



# Department of Justice Chief FOIA Officer Report

**2019**



**2019 Chief FOIA Officer Report**  
**United States Department of Justice**  
**Chief FOIA Officer: Principal Deputy Associate Attorney General Jesse**  
**Panuccio**

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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]."<sup>1</sup> Implementing this provision, the Department of Justice's [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.

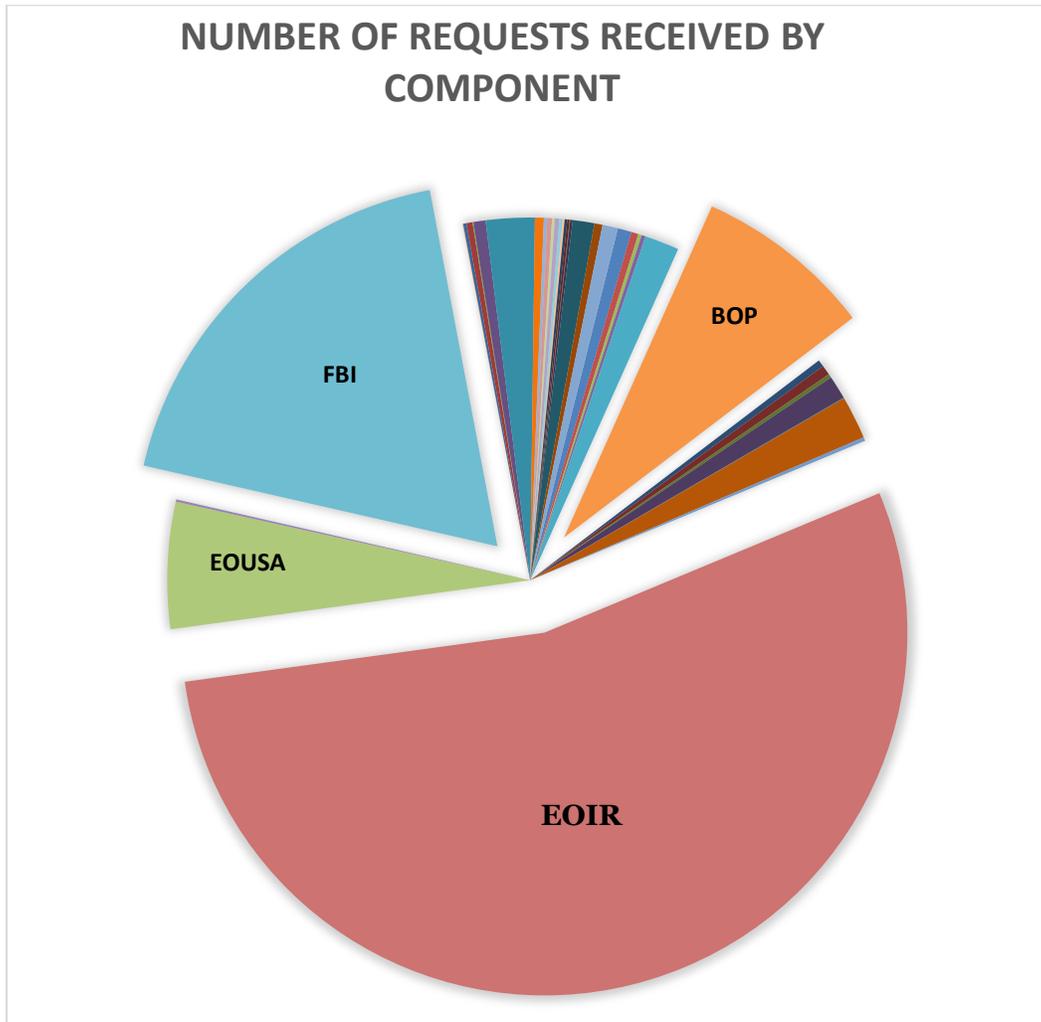
This marks the tenth year in which agencies, including the Department of Justice, have issued a Chief FOIA Officer Report. The 2019 Chief FOIA Officer Report for the Department of Justice details how in the face of record-breaking numbers of incoming FOIA requests the Department continued to attain notable achievements in its administration of the FOIA. This 2019 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 94%, and closing our oldest requests, appeals and consultations. As described below, the Department also engaged in robust training, outreach, and proactive disclosure efforts.

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<sup>1</sup> [5 U.S.C. § 552\(j\)\(2\)\(D\) \(2012 & Supp. V 2017\)](#).

