OIP Updates & Resources

- Attorney General’s 2022 FOIA Guidelines
- E-Learning Training Modules
- Updated DOJ Guide to the FOIA
- Court Decision Summaries
- Chief FOIA Officers Council and Committees
New OIP Guidance & Resources

- OIP Guidance for Further Improvement Based on 2021 Chief FOIA Officer Report Review and Assessment
- FOIA.gov and the National FOIA Portal
Attorney General’s 2022 FOIA Guidelines
Attorney General FOIA Guidelines

- Attorney General Garland announced new FOIA Guidelines on March 17, 2022
- OIP will be issuing guidance to aid agency implementation
- OIP will also be reviewing and updating FOIA reporting guidelines
Attorney General FOIA Guidelines

Applying a Presumption of Openness

- Agencies should confirm the application of the foreseeable harm standard in their response letters.

- Agencies may consult with DOJ when there are close cases.

Proactive Disclosures

- Agencies should post frequently requested records as soon as feasible.
Attorney General FOIA Guidelines

Removing Barriers to Access

- Examining alternative means of access
- Ensuring FOIA websites are navigable and records are easy to find
- Timely disclosure of records
- Good communication with the requester (see OIP Guidance)
Attorney General FOIA Guidelines

Ensuring Fair and Effective FOIA Administration

- Emphasizes role of Chief FOIA Officers
- Comprehensive reviews & new Chief FOIA Officer Report guidelines
- Regular FOIA training for the entire workforce
FOIA E-Learning Training Modules
OIP has updated three e-learning FOIA training modules:

- Executive Briefing Course
- FOIA for Federal Employees
- FOIA for FOIA Professionals

Courses will soon be available to agencies upon request so they can load them into their own learning management systems (LMS). We are also working to make the courses available at a link online for agencies that do not have an LMS.
Guide to the Freedom of Information Act Updates
DOJ Guide to the FOIA

- Comprehensive legal treatise on the FOIA available on OIP’s website.
- Includes detailed discussions of the FOIA’s procedural requirements, nine exemptions, and litigation considerations.
- Contains detailed analysis of the key judicial opinions issued on the FOIA.
DOJ Guide to the FOIA

- OIP continues to make rolling updates to individual chapters, recently including:
  - Procedural Requirements
  - Exemptions 3, 4, 7, 7(A), 7(B), 7(C), 7(F), 9
  - Exclusions

- Agencies are encouraged to use the Guide in conjunction with other resources provided by OIP.
Court Decisions

➢ Each year the federal courts issue hundreds of decisions in FOIA cases that shape the way the law is interpreted and applied.

➢ To aid those professionals, and to facilitate greater understanding of the FOIA overall, OIP posts summaries of FOIA decisions to our [Court Decisions](#) page.
Court Decisions

Court decisions can be viewed chronologically, or searched by topic, text, or date.
Court Decisions

- Users can subscribe to receive email updates whenever new cases are posted, such as last year’s Supreme Court case.


March 4, 2021

Re: Request for records generated during EPA’s rule-making process concerning cooling water intake structures

Disposition: Reversing and remanding Court of Appeals for the Ninth Circuit’s affirming in part, reversing in part, and remanding of district court’s grant in part and denial in part of parties’ cross-motions for summary judgment

- Exemption 5, Deliberative Process Privilege: The Supreme Court of the United States holds that "[t]he deliberative process privilege protects the draft biological opinions from disclosure because they are both predecisional and deliberative." The court finds that "[t]he deliberative process privilege protects the draft biological opinions at issue here because they reflect a preliminary view — not a final decision — about the likely effect of the EPA’s proposed rule on endangered species." The court finds that "the administrative context confirms that the drafts are what they sound like: opinions that were subject to change." "Consider the regulatory process that generates a draft biological opinion." "The governing regulation distinguishes between draft and final biological opinions by separating the steps at which each is produced." "If the Services prepare a biological opinion, they must ‘make available’ to the action agency — in this case, the EPA — a ‘draft’ of that opinion and generally may not issue the final opinion ‘while the draft is under review’ by the action agency." "This provision thus specifically contemplates
FOIA Self-Assessment Toolkit
FOIA Self-Assessment Toolkit

➢ To incorporate changes in FOIA law and policy, OIP looks forward to soon releasing an updated “Self-Assessment Toolkit” that covers FOIA administration from request intake to the maintenance of agency FOIA websites.

