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ONE HUNDRED FOURTEENTH CONGRESS

ELIJAH E. CUMMINGS, MARYLAND
RANKING MINORITY MEMBER

Congress of the United States

House of Representatives

COMMITTEE ON OVERSIGHT AND GOVERNMENT REFORM

2157 RAYBURN HOUSE OFFICE BUILDING

WASHINGTON, DC 20515–6143

MAJORITY (202) 225–5074
MINORITY (202) 225–5051

http://oversight.house.gov

May 8, 2015

Ms. Susan Herman
President
American Civil Liberties Union
125 Broad Street, 18th Floor
New York, NY 10004

Dear Ms. Herman:

The Freedom of Information Act (FOIA) brings needed transparency to government operations, and enables the public to hold its government accountable. However, this tool is only effective if the government meets its statutory responsibility to provide timely responses to information requests. Unfortunately, in Fiscal Year 2014, the Administration set a new record for denying access to records requested under FOIA.[1] According to the Department of Justice's Office of Information Policy, agencies processed fewer requests, invoked exemptions more often, spent more federal dollars on FOIA processing and litigation, and experienced an increase in the backlog of FOIA requests of 55 percent.[2]

The Committee is aware that executive branch agencies use several tactics to deny or delay responses to FOIA requests and FOIA reform is necessary. Agencies sometimes slow-roll responses,[3] create unreasonable requirements for specificity, provide unreasonable fee estimates,[4] and excessively redact information.[5] In some instances, agencies have not responded to requests that simply ask for information about the agencies' own FOIA processes.[6]

The Committee is collecting data to help us understand the extent to which federal agencies are failing to adequately implement government transparency laws. To assist the Committee, we would appreciate your help in identifying specific examples of obstacles you have faced obtaining

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[1] Department of Justice Office of Information Policy, *Summary of Annual FOIA Reports For Fiscal Year 2014* (online at www.justice.gov/sites/default/files/oip/pages/attachments/2015/05/01/fy_2014_annual_report_summary.pdf) (accessed May. 1, 2015).

[2] *Id.*

[3] *See e.g.,* Michael Bastasch, *EPA will take 100 years to fulfill conservative group's request*, Daily Caller, Mar. 12, 2015.

[4] *See e.g.,* J. Pat Brown, *DEA wants $1.4 million before it will begin processing request,* Muckrock, Feb. 5, 2015

[5] *See e.g.,* Lauren Harper, *DOJ Defends Spurious Redactions, Questions Remain about Stellarwind, and Much More*, Nat'l Sec. Archive, Sep. 14, 2015.

[6] *See, e.g.,* Greg Munno, *Key Agencies Flub Response to Simple Request*, The FOIA Project, Apr. 24, 2015, *available at* http://foiaproject.org/2015/04/24/agencies-rated/#more-3175 (last accessed Apr. 30, 2015).

the records you requested. Please send us documentation on your FOIA requests and the responses from agencies which you believe demonstrate failures in the FOIA process, such as:

1. Excessive or inappropriate redactions;
2. Lengthy delays;
3. Administrative closures (closures made by an agency without requester consent);
4. Requests to narrow or otherwise limit the scope of the request;
5. Delayed appeals or refusals to mediate;
6. Unreasonable denial of fee waivers; and,
7. Any other barrier to accessing disclosable agency records.

Please include the FOIA case number, if one was assigned, and all associated correspondence to or from the agency.

Participation in the Committee's effort to collect data on FOIA requests is entirely voluntary. Any documents or information you choose to share with the Committee will be used for oversight of federal agencies' compliance with FOIA laws. To best assist the Committee, please provide any responsive documents you are willing to share as soon as possible, but no later than 5:00 p.m. May 19, 2015.

When producing documents to the Committee, please deliver production sets to the Majority staff in Room 2157 of the Rayburn House Office building and to the Minority staff in Room 2471 of the Rayburn House Office Building. The Committee prefers, if possible to receive all documents in electronic format. You may submit a response by email to foia@mail.house.gov.

Thank you for your attention to this matter. Please contact Katy Rother of the Majority staff at (202) 225-5074 with any questions about this request.

Sincerely,

Jason Chaffetz
Chairman

cc: The Honorable Elijah E. Cummings
Ranking Member

Responding to Committee Document Requests

1. In complying with this request, you are required to produce all responsive documents that are in your possession, custody, or control, whether held by you or your past or present agents, employees, and representatives acting on your behalf. You should also produce documents that you have a legal right to obtain, that you have a right to copy or to which you have access, as well as documents that you have placed in the temporary possession, custody, or control of any third party. Requested records, documents, data or information should not be destroyed, modified, removed, transferred or otherwise made inaccessible to the Committee.

2. In the event that any entity, organization or individual denoted in this request has been, or is also known by any other name than that herein denoted, the request shall be read also to include that alternative identification.

3. The Committee's preference is to receive documents in electronic form (i.e., CD, memory stick, or thumb drive) in lieu of paper productions.

4. Documents produced in electronic format should also be organized, identified, and indexed electronically.

5. Electronic document productions should be prepared according to the following standards:

   (a) The production should consist of single page Tagged Image File ("TIF"), files accompanied by a Concordance-format load file, an Opticon reference file, and a file defining the fields and character lengths of the load file.

   (b) Document numbers in the load file should match document Bates numbers and TIF file names.

   (c) If the production is completed through a series of multiple partial productions, field names and file order in all load files should match.

