

ONE HUNDRED TWELFTH CONGRESS
Congress of the United States
House of Representatives

COMMITTEE ON OVERSIGHT AND GOVERNMENT REFORM
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February 2, 2011

The Honorable Darrell E. Issa
Chairman
Committee on Oversight and Government Reform
U.S. House of Representatives
Washington, DC 20515

Dear Mr. Chairman:

We are writing to express our support for enhancing the goals of the Freedom of Information Act (FOIA) and to offer to work with you in addressing this important issue in a productive manner. FOIA is one of the most important tools for promoting government transparency, facilitating public understanding of government operations, and shedding light on areas or programs that may be vulnerable to waste, fraud, or abuse.

Although we agree that effective oversight is needed to promote the goals of FOIA, we are concerned that the overwhelming scope of your recent document requests to 180 FOIA offices may have the opposite effect—impairing FOIA compliance rather than enhancing it. We hope we can work together to better focus and refine this request to ensure that the public's right to know is advanced rather than hindered.

Your January 25, 2011, letters were sent to 180 FOIA offices across the federal government. In addition to requesting agency FOIA logs over the past five years, you requested “all communications,” including emails, between agencies and requestors for all pending FOIA requests identified in the agency FOIA logs that were sent 45 days before the date of your letters. You requested this information to “enable the Committee to understand the impact of recent changes to FOIA procedures and to evaluate agencies’ compliance with FOIA.” You asked agencies to respond by February 15, 2011, an unrealistically short deadline for such a sweeping request.¹

¹ See, e.g., Letter from Chairman Darrell E. Issa to Advisory Council on Historic Preservation (Jan. 25, 2011).

A review of publicly available data demonstrates that this request will generate a massive number of documents, most of which will be routine communications between agencies and individuals. According to the Department of Justice, which tracks agency compliance with FOIA, there were 133,295 backlogged requests in Fiscal Year 2008.² In Fiscal Year 2009, this number dropped by over 40 percent, but remained significant at 77,377 backlogged requests.³ Given these totals, it is difficult to estimate how many pages of documents would be responsive to your requests, but it is safe to say it would be in the hundreds of thousands, if not more.

Your requests will produce vast amounts of information, but agency compliance with them could impair FOIA responsiveness to the public. Without a defined focus, your inquiry will place a significant burden on FOIA offices and divert limited staff from processing requests from the public. According to a recent survey of FOIA professionals, insufficient staffing for current FOIA demands is “the greatest impediment” to effective FOIA implementation.⁴ In addition, fifty-four percent of FOIA officials who responded to the survey labeled staffing issues as a “serious” or “very serious” problem.⁵ Our concern is that your request may exacerbate this problem further.

Your letters do not identify a specific purpose in requesting these records other than conducting a general assessment of compliance and a review of “recent changes.” The responses from agencies will include hundreds of thousands of pages that are not necessary to the Committee’s understanding of potential problems with agency compliance, such as initial FOIA requests by private individuals, agency records simply acknowledging receipt of the request, and pro forma interim updates.

FOIA experts have raised additional concerns with the Committee consolidating in a single repository a database with the identities of all FOIA requestors. For example, David Cuillier, Chairman of the Freedom of Information Committee at the Society of Professional Journalists, has stated that it “just seems sort of creepy that one person in the government could track who is looking into what and what kinds of questions they are asking.”⁶ Since your spokesman has confirmed that your “interest is not in the private citizens who make the requests,” it is unclear why the Committee needs the identities of specific FOIA requestors.

² U.S. Department of Justice, *Summary of Annual FOIA Reports for Fiscal Year 2009* (June 2010) (online at www.justice.gov/oip/foiapost/2010foiapost18.htm).

³ *Id.*

⁴ Citizens for Responsibility and Ethics in Washington, *FOIA at the Mid-term: Obstacles to Transparency Remain* (Sept. 29, 2010) (online at www.citizensforethics.org/files/Complete%20FOIA%20Report%2009-29-10.pdf).

⁵ *Id.*

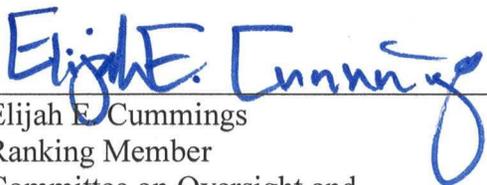
⁶ *Republican Congressman Proposes Tracking Freedom of Information Requests*, New York Times (Jan. 28, 2011) (online at www.nytimes.com/2011/01/29/us/politics/29issa.html).

In order to advance our shared goal of enhancing FOIA, we respectfully suggest that rather than seeking emails and other documents from 180 offices over five years, we begin by taking the following steps:

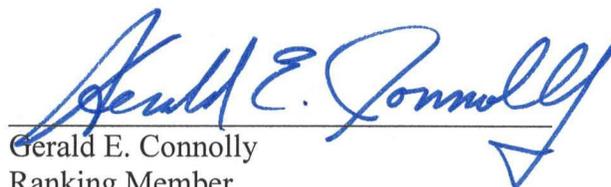
- (1) Request Committee staff briefings from the Department of Justice, which is responsible for tracking agency compliance with FOIA, and the Office of Government Information Services, which is responsible for reviewing agency policies and compliance with FOIA and for recommending FOIA policy changes to Congress.
- (2) Revise your document requests to seek only FOIA logs at this time, without the identities of specific requesters, and after completion of these productions, revisit whether additional information is necessary to assess trends in backlogs, denials, or the use of exemptions.
- (3) Convene a forum to provide FOIA officers with the opportunity to share concerns and discuss avenues for improving their response times and operations.

We believe the proposals above are a more reasonable and efficient way for the Committee to obtain the information it needs without impairing the very FOIA offices we are trying to help. We look forward to working with you on additional solutions to improve FOIA responsiveness. Thank you for considering these views.

Sincerely,



Elijah E. Cummings
Ranking Member
Committee on Oversight and
Government Reform



Gerald E. Connolly
Ranking Member
Subcommittee on Technology, Information,
Intergovernmental Relations, and
Procurement Reform



Peter Welch
Member of Congress