



Department of Justice

**STATEMENT OF
MELANIE ANN PUSTAY
ACTING DIRECTOR
OFFICE OF INFORMATION AND PRIVACY
DEPARTMENT OF JUSTICE**

**BEFORE THE
SUBCOMMITTEE ON INFORMATION POLICY, CENSUS,
AND NATIONAL ARCHIVES
COMMITTEE ON OVERSIGHT AND GOVERNMENT REFORM
UNITED STATES HOUSE OF REPRESENTATIVES**

HEARING ON

**“IMPLEMENTING FOIA [FREEDOM OF INFORMATION ACT] – ASSESSING
AGENCY EFFORTS TO MEET FOIA REQUIREMENTS”**

FEBRUARY 15, 2007

**Statement of
Melanie Ann Pustay
Acting Director
Office of Information and Privacy
Department of Justice**

**Before the
Subcommittee on Information Policy, Census, and National Archives
Committee on Oversight and Government Reform
U.S. House of Representatives**

Hearing on

**The State of FOIA [Freedom of Information Act]: Assessing Agency Efforts to Meet FOIA
Requirements**

February 15, 2007

Mr. Chairman and Members of the Subcommittee:

I am the Acting Director of the Department of Justice's Office of Information and Privacy (OIP), and I am pleased to be here this afternoon to address the subject of the Freedom of Information Act (FOIA), 5 U.S.C. § 552 (2000 & Supp. IV 2004) and the status of the implementation of Executive Order 13,392 (Improving Agency Disclosure of Information). The Department of Justice is the lead Federal agency for implementation of the FOIA and it works through OIP to encourage uniform and proper compliance with the Act by all agencies.

The Freedom of Information Act and its Governmentwide administration have evolved greatly since the time of its enactment four decades ago. For example, the rapid growth of the Internet and its increasing role in the administration of the FOIA is something that was entirely unforeseen in 1966 and could barely be envisioned even as recently as ten years ago. Currently, the Federal agencies that are subject to the FOIA face a major challenge in processing millions of

requests per year, at a cost exceeding 300 million dollars annually. This large amount of FOIA activity represents an increase of more than 35% in the number of requests received by the Federal government since fiscal year 2001, and agencies have worked diligently to keep up with the increased activity.

This does not mean that there is not room for improvement. On December 14, 2005, the President issued Executive Order 13,392, entitled "Improving Agency Disclosure of Information," which established a "citizen-centered" and "results-oriented" approach to administration of the FOIA. The Executive Order required each agency to conduct a review of its FOIA operations, to develop an agency-specific plan to improve its administration of the FOIA, and to include in its annual FOIA reports for fiscal years 2006 and 2007 a description of its progress in meeting the milestones and goals established in its improvement plan. To ensure Governmentwide compliance, the Executive Order charged the Department of Justice and the Office of Management and Budget with coordinating efforts to help agencies meet the requirements of the President's Order. I appreciate having this opportunity to describe to the Subcommittee these efforts.

Soon after the President issued his Order, the Department of Justice and OMB disseminated it throughout the Executive branch -- to the heads of all departments and agencies as well as to all key FOIA personnel directly -- and provided preliminary guidance to agencies regarding it. OMB's guidance, issued on December 30, 2005 by its Deputy Director, highlighted the Executive Order's requirements, drawing attention to its most immediate requirement -- its

mandate for the appointment of a Chief FOIA Officer at each agency by January 13, 2006.¹ This requirement was met widely across the Executive branch, and shortly thereafter, the Justice Department posted a comprehensive list of all agency Chief FOIA Officers on its FOIA Web site.²

In accordance with section 2(c) of the Executive Order, agencies then established FOIA Requester Service Centers and designated FOIA Public Liaisons in order to provide information to the public about the status of their FOIA requests and to ensure that agencies use a "service-oriented" approach in responding to FOIA-related inquiries.

