



# Department of Justice

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**STATEMENT OF**  
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**BEFORE THE**  
**COMMITTEE ON JUDICIARY**  
**UNITED STATES SENATE**

**ENTITLED**  
**“THE FREEDOM OF INFORMATION ACT:**  
**ENSURING TRANSPARENCY AND ACCOUNTABILITY IN THE DIGITAL AGE”**

**PRESENTED**  
**MARCH 15, 2011**

Testimony of Melanie Ann Pustay,  
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Good afternoon Chairman Leahy, Ranking Member Grassley, and Members of the Committee. I am pleased to be here this morning to address the subject of the Freedom of Information Act (FOIA) and the efforts of the Department of Justice (~~DOJ~~) to ensure that President Obama's January 21, 2009 Memorandum on the FOIA, as well as Attorney General Holder's FOIA Guidelines, are fully implemented. As the lead federal agency responsible for implementation of the FOIA across the government, we at the Department of Justice are strongly committed to encouraging compliance with the Act by all agencies and to promoting open government.

As you know, the Attorney General issued his new FOIA Guidelines during Sunshine Week two years ago, on March 19, 2009. Attorney General Holder's FOIA Guidelines address the presumption of openness that the President called for in his FOIA Memorandum, the necessity for agencies to create and maintain an effective system for responding to requests, and the need for agencies to proactively and promptly make information available to the public. The Guidelines discuss the critical role played by agency Chief FOIA Officers and stress that improving FOIA performance requires their active participation. The Attorney General called on agency Chief FOIA Officers to review their agencies' FOIA administration each year and to report each year to the Department of Justice on the steps taken to achieve improved transparency. These reports were completed for the first time in March 2010, and then again just

last week. Chief FOIA Officer Reports illustrate the broad array of activities agencies have undertaken to improve their administration of the FOIA and to improve transparency overall. Based on our review of both the Chief FOIA Officer Reports and agency Annual FOIA Reports, it is clear that agencies have made real progress in applying the presumption of openness, improving the efficiency of their FOIA processes, reducing their backlogs of pending FOIA requests, expanding their use of technology, and making more information available proactively. While there is always work that remains to be done, for the second year in a row agencies have shown that they are improving FOIA compliance and increasing transparency.

Agencies are meeting the demand for public information by proactively posting information of interest to the public. For example, United States Department of Agriculture's Animal and Plant Health Inspection Service drastically reduced the number of FOIA requests it received in 2010, slashing its incoming requests by 42% after posting a wide variety of agency reports, enforcement actions, and prior FOIA responses. In response to public interest in the Upper Big Branch mine tragedy, the Mine Safety Health Administration created an Upper Big Branch Single Source page on its website, which allowed it to quickly post a substantial volume of information about the mine, including enforcement actions and related records for the eighteen months preceding the accident and updates on the status of MSHA's accident investigation. Despite being overwhelmed with FOIA and media information requests, the Mine Safety and Health Administration was able to provide the mining community and the general public with access to information related to this major accident. Similarly, the Department of the Interior was able to meet public demand for information on the Deepwater Horizon oil spill by creating a special Deepwater Horizon electronic library.

This past fiscal year many agencies were able to reduce their FOIA backlogs. For example, the Department of the Army implemented a Backlog Reduction Project, which included site visits to local subordinate components to determine reasons for backlogs and to offer training on methods to improve efficiency and to gain leadership support for FOIA programs. As a result of these efforts, the Department of the Army was able to achieve a backlog reduction of 68%. Similarly, the Department of Health and Human Services' Center for Medicare and Medicaid Services created a backlog strike force and reduced its backlog by 66%. The Federal Reserve Board cut its backlog in half. Indeed, fifteen of the twenty-five key agencies reduced their backlogs in Fiscal Year 2010, for an overall backlog reduction for that group of agencies. These are just a few of the many examples of notable agency accomplishments that are detailed in agency Chief FOIA Officer Reports which were just posted last week.

