

Congress of the United States
Washington, DC 20515

March 28, 2019

The Honorable Gene L. Dodaro
Comptroller General of the United States
U.S. Government Accountability Office
441 G Street, N.W.
Washington, D.C. 20548

Dear Comptroller General Dodaro:

We request that the Government Accountability Office (GAO) conduct a comprehensive review of agency compliance with the Freedom of Information Act (FOIA).

In 2016, Congress passed the FOIA Improvement Act of 2016 to expand public access to government records. Among other reforms, the 2016 Act codified a presumption of openness, allowing agencies to withhold records only when there is foreseeable harm to an interest protected by an exemption or a legal requirement preventing their release.¹

Some agencies are not fully implementing the 2016 improvements and continue to burden requesters with unlawful delays and denials. GAO's 2018 assessment revealed inconsistent and incomplete agency compliance with FOIA between 2012 and 2016. GAO found that 18 agencies had implemented only half of the FOIA requirements reviewed, and several agencies had backlogs of more than 1,000 FOIA requests during the same time period.²

For these reasons, we request that GAO build on its 2018 assessment and conduct a comprehensive review of compliance with FOIA since the 2016 amendments. Specifically, we request that GAO examine:

1. Whether agencies have updated their FOIA regulations to incorporate the requirements of the 2016 Act;
2. The timeliness with which agencies are processing FOIA requests, including:

¹ P.L. 114-185.

² *US Sets New Record for Censoring, Withholding Gov't Files*, Associated Press (Mar. 12, 2018) (online at <https://apnews.com/714791d91d7944e49a284a51fab65b85>); Government Accountability Office, *Freedom of Information Act: Agencies Are Implementing Requirements But Need to Take Additional Actions* (Mar. 2018) (GAO-18-452T) (online at www.gao.gov/assets/700/690607.pdf).

- a. whether requests are processed within the required time limits;
 - b. the timeliness with which agencies respond to administrative appeals; and
 - c. whether agencies grant requests for expedited processing;
3. The use of exemptions under 5 U.S.C. §552(b)(3) since GAO developed a catalog of (b)(3) statutes in its 2018 report, and the use of such exemptions by agencies, including:
 - a. the frequency with which agencies cite (b)(3) exemptions to withhold information; and
 - b. whether agencies identify the specific applicable statute when using (b)(3) exemptions to deny a request;
 4. Agency denials of FOIA requests, including:
 - a. whether provisions of FOIA used to deny requests are properly applied, including law enforcement exclusions and the use of “Glomar” denials;
 - b. how agencies apply the foreseeable harm standard; and
 - c. how agencies determine whether a request is unduly burdensome or not reasonably described;
 5. How agencies determine which requests are in the public interest and when to deny requests for fee waivers;
 6. Compliance with FOIA’s proactive disclosure requirements, including proactively releasing information that may be of public interest;
 7. Agency expenditures on FOIA processing, including the number of full-time FOIA staff, based on the size of the agency; and
 8. Any measures taken by the Office of Management and Budget, Department of Justice Office of Information Policy, and Office of Government Information Services to implement the FOIA Advisory Committee’s unanimous recommendations.

If you have any questions regarding this request, please contact House Oversight Committee staff at (202) 225-5051 or Senate Judiciary Committee staff at (202) 224-5225.

Thank you for your attention to this matter.

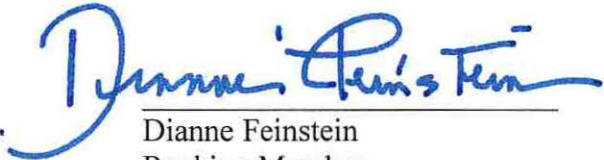
Sincerely,



Elijah E. Cummings
Chairman
House Committee on Oversight
and Reform



Jim Jordan
Ranking Member
House Committee on Oversight
and Reform



Dianne Feinstein
Ranking Member
Senate Committee on the Judiciary



Patrick Leahy
United States Senator



Charles E. Grassley
United States Senator



John Cornyn
United States Senator

cc: The Honorable Lindsey Graham, Chairman
Senate Committee on the Judiciary