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FOIA: EXAMINING TRANSPARENCY UNDER THE TRUMP ADMINISTRATION

HEARING

BEFORE THE

COMMITTEE ON OVERSIGHT AND REFORM HOUSE OF REPRESENTATIVES

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FOIA: EXAMINING TRANSPARENCY UNDER THE TRUMP ADMINISTRATION

Wednesday, March 13, 2019

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

The committee met, pursuant to notice, at 10:03 a.m., in room 2154, Rayburn House Office Building, Hon. Elijah Cummings presiding.

Present: Representatives Cummings, Maloney, Lynch, Connolly, Krishnamoorthi, Rouda, Hill, Wasserman Schultz, Sarbanes, Welch, Speier, Kelly, DeSaulnier, Plaskett, Gomez, Ocasio-Cortez, Pressley, Tlaib, Jordan, Amash, Gosar, Foxx, Meadows, Hice, Grothman, Comer, Cloud, Gibbs, Higgins, Miller, Armstrong, and Steube.

Chairman CUMMINGS. The committee will come to order.

Without objection, the Chair is authorized to declare a recess of the committee at any time.

The full committee hearing is convening to examine the compliance of Federal agencies with FOIA.

I now recognize myself for five minutes to give an opening statement.

The committee is holding this hearing on transparency under the Trump Administration during Sunshine Week. Sunshine Week is the time each year when we focus on the need for greater transparency in our government.

In 1966, Congress enacted the Freedom of Information Act so the American people could better understand the decisions being made by their government. FOIA is also critical to understanding who is influencing those decisions and how those decisions will affect their daily lives.

Today, we will hear from Ms. Melanie Pustay, the Director of the Office of Information Policy at the Department of Justice. DOJ is responsible for carrying out FOIA implementation across the executive branch. In my opinion, DOJ needs to do a much, much better job because we are seeing far too much information being delayed and even withheld.

Earlier this week, during a Sunshine Week kickoff event, Jesse Panuccio, the Principal Deputy Associate Attorney General and Chief FOIA Officer for DOJ, said this during a speech, and I quote: "Unfortunately, as with everything in life, there are excesses, and there are excesses that strain the system. Some groups have turned FOIA into a means of generating attorneys' fees or of attempting to shut down policymaking," end of quote.

This statement is deeply troubling. This sounds like DOJ is framing requests for information as obstructions. The Trump Administration should be operating with a presumption of openness, as the law now requires, rather than maligning FOIA requesters who are simply seeking the truth.

We also will hear today from the Acting Director of the National FOIA Office for the Environmental Protection Agency, Tim Epp. Last year, our committee uncovered troubling issues with the way EPA was responding to FOIA requests in an investigation of former Administrator Scott Pruitt and his senior staff.

The Chief of Staff stated during a transcribed interview with our committee staff that EPA staff were referring, and I quote, "politically charged" FOIA requests to political appointees for review. He also explained that certain requests were being deliberately delayed. Today, we will investigate whether these tactics are still being used.

Finally, also testifying today is the Acting Deputy Chief FOIA Officer from the Department of the Interior, Rachel Spector. On December 28th, during the government shutdown, the Department proposed a new rule that would make it harder for requesters to obtain information.

Last week, I sent a letter to the Acting Secretary raising concerns about the proposed rule, and I was joined by Senator Patrick Leahy, Senator Chuck Grassley, and Senator John Cornyn.

That letter, as you can see, was bipartisan, and oversight of FOIA compliance should always be bipartisan.

In 2013, when I was the Ranking Member of this committee, I worked with our Republican chairman at the time, Darrell Issa, to introduce a FOIA reform bill. For three long, hard years, we worked together to advance this bipartisan bill through the Congress. And then, with the help of Senator Cornyn and Senator Leahy, we got it over the finish line. President Obama signed the FOIA Improvement Act into law in 2016. I am grateful to the many members of this committee who sponsored the legislation, including my Republican colleagues, Mr. Hice from Georgia and Mr. Gosar from Arizona.

The FOIA Improvement Act is a prime example of how Members of Congress from both parties can work together to achieve positive results for the American people.

The law made a lot of important changes, but the Trump Administration, unfortunately, is failing to fully comply with the requirements of the new law.

Some agencies, including EPA, have not updated their regulations. Other agencies still have not published data on FOIA compliance for the year 2018. The Department of the Interior did release its data online, but it shows that the Department proactively disclosed 58 percent less data than the last full year of the Obama Administration.

I know that there are FOIA officers across the executive branch watching this hearing this morning. I want to say to them that I know you need more resources and more support for the work you do. So let me be clear. This hearing will not be the end of our work as a committee on these issues. We will fight to bring greater transparency to all operations of our government.

And with that, I yield to the distinguished ranking member of this committee, Mr. Jordan.

Mr. JORDAN. Thank you, Mr. Chairman, for calling this hearing to examine government transparency during the week in which we are promoting open and transparent government, Sunshine Week.

Nothing holds a government more accountable than making its actions open and transparent to the American taxpayer. Transparency is the lifeblood of an informed democracy.

Essential to this precept is the Freedom of Information Act, which gives the public a tool to gain insight into how their government functions. FOIA's promise of openness is central to this committee's mission of increasing transparency throughout the Federal Government. It is not hard to make a FOIA request, but navigating the FOIA process is complicated, and it varies across government agencies.

In responding to a FOIA request, each agency has its own set of standards, which may or may not be updated to reflect current law. The FOIA law requires documents to be released unless those documents fall into the exemptions outlined in the statute.

In large part, FOIA's efficacy is limited by the responsiveness of the agency that receives and processes the request. It is our job here in Congress to ensure agencies are following the law when it comes to FOIA. Congress intended for FOIA to increase accountability by giving taxpayers a view into the inner workings of their government. FOIA compliance has not come easily for many agencies. Issues with agency FOIA compliance did not begin, though, during the Trump Administration. Although President Obama pledged to have the most transparent administration in history, his administration had several notable FOIA-related problems.

Under President Obama, agencies changed FOIA regulations, implemented new policies, abused the exemptions, refused to produce responsive records, and struggled with overall FOIA compliance.

The Trump Administration has received an unprecedented number of FOIA requests. This is important. The numbers went up for the Trump Administration.

A major reason for the increases at EPA and other agencies is that former Obama and Clinton staffers, acting under the guise of being transparent organizations, are being paid by the Tom Steyers of the world to harass the executive branch now that it is in Republican control.

For example, American Oversight, which is led by Austin Evers, who oversaw FOIA-related matters at the State Department under President Obama, admits on its website, and I quote: "American Oversight is filing FOIAs and lawsuits that mirror the document requests sent by the chairs and ranking members of key congressional committees. With the House of Representatives poised to begin conducting aggressive oversight, we will be able to go to court to force the release of these records."

During Fiscal Year 2017, according to the Office of Information Policy, the government received a record high of over 818,000 FOIA requests. Even with this unprecedented level of requests, many agencies reduced their FOIA backlogs. According to OIP, even those agencies who did report an increase in their FOIA request

backlog made impressive efforts to increase the number of requests processed.

Nonetheless, this is an important duty for Congress to ensure that when it comes to FOIA, agencies are following the law.

I want to thank our panel of witnesses for being here today, and I look forward to hearing from all of you about your experiences with FOIA, the efforts your agencies are making to comply with the spirit of our law, and any suggestions you might have to ensure disclosure of information is timely, accurate, and routine.

With that, Mr. Chairman, I yield back.

Chairman CUMMINGS. I want to thank the gentleman for his statement.

With that, I now want to welcome our witnesses for today's hearing.

Ms. Melanie Pustay?

Ms. PUSTAY. Pustay.

Chairman CUMMINGS. Say it again.

Ms. PUSTAY. Pustay.

Chairman CUMMINGS. Okay, I like that.

[Laughter.]

Ms. PUSTAY. I think I do, too.

[Laughter.]

Chairman CUMMINGS. And you are the Director of the Office of Information Policy, U.S. Department of Justice.

Mr. Timothy Epp is the Acting Director of the National FOIA Office at the Environmental Protection Agency.

Ms. Rachel Spector is the Acting Deputy Chief FOIA Officer for the Department of the Interior.

Thank you all for participating in today's hearing.

If you all would please rise, I would begin to swear you in, and would you raise your right hand.

[Witnesses sworn.]

Chairman CUMMINGS. You may be seated.

Let the record show that the witnesses answered in the affirmative.

To our witnesses, the microphones are sensitive, so please speak directly into them.

Without objection, your written statements will be made a part of the record.

With that, Ms. Pustay, you are now recognized to give an oral presentation of five minutes, and I would ask that you try to limit your comments. I try to be fair and liberal. I know you want to get stuff out, statements out, but keep in mind that we do have your entire statement. So if you would be kind enough to summarize? Okay, thank you very much. Keep your voice up.

STATEMENT OF MELANIE ANN PUSTAY, DIRECTOR, OFFICE OF INFORMATION POLICY, U.S. DEPARTMENT OF JUSTICE

Ms. PUSTAY. Good morning again, Chairman Cummings, Ranking Member Jordan, and members of the committee. I am pleased to be here today to discuss the Freedom of Information Act and the Department of Justice's ongoing efforts to ensure compliance with the statute.

My office has undertaken a range of initiatives designed to assist agencies in improving their FOIA administration, and today I am pleased to highlight some of those efforts.

Just last month, OIP issued comprehensive guidance to agencies on adjudicating administrative appeals under the FOIA. As one of the agencies that receives and processes the most FOIA appeals across the government, we have seen firsthand the positive benefits that a robust administrative appeals process can have for both agencies and requesters.

For a requester, the FOIA administrative appeals process provides a simple-to-use mechanism to seek review of the initial action taken on a request. That, in turn, increases their confidence in the FOIA process.

For agencies, an effective appeals process provides an opportunity to review and reevaluate, if necessary, the initial action taken on a request to provide clarification, correct any mistakes, and thereby obviate unnecessary judicial review.

Now, while the administrative appeals process offers a formal mechanism for requesters to seek a second review of the action taken on their request, agencies often interact with the public in more informal ways through their FOIA requester service centers and their FOIA public liaisons. In June 2018, OIP issued guidance to agencies that addresses the importance of quality requester services as agencies engage with the public during all stages of the FOIA process.

Now, overseeing all of the agencies' FOIA operations are agency Chief FOIA Officers. DOJ's FOIA guidelines have long held that improving FOIA performance requires the active participation of agency Chief FOIA Officers. The Department addressed this critical aspect of FOIA administration by issuing a memorandum in January that emphasized the significant role of the Chief FOIA Officer and the importance of ensuring that this position is properly designated at the assistant secretary level or equivalent, as is required by law.

We also required agencies to report on whether their designations meet the statutory requirement in their 2019 Chief FOIA Officer reports.

Now, in addition to providing guidance to agencies, the Department firmly believes that training is fundamental to any successful FOIA program. Such training helps ensure that the law is properly and consistently implemented across the government. As part of our efforts to encourage governmentwide compliance with the FOIA, every year experts from my office provide training to thousands of FOIA professionals across the government. We also hold best practices workshops so that we can share successful strategies and approaches to FOIA administration.

The Department's FOIA guidelines stress that every agency must be accountable for their FOIA administration, and we engage in a number of efforts to keep agencies accountable, and also to help them move forward in their administration of the FOIA.

Every year, OIP issues reporting requirements for agencies that focus on five key areas, including proactive disclosures, use of technology, and timeliness in responding to requests. We conduct a detailed review and assessment of agencies' progress. We score agen-

cies on a variety of milestones, providing a visual snapshot of the progress being made in areas in need of improvement.

I would like to take a minute to highlight one of our major initiatives. As you know, the FOIA Improvement Act included a requirement that DOJ and OMB ensure the operation of a consolidated online request portal that allows members of the public to submit a request to any agency from a single website. Last March, we were very pleased to go live with our first iteration of the National FOIA Portal, which resides on *FOIA.gov*. Since the release of the portal, *FOIA.gov* has received over a million page views, and 9,000 requests have been transmitted through the portal.

Building on this achievement, last month DOJ and OMB issued joint guidance to agencies on becoming fully interoperable with the portal. The directive also requires agencies to regularly update their *FOIA.gov* accounts and to annually certify to DOJ that they have done so. We are very pleased with the positive feedback that the National FOIA Portal has received from both the public and the agencies, and we look forward to continuing to make improvements to that site.

Now, we believe that every request is important. And yet, with finite resources and an ever-increasing volume of complex requests, the challenges that many agencies face and the strain on the system can be substantial. OIP is fully committed to its responsibility of encouraging governmentwide compliance with the FOIA. We will continue to guide and train agencies to share best practices and explore IT innovations, all to help agencies meet the FOIA challenges of today.

Thank you.

Chairman CUMMINGS. Thank you very, very much.

Ms. Spector?

STATEMENT OF RACHEL SPECTOR, ACTING DEPUTY CHIEF, FREEDOM OF INFORMATION ACT OFFICER, U.S. DEPARTMENT OF THE INTERIOR

Ms. SPECTOR. Chairman Cummings, Ranking Member Jordan, members of the committee, thank you for the opportunity to appear before you today. My name is Rachel Spector, and I am the Deputy Chief Freedom of Information Officer in the Office of the Solicitor at the Department of the Interior, a newly created position that I have held for the past two months.

