



Department of Justice

STATEMENT OF

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AT A HEARING ENTITLED

**“Open Government and Freedom of Information: Reinvigorating the Freedom of
Information Act for the Digital Age”**

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Committee on the Judiciary, United State Senate

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Good morning, Chairman Leahy, Ranking Member Grassley, and Members of the Committee. I am pleased to be here today, the week before Sunshine Week, to discuss the Department of Justice’s ongoing efforts to assist agencies in improving their administration of the FOIA and to ensure that President Obama’s Memorandum on the FOIA and Attorney General Holder’s FOIA Guidelines are fully implemented. As the lead agency responsible for encouraging agency compliance with the FOIA, the Department of Justice is strongly committed to the President’s and Attorney General’s vision of open government. The Office of Information Policy (OIP) carries out the Department’s responsibility to encourage agency compliance with the FOIA. Increasing use of technology to improve the public’s access to information has been a key part of our work.

As you know, this Sunshine Week we will celebrate the fifth anniversary of the Attorney General’s FOIA Guidelines. Issued during Sunshine Week on March 19, 2009, those 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. Those Guidelines also directed agencies to promptly and proactively make information available to the public. Finally, both the President and the Attorney General emphasized the importance of agencies using “modern technology to inform citizens about what is known and done by their Government.”

Over the past five years, we have seen agencies embrace technology in a wide variety of ways, all designed to improve access to information. Looking ahead, we have launched a series of initiatives that are designed to modernize the FOIA even further. Through the efforts to date and those to come I believe that agencies are in the process of transforming the way in which the FOIA is administered and information is made available to the public.

I have been working in FOIA long enough that I can remember the days when agencies overwhelmingly searched by hand, for records that consisted solely of paper, and that were stored in filing cabinets or boxes. When FOIA requests were received, FOIA Offices searched for and reviewed records manually and made proposed redactions using highlighters or tape. FOIA Offices had supply cabinets filled with “El Marko” magic markers and the invention and use of “post it notes” was a real step forward. As I’ll describe, times have certainly changed since then.

As part of the Attorney General’s FOIA Guidelines, agency Chief FOIA Officers were directed by the Attorney General to review their administration of the FOIA each year and to report to the Department of Justice on the steps taken to improve transparency. OIP was given responsibility for

providing direction to agencies on the content of their reports and from the start, we asked agencies to address the topic of technology use in the administration of the FOIA. Each year we have modified the reporting requirements, building on the responses of previous years. As a result, agencies' Chief FOIA Officer Reports are a valuable resource for tracking and documenting agency use of technology over the past five years. These Reports also provide a detailed description of each agency's efforts to apply the presumption of openness, to increase efficiencies, to proactively disclose information, and to improve timeliness in responding to requests. I highly recommend that the Committee review these Reports, which are available at <http://www.justice.gov/oip/reports-fy2013.html>, to see the broad array of activities that agencies have undertaken to improve their FOIA administration.

On the topic of technology, for the first Chief FOIA Officer Reports submitted in 2010, OIP asked agencies to answer a series of eight questions relating to their use of technology. While we knew anecdotally that agencies had been acquiring automated FOIA tracking systems and moving to greater use of technology in administering the FOIA, this was the first time that an agency-wide survey on technology use had been undertaken. The results overwhelmingly showed that agencies were harnessing technology to assist them in the core elements of FOIA processing. Virtually all agencies reported that they received and tracked requests electronically, and used technology to process records. This survey demonstrated that the old days of using El Markos and tape were coming to an end. Agencies recognized the benefits of IT and were using it to help manage their FOIA workloads. In the years since then, just as technology has rapidly changed other aspects of how the public and agencies work and communicate, in the FOIA context, technology is being used in ever more sophisticated ways to improve disclosure of information.

As agencies were expanding and adapting technology for FOIA purposes and working to implement the Attorney General's FOIA Guidelines, OIP believed that it was important to provide agencies with a forum where they could share their ideas and learn from the successes of one another. In the spring of 2010, after review of those first Chief FOIA Officer Reports, OIP convened two FOIA Working Groups, one focused on FOIA Best Practices and the second working group focused specifically on the critical area of technology. As an outgrowth of those meetings, OIP issued guidance and suggested best practices for agencies, many of which addressed increased use of technology.

