

# DOCUMENT PRODUCTION STATUS UPDATE

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## HEARING

BEFORE THE

### COMMITTEE ON OVERSIGHT AND GOVERNMENT REFORM HOUSE OF REPRESENTATIVES

ONE HUNDRED FOURTEENTH CONGRESS

SECOND SESSION

JANUARY 7, 2016

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## DOCUMENT PRODUCTION STATUS UPDATE

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Thursday, January 7, 2016

HOUSE OF REPRESENTATIVES,  
COMMITTEE ON OVERSIGHT AND GOVERNMENT REFORM,  
*Washington, D.C.*

The committee met, pursuant to call, at 10:01 a.m., in Room 2154, Rayburn House Office Building, Hon. Jason Chaffetz [chairman of the committee] presiding.

Present: Representatives Chaffetz, Mica, Turner, Jordan, Walberg, Amash, Gosar, DesJarlais, Gowdy, Lummis, Massie, Meadows, DeSantis, Mulvaney, Buck, Walker, Blum, Hice, Russell, Carter, Grothman, Hurd, Palmer, Cummings, Maloney, Norton, Clay, Lynch, Connolly, Cartwright, Kelly, Lawrence, Lieu, Watson Coleman, DeSaulnier, Welch, and Lujan Grisham.

Chairman CHAFFETZ. The Committee on Oversight and Government Reform will come to order. Without objection, the chair is authorized to declare a recess at any time.

Thank you all for being here. The congressional oversight and investigative work does not need to be an adversarial activity. We expect, require, and need cooperation. For this to happen, it takes effort, communication, and good faith.

Mr. Cummings and I have worked together quite well. We have taken each other's views and ideas into consideration. We don't always agree, but we try as best we can to not be disagreeable. Our cooperative approach to oversight has yielded results. The committee has come a long way in a year.

Last month, we adopted a 195-plus page joint investigative report on the Secret Service, and together we have written roughly 200 joint letters asking for documents, information, and testimony. Generally, when we send a letter, it is not a thank-you note or a Christmas card. Generally, a letter from the Oversight Committee is a little bit more—a little tougher than that. The fact that we have more than 200 of these joint letters I think speaks a lot to the approach that we are trying to take.

But we also need cooperation from the agencies themselves. It might be helpful at this point to clarify our expectations so witnesses understand what we mean by cooperation. You know, we are different in the United States of America. We are open and transparent. We are self-critical. That is why back in 1816 or so, the Congress actually formed this committee. It was under a different name and it has grown and expanded and contracted and gone through a variety of different names along the way. But the function of oversight has been here since the foundation of our na-

tion. And a long, long time ago, people felt it wise to look at every expenditure made by the Federal Government.

So when the committee sends a request, we expect an honest effort to identify and collect the records that are responsive. We expect communication. We expect to be kept informed and to be straight with us. And we will expect that you will work with us in a good faith, which basically means when you make a commitment, do what you say you are going to do.

Republicans and Democrats share the goal of more efficient and effective government that serves the people. We have to ensure that every tax dollar is spent responsibly. And we do that by conducting oversight of the executive branch and examining government programs and policies that affect every American.

Mr. Cummings and I and our predecessors here at the committee didn't invent the concept of this oversight of the executive branch. It comes from the Constitution. It comes from the right of accessing and it comes from the need to be responsive as we represent the people of the United States of America.

Today, we are going to hear from a group of senior legislative liaisons from five different agencies, all of which have particularly troublesome track records when it comes to cooperating with the committee's requests for information. I am somewhat sympathetic to the idea that they get bombarded not just by us but from so many different committees not only in the House but in the Senate as well. It is a large task, particularly with agencies that you represent that are so massive and so big, spending literally billions upon billions of dollars of taxpayer dollars.

The Department of Homeland Security has been invited to discuss our requests related to the Secret Service and the TSA. TSA has consistently failed to meet our production requests and has ignored basic fundamental requests such as appearing at hearings. On April 17 of last year, we invited the administrator to testify at a hearing scheduled for a month later. The day before the hearing, the administrator backed out and cited a scheduling problem. Yet, we had a month's notice.

We invited the Justice Department to address position on withholding the memos that guided its investigative personnel when dealing with GPS tracking devices. We also hope to get an update on our request about the complete Lois Lerner files.

An official with the State Department is here to address persistent troubles we have had in securing documents for our embassy construction investigation that will be entering its third year. When State does produce materials, it is almost always in a half-hearted way with a smattering of documents for one or two discrete requests and usually none for most. And that is very problematic.

There is a story out today about providing inaccurate information as it relates to Hillary Clinton and her emails. We are going to ask you some questions about that.

The Office of Management and Budget is here to address its response to a subpoena I sent for materials from its OIRA component, the Office of Information and Regulatory Affairs, related to the Waters of the United States rulemaking. OIRA is an office created by Congress, and its job is to review draft and proposed regulations. To create the appearance that it is cooperating with the

committee, OMB reflectively offered a number of pages of documents it has produced.

To my fellow Members, here is a flashing signal that maybe there is a problem. When they want to talk about the number of documents they have produced, I am not interested in that. I am interested in the percentage of documents that you produced. It is a little trick to say, oh, we have provided 100,000 of this or 50,000 of that. Tell me what percentage of the documents we get, because if we want 100 percent of the truth, we are going to need 100 percent of the documents. And until we get them, it makes us think that you are hiding something.

The Office of Personnel Management has been invited to discuss its effort to produce materials responsive to the data breach investigations. OPM has unduly burdened the committee investigators by applying unnecessary and unexplainable redactions. Basic publicly available information has been repeatedly redacted by OPM. In some cases, our investigators have found answers more readily by reviewing the FedBizOpps Web site. The extraordinary lengths OPM has gone to keep basic information from the committee leaves us with the conclusion that perhaps they are having a lot to hide. If something is embarrassing, that is not a reason to keep it from the Congress.

A successful working relationship between the congressional committee and the executive branch agencies require effort, communication, and good faith on both sides. We need transparency. We need to work together. You have a lot of good staff and a lot of good people. We are not here to disparage any one person's reputation, but we are here to get answers. And we need to make sure that we get those documents so that we can do our job serving the American people, and we need your help in doing so.

Chairman CHAFFETZ. With that, I would now like to recognize the ranking member Mr. Cummings.

Mr. CUMMINGS. Thank you very much, Mr. Chairman.

I strongly support the authority of this committee to obtain necessary documents as part of our investigations. Documents are a critical tool to investigate waste, fraud, or abuse; eliminate unnecessary duplication; improve the effectiveness and efficiency of government; and determine whether Congress needs to change our laws to improve the lives of the American people.

Of course, we rely on other sources of information such as hearing testimony, witness interviews, and informal briefings and meetings. But documents are unique. They give us the ability to understand what happened on the ground over a certain period of time without having to rely on hazy memories or the self-serving recollections of those being investigated.

I support the committee's authority because I have been in the chairman's seat. I know firsthand how oversight can be stifled by slow-walking documents or withholding information to which Congress is entitled. I remember very well the fights we had with the Bush administration over their refusal to provide documents we needed, and I remember how those actions impaired our ability to do our work. So I support the chairman in his efforts.

Unfortunately, I have also seen how investigations can be used as a form of political attack rather than a search for the facts and

a search for the truth. I have seen how massive, repeated, and overbroad document requests have been used as a partisan weapon. I have seen how they can grind down agencies, force them to divert personnel, and waste millions of taxpayer dollars in the process.

For today's hearing, I believe it is important to recognize the difference between these two purposes. We need to recognize not only the significant demands that have been placed on these agencies but also what they have provided to date, which is substantial.

For example, the State Department has just experienced one of if not the most demanding years in its history in terms of congressional inquiries. The State Department is currently reporting to nine different committees, including the Benghazi Select Committee. And it has been inundated with requests unlike any previous year on record. In 2015 the Oversight Committee alone launched nine investigations relating to the State Department. In response, the Department provided more than 21 gigabytes of information.

Just as part of our investigation of embassy construction, the State Department produced more than 160,000 pages of documents. Of course, the committee wants additional documents. In fact, I have signed on to some of those document requests myself. But it is inaccurate to suggest that the State Department has intentionally withheld the documents we need.

With that said, the State Department is notorious for its extremely poor records management systems, and this problem dates back several administrations. As I said earlier, I have been incredibly frustrated in the past with the State Department's inability to run the most basic document searches and produce documents in a timely manner. In my opinion, a solution to this problem is not to shame the heads of the Legislative Affairs offices. Many of these officials worked in Congress previously. They fully understand our needs and our rights to the information, and they are among some of our most effective advocates within agencies.

Instead, if we really want to address this problem, we can take two key steps. First, Congress can conduct sustained and detailed reviews of agency information management processes, including document preservation, collection, and production. We can support long-term efforts to upgrade and improve their systems so they take less agency time to implement and provide Congress what it needs more quickly. I am talking about efficiency and effectiveness. This work would pay dividends to Congress, the press, and the American public.

The second thing Congress can do is to take a closer look at itself, put a mirror up to our faces. We can end the politically motivated requests that are designed to generate headlines rather than improve effectiveness and efficiency. We can eliminate duplicate requests from multiple committees and streamline our oversight efforts. We can ask for only what we really need rather than everything under the sun. And we can work with agencies to understand the legitimate interests in protecting certain classes of information while pursuing accommodations to give us what we need to do our jobs. That is the balance that we should seek. That is the balance that we should work towards.



And so in closing, Mr. Chairman, I hope we can explore some of these issues here today, and I look forward to the testimony of our witnesses. And with that, I yield back.

Chairman CHAFFETZ. I thank the gentleman.

I will hold the record open for 5 legislative days for any members who would like to submit a written statement.

I will now recognize our panel of witnesses.

I am pleased to welcome Hon. Julia Frifield, Assistant Secretary of the Bureau of Legislative Affairs at the United States Department of State; Hon. Peter Kadzik, Assistant Attorney General for Legislative Affairs at the Department of Justice; Hon. Tia Johnson, Assistant Secretary of the Office of Legislative Affairs at the United States Department of Homeland Security; Ms. Tamara Fucile—did I pronounce that right?

Ms. FUCILE. Close enough.

Chairman CHAFFETZ. Close enough—Associate Director for Legislative Affairs at the Office of Management and Budget; and Mr. Jason Levine, Director of Office of Congressional, Legislative, and Intergovernmental Affairs at the United States Office of Personnel Management.

Welcome, you all, and thank you for being here.

Pursuant to committee rules, all witnesses are to be sworn before they testify. If you will please rise and raise your right hand. Thank you.

[Witnesses sworn.]

Chairman CHAFFETZ. Thank you. You may be seated. And let the record reflect that all of the witnesses answered in the affirmative.

You know the drill here. We are trying to keep you to 5 minutes. We will give you a little bit of latitude, but please try to keep your comments to 5 minutes if you can, and then we will obviously insert your entire written statement into the record.

We will now recognize Ms. Frifield for 5 minutes.

## WITNESS STATEMENTS

### STATEMENT OF JULIA FRIFIELD

Ms. FRIFIELD. Thank you. Mr. Chairman, Ranking Member Cummings, and members of the committee, I appreciate this opportunity to testify on the State Department's response to congressional requests for documents. The State Department is committed to working with Congress on congressional investigations.

Secretary Kerry spent nearly 30 years in Congress. He believes strongly in the importance of congressional oversight and led investigations when he was in the Senate. Since he arrived at the State Department, his clear instruction has been for the entire department to be responsive to congressional investigations and requests. I share his commitment. Before joining the Department, I spent my entire career as a Capitol Hill staffer. I have great respect for the congressional role in conducting oversight.

Today's hearing focuses on requests for documents, which I will address at length. However, it's also important that—to underscore our commitment to working with Congress is not limited to requests for documents. In 2015, the State Department's Legislative Affairs office provided over 2,500 briefings for the Hill on foreign

policy issues. We worked with Consular Affairs to respond to over 5,000 constituent cases for Members of Congress, everything from lost passports to missing constituents overseas to helping with visas for constituents' family members. We arranged over 500 congressional Member and staff delegation trips abroad, and we've appeared at 168 congressional hearings. We've also responded to 1,700 congressional letters.

With crises occurring around the world and Congress intently focused on foreign policy, we're working hard to meet all of our responsibilities, and we recognize that cooperating with congressional investigations is one of them. Yet frankly, we at the State Department have struggled to keep pace with the increasing demands of congressional document requests, which have expanded in number, scope, and complexity. We're now responding to dozens of investigations by nine different committees, involving hundreds of specific requests for hundreds of thousands of pages of documents. This is approximately twice as many as we had last year.

While some of these investigations are relatively focused, others are broad and complex, involving many different bureaus within the Department, as well as other agencies. But let me be clear. We know it is our responsibility to answer these requests, and we are working to improve both the way we respond to make it more useful for Congress and the pace of our response.

Historically, when responding to congressional requests, we've followed a process similar to responding to FOIA requests, relying primarily on the same department infrastructure and technology. As both FOIA and congressional requests increased, we found that both types of requests were competing for the same resources. To compensate, at times we've pulled together ad hoc teams from functional and regional bureaus to respond to congressional requests, i.e., pulling people from the work of diplomacy to respond to Congress. Clearly, this system was not sustainable. We realized we needed to institutionalize the way we process documents to speed up the pace of delivery. We knew we had to upgrade our technology.

This past year, we've been transforming the way we respond to congressional requests. I worked with my colleagues at State to create a Congressional Document Production branch, which involved additional personnel and acquiring new software to facilitate document reviews and productions. We are grateful that Congress enabled us to shift funding to establish this new entity to provide additional personnel and new technology. As a result, we've been able to process more quickly requests from this committee, from the Select Committee on Benghazi, and from multiple other committees. While not every committee may be completely satisfied, I can state with confidence that our new unit is enabling us to respond to more committees simultaneously than ever before.

Because the Congressional Document Production branch is only a few months old, its impact may not be fully apparent yet. Going forward, this Committee should see the results of these enhanced resources as we work on your requests.

Additionally, we've made tangible improvements to the way we produce documents to Congress. We heard from congressional staff, including yours, who had concerns that we'd been providing docu-

ments in a way that was not as user-friendly as they'd like. We used to provide documents to Congress on paper, without coding, that enabled you to find and organize them. We would literally hand over boxes of documents.

After meeting with your staff and the staff of other committees who told us how hard it was to use documents in this format, we completely changed the way we give you documents. We now provide these documents electronically with easily searchable Bates numbers. We can also now provide documents organized by date or custodian, and the ability to review email documents is vastly expanded. The Department's move to electronic document processing has dramatically improved our ability to review and provide documents quickly and in volume, and it makes it easier for you to review them.

With respect to this committee, I'd like to summarize where we are and where we hope to go in the future. Currently, we're working on nine investigations for your committee. To date, we've provided over 160,000 pages to the committee for its investigation for embassy construction and have participated in four hearings in 2015 and many meetings and briefings, though I do note I did hear what the chairman said about using numbers, and I understand what he is coming from on there.

We've been collecting documents for the five requests that you outlined in your December 18 letter, and we're committed to producing thousands of pages of documents to your committee, along with providing requested briefings on the matters described in the letter.

In closing, while we've implemented significant improvements to respond to congressional investigations, we are striving to do better. The obstacle to responding is not one of our—of commitment. Fundamentally, it's a question of balancing resources in response to multiple large-scale congressional requests from a number of different committees. We're trying to find innovative ways to respond better and faster.

I look forward to working with you and your staff to ensure that the State Department and the Congress work together to provide the transparency that should be the hallmark of our government.

[Prepared statement of Ms. Frifield follows:]

STATEMENT BY  
Julia Frifield  
Department of State  
Assistant Secretary for Legislative Affairs

BEFORE THE HOUSE OVERSIGHT AND GOVERNMENT REFORM  
COMMITTEE  
January 7, 2016

Mr. Chairman, Ranking Member Cummings, and members of the Committee, I appreciate this opportunity to testify on the State Department's response to Congressional requests for documents.

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Today's hearing focuses on requests for documents, which I will address at length. However, it is important to underscore that our commitment to working with Congress is not limited to requests for documents. In 2015, the State Department's Legislative Affairs office provided over 2,500 briefings for the Hill on foreign policy issues. We worked with Consular Affairs to respond to over 5,000 constituent cases for members of Congress – everything from lost passports to missing constituents overseas to helping with visas for constituents' family members. We arranged 536 Congressional Member and staff delegation trips abroad. Department officials appeared at 168 hearings, and we responded to over 1,700 Congressional letters. With crises occurring around the world and Congress

intently focused on foreign policy, we are working hard to meet all of our responsibilities – and we recognize that cooperating with Congressional investigations is one of them.

Yet frankly, we at the State Department have struggled to keep pace with the increasing demands of Congressional document requests, which have expanded in number, scope, and complexity. We are now responding to dozens of investigations by nine different committees, involving hundreds of specific requests for hundreds of thousands of pages of documents. This is approximately twice as many as we had in 2014. While some of these investigations are relatively focused, others are broad and complex, involving many different bureaus within the Department, as well as other agencies.

But let me be clear: we know it is our responsibility to answer these requests, and we are working to improve both the way we respond – to make it more useful for Congress – and the pace of our response.

Historically, when responding to Congressional requests we have followed a process similar to responding to FOIA requests, relying primarily on the same Department infrastructure and technology. As both FOIA and Congressional requests increased, we found that both types of requests were competing for the same resources. To compensate, at times we have pulled together ad hoc teams from functional and regional bureaus to respond to Congressional requests, i.e., pulling people from the work of diplomacy to respond to Congress. Clearly, this system was not sustainable. We realized we needed to institutionalize the way we process documents to speed up the pace of delivery. We knew we had to upgrade our technology.

This past year, we have transformed the way we respond to Congressional requests. I worked with my colleagues at State to create a Congressional

Document Production branch, which involved adding additional personnel and acquiring new software to facilitate document reviews and productions. We are grateful that Congress enabled us to shift funding to establish this new entity. We now have 21 people dedicated to processing documents with support from new legal and information technology personnel. As a result, we have been able to process more quickly requests from this Committee, from the Select Committee on Benghazi, and from multiple other committees. While not every committee may be completely satisfied, I can state with confidence that our new unit is enabling us to respond to more committees simultaneously than ever before. Because the Congressional Document Production branch is only a few months old, its impact may not be fully apparent yet. Going forward, this Committee should see the results of these enhanced resources as we work on your requests.

Additionally, we have made tangible improvements to the way we produce documents to Congress. We heard from Congressional staff, including yours, who had concerns that we were providing documents in a way that was not as “user-friendly” as they would like. We used to provide documents to Congress on paper, without coding that enabled you to find and organize information. We would literally hand over boxes of documents. After meeting with your staff, and the staff of other committees who told us how hard it was to use documents in this format, we completely changed the way we give you documents. We now provide these documents electronically with easily searchable Bates numbers. We also can now provide documents organized by date or custodian, and the ability to review email documents is vastly expanded. The Department’s move to electronic document processing has dramatically improved our ability to review and provide documents quickly and in volume, and it makes it easier for you to review them.

With respect to this Committee, I would like to summarize where we are and where we hope to be in the near future. Currently, we are working on 9 investigations with your Committee. To date, we have provided over 160,000 pages to the Committee for its investigation of embassy construction, and participated in four hearings in 2015 and many meetings and briefings. We have

been collecting documents for the five requests that you have outlined in the December 18 letter and we are committed to producing thousands of pages of documents to your committee along with providing requested briefings on the matters described in that letter.

Specifically,

- On August 13, 2015, we provided a briefing on the New Embassy Compound in Jakarta. We have produced three tranches of documents, starting in August. To date, we have provided nearly 6,000 pages on the Jakarta New Embassy Compound, and we continue to review documents for future productions to the Committee.
- We have begun our document production on Zimbabwe, Mozambique, and the Kingdom of Saudi Arabia and we continue to review documents for future productions to the Committee.
- We have provided a briefing to your staff on the Art in Embassies Program on January 4 and began to produce documents to the committee.
- The Congressional Notifications, 2,137 pages, on overseas construction were sent to the Committee on December 30.
- We testified to the changes in Danger Pay in September and provided an in-depth briefing to your staff on September 30.

In closing, while we have implemented significant improvements to respond to Congressional investigations, we are striving to do better. The obstacle to responding is not one of commitment. Fundamentally, it is a question of balancing resources in response to multiple large scale Congressional requests from a number of different committees. We are trying to find innovative ways to respond better and faster. I look forward to working with you and your staff to ensure that the State Department and the Congress work together to provide the transparency that should be a hallmark of our government.

Chairman CHAFFETZ. Thank you.  
Mr. Kadzik, you are now recognized for 5 minutes.

**STATEMENT OF PETER J. KADZIK**

Mr. KADZIK. Good morning, Chairman Chaffetz, Ranking Member Cummings, and distinguished members of the committee.

Chairman CHAFFETZ. Peter, if you could —

Mr. KADZIK. Is that better?

Chairman CHAFFETZ. Thank you.

Mr. KADZIK. Okay. I appreciate the opportunity to appear before you today to discuss our continuing efforts to respond to the committee's information requests, including those requests specifically relating to the Department's policies on geolocation and other surveillance technology in the wake of the Supreme Court's 2012 decision in *United States v. Jones*.

I want to begin by assuring the committee that we value the important role of congressional oversight, and, as the attorney general and deputy attorney general have stated repeatedly, the Department is committed to accommodating the committee's information needs, consistent with our law enforcement, national security, and prosecutorial responsibilities. The Department appreciates that oversight is a critical underpinning of the legislative process.

Consistent with the value we place on congressional oversight, since the beginning of the 114th Congress, the Department has testified in close to 60 congressional hearings and provided extensive information in more than 1,800 letters responding to inquiries from committees and Members. In every instance, we strived to provide Congress with as much information as possible without compromising our law enforcement and national security efforts or our prosecutorial responsibilities.

In addition to these law enforcement and national security sensitivities, the Department also has an obligation to protect certain executive branch institutional interests, including the confidentiality of attorney-client communications, attorney work product, and internal deliberations. We are, nonetheless, committed to working in good faith to accommodate the committee's legitimate oversight interests, and we hope that the committee will likewise continue to engage in good faith with the Department in a manner that recognizes the important law enforcement and confidentiality interests presented in some cases.

In particular, we trust the committee recognizes the paramount importance of ensuring the Department's investigative and prosecutorial decisions are made without regard to political considerations or even the perception of political influence or pressure. Such political influence—and, indeed, the mere public perception of such influence—could undermine significantly our law enforcement efforts and, in criminal matters, shake public and judicial confidence in the integrity and independence of the criminal justice process.

We recognize that it is difficult when the interests and prerogatives of the legislative and executive branches come into potential conflict. That is why the Constitution envisions that the branches will engage in a process of accommodation to avoid such conflicts. This longstanding and well-accepted approach has been employed



by administrations of both parties for decades, and it has been supported by top department officials, both Democrats and Republicans alike.

Consistent with this approach, the Department has made efforts and will continue to make efforts to respond to the committee's information requests regarding our policies on geolocation and other surveillance technology. As the committee is aware, these specific information requests implicate significant confidentiality interests as the particular memoranda you have requested include sensitive, law enforcement-related, confidential work product prepared in anticipation of litigation.

Specifically, these memoranda include internal deliberations of department prosecutors about the legal, investigative, and strategic issues we face in our law enforcement efforts in light of the Jones decision. Our disclosure of this internal work product would chill the candid assessments and analyses that are essential to sound decision-making in law enforcement matters and prosecutions.

In addition, disclosure could jeopardize ongoing and future investigations and prosecutions by prematurely revealing the government's investigative and litigation strategies. Such disclosure would afford criminal targets an opportunity to preempt those tools, evade law enforcement detection, and obtain knowledge of how our agents operate, undermining our Federal law enforcement efforts in a wide variety of cases. We know that the committee understands and appreciates these very real risks.

The Department has already undertaken efforts to work in good faith to accommodate the committee's interests in this matter. We were pleased to brief committee staff last September on the forms of legal process the Department uses for obtaining geolocation information. We hope that our briefing on these matters was helpful to the committee. And as we have offered previously, we would be happy to provide additional briefings and answer any remaining questions in our ongoing effort to accommodate the committee's information requests.

In conclusion, I emphasize again that the Department recognizes the importance of congressional oversight. At the same time, congressional oversight that implicates ongoing law enforcement efforts and investigative techniques, sensitive attorney work product, and internal deliberations presents unique confidentiality challenges and concerns.

Despite these challenges, we remain optimistic that, by working together cooperatively, we will be able to satisfy the committee's oversight interests in this matter, while also safeguarding the independence, integrity, and effectiveness of the Department's vital law enforcement efforts and prosecutorial responsibilities. The Department stands ready to continue this effort and to accommodate your information needs, and we hope that you will work with us towards that goal.

Thank you again for the opportunity to testify, and I'd be happy to answer questions.

[Prepared statement of Mr. Kadzik follows:]

**Statement of Peter J. Kadzik  
Assistant Attorney General, Office of Legislative Affairs  
U.S. Department of Justice  
Before the Committee on Oversight and Government Reform  
U.S. House of Representatives  
January 7, 2016**

Good morning, Chairman Chaffetz, Ranking Member Cummings, and distinguished Members of the Committee. I appreciate the opportunity to appear before you today to discuss our continuing efforts to respond to the Committee's information requests, including those requests specifically relating to the Department's policies on geolocation and other surveillance technology in the wake of the Supreme Court's 2012 decision in *United States v. Jones*.

I want to begin by assuring the Committee that we sincerely value the important role of congressional oversight, and, as the Attorney General and Deputy Attorney General have stated repeatedly, the Department is committed to accommodating the Committee's information needs, consistent with our law enforcement, national security, and prosecutorial responsibilities. The Department appreciates that oversight is a critical underpinning of the legislative process. Congressional committees, such as this one, need to gather information about how statutes are applied and funds are spent so that they can assess whether additional legislation is necessary, either to rectify practical problems in current law or to address problems not covered by current law. Oversight can shed valuable light on the Department's operations and thereby assist the Department in addressing problems that might not otherwise have been clear.

Consistent with the value we place on the critical role of congressional oversight, since the beginning of the 114<sup>th</sup> Congress the Department has testified in close to 60 congressional hearings and provided extensive information in more than 1,870 letters responding to inquiries from Members and committees. In every instance, we have strived to provide Congress with as much information as possible without compromising our law enforcement and national security efforts or our prosecutorial responsibilities. In addition to these law enforcement and national security sensitivities, the Department also has an obligation to protect certain Executive Branch institutional interests, including the confidentiality of attorney-client communications, attorney work product, and internal deliberations. We are, nonetheless, committed to working in good faith to accommodate the Committee's legitimate oversight interests, and we hope that the Committee will likewise continue to engage in good faith with the Department in a manner that recognizes the important law enforcement and confidentiality interests presented in certain instances. In particular, we trust that the Committee recognizes the paramount importance of ensuring that the Department's investigative and prosecutorial decisions are made without regard to political considerations or even the perception of political influence or pressure. Such political influence – and, indeed, the mere public perception of such influence – could undermine significantly our law

enforcement efforts and, in criminal matters, shake public and judicial confidence in the integrity and independence of the criminal justice process.

We recognize that it is difficult when the interests and prerogatives of the Legislative and Executive branches come into potential conflict. As you well know, that is why the Constitution envisions, and the Court of Appeals for the D.C. Circuit has recognized, that the branches will engage in a process of accommodation to avoid such conflicts. This approach to responding to the Committee's requests – attempting to balance and accommodate the respective interests of the coordinate branches – is wholly consistent with and, indeed, part of the give and take that the Constitution demands as the Court explained decades ago in the seminal oversight case of *United States v. AT&T Co.*, 567 F.2d 121 (D.C. Cir. 1977). I also should add that this longstanding approach is nonpartisan – administrations of both parties have relied upon it for decades and it has been supported by top Department officials, both Democrats and Republicans alike.

Consistent with this longstanding and well accepted approach, the Department has made efforts and will continue to make efforts to respond to the Committee's information requests regarding our policies on geolocation and other surveillance technology in the wake of the Supreme Court's 2012 decision in *United States v. Jones*. As the Committee is aware, these specific information requests implicate significant confidentiality interests as the particular memoranda you have requested include sensitive, law enforcement-related, confidential attorney work product prepared in anticipation of litigation. Specifically, these memoranda include internal deliberations of Department prosecutors about the legal, investigative, and strategic issues we face in our law enforcement efforts in light of the *Jones* decision. These documents include guidance to the Department's prosecutors about how to handle specific issues when they arise in the context of criminal prosecutions, as well as descriptions of a number of sensitive law enforcement techniques and the litigation risks that could arise following the *Jones* decision. Our disclosure of this internal work product would chill the candid assessments and analyses that are essential to sound decision-making in law enforcement matters and prosecutions. In addition, disclosure could jeopardize ongoing and future investigations and prosecutions by prematurely revealing the government's investigative and litigation strategies. Disclosure of the Department's internal analysis of investigative techniques used in federal criminal investigations would afford criminal targets an opportunity to preempt those tools, evade law enforcement detection, and frustrate future similar surveillance activities, and could pose a risk to individuals conducting surveillance, undermining our federal law enforcement efforts in a wide variety of cases. We know that the Committee understands and appreciates these compelling interests and shares our view that it is critical that we appropriately protect against unnecessary disclosures. Again, we look forward to continuing to work with the Committee to find a way to ensure that you have the information you need to perform effective oversight, while also safeguarding the important interests of the Department and the criminal justice system that are implicated by disclosure of the highly sensitive memoranda in this matter.

I also want to address directly the efforts the Department has already undertaken to work in good faith to accommodate the Committee's oversight interests in this matter. Recognizing the Committee's interests, we were pleased to brief Committee staff last September on the forms of legal process the Department uses for obtaining geolocation information. In the briefing, we described the wide variety of geolocation evidence that may be available in any given matter; explained how the legal process used in a given matter will depend on the type of information sought, the highly specific facts in a given matter, and the state of law and practice in a particular jurisdiction; and answered the Committee's questions on these issues. It is our understanding that these issues lie at the core of the Committee's oversight interests. We sincerely hope that our briefing on these matters was helpful to the Committee. As we have offered previously, we would be happy to provide additional briefings and answer any remaining questions in our ongoing effort to accommodate the Committee's information requests.

In conclusion, I emphasize again that the Department recognizes that congressional oversight is an important part of our system of government. At the same time, congressional oversight that implicates ongoing law enforcement efforts and investigative techniques, sensitive attorney work product, and internal deliberations presents unique confidentiality challenges and concerns. Despite these challenges, we remain optimistic that, by working together cooperatively, we will be able to satisfy the Committee's oversight interests in this matter, while also safeguarding the independence, integrity, and effectiveness of the Department's vital law enforcement efforts and prosecutorial responsibilities. The Department stands ready to continue this effort to accommodate your information needs and we hope that you will work with us toward that goal.

Thank you again for the opportunity to testify. I would be happy to answer your questions.

Chairman CHAFFETZ. Thank you.

