

Testimony of
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Good morning Chairman Cummings, Ranking Member Jordan, and Members of the Committee. My name is Timothy Epp. I am the Environmental Protection Agency's Acting Director of the National FOIA Office within the EPA's Office of General Counsel.

EPA created the National FOIA Office less than a year ago to provide centralized FOIA programmatic services for the Agency in what otherwise remains a substantially decentralized FOIA processing structure. Later in my testimony, I will describe the creation of the National FOIA Office, its functions, and what we have accomplished this year.

I appreciate the opportunity to come before you today, during Sunshine Week, to share with you the Environmental Protection Agency's commitment both to operate in an open and transparent manner and to improve the speed and quality of the Agency's implementation of the Freedom of Information Act. In my testimony, I will describe the Agency's commitment to this goal, the reaffirmation of this goal at the highest levels of the EPA's leadership, and I will highlight the many initiatives that the Agency is implementing to sustain and improve upon this goal. The EPA takes its FOIA responsibility seriously and is committed to improving the efficiency of the FOIA Program thereby promoting greater transparency and building the public trust in the EPA's FOIA actions.

EPA Leadership is Committed to Further Improving FOIA Processing

The EPA's senior leadership has concretely demonstrated the EPA's commitment to operating in an open and transparent manner and to improve the EPA's FOIA response processing, by calling for unprecedented Agency reforms.

The EPA's 2018-2022 Strategic Plan sets a Strategic Goal to increase transparency and public participation by: (1) eliminating the backlog of pending requests; and (2) meeting the deadlines for responding to FOIA requests. The EPA's senior leadership is actively engaged in achieving this goal.

In early August, then-Acting Administrator Wheeler held a planning meeting on FOIA with me and Agency senior leadership to address how the Agency can improve our FOIA performance. At that early August meeting, Administrator Wheeler set an expectation for FOIA processing quality and timeliness for the EPA's senior leadership. He directed a review of the Agency's efforts and he asked for options to take concrete action to address FOIA processing quality and timeliness. As a result, EPA took a number of steps including manager accountability in performance reviews, monthly backlog reports, supervisor training, and streamlining of the awareness notification process.

Administrator Wheeler reinforced these expectations in an all-EPA staff announcement committing the Agency to transparency, timeliness, and the quality of FOIA response processing. His key messages were:

- **Transparency:** The EPA is committed to operating in an open and transparent manner. People have the right to access agency records, except where the information is protected from disclosure.
- **Timeliness:** The EPA will improve the timeliness of our FOIA responses.

- **Quality:** The EPA will improve the quality of our FOIA responses so that the public receives both clear communication about the FOIA process and appropriately redacted records.
- **Professionalism:** The EPA will bolster our training efforts and ensure that our FOIA professionals have the resources they need to help make the EPA a flagship example of transparent, efficient and effective government.

Additionally, the Agency issued a significant policy memorandum to clarify and streamline the awareness notification process.

Starting in FY 2019, the EPA added specific language to managers' performance agreements to hold them accountable for quality and timeliness in managing FOIA responses and for supervising and appropriately training all EPA employees who have a role in administering the FOIA. This creates accountability Agency-wide for improving FOIA performance.

Steps Taken and Results of EPA's FOIA Response Improvements

Over the past year, the EPA took significant steps to improve its FOIA processing, and those steps are already yielding measurable results.

1. EPA reorganized FOIA responsibilities to increase accountability

To improve accountability and improve FOIA implementation, the EPA delegated the Chief FOIA Officer function to the General Counsel to raise the profile and accountability of the EPA's FOIA implementation. The Agency also launched a reorganization of the FOIA programs in each of the 10 EPA regional offices, moving those programs into the Regional Counsel's Offices to ensure accountability and reporting through the Regional Counsels to the General

Counsel, as the Agency's Chief FOIA Officer. This reorganization will be completed this Spring.

2. EPA reorganized its National FOIA program office to increase performance

The EPA moved the National FOIA Program from the Office of Environmental Information (OEI) into the Office of General Counsel, combining it with the existing FOIA Expert Assistance Team (FEAT) to create the Agency's National FOIA Office (NFO). The NFO provides centralized programmatic services pertaining to the Agency's implementation of the FOIA, including performing FOIA request intake, assignment, and clarification for headquarters program offices; staffing the FOIA requester service center and FOIA Public Liaison role; issuing expedited processing and fee waiver determinations; preparing monthly and annual FOIA reports; delivering monthly, annual, and ad hoc training; and reviewing and updating the Agency's FOIA websites and its FOIA regulations, policies, and procedures.