The Executive Order also required each agency to "conduct a review of [its] FOIA operations" and to develop "an agency-specific plan to ensure that the agency's administration of the FOIA is in accordance with applicable law and the policies set forth in" the Executive Order. See Exec. Order No. 13,392 at Sec. 3(a)-(b). The Executive Order required each plan to be submitted by June 14, 2006, with one of the required elements being the inclusion of "specific activities that the agency will implement to eliminate or reduce the agency's FOIA backlog," as well as "concrete milestones, with specific timetables and outcomes to be achieved." *Id.* at Sec. 3(b).

On March 8, 2006, to best facilitate these critical agency reviews, and the subsequent development of individual agency improvement plans, the Department of Justice and OMB

¹See OMB Memorandum M-06-04, available at: <http://www.whitehouse.gov/omb/memoranda/fy2006/m06-04.pdf>.

²This compilation can be found at the following Web site address: <http://www.usdoj.gov/oip/chieffoiaofficers.html>.

convened a conference for the newly designated Chief FOIA Officers and accompanying key FOIA personnel. The conference was keynoted by the Associate Attorney General and OMB's Deputy Director for Management, whose presence and remarks strongly emphasized the importance of this Presidential initiative. Their remarks were followed by detailed discussions of the Executive Order's provisions and implementation requirements to ensure that chief FOIA officers would understand fully their responsibilities.

On April 13, 2006, OMB's Director issued to the heads of departments and agencies a memorandum entitled "Follow-up Memorandum on 'Implementation of the President's Executive Order 'Improving Agency Disclosure of Information.'""³ This memorandum emphasized the importance of "ensuring the success of this important Presidential initiative" and reminded agencies that their plans must include "specific activities" to reduce their FOIA backlog and must detail "concrete milestones, with specific timetables and outcomes to be achieved."

Then, as agencies advanced further in their ongoing reviews and planning, the Department of Justice conducted follow-up programs for all agencies, one each month until the June 14, 2006 deadline. The Department provided to all agencies formatting guidance, which was ultimately reflected in the Department's own plan,⁴ as a model. Also, the Department

³See OMB Memorandum M-06-12, available at: <http://www.whitehouse.gov/omb/memoranda/fy2006/m06-12.pdf>.

⁴See "U.S. Department of Justice Freedom of Information Act Improvement Plan Under Executive Order 13,392," which can be found at: <http://www.usdoj.gov/oip/ourplan.htm>.

established a special Executive Order implementation team that it made available to assist all agencies regarding implementation and related questions.⁵

Importantly, the Department also provided extensive written guidance to all agencies concerning a wide range of issues connected with the Executive Order's implementation. This guidance, which was issued on April 26, 2006 in coordination with OMB, was distributed to all agencies at the first of the follow-up sessions, and also was made available through the Department's FOIA Web site.⁶ It contained discussions of more than two dozen potential improvement areas that were identified for possible inclusion in agency plans; established a template for the uniform development and presentation of all plans; included supplemental guidelines on the use of agency annual FOIA reports for reporting the results of Executive Order 13,392's implementation; and addressed a breadth of questions and guidance points in further aid of the Executive Order's implementation.⁷

On July 11, 2006, the Department conducted a special training conference for approximately 150 FOIA Public Liaisons in order to review and emphasize their responsibilities

⁵Since the June 14, 2006 deadline, the Department has continued to advise all agencies of their obligations under the Executive Order, and informed them of the mechanism to report any deficiencies to the President's Management Council.

⁶See FOIA Post, "Executive Order 13,392 Implementation Guidance" (posted 4/27/06), found at: <http://www.usdoj.gov/oip/foiapost/2006foiapost6.htm>.

⁷The Justice Department's guidance extensively addressed the larger subject-matter areas of timeliness/backlogs and the increased use of information technology in the processes of FOIA administration. See, e.g., FOIA Post, "Executive Order 13,392 Implementation Guidance" (posted 4/27/06) (Potential Improvement Areas #2, #5, #6, #7, #8, #11, #12, #16, #17, #18, #22, #24, and #25).

under the Executive Order.⁸ At this conference, the Department discussed the explicit roles of FOIA Public Liaisons under the Order, e.g., serving as supervisory officials in relation to agency FOIA Requester Service Centers, assisting in reducing delays, increasing transparency of the status of FOIA requests, and resolving disputes. In addition, the Department emphasized the important roles that FOIA Public Liaisons can perform in support of their agency's Chief FOIA Officer regarding improvement plan implementation and related activities.⁹ Special emphasis was placed upon the importance of current implementation efforts and their timely reporting by all agencies in accordance with the Order's February 1, 2007 reporting deadline for the fiscal year 2006 annual FOIA report.

