

***TESTIMONY
OF
LARRY F. GOTTESMAN
NATIONAL FREEDOM OF INFORMATION OFFICER
OFFICE OF ENVIRONMENTAL INFORMATION
U.S. ENVIRONMENTAL PROTECTION AGENCY***

***Information Policy, Census, and National
Archives Subcommittee
Of the
Oversight and Government Reform Committee***

***Thursday, March 18, 2010
2154 Rayburn HOB
2:00 p.m.***

***“Administration of the Freedom of Information Act: Current
Trends.”***

Good afternoon Chairman Clay, Ranking Member McHenry, and Members of the Subcommittee. My name is Larry Gottesman, the U.S. Environmental Protection Agency's (EPA's) Freedom of Information (FOI) Officer. I am pleased to appear before you today to discuss EPA's Freedom of Information Act program during Sunshine Week.

EPA is committed to the letter and spirit of the Administration's Open Government and Transparency goals. EPA demonstrates this commitment by constantly striving for reductions in processing time for initial FOIA requests and administrative appeals. EPA recognizes that emerging technology creates new opportunities for improving the FOIA processes throughout the federal sector, and continues to collaborate with other federal agencies in this regard.

Administrator Jackson issued a memorandum to all employees on April 23, 2009 that communicated her commitment to “Transparency in EPA’s Operations”. The Administrator said, “As President Obama stated, the Freedom of Information Act should be administered with a clear presumption that openness prevails. All Agency personnel should ensure that this principle of openness is applied to the extent possible when responding to a FOIA request. Managers should give their staffs and the Agency’s FOI professionals the support needed to satisfy FOIA’s transparency requirement in as timely and efficient a manner as possible. In accordance with guidance issued by Attorney General Holder on March 19, 2009, EPA offices should exercise their discretion in favor of disclosing documents whenever possible under the FOIA. Offices should assert an exemption to disclosure only where the Agency reasonably foresees that disclosure would harm an interest protected by an exemption or disclosure is prohibited by law. Offices should also take steps to make information public on the Agency’s Web site without waiting for a request from the public to do so.”

I would like to take a few minutes to explain how EPA is addressing the FOIA backlog, striving to improve timeliness, exploring new technology, and embracing the mandate for greater transparency.

Backlog

First and foremost, the Agency’s FOIA backlog has decreased dramatically. In July 2001, there were 23,514 overdue FOIA requests. EPA took aggressive steps to address this situation. EPA revised FOIA procedures and processes, deployed updated information technology tools, and collaborated with subject matter experts across the

Agency to eliminate overdue FOIA requests. In a 2006 report to the Department of Justice (DOJ), the Agency stated that it may always have a backlog given the number and complexity of FOIA requests that it receives. Nevertheless, EPA committed to reducing its backlog to not more than 10 percent of new FOIA requests each year. EPA has met this aggressive milestone since 2007 and continued to exceed this performance level in all subsequent years. EPA received 10,404 requests in FY 2009; however, its total backlog was just 332 at the end of fiscal year 2009, or just over 3% of all incoming requests. Furthermore, the number of overdue FOIA appeals has decreased significantly even though the number of appeals has increased. At the end of FY 2009, the number of overdue appeals was reduced to 79. The lessons learned over the years have positioned EPA to maintain low backlog and high customer service that are integral to open government.

Timeliness

In spite of EPA's dramatic reduction of overdue requests, the Agency continues to seek innovative ways to improve its responsiveness. For example, each year the Agency receives thousands of FOIA requests seeking information on specific parcels of land as part of the due diligence in real estate transactions. The Agency is creating an online-searchable database that will make this information readily available to the public, thereby reducing the need for FOIA requests. By proactively disclosing environmental information before it becomes the subject of a FOIA request, EPA will significantly reduce the time required for the public we serve to access the information we maintain.