Ms. Johnson, we look forward to hearing your testimony. As you know, committee rules require that you submit your testimony 24 hours prior. That was highlighted in the invitation. And perhaps as you give your opening statement, you can explain to this committee why you failed to provide this committee with your testimony prior to you giving it right now.

Ms. JOHNSON. Thank you.

Chairman CHAFFETZ. You are now recognized for 5 minutes.

#### STATEMENT OF TIA JOHNSON

Ms. JOHNSON. Thank you, Mr. Chairman.

Ranking Member Cummings, distinguished members of the committee, I appreciate the opportunity to discuss the considerable efforts, time, resources, and money that DHS devotes to complying with oversight requests by Congress.

During his confirmation hearing, Secretary Johnson pledged transparency and candor with Congress and committed to respond to congressional inquiries in a timely fashion. Since his arrival in December 2013, the Department's responsiveness to oversight requests has greatly improved. Indeed, last year, the Department examined its responses to congressional inquiries and found that it had cut its response time in half.

We therefore appreciated Chairman Chaffetz's statement when you recognized that the production and response to Congress have become much better and thank the Secretary for that. We are determined to continue to improve on that record.

Prior to coming to DHS, I served as an officer in the U.S. Army for almost 30 years. As a senior colonel, I was assigned to the Office of the Assistant Secretary of Defense for Legislative Affairs. At that time, we were still involved in combat operations in Iraq and Afghanistan. These two operations, as well as the detainee mission, generated a significant amount of congressional oversight. I was involved in that oversight process, which at the time I thought was considerable. However, upon my arrival at DHS, I was surprised to learn of the depth, breadth, and quantity of congressional oversight that this department faces.

In 2004, the 9/11 Commission strongly recommended that Congress reform the congressional oversight structure of DHS. As one expert witness told the Commission, the number of congressional bodies that exercise oversight over DHS is perhaps the single largest obstacle impeding the Department's successful development. With jurisdiction over both oversight and government reform, your committee is uniquely positioned to help foster efforts to implement this crucial 9/11 Commission recommendation.

In the 12 years since the Commission issued that recommendation, the oversight structure of the Department has grown only more complex and extensive. At last count, the Department answered to 92 congressional committees and subcommittees, 27 other caucuses, commissions, and groups. As the 9/11 Commission chairman, former Governor Tom Kean, has said, "Think of having 100 bosses. Think of reporting to 100 people. It makes no sense. You could not do your job under those circumstances."

But despite these challenges, we are doing our job. During calendar year 2015, DHS received approximately 700 oversight letters and countless more oversight requests. Of those, 70 letters came from members of this committee. We have responded to oversight inquiries on a broad array of topics ranging from the Secret Service's protective mission to DHS's assistance to victims of the cyber breaches. By our estimate, in 2015 DHS devoted more than 100,000 hours to responding to congressional oversight.

Today's hearing is to address the Department's response to oversight requests and demands regarding the United States Secret Service. During calendar year 2015, DHS and the Secret Service received 12 letters, over 100 requests for information, testimony, or documents, and one subpoena from this committee. By our count, we have completed addressing over 90 of those requests.

Secret Service has provided 13 briefings to committee staff. Eight employees of the Secret Service participated in day-long transcribed interviews conducted by the committee staff, and Secret Service leadership has testified at two committee hearings. And at the chairman's request, we facilitated a visit to the Secret Service headquarters for members of the committee. In total, the Department has produced over 10,000 pages of documents in response to the committee's requests, in addition to thousands of pages of classified documents.

These efforts have supplemented our hard work to respond to inquiries about the operation of Secret Service from the independent Protective Mission Panel, various investigations by the Office of Inspector General, and the oversight inquiries of 10 other congressional committees and subcommittees.

Secretary Johnson has made responsiveness to Congress a priority. As his assistant secretary for legislative affairs, I am determined to continue to improve on our past record of oversight response.

And, Mr. Chairman, Ranking Member Cummings, I apologize that our statement was not forwarded. That was an oversight. But I would be pleased to answer any questions from you and the members of the committee. Thank you.

[Prepared Statement of Ms. M. Tia Johnson]

**Statement of M. Tia Johnson  
Assistant Secretary for Legislative Affairs  
Department of Homeland Security**

**Before the Committee on Oversight and Government Reform  
United States House of Representatives**

**January 7, 2016**

Mr. Chairman, Ranking Member Cummings, Distinguished Members of the Committee:

I am honored to appear before you today to discuss the considerable efforts, time, resources and money that the Department of Homeland Security devotes to complying with oversight requests by this Committee, and by the United States Congress generally. During his confirmation hearing, Secretary Johnson pledged transparency and candor with Congress, and committed to respond to Congressional inquiries in a timely fashion. Since his arrival in December 2013, the Department's responsiveness to oversight requests has greatly improved. Indeed, last year, the Department examined its responses to Congressional inquiries and found that the Secretary's Office had cut response time in half since 2013. We therefore appreciated Chairman Chaffetz's statement, when he recognized that the production and response to Congress had become much better, and thanked the Secretary and those of us who worked for him for our efforts in that area. We are determined to continue to improve on that record.

As you may know, prior to coming to DHS, I served as an officer in the U.S. Army for almost thirty years. As a senior colonel, I was assigned to the Office of the Assistant Secretary of Defense for Legislative Affairs. At the time, we were still involved in combat operations in Iraq and Afghanistan. These two operations, as well as the detainee mission, generated a significant amount of Congressional oversight. I was involved in that oversight process, which, at the time, I thought was considerable. However, upon my arrival at DHS, I was surprised to learn of the depth, breadth, and quantity of Congressional oversight that this Department faces.

As you may recall, in 2004 the 9/11 Commission strongly recommended that Congress reform the Congressional oversight structure for DHS. As one expert witness told the Commission, the number of Congressional bodies that exercise oversight over DHS is "perhaps the single largest obstacle impeding the department's successful development." With jurisdiction over both Oversight and Government Reform, your Committee is uniquely positioned to help foster efforts to implement this crucial 9/11 Commission recommendation.

Unfortunately, in the twelve years since the Commission issued that recommendation, oversight of the Department has grown only more complex and extensive. At last count, the Department answered to 92 Congressional committees and subcommittees, and 27 other caucuses, commissions and groups. As the 9/11 Commission Chairman, former Republican Governor Tom Kean, has said "Think of having a hundred bosses. Think of reporting to a hundred people. It makes no sense. You could not do your job under those circumstances."

Despite these challenges, we *are* doing our job. During calendar year 2015, DHS received approximately 700 oversight letters and countless more oversight requests. Of those, 70 letters came from Members of this Committee. We have responded to oversight inquiries on a broad array of topics ranging from the Secret Service's protective mission to DHS's assistance to victims of cyber breaches to the President's executive actions on immigration reform. By our estimate, in 2015 DHS devoted more than 100,000 hours to responding to Congressional oversight.

The invitation letter to today's hearing stated that the Committee wishes to specifically address the Department's responses to oversight requests and demands regarding the United States Secret Service. With regard to these, during Calendar Year 2015, DHS and the Secret Service received 12 letters, over 100 requests for information, testimony or documents, and one subpoena from this Committee. By our count, we have completed addressing over 90 of those requests. Secret Service staff have provided 13 briefings to Committee staff, and Secret Service leadership has testified at two Committee hearings. Eight employees of the Secret Service took time out from their duties to participate in day-long transcribed interviews conducted by the Committee's staff. And, at the Chairman's request, we facilitated a visit to the Secret Service headquarters for Members of this Committee. In total, the Department has produced over 10,000 pages of documents in response to the Committee's requests in this area, and, additionally, thousands of pages of classified documents were produced in the appropriate setting.

These efforts have supplemented our hard work to respond to inquiries about the operations of the Secret Service from the independent Protective Mission Panel, various investigations by the Office of the Inspector General, and the oversight inquiries of ten other Congressional committees and subcommittees.

Mr. Chairman, Secretary Johnson has made responsiveness to Congress a priority and we are determined to continue to improve on our past record of oversight response. It is my hope that 2016 will prove to be even better than 2015 in that regard.

I would be pleased to answer any questions you or the Members of the Committee may have.



Chairman CHAFFETZ. Thank you.  
Ms. Fucile, you are now recognized for 5 minutes.

**STATEMENT OF TAMARA FUCILE**

Ms. FUCILE. Thank you.

Chairman Chaffetz, Ranking Member Cummings, and members of the Committee, I appreciate the opportunity to testify before you today.

The Office of Management and Budget, or OMB, is committed to working with Congress and with this committee. OMB believes strongly in the importance of congressional oversight and the value that Congress provides in ensuring that OMB and the administration are working in the most effective and efficient way possible on behalf of the American people. OMB regularly receives requests for information, briefings, documents, and we strive to provide transparent responses to these congressional inquiries in a timely manner.

In addition to producing documents to Congress and to the committee, OMB works with congressional offices every day to provide information and analysis and to help respond to contingencies and unforeseen circumstances. Given OMB's broad jurisdiction, we coordinate and respond to requests from over a dozen House and Senate full committees, despite being a small agency of only 100—of only approximately 550 employees.

In addition, given OMB's extensive role in working with Congress to reach agreement on the Bipartisan Budget Act of 2015 enacted in November, and on the Consolidated Appropriations Act for fiscal year 2016 enacted just a few weeks ago, we received and responded to nearly 1,650 budget requests from Members of Congress over this last year, with more than 600 of those requests coming in the last few months.

OMB's mission is to execute the President's budget, management, regulatory, and legislative agenda and ensure that the Federal Government works at its best on behalf of those it serves. OMB works with and across Federal agencies to improve management and create a government that is more effective, efficient, and supports continued economic growth.

OMB's Office of Information and Regulatory Affairs, or OIRA, is responsible for coordination and review of all significant Federal regulations by executive agencies. OIRA ensures that regulations are based on sound analysis and serve the purpose of the statutes that authorize them and the interests of the public. OIRA also seeks to ensure, to the extent permitted by law, that the benefits of the rule justify its costs. OIRA works under long-established principles that have been implemented across several administrations of both parties.

The committee has asked me to testify today about document requests relating to the review of the proposed Clean Water Rule, which was conducted by OIRA between September 17, 2013, and March 24, 2014. Since this committee's initial request and subsequent subpoena, OMB has acted in good faith to address the committee's interest in the rule and to accommodate the committee's requests.

In response to this committee, we have provided five sets of responsive documents for the period in which the proposed Clean Water Rule was under review at OIRA. We have made these productions to the committee without any redactions, with the exception of email addresses and personal phone numbers.

OMB continues to review records that are potentially responsive to the committee's requests, and OMB remains committed to working with your staff to discuss how we can best produce materials of greatest interest to the committee.

Thank you again for the opportunity to testify, and I look forward to answering any questions you might have.

[Prepared statement of Ms. Fucile follows:]

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EXECUTIVE OFFICE OF THE PRESIDENT  
OFFICE OF MANAGEMENT AND BUDGET  
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**TESTIMONY OF TAMARA L. FUCILE  
ASSOCIATE DIRECTOR OF LEGISLATIVE AFFAIRS  
OFFICE OF MANAGEMENT AND BUDGET  
BEFORE THE COMMITTEE ON OVERSIGHT AND GOVERNMENT REFORM  
UNITED STATES HOUSE OF REPRESENTATIVES**

January 7, 2016

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Thank you again for the opportunity to testify today. I would be pleased to answer any questions you may have.

Chairman CHAFFETZ. Thank you.  
Mr. Levine, you are now recognized for 5 minutes.

**STATEMENT OF JASON LEVINE**

Mr. LEVINE. Levine, Mr. Chairman. Levine.

Chairman CHAFFETZ. Levine, sorry.

Mr. LEVINE. That's okay.

Chairman Chaffetz, Ranking Member Cummings, and members of the committee, I'm pleased to be here this morning to testify on behalf of the Office of Personnel Management and Acting Director Cobert regarding the committee's requests for information and documents related to the cybersecurity incidents at OPM.

Over the course of the past year, in the face of extraordinary circumstances, OPM has worked to address the cybersecurity incidents; to provide information and services to those impacted; and to respond to numerous congressional inquiries regarding the incidents through hearings, classified and unclassified briefings, document productions, letters, and town halls. During this time, OPM employees have worked hard to improve upon the services that OPM provides every day to the entire Federal workforce from resume to retirement. Since I arrived in August, I can tell you that it has been my distinct privilege every day to serve with these individuals.

OPM is a small agency with an important mission: to recruit, retain, and honor a world-class workforce to serve the American people. To preserve and build upon that mission, OPM's leadership has made its highest priority responding to the recent cybersecurity incidents and bolstering OPM's IT infrastructure and security capabilities. OPM is committed to working with Congress, as well as our interagency partners, including DHS, DOD, and the FBI, among others, to continue to strengthen our cybersecurity posture in order to protect the Federal Government and the people we serve.

It is critical to OPM that all of our stakeholders, particularly those directly impacted by these incidents, receive information in a timely, transparent, and accurate manner. OPM undertook two separate notification processes regarding the comprehensive identity theft protection and monitoring services that are being provided. OPM is conducting outreach about these services on our Web site and by communicating directly with stakeholders.

Further, to provide Congress with necessary information, my office has provided multiple sets of fact sheets and FAQs regarding the cybersecurity incidents and related services. OPM established a phone hotline exclusively for congressional offices to contact us with questions on behalf of your constituents. OPM has also attended town halls and conducted phone briefings with Members and congressional staffers on the issue.

Simultaneously, OPM has made every effort to work in good faith to respond to multiple congressional oversight requests, including document productions. Since June 2015, OPM has received and provided responses to every question in six separate document production requests resulting in 19 separate document productions, including tens of thousands of documents and internal reports; testified at four public congressional hearings; made hundreds of calls

to Members and congressional staffers relating to the cybersecurity incidents; received over 170 letters from Members of Congress relating to the cybersecurity incidents; made senior officials available for interviews; conducted 13 classified and unclassified briefings; and expended thousands of staff hours in an effort to be responsive.

OPM has worked as quickly as its infrastructure and resources allow. To be responsive to congressional requests, OPM has taken numerous steps to increase its previously limited capacity to respond to congressional inquiries of a large volume and sensitive nature. This includes hiring additional staff, bringing on detailees from other agencies, and obtaining document management tools that allowed the agency to respond more promptly and efficiently to Congress. As capacity was increased, OPM worked with committee staff to prioritize the requests and provide responses on a rolling basis in order to accommodate the committee's schedule and oversight interests.

As a result of the extreme and ongoing sensitivities of information related to OPM's IT networks, servers, and systems, redactions of sensitive system information were made so as not to provide a roadmap of vulnerabilities for potential adversaries and malicious actors. These redactions are consistent with those employed by other Federal agencies, and were based on security recommendations from OPM IT security professionals and in consultation with interagency cyber experts. Additional redactions were also made for reasons of longstanding executive branch confidentiality interests.

In the interest of accommodating the committee's oversight interests, a significant number of sensitive documents were also made available for in camera review in un-redacted form in OPM's liaison office here in the Rayburn House Office building in order to provide ease of access for committee members and staff. OPM looks forward to continuing to work with the committee and to respond to its requests for information in as a complete and timely manner as possible

Thank you for the opportunity to testify today, and I look forward to your questions.

[Prepared statement of Mr. Levine follows:]



UNITED STATES OFFICE OF PERSONNEL MANAGEMENT

STATEMENT OF  
JASON K. LEVINE  
DIRECTOR  
OFFICE OF CONGRESSIONAL, LEGISLATIVE,  
AND INTERGOVERNMENTAL AFFAIRS  
U.S. OFFICE OF PERSONNEL MANAGEMENT

before the

COMMITTEE ON OVERSIGHT AND GOVERNMENT REFORM  
UNITED STATES HOUSE OF REPRESENTATIVES

on

“Document Production Status Update”

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January 7, 2016

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Chairman Chaffetz, Ranking Member Cummings, and Members of the committee, I am pleased to be here this morning to testify on behalf of the United States Office of Personnel Management (OPM) and Acting Director Beth Cobert regarding the committee’s requests for information and documents related to the cybersecurity incidents at OPM.

Over the course of the past year, in the face of extraordinary circumstances, OPM has worked tirelessly to address the cybersecurity incidents; to provide information and services to those impacted by these incidents; and to respond to numerous congressional inquiries regarding the incidents through hearings, classified and unclassified briefings, document productions, letters, and town halls. During this time, OPM employees have worked hard to improve upon the services that OPM provides every day to the entire Federal workforce from resume to retirement. It has been my distinct privilege to serve with these individuals.

OPM is a small agency with an important mission—to recruit, retain, and honor a world-class workforce to serve the American people. To preserve and build upon that mission, OPM’s leadership has made responding to the recent cybersecurity incidents and bolstering OPM’s information technology (IT) infrastructure and security capabilities its highest priority. OPM is committed to working with Congress as well as our interagency partners, including the Department of Homeland Security (DHS), the Department of Defense (DoD), and the Federal Bureau of Investigation (FBI), among others, to continue to strengthen our cybersecurity posture in order to protect the Federal government and the people we serve.

**Statement of Jason K. Levine**  
**U.S. Office of Personnel Management**

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**January 7, 2016**

It is critical to OPM that all of our stakeholders, particularly those directly impacted by these incidents, receive information in a timely, transparent, and accurate manner. OPM undertook two separate notification processes regarding the comprehensive identity theft protection and monitoring services that are being provided to those individuals who are impacted by the cybersecurity incidents. OPM is conducting outreach about these services on our website and through media interviews and by communicating directly with agencies, stakeholder representatives such as unions and other employee groups, and contractor associations who were directly impacted.

Further, to provide Congress with necessary information, my office provided multiple sets of Fact Sheets and Frequently Asked Questions (FAQ) regarding the cybersecurity incidents and related services. OPM established a phone hotline exclusively for congressional offices to contact us with questions on behalf of your constituents. OPM has also attended town halls and conducted phone briefings with Members of Congress and congressional staffers on the issue.

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- Testified at four public congressional hearings;
- Made hundreds of calls to Members and congressional staffers relating to the cybersecurity incidents;
- Received over 170 letters from Members of Congress relating to the cybersecurity incidents
- Made senior officials available for interviews;
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**Statement of Jason K. Levine  
U.S. Office of Personnel Management**

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interagency cyber experts. Additional redactions were also made for reasons of longstanding Executive branch confidentiality interests.

In the interest of accommodating the committee's oversight interests, a significant number of sensitive documents were also made available for *in camera* review in unredacted form in OPM's liaison office in the Rayburn House Office building in order to provide ease of access for committee members and staff. At the committee's request, and after further consultation with OPM IT security professionals and other Federal agencies, a number of these documents subsequently have been produced to the committee.

OPM looks forward to continuing to work with the committee and to respond to its requests for information in an as complete and timely manner as possible, recognizing the highly sensitive nature of these materials and the ongoing need to safeguard system sensitive information and the personal privacy of millions of Federal employees and the public.

Thank you for the opportunity to testify today. I look forward to your questions.

Statement of Jason K. Levine  
U.S. Office of Personnel Management

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January 7, 2016

**Appendix: OPM Responses and Documents Produced to House Oversight and Government Reform Committee Requests for Information**

**July 21, 2015** Committee request for information concerning OPM's acquisition of identity protection services, including the manner in which OPM awarded this contract.

Responsive documents provided to the committee on August 21, 2015 and December 22, 2015.

**July 24, 2015** Committee request for information concerning CyTech, the Inspector General's audits, and HSPD-12.

Responsive documents provided to the committee on August 28, 2015. Additional responsive documents were also made available to the committee *in camera* in the OPM liaison office in the Rayburn building for ease of access for committee Members and staff.

Responsive documents provided to the committee on September 25, 2015.

Two senior OPM staffers were made available for a briefing at the committee staff's request on September 28, 2015.

Responsive documents provided to the committee on October 7, 2015. Additional responsive documents were also made available to the Committee *in camera* in the OPM liaison office in the Rayburn building for ease of access for Committee Members and Staff.

Responsive documents provided to the committee on October 28, 2015. Additional responsive documents were also made available to the committee *in camera* in the OPM liaison office in the Rayburn building for ease of access for committee Members and staff.

Responsive documents provided to the committee on December 22, 2015, consisting of documents that were previously provided to the committee *in camera* in the OPM liaison office for ease of access for committee Members and staff.

**Aug. 18, 2015** Committee request for information concerning OPM's security documents and systems manuals that had been compromised

Responsive documents provided to the committee on September 18, 2015.

Responsive documents were made available on October 7, 2015 to the committee *in camera* in the OPM liaison office in the Rayburn building for ease of access for committee Members and staff.

Responsive documents that had previously been provided *in camera* were provided to the committee on December 22, 2015 after consultation with agency partners.

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U.S. Office of Personnel Management**

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**January 7, 2016**

Responsive documents were made available on December 30, 2015 to the committee *in camera* in the OPM liaison office in the Rayburn building for ease of access for committee Members and staff.

**Aug. 21, 2015** Committee preservation order concerning data breaches at OPM.

Response provided to the committee regarding OPM agency records preservation on September 4, 2015.

**Sept. 9, 2015** Committee request for information concerning a deleted drive on a CyTech Services appliance

Responsive documents were provided to the committee on October 28, 2015.

Chairman CHAFFETZ. Thank you.

I want to follow up directly on that point that you just talked about. When we had our hearing about the data breach, Donna Seymour, the chief information officer, when we asked about the stolen materials, this is what she said: "Some were outdated security documents about our systems and some manuals about our system." She went on to testify that the adversaries "did not get specific configuration diagrams of our entire environment" adding that "are commercially available documents about platforms." Homeland Security went on to testify "did not include proprietary information or specific information around the architecture of the OPM environment."

So we are mystified as to what is true. Is it as Ms. Seymour testified, or is it what you are telling us now, that they did get very sensitive documents? We are not able to have these documents. They were stolen. We know the adversaries have them, but you won't allow Congress to look at them and have them in our possession. You are offering an in camera review, still with redactions. Why do we have to negotiate this with you? Why aren't you sharing this information with us?

Mr. LEVINE. Thank you for the question, Mr. Chairman. So there were, as I recall, five separate requests from the committee on the specific topic to which you're referring. The—all of the documents that Ms. Seymour was testifying about were produced as part of our production. I don't have the exact date, but the response—I believe that was to the August 18 but might have been the July 24 letter. All of the information, all of the documents that were exfiltrated during that incident have been produced. You are right; they were produced originally in camera because of the categories of information that I described previously, system-sensitive information such as —

Chairman CHAFFETZ. But she testified that they were outdated documents, they did not give specific configuration diagrams, they were commercially available.

Mr. LEVINE. So to be —

Chairman CHAFFETZ. Is that true or not true?

Mr. LEVINE. To be clear, Mr. Chairman, when we looked at the—all of the separate requests that have been made, which include information both about that incident and other incidents, our IT professionals recommended that we treat all of the following categories of information the same way, things such as IP addresses, system-sensitive architecture, system capabilities and tools as things to be treated carefully. We treated them carefully inside OPM —

Chairman CHAFFETZ. But she testified that this was all commercially available and outdated information, so she is leading Congress to believe no problem here. I know they came in, I know they breached the system, I know they stole this, but it is all commercially available, outdated information. Is she accurate or not accurate?

Mr. LEVINE. Well, again, Mr. Chairman, what we've tried to do is make available to you and your staff all of that information —

Chairman CHAFFETZ. You have not given—why aren't you giving us this information, same stuff that was already hacked? We know that the adversary has it but you won't let us see it.

Mr. LEVINE. With all due respect, Mr. Chairman, you do have it. You have all of the —

Chairman CHAFFETZ. Do we have it all unredacted? We do not.

Mr. LEVINE. You have all of the IT information unredacted. The only thing that remains redacted with respect to that production is a list of what we would consider unresponsive names. It is just a list of every username on the system with the last four of their Socials. But we are happy to—that said, we are happy to make that information—continue to make that information available if your staff lets us know. We're happy to come back and work with you on that set of responses.

Chairman CHAFFETZ. So let me pull this out. We go in camera to look at it, this is what it looks like.

Mr. LEVINE. That's the list I'm referring to. That is a—simply a list —

Chairman CHAFFETZ. Why are you redacting—I mean, we can go page after page after page here —

Mr. LEVINE. Sure.

Chairman CHAFFETZ.—why all these redactions?

Mr. LEVINE. Sure.

Chairman CHAFFETZ. I don't know what is under this.

Mr. LEVINE. And that's fair. What we've explained to your staff is what that is simply a list of every username on the system.

Chairman CHAFFETZ. We are just supposed to say okay, you are fine? We just —

Mr. LEVINE. And we're happy—what we—we have a shared goal.

Chairman CHAFFETZ. Don't tell us you are happy to do it because, as a Member of Congress with very high security clearances, you won't let us look at these materials.

Mr. LEVINE. To be fair, Mr. Chairman, we thought that was non-responsive. It wasn't a matter of not being secure. It was non-responsive.

Chairman CHAFFETZ. What do you mean nonresponsive? What does that mean?

Mr. LEVINE. So the—internally —

Chairman CHAFFETZ. We are asking to see this information, and this is what you give us —

Mr. LEVINE. We're —

Chairman CHAFFETZ.—in camera. You won't even give this—you know, you—then we finally have to negotiate with you over months to get to this point where I can even hold it up.

Mr. LEVINE. Mr. Chairman, I'll go back and we'll work with you. I think what we have tried to do —

Chairman CHAFFETZ. Here is the concern. Ms. Seymour came and testified to us and told us essentially there wasn't a problem because it is outdated, publicly available information. And you aren't even—in camera you still redact it. So don't tell me that you are responsive and that you are happy. We are not happy.

Mr. LEVINE. I appreciate that, Mr. Chairman. That information is certainly not publicly available. Those are the usernames on the systems. That is the last four Social Security numbers.

Chairman CHAFFETZ. And that is what the adversaries got. That is what we are concerned about.

Mr. LEVINE. Sure.

Chairman CHAFFETZ. Right?

Mr. LEVINE. I'm not going to comment on what your —

Chairman CHAFFETZ. Yes, because the answer is yes —

Mr. LEVINE.—what your —

Chairman CHAFFETZ.—and that is what we need is candor. The answer is yes. I mean, that is totally, dramatically, and completely different than what Ms. Seymour testified. She tried to get us to go away by telling us it is all publicly available and it is outdated anyway. That was a lie. She misled Congress. She is going to pay that price.

I now recognize Ms. Norton for 5 minutes.

Ms. NORTON. Just to clarify, are the names of these employees publicly available?

Mr. LEVINE. Well, as—to the extent that they are Federal employees, I suppose that all Federal employees in one form or another, names are available, but it would not necessarily be —

Ms. NORTON. The ones whose matters were breached are the ones I am talking about. You know, I can go on and find out if I am—I don't know, if I am a creditor or —

Mr. LEVINE. Sure.

Ms. NORTON. Can I find your name?

Mr. LEVINE. Sure. So to be clear, we are actually talking about two separate—unfortunately, two separate incidents. The incidence the chairman is referring to was of the systems internally. The system I believe you're referring to would be the later personnel records and background investigation breaches. That information is not publicly available. What I think we're referring to is, yes, every current Federal employee at any—at a given moment, there are

Ms. NORTON. Of course.

Mr. LEVINE.—forms —

Ms. NORTON. I just want —to make sure that privacy rights—it is enough—the names are not publicly available.

Mr. LEVINE. Sure. And to be clear, I think the list we were just talking about was from 2014. But you're right; I mean, those are separate things.

Ms. NORTON. Look, Congress of course is self-centered about what legislative business is. For you or perhaps Ms. Fucile—and I don't know which of you should get this question, but the most important legislative business you have done in recent months is the production of a bipartisan budget. As I understand it, your office played perhaps the central role of all the agencies in there.

I know that every Member of Congress—I was one of four leaders of the transportation bill. We were constantly talking to your legislative people about legislation. I know that you facilitated—and I appreciate what you did for the District of Columbia. I can't imagine that there isn't a Member of Congress that wasn't on the phone telling you what their constituents did. I understand you responded to 1,650 budget requests and that 600 of them came in those last few months. Would you describe your substantive role in that legislative important bill, perhaps the most important bill, the only bill that the Congress of the United States has to put out every single year?

Ms. FUCILE. Yes, Congresswoman. Thank you so much for that question. We—OMB serves a wide mission, but certainly one of our central functions is making sure that the government is funded, and so our primary focus over the last couple months, which has really been an agency-wide effort, has been ensuring the bipartisan budget agreement, as well as the Consolidated Appropriations Act, got through. That was a massive effort that involved coordination with Republicans, Democrats, House, Senate committees, individual offices, and we're really proud of the work that we did there.

Ms. NORTON. Well, first of all, I want to congratulate you for that work. Thank you for the work you did on really rescuing the Congress from the last several Congresses' reputation as a do-nothing Congress. Maybe it was busy answering legislative inquiries, but the most important inquiry from our constituents was, of course, the annual budget, and I appreciate that.

Director Levine, this breach of course was, if you were to name them, perhaps the primary business of this committee this year, and of course you were called to the carpet, your agency was called to the carpet for it. Now, the legislative business that you would have been, I suppose, most taken to task for would have been how you responded to our constituents. It comes under the hubris, I guess, of constituent services falling out of legislative business.

I wish you would describe, pursuant to what this committee wanted you to do, how you responded, what services were affected, the notion of, I understand, a hotline for our congressional offices to contact on behalf of their constituents and other services that in fact responded to Congress's concern about the OPM breach.

Mr. LEVINE. Sure. And I see my time is about to expire but ———  
Chairman CHAFFETZ. Please ———

Mr. LEVINE. Okay. Sure.

Chairman CHAFFETZ.—complete the answer and ———

Mr. LEVINE. Thank you very much for the question. The—what we've tried to do is twofold. While working to provide services to all those who were impacted by the two separate incidents, the—what we call the personnel records and the background investigations incidents, we went out and provided credit monitoring and identity theft protection services for all those who had Social Security numbers and other similar information exfiltrated in those breaches.

And so what our effort has been is to provide to all Members of Congress a mechanism for having information when your constituents call, whether they be current Federal employees, whether they be retired Federal employees, or just anyone whose information might have been swept up in that set who received letters, who wanted to know whether they received a letter. So what we did is we put together a hotline for offices to give out to their case-workers, and we sent out information to all the district offices to make sure they had that information. We produced one-page fact sheets that we updated periodically, frequently asked questions. We've updated our Web site.

It's been our effort—although please get in touch with our office to the extent we can better provide information on those efforts. Where issues have come up, we've gone back to the vendors, whether it be about wait times, whether it be about how the serv-

ice was provided, the language that they use, we want to make sure that people get the services that they need. That is the highest priority of Acting Director Cobert and our office.

Chairman CHAFFETZ. I thank the gentlewoman.

I will now recognize the gentleman from Florida, Mr. Mica, for 5 minutes.

Mr. MICA. Thank you, Mr. Chairman.

Good morning, Ms. Johnson. I guess you are assistant secretary of legislative affairs for Homeland Security Department, is that correct?

