



THE DEPARTMENT OF JUSTICE FREEDOM OF INFORMATION ACT 2021 LITIGATION AND COMPLIANCE REPORT

DESCRIPTION OF DEPARTMENT OF JUSTICE EFFORTS TO ENCOURAGE AGENCY COMPLIANCE WITH THE FREEDOM OF INFORMATION ACT

The Freedom of Information Act (FOIA) requires the Department of Justice to submit a report to Congress each year detailing the Department's efforts to encourage agency compliance with the law. 5 U.S.C. § 552(e)(6) (2018). During 2021, the Department of Justice, through its Office of Information Policy (OIP), continued to engage in a wide range of activities to encourage agency compliance with the FOIA throughout the Executive Branch, despite the ongoing COVID-19 pandemic. OIP provided comprehensive guidance, training, counseling, and other resources to agencies concerning the administration of the FOIA. The Department calls on federal agencies to administer the law with a presumption of openness, to utilize technology to achieve greater efficiencies, and to work to make more information available proactively, so that the public is better informed about what is known and done by their government.

During 2021, agency FOIA offices continued balancing our important missions with necessary public health and safety precautions. As detailed throughout this report, OIP continues to take several actions to support agencies in their efforts to advance FOIA administration and mitigate the impacts of the pandemic on their FOIA programs. For example, OIP continued to provide frequent fully remote FOIA trainings to agency FOIA professionals, making training accessible to FOIA professionals and managers across the country. Another highlight of 2021 was OIP's continued updates to the *Department of Justice Guide to the Freedom of Information Act*, a legal treatise on the FOIA used by government personnel and the public. OIP's subject matter experts took into account recent changes in the FOIA, hundreds of FOIA court decisions, and recent guidance issued by OIP to continue its rolling updates to this preeminent reference document. OIP also continued to enhance FOIA.gov for both agencies and the public, by making further improvements to the reporting tools agencies use to provide Annual and Quarterly FOIA Report data to the Department and by releasing updated Data pages available to the public.

OIP also managed the submission of agencies' Fiscal Year 2021 Annual FOIA Reports as well as their 2021 Chief FOIA Officer Reports, which are compiled based on guidance developed by OIP each year. After the submission of the 2021 Chief FOIA Officer Reports, OIP prepared a comprehensive summary of the efforts made by agencies to comply with the FOIA and with the [Department of Justice's FOIA Guidelines](#). See 74 Fed. Reg. 51879 (Oct. 8, 2009). For all agencies receiving more than fifty FOIA requests during the prior fiscal year, OIP once again assessed the efforts made by those agencies. OIP also managed the quarterly reporting requirement instituted in 2013 for all agencies on four key FOIA statistics that are displayed in one central location on [FOIA.gov](#), the Department's government-wide, comprehensive FOIA website.

These are just some examples of the many efforts OIP engaged in this past year to improve agencies' FOIA administration and to encourage compliance with the law. A full summary of OIP's efforts, as required by subsection (e)(6) of the FOIA, is set forth below.

A. Policy Guidance

One of the primary means by which the Department of Justice encourages compliance with the FOIA is through the issuance of policy guidance designed to ensure that the Act is being properly implemented across the government. During 2021, OIP continued to provide comprehensive guidance to federal agencies, addressing a range of issues related to the FOIA. This policy guidance was provided in writing and made available to agencies and the public in the [OIP Guidance](#) section of OIP's website. In addition to issuing guidance, during 2021, OIP worked directly with agencies and held multiple government-wide conferences to discuss the continued implementation of the Department's FOIA Guidelines and OIP policy guidance.

OIP Guidance: The Supreme Court's Exemption 5 Ruling in United States Fish & Wildlife Service v. Sierra club, Inc

On March 4, 2021, the Supreme Court issued its decision in United States Fish & Wildlife Service v. Sierra Club, Inc., 141 S. Ct. 777 (2021), in which it underscored important principles that agencies should consider in their application of Exemption 5's deliberative process privilege. Exemption 5 protects "inter-agency or intra-agency memorandums or letters which would not be available by law to a party other than an agency in litigation with the agency." 5 U.S.C. § 552(b)(5). On September 29, 2021, OIP issued [guidance](#) to assist agencies in understanding the Supreme Court's decision.

OIP's guidance explains that while the Supreme Court's decision does not modify existing standards for applying the deliberative process privilege, it does reemphasize and clarify important principles that agencies should consider when applying the deliberative process privilege under Exemption 5. A key consideration in determining whether a record is "final" is whether the document communicates a policy or position on which the agency has settled. To determine whether an agency has settled on a particular policy or position for purposes of the deliberative process privilege, the agency should consider the "real operative effect" of the record by looking at the record's legal consequences rather than its practical consequences.

*2021 FOIA Litigation and Compliance Report
United States Department of Justice*

Updated Guidance for Quarterly Reporting

Since January 2013, in accordance with Office of Information Policy (OIP) [guidance](#), agencies have been reporting quarterly on four key FOIA statistics to the Department of Justice by making this information available on FOIA.gov. On October 4, 2021 OIP issued new [guidance](#) updating how agencies should fulfill the quarterly reporting requirement. Agency Managers now directly input quarterly data into FOIA.gov using their FOIA.gov accounts. The new method provides a more straightforward and less resource-intensive process for reporting quarterly FOIA statistics to the public.

OIP Guidance on Chief FOIA Officer Reports

The [Department's FOIA Guidelines](#) call on agency Chief FOIA Officers to review their agencies' FOIA administration annually and to report to the Department of Justice on the steps taken to achieve improved transparency. OIP is responsible for providing guidance to agencies on the content of their Chief FOIA Officer Reports. The guidance that OIP first issued [in September 2009](#), and has expanded upon in each subsequent year, consistently requires agencies to address five distinct topics all tied to the key areas covered in the [Department's FOIA Guidelines](#). First, each agency is required to describe the steps it has taken to apply the presumption of openness. Second, agencies are required to describe the steps taken to ensure that they have an effective and efficient system in place to respond to requests. Third, agencies are required to describe their efforts to increase proactive disclosures. Fourth, agencies are required to describe the steps taken to improve the use of technology in administering the FOIA. Fifth and finally, agencies are required to provide information about any backlog of requests or appeals and the steps being taken to reduce those backlogs and improve timeliness.

