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May 4, 2012

## VIA REGULAR MAIL

A.T. Smith  
Deputy Director  
U.S. Secret Service  
Communications Center  
245 Murray Lane, S.W.  
Building T-5  
Washington, D.C. 20223

### **Freedom of Information Act Appeal Expedited Processing Requested for File Nos. 20120546-20120559**

Dear Mr. Smith:

This is an appeal of a denial of expedited processing under the Freedom of Information Act, 5 U.S.C. § 552(a)(6)(E)(i)(I) ("FOIA"), and 6 C.F.R., Chapter 1, Part 5 § 5.5. On March 27, 2012, I made a FOIA request to the Department of Homeland Security for expedited processing of the following:

1. Perfected, pending FOIA request letters submitted to your office on the dates provided below, which were listed on the Securities and Exchange Commission's 2011 Annual FOIA report as being included in the "10 Oldest Pending Perfected FOIA Requests:"<sup>1</sup>

- 11/30/2005
- 12/2/2005
- 12/2/2005
- 1/19/2006
- 1/19/2006
- 1/19/2006
- 1/19/2006

2. All correspondence related to the above requests.

On May 1, 2012, Craig W. Ulmer, a Freedom of Information and Privacy Act officer at your agency, denied my request for expedited processing on the grounds that no compelling need was demonstrated. I have enclosed copies of my original request and the agency's response.

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<sup>1</sup> U.S. Dep't of Justice, Department of Homeland Security's Annual FOIA Report, <http://www.dhs.gov/xlibrary/assets/privacy/privacy-foia-annual-report-fy-2011-dhs.pdf>.

Below are facts supporting such compelling need for the records, which demonstrate that there is “an urgency to inform the public of actual or alleged Federal government activity.”

Through this request, I am gathering information on agency efforts in processing the oldest FOIA requests, which is a topic of public interest in light of agency, media and legislative focus on agencies’ reported FOIA backlogs. This information is being sought on behalf of *The News Media & the Law*, the quarterly magazine for The Reporters Committee for Freedom of the Press, for dissemination to the general public.

Numerous recent actions taken by federal agencies and officials demonstrate the heightened public interest in agencies’ FOIA backlogs.

- In commemoration of national Sunshine Week – a week-long celebration of government transparency that began on March 12 – Attorney General Eric Holder delivered a speech in which he highlighted a stated reduction of backlogged FOIA requests, claiming the Department of Justice “reduce[d] the backlog of pending requests by more than a quarter” in 2011.<sup>2</sup>
- As discussed in greater detail below, agency officials recently testified before both houses of Congress on FOIA processing issues.
- Three federal agencies have announced plans to build a multi-agency FOIA portal in order to facilitate agencies in processing and responding to FOIA requests.<sup>3</sup>
- Federal agencies also recently submitted their 2011 Annual FOIA reports, which publicly identified the number of backlogged requests.<sup>4</sup>

Despite government claims touting FOIA processing achievements, recent media reports have challenged such claims, at times offering a contradictory perspective.

- The accuracy of the Annual FOIA report figures has been scrutinized by national media.<sup>5</sup>
- Another recent article reported that the FBI’s claim last fall that its oldest pending FOIA request was from 2009 “startled open-government groups,” who said they had unfulfilled requests dating back to 2005. The FBI said the requests had been “closed,” although the groups may not have been notified.<sup>6</sup>

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<sup>2</sup> Attorney General Eric Holder Speaks at U.S. Department of Justice Sunshine Week Celebration (March 12, 2012), available at <http://www.justice.gov/iso/opa/ag/speeches/2012/ag-speech-120312.html> (attached as Exhibit A).

<sup>3</sup> National Archives, *FOIA Portal Moving from Idea to Reality*, <http://blogs.archives.gov/foiablog/2012/01/09/foia-portal-moving-from-idea-to-reality/> (attached as Exhibit B).

<sup>4</sup> U.S. Dep’t of Justice, Annual FOIA Reports, <http://www.justice.gov/oip/reports.html> (last visited April 8, 2012).

<sup>5</sup> John Hudson, *FOIA Advocates Skeptical About Obama’s Claims of FOIA Progress*, ATLANTIC WIRE, March 9, 2012, <http://www.theatlanticwire.com/politics/2012/03/foia-advocates-skeptical-about-obamas-claims-foia-progress/49668/> (raising questions about the validity of the Justice Department’s claims of backlog reduction) (attached as Exhibit C).