## 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 nearly 97,000 FOIA requests in Fiscal Year (FY) 2018, an increase of 18% from FY 2017. The number of FOIA requests received varies widely between components, from the Executive Office for Immigration Review (EOIR), which received 52,432 requests in FY 2018, constituting over 54% of the Department's total requests received, to seven components that each received fewer than 100 requests.



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 for the Senior Leadership Offices of the Department, specifically of the Offices of the Attorney General, Deputy Attorney General, Associate Attorney General, Legislative Affairs, Legal Policy, and Public Affairs, as well as OIP. 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 2018, the Department had 419 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 495.93 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 91,000 requests. Notably, the Department increased its processing from the prior fiscal year by 14.3%.

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 2018.

## **Section I: Steps taken 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 issuing government-wide guidance, conducting a robust training program, and engaging in outreach with the public.*

### **FOIA Leadership:**

The Department of Justice's [FOIA Guidelines](#) have long maintained that "[i]mproving FOIA performance requires the active participation of agency Chief FOIA Officers." The FOIA charges the Chief FOIA Officer with "agency-wide responsibility for efficient and appropriate compliance" with the Act and requires that the role of the Chief FOIA Officer be handled by a senior official at the agency at the Assistant Secretary or equivalent level. Principal Deputy Associate Attorney General Jesse Panuccio, the third-ranking official at the Department of Justice, serves as our Chief FOIA Officer. Recognizing the critical leadership role of the Chief FOIA Officer in FOIA administration, on January 30, 2019, the Principal Deputy Associate Attorney General sent a [memorandum](#) to all agency General Counsels and Chief FOIA Officers requesting that they review their Chief FOIA Officer designations to ensure they are at the appropriate level.

*"[T]he basic purpose of the Freedom of Information Act [is] 'to open agency action to the light of public scrutiny.'"*

- Supreme Court: [Air Force v. Rose](#), 425 U.S. 352, 372, (1976).

### **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 2018 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](#).

During this reporting period, which goes from March 2018 to March 2019, 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 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 2018 Annual FOIA Reports and 2019 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 topic covered during this reporting period was *Reducing Backlogs and Improving Timeliness*.
- *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.

Further, OIP continued to provide specialized training to agencies on any topic of interest, tailoring instruction to the needs of the particular agency involved. In addition to the events hosted by OIP, 17 professional staff members from OIP gave a total of 32 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 Commerce
- Department of Defense
- Department of Education
- Department of Health and Human Services
- Department of Homeland Security
- Department of Justice components
- Department of Labor

- Department of State
- Department of Transportation
- Department of the Treasury
- Board of Governors of the Federal Reserve System
- Central Intelligence Agency
- National Aeronautics and Space Administration
- National Archives and Records Administration
- Office of the Director of National Intelligence
- Office of Management and Budget
- United States Postal Service

Within the Department, OIP also holds regular monthly calls with FOIA professionals from all the components, during which OIP provides counsel on current FOIA issues. 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) held training on the requirements for adequate searches.
- The Federal Bureau of Prisons (BOP) held multiple training sessions during FY 2018. BOP's FOIA Working Group held a "train the trainer" session on a number of topics including BOP specific FOIA workflows, expedited processing, frequently requested records, Privacy Act (PA) routine uses, law enforcement exemptions, the adequacy of a search, litigation considerations, and the processing of specific types of records like Pre-sentence Reports, contracts, and records containing sex offender status. BOP also prepared a FOIA Quick Reference Topic Guide, which includes past guidance in one document and is searchable by topic. The Guide was sent to all BOP FOIA Professionals.
- The Civil Division FOIA staff participated in Division-wide trainings concerning the relationship between FOIA, Records, and E-Discovery.
- The Criminal Division held a week long "FOIA Summit" that featured in depth sessions on the litigation process, use of technology for reviewing records, Exemption 4, and resources for historical research.
- The Drug Enforcement Administration (DEA) held training on reviewing records for exemption applicability.
- The Executive Office for United States Attorneys (EOUSA) held a two and half day comprehensive FOIA training event for the United States Attorney Offices.
- The Federal Bureau of Investigation (FBI) conducted training on a variety of topics during the reporting period, including:

- 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 13526.
- Expert/Supervisor FOIA/PA Analysis – This bi-weekly continuing education program stresses analytical methodologies for specific substantive FOIA processing issues.
- FOIA/PA Disclosure – This three to four-week training course covers the review and application of exemptions to responsive records.
- FOIA/PA Topical Matters – This ad hoc training has sessions conducted throughout the fiscal year by FOIA instructors, covering topics such as conducting a search and Glomar responses.
- Initial Processing of FOIA/PA Requests – This five to six-week training course covers the intake, acknowledgement, and front-end determinations of requests, as well as the search and import of responsive records.
- FOIA/PA Litigation Practice – This two-week course introduces employees to federal court civil litigation practice, FOIA litigation procedures, litigation case management, and declaration writing.