Ms. JOHNSON. Yes, sir, I am.

Mr. MICA. A simple yes or no question, is DHS still considering airport and aviation security a top priority?

Ms. JOHNSON. Yes, we do.

Mr. MICA. Okay. And in regard to TSA, do you have adequate personnel? I think we just approved 50,795 people for TSA. Is that about right?

Ms. JOHNSON. Congressman, I'd have to look at those numbers. I don't —

Mr. MICA. Okay. Well, that would be one you should be aware of as legislative affairs director. We just passed the budget. So we will just say 51,000 people, which I think we have a cap of about 46,000 screeners. I think that is about right.

Last time we checked, we had over 4,000 TSA employees in Washington, D.C. area within, say, 10 miles of this hearing earning on average \$103,000. I point this out because, somehow, when we send requests for information about airport security, that there is an unresponsiveness, and it appears that you have adequate personnel, 4,000 making over \$103,000 on average within just almost earshot of where we are.

Let me just give you some examples. Almost a year ago, March 16, the committee sent a letter to DHS on airport credentialing. We got almost no response. This went on. In April we followed up; in May we followed up. April 17 the committee invited the then-acting Administrator Caraway to testify on the 15th of May. We can't get documents, and then to get someone to testify—on the evening of the 14th, DHS informed the committee that Caraway was traveling and wouldn't be available the night before the hearing. So it seems like we have got a little bit of a problem here with getting responses.

In May the committee asked for additional documents trying to be produced, same subject, no later than June 5. They failed on that. Then, in June, June 4, we sent a bipartisan letter to DHS on airport vulnerabilities. Our report showed that TSA screeners failed to detect a high percentage of prohibited items. You missed production of any information on that.

On July 2, another bipartisan letter from the committee about failures, information on internal covert testing. You failed on that. It goes on and on.

As late as—and I have requests here from—here is November 23. We know there are vulnerabilities. We have had people coming up with false credentials and information. We have been trying since last March to get responses and information, and you failed to produce this. This is the latest. When can I expect a response from



this letter? We are sending it to Jeh Johnson. He is still working there, isn't he?

Ms. JOHNSON. Yes, Secretary Johnson is the —

Mr. MICA. I saw him in the hall yesterday here. Maybe that is why he couldn't respond. Is there a problem—again, we have some 4,000 people. We can't get responses to this. We have seen the system has dangers and pitfalls, and all we are trying to do is a simple oversight responsibility.

Maybe our latest request—staff, could you bring this down to her and could you let us know, the Secretary, when we can get a response on this latest request? We still have things pending from last March. Again, you see our frustration. We are trying to do our job. We expect you to do your job. When do you think we could get a response on that?

Ms. JOHNSON. Thank you, Congressman. With regards to the November 23 request, production on that one is imminent. I believe that that should be out within—you know, within a fairly short period of time. And the last one, I think you're referring to the January 4 request. We just got that and we've—using our usual tasking mechanism, it's been tasked out to TSA, and they are beginning searches for that.

Mr. MICA. Thank you, Mr. Chairman.

Chairman CHAFFETZ. Thank you.

I now recognize the gentleman from Massachusetts, Mr. Lynch, for 5 minutes.

Mr. LYNCH. Thank you, Mr. Chairman.

At the outset, I want to say that I share much of the frustration that is bipartisan up here in terms of trying to get information from your agencies. You need to do better. You really do.

We had a hearing couple weeks ago before the break regarding visa overstays, the visa waiver program, and we have been waiting a long time from DHS to get a list of how many people—20 million people a year come into this country under the visa waiver program. We need to know how many people overstay their visas. We need that information. I am sure you could give it to us for the Obama administration and the Bush administration so we are not getting political, but we need that information. That is plain and simple.

There seems to be an unneeded adversarial relationship between us and the agencies, and it has been the same way in previous administrations as well. But it is our constitutional mandate to conduct oversight, and we need to have this information.

I do want to say, though, that sometimes we on the side of the dais are responsible for promoting that adversarial relationship, and I want to point out one example that I think highlights that. And that is, as the chairman has mentioned, we are going to talk a little bit about Hillary Clinton's emails today, and I just want to point out that this committee, we conducted nine separate investigations.

We got direct evidence that Secretary Colin Powell got frustrated with his government email and discarded it and went out and acquired his own private email, his own private server, and went to work and used a private server during the bulk of his service, which was—and he is a great American, no question about it.

But we have this situation where Secretary Clinton has been pummeled with subpoenas and hearings and 11-hour hearings, and yet we have Secretary Powell who testified before the United Nations Security Council that Iraq had weapons of mass destruction, but we don't want it. We don't want to ask anything about him and his emails. We give him a complete pass. And that is problematic. That makes us look tremendously biased when, okay, I understand, we have to look at Secretary Clinton's information and investigate that because four brave Americans died.

And yet Secretary Powell did the same thing, bought his own private server, says so in his book. We have direct stipulated evidence that he did this. He gives testimony that Iraq had weapons of mass destruction and 4,000 Americans die, and we don't want to know anything about that. That is, you know, move along, nothing to see here. And that sets up this adversarial relationship here. That is why some people think that this is political, some of this stuff is political. And the evidence would certainly lead us to believe that.

You know, the Select Committee, we call it a Select Committee because the way the members are chosen, not based on how the evidence is chosen and looked at. And I think, you know, up on this side of the aisle, you know, we do have—you know, 80 percent of what we are doing here is, you know, is just straight up. We are trying to do the right thing for the people we represent. But every once in a while on an issue we go sideways, and it becomes a political hunt and we depart from, I think, our constitutional mandate to get at the truth and instead, you know, go after what is politically expedient.

So I just want to say, you know, Ms. Johnson, we need to have that information on the visa overstays. We really do. I mean, we are not looking to embarrass anybody. I bet that information is embarrassing, but it is only embarrassing because we have received repeated assurances that everything is okay. And that is a continual pattern with the agencies. Everything is fine. Secret Service, everything is fine. We found out it wasn't fine.

You know, this visa waiver program, we are told that we have a robust system. Then, we find out that there are dozens and dozens of people on the terrorist watch list that are actually working in secure areas of our airports and have been vetted and cleared by DHS, TSA.

So we are after the truth here most of the time, but I do want to highlight that aspect of this, that we have to be fairer in conducting oversight as well. I yield back.

Chairman CHAFFETZ. I now recognize the gentleman from Ohio, Mr. Turner, for 5 minutes.

Mr. TURNER. Thank you, Mr. Chairman.

Mr. Levine, I serve on the Intelligence Committee, as well as the Oversight Committee, and as a result of that, I have been following the role of CyTech in both discovering or confirming the OPM breach. The chairman has undertaken leadership for this committee to review this issue and oversight, and enjoining the chairman's lead on that, on September 9, the two of us wrote requesting documents and information pertaining to the OPM breach and the device that was supplied or furnished to OPM by CyTech.

In your response on October 28, 2015, you stated that the CyTech device was “sanitized” in accordance with best practices, National Institute of Standards and Technology guidance and OPM policy. This binder is a list of what would have been sanitized by file numbers. It is not the list of files but file names or titles. There are 15 to 16 file titles per page to show you the extent, the enormous aspect of what must have been sanitized.

Additionally, in response to the committee’s preservation order, you wrote on September 1, 2015, that “OPM has been and continues to work to preserve agency records in a manner consistent with applicable law, regulations, policies, and national archives and records administration guidance.” So I want to contrast those two in my questions.

So, first off, how far back are you saving records, and do these efforts cover the breaches that occurred in 2014, as well as those that occurred in 2015?

Mr. LEVINE. Thank you for the question. So, as I understand it, we are preserving records not just associated of course with the breach but with all government records in accordance with NARA and other appropriate government recordkeeping authorities. As you can imagine, we also have litigation that is ongoing, and so we also have litigation present at this time —

Mr. TURNER. But with respect to this breach, the standard is higher, correct? I mean, you are preserving a wider breadth of records and putting a greater effort on their preservation?

Mr. LEVINE. Yes, I think that’s fair to say.

Mr. TURNER. So what specific steps are you taking to preserve those records, and argue, for example, preserving backup tapes?

Mr. LEVINE. I would need to get back with you on that.

Mr. TURNER. Well, the CyTech device was returned to the company on August 20, and did OPM preserve records by making a copy of the information that was on the device before returning it to CyTech?

Mr. LEVINE. I would also need to get back to you on that. I did want to—though to your question about the way the device was returned, it is my understanding—and I’m not an IT cyber expert, but it is my understanding that it is standard practice when returning this sort of device in these sort of circumstances to treat it the way it was treated, which is to essentially wipe it before it’s returned in case there would be information that is sensitive in a system way. But I will —

Mr. TURNER. Okay.

Mr. LEVINE. I’ll have to get back to you on the backup —

Mr. TURNER. Excellent. And I think that you probably clearly understand that my question is not necessarily the status of the device but the status of information that was on the device that is supposed to be turned over to the committee. And we clearly requested that information. This, again, is a list of the file names of what would have been deleted, 15 to 16 file titles per page, so it is an enormous amount of information that would have been on that.

And obviously, since we are all very concerned about the cyber attack, certainly any information that is contained on the CyTech device would just—even for forensics to be able to understand what

had occurred would be important to be preserved. And this committee has requested a copy of this information. So the two aspects of this, one, my expectation would be that OPM has it, and my second expectation would be that you are going to turn it over to this committee.

Mr. LEVINE. And certainly to the extent that we have it, then we need to have a conversation. If I could ask the 15 to 16 types of file names that you're referring to is —

Mr. TURNER. Names per page on all of these pages.

Mr. LEVINE. But as that—I'm—and I'm sorry. Is that information that we provided or is that information that the company —

Mr. TURNER. This is information that the committee has. I believe it was provided by CyTech.

Mr. LEVINE. Okay. All right. Well, I—we'll have to circle back with you. My understanding was that there was—well, you know what, I don't want to misspeak. We will have to get back to you exactly with respect to how it was—with respect to the device. I

Mr. TURNER. And just to —

Mr. LEVINE.—we've answered the question as to —

Mr. TURNER. Great. And just to make certain that we are absolutely clear, the expectation would be that the preservation order and your processes as a result of the cyber attack would have required that you preserve this information. And so we are looking forward to an affirmative response from you.

Thank you. I yield back.

Chairman CHAFFETZ. Well, before the gentleman yields back, if you will yield to me for a moment?

Mr. TURNER. Absolutely. I yield to the chairman.

Chairman CHAFFETZ. Well, Mr. Turner and I sent you a letter. What percentage of the requests have you given back to us? That is, we made a request. I thought I heard you say you have given us a full response. What percentage of the —

Mr. LEVINE. So I don't know that we could—I could put it in terms of a percentage. I know that we have made every effort to provide it—responses to every question that has been asked, and we have worked with your staff, who has been extraordinarily accommodating in helping us prioritize. Where they've had follow-up questions, we certainly work to do that.

Chairman CHAFFETZ. Okay. So my follow-up question with Mr. Turner here is you say full. To me, full is 100 percent. Is full 70 percent in your mind?

Mr. LEVINE. To be fair, Mr. Chairman, I did not use the word full. What we've tried to do is provide a response to every question that's been asked. And to the extent that there are —

Chairman CHAFFETZ. All the documents that we have requested, emails, we have been asking for months. When will we get 100 percent of those requests?

Mr. LEVINE. We believe we've answered every question that's been asked. If there are questions that we've provided answers to that the staff or of course the Members feel that we need to provide more information about that is not fully —

Chairman CHAFFETZ. Well, I don't know when you are done. This is the problem with all of you. You wrote in your testimony “re-

ceived and provided responses to every question in six separate document production requests.”

Mr. LEVINE. That’s correct. We believe we have provided —

Chairman CHAFFETZ. I know you have given us an answer, but I need to know if it is complete.

Mr. LEVINE. Okay. So—I’m sorry. With respect to the—and keep in mind that those six also incorporate other committees.

With respect to the five requests from this committee, we’ve provided—we look at four of those as closed. One of them, the request with respect to the differences between the contracts for the credit monitoring and ID theft between the first contract and the second contract, while we have provided answers to each of those questions, we do expect another set of documents coming I would say this month if not, you know, not in the next couple of weeks that remain in the interagency process.

But with respect to this question, the—I hear your question, Mr. Congressman. We’ll get back to you on whether there’s something that remains outstanding in terms of the backup files.

Chairman CHAFFETZ. You better start explaining to us why CyTech is providing us documents that you aren’t providing to us, that you wrote, that you engaged in. And there is no excuse for withholding that information from Congress. You have it. It is in your systems, and we know it because we are looking at hardcopies and we are checking to see if you give it to us as well. And you are not. That is why you are going to be back before this committee. OPM, we are going to bring them up here and we are going to get to the truth of this. It is one of the biggest data breaches in the history of this country, and we need 100 percent response.

Mr. CUMMINGS. Will the gentleman yield for just a second?

Chairman CHAFFETZ. Sure.

Mr. CUMMINGS. Let’s see if we can get past, down to the nitty-gritty here. The chairman just mentioned documents that we don’t have, the CyTech. Why don’t we have them and can you tell us when we will get them?

Mr. LEVINE. Sure.

Mr. CUMMINGS. I mean, it seems like we are going in a circle and, you know, I don’t know, maybe you all are going to be here a long time but, you know, I can’t be here forever going in circles. And I think it is unfair to the committee. And so can you give us some definitive answers?

Mr. LEVINE. So to—thank you very much for the question. To the best of my understanding, we have provided the information we have associated with that tool. To the extent we have not, we need—you know, we need to go back and make sure that we are being responsive. But —

Mr. CUMMINGS. And how soon will you do that?

Mr. TURNER. And to follow on with the ranking member, and if you don’t have it, you need to explain why because you are absolutely under responsibility to have preserved it. And if you haven’t preserved it, that is another issue that this committee is going to have to pursue.

Mr. CUMMINGS. Thank you, Mr. Chairman.

Chairman CHAFFETZ. Thank you.

I now recognize Mr. Connolly of Virginia for 5 minutes.

Mr. CONNOLLY. Thank you, Mr. Chairman.

I find myself in an interesting position in this hearing because, having worked for the legislative branch for 10 years in the Senate and now being a member of the legislative branch as an elected Member of the House, I certainly have always felt that it is a key responsibility of the executive branch to be responsive to legislative information requests.

On the other hand, our Constitution I think builds in dialectic in which, you know, we want information and the executive branch doesn't want us to have it. It is kind of a natural order of things. And so there is a built-in tension and there are mechanisms for us to address that dialectic. But it does rely at the end of the day on common sense, on good faith, on determination, as well as statutory enablers.

Legitimate requirements for information must be enforced on a bipartisan basis. Fishing expeditions, blatantly partisan efforts to seek information to embarrass, to humiliate, to undermine will not get bipartisan support and don't deserve it and can understandably cause even more friction in the executive branch in trying to be responsive.

Ms. Fucile, in May of last year the chairman, along with Mr. Meadows, sent a request to OMB for documents relating to a review of the Clean Water rule. You are familiar with that?

Ms. FUCILE. Yes, I am.

Mr. CONNOLLY. That request was then followed by a subpoena in July for similar documents. Is that correct?

Ms. FUCILE. Yes. Yes, it is.

Mr. CONNOLLY. And the time period the subpoena requested documents ranged from June of 2006 to July of 2015, a 9-year time period, is that correct?

Ms. FUCILE. Correct.

Mr. CONNOLLY. Okay. So you are being asked to search and produce documents over a 9-year period. Can you briefly explain to us what is involved in being asked to search and produce documents covering a 9-year period? Because sometimes in this conversation we act as if they are all just sitting on piles waiting to be delivered up here and you are just withholding them. But that is not really how it works, is it?

Ms. FUCILE. No. Thank you for the question.

Mr. CONNOLLY. And if you can just pull that a little closer to you, thank you so much.

Ms. FUCILE. Is that better?

Mr. CONNOLLY. Yes, great.

Ms. FUCILE. Yes, the request for information that we received was quite broad covering a 9-year span. And as such, we began our search process. That involved identifying the subject—the various custodians of all the information, and then once the documents are gathered, then having a review performed by various subject matter experts, followed by review of other agencies to ensure that equities received proper review. It's quite an intense sort of process, particularly for such a broad range of documents. We—you know, we continue to work on processing that request.

Mr. CONNOLLY. And have you been responsive to that subpoena?

Ms. FUCILE. Our production response rate I think could certainly be improved. We have not produced as quickly as I think that we should have. As such, we have taken steps recently to improve our production response rate, and I expect that that will continue moving forward.

Mr. CONNOLLY. Yes, I also—you know, I can sympathize with the chairman saying, well, it ought not to be an issue of the volume, that is to say how many pages you have delivered. It is the percentage of the request. And that sounds reasonable. And in many cases I would probably agree with the chairman that that is a better standard in terms of determining responsiveness.

But on the other hand, it can also be a self-serving standard—not that it would be here, of course—when we don't like the response and when in fact we are on a fishing expedition that could be tens and tens of millions of documents. And then that standard can be used against you, I think, unfairly where you are trying to be responsive but you are not anytime soon going to give me 100 million pages of something and you are doing the very best you can to be responsive to the nature of the request.

So I think we need to tread a little bit carefully when we decide to throw a flag down and say you are unresponsive, while at the same time trying to seek bipartisan consensus to ensure accountability in the executive branch, and that we fulfill our role, our constitutional role of oversight of that branch.

With that, I yield back.

Chairman CHAFFETZ. I thank the gentleman.

I will now recognize the gentleman from Ohio, Mr. Jordan, for 5 minutes.

Mr. JORDAN. Thank you, Mr. Chairman.

Mr. Kadzik, last fall, October 23, you sent a letter to the chairman and the ranking member saying that there were no prosecutions in—there were going to be no prosecutions in the IRS targeting case. When was the decision made not to prosecute?

Mr. KADZIK. Well, I think that it was shortly before we sent the letter.

Mr. JORDAN. Shortly before the 23rd?

Mr. KADZIK. That's correct.

Mr. JORDAN. A week before, 2 weeks before, do you know?

Mr. KADZIK. I can't —

Mr. JORDAN. A month before?

Mr. KADZIK. I can't put a precise date on it.

Mr. JORDAN. In your letter to the chairman you said over 100 witnesses were interviewed. Was John Koskinen interviewed?

Mr. KADZIK. I don't know.

Mr. JORDAN. You don't know?

Mr. KADZIK. I don't know.

Mr. JORDAN. Were those interviews transcribed?

Mr. KADZIK. I don't know.

Mr. JORDAN. In your letter you said "substantial evidence of mismanagement took place." Your investigation uncovered substantial evidence of mismanagement by who?

Mr. KADZIK. By employees of the IRS.

Mr. JORDAN. Specifically?

Mr. KADZIK. I can't give you specific names.

Mr. JORDAN. Mr. Kadzik, you wrote this letter, right, 8-page letter? You —

Mr. KADZIK. That's correct.

Mr. JORDAN. Okay.

Mr. KADZIK. And we scheduled a briefing for next week in order to provide you and other Members with additional information, and we will have people involved in the investigation —

Mr. JORDAN. Well, we appreciate that, but we also sent you a letter on December 1, the chairman and I, and we requested in that letter all documents that pertain to the investigation, and we have yet to receive a single document. Why is that?

Mr. KADZIK. Well, we also received your letter yesterday requesting the file.

Mr. JORDAN. That is a follow-up letter. We sent the first letter over a month ago.

Mr. KADZIK. I understand, but producing an entire investigation or prosecution file presents particular issues with respect to our law enforcement sensitivities, prosecutorial —

Mr. JORDAN. Now, we have heard that for 3-1/2 years.

Mr. KADZIK.—responsibilities —

Mr. JORDAN. We have heard that for 3-1/2 years. I have had two different FBI directors. I have had Mr. Holder, Assistant Attorney General Mr. Cole give me that exact same answer for 3-1/2 years. And their answer added one other word: ongoing investigation. And now the investigation is over and it has been at least by October 23, according to what you just testified and according to the 8-page letter you sent us on October 23. And now you are telling us you can't get us any documents and you are just giving us the same— is there some national security interest that prevents you from giving us those documents?

Mr. KADZIK. No, but there are —

Mr. JORDAN. Is there some presidential privilege that prevents you from giving us those documents?

Mr. KADZIK. No, but there are law enforcement sensitivities and prosecutorial responsibilities concerning the confidentiality of witnesses, people cooperating with the investigation, the candid assessments of the attorneys and agents —

Mr. JORDAN. But you can give us something and you haven't given us anything. That is the point.

Mr. KADZIK. Well, we've engaged in the accommodation process, which includes the briefing which we scheduled for next week.

Mr. JORDAN. In that briefing are you going to be able to give me a little more information to give me—in your letter, you say there is a substantial evidence of poor judgment. Can you tell me who exercised poor judgment at the IRS when they were systematically targeting Americans' most cherished and fundamental right, their free speech rights under the First Amendment being violated for 5 years in some cases of certain groups and certain individuals? Can you tell me who at the IRS was exercising that poor judgment?

Mr. KADZIK. As I said, we've scheduled briefing for next week, and we'll be able to provide you with —

Mr. JORDAN. Well, this is going to be a heck of a briefing, isn't it?



Did you tell the White House before the October 23 letter came to the chairman saying no one was going to be prosecuted?

Mr. KADZIK. No.

Mr. JORDAN. Did you tell Ms. Lerner, her or her counsel, that there wasn't going to be prosecutions before the letter came to Chairman Chaffetz?

Mr. KADZIK. No.

Mr. JORDAN. Did you tell Mr. Shulman that there was not going to be a prosecution before the letter came to Mr. Chaffetz?

Mr. KADZIK. I've never talked to Mr. Shulman.

Mr. JORDAN. No, I am not saying you personally. I am saying did the Justice Department notify these individuals before you told this committee that no one was going to be prosecuted when Americans' most cherished First Amendment free-speech rights were targeted for a 5-year time frame in some cases?

Mr. KADZIK. Not that I'm aware of.

Mr. JORDAN. Not that you are aware of, okay. And you don't know if the interviews were transcribed?

Mr. KADZIK. I do not.

Mr. JORDAN. And you don't know if John Koskinen was interviewed?

Mr. KADZIK. I do not.

Mr. JORDAN. Do you think he should have been interviewed as the guy who was presiding over the Internal Revenue Service with a preservation order from the Justice Department, your agency, in place and he is the IRS Commissioner when 422 backup tapes are destroyed containing potentially 24,000 emails? Do you think it would be maybe a good thing to do in an investigation to interview Mr. Koskinen?

Mr. KADZIK. I can tell you that the career attorneys and the investigators and prosecutors that were involved in the investigation did a complete and thorough investigation.

Mr. JORDAN. Were any of the victims, the people who were targeted, were they notified before the letter came to Congress? Did you talk to any of them and say that no one was going to be prosecuted?

Mr. KADZIK. Not that I'm aware of.

Mr. JORDAN. Do you know Catherine Engelbrecht? Are you familiar with that name?

Mr. KADZIK. I'm familiar with that name.

Mr. JORDAN. The lady who started the organization True the Vote, the lady who was audited both personally and her business by the IRS, was visited by the EPA, the ATF, the FBI, and OSHA, all while she was simply trying to clean up voter registration rolls, systematically targeted. The full weight of the Federal Government came down on her. Do you know if she was contacted before you decided not to prosecute anyone?

Mr. KADZIK. I don't know.

Mr. JORDAN. Mr. Chairman —

Mr. KADZIK. I know that individuals were interviewed in the context of the investigation, but I understand your question —

Mr. JORDAN. One last question —

Mr. KADZIK.—was anyone prosecuted but —

Mr. JORDAN. But one last question.

Mr. KADZIK. Sure.

Mr. JORDAN. So you are going to talk to us in a few weeks with a briefing?

Mr. KADZIK. Next week.

Mr. JORDAN. When do you think we are going to get the documents?

Mr. KADZIK. I think that as part of the accommodation process, we'll talk about that next week. And as I said, those documents present particular —

Mr. JORDAN. Do you plan on giving us the documents or are you going to come talk to us and say you are still not going to get them to us and we need to talk more? Are you actively now trying to get those documents and get them to us?

Mr. KADZIK. We're actively preparing for the briefing next week and determining what information —

Mr. JORDAN. That wasn't my question. Are you actively getting the documents to us?

Mr. KADZIK. Are we actively getting the documents—we're reviewing the documents to see what the law enforcement sensitivities and other issues that are presented by those documents in any investigative or prosecutorial file.

Mr. JORDAN. Thank you, Mr. Chairman.

Chairman CHAFFETZ. Please be prepared to answer all of those questions at the briefing next week. You have had years you have looked at it, months to prepare given our letter. We expect a full and complete briefing.

I will now recognize the gentleman from California, Mr. Lieu, for 5 minutes.

Mr. LIEU. Thank you, Mr. Chair.

Let me, first of all, thank the panel for their public service.

I do share the chair's and ranking member's frustrations with the withholding of information by the executive branch to Congress. One panel member, I believe, mentioned the difficulty of having 100 bosses. I just want to note that you only have one boss. That is the American people. And one of the ways the Framers designed our government is for the American people to express their will through 435 elected Members of Congress and 100 elected Senators. And it is the duty of the executive branch to respond in a timely manner to Members of Congress, whether it is 100 members or 535.

And let me explain the importance of this. I will go through one area, which is privacy. The U.S. Supreme Court has said it is illegal for law enforcement without a warrant to put a GPS device on a person's car and track them through geolocation. This committee has sent two letters to the Department of Justice asking for your policies on geolocation. You have failed to provide them, and I want to know why that is. Why don't you just provide your policy on geolocation because we want to know if you are violating the law?

Mr. KADZIK. Well, Congressman, first of all, the request is not for policies. The request was for two particular memoranda which consist of attorney work product, which was advice provided to our prosecutors that included investigative and litigation strategies. With respect to policies, to the extent that policies exist, for exam-

ple, in the cell-site simulator context, we have provided that policy to the Congress.

Mr. LIEU. Well, let me just read the first sentence of your letter dated October 30, 2015. “This is in response to your letter to the attorney general dated October 26, 2015, regarding your interest in Department of Justice policies on geolocation and other surveillance technology.”

So since you have brought up cell-site simulators, we had a hearing in October, and your Department of Justice witness testified about StingRays, which can monitor cell phones, track their locations, and we want to know and I want to know, well, could these StingRays also get substantive conversations?

Department of Justice witness, I believe, sort of danced around that and sort of said I don’t know, which I find troubling. So either that witness was withholding information from this committee or had a shocking level of ignorance about a device that the Department of Justice was using. But she did commit to providing the answer to that question to which we have not gotten yet, even though we asked both publicly, as well as in writing. But I did find out about a week after the hearing through the press that, yes, in fact these StingRays can be configured to monitor conversations.

So that is why it is so important we get documents because I partly don’t trust the witnesses that I have heard sometimes before this hearing, and I just want to look at these documents to know is the Department violating the law. It is not a hard request. If you don’t want this memorandum put out publicly, you don’t have to. You can give it to us in a confidential, private setting.

But I think it is important that we get these documents, and I think the American people have a right to know is the Department of Justice violating the law when it comes to privacy. And we need to have these documents and know what your policies are. How are you using StingRays? How are you using geolocation? How are you using these GPS devices?

And so I am going to ask you once again to provide these documents. And I know in your letter to this committee you don’t cite a case, so unless you can provide some sort of case that says you can’t provide these documents, I would like you to provide those documents. And with that, I yield back.

Chairman CHAFFETZ. Before the gentleman yields back, if he would yield to me for a moment on this.

Ranking Member Cummings and I sent the Department of Justice a request. I just don’t understand when the Department of Justice sends out, as was revealed by the general counsel for the FBI, guidance to the field specifically on the use of GPS and guidance on what the Jones—that being the Supreme Court case—what Jones means for other types of geolocation techniques, why is it that Members of Congress with security clearances—I happen to sit on the Judiciary Committee, I am on the Crimes Subcommittee—why is it that I cannot actually see what you are sending out far and wide? I mean, you are sending this out to all of your prosecutors, you are sending it out to—when you send this out far and wide, why can’t Elijah Cummings and I go look at it?

Mr. KADZIK. Well, first of all, Mr. Chairman, I would say that we are not sending it out far and wide. It is attorney work product.

It goes to those prosecutors that need that information when they litigate cases and they approve or disapprove particular investigative techniques. And we have provided briefings with respect to this —

Chairman CHAFFETZ. No, no, no, no, no, no.

Mr. KADZIK.—and we've also provided —

Chairman CHAFFETZ. A briefing is not good enough. A briefing is not good enough. This is the FOIA request that is put out, 100 percent redacted. This is what the pages look like, okay? We have got concerns post-Jones that the Federal Government is potentially spying on Americans, what sort of techniques they are using. We represent the people. We have a security clearance. You send us blank pages like this to the public, and so we are asking in an in camera review situation to be able to read this ourselves. You are willing to give it to all the Federal prosecutors, okay? You are willing to share this widely within the Department, but you won't allow Members of Congress to look at it? Why?

Mr. KADZIK. Mr. Chairman, as I indicated, we've provided briefings, we've provide pleadings where we've publicly disclosed our legal analysis. We'd be happy to provide additional pleadings and additional briefings, but there are law enforcement sensitivities. And again, it is attorney work product information. And we're happy to continue with the accommodation process.

Chairman CHAFFETZ. This is guidance. You are giving guidance. You have sent this out on the techniques that are currently being deployed.

Mr. KADZIK. I —

Chairman CHAFFETZ. We don't know if you are violating the law, not violating the law, if other laws need to be written. Justice Alito even refer to that in his opinion saying the legislative body need to be involved and engaged here. The American people trust us but you don't trust us.

Mr. KADZIK. It is not that we don't trust you, Mr. Chairman, but again, it's attorney work product, privileged information that's designed to provide —

Chairman CHAFFETZ. Privileged from the American people, and that is what I have got a problem with.

Mr. CUMMINGS. Will the gentleman yield?

Chairman CHAFFETZ. Yes.

Mr. CUMMINGS. Again, let's try to get down to the bottom here. Is it one of your concerns that there are ongoing investigations, sir?

Mr. KADZIK. Yes, Mr. Cummings, there are ongoing investigations. These do discuss investigative techniques and the legal arguments that we would make in support of those techniques. And they discuss also the potential legal arguments that would be made by defendants. And we're concerned that if these techniques are disclosed that, you know, criminal elements can use that information in order to avoid detection in law enforcement efforts.

Mr. CUMMINGS. So the bottom line is that you don't trust us?

Mr. KADZIK. No, it's not that we don't trust you.

Mr. CUMMINGS. I mean, in other words, you know, if we are saying that we would like to see this information in confidence and make commitments that we are not going to disclose, then what

would be the reason—I mean, going to what you just said? In other words, that seems to take away your reason for not providing it.

Mr. KADZIK. We've —

Mr. CUMMINGS. Am I missing something?

Mr. KADZIK. We've engaged in discussions along that route, and we'd be happy to continue those discussions as an accommodation to the committee.

