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May 18, 2016

VIA EMAIL: abeckett@osc.gov

Amy Beckett
Senior Litigation Counsel
U.S. Office of Special Counsel
1730 M Street, NW
Suite 218
Washington, D.C. 20036

Re: FOIA/Touhy Regulation

Dear Ms. Beckett:

Please accept these comments from America Rising in response to the Office of Special Counsel's proposed amendments to the agency's Freedom of Information Act (FOIA) regulations.¹

America Rising is an opposition research and communications organization with headquarters in Arlington, Virginia. Since its establishment in 2013, America Rising has submitted nearly two thousand freedom of information requests to federal, state, and local agencies. Additionally, since 2015, America Rising has regularly submitted comments to federal agencies that have proposed changes to their FOIA regulations.

As a general matter, America Rising views OSC's proposed amendments favorably. America Rising suggests, however, that OSC revise certain provisions in accordance with the descriptions set forth below.

§ 1820.2 Requirements for making FOIA requests.

Subsection (a)(1) should identify OSC's fax number and its email address instead of advising potential requesters to search for such information on OSC's website. Approximately 47 million Americans do not have Internet access. *See* Adrienne Lafrance, *America Offline*, THE ATLANTIC, July 28, 2015, available at <http://www.theatlantic.com/technology/archive/2015/07/america-offline/399830/>.

Moreover, providing such information within the regulation poses little risk. Even if OSC were to relocate, for example, it would not need to change its email address. Nor

¹ *Revision of Regulations Governing Freedom of Information Act Requests and Appeals, and Revision of Touhy Regulations Governing Release of Information in Response to Legal Proceedings*, 81 Fed. Reg. 27049-27054 (May 5, 2016).

would OSC need to change its fax number unless it relocates outside of the District of Columbia, in which case it would need to amend the same regulatory provision to update its mailing address. Notably, several cabinet agencies include their email addresses and/or fax numbers in their regulations. *See, e.g.*, 22 C.F.R. §§ 171.4(a), (a)(1) (U.S. Dep't of State); 28 C.F.R. § 16.3(a)(2) (U.S. Dep't of Justice); 29 C.F.R. § 70.19(b)(2) (U.S. Dep't of Labor).

Further, subsection (c) would be clearer if the first and second sentence were combined to read as follows: "Making a FOIA request shall be considered an agreement by the requester to pay all applicable fees chargeable under § 1820.7, up to and including the amount of \$25.00, unless the requester asks for a waiver of fees or specifies a willingness to pay a greater or lesser amount."

§ 1820.3 Consultations and referrals.

Although OSC has not proposed amendments to this section, it is worth noting that subsection (a) restricts the type of entity with which OSC may consult -- namely an "agency" as defined by 5 U.S.C. § 552(f)(1) (referring in turn to 5 U.S.C. § 551(1)). Therefore, should OSC wish to consult with the Office of White House Counsel or a state or local entity, none of which is an agency for FOIA purposes, it should consider revising section 1820.3 accordingly. The Department of State recently amended its consultation procedures in response to America Rising's same comment. *See Final Rule*, 81 Fed. Reg. 19863, 19864 (Apr. 6, 2016) ("Department Response to Point 4").

§ 1820.6 Appeals.

Subsection (a)(3) should allow requesters to submit requests by email in addition to "other electronic means," just as section 1820.2 allows requesters to do for initial requests. Additionally, as noted above, America Rising suggests that OSC identify its email address and fax number within the regulation instead of directing requesters to search for such information on OSC's website.

To promote the settlement of disputes prior to litigation, America Rising recommends that subsection (c) notify requesters of the mediation services offered by the Office of Government Information Services. Additionally, for both the sake of transparency and consistency, OSC should add that it will respond to administrative appeals within the statutory deadline; it states as much with respect to initial requests in section 1820.5.

Thank you for considering America Rising's comments.

Respectfully,



Allan Blutstein
Vice President, FOIA Operations