Each year, as agencies' implementation of the [Department's FOIA Guidelines](#) has matured, OIP has modified the requirements for the Chief FOIA Officer Reports to build on the improvements made in previous years. For example, with regard to the first section of the Chief FOIA Officer Report on applying the presumption of openness, OIP began by asking agencies to report on what steps were taken to ensure that the presumption is being applied to all decisions involving FOIA. OIP has since added more granularity to this section by requiring agencies to report on their efforts to provide FOIA training to both FOIA professionals and program personnel, their efforts to conduct outreach with the requester community, and any other steps taken to apply the presumption of openness.

On September 30, 2021, OIP [issued new guidance](#) to agencies on the content of their 2022 Chief FOIA Officer Reports. OIP continued to provide separate questions for lower-volume agencies receiving 50 requests or less and higher-volume agencies receiving more than 50 requests. As in prior years, for 2022 OIP did not require lower-volume agencies receiving 50 requests or less to provide a Chief FOIA Officer Report if the agency believes that their Annual FOIA Report provides a sufficient accounting of their efforts to effectively and efficiently administer the FOIA. Providing separate reporting requirements allows OIP to more easily address the different circumstances and challenges faced by those agencies with smaller-volume FOIA workloads, while continuing to focus in-depth on those agencies that receive a higher-volume of FOIA requests. For example, high-volume agencies are required to provide details about their use of technology, steps taken to increase proactive

disclosures, and efforts to reduce backlogs, while small-volume agencies have the option to describe any of the steps they have taken to improve their FOIA administration.

As in previous years, OIP adjusted the questions for the [2022 Chief FOIA Officer Report Guidelines](#) based on agencies' success in meeting a number of milestones over the years, as well as to address newer challenges and to incorporate input from various stakeholders. Updating the questions each year allows OIP, as well as the agencies themselves, to identify best practices and common challenges as we continue to refine our FOIA processes. For 2022, OIP modified or added new questions to all five sections of the Chief FOIA Officer Report.

Specifically, Section I asks agencies to identify steps they have taken to apply the presumption of openness, including through leadership, outreach, and training. New for 2022, OIP asked agencies to indicate whether agency FOIA personnel attended training in federal records management. Finally, OIP asked agencies to indicate if senior leaders at the agency received a briefing on the agency's FOIA resources, obligations, and expectations during the FOIA process.

Section II of the Chief FOIA Officer Report addresses the need for effective systems to respond to FOIA requests. New for 2022, OIP asked agencies whether they maintained up-to-date internal Standard Operating Procedures (SOPs) for FOIA administration and, if not, to provide timeline for developing or updating SOPs. OIP also asked agencies to describe alternative means of access to first-party requested records outside of the FOIA process. If not, agencies are asked to specify whether such opportunities exist at the agency and whether there are any challenges in establishing alternative means of access. Agencies were also asked to describe self-assessments of its FOIA administration and, specifically, to highlight any data analysis methods or technologies used to assess the agency's FOIA program. Finally, OIP asked agencies whether they had reviewed their FOIA-related staffing capabilities to identify resources needed to respond to current and anticipated FOIA demands.

Section III of the Chief FOIA Officer Report asks agencies to describe the steps taken to increase proactive disclosures. New for 2022, OIP asked agencies to describe the steps taken to identify, track, and post (a)(2) proactive disclosures. Agencies were also asked if they disseminate common types of material outside of FOIA, including in online databases where the public may access them. Additionally, OIP asked agencies if their proactive disclosure process involved collaboration with agency staff outside the FOIA office.

Section IV asks agencies to report on their use of technology to improve efficiency in processing. In 2022, OIP asked agencies to indicate whether they reviewed FOIA-related technological capabilities to identify the resources needed to respond to current and anticipated FOIA demands. Additionally, OIP asked agencies to describe any new types of technology used during the reporting period to support their FOIA programs.

Section V asks agencies to discuss steps taken to improve timeliness in responding to requests and reducing any backlogs. To assess the ongoing impact of the COVID-19 pandemic, OIP asked agencies to indicate whether the impact of COVID-19 and workplace and safety precautions contributed to request and appeal backlogs.

*2021 FOIA Litigation and Compliance Report
United States Department of Justice*

March 2021 marked the twelfth year that agencies submitted to OIP their [Chief FOIA Officer Reports](#) describing the steps taken to improve their FOIA operations and to facilitate information disclosure. Agencies submitted their 2021 Chief FOIA Officer Reports to OIP for review in early 2021. OIP conducted a comprehensive review of all the reports to ensure compliance with the reporting guidelines and worked with the agencies to resolve any issues in their reports prior to clearing them for posting. After the Chief FOIA Officer Reports were posted during Sunshine Week of 2021, OIP compiled a [Summary and Assessment of Agency 2021 Chief FOIA Officer Reports](#), discussed in greater detail in Section B, Efforts to Promote Agency Accountability, below.

OIP Guidance on Annual FOIA Reports

To assist agencies with their statutory reporting obligations, OIP continued to update and disseminate its comprehensive [Annual FOIA Report Handbook](#). The Handbook includes all of the legal, procedural, and technical requirements concerning agency Annual FOIA Reports. The Handbook contains instructions for using the FOIA.gov Annual FOIA Report Tool developed by the Department and centralizes all of the guidance and instructions for agency Annual FOIA Reports into one resource designed for both agency FOIA professionals and those professionals responsible for producing the Annual FOIA Report after the end of each fiscal year. The Handbook is a "living document" that OIP will continue to update as changes to legal, procedural, or technical requirements are made. OIP released the latest version of the handbook October 7, 2021.

