



THE DEPARTMENT OF JUSTICE FREEDOM OF INFORMATION ACT 2019 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) (2018). During 2019, 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 2019, OIP continued to provide comprehensive guidance and training to agencies concerning the FOIA. OIP also managed the submission of agencies' Fiscal Year 2019 Annual FOIA Reports as well as their 2019 Chief FOIA Officer Reports, which are compiled based on guidance developed by OIP each year. After the submission of the 2019 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 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 2019 was OIP's comprehensive update to the *Department of Justice Guide to the Freedom of Information Act*, a legal treatise on the FOIA used by government personnel and the public. OIP's subject matter experts took into account recent changes in

the FOIA, hundreds of FOIA court decisions, and recent guidance issued by OIP to update this preeminent reference document. Another highlight of 2019 was OIP's addition of a new Annual FOIA Report Tool on FOIA.gov. In 2019, OIP led a team of experts in developing and deploying the tool, which allows agencies to compile and submit their Annual FOIA Reports to OIP directly from FOIA.gov. The tool simplifies and improves the reporting process for agencies and streamlines OIP's review of agency data.

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 2019, 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 2019, 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 the use of technology 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 improvements made in 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.

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On August 2, 2019, OIP [issued new guidance](#) to agencies on the content of their 2020 Chief FOIA Officer Reports. As it did the year before, OIP continued to provide separate questions for lower-volume agencies receiving 50 requests or less and higher-volume agencies receiving more than 50 requests. New for 2020, OIP did not require lower-volume agencies receiving 50 requests or less to provide a Chief FOIA Officer Report if the agency believes that their Annual FOIA Report provides a sufficient accounting of their efforts to effectively and efficiently administer the FOIA. 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 are required to provide details about their use of technology, steps taken to increase proactive disclosures, and efforts to reduce backlogs, while small-volume agencies have the option to describe any of the steps they have taken to improve their FOIA administration.

In an effort to continue to streamline agencies' reporting requirements and increase the focus on newly reported information, OIP made a limited number of adjustments to the questions for the 2020 Chief FOIA Officer Report Guidelines. For example, for 2020, OIP made optional the questions about agencies' other initiatives, best practices, and challenges in Sections I-IV of the Chief FOIA Officer Report.

March 2019 marked the tenth 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 2019 Chief FOIA Officer Reports to OIP for review in early 2019. 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 2019, OIP compiled a [Summary and Assessment of Agency 2019 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 contains instructions for using the Annual FOIA Report Tools developed by the Department and 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 made [significant updates to the Handbook](#) during 2019 to include instructions for using the new FOIA.gov Annual Reporting Tool.

In 2019, 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 2019 OIP provided agencies with an updated "[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.

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 2019 OIP created and made available on its website a [summary](#) of the key statistics reported by agencies in their Fiscal Year 2018 [Annual FOIA Reports](#).

OIP Guidance for Further Improvement Based on 2019 Chief FOIA Officer Report Review and Assessment

As noted above, in 2019 OIP conducted a detailed [assessment](#) of agencies' progress in improving transparency and implementing the [Department's FOIA Guidelines](#) based on a review of their [2019 Chief FOIA Officer Reports](#) and the data reported in their [Fiscal Year 2018 Annual FOIA Reports](#). As a result of this review and assessment, on January 22, 2020, OIP issued [guidance](#) for all agencies to assist them in making additional improvements in the years ahead.

OIP's [assessment](#) revealed that while most agencies posted the raw data from their Fiscal Year 2017 Annual FOIA Reports, some agencies were not able to do so. OIP [advised](#) those agencies that had not yet posted their raw data to review OIP's guidance and determine the next steps to ensure that they complied with the posting requirement.

Additionally, OIP [advised](#) agencies to continue to focus on improving timelines and reducing backlogs. OIP recommends that agencies reexamine their FOIA process if they had an average processing time of over 20 days for simple requests. The guidance encourages agencies to continue to reduce backlogs of requests and appeals, as well as to make it a priority to close their ten oldest pending requests, appeals, and consultations each fiscal year.

To that end, OIP recommends that agencies actively monitor the status of their ten oldest requests, appeals, and consultations. The guidance notes that sustained efforts to close these requests and appeals every year is essential to reducing the age of the government's backlogs and resolving those cases that have been lingering. Closing the ten oldest consultations also ensures that the agencies that sent the consultations can have the input they need to provide final responses to requesters.

