



## **THE DEPARTMENT OF JUSTICE FREEDOM OF INFORMATION ACT 2017 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\(e\)\(6\) \(2016\)](#). During 2017 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.

During 2017, OIP continued to provide comprehensive guidance and training to agencies concerning the FOIA. OIP also managed the submission of agencies' Fiscal Year 2017 Annual FOIA Reports as well as their 2017 Chief FOIA Officer Reports, which are compiled based on guidance developed by OIP each year. After the submission of the 2017 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](#) and [Third](#) United States Open Government National Action Plans. For example, OIP completed the commitment from the [Third](#) National Action Plan to improve agencies' FOIA websites by issuing [new policy guidance](#). In 2017, OIP also led a team of experts in designing and developing a National

FOIA Portal that is interoperable with existing agency FOIA systems, in accordance with the *FOIA Improvement Act of 2016*. 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 2017, 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 2017, 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 what steps were taken to ensure that the presumption is being applied to all decisions involving FOIA. OIP has since added more granularity to this section by requiring agencies to report on their efforts to provide FOIA training to both FOIA professionals and program personnel, their effort to conduct outreach with the requester community, and any other steps taken to apply the presumption of openness.

On September 27, 2017, OIP once again [issued new guidance](#) to agencies on the content of their 2018 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 2018 reports, OIP streamlined the reporting

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requirements and provided separate questions for small-volume agencies receiving 50 requests or less and higher-volume agencies receiving more than 50 requests. 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-volume agencies were required to provide details about their use of technology and outreach to the requester community or civil society organizations, while small-volume agencies could focus on any aspect of their FOIA administration connected with the Department's FOIA Guidelines.

As in previous years, OIP adjusted the questions for the [2018 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 2018, OIP modified or added new questions to Sections II and IV of the Chief FOIA Officer Report.

Specifically, for Section II of the 2018 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. OIP added a note highlighting the release of its [FOIA Self-Assessment Toolkit](#), which is now available to all agencies as a resource to use in conducting self-assessments of their FOIA programs. For 2018, OIP also modified a new question from the prior year that asked agencies to provide an estimate of how often requesters sought assistance from the FOIA Public Liaison. The updated question asks agencies to provide a total number of times that requesters sought assistance from the FOIA Public Liaison, which will facilitate easier analysis of agency responses. Finally, in response to feedback from the requester community, OIP added an optional survey question asking agencies to provide an estimate of the average number of pages processed for each request.

In Section IV, as in previous years, OIP asked agencies to report on their use of technology to improve efficiency in processing. As agencies have expanded and matured in their use of technology, OIP modified this question for 2018 by asking agencies to provide any best practices for using technology. Also new for 2018, to ensure that agencies are satisfying the requirements of the *FOIA Improvement Act of 2016*, OIP asked agencies to provide the link to the raw statistical data used to compile their Fiscal Year 2016 Annual FOIA Report, as well as, if available, a link to the raw data for their Fiscal Year 2017 Annual FOIA Report.

March 2017 marked the eighth 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 2017. 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 2017, OIP compiled a [Summary and Assessment of Agency 2017 Chief FOIA Officer Reports](#), discussed in greater detail in Section B, Efforts to Promote Agency Accountability, below.

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*OIP Guidance on Annual FOIA Reports*

To assist agencies with their statutory reporting obligations, OIP continued to update and disseminate its comprehensive [Annual FOIA Report Handbook](#). 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. For example, OIP updated the Handbook during 2017 to reflect new reporting metrics and posting requirements mandated by the [FOIA Improvement Act of 2016](#).

In 2017, OIP continued to supplement the instructions for Annual FOIA Reports with its [guidance](#) issued during 2016 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 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 OIP's Annual FOIA Report clearance process. In addition, OIP continued to make available a [raw data template](#) to assist agencies in compiling and posting the raw data from their Annual FOIA Reports.

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 2017 OIP created and made available on its website a [summary](#) of the key statistics reported by agencies in their Fiscal Year 2016 Annual FOIA Reports.