   (d) All electronic documents produced to the Committee should include the following fields of metadata specific to each document;

   BEGDOC, ENDDOC, TEXT, BEGATTACH, ENDATTACH, PAGECOUNT,CUSTODIAN, RECORDTYPE, DATE, TIME, SENTDATE, SENTTIME, BEGINDATE, BEGINTIME, ENDDATE, ENDTIME, AUTHOR, FROM, CC, TO, BCC, SUBJECT, TITLE, FILENAME, FILEEXT, FILESIZE, DATECREATED, TIMECREATED, DATELASTMOD, TIMELASTMOD, INTMSGID, INTMSGHEADER, NATIVELINK, INTFILPATH, EXCEPTION, BEGATTACH.

6. Documents produced to the Committee should include an index describing the contents of the production. To the extent more than one CD, hard drive, memory stick, thumb drive, box or folder is produced, each CD, hard drive, memory stick, thumb drive, box or folder should contain an index describing its contents.

7. Documents produced in response to this request shall be produced together with copies of file labels, dividers or identifying markers with which they were associated when the request was served.

8. When you produce documents, you should identify the paragraph in the Committee's schedule to which the documents respond.

9. It shall not be a basis for refusal to produce documents that any other person or entity also possesses non-identical or identical copies of the same documents.

10. If any of the requested information is only reasonably available in machine-readable form (such as on a computer server, hard drive, or computer backup tape), you should consult with the Committee staff to determine the appropriate format in which to produce the information.

11. If compliance with the request cannot be made in full by the specified return date, compliance shall be made to the extent possible by that date. An explanation of why full compliance is not possible shall be provided along with any partial production.

12. In the event that a document is withheld on the basis of privilege, provide a privilege log containing the following information concerning any such document: (a) the privilege asserted; (b) the type of document; (c) the general subject matter; (d) the date, author and addressee; and (e) the relationship of the author and addressee to each other.

13. If any document responsive to this request was, but no longer is, in your possession, custody, or control, identify the document (stating its date, author, subject and recipients) and explain the circumstances under which the document ceased to be in your possession, custody, or control.

14. If a date or other descriptive detail set forth in this request referring to a document is inaccurate, but the actual date or other descriptive detail is known to you or is otherwise apparent from the context of the request, you are required to produce all documents which would be responsive as if the date or other descriptive detail were correct.

15. Unless otherwise specified, the time period covered by this request is from January 1, 2009 to the present.

16. This request is continuing in nature and applies to any newly-discovered information. Any record, document, compilation of data or information, not produced because it has not been located or discovered by the return date, shall be produced immediately upon subsequent location or discovery.

17. All documents shall be Bates-stamped sequentially and produced sequentially.

18. Two sets of documents shall be delivered, one set to the Majority Staff and one set to the Minority Staff. When documents are produced to the Committee, production sets shall be delivered to the Majority Staff in Room 2157 of the Rayburn House Office Building and the Minority Staff in Room 2471 of the Rayburn House Office Building.

19. Upon completion of the document production, you should submit a written certification, signed by you or your counsel, stating that: (1) a diligent search has been completed of all documents in your possession, custody, or control which reasonably could contain responsive documents; and (2) all documents located during the search that are responsive have been produced to the Committee.

Definitions

1. The term "document" means any written, recorded, or graphic matter of any nature whatsoever, regardless of how recorded, and whether original or copy, including, but not limited to, the following: memoranda, reports, expense reports, books, manuals, instructions, financial reports, working papers, records, notes, letters, notices, confirmations, telegrams, receipts, appraisals, pamphlets, magazines, newspapers, prospectuses, inter-office and intra-office communications, electronic mail (e-mail), contracts, cables, notations of any type of conversation, telephone call, meeting or other communication, bulletins, printed matter, computer printouts, teletypes, invoices, transcripts, diaries, analyses, returns, summaries, minutes, bills, accounts, estimates, projections, comparisons, messages, correspondence, press releases, circulars, financial statements, reviews, opinions, offers, studies and investigations, questionnaires and surveys, and work sheets (and all drafts, preliminary versions, alterations, modifications, revisions, changes, and amendments of any of the foregoing, as well as any attachments or appendices thereto), and graphic or oral records or representations of any kind (including without limitation, photographs, charts, graphs, microfiche, microfilm, videotape, recordings and motion pictures), and electronic, mechanical, and electric records or representations of any kind (including, without limitation, tapes, cassettes, disks, and recordings) and other written, printed, typed, or other graphic or recorded matter of any kind or nature, however produced or reproduced, and whether preserved in writing, film, tape, disk, videotape or otherwise. A document bearing any notation not a part of the original text is to be considered a separate document. A draft or non-identical copy is a separate document within the meaning of this term.

2. The term "communication" means each manner or means of disclosure or exchange of information, regardless of means utilized, whether oral, electronic, by document or otherwise, and whether in a meeting, by telephone, facsimile, email (desktop or mobile device), text message, instant message, MMS or SMS message, regular mail, telexes, releases, or otherwise.

3. The terms "and" and "or" shall be construed broadly and either conjunctively or disjunctively to bring within the scope of this request any information which might otherwise be construed to be outside its scope. The singular includes plural number, and vice versa. The masculine includes the feminine and neuter genders.

4. The terms "person" or "persons" mean natural persons, firms, partnerships, associations, corporations, subsidiaries, divisions, departments, joint ventures, proprietorships, syndicates, or other legal, business or government entities, and all subsidiaries, affiliates, divisions, departments, branches, or other units thereof.

5. The term "identify," when used in a question about individuals, means to provide the following information: (a) the individual's complete name and title; and (b) the individual's business address and phone number.

6. The term "referring or relating," with respect to any given subject, means anything that constitutes, contains, embodies, reflects, identifies, states, refers to, deals with or is pertinent to that subject in any manner whatsoever.

7. The term "employee" means agent, borrowed employee, casual employee, consultant, contractor, de facto employee, independent contractor, joint adventurer, loaned employee, part-time employee, permanent employee, provisional employee, subcontractor, or any other type of service provider.