In 2021, OIP continued to make available a [raw data template](#) to assist agencies in compiling and posting the raw data from their Annual FOIA Reports, along with its [guidance](#) issued during 2016 addressing the requirements of the *FOIA Improvement Act of 2016*.

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

As was done with the Chief FOIA Officer Reports, OIP managed the submission of agency Annual FOIA Reports by first reviewing all Annual FOIA Reports in draft form, then working with the agencies to resolve any issues, and finally clearing the reports for posting. As further discussed below, in 2021 OIP created and made available on its website a [summary](#) of the key statistics reported by agencies in their Fiscal Year 2020 [Annual FOIA Reports](#).

OIP Guidance for Further Improvement Based on 2021 Chief FOIA Officer Report Review and Assessment

As noted above, in 2021 OIP conducted a detailed [assessment](#) of agencies' progress in improving transparency and implementing the [Department's FOIA Guidelines](#) based on a review of their [2021 Chief FOIA Officer Reports](#) and the data reported in their [Fiscal Year 2020 Annual FOIA Reports](#). As a result of this review and assessment, on September 21,

2021, OIP issued [guidance](#) for all agencies to assist them in making additional improvements in the years ahead.

OIP's [assessment](#) revealed that most medium and high-volume agencies reported that greater than 80% of their FOIA professionals attended substantive FOIA training. However, thirteen agencies reported that less than 80% of their FOIA professionals attended substantive FOIA training. Recognizing COVID-19 made traditional in-person FOIA training difficult, OIP encouraged agencies to leverage digital training resources and virtual conferences as a means of reaching a wider audience. Further, OIP advised agencies that needed additional assistance with FOIA trainings to utilize the training provided by OIP or contact OIP directly to coordinate training specific to the needs of their agency.

Additionally, OIP emphasized the importance of planning ahead and leveraging lessons learned to reduce backlogs and processing times. OIP noted that agencies' FOIA programs continued to be affected by the COVID-19 pandemic. Accordingly, OIP advised agencies that experienced backlog increases during Fiscal Year 2020 or that were unable to close their ten oldest requests, appeals, or consultations to continue focusing on these key metrics.

Further, OIP found that sixty-three high and medium volume agencies maintained FOIA standard operating procedures (SOP). Given the importance of a consistent FOIA process, OIP encouraged all agencies to develop and regularly maintain SOPs to assist in implementing the FOIA's requirements. OIP noted that agencies may use [OIP's Self-Assessment Toolkit](#) as a resource when creating or updating SOPs. More importantly, OIP encouraged agencies to regularly update their SOPs to reflect changes in policy or law and to review SOPs at least annually. To ensure SOPs are up to date, OIP encourages agencies to review their SOP at least annually.

Finally, OIP emphasized the importance of updating agency FOIA regulations. While a majority of agencies had published updated regulations in the Federal Register, OIP found several agencies were still in the process of fulfilling the requirement. Consequently, OIP encouraged all agencies that had not updated their regulations in accordance with the *FOIA Improvement Act of 2016* to do so as soon as feasible. Agencies were encouraged to consult OIP's [Guidance for Agency FOIA Regulations](#) and accompanying [Template](#) which includes sample regulatory language.

B. Efforts to Promote Agency Accountability

The Department of Justice, through OIP, has engaged in a number of efforts to keep agencies accountable for their administration of the FOIA. During 2021, these efforts included publishing a [summary and detailed assessment](#) of agencies' progress based on the [2021 Chief FOIA Officer Reports](#), posting a detailed [summary of agencies' Fiscal Year 2020 Annual FOIA Reports](#), and overseeing the government-wide [quarterly FOIA reporting requirement](#).

Summary of 2021 Chief FOIA Officer Reports and Assessment of Agency Progress

*2021 FOIA Litigation and Compliance Report
United States Department of Justice*

As discussed in the Policy Guidance section above, 2021 marked the twelfth year in which agencies submitted their Chief FOIA Officer Reports to the Department of Justice. These reports detail each agency's efforts throughout the year to implement the Department's FOIA Guidelines. After reviewing all of the 2021 Chief FOIA Officer Reports for completeness and clearing them for posting, OIP undertook an extensive analysis of the reports to determine the government's overall progress in implementing the Department's FOIA Guidelines and to identify any areas for improvement. As a result of this analysis, on September 21, 2021, OIP issued a [comprehensive Summary of Agency Chief FOIA Officer Reports for 2021 and Assessment of Agency Progress in FOIA Administration with OIP Guidance for Further Improvement](#).

OIP's [Summary](#) of the Chief FOIA Officer Reports provides a wealth of examples from large and small agencies describing the various efforts made to implement each of the key areas addressed in the [Department's FOIA Guidelines](#). Based on the review of the 2021 reports, the summary highlights key areas in which further improvements can be made. For 2021, OIP emphasized the importance of FOIA training for FOIA professionals and agency program personnel, planning ahead and leveraging lessons learned to reduce backlogs and processing times, maintaining and updating SOPs, and updating agency FOIA regulations in accordance with the *FOIA Improvement Act of 2016*.

In addition to the narrative, OIP for the eighth year, created a detailed [assessment](#) of the efforts made by agencies in implementing the [Department's FOIA Guidelines](#) and improving FOIA administration. Focusing on those agencies that receive higher numbers of requests, OIP's assessment covered agencies that received more than 50 requests during the prior fiscal year. In conducting this assessment, OIP identified and scored each of the agencies on several milestones tied directly to the five key areas addressed in the Department's FOIA Guidelines. As in past years, with input from interested stakeholders, OIP continued to refine the milestones in 2021 to reflect agencies' progress in administering the FOIA. OIP used a five-level scoring system to illustrate the levels of success achieved by agencies and included a detailed methodology of how each milestone was scored.