*OIP Guidance for Further Improvement Based on 2017 Chief FOIA Officer  
Report Review and Assessment*

As noted above, in 2017 OIP conducted a detailed [assessment](#) of agencies' progress in improving transparency and implementing the [Department's FOIA Guidelines](#) based on a review of their [2017 Chief FOIA Officer Reports](#) and the data reported in their [Fiscal Year 2016 Annual FOIA Reports](#). As a result of this review and assessment, on June 15, 2017, OIP issued [guidance](#) for all agencies to assist them in making additional improvements in the years ahead.

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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 reported reducing their backlogs, and many of those agencies that had backlog increases, experienced this despite impressive efforts to increase the number of requests they processed. Agencies' abilities to reduce their backlogs is directly impacted by the number of incoming requests, and in Fiscal Year 2016, the government received a record high of nearly 800,000 requests. Recognizing this, OIP encouraged agencies to manage their backlogs strategically, focusing on improving the number of requests processed, decreasing average processing times, and reducing the age of their backlogs. Over half of agencies that reported having a "ten oldest" request or appeal at the end of Fiscal Year 2015 did not close out all of those requests or appeals in Fiscal Year 2016. Accordingly, OIP again 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 actively tracking the status of these requests and following up on pending consultations to monitor progress.

*"[A]gencies should continue to manage their backlogs strategically, focusing on improving the number of requests processed, decreasing average processing times, and reducing the age of their backlogs."*

*- OIP Guidance for Further Improvement  
Based on 2017 Chief FOIA Officer Report  
Review and Assessment*

OIP's assessment also demonstrated that nearly all agencies made FOIA Reference Guides available on their website, as required by the *FOIA Improvement Act of 2016*. FOIA Reference Guides should be easy for the public to understand and can link to any other information on the agency's website that would be helpful to a requester. While the information in a FOIA Reference Guide may also be located elsewhere on an agency website, compiling it into one document allows requesters to gain a complete overview of the FOIA process. OIP encouraged agencies to continuously review and update their FOIA Reference Guides so that they are accurate and easy to locate.

Finally, OIP reminded agencies of the requirement to post the raw statistical data used to compile their Fiscal Year 2016 Annual FOIA Reports. OIP encouraged agencies to post the data promptly, and highlighted that agencies will be required to provide links to their postings in their 2018 Chief FOIA Officer Reports.

*OIP Guidance on Defining a "Record" Under the FOIA*

On January 11, 2017, OIP issued [guidance](#) to assist agencies in determining what constitutes a responsive "record" under the FOIA in light of the recent decision in *American Immigration Lawyers Association v. EOIR*, 830 F.3d 667 (D.C. Cir. 2016). In many cases determining what constitutes a responsive record is a straightforward determination; for instance, if a requester seeks a specific report that the agency locates and processes. Other times, however, requesters seek information on a particular topic and agencies may locate documents that discuss several subjects, only some of which relate to the topic of the FOIA request. In such instances, to promote efficiency in processing only those portions of records that are responsive to a request, agencies would redact "non-responsive" material from records. The D.C. Circuit addressed this practice when it decided *AILA*. The court

specifically ruled that the FOIA does not provide for “redacting non-exempt information within responsive records.” *Id.* at 677. As a result, it is very important for agencies to have a proper understanding of what constitutes a “record” under the FOIA.

The FOIA itself does not define a “record.” Accordingly, OIP encouraged agencies to apply principles based on the *AILA* decision in determining that constitutes a “record” responsive to a FOIA requests. First, agencies can use the definition of a record found in the Privacy Act to guide their decisions as to what constitutes a record for purposes of the FOIA. Thus, each “item, collection, or grouping of information” on the topic of a request can be considered a distinct “record.” Second, the nature of a FOIA “record” is defined both by the content of the document and the subject of the request. These distinctions are most easily made when the document can reasonably be broken into discrete units. By contrast, if a document cannot be viewed as containing discrete “items or groupings” of information on different topics then it must be treated as a single “record” and the entirety must be processed for exemption applicability.