Since last March, approximately 90.8% 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 FOIA 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](#).

**Outreach:**

To improve not only the Department's, but also the government's overall FOIA administration, the Department continues to engage in outreach with the requester community and other outside stakeholders 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. Further, OIP incorporated feedback from these outside stakeholders when issuing the [Guidelines for the 2019 Chief FOIA Officer Reports](#).

In addition to the outreach conducted by OIP, many other components also engaged in outreach to the requester community during the reporting period. For example, EOIR participated in a multi-agency forum focused on accessing immigration records under the FOIA. EOIR's Chief Counsel for Administrative Law discussed the types of records EOIR maintains, access to EOIR records, and the process to correct an EOIR record. The Civil Division, through requester contact, was able to increase the efficiency with which it retrieved data from a particular information system. Similarly, the Office of Legal Counsel

(OLC) has had discussions with requesters to explain what is included in its database of unclassified final legal advice and in old OLC opinion packages.

FOIA professionals at the FBI have a robust system for conducting outreach to requesters to assist in narrowing the scope of requests. In FY 2018, this effort reduced the volume of records to be processed by 4.5 million pages. Through this dialogue, the FBI was also able to assist numerous requesters in articulating the information sought in future requests.

In another form of outreach, DEA is working toward developing an online survey that will solicit requester feedback as part of an effort to improve FOIA services, response times, and experience. The online tool will assist DEA in targeting repeat requesters and creating a partnership with the public at-large.

### ***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. The Department continues to utilize e-Learning training modules that OIP created to ensure all employees have proper FOIA training, whether they are FOIA professionals or program personnel whose records are subject to the FOIA. A distinct training module is available for non-FOIA professionals that provides a primer on the FOIA and highlights ways in which they can assist their agency in administering the law. Additionally, OIP continues to make available an infographic that is designed to serve as a resource on FOIA basics for all employees new to the federal workforce.

In addition to utilizing these resources, many of the Department's components engage in other efforts to ensure employees are aware of their FOIA responsibilities. A number of components provide their new employees with briefing materials on the FOIA as part of their orientation. The FBI requires all of its employees to watch a training film developed for records management that also provides an overview of the FOIA and stresses the importance of meeting the agency's FOIA obligations. Many other components provide in-person meetings with program personnel to brief them on their important role in the FOIA process. For example, the Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF) FOIA Office met with its Office of Field Operations, Field Management Staff, and the Office of Professional Responsibility and Security Operations to discuss their obligation under the FOIA, particularly with regard to conducting searches. The Justice Management Division (JMD) provided training to staff office FOIA contacts regarding both the FOIA process and substantive applications of the law. OIP provided a full briefing on the FOIA to the Department's Office of Public Affairs.

In further recognition of the fact that FOIA is everyone's responsibility, in 2016 the Department issued a [memorandum](#) to all components that provided FOIA-related performance standards for employees that have any role in administering the FOIA, including non-FOIA professionals. Of the components that have not done this yet, several reported that they are considering including such performance standards in their employee work plans.

## **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\(a\)\(6\)\(E\)\(i\) \(2012 & Supp. V 2017\)](#). Specifically, the FOIA directs agencies to afford expedited processing whenever the requester demonstrates a "compelling need," or "in other cases determined by the agency." [Id. § 552\(a\)\(6\)\(E\)\(i\)\(I, II\) \(2016\)](#). For FY 2018, the Department reported an average of 8.52 days to adjudicate requests for expedited processing and 85% of requests for expedited processing were adjudicated within 10 calendar days.

