Department of Justice
Chief FOIA Officer Report

2018

2018 Chief FOIA Officer Report
United States Department of Justice
Chief FOIA Officer: Acting Associate Attorney General Jesse Panuccio

The Freedom of Information Act (FOIA) requires each agency Chief FOIA Officer to "review and report to the Attorney General, through the head of the agency, at such times and in such formats as the Attorney General may direct, on the agency's performance in implementing [the FOIA]."[1] Implementing this provision, the Department of Justice's 2009 FOIA Guidelines directed agency Chief FOIA Officers to annually review all aspects of their FOIA administration and to report to the Department on steps taken to improve their FOIA programs. Each year, the Department's Office of Information Policy (OIP) provides guidance to agencies on the content of these reports, which focus on: (1) applying a presumption of openness, (2) having an efficient system in place for responding to requests, (3) increasing proactive disclosures, (4) utilizing technology, and (5) reducing backlogs and improving timeliness. The Department of Justice itself follows these guidelines and issues its own Chief FOIA Officer Report.

This marks the ninth year in which agencies, including the Department of Justice, have issued a Chief FOIA Officer Report. The 2018 Chief FOIA Officer Report for the Department of Justice details how in the face of increasing numbers of incoming FOIA requests the Department continued to improve its administration of the FOIA. This 2018 Chief FOIA Officer Report describes many of the Department's accomplishments during the last year, which include receiving and processing a record high number of requests, maintaining a high release rate of 93.5%, and closing our oldest requests, appeals and consultations. As described below, the Department also engaged in robust training, outreach, and proactive disclosure efforts, and we continued to look for new ways to greater utilize technology to facilitate a more efficient FOIA administration.

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[1] 5 U.S.C. § 552(j)(2)(D) (2016).

Decentralized Nature of FOIA Processing at the Department of Justice

At the Department of Justice, the FOIA is administered on a decentralized basis, with thirty-one separate FOIA offices handling requests made to the various Department components. The Department received more than 82,000 FOIA requests in Fiscal Year (FY) 2017. The range in the number of FOIA requests received varies widely between the components, from the Executive Office for Immigration Review (EOIR), which received 43,859 requests in FY 2017, constituting over 53% of the Department's total requests received, to nine components that each received less than 100 requests.

Number of Requests Received by Component

EOIR
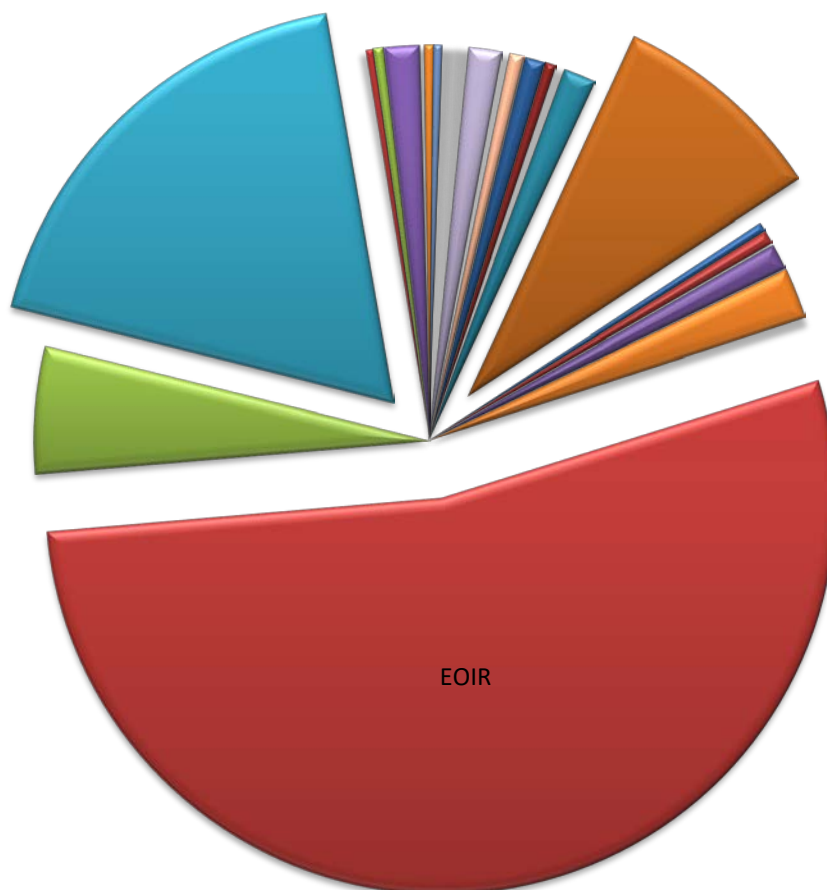
OIP, which is responsible for encouraging compliance with the FOIA both within the Department and across the federal government, is also responsible for processing FOIA requests on behalf of itself and the Offices of the Attorney General, Deputy Attorney General, Associate Attorney General, Legislative Affairs, Legal Policy, and Public Affairs. The remaining thirty Department components are responsible for processing requests received for their own records, based upon guidance provided by OIP. The Administrative Appeals Staff of OIP adjudicates administrative appeals of FOIA denials for all Department components.

During FY 2017, the Department had 418 full-time FOIA employees. These employees were joined by others who work on FOIA part of the time, which combined amounted to the equivalent of 492.02 full-time FOIA staff. As noted above, in an effort to meet the high demand of the incoming requests, Department employees managed to process more than 79,000 requests. Notably, the Department increased its processing from the prior fiscal year by over 10%.

The following report provides a comprehensive review of the steps taken throughout the Department of Justice to improve its FOIA administration since the issuance of the last Chief FOIA Officer Report in March 2017.

Section I: Steps to Apply the Presumption of Openness

The Department has engaged in a number of efforts to ensure that the presumption of openness is fully integrated into its administration of the FOIA, including conducting a robust training program and engaging in outreach with the public.