Chairman CHAFFETZ. That is not an accommodation. I want to actually read it. You gave it to all the Federal prosecutors; you gave it to the criminal chiefs and the appellate chiefs. Why do you assume that if Elijah Cummings or any Member of Congress with a security clearance, having signed an oath, taken an oath, we signed documents saying we won't reveal this, why do you assume that because we read it in camera that it is going to suddenly get out in the public?

Mr. KADZIK. Well, Mr. Chairman, it is not also—not only a question of disclosure; it is a question of waiver of privilege. And so, you know, the fact that we provide it to a third-party could potentially be an argument that we have waived the privilege and it would be discoverable by other individuals, defendants in criminal cases. And what we're trying to do is to protect our law enforcement responsibilities.

Mr. CUMMINGS. Just one other question if the gentleman will yield. There is a piece missing here. There is nobody up here on either side that wants to do anything to interfere with a criminal investigation. In other words, we want to make sure that you are able to do your job, but you have got to understand, we are trying to do our job, too. And it seems like we ought to be able to reach some type of balance here. And if there is case law supporting what you just said, do we have that? Have you provided that?

Mr. KADZIK. I don't know if we have provided it, Mr. Cummings, but again, we'd be glad to continue these discussions, and I agree that there's a way in which we can reach an accommodation to provide —

Mr. CUMMINGS. Well, let's try to do that —

Mr. KADZIK. I—we will certainly —

Mr. CUMMINGS.—as soon as possible.

Mr. KADZIK. Yes, sir.

Chairman CHAFFETZ. We haven't gotten there yet and it has been years. I would cite the FTC v. Owens-Corning Fiberglass. When a congressional committee compels production of a privileged communication through proper subpoena, it does not prevent assertion in privilege. It is well documented. You are hiding this from the American people. Who is the client? Who is the client that you are trying to protect?

Mr. KADZIK. We're trying to protect the American people but —

Chairman CHAFFETZ. And we represent the American people.

Mr. KADZIK. And so do we, but providing this memorandum for broad public disclosure doesn't protect —

Chairman CHAFFETZ. I am not talking about public disclosure. As Members of Congress, we should be able to see what you are doing and how you are doing it.

Mr. KADZIK. And as I said, we are trying to accommodate the information requests. We are happy to continue the discussion.

Chairman CHAFFETZ. No, you are not because we just want to read the documents that you are giving to the prosecutors and the criminal chiefs. And you are saying no, and it should scare every American.

I appreciate the committee's indulgence. We have gone on a long time with this. I believe I now recognize Mr. Walberg for 5 minutes.

Mr. WALBERG. Well, Mr. Chairman, this is a perfect example of how we have gone away—and, Mr. Kadzik, with all due respect, you do not represent the American people. You do not represent the American people. We are the only ones elected to represent the American people. Now, remember that.

Now, I am sitting here today thinking I am hearing an old Hogan's Heroes rerun with Sergeant Schultz saying "I know nothing." I also understand that you people have been put in very difficult situations representing people who do have the answers but put you in the place to try to give just enough to satisfy us. And you have staff behind you to make sure that you don't go too far in giving that answer. And that is frustrating.

Now, I also understand that you don't have the benefit that we do. There is only one person in our district that people come to and expect to have an answer from, and we are held accountable, Members of Congress. We are elected by those people. And the further you get outside of this Beltway—and that is a challenge that you have; I understand that—but having relatives that live at different levels outside of this Beltway, the further you get away, the more frustration there is that the people have lost control from both sides of the perspective.

And so when we who directly represent the people, who have been elected to represent the people in given districts, especially here in the House, are put upon by our people to ask questions and to get understanding for them, you have got to understand why it is frustrating to have documents that we have been told we will receive piecemealed out.

And so, Ms. Fucile, I go to you. Representing the State that has Waters of the U.S. surrounding us on three sides, very important to Michigan, I have a very great interest in the rules-making process. Back on March 3, 2015, in a hearing before this committee, members asked Administrator Shelanski for documents relating to OIRA's review of the Waters of the U.S. rulemaking. After the hearing, committee staff followed up with your staff on numerous occasions about this request but received no response.

How did you instruct your legislative affairs staff to respond to the committee after the March 3 hearing? Did you instruct them not to initiate a search until a formal letter was received from the committee? Did anyone tell you not to initiate a search? What are your answers?

Ms. FUCILE. No. Absolutely, after receiving the request, we began the search. It's a large search and it's taking time. And I appreciate that we should have, could have increased the speed of that production, and we are working on that. But when we got that request, we started to produce documents. We produced documents over the last several months. We will continue to.

Mr. WALBERG. In your first production to this committee on June 4, OMB provided 893 pages of documents, 893 pages, 846 of which were publicly available online. Were you aware of that?

Ms. FUCILE. The document request that we received was quite broad, and the documents that we produced were responsive to that. The—several of those documents—or much of that documents were publicly available online.

Mr. WALBERG. Well, in light of that —

Ms. FUCILE. Since then—since then, we have produced email communications between senior OIRA officials —

Mr. WALBERG. Is it normal practice to have staff that are under a heavy load, I understand that, to produce for a committee documents that are readily available already?

Ms. FUCILE. That was—we—as we read the request, the request was quite broad. We believed that the documents that we provided were part of that request.

Mr. WALBERG. That is not helpful. I mean, we could do that. We have plenty of other pages just going over to what EPA has provided for us already. They provided 21,000 pages of responsive documents, 21,000 pages. In the last 10 months OMB has provided this committee with 3,260 pages, 21,000 versus 3,260. That is concerning.

Ms. FUCILE. The role of EPA with respect to promulgating this rule is considerably different than the role that OIRA and OMB play. The number of documents that we would produce for any rule would be expected to be considerably smaller than that of the agency —

Mr. WALBERG. Eighty percent were online already, and we are capable of seeing those. We weren't asking for those.

Ms. FUCILE. I disagree with the characterization that 80 percent of what we have produced for this committee were available online. The first production included materials that were available online. The subsequent productions and the vast majority —

Mr. WALBERG. Less than 100 pages —

Ms. FUCILE. The vast majority —

Mr. WALBERG.—were not online.

Ms. FUCILE. The vast majority of the documents we have produced for this committee have not been documents that were available online.

Mr. WALBERG. I yield back.

Chairman CHAFFETZ. I will now recognize the gentlewoman from New Jersey, Mrs. Watson Coleman, for 5 minutes.

Mrs. WATSON COLEMAN. Thank you, Mr. Chairman, and thank you to each of you who are here today to answer our questions.

This has been a very difficult discourse, and I as a new Member am somewhere between are we putting too much on our departments trying to get information from so many different committees and subcommittees? Is that an onerous burden that you are not staffed or configured to respond to in a timely manner and in a way that meets our needs and our requests? Are you trying to not give us the information that we want in a manner that is usable for Congress as Congress goes about doing its work?

And so if it is the former, then we need to address that and you need to be communicating clearly with us about the impact of the

requests and how we can better work together. If it is the latter, then you are just going to be dragged into this committee and subcommittees until the end of time because it is disrespectful not to address Congress's right to have information. And so we need to figure out exactly which one of these things it is.

In the Department of Human Services there was a request regarding some findings with regard to Secret Service, Ms. Johnson, and there were a number of issues which were already addressed, but my understanding is that there is one more issue that is outstanding. I am not quite sure what it is. Are you aware of it? It is one of 16 issues that have been identified and have been responded to in some way, shape, or form.

Ms. JOHNSON. Yes, thank you, Congresswoman. Yes, we—with regards to the Secret Service request, we are dealing with two different documents. One was the February 18, 2015, letter, and that contains 16 requests. And we were complying with that request. As a matter of fact, the good news story was the process worked as it should. It was—their—the requests were very broad, and so we went back to the committee and asked the committee to prioritize so that we could prioritize, which, in fact, the committee did. You prioritized four lines or four categories of information, which we were producing. And in the course of that production, then, ultimately, the July 9 subpoena came forward. It also had 18 requests, most of which were overlapping with the February 18 letter but it broadened the aperture.

And so as a result of that, we have been producing on both of those documents, and we continue to produce. Even last night, we produced documents responsive to the February 18 request on a—for requests numbers 4 and number 11. And so, yes, it's a rolling production and we have been producing since February.

Mrs. WATSON COLEMAN. So if there is an outstanding request, do you have any idea, any estimate of the time that it would take to have that request answered, responded to —

Ms. JOHNSON. Congresswoman, we are routinely —

Mrs. WATSON COLEMAN.—or is it just a series of things that —

Ms. JOHNSON. Right, we're continuing to comply. On the February 18 letter there were 16 requests, 12 of them are closed, four remain open, and as I said —

Mrs. WATSON COLEMAN. Okay.

Ms. JOHNSON.—we produced last night for two more. So that means there's two that remain open on that one.

Mrs. WATSON COLEMAN. On that request.

Ms. JOHNSON. On the July 9 subpoena there were 18 requests, 13 requests are closed, 5 remain open, and we continue to produce on those. So I can't give you a definite timeline —

Mrs. WATSON COLEMAN. Okay.

Ms. JOHNSON.—but we have been producing, we continue to produce, and we will continue until such time as we can close these two out.

Mrs. WATSON COLEMAN. So the Department of Justice issue is a little bit different because there is a question as to—from the Department's perspective versus our committee's perspective what information we are entitled to and in what form, to what degree. But for the rest of the departments, are we in agreement that there are



outstanding requests that have not been responded to in a way that this committee deems appropriate?

I will start with you, Ms. Frifield. That is a yes or no.

Ms. FRIFIELD. We do have outstanding requests with the committee, but we are working to meet those requests.

Mrs. WATSON COLEMAN. Ms. Fucile is it?

Ms. FUCILE. Yes. My answer would be the same.

Mrs. WATSON COLEMAN. And, Mr. Levine, yours is a little different also. Sometimes I think you are talking about apples and we are talking about oranges.

Mr. LEVINE. There —

Mrs. WATSON COLEMAN. But we need reconciliation in what we are looking for.

Mr. LEVINE. There remains one request for which we are intending to produce some documents, and then we're going to circle back on what the —

Mrs. WATSON COLEMAN. Thank you. So I simply wanted to, you know, echo our desire to be able to work together to have the information we need to represent the people that sent us here to represent their interests, and we are just as equally engaged and yoked in making sure that our Americans are safe and secure and have the benefit of all the services, and that seems to me what we are trying to accomplish as the Oversight Committee.

Thank you, Mr. Chairman.

Chairman CHAFFETZ. Thank you. I would hope it would be reasonable that you could tell us which ones you think are closed and which ones you think are still open because what I hear from staff is if we make a dozen requests and you say eight are closed, four are open, we don't know which ones are still open. And I hope that is reasonable to ask. If you think you have accomplished number seven, tell us. We are done. You don't have anything else coming for number seven. Is that fair?

Does anybody want to actually say that and be recorded as saying yes? Let's go down the line and ask if that is a reasonable request.

Ms. FRIFIELD. Yes, we can go over and give you the status of each of your requests. We're very happy to do that.

Chairman CHAFFETZ. Thank you.

Ms. JOHNSON. Yes, generally, when we —

Chairman CHAFFETZ. Wait. Mr. Kadzik —

Ms. JOHNSON. Oh.

Chairman CHAFFETZ.—you have been around. You are smart. That is good lawyering, I get it, but we are asking a direct question here. Is that reasonable?

Mr. KADZIK. Well, I think that we've told the committee —

Chairman CHAFFETZ. No, I am asking you will you tell us on the outstanding requests and moving forward, when you have completed a request, will you tell us that?

Mr. KADZIK. I think we have and we will continue to do so.

Chairman CHAFFETZ. Ms. Johnson?

Ms. JOHNSON. Thank you, Chairman. Yes, when we produce, we tell you what we're producing against. So the production last night

Chairman CHAFFETZ. We just want to know if it is completed. When it is completed, tell us it is complete.

Ms. JOHNSON. Yes, and we will say we're producing—these are the documents responsive to February 18 request number 4. These were all the documents we found so —

Chairman CHAFFETZ. Okay.

Ms. FUCILE. Our one—our one outstanding request remains open, yes.

Chairman CHAFFETZ. But will you tell us in the future when you have completed the request, and will you tell us if it is still outstanding?

Ms. FUCILE. Yes. As I just said, it is still outstanding.

Chairman CHAFFETZ. Okay.

Mr. LEVINE. Yes, we will. I mean, I think, as we've discussed with your staff, it's—we can indicate when it's closed. You can always—might be able to find something else, as you and Mr. Turner raised earlier, but yes, we believe we will let you know when things are closed.

Chairman CHAFFETZ. Because often, these letters come with two or three or five requests, and we just need to know which ones are closed within the body letter. Thank you. Appreciate that.

Mr. Gosar of Arizona is now recognized for 5 minutes.

Mr. GOSAR. Thank you, Mr. Chairman.

Assistant AG Kadzik and Assistant Secretary Johnson, in August of 2014 I wrote to the attorney general and the Secretary of Homeland Security, the head of your respective agencies, expressing serious concerns about reported alterations made to prosecutorial guidelines for operations streamlined and requesting information about this decision from your respective agencies.

Nine days earlier, I received a letter from one of my local county sheriffs expressly significantly finding concerns that Operation Streamline was being terminated and that the U.S. Attorney's Office will no longer be prosecuting first-time undocumented illegal immigrants under the program. In the letter, Sheriff Wilmot stated, "This new guidance is of great concern because it undermines the mission of local law enforcement agencies throughout Yuma County for 100 percent prosecution of those entering the United States illegally in order to curb reentries." Sheriff Wilmot also stated in his letter, "During an interview of a defendant from a recent smuggling case, the subject told investigators that since he had been in jail, they and their other partners are moving to other areas due to our hard stance on smuggling and the fact that if you are caught in Yuma, you will go to jail."

The Federal Government's failure to address our immigration crisis is forcing cities in my district such as Yuma to step up to prevent the massive flow of illegal aliens entering the country. In 2005, a combination of fencing, new infrastructure, no tolerance zones, and increased manpower drove down the number of apprehensions in the Yuma region by nearly 95 percent from 119,000 in 2006 to just over 6,000 in 2013.

Despite this remarkable success, you all defied all logic and common sense by unilaterally crippling law enforcement and terminating Operation Streamline, as well as other worthwhile border enforcement programs. On October 10, the OJ replied to my letter

from August 28 about Operation Streamline being terminated. While I appreciate the relatively prompt response within the 2-month time frame, frankly, I am shocked it even took that long considering it essentially resembled a simple copy, cut, and paste with such generic and blatantly evasive language that in no real terms could be considered an actual response.

Rather than answering my question or providing any reasoning as to why Operation Streamline had been terminated, the Department of Justice responded with a weak letter—I will hold up this letter here—that stated, “It is the Department’s longstanding practice not to provide specific information regarding criminal law enforcement policies of the United States Attorney’s Office.” That is just simply outrageous.

Now, I will humbly tell you I don’t think I am really anybody special. I am just a dentist impersonating a politician. I don’t expect any special treatment from anybody, but I was elected in accordance to the Constitution of the United States to serve as representative of the people of the Fourth Congressional District of Arizona, which carries important duties and obligations, including government oversight. Mr. Chairman, before I ask some questions, I would like to have these three letters entered into the record.

Chairman CHAFFETZ. Without objection, so ordered.

Mr. GOSAR. So with that, Mr. Kadzik and Ms. Johnson, since you are both here, I will ask you all one more time. Which one of your agencies made the call to terminate Operation Streamline and why the secrecy? Mr. Kadzik first.

Mr. KADZIK. Congressman, within the last 2 months, we conducted a briefing with respect to the status of immigration enforcement in the Yuma district. I apologize if your staff was not invited to that briefing, but I would be happy to have that briefing provided to members of your staff to give you the current status of immigration enforcement, but —

Mr. GOSAR. I am not specifically asking you that, sir. I asked you a specific question. Who—is it your agency? Who in your agency or Ms. Johnson’s agency decided to terminate Operation Streamline, point, simple, one way or another?

Mr. KADZIK. I can’t tell you that it’s been terminated and so —

Mr. GOSAR. Well, it absolutely has.

Mr. KADZIK. Well, I would say that, as the letter indicates, the local United States attorneys implement prosecution policies.

Mr. GOSAR. You know, those come from the DOJ directly. I am sorry, sir. Those are directives came from—so I am asking you this question. If you don’t know the answer, simply state the answer, that you don’t know. But —

Mr. KADZIK. I can’t say I don’t know because I don’t believe that it was terminated. And —

Mr. GOSAR. It has been terminated. Whether—you don’t know the answer. Mr. Johnson, how about you?

Ms. JOHNSON. Congressman, I have to defer to Department of Justice. Operation Streamline is not a Department of Homeland Security operation, and so it—I’m not—I don’t have competence

Mr. GOSAR. Okay.

Ms. JOHNSON.—to speak to that.

Mr. GOSAR. So let's go back to you, Mr. Kadzik. Is the standard practice of the Department of Justice to disregard requests for information from individual Members of the United States Congress?

Mr. KADZIK. No, it is not.

Mr. GOSAR. Ms. Johnson, does the Department of Homeland Security similarly shrug off information requests of individual Members of Congress who are performing their oversight duties?

Ms. JOHNSON. No. No, Congressman. We do not shrug off requests that we receive. As a matter of fact, we try to produce the documents that are being requested.

Mr. GOSAR. Does it make a difference if it is more than one, maybe 30 or 40 Members writing a letter? Does it get quicker attention if it has got 30 or 40?

Ms. JOHNSON. No, Congressman. That's not the way we prioritize. But we do have to prioritize. When you're subject to the jurisdiction of 92 committees and subcommittees, you have to prioritize where you're going to put your efforts at any given time. So—and—so we prioritize the requests, we task them out to the appropriate components to search for the documents.

Mr. GOSAR. Well, as a doctor, it seems to me your problem has been misdiagnosed. If you can't keep up with Congress—and I understand that Congress isn't your ordinary third-party—if you can't keep up with the document requests, maybe you should reevaluate your conduct. Quit reinterpreting, abusing, and remaking the laws. Follow the law. I yield back.

Chairman CHAFFETZ. I thank the gentleman. I will now recognize the gentleman from California, Mr. DeSaulnier, for 5 minutes.

Mr. DESAULNIER. Thank you, Mr. Chairman, and thank the ranking member. And forgive me for being naive, but given that I haven't been a Member for that long, it does seem that both the committee and the Departments—there should be less pull and tug in gray areas. It strikes me that public documents are public documents. We all work for the public. The sooner you have the infrastructure to respond to them, we can get those documents or be told why we can't I think does us all well, knowing that there is some political latitude in there that we have to deal with.

My question is specifically to the AG just because, like the last Member, I had a specific letter that I sent to the Department of Justice and the attorney general that I don't expect you to be aware of, but I would like to just have it on the record. So it was vis-a-vis the ability to enforce the Clean Air Act versus potentially or at least go through the due diligence when it comes to Volkswagen.

So I have read interpretations that said there is a gap in the law in the Clean Air Act where there is only civil enforcement. The letter that we sent, miraculously, we got a response this morning, so I will give that to karma, not the coincidence of the hearing.

If you could go back and let our office know because what I was asking is is there a possibility because it seems to me that is the only motivating factor having spent a long time in California on enforcement of the California Clean Air Act when it comes to regulated entities, in this instance, a car company. Are there only civil procedures that you can pursue and you are pursuing? My question

in the letter would be can you pursue criminal acts or does that require a statutory fix in the Clean Air Act?

And given that is a specific request but it also illustrates just to me the difficulty of responding. So if there is a technical reason why you don't want to respond, it would be helpful for me to understand how you can communicate that to me.

So with that, Mr. Chairman—I give you the opportunity to respond, Mr. Kadzik.

Mr. KADZIK. Congressman, I would be happy to get back to you on that. As you know, we did file a civil suit just this past Monday against Volkswagen. I'm not familiar with what criminal authorities we may have, but I'd be happy to respond to your letter on that.

Mr. DESAULNIER. I appreciate that. I yield back.

Mr. CUMMINGS. Would the gentleman yield?

Mr. DESAULNIER. Yes, to the ranking member, I'm happy to yield.

Mr. CUMMINGS. Thank you very much. Mr. Kadzik, how long have you been in your position?

Mr. KADZIK. Almost 3 years, Mr. Cummings.

Mr. CUMMINGS. Okay. And what did you do before that?

Mr. KADZIK. I was in private practice of law.

Mr. CUMMINGS. I see. Now, I was trying to figure—I keep going back to what Mr. Lynch said about why we have what appears to be an adversarial situation. And it is not a new thing, as he said. I mean, this goes back for years. And it does appear to be that. I don't care how you look at this. You have got to—and maybe some of the other—the only reason I ask you how long you had been there, I thought you had been there longer than that. But I am wondering, when you all view this, do you all see it as adversarial?

Mr. KADZIK. Mr. Cummings, we don't, and in fact, I think that we've had a good working relationship with this committee during the past year or more, and we look forward to continuing to cooperate with you and the chairman to try and get you as much information as we can, consistent with our law enforcement responsibilities and our confidentiality interests of the executive branch.

So I don't view it as adversarial, I don't want it to be adversarial, and, you know, we—you know, as the chairman indicated in his opening remarks, I know that you expect and require cooperation, and we hope to provide it.

Mr. CUMMINGS. Ms. Frifield?

Ms. FRIFIELD. I don't think it should be adversarial. I worked on Capitol Hill for over 20 years, and so I've seen it from both sides. And I generally believe it could work best if we have a collegial relationship where we can sit down and go over priorities and sequencing. I mean, we have all talked about the difficulty with resources, and that is our problem. We have to grapple with that, and we have to come to a solution. But I think it would be less frustration on your part if we could just sit down and say these are the priorities, so rather than talking about all documents or everything saying we need these—we need all contracts or we need things from this date. And we start there and then we keep—we can build on that later if we continually, you know, talk to the staffs.

And I feel like I've had good relationships with your staffs. They have my direct line and I have theirs. They can call me at any time. I can call them. I think that's the way it works best, not having a sort of confrontational kind of relationship.

Mr. CUMMINGS. And so trying to narrow the information that is needed as opposed to having just a blanket kind of request would help, I think?

Ms. FRIFIELD. Yes, sir. Because, for example, one that—the chairman asked for the notifications on various embassy construction projects. That was a very clear direction from the chairman. We were able to respond to that in a few weeks, and it was done. And then if you—you know, if anyone wants more or different or discuss it or a briefing, we can go on from there. But it's just—I feel like that is the constructive way to work with this committee given, you know, the fact that we are balancing many, many requests, many more than we frankly can deal with in a very constructive way.

And we will get better. We are getting better, but I think it would be less frustration on your part if we could sit down and go over what's the plan, these are the steps now, and we'll take the steps in the future.

Mr. CUMMINGS. Thank you.

Chairman CHAFFETZ. I now recognize the gentlewoman from New York, Ms. Maloney.

Mrs. MALONEY. Thank you, Mr. Chairman.

Chairman CHAFFETZ. I am sorry. My apologies. We were actually toggling and—my bad.

I will now recognize the gentlewoman from Wyoming, Mrs. Lummis, for 5 minutes.

Mrs. LUMMIS. Thank you, Mr. Chairman.

My questions are for Ms. Fucile. I want to visit with you about the Waters of the U.S. rule and when you gave your 5-minute testimony, you called it something new, Clean Water rule. That was a new moniker that was given to that rule over the Christmas holiday by the administration in full knowledge of the fact that that was always called the Waters of the U.S. rule and the fact that it has always been so thoroughly rejected by the people of this country caused this rebranding of the rule under a new name.

Now, one of the reasons that you are here today is because even though your agency is probably truly exhausted from the work you had to do on the omnibus—and I get it; you are a small agency and that was an enormous piece of legislation—but the administration wouldn't even speak to Congress about the omnibus until we first agreed to strip from that bill all of the riders that had to do with policy, including our decision to not fund the Waters of the U.S. rule. And so the reason that this is such an important issue today is the position the administration took on that rule.

Now, this rule is easily one of the top-10 worst rules that has been adopted during the course of this administration's term, in fact, so bad that a Federal district court blocked the rule in 13 States, calling it an "exceptionally expansive interpretation of Federal jurisdiction" that would irreparably diminish the States' power over their waters. It is so serious that the Sixth Circuit Court of Appeals expanded the stay to cover the whole nation.

This rule has the whole nation up in arms, which is why we want more information about it. Now, on March 3 and May 12 we asked for information from you about this rule. And as of June 4, no documents were produced. The May 12 letter signed by the chairman and the gentleman to my right, Mr. Meadows, no documents were produced. So the committee subpoenaed these documents. It requested all documents and communications referring or relating to the rule by July 28, 2015.

Now, a few documents were produced, many of which were just a printed copy of the rule. October 28, a letter was signed by the chairman, Mr. Chaffetz, Mr. Meadows to my right, Mr. Jordan, who was here earlier, and myself, and there has been no response. That is the reason you are here today.

We are frustrated that when a rule that is this expansive and this provocative of States' rights is promulgated and the administration won't even talk to us, to Congress, and the bipartisan opposition and bicameral opposition to this rule, and having all those States sue to have it stayed, but we can't get the information we are requesting about how this rule came about from the get-go.

So now my question, Ms. Fucile, has OMB searched the inboxes of all OIRA staff who worked on this rulemaking?

Ms. FUCILE. As part of our search process, we are in the process of going through all of the documents related to the review of the Clean Waters of the U.S. rule, the Waters of the U.S. rule, and we are in the process of that. As the request came in, it was for a 9-year period from June of 2006 to July of 2014, I believe, and so we are going through that. You mentioned —

Mrs. LUMMIS. How many custodians have you identified?

Ms. FUCILE. I don't have that information. I'd have to take that back.

Mrs. LUMMIS. And I would like to request how many have you identified to date? That is a request for information again.

Have you asked all OIRA staff to produce copies of documents related to the Waters of the U.S. rulemaking?

Ms. FUCILE. The search process has gone through identified custodians. I do not know exactly who those are. That's just—I—that's just not part of what I do. I can find that out.

Mrs. LUMMIS. And so I am requesting that, too, because we want to know whether the OIRA staff has documents related to the WOTUS rulemaking. We want to know if they have produced all potentially responsive documents for review.

Ms. FUCILE. As I said before, we are—this is an outstanding requests. We are continuing. We certainly have not produced all documents, and we are committed to continuing —

Mrs. LUMMIS. Well, pursuant to those four early requests, I renew those requests, Mr. Chairman, and yield back.

Chairman CHAFFETZ. Are you committed to providing all of those documents?

Ms. FUCILE. We are committed to providing the committee the information that it needs. We are —

Chairman CHAFFETZ. Well, we determine what we need, so the question is, are you going to provide all the documents?

Ms. FUCILE. We're—we certainly —

Chairman CHAFFETZ. Why isn't that a simple yes. You can't say yes to that?

Ms. FUCILE. We're committed to getting the committee the information it requested. We certainly are committed to going through all of those documents. There is a process that is a longstanding practice between this administration, other administrations to make sure that the documents are relevant, to make sure that the documents adhere to privacy concerns. All the information we've given you so far has been complete without redactions. We're committed to continuing this process.

Chairman CHAFFETZ. I want to know if you're committed to giving us all the documents, yes or no?

Ms. FUCILE. We are committed to getting you the information that you need and producing documents and continuing to produce documents and to working with you on that.

Chairman CHAFFETZ. Why can't you just say yes or no? Are you going to give us all the documents we asked for, yes or no?

Ms. FUCILE. Part of the problem is I personally don't know what the universe of all the documents is. I—we are committed to getting you the documents.

Chairman CHAFFETZ. When?

Ms. FUCILE. We are—have increased our production and response rate. I expect that will continue —

Chairman CHAFFETZ. Well, you had enough information that you actually produced a rule, so why can't you provide those underlying documents to Congress?

Ms. FUCILE. The—as the Congresswoman pointed out, this rule is under litigation. That increases the amount of work that needs to go done—be done in terms of producing documents. We are committed. We—I expect that we will be able to continue to produce documents, that we will be able to produce documents this month—or next month by—in short order, you know, and we're committed to work with your staff on that.

Chairman CHAFFETZ. When is it reasonable to give us the—what date? I am looking for a date.

Ms. FUCILE. I can't give you a date certain because the breadth of the subpoena is so broad, but I can commit that within the next month we will produce more documents.

Chairman CHAFFETZ. Wow. This is what we are up against.

All right. I will now recognize the gentlewoman from New York, Ms. Maloney, for 5 minutes.

Mrs. MALONEY. I would like to thank the chairman and the ranking member and all of the panelists today. And I believe we can all agree in a bipartisan way that Congress has the right and it is essential that Congress have access to all of the information that it needs to conduct its business and to provide proper oversight. I think we can all agree to that.

But today's hearing seems to be focused on production delays by a few agencies for a handful of documents, although these same agencies have produced large numbers of information to this committee. So I would like to suggest that rather than suggesting that executive agencies generally do not comply with congressional oversight request, the facts, the facts show the exact opposite.



And Assistant Secretary Frifield, in your testimony, you said that in 2015 the State Department provided more than 2,500 briefings and responded to more than 1,700 letters and appeared at 168 hearings. That is a staggering amount of response. It is almost amazing. Are these numbers correct?

Ms. FRIFIELD. Yes, Congresswoman, they are correct.

Mrs. MALONEY. Okay. And you also said that the State Department is responding to dozens of investigations, again, by a staggering nine different committees. Now, is that correct?

Ms. FRIFIELD. Yes, it is.

Mrs. MALONEY. And then you said that this is twice as many as it was in 2014, and is that correct?

Ms. FRIFIELD. Yes.

Mrs. MALONEY. So according to our records, our committee held about 90 hearings last year, and of those, witnesses from the executive agencies were testifying and playing a crucial role in 65 of them.

So my question to you is do you have time to do anything else after responding to all of these congressional responses and requests and investigations and hearings and letters? It is a staggering amount of work.

Ms. FRIFIELD. It is, and I thank you for acknowledging that. We—I mean, we take a lot of pride in what we do, and we feel it's very important. And as Congressman Cummings says, we are in many ways the advocate for you on the Hill. We work with our agencies to make sure that people on the Hill get what they need. Most of us come from a Hill background. We know what you need. We understand the pressures and the demands that are under for Members of Congress, and our job is to make sure they get what they need.

And certainly, with the State Department with the crises around the world, we know that Congress is intimately involved in many, many aspects of those, and our job is to make sure that you have the information you need to make decisions, very important decisions on everything going on in the —

Mrs. MALONEY. So in your job do you do anything else but respond to congressional requests?

Ms. FRIFIELD. That is most of my job.

Mrs. MALONEY. That is most of—you would say, is that 90 percent of your job or 80 or 20 or 30?

Ms. FRIFIELD. It is my—it is my entire job pretty much.

Mrs. MALONEY. It is your entire job?

Ms. FRIFIELD. Yes.

Mrs. MALONEY. It is 100 percent of your job —

Ms. FRIFIELD. Yes.

