THE DEPARTMENT OF JUSTICE
FREEDOM OF INFORMATION ACT
2016 LITIGATION AND COMPLIANCE REPORT

DESCRIPTION OF DEPARTMENT OF JUSTICE EFFORTS TO ENCOURAGE AGENCY COMPLIANCE WITH THE FREEDOM OF INFORMATION ACT

The Freedom of Information Act (FOIA) requires the Department of Justice to submit a report to Congress each year detailing the Department's efforts to encourage agency compliance with the law. 5 U.S.C. § 552(e)(6) (2014), *amended by* FOIA Improvement Act of 2016, Pub. L. No. 114-185, 130 Stat. 538. During 2016 the Department of Justice, through its Office of Information Policy (OIP), engaged in a wide range of activities to encourage agency compliance with the FOIA throughout the Executive Branch. OIP provided comprehensive guidance, training, counseling, and other resources to agencies concerning the administration of the FOIA. The Department calls on federal agencies to administer the law with a presumption of openness, to utilize technology to achieve greater efficiencies, and to work to make more information available proactively, so that the public is better informed about what is known and done by their government.

On June 30, 2016, the FOIA was amended by the FOIA Improvement Act of 2016 and as a result, OIP provided comprehensive guidance and training to agencies concerning the new statutory requirements. During 2016, OIP also managed the submission of agencies' Fiscal Year 2016 Annual FOIA Reports as well as their 2016 Chief FOIA Officer Reports, which are compiled based on guidance developed by OIP each year. After the submission of the 2016 Chief FOIA Officer Reports, OIP prepared a comprehensive summary of the efforts made by agencies to comply with the FOIA and with the Department of Justice's FOIA Guidelines. See 74 Fed. Reg. 51879 (Oct. 8. 2009). OIP once again assessed each of the agencies subject to the FOIA on these efforts. OIP also managed the quarterly reporting requirement it instituted in 2013 for all agencies on four key FOIA statistics that are displayed in one central location on FOIA.gov, the Department's government-wide, comprehensive FOIA website. Additionally, OIP worked on government-wide initiatives that are part of the commitments to FOIA modernization set forth in the Second United States Open Government National Action Plan. For example, OIP completed

the commitment to assess the feasibility of, and develop potential content for, a core FOIA regulation. OIP is also leading three initiatives included in the Third United States Open Government National Action Plan. These commitments include expanding the services offered on FOIA.gov, conducting a proactive disclosure pilot for posting FOIA-released records online, and improving agencies' FOIA websites. These are just a few examples of the many efforts OIP engaged in this past year to improve agencies' FOIA administration and to encourage compliance with the law. A full summary of OIP's efforts, as required by subsection (e)(6) of the FOIA, is set forth below.

A. Policy Guidance

The primary means by which the Department of Justice encourages compliance with the FOIA is through the issuance of policy guidance designed to ensure that the Act is being properly implemented across the government. During 2016, OIP continued to provide comprehensive guidance to federal agencies, addressing a range of issues related to the FOIA. This policy guidance was provided in writing and made available to agencies and the public in the OIP Guidance section of OIP's website. In addition to issuing guidance, during 2016, OIP worked directly with agencies and held multiple government-wide conferences to discuss the continued implementation of the Department's FOIA Guidelines and OIP policy guidance.

OIP Guidance on Chief FOIA Officer Reports

The Department's FOIA Guidelines call on agency Chief FOIA Officers to review their agencies' FOIA administration annually and to report to the Department of Justice on the steps taken to achieve improved transparency. OIP is responsible for providing guidance to agencies on the content of their Chief FOIA Officer Reports. That guidance, which OIP first issued in September 2009, and has expanded upon in each subsequent year, consistently requires agencies to address five distinct topics all tied to the key areas covered in the Department's FOIA Guidelines. First, each agency is required to describe the steps it has taken to apply the presumption of openness. Second, agencies are required to describe the steps taken to ensure that they have an effective and efficient system in place to respond to requests. Third, agencies are required to describe their efforts to increase proactive disclosures. Fourth, agencies are required to describe the steps taken to improve technology use in administering the FOIA. Fifth and finally, agencies are required to provide information about any backlog of requests or appeals and the steps being taken to reduce these backlogs and improve timeliness.

Each year, as agencies' implementation of the Department's FOIA Guidelines has matured, OIP has modified the requirements for the Chief FOIA Officer Reports to build on the successes of the previous years. For example, with regard to the first section of the Chief FOIA Officer Report on applying the presumption of openness, OIP began by asking agencies to report on two questions: (1) what steps were taken to ensure that the presumption is being applied to all decisions involving FOIA, and (2) whether the agency had shown an increase in the number of requests where records were released in full or where records were released in part. In subsequent years, OIP expanded this section of the Chief FOIA Officer Report by asking agencies to report on their efforts to provide FOIA training, their outreach to the requester community, and other steps taken to apply the presumption of openness.

On August 29, 2016, OIP once again issued new guidance to agencies on the content of their 2017 Chief FOIA Officer Reports. As it did the year before, OIP had separate reporting requirements based on the number of FOIA requests that agencies received in the previous fiscal year. For the 2017 reports, OIP established a new category for "small-volume" agencies receiving less than fifty requests. Medium-volume agencies receiving 50-999 requests had more detailed requirements, while agencies receiving the highest volume of FOIA requests (1,000 or more) had the most detailed reporting requirements. Providing separate reporting requirements allows OIP to more easily address the different circumstances and challenges faced by those agencies with smaller-volume FOIA workloads, while continuing to focus in-depth on those agencies that receive a higher-volume of FOIA requests. For example, high- and medium-volume agencies were required to provide details about their outreach to the requester community or civil society organizations and use of technology, while small-volume agencies could focus on any aspect of their FOIA administration connected with the Department's FOIA Guidelines.

As it has done previously, OIP adjusted the questions for the 2017 Chief FOIA Officer Report Guidelines based on agencies' successes in meeting a number of milestones over the years. Updating the questions each year allows OIP, as well as the agencies themselves, to identify best practices and common challenges as we continue to refine our FOIA processes. For 2017, OIP added new questions to Sections II and III of the Chief FOIA Officer Report.

Specifically, for Section II of the 2017 Report, which addresses the need for effective systems to respond to requests, agencies were asked to report on whether they conducted a self-assessment of their FOIA program and, if so, to describe the methods used. Another question was added to survey agencies about the proportion of their requests that were from commercial-use requesters. Additional questions covered requester services. In response to feedback from the requester community, OIP added a question asking agencies if they offer a mechanism for requesters to provide feedback about their experience with the FOIA process. FOIA Requester Service Centers and FOIA Public Liaisons provide a very important service for requesters, informing them about how the FOIA process works and providing specific details on the handling of their individual requests. The FOIA also calls on agency FOIA Requester Service Centers and FOIA Public Liaisons to assist requesters in resolving disputes. For 2017, OIP asked agencies to provide an estimate of how often requesters sought assistance from the FOIA Public Liaison. Finally, the *FOIA Improvement Act of 2016* requires agencies to make their reference materials or guides for requesting records from the agency electronically available to the public, so OIP asked agencies to provide a link to their FOIA reference guides in their reports.