#### *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 sixth 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 took advantage of the self-assessment process during the reporting year to improve their FOIA operations. Components that engaged in a self-assessment used OIP's toolkit and reviewed Annual and Quarterly FOIA Report data, workflows, and current policies and procedures. Other components established new workflows to maximize efficiencies based on their FOIA professionals' expertise and familiarity with certain subject matters. For example, after reviewing Annual FOIA Report data and workflow procedures, ATR expanded the duties for its reviewers to promote overall efficiency, coordinated with its Information Technology Unit to facilitate proper internal requests for electronic searches, and revised tracking methods to better capture specific data. At ATF, the FOIA Office completed a reorganization that established separate intake and review teams in an effort to more efficiently process FOIA requests. The Criminal Division has revised its review and signature process for certain types of FOIA responses, freeing up managers to focus on more challenging issues and litigation.

DEA focused on identifying risks and developing action plans to move particularly complex requests forward. DEA's FOIA management and Office of Chief Counsel attorneys collaborated to establish the Initial Review Team (IRT). The IRT members review all incoming FOIA/PA requests and make initial determinations on expedited processing, fee categories, whether a request is incomplete or overly broad, and where to conduct searches. The IRT also closely analyzes requests for sensitive DEA records. This intake process provides a clear path forward for the government information specialists assigned to process the FOIA/PA requests. Similarly, the Tax Division added a workflow method that resulted in a decrease of the average number of days (comparing FY 2017 with FY 2018) that it took to process simple requests.

### **Requester Services:**

#### *FOIA Public Liaison*

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."<sup>2</sup> 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 including how and where to make requests.

For the DOJ components that received inquiries from the public, they all reported that their FOIA Public Liaisons played a significant role in keeping requesters informed and

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<sup>2</sup> [5 U.S.C. § 552\(l\)](#).

answering their questions. Overall, the Department estimates that its FOIA Public Liaisons received more than 10,000 inquiries from members of the public via phone, e-mail and fax. The inquiries ranged from specific issues on an individual's request to general information sought about how the FOIA works and what records the component maintains. Of course, there are also untold numbers of inquiries made to the components' FOIA Requester Service Centers or directly to the FOIA professional handling any given request. Inquiries directed to the FOIA Public Liaison represent only a fraction of the totality of interactions requesters have with the Department's components.

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 almost 18,000 requests in FY 2018, reported that its FOIA Public Liaison responded to a significant volume of inquiries. In FY 2018 alone, the FBI responded to 1,544 phone inquiries and 4,795 faxes from the public. In contrast, some of the Department's components that receive small numbers of requests estimated receiving 30 or fewer requests for assistance per year, some even having received none. Additionally, other components reported seeing less calls to the FOIA Public Liaison because of having established very robust FOIA Requester Service Centers.

### **Other Initiatives, Challenges and Best Practices:**

In addition to the above, the Department maintains its FOIA response language repository as well as a series of FOIA processing checklists to assist its 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 repository 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.

The Department's components reported a range of challenges during this reporting year that they worked to overcome. One example of the challenges described is an increase in not only the number of incoming requests, but also the complexity of requests. BOP has observed a substantial increase over the past few years of requests that seek numerous records of all different types requiring different searches by the BOP directorates and institutions. Other components are experiencing this trend as well. Compounding this challenge is the increased amount of resources required to handle FOIA litigation that inevitably results in slower processing times for requests in the administrative phase. Some components also faced new technical challenges with their FOIA case management systems that resulted in significant work stoppages and delays. Finally, components were also significantly impacted during this reporting period by the government shutdown during which requests continued to be made to the Department.

In the face of these challenges, the Department employed many of the best practices described above to continue to have effective and efficient systems in place for responding to requests. As noted above, several components conducted self-assessments and then reworked or established new workflows to promote greater efficiencies. Staff redistributions, use of overtime funds, and telework are also some other tools used to

manage large FOIA demands. Another strategy focused on mini-surges throughout the year to push requests through the pipeline. In addition to these examples, a few 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 2018 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:
    - [OIP Guidance: Adjudicating Administrative Appeals under the FOIA \(February 14, 2019\)](#)
    - [Joint DOJ/OMB Guidance for Achieving Interoperability with the National Freedom of Information Act Portal on FOIA.gov \(February 12, 2019\)](#)
    - [Memorandum from the Principal Deputy Associate Attorney General to Agency General Counsels and Chief FOIA Officers regarding Chief FOIA Officer Designations \(January 30, 2019\)](#)
    - [Decontrolling Controlled Unclassified Information \(CUI\) in Response to a Freedom of Information Act \(FOIA\) Request \(November 19, 2018\)](#)
    - [Department of Justice Handbook for Agency Annual Freedom of Information Act Reports \(updated October 4, 2018\)](#)

