



**Statement for the Record by  
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**Statement for the House Committee on Oversight and Government Reform,  
Subcommittee on Information Policy, Census and National Archives hearing concerning  
the Freedom of Information Act and Other Disclosure Initiatives**

**March 18, 2010**

I want to thank the subcommittee for holding this hearing during Sunshine Week. Because my schedule would not allow for me to testify in person today, I want to thank the committee for the opportunity to submit this statement for the hearing record. I am extremely proud of what the Department of Homeland Security has accomplished in making itself more open and accountable to the public and I look forward to continuing to make great strides in the future. The following statement outlines a number of our accomplishments. I would be happy to answer any questions you have in writing, and hope to have the opportunity to testify before your subcommittee in the future.

In Attorney General Holder's March 19, 2009 Memorandum on the Freedom of Information Act (FOIA), he stressed that the involvement of the agency Chief FOIA Officer is imperative for improving departmental FOIA programs. Each Chief FOIA Officer is accountable for ensuring his or her agency efficiently and appropriately complies with FOIA, which includes making recommendations to top agency officials regarding any necessary modifications to agency policies, practices, personnel and funding to do so. Those who accept the statutorily mandated role of Chief FOIA Officer must take the obligations associated with the position very seriously.

It is my duty to ensure that the Department of Homeland Security (DHS) embraces the Administration's presumption of openness, and our disclosure program has instituted definitive measures to mandate proactive record posting, adopt the "foreseeable harm" standard, and reduce the DHS request backlog. Through training, coordination calls and meetings, DHS FOIA professionals are working in the spirit of cooperation with the requester community and to ensure that all DHS employees recognize unnecessary bureaucratic hurdles have no place in the 'new era of open Government' that the President has proclaimed.

The DHS FOIA Office is actively implementing sweeping policy changes in support of transparency and open government. Last May, my office issued a department-wide overview memorandum<sup>1</sup> pertaining to FOIA, highlighting the important changes in the application of FOIA under the current Administration. In August 2009, I issued guidance to all operational and support component heads reminding them of their responsibility to embrace this new era of openness and implementing a Department-wide policy of proactive disclosure of several categories of documents.<sup>2</sup> In October 2009, I disseminated further guidance specifically addressing the proactive posting of the Department's senior officials' calendars online.<sup>3</sup> Lastly, during Sunshine Week 2010, I am issuing a department-wide memorandum reminding employees that Sunshine Week, dedicated to open government and government transparency, is an excellent opportunity for DHS to review our FOIA operations and renew our commitment to openness.

## **I. Steps Taken to Reduce the DHS FOIA Backlog**

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<sup>1</sup> Overview of the Freedom of Information Act Memorandum, available at [http://www.dhs.gov/xlibrary/assets/foia/foia\\_overview\\_of\\_the\\_freedom\\_of\\_information\\_act.pdf](http://www.dhs.gov/xlibrary/assets/foia/foia_overview_of_the_freedom_of_information_act.pdf)

<sup>2</sup> Proactive Disclosure and Departmental Compliance with Subsection (a)(2) of the Freedom of Information Act (FOIA) Memorandum, available at <http://www.archives.gov/ogis/dhs-foia.pdf>

<sup>3</sup> Calendar Format for Proactive Disclosure, available at [http://www.dhs.gov/xfoia/editorial\\_0424.shtm](http://www.dhs.gov/xfoia/editorial_0424.shtm)

The FOIA Program at DHS was created at the same time the Department was stood up. The 22 component agencies that were merged into DHS had pre-existing, established FOIA operations. Elements of those decentralized operations continue today. DHS' components are responsible for establishing and maintaining their own FOIA programs and operationally decide whether to establish a centralized or decentralized FOIA program at the component or directorate level.

DHS began its operations with a large, inherited FOIA backlog due to the legacy agencies' backlogs. Additionally, when the new department stood up, it generated a flood of requests because of its status and mission. The result was a 98,396-request backlog at the end of fiscal year (FY) 2006—the largest federal FOIA backlog in history. Despite constraints, and the fact that from 2006 to 2009 the number of total requests to the Department held relatively constant, in the last three years DHS reduced its backlog by over 80 percent. At the end of FY 2009, the DHS-wide backlog was 18,787. As of February 2010, the DHS-wide backlog was 12,038. This incredible progress is a result of the ongoing dedication of the DHS FOIA professionals. To support the backlog elimination effort, I am working with component leadership to ensure the Department's components devote adequate resources to their FOIA programs.

