



Department of Justice

STATEMENT

OF

**CARL NICHOLS
DEPUTY ASSISTANT ATTORNEY GENERAL
CIVIL DIVISION
DEPARTMENT OF JUSTICE**

BEFORE THE

**SUBCOMMITTEE ON GOVERNMENT MANAGEMENT, FINANCE,
AND ACCOUNTABILITY
COMMITTEE ON GOVERNMENT REFORM
HOUSE OF REPRESENTATIVES**

CONCERNING

**INFORMATION POLICY IN THE 21ST CENTURY:
A REVIEW OF THE FREEDOM OF INFORMATION ACT**

PRESENTED ON

MAY 11, 2005

**Statement of
Carl Nichols
Deputy Assistant Attorney General
Civil Division
Department of Justice**

**Hearing on
Information Policy in the 21st Century;
A review of the Freedom of Information Act ("FOIA")**

**Before the
Subcommittee on Government Management, Finance, and Accountability
Committee on Government Reform**

**Presented on
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Introduction:

Mr. Chairman and Members of the Subcommittee: my name is Carl Nichols. I am the Deputy Assistant Attorney General for the Civil Division's Federal Program Branch at the Department of Justice which oversees, among other things, the Freedom of Information Act (FOIA) 5 U.S.C.A. § 552 (1996 & West Supp. 2004), related litigation. I am pleased to address the subject of FOIA, which is the principal statute governing public access to Federal government records and information. This law, which has been in effect for nearly thirty-eight years, has become an essential part of our democratic system of government -- a vital tool used by our citizens to learn about their government's operations and activities. It is an honor to testify on behalf of the Government employees who respond to millions of FOIA requests processed by the Executive branch every year.

The Administration and the Attorney General are firmly committed to full compliance with FOIA as a means of maintaining an open and accountable system of government, while also recognizing the importance of safeguarding national security, enhancing law enforcement effectiveness, respecting business confidentiality, and preserving personal privacy. Indeed, as part of its responsibilities for the administration of FOIA, the Executive branch spends in excess of \$300 million per year responding to

FOIA requests, only a tiny fraction of which is reimbursed to the Treasury by requesters. The Government employees who process and respond to the more than 4 million FOIA requests every year are a group of dedicated public servants who discharge their duties with vigor, diligence, and professionalism.

Recent Innovations to Increase Disclosure Process:

As you know, the Department of Justice is the lead Federal agency for FOIA. We work to encourage uniform and proper compliance with the Act by all Federal agencies through our Office of Information and Privacy (OIP), which is one of the Department's forty distinct components. We have a very experienced staff in OIP who contribute decades of experience in working with FOIA and provide a perspective of long standing to any examination of its implementation.

As you may recall, FOIA and its Governmentwide administration have evolved greatly since the time of its enactment in the 1960s. It was strengthened most recently when Congress enacted the Electronic Freedom of Information Act Amendments of 1996. These amendments -- sometimes referred to as "E-FOIA" -- brought FOIA into the electronic information age by treating information maintained by agencies in electronic form in generally the same way as paper records. In summary, these amendments addressed electronic record issues, the timeliness of agency responses to FOIA requests, and other procedural matters under the Act. They covered issues of timeliness and agency backlogs of FOIA requests with provisions that, among other things, increased the initial time for responding to FOIA requests from ten to twenty working days; authorized agencies to process FOIA requests in multiple tracks; encouraged agencies to negotiate FOIA request sizes and response times with requesters; and established a mechanism for the "expedited processing" of FOIA requests filed by members of the news media.

Just as importantly, these amendments also made major changes to the operation of agency reading rooms under subsection (a)(2) of FOIA. Under that lesser-known part of the Act, agencies are required to automatically make certain categories of records -- final opinions rendered in the adjudication of administrative cases, specific agency policy

statements, and administrative staff manuals that affect the public -- available for routine public inspection and copying. The E-FOIA amendments created a new category of "frequently requested records" for such reading room treatment, and they also generally required agencies to make all categories of their reading room records more readily available to the public through on-line access, in what can be regarded as "electronic reading rooms." This latter legislative change has had a large impact on the processes of FOIA administration throughout the Executive branch, as all Federal agencies have established specialized FOIA Web sites for this and other purposes, following Justice Department guidance, that have become a major part of the Act's Governmentwide administration.

