

*Exposing Corruption* *Exploring Solutions*  
**Project On Government Oversight**

**Testimony of Angela Canterbury, Director of Public Policy  
before the House Committee on Oversight and Government Reform  
on “The Freedom of Information Act: Crowd-Sourcing Government Oversight”  
March 17, 2011**

Chairman Issa, Ranking Member Cummings, and Members of the Committee, thank you for inviting me to testify today, and for your attention to the critical issues of openness in government and the Freedom of Information Act. I am the Director of Public Policy at the Project On Government Oversight (POGO). Founded in 1981, POGO is a nonpartisan independent watchdog that champions good government reforms. Therefore, POGO has a keen interest in protecting the public’s right to know, increasing open government, and expanding access to public information—or, as in the title of this hearing, “crowd-sourcing government oversight.”

It is particularly a pleasure to be here during the 6<sup>th</sup> Annual “Sunshine Week” when we promote open government and celebrate the Freedom of Information Act (FOIA), which for nearly 45 years has been a cornerstone of open government and a hallmark of our democracy. Some might disagree on what kind of information is most important, but we can all agree that the American people have a right to know what their government is doing on their behalf. Still, even as we enjoy a presidential administration and a Congress that embrace the ideal of open government, it is difficult to put into practice.

President Barack Obama has made opening the government a centerpiece in his administration. On his first full day in office, he called upon all federal executive departments and agencies to administer FOIA with a “clear presumption: In the face of doubt, openness prevails.”<sup>1</sup> On that same day he also issued the Memorandum on Transparency and Open Government which states:

My Administration is committed to creating an unprecedented level of openness in Government. We will work together to ensure the public trust and establish a system of transparency, public participation, and collaboration.<sup>2</sup>

The administration has sent a clear message that agencies need to proactively get information to the public and improve the FOIA process. Steps have been taken over the past two years towards meeting the President’s high standard of openness. Just this week, the administration launched

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<sup>1</sup> January 21, 2009, Memorandum from Barack Obama, President of the United States, to Heads of Executive Departments and Agencies, regarding Freedom of Information Act, Federal Register, Vol. 74, No. 15, January 26, 2009. <http://edocket.access.gpo.gov/2009/pdf/E9-1773.pdf> (Downloaded March 16, 2011)

<sup>2</sup> January 21, 2009, Memorandum from Barack Obama, President of the United States, to Heads of Executive Departments and Agencies, regarding Transparency and Open Government, Federal Register, Vol. 74, No. 15, January 26, 2009. <http://edocket.access.gpo.gov/2009/pdf/E9-1777.pdf> (Downloaded March 16, 2011)

several new initiatives, including FOIA.gov and Data.gov/law, both of which have terrific potential for improving public access to information, although we hope that FOIA.gov will become more robust and include more tools for analyzing FOIA implementation and trends over time. These public portals join the ranks of landmark sites such as Data.gov, Recovery.gov, and USASpending.gov. Importantly, all of these initiatives facilitate affirmative disclosure of information that might otherwise have been unavailable except through FOIA requests.

In addition, the Open Government Directive (OGD) has created unprecedented inter-agency cooperation on open government through the Transparency Working Group.<sup>3</sup> The OGD also has spurred a burgeoning open government infrastructure in many agencies, especially where cross-departmental teams have been established to design, implement, and improve upon their Open Government Plans. In addition to requiring agencies to identify and release high-value datasets and make other affirmative disclosures, several of these plans include activities and goals that are directly related to FOIA, particularly in reducing backlogs and encouraging proactive disclosure.<sup>4</sup>

