

**Statement of
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**Before the
Subcommittee on Government Management, Finance, and Accountability
Committee on Government Reform
U.S. House of Representatives
Hearing on
“Implementing FOIA [Freedom of Information Act] – Does the Bush
Administration Executive Order Improve Processing?”**

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Mr. Chairman and Members of the Subcommittee:

I am the Director of the Department of Justice’s Office of Information and Privacy (OIP), and I am pleased to be here this afternoon to address the subject of the Freedom of Information Act (FOIA), 5 U.S.C. § 552 (2000 & Supp. III 2003), the principal statute governing public access to Federal government records and information, and the status of the implementation of Executive Order 13,392 (Improving Agency Disclosure of Information). As the President said in his Order, “the effective functioning of our constitutional democracy depends upon the participation in public life of a citizenry that is well informed.”

The Department of Justice is the lead Federal agency for the implementation of the Freedom of Information Act, and it works to encourage uniform and proper compliance with the Act by all agencies through its Office of Information and Privacy.

The Freedom of Information Act and its Government-wide administration have evolved greatly since the time of its enactment four decades ago. A very large role in the administration of the FOIA, for example, is now played by electronic communications and the Internet, which

is something that was entirely unforeseen in 1966 and could barely be envisioned even as recently as ten years ago. Today, the ninety-one Federal agencies that are subject to the FOIA handle many millions of FOIA requests per year, at a cost now approaching 400 million dollars annually, and they work hard to do so with the limited resources that are available to them.¹

This does not mean, of course, that there is not room for improvement. On December 14, 2005, the President issued Executive Order 13,392, entitled "Improving Agency Disclosure of Information." In that Order, the President directed that the Executive branch's FOIA activities should be "citizen-centered and results-oriented," and he instructed each agency to take a number of specific, concrete actions in order to implement this policy. These actions have been taken within individual agencies, of course, but they have been coordinated by the Department of Justice and the Office of Management and Budget (OMB) on a Government-wide basis. I appreciate having this opportunity to describe to the Subcommittee these areas of FOIA activity.

Soon after the President issued his Order, the Department of Justice and OMB disseminated it throughout the Executive branch — to the heads of all departments and agencies as well as to all key FOIA personnel directly — and provided preliminary guidance to agencies regarding it. OMB's guidance, issued on December 30, 2005 by its Deputy Director, highlighted the Executive Order's requirements, drawing immediate attention to its most immediate requirement — its mandate for the appointment of a Chief FOIA Officer at each agency by January 13, 2006 (i.e., within thirty days of the Executive Order's issuance).² The Justice

¹The Federal workforce devoted to the administration of the FOIA throughout the Executive branch amounts in the aggregate to more than 5000 employee work-years.

²See OMB Memorandum M-06-04, available at: <http://www.whitehouse.gov/omb/memoranda/fy2006/m06-04.pdf>.

Department's counterpart guidance memorandum comprehensively discussed the Order's provisions as well.

Shortly after January 13, the Justice Department posted a comprehensive list of all agency Chief FOIA Officers.³ This represented an important step, ensuring that “a Chief FOIA Officer has been designated at a senior level at each agency.”

The President also required that agencies establish FOIA Requester Service Centers and FOIA Public Liaisons to provide information to the public about the status of their FOIA requests, see Exec. Order No. 13,392 at Sec. 2(c), which they immediately began to do.⁴

The President further directed each agency to "conduct a review of the agency's FOIA operations" and to develop — for the agency head's approval — "an agency-specific plan to ensure that the agency's administration of the FOIA is in accordance with applicable law and the policies set forth in section 1 of this order." *Id.* at Sec. 3(a)-(b). The President required that each agency's plan "include specific activities that the agency will implement to eliminate or reduce the agency's FOIA backlog," as well as "concrete milestones, with specific timetables and outcomes to be achieved." *Id.* at Sec. 3(b). These reviews were required to be completed, and each agency's FOIA improvement plan developed, by June 14, 2006 (i.e., six months from the Executive Order's issuance).

³This compilation can be found at the following Web site address:
<http://www.usdoj.gov/04foia/chieffoiaofficers.html>.

⁴Many agencies, of course, were already beginning their Executive Order implementation activities by this time. For example, the Department of Justice held a meeting of the principal FOIA officers of its forty components on December 15, 2005, the day after Executive Order 13,392 was issued.

