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Members of the Working Group, my name is Peter Fritz. I have experience with blanket denials of requests for government documents. When an agency denied my request for documents, I filed a lawsuit in state court after which the documents were provided. Of course, this entailed a substantial delay and expense on my part. State agencies use blanket denials to delay document production and burden the requester. Any exception must be carefully drafted and any proposal must include protections for requesters. I am opposed to the draft as written.

The proposed draft does not offer protection to the requestor for conclusory blanket denials. Blanket denials do not examine each document. As OIP has noted, an "agency [can waive] its right to not disclose [a record] to a requester if it has or will disclose the record to someone outside the agency." Blanket denials could include documents that are not entitled to protection.

If this matter moves forward, any proposal should include a language to require the agency to create an index of the documents that are being withheld and the justification for such withholding. An example is a Vaughn index. A Vaughn Index originated from Vaughn v. Rosen, 484 F.2d 820 (D.C. Cir. 1973), cert. denied, 415 U.S. 977 (1974), wherein the court rejected an agency's conclusory affidavit stating that requested FOIA documents were subject to an exemption. Id. at 828. A Vaughn Index must: (1) identify each document withheld; (2) state the statutory exemption claimed; and (3) explain how disclosure would damage the interests protected by the claimed exemption. A Vaughn Index permits effective and efficient evaluation of the factual nature of disputed information. Any proposal needs similar language.

In addition, any proposal should include an expedited process to provide an effective and efficient evaluation of a denial that does not burden the requestor. Perhaps an administrative panel that is outside of the Office of Information Practices. The Office of Information Practices has a substantial backlog of other matters.

Having requested documents on several occasions, it appears that the standard procedure for handling a document request is for the agency to delay. I want to share an example of an unjustified delay. I attended a legislative hearing. At that hearing, the Director of Taxation referred to and read from a report. I filed a request for the report she read at the hearing and was told that additional time was necessary to research and find the document. I wrote to the Director and mentioned that not too long ago, she read from the report at a hearing and that I could not understand how the Department could legitimately claim that it needed more time to find the report. After receiving my letter, the agency somehow quickly located the document and provided the document without further delay.

Thank you for the opportunity to testify.