In Section III, as in previous years, OIP asked agencies to report on their process for identifying records for proactive disclosure. In previous years, OIP has asked agencies to identify any challenges to posting records proactively. For 2017, agencies were asked to not only identify challenges, but to explain how they are working to overcome those challenges. We believe these survey questions will allow us to better understand the challenges agencies face in posting more records on their websites, while also identifying potential best practices that can be shared with other agencies.

March 2016 marked the seventh year that agencies submitted to OIP their Chief FOIA Officer Reports describing the steps taken to improve their FOIA operations and

facilitate information disclosure. Agencies submitted their reports to OIP for review in early 2016. OIP conducted a comprehensive review of all the reports to ensure compliance with the reporting guidelines and worked with the agencies to resolve any issues in their reports prior to clearing them for posting. After the Chief FOIA Officer Reports were posted during Sunshine Week of 2016, OIP compiled a [Summary and Assessment of Agency 2016 Chief FOIA Officer Reports](), discussed in greater detail in Section B, Efforts to Promote Agency Accountability, below.

<div align="center">OIP Guidance on Annual FOIA Reports</div>

To assist agencies with their statutory reporting obligations, OIP continued to use and disseminate the comprehensive [Annual FOIA Report Handbook]() it first compiled in 2013. The Handbook includes all of the legal, procedural, and technical requirements concerning agency Annual FOIA Reports. The [Handbook]() details all the legal requirements for Annual FOIA Reports described in the Department's [2008 guidance]() on the content of agency Annual FOIA Reports, along with additional guidance and tips for compiling the report. The [Handbook]() also contains instructions for using the Annual FOIA Report Tool developed by the Department. The [Handbook]() centralizes all of the guidance and instructions for agency Annual FOIA Reports into one resource designed for both agency FOIA professionals and those professionals responsible for producing the Annual FOIA Report after the end of each fiscal year. The Handbook is a "living document" that OIP will continue to update as changes to legal, procedural, or technical requirements are made. The Department looks forward to working with agencies and finding new ways to further improve the Annual FOIA Report process in the upcoming years.

In 2016, OIP supplemented the instructions for Annual FOIA Reports by issuing [guidance]() on the new requirements for agency Annual FOIA Reports that were contained in the [*FOIA Improvement Act of 2016*](). Specifically, the *FOIA Improvement Act of 2016* added three new requirements concerning agencies' Annual FOIA Reports. Agencies are now required to proactively make available the raw data elements used in the creation of their final Annual FOIA Report, to include in their Annual FOIA Report the number of times an exclusion was used, and to include the number of records that were made available for public inspection under subsection (a)(2) of the FOIA (proactive disclosures). OIP's [guidance]() addressed all these requirements and included procedures for incorporating the new data elements into the report clearance process with OIP and included a Supplemental Annual FOIA Report Template for agencies to use. In addition, OIP created a [raw data template]() to assist agencies in compiling and posting their raw data.

As was done with the Chief FOIA Officer Reports, OIP managed the submission of agency Annual FOIA Reports by first reviewing all Annual FOIA Reports in draft form, then working with the agencies to resolve any issues, and finally clearing the reports for posting. As further discussed below, in 2016 OIP created and made available on its website a summary of the key statistics reported by agencies in their Fiscal Year 2015 Annual FOIA Reports.

<div align="center">OIP Guidance for Further Improvement Based on 2016 Chief FOIA Officer
Report Review and Assessment</div>

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As noted above, in 2016 OIP conducted a detailed assessment of agencies' progress in improving transparency and implementing the Department's FOIA Guidelines based on a review of their 2016 Chief FOIA Officer Reports and the data reported in their Fiscal Year 2015 Annual FOIA Reports. As a result of this review and assessment, on May 9, 2016, OIP issued guidance for all agencies to assist them in making additional improvements in the years ahead.

OIP's assessment revealed that most agencies have effective systems in place for responding to requests. Most agencies process simple-track requests within 20 days and provide timely determinations in response to requests for expedited processing. Many agencies also report reducing their backlogs. However, over half of agencies that reported having a "ten oldest" request or appeal at the end of Fiscal Year 2014 did not close out all of those requests or appeals in Fiscal Year 2015. Accordingly, OIP encouraged agencies, as part of their effort to reduce backlogs and improve timeliness, to similarly focus on closing the ten oldest requests and appeals. OIP suggested tasking specific FOIA personnel to regularly follow up on the status of the ten oldest, and use the quarterly reports to monitor progress.

> *"OIP encourages agencies to take steps to actively monitor the status of their ten oldest requests, appeals, and consultations throughout the fiscal year."*
>
> *- OIP Guidance for Further Improvement Based on 2016 Chief FOIA Officer Report Review and Assessment*

OIP's assessment also demonstrated that most agencies successfully post their quarterly reports with the data appearing on FOIA.gov. However, there were still some agencies that had difficulty posting their quarterly reports in accordance with OIP's guidance so that it appears on FOIA.gov. OIP emphasized the importance of posting quarterly reports in accordance with previous Guidance for Quarterly FOIA Reporting and provided some tips for agencies to ensure that their reports have been successfully posted, including reaching out to OIP for assistance.

Finally, OIP encouraged agencies to conduct self-assessments to assist in reviewing and improving their FOIA administration. Self-assessments can give agencies an opportunity to streamline processing procedures. They may also reveal best practices or areas where FOIA guidance and best practices can be more effectively implemented.

OIP Guidance for Agency FOIA Regulations

On March 23, 2016, OIP issued guidance for agency FOIA regulations, along with a template with sample regulation language. Both of these resources were subsequently updated by OIP on September 6, 2016 to reflect new requirements arising from the *FOIA Improvement Act of 2016*, as well as two recent court decisions. While many of the FOIA's requirements are contained directly in the statute itself and do not need implementing regulations, there are a few areas where the FOIA specifically requires each agency to publish regulations, such as provisions covering fees. There are also other areas where the FOIA permits regulations, such as provisions providing for multitrack processing. Finally, there are other aspects of FOIA administration that can be addressed in regulations as a matter of good practice, such as establishing procedures for filing administrative appeals. OIP's FOIA regulations guidance and template are intended to assist agencies as they publish or update their FOIA regulations. Many agencies have already begun using the template language as they review and update their FOIA regulations.

<u>*OIP Guidance on the New Requirements for FOIA Response Letters*</u>

After the FOIA was amended by the *FOIA Improvement Act of 2016*, OIP issued [guidance](#) on July 18, 2016,on the new requirements for FOIA response letters and for notifications extending the FOIA's time limits due to "unusual circumstances." The guidance explains the new requirements and offers sample language for agencies to use in their FOIA response letters. The guidance addresses the requirements to notify requesters about the availability of agency FOIA Public Liaisons to offer assistance and the Office of Government Information Services at NARA to offer dispute resolution services. The guidance also addresses the statutory requirement that agencies afford the requester no less than ninety days from the date of an adverse determination on a request to file an administrative appeal. OIP created an implementation checklist which summarizes the statutory requirements for these various FOIA determinations and highlights the new requirements.

The guidance and checklist are designed to help agencies correctly and consistently implement these new requirements.

<u>*OIP Guidance on the Prohibition on Assessing Certain Fees*</u>

OIP issued additional guidance connected with the changes made to the FOIA by the *FOIA Improvement Act of 2016* on October 19, 2016, when it issued [guidance](#) on the prohibition on assessing certain fees when the FOIA's time limits are not met. This guidance included a [decision tree](#) to guide agencies through the process of determining whether fees may be assessed. Prior to the passage of the *[FOIA Improvement Act of 2016,](#)* agencies were prohibited from charging requesters certain fees when the FOIA's time limits were not met, unless "unusual" or "exceptional" circumstances (as defined by the FOIA statute) were met. Those exceptions were narrowed by the recent amendments to the FOIA and contain specific steps that agencies must take in order to fall within them. OIP's guidance addresses all these new elements.

