



STATEMENT OF

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FOR A HEARING ON

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Subcommittee on Oversight, Management, and Accountability

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Chairwoman Torres Small, Ranking Member Crenshaw, and distinguished Members of the Subcommittee, thank you for the opportunity to appear before you today to discuss oversight of the Freedom of Information Act (FOIA) process within the U.S. Department of Homeland Security (DHS).

DHS FOIA Program

DHS has a broad mandate to secure the nation from threats. The DHS mission is to safeguard the American people, our homeland, and our values with honor and integrity. The Department's FOIA program accomplishes this mission by providing records that promote transparency and demonstrate accountability, while also protecting interests identified by one of the law's nine exemptions. Disclosures under FOIA provide the public with a better understanding of, and more confidence in, the Department's work and fosters greater public participation in agency decision-making. The Department is proud of the investments we have made in our FOIA program and workforce. In Fiscal Year (FY) 2019, our dedicated staff of about 600 full-time FOIA professionals – across all elements of the Department – processed an estimated 430,000 requests and released about 40 million pages of records. Our work not only improves the public's understanding of DHS operations, but also provides a critical service to people seeking their own records.

DHS Privacy Office

Under the leadership of the Chief Privacy Officer, who the Secretary also designated the DHS Chief FOIA Officer, the DHS Privacy Office is responsible for oversight of the Department's decentralized FOIA operations. DHS Components are responsible for establishing

and maintaining their own FOIA programs. As the Deputy Chief FOIA Officer, it is my duty to monitor implementation of the law across the Department, and to counsel DHS leadership on adjustments to agency practices, policies, personnel, and funding as may be necessary to improve performance. Under my leadership, the DHS Privacy Office has met this mandate through, among other initiatives:

- Issuing policies that improve the reliability and consistency of FOIA operations across the Department;
- Leveraging the Department of Justice (DOJ) Office of Information Policy's (OIP) "Self-Assessment Toolkit," which contains various milestones to help agencies evaluate their FOIA program and identify areas for improvement;
- Providing targeted training opportunities for Department FOIA professionals;
- Establishing robust Component FOIA performance metrics that improve responsiveness to requesters;
- Investing in technology that improves workflows and workforce management;
- Centralizing certain FOIA operations at the headquarters level to take advantage of shared resources and create a better-defined career path for DHS FOIA professionals;
- Using staff capabilities and expertise to assist in aggressive Component backlog reduction efforts; and
- Creating contract vehicles that enable Components to easily access support for surge efforts.

DHS FOIA Requests

In FY 2018, DHS received and processed 45 percent of all the FOIA requests Government-wide, and we have every reason to expect that DHS will once again have the largest FOIA workload across the Government in FY 2019. The number of requests received by DHS in FY 2019 increased by approximately 2 percent compared to FY 2018. The number of requests processed by DHS in FY 2019 also increased by roughly 14 percent compared to FY 2018. This is the fourth consecutive year with increases in both the number of requests received and the number processed by the Department.

In addition to receiving and processing more FOIA requests each year, the DHS FOIA program is locating, reviewing, and releasing more pages each year. For example, the average size of an Alien file (A-file) documenting an immigrant's interactions with the Federal Government, which is the most commonly requested type of record from DHS, is growing. Additionally, DHS employees create a significant number of electronic records regarding the Department's activities, and the volume is increasing. Electronic search tools have improved the FOIA program's ability to locate records that may be responsive to a FOIA request, and the number of pages released has increased. Before these pages can be released, a DHS FOIA professional must conduct a thorough line-by-line review of the record to ensure that the public is provided with a maximum level of transparency, while also ensuring no information is released that could be used to attack our Nation's security or put other important interests, including personal privacy, at risk. Between FY 2017 and FY 2019, the average number of pages released in response to a request grew from 87 to almost 95 – an increase of 9 percent.

Regulatory Framework

As previously noted, the DHS Privacy Office is strengthening the regulatory and FOIA policy framework undergirding the FOIA program's operations. In compliance with the mandate in the *FOIA Improvement Act of 2016*, DHS issued updated FOIA regulations that incorporate the law's amendments and provide the public with insight into FOIA operations at the agency. The DHS Privacy Office also issued DHS Directive 262-11, *Freedom of Information Act Compliance*, which describes the responsibilities of the DHS Chief FOIA Officer, the Deputy Chief FOIA Officer, Component FOIA Officers, and other key personnel and directs Components to comply with FOIA law and DHS policy.¹ The DHS Privacy Office has issued two additional compliance instructions:

- DHS FOIA Compliance Instruction 262-11-001: *Employee Notification Instruction*, which ensures current DHS employees are notified if the FOIA office releases their employment records;² and
- DHS FOIA Compliance Instruction 262-11-002: *FOIA Reporting Requirements*, which requires Components to regularly report to the DHS Privacy Office statistical information regarding their FOIA operations and information regarding significant requests.³

Performance

The DHS Privacy Office also established a DHS FOIA Compliance and Oversight Program, which leverages the DOJ OIP's "Self-Assessment Toolkit" to identify shared challenges across the Department and best practices to improve the Department's FOIA performance. The results

¹ See: <https://www.dhs.gov/publication/freedom-information-act-compliance-directive-04601>.

² See: <https://www.dhs.gov/publication/foia-compliance-instruction-262-11-001-employee-notification-instruction>.

³ See: <https://www.dhs.gov/publication/foia-compliance-instruction-262-11-002-foia-reporting-requirements>.

of the initial assessment assisted the DHS Privacy Office in identifying the need for additional training and led to the creation of robust Component FOIA performance metrics. These performance metrics set clear goals for the number of requests Components are expected to process and the number of pages they are expected to release. It also encourages Components to focus efforts on closing out any request that has been open for more than 200 days.