OIP has continued to hold meetings of its FOIA IT Working Group, which have focused on a number of important areas where the government's FOIA administration could benefit from greater use of technology, including improving agency websites, using metadata to tag posted documents so that they are easier to locate, and using social media to make information available to the public. The Working Group will be meeting once again next week, during Sunshine Week, to review all the different topics we have covered over the past four years, and to discuss the important role of technology in FOIA. As we did last year, during Sunshine Week, we will open this meeting to interested members of the open government community, who can share their ideas and experiences with the participants.

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. For example, conducting an adequate search for responsive records often involves the review of both paper and electronic records originating with multiple employees throughout the agency. In turn, these searches can locate hundreds, if not thousands, of pages of material that need to be reviewed for both responsiveness and duplication before a FOIA disclosure analysis can be conducted. With the widespread use of email and the common practice of employees forwarding the same email to multiple other people,

with each employee then building still further on that email, long chains of overlapping and duplicative email are frequently created. The benefits of using technology to de-duplicate and sort and thread all those emails automatically, rather than doing so manually, are readily apparent. Employing electronic systems that can consolidate and perform any of the necessary administrative tasks associated with FOIA processing allows agency FOIA staff to focus their efforts on substantive review of the responsive material. This, in turn, has great potential to improve timeliness in responding to requests.

Significant time savings can be achieved by automating many of the administrative tasks associated with FOIA processing. Advanced technologies allow for more precise and targeted searches to be easily performed across a wide spectrum of documents in a short period of time. More sophisticated document platforms allow for enhanced capabilities in the review and processing of records, automatically creating indices and facilitating review of the material. In all of these ways, the internal processes associated with locating and processing material in response to requests can be greatly improved by using advanced technology.

OIP has hosted seminars and given presentations at our FOIA IT Working Group and other forums with the aim of enhancing awareness of the possibilities these technologies hold for increased efficiencies across the government. In the past two years, other components within the Department and other agencies have all begun using various document-management software tools for FOIA purposes. In their 2013 Chief FOIA Officer Reports a total of 68 agencies reported using some type of advanced technology to increase the efficiency of their FOIA administration. A number of agencies have implemented the use of advanced digital tools to automate the most time-consuming parts of the FOIA process, including acquiring tools to de-duplicate records. Agencies have also reported improving their records management systems to improve document retrieval in the first instance. Others are using document-sharing platforms to facilitate collaboration between and among different offices.

For example, last Fall the Department of Agriculture implemented the use of a new technology platform that allows its FOIA professionals to quickly list and catalog documents and sources; identify duplicate and near-duplicate documents and emails; search, categorize, and rank documents for ease of review; and view and group documents by the record holder. Just this past year, the Department of Homeland Security acquired de-duplication capabilities that allow FOIA staff at a number of its components to upload e-mail correspondence files and to de-duplicate them. At the Department of Defense, several components reported the implementation of advanced tools to improve searches, document sharing, and the de-duplication of records. Similarly, the Nuclear Regulatory Commission has also procured an advanced document review module to assist with the processing of voluminous records.

In addition to directly using technology to assist with internal aspects of processing FOIA requests, agencies have taken a number of steps to use technology in ways that improve the public's ability to interact with the agency and to find information. Online portals can be used by the public to make requests to more than 100 FOIA offices, of which 23 provide tracking information to the requester. For example, EPA has built a shared online portal that is currently being used by seven other agencies and which provides tracking information along with other features. The State Department created an online portal that guides requesters through a series of questions to help them better target their requests. At DOJ, we created the FOIA.gov website that, among other things, provides FOIA contact information for all agencies, eliminating the need for the public to navigate multiple websites to obtain that information. FOIA.gov also includes links to agency FOIA email accounts and online FOIA request portals, allowing the public to start making requests right from FOIA.gov.

Looking ahead, as part of this Administration's commitments under our Second Open Government National Action Plan, we have committed to improving the customer service experience even further by establishing a consolidated online FOIA portal that will not only allow for the making of

requests to all agencies from a single website, but will also include additional tools to help improve the customer experience. Such tools could, for example, help guide the requester to the right agency and help in the formulation of the request so that it could be answered more efficiently. We look forward to working with an interdisciplinary team that will seek input from both agencies and the public, will review current practices and explore new, innovative ideas, all with the aim of determining the best way to implement this consolidated FOIA service.

