

**STATEMENT
OF
THE HONORABLE ALLEN WEINSTEIN
INFORMATION POLICY, THE CENSUS, AND THE NATIONAL
ARCHIVES SUBCOMMITTEE
VERSIGHT AND GOVERNMENT REFORM COMMITTEE**

**WEDNESDAY, SEPTEMBER 17, 2008
2154 RAYBURN HOB
2:00 P.M.**

Good morning, Mr. Chairman and Representative Turner, I am Allen Weinstein, the Archivist of the United States. I am pleased to appear before you today to discuss the proposed Office of Government Information Services. The Office of Government Information Services was established by the Open Government Act of 2007 (P.L. 110-175), which is similar to H.R. 1309, introduced by Chairman Clay, and which passed the House on March 14, 2007 by a vote of 308 to 117.

The Open Government Act of 2007 (P. L. 110-175) which amended Title 5 of the United States Code, and the House bill are quite similar in the provisions for the Office of Government Information Services, and I will limit my comments today to the responsibilities of that office. As you know, in the FY 2008 Budget Submission to Congress, the Administration requested that Congress transfer the responsibilities of the Office of Government Information Services to the Justice Department. The Administration strongly supports measures to ensure the timely and fair resolution of Freedom of Information Act (FOIA) requests. However, as you know, in its FY 2009 budget submission to Congress, the Administration has taken the position that most of the proposed functions of the Office of Government Information Services (OGIS) are duplicative of activities within the Department of Justice (DOJ), and therefore believes that only DOJ, as the Government's lead on FOIA issues and mediation in legal matters, is better-situated to successfully mediate issues between requestors and the Federal Government. House and Senate Appropriations Subcommittees have indicated

disagreement with that request, although none of those bills has become law, and the issue remains unsettled for the moment.

As you may also know, Archives officials met with Senator Cornyn's staff and others during the drafting process of Open Government Act, including discussing whether the National Archives was the appropriate agency to house the Office of Government Information Services. We candidly explained our resistance to being given a new mission we are not well positioned to fulfill and do not directly relate to our core mission. Moreover, we made clear that should we nonetheless be given this responsibility, we would not be able to commence until we had received specific funding for it.

Should it be resolved that the responsibility of this office falls to the National Archives and Records Administration, we will do everything we can to follow the letter of the law and the intent of Congress to create an office that would assist in seeking to resolve disputes between agencies and individuals requesting information from their government.

The world of Freedom of Information requests can be a complex one. I know from personal experience on both sides of the fence. I was one of the first Americans to file a Freedom of Information Act lawsuit following passage of the 1974 amendments, and today I oversee the National Archives' responsibility for responding to well over one million requests a year from the public for information from my agency. Some of those requests require that the public's right to information must be balanced with the need to protect certain kinds of information.

The Freedom of Information Act recognizes this balancing act by providing nine exemptions for withholding information. It is a testament to the quality of that legislation that those exemptions still serve us well today. In the intervening years since the passage of the Freedom of Information Act the public awareness of its right to access, and the bureaucracy necessary to service that right have grown significantly. Many of the issues addressed by your bill, Mr. Chairman, and Public law 110-175 are a direct result of that growth.

Public understanding of how government records are organized and maintained is not strong, even in a government savvy town like Washington DC. That lack of understanding can result in requests that are overly broad, or which lack the specificity to allow the agency to readily search for the records. Similarly, the volume of request, the sensitivity of the records, and the need to consult with other affected agencies all significantly impact the ability of agency FOIA officers to respond in a timely manner. The combination of these pressures can result in misunderstandings.

The easy cases can be resolved with a letter or phone call. Requests can be narrowed and sharpened, and the search process can be made more efficient. The more complicated cases, often involving one or more exemptions, are more difficult to resolve. Agencies handling hundreds of thousands of Freedom of Information requests each year often stub their toes on these more difficult decisions. Sometimes these difficult cases end up in litigation, which is time consuming and expensive both for the government and for the requestor. However, many of these cases are resolved before reaching the courtroom without resort to further litigation because the dialogue between the agency and the requestor in preparation for litigation provides sufficient understanding to allow compromise.

The length of time between a Freedom of Information request received by an agency and documents in the hand of the requestor is also a serious concern both at agencies and within the requestor community. At my own agency, a number of factors complicates this response time.

Freedom of Information Act requests for military records take considerably longer than the 20-day standard if the request is for a record that was lost in the 1973 fire at the National Personnel Records Center and the data must be reconstructed from other sources, or if the record has been borrowed by another agency.

The National Archives has very limited authority to declassify information. The response time to a Freedom of Information request can therefore be lengthy if the records must be referred to another agency for declassification review.

When Freedom of Information requests are submitted to those Presidential Libraries subject to the Presidential Records Act and the Freedom of Information Act, the National Archives must inform both the current and the former Presidents of the records we propose to open and then allow the Presidents an opportunity to review the records prior to release.

Despite these obstacles in fiscal year 2007 we answered 86 percent of our 12,185 Freedom of Information requests in 20 days or less. This result exceeded NARA's performance goal. However, Freedom of Information requests make up only a small proportion of the information requests we receive each year. In FY07 the National Archives answered 1,226,954 written reference requests for access to records among our holdings. These requests seek records that are publicly available and have no restrictions to access. Of the over 1.2 million requests processed, the National Archives and Records Administration answered 820,144 requests within 10 working days.

The number of requests for open archival records does not include the 519,625 items furnished to researchers in the National Archives' reading rooms or the far greater number of telephone inquiries and other matters handled for researchers visiting National Archives facilities.

As you know, Mr. Chairman, I have not begun the task of setting up the formal processes for the Office of Government Information Services. The 2009 President's Budget, which is still pending before Congress, would transfer the functions of the Office of Government Information Services to the Justice Department. The Administration believes that the proposed functions for the new Office of Government Information Services are mostly duplicative of activities already being performed by the Department of Justice, and that the Department of Justice, as the Government's current lead on FOIA

issues and mediation in legal matters, is best situated and empowered to successfully mediate issues between requestors and the Federal Government. Moreover, the President's Executive Order of 2005 is already working to create more efficient FOIA processes and fair resolution of FOIA processes.

Today's hearing will further our efforts to maintain a dialogue. I am committed to working with all relevant parties to help ensure efficient, timely, and fair resolutions to information requests from the public.