To best facilitate these critical agency reviews, and the consequent development of individual agency improvement plans, the Executive Branch convened a major conference for all of these newly designated Chief FOIA Officers, and accompanying key FOIA personnel, on March 8. This conference was keynoted by the Associate Attorney General and OMB's Deputy Director for Management. Their remarks were followed by detailed discussions of the Executive Order's provisions and implementation, to ensure that chief FOIA officers would understand fully and comprehensively be able to discharge their responsibilities. A wide range of potential improvement areas was presented for all agencies' consideration, in addition to those identified by the agencies themselves as particularly well suited to their own individual circumstances, as part of their review and planning processes

The following month, on April 13, OMB's Director issued to the heads of departments and agencies a memorandum entitled "Follow-up Memorandum on 'Implementation of the President's Executive Order 'Improving Agency Disclosure of Information.'""⁵ This memorandum emphasized the importance of "ensuring the success of this important Presidential initiative" and reminded agencies that their plans must include "specific activities that the agency will implement to eliminate or reduce the agency's FOIA backlog" and "concrete milestones, with specific timetables and outcomes to be achieved."

Then, as agencies advanced further in their ongoing reviews and planning, the Department of Justice conducted follow-up programs for all agencies, one each month before the deadline.⁶ The Department provided to all agencies formatting guidance, which was ultimately

⁵See OMB Memorandum M-06-12, available at: <http://www.whitehouse.gov/omb/memoranda/fy2006/m06-12.pdf>.

⁶ Additionally, the Department has engaged in public outreach activities regarding the

reflected in the Department own plan,⁷ as a model.⁸

The Department also provided extensive written guidance to all agencies. This guidance, which was issued on April 26 in coordination with OMB, was distributed to all agencies at the first of these follow-up sessions and also has been made available through the Department's FOIA Web site.⁹ It contained discussions of more than two dozen potential improvement areas that were identified for possible inclusion in agency plans; it established a template for the uniform development and presentation of all plans; it included supplemental guidelines on the use of agency annual FOIA reports for reporting the results of Executive Order 13,392's implementation;¹⁰ and it additionally addressed a breadth of questions and guidance points in

Executive Order and its implementation at such forums as those held by the American Society of Access Professionals and the Freedom Forum's First Amendment Center, including a special address on the Executive Order at the International Conference of Information Commissioners that was held in England in May.

⁷See "U.S. Department of Justice Freedom of Information Act Improvement Plan Under Executive Order 13,392," for the Department's full plan which can be found at: <http://www.usdoj.gov/04foia/ourplan.htm>.

⁸The Department established a special Executive Order implementation team for the President's Order, that it made available to all agencies regarding their implementation and to address related questions for these purposes. Further descriptions of the Department's activities in this regard, which began immediately upon Executive Order 13,392's issuance, are contained in the its annual FOIA report for calendar year 2005, which can be found at: <http://www.usdoj.gov/04foia/05rep.htm>.

⁹See *FOIA Post*, "Executive Order 13,392 Implementation Guidance" (posted 4/27/06), found at: <http://www.usdoj.gov/oip/foiapost/2006foiapost6.htm>.

¹⁰Under the President's Order, agencies are to report the results of their implementation of their FOIA improvement plans as part of their annual FOIA reports, which by statute are required to be completed and sent to the Justice Department by February 1 of each year. See 5 U.S.C. § 552(e)(1). Thus, the first formal reports of agencies' results and successes in FOIA improvement plan implementation will be due next February 1.

further aid of the Executive Order's implementation.¹¹

More recently, on July 11, the Department conducted a special training conference for the FOIA Public Liaisons at all Federal agencies, whose numbers total nearly two hundred,¹² in order to review and emphasize their new responsibilities under the President's Order. At this conference, the Department discussed both the explicit roles of FOIA Public Liaisons under the Order (e.g., serving as supervisory officials in relation to agency FOIA Requester Service Centers) and the less obvious but no less important roles that they can perform in support of their agency's Chief FOIA Officer regarding improvement plan implementation and related activities.¹³ Special emphasis was placed upon the importance of current implementation efforts and their timely reporting by all agencies in accordance with the Order's firm February 1, 2007 timetable. The Department also included in this session a presentation by the official who has

¹¹Both the Justice Department's oral and written guidance extensively addressed the larger subject-matter areas of timeliness/backlogs and the increased use of information technology in the processes of FOIA administration. See, e.g., *FOIA Post*, "Executive Order 13,392 Implementation Guidance" (posted 4/27/06) (Potential Improvement Areas #2, #5, #6, #7, #8, #11, #12, #16, #17, #18, #22, #24, and #25).

