



THE DEPARTMENT OF JUSTICE FREEDOM OF INFORMATION ACT 2018 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\(e\)\(6\) \(2012 & Supp. V 2017\)](#). During 2018, 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 2018, OIP continued to provide comprehensive guidance and training to agencies concerning the FOIA. OIP also managed the submission of agencies' Fiscal Year 2018 Annual FOIA Reports as well as their 2018 Chief FOIA Officer Reports, which are compiled based on guidance developed by OIP each year. After the submission of the 2018 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). For all agencies receiving more than fifty FOIA requests during the prior fiscal year, OIP once again assessed the efforts made by those agencies. 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.

A highlight of 2018 was OIP's launch of the National FOIA Portal on FOIA.gov. OIP led a team of experts in designing, developing, and deploying the National FOIA Portal, which allows a member of the public to make a request to any agency from a single website.

The National FOIA Portal is designed to simplify and improve the request-making process and to increase public understanding of how the FOIA works across the more than 100 agencies subject to the Act.

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 2018, 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 2018, 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. The guidance that 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 those 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 efforts to conduct outreach with the requester community, and any other steps taken to apply the presumption of openness.

On September 21, 2018, OIP once again [issued new guidance](#) to agencies on the content of their 2019 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 2019 reports, OIP continued to provide 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, steps taken to increase proactive disclosures, and efforts to reduce backlogs, while small-volume agencies could describe any the steps they have taken to improve their FOIA administration, including efforts to enhance cooperation and communication with requesters.

As in previous years, OIP adjusted the questions for the [2019 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 2019, OIP modified or added new questions to all five sections of the Chief FOIA Officer Report.

Specifically, Section I asks agencies to identify steps they have taken to apply the presumption of openness, including through leadership, outreach, and training. For 2019, agencies were required to identify whether their Chief FOIA Officer is at or above the Assistant Secretary-level or equivalent as required by the FOIA. OIP also included a revised question for 2019 concerning engagement or outreach to requesters or open government groups, asking agencies to provide examples of how this outreach led to improvements in the agency's FOIA administration. Also new for 2019, OIP asked agencies to indicate whether they have considered incorporating FOIA-related performance standards into employee work plans.

In Section II of the 2019 Chief FOIA Officer Report, which addresses the need for effective systems to respond to requests, OIP asked agencies to describe the best practices used to ensure their FOIA systems operate efficiently and effectively. Similar "best practices" questions were also added to Sections III and IV. Section III focuses on steps agencies have taken to increase proactive disclosures. A new question in this section asked agencies to describe how they identify records that have been requested and released three or more times, a requirement codified by the *FOIA Improvement Act of 2016*.

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 2019 by asking agencies to describe how they are leveraging technology to facilitate efficiency in conducting searches, including email searches. Agencies were also asked to identify the types of search technologies used and how their typical search process is conducted.

Section V asks agencies to discuss steps taken to improve timeliness in responding to requests and reducing any backlogs. OIP added new questions for 2019 to provide a broader picture of agencies' efforts in this area. A question about multitrack processing was revised to ask agencies to describe whether they use a track system beyond simple, complex, and expedited tracks. Where agencies did not decrease their backlog of requests and

appeals, they were asked whether they processed more requests and appeals compared to last year. Beyond closing the ten oldest requests and appeals, agencies were also asked to describe steps taken to reduce the age of pending requests and appeals.

March 2018 marked the ninth 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 2018 Chief FOIA Officer Reports to OIP for review in early 2018. 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 2018, OIP compiled a [Summary and Assessment of Agency 2018 Chief FOIA Officer Reports](#), discussed in greater detail in Section B, Efforts to Promote Agency Accountability, below.

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 2018 to reflect the availability of an updated reporting tool that agencies use to compile their reports.

The [FOIA Improvement Act of 2016](#) requires agencies to include two additional metrics in their Annual FOIA Reports and to post the raw data used to compile their reports. In accordance with 5 U.S.C. § 552(e)(1)(P), agencies are now required to include in their Annual FOIA Report the number of times they have invoked an exclusion. In accordance with 5 U.S.C. § 552(e)(1)(Q), agencies are also now required to report on "the number of records that were made available for public inspection in an electronic format under subsection (a)(2)." In light of these new statutory requirements, OIP updated the [Handbook](#), as well as the DOJ Annual FOIA Report Tool. In 2018, OIP continued to make available a [raw data template](#) to assist agencies in compiling and posting the raw data from their Annual FOIA Reports, along with its [guidance](#) issued during 2016 addressing the requirements of the *FOIA Improvement Act of 2016*.