The issuance of this [assessment](#) was designed to promote greater accountability in implementing DOJ's FOIA Guidelines, and to encourage improvement in the government's overall FOIA administration, while also showcasing some of the progress made by agencies over the past year. The assessment illustrates the many areas where agencies have made real progress as well as those areas where further improvements can be made. By assessing agencies on a wide variety of factors that all contribute to improving information disclosure, the public, as well as the agencies themselves, can readily see where agencies have excelled, and where further work can still be done, in improving the administration of the FOIA.

Summary of Agency Annual FOIA Reports and FOIA.gov

As noted above, each year agencies are required by law to submit an Annual FOIA Report to the Attorney General. These reports detail a range of statistics regarding each agency's FOIA activities, such as the numbers of requests received and processed, and the time taken to process them. In addition to issuing guidance to agencies on the content of these reports and reviewing them for completeness, OIP, in accordance with [5 U.S.C. § 552\(e\)\(4\)](#), compiles and posts all agency Annual FOIA Reports in a "single electronic access

point," by posting them on the [Reports](#) page of its website. For Fiscal Year 2020, 119 reports were submitted and centrally posted on [OIP's website](#).

During 2021, OIP also uploaded the data for agencies' [Fiscal Year 2020 Annual FOIA Reports](#) onto [FOIA.gov](#), the Department's comprehensive, government-wide FOIA website. In addition to many other features, [FOIA.gov](#) shines a light on agencies' administration of the FOIA by taking the detailed statistics contained in the Annual FOIA Reports and allowing them to be easily be sorted and compared by agency and over time.

In order to provide a snapshot of government-wide FOIA activity, every year as part of its review of agencies' Annual FOIA Reports, OIP issues a detailed summary of the information contained in these reports for the given fiscal year. In 2021, OIP issued its [Summary of Annual FOIA Reports for Fiscal Year 2020](#). The Summary highlights the numbers of requests received and processed by agencies, the disposition of those requests, and details concerning the time taken by agencies to respond. The Summary also provides details about the numbers of consultations and administrative appeals received and processed, as well as data on backlogs of requests and appeals. Finally, the Summary provides overall figures for the numbers of personnel working on FOIA and the costs to the government. For the tenth year, OIP prepared this Summary by using [FOIA.gov](#), which allows for a detailed analysis of statistics that was not readily available prior to creation of the site. This yearly Summary of Agency Annual FOIA Reports is useful for both agency personnel and open government groups who continue to look forward to its issuance each year.

By allowing the data from agency Annual FOIA Reports to be more easily compared across agencies and over time, the Department is ensuring that agencies are accountable for their FOIA administration and that the government is fully transparent concerning its FOIA responsibilities.

Quarterly Reporting Requirement

Pursuant to the [Quarterly FOIA Reporting](#) requirement instituted by OIP in January 2013, OIP continued to facilitate agencies' quarterly reporting of FOIA data in 2021. In accordance with OIP's [quarterly report guidance](#), as updated in October 2021, agencies are required to input their quarterly data into FOIA.gov so that it then collectively appears on the [FOIA.gov Quarterly Data page](#). The quarterly data consists of: (1) the number of requests received during the reporting period; (2) the number of requests processed during the reporting period; (3) the number of requests in an agency's backlog at the end of the reporting period; and (4) the progress being made to close the agency's ten overall oldest pending FOIA requests from the prior fiscal year. This quarterly reporting of FOIA data allows for a more real-time assessment of the flow of FOIA requests handled by the government throughout the year. The quarterly reporting of these key FOIA statistics not only provides the public with more timely access to important FOIA data, but it also assists agencies and agency components in actively assessing the state of their FOIA caseloads through the year in order to take the appropriate measures to reduce backlogs and improve timelines.

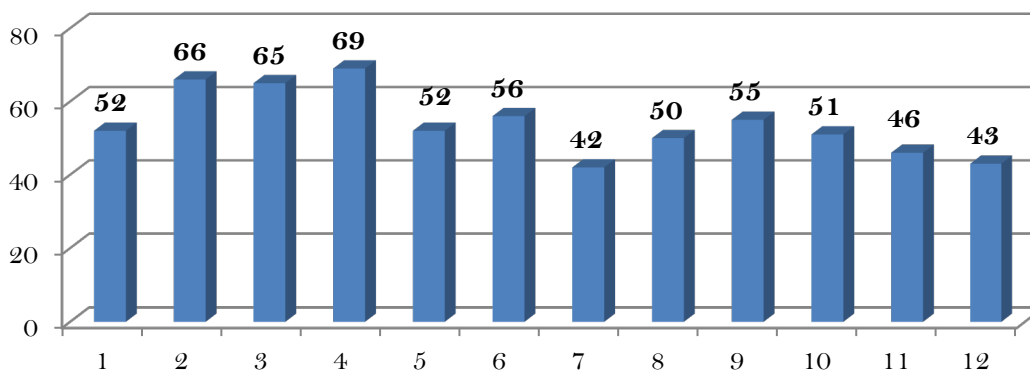
C. Counseling and Consultations

*2021 FOIA Litigation and Compliance Report
United States Department of Justice*

In addition to providing written policy guidance to agencies, OIP also provided [direct, one-on-one counseling](#) for agency personnel during 2021, as a further means of encouraging agency compliance with the FOIA. OIP's counseling activities were conducted largely over the telephone by experienced OIP attorneys known to FOIA personnel throughout the Executive Branch as "FOIA Counselors." Through this [FOIA Counselor Service](#), OIP provided confidential legal advice and policy guidance to FOIA personnel government-wide. OIP has established a special telephone line to facilitate its [FOIA Counselor Service](#) – (202) 514-3642 (514-FOIA) – which it publicizes widely. While most of this counseling was conducted by telephone, other options were made available as well. The counseling services provided by OIP during the year are summarized below.