I have worked in public service the majority of my life, beginning with my employment as a legislative assistant to Congressman Dave Obey for almost eight years. I left that position to attend law school and returned to public service when I joined the Solicitor's Office at Interior in 2002.

For most of my career in the Solicitor's Office I have worked in the division that provides legal services on core administrative law matters, including the FOIA. During my 17-year tenure at Interior, I proudly served as a career public servant to both Republican and Democratic administrations, assisting the Department to pursue its great mission in a lawful manner.

The Department's FOIA offices have experienced a 30 percent increase overall in the volume of incoming FOIA requests since Fiscal Year 2016. The FOIA office for the Office of the Secretary has been hit especially hard, experiencing a 210 percent increase.

Because many of the Department's FOIA offices are unable to timely respond to the increased volume of requests, the Department has also experienced an unprecedented increase in FOIA litigation in which requesters are not suing the Department because it allegedly withheld documents that are subject to release under the FOIA but simply because requesters have not received timely responses to their requests.

The surge in FOIA litigation further hobbles the ability of FOIA processors to do their work in a timely and equitable manner because the litigated requests typically jump to the head of the queue ahead of non-litigated requests.

The FOIA professionals at the Department are dedicated public servants who are committed to their work on behalf of the American people. These circumstances, however, have led to an environment in which the Department is unable to properly serve the FOIA requester community.

Leadership in Interior believes it is imperative to break this unproductive cycle. To that end, former Secretary Zinke issued Secretary's Order 3317, a copy of which is included in my written materials, that underscores the Department's commitment to an equitable FOIA program that ensures compliance with statutory requirements of transparency, accountability, and prompt production.

The order designates the Solicitor as the chief FOIA officer in the Department to significantly increase the visibility and authority of the position and leverage the substantial legal expertise of the Solicitor's Office with respect to the FOIA.

The order also establishes the operational position of DCFO to oversee the Department's FOIA program and take meaningful steps to improve the quality, efficiency, and consistency of the work performed by the FOIA offices.

As DCFO, I have begun a broad effort to improve the organization and governance of the Department's FOIA program that includes establishing uniform position descriptions and performance standards for FOIA staff and setting appropriate pay grades; establishing hiring requirements for the bureaus to assure adequate staffing and top-quality hires; creating a robust training program for FOIA officers and processors; issuing standard operating procedures for FOIA processing and other needed policies; and obtaining and deploying modern, reliable technology for FOIA request tracking, as well as tools for searching, collection, and document review.

I am proud to lead this important effort to improve the Department's ability to meet its obligations under the FOIA. I also appreciate the consistent bipartisan interest of the Congress in the FOIA and welcome any insights members of the committee may have to assist the Department in meeting this important goal.

With that, I conclude my remarks. Thank you again for the opportunity to appear before you today.

Chairman CUMMINGS. Thank you very much.

Mr. Epp?

STATEMENT OF TIM EPP, ACTING DIRECTOR, NATIONAL FOIA OFFICE, U.S. ENVIRONMENTAL PROTECTION AGENCY

Mr. EPP. Good morning, Chairman Cummings, Ranking Member Jordan, and members of the committee. As mentioned, my name is

Timothy Epp. I am the Environmental Protection Agency's Acting Director for the National FOIA Office within the Office of General Counsel.

EPA created the National FOIA Office this past year to provide centralized FOIA program services for the agency in what otherwise remains a substantially decentralized FOIA program.

I appreciate the opportunity to come before you today, during Sunshine Week, to share EPA's commitment to operate transparently and to improve the speed and quality of EPA's FOIA responses.

I would like to quickly touch upon key items covered in greater detail in my prepared statement, namely the commitment of EPA senior leadership, the many initiatives EPA is implementing, EPA's proactive disclosure, and the challenges EPA faces.

First, on the senior leadership's commitment. EPA established a strategic goal on transparency which includes eliminating the FOIA backlog. Also, this past August, then Acting Administrator Wheeler held a planning meeting on FOIA with agency senior leadership. At that meeting he expressed his expectation for EPA's quality and timeliness in FOIA responses. He directed a review of the agency's efforts, and he asked for options for the EPA to take concrete actions to address FOIA processing quality and timeliness.

Administrator Wheeler also sent an announcement to all EPA staff reinforcing the agency's commitment to transparency and FOIA timeliness and quality. Also in November, EPA issued a significant policy memo to streamline and eliminate confusion regarding EPA's awareness notification process.

EPA also added FOIA accountability language to all FOIA managers' performance agreements addressing FOIA response quality and timeliness, and for appropriately supervising and training all EPA professionals who administer FOIA responses.

Over the past year, EPA significantly improved its FOIA program in a number of ways. First, EPA delegated the Chief FOIA Officer function to the General Counsel to raise the profile and accountability of the EPA's FOIA implementation.

Second, EPA launched a reorganization of the FOIA programs in each of the 10 EPA regional offices, moving those programs into the Regional Counsel's offices in order to provide reporting responsibility lines up to the General Counsel, who is the Chief FOIA Officer.

Third, EPA created the National FOIA Office, which I now head. The National FOIA Office was created by a merger of the National FOIA Program into the Office of General Counsel and combining it with the previously existing FOIA Expert Assistance Team, which we call the FEAT. The NFO provides centralized programmatic services pertaining to the agency's implementation of the FOIA, including request intake and assignment for headquarters program offices. The FOIA staff also staffed the FOIA Requester Service Center and the FOIA Public Liaison. They issue expedited processing and fee waiver determinations, prepare a monthly and annual FOIA report, provide training, and the office is responsible for updating and reviewing the FOIA website, regulations, policies, and procedures.

The FOIA Expert Assistance Team provides legal counseling, training, and project management assistance on the most challenging, complex, and high-profile FOIA requests that the agency receives. The FEAT has been in existence since 2013, and has worked on the agency's most significant public health and environmental FOIA projects, including ones that are in the news such as Gold King Mine, the Flint drinking water crisis, Bristol Bay, as well as the enforcement action on VW. By establishing this office with both of those functions, the agency intends to improve its FOIA responses.

I see that I am running out of time to describe the other improvements that we have made. I would be happy to take your questions, and thank you. With that, I will conclude.

Chairman CUMMINGS. Thank you very much.

I yield now to Ms. Pressley, five minutes for questions.

Ms. PRESSLEY. Thank you, Mr. Chairman.

Ms. Pustay, the FOIA Improvement Act of 2016 encourages proactive disclosure. That bipartisan law requires agencies to identify records of general interest and to post those records. Is that correct? Yes or no?

Ms. PUSTAY. I am sorry. I——

Ms. PRESSLEY. I will start over.

Ms. PUSTAY. Thank you.

Ms. PRESSLEY. I have only five minutes, though.

The FOIA Improvement Act of 2016 encourages proactive disclosure. That bipartisan law requires agencies to identify records of general interest and to post those records. Is that correct?

Ms. PUSTAY. You are not exactly quoting the statute, but it is definitely correct that the FOIA Improvement Act has a provision to require agencies to make proactive disclosure.

Ms. PRESSLEY. Okay. I will move on.

Investigations by the Sunlight Foundation have revealed that the Department of Health and Human Services has removed web pages providing information about the Affordable Care Act from the *Medicare.gov* website. The Sunlight Foundation report notes that the deleted page contained information on how Medicare coverage relates to the health insurance marketplace and links to pages with additional information. Other similar reports from the Sunlight Foundation note that the Department of Health and Human Services has also scrubbed information about breast cancer, preventive services guaranteed by the Affordable Care Act, as well as various LGBTQ health issues from its website for the Office of Women's Health.

Were you aware that the Department of HHS has removed content related to preventive care, LGBTQ health, and women's health from its website?

Ms. PUSTAY. I really would refer you to HHS for the decisions that they have made on posting or not posting information.

Ms. PRESSLEY. Well, do you endorse that decision?

Ms. PUSTAY. We at the Department of Justice have a strong record of encouraging agencies to proactively post information beyond what is required by the statute to be posted, but to actually look for information that is of interest to the public, to work with their community of requesters, to identify——

Ms. PRESSLEY. I am sorry, but this is about people's lives and access to really critical information. So in your personal opinion, scrubbing information about breast cancer, preventive services guaranteed by the ACA, and various LGBTQ health issues from its website, this is the Office of Women's Health, what is your personal opinion of that?

Ms. PUSTAY. Well, I am not here to give you my personal opinion, but I can give you my opinion in my role at the Department of——

Ms. PRESSLEY. Okay. I think you did that, and we just disagree.

Moving on, the Sunlight Foundation also reported that the Department of Justice has removed information from its website without providing any notice or explanation. Specifically, the report notes that the Department of Justice removed information from its website for the Office of Violence Against Women, including removing a section on how to respond to stalking. That section provided links with specific tips for victims, for prosecutors, law enforcement officers, judges, and others.

Were you aware that the DOJ removed these resources for victims of domestic violence from its website?

Ms. PUSTAY. No, I am not personally aware, aware in my official capacity. I am happy to make further inquiries about it, though.

Ms. PRESSLEY. Well, I hope you would because, again, this is denying victims access to critical information that could determine their very life or death.

Despite the fact that the Office of Violence Against Women has a website archive, the deleted information does not appear to be provided in the archive.

Do you agree that it is important for agencies to provide helpful information about how Americans might obtain assistance under existing laws? Yes or no?

Ms. PUSTAY. I definitely think it is important for proactive disclosures to be there to help the public and inform the public.

Ms. PRESSLEY. Okay. One more time for the record. Do you agree that it is important for agencies to provide helpful information about how Americans might obtain assistance under existing laws? Because the stalking information and that critical information was removed.

Ms. PUSTAY. Yes. I do not want to address a specific set of documents without knowing more about them. It would not be responsible of me to do so. But I absolutely agree that the reason for having proactive disclosures, and why it is such an important part of the FOIA, is to provide information that is of interest to the public affirmatively so that there is not a need to make a FOIA request for it. That is an important part of the Freedom of Information Act, and it is an aspect of——

Ms. PRESSLEY. Okay. I am sorry, but I am running out of time.

Do you think it would be an appropriate issue for the Department of Justice to review?

Ms. PUSTAY. I am certainly happy to look into it.

Ms. PRESSLEY. Okay. Given that some agencies—and I am out of time. Thank you.

Chairman CUMMINGS. I thank the gentle lady.

When you talk, we cannot hear you. So when you talk into the mic, can you get it kind of close to you? All of you, please, so we can hear you. All right? I think we kind of got through that one.

Mr. Meadows for five minutes.

Mr. MEADOWS. Thank you, Mr. Chairman. Thank you for holding this hearing as we continue to look at FOIA.

Ms. Pustay, I can tell you that this is not a partisan issue. It is one that we have had a number of hearings on, and candidly, I appreciate your willingness to actually move the ball down the road and get a lot of this information flowing to the American people.

I think transparency is good medicine, and yet we continue to miss the statute. The statute is very clear on how quickly we need to respond to FOIA requests, and honestly, that is just not happening. Would you agree with that?

Ms. PUSTAY. There is no doubt, as I mentioned in my opening statement, for many agencies there is a strain on the system.

Mr. MEADOWS. That was not my question. My question was is there a statute that gives a number of days that you need to reply to FOIA requests? Is there not a law?

Ms. PUSTAY. The statute actually provides several mechanisms for seeking an extension of time and provides for—let me say it this way—recognizes that there are many situations, and it is set forth in the statute where it will take longer than 20 days, or even 30 days, to respond to a request. So the statute has built into it a recognition of the fact that agencies will be challenged at times in responding within 20 or 30 days.

For instance, with voluminous requests——

Mr. MEADOWS. I get that.

Ms. PUSTAY. When someone asks for thousands or tens of thousands of pages——

Mr. MEADOWS. No, I get that. So let me just ask you, and here is the crux of the matter. Overall, we are not complying with the law as the Federal Government, and this did not just happen under President Trump. It happened under the previous administration, and the administration before that. We are not complying with the law, or at least even the spirit of the law, which says that when you get a FOIA request, you actually try to get it out of the door in 21 days. Is that correct?

Ms. PUSTAY. I respectfully disagree with the premise. I do think that agencies overall are complying with the law.

Mr. MEADOWS. Okay. Then why do we have FOIA requests, Ms. Pustay? That was supposed to be a softball question. So why do we have agencies that continue—we are still waiting on documents that we requested from the State Department under the previous administration. So how can you say that that is compliance? How could Judicial Watch go through a lawsuit and get documents that both Democrats and Republicans have requested, and they get them through the courts, but we cannot get them through normal requests? How does that happen?

Ms. PUSTAY. One of the things that I think actually has a very unfortunate negative impact on FOIA administration is the fact that when somebody goes to court, and goes to court after day 20 or after day 30, because the statute allows people to go to court that quickly, that what happens all too often is it pushes that re-

quest to the front of the line, and then the ordinary citizen, the historian, the journalist, their requests get kicked further back.

Mr. MEADOWS. So how do we fix that? I agree that that is happening. So how do we fix that?

Ms. PUSTAY. Well, that would require a statutory change.

Mr. MEADOWS. What do you mean that requires—just to give them more time?

Ms. PUSTAY. I mean, I am certainly, obviously, happy to talk with the committee and work with the committee on legislative proposals. What agencies have to do, as a practical matter, taking the law as it is now, is manage their resources so that they can handle litigation deadlines that are now being imposed on them by court order, incorporate that within their day-to-day processing of requests from ordinary citizens; and because we have had, year after year, a tremendous increase in the volume of requests coming in, one of the things that we have been advising agencies to do is to focus on simple track requests, smaller volume requests——

Mr. MEADOWS. And have you seen an increase there in terms of compliance? I know you——

Ms. PUSTAY. Yes.