The guidance also included practical considerations such as ensuring that agencies are referring to the number of “records” based on how they have identified each record responsive to the request. For example, when providing an estimate of the volume withheld, if an agency has divided one ten-page document into five distinct “records,” three of which are responsive to the request, when referring to the number of records processed it should use the number three, not one. When dealing with large volumes of material agencies may find it easier to refer to the volume using other metrics, such as the number of pages, rather than the number of “records.” Similarly, when marking records for disclosure, if an agency has divided a multi-subject document into distinct records, it should mark the distinct records clearly so that the requester can readily see how the agency has defined the records responsive to his or her request. By applying the above principles and practical considerations, agencies can carefully consider what constitutes a “record” responsive to any given FOIA request.

*OIP Guidance: Processing Reminders for the Last Quarter of Fiscal Year 2017*

As Fiscal Year 2017 was drawing to a close, on July 20, 2017, OIP issued [guidance](#) on processing reminders for the last quarter. OIP encouraged agencies to continually look for ways to increase efficiencies so that they can continue to process high numbers of requests, while also ensuring that their oldest pending requests and consultations are closed each year. One particularly effective way to gain efficiencies in doing this is through the use of multiple processing tracks.

By differentiating between requests that will require minimal time to process and those that will take a longer time to complete, agencies will be able to process more requests more efficiently, as the simple-to-process requests can move promptly to completion without being held up behind complex requests. Additionally, with multiple processing tracks, agencies can offer requesters a meaningful opportunity to have their request processed more quickly if they limit their request so that it can qualify for the agency’s “simple” track.

OIP has long encouraged agencies to work each year to close not only their ten oldest requests, but also their ten oldest consultations to facilitate closure of the requests

themselves. Agencies were also reminded that there are existing memoranda that provide procedures to follow when consultations are necessary with the White House Counsel's Office. Agencies were instructed to contact OIP if they had any questions about the procedures for consulting with the White House Counsel's Office or any White House office subject to the FOIA.

*OIP Guidance on Agency FOIA Websites 2.0*

On November 20, 2017, in fulfilling the [United States Open Government Third National Action Plan](#) commitment to improve FOIA websites, OIP issued updated guidance to agencies on the style and content of their FOIA website. Agency websites have evolved as technical capabilities have improved over time and internet use has become a primary method for information dissemination. While the style of an agency's website helps the agency establish its own online identity, this has also led to differences in how similar or standard information is displayed across agencies. Fundamentally, a FOIA website should explain how to make a FOIA request, provide accurate contact information for the FOIA office, and include a link to the FOIA Library (formerly called "electronic reading rooms") where information is already available without the need for a request.

OIP encouraged agencies to regularly review their websites in light of the guidance to ensure that they contain essential resources, and are informative and user-friendly. First, all agencies should include a clear link to their FOIA website on their main homepage. For any agency that maintains multiple FOIA websites, such as a FOIA website for each of its major components, it is important that the agency's main FOIA landing page clearly identifies and links to those other subsidiary FOIA websites.

Second, agencies should ensure that the FOIA homepage contains key information and resources. It should direct the public to any proactively disclosed material that is already publicly available in the FOIA Library. It should instruct the public on how to make a request or to contact the agency about an existing request. It should also provide information about the agency's administration of FOIA by linking to agency Annual FOIA Reports and Chief FOIA Officer Reports.

Finally, agencies should adopt consistent styling and be mindful of agency and government-wide styling conventions. Agencies should also use plain language and regularly review websites for accuracy and updated links. Agencies may also consider collaborating with their web teams to identify areas for improvement. Although the individual styling of agency websites may vary, clearly directing visitors to the FOIA website from the agency's homepage and ensuring that the FOIA websites contain the above elements will help requesters better understand the FOIA process and submit their requests to the correct place.

## **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 2017, these efforts included publishing a [summary and detailed assessment](#) of agencies' progress based on the [2017 Chief FOIA Officer Reports](#), posting a detailed [summary of agencies' Fiscal Year 2016](#)

[Annual FOIA Reports](#), overseeing the government-wide [quarterly FOIA reporting requirement](#), and meeting with agency Chief FOIA Officers.

