files if case files were relevant to a particular FOIA request. We have lots of different offices.

What I want to emphasize is that technology is incredibly important to FOIA administration, and we have been at the forefront for pushing for use of more sophisticated technology to process and handle FOIA requests. We did a pilot at DOJ several years ago to show the benefits of being able to do things like searching multiple custodians at the same time.

Chairman CHAFFETZ. So my understanding is that the FBI does conduct searches on the universal index, but that that system does not allow for text-based searches. But the FBI does not search the electronic case files which contain uploaded versions of the Bureau's nonrestricted investigative records, and the ECF, as it's called, the electronic case file, is text-searchable. And that's the disconnect. I don't expect you on this spot to respond to that, but I do want you to get back to us on this specific point, if you would.

Ms. PUSTAY. Sure.

Chairman CHAFFETZ. Okay. I have a few more questions. I want you to kind of each go down the line here. We went through with Ms. Howard here, but let's go back to Ms. Barr. This is my last set of questions before I change my mind and ask another one.

I want to know what is the instruction that you believe you have been given to interact with the White House? What percentage of the documents do you give to the White House or somebody who represents the White House? What is the expectation that you share information with them? Do you need their approval before you send it back out? How does that work?

Because this directive is really concise, clear, short, three paragraphs. I mean, they essentially want you to give them everything. And so my question is, what do you have to do in order to fulfill

the demand from the White House that you give them everything before you give it to us or to the media or to the judicial branch?

Ms. BARR. Well, we have a standard process that we follow for FOIA, and it does include, if the White House has an equity in a document that we are working on, we do consult with them as appropriate. But we follow the standard FOIA process.

Chairman CHAFFETZ. How do you determine if it's a White House equity? I mean, what is not an equity?

Ms. BARR. When we get a request in we have a team of reviewers, and many of these reviewers, because so much of our work deals with things overseas, for the most part they are retired foreign service officers, and some of them are even foreign ambassadors. In fact, we have quite a few.

They look at it. We decide where we need to search for documents. And then once we get the results of that document search back, then we go through line by line. And at that point we look at whether or not we need to coordinate with other agencies. And that would be when we would include the White House, if after they get these materials back they decide that they have an interest in that document.

Chairman CHAFFETZ. And who at the White House do you send them to?

Ms. BARR. I'm not familiar with who exactly, but I can take that back.

Chairman CHAFFETZ. If you could let us know, we'd appreciate it.

Chairman CHAFFETZ. Ms. Pustay?

Ms. PUSTAY. What I can tell you is that the process of consulting with other agencies, which includes the White House, has not changed. This memo reflects the same practice that we have had administration to administration. I have been doing this a long time. And the word equity is really just sort of a more modern term. But what is captured by the memo and what has been consistent from administration to administration is that when an agency finds communications that originated with another entity or that reflect a communication with the other entity, that's when an agency as a matter of good practice consults with that other entity to get their views on the sensitivity of the material. And oftentimes that can include, of course, getting their views that it's okay to release the material. So it's communications is what happens, the memo.

Chairman CHAFFETZ. I think it's a big source of why it's so slowed down. So what percentage of the information do you have to share with the White House before you share it with us?

Ms. PUSTAY. I can speak obviously just to FOIA requests. I don't know the percentage of requests that have the equity of any particular——

Chairman CHAFFETZ. Okay.

Ms. Neuman.

Ms. NEUMAN. Yes. It is my understanding that with respect to the White House, this happens very infrequently.

Chairman CHAFFETZ. Happens what?

Ms. NEUMAN. Very infrequently.

Chairman CHAFFETZ. Why? I mean, the memo says it should happen on everything.

Ms. NEUMAN. Well, again, it is my understanding, and I don't process these requests or get involved in these kinds of consultations, but my understanding is that the kinds of requests we get don't involve, quote, White House equities. And, of course, when the request comes in, if there is an indication that it is a request for White House records or White House information, that would trigger the consultation.

Chairman CHAFFETZ. Well, no, it doesn't. I'm not talking about White House. I'm saying if you have information in your possession at Homeland and it comes from a Member of Congress, the judicial branch, it was a FOIA request, a GAO request, that it should be shared with the White House. You are telling me you don't do that?

Ms. NEUMAN. No, no. I am saying that we do, we follow DOJ-issued guidelines that require consultation not only with the White House——

Chairman CHAFFETZ. Well, what about the White House- issued guidelines, because I am reading to you the guidelines. We handed you a copy of them. This is the guidelines. You don't abide by it, or you do abide by it?