Training:

A proper understanding of the FOIA, including the correct application of the statute's provisions, is the first step towards any successful FOIA operation. As the federal office responsible for encouraging government-wide compliance with the FOIA, OIP continues to conduct a wide range of training activities to educate FOIA personnel at all federal agencies on the legal requirements of the FOIA and applicable policy directives. In 2017 alone, OIP trained over 1,500 employees by hosting and participating in a variety of training sessions addressing issues ranging from utilizing proper administrative procedures, understanding exemptions, applying the FOIA's fee and fee waiver provisions, achieving transparency through proactive disclosures, improving customer service, and ensuring an effective FOIA administration. OIP also provides training material online.

> *"[T]he basic purpose of the Freedom of Information Act [is] 'to open agency action to the light of public scrutiny.'"*
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> - Supreme Court: Air Force v. Rose, 425 U.S. 352, 372, (1976).

During this reporting period, which goes from March 2017 to March 2018, OIP hosted the following training events that were attended by FOIA professionals within the Department and across all agencies:

- *The Freedom of Information Act for Attorneys and Access Professionals* – This two-day program is designed for attorneys, Government Information Specialists, and other FOIA professionals with limited prior experience working with the FOIA who are now or soon will be working extensively with the Act. This program provides an in-depth overview of the FOIA. During this course, OIP provides lectures on procedural issues and the FOIA's exemptions, as well as a discussion on proactive disclosures and the FOIA's fee and fee waiver requirements. This training was offered four times during the reporting period.

- *Advanced Freedom of Information Act Seminar* – At this seminar, OIP provides advanced instruction on selected topics under the FOIA, including up-to-date policy guidance and significant new court decisions. This program also serves as a forum for the exchange of ideas useful in addressing common issues that arise in administering the FOIA. This training was offered twice during the reporting period.

- *Introduction to the Freedom of Information Act* – This program provides a basic overview of the FOIA for agency personnel who do not specialize in access law. It is designed for those who either work with the FOIA only occasionally or need only a

general familiarity with the FOIA in order to recognize and handle FOIA-related problems that may arise in other areas of agency activity.

- *FOIA Litigation Seminar* – This course is designed for agency attorneys and FOIA professionals and focuses on the issues that arise when FOIA requests become the subject of litigation.

- *Refresher Training for FY 2017 Annual FOIA Reports and 2018 Chief FOIA Officer Reports* – This training event provides agencies with a refresher on their FOIA reporting obligations.

- *Best Practices Workshops* – Each workshop focuses on a specific FOIA topic, with a panel of representatives sharing experiences, lessons learned, and strategies for success. Through these workshops, agencies can continue to learn from one another and leverage the successes of others in their own organizations for the overall benefit of FOIA administration across the government. The topics covered during this reporting period include *Collaborating for Results: Agencies & Requesters Working Together Throughout the FOIA Process* and *Best Practices for Self-Assessments and Improving FOIA Processes.*

- *Continuing FOIA Education* – This course provides a discussion of current topics in FOIA administration, including legal and policy developments, as well as an overview of recent FOIA court decisions.

- *DOJ Component Conference and Training* – This program is designed for DOJ components specifically. OIP provides instruction on various FOIA topics that are important to the Department's components in their FOIA administration. This past year the topics addressed at the DOJ Conference included the Department's FY 2017 Annual FOIA Report, the upcoming release of the National FOIA Portal, the Department's appeal process, adequacy of search, the threshold requirement for Exemption 7, Exemption 5, and recent developments in FOIA case law.

Further, OIP continued to provide specialized training to agencies on any topic of interest, tailoring instruction to the needs of the particular agency involved. Specifically, between March 2017 and March 2018, OIP provided specialized training for the following agencies: the Departments of Treasury, Labor, Defense, Homeland Security, Health and Human Services, Housing and Urban Development, Energy, Commerce, and State, the National Aeronautics and Space Administration, Federal Communications Commission, Privacy and Civil Liberties Oversight Board, Equal Employment Opportunity Commission, Environmental Protection Agency, and Federal Reserve Board.

In addition to the training events and resources offered through OIP, many of the Department's components held their own training events over the course of the reporting period. For example:

- The Antitrust Division (ATR) conducted training on the FOIA–Privacy Act interface and held a basic FOIA introduction for non-FOIA employees.

- The Federal Bureau of Prisons (BOP) held multiple training sessions during FY 2017. BOP created a FOIA Working Group, which is comprised of either the Regional or Deputy Regional Counsel and a Government Information Specialist (GIS) from each of BOP's six regions, as well as a GIS from BOP's Central Office, a FOIA litigation attorney, and BOP's supervisory FOIA attorneys. This Working Group held a "train the trainer" session on a number of topics including improving consistency, litigation considerations, and BOP's FOIA web page. BOP also held two teleconferences to discuss Exemptions 2 and 5, what constitutes a law enforcement record, FOIA treatment of oaths of office, categorical denials, Glomar responses, targeted requests, processing requests for contracts, search requirements , and the differences between Exemptions 6 and 7(C).

  Additionally, BOP ensured that all new staff members followed a detailed and individualized one to two-week training program specifically tailored to their understanding of the FOIA and BOP records.

- The Civil Division conducted training on the relationship between FOIA, records management, and e-Discovery.

- The Criminal Division held a week long "FOIA Summit" that featured in depth sessions on Exemptions 4, 5, 6 and 7(C).

  Additionally, the Criminal Division requires each new employee to complete DOJ's e-Learning FOIA training modules within six weeks of arrival.

- The Drug Enforcement Administration (DEA) held monthly "Lunch and Learn" sessions and covered topics such as: the application of Exemptions 6 and 7(C), a general exemption refresher training, processing under both the FOIA and Privacy Act, proper use of "Glomar" and "categorical denials," and requests from and/or about confidential informants.

