

April 7th, 2021

Senator Dick Durbin
Chairman, Senate Judiciary Committee
711 Hart Senate Building
Washington, D.C. 20510

Senator Chuck Grassley
Ranking Member, Senate Judiciary Committee
135 Hart Senate Building
Washington, D.C. 20510

Re: Oversight Hearing on FOIA at Federal Agencies

Dear Chairman Durbin,

The undersigned organizations write you to request the Judiciary Committee hold an oversight hearing on agency compliance with 5 U.S.C. § 552, the Freedom of Information Act (FOIA). The Judiciary Committee has a long history of working in a bipartisan manner to improve FOIA, and to provide vigilant oversight of agencies' compliance with the Act. Unfortunately, despite the importance of FOIA to ensuring transparency in government, the last oversight hearing on FOIA was more than three years ago. It is imperative that the Committee provide oversight of agencies' compliance with FOIA, both to understand FOIA implementation by the Trump administration, as well as to seek commitments to comply with the law from the newly confirmed Biden administration officials.

We strongly encourage the Committee to include testimony from voices outside government, in order to obtain the crucial perspective of members of the public who use FOIA often. It is vital that the Committee hear from those affected by months or even years-long delays at agencies. In addition, we recommend the Committee evaluate how agencies are implementing FOIA and explore the longstanding and worsening barriers to compliance. Topics which the Committee can explore include:

- The impact of COVID-19: Agencies struggle to administrate programs remotely, lack [access](#) to classified systems, or are burdened by a lack of electronic tools.¹
- Increased litigation: The number of FOIA cases on the dockets have more than [doubled](#) in the last decade.²

¹ Gerstein, J. (2020, March 27). *State Department FOIA work crippled by virus precautions*. Politico. <https://www.politico.com/news/2020/03/27/state-department-foia-work-crippled-by-virus-precautions-151476>

² Transactional Records Access Clearinghouse (TRAC). *FOIA Lawsuits*. The FOIA Project. <http://foiaproject.org/lawsuit/>

- Over-redactions: The use of redactions, which are discretionary, [remains excessive](#) and often fails to comply with FOIA's presumption of openness.³
- Excessive delays: FOIA requests may languish for years or even decades within agencies, and delays are [worsening](#) as agencies' request volume continues to grow.⁴

We also urge the Committee to explore solutions to FOIA's pitfalls with recommendations from witnesses. Solutions include expanding proactive disclosures by agencies, reducing agency reliance on redactions, and strengthening judicial remedies. As the Judiciary Committee is preparing for an oversight hearing, we are available to assist in any way.

Thank you for your consideration of this matter. Please contact Freddy Martinez at fmartinez@openthegovernment.org for more information.

Sincerely,

American-Arab Anti-Discrimination Committee (ADC)
 American Oversight
 Citizens for Responsibility and Ethics in Washington (CREW)
 Defending Rights & Dissent
 Demand Progress
 Digital Democracy Project
 Electronic Privacy Information Center (EPIC)
 Fix the Court
 Government Accountability Project
 Government Information Watch
 Issue One
 National Association of Broadcasters
 National Freedom of Information Coalition (NFOIC)
 National Security Archive
 National Security Counselors
 News Leaders Association
 News Media Alliance
 Open The Government
 Project On Government Oversight
 Public Citizen
 Radio Television Digital News Association
 Reporters Committee for the Freedom of the Press (RCFP)
 Society of Professional Journalists
 Special Libraries Association

³ Schwellenbach N & Moulton S. (2020, Feb 6). *The "Most Abused" Freedom of Information Act Exemption Still Needs to Be Reined In*. Project On Government Oversight. <https://www.pogo.org/analysis/2020/02/the-most-abused-foia-exemption-still-needs-to-be-reined-in/>

⁴ Government Accountability Office. (2020). *Freedom of Information Act: Federal Agencies' Recent Implementation Efforts*. (GAO Publication No. 20-406R). Washington, D.C.: U.S. Government Printing Office.

Transactional Records Access Clearinghouse (TRAC)
Transparency International—U.S. Office
Union of Concerned Scientists