Both the President and Attorney General have emphasized the need for agencies to make information available to the public proactively. Making more information available online is yet another way that FOIA is adapting to the digital age. Given that proactive disclosures can satisfy public demand for information without the need to ever file a FOIA request, OIP has focused on this topic in both our written guidance and in our training for agencies. We also have included this as one of the key areas that agencies must address in their Chief FOIA Officer Reports each year.

In the five years since issuance of the Attorney General's FOIA Guidelines, agencies have embraced proactive disclosures by posting a wide variety of material that is of high public interest. As reported in the 2014 Chief FOIA Officer Reports, for example, the Department of Homeland Security reports that it has proactively posted over 63,000 pages since October 2010, including daily schedules of senior leaders and procurement records. The Department of the Air Force posts aircraft accident reports. The Department of Education posts Federal Student Aid data, while the Department of the Interior's Bureau of Safety and Environmental Enforcement is posting certain oil and gas production data. The Federal Deposit Insurance Corporation posted documents considered at Board of Directors' meetings and the SEC posted investment and money market information. In an example of how agencies are targeting proactive disclosures to those members of the public who typically frequent their website, the National Park Service posted information on the shooting of a grizzly bear at Grand Teton National Park. At the Department of Justice, the FBI continues to post information of interest in its online *Vault*, posting records this past year on subjects as diverse as Neil Armstrong and Spiro Agnew.

Beyond proactively posting new information online, agencies also continue to take steps to make the information on their websites more useful to the public. For example, the Department of the Interior's Bureau of Ocean Energy Management posted an interactive map displaying and describing its renewable energy-related activities in the United States. The FBI's *Vault* has a robust search capability and users are able to submit feedback and suggestions on how to make the site easier to navigate. At the Department of Agriculture, the Food and Safety Inspection Service uses an interactive resource called "Ask Karen" to provide information to consumers about preventing foodborne illness, safe food handling and storage, and safe preparation of meat, poultry and egg products. In another effort, Amtrak teamed up with Google to create an interactive train locator map, which allows the public to check on the status of its trains by showing where they are in route, the speed at which they are traveling, and estimated times of arrival. Finally, the Department of Transportation's National Highway Traffic Safety Administration (NHTSA) has enhanced its website's performance and usability by continuously obtaining public feedback and analyzing various web metrics. Based on visitor feedback, NHTSA has enhanced SaferCar.gov by adding a new car seat sizing chart and functionality that compares 5-Star Safety Ratings by specific vehicles and classes.

Finally, FOIA.gov continues to revolutionize the way in which FOIA data is made available to the public. The website was initially undertaken by the Department of Justice in response to a strong interest by open-government groups to have a "dashboard" that illustrates statistics collected from agencies' Annual FOIA Reports, such as the numbers of FOIA requests received and processed each year, and the time taken to do so. The Department created FOIA.gov to serve as that dashboard.

In order to display all the detailed agency statistics in an open, interactive format, we created an Annual FOIA Report Tool for all agencies to use that converts their FOIA data into a NIEM-XML format which is then uploaded into FOIA.gov. We once again took advantage of the capabilities of technology by including within that tool built-in math checks and other features that assist agencies in ensuring the accuracy of their reports. This past year, we revised the tool even further so that it now produces not just the machine-readable version of the data, but also a human-readable Annual FOIA Report. This technological improvement to the tool enhances the quality of the human-readable reports by ensuring that they are compiled from the same set of data that is used for the machine-readable version.

Once the data is loaded onto FOIA.gov, it is displayed graphically, so it can be readily and easily reviewed by the public. FOIA.gov allows users to search and sort the data in any way they want, so that comparisons can be made among agencies and over time. This year we will be adding the comprehensive data from agencies' Fiscal Year 2013 Annual FOIA Reports to the website, so our body of data continues to grow.

This is not all FOIA.gov provides. From the start, the Department of Justice realized that FOIA.gov could be much more than a dashboard and so we created additional features to make the website more robust. To help educate the public about the FOIA, we included useful information on FOIA.gov about how the FOIA works, where to make requests, and what to expect through the FOIA process. We also included a glossary of FOIA terms and listed each agency's FOIA Requester Service Centers and FOIA Public Liaisons, as well as their Chief FOIA Officers. We created explanatory videos that guide the public through a series of questions about the FOIA. Since the launch of FOIA.gov, those videos have themselves received more than 2.5 million visitors.

