Customer Service and the FOIA
MEMORANDUM FOR HEADS OF EXECUTIVE DEPARTMENTS AND AGENCIES
FROM: THE ATTORNEY GENERAL
SUBJECT: FREEDOM OF INFORMATION ACT GUIDELINES

March 15, 2022

For more than fifty years, the Freedom of Information Act (FOIA), 5 U.S.C. § 552, has been a vital tool for ensuring transparency, accessibility, and accountability in government. As the Supreme Court has explained, the Act’s “basic purpose . . . is to ensure an informed citizenry; which is ‘vital to the functioning of a democratic society’ [and] needed to check against corruption and to hold the governors accountable to the governed.” 

The guidelines set forth below update and strengthen the federal government’s commitment to the fair and effective administration of FOIA.

A. The Presumption of Openness

1. As amended in 2016, the Freedom of Information Act provides that a federal agency or department (hereinafter “agency”) may withhold responsive records only if: (1) the agency reasonably foresees that disclosure would harm an interest protected by one of the nine exemptions that FOIA enumerates; or (2) disclosure is prohibited by law. 5 U.S.C. § 552(a)(b)(A)(i).

2. Information that might technically fall within an exemption should not be withheld from a FOIA requester unless the agency can identify a foreseeable harm or legal bar to disclosure. In case of doubt, openness should prevail. Moreover, agencies are strongly encouraged to make discretionary disclosures of information where appropriate.

3. When an agency determines that it cannot make full disclosure of a requested record, FOIA requires that it “consider whether partial disclosure of information is possible” and “take reasonable steps necessary to segregate and release nonexempt information.” Id. § 552(a)(b)(A)(iii).

4. To help ensure proper application of the foreseeable harm standard, agencies should confirm in response letters to FOIA requesters that they have considered the foreseeable harm standard when reviewing records and applying FOIA exemptions.

https://www.justice.gov/ag/page/file/1483516/download
Communication with Requesters

- A key aspect of good FOIA customer service is open and frequent communication with requesters, as emphasized in OIP’s Guidance on Applying a Presumption of Openness and the Foreseeable Harm Standard.

- FOIA requesters often do not know how agency records are organized or what might be involved in searching for the records they seek.

- Having the ability to talk through an approach to the request and reach an understanding can be very helpful to both the requester and the agency.

- As part of the presumption of openness, the Attorney General’s 2022 Guidelines direct agencies to confirm in response letters that they have considered the foreseeable harm standard when reviewing records and applying FOIA exemptions.
Estimated Dates of Completion

➢ The FOIA requires agencies to provide an “estimated date” by which processing will be complete. 5 U.S.C. § 552(a)(7).

➢ Agencies should make a reasonable judgment as to when they believe they will complete the request.

Assigning Tracking Numbers and Providing Status Information for Requests (Updated Guidance)

Subsection (a)(7)(A) of the Freedom of Information Act (FOIA), 5 U.S.C. § 552(a)(7) (2000 & Supp. IV 2010), imposes two requirements on agencies connected with tracking the status of FOIA requests. First, subsection (a)(7)(A) requires agencies to assign an individually tracked number to requests that will take longer than ten days to process. Second, subsection (a)(7)(B) requires agencies to establish a telephone line or Internet service that requesters can use to inquire about the status of their requests using the request’s assigned tracking number.

Assigning a Tracking Number

The first requirement imposed by subsection (a)(7)(A) of the FOIA requires agencies to establish a system whereby any request that will take more than ten days to process is assigned a tracking number. That number, in turn, must be provided to the requester. The simplest way to provide the number, and the method employed by many agencies, is to include the tracking number in an acknowledgment letter or email sent to the requester upon receipt of the request.

As a threshold matter, for those requests where an agency can quickly make a response, i.e., can respond within ten days or less, there is no requirement that a tracking number be assigned. In those circumstances, the agency can simply respond to the requester by providing the requester records and need not be slowed down by the necessity of assigning a tracking number to the request. Nevertheless, even though an individualized tracking number is not required for such requests, agencies should be certain to keep track of all requests they handle so that they are properly included in the agency annual FOIA Report.

Q & A

Questions: What if an agency does not use tracking numbers, but instead keeps track of requests by some other method, such as by the name of the requester? Is that still allowed?