The [decision tree](#) that accompanies the guidance includes checklists to help agencies ensure that they are satisfying all the statutory requirements before assessing fees. These resources are designed to l assist agencies in accurately understanding and applying the FOIA's new fee requirements.

B. Efforts to Promote Agency Accountability

The Department of Justice, through OIP, has engaged in a number of efforts to keep agencies accountable for their administration of the FOIA. During 2016, these efforts included publishing a [summary and detailed assessment](#) of agencies' progress based on the [2016 Chief FOIA Officer Reports](#), posting a detailed [summary of agencies' Fiscal Year 2015 Annual FOIA Reports](#), overseeing the government-wide [quarterly FOIA reporting requirement](#), and meeting with agency Chief FOIA Officers.

Summary of 2016 Chief FOIA Officer Reports and Assessment of Agency Progress

As discussed in the Policy Guidance section above, 2016 marked the seventh year in which agencies submitted their Chief FOIA Officer Reports to the Department of Justice. These reports detail each agency's efforts throughout the year to implement the Department's FOIA Guidelines. After reviewing all of the 2016 Chief FOIA Officer Reports for completeness and clearing them for posting, OIP undertook an extensive analysis of the reports to determine the government's overall progress in implementing the Department's FOIA Guidelines and to identify any areas for improvement. As a result of this analysis, on May 9, 2016, OIP issued a comprehensive Summary of Agency Chief FOIA Officer Reports for 2016 and Assessment of Agency Progress.

OIP's narrative summary of the Chief FOIA Officer Reports provides a wealth of examples from large and small agencies describing the various efforts made to implement each of the key areas addressed in the Department's FOIA Guidelines. The summary also highlights those areas in which improvements could be made such as continuing to focus on closing the ten requests, appeals, and consultations. Sustained efforts by recipients of consultations to complete their work and respond back to the originating agency helps ensure that the agencies that sent the consultations can have the responses they need in order to close out those requests.

In addition to the narrative summary, OIP for the fourth year created a detailed assessment of the efforts made by agencies in implementing the Department's FOIA Guidelines and improving FOIA administration. As was done in 2015, OIP's assessment covered all agencies subject to the FOIA. In conducting this assessment, OIP identified and scored each of the agencies on several milestones tied directly to the five key areas addressed in the Department's FOIA Guidelines, including efforts to conduct or attend FOIA training, implementation of the presumption of openness, improvements to efficiency, and to processes for making proactive disclosures, and improvements in timelines and reductions to any backlogs. To make the assessment progressively more challenging, and with the input of civil society organizations, for 2016 OIP changed several of the milestones that had been used the previous year based on the progress agencies had already made in implementing the Department's FOIA Guidelines.

In 2016, as it did in 2015, OIP used an expanded scoring system that had five levels, instead of the previous three levels, to illustrate the levels of success achieved by agencies. An overall agency score was also provided for each of the assessed sections. Additionally, narrative information from agency reports was provided in the 2016 assessment for sections that did not lend themselves to scoring. Finally, OIP also included a detailed methodology of how each milestone was scored and how the overall scores for each section were calculated.

2016 Chief FOIA Officer Reports - Assessment of Federal Departments and Agencies
Agencies Receiving Less than 1,000 Requests (FY 2014)

U.S Department of Justice
Office of Information Policy

Section V -- Steps Taken to Improve Timeliness in Responding to Requests (Req.) and Reducing Backlogs

Agency	Has a Simple Track?	Score	Avg. No. of Days to Process	% of Req. In Simple Track	Req.	App.	Req. Score	Req. %	App. Score	App. %	Req.	If no, # closed	# closed as "Req. Withdrawn"	App.	If no, # closed	Consults.	If no, # closed
ACUS	Yes		1.6	96%				0%		0%		N/A	0		N/A		N/A
ABMC	No		8	N/A				0%		0%		N/A	0		N/A		N/A
NRPC	Yes		24	31%				13%		67%		6/10	0		1/5		N/A
AFRH	Yes		17	92%				0%		0%		N/A	0		N/A		N/A
FRB	Yes		9	51%				2%		5%		N/A	2		N/A		2/3
BBG	No		117.00	N/A				9%		0%		9/10	0		N/A		N/A
CSB	Yes		25	63%				47%		0%		8/10	0		N/A		N/A
CPPBSD	Yes		8.4	80%				17%		0%		N/A	0		N/A		N/A
CFTC	Yes		43.32	55%				23%		11%		5/10	0		N/A		N/A
CFPB	Yes		9.77	97%				0%		0%		N/A	0		N/A		N/A
CNCS	Yes		8	57%				0%		0%		N/A	3		N/A		N/A
CIGIE	No		69.47	N/A				40%		0%		N/A	0		N/A		N/A
CEQ	Yes		119.33	75%				67%		0%		5/10	0		N/A		N/A
CSOSA	Yes		21.67	100%				4%		0%		N/A	0		N/A		N/A
DNFSB	Yes		10.6	75%				5%		0%		N/A	0		N/A		N/A

2016 Chief FOIA Officer Report Assessment

The issuance of this comprehensive assessment was designed to promote greater accountability in implementing DOJ's FOIA Guidelines, and to encourage improvement in the government's overall FOIA administration, while also showcasing some of the impressive progress made by agencies over the past year. The assessment illustrates the many areas where agencies have made real progress as well as those areas where further improvements can be made. By assessing agencies on a wide variety of factors that all contribute to improving information disclosure, the public, as well as the agencies themselves, can readily see where agencies have excelled, and where further work can still be done, in improving the administration of the FOIA.

Summary of Agency Annual FOIA Reports and FOIA.gov

As noted above, each year agencies are required by law to submit an Annual FOIA Report to the Attorney General. These reports detail range of statistics regarding each agency's FOIA activities, such as the numbers of requests received and processed, and the time taken to process them. In addition to issuing guidance to agencies on the content of these reports and reviewing them for completeness, OIP, in accordance with 5 U.S.C. § 552(e)(4), compiles and posts all agency Annual FOIA Reports on the Reports page of its website. For Fiscal Year 2015, one hundred reports were submitted and centrally posted on OIP's website.

During 2016, OIP also uploaded the data for agencies' Fiscal Year 2015 Annual FOIA Reports onto FOIA.gov, the Department's comprehensive, government-wide FOIA website. In addition to many other features, FOIA.gov shines a light on agencies' administration of the FOIA by taking the detailed statistics contained in the Annual FOIA Reports and displaying them graphically, where they can be easily sorted and compared by agency and over time. Moreover, the website contains various featured reports that highlight key

measurements, such as the agencies with the highest numbers of full grants and the government's overall backlog of FOIA requests for the past several years.

Further, in order to provide a snapshot of government-wide FOIA activity, every year as part of its review of agencies' Annual FOIA Reports, OIP issues a detailed summary of the information contained in these reports for the given fiscal year. On March 17, 2016, OIP issued its Summary of Annual FOIA Reports for Fiscal Year 2015, which discusses the numbers of requests received and processed by agencies, the disposition of those requests, and details concerning the time taken by agencies to respond. The summary also provides details about the numbers of consultations and administrative appeals received and processed, as well as data on backlogs of requests and appeals. Finally, the summary provides overall figures for the numbers of personnel working on FOIA and the costs to the government.

