

**Statement of  
U.S. Department of State**

**Hearing Before the  
House Committee on Oversight and Government Reform  
on  
Examining FOIA Compliance at the Department of State**

**September 8, 2016**

Chairman Chaffetz, Ranking Member Cummings, and Members of the Committee – Good Morning.

Thank you for the invitation to appear before you today. As Under Secretary for Management, I oversee the Department's budget, facilities, security, information technology, consular affairs, and other management functions, including records management and Freedom of Information Act (FOIA) activities. Thank you for your interest in FOIA and advocacy for improving transparency to the public. We share that goal at the Department and work every day to achieve it. I appreciate the opportunity to provide an overview of the State Department's continuing efforts to improve our FOIA processing and administration.

The State Department is committed to openness. Openness is critical to keeping the public informed of the activities of their government. We realize that many U.S. citizens will have little direct contact with the Department except when they apply for a passport. But many Americans have a strong interest in world affairs – from efforts to combat Da'esh, to trade deals with foreign countries, to climate change, and humanitarian efforts in the aftermath of natural disasters. As the lead foreign affairs agency, by sharing information on our programs and policies, we promote public participation in and collaboration with the U.S. Government. We are always seeking ways to improve our openness to the public and encourage the public to participate in the business of U.S. foreign policy.

I look forward to discussing with the Committee two important efforts that undergird our commitment to openness. First, the Department's efforts to preserve a full and complete record of U.S. foreign policy -- the touchstone for preservation is the Federal Records Act. Second, our efforts to ensure that the American public can gain access to that record using the Freedom of Information Act or FOIA.

## **I. PRESERVATION**

### **A. Capturing Email**

The Federal Records Act establishes broad rules for preserving records that reflect official business. The Department works closely with the National Archives and Records Administration (NARA) to ensure that we are capturing records appropriately.

In recent years, the Department has been engaged in an effort to modernize our records systems to reflect changes in technology, and in particular email. Email has fundamentally challenged the systems we have had in place for decades. In August 2012, the Office of Management and Budget (OMB) and the National Archives and Records Administration (NARA) mandated Federal agencies to manage all email records in an electronic format by December 31, 2016. I am pleased to say that we are on track to meet that mandate.

In 2013, the Department formed the Electronic Records Management Working Group to address issues with the growth of electronic records and to seek solutions to manage this information. This group is specifically tasked with overseeing the Department's efforts to meet the OMB and NARA mandate for federal agencies to manage records electronically. I am pleased to note that we are on schedule to meet the December 2016 deadline for managing email records electronically. In 2014, for example, the Department announced that it was adopting the NARA-approved Capstone approach to preserving emails. Under this approach, we began capturing the emails of senior leadership in early 2015 and have since expanded the program to over 688 senior officials. We anticipate deploying a tool to search these captured materials by the end of this year.

Over the past two years, I have issued a number of Department-wide reminders related to records management. In August 2014, I reminded senior officials about their records management responsibilities. A similar reminder to all employees went out two months later reiterating and underscoring each employee's responsibilities for records management. In 2015, I reminded employees of policies regarding the use of non-official email accounts. Early this year, the Secretary sent a Department-wide notice reminding employees about their FOIA-related responsibilities and need for transparency. These reminders are in addition to the standing rules and regulations contained in our Foreign Affairs Manual and Handbook. We take these obligations seriously.

Email remains a popular form of communication, I would like to note that it is not the only way the Department records its business – we have always had an extensive process to record senior Departmental decisions including memoranda and cables. For instance, all official policy memos are formally archived – these documents record the Department's formal decisions, recommendations, interagency policy discussions, and senior meetings with foreign leaders. They have been and will continue to be a critically important part of our FOIA searches.

## B. Training

The Department is also taking additional steps to train our employees on how to preserve records properly.

The Department has had an online records management training course since 2009, and the Bureau of Administration website contains a significant amount of reference material including contact information for questions or briefing requests.