Mr. MEADOWS. And what percentage increase?

Ms. PUSTAY. We score agencies every year on whether or not their simple track requests can be processed within an average of 20 working days.

Mr. MEADOWS. And how many of them are complying? I mean, what is the percentage?

Ms. PUSTAY. I do not have the actual numbers.

Mr. MEADOWS. Can you get that back to the Chairman or the Ranking Member?

Ms. PUSTAY. It is available on our website, but we are happy to also give it to you, yes.

Mr. MEADOWS. Okay. Here is my concern, and here is what I would ask you to help our committee out with. We need to streamline the process, whether it is when a document is created and it gets a stamp that says this is Okay for FOIA release—the problem is that you have too many people, in my opinion, in the chain of approving something before it goes to the American public. So you get documents that should be released easily that have to still go through the chain.

Can you come up with two or three recommendations on how we streamline that process and report back?

Ms. PUSTAY. Yes, sure, happy to do so.

Mr. MEADOWS. All right. Thank you.

I yield back.

Chairman CUMMINGS. Thank you very much.

Mrs. Maloney?

Mrs. MALONEY. Thank you. Thank you, Mr. Chairman.

Ms. Pustay, on December 28th, 2018, the Department of the Interior proposed a new rule on processing FOIA requests. Did Interior consult with the Office of Information Policy before it issued the proposed rule?

Ms. PUSTAY. No, it did not.

Mrs. MALONEY. It did not. The rule proposed by Interior would set limits on requests when they involve the processing of, quote,

"a vast quantity of material," end quote. The rule seems designed to give Interior discretion to arbitrarily reject requests by claiming the requests are too large or too burdensome.

In 1983, the Department of Justice explained in a guideline document, and I quote, "The sheer size of burdensome requests of a FOIA in and of itself does not entitle an agency to deny that request on the grounds that it does not reasonably describe records," end quote.

Is the proposed rule consistent with guidelines issued by the Department of Justice?

Ms. PUSTAY. I will let my colleague from the Department of the Interior discuss their proposed regulation. What I can tell you is that we will be engaging with the Department of the Interior to——

Mrs. MALONEY. Okay. I have limited time, and we will get that response from them.

And under the rule proposed by Interior, the agency would be able to ignore a request that, quote, "requires the bureau to locate, review, redact, or arrange for inspection of a vast quantity of material," end quote.

Is Interior authorized to deny a request based on its sheer size alone, without even trying to work out a response with the requester? Ms. Spector, Interior's proposed rule does not define what Interior would view as "a vast quantity of material." Without a clear standard, would you say, Ms. Spector, that the rule could easily be abused to obstruct the public's access to information from Interior? And are there any limits to Interior's ability to deny requests under the proposed rule?

Ms. SPECTOR. Well, I will start with the last question that you posed. Indeed, there are limits. The "vast quantity" language that you have quoted from our proposed rule is a codification of a 1990 D.C. Circuit Court opinion. Since 1990, there has been a body of case law that has developed, and we would use that case law as the sideboards to make that determination and not make that determination in an arbitrary and capricious manner.

The purpose of placing that—of proposing that change in our regulations was to address the substantial increase in complex discovery-like requests we are receiving for any and all records, or requests to conduct broad keyword searches.

Mrs. MALONEY. And, Ms. Pustay, is there any compelling reason why Interior's FOIA office should have more onerous rules for processing requests than any other agency in government? Is there any reason why they should have this discretion?

Ms. PUSTAY. I do not want to comment specifically on Interior's rules because we are going to be working with them.

Mrs. MALONEY. Well, the Chairman has commented on it. Chairman Cummings, along with Senator Leahy, and in a bipartisan way with Republican Senators Chuck Grassley and John Cornyn, they sent a letter to Acting Secretary David Bernhardt to express their significant concern over this unfair proposed rule, and I agree completely with their statement and with their letter.

The American people have the right to access information from the Department of the Interior, and the proposed rule would needlessly encroach on that right. So I urge DOI and everyone to object

to this proposed rule and withdraw it immediately. It is very unfair and it seems like an attempt to withhold information.

And I yield back the balance of my time.

Chairman CUMMINGS. Mr. Hice for five minutes.

Mr. HICE. Thank you, Mr. Chairman.

Ms. Pustay, I just want to echo what has already been said. There are many on this committee who have been waiting for documents for a long, long time, particularly some from the Obama Administration for years. We really would like to get those documents as soon as possible. I want to make sure that that is clearly communicated.

I understand the difficulty with the requests going up. I get that. But the task is the task and needs to be handled.

Mr. Epp, let me go to you. How many people at the EPA work on FOIA?

Mr. EPP. So, our annual report indicates that there are approximately 100 full-time employees who work on FOIA, and approximately another 100 full-time FTEs. So those are partial time.

Mr. HICE. So does every office within the EPA have a FOIA office, every department?

Mr. EPP. Every one of the major program divisions has a FOIA program.

Mr. HICE. Okay. Is it adequate enough to respond to the requests?

Mr. EPP. Well, we have been responding to requests—approximately 60 percent of the requests we respond to within the 20-day time period. But we also, at the end of Fiscal Year 2018, had a substantial backlog.

Mr. HICE. Okay. And do you have plans to deal with that backlog?

Mr. EPP. We have a lot of plans to deal with that backlog. As I was listening, and in my prepared remarks and opening statement, we have started a reorganization of the FOIA program. We have created a centralized National FOIA Office. We are looking at ways of centralizing other aspects of the program; and, yes, we have——

Mr. HICE. When will those ideas be implemented?

Mr. EPP. We have already started implementing those activities. So the reorganization of the Regional Counsel's Offices are going to waterfall forward starting in this month.

Mr. HICE. What kind of requests are coming in? Is it changing? In other words, are we having more requests from reporters, from members of the public, from advocacy groups? Are we seeing a change in the requests?

Mr. EPP. So, we have seen a change in terms of in 2017 and 2018. We had approximately 1,000 more requests each year than we had in the prior year. We have also seen that those requests have been concentrated more in the Office of the Administrator. One year it was 368 percent more than year 2016, and the other year it was 415 percent more than that base year of 2016.

We have the data to look at particular requesters. I have not broken that out. I have not done an analysis of that.

Mr. HICE. Are you able to?

Mr. EPP. We would be able to.

Mr. HICE. Would you get that back to us? Just out of curiosity.

Mr. EPP. We can work with the committee on those sorts of requests.

Mr. HICE. Okay, thank you.

What about complex requests? Are you seeing an increase in the complex?

Mr. EPP. We have noticed, at least particularly in the Office of the Administrator, some increase in complexity in a number of different ways, requests that ask for all communications, for example, without any narrowing of it, as well as requests that have multiple subparts and that as a result produce large document collections that we must review.

Mr. HICE. Have those complex requests increased with the Trump Administration?

Mr. EPP. We have noticed that increase over time, in particular over the last couple of years.

Mr. HICE. Okay. Can you give me some examples of the numbers of responsive records in a complex? What are we talking about?

Mr. EPP. So, we have one particular request right now that we have been in the process of assembling, collecting the documents for it. We have not completed that collection, but right now the workspace in the Relativity document review software has over 139,000 documents in it. And, of course, that is not pages; that is documents. Each document will have multiple pages. So we are talking about a very substantial amount of material to review for that particular request.

Mr. HICE. Okay. So a quick comparison—I am running out of time here. How long does it take, on average, just to do a simple FOIA versus a complex request?

Mr. EPP. So, our simple FOIA requests, as I have mentioned, approximately 60 percent of the requests we respond to within the 20-day time period. Our other requests, like I mentioned we have a significant backlog, and some of those are months and/or years.

Mr. HICE. Okay. Thank you very much.

I yield back, Mr. Chairman.

Chairman CUMMINGS. Mr. Lynch?

Mr. LYNCH. Thank you, Mr. Chairman and Ranking Member, for holding this hearing. I do want to say thank you to the distinguished panel for helping the committee with its work.

Ms. Pustay, the committee, along with a number of outside public interest groups, have been involved in a national security review of multiple whistleblower reports that describe a concerted effort inside the White House to transfer highly sensitive nuclear technology to Saudi Arabia. This sudden behind-the-scenes scramble to transfer sensitive technology to a foreign nation without informing Congress, without engaging in dialog with us, without congressional review, would constitute a dangerous and blatant violation of the Atomic Energy Act.

So, the interim report that was issued by Chairman Cummings' staff last month underscored that one of the chief proponents of this so-called Middle East Marshall Plan was former National Security Advisor Michael Flynn, who obviously pleaded guilty to providing false information to the FBI regarding his foreign contacts, and other former and current Trump associates at the White House who have been involved in this allegedly to push the Saudi Arabia

nuclear transfer: Thomas Barrack, who was President Trump's Inaugural Committee chairman; and also Jared Kushner, the President's son-in-law, and also a senior advisor to the President.

We have as a committee FOIA requests in and requests directly to seven different agencies. As well, the Government Accountability Project—they do great work—they have requests in to the Department of State, Department of Defense, the Central Intelligence Agency, Department of Commerce, Department of Energy, and the Treasury Department. We have requests in to those agencies, as well as the White House.

So far, we got zero—zero—nothing from any of those agencies, nothing from the White House.

So your mission, as you described it, is really to provide information that the American people should know, and this is certainly within that ambit. I am just wondering what your reasoning or what your thinking might be for why, with all these requests on such an important issue, we have zero from the White House and zero FOIA responses from all of those agencies, seven of them.

Ms. PUSTAY. Well, I cannot speak to any particular individual FOIA request because I do not know any of the background as to their handling. Our——

Mr. LYNCH. But any document at all. I understand that you can pick and choose, say this is sensitive or we cannot do this, come up with a reason. They have not given us a reason, either. So we basically got silence from seven agencies and the White House.

Ms. PUSTAY. Well, again, I just do not have any background on the handling of those individual requests. I am happy to look into it for you, if you would like. Our mission, our statutory mission is to encourage compliance with the FOIA, just to correct the articulation of that, and we do a number of things to help make sure that agencies are trained to be able to understand their legal obligations under the FOIA, that they have guidance from us as to ways to improve their administration of the FOIA. We share best practices, we encourage use of technology. All of those things are part of how we carry out our statutory——

Mr. LYNCH. Okay, I understand, I understand. That is the same answer you gave to everybody else.

So, last month the non-partisan government watchdog organization, Citizens for Responsibility and Ethics in Washington, actually filed suit on behalf of the Government Accountability Project to seek those documents, to get the answers to their FOIA requests. According to the complaint, all those Federal agencies involved have now gone silent, failing to engage in any further communication.

So this is not simply an unwillingness to give us the documents. It is an unwillingness to respond. Is that consistent with your understanding of how they should be conducting their——

Ms. PUSTAY. I cannot speak, obviously, to the particular request and the responses that you have gotten or that the requester got from those particular agencies. What I can tell you is that, of course, our guidance to agencies is to acknowledge requests. Every requester is entitled under the statute to have a tracking number——

Mr. LYNCH. Could you encourage them to respond? Could you encourage them to respond? That would be great. That would help.

Ms. PUSTAY. I certainly can.

Mr. LYNCH. Thank you.

I yield back.

Chairman CUMMINGS. Mr. Comer, five minutes.

Mr. COMER. Thank you, Mr. Chairman.

I wanted to focus my questioning on the Department of the Interior. So, Ms. Spector, how many individuals specifically work on FOIA at the Department of the Interior?

Ms. SPECTOR. I do not have that information at this time. Part of my mission in the newly created departmental FOIA office is to get my arms around that information and to understand whether our FOIA offices are adequately staffed.

Mr. COMER. Okay. Does each bureau at the Department of the Interior have its own FOIA office?

Ms. SPECTOR. Well, it is interesting that you ask that question. The Secretary's order that I referred to in my opening statement requires all of the bureaus to have a FOIA officer. So my understanding and belief is that FOIA processing occurs at all of our component bureaus, and we are looking to elevate the position of the people that do that work.

Mr. COMER. Have you determined whether you are adequately staffed to handle the FOIA requests that are coming in at DOI?

Ms. SPECTOR. I could say quite frankly we are not adequately positioned to do that work at this time, and staff is only one component of what I believe we need to do to improve our FOIA program. We also need to make improvements in our technology, as well as improving our standard operating procedures and policies.

Mr. COMER. Roughly how many FOIA requests did you get in 2018? Do you know? At the Department of the Interior.

Ms. SPECTOR. You know, I am embarrassed to say I do not know the answer to that question. I am sure my staff has it on their fingertips and will happily provide that.

Mr. COMER. So you would not know how the number of FOIA requests in 2017 and 2018 under the Trump Administration would compare to the number of FOIA requests that you received during the Obama Administration?

Ms. SPECTOR. I would be able to answer that question, sir. Since Fiscal Year 2016, the Department overall has experienced a 30 percent increase in incoming FOIA requests, similar to what my colleague from EPA attested to. The Office of the Secretary FOIA Office has been particularly hard hit with a 210 percent increase during that period.

Mr. COMER. Do you know where these increases are coming from, which particular groups? Are they advocacy groups? Are they private citizens? Media? Do you have any idea?