By combining the FOIA program functions with the Office of General Counsel's FOIA Expert Assistance Team, the Agency ensured that the NFO's centralized FOIA policy-setting and implementation activities would be informed by the FEAT's nationwide experience managing all phases of FOIA response. The EPA originally established the FEAT in 2013 to provide strategic direction and project management assistance on the most challenging, complex, or potentially sensitive FOIA requests received by the Agency. Since its founding, the FEAT has worked on the Agency's FOIA responses pertaining to many of the highest profile public health and environmental concerns, including Flint drinking water, Gold King Mine, and Bristol Bay/Pebble Mine. The FEAT provides robust project management assistance to offices, ensuring that the Agency can rapidly, efficiently, and appropriately respond to the public's requests for information in these contexts.

By establishing a single, centralized Agency FOIA Office in the Office of General Counsel, consisting of both program functions and the FEAT's project management, negotiation, and legal counseling expertise, the Agency expects to improve the timeliness and accuracy of the assignment of FOIA requests to the proper EPA action office, the timeliness of decisions on expedited processing and fee waiver requests, and the quality of training as well as other FOIA request processing support. The EPA's National FOIA Office has already started issuing monthly FOIA backlog reports to the heads of all Agency program and regional offices. These reports identify the progress each office has made toward reducing their backlog of FOIA requests, thereby using information as an accountability tool to motivate progress.

3. Enhanced FOIA processing in the Office of the Administrator

To address the substantial increase in FOIA requests in the Office of the Administrator (AO), the Agency enhanced FOIA processing in what is known as the AO FOIA Centralization Project. The Project involved combining FOIA processing for the four AO sub-offices with the largest volume of FOIA requests, hiring five additional AO staff, developing a subject matter taxonomy to classify and link over 1,400 FOIA requests, and assigning a Project lead for each subject matter.

After April 30, 2018, the Project team sent over 1,300 letters providing requesters with updates about their requests including a tracking number, the position in the queue of pending requests, an estimated response date, and information for the EPA's FOIA Public Liaison. The team closed over 400 requests and provided over 500 interim responses from April 30, 2018 to March 6, 2019. The Agency also stood up a "Tiger Team" of AO staff who performed a first review of more than 23,900 documents and a second review of more than 16,400 documents from August 14 to March 6, 2019. This work is ongoing.

4. Process improvements on responding to requests for expedited processing

The EPA continually strives to identify opportunities for FOIA process improvements. For example, the EPA conducted a Lean management process improvement project to identify and minimize bottlenecks in the process for responding to requests for expedited processing. This project reduced the EPA's average number of days to adjudicate expedited processing requests significantly in the first quarter of FY 2019.

5. Improvements to document review software

The eDiscovery Division (EDD) in EPA's Office of Mission Support deployed a large scale upgraded version of the Relativity document review software for handling the review of electronically stored information (ESI) in responding to FOIA requests. This upgrade increased handling speed of the ESI to allow faster upload and download speeds. The EPA also deployed two of Relativity's structured analytics tools: email threading and identification of near duplicate text. Email threading significantly reduces review time by allowing reviewers to view groups of related emails together in a chain (a thread would include the original email and all responses and forwarded emails). This feature allows faster and more consistent review. Similarly, identification of near duplicate text allows reviewers to review near duplicate text in groups for faster and more consistent processing. These features are expected to reduce document review processing times for large document collections.

Proactive Disclosure of Environmental Data and Information

Proactive disclosure of scientific data and environmental information is one way that the EPA has promoted transparency and access to information at the Agency.

The EPA is a leader on the proactive disclosure to the public of environmental information relevant to the localities where Americans live, work, and play. The EPA provides the public access to scientific and environmental information through a variety of interactive tools available on the EPA website. For example:

- AirNow is an interactive map and database that allows the public to locate the most current information regarding air quality in their communities.
- MyProperty is an internet-based tool that allows the public to search for environmental information on specific addresses nation-wide.
- Re-Powering Mapper is an online interactive web application that allows the public to visualize key information on renewable energy potential at over 130,000 contaminated lands, landfills, and mine sites.