## Measuring Openness

With all of the emphasis on openness, how are we doing? It depends on the measure. The Obama administration has certainly put unprecedented energy into open government efforts, and many of the benefits are not yet quantifiable. It takes time to build an infrastructure and change the internal culture of agencies that are often hesitant to shine a light on their activities. However, there are some anecdotal success stories, which provide great opportunity for sharing best practices between agencies, such as Department of Health and Human Services' Centers for Medicare and Medicaid Services reengineering their FOIA process towards "intelligent case processing."<sup>5</sup> If the measure is affirmative disclosure of government information, then the government is making leaps in mechanisms and quantity. For example, Data.gov now has more than 300,000 records and growing. Unfortunately, the audit released by OpenTheGovernment.org, in which POGO participated, shows that the agencies are not yet consistently proactively disclosing such high-value information as visitor logs, contract and grant award documents, lobbying reports, and Inspector General reports.<sup>6</sup> Happily, the White House announced this week that at least one measure recommended in this audit is planned—the statutorily mandated reports agencies submit to Congress will be posted on the agencies' open government pages.

However, if FOIA is the yardstick for openness in government, then we haven't gotten very far.

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<sup>3</sup> Congressional Research Service, *The Obama Administration's Open Government Initiative: Issues for Congress*, January 28, 2011, p. 23. <http://www.fas.org/sgp/crs/secretary/R41361.pdf> (Downloaded March 16, 2011)

<sup>4</sup> Memorandum from Peter R. Orszag, Office of Management and Budget Director, to Heads of Executive Departments and Agencies, regarding the Open Government Directive, December 8, 2009. [http://www.whitehouse.gov/sites/default/files/omb/assets/memoranda\\_2010/m10-06.pdf](http://www.whitehouse.gov/sites/default/files/omb/assets/memoranda_2010/m10-06.pdf) (Downloaded March 16, 2011)

<sup>5</sup> Department of Justice, *2010-2011 Agency FOIA Success Stories: Creating a Culture of Transparency*. <http://www.justice.gov/oip/docs/agency-success-stories2011.pdf> (Downloaded March 16, 2011)

<sup>6</sup> OpenTheGovernment.org, "Audit Reveals Lack of Access to Accountability Information," March 15, 2011. <http://www.openthegovernment.org/node/3041> (Downloaded March 16, 2011)

Some mixed, but overall disappointing, reviews were delivered this week through the release of two independent studies: *The Knight Open Government Survey 2011* by The National Security Archive (the Archive)<sup>7</sup> and an analysis by The Associated Press (AP).<sup>8</sup> Both reviews offer a mixed bag of results and deserve closer examination.

The Knight Survey found there was some progress, but also that only a little more than half of the agencies have taken concrete steps to implement the President's FOIA Memorandum. The agencies were instructed to 1) update their FOIA guidance to include the principles outlined in the President's memo, and 2) assess whether they are devoting adequate resources to promptly respond to FOIA.<sup>9</sup> This year's survey, based on responses to a FOIA request submitted to the agencies by the Archive, found the number of agencies that made concrete reforms jumped from 13 to 49. In addition, several agencies provided the Archive with draft and internal emails discussing their response to the President's memo, which suggests these agencies are responding to concerns raised by openness advocates about the widespread withholding of internal documents and staff-level reports under FOIA's (b)(5) exemption covering pre-decisional or deliberative process information.

However, according to the Knight Survey, 49 agencies had made some concrete changes to their FOIA procedures, only 24 agencies actually updated their FOIA guidance, and only 13 had fulfilled both steps required by the President's memo. Seventeen agencies were still working on the Archive's FOIA request 117 business days after receiving it. Four agencies did not even acknowledge they had received the Archive's request; it should be noted that agencies are required by law to send a basic acknowledgement of receipt of requests within 20 business days. In addition, some of the agencies that had made improvements in releasing more information through FOIA started to regress this year. Finally, the Archive's report noted that 12 agencies have overdue FOIA requests that are at least six years old.