Additionally, in 2018 OIP provided agencies with an ["Agency Reporting Obligations At-A-Glance"](#) resource that summarizes all reporting obligations throughout the year. The document briefly describes agency reporting obligations, as well as deadlines established by the FOIA, a suggested timeline, and links to key resources and guidance for each report.

*2018 FOIA Litigation and Compliance Report
United States Department of Justice*

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 2018 OIP created and made available on its website a [summary](#) of the key statistics reported by agencies in their Fiscal Year 2017 [Annual FOIA Reports](#).

OIP Guidance for Further Improvement Based on 2018 Chief FOIA Officer Report Review and Assessment

As noted above, in 2018 OIP conducted a detailed [assessment](#) of agencies' progress in improving transparency and implementing the [Department's FOIA Guidelines](#) based on a review of their [2018 Chief FOIA Officer Reports](#) and the data reported in their [Fiscal Year 2017 Annual FOIA Reports](#). As a result of this review and assessment, on July 19, 2018, OIP issued [guidance](#) for all agencies to assist them in making additional improvements in the years ahead.

OIP's [assessment](#) revealed that in Fiscal Year 2017 agencies received and processed a record number of requests. Many agencies reported reducing their backlogs. Others, that did experience an increase in backlog, nonetheless made 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 received, and in Fiscal Year 2017, the government received a record high of over 818,000 requests. Recognizing this, OIP encouraged agencies to manage their backlogs strategically, focusing on responding to simple requests quickly, encouraged the use of multi-track processing, and closing the agency's ten oldest consultations, requests and appeals. The guidance noted that closing of consultations aids other agencies in closing their requests.

"Agencies should strategically focus their attention on the areas where they can have the greatest impact."

- OIP Guidance for Further Improvement Based on 2018 Chief FOIA Officer Report Review and Assessment

Finally, OIP reminded agencies of the requirement to post the raw statistical data used to compile their Annual FOIA Reports. OIP encouraged agencies that reported having difficulties in posting their raw data to review OIP's guidance and post the data promptly.

OIP Guidance: Decontrolling Controlled Unclassified Information (CUI) in Response to a Freedom of Information Act (FOIA) Request

On November 19, 2018, OIP and the Information Security Oversight Office at the National Archives and Records Administration issued joint [guidance](#) regarding the release of Controlled Unclassified Information (CUI) under the FOIA. The guidance explains that agencies must determine whether to release information in response to a FOIA request based on the statutory exemptions contained in the FOIA, irrespective of whether the agency designated the information as CUI. The guidance further explains that when an agency releases information previously marked as CUI in response to a FOIA request, the information is generally considered to be decontrolled by the agency and can no longer be protected as CUI. The guidance advises agencies that if they believe that, notwithstanding

disclosure under the FOIA, there is still a need to continue to protect the information as CUI, they must consult with the appropriate experts, including OIP, to ensure there is a legal and policy basis to continue to protect as CUI information that has been released.

OIP Guidance: The Importance of Quality Requester Services: Roles and Responsibilities of FOIA Requester Service Centers and FOIA Public Liaisons

Agencies often interact with the public through FOIA Requester Service Centers and FOIA Public Liaisons. On June 12, 2018, OIP issued [guidance](#) addressing the importance of quality requester services and provided an overview of the roles and responsibilities of these two critical resources as they engage with the public during all stages of the FOIA process. OIP's guidance stressed the importance of maintaining "a spirit of cooperation" and ensuring good communication with requesters. OIP advised that FOIA Requester Service Centers and FOIA Public Liaisons must be prepared to answer a wide range of inquiries about their agency's FOIA administration, both in general and about any given FOIA request in particular.

As detailed in OIP's guidance, FOIA Requester Service Centers serve as the first point of contact for requesters inquiring about the FOIA. These centers handle a wide range of inquiries about types of records an agency maintains, general questions about the FOIA process, as well as request-specific questions. FOIA Requester Service Centers assist the public by identifying information already publically available and by providing average processing times, estimated completion dates, and status information about requests.

