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House of Representatives

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Opening Statement Ranking Member Elijah E. Cummings

Hearing on “Ensuring Transparency Through the Freedom of Information Act”

June 3, 2015

Mr. Chairman, thank you for holding these important hearings on the Freedom of Information Act, which is the cornerstone of our nation’s open government laws.

Thank you also to our agency witnesses for being here today. You have a critical responsibility, which is to make federal records available to the American public as efficiently and effectively as possible. You are also charged with implementing the directive President Obama issued on his first day in office—to implement a new presumption of openness that reverses the policy of withholding information embraced by the Bush Administration.

Your job is also extremely difficult—and getting harder. You, and by implication the President, are being blamed for the increase in FOIA backlogs. But as we heard at our hearing yesterday, FOIA backlogs have increased as a result of cuts to agency budgets and the dwindling number of FOIA personnel forced to process record numbers of incoming requests.

The number of FOIA requests skyrocketed from 2009 to 2014. In 2009, when President Obama took office, there were about 558,000 requests submitted to federal agencies. By 2014, that number rose to more than 714,000—a surge of 28%.

On the other hand, the total number of full-time agency FOIA personnel dropped to its lowest point since President Obama took office. In 2009, the number of full-time FOIA staff at federal agencies was 4,000. In 2014, that number dropped to 3,838—a decrease of about 4%.

It seems obvious that Congress cannot continue to starve federal agencies for resources through budget cuts, staffing reductions, sequestration, and government shut-downs, and then blame those agencies for not being able to do their jobs effectively. If we want FOIA to work, we need to restore adequate funding, staffing, and training so agencies can handle the increasing workloads they will continue to face. But this is not what House Republicans are doing.

Right now, today, down the hall in the Appropriations Committee, Republicans are voting to withhold nearly \$700 million from the State Department’s operational budget—until it improves its document production processes. The operational budget includes the salaries for all of the State Department’s FOIA employees.

Let me say that again. Today—with a record number of FOIA requests and with record low FOIA staffing—the answer from Republicans is to withhold 2/3 of a billion dollars, more

than all State Department FOIA staff salaries combined. How in the world is this supposed to help?

We know there are problems with FOIA, we know there are delays, and we know we must do better. But it is hard to imagine a more counter-productive attack on the FOIA process.

I also take issue with claims that President Obama has not been one of the most aggressive and forward-thinking presidents in history in pressing for a more open government. Those who try to argue that President Bush took the same kinds of unprecedented transparency actions as President Obama must have amnesia. There is simply no comparison.

Beyond ordering the presumption of openness for FOIA, the Obama Administration issued a National Action Plan to establish a consolidated FOIA portal and enhance training for FOIA professionals. It established a FOIA Advisory Committee to improve implementation and increase proactive disclosures of government information.

The Administration implemented a new policy of disclosing White House visitor records. It established Ethics.Data.gov, which posts lobbying disclosure reports, travel reports, and Federal Elections Commission filings all in one place. And it has made enormous amounts of government information available through Data.gov.

Finally, I expect that some of my colleagues will continue their focus on former Secretary of State Hillary Clinton and her emails. So let's review the facts.

On December 5, 2014, Secretary Clinton provided more than 30,000 emails totaling about 55,000 pages to the State Department. The Department has those emails and is currently reviewing them to make them available to the public under FOIA.

This is in sharp contrast to former Secretary of State Colin Powell, who admitted that he used a personal email account for official business all the time. Unlike Secretary Clinton, Secretary Powell did not preserve any of his official emails from his personal account, and he did not turn them over to the State Department.

I am not naïve. I understand the Republican focus on Hillary Clinton as she runs for President. But if we really want to review compliance with FOIA and the Federal Records Act, we should not do so selectively by ignoring facts based on political expediency.

To conclude, there is a major bipartisan step we can take to improve FOIA now. In February, I joined with Representative Issa, our former Chairman, on a bipartisan basis to introduce the FOIA Oversight and Implementation Act. We passed it out of our Committee unanimously several months ago, and I hope we can move forward in a bipartisan way to pass this bill on the House floor and work with the Senate to send it to the President's desk.

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