

TRAC 
Transactional Records Access Clearinghouse
Syracuse University

March 16, 2020

Douglas Hibbard
Chief, Initial Request Staff
Office of Information Policy
Department of Justice
6th Floor
441 G Street, NW
Washington, DC 20530

Dear Chief Douglas Hibbard:

In remarks prepared for delivery March 12, 2020 at the U.S. Department of Justice Sunshine Week Celebration (available at: <https://www.justice.gov/opa/speech/principal-deputy-associate-attorney-general-claire-murray-delivers-remarks-us-department>) Principal Deputy Associate Attorney General Claire Murray stated:

“[T]he work of government FOIA professionals has become even more challenging in the past few years. ... [A]n increase in nearly immediate litigation brought by some savvy frequent requesters strains our FOIA officials in their efforts to respond to every request in a timely way. Our FOIA professionals must be commended for redoubling their efforts to serve ordinary citizens while litigation on the part of the well-funded pushes ordinary citizens to the end of the queue.”

We were surprised by this statement since we recently completed a careful empirical study¹ that found quite the opposite. Not only were requesters not jumping into court immediately, but requesters were actually waiting longer than they had five years ago before filing suit in FOIA cases. We further found that the source of growing FOIA suits was because FOIA officials were *not* responding in a timely manner.

“The mission of the Office of Information Policy (OIP) is to encourage and oversee agency compliance with the Freedom of Information Act (FOIA).” Because of this important role that your agency plays, it should be incumbent on spokespersons to speak truthfully about FOIA practices. As we celebrate Sunshine Week one would hope statements – particularly those that cast aspirations at groups of FOIA requesters – are amply supported by the evidence.

Accordingly, we request under the provisions of the Freedom of Information Act:

¹ The report from this study is available at <http://foiaproject.org/2019/12/15/foia-suits-rise-because-agencies-dont-respond-even-as-requesters-wait-longer-to-file-suit/>.

- (A) All records irrespective of type including but not limited to studies, reports, and data in the department's possession that provide support for the factual assertions contained in Principal Deputy Associate Attorney General Claire Murray statement referred to above.
- (B) All records irrespective of type including but not limited to studies, reports, and data in the department's possession that document by time period from FY 2014 to date:
 - (i) The number of federal FOIA lawsuits that have occurred when:
 - a. Requesters at the time suit was filed had not received a timely response to their request;
 - b. Requesters at the time suit was filed had not received a timely response to their appeal;
 - c. Requesters at the time suit was filed had received a response to their appeal although it was not timely;
 - d. Requesters at the time suit was filed had received a timely response to their appeal;
 - e. So-called "well-funded" or "savvy frequent requesters" referred to in the above statement who at the time suit was filed had received a timely response to their appeal.
 - (ii) The number of days between the initial request, the agency's ultimate response (where applicable), and the date federal FOIA lawsuits were filed when:
 - a. Requesters at the time suit was filed had not received a timely response to their request;
 - b. Requesters at the time suit was filed had not received a timely response to their appeal;
 - c. Requesters at the time suit was filed had received a response to their appeal although it was not timely;
 - d. Requesters at the time suit was filed had received a timely response to their appeal;
 - e. So-called "well-funded" or "savvy frequent requesters" referred to in the above statement who at the time suit was filed had received a timely response to their appeal.

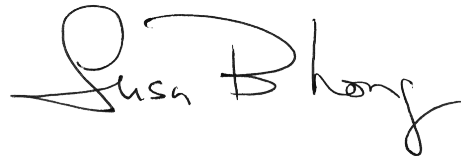
We also request that we be classified as a representative of the news media under the provisions of the Freedom of Information Act, and as representatives of an educational institution, whose purpose includes scholarly, scientific research. TRAC is a research data center at Syracuse University, and under the direction of its co-directors, Professor Long and Professor Burnham, carries out an active program of scholarly research on the federal government and its day-to-day activities. As part of our research we study how federal agencies implement their obligations under the Freedom of Information Act. For more than three decades at TRAC, we have actively gathered information of interest to the public, transformed this information utilizing our editorial and research expertise into various works -- including computerized knowledge bases and reports -- and make these works available to the public on two public websites: <http://FOIAproject.org> and <https://trac.syr.edu>. Our reports and information are widely used and

replied upon by other researchers, the news media, the government, as well as the public. See for example illustrative citations at: <https://trac.syr.edu/tracatwork/>.

We further request a full waiver of fees. As you are aware, FOIA sets strict time limits for responding to requests because timely receipt of the information that must be made public is a cornerstone of having an informed citizenry. Thus, there is substantial public interest in monitoring the success of an agency in meeting these timeliness goals. We are currently compiling information from a variety of sources to assess each agency's record. Results are published on our website where they are freely accessible to anyone on the internet.

We would very much appreciate your prompt action and response on this request. Should you have any questions, or if we can be of any assistance, please feel free to contact us. You can reach us at (315) 443-3563 or by email at tracfoia@syr.edu. Thank you very much.

Sincerely,

A handwritten signature in black ink that reads "Susan B. Long". The signature is fluid and cursive, with the first name "Susan" being larger and more prominent than the last name "Long".

Susan B. Long
Co-Director, TRAC and
Associate Professor
Martin J. Whitman School of Management
Syracuse University

A handwritten signature in black ink that reads "David Burnham". The signature is fluid and cursive, with the first name "David" being larger and more prominent than the last name "Burnham".

David Burnham
Co-Director, TRAC and
Associate Research Professor
S.I. Newhouse School of Public Communications
Syracuse University