Ms. NEUMAN. And we adhere to this memo in accordance with the DOJ guidance on that. We also report all such consultations publicly in our FOIA reports. So you asked a question about whether these consultations slow down or create additional delay in the process? I have implemented some procedures to try to minimize that delay or a delay associated with any consultations, including directing a senior professional member of my FOIA team to be the point of contact for those consultations.

Chairman CHAFFETZ. And they communicate with who at the White House?

Ms. NEUMAN. I would have to ask them.

Chairman CHAFFETZ. We're not getting much. We'll try Mr. Fontenot.

Mr. FONTENOT. Thank you. Again, I do not process specific FOIA requests, but Treasury follows the Department of Justice guidance from 2011 concerning FOIA referrals and consultations. We consult with agencies and entities concerning documents that originated at those agencies or in communication with those agencies.

And obviously in this respect Treasury may consult with staff from the Executive Office of the President or the White House when those documents either originate or relate to the White House. Again, we treat the White House just like any other agency related to FOIA.

Chairman CHAFFETZ. You were on a roll. I was believing everything you said until you said that last sentence. You're nuts if you think you're treating the White House exactly the same you treat the Bureau of Indian Affairs. There's no way that's happening.

So with all due respect, we're trying to get our hands and a grip on it. We would like some feedback on this.

Chairman CHAFFETZ. I think the directive from the White House is crystal clear, and we will continue to pursue that.

I am well over time. I will now recognize the gentleman from Maryland, Mr. Cummings, the ranking member.

Mr. CUMMINGS. Thank you very much.

I think a lot of times I sit in these hearings and I try to figure out where we're going. You all have to help me help you. I said to you a little bit earlier, Ms. Neuman, I wanted you all to get back to me with information as to—all of you—as to things that we could do to make things better. It's kind of hard to do that when you think you're almost perfect, though. I'm serious.

Did you all watch the testimony, did any of you all watch the testimony yesterday? Any of you? Hello? Anybody?

All right, I'll go to Ms. Barr. Did you watch any of the testimony yesterday?

Ms. BARR. I just heard some of it, but I wanted to focus on preparing for today.

Mr. CUMMINGS. No problem.

Did you.

Ms. PUSTAY. Right. As I mentioned, I was updated throughout the day on the testimony.

Ms. NEUMAN. As was I while I was preparing for the hearing.

Mr. FONTENOT. I watched part of the hearing.

Ms. HOWARD. I watched most of it.

Mr. CUMMINGS. All right. Fine. And when you hear the testimony that you all gave today compared to what we heard yesterday, it seems like a world of difference. And let me tell you what I think is part of the problem.

I do think a personnel issue is part of the problem. I mean, logic tells you that when you've got less people and you've got more demand, you're going to have problems. I mean, period. I also think that there are a lot of things that you all are doing right. I mean, doing a great job at. And then I think there are some cases that are maybe a little bit more complicated, a little more controversial, and so the process is slowed down a little bit, and in some instances perhaps a lot.

I mean, just listening to everything that has been said between yesterday and today, that's where I come down on this. And some kind of way we got to get past where we are because I think we could do better. It's easy to say that we are scoring excellent in this dot, dot, dot, dot that ain't true, folks. It's not.

So some kind of way we've got to close this gap. And the only way we're going to do it is that we have to be frank with each other and we've got to begin to set some kind of, I want to say goals, but the things, whatever you're going to send us back are things that you should be doing that could be better, and set some deadlines with regard to making those things happen. Other than that, it's going to get worse. I'm telling you, it's going to get worse.

So I'm hoping that you all will do that. I have discovered from being on this Hill for 20 years now almost that you almost have to—we have to set deadlines to get things done. And I've also noticed that a lot of times people who come before us, they have a tendency sometimes to outwait us. In other words, they know that the Congress is going to change. They know that we're going to move on to something else. And then the next thing you know, things don't get done, and then they look towards the new Congress, and then it's worse, and then we just go through these cir-

cles over and over again. You have to have been here for a while to see this cycle, and I've seen it.

So going to you, Ms. Barr, I want to just ask a few questions, because I want to clear up this thing. I mean, we're making a big deal with regard to Secretary Clinton. My colleague, the gentleman from South Carolina, Mr. Gowdy, who I have a tremendous amount of respect for, suggested that we should not take Secretary Clinton's word for the fact that she has produced all her emails relating to official business. He also suggested that Secretary Clinton's lawyers do not have any duty to ensure compliance with the Federal records laws.

But, Ms. Barr, let's look at former Secretary Rice. Last fall the State Department asked her, along with other secretaries, for information about official emails on their personal accounts. Is that right?

Ms. BARR. Yes, sir.

Mr. CUMMINGS. And former Secretary Rice did not respond to the Department herself in response to your letter last fall. She had a representative do that. That's what it says in the State Department's report sent to the National Archives on this issue. Do you know who Secretary Rice's representative is?