OIP's guidance further explained that FOIA Public Liaisons supervise FOIA Requester Service Centers, assist in reducing delays, increasing understanding of request status, and resolving disputes. OIP advised agencies that FOIA Public Liaisons should be able to explain how the agency manages and tracks requests, as well as be able to answer questions concerning individual agency responses to requests. As detailed in OIP's guidance, in unusual circumstances, where requesters may want to limit the scope of their request or arrange alternative processing times, FOIA Public Liaisons should be prepared to offer suggestions so that the request can be processed more quickly. OIP's guidance also stressed that FOIA Public Liaisons should employ a systemic approach to improving timeliness and increasing requesters' understanding of the FOIA process. The guidance provided multiple examples of activities that FOIA Public Liaisons can undertake to improve timeliness, ranging from conducting self-assessments to identify areas that can be streamlined, to regularly training and engaging with staff, and increasing proactive disclosures to more readily satisfy public demand for certain information.

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 2018, these efforts included publishing a [summary and detailed assessment](#) of agencies' progress based on the [2018 Chief FOIA Officer Reports](#), posting a detailed [summary of agencies' Fiscal Year 2017 Annual FOIA Reports](#), overseeing the government-wide [quarterly FOIA reporting requirement](#), and meeting with agency Chief FOIA Officers.

Summary of 2018 Chief FOIA Officer Reports and Assessment of Agency Progress

As discussed in the Policy Guidance section above, 2018 marked the ninth 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 2018 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 7, 2018, OIP issued a comprehensive [Summary of Agency Chief FOIA Officer Reports for 2018 and Assessment of Agency Progress in FOIA Administration](#).

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 key areas in which improvements could be made, such as ensuring successful posting of quarterly reports and raw data from agency Annual FOIA Reports and improving timeliness in processing requests. In conjunction with prioritizing older requests, by working to respond to simple requests quickly, agencies can strategically manage their backlogs in light of the record high volumes of requests they continue to receive and process.

In addition to the narrative [summary](#), OIP for the fifth 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 the prior fiscal year. 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 interested stakeholders, OIP continued to refine the milestones in 2018 to reflect agencies' progress in administering the FOIA.

In 2018, 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.

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 in a "single electronic access point," by posting them on the [Reports](#) page of its website. For Fiscal Year 2017, 116 reports were submitted and centrally posted on [OIP's website](#).

During 2018, OIP also uploaded the data for agencies' [Fiscal Year 2017 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.

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 June 2018, OIP issued its [Summary of Annual FOIA Reports for Fiscal Year 2017](#), using new graphics and a more streamlined approach. The summary highlights 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 seventh year, OIP prepared this summary by using [FOIA.gov](#), which allows for a detailed analysis of statistics that was not readily available prior to creation of 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 2018. 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

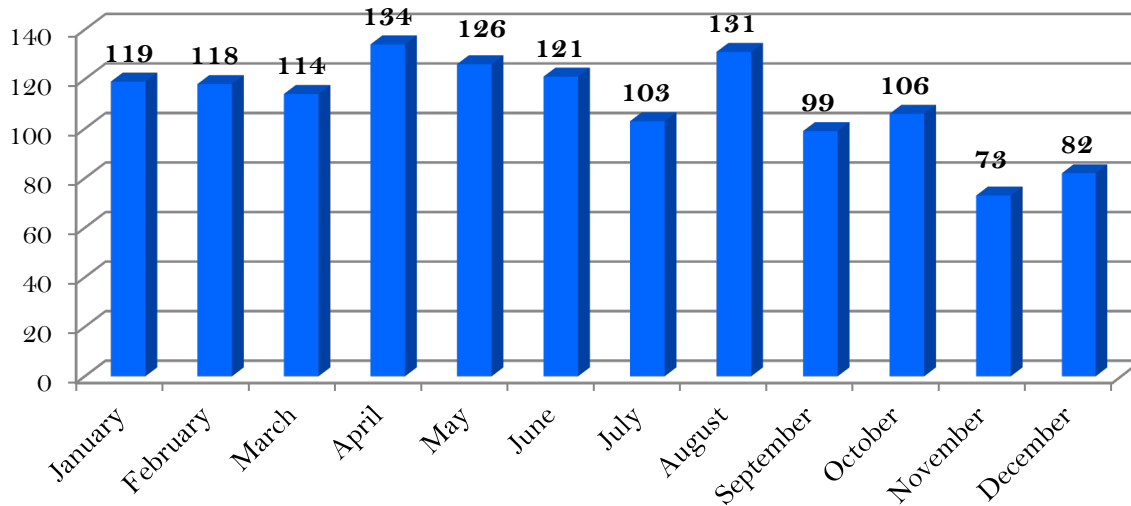
The Director of OIP continued to individually meet with selected Chief FOIA Officers to discuss their agency's FOIA administration in further detail, including their performance based on the most recent Annual and Chief FOIA Officer Reports. These meetings have become an invaluable opportunity for the 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 OIP also provided [direct, one-on-one counseling](#) for agency personnel during 2018, 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\(i\) \(2018\)](#). OIP has found that such consultations are very valuable in ensuring agency compliance with the FOIA. OIP handled 1,326 requests for guidance through its FOIA Counselor service during 2018.