- [Guidelines for 2019 Chief FOIA Officer Reports \(September 21, 2018\)](#)
  - [OIP Guidance for Further Improvement Based on 2018 Chief FOIA Officer Report Review and Assessment \(July 19, 2018\)](#)
  - [The Importance of Quality Requester Services: Roles and Responsibilities of FOIA Requester Service Centers and FOIA Public Liaisons \(June 12, 2018\)](#)
- OIP also posted the following in its FOIA Library:
- [Records Concerning the Dismissal of Federal Bureau of Investigation Director James Comey](#)
  - [Records Concerning the Recusal of Attorney General Jeff Sessions from Matters Related to the 2016 Presidential Election](#)
  - [Emails of Acting Attorney General Sally Q. Yates](#)
  - [Memorandum of Attorney General Eric Holder – Department Policy on Charging Mandatory Minimum Sentences and Recidivist Enhancements in Certain Drug Cases](#)
  - [Attorney General Memorandum to Federal Prosecutors on Guidance Regarding § 851 Enhancements in Plea Negotiations](#)
  - [Records Concerning the June 27, 2016 Meeting Between Attorney General Loretta Lynch and President Bill Clinton in Phoenix, Arizona](#)
  - [Attorney General Memorandum Regarding Communications with Congress](#)
  - Former Attorney General Jeff Sessions' [Ethics Pledge](#) and [Appointment Affidavit](#)
  - [Records Concerning the Department's Use of Private Prisons](#)
  - [Memorandum of Acting Deputy Attorney General Gary Grindler - Policy and Procedures Regarding Discoverable Information in the Possession of the Intelligence Community or Military in Criminal Investigation](#)
  - Deputy Attorney General Rod Rosenstein's [Ethics Pledge](#) [Appointment Affidavit](#)

- [Records Concerning the Presidential Advisory Commission on Election Integrity](#)
  - Former Associate Attorney General Rachel L. Brand's [Ethics Pledge](#) and [Appointment Affidavit](#)
  - Assistant Attorney General (Legislative Affairs) Stephen Elliott Boyd's [Ethics Pledge](#) and [Appointment Affidavit](#)
  - Assistant Attorney General (Legal Policy) Beth Ann Williams' [Ethics Pledge](#) and [Appointment Affidavit](#)
  - [Records Concerning Title IX Transgender Guidance](#)
  - [Emails of Sarah Isgur Flores, Director of the Office of Public Affairs](#)
- 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.
  - 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 training material](#), [FOIA Best Practices](#), all [FOIA Reports](#), and [resources on Exemption 3 statutes](#).
- ATF continues to proactively post the listing of all active [Federal Firearms Licensees](#) on a monthly basis. ATF also posted the [Annual Firearms Manufacturing and Export Report](#).
  - The Civil Division posted [Affordable Care Act Settlement Agreements](#).
  - The Civil Rights Division posted the [Independent Monitor Spring 2018 Semiannual Report](#) on the Ferguson Police Department in Missouri and agreements between the U.S. and several states to remedy violations of the [National Voter Registration Act](#) of 1993 and the [Uniformed and Overseas Citizens Absentee Voting Act](#).
  - The Criminal Division posted charging documents for [Related Enforcement Actions](#) pursuant to the Foreign Corrupt Practices Act and Securities and Financial [Accounting Fraud](#) cases.
  - DEA published a list of [Most Wanted Fugitives](#) and intelligence reports such as the [Opioid Threat in Pennsylvania](#), which provides a comprehensive assessment of the

opioid crisis in Pennsylvania.

- EOIR posted [Workload and Adjudication Statistics](#) including cases involving Unaccompanied Alien Children and [Asylum Decision Rates in Cases Originating with a Credible Fear Claim by Nationality](#)
- The Executive Office for United States Trustees (EOUST) proactively disclosed information on [USTP Marijuana Enforcement Actions by District and Chapter for 2010 through Quarter 3 of 2018](#). EOUST plans to continue to update and post this information to its public website on a quarterly basis.
- 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:
  - Records Management Policy Guide
  - Records Management User Manual
  - Preservation of Federal Bureau of Investigation (FBI) Executive Records (Executive Assistant Director, EAD, and Above) Policy Directive 0949D
  - Unofficial Contacts and Reporting Requirements
  - Drug-Free Workplace Program Policy Guide
  - Wounded Warrior Internship Policy Guide
  - Contracting for Legal Services Directive
  - Updated Flying the U.S. Flag and the FBI Flag at Half Staff Directive
  - Mandatory Training and Tracking Policy Directive/Policy Guide
  - Expungement of FBI Records from Investigative Case Files
  - Government Vehicle Maintenance Policy Guide
  - Domestic Investigation Operations Guide
  - Cellular Analysis Survey Team
- JMD posted the [Special Counsel’s Office’s Statement of Expenditures: October 1, 2017 to March 31, 2018](#)
- OLC posted its Opinions on the [Authority to Order Targeted Airstrikes Against the Islamic State of Iraq and the Levant](#) and the [April 2018 Airstrikes Against Syrian Chemical-Weapons Facilities](#).
- The Office of the Pardon Attorney posted information about [Pardons granted by President Donald Trump](#) (2017 - Present).

