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Opening Statement Rep. Elijah E. Cummings, Ranking Member

Hearing on "Why isn't the Department of Homeland Security Meeting the President's Standard on FOIA"

March 31, 2011

Thank you, Mr. Chairman. My goal is always to be as constructive as possible, so let me start with what I think we agree on.

First, I think you and I agree with President Obama's decision, on his first day in office, to reverse eight years of the previous Administration's FOIA policy, to adopt a presumption in favor of disclosure, and to renew the Federal Government's commitment to FOIA.

I think we also agree that the process used by DHS to review certain FOIA responses in 2009 and 2010 was not efficient, sometimes led to delays, and caused confusion about roles and responsibilities that resulted in inter-office tension at DHS.

Finally, I think we can agree that since then, DHS has made significant improvements, but it must continue to take additional steps to fully address these concerns.

Despite some areas of agreement, however, we part ways when you make extreme accusations that are not supported by the documents, not supported by the interviews, and not supported by the investigation conducted by the DHS Inspector General's Office.

Over and over again, you have claimed that DHS officials are making FOIA decisions based on partisan political considerations.

In July, you claimed that DHS "ignored the intent of Congress and politicized the FOIA process."

In August, you claimed that political appointees at DHS were "inappropriately injecting partisan political considerations into the process."

You continue to make this accusation today, even though the Committee has conducted interviews and gathered documents that show the opposite is true.

The report you released yesterday accused DHS officials of “illegal politicization.” It claimed that “political considerations were an important factor in the process.”

And without requesting a single document from the previous Administration, the report concluded that the FOIA process is now “more politicized than when President Obama took office.”

These extreme accusations are unsubstantiated. In preparation for today’s hearing, my staff examined eight different allegations in detail. They reviewed the documents produced to the Committee, as well as the transcripts of interviews conducted by Committee staff.

We found no evidence that DHS withheld any information for partisan political purposes.

We found no evidence that FOIA requestors received different treatment based on their political affiliation.

And we found no evidence that DHS officials implemented the FOIA process to advance partisan political objectives.

In every instance we examined, information was withheld only with the approval of either the FOIA Office or the General Counsel’s Office.

This is not just our assessment. This is also the conclusion of the DHS Inspector General, which issued a report yesterday refuting these specific allegations. This is what the IG investigators said:

- “After reviewing information and interviewing DHS FOIA experts, we determined that the significant request review process ... did not prohibit the eventual release of information.”
- “None of this information demonstrated that the Office of the Secretary prohibited the eventual release of information under FOIA. Information we obtained from the FOIA staff and our review of documents corroborates this assessment.”
- “No FOIA officer said that requesters were disadvantaged because of their political party or particular area of interest.”

Mr. Chairman, our Committee has a great opportunity to help federal agencies as they strive to achieve President Obama’s high standard. But we also have an obligation to conduct oversight that is responsible. I hope we can work together to achieve both.