The new analysis by the Associated Press also yielded mixed results. The AP found that the 35 largest agencies received 544,360 FOIA requests last year, up nearly 41,000 from the previous year, and responded to nearly 12,400 fewer requests. The agencies refused to release any information for over 1 in 3 requests. To be fair, the reasons for this ranged from cases where the agencies couldn't find any records to those where the requester refused to pay for copies. Agencies only honored around 20 percent of requests for expedited processing on matters deemed particularly urgent or newsworthy. There were also wide disparities in response time at different agencies, especially those agencies working on national security or financial oversight issues.<sup>10</sup>

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<sup>7</sup> The National Security Archive, "Glass Half Full: 2011 Knight Open Government Survey Finds Freedom of Information Change, But Many Federal Agencies Lag in Fulfilling President Obama's Day One Openness Pledge," March 14, 2011. <http://www2.gwu.edu/~nsarchiv/NSAEBB/NSAEBB338/index.htm> (Downloaded March 16, 2011)

<sup>8</sup> "PROMISES, PROMISES: Little transparency progress," *Associated Press*, March 14, 2011. <http://www.washingtonpost.com/wp-dyn/content/article/2011/03/14/AR2011031400630.html> (Downloaded March 16, 2011) (hereinafter "AP FOIA Study")

<sup>9</sup> Memorandum from Rahm Emmanuel, White House Chief of Staff and Bob Bauer, Counsel to the President, to the Agency and Department Heads, regarding the Freedom of Information Act, March 16, 2010. [http://www.whitehouse.gov/sites/default/files/rss\\_viewer/foia\\_memo\\_3-16-10.pdf](http://www.whitehouse.gov/sites/default/files/rss_viewer/foia_memo_3-16-10.pdf) (Downloaded March 16, 2011)

<sup>10</sup> "AP FOIA Study"

On a positive note, the AP confirmed the Archive's findings that the agencies' use of FOIA's (b)(5) exemption decreased last year, although it was still commonly used at the Department of Homeland Security (DHS), which accounted for nearly 80 percent of (b)(5) exemptions across the government.

The AP report also highlights a problem with inter-agency referrals. DHS cut its backlog by 40 percent, in part by referring as many as 3,800 cases each month to the State Department. State ended up with a backlog of twice as many cases as last year (20,500 overdue).<sup>11</sup> Not only is this a shell game, but inter-agency referrals are one of the major reasons for delays. As Adina Rosenbaum, Director of Public Citizen's Freedom of Information Clearinghouse, put it, "From the FOIA requester perspective, when an agency refers records to another agency for processing, they are essentially being sent into a black hole."<sup>12</sup>

The Obama administration also issued some statistics this week. The agencies overall reduced their backlog by more than 10 percent, hitting their target for the second year in a row. The administration also noted that 93 percent of requests processed for exemptions were fully or partially released. The use of Exemption 2 dropped 20 percent and the use of Exemption 5 dropped 26 percent.<sup>13</sup>

Chief FOIA Officers across the government also released their second annual reports.<sup>14</sup> Attorney General Eric Holder's guidance on Obama's Transparency and Open Government Memorandum required Chief FOIA Officers to report on steps taken to fulfill the presumption of openness and improve FOIA operations.<sup>15</sup> While currently it's not easy to download and analyze these reports in the aggregate, the individual FOIA Officer reports should be examined and compared with the independent reports by AP and the Archive to get a fuller picture of the steps actually taken by FOIA offices government-wide.

In sum, the overall picture does not look markedly better for FOIA operations. At American University Washington College of Law this past Monday, Miriam Nisbet, Director of the Office of Government Information Systems (OGIS), noted that many of the problems identified in the 1990s when there was an effort to reform FOIA are not unfamiliar today. She pointed out that delays continue to be a problem: 1 in 5 complaints OGIS received are regarding delays. Other continuing problems for requesters are excessive fees, expensive litigation when the

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<sup>11</sup> "AP FOIA Study"

<sup>12</sup> Statement of Adina Rosenbaum, Staff Attorney, Public Citizen, Director, Freedom of Information Clearinghouse on Administration of the Freedom of Information Act: Current Trends before the Information Policy, Census, and National Archives Subcommittee, Oversight and Government Reform Committee, United States House of Representatives, March 18, 2010. <http://www.fas.org/sgp/congress/2010/031810rosenbaum.pdf> (Downloaded March 16, 2011)