¹²Under the President's Order, each of the ninety-one agencies that are subject to the Act must maintain at least one FOIA Requester Service Center and one corresponding FOIA Public Liaison. Many agencies, particularly the larger ones that administer the FOIA most efficiently on a decentralized basis, have multiple FOIA Public Liaisons designated. The Justice Department, for example, has thirty-four persons designated as FOIA Public Liaisons under the Order. See "DOJ Components' FOIA Service Centers/Liaisons," which is found at: <http://www.usdoj.gov/04foia/servicecenters.htm>.

¹³The Department also called upon FOIA Public Liaisons to work to ensure that absolutely all personnel at their agencies who work with the FOIA (i.e., even "program personnel" whose primary job responsibilities are not FOIA-related) have been fully educated about Executive Order 13,392's policies and customer-service principles. See *FOIA Post*, "Executive Order 13,392 Implementation Guidance" (posted 4/27/06) (announcing FOIA Public Liaison program for July 11 and, in footnote 26, stressing that the Department would be "urging any agency that has not already done so to conduct an in-house training session on the policies of the executive order for all of its FOIA personnel").

been designated as the Chief FOIA Public Liaison at the Department of Defense (where more than a dozen FOIA Public Liaisons cover DOD's decentralized operations), in order to provide an individual agency perspective on implementation of the President's Order.¹⁴

Finally, the Department worked quite closely with many individual agencies as the June 14 deadline arrived in order to facilitate their timely and comprehensive completion of this requirement. To further this, and to aid the review of all agencies' improvement plans, the Department has compiled these plans and makes them available for convenient public access at a single location on its FOIA Web site. Thus, interested persons can examine all agency FOIA improvement plans under the President's Order side by side, just as they are able to do with the annual FOIA reports that agencies file. In both cases, the Department also has established a standard format for ease of reference.¹⁵

In conclusion, you can be assured that the Department of Justice looks forward to working together with the Subcommittee on matters pertaining to the Governmentwide administration of the Freedom of Information Act, including further Governmentwide activities in implementation of the President's Order. As this Subcommittee considers this relatively new

¹⁴From almost the outset of the implementation of the President's Order, DOD has been a model agency, and has been held out as such, based upon both the speed and quality of its early and sustained implementation efforts.

¹⁵It should be noted in this regard that the Justice Department's formal guidance added a novel element that required agencies to group their improvement plan areas into three time periods, for even further ease of review. See *FOIA Post*, "Executive Order 13,392 Implementation Guidance" (posted 4/27/06) (Part II.F.). Currently, the Government Accountability Office (GAO) has been examining agency FOIA improvement plans, and the Justice Department is pleased to be working especially closely with GAO to facilitate its work in such ways.

subject area of its oversight jurisdiction,¹⁶ it can be confident of the Department's strong and cooperative assistance on all such matters of mutual interest.

I would be pleased to address any question that you or any other Member of the Subcommittee might have on this important subject.

¹⁶Lastly, as regards the FOIA's overall place in the world, there is an aspect of it about which the Subcommittee might also wish to know: Its role as the leading model for similar freedom-of-information laws enacted around the globe. Since 1981, when the Office of Information and Privacy was established, I have met with representatives of what is now a total of more than ninety other nations and international governing bodies interested in the adoption of their own government information access laws (most commonly referred to as "transparency in government" overseas) — and now more than sixty-five nations, covering all continents of the world save Antarctica, have established openness-in-government regimes similar to the FOIA at their national government levels. See *FOIA Post*, "World Now Celebrates "International Right-to-Know Day" (posted 9/28/04); *FOIA Post*, "OIP Gives FOIA Implementation Advice to Other Nations" (posted 12/12/02). It is official United States Government policy to promote the adoption and full implementation of FOIA-like laws in other nations, *see id.*, modeled on our long experience with our law, and the worldwide trend in this direction has rapidly accelerated during the past few years. So the FOIA, and its evolution over the decades, holds significance for the processes of democracy building — and also, in the most recent international trend, fighting corruption — throughout the world.