

John Verdi- Senior Counsel, EPIC (Electronic Privacy Information Center), Director, EPIC Open Government Project

“We have never observed agency practices that flag FOIA requests for political review. We are not aware of any other program that has singled out FOIA requests based on politically sensitive content or the identity of the requester. **In our experience, this program is unique. And it is uniquely harmful.**” (Pg.1)

“Based on EPIC’s experiences, it is our view that: 1) DHS should immediately cease political review of FOIA requests; 2) DHS should immediately disclose all agency records responsive to FOIA requests that were subject to political review; 3) all other executive agencies should immediately cease political review of FOIA requests and report to the committee the extent to which they engaged in such review; and 4) all agencies should certify, as part of their annual FOIA reporting requirements, that no FOIA requests were reviewed by political appointees.” (Pg. 2)

“EPIC’s review of available records confirms that in 2009 alone, at least two of EPIC’s FOIA requests to DHS were referred to political appointees. **In both cases involving improper political review, the agency’s response to EPIC was delayed, violating statutory deadlines.**” (Pg. 7)

Charles K. Edwards- Acting Inspector General, U.S. DHS

“**We also determined that the Office of the Secretary had unprecedented involvement in the FOIA process since 2009.** For several hundred requests deemed significant, components were required to provide all materials intended for release to the Office of the Secretary for review and concurrence. This review process created inefficiencies in implementing the FOIA.” (Pg. 1)

“After reviewing information and interviewing DHS FOIA experts, we determined that the significant request review process of DHS (hereafter, referred to as the review process) did not prohibit the eventual release of information. However, the involvement of the Office of the Secretary created some inefficiencies and delayed the eventual release in some cases.” (Pg. 3)

“Rather, the process provided information about what was being disclosed. **Among other areas, the Office of the Secretary asked for details on FOIA releases that– 1. Related to a presidential or agency priority; 2. Would likely garner media attention; 3. Contained documents related to meetings with prominent public or private sector leaders; and 4. Were from the media, Congress, or special interest groups.**” (Pg. 3)

“A significant change occurred in September 2009, when components were prohibited from releasing responses to FOIA requests deemed significant until the Office of the Secretary reviewed and concurred on the FOIA responses.” (Pg. 4)

“While the department has a legitimate need to be aware of media inquiries, we are not persuaded that delaying a FOIA release so that officials can prepare for expected inquiries is the best public policy.” (Pg. 4)

“Of the 53 cases monitored, which covered releases sent for review from March through July 2010, the Office of the Secretary averaged 15 business days to complete the review process, with several cases taking significantly longer. Because the component could not send the information to the requester until this review was completed and the Office of the Secretary concurred, the review

process caused the department to violate the 20 business day statutory deadline in many instances.” (Pg. 4)

“One member of the Privacy Office staff stated that the process was —a disservice to the requester|| and it had —no added value. FOIA Officers can be concerned with delays even when only one case affected, because of potential legal liability and the desire to serve requesters promptly.” (Pg. 5)

“In the same month, the Chief FOIA Officer informed the DHS Office of the General Counsel that staff involved in the review process had suggested inappropriate edits to FOIA release cover letters— edits that would have altered the information requesters received on appeal rights when FOIA denials were made.” (Pg. 6)

“Such inefficient oversight of significant requests before release led to statutory noncompliance or prolonged delays in some cases. Additionally, various individuals who reviewed significant cases, including senior DHS officials, had little to contribute to the department’s disclosure program.” (Pg. 6)