<sup>13</sup> Steve Crowley, "The Freedom of Information Act: What the Numbers Tell Us," *The White House Blog*, March 14, 2011. <http://www.whitehouse.gov/blog/2011/03/14/freedom-information-act-what-numbers-tell-us> (Downloaded March 16, 2011)

<sup>14</sup> Department of Justice, "Reports: Chief FOIA Officer Reports, FY 2011." <http://www.justice.gov/oip/reports-fy2011.html> (Downloaded March 16, 2011)

<sup>15</sup> Memorandum from Eric Holder, Department of Justice Attorney General, to Heads of Executive Departments and Agencies, regarding The Freedom of Information Act (FOIA), March 19, 2009. <http://www.justice.gov/ag/foia-memo-march2009.pdf> (Downloaded March 16, 2011)

administrative process fails, and the concern about media and the public abandoning FOIA as a tool because it just takes too long to be useful.

However, there are many ways in which this Committee can improve the status quo through oversight and legislation.

### **It's Time for FOIA 2.0**

It is time for FOIA to move fully into the digital age, and for the government to begin to make most FOIA requests a relic of the past. The guiding vision for the future should be making all public information publicly available online in a timely manner. This will eventually allow the public and the government to stop spending time, money, and other resources on the process of requesting, responding, and litigation. This Committee can begin to formulate the process and standards for making public information proactively available now by considering something like the POIA—the Public Online Information Act, introduced in the last Congress.

A first step to better serve the public and save money over time would be to automate and put online in a common, searchable, sortable database all FOIA logs, request tracking, and the responses.

In addition, better tools and information for assessing FOIA implementation, and more transparency in decision-making for determinations, including which exemptions the Department of Justice (DOJ) chooses to defend, would greatly improve operations. FOIA.gov is promising, but we hope this Committee will push to make it more robust over time to meet the call of “crowd-sourcing government oversight.”

### **The Problem with Statutory Exemptions**

In addition to the nine permanent exemptions to FOIA, there are hundreds of statutory exemptions pursuant to FOIA's Exemption b(3), known as statutory exemptions or b(3)s.<sup>16</sup> POGO has long been concerned about the proliferation and the scope of these statutory exemptions, as well as the lack of oversight. Any exemption to FOIA requires very careful consideration of the balance between the public's right to know and other interests. However, for years there was little oversight of laws created to withhold records from the public—legitimately or not. Enactment of Senators Grassley and Cornyn's OPEN Government Act of 2007 and OPEN FOIA Act of 2009 provided for new mechanisms for tracking. The law now requires that b(3) exemptions be specifically cited in legislation. Also, since 2008, agencies have reported statutory exemptions they invoke and how often in their annual FOIA reports.

This Sunshine Week, ProPublica, a non-profit news organization, released an interactive database for tracking statutory exemptions, based on the annual FOIA report data compiled by the Sunshine in Government Initiative, a coalition of journalism and transparency groups. The

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<sup>16</sup> 5 U.S.C. § 552(b)(3) specifically exempted from disclosure by statute (other than section 552b of this title), if that statute— (A) (i) requires that the matters be withheld from the public in such a manner as to leave no discretion on the issue; or (ii) establishes particular criteria for withholding or refers to particular types of matters to be withheld; and (B) if enacted after the date of enactment of the OPEN FOIA Act of 2009, specifically cites to this paragraph.

b(3) exemption is used to withhold seemingly absurd categories of information such as lists of watermelon growers and caves. Among the interesting findings in ProPublica's analysis of the 2008-09 data is that the b(3) exemption most widely used was one protecting information related to losing contract bids (20 agencies reported using this in FY09).<sup>17</sup>

Last year, POGO helped to repeal an extremely broad statutory exemption for the Securities and Exchange Commission (SEC) enacted in the Dodd-Frank Wall Street Reform and Consumer Protection Act. The controversy and ultimate repeal of the secrecy provision known as Section 929I is illustrative of the potential dangers of statutory exemptions that can sweep too broadly, and hopefully also serves as a cautionary tale to agencies which might seek unnecessary exemptions to FOIA.<sup>18</sup>

