



Department of Justice

STATEMENT OF

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

BEFORE THE

**COMMITTEE ON THE JUDICIARY
UNITED STATES SENATE**

AT A HEARING ENTITLED

**“THE FREEDOM OF INFORMATION ACT: EXAMINING THE
ADMINISTRATION’S PROGRESS ON REFORMS AND LOOKING
AHEAD”**

**PRESENTED
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**Statement of
Melanie Ann Pustay
Director of Office of Information Policy**

**Before the
Senate Judiciary Committee
For a Hearing Entitled:
“The Freedom of Information Act: Examining the Administration’s Progress on Reforms
and Looking Ahead”**

March 13, 2018

Good morning, Chairman Grassley, Ranking Member Feinstein, and Members of the Committee. I am pleased to be here today to discuss the Freedom of Information Act (“FOIA”) and the Department of Justice’s ongoing efforts to encourage agency compliance with the statute. My office, the Office of Information Policy (OIP), has undertaken a range of initiatives designed to assist agencies in improving their FOIA administration. Today I am pleased to highlight some of those efforts, focusing on our work in assisting agencies in implementing the *FOIA Improvement Act of 2016*, which was signed into law on June 30, 2016.

Before detailing these efforts, I would like to note that several of the changes made by the *FOIA Improvement Act of 2016* codified longstanding DOJ policies that were already fully embedded in the Department’s practices and OIP’s government-wide trainings, advice and reporting requirements. For example, the presumption of openness and the foreseeable harm standard were established in the Department’s [2009 FOIA Guidelines](#). Additionally, the new statutory requirement that agencies post online the releasable portions of records that have been requested three or more times—commonly referred to as the “Rule of 3”—was also previously established through OIP guidance.

OIP Guidance and Training

After passage of the *FOIA Improvement Act of 2016*, OIP immediately took a number of steps to inform and educate agencies as to all of its provisions. OIP created a [detailed summary](#) of the law and a [redline version](#) of the FOIA showing the changes made and posted those resources to its website. We held a [government-wide training event](#) on the new provisions that was filled to capacity. The training provided an overview of the amendments, including codification of the foreseeable harm standard and the posting of frequently requested records. The training also provided an opportunity for agency FOIA personnel to engage with OIP directly about the statutory reforms. We made the [slides](#) from the training session publicly available on OIP’s website.

OIP continued to assist agencies with implementation of the new statutory amendments by providing training, issuing guidance, and leading government-wide efforts in accordance with the various new provisions of the law. OIP issued several guidance articles to agencies addressing the various changes made by the *FOIA Improvement Act of 2016*. For example:

- On July 18, 2016, OIP issued [guidance](#) to agencies on the new requirements for FOIA response letters, including the requirement to afford requesters ninety days to file administrative appeals and the new notification requirements for extending the FOIA’s time limits. The guidance included an implementation [checklist](#) and sample language to serve as a quick resource for FOIA professionals.
- On September 8, 2016, OIP issued [updated guidance](#) on Agency FOIA Regulations, which incorporated the changes made by the *FOIA Improvement Act of 2016*. OIP also issued an updated [Template for Agency FOIA Regulations](#) for agencies to use as they update their regulations. The Department updated its own FOIA regulations to bring them into alignment with the provisions contained in the FOIA Improvement Act of 2016. OIP has likewise reviewed and made suggested revisions to language contained in the proposed FOIA regulations of other agencies.
- On October 6, 2016, OIP issued [guidance](#) on the new requirements for agency Annual FOIA Reports. OIP also updated the [Department of Justice Handbook for Agency Annual FOIA Reports](#) to reflect the changes made in the *FOIA Improvement Act of 2016*.
- On October 19, 2016, OIP issued [guidance](#) on the new provisions further prohibiting the assessment of certain fees when the FOIA’s time limits are not met. This guidance included a step-by-step “[Decision Tree](#)” designed to serve as a resource for FOIA professionals as they implement the new restrictions in real time.
- OIP also incorporated the new statutory provisions into our training programs held throughout the year that reach thousands of FOIA professionals. As part of our *Best Practices* workshop series, OIP held a session that focused on the importance of informing, educating, and working collaboratively with requesters throughout the FOIA process.

As a further resource to agencies, OIP provides direct, one-on-one counseling for agency personnel through its [FOIA Counselor Service](#). Agency professionals call OIP’s FOIA Counselor Service for advice on all aspects of the FOIA, including the new provisions contained in the *FOIA Improvement Act of 2016*. OIP handled nearly 1500 requests for guidance through its FOIA Counselor service during 2017.