*[Summary of 2017 Chief FOIA Officer Reports and Assessment of Agency Progress](#)*

As discussed in the Policy Guidance section above, 2017 marked the eighth 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 2017 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 June 15, 2017, OIP issued a comprehensive [Summary of Agency Chief FOIA Officer Reports for 2017 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 reducing simple track processing times to within twenty working days or less. In conjunction with prioritizing older requests, by working to respond to simple requests quickly, agencies can strategically manage their backlogs in light of the high volumes of requests they continue to receive and process.

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. Focusing on those agencies that receive higher numbers of requests, OIP's assessment covered agencies that received more than 50 requests during Fiscal Year 2015. 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. As in past years, with input from civil society organizations, OIP continued to refine the milestones in 2017 to reflect agencies' progress in administering the FOIA.

In 2017, as in prior years, OIP used a five-level scoring system to illustrate the levels of success achieved by agencies. Additionally, narrative information from agency reports was provided in the assessment for sections that did not lend themselves to scoring. Finally, OIP also included a detailed methodology of how each milestone was scored.

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Section V -- Steps Taken to Improve Timeliness in Responding to Requests (Req.) and Reducing Backlogs																
Agency	Simple Track				Agency Backlog Decreased		Percentage of Backlog to # of Req./App. Received in FY 2015				Agency Closed Ten Oldest Req., Appeals (App.) & Consultations (Consults.) If not, # closed in FY 2015					
	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.
NRPC	Yes	20.98	42%				32%		250%		5/10	2		3/8		N/A
FRB	Yes	9	53%				6%		18%		N/A	0		N/A		N/A
CFTC	Yes	77.64	60%				13%		0%		7/10	1		N/A		N/A
CFPB	Yes	10.09	94%				<1%		0%		N/A	0		N/A		N/A
CEQ	Yes	135	18%				64%		0%		9/10	2		N/A		N/A
CSOSA	Yes	22.15	99%				<1%		0%		N/A	0		N/A		N/A
Ex-Im Bank	Yes	26.3	53%				27%		0%		8/10	0		N/A		N/A
FCC	Yes	22.57	93%				1%		39%		N/A	2		9/10		N/A
FDIC	Yes	14.11	55%				<1%		0%		N/A	0		N/A		N/A

*2017 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 a 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 2016, 115 reports were submitted and centrally posted on [OIP's website](#).

During 2017, OIP also uploaded the data for agencies' [Fiscal Year 2016 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 easily be 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.

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. In March 2017, OIP issued its [Summary of Annual FOIA Reports for Fiscal Year 2016](#), 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 sixth year, OIP prepared this summary by using [FOIA.gov](#), which allows for a detailed analysis of statistics that was not readily available prior to the site. This yearly Summary of Agency Annual FOIA Reports is useful for both agency personnel and open government groups who continue to look forward to its issuance each year.

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 be more easily 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 2017. Through the use of applied programming interfaces (APIs), agencies are required to post their quarterly data online so that it then collectively appears on FOIA.gov. The quarterly data consists of: (1) the number of requests received during the reporting period; (2) the number of requests processed during the reporting period; (3) the number of requests in an agency's backlog at the end of the reporting period; and (4) 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*

The Director of OIP continued to individually meet 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**

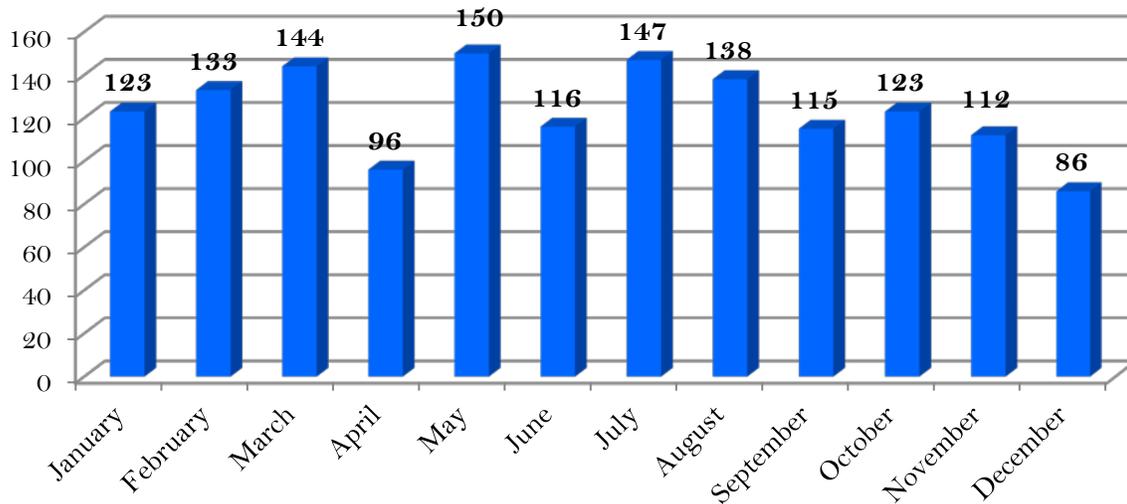
In addition to providing written policy guidance to agencies and conducting seminars on such guidance, OIP also provided [direct, one-on-one counseling](#) for agency personnel during