In addition, this Administration has taken expansive steps to improve the transparency, responsiveness, and efficiency of the Government to citizens and businesses through its e-Government initiatives. Indeed, citizens can now find and comment on proposed regulations from every agency through the Government's web portal (www.FirstGov.gov). Through this single point of access, they also can find benefit information on over 400 Government programs, apply for over \$360 billion in Federal grants from across the Government, and find a wealth of other information within 3 clicks of a mouse. Furthermore, agencies are required, under OMB Circular A-130, to develop information dissemination plans, and agencies disseminate volumes of information through their Web sites. It is worthwhile to consider the extent to which the Internet and other information technologies may develop into an effective alternative to traditional methods of information gathering through FOIA.

Statutory Time Limits:

Because the administration of the Freedom of Information Act is decentralized throughout the Executive branch, each individual Federal agency, including the Department of Justice, is responsible for administering FOIA within it. As mentioned, the Department of Justice also works to encourage Governmentwide compliance with FOIA, in accordance with subsection (e) of the Act, and we can assure you that we take this responsibility very seriously.

On a daily basis, the Department does a great deal to promote government openness and to encourage proper compliance with FOIA Governmentwide. The Department, through OIP, provides extensive consultation and advisory assistance to all Federal agencies on a wide range of FOIA-related matters; it conducts a full range of FOIA-training programs for all agencies throughout the year; and it issues policy guidance to agencies through its *FOIA Post* publication and its "Justice Department Guide to the Freedom of Information Act." These Governmentwide policy activities are described in greater detail in the "Description of Department of Justice Efforts to Encourage Agency Compliance with the Act" (which is a part of the Department's annual report to Congress). Through these efforts, the Department continually strives to assist all Federal agencies in meeting their statutory responsibilities as best as possible with the limited administrative resources that are available to them.

To be sure, it is not always a simple matter for agencies to meet their FOIA responsibilities. Indeed, perhaps the biggest challenge facing the Federal government under FOIA is the issue of timely processing of requests. When Congress first amended the Act in 1974, it established a basic ten-working-day deadline for agency responses to FOIA requests. It did so based upon the belief, held firmly at that time, that the expected nature and volume of FOIA use would allow Federal agencies to universally meet such a deadline. That turned out to be far from the case. Both the numbers and complexity of FOIA requests were far greater than anticipated, with many FOIA requesters seeking large volumes of records or particularly sensitive kinds of records (relating to personal privacy, law enforcement, national security, or other concerns). In response, the Federal

courts (following the lead of the D.C. Circuit in *Open America v. Watergate Special Prosecution Force*, 547 F.2d 605 (D.C. Cir. 1976)), concluded that the "due diligence" requirement in FOIA may be satisfied by an agency's good faith processing of all requests on a "first-in, first-out" basis, unless a requester can make a particularized showing of exceptional need or urgency.

In 1996, when Congress acted to address this by among other things increasing the Act's basic time limit from ten to twenty working days, it did so with a similarly expressed sentiment that this might all but eliminate timeliness problems. For a number of reasons, however, these expectations have proven to have been unfounded. Simply put, FOIA's time limits, even as increased in 1996, often are unrealistic as a general rule.

It is important to note that agencies respond to FOIA requests as quickly as possible. For example, in 2003 the Veterans Administration received 1.8 million FOIA requests (more than all other Executive branch agencies combined) and responds to requests within 14 days on average. The Social Security Administration receives in excess of 700,000 FOIA requests per year and responds to simple requests on average within 19 days and complex requests within 62 days. When a complete response is not possible, letters of acknowledgement routinely are provided to inform requesters of the action being taken concerning their requests. This Administration welcomes and encourages the communication between FOIA personnel and the requesters, especially where a complex request is involved or where there is an issue regarding the availability of responsive records. Many factors enter in the time required to respond to requests, such as the number of incoming requests, the number of office components with responsive documents, the number of office components that must be consulted prior to responding to the request, the size and complexity of requests, the number of resources available to the agency, and the availability of the records.

There are good reasons that not all Federal agencies are able to regularly comply with the strict time limits of the Act. Certainly, some Federal agencies are able to do so almost without exception; others may be able to do so ordinarily, though not in all cases.