For the fifth year, OIP prepared this detailed summary of agency Annual FOIA Reports by using FOIA.gov, which allows for a detailed analysis of statistics that was not readily available in past years. This yearly summary of agencies' Annual FOIA Reports is useful for both agency personnel and open government groups, who continue to look forward to its issuance each year. The Summary provides both agencies and the public with an overall picture of FOIA processing government-wide.

Through FOIA.gov and OIP's summary of Annual FOIA Reports, the Department continues to shed an unprecedented amount of light on agencies' administration of the FOIA. By allowing the data from agency Annual FOIA Reports to more easily be compared across agencies and over time, the Department is ensuring that agencies are accountable for their FOIA administration and that the government is fully transparent concerning its FOIA responsibilities.

Quarterly Reporting Requirement

Pursuant to the quarterly FOIA reporting requirement instituted by OIP in January 2013, OIP continued to facilitate agencies' quarterly reporting of FOIA data in 2016. Through the use of APIs, agencies are required to post their quarterly data online so that it then collectively appears on FOIA.gov. The quarterly data consists of: the number of requests received during the reporting period, the number of requests processed during the reporting period, the number of requests in an agency's backlog at the end of the reporting period, and the progress being made to close the agency's ten overall oldest pending FOIA requests from the prior fiscal year. This quarterly reporting of FOIA data allows for a more real-time assessment of the flow of FOIA requests handled by the government throughout the year. The quarterly reporting of these key FOIA statistics not only provides the public with more timely access to important FOIA data, but it also assists agencies and agency components in actively assessing the state of their FOIA caseloads through the year in order to take the appropriate measures to reduce backlogs and improve timelines.

Meetings with Chief FOIA Officers

In yet another effort to assist agencies in their administration of the FOIA and to promote further accountability, in 2016, the Acting Associate Attorney General, who is also the Department's Chief FOIA Officer, met with the Chief FOIA Officers from the agencies

that receive and process the overwhelming share of the government's FOIA requests. At the meeting, the Acting Associate Attorney General and agency representatives discussed their implementation of DOJ's FOIA Guidelines and other open government initiatives. The Director of OIP also individually met with many of the Chief FOIA Officers to discuss their agency's FOIA administration in further detail, including their performance based on the most recent Annual and Chief FOIA Officer Reports. These meetings have become an invaluable opportunity for the Chief FOIA Officers to hear directly from the Department of Justice as we reinforce our joint commitment to openness and transparency.

C. Counseling and Consultations

In addition to providing written policy guidance to agencies and conducting seminars on such guidance, OIP also provided direct, one-on-one counseling for agency personnel during 2016, as a further means of encouraging agency compliance with the FOIA. OIP's counseling activities were conducted largely over the telephone by experienced OIP attorneys known to FOIA personnel throughout the Executive Branch as "FOIA Counselors." Through this FOIA Counselor Service, OIP provided confidential legal advice and policy guidance to FOIA personnel government-wide. OIP has established a special telephone line to facilitate its FOIA Counselor Service – (202) 514-3642 (514-FOIA) – which it publicizes widely. While most of this counseling was conducted by telephone, other options were made available as well. The counseling services provided by OIP during the year are summarized below.

OIP provided FOIA Counselor guidance to agencies on a broad range of FOIA-related subjects, including guidance pertaining to the *FOIA Improvement Act of 2016* and the continued implementation of FOIA policy guidance. Most of the FOIA Counselor calls received by OIP involve issues regarding proposed agency responses to initial FOIA requests or administrative appeals, but many are more general anticipatory inquiries regarding agency responsibilities and administrative practices under the FOIA. The Department of Justice specifies that all agencies intending to deny FOIA requests raising novel issues should consult with OIP to the extent practicable. See 28 C.F.R. § 0.24(i) (2016). OIP has found that such consultations are very valuable in ensuring agency compliance with the FOIA.

Sometimes a determination is made that a FOIA Counselor inquiry requires more extensive discussion and analysis by OIP attorneys, including supervisory attorneys. On such occasions, OIP often convenes a meeting or teleconference between agency representatives and senior OIP staff to thoroughly discuss and resolve all factual, legal, and policy issues related to the matter. OIP conducts similar discussions within the Department of Justice as well.

An additional counseling service provided by OIP pertains to FOIA matters in litigation, where advice and guidance are provided at the request of the Department's litigating divisions. This service involves OIP review of issues and proposed litigation positions in a case from both legal and policy standpoints. Further, OIP is consulted in all instances in which the Department must decide whether to pursue a FOIA or FOIA-related issue on appeal. OIP is regularly consulted on all FOIA cases, as well as all FOIA-related issues, that are handled by the Office of the Solicitor General.

OIP also makes itself available to advise agencies on their FOIA processes generally, on matters such as incorporating quality assurances into their workflows and using active case management to ensure an effective system for responding to requests, for instance, by developing metrics to measure progress and performance. OIP may provide this advice in response to specific requests from agencies or more informally in the context of other discussions.

In addition to providing legal advice to agencies, OIP also frequently receives calls from the public as well. Often these individuals contact OIP with questions about how to make a FOIA request or locate a particular document. OIP staff provides assistance to these callers and continues to serve as a resource where anyone can call and learn about the FOIA process.

D. Disseminating Information through *FOIA Post*

During 2016 OIP continued to disseminate a wide variety of news and information using the *FOIA Post* blog. As the Department's first-ever FOIA blog, *FOIA Post* allows for quick transmittal of the most up-to-date FOIA news and information to both the public and government personnel. The blog includes a search feature that allows users to use key terms to search through all of OIP's blog posts for any information that is of particular interest. Similar full-text search tools are also provided for archived articles and guidance issued through predecessor publications. All the OIP guidance articles issued in 2016 were disseminated to agencies – and made available to the public – on *FOIA Post*. OIP also used *FOIA Post* to announce the issuance of the abovementioned Annual FOIA Report and Chief FOIA Officer Report summaries and assessment of agencies' progress in FOIA administration, and other relevant FOIA news. All training programs and FOIA conferences were likewise publicized on *FOIA Post*. Set out below are some highlights of OIP's use of *FOIA Post* to communicate with the FOIA community.

FOIA Best Practices Workshops

FOIA Post was used to recap the lessons learned and principles discussed during several FOIA *Best Practices* workshops held throughout the year. As part of the Second United States Open Government National Action Plan's commitment to further modernize FOIA and improve internal agency FOIA processes, OIP began holding a series of FOIA *Best Practices* workshops in 2014, and continued the workshops in 2016. Each workshop in the Best Practices series focuses on a specific FOIA topic, with a panel of representatives sharing experiences, lessons learned, and strategies for success in these areas. 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. Two workshops were held during 2016 on the following topics: Best Practices from the Requester's Perspective and Best Practices for FOIA Training Programs. Following each workshop, OIP published a summary of the best practices identified during the session on *FOIA Post*. OIP also referenced a section of OIP's website that compiles all of the best practices discussed as well as any related guidance or resources onto one page for easy access.