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2017, 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) (2017). OIP has found that such consultations are very valuable in ensuring agency compliance with the FOIA. OIP handled 1,483 requests for guidance through its FOIA Counselor service during 2017.

**Calls to the FOIA Counselor by Month in 2017**



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 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's review of the 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. 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. During 2017, OIP handled 415 calls from members of the public.

#### **D. Disseminating Information through *FOIA Post***

During 2017, 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 2017 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 [summary](#), [posting](#) of agency Chief FOIA Officer Reports, FOIA [reporting deadlines](#), 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.

##### *Updates on the Development of a National FOIA Portal*

*FOIA Post* was used to seek participation in, and announce updates about, the development of the National FOIA Portal. As a result of the *FOIA Improvement Act of 2016's* requirement that the Office of Management and Budget and the Department of Justice build a consolidated FOIA request submission portal that is interoperable with agencies' current systems, OIP continued its work in a long line of initiatives to develop a portal on FOIA.gov from which a requester could submit a request to any agency. On April 19, 2017, OIP [announced](#) its collaboration with GSA's [18F](#) team on the development of the National FOIA Portal. With this announcement, OIP sought the participation of agencies and requesters in the user-research and discovery of issues necessary to inform future development.

Subsequently, OIP used *FOIA Post* to announce the results of its collaboration with 18F on the discovery phase of the portal. To begin the project, OIP compiled a team with

members including its own FOIA subject matter experts, 18F's digital services team, and technical staff from DOJ's Office of the Chief Information Officer. The team began by embarking on a "discovery phase" that included conducting extensive research, interviewing requesters, agencies, and the advocacy community, and testing prototypes of possible functionality. The discovery phase focused on four categories of potential functionality: (1) the ability to submit a request to any agency; (2) interoperability (i.e., making the new portal work with other existing systems), (3) generating status updates, and (4) the option to search for already released records. OIP linked to the [report](#), which marked the completion of the discovery phase and highlighted the team's findings and recommendations for development. OIP continued to seek stakeholder feedback, particularly from agencies' technical experts to provide input on developing interoperability between the portal and agencies' existing systems.

### *FOIA Self-Assessment Toolkit*

OIP used *FOIA Post* to [announce](#) the publication of a [FOIA Self-Assessment Toolkit](#) as a resource for agencies to use when assessing their administration of the FOIA. OIP has [encouraged](#) agencies to conduct self-assessments to review and improve their FOIA program. By examining their procedures, practices, and results, agencies can improve their FOIA administration by, for instance, streamlining request processing, identifying new ways to use technology, and increasing proactive disclosures.

The FOIA Self-Assessment Toolkit consists of 13 modules, each focusing on a distinct aspect of the FOIA process, such as Initial Mail Intake, Adjudicating Requests for Expedited Processing, Searching for Responsive Records, Requester Services, FOIA Reporting, and FOIA Websites. It uses an evidence-based approach to help agencies objectively and meaningfully evaluate their performance. Scoring based on available evidence helps agencies more easily identify gaps and track progress when implementing improvements.

OIP plans to add modules and/or milestones over time as agencies use the Toolkit and provide feedback. OIP previewed the *Toolkit* at a Best Practices workshop and looks forward to agency feedback for how to make it more useful. By continuing to self-assess and implement improvements, agencies can further refine their administration of the FOIA.