<sup>6</sup> Josh Gerstein, *President Obama’s muddy transparency record*, POLITICO, March 5, 2012, <http://www.politico.com/news/stories/0312/73606.html> (attached as Exhibit D).

- An Associated Press analysis noted that the Obama administration had trouble keeping pace with current FOIA requests.<sup>7</sup>
- Other recent news reports state some requests have been unfilled for almost 20 years – an important problem because, due to extreme delays in FOIA processing, news stories, books and other materials have lacked information that would contribute to public discourse.<sup>8</sup>

Congress has also recently focused on FOIA processing delays and the appropriateness of withholdings under the law.

- At a March 13 Senate Judiciary Committee hearing, committee members expressed concerns over a possible disconnect between the administration's continued affirmations of transparency in government and what has actually materialized. At that hearing, Sen. Patrick Leahy (D-Vt.) said the federal government has used the "secrecy" stamp too liberally in classifying information, and Sen. Chuck Grassley (R-Iowa) criticized politically motivated withholdings of information.<sup>9</sup>
- Further, at a House of Representatives Committee on Oversight and Government Reform hearing on March 21, officials from the Office of Government Information Services, the Department of Justice and the Environmental Protection Agency were asked to comment on and at times defend FOIA request backlogs, as well as present ways to improve the use of technology in processing requests.<sup>10</sup>

Obviously, the debate over whether or not the government is meeting its processing obligations under FOIA is a current subject of public debate. Delaying a response to this request would compromise significant recognized interests in informing the public debate on the issue of efficient processing and providing better clarification and background for the public regarding the oldest pending requests as of fiscal year 2011. Timely release of the request itself – as well as subsequent, related correspondence between the agency and the requester – will help illuminate potential factors contributing to processing delays, and will aid in identifying what kinds of requests are taking the longest to process. This will ultimately help inform the public on the ongoing policy initiatives within government to improve and streamline FOIA processing and better enable them to assess the effectiveness of particular policy proposals.

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<sup>7</sup> *Government can't keep up with information requests*, ASSOCIATED PRESS, March 12, 2012, [http://www.cbsnews.com/8301-501704\\_162-57395168/government-cant-keep-up-with-information-requests/](http://www.cbsnews.com/8301-501704_162-57395168/government-cant-keep-up-with-information-requests/) (attached as Exhibit E).

<sup>8</sup> Matthew L. Wald, *Slow Responses Cloud a Window Into Washington*, N.Y. TIMES, Jan. 28, 2012, <http://www.nytimes.com/2012/01/29/us/slow-freedom-of-information-responses-cloud-a-window-into-washington.html?pagewanted=all> (attached as Exhibit F).

<sup>9</sup> Posting of Todd Ruger to The Blog of Legal Times, March 13, 2012, <http://legaltimes.typepad.com/blt/2012/03/senators-critical-of-obama-administration-over-government-transparency.html> (attached as Exhibit G).

<sup>10</sup> Josh Smith, *Federal Officials To Defend Responses To Records Requests*, NAT'L JOURNAL, March 21, 2012, [http://www.nationaljournal.com/tech/federal-officials-to-defend-responses-to-records-requests-20120321?mrefid=site\\_search/](http://www.nationaljournal.com/tech/federal-officials-to-defend-responses-to-records-requests-20120321?mrefid=site_search/) (attached as Exhibit H).

A.T. Smith  
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I trust that upon re-consideration, you will reverse the decision denying my request for expedited processing.

I certify that my statements concerning the need for expedited processing are true and correct to the best of my knowledge and belief.

As I am making this request as a journalist and this information is of timely value, I would appreciate your communicating with me by email, rather than regular mail, if there are questions regarding this request.

As I have made this request in the capacity of a journalist and this information is of timely value, I would appreciate your expediting the consideration of my appeal in every way possible. In any case, I will expect to receive your decision within 20 business days, as required by the statute.

I reserve the right to further appeal any future determinations made by your agency with respect to this request.

Thank you for your assistance.

Very truly yours,

Lucy A. Dalglish  
Executive Director  
& Publisher,  
*The News Media & The Law*

encs.