Ms. BARR. No, not offhand, sir, but I can find out.

Mr. CUMMINGS. Do you know whether it's an attorney?

Ms. BARR. I assume so, yes.

Mr. CUMMINGS. Okay. According to the report the Department sent to the archives, former Secretary Rice's representatives claimed that she did not use her personal email account for official business. Do you know what his assertion was based on? Do you have any idea?

Ms. BARR. Personally, just what was told to us. I don't have personal knowledge of what was said.

Mr. CUMMINGS. Okay. And so you don't know whether she told him that or he reviewed the documents? You don't know?

Ms. BARR. That is true.

Mr. CUMMINGS. Did you know if he thoroughly reviewed her personal email account to find emails relating to official business or did he just take her word? You don't know. Is that your testimony?

Ms. BARR. Yes.

Mr. CUMMINGS. So let me just state for the record that when dozens of White House officials under the Bush administration were using private email accounts at the RNC, we worked with their attorneys to ensure that they were recovering official emails and producing them. We did not suggest subpoenaing their servers. We relied on them to go through their documents, identify documents responsive to our requests, and produce them to us. Attorneys do have a legal obligation to provide us with truthful information, and this is the same process we use for virtually every investigation we conduct.

Ms. Howard, I take it that you're getting ready to retire. Is that what you've been trying tell us? You're not on your way out the door today, are you?

Ms. HOWARD. Not today, no.

Mr. CUMMINGS. How soon will you be gone?

Ms. HOWARD. I don't now. I think about that all the time.

Mr. CUMMINGS. Take your time.

Ms. HOWARD. Like many people in IRS, I am eligible to retire. And what keeps me working is the dedication of my employees and the professionalism of my colleagues at IRS.

Mr. CUMMINGS. Well, we appreciate all of you and the employees that work with you.

What can we do to improve the system?

And then I will be finished, Mr. Chairman. This is where I want to wrap up.

Ms. HOWARD. From our standpoint, we would like advanced technology I think just to make it easier to do the searches. We would also like at IRS, we would like access to a really good FOIA system that would help us be more consistent and accurate with our redactions so that we could get more done with the same amount of people.

The other thing that my folks do in Disclosure, other than just the FOIAs, is they are responsible for doing 6103 redactions for subpoenaed information around litigation, and also for just making sure that the employees across IRS who have interaction with taxpayers know the disclosure laws and have their questions about disclosure answered as they need them on a day-to-day basis.

So we have those responsibilities too. And I think the technology would go a long way. We would like additional staff. I think that what we see is a trend in the complexity of requests. So instead of requests being for mostly taxpayers asking for their own files, we're seeing more and more of the types of requests that you had witnesses speaking about yesterday that are very expansive in their scope and nature and rely on us going to multiple custodians to find and retrieve those records and then volumes and volumes of pages.

So we need people. We need people who are trained well in the exemptions. And we need technology to help us with all of that.

Mr. CUMMINGS. Mr. Fontenot?

Mr. FONTENOT. Again thank you. I mean, I can obviously tell you what we have done. The Department, we've added resources, we've added people, we've added——

Mr. CUMMINGS. What about training?

Mr. FONTENOT. We've added better data, and we've train 100 percent of our FOIA professionals at the Department, and I think that is yielding results. Again, we received about 14,000 requests overall last year, and we closed about 14,000 as well. Again, an improvement year over year.

Mr. CUMMINGS. Would you say that maybe, based upon what you just said——

Mr. FONTENOT. Yes, sir.

Mr. CUMMINGS. —you have a situation of best practices there?

Mr. FONTENOT. Again, we're always looking for best practices. We try to adopt as many best practices as we can from the Department of Justice. Our team works with them quite a bit. Again, I think we're moving in the right direction, but obviously we can always improve?

Mr. CUMMINGS. Ms. Neuman?

Ms. NEUMAN. Yes, Congressman Cummings. I really appreciate the question, and I have been giving it quite a bit of thought. In

my case, in the case of my agency, it's somewhat difficult to say right now because we are in the midst of this independent review that I have commissioned.

I think it's really important that I personally understand what the actual systemic challenges are that are facing my agency so that not only we can understand how to address those, but so that we can communicate back with you about what it is we actually need, because it may be tempting to turn to what might seem like an obvious solution today, but that solution may not actually address what the actual problems are.

I do think that FOIA as a 40-plus-year-old statute may not have contemplated the kind of technology that's available not only to seek information, but to respond to those requests, and to that extent I think it's worthwhile considering how the statute might be updated. And otherwise, I think it's a very good question, and I'm interested in polling my FOIA unit along with that and the outcome of this review. I would be delighted to get back to you with my thoughts.