Likewise, across the government, there was an overall reduction in the FOIA backlog. This was accomplished despite the fact that the number of FOIA requests made of federal agencies increased, with nearly 600,000 requests made in Fiscal Year 2010, as compared with approximately 550,000 in Fiscal Year 2009.

There was also an increase in the number of requests in response to which documents were released in full. For the twenty-five key agencies the number of requests where records were released in full increased as compared to last year. I am particularly proud to report that the Department of Justice, for the second straight year in a row, increased the numbers of responses to FOIA requests where records were released in full and increased the numbers where records

were released in part. We also improved the average processing time for simple and expedited FOIA requests. All of these things are concrete examples of improvements made to the administration of the FOIA across the government. There is still work to be done, but progress is clearly being made.

My Office, the DOJ's Office of Information Policy (OIP), carries out the Department's statutory responsibility to encourage compliance with the FOIA. We have also been actively engaged from the very start in a variety of initiatives to inform and educate agency personnel on the new commitment to open government and to encourage compliance with the key directives from the President and the Attorney General.

Just two days after the President issued his FOIA Memorandum, OIP sent initial guidance to agencies informing them of the significance of the President's Memorandum and advising them to begin applying the presumption of disclosure immediately to all decisions involving the FOIA. After the Attorney General issued his FOIA Guidelines in March 2009, OIP held a governmentwide training conference which was filled to capacity with over 500 agency personnel attending. To further assist agencies in implementing the new FOIA Guidelines, OIP issued extensive written guidance which we posted on *FOIA Post*, OIP's electronic newsletter which provides FOIA information and guidance to agencies. Significantly, OIP provided agencies with concrete steps to use and approaches to follow in applying the presumption of openness. OIP described ways to apply the foreseeable harm standard and discussed the factors to consider in making discretionary releases.

Beyond these principles applicable to responding to individual FOIA requests, OIP also provided guidance to agencies on achieving transparency in new ways. Further, OIP emphasized

the need to work cooperatively with requesters and to make timely disclosures of information. Lastly, OIP discussed the key role to be played by agency Chief FOIA Officers and encouraged FOIA professionals to work closely with those officials.

OIP included a discussion of the President's and Attorney General's FOIA Memoranda in the 2009 edition of the Department of Justice Guide to the Freedom of Information Act. The Guide to the FOIA is a comprehensive reference volume on the FOIA that is compiled by OIP every two years and serves as the principal resource manual for agency personnel working with the FOIA and for interested members of the public as well.

In addition to issuing written guidance to agencies, since the issuance of the Attorney General's FOIA Guidelines OIP has conducted numerous training sessions specifically focused on the President's and Attorney General's transparency initiative. OIP regularly provides training to agency personnel on all aspects of the FOIA. Those training programs now all include sessions on the new FOIA Guidelines. OIP has also convened two agency working groups, one on technology and the other on FOIA Best Practices. Building on those discussions, OIP has developed a list of FOIA Best Practices which in turn is used as a basis for further training of agency personnel.

OIP has also reached out to the public and the requester community. OIP hosted its Second Annual Requester Roundtable on December 8 last year. Building on the success of our first roundtable, we invited any interested members of the FOIA requester community to meet with OIP and to share their ideas for improving FOIA administration. In response to interest expressed by agency FOIA professionals in being able to attend the Requester Roundtable, and

the enthusiastic response by the requester community to the idea of meeting with those FOIA professionals, OIP decided to hold the first-ever FOIA Requester-Agency Town Hall meeting. Scheduled for March 21<sup>st</sup>, this Town Hall event will bring agency FOIA personnel and frequent FOIA requesters together to exchange ideas, share concerns, and engage in a discussion of common issues.

OIP has engaged in ongoing dialogue with the FOIA requester and open government communities and has found that engagement to be very productive.