- The Federal Bureau of Investigation (FBI) conducted training on a variety of topics during the reporting period, including:

  o Initial Processing of FOIA/PA Requests: This six to seven-week training course covers the intake and acknowledgement of requests, the search and import of responsive records, and the initial review of records for disclosure.
  o FOIA/PA Disclosure: This three to four-week training course covers the review of responsive records and proper application of exemptions.
  o Classification Review and Declassification: This week-long training course covers the review of classified documents or information and subsequent declassification procedures pursuant to Executive Order (EO) 13,526.
  o Critical Thinking: The FBI's Records Management Division (RMD) began a multi-year series of lessons/exercises specifically designed to help develop individual analytical skills for use by FOIA professionals during the processing of FOIA requests.
  o Expert/Supervisor FOIA/PA Analysis: This bi-weekly continuing education session stresses analytical methodologies for specific substantive issues.

o Human Intelligence (HUMINT) Training: Overview of the FBI's recruitment, management, validation, and assessment of sources and how the FOIA fits into this process by a representative of the FBI's HUMINT Operations Section.

Since last March, approximately 95% of the Department's FOIA professionals attended substantive FOIA training. In the upcoming year, the Department will continue its efforts to ensure that core, substantive FOIA training is offered to all agency FOIA professionals. OIP will continue to provide comprehensive FOIA training to both the Department's FOIA professionals and professionals across the government. OIP will also continue to provide targeted training to agencies and the Department's components upon request. Details on upcoming training opportunities provided by OIP can be found on the Training page of OIP's website. In addition to these efforts, OIP will continue to hold FOIA Conferences for the Department's components.

Outreach:

To improve not only the Department's, but also the government's overall FOIA administration, the Department has been heavily engaged in outreach with the requester community and open government groups in a variety of ways. The Director of OIP serves on the FOIA Federal Advisory Committee, which is made up of both government and non-government members of the FOIA community and serves as a forum for exchanging ideas on FOIA administration. OIP also engaged with civil society representatives and members of the public at large as part of its work leading the effort to create the new National FOIA Portal on FOIA.gov. OIP and its technical partners engaged directly with requesters on issues related to the development of the National FOIA Portal. Further, OIP continued to consult with civil society as part of its work in issuing reporting guidelines to agencies by soliciting feedback from civil society organizations prior to issuing the Guidelines for the 2018 Chief FOIA Officer Reports.

In addition to the outreach conducted by OIP, many other components also engaged in outreach with the requester community during the reporting period. For example, BOP worked with members of the media and a few special interest organizations to streamline the processing time necessary to answer their requests by explaining their record keeping system, search capabilities, and ability to release certain privacy-related records. The Office of Inspector General (OIG) engaged with its media relations officer to reach out to members of the media to broaden their understanding of how OIG conducts searches, the types of records OIG possess and its systems of records, and how a requester could tailor his or her request to facilitate a more efficient response. The Office of Legal Counsel (OLC) conducted outreach with three different requester organizations during this reporting period.

Other Initiatives:

As the Department has long declared, "FOIA is everyone's responsibility." OIP and the Department are fully committed to ensuring that all Department employees have a full understanding of their responsibilities in implementing this important law. OIP continues to utilize its suite of e-Learning training modules and online resources to ensure all personnel are aware of their FOIA obligations. For non-FOIA professionals, the training resources include: (1) an infographic that can serve as a resource on FOIA basics for all

employees new to the federal workforce; (2) a brief video from the Director of OIP aimed at senior government executives, providing a general overview of the FOIA and emphasizing the importance of leadership support to agency FOIA programs; and (3) an e-Learning training module for all federal employees that provides a primer on the FOIA and highlights ways in which they can assist their agency in administering the law.

Additionally, many of the Department's components have taken a range of steps to inform their employees of their FOIA obligations. For example, many components provide their new employees with briefing materials on the FOIA as part of their orientation. The Criminal Division required that all new employees complete their 1-hour "Freedom of Information Act Training for Federal Employees" course, and review a presentation on their records management obligations, which includes five slides that cover basic obligations under the FOIA. The Environment and Natural Resources Division (ENRD) FOIA managers gave an in-person training to their front office. The Executive Office for United States Trustees (EOUST) provided instruction to employees on the intersection between governmental and common-law privileges, FOIA exemptions, and proactive disclosure at a discovery presentation during the National Bankruptcy Training Institute's Core Litigation Issues course. The OIG's General Counsel made a presentation to OIG managers and staff about their obligations under the FOIA, OIG's approach to processing FOIA requests, and the importance of timely responses to OIG's overall transparency mission. The Office of Professional Responsibility (OPR) informed their employees about how FOIA works in relation with the Privacy Act and OPR's System of Records Notice (SORN). In recognition of Sunshine Week 2017, U.S. National Central Bureau – INTERPOL (USNCB) held an informational "brown bag" lunch session for interested USNCB staff to learn more about FOIA. During the session, USNCB provided a basic overview of the FOIA, FOIA processing at USNCB, and the most commonly used exemptions.

Section II: Steps Taken to Ensure that the Department Has an Effective System in Place for Responding to Requests

As the Department of Justice has emphasized, "[a]pplication of the proper disclosure standard is only one part of ensuring transparency. Open government requires not just a presumption of disclosure, but also an effective system for responding to FOIA requests." It is essential that agencies effectively manage their FOIA program.

Processing Procedures:

Expedited Processing

The FOIA contains a requirement that agencies establish procedures in their regulations that provide "for expedited processing of requests" in certain circumstances. 5 U.S.C. § 552(a)(6)(E)(i).   Agencies must make decisions on requests for expedited processing within ten days. OIP's guidance released in December 2014 stresses the importance of ensuring timely determinations on expedition requests. For FY 2017, the Department reported an average of 8.33 days to adjudicate requests for expedited processing.