Calls to the FOIA Counselor by Month in 2018



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 2018, OIP handled 412 calls from members of the public.

D. Disseminating Information through *FOIA Post*

During 2018, 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 2018 were disseminated to agencies – and made available to the public – through announcements on *FOIA Post*. OIP also used *FOIA Post* to announce the issuance of the abovementioned Annual FOIA Report [summary](#), the Chief FOIA Officer Report [summary](#), 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.

Announcing the First Iteration of the National FOIA Portal

OIP continued to use *FOIA Post* to seek participation in and announce updates about the development of the National FOIA Portal. The *FOIA Improvement Act of 2016*, required the Office of Management and Budget and the Department of Justice to develop a consolidated online request portal that would allow a member of the public to submit a request to any agency from a single website. After a robust design and development process, that included teaming with GSA's 18F digital services team and technical staff from DOJ's Office of the Chief Information Officer, on March 8, 2018, OIP [announced](#) the release of the first iteration of the National FOIA Portal on [FOIA.gov](#).

In addition to the features already available on [FOIA.gov](#), such as agency FOIA data and contact information, the new National FOIA portal provides customized forms for each agency to help requesters understand and submit requests more easily. The site also centralizes and provides a wealth of agency-specific resources that are helpful to requesters, such as a description of each agency and links to their FOIA website, FOIA Reference Guide, FOIA regulations, and their FOIA Library. The portal was developed with a user-centric focus, relying heavily on both public and agency feedback throughout the entire process. OIP continues to seek stakeholder feedback, particularly from agencies' technical experts to provide input on developing interoperability between the portal and agencies' existing systems. The release of the National FOIA Portal was the first step in an iterative process to enhance the services available on [FOIA.gov](#).

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 2018. 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. OIP held one workshop during 2018 entitled, "Reducing Backlogs and Improving Timeliness," which included Department and agency panelists. Following the 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 2018 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, Exceptional Advancements in the Area of IT to Improve the Agency's FOIA Administration, Exceptional Achievements by an Agency or Team of Professionals at an Agency to Advance the Proactive Disclosure of Information, as well as Lifetime Service Awards. The Department of Justice's Chief FOIA Officer welcomed all attendees and noted that Sunshine Week provides an important opportunity to recognize the importance of transparency in government and the contributions of FOIA professionals. The Director of OIP then spoke about new OIP resources and initiatives designed to assist agencies in administering the FOIA, including OIP's Self-Assessment Toolkit and the National FOIA Portal on FOIA.gov. Following the celebration, OIP [summarized](#) the event and listed the award recipients on *FOIA Post*.

E. Use of Social Media

In an effort to reach a wider audience and disseminate important FOIA information as soon as practical, during 2018, OIP continued to use its [Twitter](#) account to notify the public of the Office's activities and the most recent FOIA news. Twitter continues to be an efficient tool for OIP and other agencies to proactively disclose information online. 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 upon, as intended, by government personnel. Members of the public also consult it. 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 2018, OIP added to this section of its website an [updated chart](#) of all the statutes reported in agencies' Fiscal Year 2017 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 2018 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\(e\)\(1\)](#). 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 2018, 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\(e\)\(4\)](#), and as mentioned above, the Department of Justice in 2018 maintained "[a single electronic access point](#)" for the consolidated availability of the Annual FOIA Reports of all federal agencies. In 2018, 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.

FOIA Self-Assessment Toolkit

OIP continued to make available its [FOIA Self-Assessment Toolkit](#), which was developed 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. OIP will continue to update and supplement the *Toolkit* as a result of agency feedback and changes to FOIA law and policy.

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 2018, OIP continued to update the [FOIA Resources](#) section of its website with the Exemption 3 charts discussed above. As noted above, OIP also posted government-wide [guidance](#) on the FOIA on its website and regularly used its blog, [FOIA Post](#), to notify agencies and the public about new FOIA developments and events. Under the [Court Decisions](#) section of OIP's website, OIP regularly posted summaries of the new FOIA decisions issued by the federal courts. OIP also continued to update the [Training](#) section of its website to notify agency personnel and the public of upcoming FOIA training opportunities and events.