For example, in direct response to concerns raised by the requester community concerning difficulties in reaching agency personnel, OIP issued guidance to all agency personnel emphasizing the need for good communication with FOIA requesters and requiring agencies to provide an agency point of contact to all requesters, as well as to take a number of other steps to improve communication with requesters. These simple steps have the potential to go a long way to imbuing a “spirit of cooperation” into the FOIA process, as the President has called for. This encouragement to agencies to increase their interaction with requesters for their mutual benefit has taken root across the government. Many agencies included examples of improved communication with requesters in their Chief FOIA Officer Reports. These training programs and requester outreach activities will be on-going in the months and years ahead.

Last week, the Attorney General approved updated FOIA regulations for the Department of Justice which we hope to publish for notice and comment this week. The revised regulations are simplified and streamlined. They will also serve as a model for all agencies to use in similarly updating their own FOIA regulations.

Each year, all agencies submit to the Department of Justice their Annual FOIA Reports,

which contain detailed statistics on the number of requests and appeals received and processed, their disposition, and the time taken to respond. The Open Government Directive required that agencies post these Annual FOIA Reports in an “open” format. In order to ensure that those “open” formats were consistent across the government and would allow for ready “mashing” of the data contained in the reports, the Department of Justice developed a tool for all agencies to use to convert their Annual FOIA Report into an XML format. By using the same tool, all agency Annual FOIA Reports are now available in a uniform “open” format. As an additional feature, the Department of Justice designed into the tool built-in math checks and other features that alert the agency to issues regarding the integrity of the data that is entered into the various fields. This feature has greatly enhanced the accuracy of all the Annual FOIA Reports. The Department has received very positive feedback from agencies both on this correction feature and on the ease of using the tool. Through this initiative the Department of Justice utilized technology to assist all federal agencies in a key aspect of FOIA administration.

Just yesterday, the Department launched its newest transparency initiative, a new website called FOIA.gov. Combining the Department’s leadership and policy roles in the FOIA, the FOIA.gov website will shine a light on the operation of the FOIA itself. The website has two distinct elements. First, it will serve as a visual report card of agency FOIA compliance. All the detailed statistics contained in agency Annual FOIA Reports will be displayed graphically. The website will make it possible to search and sort the data so that comparisons between agencies and over time can be made. Reports highlighting key measurements, such as the five agencies which processed the most requests or the five agencies with the oldest pending requests, will be routinely posted. It is our hope that FOIA.gov will help create an incentive for agencies to



improve their FOIA performance. The site will also provide a link to each agency's FOIA website which will allow the public to readily locate records that are already posted by each agency, including frequently requested records.

In addition to allowing easy access to the wealth of FOIA data contained in agency Annual FOIA Reports, the FOIA.gov website will serve a second and equally important function. It will be a place where the public can be educated about how the FOIA works, where to make requests, and what to expect through the FOIA process. Explanatory videos are embedded into the site. There is a section addressing frequently asked questions and a glossary of FOIA terms. A wealth of contact information is given for each agency, including their Chief FOIA Officer and all their FOIA Requester Service Centers and FOIA Public Liaisons. Significant FOIA releases are posted on the site to give the public examples of the types of records made available through the law.

The Department of Justice envisions that this website will be a one-stop shop both for reviewing agency compliance with the FOIA and for learning about how the FOIA process works. We plan to continually add features and updates to the site, and so we welcome comments from both the public and from agencies and have established feedback avenues directly on the site.

Looking ahead, agencies submitted their Annual FOIA Reports in February and have just completed their 2011 Chief FOIA Officer Reports. OIP has begun its reviews of both these reports, and will assess where agencies stand in their ongoing efforts to improve compliance with the FOIA. OIP will continue its outreach on the important goal of improving transparency. This will include additional training seminars and further guidance to agencies, specialized training

sessions, as well as one-on-one assistance, and continued outreach to requesters. As I've stated previously, the Department is committed to achieving the new era of open government that the President envisions. We have made progress in the past two years toward that goal, but OIP will continue to work diligently to help agencies achieve even greater transparency in the years ahead.

In closing, the Department of Justice looks forward to working together with the Committee on matters pertaining to the government-wide administration of the Freedom of Information Act. I would be pleased to address any question that you or any other Member of the Committee might have on this important subject.