Self-Assessment

One important tool that agencies can use to ensure that they have an effective and efficient process in place for responding to FOIA requests is a self-assessment. Taking an objective and comprehensive look at internal processes and procedures often will help agencies find new efficiencies and either enhance current workflows or create new ones. Many components in the Department have engaged in self-assessment efforts to improve their FOIA processing procedures.

In 2014, OIP launched a Component Improvement Initiative to conduct an in-depth review of the Department's FOIA processes. As part of this initiative, every year OIP reviews components' FOIA data and provides them with direct feedback. Now entering its fifth year, an outgrowth of the initiative was the creation of a self-assessment toolkit. The toolkit is a resource for all agencies to conduct their own comprehensive self-assessments. The toolkit takes a modular approach to self-assessment allowing agencies to focus on specific areas where they would like to see improvement. The individual modules include assessments for: Initial Mail Intake and Review, FOIA Processing Workflows, Searching for Responsive Records, Processing Responsive Records, Consultations and Referrals, Responses and Language, Training and Personnel Development, Customer Service, FOIA Reporting, and FOIA Website Development and Maintenance. Finally, as part of the lessons learned from creating the self-assessment toolkit, OIP identified six best practices for conducting self-assessments. These best practices include:

- Finding the time to evaluate your program
- Understanding your FOIA process and having the ability to uncover all relevant information
- Looking to find new ways to use existing data or information to evaluate your program
- Proving your findings and making recommendations

- Setting reasonable and attainable goals
- Expanding your focus as time goes on and repeating the process on a set schedule

Many of the Department's components also took advantage of the self-assessment process during the reporting year to improve their FOIA processes. Components that engaged in a self-assessment used OIP's toolkit as well as reviewed Annual and Quarterly FOIA Report data and reviewed workflows and current policies and procedures. Some components established new workflows to maximize efficiencies based on their FOIA professionals' expertise and familiarity with certain subject matters. For example, ATF had success by altering its workflows to allow personnel in their disclosure division to better focus on processing requests.

BOP continued to use its FOIA Working Group to discuss methods to improve efficiency and effectiveness. For example, annual reports, similar to the statutory required Annual FOIA Report are prepared for each region and Central Office within BOP. This allows each region to pinpoint its strengths and weaknesses and focus on improving issues specific to that office.

The Civil Division conducted a self-assessment of its FOIA program by evaluating its case tracking database, reviewing its search procedures, streamlining workflows, and updating its proactive disclosure procedures.

The Tax Division's Senior Division Counsel for FOIA and Privacy Act matters assessed data, and reviewed and updated processing procedures. For example, throughout the fiscal year and in response to an increase in complex requests, the Counsel evaluated personnel skills, abilities, and work flows resulting in the reallocation of certain processing tasks of some of the FOIA team members.

Requester Services:

FOIA Public Liaisons

The FOIA describes the role of FOIA Public Liaisons, who serve as supervisory officials to agency FOIA Requester Service Centers, and who are "responsible for assisting in reducing delays, increasing transparency and understanding of the status of requests, and assisting in the resolution of disputes."[2] FOIA Requester Services Centers and the FOIA Public Liaisons who supervise them are an essential aspect of providing good service and having effective communication with requesters. Here at the Department of Justice, each component has set up its own FOIA Requester Service Center and FOIA Public Liaison to assist the public with any questions they might have regarding their FOIA request or the FOIA in general. In addition, OIP fields numerous calls from the public, assisting requesters in understanding how the FOIA works as well as how and where to make requests.

Overall, the Department's FOIA Public Liaisons received more than 63,000 inquiries from members of the public via phone, e-mail and fax. The inquiries ranged from specific

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[2] 5 U.S.C. § 552(l).

issues on an individual's request to general information sought about how the FOIA works and what records the component maintains.

The frequency and number of times that requesters reached out to different components' FOIA Public Liaisons varied a great deal by component based on the number of requests and types of records the component handles. For example, the FBI, which received over 15,000 requests in FY 2017, reported that its FOIA Public Liaison responds to a significant volume of inquiries. In FY 2017 alone, the FBI FOIA Public Liaison responded to 1,060 phone inquiries, 4,383 e-mails, and 4,442 faxes from the public. In contrast, some of the Department's small components, which receive small numbers of requests, estimated receiving 30 or less requests for assistance per year. Additionally, other components reported seeing less calls to the FOIA Public Liaison because of having established very robust Requester Service Centers.

Average Number of Pages Processed

Often, OIP will include new survey questions in the Chief FOIA Officers Reports to gain insight into government-wide FOIA administration. This year an optional survey question was included asking agencies to give an estimate of the average number of pages that they review per request. This question proved difficult to quantify for many of the Department's components. Some components stated that their numbers could vary between 0 and 100,000 pages. In addition, most components indicated that they do not currently track this information and even an estimate would be difficult. Given these caveats, DOJ components that could answer this question reported an average range of between 1 – 700 pages a request.

Other Initiatives:

In addition to the above, OIP maintains for all the Department's components a FOIA response language database as well as a series of FOIA processing checklists to assist the Department's FOIA professionals in providing timely and quality responses to requesters. These resources are made available to all DOJ FOIA professionals on the Department's intranet website. The language database is intended to standardize components' response letters and ensure that the language used in these letters is clear and easy to understand. The checklists serve as a guide for FOIA professionals to follow as they process FOIA requests. The checklist topics cover everything from intake and procedural requirements to exemption application.

Many of the Department's components have also taken steps to make sure their FOIA operations are functioning efficiently and effectively. For example, ATF invested in a system to improve the efficiency of its email search process. The system electronically de-duplicates emails and puts them into PDF format to be processed.