Although the Open Government Directive calls for an annual 10 percent backlog reduction, my office established a 15 percent reduction goal for FY 2010.<sup>4</sup> In order to stay on track to meet this goal, each component strives to hit a monthly processing target, calculated using variables such as the number of requests received per month and the component's processing capacity. Additionally, DHS is striving to close the 10 oldest cases detailed in the FY 2009 Annual FOIA Report.

### DHS FOIA Backlog History<sup>5</sup>

	Number of Backlogged Requests at End of FY 2006	Number of Backlogged Requests at End of FY 2007	Number of Backlogged Requests at End of FY 2008	Number of Backlogged Requests at End of FY 2009
USCIS	89,214	72,048	67,545	16,801
CBP	581	264	4,794	88
CRCL	*	4	5	11
USCG	*	937	1,044	385
FEMA	236	280	544	803
FLETC	0	3	7	36
I&A	95	38	0	8
ICE	7,346	1,069	8	10
MGMT	N/A	2	1	4
NPPD	N/A	8	13	11
US-VISIT	5	1	2	1
OIG	94	91	23	7

<sup>4</sup> M-10-06, Open Government Directive (December 8, 2009), available at [www.whitehouse.gov/omb/assets/memoranda\\_2010/m10-06.pdf](http://www.whitehouse.gov/omb/assets/memoranda_2010/m10-06.pdf)

<sup>5</sup> DHS started collecting backlog information from the components in June 2006. The FY 2006 and FY 2007 numbers above are derived from that data. DOJ required backlog reporting effective FY 2008. The above FY 2008 and FY 2009 information is from DHS *Annual FOIA Reports to the Attorney General*.

	Number of Backlogged Requests at End of FY 2006	Number of Backlogged Requests at End of FY 2007	Number of Backlogged Requests at End of FY 2008	Number of Backlogged Requests at End of FY 2009
OGC	3	*	5	17
OPS	9	2	0	0
PLCY	N/A	12	7	30
PRIV	22	37	22	66
S&T	16	22	6	2
USSS	730	618	504	426
TSA	45	213	349	212
<b>AGENCY OVERALL</b>	<b>98,396</b>	<b>75,649</b>	<b>74,879</b>	<b>18,918</b>

\*Information not provided by the component

## II. Steps Taken to Apply the Presumption of Openness at DHS

The basic purpose of FOIA is to ensure a fundamental principle of a democratic society—that the public has a right to access and be informed about the activities of its government. Under this Administration, agencies are to process FOIA requests with a presumption of disclosure and are further encouraged to make discretionary releases. Thus, even if an exemption would apply to a record, discretionary disclosures are encouraged. If full disclosure of a record is not possible, any portion of that record that is not subject to an exemption will be disclosed. The Department of Homeland Security shows an overwhelming increase in the number of requests where records have been released in full or where records have been released in part when compared with those numbers in the previous year’s Annual FOIA Report.

## III. Steps Taken to Increase Proactive Disclosures at DHS

In accordance with *Transparency and Open Government Memorandum for the Heads of Executive Departments and Agencies* (Transparency and Open Government Memorandum),<sup>6</sup> and in the *Freedom of Information Act Memorandum for the Heads of Executive Departments and Agencies* (FOIA Memorandum), in August 2009, I directed DHS employees to proactively publish the following categories of information:

1. Historical daily schedules of the most senior agency officials (notated to reflect that officials may have deviated from the posted schedule and abridged as appropriate for security and privacy concerns)
2. Executed contracts and grants
3. Management directives and instructions
4. Congressional correspondence under DHS control
5. FOIA logs

<sup>6</sup> Transparency and Open Government Memorandum, 74 Fed. Reg. 4,685 (Jan. 21, 2009) available at <http://edocket.access.gpo.gov/2009/pdf/E9-1777.pdf>.