But many Federal agencies, especially those required to meet large-volume FOIA demands or demands for particularly sensitive records, are unable to comply with the statute's response deadlines for their FOIA requests -- and they maintain FOIA backlogs exceeding those lengths of time. Certainly, this has varied to some degree over the years as well as from one agency to another, but in general it has always been so.¹

The reasons for this struggle are multiple and largely intractable. First and foremost is the fact that Federal agencies have primary missions that place high demand on limited resources; this is especially true in the post 9/11 world. Such limited resources make it increasingly difficult for Federal agencies, particularly the larger agencies, to administer FOIA with the timeliness that all concerned would prefer. Nonetheless, Federal agencies now spend upwards of \$300 million each year on the Act's implementation. Therefore, we must recognize the substantive burdens placed upon limited agency resources and the Government employees who respond to FOIA requests. In sum, no discussion about FOIA can be complete without a serious and sustained examination of the resource and personnel needs faced by the Executive branch in administering FOIA.

Beyond that, both the complexity and magnitude of FOIA requests received by some Federal agencies render strict compliance with the Act's existing time limits a practical impossibility for them in any event. Agencies can be required under FOIA to process extremely sensitive types of records -- such as those containing law enforcement information, classified information, or confidential business data -- on a detailed, line-by-line basis.² Properly expending highly labor-intensive efforts on such a FOIA request can

¹Specific snapshots of individual agency performance in this regard can be seen in the annual FOIA reports that all agencies prepare in accordance with the requirements of the E-FOIA amendments. Pursuant to a provision of those amendments, the Justice Department makes them available at a single location on its FOIA Web site (at www.usdoj.gov/04foia/04_6.html). OIP also creates an aggregate, Governmentwide summary of these reports each year.

²In handling FOIA requests for records containing confidential business data, for example, Federal agencies are required not only to review the business records themselves, but also to undertake a process of coordination with the business submitter in

easily require more than twenty working days, even apart from any backlog of FOIA requests that an agency might have to begin with. In many situations, some amount of "delay" (as gauged even by the Act's extended deadlines) is simply unavoidable.

To take a case in point, one of the early FOIA cases was a Watergate-era matter in which a public interest group sought more than a half-million pages of records from the six largest investigative files of the Watergate Special Prosecution Force. This FOIA case was filed in 1976, not long before the last Watergate Special Prosecutor ceased operations, which worked out well for him because he was able to pass this massive FOIA request off to the National Archives and Records Service (still at that time part of the General Services Administration), which by inheriting it also inherited an instant FOIA backlog.³ Even though that agency had a relatively large FOIA staff at the time, such a demand to process so many highly sensitive law enforcement records was overwhelming. While the E-FOIA increased the time limits for response from 10 to 20 days, the Government still receives requests that do not lend themselves to processing within 20 days. And it may be worth noting that for relatively new agencies, like the Department of Homeland Security, the public expected a mature FOIA operation on the day the agency began operations. However, that expectation conflicts with the reality that any new organization must have time to organize before it even can begin to respond to FOIA requests.

Another case in point is the Office of the Pardon Attorney, a component of the Justice Department that maintains only a single staff member to handle its relatively small amount of FOIA activity. Four years ago, that Office suddenly was swamped with FOIA requests for records pertaining to the many presidential pardons that were issued in

accordance with the "submitter notice" provisions of Executive Order 12,600, 3 C.F.R. 235 (1988). See *FOIA Update*, Vol. VIII, No. 2, at 1-3. In many instances, the time periods required for this "submitter notice" process alone are irreconcilable with the time deadlines of FOIA.

³See *Fund for Constitutional Gov't v. Nat'l Archives & Records Serv.*, 485 F. Supp. 1 (D.D.C. 1978), *aff'd*, 656 F.2d 856 (D.C. Cir. 1981).

January of 2001. This can happen to relatively small Federal agencies as well: Not long ago, the Overseas Private Investment Corporation, a tiny agency subject to FOIA, found itself struggling with a many-fold increase in its FOIA activity due to a particular matter of great controversy that abruptly arose within the relatively narrow area of its jurisdiction.

The point here, of course, is that sudden FOIA demands can at a moment's notice render askew any regular timetable for FOIA processing and leave an agency suddenly struggling to meet its FOIA responsibilities. And just as this can happen on a large-scale basis in these above examples, it can happen just the same when an especially complex FOIA request proceeds to consume exceptionally large amounts of agency resources within its place in an existing, fairly established FOIA queue -- to the disproportionate disadvantage of later FOIA requesters who would have received a much more timely response otherwise.⁴ Make no mistake: Such a situation can frustrate agency FOIA officers as well as FOIA requesters. Generally speaking, they all are trying to do the best they can with what they have available to them.