BOP has created the position of a "national search coordinator." This individual spearheads search efforts for requests requiring searches for records at multiple locations throughout the country, thereby improving both consistency and efficiency.

The Office of Community Oriented Policing Services (COPS) reported receiving requests that were more complex during this reporting cycle as compared to prior years. To

ensure they could process these requests more efficiently, COPS placed a particular emphasis on working with requesters to help narrow the scope of their requests.

The Criminal Division has noticed that more and more requesters are seeking different types of electronic records. As such, they worked closely with their Records Management and IT staff to understand what the Criminal Division maintains and how to best access that information for processing.

In addition to the examples above, a few other components also noted that they transitioned to using new FOIA case management tools that have greatly improved their FOIA processing, tracking, and reporting.

Section III: Steps Taken to Increase Proactive Disclosures

The *Department of Justice* has long focused on the need for agencies to work proactively to post information online without waiting for individual requests to be received. The Department has continued to make records available to the public proactively, posting a wide range of material.

Posting Material:

Every Department component maintains a FOIA Library on its website to centralize, organize, and publicize proactive disclosures made in connection with their FOIA administration. Components also frequently post material elsewhere on their websites where it would best serve the communities most interested in the material. A wealth of information was added this past year to the Department's website. Some examples of these new postings include:

- OIP regularly posted new material and FOIA resources on its website. Some examples of material posted since March 2017 include:

  - Through its blog, *FOIA Post*, OIP continued to inform both agencies and the public of new developments and upcoming events concerning the FOIA.

  - OIP continued to post its guidance articles to agencies on the implementation of the FOIA. Specifically, OIP posted the following guidance articles this past reporting period:

    - Agency FOIA Websites 2.0 (November 30, 2017)
    - Guidelines for 2018 Chief FOIA Officer Reports (September 27, 2017)
    - Processing Reminders for the Last Quarter of Fiscal Year 2017 (July 20, 2017)
    - Guidance for Further Improvement Based on 2017 Chief FOIA Officer Report Review and Assessment (June 15, 2017)

  - Finally, OIP continued to update both its website and FOIA.gov with new data and resources on the FOIA. For example, OIP continued to update the public with summaries of new FOIA decisions, FOIA Best Practices, all FOIA Reports, and resources on Exemption 3 statutes.

- Among other items, the Antitrust Division updated its website with new press releases, speeches, Division Guidelines, Victim-Witness Hearing Notification Postings, International Program Updates, Division Newsletters, workload statistics, appropriations figures, and Sherman Act violations yielding a corporate fine of $10 million or more. The Antitrust Division also posted 147 civil case filings, 91 criminal case filings, and 11 appellate briefs.

- ATF has continued to post a listing of Federal Firearms Licensees (FFL's). This listing is updated on a monthly basis, and is available for download as a nationwide

listing, or on a state-by-state basis. This information is posted in both .csv and .txt formats making it easy to use and more helpful to the public.

- BOP posted 42 Program Statements and Operations Memoranda; 89 PREA Reports; 27 Institution Visiting Regulations; 17 Institution Admission and Orientation Handbooks; 44 Commissary Lists; 12 Key Statistics; and 15 Clinical Practice Guidelines.

- COPS posted information on its "Blue Alert Network," which rapidly disseminates information to law enforcement agencies, the media and the public to aid in the apprehension of violent criminals who kill, seriously injure, or pose an imminent threat to law enforcement.

- CRT continues to post records concerning its cases, appellate briefs and opinions, selected case summaries, and DOJ agreements and resolutions.

- The Criminal Division posted hundreds of press releases, speeches, and testimony detailing significant investigations and prosecutions.

- DEA posted statistical data from the DEA National Forensic Laboratory Information System on a diversion control sponsored project that systematically collects results from drug analyses conducted by the Federal, State and Local Forensic Laboratories.

- ENRD proactively discloses its monthly Environmental Crimes Bulletin on a rolling basis.

- EOIR posted its Board of Immigration Appeals Precedent Decisions, Office of the Chief Administrative Hearing Officer Published Decisions, List of Disciplined Practitioners and Decisions, EOIR's Statistical Yearbook, EOIR's publication of *Immigration Law Advisor*, Asylum Statistical Charts, Operating Policy and Procedure Memoranda for Immigration Courts, List of Free Legal Service Providers, and EOIR News

- EOUSA posted its Social Media Directory, Annual Statistical Report, National Caseload Data, United States Attorneys' Bulletins, United States Attorneys' Manual, and National Caseload Data.

- The FBI manages a robust FOIA Library through its site, "The Vault." The Vault contains over 6,700 documents and other media. Below is a sampling of some new items available in the Vault:

  o Media Relations at FBI HQ and in Field Offices Policy Guide 0809PG – This policy guide instructs FBI personnel engaged in media relations.
  o Publicly Advertised Rewards Policy Directive 0978D – This policy directive establishes policies and procedures for authorizing, offering, approving, and paying monetary rewards for members of the public based on publicly

advertised solicitations for information leading to identification, arrest, and conviction of the subject of an investigation.

- o FBI Whistleblower Policy Directive 0971D – This policy directive details specific requirements under the law for whistleblower protections to apply to FBI employees and clarifies the responsibility for reporting allegations of reprisal taken against any FBI whistleblower.
- o Diversity and Inclusion Program Policy Guide Policy Directive 0842D – The FBI diversity directive citing Title 42 United States Code Section 2000, Title VII of the Civil Rights Act of 1964, was issued for all FBI employees with the purpose of positively impacting underrepresented employees and applicants.
- o Conference Cost Reporting and Approvals to Use Nonfederal Facilities Policy Directive 0927D – Policy directive establishes policy/procedures for planning, authorizing, approving, and reporting conferences and requirements for the FBI to seek approval to use certain federal and nonfederal facilities at various cost thresholds.
- o Personal Services Contracts Policy Directive 0957D – Policy directive establishes policy and procedures for requesting, issuing, and administering personal services contracts (PSCs) in the FBI.