In accordance with 5 U.S.C. § 552(a)(2)(D), agencies are required to post online all records that have been requested three or more times and released. The Department’s components employ a number of different approaches to identify these records for posting, including reviewing FOIA logs, leveraging capabilities in their databases and case

management systems, keeping detailed notes in case files, and relying on the hands-on experience of their FOIA professionals who are processing records.

Many components use a multi-pronged approach to identifying frequently requested records. For example, the FBI's triage analyst reviews each request prior to assigning it to a FOIA analyst for handling. When the same subject requests are received together, the triage analyst will flag the applicable requests for "rule of three" handling. Additionally, when receiving new requests the FOIA analyst handling those requests will conduct a search within FBI's FOIA case management system to identify any pre-existing cases with the same subject. If there are three or more requests, the analyst will flag the request for "rule of three" handling. The FBI was able to add an enhancement to its case management system to set flags for these requests thereby making it easier to identify records that have been frequently requested.

BOP uses a three-layered approach to identify records that fit the "rule of three." First, FOIA professionals located throughout the country inform the Supervisory Attorney of any frequently requested records they are able to identify. Second, each month the Supervisory Attorney reviews BOP's FOIA logs to determine which requests might involve frequently requested records. Third, BOP reviews media requests to determine if other requesters previously requested the same records.

Finally, some components go above and beyond the "rule of three," by proactively posting records after they have been released in response to the first request. OPR now proactively posts all of its FOIA responses to its website. Moreover, OLC is working to post all OLC opinions that are released in response to a FOIA request.

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.

OIP continues to enhance 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. Similarly, ATF continues 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.

In a further effort in this area, the Civil Rights Division (CRT) convened a group of prosecutors, FOIA specialists, and Information Technology experts to develop better ways of searching and displaying records of interest to the Civil Rights community. Finally, JMD's Asset Forfeiture Management Staff continues to work on establishing an on-line environment that will house user selectable reporting options from its Consolidated Asset

Tracking System database. Once completed this will allow the public access to a variety of report options instead of having to download the entire database and construct queries.

***Best Practices and Challenges:***

While the Department strives to proactively post as much information on its websites as possible, there are sometimes challenges that can make such postings difficult. Some of the Department's components reported that additional postings were not feasible because the majority of the records they handle are not appropriate for public release. For example, EOIR primarily handles first-party immigration records, which cannot be posted online. However, for those instances where records are appropriate for posting, one challenge continues to be the additional resources required to code the records so that they are compliant with Section 508 of the Rehabilitation Act. While this continues to be a challenge, the Department's best practices in this area, which are described above, remain focused on identifying those records that should be posted online either because they are frequently requested or because there is a strong public interest in access to them.

## **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.*

### **Leveraging Technology to Facilitate Efficiency in Conducting Searches:**

OIP and the Department continue to champion the use of advanced technological solutions that assist with the core functions of 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. Of course, how an agency conducts a search will necessarily vary from request to request based on the records being sought and the most efficient means by which to locate them. FOIA professionals examine each request to devise a search strategy that is both legally sufficient and the most efficient way to proceed. For example, if a requester asks for a distinct record, a search by the record custodian can be much more efficient than using more advanced tools such as e-discovery software. With that in mind, as reported in past years, many of the Department's components utilize e-discovery software when appropriate to conduct efficient records searches, particularly for requests involving email. When using this software, however, components can be reliant on their IT support offices, which can often have a very long backlog of searches needing to be conducted due to the volume of requests and the time it takes to conduct a pull of records for each request. In addition to using these tools, some components use Microsoft 365's email searching tool.