Backlog

The Department ended FY 2019 with a backlog of about 32,500 requests to which no response had been issued within the law's 20- or -30-day response time, a decrease of 40 percent compared to FY 2018. The number of requests received and DHS's backlog do not include the almost 60,000 referrals from U.S. Citizenship and Immigration Services to U.S. Immigration and Customs Enforcement (ICE) that ICE was not able to log into their FOIA tracking solution before the end of the Fiscal Year. Since FY 2008, the Department's FOIA backlog has ranged from fewer than 12,000 in 2010 to as many as approximately 103,000 in FY 2014. Notably, DHS has made great strides in driving down the average response times to requests.

At the end of FY 2019, preliminary numbers indicate that about 70 percent of open DHS FOIA requests were less than 60 days old. DHS has also made significant progress in driving down the response time for relatively routine requests. In FY 2018, DHS responses to routine requests averaged less than 30 days, a reduction of more than 10 days compared to FY 2017 figures. DHS has also driven down the response time to complex requests involving voluminous amounts of records or particularly sensitive information. For instance, in FY 2018, DHS responded to complex requests, on average, in less than 100 days, more than 20 days quicker

compared to FY 2017. We expect the Component FOIA performance metrics to further assist us in improving our responsiveness to requesters.

Technology

Our experience over the past five years has shown the value of investing in technology that eases the FOIA workload and enables process improvements. Efforts to digitize the FOIA process, eliminate paper-based processes, and avoid duplicating efforts have been key to the Department's ability to increase the number of requests processed and pages released. Currently, 10 of 13 Components participate in a contracted FOIA tracking and processing solution that enables Components to share the costs of storage and Information Technology (IT) support, avoid duplicative data entry, seamlessly transfer requests across Components, and better manage the workforce.

Senior Department leadership pushed forward an initiative to address outdated IT systems in the Components by approving a list of priority areas for budget and resource planning. In July 2018, the FOIA Technology System Requirements Working Group, under the leadership of the DHS Privacy Office, drafted a Capabilities Analysis Report that recommended scalable requirements for an enterprise-wide FOIA processing and case management system. In a recent report on best practices for leveraging technology to improve FOIA processes, the National Archives and Records Administration's Office of Government Information Services cited the work of the DHS FOIA Technology System Requirements Working Group in writing requirements for a department-wide FOIA processing and case management system as a best practice.

The Capabilities Analysis Report includes several key requirements that will assist the Department in better serving requesters, strengthening public trust in the Department's actions, and fostering greater public participation in agency decision-making. One of the key requirements for this system is a FOIA requester interface, which allows requesters to submit requests directly into the system and retrieve records electronically. That feature alone will significantly reduce the administrative burden associated with FOIA. Including this feature in the Department's enterprise-wide FOIA processing solution will enable DHS FOIA professionals to spend less time on administrative tasks like data entry and devote more of their attention to complex processing issues. These features will also eliminate the need to create CDs to transmit electronic records to requesters.

Another key requirement is integrating advanced e-discovery tools in the DHS enterprise-wide FOIA processing solution, which will enable the de-duplication of records and harness the power of Artificial Intelligence to detect information that should not be released. Having a tool that highlights sensitive information for DHS FOIA officers will increase the speed and accuracy of processing, enable the Department to release more records that shed a light on our operations, and better protect the critical interests protected by FOIA, including personal privacy. DHS highlighted the successful use of e-discovery tools to improve the FOIA process in its 2019 Chief FOIA Officer Report, which cites the successful use of e-discovery tools by the DHS Privacy Office and several DHS Components to cull and de-duplicate records, thread e-mails, and narrow large record sets based on key terms. Currently, the DHS Privacy Office and Components use a variety of methods to access these tools, including purchasing costly licenses and paying for usage by other agencies and offices that have these tools. Incorporating e-discovery tools into the enterprise-wide FOIA processing solution ensures all Components that

participate in the system have access to these tools when they need it and allows the Department to leverage the tools to assist with other information management needs across the Department.

Interoperability

The final key requirement is interoperability with other FOIA processing solutions currently in use at the Department. This interoperability will allow the Department to eliminate the duplication of efforts involved with referrals and consultations across the Department – allowing DHS FOIA professionals to focus their efforts on processing requests. The increase in the Department’s backlog at the end of FY 2019 highlights the critical importance of interoperable FOIA processing solutions across the Department. The DHS Privacy Office’s ability to coordinate Component-led surge efforts and mitigate the effects of these efforts on other Components benefits the Department overall.

Conclusion

DHS is committed to constantly improving public understanding of its mission, creating more confidence in the Department’s work through disclosures under the FOIA, and fostering greater public participation in agency decision-making. The 40 million pages the DHS FOIA program released in FY 2019 significantly advance these goals. These disclosures also feed into a continued public demand for information. DHS received a record-breaking number of requests in FY 2019, and we expect the number of requests we receive in FY 2020 to increase yet again. We also expect the concurrent number of potentially sensitive electronic records that must be reviewed for release in response to requests to continue to grow.

I look forward to working with members of this Subcommittee to ensure that we are appropriately leveraging our resources and technology to make the FOIA process as lean, agile, and effective as possible. The DHS Privacy Office will continue to invest in our workforce and create a sound regulatory framework that ensures the reliability and consistency of FOIA processing across the Department, and I will continue to seek new solutions for coordinating our efforts and better managing the backlog.

Thank you for holding this important hearing today. I appreciate your dedication to ensuring that DHS is meeting its obligations to provide transparency and demonstrate accountability to the public while protecting information that could be used to attack our homeland or otherwise damage sensitive interests like personal privacy. I look forward to answering your questions.