OIP provided [FOIA Counselor](#) guidance to agencies on a broad range of FOIA-related subjects, including guidance pertaining to managing the impacts of COVID-19 and the continued implementation of FOIA policy guidance. Most of the [FOIA Counselor](#) calls received by OIP involve issues regarding proposed agency responses to initial FOIA requests or administrative appeals, but many are more general anticipatory inquiries regarding agency responsibilities and administrative practices under the FOIA. The Department of Justice encourages agencies intending to deny FOIA requests raising novel issues to consult with OIP to the extent practicable. See [28 C.F.R. § 0.24\(i\) \(2018\)](#). OIP has found that such consultations are very valuable in ensuring agency compliance with the FOIA. OIP handled 647 requests for agency guidance through its FOIA Counselor service during 2021.

Agency Calls to the FOIA Counselor by Month in 2021



Sometimes a determination is made that a [FOIA Counselor](#) inquiry requires more extensive discussion and analysis by OIP attorneys, including supervisory attorneys. On those occasions, OIP convenes a meeting or teleconference between agency representatives and senior OIP staff to thoroughly discuss and resolve all factual, legal, and policy issues related to the matter. OIP conducts similar discussions within the Department of Justice as well.

An additional counseling service provided by OIP pertains to FOIA matters in litigation, where advice and guidance are provided at the request of the Department's litigating divisions. This service involves OIP's review of the issues and proposed litigation positions in a case from both legal and policy standpoints. Further, OIP is consulted in all instances in which the Department must decide whether to pursue a FOIA or FOIA-related

issue on appeal. OIP is regularly consulted on all FOIA cases, as well as all FOIA-related issues, that are handled by the Office of the Solicitor General.

OIP also makes itself available to advise agencies on their FOIA processes generally, on matters such as incorporating quality assurances into their workflows and using active case management to ensure an effective system for responding to requests. OIP may provide this advice in response to specific requests from agencies or more informally in the context of other discussions.

In addition to providing legal advice to agencies, OIP also frequently receives calls from the public as well. Often these individuals contact OIP with questions about how to make a FOIA request or locate a particular document. OIP staff assists these callers and continues to serve as a resource where anyone can call and learn about the FOIA process. During 2021, OIP handled 738 calls from members of the public.

D. Disseminating Information through *FOIA Post*

During 2021, OIP continued to disseminate a wide variety of news and information using the [FOIA Post blog](#). *FOIA Post* allows for quick transmittal of the most up-to-date FOIA news and information to both the public and government personnel. The blog includes a search feature that allows users to use key terms to search through all of OIP's blog posts for any information that is of particular interest. Similar full-text search tools are also provided for archived articles and guidance issued through predecessor publications. All the OIP guidance articles issued in 2021 were disseminated to agencies – and made available to the public – through announcements on *FOIA Post*. OIP also used *FOIA Post* to announce the issuance of the abovementioned Annual FOIA Report [summary](#), new Chief FOIA Officer Report [guidelines](#), FOIA [reporting deadlines](#), and other relevant FOIA news. All training programs and FOIA conferences were likewise publicized on *FOIA Post*. Set out below are some highlights of OIP's use of *FOIA Post* to communicate with the FOIA community.

Announcing Upcoming FOIA Reporting Deadlines

OIP continued to use [the FOIA Post announcement](#) to provide deadlines for the submission of agencies' Fiscal Year 2021 Annual FOIA Reports, Fiscal Year 2022 Quarterly FOIA Reports, and 2022 Chief FOIA Officer Reports. As mentioned previously, the three reports serve a vital role in illustrating the steps taken and the progress made by agencies in administering the FOIA, and provide valuable information about how agencies promote efficiency, make more information available proactively, and use technology to improve FOIA administration.

Best Practices Workshops

OIP continued to use *FOIA Post* to [announce](#) FOIA *Best Practices* workshops held throughout the year. As part of the [Second United States Open Government National Action Plan's](#) commitment to further modernize FOIA and improve internal agency FOIA processes, OIP began holding a series of FOIA *Best Practices* workshops in 2014, and continued the workshops in 2021. Each workshop in the Best Practices series focuses on a specific FOIA topic, with a panel of representatives sharing experiences, lessons learned,

*2021 FOIA Litigation and Compliance Report
United States Department of Justice*

and strategies for success in these areas. Through these workshops, agencies can continue to learn from one another and leverage the successes of others in their own organizations for the overall benefit of FOIA administration across the government.

In 2021, OIP hosted two virtual [workshops](#) focused on FOIA administration during the pandemic for both Intelligence Community (IC) and non-IC community agencies. The first workshop was attended by more than 200 federal FOIA personnel and highlighted the unique ways in which IC agency FOIA processing has been impacted by pandemic health and safety precautions, owing to each IC agency's unique missions, records, and practices. The second workshop covered how federal agencies adapted to changes in workplace precautions in the early days of the pandemic, what they are doing currently, and discussed what the future may hold for FOIA administration post-pandemic. Key points from all workshops are posted on OIP's [Best Practices Workshops page](#).

Sunshine Week Events

OIP used *FOIA Post* to [announce](#) the Department of Justice's 2021 Sunshine Week Kick-off Event. In the DOJ FOIA Guidelines, the Department emphasized the critical importance of FOIA professionals to the day-to-day implementation of the law. At its annual Sunshine Week event, the Department once again recognized and celebrated the accomplishments of these agency FOIA professionals. Agencies were [invited](#) to nominate FOIA professionals for various awards recognizing their service. At the event, the Department presented awards for Exceptional Service by a FOIA Professional or Team of FOIA Professionals, Outstanding Contributions by a New Employee, Exceptional Advancements in IT to Improve the Agency's FOIA Administration, Exceptional Advancements in Proactive Disclosure of Information, and a Lifetime Service Award.

2021 marked the Department's first entirely virtual Sunshine Week kickoff event. It began with a message from the Attorney General, who emphasized that "[t]he principles of open government and democratic accountability are at the heart of who we are as public servants and as Americans." The Acting Associate Attorney General, the Department's Chief FOIA Officer, provided keynote remarks recognizing the important work of the dedicated FOIA professionals across the government. The Director of OIP then highlighted OIP's efforts to assist agencies in their FOIA administration over the last year. The efforts included transitioning the Department's FOIA training to fully remote courses and providing FOIA Counselor Services for more than 800 requests from federal agencies. The Director also highlighted many agency achievements over the past year as reported in their Chief FOIA Officer reports.