Mr. CUMMINGS. I'm hoping that you all will get back to me within 30 days. Would you all do that, please?

Ms. PUSTAY. Certainly.

Mr. CUMMINGS. All right, go ahead.

Ms. PUSTAY. I think the number one thing from our perspective is that we really appreciate and need the support of Congress for adequate resources for FOIA. That will help us both with personnel and with IT. They're both inextricably intertwined.

Mr. CUMMINGS. And training.

Ms. PUSTAY. And training as well, although we feel as though we've done very well with training with the resources we've just made available. We've been encouraging agencies to do training. We're now asking agencies and getting a very good response that agencies are giving their employees substantive FOIA training, and we ourselves provide training to thousands of personnel every year.

So training I think we have handled, I think in the sense that we can do that now, and we're continuing to focus on that.

Mr. CUMMINGS. Ms. Barr?

Ms. BARR. Technology to help us quickly go through the various. We have information all over the world with different systems. That would be helpful. And, of course, people. And at the same time, since we do have an inspector general taking a look at our processes, we also hope to get something from that as well.

But it's a very serious problem, but for us it's also a complicated problem, just trying to get all of the information in the right place quickly so that we can be responsive.

Mr. CUMMINGS. I want to thank you all of you very much, and we look forward to hearing from you and working with you.

I yield back.

Chairman CHAFFETZ. Thank you.

I thank you all to be here. I just want to make a comment on the IT part of the equation.

One of the frustrations is, if you look at the amount of money that we pour into IT at the IRS, it's roughly $2 billion per year, $2 billion. Now, you have 90,000 employees, right? It's unfair to just divide that number and calculate out some $20,000-plus per

person. But it's an extraordinary amount of money. And my guess is, if we went to almost any corporation, private sector, and said, "Year over year we're going to keep giving you billions of dollars for your IT," and then to have such a dilapidated system, I mean, we just don't understand that.

It's not as if we're not pouring resources into IT budgets. You have billions of dollars at your disposal. And every time I turn around I hear across agencies how bad it works. And I'm doing this off the top of my head, but it's something like $75-plus billion a year—billion—is spent on IT in the United States with our government, and it doesn't work. And then we get data breaches. I mean, we didn't even get into the data breaches that are happening at the IRS.

So we have got to get a grip on what is important, what is working, what is not working. And if you think that there is a database out there that can't be searched because Microsoft wasn't smart enough to think about that, we've got big, big problems.

So I want to make sure that you and your staff know how much we do appreciate. It's a huge volume. It is supply and demand, and the demand has been greatly increasing, and that puts a lot of pressure on a lot of people. And I'm a huge believer that the overwhelming majority of our Federal workers, they work hard, they work smart, they are trying to do the right thing. We're trying to do the right thing too.

So while these hearings are sometimes tough and pointed and direct, that's what they're supposed to do. That's our Constitution in motion. We are supposed to be self-critical. That's what we do. That's how we get better. And we can't just put a smiley face on everything and say, oh, it's all good.

We want to help solve those problems. We're not only the Oversight Committee, but we're also supposed to be Government Reform, and there will be a FOIA reform bill. We passed one out of the committee. I want to take another breath and do several panels and get your perspective, the media, the outside groups, so that we get that thing just right. You don't get but once every couple decades the chance to reformulate something.

So we're going to look back at that bill. We're going to see if we can't tighten up a couple other things, maybe lessen the number of exemptions, I think is something that we have got to be able to look at, and then probably speed up some of the other parts of the process so that it makes your job smoother and easier.

And you got all these charts and graphs and, hey, what can we release or not. Let's do what President Obama said. Let's err on the side of release it. Release it. And I don't think your folks in your departments and your agencies have the freedom to do that. I think they are slowed down in what the New York Times called, their representative, this culture that says—and it has happened over a long period of time, not just one administration—a culture that doesn't want to make a mistake and consequently doesn't want to release it, and consequently we aren't getting the American people what they paid for.

We all work for them. You all work for them. And we've got to be more responsive. They're telling us it's not working. And so

we've got to change something, we can't just keep doing the same thing.

So I think it has been a productive 2 days of hearings. Still lots more to learn. We look forward to the interaction with you. I thank you for your time and your patriotism and your dedication to the country and your government, and we thank you. And this committee stands adjourned.

[Whereupon, at 12:17 p.m., the committee was adjourned.]