We constantly reevaluate our training and guidance to incorporate evolving best practices and in light of revised Government-wide laws, regulations, and guidance. For example, NARA has issued some of its most relevant guidance on email in just the last three years. The Department has worked to incorporate NARA guidance into our records management practices and to keep employees informed on their record-keeping responsibilities.

### C. Transparency Coordinator

Additionally, in order to focus a dedicated, high-level review on these issues, in September 2015, Secretary Kerry appointed Ambassador Janice Jacobs as State's Transparency Coordinator. The Secretary created the Transparency Coordinator position to examine and improve records preservation and transparency systems, including FOIA processing, within the Department.

Specifically, the Transparency Coordinator was charged with leading the Department's efforts to meet deadlines set by OMB and NARA to manage records electronically, and to oversee implementation of the OIG recommendations issued earlier this year.

Historically, information is managed by individuals, embassies and consulates, or bureaus in the Department. Individuals create, file, search, retrieve and archive the data they create. Ambassador Jacobs is helping the Department transition from a 20<sup>th</sup> century paper-based system to an electronic records management system where as many records management functions are automated as possible.

To further improve our FOIA process, as recommended by the Inspector General, Ambassador Jacobs is preparing a Quality Assurance Plan that looks at enhancing staffing, performance standards, technology, and training issues. She has examined resource issues and advocated on behalf of FOIA Office resource requests. The Ambassador is also looking at our FOIA litigation and the most efficient ways possible to handle this growing workload with the resources we have. The combination of an increased number of FOIA requests and expanding number of FOIA litigation cases requires the Department to address current demand while also planning for the future.

The Ambassador is actively engaged with the Department's Electronic Records Management Working Group to make sure that we meet the December 2016 deadline for managing emails electronically, and the December 2019 deadline for managing all permanent records electronically.

She has worked to raise visibility of records management and FOIA Department-wide, including issuing Department-wide guidance. Ambassador Jacobs issued notices on Managing Information and Records in March, and Managing Email in July 2016.

As Transparency Coordinator, her work has focused on four major areas -- governance, technology, training and best practices. I'd like to highlight that she is working with the Bureau of Administration to update our FOIA technology and leading a task force looking at modernizing the Department's information management system. She has contacted 19 federal agencies to discuss their Records Management best practices.

#### D. Inspector General Reviews

In 2015, Secretary Kerry asked our Inspector General to explore these issues to ensure we are doing everything we can to improve and to recommend concrete steps that we can take to do so. The OIG has completed its work, issuing four reports with recommendations to improve our records management and FOIA processes.<sup>1</sup> All of the OIG's recommendations are resolved and we have implemented the majority of them. We are committed to continuing efforts to improve. We look forward to discussing the steps we are taking to address these recommendations.

#### E. Case Study: Former Secretaries' Emails

As you know, in May 2016, the Inspector General released a report on the email practices of five Secretaries of State and, in particular, shortcomings in how emails were preserved in the past. It is clear that the Department could have done

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<sup>1</sup> July 2015: *Potential Issues Identified by the OIG of the IC Concerning the Department of State's Process for the Review of Former Secretary Clinton's Emails under FOIA (ESP-15-04)*;  
January 2016: *Evaluation of the Department of State's FOIA Processes for Requests Involving the Office of the Secretary (ESP-16-01)*;  
March 2016: *Classified Material Discovered in Unclassified Archival Material ESP-16-02*; and  
May 2016: *Office of the Secretary: Evaluation of Email Records Management Cybersecurity Requirements ESP-16-03*

a better job preserving emails of Secretaries of State and their senior staff going back several administrations. We also acknowledge the report's finding that compliance with email and records management guidance has been inconsistent across several administrations. As the report notes, the OIG considers all eight recommendations resolved – meaning that the OIG concurs with the Department's current activities and plans to address the recommendations.

