Department of Justice Handbook for Agency Annual Freedom of Information Act Reports

Guidance for FOIA Professionals on Proper Tracking and Detailed Instructions for Preparing the Annual Report

(Last updated: October 7, 2021)

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INTRODUCTION

The Freedom of Information Act (FOIA) provides a statutory right of public access to Executive Branch information in the federal government. Over 100 agencies are subject to the FOIA, and one of the ways they are held accountable for their administration of the law is through the Annual FOIA Report. In accordance with the FOIA, each year agencies submit to the Attorney General a report covering the prior fiscal year that includes numerous details regarding the agency's administration of the FOIA. 5 U.S.C. § 552(e)(1) (2018). The FOIA also provides that "[t]he Attorney General . . . in consultation with the Director of the Office of Management and Budget (OMB), shall develop reporting and performance guidelines in connection with reports required by this subsection . . . and may establish additional requirements for such reports as the Attorney General determines may be useful." Id. § 552(e)(5).

Pursuant to this statutory authority, in 2008 the Department of Justice (DOJ), in consultation with OMB, created guidance for agencies to follow in creating their Annual FOIA Reports. The Department has since continued to provide additional guidance to agencies as needed. In accordance with the Open Government Directive, in 2009 the Department notified agencies of the requirement to publish their Annual FOIA Report in an open format. To assist agencies in complying with this directive, the Department created and distributed an Annual FOIA Report tool that includes built-in data validation checks and assists agencies in producing their Annual FOIA Report in a uniform open (NIEM-XML) format (hereinafter, 2009 Annual Report Tool). Most recently, in 2019, the Department built annual reporting functionality into FOIA.gov, which allows agencies to provide their data online (hereinafter, FOIA.gov Annual Report Tool).

All agencies must use the FOIA.gov Annual Report Tool to compile their data for submission to the DOJ's Office of Information Policy (OIP). If your agency has difficulty using the FOIA.gov Annual Report Tool, please reach out to OIP as soon as possible.

Using agency-provided data, the FOIA.gov Annual Report Tool produces a NIEM-XML version of each agency Report and a human readable version of all of the charts containing data.

This comprehensive Annual FOIA Report Handbook includes the legal, procedural, and technical requirements concerning the Annual FOIA Report. It is designed for use by FOIA professionals who document the information that goes into the Annual FOIA Report and those who work with the Department of Justice to produce their agency's Annual FOIA Report each fiscal year.

The Annual FOIA Report Handbook consists of two main parts:

- Chapter II, which covers guidance agency FOIA professionals will need to know when processing requests and appeals throughout the fiscal year, as well as for preparing the Annual FOIA Report, and
- Chapter III, which provides guidance and instructions for preparing the Annual FOIA Report using the FOIA.gov Annual Report Tool.

Professionals preparing their agency's Annual FOIA Report are encouraged to regularly review the guidance and instructions in Chapter III, as they provide an overview of the report review process, including posting instructions and requirement to notify OIP, followed by detailed step-by-step instructions for completing the Annual FOIA Report in FOIA.gov. OIP updates this handbook as needed to reflect any changes in the law, process, or technology related to agency Annual FOIA Reports. Accordingly, agencies should carefully review this document every year *before* creating their Annual FOIA Report and submitting it to the Department of Justice.

SCOPE OF THE ANNUAL FOIA REPORT

Types of Requests Included in the Annual FOIA Report

The Annual FOIA Report is designed to capture an agency's FOIA activities and therefore should not include requests for records handled exclusively under the Privacy Act of 1974 (PA). To provide a clear report of agency FOIA activities, agencies shall only include PA requests in their Annual FOIA Reports if the FOIA is used in any way to process the request. In other words, if an agency search extends beyond PA "systems of records," see 5 U.S.C. § 552a(a)(5), the search constitutes a FOIA search and the request must be included in the agency's Annual FOIA Report. Similarly, if a PA exemption applies to records responsive to a request, the agency must then consider whether the FOIA allows access to the records. That request must likewise be included in the agency's Annual FOIA Report.

Conversely, when an agency conducts a PA search exclusively (i.e., within a "system of records") and does not claim a PA exemption for any records located, that request was in no way processed under the FOIA and should not be included in the agency's Annual FOIA Report. Agencies should still give incoming requests the potential benefit of access under both the PA and the FOIA. However, if or when an agency determines that a request will be processed completely and exclusively under the PA, that request should not be included in the agency's Annual FOIA Report.

The Two Versions of the Annual FOIA Report

In accordance with the Open Government Directive and DOJ Guidance, the Annual FOIA Report must be produced in two versions, a human-readable version (e.g., PDF), and a machine-readable version (NIEM-XML). In addition to these two version of the Annual FOIA Report, agencies are also required to post the raw data elements that were used to create the reports.

Both the NIEM-XML and human-readable versions contain nine identical sections of data. The human-readable version also includes textual sections that contain basic information regarding the Annual FOIA Report, information about making a FOIA request to the reporting agency, definitions and acronyms, and a link to the reporting agency's FOIA regulations. All requests (perfected and non-perfected), appeals, and consultations that were pending at any time during the relevant fiscal year (October 1st through September 30th) are captured in at least one of the nine data sections covered in both versions of the Report. The requirements for each version of the Annual FOIA Report are fully described in Chapter III below.

Reporting by Each Agency Component and the Agency Overall

For decentralized agencies, the information provided in the Annual FOIA Report must be "expressed [both] in terms of each principal component of the agency and for the agency overall." 5 U.S.C. § 552(e)(2).

DATA QUALITY

As outlined in Chapter III below, OIP reviews each agency's Annual FOIA Report prior to its publication. OIP's Compliance Team is always available for any agencies that need additional guidance. However, each agency is ultimately responsible for the accuracy and completeness of its Annual FOIA Report. It is therefore essential for agencies to take steps to ensure that they adequately track throughout the fiscal year all of the information necessary to complete the Annual FOIA Report. Agencies that use a tracking or case management system for this purpose are responsible for ensuring that the system they use can produce an accurate Annual FOIA Report that is compliant with the law and Department of Justice guidance. Accordingly, agencies should exercise due diligence in testing the systems they use to produce Annual FOIA Reports and correcting any identified deficiencies.

PROCESS FOR ANNUAL FOIA REPORT COMPLETION

For each fiscal year, as outlined in greater detail in Chapter III below, agencies must:

(1) Complete the NIEM-XML version of their Annual FOIA Report using the FOIA.gov Annual Report Tool;
(2) Submit the NIEM-XML version to OIP by no later than **the date published on OIP's website and on FOIA Post**;
(3) Make any necessary corrections resulting from the OIP review process;

(4) Use the charts provided by OIP to complete the human-readable version of their Annual FOIA Report;

(5) Post both the open format NIEM-XML and human-readable versions of their Annual FOIA Reports on their websites, and provide the links to OIP for aggregation on the OIP's website; and

(6) Post the raw data for the Annual FOIA Reports. Note: OIP will collect links for the raw data postings during the Chief FOIA Officer Report process.

To be in compliance with the Department's Annual FOIA Report Guidance, agencies must comply with the guidance provided in Chapter II below and complete each of these steps as explained in Chapter III below.

Agencies are required to use the document automatically generated by the FOIA.gov Annual Report Tool (see "Completing the Human-Readable Version" below) and provided to them by OIP as the basis for the human-readable version of their Annual FOIA Report.

DOJ GUIDANCE FOR FOIA PROFESSIONALS ON PROPER TRACKING OF REQUESTS, CONSULTATIONS, AND APPEALS

The Annual FOIA Report requires agencies to report on numerous statistics regarding their administration of the FOIA every fiscal year, such as the numbers of requests and appeals received, processed, and pending, the disposition of those requests and appeals, and the amount of time it took to process them. The successful production of each agency's Annual FOIA Report depends heavily on the ability of their FOIA professionals to properly track this data. Accordingly, agency FOIA professionals should use this chapter of the Handbook as they process requests, consultations, and appeals throughout the year to ensure that the required information is properly tracked for the Annual FOIA Report.

General Guidance

- Data Quality: Agencies must ensure that the information regarding the numbers of FOIA requests and administrative appeals, their status and dispositions, as well as the time spent processing them is accurate so they can provide a meaningful Annual FOIA Report. Similarly, agencies must track the dates that consultations were received from other agencies as well as the dates they were closed. This requires the coordinated efforts of all agency FOIA professionals to ensure that information about requests and appeals is properly documented throughout the year.

- Calculating Number of Days: The Annual FOIA Report captures details regarding all purported FOIA requests, including ones that are not perfected (see, e.g., Section V of the Annual FOIA Report). To calculate the number of days for the Report, however, the FOIA statutory response time does not begin until a request is perfected. Accordingly, for any sections of the Annual FOIA Report where the number of days must be calculated, agencies should count the days from the time the *perfected* request is received, i.e., the date the request was perfected. Additionally, unless indicated otherwise, agencies should only count working/business days in their calculation. The day after the perfected request is received is counted as "day 1." A more detailed explanation on calculating response times is provided below.

- Less than One Day (<1): An agency should report a response time of "<1" when it receives a request directly from the requester at the proper FOIA office and that office

processes and responds to the request within that same day. When calculating the number of days a request is pending under the FOIA, the day after the perfected request is received is considered "day 1" of the twenty-day statutory response period. Accordingly, if an agency receives, processes, and responds to a request all on the same day, the time it takes to do so necessarily constitutes less than one day. This amount of time shall be reported as "<1" day in the Annual FOIA Report and should not be counted as "0" days. When calculating averages and medians, agencies should treat "<1" as a value of "1."

- <u>Effect of Weather-Related Dismissals, Furlough Days, etc.</u>: For the purposes of compiling their Annual FOIA Reports, agencies must include all days other than Saturdays, Sundays, and legal public holidays, in their calculations of the amount of time a request or appeal has been pending and the amount of time it took an agency to process the request or appeal. Accordingly, even where an entire agency FOIA office is closed due to weather conditions, furloughed employees, or other circumstances, the agency must count those days for reporting purposes. Agencies are free to include in their Chief FOIA Officer Report an explanation of any such situations they might have faced during the fiscal year affecting FOIA processing times.

- <u>Remanded Requests</u>: If a request is remanded as a result of an administrative appeal determination reversing the agency's initial action in full or in part, it is important that the agency keep track of any time that is spent on the remanded request. To properly track a remanded request and capture the time taken to process it, agencies may give the remanded request a new tracking number or annotate the original tracking number to reflect that it has been remanded. For reporting purposes, a remanded request should be treated as a new request by the agency, and the time spent processing the new request should be included in the agency's Annual FOIA Report just as is done for all FOIA requests. For processing purposes, however, agencies should place remanded requests in the front of their queues as the requester has already moved through the queue once.

  o <u>Example</u>: A FOIA request assigned Request No. 123456 is both received and closed by the agency in Fiscal Year 2017 as a full denial based on exemptions. In Fiscal Year 2017, the requester administratively appeals the agency's action. In Fiscal Year 2018, the agency's administrative appellate authority remands the request for further processing. In Fiscal Year 2018, the agency, on remand, opens an annotated request number, 123456-1, which remains pending at the end of Fiscal Year 2018. For reporting purposes, the initial request, Request No. 123456, should have been reported in the agency's Fiscal Year 2017 Annual FOIA Report as having been both received and closed as a full denial based on exemptions. For its Fiscal Year 2018 Annual FOIA Report, the agency should include the remanded request, Request No. 123456-1, as a new request received in Fiscal Year 2018, and pending at the end of Fiscal Year 2018.

- <u>Interim Responses</u>: While OIP encourages agencies to make interim responses, an agency should not report the disposition of a FOIA request (<u>see</u> Section V.B.1 of the Annual FOIA Report) or the exemptions utilized (<u>see</u> Section V.B.3 of the Annual FOIA Report) until processing of the entire request is completed and a final response is issued. Therefore, when an agency issues an interim response, it should keep track of any

exemptions utilized, but it should only report them once and in the year that the request is finally closed.

- Referrals: When an agency receives a referral of records from another agency or agency component, it should track the referral just as it would an incoming request. Referrals should be included in all relevant sections of the receiving agency's Annual FOIA Report.

- Consultations: Section XII.B. and Section XII.C. of the Annual FOIA Report require agencies and agency components to report information about the consultations that they have received from other agencies and other components within their own agency. Agencies and agency components should be careful to report only consultations received from other agencies or components and to not include the consultations that they have sent to other agencies or components. Information regarding consultations should not be included in any other sections of the Annual FOIA Report.

- Misdirected Requests: The FOIA specifies that the twenty working-day time period to process a request commences "on the date on which the request is first received by the appropriate component of the agency, but in any event not later than ten days after the request is first received by any component of the agency that is designated in the agency's regulations under this section to receive requests." 5 U.S.C. § 552(a)(6)(A)(ii). This provision addresses the situation where a FOIA request is mistakenly addressed to a component of the agency that is designated to receive FOIA requests but is not itself the proper component to process that particular request. In such a situation, the component that received the misdirected request – provided it is a component designated by the agency's FOIA regulations to receive requests – has ten working days within which to route the FOIA request to the appropriate agency component. Once the FOIA request has been received by the appropriate agency component the twenty working-day time period to respond will commence. However, if the request is not routed within ten days, the twenty working-day time period will commence on that tenth day regardless of whether the request has been received by the proper agency component.

    o Example 1: A misdirected request is received by the proper FOIA office on the eleventh day of the routing period (rather than on or before the tenth day). That eleventh day will constitute "day 1" of the twenty-day response period. In this example, if the proper FOIA office processed and responded to the request on the same day, it would report its response time as one day, *not less than one day*. If the proper FOIA office instead takes eleven days to process and respond, it would report this as twelve days, the eleven days it took to process and respond to the request, plus the one day that accrued due to the delayed routing.

    o Example 2: If the proper FOIA office receives, processes and responds to a request on the same day, and that day is the tenth day of the routing period or earlier, the proper FOIA office should report the response time for that request as "<1" day.

