

January 27, 2010

By e-mail

Aneesh Chopra, Federal Chief Technology Officer

By e-mail

Vivek Kundra, Federal Chief Information Officer

By e-mail

Beth Noveck, Deputy Chief Technology Officer
Office of Science and Technology Policy,
Office of Management and Budget

RE: Freedom of Information Act Components of the Open Government Dashboard

Dear Messrs. Chopra, Kundra and Ms. Noveck:

We understand the Administration plans to announce an Open Government Dashboard on www.whitehouse.gov/open by February 6, 2010. We are writing to urge you to include a Freedom of Information Act (FOIA) component as part of that effort. Given the fundamental contribution that the FOIA makes to transparent government, the ready access to concrete data about agency FOIA performance, and the opportunity to improve FOIA administration, FOIA should be a significant part of any federal open government dashboard. We believe this is a high priority as it will send a signal to agencies that they are to be held accountable for reducing FOIA backlogs, as well as implementing the presumption in favor of disclosure.

The purpose of the Dashboard is to “make available each agency’s Open Government Plan, together with aggregate statistics and visualizations designed to provide an assessment of the state of open government in the Executive Branch and progress over time toward meeting the deadlines for action outlined in” the Open Government Directive issued by Peter Orszag, Director of the Office of Management and Budget, on December 8, 2009.

As we are sure you appreciate, the FOIA is at the core of the public’s right to know what the government is doing. The FOIA cannot be dismantled as administrations change and, for 43 years, it has been the public’s only enforceable tool to request information from the government. Moreover, the FOIA is a component of the Open Government Initiative; it is referenced in the Directive’s introductory language and in the requirement that agency Open Government Plans report on FOIA matters, including progress at handling backlogged requests. Thus, data about agency compliance with the FOIA should be part of the Dashboard’s measures of the state of open government in the Executive Branch.

FOIA data is particularly useful for measuring success and progress because it is routinely collected and reported by agencies, is concrete and identical in nature at every agency, and its value does not depend on qualitative judgments. FOIA data also permits meaningful comparisons in a way that may prove more challenging with other Open

Government Directive data. FOIA data going back several years is available today and new FOIA data for Fiscal Year 2009 will become available throughout the month of February 2010.

In determining which FOIA data should be included in the Dashboard, we urge you initially to consider that one of the public's greatest interests is in knowing whether agencies are processing FOIA requests as required by the law. The FOIA is a fairly straightforward statute that most fundamentally requires agencies to respond to information requests within 20 business days. Accordingly, the timeliness of agency responses provides an example of an important, understandable, and concrete measure of agency compliance with the law.

To assess timeliness, it is important to look at a few specific data points:

- (1) The volume of FOIA requests and administrative appeals made each year.
- (2) The ten oldest pending FOIA requests and appeals at the end of the year. This data is valuable because aggregate, average and median processing time data masks the extent of the delays at some agencies.
- (3) The agency's backlog measured by the number of days the agency will take to process pending cases given the number of cases the agency was able to process the previous year.
- (4) The average processing time for FOIA requests and appeals.¹
- (5) The number of requests still pending at the end of the year.
- (6) Backlog reduction goal, stated as a percent of the backlog or as a number of pending requests.

In addition, the impact of changes in FOIA policy is an important matter for members of the public who applauded the restoration of a presumption in favor of disclosure by the Obama Administration. To assess agencies' commitment to the presumption of openness and their greater willingness to release records, the following data points are useful:

- (1) The number of records released in full, as a proportion of the number of records found responsive to requests.
- (2) The number of records released in part, as a proportion of the number of records found responsive to requests.
- (3) The number of records denied in full, as a proportion of the number of records found responsive to requests.
- (4) The number of administrative appeals that resulted in a change in the agency's determination and the total number of administrative appeals filed.

Each of these data points should be presented alongside the prior year's statistics on an agency-by-agency and government-wide basis. At the same time, the Dashboard should make available each agency's complete annual FOIA report from 1996 to the present in identical, machine readable, searchable formats. Moreover, the Dashboard should permit users to group agencies by like characteristics for comparison.

¹ This data point may need to be refined to separate simple and complex queues at agencies.

Beyond the Open Government Dashboard, the Department of Justice, working with the Office of Management and Budget and the Office of Government Information Services, should launch an effort to standardize the format of and improve the quality of agencies' annual FOIA reports. The improved data should then be fed directly into the Dashboard and permit detailed agency-by-agency comparison on a wider range of FOIA processing matters. This more detailed Dashboard would enable a closer look at specific types of problems within agencies, such as how the agencies handle training, electronic reading rooms, and mediation.

Ultimately, the Dashboard should provide both transactional analysis of agency FOIA activities and outcome performance measures. Achieving these objectives will take a longer period of time and may require collecting new information from agencies.

We would appreciate the opportunity to discuss this matter in greater detail. Please contact Meredith Fuchs, National Security Archive, (202-994-7059 / mfuchs@gwu.edu) to coordinate a discussion with the signatories to this letter.

Thank you for your consideration of these matters.

Sincerely,

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Submitted to www.whitehouse.gov/open