

U.S. Senator Chuck Grassley • Iowa

Ranking Member • Senate Judiciary Committee

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Statement of Senator Chuck Grassley of Iowa
Ranking Member, Senate Committee on the Judiciary
“The Freedom of Information Act: Safeguarding Critical Infrastructure
Information and the Public’s Right to Know.”
Tuesday, March 13, 2012

Mr. Chairman, thank you for holding this hearing during Sunshine Week.

Open government and transparency are essential to maintaining our democratic form of government. Our Founding Fathers knew this, as James Madison once said -- “a people who mean to be their own governors must arm themselves with the power which knowledge gives.”

The Freedom of Information Act codifies this fundamental principle which our Founders valued so dearly. So it’s important to talk about the Act and the need for American citizens to be able to obtain information about how their government is operating.

Although it’s Sunshine Week, I’m sorry to report that contrary to President Obama’s proclamations when he took office, after three years, the sun still *isn’t* shining in Washington, D.C.

Based on my experience in trying to pry information out of the executive branch, I’m disappointed to report that agencies under the control of President Obama’s political appointees have been more aggressive than ever in withholding information from the public and from Congress.

There’s a complete disconnect between the President’s grand pronouncements about transparency and the actions of his political appointees.

On his first full day in office, President Obama issued a memorandum on the Freedom of Information Act. In it, he instructed executive agencies to
“adopt a presumption in favor of disclosure, in order to renew their commitment to the principles embodied in FOIA, and to usher in a new era of open Government.”

Unfortunately, it appears that in the eyes of the President’s political appointees, his proclamations about open government and transparency -- are merely words, which can be ignored.

Indeed, FOIA requestors appear to have reached the same conclusion. For example, when recently asked about President Obama and FOIA, Katherine Meyer, an attorney who's been filing FOIA cases since 1978, said, that the Obama administration

“is the worst on FOIA issues. The worst. There's just no question about it... This administration is raising one barrier after another. ... It's gotten to the point where I'm stunned — I'm really stunned.”

The problem is more than just a matter of backlogs with answering FOIA requests. Based on investigative reports, we've learned of inappropriate actions by the President's political appointees.

In March of last year, two weeks after this Committee held a hearing on FOIA, the House Committee on Oversight and Government Reform released a 153-page report on its investigation of the political vetting of FOIA requests by the Department of Homeland Security. The committee reviewed thousands of pages of internal emails and memoranda and conducted six transcribed witness interviews.

The committee, under Chairman Issa, learned that political staff under Secretary Napolitano corrupted the agency's FOIA compliance procedures, exerted pressure on FOIA compliance officers, and undermined the federal government's accountability to the American people. The report's findings are disturbing. I'll just summarize four of them.

First, the report finds that by the end of September 2009, copies of all significant FOIA requests had to be forwarded to Secretary Napolitano's political staff for review. The career staff in the FOIA office weren't permitted to release responses to these requests without approval from political staff.

Second, career FOIA professionals were burdened by an intrusive political staff and blamed for delays, mistakes, and inefficiencies for which the Secretary's political staff was responsible. The Chief Privacy Officer, herself a political appointee, did not adequately support and defend career staff. To the contrary, in one of her emails, she referred to her career staff as “idiots.”

Third, political appointees displayed hostility toward the career staff. In one email, political staff referred to a senior career FOIA employee as a “lunatic” and wrote of attending a FOIA training session organized by the career staffer for the “comic relief.” Moreover, three of the four career staff interviewed by the committee have been transferred, demoted, or relieved of certain responsibilities.

Finally, the report finds that the Secretary's office and the General Counsel's office can still withhold and delay significant responses. Although the FOIA office no longer needs an affirmative statement of approval, the Secretary's political staff retains the ability to halt the release of FOIA responses.

The conduct of the political appointees at Homeland Security involved the politically motivated withholding of information about the very conduct of our government from our citizens. In particular, it was the withholding of information about the administration's controversial policies and about its mistakes. This was a direct violation of the President's orders.

I'm disappointed that there wasn't more coverage of Chairman Issa's report and the inappropriate conduct by political appointees at Homeland Security. I'm also disappointed that the Justice Department hasn't conducted an investigation of this scandal.

I have to say that I'm a bit surprised that some open government and privacy groups appear to be accepting the dramatic regulatory power that Homeland Security and Secretary Napolitano will have under the Lieberman-Collins' cybersecurity bill and under President Obama's proposal. Given the FOIA scandal at Homeland Security, I'd have thought that they'd have more reservations.

I'm also sorry to say that the Department of Homeland Security isn't alone when it comes to questionable actions. Recently, the National Security Archive gave its annual Rosemary Award to the Department of Justice for the worst open government performance in 2011.

The charges the Archive makes against the Justice Department include:

- (1) proposing regulations that would allow the government to lie about the existence of records sought by FOIA requesters, and that would further limit requestors ability to obtain information;
- (2) using recycled legal arguments for greater secrecy, including questionable arguments before the Supreme Court in 2011 in direct contradiction to President Obama's presumption of openness; and
- (3) backsliding on the key indicator of the most discretionary FOIA exemption, Exemption 5 for deliberative process. In 2011, the Justice Department cited Exemption 5 to withhold information 1,500 times. That's up from 1,231 times in 2010.

According to the Archive, the Justice Department edged out a crowded field of contending agencies that seem to be in "practical rebellion" against President Obama's open-government orders.

So there's a disturbing contradiction between President Obama's grand pronouncements and the actions of his political appointees. The Obama administration doesn't understand that open government and transparency must be about more than just pleasant sounding words in memos. Ultimately, the President is responsible for the conduct of his political appointees, especially after three years in office. Both he and Attorney General Holder certainly know what's been going on.

Throughout my career I've actively conducted oversight of the Executive Branch regardless of who controls the Congress or the White House.

Open government isn't a Republican or a Democrat issue. It has to be a bipartisan issue. It's about basic good government and accountability—not party politics or ideology.

I started out my remarks by quoting James Madison, the Founding Father who is one of the inspirations for Sunshine Week. Madison understood the danger posed by the type of conduct we're seeing from President Obama's political appointees. He explained that --- “[a] popular government without popular information or the means of acquiring it, is but a prologue to a farce, or a tragedy, or perhaps both.”

So I'm looking forward to hearing the testimony of the witnesses. Their experiences and expertise should be helpful. I want to thank all of the witnesses for coming in and for taking the time to prepare their testimony.

I also want to thank Sargent Ensminger for his service to our country. I'm very sorry about the loss of your daughter. I'm a cosponsor of the Caring for Camp Lejeune Veterans Act, which was introduced by Senator Burr. That bill will help to provide medical treatment and care for service members and their families, who lived at the camp and were injured by the chemical contamination.

Thank you.