Sunshine Week Events

OIP used *FOIA Post* to announce the Department of Justice's 2016 Sunshine Week Kick-off Event. In the DOJ FOIA Guidelines, the Department emphasized the critical importance of FOIA professionals to the day-to-day implementation of the law. At its annual Sunshine Week event, the Department once again recognized and celebrated the accomplishments of these agency FOIA professionals. Agencies were invited to nominate FOIA professionals for various awards recognizing their service. At the event, the Department presented awards for Exceptional Service by a FOIA Professional or Team of FOIA Professionals as well as Lifetime Service Awards. The Department of Justice Chief FOIA Officer served as the keynote speaker and spoke about the history of the FOIA. In recognition of the FOIA's 50th anniversary, the Department debuted a video tribute to this important law. Following the celebration, OIP summarized the event, listed the award recipients, and provided links to the video available on the Department's video page and YouTube channel on *FOIA Post.*

OIP also used *FOIA Post* to announce a Sunshine Week meeting of the FOIA IT Working Group. Over the last six years, the IT Working Group has discussed a range of topics. This year, the key theme was the need for collaboration between technology and FOIA professionals and the importance of leadership and a clear vision for how technology can support the agency's mission. The panelists had a very engaging discussion with attendees, and OIP will be looking for ways to continue this dialogue with other agencies across the government. OIP summarized the event on *FOIA Post.*

FOIA Improvement Act of 2016

OIP announced the signing of the FOIA Improvement Act of 2016 on *FOIA Post*, and immediately made available to agencies the text of the FOIA Improvement Act of 2016, a summary of its provisions, and a redlined version of the FOIA reflecting the statutory changes. OIP also used *FOIA Post* to announce that it would be holding agency training on the FOIA's new requirements. Throughout the year, as OIP developed guidance on the new statutory provisions, it continued to use *FOIA Post* to disseminate that guidance.

Proactive Disclosure Pilot and "Release to One, Release to All" Presumption

OIP used *FOIA Post* to publicize developments related to its Proactive Disclosure pilot program and consideration of a "release to one, release to all" presumption. As part of the United States Third Open Government National Action Plan, discussed further below, OIP conducted a pilot program with the participation of seven agency volunteers to assess the feasibility of a policy that would entail not only releasing FOIA processed records to the requester, but to make them more broadly available to the public at large by having the agency post the processed records online. OIP announced the publication of its report on the pilot, along with its analysis and next steps, on *FOIA Post.* The Department of Justice presented its findings at the first Chief FOIA Officer's Council meeting, discussed below, and sought feedback from agencies and the public on the potential implementation of a "release to one, release to all" presumption.

Chief FOIA Officers Council

The *FOIA Improvement Act of 2016* established the Chief FOIA Officers (CFO) Council, which is composed of all agency CFOs and the Deputy Director for Management

from the Office of Management and Budget. The CFO Council is tasked with developing recommendations for increasing FOIA compliance and efficiency; disseminating information about agency experiences, ideas, best practices, and innovative approaches related to FOIA; identifying, developing, and coordinating initiatives to increase transparency and FOIA compliance; and promoting the development and use of common performance measures for agency compliance with the FOIA. OIP used *FOIA Post* to announce the [inaugural CFO Council meeting](#) held on July 22, 2016 and the Council's [second meeting](#) held on September 15, 2016. The first two meetings focused on the Department's Proactive Disclosure Pilot and the possibility of implementing a "release to one, release to all" presumption. The second meeting was dedicated to receiving feedback from journalists and members of the public about the presumption. The meetings were open to the public and livestreamed online, and instructions for registering were provided on *FOIA Post*. Following each meeting, OIP published a meeting recap on *FOIA Post*. OIP also used *FOIA Post* to publicize the newly-created CFO Council [webpage](#), which contains meeting materials and working documents for each meeting.

New Department of Justice FOIA Regulations

FOIA Post was also used to [announce](#) the publication of the Department's updated FOIA regulations that bring the Department's regulations into alignment with the provisions contained in the *FOIA Improvement Act of 2016*. As highlighted in *FOIA Post,* the Department updated its regulations to provide requesters 90 days to file administrative appeals, to require components to notify requesters about the availability of the component's FOIA Public Liaison and the Office of Government Information Services (OGIS) to provide assistance at various stages of the request process, and to include a new paragraph regarding engaging in dispute resolution services provided by OGIS. The fee provisions were also amended to incorporate the new statutory restrictions on charging fees in certain circumstances and to reflect recent developments in the case law pertaining to FOIA fee categories.

E. Use of Social Media

In an effort to reach a wider audience and disseminate important FOIA information as soon as practical, during 2016, OIP continued to use its [Twitter](#) account to notify the public of the Office's activities and the most recent FOIA news. In [announcing the use of Twitter](#) through *[FOIA Post](#)*, OIP noted that "[a]s agencies and offices continue to proactively disclose information online, it is important that the public be made aware of such releases [and that] . . . [s]ocial media offers government offices an efficient way to notify the public of proactive disclosures." OIP also noted that "by utilizing social media, agencies can rapidly convey information to a broad audience, in a timely fashion, keeping with the FOIA's goal of letting the public know what their government is doing." In 2016, OIP also posted two videos to the Department's video page and YouTube channel: a video to [commemorate the FOIA's 50th anniversary](#) and the [recorded livestream of the inaugural CFO Council meeting](#).

F. Providing Additional FOIA Reference Materials

In addition to using *FOIA Post* to timely disseminate policy guidance and other useful information concerning the FOIA, OIP also creates or makes available additional FOIA reference materials for agencies to use.

Department of Justice Guide to the Freedom of Information Act

The preeminent reference document created by OIP is the *United States Department of Justice Guide to the Freedom of Information Act*. This publication is a legal treatise on the FOIA and is widely relied on by government personnel as well as members of the public. The *Guide to the FOIA* contains an extensive discussion of the case law interpreting the FOIA's many procedural requirements, its exemptions and other relevant topics such as litigation considerations and reverse FOIA actions.

In 2013, the *Guide* was transitioned from a paper publication to a 100% online resource that serves as a "living document" that can be more regularly updated to include significant new developments in FOIA. In addition to allowing for the more timely transmission of information to those who rely on the *Guide* to understand and implement the FOIA statute, this online publication allows users to conduct keyword searches throughout the entire *Guide*, and also includes links to source material. In 2016, OIP supplemented the *Guide* with a Summary of the FOIA Improvement Act of 2016 along with an updated text of the FOIA showing the recent amendments.

Resources on Exemption 3 Statutes

 OIP has a dedicated section on its website, under FOIA Resources, to address Exemption 3 of the FOIA. This section is designed to offer resources to assist agencies in properly processing FOIA requests and to aid requesters in understanding the scope of Exemption 3. In 2016, OIP added to this section of its website an updated chart of all the statutes reported in agencies' Fiscal Year 2015 Annual FOIA Reports as used by them in conjunction with Exemption 3. To further assist agencies in properly processing requests and in preparing their Annual FOIA Reports, in 2016 OIP also continued to update its chart of all the statutes that courts have found to qualify as Exemption 3 statutes under the FOIA. This chart, which includes a description of the material covered by the various statutes and the corresponding case citations, is also posted on the FOIA Resources page of OIP's website.

