

Chairman Chuck Grassley
U.S. Senate Committee on the Judiciary
Questions for the Record

Mr. Rick Blum

Hearing: “FOIA at Fifty: Has the Sunshine Law’s Promise Been Fulfilled?”

1. In previous testimony before Congress, you discussed the unique and important role that the Office of Government Information Services (OGIS) plays in helping to resolve Freedom of Information Act (FOIA) disputes. You also suggested that OGIS should exercise the authority given to it by Congress to “push back harder against agencies that have taken hard positions.”
 - a. What challenges do you still see OGIS facing?
 - b. What specific ways do you, from a journalist’s perspective, think that OGIS’s role in resolving disputes could be strengthened?
2. President Obama claims that his is the most transparent in history. Most recently, at the NATO Summit press conference on July 9, 2016, President Obama said, “We’re processing more Freedom of Information Act requests and doing so faster than ever before.” Yet, the Associated Press reported earlier this year that the Obama Administration set a new record in 2015 for failing to fulfill FOIA requests.
 - a. Is the President’s claim of “processing more Freedom of Information Act requests and doing so faster than ever before” an accurate measure of government transparency? Why or why not?
3. 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.

Chairman Chuck Grassley
U.S. Senate Committee on the Judiciary
Questions for the Record
Ms. Miriam Nisbet

Hearing: “FOIA at Fifty: Has the Sunshine Law’s Promise Been Fulfilled?”

1. How can we best ensure quality customer service in the FOIA process? Is this accomplished through earlier communication between requesters and agencies? Is this accomplished through better training of FOIA professionals? How else?
2. What benefits of improved customer service in FOIA did you witness as Director of OGIS?
3. In your testimony, you mention the “perennial and vexing problems of over-classification and slow declassification,” which keeps historically important records in the dark.
 - a. What recommendations do you have for this Committee to better address these issues? Where do you recommend that we focus our attention to try and get more historically important information into the hands of the American people?
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.

Chairman Chuck Grassley
U.S. Senate Committee on the Judiciary
Questions for the Record
Dr. David Cuillier

Hearing: “FOIA at Fifty: Has the Sunshine Law’s Promise Been Fulfilled?”

1. In your written testimony, you lay out many flaws in FOIA’s implementation and “emphasize that this is not a press issue. Journalists are mere proxies for the public.”
 - a. As we celebrate FOIA’s 50th anniversary, can you speak to the importance of FOIA to the *people* and what it should mean to people in Iowa and throughout the country?

Freedom of information is critical for people throughout the country, whether acquired by citizens or by journalists on behalf of the public. In particular:

1. FOIA saves lives. One thing we have learned is that problems exposed are problems fixed. Rick Blum from the Sunshine in Government Initiative mentioned just some of the deadly flaws in our country that have been exposed through FOIA, including:
 - Prevalence of mercury in tuna and lax enforcement of meat inspections.
 - Diversion of federal emergency funds for bike paths and tennis courts.
 - Slip-ups in government labs in the handling of SARS and anthrax.
 - Defective body armor for troops that endangered thousands of soldiers.
2. FOIA helps citizens understand what their government is up to. One study by the Society of Professional Journalists indicates that a third of news stories are based in part on information acquired from public records or meetings, at the federal or state level.¹ People need strong transparency laws to know what is going on in their communities, and how to cast an informed vote at the polls.
3. FOIA keeps government honest and makes it work better. “Sunlight is said to be the best of disinfectants; electric light the most efficient policeman,” said Justice Louis Brandeis. Humans who know they are being watched are more likely to work harder and less likely to sneak into the cookie jar. One study demonstrated that making food safety inspection records public decreases consumer complaints.² Another study showed that requiring disclosure of drinking water contaminants reduces health violations.³ Government employees, like anyone else, work better when watched and held accountable. FOIA facilitates that.

¹ Society of Professional Journalists, *Open Doors Survey* (2002), <http://www.spj.org/opendoors5.asp>

² Barbara A. Almanza, Joseph Ismail & Juline E. Mills, *The Impact of Publishing Foodservice Inspection Scores*, 5 J. FOODSERVICE BUS. RES. 45-62 (2002).

³ Lori S. Bennear & Sheila M. Olmstead, *The Impacts of the “Right to Know”: Information Disclosure and the Violation of Drinking Water Standards*, 56 J. ENVTL. ECON. & MGMT. 117-30 (2008)

2. President Obama claims that his is the most transparent in history. Most recently, at the NATO Summit press conference on July 9, 2016, President Obama said, “We’re processing more Freedom of Information Act requests and doing so faster than ever before.” Yet, the Associated Press reported earlier this year that the Obama Administration set a new record in 2015 for failing to fulfill FOIA requests.
 - a. Is the President’s claim of “processing more Freedom of Information Act requests and doing so faster than ever before” an accurate measure of government transparency? Why or why not?