However, too often b(3) exemptions go completely unnoticed. Though the OPEN FOIA Act requires citation of b(3)s, the use of a simple savings clause can get around the requirement for a citation.<sup>19</sup> Also, there is no official or consistent mechanism for actively tracking these provisions as legislation moves through Congress. This Committee and the Senate Judiciary Committee are not given jurisdiction over every bill that contains an exemption to FOIA. Thus, often it is only due to the courtesy of another committee or a diligent staffer that it is brought to the attention of this Committee before it becomes law.

This Committee must take a close look at statutory exemptions and how they are being used, and determine if they are necessary.<sup>20</sup> This Committee should ensure there is a study to explore options for a mechanism for bringing proposed statutory exemptions to light for full consideration, and to review the scope and utility of existing b(3)s. This Committee also can help to hold the line on proliferating unnecessary statutory exemptions, ensuring they are necessary and narrow in scope. Requiring a study by the Inspector General of a new exemption, as Senator Leahy's amendment to a b(3) in Dodd-Frank did, or adding a sunset clause might help curtail unnecessary exemptions.<sup>21</sup>

### **This Year's Supreme Court Decisions on FOIA**

The Supreme Court has recently affirmed more open government and reaffirmed the intent of Congress to narrowly construe exemptions to FOIA in two high-profile cases: *FCC v. AT&T* and *Milner v. the Department of the Navy*. In *AT&T*, the Court rightfully rejected the arguments that personal privacy applies to any entity other than natural born persons for FOIA purposes.<sup>22</sup>

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<sup>17</sup> Jennifer LaFleur, "FOIA Eyes Only: How Buried Statutes Are Keeping Information Secret," *ProPublica*, March 14, 2011. <http://www.propublica.org/article/foia-exemptions-sunshine-law> (Downloaded March 16, 2011)

<sup>18</sup> Testimony of POGO's Angela Canterbury Before the House Committee on Financial Services regarding Legislative Proposals to Address Concerns Over the SEC's New Confidentiality Provision, September 16, 2010. <http://www.pogo.org/pogo-files/testimony/financial-oversight/fo-fra-20100916.html> (Downloaded March 16, 2011) (hereinafter "POGO Testimony")

<sup>19</sup> Such as "not withstanding any other provision of law."

<sup>20</sup> "FOIA b(3) Exemptions: All Statutes," *ProPublica*. <http://projects.propublica.org/foia-exemptions/statutes> (Downloaded March 16, 2011)

<sup>21</sup> 111<sup>th</sup> Congress, "Restoring American Financial Stability Conference Amendment." <http://pogoarchives.org/m/er/sec-foia-study.pdf>

<sup>22</sup> *Milner v. Department of the Navy*, No. 09-1163, Argued December 1, 2010—Decided March 7, 2011. <http://www.supremecourt.gov/opinions/10pdf/09-1163.pdf> (Downloaded March 16, 2011); *Federal*

In *Milner*, the Court threw out the so-called “High 2,” which was a broad interpretation of Exemption 2 that was intended to cover things too trivial to expose. Exemption 2 covers records “related solely to the internal personnel rules and practices of an agency,” but was eventually expanded by a court decision, and used liberally by agencies to withhold a wide range of documents that might “risk circumvention of the law.” We expect the administration, the agencies and other interests to seek a substitute. But Congress must resist pressure to replace it outright. If there is a demonstrated need to protect information that existing exemptions do not cover, it must be very carefully considered.

Unfortunately, in her decision for the majority, Justice Kagan suggested that a remedy for agencies in lieu of High 2 might be classification. Here POGO agrees with the dissenting opinion where Justice Breyer states, “And both Congress and the President believe the Nation currently faces a problem of too much, not too little, classified material.”<sup>23</sup>

Congress must conduct rigorous oversight to ensure response to this decision does not compound the problem of over-classification.