Summaries of Court Decisions

Each year the federal courts issue several hundred decisions in FOIA cases, addressing all aspects of the law. These decisions shape the way the law is interpreted and applied by the thousands of attorneys and access professionals across the government who handle FOIA requests, administrative appeals, and litigation. As a resource for those professionals, in addition to substantive and procedural policy guidance, OIP provides agencies as well as the public with detailed summaries of every FOIA case decided in the United States, at both the district court and appellate levels. For every court decision in its summaries, OIP highlights each FOIA exemption and procedural or litigation-related issue that was discussed in the opinion. Because court decisions play such an important part in the interpretation of the FOIA and its proper administration, OIP provides these summaries to help ensure that all FOIA professionals have ready and current access to the most

recently decided court opinions. All of the summaries are compiled in one central location on the Court Decisions section of OIP's website. These cases can all be searched by topic, chronologically and through key words.

Centralized Access to all Agency Annual FOIA Reports

As noted above, agencies are required to compile and submit to the Attorney General an Annual FOIA Report each year in accordance with 5 U.S.C. § 552(e)(1). For Fiscal Year 2015, for the ninth year in a row, OIP completed and posted the Department's Annual FOIA Report in advance of the statutory deadline. By completing and publicly posting the Department's Annual FOIA Report early, OIP continues to serve as an example to other agencies.

As is also mentioned above, as part of its government-wide guidance responsibilities, every year OIP reviews each agency's Annual FOIA Report prior to it being posted. Once they are finalized, OIP makes all of the agencies' Annual FOIA Reports promptly available on its central electronic site. In 2016, OIP continued this practice of reviewing all agencies' Annual FOIA Reports prior to their being posted. This review was conducted in accordance with a 2002 Government Accountability Office (GAO) report which encouraged such discretionary OIP review activities and found that they "have resulted in improvements to both the quality of agencies' annual reports and on-line availability of information." A follow-up GAO study published in 2004 likewise found improvements in agencies' annual reporting due to OIP's government-wide review efforts.

In accordance with another provision of the FOIA, 5 U.S.C. § 552(e)(4), the Department of Justice in 2016 maintained "a single electronic access point" for the consolidated availability of the Annual FOIA Reports of all federal agencies. In 2016 OIP posted all agency Annual FOIA Reports in a human-readable and uniform "open" format on its centralized Annual FOIA Report website, as well as included all the data from the reports on FOIA.gov.

Proactive Disclosures

In keeping with the Department's focus on increasing proactive disclosures, OIP proactively posted a variety of information concerning the FOIA that is useful to both agencies and the public alike on its website. In 2016, OIP continued to update the FOIA Resources section of its website with the Exemption 3 charts discussed above. As noted above, OIP also posted government-wide guidance on the FOIA on its website and regularly used its blog, *FOIA Post*, to notify agencies and the public about new FOIA developments and events. Under the Court Decisions section of OIP's website, OIP regularly posted summaries of the new FOIA decisions issued by the federal courts. OIP also continued to update the Training section of its website to notify agency personnel and the public of upcoming FOIA training opportunities and events. In 2016, OIP continued to maintain electronic training materials, including a FOIA infographic for all agency employees and a video briefing for agency senior executives, as well as information about accessing two e-Learning FOIA modules, as discussed below. The Key Dates and Reporting Requirements section was also updated throughout 2016 with a calendar of key FOIA events, including training sessions, workshops, and conferences, as well as key deadlines for federal agencies. The calendar is presented both chronologically, by month, and topically.

As described in the Department's 2015 and 2016 Chief FOIA Officer Reports, OIP also continued to update its FOIA Library in 2016 by posting a number of new records and updates to the Calendar of Public Events for the Attorney General and other Senior Department Officials. In addition, OIP continued to post monthly FOIA logs for requests made to OIP and the Offices of the Attorney General, Deputy Attorney General, Associate Attorney General, Legislative Affairs, Public Affairs, and Legal Policy. In 2016, OIP posted the Acting Associate Attorney General Memorandum to Heads of Civil Litigating Components and United States Attorneys on Statement of Principles for Selection of Corporate Monitors in Civil Settlements and Resolutions. OIP also proactively disclosed the Proactive Disclosure Pilot Assessment on the Reports page of the OIP website, and highlighted this disclosure on *FOIA Post.*

As noted above, for additional reference purposes, OIP continued during 2016 to make available on its website all issues of the original *FOIA Post*, as well as OIP's former newsletter, *FOIA Update*, in a digital and keyword searchable format.

FOIA Reference Guide

OIP continues to maintain an electronic copy of its *Department of Justice Freedom of Information Act Reference Guide* on the Department's FOIA website. This reference guide provides the public with information about how to make a request to the Department, describes how the FOIA process works, and contains descriptions of each of the Department's components and the type of records they maintain.

G. Additional Government-wide Initiatives for Further Improving the Administration of the FOIA

During 2016, OIP made substantial progress on or concluded five initiatives from the Second United States Open Government National Action Plan related to modernizing FOIA. OIP also began working on initiatives included in the Third United States Open Government National Action Plan, which builds on the commitment to modernize FOIA with additional initiatives.

Second United States Open Government National Action Plan

The first of five FOIA initiatives contained in the Second Open Government National Action Plan was to establish a consolidated online FOIA service that allows the public to submit a request to any Federal agency from a single website and includes additional tools to improve the customer experience. This project has progressed in three phases. During 2014, the Department collaborated with the General Services Administration (GSA) and worked with an interagency task force to guide this project and gather input from civil society organizations and agency stakeholders. As part of the second phase, in 2015, the Department and GSA continued to work on this project and launched Open.FOIA.gov, which served as a sandbox for design and function concepts. At the end of 2015 and into 2016, the Department began the third phase of this project by taking lessons learned from Open.FOIA.gov and working with its technology experts and leadership to evaluate requirements for existing tools and resources that could be leveraged for the consolidated portal.

The second FOIA initiative was to assess the feasibility and develop the potential content of a "core" FOIA regulation that could be applicable to all agencies while also allowing for individual requirements. In 2014, OIP launched this project by meeting with both agencies and civil society organizations to get their initial input. OIP then formed an interagency taskforce which began the process of exploring the possibility and potential content of "core" regulatory language. OIP concluded this work in 2016 with the publication of guidance for agency FOIA regulations and a regulation template that provides sample language for agencies to use as they update their own regulations. Throughout the process of developing common language and practices, OIP and the working group engaged with civil society organizations.

The third FOIA initiative was to improve internal agency FOIA processes by leveraging best practices and successful strategies across the government. As discussed above, in 2014 OIP launched a series of FOIA Best Practices Workshops to convene agency FOIA professionals and members of the requester community to share best practices in FOIA administration. Each workshop focuses on a specific topic in FOIA administration where agency representatives who have had particular success in those areas share their best practices and successful strategies. OIP continued the Best Practices Workshops in 2016. These workshops provide a unique opportunity for agencies to learn from each other and apply innovative solutions to their own FOIA practices. OIP publishes the best practices discussed at the workshops, as well as any related guidance or resources, on its website as a reference for all agencies.

The fourth FOIA initiative was to improve FOIA Training by making standard electronic resources available for all federal employees. As reported in 2015, this initiative resulted in the release of new electronic training tools, which OIP continues to make available to all agencies.

Finally, as part of the fifth FOIA initiative in the Second United States National Action Plan, the Director of OIP began serving on the FOIA Federal Advisory Committee. The FOIA Federal Advisory Committee met four times in 2016 (January 19, April 19, July 21, and October 25) and discussed a range of issues related to FOIA administration, including assessment of fees, proactive disclosures, and use of technology in FOIA administration.