Exemption 3 Statutes

The FOIA requires agencies to list in their Annual FOIA Reports all of the statutes they relied upon when asserting Exemption 3. 5 U.S.C. § 552(e)(1)(B)(ii). Therefore, agency FOIA professionals will need to keep a good accounting of all Exemption 3 statutes they asserted throughout the year and the number of times those statutes were used. To assist agencies in properly asserting and accounting for their use of Exemption 3, OIP has compiled a running list of all the statutes that have been found to qualify as proper Exemption 3 statutes by federal courts. Agency FOIA professionals should consult OIP's Exemption 3 Chart prior to asserting Exemption 3 in response to a FOIA request. After consulting OIP's Chart, if an agency professional has any questions regarding whether a particular statute qualifies as an Exemption 3 statute they may call OIP's FOIA Counselor Service at (202) 514-FOIA (3648).

Disposition of FOIA Requests

Agencies are required to account for the disposition of each FOIA request processed during the fiscal year in their Annual FOIA Reports. A disposition is needed for all processed requests, including those that were not perfected. Additionally, when closing a FOIA request, any exemption used by the agency to protect information must be documented. Accordingly, it is important that FOIA professionals accurately classify the dispositions of the requests they process and document any exemption usage throughout the year so the agency is able to produce an accurate accounting of its FOIA work for the Annual FOIA Report.

Disposition of FOIA Requests -- All Processed Requests

There are eleven pre-established dispositions that a request can be classified under, which are each described in the chart below. **Each closed request must have underline exactly one disposition.** If a request cannot be classified under any of these standard dispositions, there is a disposition called "other" that can be used. Agencies should use the disposition categories Full Grant, Partial Grant/Partial Denial, and Full Denial Based on Exemptions whenever possible. Those dispositions capture all the requests where either: (1) records are actually located and processed and either released or denied in part or in full based on FOIA exemptions; or (2) the existence of records is either denied in full or in part based on FOIA exemptions (i.e., when a Glomar response is made). The remaining nine disposition categories cover requests closed for reasons other than exemptions, such as when there are no records or when the request is a duplicate of another request. Many requests will involve a combination of dispositions.

For purposes of the Annual FOIA Report, however, the default is to use one of the first three dispositions on the chart below. If any records (or the existence of records) are reviewed for exemption applicability and released and/or withheld under exemptions, the disposition for that request must be reported under one of these three categories even though a disposition from one of the latter nine categories may also apply.

Disposition	Description
Full Grant	A full release of all records responsive to the request is made.
Partial Grant/Partial Denial	The agency provides the requester with some, but not all, of the information requested. This typically, but not always, means that the agency used exemptions in its response. Example 1: In response to a request the agency releases portions of some records and withholds other portions pursuant to FOIA exemptions. This is a Partial Grant/Partial Denial. Note: There can be instances where an agency does not withhold any information yet the disposition is still a Partial Grant/Partial Denial. Example 2: In response to a request for two separate documents (Document A and Document B) an agency could release Document A in full and inform the requester that it has no records responsive to the request for Document B. This would constitute a Partial Grant/Partial Denial. Example 3: If in Example 2 the agency had instead located Document B but referred it to another agency, that action would also constitute a Partial Grant/Partial Denial.
Full Denial Based on Exemptions	The agency withholds all of the requested information pursuant to an exemption listed at 5 U.S.C. § 552(b). This includes Glomar responses where an agency neither confirms nor denies the existence of responsive records based on one of the FOIA exemptions.

As noted above, the following nine dispositions should be used only when the previous three dispositions are not applicable, i.e. when the agency did not actually process any records for disclosure or make a determination on exemptions.

Disposition	Description
No Records	The agency responds by informing the requester that it has no records responsive to the request.
All Records Referred to Another Component or Agency	The agency responds by advising the requester that it has referred all responsive records to another component or agency for direct response to the requester.
Request Withdrawn	The request was closed because the requester withdrew the request. Note: A request can also be closed using this disposition when a requester fails to respond to a still-interested inquiry after a reasonable amount of time (no less than 30 working days). This is known as a "constructive withdrawal."
Fee-Related Reason	The request was closed for fee-related reasons, such as failing to pay fees after committing to do so.
Records not Reasonably Described	The request was closed as unperfected because the requester failed to reasonably describe the information requested. (Agencies are encouraged to work with requesters to help them describe the records they seek.)
Improper FOIA Request for Other Reason	The request was not a proper FOIA request and was not perfected because it was not made in accordance with the agency's published regulations. For example, if the purported request sought only state or local records, only asked questions, or failed to provide a certification of identity as required by the agency's regulations. Agencies should consult their FOIA regulations prior to classifying a request as Improper.

Disposition	Description
Not an Agency Record	The request was closed because after conducting a search the only records located were not agency records subject to the FOIA. For example, the agency only located personal or congressional records.
Duplicate Request	The request was closed because it was a duplicate of another request received by the agency. Only requests from the same requester seeking the same information can be closed as duplicates. Example 1: Requester A sends a request both by e-mail and U.S. mail. As a result, the agency inadvertently opens two request numbers and sends out two acknowledgment letters before realizing that it has received the same request from the same requester, just by separate means. The request received last should be closed as a duplicate request. Example 2: Requester A makes a request for records that an agency denies in full pursuant to Exemption 6. Requester B makes a request for the same records to the same agency, and the agency again denies the request in full pursuant to Exemption 6. These are *not* duplicate requests for purposes of the Annual FOIA Report because the requester is different. Both requests should be counted and categorized as Full Denials Based on Exemptions.

Agencies should to the extent possible use one of the eleven pre-established disposition categories described above and only use the "other" category when no other category can capture what occurred with the request.

Disposition	Description
Other	The request is closed for a reason other than the eleven categories of dispositions described above. For those requests that are categorized under the "Other" disposition, agencies will need to provide a

Disposition	Description
	further description of why the request was closed. Agencies should standardize these descriptions as much as possible. Some examples include: o Court Sealed o Directed Requester to Another Entity Subject to the FOIA o Information Available for Sale by the U.S. Government Printing Office o Referred Documents Not Responsive o Unable to Locate Requester o Records not Available in Format Requested

Disposition of FOIA Requests – Number of Times Exemptions Applied

As noted above, in addition to capturing the disposition of a request, agencies will need to account for any exemptions that are asserted as part of a partial grant/partial denial or full denial based on exemptions. When accounting for the use of exemptions, agency FOIA professionals only need to document which of the nine exemptions were asserted and not how many times a particular exemption was used in response to a given request.

- Example: Given a request in which Exemption 3 applies to one portion of the request, Exemption 5 applies to three portions of the request, and Exemption 6 applies to eight portions of the request, the agency should count each exemption only once per request. So, for this request the agency needs to document that Exemptions 3, 5, and 6 were asserted. The fact that Exemption 5 was used three times during the processing of the responsive records and Exemption 6 was used eight times is not relevant.

Administrative Appeals of Initial Determinations of FOIA Requests

The FOIA provides requesters with the right to administratively appeal any adverse determination made by an agency on their initial request. See 5 U.S.C. § 552(a)(6)(A)(i). Agencies are required to account for the dispositions of these appeals in their Annual FOIA Report, as well as any exemptions that were used by the agency's administrative appellate authority. To ensure that an agency can produce an accurate Annual FOIA Report, it is important for the agency FOIA professionals handling appeals to properly classify the final disposition of these appeals and to account for any exemptions used as part of that disposition.

Disposition of Administrative Appeals – All Processed Appeals

For purposes of the Annual FOIA Report, the dispositions on appeal are different from those made at the initial request level. On appeal, the agency is reviewing an action that already occurred and so the disposition categories capture whether that initial action was upheld by the appellate authority.

The four dispositions associated with adjudicating administrative appeals are described in the chart below:

Disposition	Description
Affirmed	The agency's administrative appellate authority affirms the agency's initial action on the request. This includes instances when the initial action is affirmed on modified grounds. Example: Agency denies all records responsive to a FOIA request pursuant to Exemption 7(C) of the FOIA. On appeal, the agency determines that the records were correctly withheld under Exemption 6, but not Exemption 7(C), and advises the requester that it is affirming the initial decision on modified grounds. The disposition of this appeal should be that the agency's initial determination was *affirmed*.
Partially Affirmed & Partially Reversed/Remanded	On appeal, portions of the agency's initial action on the request are affirmed, but other aspects are either reversed or remanded. Example: Agency responds to a request by partially withholding portions of the documents it located pursuant to Exemption 6. On appeal, the requester challenges both the agency's withholding and the adequacy of its search. Upon review of the initial determination, the agency affirms the withholding, but determines that a further search is necessary, and therefore, remands the request. The disposition of this appeal should be partially affirmed and partially remanded.

Disposition	Description
Completely Reversed/Remanded	On appeal, the agency's initial determination is completely reversed and/or the request is completely remanded for further action.
Closed for Other Reasons	The agency neither affirms nor reverses/remands (either entirely or partially) the initial request determination, but rather closes the appeal for other reasons (e.g., the request was in litigation, the appeal was a duplicate appeal, the appeal was premature, etc.).

Reasons for Denial on Appeal

In the Annual FOIA Report, in addition to capturing the final dispositions of appeals, agencies need to account for the *reasons* information is denied on appeal. These reasons are grouped into two overall categories: exemptions and any other, non-exemption-related reasons for denial on appeal.

Reasons for Denial on Appeal– Number of Times Exemptions Applied

Agencies will need to account for any exemptions that were relied upon on appeal to withhold information. The exemptions used *on appeal* are what must be captured.

- Example 1: If the agency relied on Exemptions 6 and 7(C) at the initial request level, but on appeal the action was affirmed solely on Exemption 7(C), it is Exemption 7(C) that should be entered in the agency's tracking system for the appeal.

When accounting for exemptions, agency FOIA professionals should count each exemption only once per appeal.

- Example 2: Given a request in which the agency's administrative appellate authority affirms the uses of Exemption 3 for one portion of the request, Exemption 5 for three portions of the request, and Exemption 6 for eight portions of the request, the agency needs to document that Exemptions 3, 5, and 6 were asserted on appeal. The fact that Exemption 5 was asserted in three places and Exemption 6 was asserted in eight places does not need to be tracked.

Reasons for Denial on Appeal – Reasons Other than Exemptions

Agency FOIA professionals will also need to document any reasons other than exemptions that resulted in a denial (or closure) on appeal. The following chart provides eleven pre-established reasons other than exemptions that should be captured for this section. Agencies may cite more than one of the reasons below for each appeal. The "reasons" information in this section should be cited regardless of the *disposition* of the appeal, i.e.,

regardless of whether the agency has affirmed the initial determination, partially affirmed and partially reversed/remanded the initial determination, or closed the appeal for other reasons (see Section VI.B of the Annual FOIA Report). What needs to be documented is the *reason* the *appellate authority* denied or otherwise closed the appeal. Sometimes that will be the same reason used at the initial level, but other times the appellate authority may have a different reason.

Reason Other than Exemptions	Description
No Record	On appeal, the agency determined that there are no records responsive to the request.
Records Referred at Initial Request Level	On appeal, the agency determined that responsive records were properly referred to another agency or agency component for direct response to the requester.
Request Withdrawn	The request was withdrawn by the requester either at the initial request level or on appeal.
Fee-Related Reason	On appeal, a fee-related reason was cited for denying the request.
Records not Reasonably Described	On appeal, the agency determined that the records sought were not reasonably described.
Improper Request for Other Reasons	On appeal, the agency determined that the request was not a proper FOIA request for a reason other than that the request was not reasonably described (because it was not made in accordance with agency FOIA regulations).
Not an Agency Record	On appeal, the agency determined that at least some of the records requested were not agency records subject to the FOIA.
Duplicate Request or Appeal	On appeal the agency determines that an appeal is a duplicate of another appeal. For an appeal to be a duplicate it must be from the same requester addressing the same issue and request. This reason is also used when, on appeal, the agency determines that a request was properly closed at the initial level as a duplicate request.

Reason Other than Exemptions	Description
Request in Litigation	The appeal was closed because the request was in litigation.
Appeal Based Solely on Denial of Request for Expedited Processing	On appeal, the agency affirmed its initial determination denying a request for expedited processing.
Other	Any other reasons not described above for denying information on appeal. A brief description of these other reasons will need to be provided.

<u>Reasons for Denial on Appeal – Appeals that Include Both Exemptions and Reasons Other than Exemptions</u>

If an appeal results in the denial of information based on exemptions *and* any of the non-exemption-related reasons presented in Section VI.C.(2) and Section VI.C.(3) of the Annual FOIA Report, agencies will need to track both the exemptions applied and any of the other reasons.

- <u>Example</u>: Agency locates two documents (Document A and Document B) in response to a FOIA request. The agency releases Document A in part, but withholds certain information under Exemption 5. The agency refers Document B to another agency because the responsive document originated with that other agency. The requester appeals the withholdings on Document A and appeals the agency's decision to refer Document B to another agency. If the agency's administrative appellate authority determines on appeal that both the withholding of Document A and the referral of Document B were appropriate, it should track both these reasons as part of its handling of that appeal. In other words, the reasons for denial on appeal should be both Exemption 5 and the determination that records were properly referred to the other agency.

FOIA Requests: Response Time for Processed and Pending Requests

Section VII of the Annual FOIA Report documents an agency's response times. Agency FOIA professionals must keep track of the time it takes to process and respond to requests throughout the year. As indicated in the General Guidance above, response times are only calculated for requests that are perfected, meaning the request is reasonably described and is made in accordance with the agency's FOIA regulations. Requests are presumed to be perfected upon receipt.

- <u>Example 1</u>: Agency receives a request on October 15. Five working days later the agency reviews the request and determines that it is reasonably described and made in accordance with the agency's published rules. The agency must begin counting days from the date of *receipt*, not the date the request was first reviewed by agency personnel. In this example, the request would counted as received on October 15.