To make it easier for the public to locate material that agencies have been proactively disclosing, the Department expanded the scope of services offered by FOIA.gov by adding a search feature, which allows users to enter search terms on any topic of interest. FOIA.gov then searches for material on that topic across all federal government websites. The "Find" feature captures not just those records posted in agency FOIA Libraries, but also records that are posted anywhere on an agency's website. Further, in the year ahead we will be building on our guidance issued last year at this time on the use of metadata tagging for FOIA. With increased use of metadata tags for posted material, the search capability of FOIA.gov will be enhanced even further by allowing for more targeted searches. In this way FOIA.gov will continue to provide the public with an easy way to locate information that has already been made available by agencies. With our continued focus on encouraging agencies to post documents proactively, enhancing the public's ability to locate that posted information is critical.

As you can see, the FOIA has indeed been adapting to the digital age. Yet there is still more that we can do to improve and advance the administration of the FOIA. In the next two years we have committed to five initiatives that are designed to modernize the FOIA as part of the Second Open Government National Action Plan. As mentioned, the first of these initiatives is the creation of a consolidated online FOIA service that will allow the public to make a request to any Federal agency from a single website and will include additional tools to improve the customer experience. Second, given that many steps in the FOIA process are generally shared across Federal agencies, and to streamline and simplify the request-making process for the public, an interagency team lead by OIP is reviewing the feasibility and potential content of a core FOIA regulation that could be both applicable to all agencies and retain flexibility for agency-specific requirements. Third, as agencies have been working to improve their FOIA practices these past five years, OIP is organizing a series of targeted Best Practices Workshops where agencies will systematically share lessons learned in implementing the Attorney

General's FOIA Guidelines, including increasing proactive disclosures, using technology and reducing backlogs and improving timeliness, with the goal of scaling those successes across the government. Fourth, to ensure that all employees, not just FOIA professionals, have a proper understanding of the FOIA, OIP is creating a suite of e-learning FOIA training resources which we will make available to all agencies, which target discrete groups of employees, from the newly arrived intern to the senior executive, to ensure that all employees know their obligations and responsibilities under the law. Lastly, OIP will be supporting and participating in a FOIA Modernization Advisory Committee that is being established at the National Archives and Records Administration to foster dialogue between agencies and the requester community and to develop consensus recommendations for improving FOIA administration.

In addition to all our work on these initiatives, the Department of Justice will also be continuing its work in encouraging and overseeing agency compliance with the law. We have been actively engaged in a variety of initiatives to inform and educate agency personnel on the requirements of the FOIA, as well the policy directives from the President and the Attorney General. Over the past five years, OIP has provided training to thousands of agency personnel, including training by video conferencing to reach employees outside the Washington area.

We also continue to reach out to the public and the requester community. In 2009, OIP teamed with the Office of Government Information Services to begin holding "requester roundtable" meetings with interested members of the FOIA requester community to engage in a dialogue and share ideas for improving FOIA administration. OIP has also, on multiple occasions, issued policy guidance to all agencies specifically in response to feedback from the requester community. Last year, for example, based on input from requesters, we issued revised guidance addressing the importance of good communication with FOIA requesters. One of the key points addressed in the guidance was the need for agencies to use technology to communicate with requesters when it is feasible to do so. We advised agencies to use electronic communication as the default and to alert the public to any limitations on the use of technology in communicating with the public.

In addition to our work encouraging agency compliance with the FOIA statute and with the Attorney General's FOIA Guidelines, OIP has undertaken several initiatives to increase agency accountability. Last year, for the first time, OIP instituted a new quarterly reporting requirement for all agencies that allowed for a more real-time assessment of the flow of FOIA requests handled by the government throughout the year. During the course of each fiscal year, agencies are now required to publicly report on the numbers of requests received, processed, and in an agency's backlog for that quarter, as well as the status of the agency's ten oldest pending requests. We, in turn, post that information on FOIA.gov. The Department has continued to focus on the importance of agencies closing their oldest pending requests and this additional reporting requirement was yet another way to bring attention to that issue.

