

**Testimony of Karen L. Neuman, Chief Privacy Officer and Chief FOIA Officer,
Department of Homeland Security, Before the United States House of
Representatives Committee on Oversight and Government Reform on “Ensuring
Agency Compliance with the Freedom of Information Act (FOIA) Part II”**

June 3, 2015

2154 Rayburn House Office Building

Good morning Chairman Chaffetz, Ranking Member Cummings, and distinguished Members of the Committee. My name is Karen Neuman. I am the Chief Privacy Officer and Chief FOIA Officer at the Department of Homeland Security (DHS).¹ My office administers policies, programs, and procedures to ensure that the Department complies with FOIA², the Privacy Act³, and applicable sections of the E-Government⁴ and Homeland Security Act⁵, as amended.

Introduction

I appreciate this opportunity to appear before you today to discuss how DHS implements FOIA. I will also describe what we are doing to improve access under the statute.

The DHS FOIA Enterprise

DHS is composed of several distinct Components, each with unique authorities and categories of records. Therefore, the Department’s FOIA program takes a decentralized approach to meeting its obligations. DHS Components operate their own FOIA offices staffed by FOIA professionals who respond directly to requesters seeking records.

On August 29, 2011, the Secretary of Homeland Security delegated to the Chief Privacy Officer the authority to develop and oversee the implementation of policies within the Department and except as otherwise provided by law, carry out the functions of the agency regarding compliance with FIOA. The DHS Privacy Office coordinates among and oversees DHS Component FOIA operations. The Privacy Office, through its FOIA unit, also processes FOIA requests for most of the Department’s headquarters offices.⁶

¹ 5 U.S.C. § 552.

² 5 U.S.C. § 552.

³ 5 U.S.C. § 552a.

⁴ Pub. L. 107-347, § 208, 44 U.S.C. §101 note.

⁵ 6 U.S.C. § 142.

⁶ The DHS FOIA Office processes the Privacy Office’s initial requests and those for the following 11 offices: Office of the Secretary, Citizenship and Immigration Services Ombudsman, Domestic Nuclear Detection Office,

DHS takes its missions to be open and responsive very seriously. Nonetheless, as I discuss below, there are serious systemic challenges to connecting requesters with the records they seek. I have made addressing these challenges a top priority and would like to highlight some of the initiatives I have put in place to improve FOIA at DHS.

Increased Demand for DHS Records

DHS receives the largest number of FOIA requests of any Federal Department or Agency and produces the greatest number of responses. Since January 2009, DHS experienced a 182 percent increase in the number of FOIA requests received. As reported in our Annual FOIA report to the Attorney General, DHS received 40 percent of all FOIA requests submitted to the Federal Government in fiscal year 2014.⁷ In that twelve-month period, DHS received an unprecedented 291,242 requests. As a result, DHS also has the largest backlog. In fiscal year 2014, the backlog increased from 51,575 to 103,480.

Components that process requests seeking immigration-related records have the largest backlogs in the Department, comprising more than 90 percent of the total DHS backlog. U.S. Citizenship and Immigration Services (USCIS), U.S. Customs and Border Protection (CBP), and U.S. Immigration and Customs Enforcement (ICE) received most of these requests. These Components primarily handle requests seeking immigration records (e.g., copies of the Alien File, entry/exit records, detention, and deportation records).

Key Considerations in Responding to Requests

The DHS Privacy Office has dual responsibilities to protect privacy and promote transparency. Every FOIA request deserves careful consideration in order to properly protect records that should not be released to the public. These records can include the personal information of individuals we may have collected while carrying out the Department's missions, as well as information about law enforcement matters. Law enforcement records may include information about subjects of investigations, victims of crime, and the public at large.

Providing Access to DHS Records under FOIA

The Government Accountability Office (GAO) was asked by Congress to review DHS's processing of FOIA requests. In November 2014, GAO published the report *Freedom of*

Office of the Executive Secretary, Office of Intergovernmental Affairs, Management Directorate, Office of Policy, Office of the General Counsel, Office of Health Affairs, Office of Legislative Affairs, and Office of Public Affairs.

⁷ http://www.dhs.gov/sites/default/files/publications/dhs-chief-foia-officer-reports-fy-2014_0.pdf.