6. Any records released pursuant to a FOIA request that have been, or are likely to become, the subject of three or more requests<sup>7</sup>

DHS has made significant enhancements to its online FOIA Reading Rooms to support the proactive disclosure initiative. New information is posted to many of the sites on a weekly basis, with over 500 documents proactively disclosed by the Department and more planned in the near future. In addition, the Department has significantly increased its disclosures of 5 U.S.C. § 552(a)(2)(D) documents. The following are examples of proactive disclosures being processed by the Department:

- CBP posted more than 80 documents including Congressional correspondence, contracts, final opinions, FOIA logs, manuals and instructions, policies and procedures, and significant records of interest.
- FEMA is working with its Grants Program Directorate to develop a process to proactively post grant awards.
- FLETC posted its strategic plan, organizational structure, and financial reports. In addition, training material not considered law enforcement sensitive is posted for public use. These include student handbooks, sample tests, and reference materials.
- The Privacy Office (for DHS Headquarters) posted Volumes 8000-11000 of Departmental Directives, as well as FOIA logs for FY 2004-FY 2009.
- ICE posted detention facility reviews, government contracts, 287(g) audits, Intergovernmental Service Agreements (IGSAs), agreements with state and local jails, policy memoranda, as well as their Standard Operating Procedures.
- MGMT provides all DHS Management Directives for posting to the DHS FOIA Reading Room; to date, 181 have been posted.
- OIG is regularly updating its website proactively with management reports, audit reports, inspection reports, FOIA Logs, and procurement-related records. OIG posted the Inspector General's Calendar, OIG contracts, Congressional correspondence, and OIG's FOIA log.
- TSA posted 155 Management Directives and frequently-requested executed contracts. TSA also made available its Claims Management database, which enables the public to view the status and disposition of claims for lost or damaged items.
- USCG posted Management Directives and Instructions and FY 2009 FOIA logs. USCG also recently posted records regarding the following incidents: 1) CG Defender-class response boat mishap in Washington State Investigation, 2) CG 9/11/09 Potomac River response exercise in the District of Columbia Investigation, and 3) Loss of CG Dolphin helicopter in Hawaii Investigation.

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<sup>7</sup> 5 U.S.C. § 552(a)(2)(D).

- USCIS posted Statements of Policy and interpretations that have been adopted, final written determinations of administrative proceedings related to the Immigration and Nationality Act, administrative manuals, operating instructions and handbooks that affect the public, and FOIA Request logs.

By mid-2010, the DHS components intend to implement the following website improvements:

- CBP will add the abridged daily historical schedule of the Commissioner biannually, and will regularly update the frequently requested documents, Congressional correspondence, contracts, final opinions, FOIA logs, manuals and instructions, policies and procedures, and other significant records of interest.
- USCIS will post historical FOIA logs and existing contracts.
- FEMA will develop an electronic test site designed to provide the public information such as contracts that have been requested more than three times in the past year and hyperlinks to HQ Grants and Policies web pages.
- ICE will establish processes to post currently awarded contracts and senior officials' calendars.
- OIG will establish processes to post historical calendars of the IG and Congressional Correspondence Logs on a quarterly basis; and FOIA logs annually.
- OPS will establish processes to post historical FOIA logs and the Director's calendar.
- S&T will post Acting Under Secretary Buswell's and Under Secretary O'Toole's calendar from Aug. 31, 2009, to present when deemed Section 508-compliant.

#### **IV. Steps Taken to Increase Utilization of Technology**

The Government Accountability Office (GAO) audited the Department's FOIA program and issued a report on March 20, 2009, entitled *Freedom of Information Act: DHS Has Taken Steps to Enhance Its Program, but Opportunities Exist to Improve Efficiency and Cost-Effectiveness*.<sup>8</sup> The technological improvements recommended by GAO in the report have already been implemented in varying degrees by the components. Additionally, DHS HQ FOIA is working with the components to ensure consistent application of technological tools. Currently, all of the components receive, track, and process requests electronically.

For example, CBP's FOIA Division began a pilot of an in-house redaction tool for TECS law enforcement records to increase consistency in applying exemption codes office-wide to TECS records. This is a scripting program to allow for redaction within the TECS browser. The

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<sup>8</sup> Freedom of Information Act: DHS Has Taken Steps to Enhance Its Program, but Opportunities Exist to Improve Efficiency and Cost-Effectiveness, available at <http://www.gao.gov/products/GAO-09-260>

system sits “on top” of TECS and allows for consistent exemptions and the ability to update as changes may occur to exemptions applied to TECS data; improves production or processing time; and increases the security of any documents released electronically since there is no text behind the redaction codes applied and, therefore, no way to undo an applied redaction. The system is expected to reduce actual TECS-record processing time of entry and exit records by 50-70 percent. Approximately 150 pages can be processed and redacted in 10-15 minutes versus several hours with other redaction software.