# APPENDIX

Material Submitted for the Hearing Record

**Questions for the Record Submitted to**
**Assistant Secretary Joyce Barr by**
**Representative Elijah Cummings**
**Committee on Oversight and Government Reform**
**June 3, 2015**

**Relating to Former Secretary of State Colin Powell**

**Question:**

1. **Please provide any official, unclassified email address used by former Secretary of State Colin Powell during his tenure as Secretary of State.**

**Answer**:

The Department currently is awaiting the findings of the Office of Inspector General's review of the email practices of four former Secretaries of State. At this time, the Department understands that former Secretary of State Colin Powell did not use any official, unclassified email address during his tenure as Secretary of State.

**Question:**

2. **Please provide any personal email address used by former Secretary Powell for official business during his tenure as Secretary of State.**

**Answer**:

The Department currently is awaiting the findings of the Office of Inspector General's review of the email practices of four former Secretaries of State. At this time, the Department is aware that Former Secretary Powell used the following personal email address during his tenure as Secretary of State: LPowell861@aol.com. Please note that public dissemination of this information could negatively impact the privacy of former Secretary Powell. Accordingly, the Department requests that the address be redacted from this response prior to public release.

**Question:**

3. **Please provide the total number of emails provided by the Department to FOIA requesters that were sent to or from former Secretary Powell from an official, unclassified account or a personal account relating to official business.**

**Answer:**

There is no record available of the Department providing emails sent to or from former Secretary Powell in response to any FOIA request. The Department currently is awaiting the findings of the Office of Inspector General's review of the email practices of four former Secretaries of State.

**Question:**

4. **Please provide the total number of emails provided by the Department to congressional requesters that were sent to or from former Secretary Powell from an official, unclassified account or a personal account relating to official business.**

**Answer:**

There is no record available of the Department providing emails sent to or from former Secretary Powell in response to any congressional request. The Department currently is awaiting the findings of the Office of Inspector General's review of the email practices of four former Secretaries of State. We are happy to continue to work with your staff on providing the information you need related to this matter.

**Question:**

5. **Please provide the identity of former Secretary Powell's representative who responded to the Department's letter requesting information about the use of personal email for official business, and any documents provided by this representative.**

**Answer:**

Former Secretary Colin Powell's Principal Assistant, Peggy Cifrino, responded on his behalf in March 2015 to the Department of State's letter.

**Question:**

6. **Please provide a detailed description of the steps taken by the Department to follow-up with former Secretary Powell after the Department learned about his use of a personal email account for official business, including whether the Department or former Secretary Powell contacted his Internet Service Provider to determine whether any emails relating to official business could be recovered.**

**Answer:**

On March 9, 2015, Ms. Cifrino advised the Department, with respect to official emails sent on Secretary Powell's private account during his time in office, that "[w]e have no such emails in our possession. He did not retain those emails nor make printed copies." She previously advised that while Secretary Powell "used a personal email account during his tenure as Secretary of State . . . [t]he account he used has been closed for a number of years."

The Department's Office of the Inspector General (OIG) is conducting a review of the use of personal communications hardware and software by the current Secretary of State as well as the four former Secretaries of State, including former Secretary Powell. The Department believes that the OIG has reached out to former Secretary Powell in connection with this review. Furthermore, the Department understands the OIG has identified at least two

emails in Department archives involving Secretary Powell's AOL.com address.

On October 21, 2015, the Department sent a letter to Secretary Powell's principal assistant encouraging them to check with the internet service or email provider for Secretary Powell's former account to see if it is still possible to retrieve any official emails from his tenure at the Department.

**Question:**

7. **Please provide copies of all emails that were sent to and from Former Secretary Powell from an official, unclassified or personal account related to official business.**

**Answer:**

The Department currently is awaiting the findings of the Office of Inspector General's review of the email practices of four former Secretaries of State. The Department does not have a collection of emails sent to or from Secretary Powell from which to produce records to the Committee. However, the Department understands the OIG has identified at least two emails in Department archives involving Secretary Powell's AOL.com address. We are working with staff to provide access to copies of these emails. We are happy to continue to work with your staff on providing the information you need related to this matter.

**Relating to Former Secretary of State Condoleezza Rice**

**Question:**

1. **Please provide any official, unclassified email address used by former Secretary of State Condoleezza Rice during her tenure as Secretary of State.**

**Answer:**

The Department currently is awaiting the findings of the Office of Inspector General's review of the email practices of four former Secretaries of State. At this time, the Department understands that Former Secretary of State Condoleezza Rice did not use any official, unclassified email address during her tenure as Secretary of State.

**Question:**

2. **Please provide any personal email address used by former Secretary Rice for official business during her tenure as Secretary of State.**

**Answer:**

The Department currently is awaiting the findings of the Office of Inspector General's review of the email practices of four former Secretaries of State. At this time, the Department has no record of any personal email address used by former Secretary Rice for official business during her tenure as Secretary of State.