- Example 2: On October 15, the agency receives a letter that does not reasonably describe the records the requester seeks.   After discussions with the agency, the requester provides additional information about their request on October 20, reasonably describing the records. At that point the request becomes perfected and the agency should count this request as received on October 20.

<div align="center">Using Processing Tracks</div>

For purposes of the Annual FOIA Report, agencies can break down their response times by three processing tracks: Simple, Complex and Expedited. All agencies are required by statute to have an expedited processing track. See 5 U.S.C. § 552(a)(6)(E)(i). Accordingly, expedited requests should be tracked in the expedited processing track. If an agency does not utilize any further tracks, it should report all of its non-expedited requests as either simple or complex, whichever best characterizes the majority of the requests the agency processed that year.

- Example: An agency tracks is requests as either general FOIA requests or expedited requests. Most of the requests that fall into the first track are complex as they involve high volumes of records. The agency should report its general FOIA requests under the complex track and its expedited requests under the expedited track.

Agencies that have more than these three tracks, should allocate their various non-expedited tracks into either simple or complex, whichever best matches the type of requests handled in those additional tracks.

- Example: An agency tracks requests as track 1, track 2, track 3, and expedited. Track 1 requests have a low volume of records. Track 2 and track 3 requests have a greater volume of records and are complex. The agency should report the expedited requests in the expedited track, the track 1 requests in the simple track, and the track 2 and track 3 requests in the complex track.

<div align="center">**Adjudicating Requests for Expedited Processing**</div>

In Section VIII.A. of the Annual FOIA Report, agencies account for the numbers of requests for expedited processing that they granted and denied, as well as the number of days taken to make a determination whether to grant or deny expedited processing. Agency FOIA professionals must track this information for any request for expedited processing that is adjudicated at the initial request level or, when applicable, at the administrative appeal level. The FOIA statute requires agencies to "make a determination of whether to provide expedited processing" within ten days. 5 U.S.C. § 552(a)(6)(E)(ii)(I).

Counting Days: When calculating the response time for a request for expedited processing, agencies should begin counting calendar days from the day the request for expedited processing is received until the day the agency provides notice to the requester of its determination to either grant or deny the request for expedited processing.

<div align="center">**Adjudicating Requests for Fee Waivers**</div>

Section VIII.B. of the Annual FOIA Report documents the numbers of fee waiver requests the agency granted and denied, as well as the response times for adjudicating those requests. Agency FOIA professionals must track this information for any fee waiver requests adjudicated at the initial request level or, when applicable, at the administrative appeal level.

Counting Days: Unlike requests for expedited processing, the period of time to adjudicate a fee waiver request does not necessarily begin with receipt of the fee waiver request itself, nor does it necessarily conclude with a separate letter sent to the requester. For example, the agency may determine that the request will not involve any fees. Thus, there would be no need to make a determination on the request for a waiver of fees. In other cases, the agency will not know whether fees will be assessed until after it has begun processing. As a result, agencies should begin counting days at the point when they determine that fees will be assessed for the request, and so the fee waiver request is "ripe" for adjudication. For purposes of the Annual FOIA Report, once the agency makes a decision whether to grant or deny the fee waiver request, the counting stops for this metric. That period of time must then be documented by the agency, along with the determination whether to grant or deny the fee waiver. That data, in turn, is then included in the Annual FOIA Report.

Fees Collected for Processing Requests

Agencies report the amount of fees that were collected in processing requests during the fiscal year. This includes fees received from a FOIA requester for search, review, duplication, and any other direct cost permitted by agency regulations. Agency FOIA professionals must track this information throughout the year.

Backlogged Requests and Appeals

Section XII.A. of the Annual FOIA Report requires agencies to report the numbers of backlogged requests and appeals they have pending at the end of the fiscal year. A request or appeal is backlogged when it is pending beyond the statutory time period for a response. For requests, the statutory time period is twenty working days from receipt of the *perfected* request, see 5 U.S.C. § 552(a)(6)(A)(i), unless there are "unusual circumstances," in which case the time period may be extended for an additional ten working days, see id. § 552(a)(6)(B)(i). For appeals, the statutory time period is twenty working days from receipt of the appeal, see id. § 552(a)(6)(B)(ii), unless there are "unusual circumstances" in which case the time period may be extended for an additional ten working days, see id. § 552(a)(6)(B)(i). Although requesters might agree to an alternate time period for the agency to respond, or the agency may advise the requester that the "unusual circumstances" presented will require more than ten additional days to process, for purposes of the Annual FOIA Report, the request should be counted as backlogged once it is past the basic twenty-day (or, if applicable, the thirty-day) statutory response date.

Consultations Received From Other Components and Agencies

For agencies to complete Sections XII.B. and XII.C. of their Annual FOIA Report, agency FOIA professionals will need to track the date of each consultation received from components within their agency or from other agencies. As outlined more fully in Chapter III of the Handbook, Section XII.B. of the Annual FOIA Report requires agencies to report the number of consultations they received from other agencies that were pending at the

start of the fiscal year, the number of consultations they received during the fiscal year, the number of consultations they processed during the fiscal year, and finally the number of consultation they received that were still pending at the end of the fiscal year. Section XII.C. requires agencies to list the dates and numbers of days pending for the ten oldest consultations they received from other agencies that are still pending at the end of the fiscal year. The "date" listed in this section of the Annual FOIA Report is the date the consultation was received by your agency and not the date the request itself was received by the agency sending the consultation. (The agency sending the consultation reports the request itself separately in its Annual FOIA Report.) The "number of days pending" accounts for the number of days your agency took to review the consultation after receiving it from the other agency (i.e., count working days from the day the consultation was received by your agency through the date the consultation was closed). Please note that all this information must be tracked for the consultations your agency *receives* from other agencies and not those that your agency has sent to other agencies for review.

DOJ INSTRUCTIONS FOR COMPLETING THE ANNUAL FOIA REPORT

Overall Process for Creating, Submitting, and Posting the Annual FOIA Report

Completing the NIEM-XML Using FOIA.gov

Agencies are required to complete their Annual FOIA Report in NIEM-XML format by using the FOIA.gov Annual Report Tool. If your agency is unable to use the FOIA.gov tool, you must contact OIP as soon as possible before the reporting deadline to troubleshoot or agree on an alternative submission method of the NIEM-XML file. Once agencies have completed their report in NIEM-XML format using FOIA.gov, they should review the information below for submission and posting instructions.

Review Prior to Submission

Each agency is ultimately responsible for the quality of its own data. Prior to submitting an Annual FOIA Report to the Department of Justice for clearance, agencies should carefully review all of the data contained in their NIEM-XML file as reflected in the FOIA.gov Annual Report Tool to ensure its accuracy. Even if an agency does not use the FOIA.gov Annual Report Tool to create its NIEM-XML, it must load the NIEM-XML into the FOIA.gov Annual Report Tool to review its data prior to submission.

Submitting the NIEM-XML to OIP

After completing the report in FOIA.gov and reviewing its contents for accuracy, agencies must email OIP at DOJ.OIP.FOIA@usdoj.gov to indicate that they have submitted their report on FOIA.gov. If an agency has difficulty submitting the report via FOIA.gov it should contact OIP at DOJ.OIP.FOIA@usdoj.gov or (202) 514-3642, and request to speak with a member of the Compliance Team.

The OIP Review Process

OIP will review the data submitted in FOIA.gov to help ensure the quality of agency Annual FOIA Reports. However, each agency is ultimately responsible for the quality of the information contained in its report. If OIP identifies any areas that require additional

follow-up, it will advise the agency of this, and the agency will be required to resubmit its Annual FOIA Report to OIP through FOIA.gov with the issue(s) resolved. Once any outstanding issues are resolved, OIP will advise the agency that its data has been cleared, and will return the cleared NIEM-XML file to the agency, as well as a human-readable version of the data contained in the NIEM-XML, both generated from FOIA.gov. Following the instructions below, the agency must then use the human-readable version of the charts provided by OIP as the basis for its human-readable Annual FOIA Report.

<p style="text-align:center">Completing the Human Readable Version</p>

The FOIA.gov Annual Report Tool produces both the NIEM-XML version of the Annual FOIA Report and the data-oriented sections of the human-readable version. These were designed to assist agencies by eliminating the need to create two entirely separate reports and by ensuring better accuracy by eliminating inconsistencies caused by human error. **To ensure consistency between the two versions of the Annual FOIA Report, agencies are required to use the document automatically generated by the FOIA.gov Annual Report Tool and provided to them by OIP as the basis for the human-readable version of their Annual FOIA Report.**

Upon receiving the charts from OIP, agencies will simply need to complete and add the three textual sections provided below to the beginning of their Report. Agencies may also choose to add a cover page and modify the formatting of the charts to customize their human-readable report. **While agencies may customize their human-readable reports with regard to presentation and formatting, they may not make any substantive changes to the data in the charts provided by OIP. Agencies must first contact OIP if they wish to change any data in their NIEM-XML file after it has already been cleared.**

<p style="text-align:center">. . .</p>

Section I: Basic Information Regarding Report

> 1. Provide name, title, address, and telephone number of person(s) to be contacted with questions about the Report.

> 2. Provide an electronic link for access to the Report on the agency Web site.

> 3. Explain how to obtain a copy of the Report in paper form.

Section II: Making a FOIA Request

> 1. Provide names, addresses, and telephone numbers of all individual agency components that receive FOIA requests.

> 2. Provide a brief description of why some requests are not granted and an overview of certain general categories of the agency's records to which the FOIA exemptions apply.

3. Provide a functional electronic link to agency FOIA regulations, including the agency's fee schedule. (NOTE: Agency FOIA Regulations were formerly listed at Section XI of the human-readable version of the Report).

Section III: Acronyms, Definitions, and Exemptions

1. Include the following definitions of terms used in this Report:

    a. **Administrative Appeal** – a request to a federal agency asking that it review at a higher administrative level a FOIA determination made by the agency at the initial request level.

    b. **Average Number** – the number obtained by dividing the sum of a group of numbers by the quantity of numbers in the group. For example, of 3, 7, and 14, the average number is 8.

    c. **Backlog** – the number of requests or administrative appeals that are pending at an agency at the end of the fiscal year that are beyond the statutory time period for a response.

    d. **Component** – for agencies that process requests on a decentralized basis, a "component" is an entity, also sometimes referred to as an Office, Division, Bureau, Center, or Directorate, within the agency that processes FOIA requests. The FOIA now requires that agencies include in their Annual FOIA Report data for both the agency overall and for each principal component of the agency.

    e. **Consultation** – the procedure whereby the agency responding to a FOIA request first forwards a record to another agency or component within the same agency for its review because that other agency has an interest in the document. Once the agency in receipt of the consultation finishes its review of the record, it responds back to the agency or component within the same agency that forwarded it. That agency, in turn, will then respond to the FOIA requester.

    f. **Exemption 3 Statute** – a federal statute that exempts information from disclosure and which the agency relies on to withhold information under subsection (b)(3) of the FOIA.

    g. **FOIA Request** – a FOIA request is generally a request to a federal agency for access to records concerning another person (i.e., a "third-party" request), or concerning an organization, or a particular topic of interest. FOIA requests also include requests made by requesters seeking records concerning themselves (i.e., "first-party" requests) when those requesters are not subject to the Privacy Act, such as non-U.S. citizens. Moreover, because all first-party requesters should be afforded the benefit of both the access provisions of the FOIA as well as those of the Privacy Act, FOIA requests also include any first-party requests where an agency determines that it must search beyond its

Privacy Act "systems of records" or where a Privacy Act exemption applies, and the agency looks to FOIA to afford the greatest possible access. All requests which require the agency to utilize the FOIA in responding to the requester are included in this Report. Additionally, a FOIA request includes records referred to the agency for processing and direct response to the requester. It does not, however, include records for which the agency has received a consultation from another agency. (Consultations are reported separately in Section XII of this Report.)

h. **Full Grant** – an agency decision to disclose all records in full in response to a FOIA request.

i. **Full Denial** – an agency decision not to release any records in response to a FOIA request because the records are exempt in their entireties under one or more of the FOIA exemptions, or because of a procedural reason, such as when no records could be located.

j. **Median Number** – the middle, not average, number. For example, of 3, 7, and 14, the median number is 7.

k. **Multi-Track Processing** – a system in which simple requests requiring relatively minimal review are placed in one processing track and more voluminous and complex requests are placed in one or more other tracks. Requests granted expedited processing are placed in yet another track. Requests in each track are processed on a first in/first out basis.

    i. **Expedited Processing** – an agency will process a FOIA request on an expedited basis when a requester satisfies the requirements for expedited processing as set forth in the statute and in agency regulations.

    ii. **Simple Request** – a FOIA request that an agency using multi-track processing places in its fastest (non-expedited) track based on the low volume and/or simplicity of the records requested.

    iii. **Complex Request** – a FOIA request that an agency using multi-track processing places in a slower track based on the high volume and/or complexity of the records requested.

l. **Partial Grant/Partial Denial** – in response to a FOIA request, an agency decision to disclose portions of the records and to withhold other portions that are exempt under the FOIA, or to otherwise deny a portion of the request for a procedural reason.

m.　**Pending Request or Pending Administrative Appeal** – a request or administrative appeal for which an agency has not taken final action in all respects.

n.　**Perfected Request** – a request for records which reasonably describes such records and is made in accordance with published rules stating the time, place, fees (if any) and procedures to be followed.

o.　**Processed Request or Processed Administrative Appeal** – a request or administrative appeal for which an agency has taken final action in all respects.

p.　**Range in Number of Days** – the lowest and highest number of days to process requests or administrative appeals.

q.　**Time Limits** – the time period in the statute for an agency to respond to a FOIA request (ordinarily twenty working days from receipt of a perfected FOIA request).