### *Best Practices Workshops*

OIP continued to use *FOIA Post* to [announce](#) 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 2017. 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 2017 on the following topics: "Agencies and Requesters Working Together Throughout the FOIA Process," which included requester and agency panelists, and "Best Practices for Self-Assessments and Improving FOIA Processes," where OIP previewed the above-mentioned [FOIA Self-Assessment Toolkit](#). Following each workshop, OIP published

a summary of the best practices identified during the session on 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 2017 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's Acting Chief FOIA Officer welcomed all attendees and noted that Sunshine Week provides an important opportunity to recognize the key role that the FOIA serves in ensuring an open government. The Director of OIP then spoke about the history of the FOIA and the continuous increase in demand by the public to use the law as an essential tool for achieving the open government envisioned by our founding fathers. Following the celebration, OIP [summarized](#) the event and listed the award recipients on *FOIA Post*.

OIP also used *FOIA Post* to [announce](#) a Sunshine Week meeting of the FOIA IT Working Group. Over the last seven 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 to best determine how technology can support the agency's FOIA administration. 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.

### Chief FOIA Officers Council

The *FOIA Improvement Act of 2016* established the [Chief FOIA Officers Council](#), which is composed of all agency Chief FOIA Officers, the Directors of OIP and the Office of Government Information Services (OGIS), and the Deputy Director for Management from OMB. The Chief FOIA Officer 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 summarize the third meeting of the Chief FOIA Officers Council held on July 27, 2017. At that meeting, OIP's Director discussed proposed updates to the sample language for agencies to use to ensure their responses satisfy the notice requirements of the *FOIA Improvement Act of 2016*. Additionally, during the meeting, the audience heard from a panel of agency and requester representatives on ways to maximize the services provided by FOIA Requester Service Centers, FOIA Public Liaisons and OGIS. The meeting was open to the public and livestreamed online. Following the meeting, OIP continued to publish meeting materials to the Chief FOIA Officers Council [webpage](#).

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 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 2017, OIP continued to use its [Twitter](#) account to notify the public of the Office's activities and the most recent FOIA news. In first [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."

### **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 online 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.

*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 2017, OIP added to this section of its website an [updated chart](#) of all the statutes reported in agencies' [Fiscal Year 2016 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 2017 OIP also continued to make available

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 2016, for the tenth 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 2017, 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 2017 maintained "[a single electronic access point](#)" for the consolidated availability of the Annual FOIA Reports of all federal agencies. In 2017, 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 2017, 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.

As described in the Department's [2016](#) and [2017](#) Chief FOIA Officer Reports, OIP also continued to update its [FOIA Library](#) in 2017 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 2017, OIP posted the [FOIA Self-Assessment Toolkit](#) on the [FOIA Resources](#) page of the OIP website, and [highlighted](#) this disclosure on [FOIA Post](#).

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 2017, OIP made substantial progress on, or concluded, multiple FOIA initiatives from the [Second](#) and [Third](#) United States Open Government National Action Plans. For example, the [Second](#) and [Third](#) Open Government National Action Plans contained initiatives for expanding the services on FOIA.gov. Specifically, this included working to establish a consolidated National FOIA Portal that allows the public to submit a request to any Federal agency from a single site. As detailed above, in 2017 the Department collaborated with GSA's 18F Team to complete a discovery phase, which helped inform the development of the first iteration of a National FOIA Portal. We then transitioned straight from the discovery phase right to development. The development efforts for the first iteration of the new National FOIA Portal were completed in February 2018, providing the public with a number of new resources to learn more about the FOIA both generally, and more specifically at each agency and agency component. The Portal also allows requesters to, for the first time, make requests directly from FOIA.gov through a customized, electronic form. We look forward to continuing to expand and build upon the functionality on FOIA.gov in the upcoming years to improve FOIA for both requesters and agencies.

As part of another ongoing initiative included in the [Second](#) Open Government National Action Plan, the Director of OIP continued serving on the [FOIA Federal Advisory Committee](#). The FOIA Federal Advisory Committee met four times in 2017 (January 26, April 20, July 20, and October 19) and discussed a range of issues related to FOIA administration, including assessment of fees, proactive disclosures, and use of technology in FOIA administration.

