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Congress of the United States

House of Representatives

COMMITTEE ON OVERSIGHT AND GOVERNMENT REFORM

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WASHINGTON, DC 20515-6143

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<http://oversight.house.gov>

April 11, 2012

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LAWRENCE J. BRADY
STAFF DIRECTOR

The Honorable Eric Holder
Attorney General of the United States
U.S. Department of Justice
950 Pennsylvania Avenue, NW
Washington, DC 20530

Dear Mr. Holder:

I write to express my concern regarding a recent Department of Justice (DOJ) proposal to carve out an expanded role for itself by marketing itself as the sole arbiter in FOIA disputes thus usurping the Office of Government Information Services (OGIS), in apparent contravention of FOIA law. Specifically, DOJ proposed to modify the system of records, "Freedom of Information Act, Privacy Act, and Mandatory Declassification Review Requests and Administrative Appeals for the Department of Justice (DOJ-004)."¹ DOJ's proposal would add language describing the DOJ Office of Information Policy (OIP) "as Ombudsman in disputes between federal agencies and individuals who submit requests under the Freedom of Information Act."² This new definition is prescribed five separate times in DOJ's notice.

DOJ has important but limited statutory responsibilities concerning the Freedom of Information Act (FOIA). These responsibilities include making information about agency FOIA programs publicly available; issuing recommendations and guidelines to agency FOIA offices, and encouraging agency FOIA compliance.³ DOJ's responsibilities under FOIA, however, do not include offering dispute resolution services between agencies and FOIA requesters.

The OPEN Government Act of 2007 established OGIS within the National Archives and Records Administration to act as the official FOIA Ombudsman and to provide services including dispute resolution:

The Office of Government Information Services shall offer mediation services to resolve disputes between persons making requests under [FOIA] and administrative agencies.⁴

¹ *Privacy Act of 1974; System of Records*, 77 Federal Register 16066-16069, March 19, 2012. "Freedom of Information Act, Privacy Act, and Mandatory Declassification Review Requests and Administrative Appeals for the Department of Justice (DOJ-004)."

² *Id.*

³ See Freedom of Information Act, 5 U.S.C. § 552.

⁴ See OPEN Government Act of 2007, P.L. No. 110-175, 121 Stat. 2524.

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OGIS is commonly referred to by Congress as "The Federal FOIA ombudsman." When it created OGIS, Congress explicitly chose to house the new entity at the National Archives and Records Administration.

The language contained in DOJ's proposal of modification clearly contradicts Congress's intent and the language of the OPEN Government Act. The use of the term "Ombudsman" to refer to the DOJ OIP undermines OGIS's official role in FOIA, and will result in confusion for agencies and FOIA requesters wishing to utilize OGIS's services. DOJ's proposal to offer dispute resolution between agencies and FOIA requesters oversteps its statutory authority.

As Chairman of the Committee on Oversight and Government Reform, which is the primary oversight Committee of the U.S. House of Representatives and has legislative jurisdiction over the Freedom of Information Act, I am concerned that this proposed modification will have a negative impact on government transparency and cause unnecessary confusion about the respective roles of DOJ and OGIS under the Act. I therefore ask you to reconsider the proposed modification to comply with current law.

In order to obtain more information about this matter, I ask that you coordinate with my staff to provide a briefing to take place no later than April 20, 2012. In addition, please provide the Committee with the following documents and information for the time period from January 1, 2011, to the present:

- 1) All documents and communications regarding DOJ's development of its March 19, 2012, Privacy Act notice entitled "Freedom of Information Act, Privacy Act, and Mandatory Declassification Review Requests and Administrative Appeals for the Department of Justice (DOJ-004)," including any draft versions of the notice and any internal communications about how the notice was intended to, or would otherwise, affect OGIS's statutorily established FOIA ombudsman role.
- 2) All documents and communications regarding OGIS's statutorily established FOIA dispute resolution authority, including internal DOJ discussions about OGIS's dispute resolution authority and DOJ employee communications with NARA employees about OGIS's dispute resolution authority.
- 3) The federal statute or statutes that you believe would permit DOJ's OIP, or any other component of DOJ, to provide any type of FOIA dispute resolution services.
- 4) The names of the DOJ employees, and any federal contract employees, who were primarily responsible for drafting DOJ's March 19 notice.