That being said, as a result of concerted efforts to improve, the Department is much better situated today than during the historical periods described in this OIG report. By early 2015, the Department had already taken a number of important steps. For instance:

- As noted in the report, NARA and the State Inspector General agree that past preservation problems of former Secretary Clinton and her immediate staff were “mitigated” by the production of emails to the State Department.
- The Department then worked diligently from May 2015 to February 2016 to release more than 52,000 pages of former Secretary Clinton's emails through monthly Freedom of Information Act (FOIA) releases. Those emails are now a part of the Department's permanent records and available online. We recently received additional Clinton emails from the Federal Bureau of Investigation which we have begun processing.
- As noted above, the Department is automatically archiving Secretary Kerry's emails through Capstone, along with 688 other senior officials.
- We are purchasing new technology for records management to meet the OMB/NARA directed deadline for U.S. Government agencies to manage email records electronically by the end of 2016. We expect the technology will improve our ability to archive email consistent with the Federal Records Act and search email in response to FOIA requests.

## II. Freedom of Information Act

The Freedom of Information Act is a critical component of our commitment to openness. Although we have made great strides in recent years to improve our FOIA record, the State Department faces significant challenges in doing so.

Since Fiscal Year 2008, the Department's FOIA annual caseload has increased by over 300 percent, with new requests rising from 6,000 to over 24,000 per year. As a result, the Department faces a significant FOIA backlog of approximately 30,000 requests – about 17,000 direct requests to the Department and about 13,000 referrals from other agencies to the Department to provide direct responses. I want to be clear: the Department recognizes that this backlog is not acceptable. We do not accept it, and we are working to reduce it.

### A. Tangible Increases to FOIA Commitments

We have increased resources for our FOIA office. The Department allotted \$18 million for these activities in Fiscal Year 2014, \$26.2 million in Fiscal Year 2015, and \$32.5 million was dedicated in Fiscal Year 2016. We are seeing results: In Fiscal Year 2014, we achieved a nearly 23 percent reduction in our appeals backlog by finding ways to streamline our case processing. In Fiscal Year 2015, the Department closed nine of its ten oldest FOIA requests, and the ten oldest FOIA consultations. Over the past year, the FOIA Office added 25 full-time positions and converted 25 part-time positions to full time. This comes at a time when the Department's operations funding has decreased 25% in constant dollar terms since FY-2012.

We are also making a concerted effort to post online the results of many FOIA requests, potentially reducing the need to file new requests for information that is already available. To assist in addressing both current FOIA requests and questions about older and pending requests, the State Department has a dedicated FOIA Requester Service team working hard to answer questions and respond to queries about the status of specific requests. Additionally, a new FOIA public liaison joined the Department in May; contact information for both the Requester Service Center and the Public Liaison is provided on our FOIA website. The most common complaint we receive from the public is related to delays in receiving

timely responses. Not surprisingly, as the number of FOIA requests has increased, so has the number of public inquiries regarding the status of those requests, and we receive such inquiries on a daily basis. Our goal is to do everything we can to complete each request as quickly as possible, with as much responsive information as possible.

Senior Leadership has also emphasized the importance of FOIA. Ambassador Jacobs has worked closely with the Bureau of Administration, which handles FOIA, to identify procedural, bureaucratic, and technological solutions to the challenges we face.

### B. Inherent FOIA Challenges

Notwithstanding our increased efforts, we expect it will take time for the Department to overcome its FOIA backlog. The rate of incoming cases shows no signs of decreasing. In addition, many of these cases are increasingly complex, in the scope of the request and volume of potentially responsive documents that need to be reviewed. The State Department is often the public's first stop for information and documents relating to national security interests. It is our experience that requesters first often come to the Department to request information on any and all national security issues. These requests are often a mixture of complex subject matters regarding terrorism, armed conflicts, foreign government relations, security, and diplomacy.