Finally, during 2017 the Department completed its final FOIA initiative from the [Third Open Government National Action Plan](#) with the issuance of its new policy [guidance](#) on FOIA websites detailed above in Section A. Policy Guidance.

## 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 many of the initiatives mentioned above. For example, OIP continued to consult with civil society representatives as part of its work in issuing policy and reporting guidelines to agencies. OIP solicited feedback from civil society organizations prior to issuing the [2018 Chief FOIA Officer Report Guidelines](#) as well as the guidance on [Agency FOIA Websites 2.0](#).

### [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 part of the development of the National FOIA Portal, the services on FOIA.gov will continue to expand.



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 2017, the Department added the data from agencies' Fiscal Year 2016 Annual FOIA Reports so that it too can now be sorted and compared. In 2017 the Department updated FOIA.gov to display the new metrics on proactive disclosures and exclusions that agencies are required to report as a result of the *FOIA Improvement Act of 2016*. New charts and graphs were added that showed the evolution of key FOIA statistics over the past several fiscal years. During 2017, OIP and the Department also captured on FOIA.gov's [Reports](#) page agencies' Quarterly Report data. FOIA.gov was also updated throughout 2017 with recent FOIA news and spotlights on new releases agencies made that are likely to be of interest to public.

[FOIA.gov](http://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](http://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](http://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](http://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 2017, 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 2017, which ranged from half-day introductory sessions for non-FOIA personnel to advanced programs for highly experienced FOIA personnel. Specifically, in 2017 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 three times in 2017.

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- *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 in 2017
- *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.
- *Continuing FOIA Education* – This 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. This training was offered twice in 2017.
- *Refresher Training for Fiscal Year 2017 Annual FOIA Reports and 2018 Chief FOIA Officer Reports* – These training events 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 2017 include *Collaborating for Results: Agencies and Requesters Working Together Throughout the FOIA Process* and *Best Practices for Self-Assessments and Improving FOIA Processes*.

In addition, OIP provided training for components of the Department of Justice. In 2017, approximately 1,543 individuals were trained at OIP-hosted courses.

Recognizing that travel requirements limit the ability of some FOIA personnel to attend training sessions in Washington, DC, in 2017, OIP provided training on-site to the Department of Homeland Security, U.S. Citizenship and Immigration Services in Missouri, Immigration and Customs Enforcement in Florida, the Department of Defense in Florida, and the Department of Housing and Urban Development in Atlanta. In addition to the events hosted by OIP, 21 professional staff members from OIP gave a total of 21 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 Energy
- Department of Health and Human Services
- Department of Justice components
- Department of Labor
- Department of State
- Department of the Treasury
- Equal Employment Opportunity Commission
- Federal Communications Commission
- National Aeronautics and Space Administration
- Privacy and Civil Liberties Oversight Board
- United States Postal Service

During 2017, the Director of OIP gave a total of 27 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 2017, 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 2017, OIP responded to nine congressional inquiries pertaining to FOIA-related matters. OIP also received and looked into 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 2017**

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 2017, one showing the FOIA cases “received” during 2017 and the second showing the dispositions “rendered” in 2017. 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 2017*

The first list contains all of the cases filed as FOIA claims in federal district court during 2017. This information is derived directly from the federal courts' docketing systems through the Public Access to Court Electronic Records ([PACER](#)). According to PACER, in 2017, 699 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 2016 alone the government overall received 788,769 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 2017, OIP observed 23 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 2017*

The second list attached to this report contains all of the FOIA cases in which a decision was rendered by the federal courts in 2017. 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 2016, but appealed and affirmed in 2017, would be found on the lists of cases in which a decision was rendered for both 2016 and 2017.

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*Report on any Notification to the U.S. Office of Special Counsel*

During 2017, the United States courts made no written findings pursuant to [5 U.S.C. § 552\(a\)\(4\)\(F\)\(i\)](#). Accordingly, no notification to the U.S. Office of Special Counsel was necessary.