2.　Include the following concise descriptions of the nine FOIA exemptions:

a.　**Exemption 1**: classified national defense and foreign relations information

b.　**Exemption 2**: information that is related solely to the internal personnel rules and practices of an agency

c.　**Exemption 3**: information that is prohibited from disclosure by another federal law

d.　**Exemption 4**: trade secrets and other confidential business information

e.　**Exemption 5**: inter-agency or intra-agency communications that are protected by legal privileges

f.　**Exemption 6**: information involving matters of personal privacy

g.　**Exemption 7**: records or information compiled for law enforcement purposes, to the extent that the production of those records (A) could reasonably be expected to interfere with enforcement proceedings, (B) would deprive a person of a right to a fair trial or an impartial adjudication, (C) could reasonably be expected to constitute an unwarranted invasion of personal privacy, (D) could reasonably be expected to disclose the identity of a confidential source, (E) would disclose techniques and procedures for law enforcement investigations or prosecutions, or would disclose guidelines for law enforcement investigations or prosecutions, or (F) could reasonably be expected to endanger the life or physical safety of any individual

a. **Exemption 8**: information relating to the supervision of financial institutions

b. **Exemption 9**: geological information on wells

Posting the Final Report and Notifying OIP

After your agency creates the human-readable version of its Annual FOIA Report you will need to post both the human-readable and NIEM-XML versions on your agency's FOIA website. Finally, **and in order for your agency to complete all reporting requirements, you must send the links to the two versions of your Reports to DOJ.OIP.FOIA@usdoj.gov.** The Reports will be linked to on DOJ's centralized Annual FOIA Reports page and the data from the NIEM-XML version will be uploaded onto FOIA.gov.

All agencies should maintain their Annual FOIA Reports on their agency website for at least seven years.

Posting the Raw Data from the Final Annual FOIA Report

In addition to posting the human-readable and NIEM-XML version of your Annual FOIA Report, the FOIA requires that your agency also post the raw data that made up your Annual FOIA Report. See 5 U.S.C. § 552(e)(3)(A)-(C). To meet this requirement, agencies must provide the underlying data elements behind each request, administrative appeal, and consultation received and processed that is used to create the Annual FOIA Report at the conclusion of each fiscal year. This data is used to create the aggregated data tables for Sections IV-VIII, X, and XII.A-XII.C of the Annual FOIA Report, and contains such fields as the date the request or appeal was received, the request or appeal disposition, and the date closed. To assist agencies with this new requirement, OIP created a Raw Data Template that contains all of the raw data fields used in creating an agency Annual FOIA Report.

To meet the requirement that this data be provided in an aggregated, searchable format, agencies should post this information in the Comma Separated Value (CSV) file type, which is an open, machine-readable format, and allows the data to be downloadable in bulk.

Agencies should be aware of the following considerations when putting together their raw data and when using this template:

- Data aggregated for consultations in the Annual FOIA Report includes the tracking number, date received, and date closed. While additional data elements may be included in agency case management systems for consultations, because this data is not included in the aggregated Annual FOIA Report it does not appear in the Raw Data Template.

- Data for administrative appeals can be associated with a specific request number or it can be listed in a separate row, depending on the agency's case management system and method of tracking.

- Data for Section IX of the Annual Report, related to personnel and costs, is not included at the raw data level because these data points are not captured at the

request-by-request level and often must include calculations that go beyond what can be captured at that level. For example, processing cost information includes overhead costs that are not broken down by request. As such, metrics for this section will be included in the agency's overall report but are not included in the Raw Data Template.

Creating the NIEM-XML Version of the Annual FOIA Report Using the FOIA.gov Annual Report Tool

Agencies may complete their NIEM-XML file by either: (1) manually entering their Annual FOIA Report data into the FOIA.gov Annual Report Tool, or (2) directly exporting the Annual FOIA Report data from their FOIA tracking system into the specified NIEM-XML format and uploading it into the FOIA.gov Annual Report Tool. Agencies that choose the latter option should consult with their IT staff about how to integrate the NIEM-based XML schema into the current structure of their FOIA tracking system. Please note that agencies that export their Annual FOIA Report data directly into the NIEM-XML format will still need to use the FOIA.gov Annual Report Tool to review the contents of their NIEM-XML prior to submitting it to OIP. Therefore, agencies should follow the next steps for accessing and using the FOIA.gov Annual Report Tool.

Instructions for Using the FOIA.gov Annual Report Tool

Creating a New Annual Report Manually in FOIA.gov

(1) Ensure all component names and acronyms that will be listed in the report match the ones listed in your agency's Annual FOIA Report data on FOIA.gov from the previous year. **If component names changed, merged, or are discontinued please notify OIP prior to completing the report.**

(2) Log into your FOIA.gov Agency Manager account. If you do not already have log in credentials please notify OIP so we can create an account for you.

(3) On the homepage, click "Add New Annual FOIA Report," which appears at the bottom of the screen. This will allow you to manually enter the data from scratch. Alternatively, agencies may choose to "clone" their previous year's report and clear the old data, with assistance from OIP. For instructions, see "Cloning a Previous Year's Report," below.

(4) In the Agency Info tab, enter the agency name, report year, and date prepared. The Title of the Report will populate for you as "[Agency Name] FY 20[XX] Annual Report." The fields with a red * are required to save the new report.

(5) Click the "Save" button. Once the report has saved you will be returned to the "Home" screen. **Do not close the window before it returns to the home screen.** If you do so, the draft will not save and you will have to re-enter the data. **If you are not actively working in the report, you must save it to prevent losing data if your session times out.** If your session times out before saving, you must re-enter the data.

(6) To return to the report, click the "Edit" tab and enter your agency's data in accordance with "Using FOIA.gov to Create a NIEM-XML" and the "Guidelines for Preparing the Annual FOIA Report," below.

Uploading the Annual Report NIEM-XML File into FOIA.gov

If your agency's tracking system generates a NIEM-XML file, you may upload this into FOIA.gov with the following steps:

(1) Ensure all component names and acronyms that will be used match those used in your agency's Annual FOIA Report data on FOIA.gov from the previous year. **If component names changed, merged, or are discontinued please notify OIP prior to uploading the report.**

(2) Log into your FOIA.gov Agency Manager account. If you do not already have log in credentials please notify OIP so we can create an account for you.

(3) On the homepage, click "Upload Annual FOIA Report Data," which appears at the bottom of the screen.

(4) Choose the XML file to upload. Wait for the file to load and turn blue. Then, click "Submit." The screen should show a long green text box showing that the data successfully uploaded.

(5) Click the "Home" link at the bottom of the page. The report should appear in a chart on the home page. This chart will also indicate where the report is in the workflow (Draft, Submitted to OIP, Back with Agency, Cleared, Published). If the report does not appear, please contact OIP.

(6) Once the report is uploaded, click on the "Edit" tab to review the data. If there are duplicate or missing components, please contact OIP.

(7) Once you are ready to validate the data, click on "Validate" at the bottom of the page.

(8) Review and correct any validation errors, referencing the guidance for each section of the Annual Report as described in the ["Guidelines for Preparing the Annual FOIA Report,"](#) below.

(9) Click the "Save" button. Once the report has saved you will be returned to the "Home" screen. **Do not close the window before it returns to the home screen.** If you do so, the draft will not save and you will have to re-enter the data. **If you are not actively working in the report, you must save it to prevent losing data if your session times out.** If your session times out before saving, you must re-enter the data.

Using FOIA.gov to Create a NIEM-XML and Submit to OIP

Saving the Draft Report

After creating a new Annual Report, users should scroll to the bottom of the page and click the "Save" button. Once the report has saved you will be returned to the "Home" screen. **Do not close the window before it returns to the home screen.** If you do so, the draft will not save and you will have to re-enter the data, whether you are saving the report for the first time or making edits to a previously saved report. **If you are not actively working in the report, you must save it to prevent losing data if your session times out.** If your session times out before you save the report for the first time, or after making edits to a previously saved report, the draft will not save and you will have to re-enter the data. You must click the "Save" button to save work on your draft report.

Edit Tab: Check Component Information and Enter Data

Begin by entering data into the "Agency Information" tab before completing the remaining sections of the report. A type-ahead feature populates potential agencies. Select your agency. After you select the agency name in the Agency Info tab, a list of components will populate automatically for your agency. Check the boxes for all components that should be included in this year's report. Uncheck any components that should not appear in this year's report. If an active component name or new component name does not appear, alert OIP so the component information can be updated. When entering data into the tool, it is best to proceed through the sections in order because some sections validate against entries in the previous sections.

Adding and Removing Component Level Data

The "Agency/Component" field in each tab will have a drop down listing of components for your agency. Select the component from the drop down to enter data. If an agency needs to add additional component data to any of the tabs in the template, it may do so by clicking the "Add" button above the "Agency Overall" fields. To remove a component and its corresponding data, click "Remove" in the top right corner. Then, click "Confirm Removal."

Centralized agencies must add one "component" in each section where you will enter your agency's data as both the component and the agency overall data (most of the agency overall data will auto-populate). Although centralized, these agencies must add the "component" for the validation to function properly.

Decentralized agencies must enter all components once in each section, unless otherwise noted, and complete the agency overall data as needed (most of the agency overall data will auto-populate).

Tip: Decentralized agencies that manually create their reports are encouraged to add placeholders for components or clone the previous year's report, with assistance from OIP, as described below. Either of these methods will provide efficiency in populating an agency's report.

Adding Placeholders for Components

When creating a new blank report, the "Add Placeholder" button allows agencies to add components section-by-section. Any components checked on the Agency Info tab will be loaded into a section after clicking the "Add Placeholder" button.

Add placeholders for component data below

Use this button when starting a new report, to quickly add placeholders for all of the components that you have selected in the checkboxes above.

Components in sections IV, V.B.2, VI.A.-VI.C.5, XII.E.1-2 may differ from the other sections. For instance, agencies may have only one component that processes appeals. In that case, only that single component will need to be added to the appeals sections VI.A.-VI.C.5, XII.E.1-2. We suggest doing this manually by clicking the "Add" button at the

bottom of the chart, or, if you have added placeholder components, removing the unnecessary components.

NOTE: If you have already added components in a section, hitting the "Add Placeholder" button will create duplicate component entries.

<p style="text-align:center">*Cloning a Previous Year's Report*</p>

The cloning feature duplicates a previous year's Annual FOIA Report so all the components automatically populate in each section. The clone feature is particularly recommended for decentralized agencies with lots of components that are unable to upload an XML to create their report. To use this feature, **please contact OIP and we will clone the report for you**. We will save the cloned draft report with the current reporting year, but will not make any other edits. Once your agency's report is cloned, please follow the below steps to remove the old data:

(1) Before entering data for the new year, you must remove the previous year's data. There are two ways to do this:

    a. **Recommended method**: Clear the previous year's data by clicking on the "Clear All Data" button at the bottom of the page. This will clear all the fields except the "Components" in every section.

| Validate | Save | Preview | Delete | Clear all data |

    b. Alternatively: You may manually delete data section-by-section if you would like to retain data in some sections. For instance, data in Sections IV, V.B.2, and VI.C.3 is often similar year-to-year, so if you have many entries in these sections you may choose to retain some of the information in them.

(2) Save the report. You may now re-open the report to begin entering data for the current reporting period.

<p style="text-align:center">*Validation of Data and Resolving Red Tabs*</p>

After entering your data, click "Validate" in the bottom left corner of the report. Any tab that is missing data or contains errors or discrepancies will turn red. A red tab indicates that the entered data has failed a system validation check. The red error message below the field will indicate the cause of the error. If the error message is the result of a math or data entry error, the agency should correct the data. If the error message is not due to a math or data entry error and can be explained with a footnote, the agency should add a footnote and continue to complete the remainder of the section.

After correcting the data to address any validation error messages, scroll to the bottom and click "Validate" again. This should update any overall data calculations for the agency and remove the red tabs if the data correction resolved the validation error. If there are still red tabs, repeat the correction process until the red tabs are all gone or you have added footnotes to address them. Remember to "Save" before closing the report so you do not lose any changes you have made. **As you are addressing error messages, please review**

the guidance below for that particular section and the help text and error messages themselves in the Annual FOIA Report Tool before seeking OIP's assistance.

Tips:
- We recommend entering all data before clicking "Validate," since some validation relies on data in other sections, and correcting all validation errors before re-validating.

- If you are unable to determine a math error, double check that component level data is entered in each section of the report. If component data is entered in one section, but only agency overall data is entered in another section the validation will flag the data as an error.

Footnotes

Agencies may need to include footnotes in their Annual FOIA Reports to explain an apparent discrepancy. They may also choose to include a footnote to provide greater context for their data to the public. These footnotes may be added to an agency report by using the FOIA.gov Annual Report Tool. Users may add a footnote at the bottom of the page in each tab of the Tool. The wording of the footnote itself should make it clear to which data the footnote applies.

Submitting the Draft Report to OIP

Once you have entered all data and resolved any validation errors to eliminate red tabs, users may submit the draft report to OIP for review. While viewing your draft report, scroll to the bottom of the page; in the "Change To" dropdown, select "Submitted to OIP." Click "Save." Once the report is submitted to OIP, you will no longer be able to edit the report. Once you have submitted to OIP on FOIA.gov, agencies must notify OIP of their submission by emailing DOJ.OIP.FOIA@usdoj.gov.

Revision History

The "Revision" tab along the top of the report enables users to compare the last five revisions to the report that have been successfully saved. Users can compare data from one version to another by selecting the bubble next to the ones you'd like to compare, then selecting "Compare" on the bottom left of the page. Users can also revert to a previous version by selecting "Revert" on the right side of the page.

Guidelines and Instructions for Completing the Data Sections of the Annual FOIA Report Using the FOIA.gov Annual Report Tool

General Guidance

For all of the data-oriented sections of the Annual FOIA Report, which are contained in the NIEM-XML, agencies must adhere to the guidance described in Chapter II, DOJ Guidance for FOIA Professional on Proper Tracking of Requests, Consultations, and Appeals, and the below guidance points:

- Format: The Annual FOIA Report information and data provided by agencies must be in the format presented in this guidance. All fields in each section must be completed. Agencies should enter "0" or "N/A" in accordance with the guidance for any fields where there is no data to report.

- Footnotes: If an agency is unable to comply with a specific reporting requirement, an explanatory footnote must be included in the Annual FOIA Report.