➢ The updated toolkit will:
  • Include new modules for proactive disclosures and administrative appeals.
  • Incorporate additional technology-related milestones into existing modules.
  • Include a fillable version to more easily facilitate agency completion of each module.
Chief FOIA Officers Council
Chief FOIA Officers Council

- For details on upcoming meetings, see OIP’s CFO Council page.

- Over the past year, the Technology Committee:
  - Published white papers on FOIA Searches – Key Challenges and Findings and Best Practices for Video Redaction
  - Organized the NexGen FOIA Tech Showcase, featuring two days of vendor presentations (videos available online)
  - Updated its working groups: Search/AI, FOIA IT Platforms, Data, IT Integration, 508 Compliance, FOIA and Classified, Technology Best Practices, FOIA Reference Model
Chief FOIA Officers Council

The Committee on Cross-Agency Collaboration and Innovation formed 3 working groups:

• Government Information Specialist (GIS) Professionalism: Review and promote initiatives for clear career trajectories for FOIA professionals, building on the GIS job series and in coordination with existing agency efforts.

• Pandemic/Virtual FOIA Offices: Review lessons learned from the pandemic to transform FOIA offices to thrive in fully virtual and hybrid environments.

• FOIA Resources: Provide information on accessing revenue streams and resources that would particularly benefit smaller agencies.
OIP Guidance for Further Improvement Based on 2021 Chief FOIA Officer Report Review and Assessment
Chief FOIA Officer Report Review and Assessment

- Importance of FOIA training for both FOIA and non-FOIA staff
- Plan ahead and leverage lessons learned to reduce backlogs and processing times
- Develop and maintain current Standard Operating Procedures
- Update agency FOIA regulations
OIP Guidance: The Supreme Court’s Exemption 5 Ruling in U.S. Fish & Wildlife Service v. Sierra Club, Inc.

Holding: Draft biological opinions, created by the U.S. Fish and Wildlife Service and the National Marine Fisheries Service to address whether a proposed Environmental Protection Agency action would jeopardize the existence of threatened or endangered species, could be withheld pursuant to the deliberative process privilege in conjunction with Exemption 5.

- OIP’s guidance highlights two key principles from the opinion when applying the deliberative process privilege:
  1. The key consideration in whether a record is final is whether the document communicates a policy or position on which the agency has settled.
  2. When determining whether the agency has settled on a policy or position for purposes of the deliberative process privilege, the agency should consider the “real operative effect” of the record by looking at the record's legal consequences rather than its practical consequences.
National FOIA Portal on FOIA.gov
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- 2018: National FOIA Portal released, allowing requesters to submit a request to any agency from a single site.
- 2019: DOJ/OMB issued guidance for achieving interoperability
- 2021-present: Agencies will achieve full interoperability and continue to maintain their agency and component pages
FOIA.gov/quarterly.html

- To improve the user experience, OIP redesigned the FOIA.gov Quarterly Report Data page.
- The new page is mobile friendly and searchable across years, agencies, and components. Historical data will be available moving forward.
- Agencies now enter their Quarterly Data directly into FOIA.gov.
- The Quarterly and Annual Data pages can help agencies analyze their FOIA data over time.
Future Efforts

- OIP is planning to enhance FOIA.gov with a “guided requester” feature that would help the public:
  - Locate information that is already publicly available
  - Identify the correct agency to which they should submit their FOIA request

- Goals: Make it easier for requesters to find information that is already online and minimize misdirected or unnecessary requests.

- We look forward to engaging agencies and the public in this effort in the coming months.
Questions?