The Department worked quite closely with many individual agencies as the June 14, 2006 deadline arrived in order to facilitate their timely and comprehensive completion of their FOIA improvement plans. In order to aid the public review of all agencies' improvement plans, the Department compiled the plans and made them available for convenient public access at a single location on its FOIA Web site. Thus, interested persons can examine all agency FOIA

⁸Under the President's Order, each of the ninety-two agencies that are subject to the Act must maintain at least one FOIA Requester Service Center and one corresponding FOIA Public Liaison. Many agencies, particularly the larger ones that administer the FOIA most efficiently on a decentralized basis, have multiple FOIA Public Liaisons designated. The Justice Department, for example, has thirty-four persons designated as FOIA Public Liaisons under the Order. See "DOJ Components' FOIA Service Centers/Liaisons," which is found at: <http://www.usdoj.gov/oip/servicecenters.htm>.

⁹The Department also called upon FOIA Public Liaisons to work to ensure that all personnel at their agencies who work with the FOIA (i.e., even "program personnel" whose primary job responsibilities are not FOIA-related) have been fully educated about Executive Order 13,392's policies and customer-service principles. See FOIA Post, "Executive Order 13,392 Implementation Guidance" (posted 4/27/06).

improvement plans under the Executive Order side by side, through a standard format recommended for ease of reference, just as they are able to do with the annual FOIA reports that agencies file.

In accordance with the Executive Order, the Attorney General reviewed the agency implementation plans (and the corresponding fiscal year 2005 annual FOIA reports), and, on October 16, 2006, in coordination with OMB, submitted to the President a report on agency FOIA implementation. Pursuant to the Executive Order, the Attorney General report provided the President recommendations related to "continued agency dissemination and release of public information." See Exec. Order No. 13,392 at Sec. 4(a). The Attorney General recommended holding a follow-up meeting of Chief FOIA Officers, streamlining FOIA correspondence, and, significantly, increasing the use of advanced technology and automation to improve agency FOIA operations. The Attorney General ultimately concluded that "the agencies of the Executive Branch have implemented [the Executive Order] in a vigorous manner fully commensurate with the importance of this unprecedented Presidential initiative."¹⁰

In addition to establishing an implementation plan under the Executive Order, each agency is required to submit with its annual FOIA reports for fiscal years 2006 and 2007 a description of the agency's progress in meeting its milestones and goals under its FOIA improvement plan. As the lead implementation agency, the Department of Justice completed its 2006 annual report on January 19, 2007, two weeks in advance of the February 1 deadline, and posted it on the Department's FOIA Web site to serve as a model for all other agencies. To date,

¹⁰See "Attorney General's Report to the President Pursuant to Executive Order 13,392, Entitled 'Improving Agency Disclosure of Information,'" available at: http://www.usdoj.gov/oip/ag_report_to_president_13392.pdf

virtually all agencies have submitted their annual FOIA reports to the Department for review. After submission, OIP works with the agencies to ensure that their reports meet the technical requirements of the FOIA and the Executive Order. Once this process is completed, the reports are then posted on the Department's FOIA Web site for public review.

In accordance with the Executive Order's requirements, the Attorney General will next review the agencies' progress in implementing their FOIA improvement plans and will submit a report on such progress to the President on June 1, 2007. A second such review and report will be made on June 1, 2008.

In conclusion, you can be assured that the Department of Justice looks forward to working together with the Subcommittee on matters pertaining to the Governmentwide administration of the Freedom of Information Act, including future Governmentwide activities in implementation of the Executive Order.

I would be pleased to address any question that you or any other Member of the Subcommittee might have on this important subject.