- Calculating the Median Age and Average Age for Components and for the Agency Overall:

    o **Calculation of median for components**: Example #1 -- Given seven requests with ages 10, 25, 35, 65, 75, 80, and 400 days from the date the perfected request was received, the median age of these requests is 65 days, i.e., the middle number. Example #2 -- Given six requests with ages 10, 20, 30, 50, 120, and 200 days from the date the perfected request was received, the median age of these requests is 40 days (the average of the two middle numbers).

    o **Calculation of median for the agency overall**: Calculate the median of all requests agency-wide. Do not calculate the median of the components' medians. Example -- Assuming 45 days is the median age of all of Component A's requests, 85 days is the median age of all of Component B's requests, and 200 days is the median age of all of Component C's requests, do not determine the median for the agency overall by selecting the components' middle number, i.e., 85 days. Rather, compile a comprehensive list of the ages of all requests from each of the components and determine the median from this overall group of numbers.

    o **Calculation of average for components**: Given six requests with ages 10, 20, 30, 50, 120, and 200 days from the date the perfected request was received, the average age is 71.7 days, which is 430 days (the sum) divided by six (the number of requests).

    o **Calculation of average for the agency overall**: Provide the weighted average. Example -- Component A has 50 requests with an average age of 25 days, Component B has 100 requests with an average age of 60 days, and Component C has 200 requests with an average age of 75 days. For each component, multiply the number of requests the component has by the average age of those requests, i.e., 50x25 (= 1250 for Component A), 100x60 (= 6000 for Component B), and 200x75 (= 15,000 for Component C). Add these figures (1250+6000+15,000), for a sum of 22,250. Add the number of requests of all components (50+100+200), for a sum of 350 total requests. Divide 22,250 by the 350 total requests, which is 63.6. The average age of requests for this agency is 63.6 days.

<u>Agency Information</u>

Screenshot of the FOIA.gov Annual Report Tool

The FOIA.gov Annual Report Tool requires that each agency provide its name, an agency abbreviation (acronym), component abbreviations, the FOIA Annual Report Year, and the date the report was prepared. Agencies must provide the same name and agency abbreviation used in FOIA.gov. If an agency's XML fails to upload into the FOIA.gov Tool, a common cause is that the agency abbreviation in the XML does not match FOIA.gov. For example, if the FOIA.gov abbreviation for the Department of Justice is "DOJ", but the XML contains "Justice" as the abbreviation, the XML will not upload. **If this is the case, you must edit the XML to match FOIA.gov or reach out to OIP for assistance**.

If an agency is **centralized**, the agency abbreviation will also populate as a check box below "Components." Centralized agencies must check the box for their abbreviation so the agency's acronym appears in each section.

If an agency is **decentralized** and its FOIA information is reported by "component" (sub-organization, office, division), the agency component abbreviations listed in FOIA.gov will auto-populate as check boxes below "Components." Check the boxes for the components that should appear in the agency's report. If a component has been added to an agency or the name of a component has been changed since last reporting season, the agency should advise OIP's Compliance Team before completing this part of the Report. The agency abbreviation cannot match any of the component abbreviations.

For the "FOIA Annual Report Year," agencies should provide the fiscal year to which the FOIA data pertains and not the fiscal year at the time the Report is created. For "Date Prepared," please note that dates are displayed in YYYY-MM-DD format.

The agency or component acronyms will auto-populate throughout the FOIA.gov Annual Report Tool, though you must add the component to each section of the report. If a component is not listed, please verify whether you have checked the boxes for each component.

Section IV.: Exemption 3 Statutes

Screenshots of FOIA.gov Annual Report Tool

Click "Add Statute" for each statute you need to add. If multiple components cited to that statute, each component will be entered in the "Agency/Component" tab. If your agency did not cite any statutes click "Add Statute" once.

The following items must be captured for this section:

- Statute: In the Statute tab, list the Exemption 3 statutes relied upon by your agency to withhold information. Each statute cited by any component in your agency should be listed once. To standardize the citations and formatting used to list these statutes, if an agency utilized any statute(s) listed in OIP's Exemption 3 Chart during the fiscal year, it should cite to the statute in the exact manner it is listed in the OIP List of Statutes Found to Qualify Under Exemption 3 of the FOIA, **except that it should not include the name of the statute**. This Chart identifies statutes that have been found by courts to qualify as a proper Exemption 3 statute. If the statute is not listed in the OIP Exemption 3 Chart, agencies may also check the lists of statutes used in previous annual reports for citation and description information. If your agency did not cite to any statutes, enter N/A for this field.

    o Example: If an agency relied on Rule 6(e) of the Federal Rules of Criminal Procedure, the citation should be "Fed. R. Crim. P. 6(e), enacted by Act of July 30, 1977, Pub. L. No. 95-78, 91 Stat. 319."

    But agencies should not include the name of the statute.

o   <u>Example</u>: If an agency relied on the Commodity Exchange Act, it should be cited simply as "7 U.S.C. § 12."

If your agency relied on a statute that is not listed in the OIP Exemption 3 Chart or in the lists of statutes used in previous annual reports, please include in your e-mail to OIP the statutory citation and text of the portion of the statute your agency relied upon.

<u>Tip</u>:
- To insert the section (§) symbol, hold the "Alt" key and then type "0167".
- You may copy/paste the statute, case citation, and type of info withheld from the chart into the report.

- <u>Type of Information Withheld</u>: In the Statute tab, provide a brief description of the types of information withheld under each statute listed. If your agency relied on a statute that is in OIP's Exemption 3 Chart, the description inserted here for the type of information withheld should be copied verbatim from OIP's Chart, unless that language would not accurately describe the information actually withheld by your agency. If your agency did not cite to any statutes, enter N/A for this field.

- <u>Case Citation</u>: In the Statute tab, if the statute listed has been approved to qualify as an Exemption 3 statute by a court, include the case citation in this section. If your agency relied on a statute listed in the OIP Exemption 3 Chart, the case citation should be listed in the exact way it is presented in OIP's Chart. If there is no case citation or if your agency did not cite to any statutes, enter N/A for this field.

- <u>Agency/Component</u>: In the Agency/Component tab, agencies that do not report by component should select their agency acronym. If the agency does report by component, it should list the component acronyms for only those components that relied on the statute. If multiple components cited to the same statute, add each component by clicking "Add Statute Agency Details" on the Agency/Component subsection. If your agency did cite to any statutes, you do not need to enter any components in this tab leave this tab.

- <u>Number of Times Relied Upon per Agency/Component</u>: In the Agency/Component tab, provide the number of times each component (or the agency, if centralized) relied upon each statute.

- <u>Total Number of Times Relied Upon by Agency</u>: The total number of times a particular statute was relied upon by an agency. This number will be automatically generated from information in the Agency/Component tab.

<u>Section V.: FOIA Requests</u>

For the charts in Section V of the Annual FOIA Report, include all "purported" FOIA requests, both perfected and non-perfected. Non-perfected requests are further reflected in various fields in Section V.B.1 of the Annual FOIA Report.

Section V.A.: Received, Processed, and Pending FOIA Requests

Screenshot of FOIA.gov Annual Report Tool

Add all components that are designated to receive requests by clicking the "Add FOIA Requests V.A" button. If your agency is centralized, add one component entry and select the agency abbreviation. Once you have added the components, enter data for each one. All fields are required, so if a component/agency did not receive, process, or have any pending requests, enter "0" for that field. The "Number of Request Pending As of End of Fiscal Year" and the Agency Overall totals will automatically populate.

The following items must be captured for this section:

- Number of Requests Pending As of Start of Fiscal Year: Provide the number of requests that were pending as of the start of the relevant fiscal year. If the number reported in this section for a component and/or agency does not match what was reported as pending as of the end of the fiscal year from the prior year's report, the agency should include a footnote briefly explaining the discrepancy.

- Number of Requests Received in Fiscal Year: Provide the number of requests that were received in the relevant fiscal year. This includes all requests received from October 1 through September 30 of the relevant fiscal year, including when September 30 falls on a non-working day.

- Number of Requests Processed in Fiscal Year: Provide the number of requests that were closed in the relevant fiscal year.

- Number of Requests Pending As of End of Fiscal Year: Provide the number of requests that were pending at the end of the fiscal year. *Please note that the sum of the number pending at the start of the fiscal year and the number received during the fiscal year, minus the number processed during the fiscal year, must equal the number pending as of the end of the fiscal year.* In the FOIA.gov Annual Report Tool, the latter number is automatically populated based on the other three values. If the number reported in the

last field does not reflect the number actually pending at your agency as of the end of the fiscal year, one of the other numbers must be inaccurate and you must review and correct the discrepancy.

Section V.B.(1): Disposition of FOIA Requests – All Processed Requests

Screenshots of the FOIA.gov Annual Report Tool

Add all components that are designated to receive requests by clicking the "Add FOIA Requests V.B.(1)" button. If your agency is centralized, add one component entry and select the agency abbreviation. Once you have added the components, enter data for each one. All fields are required, so if a component/agency did not process any requests, enter "0" for that field.

The number of each of the following dispositions listed below must be captured for this section. Please provide the number of request dispositions for each of the categories described below. **Each request must have a single disposition that best reflects the processing of the request, even if multiple dispositions may apply.**

As described in Chapter II of the Handbook, a request should <u>only</u> be counted in one of the nine "Full Denial Based on Reasons Other than Exemptions" fields (the fourth through twelfth bullets bellow) if the request cannot be accounted for in one of the first three fields (Full Grant, Partial Grant/Partial Denial, or Full Denial Based on Exemptions). Furthermore, a request should only be categorized as "other" if it cannot fit into one of the eleven pre-established categories.

If an agency utilizes exemptions in response to a request, that request must be counted as either a Partial Grant/Partial Denial or a Full Denial Based on Exemptions. Please review Chapter II of the Handbook for additional information about the below dispositions.

- <u>Number of Full Grants</u>: A full release of all records responsive to the request is made. Enter this data in the Agency/Component tab.

- <u>Number of Partial Grants/Partial Denials</u>: The agency responds by providing the requester with some, but not all, of the information requested. This typically, but not always, means that the agency used exemptions in its response. Enter this data in the Agency/Component tab.

- Number of Full Denials Based on Exemptions: The agency responds by withholding all of the requested information pursuant to an exemption listed at 5 U.S.C. § 552(b). This includes Glomar responses where an agency neither confirms nor denies the existence of responsive records based on one of the FOIA exemptions. Enter this data in the Agency/Component tab.

- No Records: The agency responds by informing the requester that it has no records responsive to the request. Enter this data in the second tab labeled "Number of Full Denials Based on Reasons Other Than Exemptions."

- All Records Referred to Another Component or Agency: The agency responds by advising the requester that it has referred all responsive records to another component or agency for direct response to the requester. Enter this data in the second tab labeled "Number of Full Denials Based on Reasons Other Than Exemptions."

- Request Withdrawn: The request was closed because the requester withdrew the request. A request can also be closed using this disposition when a requester fails to respond to a still-interested inquiry after a reasonable amount of time (no less than 30 working days). Enter this data in the second tab labeled "Number of Full Denials Based on Reasons Other Than Exemptions."

- Fee-Related Reason: The request was closed for fee-related reasons, such as failing to pay fees after committing to do so. Enter this data in the second tab labeled "Number of Full Denials Based on Reasons Other Than Exemptions."

- Records not Reasonably Described: The request was closed as non-perfected because the requester failed to reasonably describe the information requested. (Agencies are encouraged to work with requesters to help them describe the records they seek.) Enter this data in the second tab labeled "Number of Full Denials Based on Reasons Other Than Exemptions."

- Improper FOIA Request for Other Reason: The request was not a proper FOIA request and was not perfected because it was not made in accordance with agency FOIA regulations. For example, if the purported request sought only state or local records, only asked questions, or failed to provide a certification of identity as required by the agency's regulations. Agencies should consult their FOIA regulations prior to classifying a request as Improper. Enter this data in the second tab labeled "Number of Full Denials Based on Reasons Other Than Exemptions."

- Not Agency Record: The request was closed because it did not involve access to an agency record subject to the FOIA. Enter this data in the second tab labeled "Number of Full Denials Based on Reasons Other Than Exemptions."

- Duplicate Request: The request was closed because it was a duplicate of another request received by the agency. Only requests from the same requester seeking the same information can be closed as duplicates. Enter this data in the second tab labeled "Number of Full Denials Based on Reasons Other Than Exemptions."

- Other: Any requests included in this field must be further described in Section V.B.(2), below. Enter this data in the second tab labeled "Number of Full Denials Based on Reasons Other Than Exemptions."

- TOTAL: Provide the total number of dispositions for each component (or, if the Report is not broken down by component, for the agency overall). *Please note that the numbers in the "Total" field here must match the numbers listed for "Requests Processed in Fiscal Year" in Section V.A. above (the third bullet in that section).* The FOIA.gov Annual Report Tool will flag to users any difference between the numbers reported in the two sections. The total field and agency overall fields will be automatically populated.

Section V.B.(2): Disposition of FOIA Requests – "Other" Reasons for "Full Denials Based on Reasons Other than Exemptions" from Section V.B.(1) Chart

Screenshot of the FOIA.gov Annual Report Tool

In the "Agency/Component" tab, add all components that are designated to receive requests by clicking the "Add FOIA Requests V.B.(2)" button. If your agency is centralized, add one component entry and select the agency abbreviation. Once you have added the components, enter data for each one. All fields are required. The Agency Overall Total will automatically populate.

In the "Other Reasons for Denials" tab, the following information is required:

- Description of Other Reasons for Denials: Enter the reason the component denied the request. If the component used multiple "Other" reasons, add additional reasons by clicking "Add FOIA Requests V.B.(2) Other Denials Details." If a component utilized the "Other" field in Section V.B.(1), it must provide in this section descriptions of the "other" reasons for full denials and the number of times each reason was relied upon. If an agency/component did not have any other reasons for denials as listed in Section V.B.(1), enter N/A.