Chief FOIA Officer Council Updates

OIP continued to use *FOIA Post* to provide updates related to the CFO Council, which is co-chaired by the Director of OIP. OIP used *FOIA Post* to announce CFO Council meetings and related best practices workshops in [April](#), [February](#), and [November](#). OIP also [announced](#) the posting of the CFO Council Technology Committee's working group charters and [announced](#) the release of a [white paper](#) issued by the FOIA Searches working group. The [paper](#) presented key findings from the group's research over the past fiscal year into search and technology considerations for FOIA professionals.

The [paper](#) raised awareness of search-related challenges for ongoing discussion and collaboration. OIP encouraged agency FOIA professionals and members of the public to read the [white paper](#) for further insight into the Working Group's research and findings.

New Guidance on Exemption 5 of the FOIA and the Deliberative Process Privilege

In 2021, OIP also used *FOIA Post* to [announce](#) new guidance following significant developments in FOIA. For instance, in September 2021, OIP [announced new guidance](#) after the Supreme Court decision in *U.S. Fish & Wildlife Service v. Sierra Club*, as discussed above in Subsection A, Policy Guidance. OIP's [announcement](#) contained a brief summary of the decision and [links](#) to more detailed guidance. OIP encouraged agencies to contact OIP's FOIA Counselor Service with any questions regarding the guidance article.

Request for Public and Agency Input on FOIA.gov

In 2021, OIP used *FOIA Post* to [announce](#) its second collaboration with GSA's 18F team to examine the next phase of development for FOIA.gov with features such as a guided user experience or the ability to check the status of requests. Given the public-facing nature of the project, OIP used *FOIA Post* to seek both agency and public user feedback to improve the overall experience on [FOIA.gov](#) through the new features. For more information about this project and FOIA.gov generally, see Subsection G, Additional Government-wide Initiatives to Further Improve the Administration of the FOIA.

Update to FOIA.gov: FOIA Data Page Updates

In March 2021, OIP [announced](#) that it has recently upgraded the Annual Report [Data](#) page on [FOIA.gov](#), along with announcing the availability of Fiscal Year 2020 data. The new page has a user-friendly design that enables the public to search individual agency or component data, compare data from several agencies, and gather government-wide data. The revamped page combines the previously available Basic and Advanced Report features into a single interface that is more intuitive and mobile-friendly. Users can search across all data points in the agency Annual FOIA Reports since Fiscal Year 2008. The results can be viewed on the page or downloaded as a .csv file.

E. Use of Social Media

In an effort to reach a wider audience and disseminate important FOIA information as soon as practical OIP continued to use its [Twitter](#) account during 2021 to notify the public of the Office's activities and the most recent FOIA news. Twitter continues to be an efficient tool for OIP and other agencies to proactively disclose information online. In first [announcing the use of Twitter](#) through *FOIA Post*, OIP noted that "[a]s agencies and offices continue to proactively disclose information online, it is important that the public be made aware of such releases [and that] . . . [s]ocial media offers government offices an efficient way to notify the public of proactive disclosures." OIP also noted that "by utilizing social media, agencies can rapidly convey information to a broad audience, in a timely fashion, keeping with the FOIA's goal of letting the public know what their government is doing."

F. Providing Additional FOIA Reference Materials

In addition to using [FOIA Post](#) to timely disseminate policy guidance and other useful information concerning the FOIA, OIP also creates or makes available additional FOIA reference materials for agencies to use.

Department of Justice Guide to the Freedom of Information Act

The preeminent reference document created by OIP is the [United States Department of Justice Guide to the Freedom of Information Act](#). This online publication is a legal treatise on the FOIA and is widely relied upon, as intended, by government personnel. Members of the public also consult it. The Guide contains an extensive discussion of the case law interpreting the FOIA's many procedural requirements, its exemptions and other relevant topics such as litigation considerations and reverse FOIA actions.

In 2021, OIP's subject matter experts prepared updates to the [Guide](#), taking into account recent changes in the FOIA, hundreds of court decisions impacting the interpretation of the FOIA, and guidance issued by OIP. The [Guide](#) also contains detailed discussions of the FOIA's procedural requirements, including the fee and fee waiver provisions, exemptions, discretionary releases and waivers, as well as litigation considerations. OIP is currently updating individual chapters on a rolling basis to continue to provide the most up-to-date treatise on the current state of the FOIA. In 2021, OIP posted updated chapters concerning: Procedural Requirements, Exemption 1, Exemption 3, Exemption 4, Exemption 7(B), Exemption 7(F), and Exemption 9.

Resources on Exemption 3 Statutes

OIP has a dedicated section on its website, under [FOIA Resources](#), to address Exemption 3 of the FOIA. This section is designed to offer resources to assist agencies in properly processing FOIA requests and to aid requesters in understanding the scope of Exemption 3. To assist agencies in properly processing requests and in preparing their Annual FOIA Reports, in 2021, OIP continued to make available its chart of all [the statutes that courts have found to qualify as Exemption 3 statutes](#) under the FOIA. This chart, which includes a description of the material covered by the various statutes and the corresponding case citations, is also posted on the FOIA Resources page of OIP's website. OIP also continued to make available its charts reflecting all of the [Exemption 3 statutes cited by agencies in their Annual FOIA Reports](#).

Summaries of Court Decisions

Each year the federal courts issue several hundreds of decisions in FOIA cases, addressing all aspects of the law. These decisions shape the way the law is interpreted and applied by the thousands of attorneys and access professionals across the government who handle FOIA requests, administrative appeals, and litigation. As a resource for those professionals, in addition to substantive and procedural policy guidance, OIP provides agencies as well as the public with [detailed summaries](#) of every FOIA case decided in the United States, at both the district court and appellate levels. For every court decision in its summaries, OIP highlights each FOIA exemption and procedural or litigation-related issue that was discussed in the opinion. Because court decisions play such an important part in

*2021 FOIA Litigation and Compliance Report
United States Department of Justice*

the interpretation of the FOIA and its proper administration, OIP provides these summaries to help ensure that all FOIA professionals have ready and current access to the most recently decided court opinions. All of the summaries are compiled in one central location on the [Court Decisions](#) section of OIP's website. These cases can all be searched by topic, chronologically, and through key words.