Ms. SPECTOR. I could speculate on that point, but I would underscore that the Department is not concerned with who the FOIA requests are coming from. I mean, we endeavor to respond in a timely, comprehensive manner to all requesters regardless of their identity.

Mr. COMER. Do you prioritize the FOIA requests when they come in? For example, if it is a major news network, is that pushed

ahead of the stack or behind the stack compared to if it is a FOIA request from a citizen in Montana?

Ms. SPECTOR. Well, as a general matter, we process FOIA requests on a first-in/first-out basis, and there are certain provisions in the FOIA that provide for expedited processing, and also provide for a fee waiver for requesters who qualify as representatives of the news media. We apply the provisions of the FOIA accordingly.

Mr. COMER. On average, how long does it take when you get a FOIA request to be able to review and respond to the request?

Ms. SPECTOR. Well, the answer is more nuanced in that we process our incoming requests pursuant to track. There is a simple track, a normal track, a complex track, complex being the requests that are likely to result in the collection of large amounts of documents. For example, requests that are in our simple track, by our own policy, we endeavor to respond to within five working days.

Mr. COMER. Do you track with requests of—if this is the same person doing a FOIA request every day? Are they red flagged? How does that work? I know in the past I have been—a previous job before I came here was harassed by political opposition groups, bloggers, things like that. I did not know whether there was a system in place to determine the validity of the person requesting the FOIA request.

Ms. SPECTOR. No, sir. And again, we do not process our requests based on the identity of the requester. I would say we have a substantial number of what we call frequent flyers, and we process their requests on a first-in/first-out basis.

Mr. COMER. Thank you.

Chairman CUMMINGS. The gentleman's time has expired. Thank you.

Mr. Rouda?

Mr. ROUDA. Thank you, Mr. Chairman.

Mr. Epp, there are about 1,700 FOIA requests outstanding from the most recent report. That actually puts EPA in the bottom 10 percent. Is this a resource issue, a manpower issue, or both?

Mr. EPP. That is a topic that we are currently analyzing, and that is part of the reason for the reorganization of the National FOIA Office, to create a centralized office to take a look at those sorts of issues.

One of the things that we have recently done that we did within the last calendar year was upgraded the document review processing software to add certain features that will increase the ability to review similar documents together.

Mr. ROUDA. So is it a resource issue, then, or a manpower issue? I mean, if you had enough people and resources, we could clear this up pretty quickly, right? Or if it is a process issue, that tends to be a lack of management and leadership issue. So which one is it?

Mr. EPP. The agency has dedicated more resources to FOIA processing this year, including authorizing increased hiring in my office. We have just on-boarded those new hires, new hiring in the Administrator's Office, and standing up a Tiger Team of document reviewers in the Administrator's office. So we are dedicating more resources to the effort, and part of what I am doing is trying to analyze exactly how much of it is resource issues, how much of it is processing issues and things like that.

Mr. ROUDA. Well, we are a few years into the Administration, so hopefully that will happen soon. But let me ask you this: President Trump's budget with a 31 percent cut in the EPA, do you support that cut?

Mr. EPP. Like I said, the agency dedicated more resources to FOIA in the last——

Mr. ROUDA. But you have a limited budget. Do you support the 31 percent cut to the EPA?

Mr. EPP. Our——

Mr. ROUDA. Do you support the 31 percent cut to the EPA?

Mr. EPP. We will work with Congress to implement the budget that you pass.

Mr. ROUDA. But do you support the President's 31 percent cut to the EPA?

Mr. EPP. We will work with Congress on the budget that Congress passes.

Mr. ROUDA. I also note that you have over 800 openings in the EPA that have not been filled. If those seats were filled, would that not help address this issue?

Mr. EPP. So, I do not have oversight or vision on all of the hiring needs and where the hiring is across the agency. If that is something that you would like a response on——

Mr. ROUDA. My concern is that there are roughly 14,000 employees at the EPA; 8,000 of them are eligible for retirement through 2021. So you take that, coupled with the 800-plus open seats, I cannot help but think that the EPA could meet many of its obligations, including FOIA requests, if it was properly staffed up according to the ability it has, not to mention with all of these potential retirements. Is the EPA prepared to hire people so it can meet its obligations.

Mr. EPP. So, like I mentioned, within my office we were authorized to hire, and we completed hiring over the last year and are now——

Mr. ROUDA. So if you were authorized to hire more individuals that could manage the FOIA requests, you could definitely address the backlog; correct?

Mr. EPP. We on-boarded and are currently on-boarding some of those hires. You know, with any hiring initiative there is also a training-up time, an integration——

Mr. ROUDA. Again, we are two years into the Administration. We have 1,700 FOIA requests that have not been met. So if people were hired, it seems like that would solve the problem.

I also want to call your attention to last year the Republican and Democratic staff on this committee interviewed EPA Chief of Staff Ryan Jackson, who stated—in talking about a specially created team he said, "Politically charged FOIA productions."

Is there a special team or any version of it that is still existing at the EPA that is reviewing these types of FOIA requests?

Mr. EPP. So, the FOIA Expert Assistance Team is in my office, and their charge since 2013 has been to work on the most challenging, complex, and high-profile FOIA requests that the agency receives, including such things as Bristol Bay, Gold King Mine——

Mr. ROUDA. Do you personally review them?

Mr. EPP. Yes.

Mr. ROUDA. So they all come—basically, the buck stops with you? You personally make the decision?

Mr. EPP. That team I review and I supervise, yes.

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

Chairman CUMMINGS. Mr. Gosar, five minutes.

Mr. GOSAR. Thank you, Mr. Chairman.

I thank the Chairman for having this hearing on FOIA. But I also find it odd that my friends across the aisle are complaining about the FOIA requests when this Administration was able to reduce some of the FOIA backlog by 3.2 percent. I do not remember hearing anything when groups were sending FOIA requests to the Obama Administration on the IRS scandal, Benghazi, Fast and Furious, and the list goes on, not a peep. Since my friends across the aisle have a newfound respect for FOIA, I ask them to join me in urging the DOJ to release the requested FOIA documents to groups like Judicial Watch that have requested documents that deal with the IRS scandal, Fast and Furious, all the documents reporter Sharyl Attkisson has requested that deal with the Obama Administration spying on her, and the FISA warrants used to spy on Carter Page. If my friends across the aisle truly care about transparency, they would join me in pressuring the DOJ to release the requests of FOIA documents; unless, of course, this is a charade and they only care because it is Donald Trump as the president.

Ms. Spector, I did not hear the answer. Did some of the FOIA officers at the DOI attend trainings offered by the Office of Government Information Services?

Ms. SPECTOR. I do not know specifically, but I suspect that is the case, yes.

Mr. GOSAR. Their mantra is Working Smarter, Not Harder. So sometimes an educational process of how to actually triage things, that might be a very helpful application.

Let me ask you another question. Can you give me a little bit more idea of specifically what type of FOIAs are coming in? Have they changed in nature? Are they more from news agencies? Are they more complex in litigation? Can you give me a breakdown of how that maybe has changed over the last two years?

Ms. SPECTOR. Yes. And again, I cannot really speak to the identity of FOIA requesters, but I can tell you that since Fiscal Year 2015 our amount of complex FOIA requests—that is, requests that will result in the production of a large amount of documents and records—has gone up 55 percent.

Mr. GOSAR. So even with a very enabled work force, that kind of change for complexity makes it very hard to comply, would it not?

Ms. SPECTOR. It is part of the challenge that we face. It is a large part of the challenge that we face at Interior. Another related challenge is that because we are not able to provide timely responses to a large number of FOIA requesters, we have engendered a substantial increase in what we call FOIA non-response litigation where the requester is suing not based on an alleged illegal withholding but simply because we have not responded in a timely manner, and that produces a snowball effect on our situation because those cases are essentially glorified FOIA processing under the auspices of the court, and we are under increased pressure to

move those requests to the front of the line, which further impacts the rest of the FOIA requesters.

Mr. GOSAR. So is there some way—you know, when we are on a battlefield, we have a triage-type system. Is there a way to look at these documents as they are coming in that could actually facilitate a better triage allocation where you may be having somebody monitoring the atmosphere at the time of discovery that maybe puts a kind of emphasis or a highlight on an issue, that maybe somebody is reviewing these at the front end that may speed up that system? Is there some type of triage system that could work along those lines?

Ms. SPECTOR. Yes, and that is certainly part of the comprehensive effort that we are endeavoring to employ at the Department. We are using a more expensive technology to process these large requests. That technology also enables us to leverage requests that are for the same or similar types of documents. And we are trying to focus more in our processes and protocols on meeting our commitment under the FOIA.

Mr. GOSAR. Yes. And, Mr. Epp, real quickly, I am glad that you made the comment about the budget, because the budget is our deal. Allocation of funds is Congress' deal. So we ought to be the ones stepping up and doing that process forwardly.

Thank you, Mr. Chairman.

Chairman CUMMINGS. Ms. Cortez?

Ms. OCASIO-CORTEZ. Thank you, Mr. Chair.

Ms. Pustay, as Director of Information Policy, you review the various reports that agencies prepare as part of their FOIA responsibilities; correct?

Ms. PUSTAY. Right.

Ms. OCASIO-CORTEZ. Do you agree that it is important for all of us to have current information on the agency compliance with FOIA?

Ms. PUSTAY. Of course.

Chairman CUMMINGS. Keep your voice up.

Ms. PUSTAY. Sure.

Ms. OCASIO-CORTEZ. And I think that is why we agree that is why Congress added these requirements that agencies report data by certain deadlines each year. In fact, the law requires agencies to provide the annual report on FOIA to DOJ by February 1st. Today is now March 13th. It is six weeks past the reporting deadline.

My question to you is how many agencies have provided their reports to the DOJ by February 1st?

Ms. PUSTAY. Oh, this year is quite the anomaly in terms of reporting for a very obvious reason. We had a government shutdown that lasted more than 35 days. All of OIP was furloughed for 35 days. So we have an extensive process where we clear the annual FOIA reports from agencies and work with them to get the reports——

Ms. OCASIO-CORTEZ. So——

Ms. PUSTAY. So there is necessarily a delay this year. But I am happy to tell you we have almost—over 90 reports have already been cleared for——

Ms. OCASIO-CORTEZ. So 90 reports have been cleared. Great. And it is completely understandable that the shutdown would delay that. That is why we try to avoid shutdowns.

Do you know how many outstanding reports have missed that deadline?

Ms. PUSTAY. Oh, sure. We have been working with all the agencies to catch up on their work and their reporting to us, and we fully expect to have all the reports posted actually fairly soon.

Ms. OCASIO-CORTEZ. Okay, great. So has the DOJ made every annual report it has received so far from an agency available on its website?

Ms. PUSTAY. When we clear our reports, after we have done our review, the agency has to prepare their report for posting, and that requires a process of coding the document. As soon as the agency posts the document, then we in turn link it to our central website on DOJ's website. So we are literally posting reports as we speak.

Ms. OCASIO-CORTEZ. Thank you. Okay, and that is great. Good to know that that process is on its way.

Mr. Epp, the EPA just posted its report yesterday. When did you provide that report to the DOJ?

Mr. EPP. So, I do not recall when we provided the first draft of the report to DOJ.

Ms. OCASIO-CORTEZ. Okay.

And, Ms. Pustay, what is DOJ doing to ensure that the agencies are making these annual reports accessible to the public in a timely manner?

Ms. PUSTAY. Right. As I said, this year is quite the anomaly. I think if you looked back at any of the other years, we are very proactive in terms of reaching out to agencies, and we have really quite a refined process now. It is not an issue at all in a normal year.

Ms. OCASIO-CORTEZ. And that is good to know.

One of my questions, too, is what would DOJ do if an agency simply refused to provide the annual report?

Ms. PUSTAY. That has not been a problem at all. Agencies work with us very well and they are fully aware of their obligation to get their annual report in to us.

Ms. OCASIO-CORTEZ. Are there any consequences in case that does happen?

Ms. PUSTAY. It is a hypothetical that really I am not worried about because we have no issue with getting the reports from the agencies. We work with them, and then we get them posted every year.

Ms. OCASIO-CORTEZ. All right, great. Thank you very much.

I yield my time.

Chairman CUMMINGS. Mr. Higgins?

Mr. HIGGINS. Thank you, Mr. Chairman.

Mr. Chairman, the Committee on Oversight and Reform majority seems to be attempting to imply that the Trump Administration is opaque and closed off to Freedom of Information Act requests, whereas actual data shows that the President's administration has been very responsive to the record number of FOIA requests and is actively working to reduce the nearly 10-year Freedom of Information Act backlog at some agencies.

Ms. Pustay, OIP found that the government received a record number of FOIA requests in 2017; correct?

Ms. PUSTAY. Yes.

Mr. HIGGINS. In fact, can you clarify for Americans watching that the government received over 818,000 FOIA requests in 2017 alone, an incredible increase from 2016 in number? This was the first year, in fact, that the government received over 800,000 requests. Is that correct?

Ms. PUSTAY. That is correct, and we are on track, I think, to far exceed that number for Fiscal Year 2018.

Mr. HIGGINS. And how have you managed to deal with such a volume of requests? Were you and your staff surprised at the number of FOIA requests that has been received since President Trump took office?

Ms. PUSTAY. Well, the increase in incoming FOIA requests has actually been taking place over quite some time, a much longer time than two years.