Please provide the requested information as soon as possible, but no later than Wednesday, April 25, 2012. When producing documents to the Committee, please deliver separate production sets to both the Majority Staff in Room 2157 of the Rayburn House Office Building and the Minority Staff in Room 2471 of the Rayburn House Office Building. The Committee prefers, if possible, to receive all documents in electronic format.

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The Committee on Oversight and Government Reform is the principle oversight committee of the House of Representatives and may at “any time” investigate “any matter” as set forth in House Rule X. Additionally, the Committee has legislative jurisdiction of public information and records, including FOIA.

An attachment to this letter provides additional information about responding to the Committee’s request. If you have any questions regarding any aspect of this request, please contact Tegan Millspaw or John Zadrozny of the Committee staff at (202) 225-5074. Thank you for your prompt attention to this matter.

Sincerely,

A handwritten signature in blue ink, appearing to read "Darrell E. Issa". The signature is stylized and written over a light blue horizontal line.

Darrell E. Issa
Chairman

Attachment

cc: The Honorable Elijah E. Cummings, Ranking Minority Member
Committee on Oversight and Government Reform

ONE HUNDRED TWELFTH CONGRESS
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Responding to Committee Document Requests

1. In complying with this request, you should produce all responsive documents that are in your possession, custody, or control, whether held by you or your past or present agents, employees, and representatives acting on your behalf. You should also produce documents that you have a legal right to obtain, that you have a right to copy or to which you have access, as well as documents that you have placed in the temporary possession, custody, or control of any third party. Requested records, documents, data or information should not be destroyed, modified, removed, transferred or otherwise made inaccessible to the Committee.
2. In the event that any entity, organization or individual denoted in this request has been, or is also known by any other name than that herein denoted, the request shall be read also to include that alternative identification.
3. The Committee's preference is to receive documents in electronic form (i.e., CD, memory stick, or thumb drive) in lieu of paper productions.
4. Documents produced in electronic format should also be organized, identified, and indexed electronically.
5. Electronic document productions should be prepared according to the following standards:
 - (a) The production should consist of single page Tagged Image File ("TIF"), files accompanied by a Concordance-format load file, an Opticon reference file, and a file defining the fields and character lengths of the load file.
 - (b) Document numbers in the load file should match document Bates numbers and TIF file names.
 - (c) If the production is completed through a series of multiple partial productions, field names and file order in all load files should match.

6. Documents produced to the Committee should include an index describing the contents of the production. To the extent more than one CD, hard drive, memory stick, thumb drive, box or folder is produced, each CD, hard drive, memory stick, thumb drive, box or folder should contain an index describing its contents.
7. Documents produced in response to this request shall be produced together with copies of file labels, dividers or identifying markers with which they were associated when they were requested.
8. When you produce documents, you should identify the paragraph in the Committee's request to which the documents respond.
9. It shall not be a basis for refusal to produce documents that any other person or entity also possesses non-identical or identical copies of the same documents.
10. If any of the requested information is only reasonably available in machine-readable form (such as on a computer server, hard drive, or computer backup tape), you should consult with the Committee staff to determine the appropriate format in which to produce the information.
11. If compliance with the request cannot be made in full, compliance shall be made to the extent possible and shall include an explanation of why full compliance is not possible.
12. In the event that a document is withheld on the basis of privilege, provide a privilege log containing the following information concerning any such document: (a) the privilege asserted; (b) the type of document; (c) the general subject matter; (d) the date, author and addressee; and (e) the relationship of the author and addressee to each other.
13. If any document responsive to this request was, but no longer is, in your possession, custody, or control, identify the document (stating its date, author, subject and recipients) and explain the circumstances under which the document ceased to be in your possession, custody, or control.
14. If a date or other descriptive detail set forth in this request referring to a document is inaccurate, but the actual date or other descriptive detail is known to you or is otherwise apparent from the context of the request, you should produce all documents which would be responsive as if the date or other descriptive detail were correct.
15. The time period covered by this request is included in the attached request. To the extent a time period is not specified, produce relevant documents from January 1, 2009 to the present.
16. This request is continuing in nature and applies to any newly-discovered information. Any record, document, compilation of data or information, not produced because it has not been located or discovered by the return date, shall be produced immediately upon subsequent location or discovery.