- JMD posted its 2018 Budget and Performance Summary, 2018 Budget Fact Sheets, 2018 Congressional Budget Submissions, 2018 Exhibit 300's, DOJ Strategic Plan for Fiscal Years 2014 to FY 2018, DOJ's FY 2018 Contingency Plan, Service Contract Inventory, and Listing of Bureau Procurement Officers.

- OIG continues to post many of its reports, audits, and investigation findings.

- The Office of the Solicitor General (OSG) posted each brief that it filed with the Supreme Court.

- OLC continues to post opinions that are appropriate for publication.

- OJP posts information about its grant awards by program office.

- The Office of Violence against Women (OVW) posted information about grant awards, including the name of the grantee, award amount, and the OVW grant program.

- Office of the Pardon Attorney (OPA) posted information on clemency statistics, clemency recipients, and clemency denials.

Several of the Department's components also made efforts to publicize when new materials were posted online so that those who were interested were aware of their

availability. Several components use social media platforms such as Twitter, Facebook and YouTube to publicize their postings. Further, some components explained that they publicize their proactive disclosures by spotlighting them on their websites, using scrolling marquees on their home page, using email delivery services, and through online newsletters. The FBI utilizes a "Recently Added" section on the FBI Vault to notify the requester community of recent publications. OIP continued to highlight a number of newly posted material on its website through its blog, *FOIA Post.*

    Not only has the Department continued its trend of posting more information online, but it has also continued to work to find ways to make that information more useful to the public. The Department welcomes public feedback through its main website and it strives to implement any suggestions that would make the information posted online more useful. Apart from the main site, many of the Department's components have also built in separate mechanisms for receiving public feedback on their individual web pages.

Several components improved their websites by making information posted online more accessible and easier to locate. OIP continues to improve the usability of several of the FOIA reports and resources on its website by posting them in open formats. For example, during the reporting period, OIP posted agency Annual FOIA Report data, its Chart of Exemption 3 Statutes, Assessment of Agency Annual and Chief FOIA Officer Reports, and Litigation and Compliance Report data in both human readable and open formats. ATF has continued to post its listing of Federal Firearms Licensees (FFL's) in both .csv and .txt formats making it easy to use and more helpful to the public. OLC is nearing the completion of its document remediation project to improve the searchability of its older records.

As another way of making the material posted online more useful to the public, several components redesigned their websites to make it easier for the public to locate information. For example, BOP uses the DOJ Google search appliance, which is particularly user friendly. COPS has moved their award announcement map to be associated with the grant award program by fiscal year. This information used to be embedded on their website at the bottom of the page and it is now in a more useful location. The Civil Rights Division launched a new portion of their website to make information about the Justice Department's investigation of unsolved homicides—or "cold cases"—from the Civil Rights Era more accessible to the public. The site also includes a searchable index of the closing memoranda associated with each case. The Executive Office for U.S. Trustees (EOUST) uses "What's New," "Press and Public Affairs," and "Bankruptcy Data & Statistics" links directly from its FOIA library to ensure that requesters know there is additional information available elsewhere on their website.

Several of the Department's components reported that their FOIA professionals interacted with other agency staff, such as technology specialists or public affairs, legislative affairs, or communications professionals in order to identify new and effective ways of posting information online. BOP's FOIA and Public Affairs personnel routinely discuss the types of requests media are making to determine whether to proactively post additional records. As in past years, EOUST convenes personnel from their FOIA Office, their Office of Planning and Evaluation, and their Office of Information Technology to form an Open Government Team to identify records suitable for proactive disclosure. This year the team focused on data architecture requirements, with the goal of aiding future efforts to disclose data proactively.

Section IV: Steps Taken to Greater Utilize Technology

A key component of a successful FOIA administration is the use of modern technology to inform citizens about what is known and done by their Government. In addition to using the Internet to make proactive disclosures, agencies should also be exploring ways to utilize technology in responding to requests. The Department continues to embrace the use of technology to improve all aspects of our FOIA administration. Particularly, we continue to find great potential in technological solutions that help with the core functions of document processing.

Best Practices to Leverage Technology to Facilitate Overall FOIA Efficiency:

The Department continues to champion the use of technology, particularly advanced technological solutions that assist with the core functions of document processing, as a key component of improving FOIA administration. OIP has led the effort to explore the use of these more advanced technologies for the benefit of not only the Department, but all agencies' FOIA administration. During Sunshine Week 2017, OIP reconvened the FOIA IT Working Group to have a cross-agency discussion on the areas in FOIA administration that can benefit from advanced technology.

As previously reported, in addition to OIP, many of the Department's components, including ENRD, EOIR, EOUSA, JMD, OIG, OLC, Public Affairs, and the Antitrust, Tax, Civil, Civil Rights, and Criminal Divisions use advanced tools to search for, sort, and de-duplicate responsive documents. Some of these tools can also compile a Vaughn Index for use in litigation, saving components a significant amount of time. Using these tools to automate many of the internal processes for handling FOIA requests has proven to provide great benefits in efficiency. For example, conducting an adequate search for responsive records often involves the review of both paper and electronic records originating with multiple employees throughout the agency. In turn, these searches can locate hundreds, if not thousands, of pages of material that need to be reviewed for both responsiveness and duplication before a FOIA disclosure analysis can be conducted. With the widespread use of email and the common practice of employees forwarding the same email to multiple other people, with each employee then building still further on that email, long chains of overlapping and duplicative email are frequently created. The benefits of using technology to de-duplicate, sort, and thread all those emails automatically, rather than doing so manually, are readily apparent.