Answer: Yes. Agencies are free to assign all requests tracking numbers if they find it efficient to do so. As mentioned above, because agencies need to keep track of all FOIA requests they receive and process so that they may be included in the agency Annual FOIA Report, the use of tracking numbers for all requests can be beneficial.

Questions: What if an agency does not use tracking numbers, but instead keeps track of requests by some other method, such as by the name of the requester? Is that still allowed?

Answer: Subsection (a)(7)(A) of the FOIA mandates that agencies “assign an individualized tracking number for each request received that will take longer than ten days to process.” Thus, if the request will take longer than ten days to process, agencies are required to assign tracking numbers to such requests and to provide that number to the requester.

Providing a Telephone Line or Internet Service

Subsection (a)(7)(B) of the FOIA also requires agencies to establish a telephone line or an Internet site that will provide information to the requester “as to the assigned tracking number.” The information required to be provided to the requester includes (a) the date the request was received by the agency and (b) an estimated date by which the agency will finish processing the request.

Agencies have two alternatives for providing this information to requesters. They can establish an Internet service which can be accessed by the requester using his or her tracking number. Alternatively, agencies can establish a telephone line where requesters can contact the agency by phone to inquire about the status of their request. Whichever method is utilized to provide status information concerning a given request, the FOIA mandates that both the date of receipt and the estimated date of completion for the request be provided to the requester.

When providing an estimated date of completion, agencies should keep in mind that often a requester will not know how complicated their request might be, or may not understand that the agency might have a long processing queue. The requester understandably is very interested in knowing when he or she can reasonably expect to receive their requested records. Agencies necessarily will be able to provide more targeted estimates as processing commences, but at whatever stage it is requested, agencies should strive to give their best estimate to the requester so that he or she has a realistic expectation of when records will likely be provided. Providing an estimate is often a good

Estimated Dates of Completion Best Practices

- EDCs should be provided promptly.
- Compare the time it took to process similar requests in the past.
- Utilize data available in the agency Annual FOIA Report or on FOIA.gov.
- Consider whether providing proactive updates via your case management system is appropriate.
- Provide an updated timeframe when an EDC passes.
FOIA Requester Service Center and FOIA Public Liaison

Agency FOIA Requester Service Centers and FOIA Public Liaisons serve a vital role in providing helpful and timely explanations of the FOIA process to members of the public.
The FOIA Requester Service Center is the first point of contact for requesters and should be ready to provide information about the status of a request.

The FOIA Public Liaison is intended to supervise the Requester Service Center and ensure a service-oriented response to FOIA requests and FOIA-related inquiries.

Interim Responses

- Interim responses can facilitate open communication with the requester.

- When a request involves voluminous records or searches in multiple locations, agencies should provide the requester with interim responses, whenever feasible, rather than waiting until all records are located and processed.
Interim Responses

- This can help the requester better understand the type of records the agency has and can release, so that the requester can determine if there is still an interest in the request continuing to be processed.

- Providing interim responses may also facilitate clarification or narrowing of the request.
Posting Records Online

- In making FOIA proactive disclosures, agencies should post records online as soon as feasible.
- Agencies should also continue to maximize their efforts to post more records online quickly and systematically in advance of any public request.

https://www.justice.gov/oip/available-documents-oip
Website Navigation

- The 2022 FOIA Guidelines note that “agency websites should be easily navigable, and records should be presented in the most useful, searchable, and open formats possible.”

- OIP’s guidance on agency FOIA websites addresses key elements that should be included.

- Overall, consider how to best serve your agency’s community of users when organizing your site and posting records.
Website Navigation Tips

- Include a clear link to FOIA on your agency homepage
- Ensure your FOIA homepage contains key information and resources
- Conspicuously label proactive disclosures
- Consider posting frequently asked questions to clarify the request process and reduce misdirected requests
- Adopt consistent styling
- Use plain language
- Regularly review website for accuracy and updated links
- Collaborate with IT staff to identify areas for improvement
Chief FOIA Officers

- Chief FOIA Officers play a critical role in ensuring fair and effective FOIA administration.

- As noted in the Attorney General’s FOIA Guidelines, “FOIA professionals deserve the full support of their Chief FOIA Officers and all their agency colleagues.”
Questions?