Mrs. MALONEY.—is to respond to congressional requests? Okay. All right.

And in fact more than 45 witnesses who testified before the committee last year came from the five departments that are represented here today. And, Ms. Frifield, were you aware of that, that that is happening, that you are here all the time? I guess you do.

Now, Assistant Attorney General Kadzik, this committee received more than 200 letter responses from executive agencies in

2015. For example, in 2015 the committee sent about 16 letters to the Department of Justice and received 28 responses. Does that sound about right to you?

Mr. KADZIK. Yes, it does, Congresswoman.

Mrs. MALONEY. Again, it is a staggering amount of work.

And, Assistant Secretary Johnson, the Department of Homeland Security and its component agencies provided information on topics ranging from immigration and visas to border and transportation security. And during our investigation of the Secret Service, we received 17 briefings, eight transcribed interviews, Director Clancy's testimony twice, and more than 15,000 pages of documents and four in camera interviews. Does that sound about right?

Ms. JOHNSON. Yes, Congresswoman.

Mrs. MALONEY. Yes. And, Assistant Director Fucile, my understanding is that the Office of Management and Budget, on behalf of OIRA, has produced more than 9,000 pages of documents in response to the committee—in response to this particular—more than this committee but in response to committees' requests and has repeatedly asked this committee for further guidance. Does that sound about right to you?

Ms. FUCILE. That sounds about right.

Mrs. MALONEY. Okay. And OMB is continuing to produce responsive documents. Is that correct?

Ms. FUCILE. Correct.

Mrs. MALONEY. So today's hearing also highlights four requests the committee has made to the Office of Personnel Management and, Director Levine, OPM has produced responsive documents to each of these requests and is continuing to do that. Is that correct, too?

Mr. LEVINE. To the extent there are outstanding requests, yes, that's correct. Thank you.

Mrs. MALONEY. Well, I want to congratulate you on responding to a staggering amount of requests. And I know it is difficult to get it done as quickly and as responsively as you have, so I want to thank you for your public service.

I yield back.

Chairman CHAFFETZ. Thank you.

I will now recognize the gentleman from North Carolina, Mr. Meadows, for 5 minutes.

Mr. MEADOWS. Thank you, Mr. Chairman. I want to follow up on what you had been talking about and actually Mrs. Lummis as well. Ms. Fucile, your characterization with my good friend Mr. Connolly troubles me because you have indicated that because of the wide breadth of the request that has caused you to not be able to fulfill what initially started out as a very simple request. And so what you are indicating today is that you have gotten no guidance from this committee on any priorities. Is that your testimony?

Ms. FUCILE. No, that's not what I—I stated I didn't say we didn't have any guidance. I—I —

Mr. MEADOWS. Well, you said it was so wide from 2009 on.

Ms. FUCILE. It is a very wide —

Mr. MEADOWS. All right. So you have gotten —

Ms. FUCILE.—request.

Mr. MEADOWS.—guidance. Would you say that you have —

Ms. FUCILE. And I would say that in one instance when we got guidance, we were able to respond very successfully. You asked us for some —

Mr. MEADOWS. Well —

Ms. FUCILE.—information about the administrator's personal email. We responded with that information.

Mr. MEADOWS. Well, let me —

Ms. FUCILE. And that kind of —

Mr. MEADOWS. Let me go —

Ms. FUCILE.—give-and-take —

Mr. MEADOWS. Okay. But let me —

Ms. FUCILE.—is very helpful.

Mr. MEADOWS. Let me go. I have got 5 minutes. Because I wasn't going to bring us up, but this is the entire response that we have gotten from OMB with regards to two letters and a subpoena. Now, the problem that I have with it is all of this is either the proposed rule or what could be found online. And in 10 months this is all that we have gotten from you. And I went through and most of this is it duplicates. Is this the best you can do?

Ms. FUCILE. To your question about duplicates, a lot of the communication between senior OIRA officials has to do with comments on iterations of the rule. As such —

Mr. MEADOWS. But this is an email chain —

Ms. FUCILE.—all of those communications —

Mr. MEADOWS. This is an email chain —

Ms. FUCILE.—we include the iterations of the rule.

Mr. MEADOWS. No, this is an email chain—I will let you review it. Let me just tell you what offends me is that we send you a simple request, and then what you give us is things that we can get our own staff to look up. And so here is my question to you, as a follow up on what the chairman said, what have you, through your process, decided not to give this committee?

Ms. FUCILE. We have decided not—we have not decided not to give this committee anything —

Mr. MEADOWS. So in 10 months —

Ms. FUCILE.—we have looked at —

Mr. MEADOWS.—you have decided to give us everything that you have looked at? Is that your testimony?

Ms. FUCILE. The documents that we have reviewed we have turned over. The other ones remain in process. We are continuing—I said earlier that we're going to provide more documents this coming month —

Mr. MEADOWS. All right. So what reason would there be —

Ms. FUCILE. We have not redacted anything —

Mr. MEADOWS. I am asking—wait, that is not true. You have redacted a lot.

Ms. FUCILE. Phone numbers and emails is what has —

Mr. MEADOWS. Well —

Ms. FUCILE.—been redacted —

Mr. MEADOWS. Okay. Okay.

Ms. FUCILE.—only.

Mr. MEADOWS. I have read all of the emails, and so what I am suggesting to you at this particular point is what theory would you

invoke to not give this committee the documents that regarded this rulemaking?

Ms. FUCILE. We have not said that we're not giving you documents. I specifically said —

Mr. MEADOWS. So you are going to give us all the documents?

Ms. FUCILE.—we said that. We have given every document that

Mr. MEADOWS. So you are going to give us all the documents?

Ms. FUCILE. We are continuing to move forward on that production, and we're—we —

Mr. MEADOWS. It is a simple question.

Ms. FUCILE.—we have provided the documents —

Mr. MEADOWS. Are you going to give us —

Ms. FUCILE.—we're going to continue to provide documents.

Mr. MEADOWS. Are you going to give us all the documents?

Ms. FUCILE. And the more direction we have in terms of what is most helpful, the more responsive our responses will be.

Mr. MEADOWS. Are going to give us all the documents?

Ms. FUCILE. We're going to continue to provide the committee with the information they request.

Mr. MEADOWS. So the answer is no? There are two questions here. Either you are going to give us all the documents, or I ask—the other side of that is what would be the rationale to not give this committee documents? Is it a national security threat on the WOTUS rule? Yes or no?

Ms. FUCILE. I don't want to speak to documents I haven't seen that I don't know about.

Mr. MEADOWS. Okay. Let me suggest —

Ms. FUCILE. There are —

Mr. MEADOWS.—that there is no reason not to give this committee all the documents. There is no reason. And unless you can testify that —

Ms. FUCILE. Because we're under litigation for this rule, there are lots of equities to be concerned about. There's also—we need to make sure that there's nothing that's in documents that doesn't

Mr. MEADOWS. Okay. Can we count on —

Ms. FUCILE.—affect other agencies' —

Mr. MEADOWS. Can we count on —

Ms. FUCILE.—equities —

Mr. MEADOWS.—all responsive documents? Every 3 weeks can we get responsive documents on a regular basis? You have got four custodians. Two haven't given us anything. And so can we count on that on a 3-week basis, every 3 weeks getting something from you? Is that reasonable?

Ms. FUCILE. I don't feel comfortable saying every 3 weeks.

Mr. MEADOWS. Well, you don't feel comfortable. Let me just tell you, I am tenacious. I am not going to give up on this, and so you just need to tell your staff I am not going to give up on it.

Ms. Johnson, I am going to finish with you. You said simple requests are things that you can get done very quickly. We talked about visa overstays. There is an internal document that DHS has that has a number of visa overstay potentials, that that document

could be produced within 24 hours. Are you willing to produce that document to this committee?

Ms. JOHNSON. Congressman, the Senate—the Secretary is keenly aware of this committee’s and other committees’ desire for the visa overstay report, and I know that he has put specific attention to getting a report completed.

Mr. MEADOWS. I don’t want a report. I want those documents. They are just, you know, a few pages. So can you produce those documents, give to this committee in short order within a week, or is there a national security concern that you would have to be concerned about?

Ms. JOHNSON. Congressman, I don’t—I honestly don’t know what documents they are. I don’t think we have an outstanding request

Mr. MEADOWS. But we have had sworn testimony where —

Ms. JOHNSON.—for that —

Mr. MEADOWS.—both people have acknowledged that there are internal documents that has a number of visa overstays on it. It is an internal DHS document that you could produce within a week. Are you willing to produce that?

Ms. JOHNSON. Congressman, I’m not prepared to say that. If we have a request for that document, what I know is outstanding is

Mr. MEADOWS. Well, you do have —

Ms. JOHNSON.—the visa —

Mr. MEADOWS.—you already have a request.

Ms. JOHNSON.—overstay report.

Mr. MEADOWS. Well, you —

Ms. JOHNSON. And the visa overstay report is—we admit is overdue —

Mr. MEADOWS. Okay. Okay.

Ms. JOHNSON.—and the Secretary is committed to getting that out.

Mr. MEADOWS. All right. With the chairman’s indulgence, I am going to make that official request that I would like within 7 days those internal documents, which should be only a few pages, submitted to this committee with the number of overstays unless—are you saying there is a national security concern?

Ms. JOHNSON. Congressman, I’m not sure—I’ve never seen the document, so I don’t know what —

Mr. MEADOWS. I yield back.

Ms. JOHNSON.—concerns there may be.

Chairman CHAFFETZ. Before the gentleman yields back, if you will be okay to yield to Mr. Cummings.

Mr. CUMMINGS. Ms. Fucile, I have been sitting here watching you try to answer these questions, and you can’t—it seems as if there is something blocking you from being able to give a definitive answer. And I am just trying to figure out, are you the appropriate person that we should be asking? It seems like there is something—I don’t know whether you feel like you have got to report to a higher authority, whether there are hoops that you have to go through, but in fairness to the committee—and I am always about effectiveness and efficiency. I mean, is there somebody else we need to be asking those questions to? Do you follow me?

Ms. FUCILE. I understand your question. My —

Mr. CUMMINGS. Because you have struggled —

Ms. FUCILE. My hesitancy is more about making a commitment to something in the abstract while I am under oath that I just don't know about, and that makes me really nervous. And that's my hesitancy.

I'm here today to work with you. We're not trying to withhold anything. We haven't withheld anything. Our production hasn't been fast enough and it can and it should be better. But I'm not saying we're not going to produce all the documents because I'm purposely trying to hide something. I just don't want to get myself in trouble by promising something about—and then later on there's some issue that I at this moment know nothing about, and I just don't want to do that.

Mr. CUMMINGS. Well, you know what, that makes sense. That makes a lot of sense because I can tell you that if you make a commitment and then you don't keep the commitment, you will catch out. So, I mean, that makes sense. But I was just —

Ms. FUCILE. Thank you.

Mr. CUMMINGS.—wondering.

Chairman CHAFFETZ. Before the gentleman yields back, the concern here is Mr. Meadows first made his request in March of last year. And the reason you are here is we still don't have this information. That is why you have Mrs. Lummis, Mr. Meadows, this whole committee frustrated. Do you understand that?

Ms. FUCILE. I certainly understand that. I appreciate that. I admit completely that our production has not been fast enough, and we will continue—we will do better.

Chairman CHAFFETZ. Just turn on the photocopier.

Ms. FUCILE. It—we can't—it doesn't work that way. The search process doesn't work that way. It —

Chairman CHAFFETZ. You have these materials enough so to make a rule but you don't have the—somebody comes to the conclusion, they have looked at all the information, now they are going to make a rule. We want to see that information. I have got to ask

Ms. FUCILE. And I have committed that we will work to get you that. I am here to help. I want to be helpful.

Chairman CHAFFETZ. What about results? You are a very nice person. I am just—we are not seeing the results of it.

Now, I have got to ask you one other thing in follow-up with Mr. Meadows. You have cited a couple of times that there are different stakeholders, and that is causing some delay. You have mentioned litigation, ongoing litigation. What in the world does that have to do with Congress's right to review documents?

Ms. FUCILE. With any document research, different equities—different equities are given the opportunity to review to make sure that there isn't sensitive matter that we are not aware of that is sensitive before it's turned over. That's our standard practice.

Chairman CHAFFETZ. So what is it that you believe Congress shouldn't look at?

Ms. FUCILE. We haven't said that anything shouldn't be turned over.

Chairman CHAFFETZ. I can't think of anything —

Ms. FUCILE. We haven't —

Chairman CHAFFETZ.—that OMB is —

Ms. FUCILE. We haven't said no to turning anything over.

Chairman CHAFFETZ. Then why not give us everything?

Ms. FUCILE. We're working on that. It's an incredibly broad subpoena, 9 years.

Chairman CHAFFETZ. And you give us handfuls of documents, and you—just photocopy —

Ms. FUCILE. But the time that —

Chairman CHAFFETZ.—and give it to us.

Ms. FUCILE.—we were most successful in providing documents to you was when we had a conversation with your staff about what you wanted, and you asked for emails from the administrator. We've been asking for meetings with your staff, and until yesterday, they weren't available to meet with us.

Chairman CHAFFETZ. Okay, that is not true. That is —

Ms. FUCILE. It is true.

Chairman CHAFFETZ.—absolutely not true.

Ms. FUCILE. It is true.

Chairman CHAFFETZ. You are infuriating. As nice and sweet as you want to portray yourself, this is infuriating. This request came in March, and here we are, turning the new year. I am going to ask you one more time and then we will go to Mr. Cartwright—I appreciate the committee's indulgence—articulate for me what you believe Congress should not see.

Ms. FUCILE. We have not said that you can't see anything. There has been no document that we haven't given you that we've looked at.

Chairman CHAFFETZ. There is no—well, then why not give it to us? You haven't given—have you given us all the documents since March's request?

Ms. FUCILE. I have said that the—I have said that the document request is still outstanding. I have said that I will work with you to get them more and to get faster. I cannot do more than that.

Chairman CHAFFETZ. Yes, you can. You actually can and you are not.

We are now going to recognize Mr. Cartwright from Pennsylvania for a generous 5 minutes.

Mr. CARTWRIGHT. Thank you, Mr. Chairman.

Mr. Levine, I have some questions for you. You are the director of the Office of Congressional Legislative and Intergovernmental Affairs of OPM, is that correct?

Mr. LEVINE. Yes, sir, Mr. Congressman.

Mr. CARTWRIGHT. Well, thank you for being here today. And for the record, I think you are nice and sweet, too.

Mr. LEVINE. I appreciate that. So does my family.

Mr. CARTWRIGHT. I am particularly interested in OPM because we had this data breach, and we had a couple of significant breaches that impacted really millions and millions of current and former Federal employees. This committee has been investigating the cause of those breaches on a bipartisan basis with the goal of ensuring really that OPM has the necessary tools to prevent this kind of thing from happening again.

As part of the investigation, this committee sent four requests for documents and information. Now, as of today, I understand that OPM has produced documents responsive to each of the committee's four letter requests. Am I correct on that?

Mr. LEVINE. Yes, sir.

Mr. CARTWRIGHT. And as part of your job, is that what you spend a majority of your time doing as well?

Mr. LEVINE. Yes. I would say the overwhelming majority of the time that I've spent at OPM has been in the area of responding to the cyber incidents both with respect to the congressional requests that you're referring to from this committee and others, as well as providing information to Members, particularly in the caseworkers in the constituent office—in the district offices to have information about the services that we've provided to respond to the breaches, so —

Mr. CARTWRIGHT. All right. So one of —

Mr. LEVINE.—both areas.

Mr. CARTWRIGHT. One of the things that we did was, in addition to asking OPM directly for documents, we have also asked contractors of OPM, including KeyPoint, for documents. You are aware that, are you?

Mr. LEVINE. Yes.

Mr. CARTWRIGHT. Well, we had the KeyPoint CEO in here for a hearing not too long ago, a gentleman who pretty much admitted that KeyPoint was responsible, a KeyPoint employee was responsible for one of the data breaches. And we were questioning him about why it was taking them 5 months to respond to our document request. Just to make it clear, is that part of your document request response to produce KeyPoint documents, or is that theirs separately?

Mr. LEVINE. I don't believe it is, but to the extent it is, I'll circle back. But I don't believe it is.

Mr. CARTWRIGHT. Okay.

Mr. LEVINE. But I don't think so.

Mr. CARTWRIGHT. No, I didn't think so either. So I guess that begs the question then, are you aware of why either the CEO of KeyPoint or anybody from KeyPoint has not been called to testify before this committee today, having taken in excess of 5 months to respond to the ranking member's letter asking for documents? Are you aware why we didn't get a request from this committee to the KeyPoint management to explain themselves?

Mr. LEVINE. I am not aware of why that has not happened.

Mr. CARTWRIGHT. I am not either, and I am concerned about that. We haul before this committee the people who have responded to the document requests, and my understanding that KeyPoint has still not responded 100 percent to all the document requests. Are you aware of any reason why KeyPoint should not have responded 100 percent to our document requests?

Mr. LEVINE. I am not aware of any reason.

Mr. CARTWRIGHT. All right. Well, what about OPM for its part? How many documents has OPM produced to this committee?

Mr. LEVINE. To this committee I want to say in the thousands, probably in the—probably over 5,000. I think what we've tried to do, to the chairman's earlier request, is focus on the ones that were



the most—that were responsive as—to provide that information as opposed to just documents.

Mr. CARTWRIGHT. Well, Director Levine, has OPM ever taken the position at any point that it will no longer respond to this committee's requests?

Mr. LEVINE. Absolutely not.

Mr. CARTWRIGHT. And throughout the course of identifying, gathering, and producing documents, can you tell us what challenges OPM has faced that would account for any delays in producing documents to the committee?

Mr. LEVINE. Yes, absolutely. I think it's fair to say that OPM is a small agency that in the past had not been challenged with this level of a document production and simply did not have the infrastructure in place, whether it be staffing level, on expertise level, on a technical document management level to quickly, efficiently, accurately produce documents in this way.

And in addition, the—you know, the overriding priority of the agency since the breaches, particularly Acting Director Cobert and my office has been on being responsive to Congress, again, both with respect to the document requests, as well as information about the other services.

So, I mean, I think it's been a combination, the delays, and there have been delays, and we would like to get things out as quickly as we can, and we're working to do that and I think we've been moderately successful. But the delays, I think, go to just the breadth—or the volume and the lack of preparedness for that volume once it hit.

Mr. CARTWRIGHT. Well, I thank you for your testimony today. I thank you for your efforts in complying with these requests. And thank you for working with us to make sure these kinds of data breaches don't happen again.

And I yield back, Mr. Chairman.

Chairman CHAFFETZ. I thank the gentleman.

I will now recognize the gentleman from North Carolina, Mr. Walker, for 5 minutes.

Mr. WALKER. Thank you, Mr. Chairman.

Mr. Kadzik, on December 21 the Department of Justice sent a letter to State and local law enforcement with absolutely no warning in deferring the payment sharing of the Asset Forfeiture Program. In fact, Mr. Chairman, I would like to submit this letter into record.

Chairman CHAFFETZ. All right. Without objection, so ordered.

Mr. WALKER. Thank you, Mr. Chairman.

This program may need reform, yet our local county sheriffs and other law enforcement depend on these seized funds. To pull the rug out from under these local law enforcements with absolutely no warning or no consideration, I believe, is preposterous. In fact, let me read from the letter. It says, "Effective immediately, the Department will defer all equitable sharing payments to our State, local, and tribal partners and transfer any items for official use." Why would the Department of Justice, with no warning, on December 21 say this program is either stalled, concluded, in fact, it doesn't really say to what degree? Can you explain this?

Mr. KADZIK. I'm not intimately familiar with that program, Congressman, but my understanding is that the funds that were part of that program were reallocated by Congress and the budget, so there was no money there to distribute.

Mr. WALKER. According to this, this says this is a decision by the Department of Justice. I want to come back to that. But I want to also, speaking of sheriffs, talk about what happened on November 17, 2015. Following Attorney General Loretta Lynch's appearance in the House Judiciary Committee, Mr. Chaffetz submitted a number of questions for the record to the Department. These questions concerned reports from multiple sheriffs of North Carolina, predominately, a sheriff in our district, from Alamance County, concerning how the Department of Justice has terminated or refused to renew grants to local police departments based on allegations of racial discrimination. These questions seek to learn how often and under what circumstances these grants denials have been made. Did you receive these questions for the record?

Mr. KADZIK. I believe we did.

Mr. WALKER. And what has been the submitted response?

Mr. KADZIK. My understanding is that those responses are being prepared now and will be submitted promptly.

Mr. WALKER. And when you say submitted promptly, what is the time frame that you believe that —

Mr. KADZIK. I can't —

Mr. WALKER.—would conclude?

Mr. KADZIK. I can't give you a specific time frame, but I'd be happy to go back and check on the status and respond to you.

Mr. WALKER. Who receives these responses? Who vets them?

Mr. KADZIK. Who vets them?

Mr. WALKER. Yes.

Mr. KADZIK. The various components within the Department that have responsibility for the areas that are the subject of the questions.

Mr. WALKER. Okay. I want to sort of cut through the vagueness there or the ambiguity and ask this: Assuming we would like to follow up on the answers that you are saying promptly that you will provide for us, is there a mechanism in place for us to submit such follow-up questions? And can you share with me what and how that works?

Mr. KADZIK. You can send correspondence to the attorney general or to me.

Mr. WALKER. Okay. Do you think Congress should submit more QFRs? Would that provide a helpful mechanism for the Department to answer our questions?

Mr. KADZIK. Well, no. If we had outstanding QFRs, we'll respond to the ones that are there.

Mr. WALKER. Let me ask —

Mr. KADZIK. Asking the same question again doesn't make it any easier to respond to it.

Mr. WALKER. Well, then let me ask a general question then. In your opinion do you consider it part of your mission to be helpful to Members of Congress in providing these responses?

Mr. KADZIK. Absolutely.

Mr. WALKER. Okay. So I want to conclude with this question. When you say prompt, can you give me a timeline? Is there a time frame, 2 weeks, 4 weeks, 2 months? I would like to know—listen, this sheriff—this has been ongoing for 7 years. And even recently, okay, the Department of Justice—the court came together, they made a decision, no wrongdoing here, he thought he was getting his grant. The Friday before that he was supposed to get the grant, the Department of Justice appealed this decision. So please tell me when you say promptly, what does that look like for us?

Mr. KADZIK. Well, I'm not—I don't recall the volume of QFRs that we received. I'll go back and look at those and I'll try and provide you with a timeline as to when we can respond.

Mr. WALKER. You would try to provide me with a timeline on when you could respond. That is what frustrates us, the ambiguity, maybe here, possibility—can we set maybe end of January, 1st of February? Is there a specific timeline that you—according to me that is prompt? You said the word prompt. What is a prompt response that I can let this sheriff, who has gone through 7 years of hell trying to get past this and get his grants where he can make not offensive weapons but defensive weapons for his deputies, for his officers that he can protect the community of Alamance County? What is a prompt response for that?

Mr. KADZIK. Well, not being familiar with the particular question that was asked or the circumstances of why the grant was denied or terminated, I can't tell you precisely what prompt would be. As I said, I'll be happy to go back to inquire as to the status of it and then give you a timeline.

Mr. WALKER. So maybe it was best not to use the word prompt, just maybe you would get an answer back to me at some point.

Mr. KADZIK. Well, I —

Mr. WALKER. Thank you, Mr. Chairman. I yield back.

Chairman CHAFFETZ. I now recognize the ranking member, Mr. Cummings, for 5 minutes.

Mr. CUMMINGS. Mr. Kadzik, I would hope that you would make it a priority with regard to Mr. Walker's request.

You know, one of the things that happens in Congress, sadly, is that in order for us to get answers, we have to wait until people like you all get before us, and it shouldn't be that way. We should be able to get the answers. And all we are trying to do is represent our constituents.

And all of us have been in a position of Mr. Walker, and it is very frustrating. When he goes back to his district, he has got people that say, well, you know, I just saw you on C-SPAN and you had the folks before you. Well, what did they tell you? And did they say when we are going to get an answer? I guarantee you, by the time he gets back to his office, he is going to have somebody calling. That sheriff is going to call, and somebody is going to say thank you—first, they are going to say thank you for raising it, but then they are going to say, well, did you have a conversation afterwards, and when is he going to get us the answer? So I would ask you to make that a priority, okay, to look into it.

Mr. KADZIK. We will, sir.

Mr. CUMMINGS. Thank you.

Assistant Secretary Frifield, the State Department faces huge challenges with its document management systems, and you have heard my complaints. And that has been decades old and affected previous administrations. Would you agree?

Ms. FRIFIELD. Yes, sir.

Mr. CUMMINGS. And we appreciate very much the State Department has produced more than 160,000 pages of documents to this committee last year. However, there is no denying that some responses have taken longer than we or you would like. You have your own significant professional experience on Capitol Hill, is that right?

Ms. FRIFIELD. Yes, sir.

Mr. CUMMINGS. So you are familiar with the information demands that the Congress has, is that right?

Ms. FRIFIELD. Yes.

Mr. CUMMINGS. I think you worked with Senator Mikulski?

Ms. FRIFIELD. Yes.

Mr. CUMMINGS. You can get no better boss, that is for sure. Her standards are extremely high, would you agree?

Ms. FRIFIELD. Absolutely.

Mr. CUMMINGS. Do you agree that the State Department's internal document management systems are not ideal?

Ms. FRIFIELD. Yes, we do.

Mr. CUMMINGS. And in your position as the head of the legislative affairs at the State Department, do you have the ability to talk to Secretary Kerry about the challenges that you face?

Ms. FRIFIELD. Yes.

Mr. CUMMINGS. And have you ever done that?

Ms. FRIFIELD. Yes, sir.

Mr. CUMMINGS. Have you ever proposed changes to the current systems, and if so, what was that response?

Ms. FRIFIELD. Yes, we've created a whole new system for responding to congressional requests that is separate from the FOIA system. We've gotten full support from the State Department, from the Secretary to do that. It's only recently up and running so we are still working out some of the kinks, but I'm hoping that this will transform the way we are able to respond to Congress and enable us to do it in a quicker way and also in a more convenient way so it's computerized and easily searchable and just more of this century than the way we used to do it.

Mr. CUMMINGS. Now, did you propose creating a Congressional Document Production branch?

Ms. FRIFIELD. Yes, sir.

Mr. CUMMINGS. And can you tell us more about why you wanted this new unit and what your vision is?

Ms. FRIFIELD. It enables us to computerize and make a more technologically savvy system of collecting documents. We used to have to compete for resources with the FOIA producers. They—we had the same office, the same people doing it. Now, we have a separate entity which is able to help us process just documents for Congress.

Mr. CUMMINGS. So how does that help you produce documents?

Ms. FRIFIELD. It helps us because it's the—it's a sort of first major step in the process of collecting documents is to actually

physically collect them, collate them, number them, and get them ready for review. So that makes the whole early part of the process much easier. It's not the entire process.

But if I could also say, sir, that the Secretary, recognizing larger issues we have with some of our information management, he asked the OIG to do reports on how we actually do our FOIA system, our records managements, and other things of that nature. He also appointed a transparency coordinator, a former ambassador, who's actually helping us implement the changes across the board. So we're hoping that we're able to implement changes that make it better in our FOIA system, better in our congressional production system.

Mr. CUMMINGS. Now, you stated in your testimony that you have made document productions to this committee and others more accessible and user-friendly. Can you briefly explain the technology and the process changes you've made?

Ms. FRIFIELD. For—yes, sir. For many years we would provide them on paper in boxes that were unnumbered, so staff and Members had to dig through to find what they're looking for. Now, they're on disk. They have Bates stamps. It's a much more professional way of providing documents.

Mr. CUMMINGS. Would you agree there is still a lot more work to be done?

Ms. FRIFIELD. Absolutely.

Mr. CUMMINGS. You know, I just think that if—you know, I just want to be effective and efficient, you know? I tell my staff there are two words that control everything we do: effective and efficient. We have a limited amount of time to do the jobs that we have to do. I just want to get them done. And I would say that to all of you all. I mean if there are deficiencies in your operation, please try to address them, and if there are things that we can do—by the way, are there things that we can do? This is my last question, Mr. Chairman. Are there things that you would like to see us do other than the things I have already talked about, being kind of—and you talked, Ms. Frifield, about limiting scope. Are there things that we can do to help you do your job so that we can do our job? Anybody? Speak now or forever hold your peace, Mr. Levine.

Mr. LEVINE. Well, thank you for the question, Mr. Cummings. I think, as you've specifically noted, the ability to work with your staff and the chairman's staff and the committee's staff on prioritizing the information that could be most helpful for you and them and—is the most helpful step that you can provide us as we work through the requests. And we appreciate when they have done that, and I hope we can continue that dialogue.

Mr. CUMMINGS. Anybody else? Ms. Johnson?

Ms. JOHNSON. Yes, Congressman Cummings. It's the exact same thing. The most successful thing we did with the Secret Service request was coming back to the committee, asking you to prioritize the 18 categories. You identified four. We immediately started to search and to produce on those four. And so, yes, the constant dialogue between our offices and your staffs is extremely important. A collaborative spirit is important. And whatever we can do to try to narrow and focus the request allows us to do the searches, to do the reviews, and to produce documents much faster.

Ms. FUCILE. I would echo the comments of my colleagues that the narrowing and the limiting and the prioritizing really do help us in our productions.

Mr. CUMMINGS. All right.

Mr. KADZIK. As I said in my opening statement, Mr. Cummings, and in response to your previous question, I believe that we've had a cooperative and not an adversarial relationship with the committee. We look forward to continuing that dialogue with both you and the chairman and staff. And that will make us more effective and more efficient.

Mr. CUMMINGS. Thank you.

Chairman CHAFFETZ. Thank you. I now recognize the gentleman from Alabama, Mr. Palmer, for 5 minutes.

Mr. PALMER. Thank you, Mr. Chairman.

Mr. Levine, on June 19 of last year, Senator Mark Warner's office—it may have been 2013; I think it was 2013—no, 2014—his office sent a letter to OPM questioning the nature of the agency's credit monitoring contract with Winvale/CSID. It appears from our records that his office received a reply 4 days later on June 23. However, when this committee sent a letter requesting information on the contract, the committee didn't receive a response until a month later, which, incidentally, was 17 days overdue.

Now, what I want to know is what accounted for the extended time it took to respond to this committee versus the quick turnaround for Senator Warner's office? I mean do we need to ask a Senator to send a request for documents so that we can get a timely response for documents?

Mr. LEVINE. Thank you for the question, Congressman. I would note that was prior to my arrival at OPM, but I'm aware of what you're inquiring about. So with respect to Senator Warner's letter, if I'm understanding correctly, two major differences. One, it was not a request for documents. I think it was a request for information, and we went and did brief out—we —

Mr. PALMER. So we are parsing words?

Mr. LEVINE. No, absolutely not. The—what—the large distinction being Mr.—Senator Warner asked for some information, we provided information to his staff in an oral fashion, similar to as we've done with committee staff here.

