

April 3, 2012

Tony West, Acting Associate Attorney General
US Department of Justice
950 Pennsylvania Avenue, NW
Washington, DC 20530-0001

Dear Mr. West:

On behalf of the undersigned organizations concerned with government openness and accountability, we are writing to urge you to clarify issues raised by the Department of Justice's (DOJ) recent public notice of proposed modifications to its Privacy Act and Freedom of Information Act system of records (CPCLO Order No. 004-2012) (77 FR 16066; March 19, 2012).

The notice made several references to the Office of Information Policy (OIP) serving as "Ombudsman" in disputes between federal agencies and individuals who submit requests under the Freedom of Information Act (FOIA). This is a role given by statute to the Office of Government Information Services (OGIS). We are pleased the Department has issued statements clarifying the scope of its role as limited to compliance inquiries. Nevertheless, questions remain regarding how OIP defines "compliance inquiries" and the actions it takes in response to such inquiries.

As you know, Congress passed an amendment to the FOIA, the Open Government Act of 2007, establishing the OGIS within the National Archives and Records Administration (NARA) to act as the FOIA Ombudsman. Congress specifically deflected an attempt by the Bush Administration to defund OGIS and set up the functionality within the Department of Justice. As Senator Leahy explained,

When Senator Cornyn and I drafted the OPEN Government Act, we intentionally placed this critical office in the National Archives, so that OGIS would be free from the influence of the Federal agency that litigates FOIA disputes – the Department of Justice.

Given the language of the statute and its legislative history, OIP should limit any assistance to resolving disputes within DOJ involving DOJ components, and leave all other agencies and disputes to OGIS. Intervening to resolve specific questions or concerns regarding specific FOIA requests made to agencies other than DOJ creates unnecessary confusion with agencies and requesters alike regarding how federal FOIA disputes should be handled, and undermines OGIS's authority as the legislatively recognized FOIA ombudsman.

We urge you to clarify how OIP defines "compliance inquiries" and explain how OIP's response to such requests differs from that as an "ombudsman." To discuss this issue in greater detail, please contact Patrice McDermott, Executive Director of OpenTheGovernment.org at pmcdermott@openthegovernment.org or 202-332-6736.

Sincerely,

Citizens for Responsibility and Ethics in Washington – CREW
Electronic Privacy Information Center - EPIC

National Security Archive
OMB Watch
OpenTheGovernment.org
Project On Government Oversight – POGO

cc: Senator Patrick Leahy
Senator John Cornyn