- Number of Times Other Reason Was Relied Upon: Enter the number of times each reason was replied upon. If the agency/component did not use any "Other" reasons,

enter "0". The FOIA.gov Annual Report Tool will flag any difference between the numbers reported in the two sections.

Agencies should attempt to standardize to the fullest extent possible the language used in this section of the Report. See Chapter II for some examples.

Section V.B.(3): Disposition of FOIA Requests – Number of Times Exemptions Applied

Screenshot of the FOIA.gov Annual Report Tool

Add all components that are designated to receive requests by clicking the "Add FOIA Requests V.B.(3)" button. If your agency is centralized, add one component entry and select the agency abbreviation. Once you have added the components, enter data for each one. All fields are required. The data in the agency overall fields will automatically populate.

The number of times each exemption was applied in response to a request must be captured for this section. For each request, report all exemptions applied; however, **count each exemption only once per request**. If a component did not use an exemption, enter "0".

- Example: Given a request in which Exemption 3 applies to one portion of the request, Exemption 5 applies to three portions of the request, and Exemption 6 applies to eight portions of the request, the agency should count each exemption only once per request. So, for this request the agency needs to document that Exemptions 3, 5, and 6 were asserted. The fact that Exemption 5 was used three times during the processing of the responsive records and Exemption 6 was used eight times is not relevant.

Section VI: Administrative Appeals of Initial Determinations of FOIA Requests

For this section of the Annual FOIA Report, if more than one component in the agency adjudicates administrative appeals, provide information for each appellate component, as well as for the agency overall. Only those components that adjudicate administrative appeals should be included in Section VI.

Section VI.A.: Received, Processed, and Pending Administrative Appeals

Screenshot of the FOIA.gov Annual Report Tool

Add all components that are designated to receive appeals by clicking the "Add Administrative Appeals VI.A" button. If your agency is centralized, add one component entry and select the agency abbreviation. Once you have added the components, enter data for each one. All fields are required. The data in the agency overall fields will automatically populate.

The following items must be captured for this section:

- Number of Appeals Pending As of Start of Fiscal Year: Provide the number of appeals that were pending as of the start of the relevant fiscal year. If the number reported in this section for a component and/or agency does not match what was reported as pending as of the end of the fiscal year from the prior year's Annual FOIA Report, the agency should include a footnote briefly explaining the discrepancy.

- Number of Appeals Received in Fiscal Year: Provide the number of appeals that were received in the relevant fiscal year. This includes all appeals received from October 1 through September 30 of the relevant fiscal year, including when September 30 falls on a non-working day.

- Number of Appeals Processed in Fiscal Year: Provide the number of appeals that were closed in the relevant fiscal year.

- Number of Appeals Pending As of End of Fiscal Year: Provide the number of appeals that were pending at the end of the fiscal year. *Please note that the sum of the number pending at the start of the fiscal year (the first bullet above) and the number received during the fiscal year (the second bullet above), minus the number processed during the fiscal year (the third bullet above), must equal the number listed here as pending as of the end of the fiscal year*. In the FOIA.gov Annual Report Tool, this number is automatically generated based on the other three values. If the number reported in the last field of the Tool does not reflect the number actually pending at your agency as of

the end of the fiscal year, one of the other numbers must be inaccurate and you must review and correct this discrepancy.

Section VI.B.: Disposition of Administrative Appeals – All Processed Appeals

Screenshot of the FOIA.gov Annual Report Tool

Add all components that are designated to receive appeals by clicking the "Add Administrative Appeals VI.B." button. If your agency is centralized, add one component entry and select the agency abbreviation. Once you have added the components, enter data for each one. All fields are required. The agency overall fields will automatically populate.

Each processed appeal should have a single entry in this section. For additional information about the dispositions, please see Chapter II, Disposition of Administrative Appeals – All Processed Appeals. The following items must be captured for this section:

- Number Affirmed on Appeal: Provide the number of times the agency's administrative appellate authority affirms the agency's initial action on the request. This includes instances when the initial action is affirmed on modified grounds.

- Number Partially Affirmed & Partially Reversed/Remanded on Appeal: Provide the number of times on appeal that portions of the agency's initial action on the request are affirmed, but other aspects are either reversed or remanded.

- Number Completely Reversed/Remanded on Appeal: Provide the number of times on appeal that the agency's initial determination is completely reversed and/or the request is remanded for further action.

- Number of Appeals Closed for Other Reasons: Provide the number of times the agency neither affirms nor reverses/remands (either entirely or partially) the initial request determination, but rather closes the appeal for other reasons (e.g., the request went into litigation, the appeal was a duplicate appeal, the appeal was premature, etc.).

- Total: This number will be automatically generated. Please note that this number must match the "Number of Appeals Processed in Fiscal Year" reported in Section VI.A. above (the third bullet in that section). The FOIA.gov Annual Report Tool will flag any difference between the numbers reported in the two sections.

Section VI.C.(1): Reasons for Denial on Appeal – Number of Times Exemptions Applied

Screenshot of FOIA.gov Annual Report Tool

Add all components that are designated to receive appeals by clicking the "Add Administrative Appeals VI.C.(1)" button. If your agency is centralized, add one component entry and select the agency abbreviation. Once you have added the components, enter data for each one. All fields are required. The agency overall fields will automatically populate.

For this section, agencies must provide the number of times each exemption was used on appeal to withhold information. For each administrative appeal, report all exemptions applied; however, count each exemption only once per appeal.

- Example 1: If the agency relied on Exemptions 6 and 7(C) at the initial request level, but on appeal the action was affirmed solely on Exemption 7(C), it is Exemption 7(C) that should be entered in the agency's tracking system for the appeal.

- Example 2: Given a request in which the agency's administrative appellate authority affirms the uses of Exemption 2 for one portion of the request, Exemption 5 for three portions of the request, and Exemption 6 for eight portions of the request, count Exemptions 3, 5, and 6 once each. Do not count Exemption 5 three times and Exemption 6 eight times.

Additionally, if an administrative appeal results in the denial of information based on exemptions *and* any of the reasons presented in Section VI.C.(2) and Section VI.C.(3) below, that appeal should be accounted for in all of the applicable sections.

- Example: Agency locates two documents (Document A and Document B) in response to a FOIA request. The agency releases Document A in part, but withholds certain information under Exemption 5. The agency refers Document B to another agency which was the creator of the responsive document. The requester appeals the withholdings on Document A and appeals the agency's decision to refer Document B to another agency. If the agency determines on appeal that both the withholding of Document A and the referral of Document B were appropriate, it should account for that appeal in the "Ex. 5" category of this section, as well as the "Records Referred at Initial Request Level" category of <u>Section VI.C.(2)</u> below.

Section VI.C.(2): Reasons for Denial on Appeal – Reasons Other than Exemptions

Screenshot of FOIA.gov Annual Report Tool

Add all components that are designated to receive appeals by clicking the "Add Administrative Appeals VI.C.(2)" button. If your agency is centralized, add one component entry and select the agency abbreviation. Once you have added the components, enter data for each one. All fields are required. The agency overall fields will automatically populate.

The number of each of the following reasons for denying information on appeal must be captured for this section. Agencies may cite to more than one of these reasons for each appeal. Additionally, the reasons in this section can be cited regardless of whether an agency has affirmed its initial determination, partially affirmed and partially reversed/remanded the initial determination, or closed the appeal for other reasons (<u>see Section VI.B.</u> of the Annual FOIA Report).

- No Records: On appeal, the agency determined that there are no records responsive to the request.

- <u>Records Referred at Initial Request Level</u>: On appeal, the agency determined that responsive records were properly referred to another agency or agency component for direct response to the requester.

- <u>Request Withdrawn</u>: The request was withdrawn by the requester either at the initial request level or on appeal.

- <u>Fee-Related Reason</u>: On appeal, a fee-related reason was cited for denying the request.

- <u>Records not Reasonably Described</u>: On appeal, the agency determined that the records sought were not reasonably described.

- <u>Improper Request for Other Reasons</u>: On appeal, the agency determined that the request was not a proper FOIA request for a reason other than that the request was not reasonably described (because it was not made in accordance with agency FOIA regulations).

- <u>Not Agency Record</u>: On appeal, the agency determined that at least some of the records requested were not agency records subject to the FOIA.

- <u>Duplicate Request or Appeal</u>: This includes both when an appeal is closed because it is a duplicate of another appeal and when on appeal the agency determines to close a request because it is a duplicate of another request the agency received. For an appeal to be a duplicate it must be from the same requester addressing the same issue and request.

- <u>Request in Litigation</u>: The appeal was closed because the request was in litigation.

- <u>Appeal Based Solely on Denial of Request for Expedited Processing</u>: On appeal, the agency affirmed its initial determination denying a request for expedited processing.

- <u>Other</u>: If another reason was cited for denying an appeal, include that appeal in this category. Any appeals included here must be further described in <u>Section VI.C.(3)</u> of the Annual FOIA Report.

Section VI.C.(3): Reasons for Denial on Appeal –
"Other" Reasons from Section VI.C.(2) Chart

Screenshots of the FOIA.gov Annual Report Tool

In the "Agency/Component" tab, add all components that are designated to receive appeals by clicking the "Add Administrative Appeals VI.C.(3)" button. If your agency is centralized, add one component entry and select the agency abbreviation. Once you have added the components, enter data for each one. All fields are required. The agency overall total field will be automatically populated.

In the "Other Reasons for Denials" tab, the following information is required:

- Description of Other Reasons for Denials: Enter the reason the component denied the request. If the component used multiple "Other" reasons, add additional reasons by clicking "Add FOIA Administrative Appeals VI.C.(3) Other Denials Details." If a component utilized the "Other" field in Section VI.C.(2), it must provide in this section descriptions of the "other" reasons for full denials and the number of times each reason was relied upon. If an agency/component did not have any other reasons for denials, enter N/A.

- Number of Times Other Reason Was Relied Upon: Enter the number of times each reason was replied upon. If the agency/component did not use any "Other" reasons, enter "0". The FOIA.gov Annual Report Tool will flag any difference between the numbers reported in the two sections.

Section VI.C.(4): Response Time for Administrative Appeals

Screenshot of the DOJ FOIA.gov Template

Add all components that are designated to receive appeals by clicking the "Add Administrative Appeals VI.C.(4)" button. If your agency is centralized, add one component entry and select the agency abbreviation. Once you have added the components, enter data for each one. All fields are required. Agency Overall Lowest and Highest Number of Days data in this section will automatically populate. **Agency Overall Median and Average Number of Days must be manually entered.**

The following information must be captured for this section:

- Median Number of Days: For any appeals closed during the relevant fiscal year, provide the median number of days it took to respond. For more information on calculating medians, please see the "General Guidance" section above.

- Average Number of Days: For any appeals closed during the relevant fiscal year, provide the average number of days it took to respond. For more information on calculating averages, please see the "General Guidance" section above.

- Lowest Number of Days: Provide the lowest number of days that it took to close any appeal during the relevant fiscal year.

- Highest Number of Days: Provide the highest number of days that it took to close any appeal during the relevant fiscal year.

Section VI.C.(5): Ten Oldest Pending Administrative Appeals

Screenshot of the FOIA.gov Annual Report Tool

Add all components that are designated to receive appeals by clicking the "Add Administrative Appeals VI.C.(5)" button. If your agency is centralized, add one component entry and select the agency abbreviation. Once you have added the components, enter data for each one. All fields are required. **Agency Overall data must be manually entered.**

The following information must be captured for this section:

- Date of Receipt of Ten Oldest Appeals: Provide the date of receipt for the ten oldest administrative appeals that remain pending at the end of the relevant fiscal year. The date must be formatted as YYYY-MM-DD. If there are no pending appeals or fewer than ten, enter "N/A" for the Date of Receipt.

- Number of Days Pending: Provide the number of days pending (in working days) for the ten oldest administrative appeals that remain pending at the end of the fiscal year. The number of days pending should be based on the end of the relevant fiscal year and not the date the Annual FOIA Report is created. If there are no pending appeals or fewer than ten, enter "0" for the Date of Receipt.

Section VII: FOIA Requests – Response Time for Processed and Pending Requests

For charts in Section VII, include response times for only perfected requests. Begin counting days from the date of receipt of the *perfected* request. For additional information on calculating response times, please see Chapter II, FOIA Requests: Responsive Time for Processed and Pending Requests.

Use no more than the three specified tracks to report your requests: Simple, Complex, and Expedited. All agencies are required to have an expedited track, even if they have no expedited requests to report. For additional information on processing tracks, see Chapter II, FOIA Requests: Response Time for Processed and Pending Requests.

Section VII.A.: Processed Requests – Response Time for All Processed Perfected Requests

Screenshot of the FOIA.gov Annual Reporting Template

Add all components that are designated to receive requests by clicking the "Add Processed Requests VII." button. If your agency is centralized, add one component entry and select the agency abbreviation. Once you have added the components, enter data for each one in each of the three tabs for Simple, Complex, and Expedited. All fields in all tracks are required. Agency Overall Lowest and Highest Number of Days data in this section will automatically populate. **Agency Overall Median and Average Number of Days must be manually entered.**

The following information, broken down by track, must be captured for this section:

- Median Number of Days: For all perfected requests that were closed during the relevant fiscal year, provide the median number of working days it took to close them. For more information on calculating medians please see the "General Guidance" section above. If the agency/component did not process requests in a particular track, enter "N/A".

- Average Number of Days: For all perfected requests that were closed during the relevant fiscal year, provide the average number of working days it took to close them. For more information on calculating averages please see the "General Guidance" section above. If the agency/component did not process requests in a particular track, enter "N/A".

- Lowest Number of Days: For all perfected requests that were closed during the relevant fiscal year, provide the lowest number of working days it took to close any one of them. If the agency/component did not process requests in a particular track, enter "N/A".

- Highest Number of Days: For all perfected requests that were closed during the relevant fiscal year, provide the highest number of working days it took to close any one of them. If the agency/component did not process requests in a particular track, enter "N/A".