**Question:**

3. **Please provide the total number of emails provided by the Department to FOIA requesters that were sent to or from former Secretary Rice from an official, unclassified account or a personal account relating to official business.**

**Answer:**

The Department currently is awaiting the findings of the Office of Inspector General's review of the email practices of four former Secretaries of State. After the Department asked the four former Secretaries for their emails, Secretary Rice indicated that she did not use a personal account for business. She indicated she had a state.gov email account that she said she used sparingly. There is no record available of the Department providing emails sent to or from former Secretary Rice in response to any FOIA request. However, a review of the FOIA electronic reading room at www.foia.state.gov shows two letters from Secretary Rice and a list of her travel; there are also six letters addressed to Secretary Rice.

**Question:**

4. **Please provide the total number of emails provided by the Department to congressional requesters that were sent to or from former Secretary Rice from an official, unclassified account or a personal account relating to official business.**

**Answer:**

There is no record available of the Department providing emails sent to or from former Secretary Rice in response to any congressional request. The Department currently is awaiting the findings of the Office of Inspector General's review of the email practices of four former Secretaries of State. We are happy to continue to work with your staff on providing the information you need related to this matter.

**Question:**

5. **Please provide the identity of former Secretary Rice's representative who responded to the Department's letter requesting information about the use of personal email for official business, and any documents provided by this representative.**

**Answer:**

Former Secretary Rice's representative, John Bellinger, advised the Department that she did not use personal email for official business and does not have any personal emails that constitute federal records.

**Question:**

6. **Please provide a detailed description of the steps taken by the Department to follow-up with former Secretary Rice after her representative asserted to the Department that former Secretary Rice did not use a personal email account for official business, including whether the Department asked former Secretary Rice's representative whether anyone conducted a comprehensive review of former Secretary Rice's personal account for emails relating to official business.**

**Answer:**

After the Department asked the four former Secretaries for their emails, Secretary Rice indicated that she did not use a personal account for business. The Department has not asked Secretary Rice to perform additional searches. The Department's Office of the Inspector General (OIG) is conducting a review of the use of personal communications hardware and software by the current Secretary of State as well as the four former Secretaries of State, including former Secretary Rice. The Department believes that the OIG has reached out to former Secretary Rice in connection with this review.

**Question:**

7. **Please provide copies of all emails that were sent to and from Former Secretary Rice from an official, unclassified or personal account related to official business.**

**Answer:**

The Department currently is awaiting the findings of the Office of Inspector General's review of the email practices of four former Secretaries of State. The Department does not have a collection of emails to or from Secretary Rice from which to produce records to the Committee. We are happy to continue to work with your staff on providing the information you need related to this matter.

**Question:**

8. **Please provide copies of all documents relating to the attached FOIA request submitted by Citizens for Responsibility and Ethics in Washington on November 20, 2007, seeking "representative copies of e-mails that have been sent by the Secretary of State from her U.S. government-issued e-mail account," as well as representative copies of "e-mail messages that have been sent by the Secretary of State from any private e-mail account and that pertain to official government business" for the time period dating from January 26, 2005 through the present.**

**Answer:**

The Department is gathering records in response to this request and expects to get back to the Committee shortly. We are happy to continue to work with your staff on providing the information you need related to this matter.

**Department of Justice**
**Questions for the Record**
**"Ensuring Agency Compliance with the Freedom of Information Act (FOIA)"**
**Committee on Oversight and Government Reform**
**U.S. House of Representatives**
**June 3, 2015**

**Questions posed by Chairman Jason Chaffetz**

**Federal Bureau of Investigation Responses**

**1. How many FBI databases does the Bureau use when conducting its daily work?**

Response:

Numerous databases are used on a daily basis by the Federal Bureau of Investigation (FBI) employees to fulfill their responsibilities. These databases are created by FBI units or other entities to meet the ever-increasing demands of the FBI to assimilate information for investigations and for situational awareness, strategic planning, and reporting. For example, FBI employees working counterterrorism matters will have access to a variety of information databases they need to pursue terrorism investigations, including databases shared with other federal agencies.

**2. Are the databases text-searchable?**

Response:

Whether a database is text searchable depends on the purposes and format of the various databases.

**3. Does the FBI search these databases when responding to FOIA requests? Why or why not?**

Response:

The FBI searches those databases where records responsive to the Freedom of Information Act (FOIA) are reasonably likely to reside when responding to FOIA requests. The FBI's FOIA search methodology has been consistently upheld by numerous federal courts.