Mr. HIGGINS. The backlog was 10 years? I do not mean to interrupt you but just to clarify for those watching. The backlog was—you had about a 10-year backlog?

Ms. PUSTAY. No. What I am saying is that the increase in incoming requests has been occurring steadily over the years, and each year agencies are really struggling to try to meet that increased demand and increasing their processing, only to see the following year even more requests coming in. I think I attribute it to just an increased interest in using the FOIA as a means of becoming more engaged with their government.

Mr. HIGGINS. Thank you for that clarification. Despite the number of requests that have been received since 2017, since the President took office, am I also correct in saying that the government has processed more FOIA requests than they received, and that the number of backlogged requests has actually decreased?

Ms. PUSTAY. The numbers you are referring to are from Fiscal Year 2017, which is where we have our last governmentwide numbers. And, yes, in Fiscal Year 2017 the government overall reduced the backlog, which was a nice accomplishment, and increased its processing.

As I mentioned, agencies are doing a lot to increase their processing to keep up with the demand of the public for information from the government.

Mr. HIGGINS. So you feel confident confirming to America today, Madam, that agencies are making an effort, a good-faith and determined effort to process FOIA requests and reduce backlogs?

Ms. PUSTAY. Agencies are definitely making a good-faith effort to process the overwhelming number of requests that are coming in every day.

Mr. HIGGINS. Thank you, Madam.

Ms. Spector and Mr. Epp, thank you for your service to your country and appearing before the committee today.

Mr. Chairman, since January 2017, there has been quite an orchestrated effort to obstruct and resist our duly elected President's administration, an incredibly active movement nationwide, and Americans that I have spoken to look at the number of FOIA requests as perhaps a legitimate tool that should be available in a

representative republic of sovereign states that has perhaps been weaponized against our current executive.

I yield my remaining 50 seconds to the Ranking Member.

Mr. JORDAN. I yield back.

Chairman CUMMINGS. Ms. Plaskett?

Ms. PLASKETT. Thank you, Mr. Chairman, and thank you for holding this hearing.

Ms. Pustay, the Office of Legal Counsel is responsible for providing legal advice to the executive branch. Is that correct?

Ms. PUSTAY. Yes.

Ms. PLASKETT. Otherwise known as OLC. And that advice is usually given through memorandum, is it not?

Ms. PUSTAY. I do not know if I want to characterize that it is usually given through memorandum.

Ms. PLASKETT. But there are memorandum that are done?

Ms. PUSTAY. Yes.

Ms. PLASKETT. And those memorandum really outline what the Office of Legal Counsel's opinions are with regard to specific issues that the executive branch may be requesting.

Ms. PUSTAY. They provide legal advice, yes, exactly.

Ms. PLASKETT. DOJ, the Department of Justice, generally considers OLC advice to be binding on those agencies. Is that correct?

Ms. PUSTAY. No, I do not think that is correct. OLC provides legal advice to agencies, who then incorporate that advice into their decisionmaking.

Ms. PLASKETT. Okay. So it does not bind an agency to the advice.

Ms. PUSTAY. They give legal advice to an agency.

Ms. PLASKETT. Got you. And with that, there does, however, seem to be a secrecy with regard to OLC memos, which have long been the subject of controversy in terms of them being available to the public. Would you say that that is correct?

Ms. PUSTAY. No. I understand that the public is very interested in OLC memorandum, and OLC understands that public interest as well, and they have an established publication review process where they review their memorandum and post those that they can on their website.

Ms. PLASKETT. So how many memorandum per year would you say that they produce?

Ms. PUSTAY. I do not know about per year, but I know——

Ms. PLASKETT. On average?

Ms. PUSTAY. Well, they have over 1,000 OLC opinions on their website.

Ms. PLASKETT. Well, that is going back 20 years, 30 year or so.

Ms. PUSTAY. It is quite a nice——

Ms. PLASKETT. But what would you say per year is the average of opinions that they write?

Ms. PUSTAY. I am sorry, I just do not have it.

Ms. PLASKETT. Would you be surprised to understand that there are over 200 OLC opinions which have not been released?

Ms. PUSTAY. No, it does not surprise me because, as I said, OLC opinions are legal advice to an agency. So they are protectable under the FOIA—under the attorney——

Ms. PLASKETT. So if the advice is taken and the Administration acts on that advice, how about releasing an opinion from 2003,

going back 15 years, which has already been enacted? Would that chill or inhibit discussion taking place in the government by not releasing that information at this time?

Ms. PUSTAY. The age of the opinion and the circumstances surrounding the topic that is addressed in an opinion would definitely be factors that would be looked at. All of that is actually laid out by OLC in their procedures for publishing their opinions.

Ms. PLASKETT. So if the concern is for the public to get that information which may be deliberation that OLC has had, or whether or not positions are factors involved in making decisions and legal advice, some of the opinions have already been published, or through leaked opinions online. But DOJ still asserts that those opinions are privileged and cannot be released.

What would inhibit the DOJ from releasing opinions which are already out there so that the public can be sure that the opinions which have been leaked are, in fact, the opinion of DOJ?

Ms. PUSTAY. Well, we have very strong protection for information that is covered by a discovery privilege like the attorney-client privilege. Courts have recognized that that applies after the advice has been given, and it would certainly be——

Ms. PLASKETT. Even after it has been acted upon or has been changed and the Administration is no longer using that opinion? What would be the reason for withholding it at that point?

Ms. PUSTAY. The contours of the attorney-client privilege, as well as the deliberative process privilege, another primary reason why OLC opinions are protected——

Ms. PLASKETT. I know that can take me a whole other five minutes of questioning if we discussed the deliberative process privilege.

Ms. PUSTAY. There was a case that went to the Supreme Court actually early in my FOIA career involving deliberative process privilege, and the very issue presented was when a decision is over, does the deliberative process privilege fall away, and it is actually an issue that went all the way to the Supreme Court, which ruled that, no, the privilege protection continued on. And the point that——

Ms. PLASKETT. That is not to say that DOJ does not release opinions. All of the opinions involve some deliberative process; correct?

Ms. PUSTAY. Yes, yes.

Ms. PLASKETT. So you do release some and not others.

Ms. PUSTAY. Yes, absolutely.

Ms. PLASKETT. So the factors that you are using have nothing to do with the deliberative process as a theory, but other factors that you have determined whether or not the import of what is in that opinion——

Ms. PUSTAY. I think the OLC lays out in the guidance on their website the factors that they look at to make releases of opinions, and obviously a big part of that is the public interest in the topic.

Ms. PLASKETT. I yield back. Sorry.

Chairman CUMMINGS. Thank you.

Mr. Jordan?

Mr. JORDAN. Thank you, Mr. Chairman.

Ms. Pustay, I will go back to where Mr. Higgins was. How many FOIA requests governmentwide were there in 2017?

Ms. PUSTAY. Over 800,000.

Mr. JORDAN. Over 800,000. And is that more than the requests in 2016?

Ms. PUSTAY. Yes.

Mr. JORDAN. How much more?

Ms. PUSTAY. We have a chart in our—we have a summary that we create every year of annual FOIA reports, and we have all the numbers there. I think if you look at the chart you see a nice steady incline of incoming FOIA requests really starting since 2009.

Mr. JORDAN. And I am looking at that chart right now.

Ms. PUSTAY. Okay.

Mr. JORDAN. It looks to me in 2016 there were 788,000, and in 2017 818,000, 40,000 more FOIA requests governmentwide in 2017.

Ms. PUSTAY. That sounds right.

Mr. JORDAN. All right. So more requests, trending up, has been trending up, but obviously 40,000 more just in the first year of the new administration. And what about the backlog? What happened with the backlog of requests that was there? Did that——

Ms. PUSTAY. Well, in Fiscal Year 2017 the backlog did go down by, I think, 3 percent. That was primarily due to the efforts of DHS in reducing its backlog. The backlog governmentwide is really attributable to a few of the really big agencies that get incredibly large volumes of requests.

Mr. JORDAN. DHS and Justice?

Ms. PUSTAY. DHS, Justice, State. Again, we have that in our summary.

Mr. JORDAN. Okay. But overall——

Ms. PUSTAY. But overall there was a reduction.

Mr. JORDAN. Overall 40,000 more requests in 2017, and a reduction in the backlogs that had been present, in overall backlogs.

Ms. PUSTAY. Overall.

Mr. JORDAN. So it is an improvement.

Ms. PUSTAY. That is right.

Mr. JORDAN. Now, that is not to say every agency is doing wonderful. There may need to be improvement in some specific agencies, but overall that is pretty good for government.

Ms. PUSTAY. Well, I think especially with backlogs. There were 85 agencies that had a backlog of 100 or less. So when you think across the government, the issue of backlogs is a quite different picture and I think a very positive picture for many agencies.

Mr. JORDAN. Of that 40,000, which agencies had the biggest increase? It was the ones you said before? It was State, Justice, and DHS?

Ms. PUSTAY. Yes.

Mr. JORDAN. That is where the biggest increase happens?

Ms. PUSTAY. Yes.

Mr. JORDAN. Okay. And were those the same agencies that had the largest backlog, or not?

Ms. PUSTAY. Yes. Usually there is an exact and understandable relationship, absolutely.

Mr. JORDAN. Okay. And is there a reason why we saw 40,000 more? Did you analyze the data? Is there any reason why there was 40,000 more requests in the first year?

Ms. PUSTAY. We have been looking at this issue for many years, and as I mentioned before to one of your colleagues, the best I can come up with is that I think there is a lot of interest in the public in what the government is doing, and so as a result there is an increase in FOIA requests.

Mr. JORDAN. For a government that is as big as our government, unfortunately. I wish it was smaller in many ways. If you have big government, there are going to be people interested in looking at it and asking for information.

How does 2018 look? When are we going to get those numbers?

Ms. PUSTAY. We will get those numbers shortly. As I was discussing, we are in the process of finalizing the intake of the annual FOIA reports, and then we will be able to——

Mr. JORDAN. Can you give me a preliminary assessment?

Ms. PUSTAY. My prediction is that there definitely is going to be yet another increase in incoming——

Mr. JORDAN. I figured.

Ms. PUSTAY [continuing]. incoming requests. I am hopeful that we will have an increase in processing, because the challenge for agencies is to try their best to keep up. And then I am predicting that the backlog might increase as well, as a result of the increase in incoming.

Mr. JORDAN. Do you think the increase in 2018 is going to be more than the 40,000 we saw in 2017?

Ms. PUSTAY. I do not—I just am not sure yet.

Mr. JORDAN. When will we get those again?

Ms. PUSTAY. Soon, relatively soon. As I said, we have over 90 agencies where we have the numbers cleared, so within the next month or so we will have our figures, and then we will post them like we normally do with a summary.

Mr. JORDAN. If the backlog—you said the backlog may not be an improvement like it was in 2017. It may trend the other way.

Ms. PUSTAY. Yes.

Mr. JORDAN. Is it a small increase? What is your——

Ms. PUSTAY. I am predicting probably a larger increase. Again, this is just a prediction because we do not have the numbers yet. Once we have the summary and have the numbers, obviously we are going to post them on our website like we always do.

Mr. JORDAN. I forgot. I was going to yield to my friend. I will yield what remaining time I have.

Mr. MEADOWS. I thank the gentleman.

One question, Ms. Pustay. You said you keep track of how people respond. Do you have agency by agency the budget they spent on FOIA and the number of pages that they actually get out the door so we can tell how efficient an agency is?

Ms. PUSTAY. We do not keep track of the number of pages, but we do keep track—every agency reports in their annual FOIA report their costs and the personnel that are used every single year for FOIA. So that is in every agency's annual FOIA report. You can look back many, many years, and we summarize that in our summary as well.

Chairman CUMMINGS. Thank you very much.

I will now ask a few questions.

Ms. Spector, significant concerns have been raised about the lack of transparency of meetings held by Acting Secretary David Bernhardt. On February 20, 2019, Mr. Bernhardt sent a letter to Natural Resources Committee Chairman Raul Grijalva, and this is what he said, and I quote: "I have inquired with the Department of Interior's Office of the Solicitor and have been advised that I have no legal obligation to personally maintain a calendar. Further, no agency guidance exists recommending that I create or retain one. I have not personally maintained a calendar for years, and I have no intention of suddenly doing so now." Did you hear me? End of quote.

Is this true? Does Acting Secretary Bernhardt not keep a calendar of his meetings and activities?

Ms. SPECTOR. I was not involved in providing legal advice around this issue, but I am aware that Acting Secretary Bernhardt's calendars, there are calendars that we proactively post on our website, just as we did with Secretary Zinke's calendars, because the public is interested in that information, and we received more than three FOIA requests for that material. So we proactively post it on the website.

Chairman CUMMINGS. Well, Acting Secretary Bernhardt also wrote, and I quote: "Numerous people create calendar entries on what can be labeled my calendar to maintain a schedule for the organization of daily appointments, both personal and official." End of quote.

How are appointments added to the Secretary's schedule? Do you know?

Ms. SPECTOR. I am speculating. I think it is probably pretty accurate. I assume that his administrative assistant and other support staff provide that function for him.

Chairman CUMMINGS. So who at the Department has the ability to add appointments to the schedule of the Acting Secretary? Do you know?

Ms. SPECTOR. I am sorry, there was movement in the back and I did not clearly hear what you said.

Chairman CUMMINGS. Who at the Department has the ability to add appointments to the schedule of the Acting Secretary?