The complexity is compounded by changes in how we communicate. Until relatively recently, the Department communicated overwhelmingly by official cable and memoranda all of which are organized and easily searchable. Today, the vast majority of Department communications are emails – with over 1 billion messages exchanged per year. Thus, a request for “all” communications on a given topic often captures exponentially more records than prior to the advent of email, and these records must be processed to ensure their release will not harm the many important interests protected by the exemptions to FOIA in 5 U.S.C. § 552(b), including national security concerns. As I will describe, the Department is developing technologies to assist us with this reality.

Finally, the FOIA review process itself is complicated. Especially in light of our national security mission, the Department cannot simply print documents and provide them to the public. Documents must be reviewed and processed. While the overall FOIA process is managed by our FOIA office in the Bureau of Administration, responding to a FOIA request involves other offices. FOIA requests on complex subject matters require multiple searches throughout many of our 275 embassies and consulates across the globe, often involving the review of classified or highly sensitive materials, as well as coordination with other federal agencies. In many of these cases, searches locate voluminous amounts of paper and electronic materials that must be reviewed by State and interagency subject matter experts at various agencies in the U.S. Government. It is the Department's experience that many FOIA requesters of recent years are seeking documents that often relate to contemporary topics (unlike most FOIA requesters of years past who were more focused on historical materials); thus, our FOIA team must consult within State and with other interagency subject matter experts, as well as foreign governments at times, regarding current sensitivities and whether the release of the information would harm U.S. national security, potentially damage relations with a foreign country, or otherwise harm the other important interests protected by the exemptions to FOIA disclosure.

### C. Case Study: Efforts by the Executive Secretariat

The Executive Secretariat is responsible for coordinating the work of the Department internally, communicating between the Department's bureaus and the offices of the Secretary, Deputy Secretary, and Under Secretaries. The Staff of the Executive Secretariat is responsible for records management, tracking and tasking correspondence for the Secretary and other Department of State Principals. Given its place in the Department, the Executive Secretariat provides a useful window into our FOIA challenges: the Executive Secretariat has experienced a significant increase in FOIA and other document requests. For example, the number of search requests it has received in 2016 to date is more than double the number it received in all of 2015. Moreover, an increasing number of FOIA litigation cases have involved extensive and complex searches, which take precedence over routine FOIA searches due to court ordered search and production deadlines.

The OIG's January 2016 report found weaknesses in FOIA processing by the Executive Secretariat; the Executive Secretariat has acknowledged these weaknesses, accepted all the IG's recommendations, and made changes to promote improved FOIA responsiveness.

Steps taken so far include establishing written procedures for FOIA searches, including email searches, increased training of staff by the FOIA Office, and better oversight of the FOIA process including senior review of all FOIA searches, more intensive checking for accuracy, and establishment of metrics and best practices.

Following the OIG's January report, the Executive Secretariat Staff created two new Government Information Specialist positions to manage FOIA and other document searches. Both positions were filled effective June 27, 2016.

The Executive Secretariat has instituted email searches as a standard operating procedure (SOP) in all FOIA searches, with additional training, guidance, and oversight.

- **Training** has been provided to staff of the Office of the Secretary and other 7<sup>th</sup> floor offices including information and instruction on conducting email searches. Six FOIA-specific training sessions have been held by the Executive Secretariat for the Office of the Secretary and other Department Principals in the past year, between November 2015 and August 2016. The Executive Secretariat also provides individual assistance as needed to staff conducting email searches.
- **Written policies and procedures** - SOPs for FOIA searches have been developed for Executive Secretariat managers, government information specialists, and for offices conducting searches. These SOPs contain detailed instructions for searching email records.
- **Oversight** - The Director of the Executive Secretariat Staff oversees all FOIA searches conducted by its staff and reviews and approves all responses to the A Bureau FOIA office. Each search is reviewed by Executive Secretariat managers; a minimum standard was established of 5% of completed searches to

be audited by managers, but in practice, managers spot check approximately 25% of searches.

