

**“Ensuring an Informed Citizenry:  
Examining the Administration’s Efforts to Improve Open Government”  
Written Questions for the Record Submitted by Chairman Charles E. Grassley of Iowa  
May 13, 2015**

**Questions for Ms. Kaiser**

1. Secretary of State John Kerry recently called on the inspector general to conduct a thorough review of the Department’s FOIA and records management operations. He says that a full and complete record of American foreign policy, and the public’s access to that record, are “interrelated principles.” And back in 2011, President Obama issued a memo regarding records management to the heads of executive departments and agencies, declaring that “proper records management is the backbone of Open Government.”
  - a. Would you agree that the proper management and archiving of official government records is the foundation of an open and transparent government?

***Yes, we believe that transparency of government work cannot be achieved without the underlying requirements of proper document management and archiving. Without a system of proper records keeping, the principle of access is hollow. In our view, open and transparent government is founded on the principles of (1) preserving a record of government activities and operations; (2) presuming openness in the absence of a foreseeable harm from disclosure; and (3) disclosing information to the public in a timely manner. These premises are essential to achieve true transparency.***

- b. What are the consequences to FOIA—and to public access—if agencies are not taking seriously their obligations to keep track of information, particularly in the age of digital communication?

***Government agencies cannot meet their statutory obligation to disclose information if they do not manage records properly. Further, agencies must apply standards for review and disclosure that are (1) consistent with the intent of Congress that FOIA serve as a disclosure not a withholding statute; (2) effective regardless of the format or medium in which the information is held; and (3) applied consistently across agencies and administrations. FOIA needs to remain strong and adaptable in the quickly-evolving digital landscape.***

***The AP, like other media entities, is a proxy for the people. It is AP’s mission to inform the world. AP journalists rely on FOIA to inform the public about issues that are critical to the public – what public officials are doing, how tax dollars are being spent, and what decisions are being made on the public’s behalf. Information disclosed through FOIA informs our society, and it is through that transparency that we achieve accountability – a core element of our democracy.***

2. On the first day of Sunshine Week this year, the White House announced it was removing regulations that for 30 years had subjected its Office of Administration to FOIA requests.
  - a. Do you think this decision was proper—both in terms of timing and policy?
  - b. Is the decision to remove these regulations—all without an opportunity for public comment—consistent with the President’s “presumption of openness”?
  - c. Is the decision consistent with being the “most transparent administration in history”?

***The Office of Administration took the position in 2007 that it is not an agency subject to the Freedom of Information Act. It stopped providing information in response to FOIA requests at that time, even though it had provided information in years prior. The Office of Administration prevailed in its position that it was not subject to FOIA in a subsequent lawsuit: Citizens for Responsibility and Ethics in Washington v. Office of Administration, 566 F.3d 219 (D.C. Cir. 2009). Therefore, although rescinding the Office of Administration’s FOIA regulations earlier this year did not have a substantive impact on the way the Office has been responding to requests since 2007, the timing of it during Sunshine Week was unfortunate.***

***Further, we believe that FOIA’s long history as a disclosure statute and the Administration’s stated intention of discretionary disclosures when possible – while protecting important interests such as trade secrets, personal privacy and national security – strongly indicates that as a policy matter, the Office of Administration should respond to FOIA requests. Such a position would be consistent with the principles of transparency.***

3. The mediation services that OGIS provides were intended to—and should—serve as a meaningful alternative to resolving FOIA disputes through litigation. The numbers show, however, that FOIA lawsuits continue to be on the rise. And the government’s often-vigorous defense of FOIA litigation is surely costing taxpayers money. I’m concerned that there could be more engagement with the requester community by agencies at an earlier stage to inform them of the mediation services that OGIS provides. I’m equally concerned that agencies aren’t warming up to the idea of mediation as a way to resolve FOIA disputes.
  - a. Are the services OGIS provides being underutilized as a litigation alternative?
  - b. What benefits would requesters receive if agencies take a more active and cooperative role in resolving FOIA disputes through mediation?

***The Office of Government Information Services was created to help resolve disputes before reaching litigation; it was meant to provide a means to address those improper denials that would never be taken to court due to the high financial barriers to litigation. Yet the admirable goals for OGIS cannot fully be realized under its current structure. Investing the resources into strengthening OGIS is a worthwhile endeavor for increasing transparency.***

***There are several steps that need to be taken to restore OGIS as a practical alternative to litigation. For starters, every agency subject to FOIA should inform its own staff and all***

***requesters of the mediation services provided by OGIS. But agencies also need to be open to mediation. Currently, OGIS cannot mediate a dispute without the agencies' consent. As a practical matter, that provides a major set-back to OGIS's ability to serve as a real alternative to litigation.***

***In addition, agencies should do more to resolve routine processing obstacles on their own; OGIS currently does much of this work. Shifting the burden to agencies to better manage the procedural issues of their FOIA cases would allow OGIS to focus its limited resources on addressing and resolving substantive disputes between the government and requesters.***

***Finally, OGIS should use advisory opinions and other forms of guidance to ensure all agencies benefit from the lessons learned in existing disputes, many of which are likely to arise in future and similar requests. This will result in fewer delays and more information released to the public.***

4. Is there anything you wish to add to, or correct for, the record? If so, please take this opportunity to provide any additional remarks or commentary.

***I have nothing further to add at this time. We thank you for the continued opportunity to address this Committee on the critical issue of preserving and strengthening our country's freedom of information laws.***