**4. Does the FBI search its case files when responding to FOIA requests?**

Response:

FBI case files are part of the Central Records System (CRS), which is an extensive system of records consisting of applicant, investigative, intelligence, personnel, administrative, and general files compiled and maintained by the FBI in the course of fulfilling its integrated mission and

function as a law enforcement and national security agency. The CRS spans the entire FBI organization and encompasses the records of FBI Headquarters (FBIHQ), FBI Field Offices, and FBI Legal Attaché (Legat) Offices worldwide. The CRS is searched when responding to FOIA requests.

The CRS consists of a numerical sequence of files, called FBI "classifications," which are organized according to designated subject categories. The broad array of CRS file classification categories includes types of criminal, counterterrorism, counterintelligence, and cyber investigations; intelligence assessments; and personnel and administrative matters. The general indices to the CRS are the index or "key" to locating records within the enormous amount of information contained in the CRS. The CRS is indexed in a manner which meets the FBI's investigative needs and priorities, and allows FBI personnel to reasonably and adequately locate pertinent files in the performance of their law enforcement and national security duties. The general indices are arranged in alphabetical order and comprise an index on a variety of subject matters to include individuals, organizations, events, or other subjects of investigative interest that are indexed for future retrieval. FBI employees may index information in the CRS by individual (persons), by organization (organizational entities, places, and things), and by event (*e.g.,* a terrorist attack or bank robbery). Indexing information in the CRS is based on operational necessity, and the FBI indexes that information considered relevant and necessary for future retrieval. Accordingly, the FBI does not index every individual name or other subject matter in the general indices.

Sentinel, and its precursor Automated Case Support (ACS), are the main portals used to locate information within the vast CRS. On October 1, 1995, the FBI implemented ACS as an electronic, integrated case management system for FBIHQ and all FBI Field Offices and Legats. ACS had an operational purpose and design to enable the FBI to locate, retrieve, and maintain information in its files in the performance of its mission. Sentinel, the FBI's next generation case management system, became effective FBI-wide on July 1, 2012. Sentinel provides a web-based interface for FBI users, and it builds upon the automated applications that were utilized in ACS. Since July 1, 2012, FBI generated records have been created electronically in case files via Sentinel.

**5. Does the FBI search its Electronic Case File when responding to FOIA requests?**

**Response:**

The Electronic Case File (ECF) is the component of ACS which allowed text-based searches. The FBI used ECF when information would not reasonably be expected to be located in the CRS via an index search methodology and, therefore, a text-based search was warranted. Sentinel has a text based search capability which the FBI uses if the information would not reasonably be found using the Sentinel index search.

**6. Please provide a list of all databases searched when responding to FOIA requests.**

**Response:**

Given its comprehensive nature and scope, the CRS is the principal records system searched by the FBI when responding to FOIA requests as the CRS is where the FBI indexes information about individuals, organizations, and other subjects of investigations for future retrieval. The CRS is the FBI system where records responsive to most requests would reasonably be found. If a request is such as to reasonably conclude records would reside outside of the CRS, then an additional search of the appropriate database or location will be conducted. The FBI's FOIA search methodology has been consistently upheld by numerous federal courts.

**Department of Justice Responses**

**7. How does the Department of Justice evaluate whether an agency "reasonably foresees that disclosure would harm an interest protected by one of the statutory interests"?**

The Department of Justice has taken many steps to ensure that agencies are properly applying the foreseeable harm standard outlined in the Departments 2009 FOIA Guidelines. After the FOIA Guidelines were issued in March 2009, the Department's Office of Information Policy (OIP) issued guidance to all agencies specifically addressing the foreseeable harm requirement. *See* DOJ, OIP Guidance: President Obama's FOIA Memorandum and Attorney General Holder's FOIA Guidelines – Creating a New Era of Open Government (2009). We also discuss the requirement in our *Department of Justice Guide to the FOIA* and we have made it a regular part of the many FOIA training programs OIP conducts each year. Through these efforts we are educating agencies about the standard.

Moreover, each year OIP has asked agencies to include in their Chief FOIA Officer Reports information about whether they have made discretionary releases of information after applying the foreseeable harm standard. After reviewing the first set of agency Chief FOIA Officer Reports submitted in 2010, OIP found a strong correlation between those agencies that reviewed their documents with the foreseeable harm standard in mind and those agencies that were able to identify additional information that could be released as a matter of discretion. Accordingly, OIP issued guidance that each agency "should institute a system, or add a step in their processing procedures, to affirmatively consider whether more information can be released as a matter of administrative discretion." Agencies were then required to report in their Chief FOIA Officer Reports on whether a distinct process or system had been put in place at their agency for reviewing records for discretionary release. Additionally, since 2014, agencies that were not able to make discretionary releases during the reporting period have been required to explain why.

