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May 20, 2015

The Honorable Jason Chaffetz, Chairman  
Committee on Oversight and Government Reform  
United States House of Representatives  
2157 Rayburn House Office Building  
Washington, DC 20515

The Honorable Elijah Cummings, Ranking Member  
Committee on Oversight and Government Reform  
United States House of Representatives  
2157 Rayburn House Office Building  
Washington, DC 20515

RE: Freedom of Information Act requests by Human Rights Watch

Dear Chairman Chaffetz and Ranking Member Cummings,

The US Freedom of Information Act (FOIA) is a critical instrument to ensure accountable government and make effective the American people's right to know information of public interest. At Human Rights Watch, we rely on the law as an essential tool to help document potential rights abuses by US agencies, as we did in our reports on the [use of far and frequent detention transfers within the immigration system](#) and the [impact of US border prosecutions](#). However, as the Oversight Committee is aware, we are witnessing what the Associated Press has recently described as a procedural and substantive breakdown of the system. Our own recent experience using FOIA is unfortunately consistent with the Associated Press's accounts of government agencies denying requests, delaying responses, charging exorbitant fees, censoring responses and generally obfuscating records requests at unprecedented levels.

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A partial list of the problems we have encountered in using FOIA includes:

### **Unreasonable delays**

It is not uncommon for us to wait nearly a year for an initial response to a FOIA request. In our worst horror stories, the government simply refuses to provide information, or provides unresponsive information, and the resolution of a FOIA request drags on for many years. For example, the Bureau of Prisons (BOP) stalled for 18 months and ultimately provided no responsive information to a FOIA request we filed in August 2012 on the numbers of people in federal prison charged or convicted of terrorism-related offenses and their conditions of confinement. Only after Human Rights Watch filed a lawsuit and the BOP was instructed by a federal judge to provide information did it begin to produce a portion of the requested information. However, even after negotiations in which BOP agreed to produce responsive information, the agency's redactions were so extensive as to make some of the information meaningless. A hearing on the litigation is scheduled for this June.

We are also currently appealing a FOIA denial from Immigrations and Customs Enforcement (ICE) for a request filed nearly three years ago (July 2012) regarding the immigration status and criminal history of deported non-citizens.

The agencies in question have offered little justification for these delays, which can significantly undermine the potential impact of the data in our work, as the information can become so outdated as to be useless.

### **Arbitrary and unexplained redactions**

FOIA requires the US government to share information “unless disclosure would hurt national security, violate personal privacy or expose business secrets or confidential decision-making in certain areas.” Therefore, FOIA responses sometimes include redactions. However, our experiences indicate redactions can be arbitrary, unexplained, and often render responses meaningless. For example, we have received data on immigration apprehensions from ICE that was heavily redacted, only to have it un-redacted after a legal appeal. In another case, the BOP provided Human Rights Watch with data, heavily redacted, and, in violation of the FOIA statute, refused to identify the statutory provision upon which it was basing

some of its redactions. We recently received a 17-page document from the Air Force, of which 14 pages were completely blank, with little information provided on what types of information the pages held. In many of these cases, redactions appear to be an effort to obfuscate rather than to maintain confidentiality, privacy or security.

### **Data availability and poor quality of data**

Human Rights Watch has spent countless hours and human resources communicating, appealing and litigating with government agencies over what data is available and how to ask for it. In one particularly jarring episode, ICE told us it doesn't keep data on the immigration status of those it deports, even though the government is legally obligated to keep this information, and even though it has willingly provided us that information (for prior years) in the past.

Additionally, we regularly receive datasets that are incomplete or include incredibly "dirty" data. Poor quality or incomplete data indicates that the data management and systems agencies are using are not suitable for fulfilling FOIA's mandate. Much of this is due to the systems used to collect data, whether a variable is mandatory or not, or whether it is an open-text variable. We have received data in which ICE staff entered the "number and nationality of children" of detainees more than 110,000 different ways—we were eventually able to determine that these could be reduced to about 1,000 unique values. We have also received data in formats that render the data incomplete. For example, rather than exporting data in a flat file format, we have received datasets where some unknown amount of the data was missing because it was exported in the Excel format, which has a row limit. In another case, the Department of Homeland Security told us that the information we are requesting exists online and then provided a broken URL that navigates to an error page. Too often the government provides us with a dataset in which the majority of cases have missing data—indicating serious deficiencies in government data management systems.

### **Irregular and unreasonable fees**

US agencies' decisions to charge fees in response to FOIA requests sometimes appear arbitrary. For example, Human Rights Watch always documents in FOIA requests how we fulfill the fee waiver requirement. In the vast majority of cases, ICE

agrees on the fee waiver; yet, very occasionally, ICE demands a fee for producing data. In these cases, we have successfully appealed the fee request.

The amount of fees quoted by agencies can vary wildly. In an extreme example, we requested identical information from each branch of the armed forces. The Air Force quoted us \$168,316 in processing fees while the Army only estimated a \$1,584 cost for the same request. Fee estimates appear to be generated by FOIA employees trying to determine how extensive a database query will be. In an example that highlights the arbitrariness of estimating a query, we have received a response from ICE that told us that fulfilling our request for data on deported non-citizens would cause statistical reporting by the agency to “virtually grind to a halt”. Yet after appealing, it was promptly fulfilled.

In passing FOIA, the United States recognized that transparency, accountability and democratic governance are intrinsically linked. Yet if the US is to live up to these values, the US must urgently correct course, by providing the resources and training necessary to implement FOIA, and by instructing its agencies to provide accurate, reasonable, and complete responses to those who use it. The Oversight Committee has a key role in making these changes occur, including by pressing the relevant agencies to meet their obligations, as well as by ensuring that Congress is providing adequate resources for FOIA compliance.

We are available to discuss our concerns with FOIA compliance further with your staff.

Sincerely,

A handwritten signature in black ink, appearing to read "Brian Root", written over a light-colored rectangular background.

Brian Root, PhD  
Quantitative Analyst  
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