In my opinion, average processing speed as claimed by President Obama is not an accurate measure of FOIA performance, nor is the claim entirely accurate. The claims indicating faster processing are misleading on several levels:

1. The average processing time of FOIA requests actually have increased from 2014 to 2015, according to the Department of Justice’s own figures,⁴ from 20 to 23 days for simple requests and from 118 to 121 days for complex requests. While the 2015 numbers are an improvement from when Obama entered the White House, four months is still far too long for a journalist to wait for records of importance to the public. Claims of a speedier process are exaggerations.
2. While processing time have improved some since Obama first took office, which is commendable, the use of denials, exemptions, and responses indicating that no records exist have climbed. One study indicates that under Obama the release of information in full has steadily dropped and outright denials have increased.⁵ Exemptions are increasingly being applied under Obama (averaging 2.42 exemptions when denying requests) than under Bush (2.22 exemptions per denied request). The data also indicate that appeals are less likely to be processed under Obama than under Bush. As you noted, *The Associated Press* study found that 77 percent of the time when someone requests to see information they will be left empty handed.⁶

⁴ Office of Information Policy, Department of Justice, *Summary of Annual FOIA Reports for Fiscal Year 2015*, available at https://www.justice.gov/oip/reports/fy_2015_annual_foia_report_summary/download. (The Department A record number of FOIA requests, 769,903, were processed in 2015, and the administration boasts a 92.7 percent “release rate” defined as records released in full or part for requests processed for a disclosure determination. That doesn’t take into account all requests, including the ones that are turned down because they can’t find the documents. Average processing time for simple requests was at 23 days, longer than 20.5 days reported in 2014 but better than the 28-day average of 2010. Average time for processing complex requests in 2015 was 121.8 days, about three days longer than in 2014).

⁵ Ben Wasike, *FoIA in the Age of ‘Open.Gov’: An Analysis of the Performance of the Freedom of Information Act Under the Obama and Bush Administrations*, GOV. INFO. Q. (in press).

⁶ Ted Bridis & Jack Gillum, *U.S. Government Sets Record for Failures to Find Files When Asked*, ASSOCIATED PRESS, Mar. 18, 2016, <http://bigstory.ap.org/article/697e3523003049cdb0847ecf828afd62/us-govt-sets-record-failures-find-files-when-asked>

In other words, the federal government is getting faster and more efficient at working in secret and thwarting Americans who seek information to which they are entitled. I do not think that is progress.

3. 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.

President Obama has said he is the most transparent president ever. Journalists say he is the most secretive. Both, history shows, are wrong. Clearly, access to federal information is far better than it was before FOIA, when the Administrative Procedure Act of 1946 let agencies determine what they would release or hide.⁷ The United States has had far worse periods of secrecy than today, including during the Civil War when the president controlled the wire services, jailed two dozen journalists, and shut down newspapers. As well, President Obama's transparency record has not demonstrated an improvement from presidents in recent history, including, to the surprise of journalists and access advocates, that of George W. Bush.

This really goes beyond a single president. This is about the culture of our government, our nation. Some access scholars say transparency in the United States is cyclical, peaking in the years of the mid '70s through the late 1990s with the adoption of a strong FOIA amendment and better state laws. The government faced a disgruntled public that demanded accountability, just as FOIA was enacted in response to residual secrecy stemming from World War II and the Cold War.

Today, the American public again seems disgruntled with government (and with the media, as well), based on voter response to polarizing rhetoric in the presidential campaign. Regardless who is elected the next president, the executive branch will continue to resist outside control through mandated information disclosure. It is incumbent upon Congress, the courts, the media, and most important the citizenry to hold government accountable, and a stronger more effective FOIA is central to that effort.

⁷ David Cuillier, *The People's Right to Know: Comparing Harold L. Cross' pre-FOIA world to post-FOIA today*, COMM. L. & POL'Y (in press).

Chairman Chuck Grassley
U.S. Senate Committee on the Judiciary
Questions for the Record
Prof. Margaret Kwoka

Hearing: “FOIA at Fifty: Has the Sunshine Law’s Promise Been Fulfilled?”

1. President Obama claims that his is the most transparent in history. Most recently, at the NATO Summit press conference on July 9, 2016, President Obama said, “We’re processing more Freedom of Information Act requests and doing so faster than ever before.” Yet, the Associated Press reported earlier this year that the Obama Administration set a new record in 2015 for failing to fulfill FOIA requests.
 - a. Is the President’s claim of “processing more Freedom of Information Act requests and doing so faster than ever before” an accurate measure of government transparency? Why or why not?
2. 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.