The *FOIA Improvement Act of 2016* amended the FOIA to require the creation of a Chief FOIA Officers Council. On July 22, 2016, OIP convened the first meeting of the Chief FOIA Officers (CFO) Council, and held two additional meetings thereafter. The third Council meeting specifically focused on the statutory notification requirements concerning FOIA Public Liaisons and the Office of Government Information Services (OGIS) that are contained in the *FOIA Improvement Act of 2016*. This third meeting of the Council included an overview of the respective duties of FOIA Public Liaisons and OGIS, as well as those of the FOIA Requester

Service Center, and featured a panel discussion on maximizing the effectiveness of all of their services. All the information describing these meetings, including associated resources, are available on a dedicated [Chief FOIA Officers Council](#) page of OIP's website.

Each year OIP develops guidelines for agency Chief FOIA Officer Reports and after the reports are submitted we conduct an [assessment](#) of each agency's progress in administering the FOIA, scoring agencies on a range of milestones. For the 2017 Chief FOIA Officer Reports OIP modified and updated the reporting requirements to reflect the amendments made to the FOIA by the *FOIA Improvement Act of 2016*. Our assessment of agency progress likewise included milestones connected with agency implementation of the new statutory provisions.

National FOIA Portal

One of the major new provisions in the *FOIA Improvement Act of 2016* was the requirement that OMB and DOJ ensure the operation of a consolidated online request portal that allows members of the public to submit a request for records to any agency from a single website. Significantly, the amendments expressly stated that creation of this new portal should not alter the power of any other agency to create or maintain an independent request portal. We are pleased to report that we have just "gone live" with the first iteration of a National FOIA Portal built in accordance with both these statutory directives.

With OMB's support, DOJ secured \$1.3 million for building the new National FOIA Portal, which resides on FOIA.gov. Given that DOJ's FOIA.gov website already served as the government's comprehensive, public facing FOIA resource, DOJ decided that it was a logical choice to expand those services to include a National FOIA Portal.

From the beginning DOJ wanted to approach this effort using modern, open source technologies and agile methodologies that focused on user experience and user design. DOJ partnered with GSA's 18F digital services team and augmented the group with OIP's own FOIA subject matter experts, and technical staff from DOJ's Chief Information Office coupled with technical contract support. GSA's 18F team specializes in agile and user-based development, which made them an ideal partner. In addition to utilizing their technical expertise, GSA was able to add an additional \$500,000 from the Federal Citizens Services Fund to support the project.

Working in the open, the team conducted extensive research, interviewed requesters, agencies, and the open government community, and continually tested prototypes. The new portal:

- Provides the public with the ability to submit a request to any federal agency from a single site,
- Contains agency specific request forms, which both standardize the request-making process, while allowing for agency or component-specific variations,
- Allows agencies to directly update and customize certain content and contact information, and
- Delivers a wealth of information to the public to help them determine whether they need to make a FOIA request and to assist them when they do.

These new features were added to the functionality that already existed on FOIA.gov, providing the public with a robust, one-stop resource on government-wide FOIA administration. OMB will be issuing government-wide standards later this spring to guide agencies in ensuring that their existing or future FOIA case management systems are interoperable with the National FOIA Portal.

Looking Ahead

DOJ is looking forward to receiving feedback from both requesters and agencies to inform our decisions on the portal going forward. In partnership with OMB, DOJ has identified a dedicated funding source to operate and maintain the portal to ensure its success in the long-term, with major agencies sharing in the costs to operate, maintain, and fund any future enhancements designed to improve FOIA processes.

In addition to continued improvements to the National FOIA Portal, OIP will continue to focus on its core efforts 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 policy considerations. Accordingly, we will continue to offer a range of government-wide training programs and will continue to issue policy guidance to agencies on the proper implementation of the law. For example, in addition to our guidance on implementing the *FOIA Improvement act of 2016*, last year OIP issued guidance on defining a record under the FOIA and on the content of agency FOIA websites. As in years past, OIP also issued guidance to agencies for further improvement based on our review and assessment of agencies' Chief FOIA Officer Reports. Additionally, to assist agencies in reviewing their own FOIA programs and identifying ways to make improvements, last year OIP created a [*FOIA Self-Assessment Toolkit*](#). The *Toolkit* is composed of thirteen modules corresponding to the various stages of the FOIA process, from initial mail intake, to searching and reviewing records, to updating FOIA websites. There is a dedicated module for "Requester Services" which addresses the roles and responsibilities of FOIA Requester Service Centers and FOIA Public Liaisons.

As you know, this week we are celebrating Sunshine Week. The Department's FOIA Guidelines were issued during Sunshine Week 2009. Those Guidelines address the presumption of openness that is inherent in the FOIA, the need for agencies to create and maintain an effective system for responding to requests, and the need to improve timeliness and to work to reduce any backlogs. The FOIA 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. We will continue to focus attention on all these areas of FOIA administration as we strive to make further improvements in the year ahead.

In closing, I want to thank you for the opportunity to be here today to discuss OIP's work in encouraging agencies' compliance with the FOIA. The Department of Justice looks forward to

working together with the Committee on matters pertaining to the government-wide administration of the FOIA. I would be pleased to address any question that you or any other Member of the Committee might have on this important subject.