Informing the American public about their own communities is part of the EPA's core mission and enables Americans to participate in local and national decisionmaking. The Agency continuously seeks to identify new proactive disclosure opportunities to provide important information to the public without a formal FOIA request.

Another example of EPA's commitment to transparency and proactive disclosure is its leadership developing FOIAonline as a shared service for other federal agencies. The EPA launched FOIAonline in 2012 as a federal shared service to provide an online means for the public to submit, track, and receive responses to FOIA requests, as well as a means for federal agency partners to receive, route, process, and respond to FOIA requests. FOIAonline currently serves 19 federal agency organizations, with about 3,000 agency users; and it has over 50,000 public user accounts. The system contains over 2,000,000 records and its content is increasing at a rate of about 30 percent per year.

Volume of FOIA requests to EPA

The EPA is taking great strides to confront its FOIA challenges and to improve the Agency's overall FOIA processing. One of the EPA's biggest challenges pertaining to FOIA processing is the sheer number of requests received by the Agency.

The EPA's FOIA challenges must be understood in the context of the substantial increase in FOIA requests over the last two years and their increased complexity. The EPA received 1,115 more FOIA requests in FY 2017 and 961 more FOIA requests in FY 2018 than the EPA received in FY 2016. The increase in overall FOIA requests had a particularly significant impact on the Office of the Administrator, which saw more than a 415% increase in its FOIA requests in FY 2017 and more than a 368% increase in its FOIA requests in FY 2018 as compared to FY 2016. The EPA also has observed increased FOIA request complexity: an increase in the number of requests seeking correspondence generally (e.g., "all communications"), rather than correspondence about a specific or precise subject; and an increase in the number of distinct subparts that require coordination among multiple Agency subcomponents.

EPA has had a significant number of backlogged FOIA requests for years. At the end of FY 2016 and FY 2017, EPA had, respectively, 1,284 and 1,891 FOIA requests that were backlogged. At the end of FY 2018, EPA had 2,761 FOIA requests that were backlogged. At the end of FY 2018, the Agency also had over 65 pending FOIA court cases which is significantly more than the number of cases received in each of the fiscal years between 2013-2015. Even on narrower snapshots looking at specific stages of FOIA processing, the EPA's data shows opportunity for improvement. For example, in FY 2018, it took the EPA an average of 18.3 days to adjudicate requests for expedited processing, significantly longer than the expectation of a 10-day average.

While these numbers are daunting, the EPA remains committed to complying with the FOIA and to improving its implementation; and, we are beginning to see progress from our efforts.

Forecast for Additional Improvements

The EPA continues to explore cost-effective ways to improve the Agency's timeliness and quality of FOIA responses. To this end, the EPA is considering options to further streamline its FOIA processing including by centralizing FOIA intake and related FOIA processing functions as other agencies do, such as the Department of State and the Securities and Exchange Commission as well as the recommendations of the 2016 – 2018 Final Report of the FOIA Federal Advisory Committee. EPA is developing a new, comprehensive training course for supervisors that it plans to roll out nation-wide in the next few months. The NFO is working on a pilot to create a visual management tool, or "national pulse board," to display FOIA request data potentially from all EPA offices and track each FOIA request as it moves through the FOIA lifecycle. Development and maintenance of this visual management tool could help the NFO identify processing bottlenecks and enable the NFO to better analyze the efficiencies and challenges within the Agency's FOIA process. The Agency continues to explore other Lean management projects and evaluate additional process improvements to further streamline the FOIA response process and increase transparency through additional proactive disclosures.

In sum, despite the significant increases in FOIA requests and litigation, the EPA, at its highest leadership levels, is committed to operating transparently; the EPA has set a Strategic Goal to fully eliminate its FOIA backlog; and this year, the EPA took many concrete steps to improve its implementation of FOIA. Equally important, the EPA is committed to proactively

disclosing to the public scientific data and environmental information relevant to the EPA's core mission and the American public's daily life.

Thank you for the opportunity to testify before you today to discuss the EPA's work regarding FOIA. I would be pleased to address any questions that you or any other Member of the Committee may have on this important subject.