

██████████
Providence, RI 02906

May 28, 2015

114th Congress of the United States
House of Representatives
Committee on Oversight and Government Reform
2157 Rayburn House Office Building
Washington, DC 20515

RE: Freedom of Information Act.

Dear Chairman Chaffetz, Ranking Member Cummings, and members of the Committee on Oversight and Government Reform:

My name is Philip Eil and I am a freelance journalist based in Providence, Rhode Island. I was 26 years old when I filed my first Freedom of Information Act request, and though I had interacted with the federal government before – paying taxes, registering for the draft, talking with airport customs officers – my 2012 FOIA letter to the Department of Justice marked a chance for me to get a substantial first impression.

It did not go well.

In fact, I often describe the handling of my FOIA request as the single most disillusioning experience of my life.

That may sound hyperbolic, so allow me to explain. For more than five years, I have been working on a book about Dr. Paul Volkman, a college and medical school classmate of my father charged with a massive prescription drug-dealing scheme that, according to prosecutors, led to the overdose deaths of at least 14 patients. When Volkman was convicted, after an eight-week trial in Cincinnati U.S. District Court, in 2011, I requested access to the trial exhibits from the clerk of the court. This request was denied, as were subsequent requests to the Ohio U.S. Attorney's office, the U.S. District Court judge who presided over the case, and the clerk of the Sixth Circuit U.S. Court of Appeals.

And so on February 1, 2012, I sent a FOIA request to the Executive Office for U.S. Attorneys, in Washington, seeking access to the trial evidence. I attached a 16-page list of exhibits which served as a kind of "shopping list" for my request. (Both the letter and the list, which I accessed via PACER, are attached.) To be clear, I asked only to see materials that had already been shown in an open courtroom, without seal or restriction.

EOUSA acknowledged receiving my request on February 28, 2012, and held it until November 29, when the agency notified me it was transferring the request to the Drug Enforcement Administration, where the documents I sought originated. EOUSA charged me a \$154 "review fee" for the nine months the agency spent determining it could not process my request. (Both letters are attached.)

DEA received my transferred request in December of 2012, and, in May of 2013, I received my first of ten partial fulfillment packages. The cover letter for this package (attached) notified me that the agency had processed 150 of "approximately 15,000 referred pages." In other words, it took DEA four months to process one percent of my request. Unfortunately, this

pace did not significantly improve. And by the time I sent letters complaining about the handling of my FOIA request to my U.S. representative and senators in November of 2014 (33 months after EOUSA had received my request, and 22 months after DEA had received my transferred request) only 23 percent of my request had been processed.

These delays might have been less conspicuous if the packages I received from DEA actually reflected what the Volkman jury saw. But, all told, DEA withheld 87 percent of the 16,012 total pages it processed. And most of the remaining 2,012 pages the agency “released” were immaterial or redacted to the point of uselessness. In one partial-fulfillment response, the agency “released” a 133-page slideshow with the substance from every single slide redacted. In other cases, the agency released Xeroxes of the front, back, and spine of notebooks, but withheld the notebooks’ contents. In other packages, DEA sent more than 450 pain-clinic sign-in sheets that were completely redacted except for the dates on each page. (Examples of all are attached.)

I suspect that much of DEA’s withholding and redacting is excessive (remember: I requested only previously-published material), and, in some cases, I have proof. When I filed a FOIA request for the processing notes from my Volkman-evidence FOIA request, I received, among other things, a partially-redacted version of the exhibit list I attached to my initial request¹. (Translation: DEA had redacted a document that had been previously published on PACER with no redactions.) Furthermore, in February 2013 (after DEA received my transferred request and before it sent my first partial fulfillment package) prosecutors from the Ohio U.S. Attorney’s office submitted 59 pages of selected trial exhibits to the Sixth Circuit Court of Appeals. Among these documents (which were uploaded to PACER) were lightly-redacted death certificates of Volkman’s former patients and other trial exhibits that DEA would later withhold.

As I write this letter, I am awaiting a response to a FOIA lawsuit I recently filed against the DEA, with the help of the Rhode Island ACLU and two pro-bono attorneys². I assure you, I did not plan to sue the Department of Justice when I first filed this FOIA request in 2012. Nor did I expect to write letters to various elected representatives, including the President of the United States; make countless phone calls and emails to EOUSA and DEA FOIA officers; and file a complaint with the “FOIA Ombudsman” at the National Archives’ Office of Government Information Services (all measures which have proved fruitless, in terms of retrieving the materials I seek). But I was compelled to do those things – just as I am compelled to write this letter – by the appalling dysfunction I encountered when asked my government a simple question: “May I see the evidence that sent a U.S. citizen to prison for four consecutive life terms³?”

As you continue to collect testimonials and consider possibilities for FOIA reform, I urge you to remember my story. I submitted my FOIA request with an open mind and a firm belief in President Lyndon Johnson’s words, when he signed the FOIA into law in 1966: “the United States is an open society in which the people’s right to know is cherished and guarded⁴.” At no point since then, however, have I seen this spirit – or the “presumption in favor of disclosure” that President Barack Obama urged in a 2009 memo about FOIA to the heads of executive departments and agencies⁵ – carried out. My experiences, instead, have much more closely

¹ https://muckrock.s3.amazonaws.com/foia_files/12-4-14_MR14274_RES_ID15-00142-F_1.pdf, p. 1-16.

² http://riaclu.org/images/uploads/Eil_v_USDEA_complaint.pdf

³ <http://www.fbi.gov/cincinnati/press-releases/2012/chicago-physician-receives-four-life-sentences-for-illegally-distributing-pills-that-led-to-deaths-of-four-people>

⁴ <http://www.presidency.ucsb.edu/ws/?pid=27700>

⁵ https://www.whitehouse.gov/the_press_office/Freedom_of_Information_Act/

reflected Associated Press General Counsel Karen Kaiser's recent testimony before the Senate Judiciary committee: "We are witnessing a breakdown in the system both on the procedural front, in the form of continual delays and agency non-responsiveness, and on the substantive front, with the vast over-use of exemptions and redactions."⁶

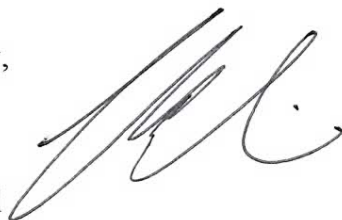
The disillusionment I described at the top of this letter did not happen overnight. It happened gradually over the 1,108 days DOJ took to process my request: when an EOUSA FOIA officer erroneously told me, over the phone, "The boxes I have on my desk will be coming your way"; when two separate DEA FOIA officers denied my legally-entitled request for a estimated completion date on my FOIA request, during a phone call; when DEA sent me a partial fulfillment package that withheld 1,225 of 1,232 processed pages (99.43 percent); when I learned that my FOIA request was at one point forwarded to the wrong DEA field office, which accidentally deleted it⁷.

Disillusioned as I am today, though, I have not lost all faith in the U. S. government. I write with the hope – and firm belief – that when Congress hears stories like mine, it will work to repair this broken system.

Thank you for considering my input on this issue. You will find exhibits attached to this letter, and I am happy to provide further documentation or testimony, if necessary.

Sincerely,

Philip Eil

A handwritten signature in black ink, appearing to be 'PE', written over a horizontal line.

⁶ <http://www.ap.org/Content/Press-Release/2015/Ensuring-an-informed-citizenry-Examining-the-administrations-efforts-to-improve-open-government>

⁷ https://muckrock.s3.amazonaws.com/foia_files/12-4-14_MR14274_RES_ID15-00142-F_1.pdf, p. 20.