EPA also reduced the response time for issuing decisions on fee waivers, and expedited processing requests by centralizing these processes within its headquarters National FOI staff. The consolidation ensures that the same high standards of timeliness and law are applied to each decision issued by the Agency. EPA conducts annual FOIA trainings for its employees. Monthly meetings are held with the Agency's headquarters and regional FOI contacts by the Agency FOI Officer.

Technology

The Agency continues to look at new technologies to assist the processing of FOIA requests, particularly the processing of email and electronic records. EPA developed a software application for processing large e-mail searches and responses. The application allows for duplicate email messages to be identified and removed, facilitating more timely review and processing. In addition, the National FOI Program currently is collaborating with Agency information technology staff to improve the efficiency for conducting key word searches on the Agency's e-mail servers. This service will expedite FOIA searches and assure that all responsive e-mails maintained on the Agency's e-mail system are identified.

EPA also deployed redaction software to help process electronic records. The application uses "pixel" replacement to permanently remove information being withheld from disclosure, eliminating the risk associated with technologies that electronically "white out" information which can later be restored. The redaction software expedites the processing of FOIA responses while protecting information that should not be released.

Transparency

The Agency embraced the mandate for greater transparency. EPA posted data bases to its Web site containing information frequently requested under FOIA. For example, an individual desiring to export an automobile is required to produce a certificate issued by EPA. In the past, the individual had to make a FOIA request for the certification and then wait for the Agency to respond to the request. Promoting transparency, quicker access and accountability, EPA's FOI Officer worked with the Agency's Office of Air and Radiation to make the database available online. The public can now go directly to EPA's FOIA Web site (epa.gov/foia) and print the certificate(s) in seconds without having to file a FOIA request; previously, the public had to wait days or weeks to obtain the necessary documentation after submitting a request. In addition, the Agency recently launched a Web page in March 2009 that allows requesters to easily obtain the status of their FOIA requests on the "Status of My FOIA Request" site at http://www.epa.gov/foia/foia_request_status.html.

EPA's Office of Pesticide Programs (OPP) completely redesigned its electronic FOIA reading room to make tens of thousands of highly sought after pesticide science and regulatory records publicly available without the filing of a FOIA request. OPP established a dual component electronic reading room by making documents available on its FOIA Website and on the *Regulations.gov* Web site. The OPP FOIA Web site provides access to approximately 13,000 OPP scientific reviews on 300 pesticide active ingredients. The *Regulations.gov* regulatory repository contains approximately 800 pesticide product registration working files comprising some 150,000 pages. Since making these highly sought after records available on the Web, FOIA requests for this

information have plummeted from twenty percent to three percent of all FOIA requests received by this office. The high demand scientific reviews and pesticide registration information are vital to industry, interest groups, state, local, and foreign governments, and many other stakeholders. Other parts of the Agency are exploring opportunities to use similar technology in proactively disclosing records.

EPA publishes extensive information on its Web site and continues to look for additional information to publish. Additionally, EPA continues to engage the public through FOIA Requester Forums held in conjunction with National and Regional training sessions. In the aftermath of Hurricane Katrina, EPA created a Web site to allow the public access to Hurricane-related information as soon as it became available at <http://www.epa.gov/katrina/>. While this site is no longer being updated it is still available to the public for reference purposes. Currently EPA is actively participating in the Data.gov effort by making datasets -- which have been accessible through Envirofacts and My Environment -- available now in open, downloadable formats that enhance access and support user creation of customized reports by individuals and businesses, reducing the need to file FOIA requests. The requested reports are often used for real estate transactions as part of the due diligence package. It is anticipated that this tool may reduce the number of Agency FOIA requests by 20 percent by allowing the public direct access to this environmental information.

Conclusion

In conclusion, EPA is proud of the accomplishments with its FOIA administration responsibilities and continues to proactively disclose information and reduce FOIA

requests for publicly available information. I would be pleased to answer any questions from the Subcommittee.

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