Section VII.B.: Processed Requests – Response Time for Perfected Requests in Which Information Was Granted

Screenshot of the FOIA.gov Annual Report Tool

Add all components that are designated to receive requests by clicking the "Add Processed Requests VII" button. If your agency is centralized, add one component entry and select the agency abbreviation. Once you have added the components, enter data for each one in each of the three tabs for Simple, Complex, and Expedited. All fields in all tracks are required. Agency Overall Lowest and Highest Number of Days data in this section will automatically populate. **Agency Overall Median and Average Number of Days must be manually entered.**

This section captures the response times for those requests identified as either "Full Grants" or "Partial Grants/Partial Denials" in Section V.B.(1) of the Annual FOIA Report. The following information, broken down by "track", must be captured for this section:

- Median Number of Days: For all perfected requests in which information was granted and that were closed during the relevant fiscal year, provide the median number of working days it took to close them. For more information on calculating medians please

see the "General Guidance" section above. If the agency/component does not have requests to report in a particular track, enter "N/A".

- Average Number of Days: For all perfected requests in which information was granted and that were closed during the relevant fiscal year, provide the average number of working days it took to close them. For more information on calculating averages please see the "General Guidance" section above. If the agency/component does not have requests to report in a particular track, enter "N/A".

- Lowest Number of Days: For all perfected requests in which information was granted and that were closed during the relevant fiscal year, provide the lowest number of working days it took to close any one of them. If the agency/component does not have requests to report in a particular track, enter "N/A".

- Highest Number of Days: For all perfected requests in which information was granted and that were closed during the relevant fiscal year, provide the highest number of working days it took to close any one of them. If the agency/component does not have requests to report in a particular track, enter "N/A".

Sections VII.C.(1),(2), (3).: Processed Requests – Response Time in Day Increments

Screenshot of the FOIA.gov Annual Report Tool

Add all components that are designated to receive requests by clicking the "Add Processed Requests VII.C." button. If your agency is centralized, add one component entry and select the agency abbreviation. Once you have added the components, enter data for each one. All fields are required. Agency Overall data will automatically populate.

The following information, broken down by "track", must be captured for these sections:

- <1-20 Days: Provide the number of perfected requests processed in the relevant year in the designated timeframe. Agencies should include those requests closed in less than one day in this category.

- 21-40 Days: Provide the number of perfected requests processed in the relevant year in the designated timeframe.

- 41-60 Days: Provide the number of perfected requests processed in the relevant year in the designated timeframe.

- 61-80 Days: Provide the number of perfected requests processed in the relevant year in the designated timeframe.

- 81-100 Days: Provide the number of perfected requests processed in the relevant year in the designated timeframe.

- 101-120 Days: Provide the number of perfected requests processed in the relevant year in the designated timeframe.

- 121-140 Days: Provide the number of perfected requests processed in the relevant year in the designated timeframe.

- 141-160 Days: Provide the number of perfected requests processed in the relevant year in the designated timeframe.

- 161-180 Days: Provide the number of perfected requests processed in the relevant year in the designated timeframe.

- 181-200 Days: Provide the number of perfected requests processed in the relevant year in the designated timeframe.

- 201-300 Days: Provide the number of perfected requests processed in the relevant year in the designated timeframe.

- 301-400 Days: Provide the number of perfected requests processed in the relevant year in the designated timeframe.

- 401+ Days: Provide the number of perfected requests processed in the relevant year in the designated timeframe.

- Total: The sum of the thirteen fields in the "Total" field reflects the total number of requests processed for each of the tracks. If using the FOIA.gov Annual Report Tool, this field will automatically populate.

Note: The total number of processed perfected requests listed in this section must be less than or equal to the number of requests reported as processed in Section V.A.

Section VII.D.: Pending Requests – All Pending Perfected Requests

Screenshot of the FOIA.gov Annual Report Tool

Add all components that are designated to receive requests by clicking the "Add Pending Requests VII.D." button. If your agency is centralized, add one component entry and select the agency abbreviation. Enter data for each component in each of the three tabs for Simple, Complex, and Expedited. All fields in all tracks are required. Agency Overall Number Pending will automatically populate. **Agency Overall Median and Average must be manually entered.**

The following information, broken down by track, must be captured for this section:

- Number Pending: Provide the number of all perfected requests which remained open as of the end of the relevant fiscal year.

- Median Number of Days: For all perfected requests which remained open as of the end of the relevant fiscal year, provide the median number of working days they had been pending. For more information on calculating medians please see the "General Guidance" section above.

- Average Number of Days: For all perfected requests which remained open as of the end of the relevant fiscal year, provide the average number of working days they had been pending. For more information on calculating averages please see the "General Guidance" section above.

Section VII.E.: Pending Requests – Ten Oldest Pending Perfected Requests

Screenshot of the DOJ FOIA.gov Template

Add all components that are designated to receive requests by clicking the "Add Oldest Days" button. If your agency is centralized, add one component entry and select the agency abbreviation. All fields are required. The requests in this chart should be ordered based on the number of days pending as opposed to the date of receipt, which may not always match due to tolling. The tool will flag with a red cell any requests that are not in order based off the number of days pending. **Agency Overall data must be manually entered.**

The following information for each of the ten oldest requests pending as of the end of the relevant fiscal year must be captured for this section:

- Date of Receipt: Provide the date of receipt of the *perfected* request (see example). The date must be formatted as YYYY-MM-DD. If there are no pending perfected requests or fewer than ten, enter "N/A" for the Date of Receipt.

- Number of Days Pending: From the date of receipt of the perfected request, provide the number of working days that each request remained pending as of the end of the relevant fiscal year. If there are no pending perfected requests or fewer than ten, enter "0" for the Number of Days Pending.

Section VIII.: Requests for Expedited Processing and Requests for Fee Waiver

For this Section of the Annual FOIA Report, agencies will need to provide information on the requests for expedited processing they adjudicated and the determinations made on requests for fee waivers. Agencies should not include data in this section for those expedited processing requests or fee waiver requests which became moot for various reasons and, as a result, were neither granted nor denied.

All determinations made during the relevant fiscal year to either grant or deny an expedited processing or fee waiver request must be included.

- Example: The agency receives an initial request in Fiscal Year 2019, which asks for expedited processing. In Fiscal Year 2019, the agency notifies the requester that it has decided to grant expedited processing, but the agency does not complete the processing of the actual request until Fiscal Year 2020. The information regarding the decision to grant expedited processing should be reported in this section of the agency's Fiscal Year 2019 Annual FOIA Report.

Section VIII.A.: Requests for Expedited Processing

Screenshot of the FOIA.gov Annual Report Tool

Add all components that are designated to receive requests by clicking the "Add Requests VIII.A." button. If your agency is centralized, add one component entry and select the agency abbreviation. All fields are required. **Agency Overall Median and Average must be manually entered.** The remaining Agency Overall fields will populate automatically.

The following items must be captured for this section in the NIEM-XML. Please include requests for expedited processing made both at the initial request level and, when applicable, at the administrative appeal level.

- <u>Number Granted</u>: Provide the number of adjudications resulting in the agency granting expedited processing of the request during the Fiscal Year being reported.

- <u>Number Denied</u>: Provide the number of adjudications resulting in the agency denying expedited processing of the request during the Fiscal Year being reported.

- <u>Median Number of Days to Adjudicate</u>: Provide the median number of calendar days the agency took to adjudicate requests for expedited processing. For more information on calculating medians please see the "[General Guidance](#)" section above.

- <u>Average Number of Days to Adjudicate</u>: Provide the average number of calendar days the agency took to adjudicate requests for expedited processing. For more information on calculating averages please see the "[General Guidance](#)" section above.

- <u>Number Adjudicated Within Ten Calendar Days</u>: Provide the number of requests for expedited processing that were adjudicated within ten calendar days.

Note: The response time portion of this reporting requirement captures the time taken to decide whether to grant or deny a request for expedited processing. This does not cover the time taken to process the FOIA request which has been granted expedited status and placed in the "expedited processing" track. Rather, this requirement reflects the time taken to make a determination (i.e., adjudicate) whether a request for expedited processing should be granted or denied.

<u>Calculating days</u>: Count <u>calendar</u> days starting from the day the request for expedited processing is received through the day the agency provides notice to the requester of its determination to grant or deny the request for expedited processing.

Section VIII.B.: Requests for Fee Waiver

Screenshot of the FOIA.gov Annual Report Tool

Add all components that are designated to receive requests by clicking the "Add Requests VIII.B." button. If your agency is centralized, add one component entry and select the agency abbreviation. All fields are required. **Agency Overall Median and Average**

must be manually entered. The remaining Agency Overall fields will populate automatically.

The following items must be captured for this section in the NIEM-XML. Please include requests for a waiver of fees made both at the initial request level and, when applicable, at the administrative appeal level.

- Number Granted: Provide the number of adjudications resulting in the agency granting a request for a fee waiver during the Fiscal Year being reported.

- Number Denied: Provide the number of adjudications resulting in the agency denying a request for a fee waiver during the Fiscal Year being reported.

- Median Number of Days to Adjudicate: Provide the median number of days the agency took to adjudicate a request for a fee waiver. For more information on calculating medians please see the "General Guidance" section above.

- Average Number of Days to Adjudicate: Provide the average number of days the agency took to adjudicate a request for a fee waiver. For more information on calculating averages please see the "General Guidance" section above.

Calculating days: Unlike requests for expedited processing, the period of time to adjudicate a fee waiver request does not necessarily begin with receipt of the fee waiver request itself, nor does it necessarily conclude with a separate letter sent to the requester. This is because the agency might determine that no fees will be assessed for the processing of the request. In that case, there would be no need for the agency to make any determination on the fee waiver request. In other cases, the agency won't know whether fees will be assessed until after it has begun processing. As a result, agencies should begin counting days at the point when they determine that fees will be assessed for the request, and so the fee waiver request is then "ripe" for adjudication. Once the agency makes a decision whether to grant or deny the fee waiver request, the counting stops for this metric. That period of time must then be documented by the agency, along with the determination whether to grant or deny the fee waiver.

Section IX.: FOIA Personnel and Costs

Screenshots of the FOIA.gov Annual Report Tool

Add all components that are designated to receive requests by clicking the "Add FOIA Personnel and Costs IX" button. If your agency is centralized, add one component entry and select the agency abbreviation. All fields are required. Agency Overall fields will populate automatically.

The following items must be captured for this section in the NIEM-XML:

- Number of "Full-Time FOIA Employees": Provide the number of full-time FOIA employees. A "full-time FOIA employee" is a full-time employee who performs FOIA duties 100% of the time.

- Number of "Equivalent Full-Time FOIA Employees": Provide the number of equivalent full-time FOIA employees. This includes employees performing less than full-time FOIA duties that are either: (1) part-time employees who perform FOIA duties all, or part, of the time, or (2) full-time employees who perform FOIA duties less than 100% of the time. An "equivalent full-time FOIA employee" is created by adding together the percentages of time dedicated to FOIA duties by employees performing less than full-time FOIA work. Each time 100% is reached, the time expended is counted as one "equivalent full-time FOIA employee." The number of such "equivalent" employees should be reported in this category. The following examples illustrate how to calculate the number of "equivalent full-time FOIA employees."

  - Example 1: Assume three full-time employees with part-time or occasional FOIA duties. If Employee #1 performs FOIA duties 50% of the time, and Employees #2 and #3 each perform FOIA duties 25% of the time, together they perform 100% (50+25+25) FOIA duties. Therefore, the FOIA duties of these three employees are the equivalent of 1 "full-time FOIA employee," because a "full-time FOIA employee" is equal to 100%. This component would report that it has one equivalent full-time FOIA employee.

o Example 2: Assume six full-time employees with part-time or occasional FOIA duties. If Employees #1, #2, #3 and #4 each perform FOIA duties 50% of the time, Employee #5 performs FOIA duties 75% of the time, and Employee #6 performs FOIA duties 10% of the time, together they perform 285% (50x4 + 75+10) FOIA duties. Because a "full-time FOIA employee" is equal to 100%, the FOIA duties of these six employees are the equivalent of 2.85 "full-time FOIA employees." This component would report that it has 2.85 equivalent full-time FOIA employees.

o Example 3: Assume Employee #1 is a part-time employee who works twenty hours per week and performs FOIA duties half of his time. As a part-time employee who works twenty hours per week, the most FOIA work Employee #1 could perform is 50%. Because Employee #1 performs FOIA duties for only half of his part-time schedule, he performs 25% FOIA duties (i.e., half of the 50% maximum). Assume Employee #2 is a part-time employee who works thirty-two hours per week and performs FOIA duties for all of her time. As a part-time employee who works thirty-two hours per week, the most FOIA work Employee #2 could perform is 80%. Because Employee #2 performs FOIA duties for all of her time, she performs 80% FOIA duties. Together, the two employees perform 105% (25+80) FOIA duties. Therefore, their combined FOIA duties are the equivalent of 1.05 "full-time FOIA employees," and this component would report that it has 1.05 equivalent full-time FOIA employees.

- Total Number of "Full-Time FOIA Staff": The combined total of full-time FOIA employees and equivalent full-time employees. This field will automatically calculate for each component based on the data entered in the Number of "Full-Time FOIA Employees" and Number of "Equivalent Full-Time FOIA Employees" fields.

- Processing Costs: Provide the sum of all costs expended by the agency for processing FOIA requests at the initial request and administrative appeal levels. Include salaries of FOIA personnel, overhead, and any other FOIA-related expenses. (An agency's budget will often be a useful resource for this information.)

- Litigation-Related Costs: Provide the sum of all costs expended by the agency in litigating FOIA requests. Include salaries of personnel involved in FOIA litigation, litigation overhead, attorney fees and costs, and any other FOIA litigation-related expenses. (As with Processing Costs, an agency's budget will often be a useful resource for this information.)

- Total Costs: The sum of the processing and litigation-related costs. This number will be automatically populated based on the data entered in the Processing Costs and Litigation-Related Costs fields.