To provide greater transparency to this aspect of the 2009 FOIA Guidelines, for the past four years OIP has asked agencies to provide examples of discretionary releases made the previous year in their Chief FOIA Officer Reports. Many of these releases consist of information that could have been protected by the deliberative process privilege of Exemption 5, but information

protected by other exemptions, such as Exemptions 2, 7(D), 7(E), and 8, has also been released as a matter of discretion. For example, as reported in the 2016 Chief FOIA Officer Reports, 62% of Department of Defense components made discretionary releases, and in the vast majority of cases the information released qualified for protection under Exemption 5 of the FOIA. The Department of Commerce released material discussing the preplanning of a risk assessment project for the 2020 Decennial, as well as draft documents, recommendations and opinions concerning a program to help improve patent quality. The FBI continues to release information with historical value that could be protected by the FOIA's law enforcement exemptions, such as information about counterintelligence operations and records of discussion about whether to prosecute Alger Hiss for espionage and perjury.

The Department encourages the Committee to review agency Chief FOIA Officer Reports for 2013, 2014, 2015, and 2016, which are readily available on the Reports page of OIP's website, to get a complete picture of the many types of information released as a matter of discretion each year under the Department's 2009 FOIA Guidelines.

**8. How many times has DOJ refused to defend an agency's withholding of documents in court since 2009?**

When the Department's FOIA Guidelines were issued in 2009, the Department's litigators immediately began applying their principles to their litigation cases. While the Department has not kept statistics on this point, there are a number of examples where the agency made a discretionary release of additional information during the course of litigation that was originally withheld at the administrative level. For example, after issuance of the Department's 2009 FOIA Guidelines, OIP conducted a systematic review of all its pending FOIA litigation cases to determine whether any information could be released as a matter of discretion. OIP determined that releases could be made in eight of those cases. Attached is a chart OIP compiled in response to a FOIA request on this topic that was prepared in late 2009 and that lists the eight litigation cases where supplemental releases were made after issuance of the 2009 FOIA Guidelines. There are also court decisions that reference the fact that releases were made as a matter of discretion, *see, e.g., Judicial Watch, Inc. v. DOJ*, 878 F. Supp. 2d 225, 233 (D.D.C. 2012) (referencing review that the Department had conducted in connection with the litigation and the decision to make discretionary releases as a result of that review); *ACLU v. DHS*, 810 F. Supp. 2d 267, 276 (D.D.C. 2011) (noting that agencies had applied the Attorney General's Guidelines, which were issued during the pendency of the case, and had released records as a result).

Importantly, separate and apart from its impact on litigation, the foreseeable harm standard contained in the Department's 2009 FOIA Guidelines has had an ongoing impact on agency decision making at the administrative level, when agencies are making their initial determinations on FOIA requests. As discussed above, the Department of Justice has taken several steps since the issuance of the 2009 FOIA Guidelines to ensure that the foreseeable harm standard is being properly applied by agencies at the administrative level.

**Freedom of Information Act (FOIA) Litigation Cases Handled by the Office of Information Policy (OIP) Where Discretionary Releases of Previously Withheld Documents Were Made**

**OIP has made supplemental releases in the following four cases:**

| | Case Name | Defendant Agency |
|---|---|---|
| 1 | Electronic Frontier Foundation v. Office of the United States Trade Representative, Civil Action No. 08-1599 (D.D.C.) | United States Trade Representative |
| 2 | Schoenman v. Federal Bureau of Investigation, et al., Civil Action No. 04-2202 (D.D.C.) | Federal Bureau of Investigation |
| 3 | King v. Department of Justice, et al, Civil Action No. 08-1555 (D.D.C.) | Executive Office for United States Attorneys |
| 4 | Humane Society v. USDA, Civil Action No. 05-0197 (D.D.C.) | Department of Agriculture |

**OIP, on behalf of the Senior Management Offices of the Department of Justice, made supplemental releases of records in the following four litigation cases:**

| | Case Name | Processing on Behalf of |
|---|---|---|
| 1 | Habeas Corpus Resource Center v. Department of Justice, Civil Action No. 08-02649 (N.D. Cal.) | Office of the Attorney General, Office of the Deputy Attorney General, Office of Legal Policy, Office of Legislative Affairs, Office of Intergovernmental and Public Liaison |
| 2 | Electronic Frontier Foundation v. Office of the Director of National Intelligence, Civil Action No. 08-01023 (N.D. Cal.) | Office of the Attorney General, Office of Legal Policy, Office of Legislative Affairs |
| 3 | Citizens for Responsibility and Ethics in Washington v. Department of Justice, Civil Action No. 05-2078 (D.D.C.) | Office of the Associate Attorney General |
| 4 | Lardner v. United States Department of Justice, Civil Action No. 09-00784 (D.D.C.) | Office of the Deputy Attorney General |

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