### III. OTHER DOCUMENT RELEASE PROGRAMS AND INITIATIVES

I would like to also take this opportunity to share with the Committee some of the unique State Department activities, in addition to FOIA, that inform the public about foreign policy, diplomatic relations, and State operations through the release of literally millions of pages of documents. These efforts are also carried out by staff in the Bureau of Administration.

#### A. Website

We urge everyone to visit [FOIA.state.gov](http://FOIA.state.gov). Over the past few years, we have posted over 140,000 documents including documents for which we have received more than one request for the same information. The site is searchable by key word, date, region, etc.

We have continuously striven to enhance our FOIA website, working with constituency requester groups to continuously enhance our site to provide what they need and want. In fact, the National Security Archive has publicly noted that the State Department has one of the best FOIA websites of all federal agencies.<sup>2</sup> Today, we have an interactive site that provides a wealth of information to the public, including the ability to search and access thousands of previously released documents. Later this year, we plan to start posting nearly all of the documents released through FOIA on the website. This will result in a larger volume of posted material on broader ranges of topics than in the past.

#### B. Opening the Historical Record of U.S. Foreign Policy

Decades before the Executive Order 13526 mandate, the Department established a program for the declassification review of its most sensitive permanent historical records, transferring them to the National Archives where

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<sup>2</sup> See <http://nsarchive.gwu.edu/NSAEBB/NSAEBB505/>

they are available to the public. During the past five years alone, we have declassified nearly 26 million pages, bringing the long term total to literally hundreds of millions of pages of declassified foreign policy records available to the public at the National Archives. More than 95 percent of the entire collection was declassified for public access, with the remaining percentage representing mostly the equities of other agencies.

There are approximately 2.3 million permanent historical records available online from State's corporate electronic archive. It is the oldest (dating back to 1973) and only enterprise-wide collection of substantive electronic records documenting a cabinet agency's mission and activities in the Federal government. Millions of cables, diplomatic notes, and other important foreign policy documentation are available online. These actions are consistent with the Department's commitment to openness, as well as its objective to make available to the American taxpayer, the maximum amount of documents related to our country's foreign policy activities.

#### C. Foreign Relations of the United States (FRUS)

The FRUS series is the official documentary historical story of major U.S. foreign policy events and significant diplomatic activities - and the decision making surrounding them. FRUS volumes contain documents compiled by the Office of the Historian not only from the State Department's archives, but from the Presidential Libraries, the Department of Defense, the National Security Council, the intelligence community, and USAID. The series also provides insightful documentary editing. Since the inception of the FRUS in 1861 under Secretary Seward, the State Department has been informing citizens about formerly classified operations and events in our foreign relations - and doing so proactively long before any other entity in the Federal government was releasing such information. Since its inception, the Department has published 526 volumes; with 40 volumes published in the last five years.

#### D. Presidential Libraries

There are 13 Presidential Libraries open to the public that not only provide unique insight into the personal lives of our presidents, but also serve as a

collection of the records related to an administration. The public can request access to these records. The State Department is one of the largest equity holders of records in the Presidential Library system. During the past five years we have processed over 3,600 requests from the Libraries, reviewing over 51,000 pages for release.

#### E. Special Access under Executive Order 13526 and Pre-Publication Review

Executive Order 13526 provides former presidential appointees access to records originated, reviewed, signed or received during their tenure in office. It also allows for them to designate research assistants for this purpose. Many of the Department's former principal officers, including former secretaries, request access to publish books covering their respective tenure in office, thus providing unique insights into events, decision making, people, and diplomacy. As a condition of this access, the State Department reviews manuscripts produced as the result of this access to ensure that there is no classified information in the published product.

#### IV. CONCLUSION

The Department steadfastly operates on the principle of releasing as much information as possible. With all FOIA requests, staff in the FOIA office work tirelessly to process these documents, reviewing them for sensitive information, making redactions as needed, and consulting with other agencies.

The Department is committed to finding ways to streamline the FOIA process to help overcome these challenges. As I said, we are increasing resources and seeking solutions. We look forward to exploring this issue with you today.