Beyond email, components also maintain databases of records that are electronically searched. For example, the FBI conducts standard searches within its Central Records System, which is an extensive system of records consisting of applicant, intelligence, personnel, administrative, and general files compiled and maintained by the FBI. OLC is finalizing the process for replacing its current internal computer database that allows it to search OLC opinions and memoranda from 1945 to the present. The new software will allow for better searching and sorting by metadata, including by author and date.

### **FOIA Websites:**

OIP issued [guidance](#) in 2017 on the content and style of agency FOIA websites. The guidance detailed key information and resources that should be made available on every FOIA website as well as some additional considerations such as adopting consistent styling, using plain language, regularly reviewing for accuracy and updated links, and collaborating to identify areas for improvement. Agencies were encouraged to regularly review their websites in light of this guidance to ensure that they contain essential resources, and are informative and user-friendly. The Department's components have each reviewed their websites in accordance with the guidance. During the reporting period, OIP also conducted an independent review of components' FOIA websites as part of the Component Improvement Initiative. OIP will once again review these sites as part of the Component Improvement Initiative this upcoming year.

### **Quarterly Reports:**

In January 2013, OIP instituted a 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 2018.

### **Raw Statistical Data from Fiscal Year 2018 Annual Report:**

In accordance with 5 U.S.C. § 552(e)(3), OIP consolidated all of the Department's raw data from its Fiscal Year 2017 Annual FOIA Report and [posted](#) it alongside PDF and XML versions of the final report. The raw data for 2016 is likewise posted.

### **Best Practices and Challenges on the use of Technology in FOIA:**

Acquiring technology to help meet the ever-increasing demands of FOIA administration is only half the battle. Often the technology that FOIA professionals leverage to search and review records are not specifically designed with FOIA in mind. The Department has seen great benefits when a strong relationship is forged between its FOIA and IT Offices. By working closely with our technological experts and conveying the unique nuances of the FOIA process, we are able to ensure that the technology we are using is being leveraged to the fullest extent possible for FOIA purposes. Strong IT support can also be helpful in finding new solutions, such as when useful new tools become available. Keeping IT experts abreast of the FOIA program's needs is critical to making sure that technology is being utilized as much as possible to improve FOIA administration.

## **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 a successful FOIA administration. The data referenced in this section of the Report comes from the Department's FY 2018 Annual FOIA Report. As discussed above, in the face of increasing numbers of incoming requests, during FY 2018 the Department processed a record high 91,383 requests while continuing to maintain a high release rate of 94%. The Department overall also closed all of its ten oldest requests, consultations and appeals.*

### **Simple Track:**

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 2018 was 30.77 days. Approximately 71% of the requests processed by the Department in FY 2018 were categorized as simple requests.

### **Backlogs – Requests and Appeals:**

#### *Requests*

By responding to 91,383 FOIA requests in FY 2018, the Department's FOIA offices were able to process nearly 12,000 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, the Department's overall request backlog increased by 35%. Even with the increase, however, the Department's overall request backlog amounted to less than 18% of the total number of requests received in FY 2018. Additionally, even though the Department's overall backlog increased, there were many components that either reduced their backlog or maintained a low backlog in FY 2018. Specifically, a total of five components decreased their backlog of FOIA requests and eleven maintained a nominal backlog of fifteen or fewer requests.

In addition to more incoming requests and the increasing complexity of those requests, several components also noted the following challenges contributing to the overall increase in backlogs: staff shortages and turnover, staff reorganizations, the time needed to fully train new staff, efforts to fill positions often held by seasoned and long tenured professionals, and significant issues with FOIA case management systems that caused work stoppages and delays.

#### *Appeals*

The Department received 4,018 administrative FOIA appeals in FY 2018, and adjudicated 4,022 appeals. As a result of these efforts the Department achieved a backlog reduction for administrative appeals of 6%. Notably, this was also the seventh year in a row that the Department reduced its appeals backlog. The appeals backlog at the end of FY 2018 made up only 4% of the total number of appeals the Department received.

### **Backlog Reduction Plans:**

In the 2018 Guidelines for agency Chief FOIA Officer Reports, any agency with a backlog of over 1,000 requests in FY 2018 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 2019. 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 FOIA processing, 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 2017. Notably, this marks the eleventh 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.

Beyond closing the ten oldest requests, appeals, and consultations, the Department also has taken a proactive approach to make sure that the overall age of requests at the Department are reduced. OIP monitors the ten oldest requests for each component, ensuring that there is ongoing attention paid to this important metric. Similarly, BOP places a greater focus on the age of its backlog by monitoring its 100 oldest requests. Components such as OIP also designate teams or certain FOIA professionals to focus solely on the component's oldest requests, thereby ensuring that those more complex requests are continually being worked on.

