

February 9, 2017

David M. Hardy  
Section Chief  
Record/Information Dissemination Section  
Federal Bureau of Investigation  
170 Marcel Drive  
Winchester, VA 22602-4483

Dear Mr. Hardy,

According to media reports, the FBI has announced that it will stop accepting Freedom of Information Act (FOIA) requests via email, starting on March 1, 2017. Instead, requesters must either use the FBI's online FOIA portal or they must send their requests in by fax or letter.

While it is admirable that the FBI has sought to make it easier to receive and process FOIA requests, there are a number of limitations with the online portal. These limitations may become serious problems if this system is to be the sole method through which the agency can receive digital FOIA requests.

I urge you to remedy these unnecessary limits on FOIA submissions and continue to accept email submissions, absent an online portal capable of accepting all FOIA requests.

First, the portal places a 3,000 character limit on requests. While that may be sufficient for simple requests, it may not be sufficient for those who need to explain why they are seeking the relevant records. What is the rationale for limiting these requests to 3,000 characters?

Second, the FOIA portal's online terms state that it may only be used to request records about "events, organizations, first party requests (Privacy Act requests), and deceased individuals." It is unclear whether the online FOIA system can be used to request internal FBI communications, such as memos, emails, guidance, or a wide range of other important internal agency records. Please clarify whether you intend to exclude requests for such records from the FOIA portal. If this was not your intent, please update the terms of service to permit explicitly these other types of requests through the portal.

Third, the portal requires that requesters solve a CAPTCHA, that is, a program or system intended to distinguish human from machine input. By employing technical measures to prevent the automated submission of FOIA requests, the FBI is creating an unnecessary barrier for researchers and journalists engaged in the innovative use of technology. The FBI should be facilitating and encouraging such innovative projects. Why has the agency added this technical protection measure, and under what legal authority can it limit automated submissions?

Fourth, the portal also requires requesters to reveal whether or not they are in the United States. Because both U.S. citizens and foreign nationals can invoke FOIA's right of access regardless of their geographic location, it is not clear why the FBI is requesting this information. To the extent that the FBI is requesting this information from those submitting first-party requests under the Privacy Act, please modify the FOIA portal to only request this information from those requests.

Finally, please explain the rationale that persuaded the FBI to develop its own FOIA portal, rather than use the existing multi-agency FOIAonline portal, which other Department of Justice components use to receive FOIA requests.

Taken together, this change in policy may place an unnecessary burden on those requesters who must now send requests to the FBI by fax or letter and may, counter-intuitively, create unnecessary work for the FBI, as the agency's FOIA team will then have to perform manual data entry of text that would have previously been emailed to the agency.

If you have any questions about this request, please contact Anderson Heiman, Senate Finance Committee Staff, at (202) 224-4515.

Sincerely,



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Ron Wyden  
United States Senator