OIP has noted some best practices in working with these advanced tools over recent years. First, OIP has found that an important step in using new technology is working closely with your technological experts and conveying to them the unique nuances of the FOIA process and what is needed from a solution. This is particularly important when leveraging technology, such as e-Discovery software, that was not built specifically with FOIA in mind. While the discovery process and FOIA have a lot in common, there are also significant differences. Working with the technical experts in the Department, OIP has been able to leverage these tools in a way that better fits the needs of its FOIA processing. Second, once having established the use of this type of technology, OIP has found it to be a very helpful resource in working with requesters to narrow the scope of their requests. For example, leveraging this technology, OIP is able to explain early on in the process the universe of records that may be responsive to a request and certain categories of those

records that are appearing such as press clippings or communications about the logistics of meetings. If the requester does not want these types of items, OIP can instantly remove them from the scope of records that must be reviewed for disclosure. Using these tools, OIP has found a lot of success working with requesters in real time to refine the scope of their request in order to save agency resources and provide a quicker response.

Quarterly Reports:

In January 2013, OIP instituted a new quarterly reporting requirement for all agencies on four key FOIA statistics, thereby allowing for a more real-time assessment of the flow of FOIA requests handled by the government throughout the year. The four key statistics are the numbers of requests received, processed, and in an agency's backlog for each quarter of the fiscal year, as well as the status of the agency's ten oldest pending requests. This reporting requirement is specifically designed to provide even greater transparency to the FOIA process by proactively shedding light on agencies' statistics throughout the fiscal year and not just at the end. To facilitate the viewing of this data by both agencies and the public, all agency quarterly reporting is displayed on the [Reports] page of [FOIA.gov]. In accordance with the January 2013 [Guidance for Quarterly Reporting], the Department posted all of the required quarterly FOIA reports for FY 2017.

Raw Statistical Data from Fiscal Year 2016 Annual Report:

One of the new requirements in the [FOIA Improvement Act of 2016] requires that agencies post their "raw statistical data" that makes up their Annual FOIA Reports. OIP provided agencies with a [Raw Data Template] to help facilitate posting that information. OIP consolidated all of the Department's components raw data and [posted] it in accordance with this new requirement for the first time during this past reporting cycle.

Other Steps to Improve the use of Technology in FOIA:

In addition to the efforts mentioned above, the [FOIA Improvement Act of 2016] directed the Office of Management and Budget (OMB) and DOJ to build a "consolidated online request portal that allows a member of the public to submit a request for records . . . to any agency from a single website." In April 2017, OIP [announced] its partnership with the General Services Administration's (GSA) 18F team to create a consolidated online request portal. To begin the project, OIP compiled a team with members including its own FOIA subject matter experts, 18F's digital services team, and technical staff from DOJ's Office of the Chief Information Officer. The team began by embarking on a "discovery phase" that included conducting extensive research, interviewing requesters, agencies, and the advocacy community, and testing prototypes of possible functionality. The discovery phase focused on four categories of potential functionality: the ability to submit a request to any agency, interoperability (i.e., making the new portal work with other existing systems), generating status updates, and the option to search for already released records.

OIP and 18F released the [results] of this discovery effort and moved on to the development phase of building the National FOIA Portal using an agile approach to development and user-centered design research. Work was divided into short periods of iterations called sprints. During each sprint, the scope of work was planned, executed, and

tested with users in order to inform the next iteration (sprint). Using this method of "agile" development we were able to focus on iterative solutions guided by stakeholder feedback. This also helped ensure that our final deliverables met the actual needs of our end users, which for this project included both requesters and agencies.

Just last week the Department was pleased to announce that the first iteration of the National FOIA Portal had gone live and was operational on FOIA.gov. The first iteration of the new National FOIA Portal provides customized forms for each agency to help requesters understand and submit requests more easily. The site also provides insight into the FOIA process, including what to do before submitting a FOIA request, how to submit a request, and what happens after submitting a request. The site also centralizes and provides a wealth of agency specific resources that are helpful to requesters, such as a description of each agency and links to their FOIA website, FOIA Reference Guide, FOIA regulations, and the FOIA Library.

Section V: Steps Taken to Improve Timeliness in Responding to Requests and Reducing Backlogs

Improving timeliness in responding to requests is an important aspect of successful FOIA administration. The data referenced in this section of the Report comes from the Department's FY 2017 Annual FOIA Report. As discussed above, in the face of increasing numbers of incoming requests, during FY 2017 the Department processed a record high 79,390 requests while continuing to maintain a high release rate of 93.5%. The Department overall also closed all of its ten oldest requests, consultations and appeals.

<u>Simple Track:</u>

The Department utilizes multi-track processing to manage its FOIA administration. The Department's overall average number of days for processing simple track requests during FY 2017 was 27.87 days, which is a reduction of over a day from last fiscal year. Approximately 69% of the requests processed by the Department in FY 2017 were categorized as simple requests. As such, the majority of requests processed by the Department were responded to in an average of 27.87 days or less.

<u>Backlogs – Requests and Appeals:</u>

Requests

By responding to 79,390 FOIA requests in FY 2017, the Department's FOIA offices were able to process over 7,500 more requests than were processed in the prior year. Despite this impressive accomplishment, as a result of an increase in the number of incoming requests and a continued increase in the complexity of the requests received, unfortunately the Department's overall request backlog increased. Even with the increase, however, the Department's overall request backlog amounted to less than 16% of the total number of requests received in FY 2017. Additionally, even though the Department's overall backlog increased, there were many components that had great success in reducing their backlog in FY 2017. A total of eight components decreased their backlog of FOIA requests and twelve maintained a nominal backlog of fifteen or less requests. Three components had no backlogged requests at the end of the year.

As to the challenges that contributed to the overall increase in backlog, in addition to more incoming requests and the increasing complexity of those requests, several components also noted the following challenges: staff shortages and turnover, staff reorganizations, the time needed to fully train new staff, and efforts to fill positions often held by seasoned and long tenured professionals.