Mr. PALMER. Well, let me ask you this. Do you prioritize certain requests? Do you give a higher priority to requests from certain individuals, elected officials or agencies than you do others? And let me just tell you, I have sat here now an hour and a half, two hours listening to this, Mr. Meadows from North Carolina in his discussion about the lack of response from the Office of Management and Budget, and, you know, I have to question whether or not you guys respect the constitutional authority that is invested in this committee.

I mean, our responsibility is oversight. We owe that to the American people. And I have heard example after example today of how your agencies continue to impede this committee's ability to carry out our oversight responsibilities.

You know, and there is a pattern here, Mr. Chairman. Before I was a Member of Congress, before I was in this committee, there

was a letter signed by 47 inspectors general. I believe that is 47 out of 72, is that correct, Mr. Chairman?

Chairman CHAFFETZ. [Nonverbal response.]

Mr. PALMER. And their letter—and I believe this is unprecedented, that the OIG's office felt like they had to send a letter to this committee because Federal agencies were impeding investigations by withholding documents. It seems to me that that is what is continuing to happen right now.

You know, if this were a Department of Justice—Mr. Kadzik, if the Department of Justice sent out a request for documents in an effort to do due diligence and investigating any issue, I doubt seriously that the Department of Justice would look very kindly upon the kind of delays that this committee has experienced. I daresay they might even issue a warrant. It would probably rise to the level of obstruction of justice.

But what we have had to deal with here is delay after delay, and to delay is to obstruct in my opinion. It seems to me that you are running out the clock. There have been numerous requests. Our chairman has requested time and time again for dates certain for the production of documents. But it seems to me that you think—and it appears to me you have been very well coached in how to respond to these requests. It just appears to me, Mr. Chairman, that they have no intention of producing the documents. That is frustrating and it is a violation of the public trust.

I yield back.

Chairman CHAFFETZ. I thank the gentleman.

I now recognize the gentleman from Florida, Mr. DeSantis, for 5 minutes.

Mr. DESANTIS. Thank you, Mr. Chairman.

Mr. Kadzik, the chairman and myself sent a letter to the Justice Department in December requesting the case file for the prosecution of Dinesh D'Souza. We asked for it by the end of the month. We have not received it, which is obviously not a surprise, given what people have said during this hearing. But I just wanted to ask you, will the Department produce the case file?

Mr. KADZIK. We'll—we're willing to come and brief on the issue. Presenting prosecution files presents particular law enforcement sensitivities. I know that the issue that you and the chairman are interested in is whether or not there was selective prosecution. That —

Mr. DESANTIS. Among others. I mean, there are a number of issues that we would like to review and conduct oversight about how the case was handled. And, you know, we want to get prompt responses. We don't want this to turn into the IRS or some of the other investigations that have just been stonewalled to death.

So the case is over. There is no ongoing investigation. The sentence, I think, has even been served, and clearly, we have a public interest in conducting oversight over how the Department is doing its job. I mean we fund your agency, and I think that we are entitled to the file. So we don't want a briefing; we want the file. So are you going to produce the file?

Mr. KADZIK. I'll be happy to take that back. And we—again, we'd be happy to brief, but as I indicated, the—particularly the law enforcement and prosecutorial sensitivities —

Mr. DESANTIS. Such as?

Mr. KADZIK.—of providing a case file. Well, we—there's the names of witnesses, there's individuals who cooperated with the investigation —

Mr. DESANTIS. Aren't those —

Mr. KADZIK.—might not be publicly disclosed. There's the internal deliberations of the prosecutors that are deliberative and subject to the confidential —

Mr. DESANTIS. So basically, if a prosecutor did have illicit motivation, we are not entitled to that. So the public is never going to be able to know whether someone had ill intent when they were providing cases. Is that what you are saying?

Mr. KADZIK. No, that's not what I'm saying. And in fact, that issue —

Mr. DESANTIS. Then how would we —

Mr. KADZIK.—was raised —

Mr. DESANTIS.—discover the truth?

Mr. KADZIK. As—if I could finish—as—that issue was raised before the court, and the court said that the defense did not provide any evidence of selective prosecution.

Mr. DESANTIS. Because the defense also did not have access to what we are trying to seek access to. I mean, you know, it was, I understand, in the middle of a case how you would say that there is attorney work product because we have an adversarial system. You start getting into strategy and then that is just not the way our system functions. But that ship sailed. I mean, the case is over, in the books, prosecute, felony, served a sentence. So that whole argument really is gone at this point. The interest is done.

Is it your view that that—you talk about law enforcement sensitivities. Does that trump a subpoena from the Congress because if we don't get the case file, obviously, through the request, then we may issue a subpoena from the committee?

Mr. KADZIK. As I said, we would like to find a way to accommodate the committee and provide it with the information that it needs. I think the first step in that process would be a briefing so that you can ask questions and receive information, and then we can see what other further accommodations may be necessary.

Mr. DESANTIS. When can you let us know what the Department's position on the file is? I am not even asking when you can produce it, although I assume the Department of Justice still employs interns who could easily make the copies. When are you going to let us know? You said you are going to take it back and talk to people, so when are you going to be able to respond to the committee one way or another?

Mr. KADZIK. I think we can respond to that within the next 2 to 3 weeks.

Mr. DESANTIS. Okay. Well, I mean I don't think it should take 3 weeks. I mean, I think we would like to have an answer, you know, towards the third week of this month. And if we don't get that, then we are going to continue to press the issue because I look around, I hear the stories and, you know, at the end of the day it is not Members of Congress who are ultimately being stonewalled on a lot of this stuff. It is the American people because our constituents ask us about things. We have constituents who



were targeted by the IRS. Some of us who have constituents who were in other situations, and they come and they see a government that is just totally unresponsive and a government that is very difficult to get answers from. And I don't think that is really the way the system was designed.

So we will await that response, and obviously, we will be in contact one way or another after that.

I yield back the balance of my time.

Chairman CHAFFETZ. I thank the gentleman.

Following up on that, Mr. Kadzik, I do appreciate your personal responsiveness and would expect the highest standard of responsiveness given your expertise and your approach to this.

My question is in following up to Mr. DeSantis, if the inspector general was to come in and look at that case file, what would they not be entitled to look at in your opinion?

Mr. KADZIK. I'm no expert on the Inspector General Act, but my understanding is that in the present state of the law the only possible information that would potentially be excluded would be grand jury information protected by Rule 6(3), Title III wiretap information. And there's the FCRA, which I believe is the Fair Credit Reporting Act protection that protects certain information.

Chairman CHAFFETZ. And for members of this committee, I think that is something we need to look at more broadly where the inspector general is allowed access but we, we are the Oversight Committee. We are charged by the Constitution to provide that oversight, and we should be able to have access to at least the same amount of information.

So I have a series of specific things I need to go through, and then we will work to wrap this up.

Ms. Fucile, we had put in a request in October for transcribed interviews. You have still not responded to that. Why—I mean we are in January. Tell me why I shouldn't issue a subpoena.

Ms. FUCILE. The request for transcribed interviews has been taken back. My understanding is that not all of those folks still work at OIRA.

Chairman CHAFFETZ. Well, we put in a request; we want a response. If the response is well, they don't work here, go find them somewhere else, I can go find them somewhere else. But I think it is more complicated. And there are people that work there that we do want to have transcribed interviews.

We are trying to avoid doing subpoenas. I have done about a dozen or so. But you leave us with no choice, and I hope you understand that. I hope you take that back.

Ms. FUCILE. We'll take that back.

Chairman CHAFFETZ. I am going to try to get this one more time. Within the week, within a week from now can you respond to us on that?

Ms. FUCILE. We'll follow up with your staff within the week.

Chairman CHAFFETZ. Thank you.

Ms. Johnson, let me ask you about this, and let me give a little background in prelude to my question. There were a series of problems and challenges at the Secret Service, enough so that Secretary Johnson put together a Protective Mission Panel. Four people from the outside came in and looked and Secret Service and Homeland

Security gave them the information, and they produced a very important and significant document. I was very impressed with their conclusions and the depth of their work in such a short amount of time. In fact, to me I thought, well, that is what we aspire to do.

Now, my understanding is you provided them, Homeland Security, you being Homeland Security provided that panel pretty much anything and everything that they wanted in order to get the information for the Secretary. So here we are in Congress trying to have the same type of responsiveness, and one of the things that we asked for in February of 2015 was—and this is I think a—I thought this was the easiest of all the requests. It said, “All documents and communications were produced to the recent Protective Mission Panel, which operated from October 22, 2014, to December 15, 2014.”

I mean that is photocopying. There was a set of materials that was put together. It was given to the Protective Mission Panel. We wanted to see that same thing. And yet we didn’t get anything, nothing—you gave us nothing until we got to I think it was June when I had to issue a subpoena. Now, why is that? Why wouldn’t you provide those to Congress? Why did I have to issue a subpoena?

Ms. JOHNSON. Chairman, I —

Chairman CHAFFETZ. Microphone, microphone —

Ms. JOHNSON.—that —

Chairman CHAFFETZ.—microphone, please.

Ms. JOHNSON. Chairman, that predates me coming in as assistant secretary. I am not sure what was the result of—why there was a delay. I know that—I’m looking at my chart. I know that the majority of documents have been produced or have been made available in camera. I’m not sure about the timeline.

Chairman CHAFFETZ. But why not produce all of them? You produced all of them to the panel. They are not Members of Congress. Why are you holding stuff back from us?

Ms. JOHNSON. Chairman, I really can’t answer that question because I don’t know what’s been produced to the panel. All of that occurred before I became the assistant secretary. I do know —

Chairman CHAFFETZ. Will you get that answer for me? I think it is a reasonable request. You want the panel to come up with the most comprehensive, the best possible recommendation for the President of the United States, the best possible recommendation for the Secretary of Homeland Security, so you gave them a set of documents. You gave them the documents that—we want to see those same documents because I want to make sure that we are performing at that same level, that we are provided that type of information.

You want funding from the American people, there is possible legislation, there are all sorts of things. And so you only give us a percentage of it, and there is such—you are hiding stuff. You are holding back from us and it is not reasonable.

Ms. JOHNSON. Chairman, I will take that back because, as I said, it’s my understanding that the majority of documents have been produced, and we are currently still producing them so—but I will take that back.

Chairman CHAFFETZ. And I think you are absolutely accurate on that, and I appreciate that, and I take you at your word and look forward to seeing it, but the frustration is this has been going on since February of last year. We are talking a year and we still don't have them. It has been a year. And we issued a subpoena. It is not like we are not serious about that. And I did this jointly with the Democrats. This is a bipartisan request and you still haven't fulfilled it.

I have made my point. Let me move on.

November 23 to Secretary Johnson, John Mica and I—he is the chairman of the Subcommittee on Transportation—sent you a request on airport identification. There are five requests. I haven't gotten a single document from you on this. Why not?

Ms. JOHNSON. Chairman, that's the one that I mentioned earlier that production is likely on that. TSA will be producing those documents fairly shortly.

Chairman CHAFFETZ. Okay. Let's go to the State Department if I could, please. We are trying to wrap this up. We had four Members of Congress—myself, Elijah Cummings, Steve Lynch, Ron DeSantis—bipartisan request on October 16 for a bipartisan danger pay. It was not a long request, barely a page-and-a-half, two requests. I don't have a single document from you.

Ms. FRIFIELD. We've provided a—oh, sorry. Sorry. We've provided a briefing and we are preparing the documents and hope to have some delivered to you in the very near future.

Chairman CHAFFETZ. I have a series of other things but my last bit of frustration with the State Department, we noticed this hearing, and then suddenly, the whole dam sort of breaks open. It hasn't fully gotten there yet, but we got 1,700 pages on our Jakarta request, we got 2,300 pages on congressional cost certifications, you said you closed out a letter that was nearly 2 months old, last night after hours you gave us 3,958 documents related to Maputo, Harare, and Saudi facilities.

Some of these requests are old. I mean, they are really old. And mysteriously, we get them the night before this hearing, which leads me to believe I guess we have got to do this on a weekly or semi, you know, bimonthly basis because it is really hard for us to understand. And I would rather not even hold this hearing. I don't want to have to hold it again. But can you understand that just from a human standpoint?

Ms. FRIFIELD. I absolutely do and we noted it ourselves and we were discussing it. But in your letter you very clearly articulated what were your priorities, and we had been focusing on Jakarta thinking get Jakarta—as much done with Jakarta first and then turn to the others. But when we see that you have five that you want us to do at the same time, we immediately started working on all of those.

Chairman CHAFFETZ. But it was August. The Maputo and Harare discussion was in August, and then we get it the night before the hearing. And the Art in Embassies October 7, we didn't get any documents. When will you get those?

Ms. FRIFIELD. Art in Embassies, I—we've given you a few documents, but we're—and a briefing, but we'll continue—we're continuing to gather and produce those.

Chairman CHAFFETZ. I guess we got some last night. I haven't had a chance to look and review those.

But, listen, I need to get to the Floor. We have some things happening there. I appreciate the Member participation. Please know there are a lot of good people that are working within your organizations. We appreciate the good work that they do. So much happens the right way, but it is these headaches that we have got to figure out. And so we appreciate your participation today.

This committee stands adjourned.

[Whereupon, at 1:04 p.m., the committee was adjourned.]

## **APPENDIX**

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MATERIAL SUBMITTED FOR THE HEARING RECORD

PAUL A. GOSAR, D.D.S.  
FOURTH DISTRICT, ARIZONA  
504 CONGRESS HOUSE OFFICE BUILDING  
WASHINGTON, D.C. 20515  
(202) 225-2315  
122 N. CORTEZ STREET, SUITE #104  
PRESCOTT, AZ 86301  
(928) 445-1683  
270 E. HUNT HIGHWAY, SUITE #12  
SAN TAN VALLEY, AZ 85143  
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220 N. 4TH STREET  
KINGMAN, AZ 86401  
(928) 445-1683  
WWW.GOSAR.HOUSE.GOV



Congress of the United States  
House of Representatives  
Washington, DC 20515-0301

COMMITTEE ON OVERSIGHT  
AND GOVERNMENT REFORM  
SUBCOMMITTEES  
VICE CHAIRMAN, ENERGY POLICY,  
HEALTH CARE AND ENTITLEMENTS  
NATIONAL SECURITY  
ECONOMIC GROWTH, JOB CREATION,  
AND REGULATORY AFFAIRS  
COMMITTEE ON  
NATURAL RESOURCES  
SUBCOMMITTEES  
ENERGY AND MINERALS  
INDIAN AND ALASKA NATIVE AFFAIRS  
WATER AND POWER

August 28, 2014

The Honorable Eric Holder  
Attorney General  
U.S. Department of Justice  
950 Pennsylvania Avenue, NW  
Washington, DC 20530

The Honorable Jeh Johnson  
Secretary  
U.S. Department of Homeland Security  
Nebraska Avenue Center, NW  
Washington, DC 20528

The Honorable John S. Leonardo  
United States Attorney, District of Arizona  
Two Renaissance Square  
40 N Central Avenue, Suite 1200  
Phoenix, AZ 85004

Dear Attorney General Holder, Secretary Johnson, and Mr. Leonardo,

I write you today regarding reported alterations that have been made to the prosecution guidelines related to Operation Streamline. Yuma County Sheriff Leon Wilmot wrote me to inform me that during the course of a recent Customs and Border Patrol briefing, his department was told that the U.S. Attorney's office would no longer be prosecuting undocumented aliens (UDAs) under Title 8, United States Code, §1325. I have enclosed Sheriff Wilmot's letter for your reference.

A change of this nature to these prosecution guidelines constitutes a major shift in practice, and certainly undermines the "zero tolerance" policy established by Operation Streamline. I am greatly concerned that such a shift also flies in the face of years of work conducted by federal, state, and local law enforcement to secure our communities, secure our borders, and, more broadly, enforce the rule of law.

I have outlined some questions for you below, and I respectfully ask for a timely response so that I may share your answers with relevant stakeholders and concerned constituents.

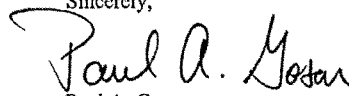
1. Is this shift in prosecution guidelines (shift) something that came from the Department of Justice and/or Department of Homeland Security in Washington? If so, from whom or which office exactly did it originate?
2. Is this shift specific to Arizona, or is it being applied nationwide?
3. What law enforcement purpose does this shift serve?
4. On what date exactly did the shift occur, and approximately how many UDAs have avoided prosecution in Arizona under 8 USC §1325? Approximately how many nationwide?

5. What exactly are the final guidelines being followed after the shift? Please provide me with a copy of those guidelines.
6. Do you anticipate future shifts in the prosecution guidelines which would lead to further erosion in prosecution numbers under 8 USC §1325? If so, please elaborate.

I support Operation Streamline and do not appreciate it being undermined by executive fiat. Again, such actions compromise the safety of our citizens, not to mention our national security.

Thank you for your attention to this important matter. As always, I ask that this matter be handled in strict accordance with the existing agency rules, regulations, and ethical guidelines. If you have any questions or concerns, please feel free to contact my office.

Sincerely,

A handwritten signature in black ink that reads "Paul A. Gosar". The signature is written in a cursive style with a large initial "P" and "G".

Paul A. Gosar  
Member of Congress  
Arizona's Fourth District

Enclosure

## Yuma County Sheriff's Office



August 19, 2014

Leon N. Wilmot  
Sheriff

Matthew Catron  
Chief Administrative Officer

Capt. Mark Martinez  
Detention Bureau

Capt. Eben Bratcher  
Patrol Bureau

141 S. Third Avenue  
Yuma, Arizona  
85364-2255

Phone: (928) 783-4427  
Fax: (928) 539-7837

[www.yumacountysheriff.org](http://www.yumacountysheriff.org)

The Honorable Paul Gosar  
U.S. House of Representatives  
504 Cannon HOB  
Washington, DC 20515

RE: Operation Streamline

Dear Representative Gosar:

I would like to take this opportunity to address some very disturbing news that I received regarding the implementation of new "Operation Streamline" prosecution guidance. I have been informed that the United States Attorney's Office for the District of Arizona will no longer be prosecuting first time undocumented aliens (UDAs) under 8§1325. Furthermore, I was advised that only UDAs with an adverse immigration history (excluding voluntary returns and voluntary departures but including expedited removals, orders of removal and other forms of administrative removals and reinstatements) and/or a criminal conviction of any kind, and all UDAs found in the United States while engaged in criminal activity or who otherwise present a danger to public safety or officer safety, with the exception of the UDAs who otherwise qualify for flip-flop or felony prosecutions, would be prosecuted under 8§1325. This new guidance is of great concern because it undermines the mission of local law enforcement agencies throughout Yuma County for 100% prosecution of those entering the United States illegally in order to curb reentries.

At one time, Yuma County had the worst record in the United States for illegal entries by UDAs. As a result of the high UDA traffic, our community suffered numerous ancillary crimes. In effort to reduce the UDA traffic and their criminal activity in Yuma County, the Federal, State and local law enforcement agencies came together and formed a partnership with a common mission—100% prosecution of all UDAs. Over the years, we have worked together through this partnership to make our community a safe place for Yuma County citizens to live, work and play. This partnership has been very successful, to the point that it has been viewed as an excellent example of collaborative efforts to accomplish a mission.

Since the implementation of Operation Streamline in December 2006, Yuma County has been very successful in curtailing UDA traffic. Through our

*"Dedicated to Service"*



The Honorable Paul Gosar  
August 19, 2014  
Page 2

partnership with the Yuma Sector Border Patrol, Yuma County has attained a reputation of "zero tolerance" enforcement for UDAs and their criminal activities. Case in point, during an interview of a defendant from a recent smuggling case, the subject told investigators that since he has been in jail, he has talked with several other inmates. He informed the investigators that the inmates were talking about how hard we (Yuma Sector) have been coming down on alien smuggling in our area. He stated that they and their partners are moving to other areas due to our hard stance on smuggling and the fact that if you are caught in Yuma, you will go to jail.

Now I'm being told that Operation Streamline is being scaled back to be more in line with the Tucson Sector and that first time offenders will not be prosecuted. I'm not sure why or how the United States Attorney's Office for the District of Arizona came up with this idea. Regardless of the why or how, this new guidance aligns the Yuma Sector operations to practices that are not working in other sectors. From an outside perspective, this new guidance gives a strong impression that its sole purpose is to direct the UDA traffic and their criminal activity back to Yuma County. This practice undermines everything that we have worked hard to achieve over the years for the citizens of Yuma County.

Recently, Yuma County has had to assume an already growing trend of prosecuting cases through the state that the AUSA failed or refused to prosecute. For example, we recently assumed a case that the AUSA would not prosecute involving a local express shuttle company smuggling illegals by transporting them from San Luis, Arizona to Phoenix. On August 15, 2014, an express shuttle van was sent to secondary at the Border Patrol checkpoint. Two occupants presented identification that turned out did not belong to them. The identification consisted of a U.S. Passport Crossing Card and a Mexico Passport with a U.S. Visa Stamp. When a check was run on the documents, it was found that these documents had been used to cross into the United States from Mexico at the San Luis Port of Entry over 100 times this year alone. The following day, another UDA using someone else's identification was again taken off an express shuttle. While still a clear violation of law, the facts of these three cases do not meet the new threshold for prosecution set forth by the AUSA and therefore, these individuals would have been released without being charged for their offense. At this point, Yuma County stepped in to enforce state law, charging these criminals with Taking the Identity of Another, a class 4 felony.

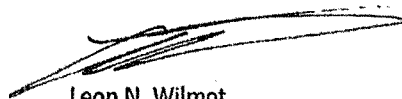
The Honorable Paul Gosar  
August 19, 2014  
Page 3

It is our position, much like other border Sheriffs, that without 100% prosecution of all UDAs, this Administration will continue to see a border that is porous and open to the criminal element entering the United States to prey on this country. The new guidance for Operation Streamline set forth by the AUSA will have a huge impact on our mission and collaborative efforts to stop these crimes in our community, and in turn impact the quality of life that the citizens of Yuma County currently enjoy. Furthermore, this new guidance can't help but have a negative and detrimental impact on the morale of the men and women on the front line who are tasked with protecting our nation's borders and enforcing our laws. Moreover, this new guidance will cause these brave men and women, who are sworn to uphold the Constitution of the United States and to defend this nation against all enemies, foreign and domestic, to feel betrayed by the very government that they serve.

As a U.S. Representative for the State of Arizona, you have pledged to be a voice for the citizens of this state. At this time, I am asking that you be that voice and do everything in your power to bring this urgent matter to the attention of the Administration in order to rectify this situation.

In closing, I would like to thank you for your time and consideration of my request. If you have any questions or need further information, please feel free to contact me at (928) 539-7830.

Sincerely,



Leon N. Wilmot  
Sheriff, Yuma County

aa



U.S. Department of Justice  
Office of Legislative Affairs

Office of the Assistant Attorney General

Washington, D.C. 20530

**FAX COVER SHEET**

DATE: 10/14/14

TO: Cong. Paul Gosar  
Department/Agency/Bureau:  
FAX #: (202) 226-9739

FROM: Shirley McKay  
PHONE #:  
FAX #:

# of PAGES: 3 + COVER

Comments: DOJ Resp dated 10/10/14  
Re: Operation Streamline

Precedence: Immediate \_\_\_ Priority \_\_\_ Routine \_\_\_ Sensitive \_\_\_  
Non-Sensitive \_\_\_

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U.S. Department of Justice  
Office of Legislative Affairs

Office of the Assistant Attorney General

Washington, D.C. 20530

OCT 10 2014

The Honorable Paul A. Gosar  
U.S. House of Representatives  
Washington, DC 20515

Dear Congressman Gosar:

This responds to your letter to the Attorney General dated August 28, 2014, which expressed concerns about misdemeanor prosecutions for improper entry by aliens, in violation of 8 U.S.C. § 1325, in the Yuma County border sector of Arizona, and specifically the policy of the United States Attorney's Office for the District of Arizona regarding federal criminal prosecution of undocumented aliens along Arizona's border.

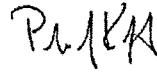
It is the Department's longstanding practice not to provide specific information regarding criminal law enforcement policies of United States Attorneys' offices, as doing so could potentially undermine law enforcement efforts. United States Attorneys formulate their own district guidelines in the exercise of investigative and prosecutorial discretion. See *Memorandum to Heads of Department of Justice Components and United States Attorneys*, dated August 12, 2013, at <http://www.justice.gov/eo/smart-on-crime/ag-memo-substantial-federal-interest.pdf>. We can assure you that the United States Attorney's Office for the District of Arizona is committed to public safety in the enforcement of federal immigration laws and to working with its federal and state law enforcement partners in this effort. Charging decisions by that office are made in accordance with the *Principles of Federal Prosecution*. See *United States Attorneys' Manual 9-27.000*, [http://www.justice.gov/usdo/eo/foia\\_reading\\_room/usam/title9/27enrm.htm#9-27.001](http://www.justice.gov/usdo/eo/foia_reading_room/usam/title9/27enrm.htm#9-27.001).

As Attorney General Holder recently reiterated in testimony to Congress, the Department of Justice is committed to the cause of justice and the mission of "securing our nation and protecting the American people. This is, and will always be, our top priority." See *Attorney General Eric Holder Testifies Before the U.S. House Committee on the Judiciary*, (April 8, 2014), <http://www.justice.gov/iso/opa/pr/speeches/2014/ag-speech-140408.html>. Public safety is the paramount consideration in exercising prosecutorial discretion as it relates to the prosecution of undocumented aliens. Other considerations may include the nature and extent of a defendant's criminal and prior removal history, ensuring deportation and removal consequences for immigration violations, prosecutorial consistency, and local court practice.

The Honorable Paul A. Gosar  
Page 2

We hope this information is helpful. Please do not hesitate to contact this office if we may provide additional assistance regarding this or any other matter.

Sincerely,



Peter J. Kadzik  
Assistant Attorney General



United States Department of State

Washington, D.C. 20520

FEB 12 2016

The Honorable  
Jason Chaffetz, Chairman  
Committee on Oversight and Government Reform  
House of Representatives  
Washington, DC 20515

Dear Mr. Chairman:

Thank you for the opportunity to testify at your January 7, 2016 hearing titled "Document Production Status Update."

I am writing to you in response to the Questions for the Record that your committee submitted following the hearing. Please find enclosed my response to Question 8. We are working diligently to answer the rest of your questions, but given their breadth and scope, they will take time to answer. We will send you additional letters with these answers as they are completed.

The Department looks forward to continuing to work with the Committee on this and other issues.

Sincerely,

A handwritten signature in cursive script, appearing to read "Julia Frifield".

Julia Frifield  
Assistant Secretary  
Legislative Affairs

Enclosures:  
As stated.

cc: The Honorable Elijah E. Cummings

Questions for the Record Submitted to  
Assistant Secretary Julia Frifield by  
Representative Jason Chaffetz (8)  
**House Committee on Oversight and Government Reform**  
January 7, 2016

**Question 8:** What is your agency's position on who in your agency can offer testimony at a congressional hearing? Is this policy in writing?

- If not, how are employees informed of the policy?
- If so, when was it written, and who was it written by? Please provide a copy of the policy.

**Answer:**

The Department of State considers each request from Congress for witness testimony on a case-by-case basis. The Department of State's Bureau of Legislative Affairs provides guidance and advice on the appropriateness of any particular witness for each particular congressional hearing. The policy is not in writing, but the practice of the Department is typically to send witnesses at Deputy Assistant Secretary-level and above.



U.S. Department of Justice

APR 07 2016

Office of Legislative Affairs

Office of the Assistant Attorney General

Washington, D.C. 20530

April 5, 2016

The Honorable Jason Chaffetz  
Chairman  
Committee on Oversight and Government Reform  
U.S. House of Representatives  
Washington, DC 20510

Dear Mr. Chairman:

This responds to your letter dated March 7, 2016, which enclosed 54 separately enumerated requests, as well as additional sub-requests, which cover thirteen different subject headings. We appreciate the opportunity to provide the Committee with information regarding these matters, and as discussed with your staff and described in our March 4, 2016 letter, we will endeavor to provide responses on a rolling basis as we gather information. This letter responds further to your questions regarding "Whistleblower Protection / Contact with Congress." As noted in our prior letter, we are happy to continue discussions with your staff regarding prioritization and scope of the remaining questions.

As we have stated previously, the Department of Justice (the Department) supports the rights of all individuals to communicate with Congress consistent with federal law, including the right to make protected disclosures. We assure you that the Department shares the view that whistleblowers provide an important service and are a vital part of ensuring good government and stopping waste, fraud, and abuse. To that end, the Department has measures in place aimed at ensuring that all employees, managers, and supervisors are fully aware of whistleblowers' rights and the Department's responsibilities.

Department employees are required to complete bi-annual No Fear Act training, and new employees are required to complete such training within 90 days of appointment. The Department's webpage also informs current and former employees of their rights under the Whistleblower Protection Enhancement Act of 2012 (WPEA) and other Executive Orders and statutory provisions. See <https://www.justice.gov/employees/whistleblower-protection-and-non-disclosure-policies-forms-or-agreements>. More specifically, the Department's webpage directs employees to the WPEA language concerning communications to Congress and states that any non-disclosure policy, form or agreement an employee may have signed should be read as if it incorporated the WPEA language regarding communications with Congress. We have enclosed an example of one of the forms used by the Department that contains non-disclosure provisions. We also note that this webpage contains a link for reporting fraud, waste, abuse or misconduct to the Department's Office of the Inspector General (OIG).



The Honorable Jason Chaffetz  
Page 2

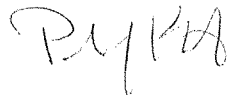
The Department fully supports the OIG's Whistleblower Ombudsperson Program as well, and additional information on that program and the resources available through this program are available on the OIG's webpage. See <https://oig.justice.gov/hotline/whistleblower-protection.htm>. The Department regularly consults with the OIG Ombudsperson on whistleblower matters. For example, the OIG Ombudsperson was a key member of the working group that drafted the April 2014 Department of Justice Report on Regulations Protecting FBI Whistleblowers. Additionally, the Federal Bureau of Investigation (FBI) worked with the OIG Ombudsperson to develop a video training on whistleblower rights and protections that all Department employees are encouraged to view. Through mandatory and additional training, as well as public notification available on its internet webpages, the Department seeks to ensure that its employees understand the rights and the avenues available to them for reporting waste, fraud, abuse or misconduct, as well as the Department's policies related to protected disclosures.

The Department takes seriously allegations of retaliation against individuals who have made protected disclosures, and the Office of Special Counsel (OSC) may refer such allegations to the Department for investigation. To the extent that your letter seeks information about OSC's own findings of reprisal from FY 2005 through FY 2015, however, the Department does not have centralized records of such findings. In instances involving Department employees, the Department and/or its components work directly with OSC to take appropriate action in individual matters.

You also inquired about the status of the Department's participation in OSC's Section 2302(c) certification program. While a part of the Department has been certified to date, we are actively engaged with OSC regarding the remainder of the Department and expect to complete the process within the next few months.