OIP has also taken measures to ensure that the age of the Department's appeals remains low. This past year, OIP's Appeals Team set a goal of closing the ten oldest appeals by the first half of the year. After achieving this, the Team then focused on closing all appeals received in the prior year. At the end of FY 2018, the oldest appeal pending at OIP was from December 2017.

## Spotlights on Success

- The Department met the demand of increasing numbers of incoming requests in FY 2018 by processing more requests in any year since 2002, which was prior to the departure of the then Immigration and Naturalization Service (INS). Further, while processing a record high number of requests, the Department maintained a high release rate of 94%, and closed its 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. Since last March, the Department has issued government-wide guidance on the roles of FOIA Requester Service Centers and FOIA Public Liaisons, decontrolling Controlled Unclassified Information (CUI) in response to FOIA requests, Chief FOIA Officer designations, and adjudicating FOIA administrative appeals. OIP also provided FOIA training to thousands of FOIA professionals across the government on a range of topics covering all aspects of FOIA administration.
- Finally, the Department continued to build on its efforts from last year in launching the National FOIA Portal on FOIA.gov. Since the release of the National FOIA Portal, FOIA.gov has received over a million page views and nearly 9,000 requests have been submitted to various agencies through the site. Building on this achievement, on February 12, 2019, DOJ and OMB issued [joint guidance](#) to agencies on becoming fully interoperable with the National FOIA Portal. This joint directive provides two ways for agencies to achieve interoperability based on how they are currently tracking and managing their FOIA requests.

### *Other Success Stories Reported by the Department's Components*

- ATR worked with its Information Technology Unit and available software to develop electronic search procedures, including organizing responsive records to increase processing efficiency.
- ATF fully implemented the reorganization of its Disclosure Division, and, with a new Division Chief on board, was able to:
  - Increase the number of FOIA requests closed in FY 2018 by 73%, from 985 requests closed in FY 2017 to 1,704 in FY 2018. This was the most requests closed by ATF in 13 years.
  - Reduce its backlog by 14%, from 1,372 at the end of FY 2017 to 1,180 in FY 2018, even as it saw a 35% increase in the number of requests received during FY 2018.
- BOP's FOIA staff exemplified efficiency, effectiveness, and transparency by significantly decreasing processing times for:
  - simple requests by 62% from 14.19 days in FY 2017 to 5.35 days in FY 2018;
  - expedited requests by 18% from 115.64 days in FY 2017 to 95.27 days in FY 2018; and
  - complex requests from 73.12 days in FY 17 to 71.92 days in FY 18.

- EOIR took significant steps to improve transparency, openness, and accountability to the public by posting its entire Immigration Court and Board of Immigration Appeals database, which consists of millions of raw data fields relating to the adjudication of court cases. EOIR updates the posted data on a monthly basis on EOIR's home page located under CASE Data.
- EOUSA's FOIA staff was able to process more requests than the previous year even though their case management system was not fully operational for most of the year.
- EOUST FOIA personnel participated with personnel from the EOUST's Office of Planning and Evaluation, Office of Information Technology, Office of Oversight, Office of Administration, and representatives from the United States Trustee Program's (Program) field offices in a Government Information Working Group to identify records suitable for proactive disclosure.
- The FBI's FOIA Program tested and implemented two improvements to its internal workflow for handling FOIA requests. First, the Exempted Term Search (ETS) was implemented in March 2018. ETS is a full-featured content filtering program within FBI's case management system that allows an analyst to check for sensitive terms within a FOIA document prior to it being released to the requester. Second, FOIA analysts now have the ability to self-seal a processed work item, which streamlines FBI's review process. These implementations will be the starting point as the FBI pursues artificial intelligence functionality in developing the FBI's new FOIA processing system.
- Despite the fact that the Office of the Solicitor General (OSG) received more requests in FY 2018 than the previous five fiscal years, OSG was able to process more requests in FY 2018 than in all five previous fiscal years. OSG's backlog and average response time for all processed simple and complex requests is the lowest it has been in the past four years.
- The Office on Violence Against Woman (OVW) has had success in helping potential FOIA requesters review the OVW website and find publicly available information about grant-funded activities or grant awards, which obviated the need to file a FOIA request. In addition, the newly designed website has much more publicly available information about grant conditions and about grant administration for organizations receiving OVW funding.