Centralized Access to all Agency Annual FOIA Reports

As noted above, agencies are required to compile and submit to the Attorney General an Annual FOIA Report each year in accordance with [5 U.S.C. § 552\(e\)\(1\)](#). As part of its government-wide guidance responsibilities, every year OIP reviews each agency's Annual FOIA Report prior to it being posted. Once they are finalized, OIP makes the agencies' Annual FOIA Reports promptly available on its central electronic site. In 2021, OIP continued this practice of reviewing all agencies' Annual FOIA Reports prior to their being posted. This review was conducted in accordance with a [2002 Government Accountability Office \(GAO\) report](#), which encouraged such discretionary OIP review activities and found that they "have resulted in improvements to both the quality of agencies' annual reports and on-line availability of information." A [follow-up GAO study](#) published in 2004 likewise found improvements in agencies' annual reporting due to OIP's government-wide review efforts.

In accordance with another provision of the FOIA, [5 U.S.C. § 552\(e\)\(4\)](#), and as mentioned above, the Department of Justice in 2021 maintained "[a single electronic access point](#)" for the consolidated availability of the Annual FOIA Reports of all federal agencies. In 2021, OIP posted [all agency Annual FOIA Reports](#) in a human-readable and uniform "open" format on its centralized Annual FOIA Report website, as well as included all the data from the reports on FOIA.gov.

FOIA Self-Assessment Toolkit

OIP continued to make available its [FOIA Self-Assessment Toolkit](#), which was developed as a resource for agencies to use when assessing their administration of the FOIA. OIP has [encouraged](#) agencies to conduct self-assessments to review and improve their FOIA program. By examining their procedures, practices, and results, agencies can improve their FOIA administration by, for instance, streamlining request processing, identifying new ways to use technology, and increasing proactive disclosures.

The [FOIA Self-Assessment Toolkit](#) consists of 13 modules, each focusing on a distinct aspect of the FOIA process, such as Initial Mail Intake, Adjudicating Requests for Expedited Processing, Searching for Responsive Records, Requester Services, FOIA Reporting, and FOIA Websites. It uses an evidence-based approach to help agencies objectively and meaningfully evaluate their performance. During 2021, OIP continued a comprehensive review to update and expand the *Toolkit* as a result of agency feedback and changes to FOIA law and policy. OIP looks forward to releasing the updated version in 2022.

Proactive Disclosures

*2021 FOIA Litigation and Compliance Report
United States Department of Justice*

In keeping with the Department's focus on increasing proactive disclosures, OIP proactively posted a variety of information concerning the FOIA that is useful to both agencies and the public alike on its website. In 2021, OIP continued to update the [FOIA Resources](#) section of its website with the Exemption 3 chart discussed above. As noted above, OIP also posted government-wide [guidance](#) on the FOIA on its website and regularly used its blog, [FOIA Post](#), to notify agencies and the public about new FOIA developments and events. Under the [Court Decisions](#) section of OIP's website, OIP regularly posted summaries of the new FOIA decisions issued by the federal courts. OIP also continued to update the [Training](#) section of its website to notify agency personnel and the public of upcoming FOIA training opportunities and events.

OIP also continued to post [monthly FOIA logs](#) for requests made to OIP and the Offices of the Attorney General, Deputy Attorney General, Associate Attorney General, Legislative Affairs, Public Affairs, and Legal Policy. In addition to posting frequently requested records on [various topics](#), OIP also posted records that had not previously been requested such as a [Summary of Unmanned Aircraft Systems \(UAS\) Operations During Fiscal Year 2021](#).

FOIA Reference Guide

OIP continues to maintain an electronic copy of its [Department of Justice Freedom of Information Act Reference Guide](#) on the Department's FOIA website. This reference guide provides the public with information about how to make a request to the Department, describes how the FOIA process works, and contains descriptions of each of the Department's components and the type of records they maintain.

G. Additional Government-wide Initiatives to Further Improve the Administration of the FOIA

During 2021, OIP also made substantial progress on several other FOIA initiatives, including enhancing the services provided on FOIA.gov, co-chairing of the Chief FOIA Officer Council, and participating as a member of the FOIA Federal Advisory Committee.

FOIA.gov

Since its launch in 2011, [FOIA.gov](#) has continued to serve as a central resource for educating the public on the FOIA both in terms of agency Annual FOIA Report data and taking part in the FOIA process. While it was initially a project undertaken by the Department in response to a strong interest by open government groups to have a "dashboard" that illustrates statistics collected from agencies' Annual FOIA Reports, the Department almost immediately began to expand its capabilities and has continued to add new features over time.

During 2021, OIP continued to improve the data validation and other functionality released in 2019 as part of the FOIA.gov Annual Report Tool. The Tool provides agencies an improved centralized location to submit their Annual FOIA Reports. In 2021, all 118 submitting agencies were required to upload their Annual FOIA Report through the tool.

*2021 FOIA Litigation and Compliance Report
United States Department of Justice*

Additionally, consistent with its [guidance](#) issued in light of the *FOIA Improvement Act of 2016*, OIP continued efforts to help agencies become interoperable with the National FOIA Portal on [FOIA.gov](#). The *FOIA Improvement Act of 2016* required the creation of a central, online request portal that allows a member of the public to submit a request for records under the FOIA to any Federal agency from a single website. Accordingly, unless granted an exception by OMB and DOJ, agencies with automated case management systems were required to achieve full interoperability with the National FOIA Portal by accepting requests through a structured API by the end of Fiscal Year 2021. Agencies without automated case management systems can achieve interoperability by accepting requests through email.