Third United States Open Government National Action Plan

On October 27, 2015, the Third United States Open Government National Action Plan was released and outlined forty-five commitments to deepen and expand upon existing open government efforts. The Department is proud to be working on a number of commitments, several of which are related to improvements to FOIA. As part of this effort, the Department committed to: 1) expanding the services on FOIA.gov, 2) conducting a proactive disclosure pilot for posting FOIA-released records online, and 3) improving agency FOIA websites.

During 2016, building on the work done as part of the Second Open Government National Action Plan, and now part of the commitment in the Third Open Government National Action Plan, the Department continued its evaluation of the requirements for enhancing FOIA.gov, to among other things, feature a consolidated FOIA portal. The

feasibility of additional new features was also explored, including creation of a guided request tool, online tracking of request status, simplified reporting methods for agencies, improved FOIA contact information, and tools that will enhance the public's ability to locate already posted information. This work is continuing in 2017, in a collaboration with GSA, with the goal of developing the first phase of the consolidated portal by the end of the year.

The second initiative began in July 2015 when the Department launched a six-month proactive disclosure pilot for posting FOIA-released records online. The program was designed to test the feasibility of posting most FOIA responses online so that they are available not just to a single FOIA requester, but to the general public as well. Several diverse agencies participated in the pilot, ranging from those that receive high numbers of requests to those that receive very few, with a variety of sensitivities contained in their records, with each agency having unique workflows. Throughout the pilot, the public was invited to provide their feedback and any suggestions for overcoming implementation challenges.

In June 2016, the Department concluded the pilot with the release of its [Proactive Disclosures Pilot Assessment](#). The Assessment summarizes the metrics that each participating agency provided. The metrics included items such as costs and time incurred in implementing the pilot, including the impact of ensuring postings were compliant with Section 508 of the Rehabilitation Act so that they were accessible to people with disabilities; the number of pages posted during the pilot; the number of times the records were viewed online; and the number of FOIA requests received. The [Assessment](#) provides several findings evaluating the feasibility of posting FOIA-released records online. The findings included the importance of leadership support to facilitate successful implementation, the need for each agency to have a plan to address Section 508 compliance, and the need for exceptions and flexibility in implementing a policy where most FOIA released-records are posted online. OIP subsequently shared the [Assessment](#) with the newly-established [Chief FOIA Officers Council](#) and sought their feedback on the feasibility of implementing such a policy across the government.

For the third initiative, the Department has begun working collaboratively with the Office of Government Information Services (OGIS), as well as agency and public stakeholders, in identifying best features and elements for agency FOIA web pages, to ensure that they share common elements from agency to agency and are informative, and user-friendly. In 2016, OIP and OGIS hosted a Requester Roundtable with agencies and civil society representatives to discuss this topic and identity best practices seen on agency FOIA websites.

H. 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 civil society organizations in a variety of ways. OIP has regularly engaged civil society organizations on the initiatives mentioned above as part of our work on the Second and Third United States Open Government National Action Plans. OIP will continue to engage civil society organizations throughout its work on the new FOIA modernization initiatives.

Additionally, as in past years, OIP continued to consult with civil society representatives as part of its work in issuing policy and reporting guidelines to agencies. For example, OIP solicited feedback from civil society organizations prior to issuing the [2017 Chief FOIA Officer Report Guidelines](#) as well as the [Template for Agency FOIA Regulations](#) as part of the OIP's [Guidance for Agency FOIA Regulations](#).

FOIA.gov

With millions of visitors since it was launched in 2011, [FOIA.gov](#) continues to revolutionize the way in which FOIA data and information is made available to the public. While it was initially a project undertaken by the Department in response to a strong interest by open government groups to have a "dashboard" that illustrates statistics collected from agencies' Annual FOIA Reports, the Department almost immediately began to expand its capabilities and has continued to add new features over time.

As described above, [FOIA.gov](#) takes the detailed statistics contained in agency Annual FOIA Reports and displays them graphically. The website allows users to search and sort the data in any way they want so comparisons can be made between agencies and over time. In 2016, the Department added the data from agencies' Fiscal Year 2015 Annual FOIA Reports so that it too can now be sorted and compared. New charts and graphs were added that showed the evolution of key FOIA statistics over the past four fiscal years. During 2016, OIP and the Department also captured on FOIA.gov's [Reports](#) page agencies' Quarterly Report data. FOIA.gov was also updated throughout 2016 with recent FOIA news and spotlights on new releases agencies made that are likely to be of interest to public.

[FOIA.gov](#) also serves as an educational resource for the public by providing useful information about how the FOIA works, where to make requests, and what to expect through the FOIA process. Explanatory videos are embedded into the website and the site contains a section addressing frequently asked questions, as well as a glossary of FOIA terms. The website also provides updated contact information for each agency, including their FOIA Requester Service Centers and FOIA Public Liaisons, and hyperlinks to over 100 agency online request forms. With the online request form feature, when a requester is on the site and decides to make a request to an agency with an online request-making capability, he or she may do so directly from [FOIA.gov](#) with just a couple of clicks.

In addition to these resources, FOIA.gov offers users a ["Find"](#) feature that allows the public to enter search terms to locate information on any topic across all federal government websites. The search feature captures not just those records posted in agency FOIA Libraries, but also records posted anywhere on an agency's website. This more expansive search capability is particularly significant given the steady stream of information that agencies are proactively making available on their websites. [FOIA.gov's](#) ["Find"](#) feature provides an easy way for potential FOIA requesters to first see what information is already available on a topic. This might preclude the need to even make a request in the first instance, or might allow for a more targeted request to be made.

Finally, in keeping with the Department's commitment to making government more transparent and accessible, FOIA.gov offers select content in English and Spanish. Individuals with limited English proficiency can access the Spanish translations for the "What is a FOIA?" and "Learn" sections of FOIA.gov.

I. Training, Public Presentations, and Briefings

As yet another method for encouraging compliance with the FOIA, OIP held a variety of training programs throughout the year. During 2016, OIP furnished speakers and workshop instructors for seminars, conferences, individual agency training sessions, and similar programs conducted to promote the proper administration of the FOIA within the Executive Branch. Additionally, OIP conducted presentations aimed at fostering a greater understanding of the Act's administration outside the Executive Branch. This included developing a greater international understanding of the FOIA.

In conjunction with the Department of Justice's National Advocacy Center, OIP conducted numerous FOIA-training programs in 2016, which ranged from half-day introductory sessions for non-FOIA personnel to advanced programs for highly experienced FOIA personnel. Specifically, in 2016 OIP hosted the following events:

- *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 previous experience working with the FOIA who are now or soon will be working extensively with the Act. This program provides an overview of the FOIA and related policy guidance. During this course OIP also provides lectures on the various FOIA exemptions and on procedural issues, as well as a discussion on proactive disclosures and the FOIA's fee and fee waiver requirements. This training was offered twice in 2016.

- *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.

- *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. This training was offered twice in 2016.

- *Continuing FOIA Education* – This newly developed course is designed as a program for experienced FOIA professionals with lectures on new or recent developments in FOIA administration as well as an update on recent FOIA court decisions.

- *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.

- *FOIA Processing Workshop* – This course is a half-day program designed to take attendees through the steps of processing a FOIA request one-on-one in a small class setting.

