



UNITED STATES DEPARTMENT *of* JUSTICE

Chief FOIA Officers Council

Inaugural Meeting

July 22, 2016



Responsibilities of Chief FOIA Officers

Agency Chief FOIA Officers:

- Have agency-wide responsibility for efficient and appropriate compliance with FOIA;
- Monitor implementation of the FOIA throughout the agency and keep the head of the agency, the chief legal officer of the agency, and the Attorney General appropriately informed of the agency's performance in implementing FOIA;
- Recommend to the head of the agency such adjustments to agency practices, policies, personnel, and funding as may be necessary to improve its implementation of FOIA;
- Review and report to the Attorney General, through the head of the agency, at such times and in such formats as the Attorney General₂ may direct, on the agency's performance in implementing FOIA;



Responsibilities of Chief FOIA Officers

- Facilitate public understanding of the purposes of the FOIA's statutory exemptions by including concise descriptions of the exemptions in both the agency's handbook issued under subsection (g) of the FOIA, and the agency's annual FOIA report, and by providing an overview, where appropriate, of certain general categories of agency records to which those exemptions apply;
- *New:* Offer training to agency staff regarding their responsibilities under the FOIA;
- *New:* Serve as the primary agency liaison with the Office of Government Information Services and the Office of Information Policy; and
- Designate 1 or more FOIA Public Liaisons.



Responsibilities of Chief FOIA Officers

New: Chief FOIA Officers are also now required to “review, not less frequently than annually, all aspects” of their agency’s administration of the FOIA, including:

- Agency regulations,
- Disclosure of records under paragraphs (a)(2) [proactive disclosure provision] and (a)(8) [foreseeable harm standard],
- Assessment of fees and fee waivers,
- Timely processing of requests,
- Use of exemptions, and
- Dispute resolution services with the Office of Government Information Services or the FOIA Public Liaison.



Chief FOIA Officers Council Members

Co-Chairs

- Director, Office of Information Policy at the Department of Justice
- Director, Office of Government Information Services, National Archives and Records Administration

Members

- Deputy Director of Management, Office of Management and Budget
- Chief FOIA Officers of all agencies
- Any other officer or employee of the United States as designated by the Co-Chairs



Role of Chief FOIA Officers Council

The duties of the Council include the following:

- Develop recommendations for increasing FOIA compliance and efficiency.
- Disseminate information about agency experiences, ideas, best practices, and innovative approaches related to FOIA.
- Identify, develop, and coordinate initiatives to increase transparency and compliance with FOIA.
- Promote the development and use of common performance measures for agency compliance with FOIA.



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“Release to One, Release to All” Pilot Assessment and Next Steps



Administration Directives

President's FOIA Memorandum:

“The presumption of disclosure also means that agencies should take affirmative steps to make information public. They should not wait for specific requests from the public.”



DOJ FOIA Guidelines:

“... agencies should readily and systematically post information online in advance of any public request.”





Chief FOIA Officer Reports

Each year DOJ asks agencies to report on five key areas in FOIA administration, including proactive disclosures. In recent years agencies have reported posting information proactively on:

- energy resources
- food safety
- the ebola outbreak
- procurement
- historical reviews



Guidance on Proactive Disclosures

DOJ issued guidance on Proactive Disclosures in 2015, highlighting:

- statutory requirement to post “frequently requested records,” and
- policy directives encouraging posting even before one request is received.



Launch of Pilot

In July 2015, OIP launched a pilot program with the participation of seven agency volunteers to assess the viability of a policy that would entail routine online posting of agency FOIA responses.



Pilot Considerations

- First-party requests were not included in this pilot.
- Biggest hurdle: Time and resources needed to prepare documents for posting.