An agency's ability to meet the statutory 20-day response period has been severely affected by the substantially increased number of large "database" requests filed by the media and educational institutions. Agencies are finding that it is simply not possible to process massive database requests in 20 working days without diverting substantial financial or personnel resources from FOIA staffs and from other agency staffs. The impact of these requests on other requesters in the queue and, consequently, on the overall backlog is substantial.

We should emphasize in this regard that in recent years many agencies have worked hard and well to achieve greater efficiencies in their FOIA activities -- from initial case tracking to record redaction to final correspondence management as well -- through the use of newly designed automated information systems. One of the early

⁴Without a doubt, the "multitrack processing" that is provided for in the E-FOIA amendments can lessen the overall impact of this effect, but it far from eliminates it.

leaders in the use of automation in FOIA processing was the Department of State, which began to implement such an automated system several years ago. That agency recently held a FOIA officers conference for the specialized training of its FOIA personnel, in which the Department of Justice, through OIP heavily participated, and it was proud to describe to us how its automation of its FOIA program has helped to reduce – although not eliminate – its backlog of requests.⁵ Thus agencies are increasingly working to leverage the efficiencies of advanced technology in their implementation of the Act, not only through their development of Web-based information availability.

Faster agency responses can be obtained through focus on improved record management systems. Agencies that invest in record management applications and electronic record keeping will be able to gather documents much more efficiently. For example, although it has not yet reduced its backlog, the Federal Bureau of Investigation (FBI) has embarked on an approach to create one central repository for closed files, converting paper files into digital format, eliminating or transferring older files to NARA, and incorporating record management applications into new electronic record systems. Other agencies may benefit from similar steps; however, there are significant financial burdens associated with improved records management systems.

Another mechanism being employed by Federal agencies to enhance their administration of the Act is the use of contractors for various parts of FOIA administrative process. In recent years, this has become an increasingly significant part of FOIA's administration at growing numbers of Federal agencies. The Department of Justice first encouraged this, within specified bounds of the law, in a Governmentwide policy publication that it issued in 1983,⁶ but recently this has become a permanent

⁵See *FOIA Post*, "FOIA Conferences Held by Growing Numbers of Agencies" (posted 2/22/05).

⁶See *FOIA Update*, Vol. IV, No. 1, at 2.

fixture on FOIA landscape, with the Department's continued encouragement and strong support.⁷

In addition, in some instances, requesters may make very broad requests for records because they intend to use the records to conduct a far-reaching inquiry. However, in other cases, requesters may make very broad requests because they are unaware of what records are available, although they may have particular types of records in mind. In these cases, agencies can respond reduce their search time and the number of records they must provide by working with requesters to narrow the scope of the request to more accurately describe the records the requester desires.

Safeguarding Sensitive Information:

Another part of the modern-day FOIA landscape is its place in the broader debate about the methods utilized by the Executive Branch to protect sensitive information, which certainly has been a matter of greater concern in the post-9/11 environment. Unfortunately, that debate all too often sweeps so indistinctly as to conflate the *safeguarding* of information with nondisclosure under FOIA.⁸ Government safeguarding labels, such as "For Official Use Only" (FOUO), for example, should not be confused with the withholding of information as FOIA-exempt -- but nevertheless they often are.⁹ Contrary to some popular misconceptions, such information-safeguarding labels do not create a basis for withholding information from the public; in other words, they do not create or enlarge FOIA exemptions.

⁷See *FOIA Post*, "The Use of Contractors in FOIA Administration" (posted 9/30/04).

⁸See, e.g., *FOIA Post*, "Critical Infrastructure Information Regulations Issued by DHS" (posted 2/27/04) (emphasizing the critical difference between "*protecting* information from public disclosure" in a FOIA sense and "*the safeguarding* of federal information" within an agency's walls).

⁹See, e.g., *Freedom of Information Act Guide & Privacy Act Overview* (May 2004), at 190-91 & nn.214-19.

Equally blurred can be the difference between an agency removing something from its Web site that was not required by FOIA to be up there in the first place, i.e., when it had been posted as a matter of administrative discretion, and something that actually was required by FOIA to be available on-line. The latter would be a FOIA issue; the former would not.