17. All documents shall be Bates-stamped sequentially and produced sequentially.
18. Two sets of documents shall be delivered, one set to the Majority Staff and one set to the Minority Staff. When documents are produced to the Committee, production sets shall be delivered to the Majority Staff in Room 2157 of the Rayburn House Office Building and the Minority Staff in Room 2471 of the Rayburn House Office Building.
19. Upon completion of the document production, you should submit a written certification, signed by you or your counsel, stating that: (1) a diligent search has been completed of all documents in your possession, custody, or control which reasonably could contain responsive documents; and (2) all documents located during the search that are responsive have been produced to the Committee.

Definitions

1. The term "document" means any written, recorded, or graphic matter of any nature whatsoever, regardless of how recorded, and whether original or copy, including, but not limited to, the following: memoranda, reports, expense reports, books, manuals, instructions, financial reports, working papers, records, notes, letters, notices, confirmations, telegrams, receipts, appraisals, pamphlets, magazines, newspapers, prospectuses, inter-office and intra-office communications, electronic mail (e-mail), contracts, cables, notations of any type of conversation, telephone call, meeting or other communication, bulletins, printed matter, computer printouts, teletypes, invoices, transcripts, diaries, analyses, returns, summaries, minutes, bills, accounts, estimates, projections, comparisons, messages, correspondence, press releases, circulars, financial statements, reviews, opinions, offers, studies and investigations, questionnaires and surveys, and work sheets (and all drafts, preliminary versions, alterations, modifications, revisions, changes, and amendments of any of the foregoing, as well as any attachments or appendices thereto), and graphic or oral records or representations of any kind (including without limitation, photographs, charts, graphs, microfiche, microfilm, videotape, recordings and motion pictures), and electronic, mechanical, and electric records or representations of any kind (including, without limitation, tapes, cassettes, disks, and recordings) and other written, printed, typed, or other graphic or recorded matter of any kind or nature, however produced or reproduced, and whether preserved in writing, film, tape, disk, videotape or otherwise. A document bearing any notation not a part of the original text is to be considered a separate document. A draft or non-identical copy is a separate document within the meaning of this term.
2. The term "communication" means each manner or means of disclosure or exchange of information, regardless of means utilized, whether oral, electronic, by document or otherwise, and whether in a meeting, by telephone, facsimile, email, regular mail, telexes, releases, or otherwise.
3. The terms "and" and "or" shall be construed broadly and either conjunctively or disjunctively to bring within the scope of this request any information which might

otherwise be construed to be outside its scope. The singular includes plural number, and vice versa. The masculine includes the feminine and neuter genders.

4. The terms "person" or "persons" mean natural persons, firms, partnerships, associations, corporations, subsidiaries, divisions, departments, joint ventures, proprietorships, syndicates, or other legal, business or government entities, and all subsidiaries, affiliates, divisions, departments, branches, or other units thereof.
5. The term "identify," when used in a question about individuals, means to provide the following information: (a) the individual's complete name and title; and (b) the individual's business address and phone number.
6. The term "referring or relating," with respect to any given subject, means anything that constitutes, contains, embodies, reflects, identifies, states, refers to, deals with or is pertinent to that subject in any manner whatsoever.