

United States Senate

May 4, 2020

VIA ELECTRONIC TRANSMISSION

Bobak Talebian
Director, Office of Information Policy
U.S. Department of Justice
Suite 11050
1425 New York Avenue, N.W.
Washington, D.C. 20530

Dear Director Talebian:

We write to request information about federal agencies' compliance with the Freedom of Information Act (FOIA) during the COVID-19 pandemic. Given the central role of the Justice Department's Office of Information Policy (OIP) in encouraging and overseeing FOIA compliance across the government, we are particularly interested in any efforts you have initiated to ensure that FOIA is faithfully administered in these unprecedented times.

FOIA plays a critical role in increasing government transparency and accountability by securing the public's right to information about the work that federal agencies are doing. For over 50 years, information revealed through FOIA requests has helped to expose government waste and misconduct, as well as threats to the public health and safety.

Of course, government transparency and accountability is even more important during a time of crisis. While many agencies have sought to be clear about their temporarily reduced capabilities, we are concerned that some, particularly the FBI, may have created unnecessary burdens on requesters in response to the COVID-19 national emergency declaration.¹ We understand all agencies and departments are continuing to adapt to the current circumstances, but it is the Department's duty to ensure that FOIA administration is not simply cast aside as a temporary inconvenience.

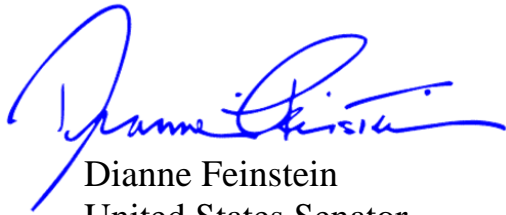
¹ See *Freedom of Information Act (FOIA) Processing Changes Due to COVID-19: In Brief*, Congressional Research Services (Mar. 27, 2020).

To better understand how FOIA operations throughout the federal government have been impacted, and what specific steps OIP is taking to protect the public's right to information, please provide numbered, written responses to the following questions by no later than May 29, 2020.

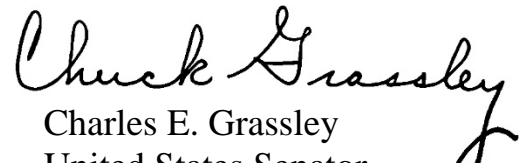
- 1) Please provide a list of agencies and departments that have limited in any manner their acceptance of FOIA requests or delayed processing of such requests due to the current crisis, along with OIP's understanding of the specific reasons for such limitations and delays.
- 2) What specific steps has OIP taken to mitigate the impact of the pandemic on FOIA administration across the government? For example, has OIP, or the Department more broadly, issued any formal guidance to agencies regarding best practices for FOIA administration during the pandemic? If not, why?
- 3) Does OIP support the FBI's decision to not accept electronic FOIA requests or send out electronic responses through its electronic portal during the pandemic? If so, please explain how the FBI's decision is consistent with the FOIA statute.
- 4) Has OIP instructed agencies to be clear, candid, and transparent with requesters and the general public about any altered procedures or potentially diminished FOIA processing capabilities during the pandemic? Please explain.
- 5) What specific steps, if any, has OIP taken to encourage increased proactive disclosures by agencies during this time, which would reduce the necessity for individual request processing?
- 6) What specific steps, if any, has OIP taken during the pandemic to encourage the use and integration of technology into agencies' FOIA processing protocols? And what specifically is OIP doing to ensure the continued functionality of the "consolidated online request portal," as required by the FOIA Improvement Act of 2016?
- 7) Has OIP identified any specific logistical, technological, or other limitations, such as statutory constraints, that might be discouraging the timely processing of FOIA requests during this (or any future) pandemic or national emergency?

Thank you for your prompt attention to this request. If you have any questions, please contact the appropriate staff from each of our offices.


Sincerely,




Dianne Feinstein
United States Senator



Charles E. Grassley
United States Senator



Patrick Leahy
United States Senator



John Cornyn
United States Senator