Statutory Exemptions:

As members of the Subcommittee are well aware, nine categories of records are considered exempt from mandatory disclosure under 5 U.S.C. § 552(b). Exempt records include materials related to national security, defense or foreign policy, records related solely to the internal personnel rules of an agency, records that are specifically exempted from disclosure by statute, trade secrets and commercial or financial information, internal deliberative material, personnel or medical files the disclosure of which would cause a clearly unwarranted invasion of personal privacy, law enforcement records, records related to financial institutions, and geological data.

It must be emphasized for the record that these exemptions are central to the purposes of the act, because while the basic purpose of FOIA is to ensure an informed citizenry, it balances society's strong interest in open government with other equally compelling public interests, such as protecting national security, enhancing the effectiveness of law enforcement, protecting sensitive business information, protecting internal agency deliberations and common law privileges and, not least, preserving personal privacy. The protection of personal privacy is a critical consideration in an era when the Federal government routinely collects more and more information about individuals. In order to maintain public confidence in FOIA, this type of information must be protected against unwarranted disclosure.

The current statutory scheme, as implemented by the Executive branch and as interpreted by the courts in cases such as *Department of the Air Force v. Rose*, 425 U.S. 352 (1976) & *Department of Justice v. Reporters Committee for Freedom of the Press*,

489 U.S. 749 (1989), have helped to realize the finely tuned balance between competing public interests alluded to earlier.

We would note that the Department of Justice believes that the consequences of the Supreme Court's decision in *Department of Interior v. Klamath Water Users Protective Ass'n*, 532 U.S. 1 (2001) has been injurious to the sound administration of FOIA. In *Klamath*, the Supreme Court narrowly addressed the scope of FOIA's exemption 5, which exempts from disclosure "inter-agency or intra-agency memorandums or letters which would not be available by law to a party other than an agency in litigation with the agency." 5 U.S.C. § 552(b)(5). The court held that communications between the Department of Interior (DOI) and several Indian tribes which, as applicants for a water allocation by DOI, were "seeking a government benefit at the expense of other applicants," did not meet the threshold of exemption 5 of FOIA because the communications were not "inter-agency or intra-agency" documents. However, litigants have tried to argue beyond the narrow holding involved in the *Klamath* case. This practice has affected our ability to maintain confidentiality for our exchanges with aligned parties and our settlement exchanges with opposing parties. *Klamath* has adversely affected expectations of confidentiality for common interest and settlement exchanges in the full range of civil and criminal litigation conducted by the Department of Justice.

Relying on *Klamath's* discussion of what is an "inter-agency or intra-agency" document under exemption 5, opposing parties have begun to seek the Government's exchanges with co-parties and settlement exchanges with opposing parties through FOIA requests and related litigation. The fact that the court in *Klamath* did not distinguish between the specific communications in question in that case and the common interest exchanges and settlement exchanges has converted FOIA into a "discovery loophole" that parties are using increasingly against the Government to circumvent legal privileges and other court protections. *Klamath* has disadvantaged the Government unfairly by forcing it to disclose privileged common interest exchanges with co-parties and settlement exchanges with opposing parties. The Government is receiving an increasing number of requests for these documents. As a result, the Department of Justice in some

cases has been obliged to publicly disclose documents that ordinarily would be protected under legal privileges and other court protections. The risk of forced disclosure is deterring the sharing of information and other documents that would otherwise be confidential between parties in litigation and thereby hindering effective communication between co-parties and the efficient settlement of cases.

This use of FOIA in a manner not intended by Congress is adversely affecting the Department's joint enforcement efforts with foreign nations in the war against terrorism, with States in antitrust and environmental enforcement cases, and with private parties in civil rights cases. This unintended use is also interrupting our work across the Department in efficiently and effectively settling cases by interfering with our ability as litigants to confidentially exchange settlement proposals. We would be happy to provide further examples of how this has adversely affected the litigating components within the Department.

FOIA itself need not be amended, but the Department of Justice urges Congress to adopt confidentiality legislation to address this problem and reestablish a level playing field in litigation. This could be accomplished by employing FOIA exemption 3 for the Government's common interest exchanges with aligned parties and settlement exchanges with opposing parties. The legislation must not affect the disclosure of final settlement documents under FOIA. This would ensure that the Government's common interest and settlement exchanges in litigation remain protected from disclosure, commensurate with existing legal privileges and court practices. Protecting settlement and common interest exchanges would simply return the Government to the same footing as other litigants. Such a legislative solution also would return a reasonable balance between public disclosure and protecting certain information that, if disclosed, would impair legitimate governmental functions. We would be happy to meet with committee staff to discuss further a potential legislative solution.