In 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. OIP also posted memoranda issued by the Attorney General and Deputy Attorney General, on topics including [coordination of corporate resolution penalties](#) and [communications with Congress](#), as well as a [policy statement](#) on the use of social media to communicate with the public, accompanied by

[account](#) and [content](#) management instructions. Also posted were several frequently requested records on [various topics](#).

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 to Further Improve the Administration of the FOIA

During 2018, 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 2018 the Department released the first iteration of the National FOIA Portal on FOIA.gov, 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 2018 (January 16, April 17, September 6, and November 29, 2018) and discussed a range of issues related to FOIA administration, including proactive disclosures, resources, and searches.

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 Officers 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.

The Chief FOIA Officers Council held two meetings in 2018. At the July 19, 2018 meeting, the Chief FOIA Officers from the Department of Homeland Security, Department of the Treasury, the National Archives and Records Administration, the Deputy Chief FOIA Officer from the Department of Health and Human Services, and the FOIA Liaison Officer

from the Department of Defense, all contributed to a panel discussion about overcoming challenges and opportunities for improvement in FOIA administration. Each panelist identified challenges faced at their agency, their efforts to address them, and their plans for future improvements to their agency's FOIA administration. During the October 4, 2018 meeting, members discussed best practices identified in the Final Report and Recommendations of the 2016-2018 FOIA Advisory Committee. OIP's Director also highlighted DOJ Guidance related to good communication, effective case management, proactive disclosures, and enhanced use of IT. The meetings were open to the public and livestreamed online. OIP continued to publish all meeting materials on the [Chief FOIA Officers Council](#) section of its website.

H. Outreach

To improve not only the Department's, but also the government's overall FOIA administration, the Department engages in outreach with the requester community and other outside stakeholders in a variety of ways. OIP has regularly engaged with outside stakeholders on many of the initiatives mentioned above. For example, OIP sought input from the requester community [throughout](#) the development of the National FOIA Portal, and, in 2018, [continued](#) to welcome feedback after the release of the first iteration of the portal. During Sunshine Week 2018, OIP invited members of civil society organizations to receive an overview of the portal's capabilities and to provide feedback. Through its participation in the Chief FOIA Officers Council, as well as its membership on the FOIA Federal Advisory Committee, OIP also engages with outside stakeholders and advocates, as well as the public.

FOIA.gov

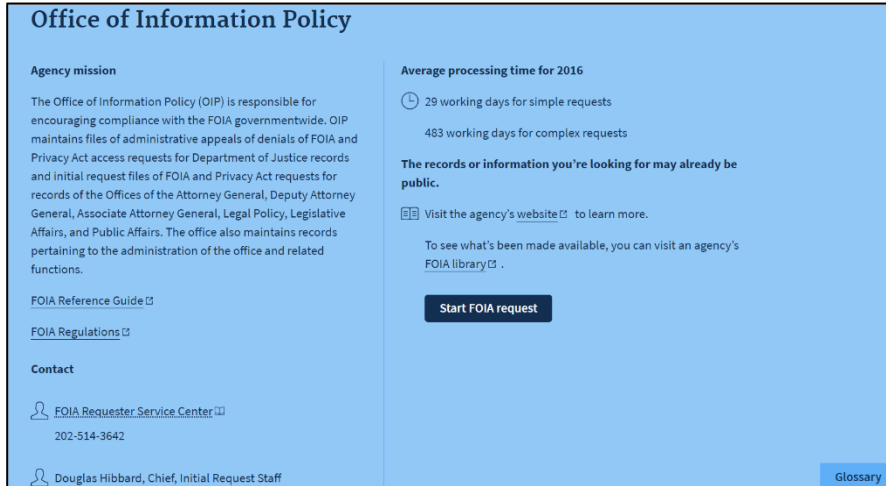
With millions of visitors since it was launched in 2011, [FOIA.gov](#) continues to revolutionize the way in which FOIA data and information is made available to the public. While it was initially a project undertaken by the Department in response to a strong interest by open government groups to have a "dashboard" that illustrates statistics



New FOIA.gov homepage

collected from agencies' Annual FOIA Reports, the Department almost immediately began to expand its capabilities and has continued to add new features over time. During 2018, the site was refreshed and updated. More significantly, as discussed above, in 2018 the first iteration of the National FOIA Portal was released on FOIA.gov. As a result, in addition to learning about the FOIA and reviewing FOIA data, members of the public can now make a FOIA request to any agency right from FOIA.gov. Since the release of this capability, requesters have submitted approximately 8,700 requests to agencies through the portal.