OIP Guidance: Exemption 4 after the Supreme Court's Ruling in Food Marketing Institute v. Argus Leader Media

On June 24, 2019, the Supreme Court issued an opinion interpreting the meaning of the word "confidential" in Exemption 4 of the FOIA. *See Food Marketing Institute v. Argus Leader Media*, 139 S. Ct. 2356 (2019). FOIA's Exemption 4 protects from disclosure

“trade secrets and commercial or financial information obtained from a person [that is] privileged or *confidential*.” 5 U.S.C. § 552(b)(4) (emphasis added). On October 3, 2019, OIP issued [guidance](#) that provides agencies with workable rules for applying Exemption 4 in light of the Supreme Court's decision.

OIP's guidance contains a detailed discussion of the decision in *Food Marketing Institute v. Argus Leader*, as well as the scope of Exemption 4 before and after the Supreme Court decision. The purpose of the guidance is to address the new standard under Exemption 4 and to provide workable rules for agencies to use when making disclosure determinations. Accompanying the guidance, OIP also issued a [step-by-step guide](#) to further assist agencies in applying the new standard.

Joint DOJ/OMB Guidance: Achieving Interoperability with the National FOIA Portal on FOIA.gov

On February 19, 2019, OIP and the Office of Management and Budget (OMB) issued joint guidance establishing interoperability standards for the National FOIA Portal on FOIA.gov. The guidance explains that agencies can achieve interoperability with the Portal in one of two ways: 1) agencies can accept FOIA requests directly to their current case management platforms via a structured Application Programming Interface (API) or 2) agencies can accept FOIA requests via a formal, structured e-mail to a designated e-mail inbox. The guidance further explains that, unless an exception is granted by OMB and DOJ, agencies with automated case management systems will be required to achieve full interoperability with the National FOIA Portal by accepting requests through a structured API. Agencies with non-automated solutions will be required to achieve full interoperability by accepting FOIA requests through the National FOIA Portal via a formal, structured e-mail to a designated e-mail box. The guidance informed agencies of a deadline of May 10, 2019 for CFO Act agencies to provide OMB a plan for how they intend to achieve full interoperability and the estimated cost. Some agencies have already become or are quickly progressing on becoming interoperable in accordance with the guidance.

OIP Guidance: Adjudicating Administrative Appeals under the FOIA

The FOIA provides requesters with a statutory right to administratively appeal an "adverse determination" an agency makes on a FOIA request. See [5 U.S.C. § 552\(a\)\(6\)\(A\) \(i\) \(2019\)](#). On February 14, 2019, OIP issued [guidance](#) stressing the importance of efficiency and quality when responding to FOIA administrative appeals. OIP advises agencies to conduct an independent, "de novo" review of each appeal, to communicate effectively with both FOIA professionals who handle the initial response and with requesters. OIP further encourages agencies to employ effective management techniques to organize their appeals dockets. Implementing these practices will help agencies effectively carry out their statutory responsibility to adjudicate administrative appeals under the FOIA.

As detailed in OIP's guidance, the administrative appeal process affords benefits to agencies as well as to requesters. The process offers the agency an opportunity to reevaluate its initial response to a request and to identify any potential legal errors, and it increases the requester's confidence in the FOIA process by providing a second opportunity for the request to be reviewed.

Memorandum from the Principal Deputy Associate General to Agency General Counsels and Chief FOIA Officers regarding Chief FOIA Officer Designations

On January 30, 2019, the Principal Deputy Attorney General sent a [memorandum](#) to all agency General Counsels and Chief FOIA Officers requesting that they review their Chief FOIA Officer designations to ensure that they are at the appropriate level. In accordance with the FOIA, agencies are required to designate a Chief FOIA Officer who is charged with "agency-wide responsibility for efficient and appropriate compliance" with the Act. 5 U.S.C. § 552(e)(6). The Act directs that the Chief FOIA Officer "shall be a senior official of such agency (at the Assistant Secretary or equivalent level)." *Id.*

The memorandum also informed agencies that the Department would require agencies to report on whether their designations meet the statutory requirement in their 2019 Chief FOIA Officer Reports.

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 2019, these efforts included publishing a [summary and detailed assessment](#) of agencies' progress based on the [2019 Chief FOIA Officer Reports](#), posting a detailed [summary of agencies' Fiscal Year 2018 Annual FOIA Reports](#), overseeing the government-wide [quarterly FOIA reporting requirement](#), and meeting with agency Chief FOIA Officers.