*Information Act, DHS Should Take Steps to Improve Cost Reporting and Eliminate Duplicate Processing*⁸ with the following four recommendations:

1. Finalize and issue an updated DHS FOIA regulation.
2. Improve reporting of FOIA costs by including salaries, employee benefits, non-personnel direct costs, indirect costs, and costs for other offices.
3. Determine the viability of re-establishing the service-level agreement between USCIS and ICE to eliminate duplication in the processing of immigration files. If the benefits of doing so would exceed the costs, re-establish the agreement.
4. Direct USCIS and Coast Guard to fully implement the recommended FOIA processing system capabilities and the Section 508 requirement.

DHS concurred with all four of GAO's recommendations and has taken the following actions to address them:

1. The Department has made significant progress on its draft FOIA notice of proposed rulemaking. We expect to publish the notice of proposed rulemaking in the Federal Register by the end of this fiscal year. We plan to finalize the rule following receipt and consideration of public comment.
2. DHS sought assistance from the DOJ Office of Information Policy in the development and implementation of a policy to ensure that all DHS Components are capturing FOIA costs consistently. As a result of these discussions, my office developed a DHS Freedom of Information Act Office Budget Detail Worksheet. DHS Components will begin to use the Budget Detail Worksheet and provide standardized budget information in June 2015.
3. The Privacy Office established a working group to determine the feasibility of re-establishing a service-level agreement between USCIS and ICE and to determine a course of action that will eliminate duplication in the processing of requests for immigration files. While this issue is being studied, ICE has entered into a contract agreement to clear its current backlog of 56,129 requests that were referred from USCIS. As a result of this effort, since the beginning of the fiscal year the ICE FOIA backlog has decreased 30 percent from 56,129 to 39,149 as of May 8, 2015. The overall goal of this one-year contract project is to eliminate the ICE FOIA backlog by 100 percent by the end of fiscal year 2015.

⁸ <http://www.gao.gov/assets/670/667052.pdf>.

4. On March 16, 2015, the DHS Privacy Office issued a policy memorandum laying out requirements for all DHS FOIA Offices to have a processing system with the recommended capabilities to meet the 508 requirements.⁹

In addition to implementing the GAO recommendations, we have initiated numerous new and innovative measures that are designed to improve FIOA operations in both the near and long term:

- I requested top-to-bottom review of six DHS Component FOIA Offices: CBP; the Federal Emergency Management Agency (FEMA); ICE; the Transportation Security Administration (TSA); the U.S. Coast Guard (USCG); and the U.S. Secret Service (USSS). That review is currently being conducted by the Office of Government Information Services (OGIS) at the National Archives and Records Administration and will conclude with a report to me by September 2015. I expect that as a result of this review, OGIS will recommend best practices for additional Department-wide improvements to FOIA administration.
- The Privacy Office is establishing a blanket purchase agreement contract for FOIA support services. This contract vehicle will be managed by the Privacy Office and funded as needed by the Component FOIA Offices that require additional help.
- At my direction, the Deputy Chief FOIA Officer recently met with colleagues from various agencies FOIA operations, to learn about the types of records that can be made available through technology and other routine procedures and that would not require the submission of a FOIA request.
- The DHS Privacy Office continues to provide to each Component FOIA Office an enterprise-wide FOIA tracking, processing, and reporting case management system with customizable features.
- The DHS Privacy Office is also working with the DHS Office of the Chief Information Officer (CIO) to develop an eFOIA Mobile Application. This Application will replicate the functionality of the DHS public-facing FOIA website for mobile use, including enabling members of the public to submit FOIA requests and check the status of existing requests from a mobile device.

As a result of these measures we are starting to see a slow but steady reduction in the backlog. Since the beginning of the fiscal year, the DHS backlog has been reduced by seven percent from 103,480 to 95,819 as of April 2015.

⁹ <http://www.dhs.gov/sites/default/files/publications/dhs-implementation-of-technology-to-address-foia-processing.pdf>.

Conclusion

Reducing the FOIA backlog has been a top priority since I joined DHS a little over a year and a half ago. Despite the challenges outlined above, I am proud of the administrative and technological infrastructure I have put in place to improve FOIA. This infrastructure is already resulting in a trend in the right direction for reducing the backlog. Nonetheless, there is room for improvement.

As the Attorney General's 2009 FOIA guidance counseled, "the responsibility for effective FOIA administration belongs to all of us." A strong, collaborative relationship with Congress is crucial to the overall success of the Department's FOIA program. I look forward to working with the Committee to further understand and improve our FOIA processes. I welcome your recommendations and look forward to taking your questions.