Ms. SPECTOR. I am familiar with a process of——

Chairman CUMMINGS. You do not know?

Ms. SPECTOR. I do not know. Thank you, sir.

Chairman CUMMINGS. Does the calendar for the Acting Secretary get deleted at the end of each day? Do you know that?

Ms. SPECTOR. I do not know that.

Chairman CUMMINGS. Is it possible this is happening and you do not know about it? That is, the deletion of the calendar or the entries.

Ms. SPECTOR. I have some familiarity with the issue that you are raising and understand that the Solicitor's Office in the Department is working with the records officer in the Department to determine what has occurred there and whether it is consistent.

Chairman CUMMINGS. How long have you been in the position here?

Ms. SPECTOR. I am sorry. Say that again?

Chairman CUMMINGS. How long have you been in the position you are in?

Ms. SPECTOR. For two months, sir.

Chairman CUMMINGS. Okay. Has any Interior employee ever been tasked with recreating the calendar of the Acting Secretary by piecing together drafts of Googled documents or using other records of meetings?

Ms. SPECTOR. Not to my knowledge.

Chairman CUMMINGS. Has any Interior employee ever been told to stop recreating the calendar of the Acting Secretary?

Ms. SPECTOR. Again, not to my knowledge.

Chairman CUMMINGS. How do you respond to FOIA requests for information about meetings attended by Acting Secretary Bernhardt?

Ms. SPECTOR. Precisely the way we do all FOIA requests. They are processed as a general matter on a first-in/first-out basis, and one distinction with calendars is that there has been so much public interest in those materials for our senior officials that many are posted, affirmatively posted on our website.

Chairman CUMMINGS. So whose records do you search to respond to requests about the Acting Secretary's calendar?

Ms. SPECTOR. I am sorry. Again, I did not hear.

Chairman CUMMINGS. Whose records do you search to respond to requests about the Acting Secretary's calendar?

Ms. SPECTOR. Again, I do not specifically know the answer because I have not performed that task, but I assume that it is his electronic calendar entries that are prepared by his administrative staff.

Chairman CUMMINGS. All right. CNN reported last week that the calendars posted on the website of the Department of the Interior are missing information. For example, a meeting on the schedule posted for Acting Secretary Bernhardt for September 22d, 2017 includes an entry that says, quote, "A meeting to discuss energy issues," end of quote. It lists no visitors. However, CNN reported that Interior visitor logs showed that the Acting Secretary actually signed in Jack Gerard, then CEO of American Petroleum Institute.

Are you aware of any other calendars or calendar entries on the website of the Department of the Interior Acting Secretary Bernhardt or any senior official that are missing information?

Ms. SPECTOR. No, I am not.

Chairman CUMMINGS. Every senior official, including Acting Secretary Bernhardt, should be making and preserving a transparency record of their meetings and other activities so that the American people know who is influencing policies.

I yield now to Mr. Cloud for five minutes.

Mr. CLOUD. Thank you.

With all the talk about data, we had our team go ahead and compile it for you. And, yes, it does confirm what you are saying, a general upwards trend. The blue is the requests. The green is what has been processed since 2010. The red is what has been the backlog. And you can see that we are pretty much within norms, this Administration has been, with the trends. Actually, there has been some progress in the sense that more FOIA requests were proc-

essed over the last year than were requested. I think that is good news.

Really, the only outlier in the backlog generally has been 11 to 15 percent, with the only outlier being the year following the IRS scandals when the IRS was targeting conservative groups.

I think congratulations, I guess I would say, on the general picture of processing FOIA requests. I think there are some things that probably do need to be addressed or jobs to begin this kind of stuff.

So, Deputy Chief Spector, your written testimony says that you, or the Interior Department I should say, proposed a change to apply monthly per-page processing limits to requests involving a large number of responsive records to allow processing of other requests. It is citing vast quantities of materials needed in some of these requests. Could you describe what is considered vast quantities?

Ms. SPECTOR. Oh, absolutely. There is a 1990 D.C. Circuit Court opinion that coined the phrase "vast quantity" that we endeavored to codify in our proposed regulations. There is not a precise definition. I could not tell you precisely the number of pages that would qualify as a vast quantity, but since 1990 there has been a developed body of case law that has created the general parameters that surround vast quantity of materials, and to the extent this proposed change is incorporated into our final rule, we would look to the sideboards in that case law to make our determination.

Mr. CLOUD. Okay. So as each case comes in, you are looking at case law? Is that what you are saying? To make the adjustment?

Ms. SPECTOR. I am sorry, I did not hear you.

Mr. CLOUD. You are looking at case law as each individual request comes in to determine? You do not have a benchmark I guess?

Ms. SPECTOR. I guess what I am saying is that the vast quantity of materials does not lend itself to a precise number.

Mr. CLOUD. Okay. If you do get a request that is requesting a large amount of information, how do you go about prioritizing requests just in general? But also if there is a large request and you have limited capacity, are you processing that request—like let's say 1,000 pages would be considered a vast quantity, do you process a little of that every month?

Ms. SPECTOR. Well, I will say that——

Mr. CLOUD. Do you say, oh, we are only going to do a portion of the big requests?

Ms. SPECTOR. I will say that I do not believe that 1,000 pages is not a vast quantity. I think 1,000 pages is actually a pretty garden-variety quantity that we are encountering.

But we have, in the context of our litigation, FOIA non-response litigation, we have applied a protocol where we process a certain number of pages each month in order to meet our obligations to all of the litigants. So we have 90 to 110 pending FOIA non-response cases, and all of those courts are asking us when are you going to get the request satisfied, and how many pages can you supply to the requester each month? So when we get a request that involves thousands of pages of documents, we make monthly episodic releases in order to get that.

Mr. CLOUD. Yes, that is what I was wondering.

Ms. Pustay, the performance across the agency has been varied. Is there some sort of mechanism in place for developing best practices and communicating best practices across agencies?

Ms. PUSTAY. Oh, sure. We do that in a whole bunch of different ways. We have a workshop series that we literally call our best practices workshop series where every year we identify a topic that we think is important to address, and we have agencies that have demonstrated success in that area on a panel where they can share their best practices in achieving success in that area.

Our very first best practices workshop was on reducing backlogs and improving timeliness because that is always a perennial challenge——

Ms. HILL.

[presiding] The time of the gentleman has expired, if you want to wrap it up.

Ms. PUSTAY. Okay. So the answer is yes, we do many things, including those workshops.

Ms. HILL. Thank you.

Without objection, I would like to enter a statement from the Electronic Privacy Information Center.

Ms. HILL. And I will recognize myself for five minutes.

Mr. Epp, last year this committee received troubling allegations from a whistleblower about EPA's FOIA practices. The whistleblower, a former Deputy Chief of Staff, claimed that the former Administrator Pruitt intentionally delayed responses to new FOIA requests under the pretext of a first-in/first-out policy. So my first question is, is the EPA still processing requests under a first-in/first-out policy?

Mr. EPP. Well, the Department of Justice has guidance that recommends to agencies that they use a first-in/first-out approach. We are using a multi-track approach where we try to identify whether the FOIA request is simple or whether there are unusual circumstances that make it complex, and then in the Office of the Administrator we have also divided up the FOIA requests, particularly the backlog, within subject matter areas so that they can be more efficiently processed by individuals who are familiar with those areas.

So I would not say that it is accurate that we are using a first-in/first-out. In fact, we have within the last months issued FOIA responses on many more recent FOIA requests, including in the Administrator's Office.

Ms. HILL. Is there documentation for this process or protocol around this new multi-track process?

Mr. EPP. The multi-track process and unusual circumstances or complex is laid out in our regulations.

Ms. HILL. So in the regulations that are published where?

Mr. EPP. EPA's regulations that were published in the Federal Register.

Ms. HILL. Okay. So the multi-track process was just simply not being followed previously, or it was——

Mr. EPP. I have been in my position since August of last year.

Ms. HILL. Okay.

Mr. EPP. But it is my understanding that the multi-track process of determining simple and complex has consistently been followed by the agency all the time, ever since the regulations were adopted.

Ms. HILL. Okay. I think that that is perhaps not the case. But are you saying that the EPA is not prioritizing requests for documents of the Obama Administration over the current administration?

Mr. EPP. We have tackled backlog in various frames, but right now we are primarily working on FOIA requests that have come in within this administration.

Ms. HILL. Okay. And is the EPA prioritizing requests for documents of the Pruitt Administration over requests for the documents since Administrator Wheeler was named as Acting Administrator?

Mr. EPP. Like I said earlier, within the last months we have put out responses on FOIA requests that have come in within the last months within the time of the Wheeler.

I would also like to point out that the data show that more than 60 percent, or approximately 60 percent of our FOIA requests we respond to within 20 days.

Ms. HILL. Okay. So if the regulations state that the EPA determines that a request will be placed on a slower track for review, that the agency must provide the requester with an opportunity to simplify that request, is that happening?

Mr. EPP. We—when—so EPA is a very decentralized FOIA processing agency. Each office does the FOIA processing themselves, so there may be inconsistencies across the agency, but the best practices that we recommend and that my FOIA Expert Assistance Team trains on when they go out and do training for offices is to do precisely that, to reach out to the requesters, to seek opportunities, to offer them opportunities to narrow their request, to find out what information the requesters are actually looking for in order to be able to more efficiently and effectively and quickly provide them responses.

Ms. HILL. Okay. In December, a Federal judge in California ruled that EPA could not slow-walk their requests for emails and calendars of senior EPA officials. Without objection, I would like to submit the decision from the Northern District of California to the record.

Ms. HILL. In her ruling, Magistrate Judge Elizabeth Laporte said, and I quote, "The defendant's limited resources do not relieve it of its statutory obligation to promptly provide requested documents." Administrator Wheeler has pledged to improve the timeliness of the EPA's FOIA responses by hiring additional staff to respond to pending requests. How many staff have been hired in the last four months to deal with this issue?

Mr. EPP. So again, EPA is a decentralized processing agency for FOIA. I do not have direct supervisory responsibility over the Office of the Administrator. Nevertheless, my understanding is that the Office of the Administrator has hired five new staff for processing FOIA requests. And of course, as I stated in my prepared remarks, there was also a Tiger Team of document reviewers that was stood up originally in August of last year, 12 individuals who have been performing on that document review team, and they have reviewed nearly 24,000 documents on a first-pass review since

August through this last week, and an additional 16,000 documents on a second-pass review.

Ms. HILL. I have some concerns that the decentralized response is making it so that we cannot get full information. So can you get back to us in terms of how we are able to get answers on the fact that you are saying this is a decentralized way of processing FOIA information?

Mr. EPP. I would be happy to work with the committee and your staff.

Ms. HILL. Thank you.

And with that, I would like to recognize Ms. Miller.

Mrs. MILLER. Thank you, Madam Chairwoman and Ranking Member Jordan, and thank all of you all for being here today.

West Virginians sent me to Congress to hold our government accountable to the people that it serves. While we work here in Congress to make our own institution more transparent, it is important that other branches take similar steps to support an open government.

Across administrations, full and speedy FOIA compliance should be the goal. As we have seen, our current administration has received an increase in FOIA requests. I understand the frustration from groups who want access to information quickly, but I also realize such requests take time to process and complete.

With that in mind, I have questions that I would like each one of you to answer.

How long does it take each of your agencies to review and respond to a simple FOIA request?

Ms. Pustay, do you want to start?

Ms. PUSTAY. Between 20 and 30 days for simple track in DOJ.

Mrs. MILLER. Okay. Thank you.

Ms. SPECTOR. It is my understanding that the Department of the Interior, that our policy—based on our policy, we endeavor to respond to simple requests within five working days. It is also my understanding that we are not always able to meet that goal.

Mrs. MILLER. Mr. Epp?

Mr. EPP. The data on that is in our annual report, which is posted on our website, and it shows that for simple requests that the average number of days that it has taken us to respond was 35.

Mrs. MILLER. Thank you. How long does it take for you all to review and respond to complex FOIA requests?

Ms. PUSTAY. Again, that number I do not have memorized, but it is obviously in our annual report as well. But I believe it is several hundred days.

Mrs. MILLER. Several hundred.

Ms. SPECTOR. The same answer for me. I do not have that number at my disposal, but we can certainly provide it to you.

Mr. EPP. And again, it is in our annual report that is posted on our website. For complex, the data show that the average number of days is 148.

Mrs. MILLER. So it could be anywhere between three and six months, basically, would you not say? Okay.

From Fiscal Year 2016 to Fiscal Year 2017, FOIA requests to the Administration increased by a total of nearly 30,000. Since 2017,

have each of your agencies seen a huge increase in FOIA requests overall? Can you quantify it?

Ms. PUSTAY. Well, again, this is all information that is tracked by each agency in their annual FOIA report. You can compare from year to year, and then in the summary that my office puts together every year we compile the numbers so we can show government-wide the trends. As I mentioned before, there has been an increase in incoming requests for the past several years. Since 2009, we have had a steady increase in incoming requests each and every year. We have also seen agencies do their best to reach out and respond to that increase by increasing their processing.

Mrs. MILLER. But you have not seen a huge increase since 2017?

Ms. PUSTAY. We did see yet again—the trend continued, and certainly at DOJ we received over 90,000 requests in Fiscal Year 2018, which was a record high for us, and I am expecting the same across the government.

Mrs. MILLER. Thank you.

Ms. Spector?