Summary of 2019 Chief FOIA Officer Reports and Assessment of Agency Progress

As discussed in the Policy Guidance section above, 2019 marked the tenth 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 2019 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 January 24, 2020, OIP issued a [comprehensive Summary of Agency Chief FOIA Officer Reports for 2019 and Assessment of Agency Progress in FOIA Administration with OIP Guidance for Further Improvement](#).

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 the successful posting of raw data from agency Annual FOIA Reports, improving timeliness, and reducing backlogs. In addition to working to reduce simple track processing times to within twenty days, agencies should also actively monitor the status of their ten oldest requests, appeals, and consultations throughout the year in an effort to reduce the overall age of their backlogs.

In addition to the narrative [summary](#), OIP for the sixth 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 2019 to reflect agencies' progress in administering the FOIA. OIP used a five-level scoring system to illustrate the levels of success achieved by agencies and 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 2018, 118 reports were submitted and centrally posted on [OIP's website](#).

During 2019, OIP also uploaded the data for agencies' [Fiscal Year 2018 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 2019, OIP issued its [Summary of Annual FOIA Reports for Fiscal Year 2018](#). 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 eighth 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.

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 2019. Through the use of 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

As in previous years, the Director of OIP met with selected Chief FOIA Officers to discuss their agency's FOIA administration in further detail. These meetings have become an invaluable opportunity for Chief FOIA Officers to hear directly from the Department of Justice as we reinforce our joint commitment to openness and transparency.

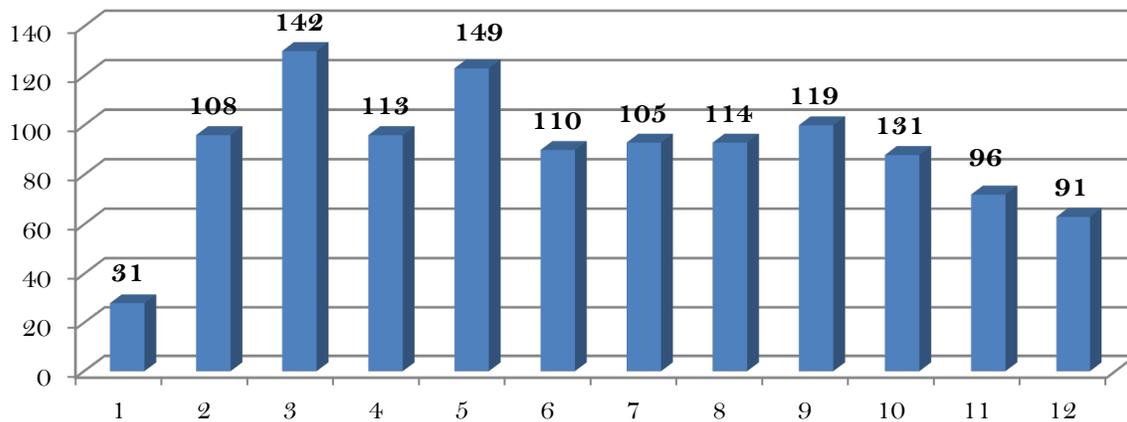
C. Counseling and Consultations

In addition to providing written policy guidance to agencies, OIP also provided [direct, one-on-one counseling](#) for agency personnel during 2019, 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 encourages agencies intending to deny FOIA requests raising novel issues to 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 1,072 requests for guidance through its FOIA Counselor service during 2019.

Calls to the FOIA Counselor by Month in 2019



Sometimes a determination is made that a [FOIA Counselor](#) inquiry requires more extensive discussion and analysis by OIP attorneys, including supervisory attorneys. On those 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 2019, OIP handled 231 calls from members of the public.

D. Disseminating Information through *FOIA Post*

During 2019, 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 2019 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](#), new Chief FOIA Officer Report [guidelines](#), 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 New Annual FOIA Report Tool for Agencies on FOIA.gov and Upcoming Reporting Deadlines

OIP continued to use *FOIA Post* to seek participation in and announce updates about the new functionality being developed on FOIA.gov (the National FOIA Portal). For example, after a robust design and development process, OIP [announced](#) the release of a new reporting tool on October 8, 2019. The new tool assists agencies in compiling and submitting their Annual FOIA Reports to OIP. OIP encourages agencies to use and provide feedback on the new reporting functionality so that it may continue to be improved.

Additionally, OIP used [the FOIA Post announcement](#) to provide deadlines for the submission of agencies' Fiscal Year 2019 Annual FOIA Reports, Fiscal Year 2020 Quarterly FOIA Reports, and 2020 Chief FOIA Officer Reports. As mentioned previously, the three reports serve a vital role in illustrating the steps taken and the progress made by agencies in administering the FOIA, and provide valuable information about how agencies promote efficiency, make more information available proactively, and use technology to improve FOIA administration.