FOIA Processing Fees:

FOIA sets forth differing fee levels for different categories of requesters. For example, an agency is permitted to charge a requester for document search time, duplication, and review costs if the request is made for "commercial use." 5 U.S.C. § 552(a)(4)(A)(ii)(I). If the request is made by an educational or non-commercial scientific institution, whose purpose is scholarly or scientific, or by a representative of the "news media," an agency may charge a requester only for document duplication. 5 U.S.C. § 552(a)(4)(A)(ii)(II).

We believe that the current system of collecting fees for FOIA requests has benefited many requesters, as evidenced by the fact that requesters currently pay a mere 2.09% of the total cost associated with FOIA compliance, which was in excess of \$306 million in 2003. At the same time, these fees impose a modest financial incentive upon requesters who make FOIA requests for commercial purposes to submit reasonably described FOIA requests. The Department of Justice believes that this is important because the statute places few limitations of the scope of a request. See 5 U.S.C. § 552(a)(3)(A)(i), which states that the Government shall make any record promptly available so long as the request "reasonably describes such records." Appropriate fees are necessary to provide a reasonable disincentive for frivolous or overbroad requests.

Attorneys Fees:

Current law permits a court to assess reasonable attorney fees and litigation costs incurred when the complainant in a lawsuit challenging an agency's response (or lack thereof) to a FOIA request has "substantially prevailed." 5 U.S.C. § 552(a)(4)(E). This interpretation of the law has evolved in part from the Supreme Court's decision in *Buckhannon Board & Care Home, Inc. v. W. Va. Dep't of Health & Human Resources*, 532 U.S. 598 (2001), and a number of recent court of appeals decisions that have applied *Buckhannon* to FOIA litigation involving the issue of which party is responsible for the payment of attorneys fees. In this line of cases, the courts rejected the so-called "catalyst

theory" as a basis for FOIA attorney fee awards. See *OCAW v. Dep't of Energy*, 288 F.3d 452 (D.C. Cir. 2002); *Union of Needletrades v. INS*, 336 F.3d 200 (2d Cir. 2003). Briefly, the catalyst theory permits an award of attorney fees if the plaintiff's lawsuit served as a "catalyst" in achieving a voluntary change in the defendant agency's conduct. Proponents of this theory believe it is necessary to encourage plaintiffs with meritorious but expensive cases to bring suit, and will prevent agencies from unilaterally mooting an action before judgment to avoid an award of attorney fees. However, in rejecting the catalyst theory, Chief Justice Rehnquist noted in *Buckhannon* that ". . . these assertions . . . are entirely speculative and unsupported by any empirical evidence." *Buckhannon*, 532 U.S. at 608. The Department of Justice believes that *Buckhannon* and its progeny represent sound public policy and should remain undisturbed.

All in all, FOIA is working about as well as might be expected as it enters its middle age.¹⁰ To be sure, in an area of government administration such as this, there will always be instances in which Federal agencies still can improve their delivery of services to the public as they continuously struggle to strike the best balance among their competing responsibilities. Governmentwide, more than four million FOIA requests are now made each year and, inevitably, some percentage of them will not receive the immediacy of attention that both the Department of Justice and FOIA requesters involved would like to see them receive. Especially in this era of large fiscal constraints and homeland security concerns, it is difficult for some agencies to discharge their FOIA responsibilities as well as we would all like them to. But the Department of Justice will continue to do all that it can to encourage full and uniform Governmentwide compliance with this vital access law because we are committed to its faithful implementation.

Conclusion:

¹⁰Beyond matters of procedural concern, there always are some substantive respects in which FOIA could benefit from further fine-tuning, such as regarding the protection of settlement discussions as noted above and perhaps also homeland security information as well. Such matters may be appropriate for future attention.

Since its enactment in 1966, FOIA has firmly established an effective statutory means of public access, where warranted, to Executive branch information in the Federal government. But the goal of achieving an informed citizenry is often counterpoised against other vital societal aims, such as national security, the public's interest in effective and efficient operations of government; the prudent use of limited tax payer dollars; and the preservation of the confidentiality and security of sensitive personal, commercial, and governmental information.

Though tensions among these competing interests are characteristic of a democratic society, their resolution lies in properly utilizing FOIA's workable statutory scheme that encompasses, balances, and appropriately protects all interests, while placing primary emphasis on the most responsible disclosure possible.

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