We hope this information is helpful, and we will continue to respond further on a rolling basis. Please do not hesitate to contact this office if we may provide additional assistance regarding this or any other matter.

Sincerely,



Peter J. Kadzik  
Assistant Attorney General

Enclosure

cc: The Honorable Elijah E. Cummings  
Ranking Member

---

**CLASSIFIED INFORMATION NONDISCLOSURE AGREEMENT**


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**AN AGREEMENT BETWEEN \_\_\_\_\_ AND THE UNITED STATES**


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*(Name of Individual - Printed or typed)*

1. Intending to be legally bound, I hereby accept the obligations contained in this Agreement in consideration of my being granted access to classified information. As used in this Agreement, classified information is marked or unmarked classified information, including oral communications, that is classified under the standards of Executive Order 13526, or under any other Executive order or statute that prohibits the unauthorized disclosure of information in the interest of national security; and unclassified information that meets the standards for classification and is in the process of a classification determination as provided in sections 1.1, 1.2, 1.3 and 1.4(e) of Executive Order 13526, or under any other Executive order or statute that requires protection for such information in the interest of national security. I understand and accept that by being granted access to classified information, special confidence and trust shall be placed in me by the United States Government.
2. I hereby acknowledge that I have received a security indoctrination concerning the nature and protection of classified information, including the procedures to be followed in ascertaining whether other persons to whom I contemplate disclosing this information have been approved for access to it, and that I understand these procedures.
3. I have been advised that the unauthorized disclosure, unauthorized retention, or negligent handling of classified information by me could cause damage or irreparable injury to the United States or could be used to advantage by a foreign nation. I hereby agree that I will never divulge classified information to anyone unless: (a) I have officially verified that the recipient has been properly authorized by the United States Government to receive it; or (b) I have been given prior written notice of authorization from the United States Government Department or Agency (hereinafter Department or Agency) responsible for the classification of information or last granting me a security clearance that such disclosure is permitted. I understand that if I am uncertain about the classification status of information, I am required to confirm from an authorized official that the information is unclassified before I may disclose it, except to a person as provided in (a) or (b), above. I further understand that I am obligated to comply with laws and regulations that prohibit the unauthorized disclosure of classified information.
4. I have been advised that any breach of this Agreement may result in the termination of any security clearances I hold; removal from any position of special confidence and trust requiring such clearances; or termination of my employment or other relationships with the Departments or Agencies that granted my security clearance or clearances. In addition, I have been advised that any unauthorized disclosure of classified information by me may constitute a violation, or violations, of United States criminal laws, including the provisions of sections 641, 793, 794, 798, \*952 and 1924, title 18, United States Code; \*the provisions of section 783(b), title 50, United States Code; and the provisions of the Intelligence Identities Protection Act of 1982. I recognize that nothing in this Agreement constitutes a waiver by the United States of the right to prosecute me for any statutory violation.
5. I hereby assign to the United States Government all royalties, remunerations, and emoluments that have resulted, will result or may result from any disclosure, publication, or revelation of classified information not consistent with the terms of this Agreement.
6. I understand that the United States Government may seek any remedy available to it to enforce this Agreement including, but not limited to, application for a court order prohibiting disclosure of information in breach of this Agreement.
7. I understand that all classified information to which I have access or may obtain access by signing this Agreement is now and will remain the property of, or under the control of the United States Government unless and until otherwise determined by an authorized official or final ruling of a court of law. I agree that I shall return all classified materials which have, or may come into my possession or for which I am responsible because of such access: (a) upon demand by an authorized representative of the United States Government; (b) upon the conclusion of my employment or other relationship with the Department or Agency that last granted me a security clearance or that provided me access to classified information; or (c) upon the conclusion of my employment or other relationship that requires access to classified information. If I do not return such materials upon request, I understand that this may be a violation of sections 793 and/or 1924, title 18, United States Code, a United States criminal law.
8. Unless and until I am released in writing by an authorized representative of the United States Government, I understand that all conditions and obligations imposed upon me by this Agreement apply during the time I am granted access to classified information, and at all times thereafter.
9. Each provision of this Agreement is severable. If a court should find any provision of this Agreement to be unenforceable, all other provisions of this Agreement shall remain in full force and effect.
10. These provisions are consistent with and do not supersede, conflict with, or otherwise alter the employee obligations, rights, or liabilities created by existing statute or Executive order relating to (1) classified information, (2) communications to Congress, (3) the reporting to an Inspector General of a violation of any law, rule, or regulation, or mismanagement, a gross waste of funds, an abuse of authority, or a substantial and specific danger to public health or safety, or (4) any other whistleblower protection. The definitions, requirements, obligations, rights, sanctions, and liabilities created by controlling Executive orders and statutory provisions are incorporated into this agreement and are controlling.

*(Continue on reverse.)*

11. These restrictions are consistent with and do not supersede, conflict with, or otherwise alter the employee obligations, rights, or liabilities created by Executive Order No. 13526 (75 Fed. Reg. 707), or any successor thereto section 7211 of title 5, United States Code (governing disclosures to Congress); section 1034 of title 10, United States Code, as amended by the Military Whistleblower Protection Act (governing disclosure to Congress by members of the military); section 2302(b) (8) of title 5, United States Code, as amended by the Whistleblower Protection Act of 1989 (governing disclosures of illegality, waste, fraud, abuse or public health or safety threats); the Intelligence Identities Protection Act of 1982 (50 U.S.C. 421 et seq.) (governing disclosures that could expose confidential Government agents), sections 7(c) and 8H of the Inspector General Act of 1978 (5 U.S.C. App.) (relating to disclosures to an inspector general, the inspectors general of the Intelligence Community, and Congress); section 103H(g)(3) of the National Security Act of 1947 (50 U.S.C. 403-3h(g)(3)) (relating to disclosures to the inspector general of the Intelligence Community); sections 17(d)(5) and 17(e)(3) of the Central Intelligence Agency Act of 1949 (50 U.S.C. 403g(d)(5) and 403q(e)(3)) (relating to disclosures to the Inspector General of the Central Intelligence Agency and Congress); and the statutes which protect against disclosure that may compromise the national security, including sections 641, 793, 794, 798, \*952 and 1924 of title 18, United States Code, and \*section 4 (b) of the Subversive Activities Control Act of 1950 (50 U.S.C. section 783(b)). The definitions, requirements, obligations, rights, sanctions, and liabilities created by said Executive Order and listed statutes are incorporated into this agreement and are controlling.

12. I have read this Agreement carefully and my questions, if any, have been answered. I acknowledge that the briefing officer has made available to me the Executive Order and statutes referenced in this agreement and its implementing regulation (32 CFR Part 2001, section 2001.80(d)(2)) so that I may read them at this time, if I so choose.

\* NOT APPLICABLE TO NON-GOVERNMENT PERSONNEL SIGNING THIS AGREEMENT.

SIGNATURE	DATE	SOCIAL SECURITY NUMBER <i>(See Notice below)</i>
ORGANIZATION (IF CONTRACTOR, LICENSEE, GRANTEE OR AGENT, PROVIDE: NAME, ADDRESS, AND, IF APPLICABLE, FEDERAL SUPPLY CODE NUMBER) <i>(Type or print)</i>		

WITNESS		ACCEPTANCE	
THE EXECUTION OF THIS AGREEMENT WAS WITNESSED BY THE UNDERSIGNED.		THE UNDERSIGNED ACCEPTED THIS AGREEMENT ON BEHALF OF THE UNITED STATES GOVERNMENT.	
SIGNATURE	DATE	SIGNATURE	DATE
NAME AND ADDRESS <i>(Type or print)</i>		NAME AND ADDRESS <i>(Type or print)</i>	

**SECURITY DEBRIEFING ACKNOWLEDGEMENT**

I reaffirm that the provisions of the espionage laws, other federal criminal laws and executive orders applicable to the safeguarding of classified information have been made available to me; that I have returned all classified information in my custody; that I will not communicate or transmit classified information to any unauthorized person or organization; that I will promptly report to the Federal Bureau of Investigation any attempt by an unauthorized person to solicit classified information, and that I (have) (have not) (strike out inappropriate word or words) received a security debriefing.

SIGNATURE OF EMPLOYEE	DATE
NAME OF WITNESS <i>(Type or print)</i>	SIGNATURE OF WITNESS

**NOTICE:** The Privacy Act, 5 U.S.C. 552a, requires that federal agencies inform individuals, at the time information is solicited from them, whether the disclosure is mandatory or voluntary, by what authority such information is solicited, and what uses will be made of the information. You are hereby advised that authority for soliciting your Social Security Number (SSN) is Public Law 104-134 (April 26, 1996). Your SSN will be used to identify you precisely when it is necessary to certify that you have access to the information indicated above or to determine that your access to the information indicated has been terminated. Furnishing your Social Security Number, as well as other data, is voluntary, but failure to do so may delay or prevent you being granted access to classified information.

**U.S. Department of Justice**

Office of Legislative Affairs

Office of the Assistant Attorney General

*Washington, D.C. 20530*

May 24, 2016

The Honorable Jason Chaffetz  
Chairman  
Committee on Oversight and Government Reform  
U.S. House of Representatives  
Washington, DC 20515

Dear Mr. Chairman:

This responds further to your letter dated March 7, 2016, which enclosed 54 separately enumerated requests, as well as additional sub-requests, which cover thirteen different subject headings. We appreciate the opportunity to provide the Committee with further information regarding these matters, and as discussed with your staff, in addition to our April 5, 2016, letter, we will endeavor to provide responses on a rolling basis as we gather information. This letter responds to your questions regarding the Freedom of Information Act (FOIA or the Act). As noted in our prior letters, we are happy to continue discussions with your staff regarding prioritization and scope of the remaining questions.

As the lead federal agency responsible for implementation of the FOIA across the federal government, the Department of Justice (the Department) is committed to encouraging compliance with the Act by all agencies and to fulfilling President Obama's vision of a more open government. As you may know, the Department has adopted the presumption of openness called for in the President's 2009 FOIA Memorandum.<sup>1</sup> Indeed, in accordance with that Memorandum, the Department issued FOIA Guidelines in March 2009 that are applicable to all federal agencies and which further elaborate on the meaning of the presumption of openness.<sup>2</sup> Specifically, the Department's FOIA Guidelines explain that the presumption of openness "has two important considerations." First, agencies should not withhold information simply because they may do so as a technical matter, but instead are strongly encouraged to make discretionary disclosures of information. Second, when full disclosure of a record is not possible, the Department encourages agencies to make partial disclosures.

In addition, after the Department's FOIA Guidelines were issued in March 2009, our Office of Information Policy (OIP) issued guidance to all agencies on implementing the presumption of openness and the other directives contained in the President's and Department's

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<sup>1</sup> [https://www.whitehouse.gov/the\\_press\\_office/FreedomofInformationAct](https://www.whitehouse.gov/the_press_office/FreedomofInformationAct).

<sup>2</sup> <https://www.justice.gov/sites/default/files/ag/legacy/2009/06/24/foia-memo-march2009.pdf>.

The Honorable Jason Chaffetz  
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FOIA Memoranda.<sup>3</sup> That guidance provides detailed instructions to all agencies on applying the presumption of openness, discusses key principles to be considered, and specifically addresses considerations applicable to documents covered by the deliberative process privilege.

In addition to establishing these principles applicable to the presumption of disclosure, the Department's FOIA Guidelines also address the importance of agencies establishing effective systems for responding to requests, increasing proactive disclosures, and making timely release of requested records a priority. In doing so, the Department emphasizes that "[e]ach agency must be fully accountable for its administration of the FOIA." As a key part of that accountability, each year the Department has required agencies to submit a Chief FOIA Officer Report detailing the steps taken at each agency to implement the President's FOIA Memorandum and the Department's FOIA Guidelines. Those Chief FOIA Officer Reports are an invaluable resource as they document the changes made by all agencies to achieve greater transparency since the issuance of the President's and Department's FOIA directives of 2009.

For the past four years, the Department has asked agencies to provide in their Chief FOIA Officer Reports examples of discretionary releases of information made during the previous year. Many of these releases consist of information that could have been protected by the deliberative process privilege of Exemption 5. Information protected by other exemptions, such as Exemptions 2, 7(D), and 7(E), also has been released as a matter of discretion. At the Department, our Chief FOIA Officer Reports contain many examples of these discretionary releases.<sup>4</sup> For example, the Federal Bureau of Investigation (FBI) continues to release information with historical value that could be protected by the FOIA's law enforcement exemptions, such as information about counterintelligence operations and records of discussion about whether to prosecute Alger Hiss for espionage and perjury. The Executive Office of United States Trustees (EOUST) also has released information regarding the performance of private bankruptcy trustees overseen by the United States Trustees Program. In addition, OIP released information contained in former Attorney General Alberto Gonzales's briefing material regarding his travel to Egypt. Additional examples are provided in the Department's Chief FOIA Officer Reports for 2013 through 2016, which provide a more comprehensive picture of the many types of information released as a matter of discretion each year under the Department of Justice's FOIA Guidelines.<sup>5</sup>

The Department firmly believes that a proper understanding of the FOIA, including the correct application of the statute's provisions and the Department's 2009 FOIA Guidelines, is the first step towards a successful FOIA operation. As the federal office responsible for encouraging government-wide compliance with the FOIA, OIP conducts a wide range of training activities to educate FOIA personnel at all federal agencies on the legal requirements of the FOIA and the policy directives of the President and the Department. In 2015 alone, OIP trained nearly 2,000 employees by hosting and participating in a variety of training sessions addressing issues ranging

<sup>3</sup> <https://www.justice.gov/oip/blog/foia-post-2009-creating-new-era-open-government>.

<sup>4</sup> [https://www.justice.gov/oip/reports/2016\\_doj\\_cfo\\_report/download](https://www.justice.gov/oip/reports/2016_doj_cfo_report/download).

<sup>5</sup> <https://www.justice.gov/oip/reports-1>.

The Honorable Jason Chaffetz  
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from utilizing proper administrative procedures, understanding exemptions, applying the FOIA's fee and fee waiver provisions, achieving transparency through proactive disclosures, improving customer service, and ensuring an effective FOIA administration. A more detailed description of the various courses held by OIP last year is contained in the Department's 2016 Chief FOIA Officer Report.<sup>6</sup>

OIP also provides training resources to agencies online.<sup>7</sup> In March 2015, OIP released a new suite of government-wide FOIA training resources designed for every level of the federal workforce from the senior executive, to the FOIA professional, to other federal employees who should have a basic understanding of the FOIA. The new training tools released by OIP include:

- An infographic that can serve as a resource on FOIA basics for all employees new to the federal workforce;
- A brief video from the Director of OIP aimed at senior government executives, which provides a general overview of the FOIA and emphasizes the importance of their support to their agency's FOIA program;
- An in-depth e-Learning training module specifically designed for FOIA professionals which addresses all the major procedural and substantive requirements of the law, as well as the importance of customer service; and
- A separate e-Learning training module for all other federal employees that provides a primer on the FOIA and highlights ways in which they can assist their agency in administering the law.

In addition to the training events and resources offered through OIP, many of the Department's components held their own training events over the course of the past year. Examples are provided in our 2016 Chief FOIA Officer Report.<sup>8</sup>

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<sup>6</sup> [https://www.justice.gov/oip/reports/2016\\_doj\\_cfo\\_report/download](https://www.justice.gov/oip/reports/2016_doj_cfo_report/download).

<sup>7</sup> <https://www.justice.gov/oip/training>.

<sup>8</sup> [https://www.justice.gov/oip/reports/2016\\_doj\\_cfo\\_report/download](https://www.justice.gov/oip/reports/2016_doj_cfo_report/download).

The Honorable Jason Chaffetz  
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We hope this information is helpful, and we will continue to respond further on a rolling basis. Please do not hesitate to contact this office if we may provide additional assistance regarding this or any other matter.

Sincerely,

A handwritten signature in black ink, appearing to read 'P. Kadzik', written in a cursive style.

Peter J. Kadzik  
Assistant Attorney General

cc: The Honorable Elijah E. Cummings  
Ranking Member



April 15, 2016

The Honorable Jason Chaffetz  
Chairman  
Committee on Oversight and Government Reform  
U.S. House of Representatives  
Washington, DC 20515

Dear Chairman Chaffetz:

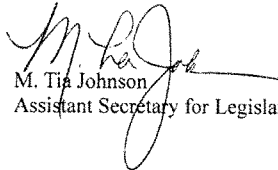
This letter responds to the Questions for the Record that you submitted to me on January 28, 2016, following my testimony at the hearing titled "Document Production Status Update" on January 7, 2016.

As you stated in your witness invitation letter to me, the purpose of the hearing was to allow "the Committee to hear testimony from top congressional and legislative affairs officials" who "coordinate responses to congressional oversight requests." After reviewing the questions, I am pleased to respond to Questions 8 and 9, which address Department of Homeland Security (DHS) employees' interactions with Congress.

Questions 1-7 and 10-54 seek information beyond the scope of topics that I, in my capacity as Assistant Secretary for Legislative Affairs, have personal knowledge of, and/or are beyond the scope of the hearing. Nevertheless, DHS seeks to accommodate the requests of this Committee. Some of the subject matter of these questions is already covered in letters the Department has received from you, and to which we are in the process of responding. If the Committee should choose to include any of the questions in subsequent letters to the Department, we will be happy to respond appropriately.

I hope this information is helpful. Should you require additional assistance, please do not hesitate to contact me at (202) 447-5890.

Sincerely,



M. Tia Johnson  
Assistant Secretary for Legislative Affairs

Enclosure



**Questions for The Honorable M. Tia Johnson**  
Assistant Secretary for Legislative Affairs  
U.S. Department of Homeland Security

**Questions from Chairman Jason Chaffetz**  
Committee on Oversight and Government Reform

Hearing: "Document Production Status Update"

**8) What is your agency's position on who in your agency can offer testimony at a congressional hearing? Is this policy in writing?**

- **If not, how are employees informed of the policy?**
- **If so, when was it written, and who was it written by? Please provide a copy of the policy.**

**Response:**

The Assistant Secretary for Legislative Affairs, through the Office of Legislative Affairs, serves as the principal coordinator of Department contacts, relations and activities with Congress. As such, when DHS/OLA is notified of a congressional hearing, DHS aims to provide the most appropriate witness for that hearing. This involves taking into account a variety of factors, including ability to address the subject matter at hand, specific position and job responsibilities within DHS, any scheduling concerns, and the views of the Committee as to who the most appropriate witness would be. Our general approach to requests for DHS participation at congressional hearings is set forth in my February 4, 2016 letter to Congress (enclosed).

**9) What is your agency's policy on contact with Congress by employees of your agency? Is this policy in writing?**

- **If not, how are employees informed of the policy?**
- **If so, when was it written, and who was it written by? Please provide a copy of the policy.**

The Assistant Secretary for Legislative Affairs, through the Office of Legislative Affairs, serves as the principal coordinator of Department contacts, relations and activities with Congress. Accordingly, official communications on behalf of the Department are typically transmitted through my office. OLA's responsibilities are memorialized in DHS Management Directives 2100, "Organization of the Office of Legislative Affairs," and 0420, "Legislative Procedures." Thus, if an employee is attempting to respond to Congress for the agency or in their official capacity, the respective Office of Legislative/Congressional Affairs should be involved.

Conversely, the Department fully recognizes that federal employees, as U.S. citizens, retain their First Amendment right to "petition the government for a redress of grievances." This right is implemented in 5 U.S.C. 7211, which provides:

“The right of employees, individually or collectively, to petition Congress or a Member of Congress, or to furnish information to either House of Congress, or to a committee or Member thereof, may not be interfered with or denied.”

In addition to the above Management Directives, employees receive annual “No FEAR ACT” Notices published by the DHS Undersecretary for Management. The No Fear Act requires DHS to provide a notice to federal employees, former federal employees, and applicants for federal employment to inform them of their rights and protections under federal antidiscrimination, whistleblower protection, and retaliation laws. Additionally, the NO FEAR Act and 5 Code of Federal Regulations Sec. 724.202 require federal agencies to provide training every two years to all employees regarding their rights and remedies under federal antidiscrimination, whistleblower and retaliation laws. DHS has created a one-stop-shop web resource – DHS Whistleblower Protection – that assists employees to easily determine what and to whom they should report suspected issues. <http://dhsconnect.dhs.gov/org/comp/mgmt/Pages/Whistleblower-Protection.aspx>.



**Homeland  
Security**

February 4, 2016

To our Friends in Congress,

As Congress begins the second session of the 114<sup>th</sup> Congress, I wanted, on behalf of the Office of Legislative Affairs, to thank you for your efforts to support the U.S. Department of Homeland Security's mission to ensure a homeland that is safe, secure, and resilient against terrorism and other hazards.

The Office of Legislative Affairs works proactively with Congress to provide the timely information you need to formulate policy and conduct oversight. To that end, I wanted to share with you some of the policies and procedures we maintain to allow for efficient and effective communication and cooperation with Congress.

For congressional offices seeking to send a letter to the Secretary of Homeland Security, the email [CongresstoDHS@hq.dhs.gov](mailto:CongresstoDHS@hq.dhs.gov) remains the most efficient way to reach us. Sending your letter in this manner avoids delays.

As you might imagine, DHS receives a high volume of requests for witnesses at congressional hearings; last year alone, 159 Department officials testified at committee and subcommittee hearings. In order to be responsive to the 92 congressional committees and subcommittees that exercise oversight activities of the Department, in 2011 we developed guidelines for participation in congressional hearings. As committees of jurisdiction prepare to hold hearings with Department witnesses, I respectfully remind you of the following DHS hearing policies:

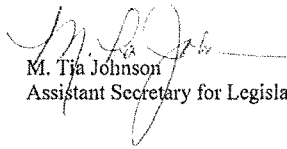
- When a Department witness will be invited to appear at a congressional hearing, three weeks written notification is needed. This amount of time is required to draft fact-based, responsible testimony and to clear the testimony through the Department and the interagency and transmit this testimony to the Committee at a minimum 48 hours before the hearing. Please keep in mind that due to the effort and resources needed to prepare for a hearing, the Department cannot begin drafting a statement for a hearing until it receives written notice from a Committee that a proposed hearing has been scheduled. Advance formal notice ensures that the Committee receives testimony on time.
- DHS leaders of operating components and Senate-confirmed DHS employees will testify before Congress on a single panel together with other U.S. government witnesses. DHS witnesses who are not component heads will testify on a single-panel of other DHS and United States Government witnesses, but may from time-to-time testify with non-USG governmental witnesses, including state, local, tribal, and foreign governments.

- DHS witnesses will not testify on panels with private sector witnesses, except under extraordinary circumstances.

It is my top priority that the DHS Office of Legislative Affairs continue to work cooperatively with Congress and facilitate effective communication between our organizations. To that end, I have included with this letter a directory of our office staff.

If you need additional assistance, please do not hesitate to contact me at (202) 447-5890.

Respectfully,

A handwritten signature in black ink, appearing to read 'M. Tja Johnson', with a horizontal line extending to the right.

M. Tja Johnson  
Assistant Secretary for Legislative Affairs



**U.S. Department of Homeland Security  
Legislative Affairs Contact List  
January 2016**



*Please note that correspondence to Secretary Johnson should be sent to [Congress@DHS@hq.dhs.gov](mailto:Congress@DHS@hq.dhs.gov)*

<b>Headquarters Office of Legislative Affairs</b>	<b>Main number: (202) 447-5890</b>	<b>FAX: (202) 447-5437</b>
Assistant Secretary	M. Tia Johnson	<a href="mailto:Lia.Johnson@hq.dhs.gov">Lia.Johnson@hq.dhs.gov</a>
Deputy Assistant Secretary – House	Connie LaRossa	<a href="mailto:Connie.LaRossa@hq.dhs.gov">Connie.LaRossa@hq.dhs.gov</a>
Deputy Assistant Secretary – Senate	Sue Ramanathan	<a href="mailto:Sue.Ramanathan@hq.dhs.gov">Sue.Ramanathan@hq.dhs.gov</a>
Chief of Staff	Susan Corbin	<a href="mailto:Susan.Corbin@hq.dhs.gov">Susan.Corbin@hq.dhs.gov</a>
Director	Eric Lamarkin	<a href="mailto:Eric.Lamarkin@hq.dhs.gov">Eric.Lamarkin@hq.dhs.gov</a>
Director – I&A, OPS, DND0 (Acting)	Jay Harper	<a href="mailto:Jay.Harper@hq.dhs.gov">Jay.Harper@hq.dhs.gov</a>
Director – ISRG, USSS, FEET, Human Trafficking, Outreach	Eddie Gleason	<a href="mailto:Eddie.Gleason@hq.dhs.gov">Eddie.Gleason@hq.dhs.gov</a>
Director – ICE, CBP, USGIC, PLCY	Ted Lovett	<a href="mailto:Ted.Lovett@hq.dhs.gov">Ted.Lovett@hq.dhs.gov</a>
Director – NPPD (Acting)	Angela Kouers	<a href="mailto:Angela.Kouers@hq.dhs.gov">Angela.Kouers@hq.dhs.gov</a>
Director – NIGMT, QHSR, Privacy, Civil Rights	Jeff Reindinger	<a href="mailto:Jeff.Reindinger@hq.dhs.gov">Jeff.Reindinger@hq.dhs.gov</a>
Director – FEMA, TSA, Grants	Jay Harper	<a href="mailto:Jay.Harper@hq.dhs.gov">Jay.Harper@hq.dhs.gov</a>
Director (Acting) - S&T, OHA	Amy Cassidy	<a href="mailto:Amy.Cassidy@hq.dhs.gov">Amy.Cassidy@hq.dhs.gov</a>
<b>U.S. Citizenship and Immigration Services (USCIS)</b>	<b>Main number: (202) 272-1940</b>	<b>FAX: (202) 272-1955</b>
Assistant Chief	Alan Atkinson (Acting Chief)	<a href="mailto:Alan.Atkinson@uscis.dhs.gov">Alan.Atkinson@uscis.dhs.gov</a>
Chief of Staff	Janeen Wooden (Acting Deputy Chief)	<a href="mailto:Janeen.Wooden@uscis.dhs.gov">Janeen.Wooden@uscis.dhs.gov</a>
<b>U.S. Customs and Border Protection (CBP)</b>	<b>Main number: (202) 344-1760</b>	<b>FAX: (202) 344-2152</b>
Asst Commissioner, Office of Congressional Affairs	Michael Yeager	<a href="mailto:Michael.Yeager@cbp.dhs.gov">Michael.Yeager@cbp.dhs.gov</a>
Deputy Assistant Commissioner	Kim Lowry	<a href="mailto:Kim.Lowry@cbp.dhs.gov">Kim.Lowry@cbp.dhs.gov</a>
<b>Federal Emergency Management Agency (FEMA)</b>	<b>Main number: (202) 646-4500</b>	<b>FAX: (202) 646-3600</b>
Director, Congressional Affairs Division	Aaron Davis	<a href="mailto:Aaron.Davis@fema.dhs.gov">Aaron.Davis@fema.dhs.gov</a>
<b>Immigration and Customs Enforcement (ICE)</b>	<b>Main number: (202) 732-4200</b>	<b>FAX: (202) 732-4269</b>
Assistant Director, Office of Congressional Relations	Jason Yamusi	<a href="mailto:Jason.Yamusi@ice.dhs.gov">Jason.Yamusi@ice.dhs.gov</a>
Deputy Assistant Director	Judy Rogers	<a href="mailto:Judy.Rogers@ice.dhs.gov">Judy.Rogers@ice.dhs.gov</a>
Deputy Assistant Director	Sean Hackbarth	<a href="mailto:Sean.Hackbarth@ice.dhs.gov">Sean.Hackbarth@ice.dhs.gov</a>
<b>Transportation Security Administration (TSA)</b>	<b>Main number: (571) 227-2717</b>	<b>FAX: (571) 227-2559</b>
Asst. Administrator, Legislative Affairs (Acting)	Peter Hearding	<a href="mailto:Peter@tsa.dhs.gov">Peter@tsa.dhs.gov</a>
<b>U.S. Coast Guard (USCG)</b>	<b>Main number: (202) 245-0520</b>	<b>FAX: (202) 245-0529</b>
Chief, Office of Congressional Affairs	CAPT Tom Allan	<a href="mailto:Thomas.G.Allan@uscg.mil">Thomas.G.Allan@uscg.mil</a>
House Liaison	CDR Jo Ann Burdian	<a href="mailto:JoAnn.Burdian@uscg.mil">JoAnn.Burdian@uscg.mil</a>
Senate Liaison	CDR Brian Letebvre	<a href="mailto:Brian.Letebvre@uscg.mil">Brian.Letebvre@uscg.mil</a>
<b>U.S. Secret Service (USSS)</b>	<b>Main number: (202) 406-5676</b>	<b>FAX: (202) 406-5740</b>
Deputy Assistant Director, Congressional Affairs	Chris Stanley	<a href="mailto:Chris.Stanley@uss.s.dhs.gov">Chris.Stanley@uss.s.dhs.gov</a>
Special Agent in Charge	Christopher Diotoro	<a href="mailto:Christopher.Diotoro@uss.s.dhs.gov">Christopher.Diotoro@uss.s.dhs.gov</a>



EXECUTIVE OFFICE OF THE PRESIDENT  
OFFICE OF MANAGEMENT AND BUDGET  
WASHINGTON, D.C. 20503

April 5, 2016

The Honorable Jason Chaffetz  
Chairman  
Committee on Oversight and Government Reform  
U.S. House of Representatives  
Washington, DC 20515

Dear Mr. Chairman:

Thank you for your letter dated January 28, 2016, concerning my appearance at a hearing titled "Document Production Status Update," held before the Committee on Oversight and Government Reform on January 7, 2016.

The Office of Management and Budget (OMB) has reviewed the 54 questions attached to your letter and have determined that Questions 8 and 9, which seek information about OMB's interactions with Congress, relate to the subject matter of the January 7 hearing. OMB's responses to Questions 8 and 9 are enclosed. As the remaining questions are outside the scope of the January 7 hearing and will require additional time to answer, OMB will separately respond to the Committee's remaining questions outside the scope of the hearing record.

Thank you again for your letter. If you have any additional questions, please contact OMB's Office of Legislative Affairs at (202) 395-4790.

Sincerely,

A handwritten signature in cursive script that reads "Tamara L. Fucile".

Tamara L. Fucile  
Associate Director for Legislative Affairs

Enclosure

cc: The Honorable Elijah E. Cummings  
Ranking Member

**Questions for the Record**  
**Tamara L. Fucile**  
**Associate Director for Legislative Affairs**  
**Office of Management and Budget**  
**Before the Committee on Oversight and Government Reform**  
**U.S. House of Representatives**

- 8) What is your agency's position on who in your agency can offer testimony at a congressional hearing? Is this policy in writing?**
- **If not, how are employees informed of the policy?**
  - **If so, when was it written, and who was it written by? Please provide a copy of the policy.**

Requests for congressional testimony are generally handled by the Office of Management and Budget's (OMB) Office of Legislative Affairs. The individuals in the Office of Legislative Affairs interact with individuals throughout OMB and with Congress in order to identify appropriate witnesses for Congressional hearings. While it is my understanding that OMB does not have a written policy with respect to who can offer testimony at a Congressional hearing, our general practice is to offer testimony from Presidentially-appointed, Senate-confirmed officials.