Ms. SPECTOR. At Interior, since the close of Fiscal Year 2016, there has been a 30 percent overall increase, but within the Office of the Secretary FOIA Office they have experienced a 210 percent increase.

Mrs. MILLER. Wow.

Mr. EPP. So at EPA, for Fiscal Year 2018, there was a modest decline as compared to 2017, but approximately 1,000 more as compared to 2016. Also in 2017, it was approximately 1,000 more than in 2016.

Mrs. MILLER. Thank you. I think it is important for people to hear this.

Would you all say that most of these requests have been simple or complex?

Ms. PUSTAY. The trend definitely is that requests are more complex.

Mrs. MILLER. Okay.

Ms. SPECTOR. I would concur to the extent that I do not have the hard data in front of me.

Mrs. MILLER. Thank you.

Mr. Epp?

Mr. EPP. And EPA receives a very wide spectrum of requests that come in to EPA. As I mentioned earlier, approximately 60 percent of our requests we were able to respond to within 20 days. Those are much simpler requests. But others take us much longer. And what I also previously stated is that within the Office of the Administrator in particular, we have seen a concentration of requests in that office in both 2016 and 2017, an increase in that office of 368 percent one year and 415 percent another year over the level that it was in 2016.

And we have also observed that the requests in particular in that office are more complex in a number of different ways in terms of our ability to respond, such as requests that ask for all communications from a particular individual, as well as requests that are more complex in terms of asking for many subparts that require coordination and communication not only from within the Office of

the Administrator but from within other offices of EPA to ensure that they are properly responded to.

Mrs. MILLER. Thank you so much.

Mr. SARBANES.

[presiding] The gentlewoman's time has expired.

Congresswoman Tlaib is recognized for five minutes.

Ms. TLAIB. Thank you, Mr. Chairman.

Ms. Spector, during the government shutdown in January, the Department of the Interior's FOIA request website sent an automatic message to requesters that said, and I quote, "No FOIA request can be accepted or processed at this time." The Deputy Press Secretary for Interior claimed in a statement that this was "standard protocol for a shutdown."

Two questions. Is there a written document that confirms this policy is standard protocol?

A second question. Why was the Interior Department unable to accept requests through the FOIA online process?

Ms. SPECTOR. I am not aware of whether or not there is a written document that reflects that protocol, and I am happy to take that back to my department and provide a response to you.

The FOIA online requires staffing, and my understanding of the situation is there were no appropriated funds available to provide such staffing.

Ms. TLAIB. Well, during the shutdown in 2018, the Equal Employment Opportunity Commission's website stated, "EEOC will accept all FOIA requests during the Federal Government shutdown, but EEOC will not be able to process the FOIAs until after the Federal Government reopens."

Another two questions. What prevents the Interior from passively receiving FOIA requests during a shutdown like the EEOC did?

And did the Interior choose to reject requests to avoid starting the statutory timeline?

Ms. SPECTOR. I regret that I do not know the answer to that question, but I will endeavor to get back to you with that information.

Ms. TLAIB. I appreciate that.

Even though the Interior claimed that it could not accept FOIA requests during the shutdown, it still managed to issue a new proposed rule to change its FOIA regulations, and it did so on December 28, six days after the shutdown started. The public was given a month to provide public comments, but because of the shutdown none of the comments could be reviewed until three days before the end of the comment period.

Another two questions. Was three days enough for the Interior to review all the comments on the proposed new rule?

Why did the Interior rush to announce this new rule during the shutdown?

Ms. SPECTOR. My understanding is that the proposed rule was provided to the Federal Register the day of the shutdown.

And to respond to your second question—actually, could you repeat your question?

Ms. TLAIB. Yes. Why did the Interior rush to announce the new rule during the shutdown?

Ms. SPECTOR. Yes. I believe that it was unclear whether the shutdown was going to occur on that Friday, and the rule was ready to be sent to the Federal Register.

Ms. TLAIB. It just looks bad, we cannot accept FOIA requests but we are issuing new rules. I find it troubling that the Interior was able to push forward new regulations to roll back FOIA during the shutdown at the same time it was refusing to accept new requests. The Department of the Interior should be using its limited resources, Ms. Spector, to advance transparency rather than using the shutdown to weaken its FOIA program within these new limitations.

I yield my time, Mr. Chairman.

Mr. SARBANES. The Chair yields to Mr. Grothman for five minutes.

Mr. GROTHMAN. A question for Ms. Pustay. Since the portal went live, how many requests have been submitted to the portal, do you think?

Ms. PUSTAY. Nine thousand.

Mr. GROTHMAN. Nine thousand. Okay. Do you think it has streamlined these requests? We are better off with the portal?

Ms. PUSTAY. Yes. We have been very pleased with the operation of the portal so far, and obviously we are really looking forward to improving the capabilities and the capacities of it.

I think one of the key highlights of the portal, first of all, was that it was built in conjunction with user feedback. So all through the process of developing the portal, we were working not just with agencies but also with requesters to find out what is it that is most useful to them in the request-making process, and I think by factoring that input in, we did simplify the process.

Mr. GROTHMAN. And about how quick is the turnaround, do you think?

Ms. PUSTAY. The transmission through the portal is basically instantaneous.

Mr. GROTHMAN. Okay, Okay. Do you believe—there have been some rumors out there. Do you believe agencies are making an effort to make their current system interoperable with the FOIA?

Ms. PUSTAY. They are now required to. The Justice Department and OMB just issued a memo to agencies directing them and setting forth a schedule and a process for them to develop plans to become interoperable with the National FOIA Portal. The default position for any agency that has an automated case management system is that they are going to need to be interoperable with the portal through an API, an application programming interface, which is basically a tool or a bridge between two technology systems.

So the idea there is that the greatest efficiencies are achieved by using an API, and the agencies with automated case management systems will have requests coming through the portal and going directly into their internal case management systems. It is a definite improvement in efficiency.

Mr. GROTHMAN. Okay. So it sounds like you are doing a great job on the first iteration. Are you working on a second iteration?

Ms. PUSTAY. Yes, we definitely are, and we have a group. We have secured funding for improvements to the portal, and we have several things that we want to do both to help have a guided fea-

ture, for example, to help guide requesters to the right agency. We want to help improve the reporting functionality for agencies. We have been talking a lot today about annual FOIA reports and governmentwide numbers. We want to do some things with the portal to work on that. We have a lot of ideas, and we are looking forward to keeping the National FOIA Portal as a vital part of FOIA.

Mr. GROTHMAN. Super.

Just a general comment and a followup with Ms. Spector and Mr. Epp. How does your agency—or what is your experience with the portal? Do you get a lot of requests through there? Do you feel it is working well?

Ms. SPECTOR. I actually do not have numbers on requests that we have received through the DOJ portal, but I can provide that at a later time.

Mr. GROTHMAN. Okay.

Mr. Epp?

Mr. EPP. I also do not have those numbers. We use FOIA Online as our primary method for receiving FOIA requests.

Mr. GROTHMAN. Okay. Do you feel the portal, though, does it interact with the current system?

Mr. EPP. Currently it does not. We are committed to making that interoperable.

Ms. SPECTOR. I believe at Interior that it does.

Mr. GROTHMAN. Okay.

Mr. Epp, how many individuals work on FOIA at the EPA?

Mr. EPP. So, our annual report shows that there are approximately 100 full-time employees, and approximately an additional 100 full-time equivalents. So those are people who work on FOIA part time and enter their information.

Mr. GROTHMAN. So it is like 200 people full time are just working on FOIA.

Mr. EPP. Full-time equivalent.

Mr. GROTHMAN. Okay. Does each office within EPA have their own department?

Mr. EPP. So, as I mentioned earlier, EPA is a highly decentralized FOIA processing agency, so each of the major divisions have a FOIA officer, a FOIA coordinator who manages the assignments of FOIAs.

Mr. GROTHMAN. Okay. And then maybe I missed this. How many FOIA requests do you get, FOIA requests did you get in 2017 total for EPA?

Mr. EPP. It was approximately 11,000.

Mr. GROTHMAN. Eleven thousand. And did that go up or down last year?

Mr. EPP. Last year it was slightly lower than it was the year before.

Mr. GROTHMAN. Is there any big change since the Obama Administration? What were you getting in 2015, 2016?

Mr. EPP. One of the things that I have testified to is that, as compared to 2016, both 2017 and 2018 were approximately 1,000 higher than they were in 2016.

Mr. GROTHMAN. Okay, so up, but not wildly up, right?

Mr. EPP. What we have observed in both 2017 and 2018 is significant increase in FOIA requests to the Office of the Adminis-

trator. So that particular component of the agency received approximately 368 percent more than 2016, and approximately 415 percent more in——

Mr. GROTHMAN. Okay. I think I am about ready to get the hook, so we will let you be.

Mr. SARBANES. The gentleman's time has expired.

I yield myself five minutes for questions.

Ms. Spector, the Department of the Interior proposed a rule in December, I believe, that would restrict public access to its records. Under the rule, Interior could "impose a monthly limit for processing records" for an individual requester.

I am curious; what is the monthly limit that Interior is proposing?

Ms. SPECTOR. Congressman, this is a work in progress, and I would like to explain that. During the past two years the Department has seen a significant increase in complex requests that are seeking any and all records that result in the collection of a large volume of material, and this creates—the monthly processing limit proposal is an effort to equalize the provision of records to all FOIA requesters. So if you have a small group of requesters whose requests consist of hundreds of thousands of pages of documents, that if we produce only a portion to them in a monthly period, that we can then provide more responses to more requesters.

Mr. SARBANES. I get that. I understand that. What is the number?

Ms. SPECTOR. There actually is not a set number. As I was describing a little bit earlier, in the context of FOIA non-response litigation, we have a separate track of processors who work only on those matters, and we calculate a monthly processing capability based on the number of litigated matters, the number of processors, and the estimated page number that each processor can complete in a month.

Mr. SARBANES. I guess the reason that concerns me is—first of all, I am not sure a monthly limit really comports with the spirit of FOIA. I mean, the agencies to which these inquiries are directed are under an obligation to respond, and a monthly limit would appear to cut against that obligation. But also I am particularly troubled at this notion that the monthly limit could just change based on the—I mean, I understand from your point of view maybe why that could make some sense, but the potential to, in a sense, manipulate the monthly limit from month to month, either based on the kinds of requests that have come in previously or in anticipation of requests that may be coming, could allow for a lot of mischief. Do you understand what I am saying?

You could anticipate, oh, this group is going to be making this number of requests, so let's set the monthly limit here for the next month, and that will knock them down. And then another month comes along and you change it again to potentially respond to another group. The reason that concerns me is there is potential for politics to get in the mix.

I understand that the Western Values Project, which is a nonprofit based in Montana, was one of the organizations that has frequently requested records from the Interior over the past two years, and the former Secretary of the Interior, Ryan Zinke, went

on television and was disparaging the group: they are operatives of the Democratic Party, they are hacks, they have always been, they need to be investigated, et cetera.

I am concerned that these monthly limits maybe are being instituted potentially as a way of limiting the inquiries coming from certain groups based on their politics.

Was this rule drafted in any way in response to that particular group, that you are aware of?

Ms. SPECTOR. Absolutely not.

Mr. SARBANES. Do you understand my concern about how monthly limits could be manipulated based on experience or anticipation of what will be coming in? Do you see that as an issue?

Ms. SPECTOR. I would agree that a monthly limit scenario that was applied arbitrarily and capriciously could result in that outcome, but I would also say that the process that we anticipate is a process by which we assess our capacity and provide the greatest number of FOIA responses to the greatest number of requesters each month. At the end of the day, that promotes the spirit of the FOIA to a greater extent than focusing on a small subset of requesters who eat up all the time of the FOIA processors with these large requests that involve thousands of pages of documents.

Mr. SARBANES. Well, you have not completely assuaged my anxiety on this point, so I would ask the Department to go back and take a closer look at this rule, because I think there is the potential for it to be used in a way that cuts against the obligations under FOIA.

With that, I will yield back my time to myself and recognize Congresswoman Speier for five minutes.

Ms. SPEIER. Thank you, Mr. Chairman.

Ms. Spector, are you a political appointee?

Ms. SPECTOR. No.

Ms. SPEIER. So you work for the American people; correct?

Ms. SPECTOR. Yes, ma'am.

Ms. SPEIER. Now, you indicated that the percentage increase in the last year or two was up 30 percent for——

Ms. SPECTOR. The Department overall.

Ms. SPEIER. And 200 percent for——

Ms. SPECTOR. Two-hundred and 10 percent for the Office of the Secretary.

Ms. SPEIER. Now, having said that, in 2016 the Department of the Interior released 53,000 records proactively, and in 2018 the Department released just 22,000 records. That is a 58 percent reduction in the number of documents that were released. So to make the claim that the production of document requests has increased, the actual number of pages or requests that have been filled has been reduced by 58 percent. So how do you account for that?

Ms. SPECTOR. Well, I think the number that you are referring to is our proactive disclosures. Under the FOIA we are required, when three or more requesters seek certain documents, that we make them proactively available to the public. Although I am not specifically familiar with the data that you provided about that decline, I think I can speculate with some assurance that given the increased volume of our FOIA requests overall, and specifically with the Office of the Secretary, that has hampered our effort to make

proactive disclosures that are not in response to a specific FOIA request.