As mentioned above, all components updated their FOIA websites to accommodate increased postings. They have also added elements to improve customer service. My office in DHS headquarters performs regular maintenance of the DHS site, such as keeping components’ contact information up to date, revising the “how to submit” pages to make them more user-friendly, and re-designing the layout of FOIA pages to make them easier to navigate. Ample IT support makes it possible for DHS to regularly update postings, such as the Chief FOIA Officer’s FOIA-related memos, Secretary Napolitano’s calendars, and Congressional correspondence. Each office is responsible for assuring any documents they process and post are Section 508 compliant.

## **V. Steps Taken to Ensure DHS has an Effective System for Responding to Requests**

At the Headquarters level, as the DHS Chief FOIA Officer, I have agency-wide policy responsibility for efficient and appropriate compliance with FOIA. I am assisted by the DHS Deputy Chief FOIA Officer and Director of Disclosure and FOIA, who has responsibility for agency-wide policy development and FOIA/Privacy Act compliance and program oversight. She also provides daily supervision of the DHS Headquarters FOIA Office, housed in the DHS Privacy Office, which processes most Department Headquarters FOIA requests and provides response coordination among components.

Two key positions related to transparency and disclosure at DHS Headquarters are the Associate Director of Disclosure & FOIA Operations and Associate Director of Disclosure Policy & FOIA Program Development. The Associate Director for Operations is responsible for processing FOIA and Privacy Act requests for records maintained by DHS Headquarters offices and coordinating responses involving records from multiple components. The Associate Director for Policy and Program Development is responsible for Department-wide disclosure training, identifying and remedying policy and program deficiencies, serving as the DHS FOIA Public Liaison<sup>9</sup> and managing the DHS FOIA web presence.

At the component level, FOIA operations at DHS are decentralized. Currently, seven operational components and 10 Headquarters components at DHS have appointed FOIA Officers and staff.<sup>10</sup>

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<sup>9</sup> As required by 5 U.S.C. § 552(l).

<sup>10</sup> The seven Operational Components and 10 HQ components with FOIA officers and staff: Transportation Security Administration (TSA), Customs and Border Protection (CBP), Immigration and Customs Enforcement (ICE), United States Coast Guard (USCG), United States Citizenship and Immigration Services (USCIS), and Federal Emergency Management Agency (FEMA), Office for Civil Rights and Civil Liberties (CRCL), Directorate for Management (MGMT), National Protection and Programs Directorate (NPPD), Office of the General Counsel (OGC), Office of Intelligence and Analysis (I&A), Office of Inspector General (OIG), Office of Operations Coordination (OPS), Office of Policy (PLCY), Directorate for Science and Technology (S&T), US-VISIT.

Although the FOIA Officers do not report to the DHS Headquarters FOIA Office, the DHS Headquarters FOIA Office continues its efforts to better coordinate and systematize the FOIA processes throughout the Department.

Examples of steps taken to ensure effective and efficient operations:

- Due to increased online postings, HQ FOIA processors attended DHS hands-on Section 508 of the Rehabilitation Act of 1973, as amended by 29 U.S.C. § 794 (d), compliance training in February 2010. Each processor is responsible for assuring any documents they process are Section 508 compliant if the documents will be posted online.
- Several components, including USCIS and ICE, implemented online tools for customers to access information pertaining to the status and location of their request in the queue.
- The Chief FOIA Officer and her Deputy met with each component FOIA Officer to discuss specific component operational concerns and component progress on implementation of transparency initiatives detailed in Section I.
- The Chief FOIA Officer hosts a bi-weekly FOIA Officer conference call to discuss current processing issues. The calls are a means to proactively resolve any issues that could delay processing of requests and assure that the components have a forum to share ideas and best practices.
- The Associate Director of Disclosure Policy & FOIA Program Development also serves as the DHS FOIA Public Liaison. Handling customer concerns in the Liaison role provides heightened insight into the component FOIA programs. When working the other portion of the job, the Associate Director can address the exposed issues with program development assistance, such as employee training or an operational site evaluation.
- By taking an aggressive approach to proactive disclosure, DHS reduces the number of requests received because the information is already publicly available.

I am very pleased with the progress made by the DHS disclosure program and look forward to even greater improvement in the coming year.