- *Refresher Training for Fiscal Year 2016 Annual FOIA Reports and 2017 Chief FOIA Officer Reports* – This training event provided agencies with a refresher on their FOIA reporting obligations.

- *Best Practices Workshops* – As noted above, OIP launched the Best Practices Workshop Series in 2014 as a part of the Second United States Open Government National Action Plan's commitment to modernizing FOIA and improving internal agency FOIA processes. Each workshop focuses on a specific FOIA topic, with a panel of representatives sharing experiences, lessons learned, and strategies for success in these areas. 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 2016 include *Best Practices from the Requester's Perspective* and *FOIA Training Programs.*

- *Overview of Agency Responsibilities Under FOIA* – OIP provided training designed specifically for new agency personnel with supervisory responsibilities. The course provided an overview of the agency's general responsibilities under the FOIA, including receiving and processing requests, making proactive disclosures, and compiling various FOIA reports.

- *FOIA Public Liaison and FOIA Requester Service Center Training* – Agency FOIA Requester Service Centers and FOIA Public Liaisons serve as the voice of the agency and provide two channels for the public to use to interact with agencies during the FOIA request process. OIP, in conjunction with OGIS, hosted two specialized training events to assist agency personnel in carrying out their responsibilities in these important roles.

- *Agency Training on FOIA Improvement Act of 2016* – OIP provided training on the *FOIA Improvement Act of 2016*, which was signed into law on June 28, 2016. The training provided agency personnel with an overview of the recent amendments to the FOIA and an opportunity to ask questions of OIP's Director about the new provisions.

In addition, OIP provided training for components of the Department of Justice. In 2016, approximately 2,112 individuals were trained by OIP.

Recognizing that travel requirements limit the ability of some FOIA personnel to attend training sessions in Washington, DC, in 2016, OIP provided training on-site to the Department of Homeland Security, U.S. Citizenship and Immigration Services in Missouri, the Department of Defense in Alabama and Germany, and the Department of Education in Boston and Dallas. In addition to the events hosted by OIP, 20 professional staff members from OIP gave a total of 42 training presentations during the year, including several training

sessions designed to meet the specific FOIA-training needs of individual agencies. Such individualized training sessions were conducted for the:

- Department of Health and Human Services
- Department of Labor
- Department of the Treasury
- Board of Governors of the Federal Reserve System
- Consumer Financial Protection Bureau
- Federal Communications Commission
- Federal Deposit Insurance Corporation
- National Council on Disability
- Nuclear Regulatory Commission
- Office of the Director of National Intelligence
- Office of Government Ethics
- Office of Government Information Services
- Office of Personnel Management
- Small Business Administration
- United States Department of the Navy
- United States Institute for Peace
- United States Postal Service

Furthermore, in 2016, OIP professionals gave training presentations at seminars hosted by the American Society for Access Professionals, an association which includes members of the FOIA requester community as well as agency FOIA professionals.

During 2016, the Director of OIP gave a total of 26 presentations at a variety of FOIA-training programs and other forums. In addition to the training programs described above, the Director and other senior OIP staff met with a number of representatives from foreign countries interested in learning about the American experience with open government.

J. Legislative and Regulatory Proposals

During 2016, OIP reviewed numerous draft or preliminary legislative proposals relating to the FOIA or to information policy more generally. As a result of this review, OIP made recommendations in many instances, most frequently in connection with the technical sufficiency of proposed statutory nondisclosure provisions intended to serve as Exemption 3 statutes under the Act. OIP likewise reviewed and made suggested revisions to language contained in proposed FOIA regulations of other agencies.

K. Congressional and Compliance Inquiries

In 2016, OIP responded to nine congressional inquiries pertaining to FOIA-related matters. OIP also received nine matters from members of the public who had concerns about how the FOIA was being administered at an agency. In response to these compliance inquiries, OIP discussed the issues with the agency involved and, whenever appropriate, made recommendations on the steps needed to address the concern.

LISTS OF FOIA LITIGATION CASES RECEIVED AND DECIDED DURING 2016

In accordance with 5 U.S.C § 552(e)(6), the Department of Justice is required to provide a "listing of the number of cases arising under this section; a listing of each subsection, and any exemption, if applicable, involved in each case arising under this section; the disposition of each case arising under this section; and the cost, fees, and penalties assessed under subparagraphs (E), (F), and (G) of subsection (a)(4)." Because FOIA cases are often brought in one year, but not resolved until a subsequent year, the Department attaches to this report two separate lists of FOIA litigation cases for 2016, one showing the FOIA cases "received" during 2016 and the second showing the dispositions "rendered" in 2016. These lists will also be posted on OIP's website in an "open" format so that the public may manipulate and sort through the data in accordance with their particular interests.

List of Cases Received in 2016

The first list contains all of the cases filed as FOIA claims in federal district court during 2016. This information is derived directly from the federal courts' docketing systems through the Public Access to Court Electronic Records (PACER). According to PACER, in 2016, 448 cases were filed in the federal district courts as FOIA claims. This represents a fraction of one percent of the hundreds of thousands of FOIA requests agencies have historically received every year. For example, in Fiscal Year 2015 alone the government overall received 713,168 FOIA requests.

It is important to note that not all claims that are originally filed as FOIA claims remain as such on the court's docket. In many instances a court will determine after a case is filed that the lawsuit does not actually pertain to an agency action under the FOIA. During 2016, OIP observed 19 cases in which the courts dismissed claims because they were not actually FOIA actions. This can happen, for example, when a requester attempts to file a lawsuit against a state agency or public organization that is not subject to the FOIA. This list does not include those cases.

List of Decisions Rendered in 2016

The second list attached to this report contains all of the FOIA cases in which a decision was rendered by the federal courts in 2016. The list was compiled through the Summary of Court Decisions issued by OIP on a weekly basis and a survey of PACER. The list is organized alphabetically, and as required by Section (e)(6) of the FOIA, contains a description of the disposition in each case, each subsection and the exemptions (if any) involved, and any costs, fees or penalties assessed. If a court assessed attorney fees and costs pursuant to 5 U.S.C. § 552(a)(4)(E), the amount is noted under "Fees and Costs" and subsection (a)(4)(E) is noted under "Subsections and Exemptions." Going beyond the requirements of the FOIA, the "Fees and Costs" list also reflects those cases where court filings indicate that a party agreed to pay attorney fees or costs. In such cases, the amount is included under "Fees and Costs," however, no subsection is listed since fees and costs were not assessed by the court.

The list does not include cases that were dismissed as non-FOIA claims (e.g. a case brought against a state agency) or "reverse" FOIA lawsuits, which are actions brought under the Administrative Procedure Act. They do include cases involving the National Labor Relations Board, the Securities and Exchange Commission, the Equal Employment Opportunity Commission, the Tennessee Valley Authority, and the National Railroad Passenger Corporation, all of which, by statutory authority or agreement with the Attorney General, handle FOIA cases in which they are the defendant. Finally, it should be noted that this list of cases may include cases which were listed in previous reports. For example, a case initially decided in 2015, but appealed and affirmed in 2016, would be found on the lists of cases in which a decision was rendered for both 2015 and 2016.

Report on any Notification to the Special Counsel

During 2016, the United States courts made no written findings pursuant to 5 U.S.C. § 552(a)(4)(F)(i). Accordingly, no notification to the Special Counsel was necessary.