Participants

Department of Defense

- U.S. Air Force
- Defense Commissary Agency
- Defense Finance & Accounting Services
- Defense Intelligence Agency
- National Guard Bureau
- U.S. Northern Command
- U.S. Southern Command
- Office of the Secretary of Defense/Joint Staff

Department Homeland Security

- Privacy Office
- Science & Technology

Millennium Challenge Corporation

Office of the Director of National Intelligence

Environmental Protection Agency

National Archives and Records Administration

- Office of General Counsel

Department of Justice

- Office of Justice Programs



Background

The pilot sought to answer many important questions, including:

- the costs associated with such a policy,
- the effect on staff time for those who process requests,
- the effect on interactions with government stakeholders, and
- the justification for any exceptions to such a policy - such as for personal privacy.



Background

During the course of the pilot OIP:

- collected metrics,
- provided guidance, and
- answered questions from the participating agencies.

OIP also solicited feedback from the public during the pilot.



Finding 1: Leadership

Leadership “buy-in” and support is essential to success.

- Keeping the policy a priority and devoting resources.
- Facilitating collaboration and work-flow alterations.
- Establishing or enhancing links between different parts of the agency (e.g., FOIA office and the IT/Web Team office).



Finding 2: Addressing 508 Compliance

Each agency must have a plan to address Section 508 compliance.

- Assess the volume of the material to be posted.
- Determine which office will be responsible for preparing documents for posting.
- Allocate personnel and IT support to this effort.



Finding 2: Addressing 508 Compliance

As a part of their 2016 Chief FOIA Officer reports, all 100 agencies answered survey questions about how they post material online.

Of these, 24 agencies reported at least some involvement of their FOIA professionals in the mechanics of posting.



Finding 3: Exceptions and Flexibility

There is a need to remain flexible in implementing this policy.

- First-party requests are excluded.
- Other Possible Exceptions:
 - Explicit videos (e.g., car accident).
 - Records that are particularly difficult and time-consuming to make compliant with Section 508.



Finding 4: FOIA Demand

The metrics collected during the pilot revealed very little about whether or not there was an increase or decrease in FOIA requests or in the number of visitors to an agency's FOIA Library.



Finding 5: Inherent Value in Policy

If even one requester finds what they are looking for prior to submitting a request, that would be one less request that needs to be made and one less request to which an agency needs to respond.

Anecdotal parallels can be drawn from previous open data initiatives.



Finding 6: Outside Stakeholder Concerns

None of the participating agencies reported receiving any indication that their posting of FOIA-processed records impacted how outside entities or stakeholders interacted with the agency.



Finding 6: Outside Stakeholder Concerns

Some journalists had concerns with this policy. Generally, the concerns were:

- Loss of “scoop” or “exclusive” story
- Disincentive to use FOIA and invest time and resources building a story when the journalist won’t have first access to the records
- Some suggest building in a “reasonable delay”



Finding 7: Additional Benefits

- Coordinating/collaborating with other offices improved or created new working relationships
- Altering work-flows created new efficiencies for some agencies who participated
- Most participants became more aware of how much and what gets posted, identifying new way to present that material on their website.



The Council's Task

“The President is directing the newly established Chief FOIA Officers Council to consider the lessons learned from the DOJ pilot program and work to develop a Federal Government policy establishing a ‘release to one is a release to all’ presumptive standard for Federal agencies when releasing records under FOIA.”



The Council's Task

The Council will examine issues critical to this policy's implementation, including assessing the impact on investigative journalism efforts, as well as how best to address technological and resource challenges.

By **January 1, 2017**, the Chief FOIA Officers Council will work with OMB to provide further guidance as it relates to this presumption.



Next Steps

The Chief FOIA Officer of each agency should assess how best to address technological and resource challenges and report back prior to the next meeting. For example:

- Assess the volume of the material to be posted.
- Determine which office will be responsible for preparing documents for posting.
- Allocate personnel and IT support to this effort.



Next Steps

At the next meeting the Council will invite members of the journalist community and agency FOIA contacts to address the potential impacts of building in a reasonable delay to posting.

To facilitate this discussion we invite comments to be sent to **ReleaseToAll@usdoj.gov**.



Moving Forward

- We will provide a template to Chief FOIA Officers to address implementation efforts.
- We will schedule the second Council meeting:
 1. To hear from journalists and other members of the public on the Release to All Presumption.
 2. To discuss the agency responses regarding implementation efforts.



Discussion