In addition to the new reporting functionality, FOIA.gov continues to provide customized forms for each agency to help requesters understand the FOIA process 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 site was developed with a user-centric focus, relying heavily on both public and agency feedback throughout the entire process. OIP continued to seek stakeholder feedback in 2019.

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 2019. 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. For example, OIP held a workshop during 2019 entitled "FOIA Administrative Appeals." The workshop included Department and agency panelists and was open to FOIA professionals and other interested personnel.

Sunshine Week Events

OIP used *FOIA Post* to [announce](#) the Department of Justice's 2019 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, Outstanding Contributions by a New Employee, Exceptional Advancements in IT to Improve the Agency's FOIA Administration, Exceptional Advancements in Proactive Disclosure of Information, as well as, a Lifetime Service Award. The Department of Justice's Chief FOIA Officer provided the welcoming keynote address. The Director of OIP then spoke about new OIP guidance and resources, including OIP's administrative appeals guidance and the joint OMB/DOJ guidance on interoperability with FOIA.gov, and also highlighted the achievements of many agencies over the past year as reported in their Chief FOIA Officer Reports.

E. Use of Social Media

In an effort to reach a wider audience and disseminate important FOIA information as soon as practical, during 2019, 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

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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 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.

In 2019, OIP's subject matter experts prepared a comprehensive update to the [Guide](#), taking into account recent changes in the FOIA, hundreds of court decisions impacting the interpretation of the FOIA, and recent guidance issued by OIP. The [Guide](#) also contains detailed discussions of the FOIA's procedural requirements, including the fee and fee waiver provisions, exemptions, discretionary releases and waivers, as well as litigation considerations. In the future, OIP will continue to update individual chapters as necessary, but the current edition of the [Guide](#) reflects the most up-to-date treatise on the current state of the FOIA.

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. To assist agencies in properly processing requests and in preparing their Annual FOIA Reports, in 2019, OIP 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. OIP also continued to make available its charts reflecting all of the [Exemption 3 statutes cited by agencies in their Annual FOIA Reports](#).

Summaries of Court Decisions

Each year the federal courts issue several hundreds of 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 2019, 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 2019 maintained "[a single electronic access point](#)" for the consolidated availability of the Annual FOIA Reports of all federal agencies. In 2019, 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 2019, OIP continued to update the [FOIA Resources](#) section of its website with the Exemption 3 chart 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](#) a memorandum issued by the Attorney General on the lifting of a Departmental hiring freeze. OIP continued to make available [memoranda](#) issued in previous years by the Attorney General and Deputy Attorney General, as well as, 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 2019, OIP made substantial progress on a number of other FOIA initiatives including continuing to expand the services on FOIA.gov. In addition to continuing to work with agencies on improving interoperability with the National FOIA Portal, OIP worked to establish simplified reporting methods for agencies with the addition of a new Annual FOIA Report tool on FOIA.gov. The new tool streamlines the submission process for agency Annual FOIA Reports and enhances data validations checks, representing an expansion of the services offered on FOIA.gov. 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, the Director of OIP continued serving on the [FOIA Federal Advisory Committee](#). The FOIA Federal Advisory Committee [met](#) four times in 2019 (March 20, June 6, September 5, and December 6, 2019) and discussed a range of issues related to FOIA administration, first person requests, technology, and records management.

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 one meeting in 2019. On August 5, 2019, members from the Office of Management and Budget, the Department of State, and the Veterans' Health Administration led discussions on a variety of FOIA topics. This year, the agenda included a discussion of the *Foundations for Evidence-Based Policymaking Act* and a report by the CFO Council's Technology Subcommittee Co-Chairs. Additionally, OIP's Director led a discussion on the status of Exemption 4 after the Supreme Court decision in *Food Marketing Institute v. Argus Leader Media*, 139 S. Ct. 2356 (2019). 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. For example, in 2019 OIP invited members of civil society to attend its annual Sunshine Week. Additionally, OIP engaged with outside stakeholders and advocates, as well as the public through its participation in the Chief FOIA Officers Council and its membership on the FOIA Federal Advisory Committee.