2018 FOIA Litigation and Compliance Report
United States Department of Justice



FOIA.gov agency information page

FOIA.gov includes new features such as individual agency pages containing a description of each agency's mission, their key FOIA resources, and their average processing times for simple and complex requests. The website also provides updated contact information for each agency, including their FOIA Requester Service Centers and FOIA Public Liaisons, which agencies can

update themselves as needed. There are also tools to assist the public in locating the right agency and aids to assist in making a request. For each agency, a customized request form incorporates any specific regulatory requirements of that agency to ensure that the requester provides the agency with all the required information right at the outset of the request process. The request forms all follow a similar pattern to bring more consistency to the request-making process. All these features are designed to educate the public, simplify the process, and improve FOIA administration overall.

As mentioned above, [FOIA.gov](#) also 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 2018, the Department added the data from agencies' Fiscal Year 2017 Annual FOIA Reports so that it too can now be sorted and compared. During 2018, OIP and the Department also captured on FOIA.gov's [Reports](#) page agencies' Quarterly Report data.

[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.

"Before You Request" resources and Glossary

*2018 FOIA Litigation and Compliance Report
United States Department of Justice*

In addition to these resources, FOIA.gov offers users a "Before you request" 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. This 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 a more targeted request to be made. The Department will continue to work to enhance the services on FOIA.gov in the years ahead.

FOIA.gov request submission form

Finally, in keeping with the Department's commitment to making government more transparent and accessible, FOIA.gov offers select content in English and Spanish. Individuals with limited English proficiency can access the [Spanish translations](#) for the "Learn about FOIA" sections of FOIA.gov.

I. Training, Public Presentations, and Briefings

As yet another method for encouraging compliance with the FOIA, OIP held a [variety of training programs](#) throughout the year. During 2018, 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 2018, which ranged from half-day introductory sessions for non-FOIA personnel to advanced programs for highly experienced FOIA personnel. Specifically, in 2018 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 four times in 2018.

*2018 FOIA Litigation and Compliance Report
United States Department of Justice*

- *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 2018.
- *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.
- *Refresher Training for Fiscal Year 2018 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 2018 Best Practices Workshop was about *Reducing Backlogs and Improving Timeliness*.

In addition, OIP provided training for components of the Department of Justice. In 2018, approximately 1,537 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 2018, OIP provided training on-site to the Department of Homeland Security, U.S. Citizenship and Immigration Services in Missouri, and the Department of Interior, U.S. Fish and Wildlife Service in Massachusetts. 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

*2018 FOIA Litigation and Compliance Report
United States Department of Justice*

- 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

During 2018, the Director of OIP gave a total of 23 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 and our administration of the FOIA.

J. Legislative and Regulatory Proposals

During 2018, 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. In 2018, OIP reviewed proposed FOIA regulations from approximately 5 agencies, reviewing them for legal sufficiency and conformity with DOJ's FOIA Guidance.

K. Congressional and Compliance Inquiries

In 2018, OIP responded to ten congressional inquiries pertaining to FOIA-related matters. OIP also looked into six matters (sometimes involving multiple issues) from members of the public who had concerns about how the FOIA was being administered at an agency. In response to each of 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

*2018 FOIA Litigation and Compliance Report
United States Department of Justice*

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 2018, one showing the FOIA cases "received" or filed during 2018 and the second showing the dispositions "rendered" or decided in 2018. 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 2018

The first list contains all of the cases filed as FOIA claims in federal district court during 2018. This information is derived directly from the federal courts' docketing systems through the Public Access to Court Electronic Records ([PACER](#)). According to PACER, in 2018, 816 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 2017 alone the government overall received 818,271 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 2018, OIP observed thirty-five 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 2018

The second list attached to this report contains all of the FOIA cases in which a decision was rendered by the federal courts in 2018. 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

*2018 FOIA Litigation and Compliance Report
United States Department of Justice*

this list of cases may include cases which were listed in previous reports. For example, a case initially decided in 2017, but appealed and affirmed in 2018, would be found on the lists of cases in which a decision was rendered for both 2017 and 2018.

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

During 2018, 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.