### **Better Information on How FOIA Is Working**

POGO supports proposals for a study by an independent, bipartisan body of government-wide FOIA practices; the persistent structural problems manifested in delays, backlogs, and other issues; and practices that lead to more withholding than disclosing, such as the use of statutory exemptions. The Sunshine Week, Senators Leahy and Cornyn re-introduced the Faster FOIA Act, which would create such a commission and passed the Senate unanimously in the last Congress. This Committee should work with these Senators to ensure legislation is enacted in this Congress.

We also hope this Committee will take full stock of the state of FOIA as part of the overall efforts to create substantially more openness in our government, and will do so in a strategic and transparent manner.

The FOIA project that Chairman Issa has underway could yield very useful information, helping to provide a more complete picture of how FOIA is and isn’t working. Chairman Issa has asked 180 FOIA offices to provide agency FOIA logs over the past five years, plus “all communications,” including emails, between agencies and requestors for all pending FOIA requests identified in agency FOIA logs that were sent 45 days prior to his letters. This may be the first time searchable logs will leave all government agencies, and if Chairman Issa makes this data transparent and available to the public, there could be tremendous value in isolating problems and tracking inter-agency referrals.

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*Communications Commission et al. v AT&T Inc. et al.*, No. 09–1279. Argued January 19, 2011—Decided March 1, 2011. <http://www.supremecourt.gov/opinions/10pdf/09-1279.pdf> (Downloaded March 16, 2011)

<sup>23</sup> *Milner v. Department of the Navy*, No. 09–1163, Argued December 1, 2010—Decided March 7, 2011. (Justice Breyer, J., dissenting) <http://www.supremecourt.gov/opinions/10pdf/09-1163.pdf> (Downloaded March 16, 2011)

However, we agreed with the initial concerns raised by Ranking Member Cummings and Representatives Connelly and Welch regarding the potential burden on agencies due to the broad scope of the request, particularly the request for “all communications” with requestors.<sup>24</sup> I understand that the Chairman is currently working with the agencies on a case-by-case basis to ensure the request is manageable, which could alleviate this concern. POGO hopes the Chairman will set an example of transparency with this project, both in the process, communications with agencies, and the full complement of responses. Again, we also hope this Committee will help to make it law that FOIA logs be proactively made public and posted online.

Chairman Issa has another high-profile investigation about possible political interference in FOIA request responses at DHS initially reported by the AP in July of last year.<sup>25</sup> If founded, these issues are of great concern—FOIA should never be used for political purposes, and the identity or affiliation of a requester should never impact the response.

POGO also believes the broader question of who is reviewing FOIA requests and why deserves more attention. Certainly the scope of policies at DHS—and other agencies—that allow for review by political appointees or government contractors should be determined, and perhaps independently investigated. It appears from the policies posted on the DHS FOIA Reading Room that a similar policy was in place as early as 2005.<sup>26</sup> Emails obtained by the Electronic Privacy Information Center show that John Sandweg, then-Chief of Staff for the DHS Office of General Counsel, raised a concern with the front office, stating: “I have a concern that contractors are frequently doing substantive reviews to determine what is to be released.”<sup>27</sup>

POGO is likewise concerned. *The Washington Post* reported that TDB Communications of Lenexa, Kansas, helped DHS reduce its backlog under a \$7.6 million federal contract.<sup>28</sup> It should be determined to what extent agencies rely on contractors, whether contractors are making exemption determinations, and whether any agency personnel are reviewing them or if the contractor’s decision is the final say. We hope the Committee will investigate the use of contractors in the FOIA process throughout the government.