In 2013, for the third straight year, OIP conducted a formal assessment of agencies' FOIA administration by scoring all 99 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 FOIA Guidelines. Because each agency inevitably faces different challenges in meeting the demands of its FOIA operations, OIP uses a wide range of milestones to more completely capture every agency's efforts. We post on the Department's website the assessment each year, along with a summary of agency activity and guidance for further improvement. As agency implementation of the Attorney General's FOIA Guidelines has matured, OIP has been continually refining the milestones that are assessed. We have also engaged with the open-government community 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 gotten.

As you know, Sunshine Week is the time when agencies complete their Chief FOIA Officer Reports. Based on our initial review of those reports for 2014 and our review of agency Annual FOIA Reports for Fiscal Year 2013, it is clear that agencies have persevered through a difficult year of limited resources and tough fiscal times to meet the ever-increasing demands of their FOIA administration and to continue to improve public access to information. This past fiscal year marks yet another year in which the government received record high numbers of incoming requests. During Fiscal Year 2013, agencies received 704,394 requests, which rose from the previous high of 651,254 requests received in Fiscal Year 2012. Notably, since Fiscal Year 2009, the number of FOIA requests received by the government has increased each year. In Fiscal Year 2013, the government received 26 % more requests than the 557,825 received in Fiscal Year 2009. As described above, in accordance with the President's and Attorney General's FOIA directives, we have encouraged agencies to make proactive disclosures and to anticipate the public's need for information in advance of any FOIA requests. Agencies have responded to these directives by posting a wide variety of material. While we had hoped that this increased focus on proactive disclosures would reduce the number of incoming requests, to date that has not been the case. Of course, it is likely that the increase would be even higher in the absence of the many proactive disclosures that were made. It is also likely that our increased focus on the important role that transparency plays in our democracy has itself made more members of the public interested in seeking access to records under the FOIA.

In response to the increased numbers of incoming requests, agencies were able to increase the total number of requests processed this past fiscal year, processing 678,391 requests. As to backlogs of pending requests, out of the 99 agencies subject to the FOIA, 73 agencies reported having a backlog of fewer than 100 requests. Of those, 29 agencies reported no backlog at the end of the fiscal year. Further, 55 agencies reduced their backlog or continued to maintain no backlog of FOIA requests. Of the 40 agencies that had an increase in their backlog, 25 had a backlog of 100 requests or fewer. Given the importance of reducing significant agency backlogs, for the first time this year, OIP directed any agency that had a backlog of more than 1000 pending requests, and had not reduced that backlog by the end of the fiscal year, to include in its 2014 Chief FOIA Officer Report a plan for achieving backlog reduction in the year ahead.

Even in the face of these challenging times agencies did find ways to improve their administration of the FOIA this past year. As highlighted earlier, the 2014 Chief FOIA Officer Reports contain many, varied examples of proactive disclosures made by agencies and their increasing use of technology to find efficiencies in their administration of the law. Agencies also made improvements to their websites to make them more useful and are increasingly using social media to disseminate information to even wider segments of the public. Agencies have also continued to maintain a high release rate. Indeed, during Fiscal Year 2013, the government released records in full or in part in response to 91.4% of requests where records were processed for disclosure, marking the fifth straight year in which the government's release rate was above 90%.

Like the majority of agencies, the Department of Justice was also faced with the challenge of finding ways to do more with less. This past fiscal year the Department received a record high number of over 70,000 incoming requests. In an effort to meet this high demand, and despite an over 5% reduction in FOIA staffing, the Department processed over 68,000 requests, including its ten oldest requests from the prior fiscal year, while continuing to release records in full or in part in response to over 93% of requests that were processed for disclosure. We also continued to make proactive disclosures of information and to improve the capabilities of our website. For example, OIP revamped the webpage that contains our summaries of FOIA court decisions to make them more easily searchable, posted material in an open format, and converted our *Department of Justice Guide to the FOIA* to a

“living” document that can be updated on a rolling basis.

In closing, 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 new era of open government that the President and Attorney General envision. We have accomplished a great deal over these past five years, but OIP will continue to work diligently to help agencies achieve even greater transparency in the years ahead. Increasing our use of technology will be a key part of those efforts. Employing advanced digital tools to help internal processes, increasing proactive disclosures, expanding search capabilities of websites and improving their functions, and creating a consolidated online FOIA service that helps improve the customer experience are all exciting initiatives we will be undertaking in the year ahead.

I would be pleased to address any question that you or any other Member of the Committee might have on this important subject.