FOIA.gov

With millions of visitors since it was launched in 2011, [FOIA.gov](#) revolutionized 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. In addition to continuing to maintain the capability established in 2018 that allows members of the public to make a FOIA request to any agency from FOIA.gov, during 2019, OIP added a new annual reporting tool to the website. As a result, agencies have a central point to submit their Annual FOIA Reports using a tool that contains additional automated validation checks, thereby simplifying the submission and review process. Since the release of the new functionality, more than half of all agencies have submitted their Annual FOIA Reports to OIP through the tool.

In addition to the new reporting functionality, FOIA.gov continues to include individual agency pages containing a description of each agency's key FOIA resources and their average processing times for simple and complex requests. The website also provides 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.

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As mentioned above, [FOIA.gov](https://www.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 2019, the Department added the data from agencies' Fiscal Year 2018 Annual FOIA Reports so that it too can now be sorted and compared. During 2019, OIP and the Department also captured on FOIA.gov's [Reports](#) page agencies' Quarterly Report data.

[FOIA.gov](https://www.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



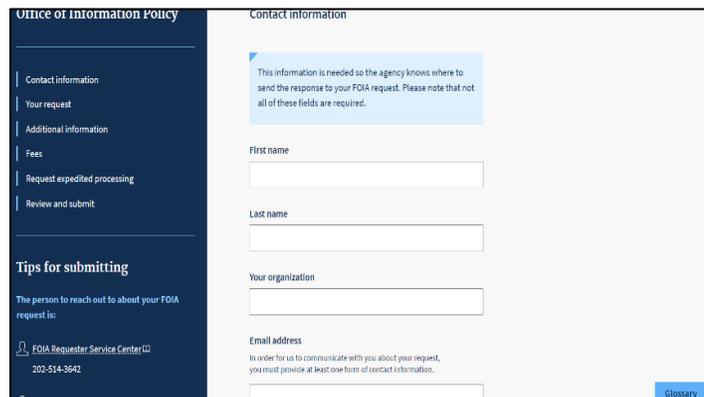
contains a section addressing frequently asked questions, as well as a glossary of FOIA terms.

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

"Before You Request" resources and Glossary

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](https://www.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](https://www.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 2019, 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 through briefings held for foreign delegations and international visitors.

In conjunction with the Department of Justice's National Advocacy Center, OIP conducted numerous FOIA-training programs in 2019, which ranged from half-day introductory sessions for non-FOIA personnel to advanced programs for highly experienced FOIA personnel. Specifically, in 2019 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 2019.
- *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 2019.
- *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. This training was offered twice in 2019.
- *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 2019.
- *Refresher Training for Fiscal Year 2019 Annual FOIA Reports and 2020 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 2019 Best Practices Workshop was about [FOIA Administrative Appeals](#).

In addition, OIP provided training for components of the Department of Justice. In 2019, approximately 2,321 individuals registered for training at OIP-hosted courses.

Recognizing that travel requirements limit the ability of some FOIA personnel to attend training sessions in Washington, DC, in 2019, OIP provided training on-site to the Department of Defense/Department of the Army in Alabama. In addition to the events hosted by OIP, 21 professional staff members from OIP gave a total of 18 agency training presentations during the year, including several training sessions designed to meet the specific FOIA-training needs of the individual agencies. Such individualized training sessions were conducted for the:

- Department of the Treasury
- United States Census Bureau
- United States Postal Service
- Social Security Advisory Board
- Office of the Director of National Intelligence
- Department of Justice Components
- Department of Education
- Department of Homeland Security
- Department of Health and Human Service/Food and Drug Administration/

During 2019, the Director of OIP gave a total of 13 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 2019, 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 2019, OIP reviewed proposed FOIA regulations from approximately 8 agencies, reviewing them for legal sufficiency and conformity with DOJ's FOIA Guidance.

K. Congressional and Compliance Inquiries

In 2019, OIP responded to ten congressional inquiries pertaining to FOIA-related matters. OIP also looked into ten 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 2018

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 2019, one showing the FOIA cases "received" or filed during 2019 and the second showing the dispositions "rendered" or decided in 2019. 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 2019

The first list contains all of the cases filed as FOIA claims in federal district court during 2019. This information is derived directly from the federal courts' docketing systems through the Public Access to Court Electronic Records ([PACER](#)). According to PACER, in 2019, 841 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 2018 alone the government overall received 863,729 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 2019, OIP observed 15 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 2019

The second list attached to this report contains all of the FOIA cases in which a decision was rendered by the federal courts in 2019. 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

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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 2018, but appealed and affirmed in 2019, would be found on the lists of cases in which a decision was rendered for both 2018 and 2019.

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

During 2019, 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.