

RICHARD J. DURBIN, ILLINOIS, CHAIR

PATRICK J. LEAHY, VERMONT  
DIANNE FEINSTEIN, CALIFORNIA  
SHELDON WHITEHOUSE, RHODE ISLAND  
AMY KLOBUCHAR, MINNESOTA  
CHRISTOPHER A. COONS, DELAWARE  
RICHARD BLUMENTHAL, CONNECTICUT  
MAZIE HIRONO, HAWAII  
CORY A. BOOKER, NEW JERSEY  
ALEX PADILLA, CALIFORNIA  
JON OSSOFF, GEORGIA

CHARLES E. GRASSLEY, IOWA  
LINDSEY O. GRAHAM, SOUTH CAROLINA  
JOHN CORNYN, TEXAS  
MICHAEL S. LEE, UTAH  
TED CRUZ, TEXAS  
BEN SASSE, NEBRASKA  
JOSHUA D. HAWLEY, MISSOURI  
TOM COTTON, ARKANSAS  
JOHN KENNEDY, LOUISIANA  
THOM TILLIS, NORTH CAROLINA  
MARSHA BLACKBURN, TENNESSEE

## United States Senate

COMMITTEE ON THE JUDICIARY

WASHINGTON, DC 20510-6275

March 15, 2021

### VIA ELECTRONIC TRANSMISSION

The Honorable Gene Dodaro  
Comptroller General  
United States Government Accountability Office  
441 G Street, NW  
Washington, DC 20226

Dear Comptroller Dodaro:

This week marks the sixteenth anniversary of Sunshine Week. Sunshine Week coincides with the birthday of James Madison, considered the father of open government, and has grown into an enduring initiative to promote open government. Central to this celebration is the Freedom of Information Act (“FOIA”), which creates accountability for the federal government and keeps citizens informed of its operations, both of which are vital to the functioning of our democratic society.

The Government Accountability Office (“GAO”) plays an essential role in monitoring the federal government’s compliance with FOIA, and we applaud GAO’s two recent reports<sup>1</sup> examining compliance with FOIA and the FOIA Improvement Act of 2016. We request GAO continue its work in this field by examining the impact of the SARS-COV-2 (“COVID-19”) pandemic on FOIA processes and procedures.

As you are aware, the Senate Judiciary Committee has jurisdiction over FOIA. Compliance with FOIA, including its 2016 amendments, is mandatory for all federal agencies, even during unforeseen circumstances. As strong supporters of government transparency, we are concerned these obligations are not being met. For example, according to a May 2020 Department of Justice (“DOJ”) report, COVID-19 impacts affected FOIA processing government-wide, as many agencies have had limited ability to retrieve or process FOIA requests during the pandemic.<sup>2</sup> The DOJ reported that due to staffing and technology limitations, many agencies faced challenges at various stages of the FOIA process, ranging from accepting requests to conducting searches, processing certain types of records, and providing final responses.<sup>3</sup>

These issues compound the preexisting challenges that agencies face in processing the hundreds

---

<sup>1</sup> U.S. Gov’t Accountability Office, GAO-21-148, *Freedom of Information Act: Update on Federal Agencies’ Use of Exemption Statutes* (Jan. 12, 2020), available at <https://www.gao.gov/products/gao-21-148>; U.S. Gov’t Accountability Office, GAO-21-XXX, *Accountability 2021: Recommendations for restoring accountability in the federal government* (Mar. 10, 2020), available at XXX.

<sup>2</sup> U.S. Dept. of Justice, *Guidance for Agency FOIA Administration in Light of COVID-19 Impacts* (May 28, 2020), available at <https://www.justice.gov/oip/guidance-agency-foia-administration-light-covid-19-impacts>.

<sup>3</sup> *Id.*

of thousands of FOIA requests they receive each year in a timely manner, even following the passage of the FOIA Improvement Act of 2016.<sup>4</sup> According to a March 2020 GAO report, from fiscal year 2011 to 2018, agencies reported the number of FOIA requests received increased over 30 percent and backlogs increased over 80 percent.<sup>5</sup>

To assist the Committee in better understanding the impact of the COVID-19 pandemic on agencies' compliance with FOIA, please provide a written response to the following questions no later than June 30, 2021.

1. How has the volume and timeliness of FOIA requests and appeals processing, and the size of FOIA backlogs, changed during the COVID-19 pandemic?
2. What specific challenges have agencies faced in meeting their FOIA obligations during the COVID-19 pandemic?
3. What are the effects of delays in FOIA processing on agencies' assessment of FOIA fees?
4. What recent changes have agencies made during the COVID-19 pandemic, including operational efficiencies?
5. What are agency plans for reducing any FOIA backlogs as a result of the COVID-19 pandemic?
6. What, if any, guidance or other resources have the Department of Justice, Office of Information Policy and the National Archives and Records Administration, or Office of Government Information Services provided to help agencies with FOIA operations and planning during and following the pandemic?
7. Other than appropriating additional funds, what steps can Congress take to assist agencies with meeting their FOIA obligations in a timely fashion?

Thank you for your prompt attention to this important matter. If you have any questions, please contact Kristina Sesek of Ranking Member Grassley's staff at (202) 224-5225, Sara Zdeb of Chair Durbin's staff at (202) 224-7703, Rajiv Venkataramanan of Senator Leahy's staff at (202) 224-4242, or Franci Rooney of Senator Cornyn's staff at (202) 224-7840.

Sincerely,

---

<sup>4</sup> U.S. Gov't Accountability Office, GAO-20-406R, *Freedom of Information Act: Federal Agencies' Recent Implement Efforts* (Mar. 11, 2020), available at <https://www.gao.gov/products/gao-20-406r>.

<sup>5</sup> *Id.*



Charles E. Grassley  
Ranking Member  
Committee on the Judiciary



Richard J. Durbin  
Chair  
Committee on the Judiciary



John Cornyn  
United States Senator



Patrick Leahy  
United States Senator