New OIP Guidance & Resources
New OIP Guidance & Resources

- Updated DOJ Guide to the FOIA
- Court Decision Summaries
- Best Practices Workshop Series
- Self-Assessment Toolkit
- Chief FOIA Officers Council and Committees
New OIP Guidance & Resources

- OIP Guidance for Further Improvement Based on 2020 Chief FOIA Officer Report Review and Assessment
- OIP Guidance for Agency FOIA Administration in Light of COVID-19 Impacts
- FOIA.gov and the National FOIA Portal
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:
  - Introduction
  - Proactive Disclosures
  - Fees and Fee Waivers
  - Exemption 1
  - Exemption 2

- 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.

VIEW COURT DECISIONS CHRONOLOGICALLY

March 12, 2021

March 11, 2021

March 10, 2021

March 10, 2021

March 9, 2021
Court Decisions

Users can subscribe to receive email updates whenever new cases are posted, such as the recent 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
Best Practices Workshops

- OIP hosts Best Practices Workshops focused on various FOIA topics, with a panel of representatives sharing experiences, lessons, and strategies for success in these areas.

- Through these workshops, agencies can continue to learn from one another and leverage best practices at their own organization.

- OIP’s Best Practices Workshop page summarizes key items from each workshop.
Best Practices Workshops

- Highlights from two recent workshops focused on FOIA administration during the pandemic included:
  - Prioritizing employee safety and well-being
  - Regularly engaging with staff to foster collaboration in a remote environment
  - Plan in advance for unexpected changes to normal operations
  - Strengthen communication with requesters
  - Use technology resources within and outside your agency
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.
FOIA Administration in Light of COVID-19 Impacts

Addresses frequently asked questions and further assists agencies in continuing to fulfill their FOIA obligations, in particular advising agencies to:

- Focus on finding workable solutions to maximize the efficiency and effectiveness of their FOIA administration;
- Practice effective communication with requesters regarding impacts caused by the pandemic through general notices and direct engagement;
FOIA Administration in Light of COVID-19 Impacts

- Strategically manage requests through multitrack processing and interim releases;
- Consider additional proactive disclosures;
- Reexamine the use of technology in light of additional agency needs;
- Examine possibilities for advancing other areas of FOIA administration not limited by remote telework: providing training, conducting self-assessments, or handling particularly complex or older requests that are accessible remotely.
OIP Guidance for Further Improvement Based on 2020 Chief FOIA Officer Report Review and Assessment
Chief FOIA Officer Report Review and Assessment

- Improving Timeliness and Reducing Backlogs
  - Simple track request processing time
  - Assessing FOIA programs to develop short and long-term plans for improvements

- Expedited Processing Procedures
  - Agencies exceeding ten calendar days should follow up on their plans throughout the year
Chief FOIA Officers Council

- Upcoming meeting April 29, 2021; for details see OIP’s CFO Council page.

- The Technology Committee is engaged in a range of cross-agency efforts:
  - Published Report of Best Practices and Recommendations
  - Artificial Intelligence 101 event for agency FOIA professionals
  - Published charters with planned deliverables for FY2021
  - Additional events planned for 2021
Chief FOIA Officers Council

- Newly established Committee on Cross-Agency Collaboration and Innovation will research and propose cross-agency grant programs and funding sources, create federal career paths for FOIA professionals, and promote models to align agency resources with agency transparency.

- The CFO Council and Committees offer a wealth of resources for all agency FOIA professionals.
National FOIA Portal on FOIA.gov
National FOIA Portal on FOIA.gov

- 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
- By end of 2021: Agencies will achieve full interoperability
To improve the user experience, OIP redesigned the FOIA.gov Annual Report Data page and migrated data from the legacy data site.

The new page is mobile friendly and searchable across years, agencies, and components going back to 2008.

Can be helpful for agencies looking to analyze trends using their Annual FOIA Report data.
The new Data page combines the legacy “Basic” and “Advanced” report features into a single interface.

Users can now:

• Compare data for up to five agencies or components, or view all agency data
• Apply filters to search results more easily
• Download results directly to a CSV file from the search page
Questions?