- 9) What is your agency's policy on contact with Congress by employees of your agency? Is this policy in writing?**
- **If not, how are employees informed of the policy?**
  - **If so, when was it written, and who was it written by? Please provide a copy of the policy.**

OMB does not have a single agency-wide written policy that covers all agency communications with Congress. The Office of Legislative Affairs within OMB serves as the primary point of contact for communications with Congress, and OMB staff often communicate directly with Congress on a wide range of policy matters. To help ensure coordinated communications with Congress, OMB staff are encouraged, but not required, to share information regarding their Congressional interactions with OMB's Office of Legislative Affairs. The Office of Legislative Affairs supports the rights of all employees to communicate with Congress consistent with federal law. OMB's webpage informs employees of their rights under the Notification and Federal Employee Antidiscrimination and Retaliation Act of 2002 (No FEAR Act) (Pub. L. 107-174). See [https://www.whitehouse.gov/omb/no\\_fear\\_notice](https://www.whitehouse.gov/omb/no_fear_notice).



UNITED STATES OFFICE OF PERSONNEL MANAGEMENT  
Washington, DC 20415

Congressional, Legislative, &  
Intergovernmental Affairs

February 12, 2016

The Honorable Jason Chaffetz  
Chairman  
Committee on House Oversight and  
Government Reform  
2157 Rayburn House Office Building  
U.S. House of Representatives  
Washington, DC 20515

Dear Mr. Chairman:

Thank you for your questions for the record (QFRs) in response to the Committee on Oversight and Government Reform's January 7, 2016 hearing, titled "Document Production Status Update." As stated in your letter of invitation, the purpose of the hearing was to allow "the Committee to hear testimony from top congressional and legislative affairs officials" who "coordinate responses to congressional oversight requests." As the QFRs were directed to me in my role as the Director of the Office of Congressional, Legislative, and Intergovernmental Affairs at the U.S. Office of Personnel Management (OPM), I am pleased to be able to provide answers to the questions that fall directly within the realm of my personal knowledge or generally within the scope of the type of information that we sought to gather in preparation for the hearing.

After reviewing the questions, I am providing detailed responses to Questions 8 and 9 which deal with OPM employees' interactions with Congress. As responses to the QFRs numbered 1-7 and 10-54 do not fall directly within the realm of my personal knowledge, or generally within the scope of the type of information that we sought to gather in preparation for the hearing, I cannot provide information regarding these questions at this time.

OPM, as it always does, seeks to be accommodating to this Committee. Accordingly, please advise if it is the Committee's wish that OPM treat the Committee's QFRs as we would treat a formal letter from the Chairman to the Director. If so, OPM will work to answer the Committee's questions and return a formal response to the Committee outside of the hearing record.



The Honorable Jason Chaffetz  
Page 2

Sincerely,

A handwritten signature in black ink, appearing to read "Jason K. Levine". The signature is fluid and cursive, with a large initial "J" and a long, sweeping underline.

Jason K. Levine  
Director, Congressional, Legislative &  
Intergovernmental Affairs

Enclosures

cc: The Honorable Elijah E. Cummings  
Ranking Member

The Honorable Jason Chaffetz  
Page 3

**Question 8 – What is your agency’s position on who in your agency can offer testimony at a congressional hearing? Is this policy in writing? If not, how are employees informed of the policy? If so, when was it written, and who was it written by? Please provide a copy of the policy.**

It is my understanding that, in 2012, under a previous Director of the Office of Congressional and Legislative Affairs (CLA), OPM employees were provided with guidance on this and other related aspects of the agency’s relationship with Congress. This guidance, assembled under the direction of Tania Shand, former Director of CLA indicated that: “The CLA Director, in consultation with the Director, will determine which OPM official will be the OPM witness at a Congressional hearing. All other OPM officials who wish to testify must inform CLA in advance for concurrence and coordination.”

To the best of my understanding, since this guidance was shared in 2012, this has been the process undertaken by the Office of Congressional, Legislative, and Intergovernmental Affairs (CLIA)\* staff at OPM when requests have been made to OPM with respect to identifying witnesses for Congressional hearings. As of this date, the guidance has not been amended.

\*Please note that the name of CLA was changed to its present form of the Office of Congressional, Legislative, and Intergovernmental Affairs in April 2014.

**Question 9 – What is your agency’s policy on contact with Congress by employees of your agency? Is this policy in writing? If not, how are employees informed of the policy? If so, when was it written, and who was it written by? Please provide a copy of the policy.**

OPM does not have an official policy regarding an OPM employee’s ability to proactively contact Congress or congressional offices on an individual basis. In 2012, under a previous Director of the Office of Congressional and Legislative Affairs, (CLA) guidance, assembled under the direction of Tania Shand, former Director of CLA, described the process the agency undertakes when responding to inquiries from members of Congress and Congressional staffs.

This guidance specifically noted that nothing in the guidance was intended to restrict, supersede, conflict with or otherwise alter employee obligations, rights, or liabilities created by: Executive Order No. 12958; section 7211 of title 5, United States Code (governing disclosures to Congress); section 1034 of title 10, United States Code, as amended by the Military Whistleblower Protection Act (governing disclosure to Congress by members of the military); section 2302(b)(8) of title 5, United States Code, as amended by the Whistleblower Protection Act of 1989 (governing disclosures of illegality, waste, fraud, abuse or public health or safety threats); the Intelligence Identities Protection Act of 1982 (50 U.S.C. 421 et seq.) (governing disclosures that could expose confidential Government agents); and the statutes which protect against disclosure that may compromise the national security, including sections 641, 793, 794, 798, and 952 of title 18, United States Code, and section 4(b) of the Subversive Activities Act of 1950 (50 U.S.C. 783(b)).

The Honorable Jason Chaffetz  
Page 4

In addition, since my arrival at OPM, I have discussed with senior managers that in order to ensure a timely and accurate response from OPM, program offices are asked to route formal correspondence and detailed information requests from Congressional offices to CLIA for review and coordination of response.

Also, OPM's intranet site "THEO" contains easily-retrieved information on whistleblower protection, and OPM's policy to protect an employee's whistleblower rights and protections, including confidentiality. The site specifically states that OPM:

"fully supports Federal law prohibiting any employee who has authority to take personnel actions from discriminating for or against any employee or applicant for employment on the basis of conduct that does not adversely affect job performance. Consistent with the law and agency objective, it is the policy of OPM to protect the rights of employees and applicants for employment by prohibiting inquiries into, or actions based on non-job-related status, including: marital status; political affiliation; whistleblower status; sexual orientation; and parental status."

The OPM internet website ([www.opm.gov](http://www.opm.gov)) links to the website of the OPM Office of Inspector General, which provides additional details about whistleblower rights and protections, and describes the availability of the OPM OIG Hotline for communicating complaints.



UNITED STATES OFFICE OF PERSONNEL MANAGEMENT  
Washington, DC 20415

**JUN 20 2016**

Congressional,  
Legislative and  
Intergovernmental  
Affairs

The Honorable Jason Chaffetz  
Chairman  
Committee on Oversight  
and Government Reform  
United States House of Representatives  
2157 Rayburn House Office Building  
Washington, DC 20515

Dear Chairman Chaffetz:

In response to your letter to the Acting Director of the U.S. Office of Personnel Management (OPM) on January 28, 2016, we are providing the information below relating to personnel actions, information technology policy, and contracting updates at OPM.

We have attached the following documents in response to your inquiries:

- Enclosure 1: OPM Response to House Oversight and Government Reform Letter January 2016

We take the Committee's interest in these matters seriously. If you need any further assistance in this matter, please do not hesitate to contact me at (202) 606-1300.

Sincerely,

A handwritten signature in black ink, appearing to read "Jason Levine".

Jason Levine  
Director  
Congressional, Legislative,  
and Intergovernmental Affairs

Enclosure

Cc: The Honorable Elijah E. Cummings  
Ranking Member

**OPM Response to House Oversight and Government Reform  
Enclosure (1) Letter January 2016**

**PERSONNEL**

**Whistleblower Protection/Contact with Congress**

1) What is the punishment in your agency for retaliating against a whistleblower?

OPM: OPM has not adopted any sort of table of penalties, and thus does not have a standard penalty for confirmed whistleblower retaliation. Each case is considered on its merits, as is required by law.

2) For each instance from Fiscal Year 2005 to Fiscal Year 2015 in which the Office of Special Counsel (OSC) made a finding of reprisal against one of your employees, please provide:

- o The date of OSC's finding;
- o The GS-level and job title of the individual who was retaliated against;
- o The GS-level and job title of the retaliator; and
- o What discipline, if any, your agency imposed against the retaliator, and the date such action was taken. If the ultimate disciplinary action taken was different than the disciplinary action proposed by the agency, please also provide the proposed disciplinary action and such action was proposed. If no disciplinary action was taken, please provide a detailed explanation of why.

OPM: OPM is not aware of any instance when the OSC made any finding of reprisal against an OPM employee from FY 2005 to FY 2015.

3) What specific policies do you have in place to inform employees of their rights as whistleblowers?

OPM: OPM's intranet site "THEO" contains easily-retrieved information on whistleblower protections and OPM's Policy on Prohibited Personnel Practices. The intranet site also advises employees of various means for seeking redress of complaints relating to whistleblowing, including contacting OPM's Human Resources office, filing a grievance under an applicable collective bargaining agreement, filing an appeal with the Merit Systems Protection Board, or filing a complaint with the OSC. In addition, the intranet site links to OSC's own website.

The OPM internet website ([www.opm.gov](http://www.opm.gov)) links to the website of the Office of the Special Counsel in a discussion of employee appeals at <https://www.opm.gov/policy-data-oversight/employee-relations/employee-rights-appeals/#url=Appeals>. It also links to the website of the OPM Office of Inspector General (OIG), which provides additional details about whistleblower rights and protections, and describes the availability of the OPM OIG Hotline for communicating complaints.

In addition, all employees receive an e-mail detailing their rights with regard to

**OPM Response to House Oversight and Government Reform  
Letter January 2016**

whistleblower protections when onboarding and, thereafter, on an annual basis.

- 4) How often do you require your employees to complete training on whistleblower protections?

OPM: Employees receive written and verbal notice concerning anti-discriminatory and whistleblower laws during "Newcomers Orientation"; completion of "No Fear" training is required within 30 days from their starting date.

- 5) OSC 2302(c) Certification Program

- Did your agency create a plan to complete the Office of Special Counsel's "2302(c) Certification Program" and post the plan on your agency website by June 1, 2014, as required by the White House?

OPM: Yes.

- Has your agency completed the program yet, as directed by the White House in February 2014? If not, why not?

OPM: Yes.

- 6) The Whistleblower Protection Enhancement Act of 2012 makes it a prohibited personnel practice to utilize any non-disclosure agreement that does not have specific text in the agreement regarding communications with Congress and inspector generals.

- Is your agency in compliance with these standards? If not, why not?

OPM: Yes.

- Please provide the Committee with all standard non-disclosure forms used by your agency.

OPM: OPM does not have standard non-disclosure forms.

- 7) What is your agency doing to support your inspector general's Whistleblower Ombudsperson program?

OPM: Through an email to new employees (and annually to all employees), OPM provides a link to online information about our OIG. Additionally, we provide the phone number to our OIG Hot Line and link to file a complaint online. Links to OIG are also provided on the OPM website.

**Tax Delinquent Status**

- 10) How many employees at your agency are currently delinquent on their taxes? Please provide this information by classification of employee (Executive Schedule, Senior Executive Service, General Schedule, and Federal Wage System) with both the total

**OPM Response to House Oversight and Government Reform  
Letter January 2016**

number for each class and the percentage for each class. (If current data is not available, please provide the available data for the most recent fiscal year.)

OPM: IRS provides an annual report to agencies indicating the percentage of employees who are delinquent on Federal taxes. As of September 30, 2015, 3.18% of OPM personnel had some type of Federal income tax delinquency. OPM does not have authority to inquire about the details of an individual employee's personal obligations, including tax obligations. Further, we lack the ability to compel the Internal Revenue Service (IRS) to share with us the information we would need to detect such non-compliance, and it is our understanding that the IRS is constrained in what it may release to other entities concerning a taxpayer's obligations.

11) How long has each employee maintained his/her delinquent tax status?

OPM: As noted above, we lack the requisite authority or information to respond to this question.

12) What internal controls does your agency have in place to ensure that all employees are tax compliant?

OPM: Each year upon the request of the Internal Revenue Service (IRS), OPM sends an annual email to all employees reminding them of their tax obligation and the tools available to help them meet these responsibilities.

13) What actions does your agency take against employees who are not tax compliant to ensure payment and compliance?

- Has your agency exercised these abilities and followed these steps in the past? If so, please describe how frequently it has been done.

OPM: Pursuant to the Office of Government Ethics Standards of Ethical Conduct for Employees of the Executive Branch, employees are obligated to "satisfy in good faith their obligations as citizens, including all just financial obligations, especially those – such as Federal, State, or local taxes – that are imposed by law." 5 C.F.R. § 2635.101(12). A failure to do so, if brought to our attention, could constitute an ethical violation and thus could serve as the basis for an adverse action.

14) Does your agency have any policies or incentive plans in place to ensure tax compliance?

OPM: Each year upon the request of the IRS, OPM sends an email to all employees reminding them of their tax obligation and the tools available to help them meet these responsibilities.

**Administrative Leave/Adverse Action**

15) In the past year, how many employees at your agency have been placed on administrative leave as a result of an ongoing investigation?

**OPM Response to House Oversight and Government Reform  
Letter January 2016**

OPM: Between April 1 2015 and March 31, 2016, OPM placed 17 employees on administrative leave as a result of ongoing investigations.

Of those, how many are currently on administrative leave as a result of an ongoing investigation? How long has each individual been on administrative leave?

OPM: Of those, 11 are currently on administrative leave as a result of an ongoing investigation. As of April 1, 2016, they have been on administrative leave for the following number of work days:

- 13 work days
- 15 work days
- 22 work days
- 30 work days
- 35 work days
- 119 work days
- 144 work days
- 144 work days
- 204 work days
- 212 work days
- 233 work days

Of those no longer on administrative leave, how long was each on administrative leave?

OPM: Each employee was on administrative leave for:

- 21 work days
- 24 work days
- 30 work days
- 34 work days
- 41 work days
- 119 work days

**POLICIES AND PROCEDURES**

**IT System**

16)What operating system does your agency use?

OPM: OPM utilizes a variety of Linux and Windows operating systems. The OPM mainframe operating system is z/OS 2.1.

17)How much does your agency spend annually on maintaining information technology systems?



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OPM: OPM's IT investment portfolio for operations and maintenance (O & M), as reported to the Office of Management and Budget (OMB), are listed below. This information is publically available at [www.itdashboard.gov](http://www.itdashboard.gov).

Year	Total O&M Costs
FY2015	\$257,943,737
FY2016	\$310,070,000
FY2017	\$312,297,866

18) How often does the head of your agency meet with the agency's chief information officer and chief information security officer?

OPM: Both officers meet with the OPM Acting Director regularly, both individually to discuss information technology issues, and as part of a group discussing larger OPM policies.

19) Have you had a penetration test done on your network in the last year?

OPM: Yes.

If yes, how long were the white hat hackers were in the agency's network before they were discovered?

OPM: They were discovered within 10 minutes. Numerous exceptions had to be put in place to allow the "white hat hackers" to perform operations on the network.

**Freedom of Information Act**

20) The President issued a memorandum in 2009 directing agencies to adopt a presumption of openness. Has your agency adopted a presumption of openness?

OPM: Yes.

If so, how has that changed Freedom of Information Act (FOIA) operations at your agency?

OPM: OPM has adopted a presumption of openness. Our annual, mandated FOIA training, internal FOIA Council meetings, and one-on-one meetings with program office staff and FOIA points of contact are opportunities that are used to promote transparency and open government in the disclosure of our records and data responsive to our FOIA requests. OPM's FOIA policy and internal training emphasizes the need to review all responsive records in order to consider whether making discretionary releases is appropriate. We seek areas for making discretionary disclosures, wherever possible, without causing a violation of an individual's personal privacy rights under FOIA or the Privacy Act or disclosing personally identifiable information (PII). OPM also continues to proactively put more information on the web.

**OPM Response to House Oversight and Government Reform  
Letter January 2016**

Can you provide some examples of records that have been released since your agency adopted this presumption of openness that you would not have otherwise released?

OPM: Due to the nature of OPM's functions in dealing with human resource policies and procedures as well as providing background investigations for most Federal agencies and military services, disclosures are difficult as the majority of our records contain the PII of current and former Federal employees. In working with human resources staff, general information found within application packages such as application questions, form information, and other generic information which had formerly been withheld is now being disclosed.

21) How does your agency apply the presumption of openness to the deliberative process privilege when responding to FOIA requests?

OPM: OPM reviews its records on a case-by-case basis when applying the deliberative process privilege to responsive records. Program offices are strongly encouraged to disclose as much information as possible in keeping with openness and transparency.

22) How does the agency determine that records need to be withheld under deliberative process privilege?

OPM: Records responsive to a FOIA request are reviewed on a case-by-case basis as to what should be withheld or disclosed and what exemptions are applicable. Consideration for discretionary and proactive disclosure is also given. For additional information, please see "Section I: Steps Taken to Apply the Presumption of Openness" in OPM's Chief FOIA Officer's Report for FY 2016: <https://www.opm.gov/information-management/freedom-of-information-act/reports/chief-foia-officer-report-fy2016.pdf>

23) How much training did your agency's FOIA staff receive in the past year?

OPM: Approximately 90% of the FOIA Team, FOIA points of contact, and other FOIA professionals attended substantive FOIA training throughout the year. Training was inclusive of the annual mandated agency-wide FOIA and Privacy Act training. Members of the FOIA team attended the Advanced FOIA training for Attorneys and Access Professionals and one of the "Best Practices" workshops. The FOIA Team attended OPM's "Art of Customer Service" and "Handling Difficult Customers" courses further enhancing the Team's customer service skills as FOIA professionals. The Team also attended "IT Cybersecurity Training" which provided substantial insight into the protection and securing of personally identifiable information (PII) and the handling of all PII records.

24) How much training do employees agency-wide receive on FOIA and federal record responsibilities?

OPM: As stated above, approximately, 90% of the FOIA Team and FOIA POCs and other FOIA professionals attended substantive FOIA training throughout the

**OPM Response to House Oversight and Government Reform  
Letter January 2016**

past year. Basic Records Management training is included in the annual IT Security and Privacy training that is mandatory for all employees and contractors within the agency. In addition to the mandatory training, as part of the Sunshine Week outreach program, FOIA training is available to all employees that wish to participate, often with Open Government and records management program participation. Also, as part of Sunshine Week, records management, FOIA and Open Government have a one day promotion activity in which all OPM employees are encouraged to ask questions and learn more about the programs.

**DATA Act Questions**

25) What is the agency's progress on DATA Act implementation?

OPM: OPM is showing progress in implementing the DATA Act. We have actively participated in the working groups and information sessions with the Department of Treasury (Treasury), the Office of Management and Budget (OMB) and other federal agencies. Recent actions include the following:

- We have completed our analysis of the required data elements, and created data crosswalks back to our existing systems / information sources.
- Testing is underway to enable us to implement the Oracle patch to enable object class reporting from our primary financial system.
- We have critically evaluated the approved Reporting Submission Specification

26) Have you fully mapped the data required by Treasury and the Office of Management and Budget?

OPM: OPM has completed the required mapping to each of the two versions of data schema provided by Treasury and OMB. We plan to revise our data maps as necessary once the final data element listing is released.

27) Do you expect to be fully compliant by May 2017? If not, why not?

OPM: OPM is working towards compliance with the DATA Act and will continually assess the ability to meet deadlines based on available resources.

28) How does the agency plan to use the data being produced through this DATA Act effort to improve efficiency and decision-making?

OPM: While it is likely that the greatest use of the data produced by the DATA Act will be for external purposes, we have already found that the implementation process has provided opportunities to reevaluate processes. Additionally OMB and Treasury have employed a collaborative, government wide approach that has allowed us to meet the requirements more efficiently and with less redundancy than had each agency been left to devise and implement a unique approach.

**OPM Response to House Oversight and Government Reform  
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29) How much has the agency spent on DATA Act implementation? Why?

OPM: To date spending has been through the use of onboard government FTE. These FTE costs are estimated at approximately \$30K. Current estimates show that there will be contractual costs in FY 2017 of approximately \$1 million.

**Federal Records Act Compliance**

30) In the last 5 years, have there been any violations or allegations of violations of the Federal Records Act? If so, please provide a list describing each, along with the date of allegation or violation.

OPM: Yes. Violations and non-compliance issues with respect to Records Management have been accurately reported in the most recent annual Records Management Self-Assessment submitted to the National Archives and Records Administration and to the Government Accountability Office. OPM scored a 74% on the Self-Assessment and is currently in the process of securing additional information management resources, updating policies, developing training to educate employees, and preparing to update record schedules in every agency program office. The full results of the Self-Assessment will be available on the NARA website in the coming months and we look forward to working with you on this issue at that time.

31) Does the agency still use a "print-to-file" records retention system?

OPM: Yes, partially.

- If so, are you planning to transition to an electronic system? When?

OPM: The majority of OPM's record schedules are based on record schedules from the Civil Service Commission, which relied on paper-only schedules. Our goal is to update the record schedules across OPM to properly reflect our modern organization and promote a media-neutral records environment. Once these record schedules are up to date, OPM will move into a more electronic system-centric management of our records assets. The records management program is currently rescheduling program offices, moving toward this goal.

- If not, when did you change?

OPM: Some of our major records assets, including the Official Personnel Folder, moved into the electronic environment in the mid-2000s. This system, eOPF, contains some records management functionality.

**OPM Response to House Oversight and Government Reform  
Letter January 2016**

32) When did the agency last update its Federal Records Act guidance regulations and policy?

OPM: Our records management policy was updated in January 2014. However, because this policy still reflects a largely paper-based records management environment, OPM's Information Management Division is in the process of updating all of the policies and guidance related to the Federal Records Act. Once complete, the policies and guidance will:

- (1) Reflect the 2014 Amendments to the Federal Records Act,
- (2) Better reflect the roles and responsibilities of agency leadership and individual employees towards records management compliance, and
- (3) Bring the focus of records management to a media-neutral environment.

**CONTRACTING**

**Strategic Sourcing**

33) Please describe your agency's strategic sourcing plan.

OPM: In FY13 the agency initiated its efforts to enhance the acquisition process through strategic sourcing. An agency-wide blanket purchase agreement for office supplies was awarded to a small business through the General Services Administration Federal Strategic Sourcing Initiative. Additional strategic sourcing efforts have been initiated, while several others are in development with program office support.

34) When did you begin implementing this plan?

OPM: Initial agency strategic sourcing efforts referenced above began being implemented in FY13.

35) How much has your agency realized in terms of cost savings since implementing the agency strategic sourcing plan?

OPM: OPM has realized cost savings as a result of the implementation of our strategic sourcing plan, however the total amount has proven difficult to quantify. Although we are able to calculate savings associated with unit price reductions, ancillary administrative efforts (for example, the reduction of contract administration efforts through the consolidation of common requirements) are not as easily measured. Planning efforts are ongoing to further align requirements within the agency and to strategically source those efforts where applicable, which in turn will eliminate duplicative contracts.

- What specific actions has your agency taken to eliminate duplicative contracts?

OPM: Examples of actions taken at OPM to eliminate duplicative contracts:

- Strategically sourcing office supplies, referenced above;

**OPM Response to House Oversight and Government Reform  
Letter January 2016**

- Ongoing efforts to create common standards for copiers, printers, and wireless services across the agency;
- Supporting the agency in its role as category manager (category management is the newest title for strategic sourcing) of the human capital and training services requirement across the federal government. Over time this will support not only the critical consolidation of human capital and training requirements as well as the reduction in contract duplication within the agency but also across the federal government.

**Software Licenses**

36) Does your agency have a complete inventory of software licenses? If not, when will this be complete?

OPM: OPM has implemented a number of tools that scan the network to identify databases, and hardware and software.

In addition, OPM recently acquired an enterprise architecture repository tool which OPM is using to maintain the authoritative inventory of applications in the OPM environment. We are currently developing a comprehensive asset management process and we plan to pilot new asset management procedures for software licenses in FY17.

37) Who is accountable for this tracking and maintaining this inventory?

OPM: The staff of the Office of the Chief Information Officer.

38) Does your agency centrally manage software licenses?

OPM: Currently OPM's software inventory management is decentralized. However, in accordance with the Information Technology Infrastructure Library framework, centralization of these licenses will begin in FY17.

**Cloud Computing**

39) In Fiscal Year 2015, what percentage of your IT budget was spent on cloud computing?

OPM: OPM's total FY2015 IT budget (agency funding and contributions) is \$380,313,934. Please see the table below for further details:

FY2015		
Total IT	Total Cloud Spend	Percent
\$380,313,934	\$10,114,000	2.66%

**OPM Response to House Oversight and Government Reform  
Letter January 2016**

40) In Fiscal Year 2016, what percentage of your IT budget do you plan to spend on cloud computing?

OPM: OPM's total FY2016 IT budget (agency funding and contributions) is \$371,730,000. Please see the table below for further details:

FY2016		
Total IT	Total Cloud Spend	Percent
\$371,730,000	\$9,934,000	2.67%

**Acquisition Personnel**

41) Has your agency used any specialized or direct hiring authorities to hire acquisition professionals?

OPM: To the best of our knowledge, the agency has not used direct hiring authorities to hire acquisition professionals. The agency has over the last fiscal year secured support through the hiring of reemployed annuitants. In making such hires, OPM has made use of an authority to offer salary offset waivers arising from section 1122 of the National Defense Authorization Act for Fiscal Year 2010 (P.L. 111-84), as extended by the National Defense Authorization Act for Fiscal Year 2015.

42) How many individuals have been hired using these authorities?

OPM: Two re-employed annuitants have been brought on in support of the OPM, Office of Procurement Operations over the last fiscal year.

43) How many contracting officers (1102s) does your agency have?

OPM: Currently the agency has 17 warranted § 1102 contracting officers.

44) How many contracting officer representatives does your agency have?

OPM: Currently the agency has 144 certified contracting officer representatives.

45) Has your agency established a specialized IT acquisition group? How many individuals are in this group?

OPM: OPM's Office of Procurement Operations has a specialized IT acquisition group. The team is currently comprised of 9 individuals.

**OPM Response to House Oversight and Government Reform  
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**Cost Overruns/Schedule Delays**

46) What acquisition policies/procedures does your agency have in place to limit cost overruns and schedule delays?

OPM: The agency has established policy guidance to limit cost overruns and schedule delays. For example, to help develop well defined requirements packages and pricing schedules, a formal review and approval policy is in place incorporating critical reviews from senior contracting staff, small business, acquisition policy, and general counsel. For those higher value more complex requirements a contract review board process is also in place, folding in the above team members in a more formal setting to achieve critical milestones in the procurement process. Additionally, contracting officer's representative (COR) policy is established within the agency which emphasizes those responsibilities associated with tracking performance, acceptance of deliverables, and the payment of invoices. This guidance encourages well-defined requirements are in place and that proper administration is conducted encouraging limited cost overruns and schedule delays.

47) How many major IT investments experienced cost overruns or schedule delays?

OPM: The following major IT Investments experienced cost overruns or schedule delays since FY 2014:

**Major Investment = Enterprise Migration to Infrastructure-as-a-Service (IaaS)**

- **Project = FY2015 Infrastructure-as-a-Service:** Experienced a schedule overrun in December 2015.

48) Please describe the circumstances of these cost overruns/delays and how the agency addressed these issues?

OPM: The late appropriation of FY16 funds caused extension to the completion date.

**Contracting Numbers**

49) How many contract actions did your agency complete in the last fiscal year?

- How does this compare with the previous fiscal year?
- What percentage of these contract actions are for services? Goods?
- What is the total value of your agency contract actions in the last fiscal year?
  - How does this compare with the previous fiscal year?
- How many of these contracts were awarded in the fourth quarter of the fiscal year?
- How many of these contracts were: <sup>B</sup> Firm fixed price (FFP)
  - Cost reimbursement



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- Incentive contracts (FFP-incentive or award fees; cost reimbursement-incentive or award fees)?

OPM: Based on publicly available Federal Procurement Data System (FPDS) data, the agency completed 2,901 contract actions last fiscal year. The agency completed 3,587 actions in FY14. Out of the 2,901 actions 85% were for services and 15% were for goods. Based on publicly available FPDS data, the agency obligated \$921M last fiscal year. The agency obligated \$1.03B in FY14. Out of the 2,901 actions 28% were awarded in the fourth quarter of the fiscal year and the breakdown of contract type is as follows: 2,745 firm fixed price; two cost reimbursement; one incentive.

- 50) How many sole source contract awards did your agency make in the last fiscal year?
- Please describe the exception to competition used to justify the sole source awards.

OPM: The agency awarded 377 sole source contracts last fiscal year. Authorities used to execute the above referenced sole source awards included:

- FAR 6.302-1 or FAR 8.405-6(a)(1)(B) Only one responsible source;
- 6.302-2 or FAR 8.405-6(a)(1)(A) unusual and compelling urgency;
- 6.302-5 authorized or required by statute;
- FAR 8.405-6(a)(1)(C) in the interest of economy and efficiency, new work is a logical follow-on to the original Federal Supply Schedule order; and
- FAR 16.505(b)(2) exceptions to fair opportunity.

- 51) How many requests for equitable adjustment (REAs) did your agency consider in the last fiscal year?

- 36) What is the total value of unresolved REAs?
- 37) How many were resolved via negotiations?
- 38) How many REAs were caused by a change in government requirements?
- 39) How many REAs were ultimately litigated at the board of contract appeals?
- 40) What is the total value claim exposure for your agency?

OPM: The agency considered two REAs last fiscal year, both of which were resolved through negotiations. One REA was considered by the agency last fiscal year which was caused by a change in Government requirements. Zero REAs considered by the agency last fiscal year were litigated at the board of contract appeals. The agency's total value of claim exposure is \$0.

- 52) How many agency protests did your agency have in the last fiscal year?

- 41) How many were resolved in favor of the agency?
- 42) How many were resolved in favor of the contractor?

OPM: The agency received one agency level protest last fiscal year which was resolved in favor of the agency.

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53) How many protests at GAO in the last fiscal year?

43) How many were sustained?

44) How many were denied?

OPM: The agency received zero GAO level protests last fiscal year.

54) How many protests at the Court of Federal Claims in the last fiscal year for your agency contract actions?

45) How many were resolved in favor of the agency?

46) How many were resolved in favor of the contractor?

OPM: The agency received zero Court of Federal Claims level protests last fiscal year.

