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## United States Senate

COMMITTEE ON THE JUDICIARY  
WASHINGTON, DC 20510-6275

KOLAN L. DAVIS, *Chief Counsel and Staff Director*  
JENNIFER DUCK, *Democratic Staff Director*

March 15, 2017

### VIA ELECTRONIC TRANSMISSION

The Honorable Mick Mulvaney  
Director, Office of Management and Budget  
The White House  
725 17<sup>th</sup> Street, NW  
Washington, D.C. 20503

Dear Director Mulvaney:

We write to express our unified sense that compliance with both the letter and spirit of the Freedom of Information Act (FOIA) should be and always remain a top priority for any administration. Enacted over 50 years ago, FOIA is a critically important tool for Americans to ensure government transparency and accountability, as it establishes clear rules for informing the people about what their government is doing. Without FOIA, countless stories of government waste, fraud, and abuse, as well as important historical documents, would have remained in the dark.

Despite its successes, however, a culture of obstruction and reflexive secrecy across government has undermined FOIA. This has been the case under both Democratic and Republican administrations. Last year, a strong bipartisan and bicameral effort resulted in the enactment of the FOIA Improvement Act of 2016. This important piece of legislation accomplishes some of the most sweeping and meaningful improvements to FOIA in history. The amendments made by the FOIA Improvement Act of 2016 were guided by an overriding principle—to make government transparency the norm, not the exception.

The Senate Committee on the Judiciary has jurisdiction over—and is charged with conducting oversight of—FOIA. Complete implementation of FOIA's statutory requirements, including its most recent amendments, is necessary to ensure that the public can exercise its right to know. Accordingly, we request detailed information regarding the implementation of the FOIA Improvement Act of 2016, as well as information regarding your office's role in FOIA matters. Please provide a numbered, written response to the following questions by no later than April 5, 2017.

1. The FOIA Improvement Act of 2016 requires “the operation of a consolidated online request portal that allows a member of the public to submit a request for records ... to any agency from a single website.”<sup>1</sup>
  - a. What is the current status of, and what specific actions has the Office of Management and Budget (OMB) taken in furtherance of, this requirement?

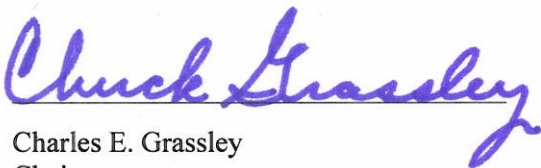
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<sup>1</sup> 5 U.S.C. §552(m)(1).

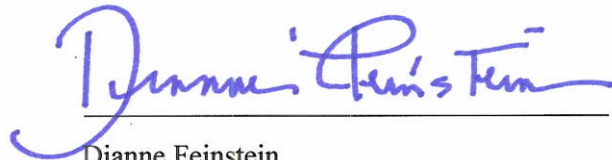
- b. Please explain in detail the status of funding for the portal, as well as the OMB's specific involvement in the portal's development.
  - c. Please provide a specific date upon which requesters should anticipate the availability of the portal.
2. What is the current status of, and what specific actions has the OMB taken in furtherance of, the FOIA Improvement Act's requirement that the Director of the OMB "establish standards for interoperability" between the consolidated online request portal "and other request processing software used by agencies" in the FOIA process?
3. In 1987, the OMB issued guidance to agencies on how to make fee determinations for FOIA requests.<sup>2</sup> Since then, Congress has amended FOIA in multiple and substantial ways, including amendments to when and how agencies may collect fees from FOIA requesters. Despite these significant changes to FOIA, however, we understand that the OMB has never updated its fee guidance. In 2016, the FOIA Advisory Committee recommended that the OMB revise its fee guidance to reflect changes in the law and technological changes in the public's ability to disseminate information.<sup>3</sup> Accordingly, what is the current status of, and what specific actions has the OMB taken or does it intend to take to update its FOIA fee guidance to agencies? Please explain any efforts underway to update the guidance or plans to update such guidance, along with an estimated date of issuance.

Thank you for your prompt attention to this important matter. If you have any questions, please contact Kyle McCollum of the Majority Staff at (202) 224-5225 or Lartease Tiffith of the Minority Staff at (202) 224-7703.

Sincerely,



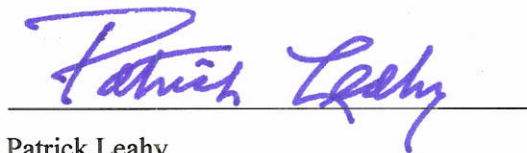
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Chairman



Dianne Feinstein  
Ranking Member



John Cornyn  
Chairman  
Subcommittee on Border Security and Immigration



Patrick Leahy  
Former Ranking Member

<sup>2</sup> Office of Mgmt. & Budget, *Uniform Freedom of Information Act Fee Schedule and Guidelines*, 52 Fed. Reg. 10012 (Mar. 27, 1987).

<sup>3</sup> Letter to David S. Ferriero, Archivist of the United States, National Archives and Records Administration, *Final Report and Recommendations*, FOIA Federal Advisory Committee (April 19, 2016) available at <https://ogis.archives.gov/Assets/Final-Recommendation-to-Archivist-fees.pdf?method=1>.