Appeals

The Department received 3,192 administrative FOIA appeals in FY 2017, and adjudicated 3,270 appeals. As a result of these efforts the Department achieved a backlog reduction for administrative appeals of nearly 25%. Notably, this was also the sixth year in a row that the Department reduced its appeals backlog. The appeals backlog at the end of FY 2017 made up only 5.39% of the total number of appeals the Department received.

Backlog Reduction Plans:

In the 2017 Guidelines for agency Chief FOIA Officer Reports, any agency with a backlog of over 1,000 requests in FY 2016 was asked to provide a plan for achieving backlog reduction in the year ahead. The Department has implemented the plan described in last year's Report. Building on past efforts through the Component Improvement Initiative, OIP worked closely with Department components to identify areas of improvement with a focus on backlog reduction, track management, and improving efficiencies. As noted last year, many of the components also had individualized plans, which they have reported working on this past year. Many of these plans included hiring additional staff, leveraging new technology, providing more training focused on efficiencies and best practices, further outreach to requesters to facilitate more efficient responses, and greater utilization of multiple processing tracks.

Moving forward, the Department remains committed to backlog reduction and we continue to take affirmative steps to achieve that goal in FY 2018. For example, OIP will continue with its backlog reduction efforts that are part of the Component Improvement Initiative. A number of components have also reported plans to continue with the efforts they started last year, which for many components already resulted in a reduction of backlog. Component plans this year also included new ways of actively managing FOIA workflows, continued emphasis on FOIA training, digitizing the FOIA processing process, and hiring additional FOIA professionals.

Status of Ten Oldest Requests, Appeals, and Consultations:

In addition to focusing on reducing the number of requests in an agency's backlog, OIP has issued guidance on a number of occasions stressing the importance of agencies reducing the age of their backlogs by closing their ten oldest requests, appeals and consultations. The Department is pleased to report that it successfully closed its ten oldest pending requests, appeals, and consultations from FY 2016. Notably, this marks the tenth consecutive year that the Department closed its ten oldest pending requests and appeals. None of the ten oldest requests that were closed were withdrawn by the requester.

Spotlights on Success

- The Department met the high demand of increasing numbers of incoming requests in FY 2017 by breaking its record of processed requests and responding to nearly 80,000 FOIA requests. Further, while processing a record high number of requests, the Department maintained a high release rate of 93.5%, and closed its ten oldest requests, appeals, and consultations.

- The Department also continues to lead by example, both in its own administration of the FOIA and in its policy and oversight role for all agencies' administration of the statute. In addition to issuing new guidance to agencies on topics such as "Defining a 'Record' Under the FOIA" and "Agency FOIA Websites 2.0," OIP released a new, comprehensive FOIA Self-Assessment Toolkit to help all agencies improve every aspect of their FOIA administration.

- Finally, the Department continued to lead the effort to establish the new National FOIA Portal called for by the FOIA Improvement Act of 2016.
  - ➢ With the support of OMB and in partnership with GSA's 18F team, the Department began by embarking on a "discovery phase" that included conducting extensive research, interviewing requesters, agencies, and the advocacy community, and testing prototypes of possible functionality. Based on the results of this discovery effort the team moved right into development using an agile approach to development and user-centered design research.
  - ➢ In March 2018, the Department was pleased to announce that the first iteration of the National FOIA Portal had gone live and was operational. The new National FOIA Portal provides customized forms for each agency to help requesters understand and submit requests more easily. It also provides insight into the FOIA process including what to do before submitting a FOIA request, how to submit a request, and what happens after submitting a request. The site also centralizes and provides a wealth of agency specific resources that are helpful to requesters, such as a description of each agency and links to their FOIA website, FOIA Reference Guide, FOIA regulations, and the FOIA Library.

Other Success Stories Reported by the Department's Components

Antitrust Division:

- The Antitrust Division closed its ten oldest pending requests for the fourth straight year. During FY 2017, the Antitrust Division had 167,029 subscribers to its GovDelivery email subscription service. The Division sent 3,856,079 updates to those subscribers across 13 Antitrust content categories.

BOP:

- In the past two fiscal years, BOP suffered a 25.8% reduction in staff. Notwithstanding these extremely challenging personnel issues, in FY 2017, BOP was able to significantly decrease processing times for simple requests by 27% from 19.62 days to 14.33 days. BOP also decreased its time to adjudicate requests for expedited processing by 35% from 9.69 days to 6.3 days, and reduce its backlog by 7% from 809 to 752.

CRT:

- CRT was able to close its ten oldest requests and reduce its backlog by 8% despite a substantial amount of FOIA litigation and being short-staffed.

DEA:

- DEA was able to compile and post important statistical data from the DEA National Forensic Laboratory Information System on a diversion control sponsored project that systematically collects results from drug analyses conducted by the Federal, State and Local Forensic Laboratories.

EOIR:

- During FY 2017, EOIR received 23.5% more requests (43,859) than it received in FY2016 (35,500). Despite this large increase in requests received, EOIR managed to process 41,723 requests and EOIR's backlog of 1,494 requests was only 3.4% of the total number of requests received for FY 2017.

EOUSA:

- Despite a reduction in staff and an increase in requests received, EOUSA was able to reduce its backlog by over 10% during FY 2017.

FBI:

- The FBI revamped its FOIA Portal, making it easier and more user friendly. Since the update, the requests received via the portal increased from 2,200 in FY 2016 to approximately 16,100 requests in FY 2017.

OLC:

- Despite an over 250% increase in incoming FOIA requests that also are more and more and complex, staffing shortages, and increased FOIA litigation, OLC still managed to process more requests in FY 2017 than the previous year.

OSG:

- OSG received and processed more requests than the year before and was able to reduce its backlog in FY 2017 despite the additional volume.