In addition, it may be that many agencies have policies where management reviews FOIA requests. On Tuesday, Melanie Ann Pustay, Director of the Office of Information Policy, told the Senate Judiciary Committee that management at the DOJ components are routinely made aware of requests, as has been the case for the more than 20 years she has been at DOJ.<sup>29</sup> At the SEC,

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<sup>24</sup> 112<sup>th</sup> Congress, House Committee on Oversight and Government Reform, Minority, “Oversight Committee Democrats Call on Chairman Issa to Revisit FOIA Investigation,” February 2, 2011. [http://democrats.oversight.house.gov/index.php?option=com\\_content&task=view&id=5176&Itemid=49](http://democrats.oversight.house.gov/index.php?option=com_content&task=view&id=5176&Itemid=49) (Downloaded March 16, 2011)

<sup>25</sup> Ted Bridis, “AP Impact: A political filter for info requests,” July 21, 21, 2010. [http://www.ap.org/foi/foi\\_072110a.htm](http://www.ap.org/foi/foi_072110a.htm) (Downloaded March 16, 2011)

<sup>26</sup> Department of Homeland Security, “FOIA Electronic Reading Room,” last modified on February 3, 2011. [http://www.dhs.gov/xfoia/editorial\\_0424.shtm](http://www.dhs.gov/xfoia/editorial_0424.shtm) (Downloaded March 16, 2011)

<sup>27</sup> John Sandweg, email message to Amy Shlossman and Noah Kroloff, “Re:\*\*\*FRONT OFFICE REVIEW REQUESTED\*\*\*,” December 15, 2009. p.16. [http://epic.org/open\\_gov/foia/OGIS\\_Ltr\\_12\\_08\\_10\\_Appendix\\_1-6.pdf](http://epic.org/open_gov/foia/OGIS_Ltr_12_08_10_Appendix_1-6.pdf) (Downloaded March 16, 2011)

<sup>28</sup> “AP FOIA Study”

<sup>29</sup> Statement of Melanie Pustay, Director, Office of Information Policy, before the Senate Committee on the Judiciary on The Freedom of Information Act: Ensuring Transparency and Accountability in the Digital Age, 112<sup>th</sup>



the Inspector General found that the SEC General Counsel was often involved in both the determinations and appeals of the same requests and recommended an end to this conflict of interest.<sup>30</sup>

We also have concerns about agency management interfering with the independence of Inspectors General in making FOIA determinations. For instance, we have found the regular redacting and wholesale withholding of SEC OIG investigative reports by the Commission's Office of General Counsel.<sup>31</sup> This is troubling because all IGs should have the ability to have FOIA determinations made independent from the agency management they often are criticizing on the release of their products. We hope the Committee will explore this issue further as well.

### **More Open Government Initiatives**

FOIA is the central tool for open government, but there are several other openness issues ripe for legislative reform that can compliment the Act's purpose of shedding light on the workings of the government. POGO supports several bills that would go a long way to increase transparency in government.

The Access to Congressionally Mandated Reports Act introduced in the last Congress is one such bill. Though the administration has announced that agencies will begin to post congressionally mandated reports on their websites, this Committee can help ensure regular and permanent disclosure of these reports and make them more accessible to the public by requiring that they be posted on a centralized website.

Additionally, there are five bills that passed the House of Representatives in the 111<sup>th</sup> Congress on which the Committee should quickly take action:

- Electronic Message Preservation Act (H.R. 1387)
- Federal Advisory Committee Act Amendments of 2010 (H.R. 1320)
- Government Accountability Office Improvement Act of 2010 (H.R. 2646)
- Government Information Transparency Act (H.R. 2392)
- Presidential Library Donation Reform Act of 2009 (H.R. 36)
- Presidential Records Act Amendments of 2009 (H.R. 35)

Additionally, I hope the Committee will consider legislation to standardize and make searchable government spending data so that we can know how taxpayer dollars are being spent.