Ms. SPEIER. All right. Last month the Ninth Circuit Court of Appeals rejected efforts by the U.S. Fish and Wildlife Service, which falls under your agency, for disclosures to the Sierra Club. The document at issue was an analysis provided to the EPA by Wildlife Service, as required by law, on the adverse effects of a proposed rule that would have endangered turtles and sea lions. The Service, which is within your Department, wanted to hide the documents through the so-called deliberative process exemption in FOIA.

Why would the Department want to shield its analysis on the impact of an EPA regulation from the public?

Ms. SPECTOR. I am not familiar with that specific case.

Ms. SPEIER. All right. If you are not familiar, would you become familiar and then report back to the committee on why you felt compelled to shield the analysis from the public?

Ms. SPECTOR. Certainly. Can I say, though, that——

Ms. SPEIER. I do not want to waste my time if you cannot answer it.

Ms. SPECTOR. I understand.

Ms. SPEIER. How would you explain—the question asked about the monthly limit, where did that idea come from?

Ms. SPECTOR. Interestingly, it is a variation on a protocol that we understand the Federal Bureau of Investigation applies in managing its FOIA responses.

Ms. SPEIER. Did the FBI suggest this to you? How did this idea pop into your head?

Ms. SPECTOR. We learned of it in litigation and reached out to the Federal Bureau of Investigation to understand their processes, and in light of that are attempting to develop an approach——

Ms. SPEIER. I hope you can appreciate, from some of the questions that you have heard today, that that is a really bad idea.

I would like to move on to Ms. Pustay. You have indicated in a memorandum about what documents should be included in administrative records. You specifically said that documents reflecting the agency's pre-decisional deliberative process are generally not relevant to the APA.

How can agencies be held accountable under the APA if we cannot see how decisions are being made?

Ms. PUSTAY. I do not have any idea what document you are talking about because I would not have written a document about the Administrative Procedures Act.

Ms. SPEIER. It was a memo, October 20th, 2017, from DOJ about what documents to include in administrative records.

Ms. PUSTAY. So it is not a FOIA matter, and I cannot answer it. I am sorry.

Ms. SPEIER. So in that case, would you look into it for us and report back to the committee?

Ms. PUSTAY. Sure.

Ms. SPEIER. All right.

And with that, Mr. Chairman, I will yield back.

Mr. SARBANES. The gentleman from Vermont, Mr. Welch, is recognized for five minutes.

Mr. WELCH. Thank you, Mr. Chairman.

Ms. Pustay, the FOIA Improvement Act of 2016 requires agencies to establish "procedures for identifying records of general interest that are appropriate for public disclosure and for posting such records in a publicly accessible electronic format," as you know. Research, I am told, shows that agencies could significantly reduce their FOIA backlogs by taking steps to proactively disclose information that is routinely requested by the public.

What procedures have agencies established to comply with this section of the law?

Ms. PUSTAY. We have long hoped that we would see a decline in the incoming FOIA requests as a result of proactive disclosures. But as we have been talking about today, the number keeps increasing. But we can certainly hope that there are individuals who have been finding their records via proactive disclosures, and it is definitely a factor in our DOJ FOIA guidelines. It is something that we train on regularly. We have issued guidance to agencies on making proactive disclosures because we really think it is a very beneficial part of FOIA administration.

To your question specifically, we asked all agencies to include in their Chief FOIA Officer Report a description of the steps they take, the methods they use to identify records for proactive disclosure. So we will have that answer for every single agency as part of their Chief FOIA Officer Report.

Mr. WELCH. In 2016, Professor Margaret Kwoka conducted research on a group of agencies with significant numbers of FOIA requests. She found that certain private companies were routinely requesting large volumes of records from regulatory agencies such as the FDA and FCC, and then selling access to the records for a profit. It sounds like a rip-off, actually.

If there is so much demand for the public records, why don't the FDA and the FCC proactively disclose them?

Ms. PUSTAY. Right. I am aware of that research, and we actually did some followup questions to agencies via the Chief FOIA Officer Reports. I think I agree with you. The obvious response to that situation is for the agencies themselves to proactively make that information available.

Mr. WELCH. One company, I guess Day and Day, incorporated notes on its website that it charges $1,800 a year for online access to a data base of information on Defense contracts. Another company, BioScience Advisors, lists a price of $9,500 for an annual subscription to a data base of FCC contracts.

Mr. Chairman, that sounds like an outrageous business but one we allow.

How does it serve the public for the government agencies to subsidize these data bases?

Ms. PUSTAY. Right. Of course, the public is best served by the agencies directly making the material available for free to everyone on their own website.

Mr. WELCH. So the government could create their own data bases.

Ms. PUSTAY. I certainly agree with you that the way to address this is for posting to be done by the government.

Mr. WELCH. Yes. And according to the Professor's research, government agencies are only recouping between 1 and 5 percent of

the cost of processing. In 2015 she pointed out—this is great research—the FDA spent $33 million on processing costs but received $327,000 in fees from requesters.

Why are we allowing companies to make huge profits compiling information that should simply be proactively released?

Ms. PUSTAY. Well, your question has a couple of elements to it. The recouping of fees we report for every single agency. It is a requirement of their FOIA report, and it is a very incredibly small number, but that is because of the structure of the FOIA. It really limits the situations where agencies can charge fees. So as a practical matter, they are really almost a non-issue, a non-relevant part of FOIA, although I think it is an important thing to be looked at going forward.

Mr. WELCH. Okay. Thank you very much.

I yield back.

Mr. SARBANES. Would you yield the balance of your time to me?

I had a question for all of you, which is that as you have been testifying, I am getting a sense of the potential for there to be different standards on how you respond to these FOIA requests depending on the agency. Is there a process where you are looking to your left and your right kind of at what best practices ought to operate across the entire government in terms of responding?

Each of you can answer that question, if you would like.

Ms. PUSTAY. I will start by saying that because of our role, our governmentwide guidance role, we, of course, established the standards for agencies to apply, and we do that through our guidance that is posted on our website, through our training to agencies, and through the DOJ FOIA guidelines that we have now had for 10 years that give what we call the pillars of FOIA administration.

But then we know on a very practical level that there are tips and nuances, procedures that can be employed to manage FOIA requests and manage different aspects of FOIA administration, and that is where we do things like have best practices workshops. There are other ways that within that the government agencies interact with one another, including through our newly constituted Chief FOIA Officers Council, and then agencies informally meet with one another to learn best practices.

Mr. SARBANES. Appreciate that.

Any other comments?

Ms. SPECTOR. I would add that in formulating the new departmental FOIA office that I am responsible for launching and making operational, we work quite closely with the EPA, as well as the FBI and other agencies to identify best practices precisely.

Mr. EPP. We, of course, look to the DOJ guidance for much of our processing baseline, and then we compare notes with other agencies. My staff have attended DOJ trainings. We compare notes with other agencies for those sort of cutting-edge, innovative ways of doing things. And then we, of course, have our own cutting-edge, innovative ways of doing things, and I have testified throughout this hearing regarding our FOIA Expert Assistance Team, which we think is one of those innovative approaches that we have listed in our Chief FOIA Officer Report as one of our best practices. And

we, of course, use FOIA Online as a "disclosure to one is a disclosure to all" approach to proactive disclosure.

Mr. SARBANES. Thank you. One of the reasons I asked that is because some of the concerns we have expressed here on how things are being done in response to requests, hopefully those would fall off of any best practice list and be replaced by things that are more responsive to the public.

With that, I would like to recognize the gentlewoman from Florida, Ms. Wasserman Schultz, for five minutes.

Ms. WASSERMAN SCHULTZ. Thank you, Mr. Chairman.

Ms. Spector, in your testimony you challenged claims that Interior leaders have politicized the FOIA process. So let me be very specific, and I would like yes or no answers to these questions, please.

Are you aware of any attempts to delay or deny a FOIA request to hide information about or protect former Secretary Zinke?

Ms. SPECTOR. No, I am not.

Ms. WASSERMAN SCHULTZ. Are you aware of any attempts to delay or deny a FOIA request to hide information about or protect Secretary Bernhardt?

Ms. SPECTOR. No, I am not.

Ms. WASSERMAN SCHULTZ. Are you aware of attempts to delay or deny a FOIA request to hide information about or protect your boss, Solicitor Giorgianni?

Ms. SPECTOR. No, and may I extend my answer to say that we respond to FOIA requests consistent with the exemptions in the FOIA, and to the extent information has been withheld, to my knowledge it has always been based on a sound legal framework.

Ms. WASSERMAN SCHULTZ. Okay. Well, that leads me to a question: Are you aware of any policy changes made to delay or deny FOIA requests to protect politically appointed staff?

Ms. SPECTOR. No, I am not aware of that.

Ms. WASSERMAN SCHULTZ. Okay. Well, this memo from February 28th clearly instructs an additional layer of review for any requested documents that mention politically appointed staff. How is this not a policy change?

And I would like to ask unanimous consent, Mr. Chairman, to enter this memo into the record.

Mr. SARBANES. Without objection.

Ms. WASSERMAN SCHULTZ. How is this not a policy change designed to delay FOIA requests explicitly to protect your bosses?

Ms. SPECTOR. I now am actually very familiar with what you are referring to. It was a memo that was published on our website in February. It was actually an update of an earlier iteration of an awareness review policy that was posted on our website in May.

Ms. WASSERMAN SCHULTZ. Okay. Please get to the answer.

Ms. SPECTOR. The awareness review is something that the agency and I believe other agencies have been doing informally for many years, dating back at least to the prior administration.

Ms. WASSERMAN SCHULTZ. Having a layer of review for politically appointed staff is something that has routinely been done? That is not something that I am remotely familiar with.

Ms. SPECTOR. The primary purpose of this policy—in fact, the purpose of this policy is to make senior leadership aware of upcoming releases that may receive media attention. It provides——

Ms. WASSERMAN SCHULTZ. Okay. That would also seem to me to be an attempt to delay or deny FOIA requests when you add another layer of review by politically appointed staff to slow down the assurance that FOIA requests are going to be met in a timely fashion. You answered no to my questions, and clearly this process adds a layer that delays the process and potentially risks denial of a legitimate FOIA request.

Ms. SPECTOR. I disagree on that second point. The policy provides for three workdays in which senior officials are made aware of releases that are upcoming, but the policy does not provide for senior officials preventing the release of the information.

Ms. WASSERMAN SCHULTZ. Well, the policy even provides a layer of review for people who left in the last three months. Is there any reason for the inclusion of that three-month period other than to protect former Secretary Zinke?

Ms. SPECTOR. Again, three months is a relatively recent period, and——

Ms. WASSERMAN SCHULTZ. Incidentally coinciding with Secretary Zinke's departure, which was December 15th. Is there any reason to include that three-month layer of review for people who left in the last three months other than to protect Secretary Zinke?

Ms. SPECTOR. I believe that things that may——

Ms. WASSERMAN SCHULTZ. Like what?

Ms. SPECTOR. I am sorry. What?

Ms. WASSERMAN SCHULTZ. Like what? Besides protecting Secretary Zinke, what can you think of that would need review in the prior three months?

Ms. SPECTOR. Indeed, there may be policy decisions that were made in the previous three months that implicate the current leadership in the Department for which they legitimately should be aware before the release is made.

Ms. WASSERMAN SCHULTZ. Even though that has never been the policy before? And incidentally, you implemented a three-month review process——

Ms. SPECTOR. Three day, three workday.

Ms. WASSERMAN SCHULTZ.—a process that requires review for people who have left in the last three months suddenly. Is that pure coincidence that it happens that the previous Secretary left on December 15, within that three-month window? Because this is not something that was ever needed before. Why is it needed now?

Ms. SPECTOR. I guess I am not understanding your question. I am sorry.

Ms. WASSERMAN SCHULTZ. Okay. If I can just indulge for a moment to clarify, Secretary Zinke left on December 15. That is within the last three months. And prior to Secretary Zinke's departure, there was not a requirement or a layer of review for FOIA requests for people who left in the previous three months. Suddenly there is a review that was deemed necessary following his departure.

Is there any reason not to conclude that that three-month period was added other than to protect former Secretary Zinke?

Ms. SPECTOR. Yes. Again, I believe that there may have been policy discussions within the previous three months that implicate the senior officials that are currently leading the Department, and pursuant to our policy they have three working days to be aware of the release of that material.

Ms. WASSERMAN SCHULTZ. Reclaiming my time, Mr. Chairman. In my days as a state legislator, we called Ms. Spector's answer not passing the straight-face test.

Thank you. I yield back.

Mr. SARBANES. The gentlewoman's time has expired.

I want to thank the witnesses because this is a very important topic, obviously. The public has a strong appetite. It fluctuates over the course of different administrations and congresses and so forth in terms of the kinds of information that they would like to see. It is a tricky process to navigate, I understand. Establishing best practices in the ways that you heard from members today is obviously very, very critical.

So we are going to continue to take a close look at how the agencies respond and meet their obligations under FOIA. This was an important opportunity for us to get input and perspective from your agencies, and we certainly appreciate your testimony.

Without objection, I would like to place in the record a statement from Public Citizen.

Without objection, so ordered.

Mr. SARBANES. I want to thank our witnesses for testifying today.

Without objection, all members will have five legislative days within which to submit additional written questions for the witnesses to the Chair, which will be forwarded to the witnesses for their response. I ask our witnesses to please respond as promptly as you are able.

This hearing is adjourned. Thank you.

[Whereupon, at 12:33 p.m., the committee was adjourned.]