

**Prepared Statement by Senator Chuck Grassley of Iowa
Chairman, Senate Committee on the Judiciary
Hearing on “Ensuring an Informed Citizenry:
Examining the Administration’s Efforts to Improve Open Government”
May 6, 2015**

Good morning. Today we’ll examine what this Administration has done to fulfill its promise of open government. President Obama began his presidency with assurances of unprecedented transparency. It’s time once again to take stock of where things stand.

There’s perhaps no better tool that Americans have to help ensure open government than the Freedom of Information Act. Enacted almost five decades ago, FOIA’s purpose is to help keep folks in-the-know about what their government is doing. No doubt an informed public helps to guarantee a more accountable government.

The Judiciary Committee has a long and bipartisan history of helping protect the public’s right to know, and ensuring that the government effectively administers FOIA.

Earlier this year, the Committee reported the “FOIA Improvement Act of 2015” to the full Senate for consideration. This bill codifies the “presumption of openness” standard, so that agencies proactively disclose more information. Among other reforms, the bill makes it easier for the public to submit FOIA requests, and improves electronic access of agency records.

As many of you know, Ranking Member Leahy and Senator Cornyn have been FOIA leaders for many years. And I appreciate the hard work they’ve put into this bill, of which I’m a co-sponsor. Last year, thanks to their efforts, the Senate passed an almost identical bill by unanimous consent. That’s not an easy task. Unfortunately, we ran out of time at the end of the year and were unable to get the bill to the President’s desk. I’m hopeful that won’t be the case this time around, and that the Senate will soon pass these meaningful and much-needed reforms.

But legislative reforms can only go so far. Experience shows that many in government continue to operate with an instinct of secrecy. This has been the case under Democrat and Republican administrations, as both have failed to live up to the letter and spirit of FOIA.

President Obama gave me high hopes for a change in the status quo. He pledged a “new era of open government”—one where transparency is the rule and not the exception. On his first full day in office, the President called for agencies to administer FOIA “with a clear presumption: In the face of doubt, openness prevails.” Unfortunately, over six years later we continue to see this Administration operating under a “do as I say, not as I do” approach to transparency.

Recently, the Office of Information Policy Director Melanie Pustay and a senior White House official wrote in *USA Today* that the Administration “continues to demonstrate its commitment to improving open government and transparency.” But the very next day—ironically, the first day of Sunshine Week—the White House announced it was removing regulations that for thirty-years had subjected its Office of Administration to FOIA requests. According to the White House, this decision is consistent with court decisions holding that the office isn’t subject to

FOIA. But as one open government advocate put it, “You have a president who comes in and says, I’m committed to transparency and agencies should make discretionary disclosures whenever possible, but he’s not applying that to his own White House.”

This is just one of many examples that leads me to question President Obama’s declaration that his Administration is the most transparent in history.

The numbers, I think, also speak for themselves.

The Center for Effective Government recently released its annual Access to Information Scorecard, which grades federal agencies’ FOIA performance. While there were some glimmers of hope, the overall results indicate there’s much room for improvement.

I’m particularly concerned with the State Department’s FOIA operation. According to the Scorecard, the State Department processed only 17% of the FOIA requests it received in 2013. For the second year in a row, the State Department was the lowest scoring agency by far, with performance that was “completely out of line” with that of other agencies.

These results seem to confirm an ongoing issue with the State Department’s ability to manage agency information and process FOIA requests. In 2012, the State Department’s Office of Inspector General issued a report concluding that “the Department’s FOIA process is inefficient and ineffective,” and that its records management practices “do not meet statutory and regulatory requirements.”

And just recently, the Inspector General released another report outlining the State Department’s failure to properly archive emails as official records. Out of over 1 billion emails sent by agency employees in 2011, just over 61,000 of those were properly archived. And it’s impossible not to acknowledge former Secretary Clinton’s exclusive use of a private email account to conduct official State Department business. According to Jason Baron, the former Director of Litigation at the National Archives and Records Administration, “a federal employee or official choosing to carry out communications using a non-‘.gov’ address, without making timely transfer of those records to an appropriate governmental system, compromises the ability of an agency to adequately respond to FOIA requests.”

No doubt, these failures undermine FOIA and have serious consequences for congressional oversight, and for documenting U.S. diplomatic history. And as Secretary Kerry acknowledged, the preservation of records—and the public’s access to those records—are “interrelated principles.”

I agree. After all, if a record can’t be found, it can’t be disclosed.

So I want to know where the break-downs occurred. I want to hear what the State Department has done, and plans to do, to address these serious concerns. Further, is this an isolated incident? And if not, then how widespread are these issues and what can be done to turn the tide? Finally, I want to know what steps the Administration is taking to ensure the public’s right to know,

which the President himself said is central to “the effective functioning of our constitutional democracy.”

These, along with many others, are important questions that need to be answered. And I’m glad that today’s hearing provides the opportunity to do just that.

I’m looking forward to hearing from our witnesses today, who I’m sure can shed some light on these matters. So I want to thank you all for being here this morning.

And now I’ll turn to the Ranking Member for his opening remarks.