### **A Word About Secrecy**

Too often, overt secrecy has not only impaired the promise of FOIA but also has put the American people at risk. The tension between secrecy and openness in government continues to

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Congress, March 15, 2011. <http://judiciary.senate.gov/pdf/11-3-15%20Pustay%20Testimony.pdf> (Downloaded March 16, 2011)

<sup>30</sup> Securities and Exchange Commission, Office of Inspector General, *Review of the SEC's Compliance with the Freedom of Information Act* (Report No. 465), September 25, 2009, pp. 18-20. <http://www.sec-oig.gov/Reports/AuditsInspections/2009/465.pdf> (Downloaded March 16, 2011)

<sup>31</sup> "POGO Testimony"

be extremely high. Abuse of FOIA, over-classification, quasi-classification, and suppression of whistleblowers are the most common tools of secrecy. POGO urges the Committee to closely monitor the administration in each of these areas, especially as new policies are promulgated on so-called controlled but unclassified information (CUI) and in response to the WikiLeaks disclosures of classified information.

Additionally, this Committee also must ensure the free speech for those who warn us of waste, fraud, and abuse. We urge you to waste no time in ensuring all federal whistleblowers have safe, legal channels and protections to hold the government accountable to taxpayers by enacting the Whistleblower Protection Enhancement Act.

## **Conclusion**

There are many opportunities for bipartisan collaboration on legislative reform and productive oversight of open government for the House Oversight and Government Reform Committee. POGO hopes you will be vigilant in balancing the public's right to know with other interests.

Naturally, government spending is out of control and this Congress is moving towards slashing budgets to reduce the deficit. However, we hope this Committee will recognize that some short-term investments may be needed to modernize freedom of information to yield long-term savings. Also, we hope the Committee will seek to preserve adequate resources for FOIA offices, particularly at the agencies of high public interest, at OIGIS, and for the nascent open government infrastructure and its initiatives.

Lastly, to fulfill "A Pledge to America," this Congress must begin to proactively disclose congressional information, serving as a model for the new paradigm for FOIA.<sup>32</sup>

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<sup>32</sup> In "A Pledge to America," House Republican candidates pledged "We will fight to ensure transparency and accountability in Congress and throughout government." GOP.gov, "A Pledge to America: The Republican Agenda." <http://pledge.gop.gov/> (Downloaded March 16, 2011)

## **Angela Canterbury, Director of Public Policy, Project On Government Oversight (POGO)**

Angela Canterbury, Director of Public Policy, is an experienced advocate, policy analyst, and public campaign strategist. Angela advances public policies to combat corruption and to promote openness and accountability in government. Last year, Angela was deeply engaged in the successful repeal of a secrecy provision in the Dodd-Frank Wall Street Reform and Consumer Protection Act that would have given the Securities and Exchange Commission an overly broad exemption to the Freedom of Information Act. She also has been instrumental in advancing improvements to the financial regulatory system, lobbying and congressional ethics rules, whistleblower protections, the FOIA, and other open government initiatives. She has testified before Congress and been quoted or appeared in several news outlets. Prior to joining POGO, Angela served as the director of advocacy for Public Citizen's Congress Watch division, and before that she worked with the League of Women Voters of the U.S. Prior to that she worked with democracy, free media, and civil society programs in Ukraine, and was formerly a campaign manager and political consultant. She graduated from the University of North Carolina at Wilmington with a Bachelor of Arts in Economics, with honors and distinction.

Committee on Oversight and Government Reform  
Witness Disclosure Requirement - "Truth in Testimony"  
Required by House Rule XI, Clause 2(g)(5)

Name: ANGELA CANTERBURY

1. Please list any federal grants or contracts (including subgrants or subcontracts) you have received since October 1, 2008. Include the source and amount of each grant or contract.

NONE

2. Please list any entity you are testifying on behalf of and briefly describe your relationship with these entities.

My employer: The Project On Government Oversight  
501(c)(3) (POGO) is an independent, nonprofit  
watchdog that champions good  
government reform.  
I am the Director of Public Policy

3. Please list any federal grants or contracts (including subgrants or subcontracts) received since October 1, 2008, by the entity(ies) you listed above. Include the source and amount of each grant or contract.

NONE

We don't accept government  
or corporate funding.

I certify that the above information is true and correct.

Signature:

Angela Canterbury

Date:

3/16/11