Section X: Fees Collected for Processing Requests

Screenshot of the FOIA.gov Annual Report Tool

Add all components that are designated to receive requests by clicking the "Add Fees X" button. If your agency is centralized, add one component entry and select the agency abbreviation. All fields are required. Agency Overall fields will populate automatically.

The following items must be captured for this section in the NIEM-XML:

- Total Amount of Fees Collected: Report the dollar amount of fees collected from FOIA requesters for processing their requests. In calculating the amount of fees collected, include fees received from a FOIA requester for search, review, document duplication, and any other direct costs permitted by agency regulations.

- Percentage of Total Costs: Report the percentage of total processing costs (i.e., the processing costs reported in Section IX. must be divided by the total amount of fees collected in this section). This number will be automatically populated.

<div align="center">Section XI: Exclusion Use and Proactive Disclosures</div>

<div align="center">*Section XI.A.: Number of Times Subsection (c) Used*</div>

<div align="center">*Screenshot of the FOIA.gov Annual Report Tool*</div>

Add all components that are designated to receive requests by clicking the "Add Subsection XI.A." button. If your agency is centralized, add one component entry and select the agency abbreviation. All fields are required. Agency Overall fields will populate automatically.

The following items must be captured for this section in the NIEM-XML:

- <u>Number of Times Subsection Used</u>: Report the number of times the agency or component used a FOIA subsection (c) exclusion.

<u>Exclusions</u>: The FOIA provides special protection for a narrow category of particularly sensitive law enforcement records. For these three specifically defined categories of records, Congress provided that federal law enforcement agencies "may treat the records as not subject to the requirements of [the FOIA]." 5 U.S.C. § 552(c). These provisions, referred to as "exclusions," provide protection in three limited sets of circumstances where publicly acknowledging even the existence of the records could cause harm to law enforcement or national security interests. In 2012, OIP issued guidance on exclusions.

Agencies are required to include in their Annual FOIA Report the number of times they have invoked an exclusion. Based on experience in collecting this data, most agencies do not use exclusions. Nevertheless, decentralized agencies should fully report this metric by component even if the agency overall is reporting that no exclusions were used.

- Example 1: An agency processes requests on a decentralized basis with fifteen components. No components invoked an exclusion during the fiscal year. This

agency will list each component and record a "0" for each component.

- Example 2: An agency processes requests on a decentralized basis with fifteen components. Two components invoked exclusions during the fiscal year. This agency will list all components and the number of exclusions invoked by each component.

Section XI.B.: Number of (a)(2) Records Posted

Screenshot of the FOIA.gov Annual Report Tool

Add all components that are designated to receive requests by clicking the "Add Subsection XI.B." button. If your agency is centralized, add one component entry and select the agency abbreviation. All fields are required. Agency Overall fields will populate automatically.

The following items must be captured for this section in the NIEM-XML:

- Number of (a)(2) Records Posted by the FOIA Office: Provide the sum of all (a)(2) records posted to your agency's FOIA webpage during the reporting period. This includes (a)(2) records posted in your FOIA Library or anywhere else on your FOIA webpage.

- Number of (a)(2) Records Posted by the Program Offices: Provide an estimate of all (a)(2) records posted to the agency's webpage outside the FOIA office by your agency's program offices during the reporting period. This figure should be formulated by coordinating with the appropriate program offices or resources within your agency that can best help calculate this data point.

Subsection (a)(2) of the FOIA requires agencies to proactively make available to the public non-exempt information from certain categories of records without waiting for a specific request to be received. These categories are:

- Final agency opinions and orders rendered in the adjudication of cases,
- Specific policy statements that are not published in the Federal Register,
- Administrative staff manuals and instructions to staff that affect a member of the public, and
- Records that have become or are likely to become the subject of subsequent requests or those records that have been requested three or more times – commonly referred to as frequently requested records.

In accordance with 5 U.S.C. § 552(e)(1)(Q), agencies are required to include in their Annual FOIA Report "the number of records that were made available for public inspection in an electronic format under subsection (a)(2) of the FOIA."

The first three categories of subsection (a)(2) records concern the operational documents of the agency and are often posted outside the agency's FOIA office. Agency program offices post a wide variety of records that fall within these categories in various locations throughout agency websites. In light of this reality, FOIA offices are necessarily better equipped to provide more precise numbers for the records that are posted on their agency's FOIA webpage, which are most often "frequently requested records" but can include operational records as well. This provision is designed to capture the number of "records" posted by agencies under (a)(2), so both figures should be reported in terms of records posted by the agency.

Subsection (a)(2) records are posted in a variety of formats. For reporting purposes, this metric captures the number of records posted, not the total number of pages. Agencies should take a practical approach to calculating this metric by considering how the information is posted on their websites. Below is a non-exhaustive list of examples to illustrate how agencies may count various types of (a)(2) disclosures:

- **One** record: One PDF file containing 175 pages of emails, spanning the dates of March 28, 2018 to March 15, 2019.
- **One** record: One HTML page containing a new or updated agency policy with embedded hyperlinks.
- **One** record: One PDF investigative report totaling 25 pages and containing charts and photographs within the report itself.
- **One** record: One video recording, lasting 5 minutes and 16 seconds, linking numerous non-continuous video clips lasting 30 seconds to 1 minute, each of footage from numerous recording devices, compiled into one continuous video posting.
- **One** record: One XLS FOIA Log, including two sheets within the one posted XLS file.
- **Multiple** records: One response to a request for records that is split into three separate postings, for instance, if the request involves multiple topics.
- **Multiple** records: A dynamic database containing multiple entries that is periodically updated. Each entry or uploaded file in the database is counted as one record.

Section XII.: Backlogs, Consultations, and Comparisons

Section XII.A.: Backlogs of FOIA Requests and Administrative Appeals

Screenshot of the FOIA.gov Annual Report Tool

Add all components that are designated to receive requests or appeals by clicking the "Add FOIA Requests and Administrative Appeals XII.A." button. If your agency is centralized, add one component entry and select the agency abbreviation. All fields are required. Agency Overall fields will populate automatically.

The following items must be captured for this section in the NIEM-XML:

- Number of Backlogged Requests As of End of Fiscal Year: Provide the number of backlogged requests as of the end of the relevant fiscal year.

- Number of Backlogged Appeals As of End of Fiscal Year: Provide the number of backlogged appeals as of the end of the relevant fiscal year. **Users should enter "N/A" for any components of their agency that do not process appeals.** Users should enter "0" for any components that process appeals but did not have any backlogged appeals at the end of the reporting Fiscal Year.

Note: A request or appeal is backlogged if it is pending beyond the statutory time period for a response at the end of the fiscal year. The statutory time period is ordinarily twenty working days from receipt of a perfected request or appeal. See 5 U.S.C. § 552(a)(6)(A)(i), (ii). That time period may be extended up to ten additional working days when "unusual circumstances" are present. See id. § 552(a)(6)(B)(i). Although requesters might agree to an alternate time period to respond, or the agency may determine that the "unusual circumstances" require more than ten additional days to process, the request must still be counted as backlogged once it is past the statutory response date.

Section XII.B.: Consultations on FOIA Requests – Received, Processed, and Pending Consultations

Screenshot of the FOIA.gov Annual Report Tool

Add all components that are designated to receive requests by clicking the "Add FOIA Requests and Administrative Appeals XII.B" button. If your agency is centralized, add one component entry and select the agency abbreviation. All fields are required. Agency Overall fields will populate automatically.

This section requires agencies and agency components to report information about consultations that they have received from other agencies as well as those received from other components within their own agency. Agencies and agency components should be careful to report only consultations received from other agencies or from other components of their agency, and to not include consultations that they have *sent* to other agencies and/or components. The following items must be captured for this section in the NIEM-XML:

- Number of Consultations Received from Other Agencies that Were Pending at Agency As of Start of the Fiscal Year: Provide the number of consultations that were pending at your agency as of the start of the relevant fiscal year. If the number reported in this section for a component and/or agency does not match what was reported as pending as of the end of the fiscal year from the prior year's Annual FOIA Report, the agency should include a footnote briefly explaining the discrepancy.

- Number of Consultations Received from Other Agencies During the Fiscal Year: Provide the number of consultations received from other agencies and components during the relevant fiscal year.

- Number of Consultations Received from Other Agencies that Were Processed by the Agency During the Fiscal Year: Provide the number of consultations received from other agencies and components that were closed in the relevant fiscal year.

- <u>Number of Consultations Received from Other Agencies that Were Pending at the Agency As of End of the Fiscal Year</u>: Provide the number of consultations received from other agencies or components that were pending at your agency at the end of the fiscal year. *The sum of the number pending at the start of the fiscal year (the second field) and the number received during the fiscal year (the third field), minus the number processed during the fiscal year (the fourth field), must equal the number pending as of the end of the fiscal year (the fifth field).* In the FOIA.gov Annual Report Tool, this number is automatically generated based on the other three values. If the number reported in the last field does not reflect the number actually pending at your agency as of the end of the fiscal year, one of the other numbers must be inaccurate and you must review and correct that other number.

Section XII.C.: Consultations on FOIA Requests – Ten Oldest Consultations Received from Other Agencies and Pending at Agency

Screenshot of the FOIA.gov Annual Report Tool

Add all components that are designated to receive requests by clicking the "Add Oldest Days" button. If your agency is centralized, add one component entry and select the agency abbreviation. All fields are required. **Agency Overall data must be manually entered.**

As with the above, this section requires agencies and agency components to report information about consultations that they have received from other agencies as well as those received from other components within their own agency. Agencies and agency components should be careful to report only consultations received from other agencies or from other components of their agency, and to not include consultations that they have *sent* to other agencies and/or components.

The following information for each of the ten oldest consultations received from other agencies or agency components that are pending as of the end of the relevant fiscal year must be captured for this section in the NIEM-XML:

- Date: The date the consultation was received at your agency from another agency or component of the same agency. The date must be formatted as YYYY-MM-DD. If there are no pending consultations or fewer than ten, enter "N/A" for the Date of Receipt.

- Number of Days: The number of working days the consultation was pending at your agency as of the end of the relevant fiscal year. If there are no pending consultations or fewer than ten, enter "0" for the Number of Days Pending.

Section XII.D.(1).: Comparison of Numbers of Requests from Previous and Current Annual Report

Screenshot of the FOIA.gov Annual Report Tool

Add all components that are designated to receive requests by clicking the "Add FOIA Requests and Administrative Appeals XII. Received and Processed" button. If your agency is centralized, add one component entry and select the agency abbreviation. All fields are required. Agency Overall data will automatically populate.

The following items must be captured for this section in the NIEM-XML:

- Number Received During Fiscal Year from Last Year's Annual Report: Provide the number of requests the agency reported as received from Section V.A. of the prior year's Annual FOIA Report.

- Number Received During Fiscal Year from Current Annual Report: Provide the number of requests the agency received during the relevant reporting year. This must be the same number reported in Section V.A.

- Number Processed During Fiscal Year from Last Year's Annual Report: Provide the number of requests the agency reported as processed from Section V.A of the prior year's Annual FOIA Report.

- Number Processed During Fiscal Year from Current Annual Report: Provide the number of requests the agency processed during the relevant reporting year. This must be the same number reported in Section V.A.

Section XII.D.(2).: Comparison of Backlogged Requests from Previous and Current Annual Report

Screenshot of the FOIA.gov Annual Report Tool

Add all components that are designated to receive requests by clicking the "Add FOIA Requests and Administrative Appeals XII. Backlogged" button. If your agency is centralized, add one component entry and select the agency abbreviation. All fields are required. Agency Overall data will automatically populate.

The following items must be captured for this section in the NIEM-XML:

- Number of Backlogged Requests As of End of the Fiscal Year from Previous Annual Report: The number of requests the agency reported as backlogged from Section XII.A of the prior year's Annual FOIA Report.

- Number of Backlogged Requests As of End of the Fiscal Year from Current Annual Report: The number of requests pending in the agency's backlog as of the end of the fiscal year for the current Annual FOIA Report. This must be the same number reported in Section XII.A.

Section XII.E.(1).: Comparison of Numbers of Administrative Appeals from Previous and Current Annual Report

Screenshot of the FOIA.gov Annual Report Tool

Add all components that are designated to receive administrative appeals by clicking the "Add FOIA Requests and Administrative Appeals XII. Received and Processed" button. If your agency is centralized, add one component entry and select the agency abbreviation. All fields are required. Agency Overall data will automatically populate.

The following items must be captured for this section in the NIEM-XML:

- Number Received During Fiscal Year from Last Year's Annual Report: The number of administrative appeals the agency reported as received from Section VI.A of the prior year's Annual FOIA Report.

- Number Received During Fiscal Year from Current Annual Report: The number of administrative appeals the agency received during the relevant reporting year. This must be the same number reported in Section VI.A.

- Number Processed During Fiscal Year from Last Year's Annual Report: The number of administrative appeals the agency reported as processed from Section VI.A of the prior year's Annual FOIA Report.

- Number Processed During Fiscal Year from Current Annual Report: The number of administrative appeals the agency processed during the relevant reporting year. This must be the same number reported in Section VI.A.

Section XII.E.(2).: Comparison of Backlogged Administrative Appeals from Previous and Current Annual Report

Screenshot of the FOIA.gov Annual Report Tool

Add all components that are designated to receive administrative appeals by clicking the "Add FOIA Requests and Administrative Appeals XII. Received and Processed" button. If your agency is centralized, add one component entry and select the agency abbreviation. All fields are required. Agency Overall data will automatically populate.

The following items must be captured for this section in the NIEM-XML:

- Number of Backlogged Appeals As of End of the Fiscal Year from Previous Annual Report: The number of administrative appeals the agency reported as backlogged from Section XII.A of the prior year's Annual Report.

- Number of Backlogged Appeals As of End of the Fiscal Year from Current Annual Report: The number of administrative appeals pending in the agency backlog as of the end of the fiscal year for the current Annual FOIA Report. This must be the same number reported in Section XII.A.