In addition to these efforts, OIP worked to ensure the best possible user experience for the public through its redesign of the Annual Report Data page, the redesign of its Quarterly Data page, and the migration of data from the legacy FOIA.gov data site. In 2020, OIP conducted user testing with members of the public and tested the design and functionality of the site using sample data. In March 2021, OIP [launched](#) the improved [Data page](#), which is mobile friendly and searchable across years, agencies, and components. The new data tool also facilitates more efficient publication of agency data directly from the FOIA.gov Annual FOIA Report Tool, compared with the old multi-step process requiring the upload of XML files.

Create an Annual Report

Annual Reports shine a light on agencies' administration of the FOIA by providing members of the public with detailed FOIA statistics. Users can filter data by agency, data type, and fiscal year. Users can also compare data across years and agencies. For full data sets from agency Annual Reports, please visit the [Developer page](#).

1. Select Agencies or Components

Agency or Component Name
Type agency name

Add Another Agency or Component Select All Agencies

2. Select Data Type(s)

Adding more than one data filter will return results that fit any one of the filters provided. For example, a search for exemption data with the filters "Ex. 5 is 0" + "Ex. 6 is 0" will return data that satisfy either criteria, rather than limiting the results to data that satisfy both criteria.

Data Type
None

Add Another Data Type

3. Select Fiscal Years

2020 2019 2018 2017 2016 2015
2014 2013 2012 2011 2010 2009
2008

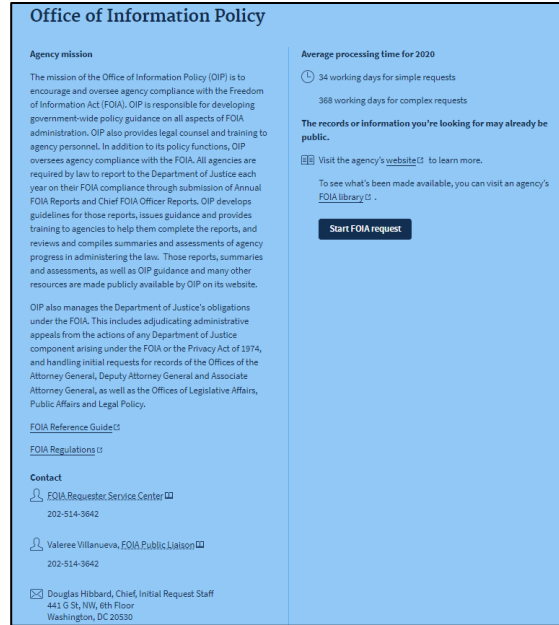
www.foia.gov/data.html

During 2021, OIP was pleased to continue participation in the General Service Administration's [10x](#) program. 10x funds, supports, and develops ideas for how technology can improve the public's experience with the government. OIP's idea pitch was selected to improve searchability of records across agency FOIA Libraries. Across the government, hundreds of online FOIA Libraries contain a wealth of information, yet these libraries are disconnected and lack an effective centralized search capability to allow the public to easily navigate the records. During Phase 1, completed in 2020, 10x began to investigate the potential for a centralized search capability that would allow the public to search across all agency FOIA Libraries, enhancing the public's interaction with the government by facilitating the discovery of records already in the public domain, and creating efficiencies in agency FOIA operations as resources are directed to processing FOIA requests for information not previously disclosed and available to the public. In 2021, the 10x team continued the project with more detailed discovery as part of Phase 2, which reinforced the need for and potential feasibility of a centralized search capability. The project was selected for Phase 3 funding, set to begin in 2022, during which the team plans to prototype a centralized search feature on FOIA.gov. As part of Phase 3, the team will assess the technical feasibility of the prototype, measure value to the public through usability testing, and confirm that it will not create an undue burden for agencies.

2021 FOIA Litigation and Compliance Report United States Department of Justice

During 2021, OIP also worked with GSA's 18F team to make recommendations to improve the user experience of FOIA requesters and the agency staff that process their requests, as well as to chart a path forward for future development. As part of near-term plans, the 18F team recommended the development of a guided user experience to help the requester navigate through FOIA.gov.

In addition, [FOIA.gov](https://www.foia.gov) continues to include individual agency and component pages containing a description of key FOIA resources and their average processing times for simple and complex requests. The website also provides contact information for each agency, including their FOIA Requester Service Centers and FOIA Public Liaisons, which agencies can update themselves as needed. There are also tools to assist the public in locating the right agency and aids to assist in making a request. For each agency, a customized request form incorporates any specific regulatory requirements of that agency to ensure that the requester provides the agency with all the required information right at the outset of the request process. The request forms all follow a similar pattern to bring more consistency to the request-making process. All these features are designed to educate the public, simplify the process, and improve FOIA administration overall.



OIP's component page on FOIA.gov

In 2021, [FOIA.gov](https://www.foia.gov) continued to serve as an educational resource for the public by providing useful information about how the FOIA works, where to make requests, and what to expect through the FOIA process. As in prior years, explanatory videos are embedded into the website and the site contains a section addressing frequently asked questions, as well as a glossary of FOIA terms.

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

Chief FOIA Officers Council

The *FOIA Improvement Act of 2016* established the [Chief FOIA Officers \(CFO\) Council](#), which is composed of all agency Chief FOIA Officers, the Directors of OIP and OGIS, and the Deputy Director for Management from the Office of Management and Budget (OMB). The Chief FOIA Officers Council is tasked with developing recommendations for increasing FOIA compliance and efficiency; disseminating information about agency experiences, ideas, best practices, and innovative approaches related to FOIA; identifying, developing, and coordinating initiatives to increase transparency and FOIA compliance; and

promoting the development and use of common performance measures for agency compliance with the FOIA.

The Chief FOIA Officers Council held two public meetings in 2021. On April 29, 2021, members of the Council heard updates from the Technology Committee, the Committee on Cross-Agency Collaboration and Innovation, and the Chief Data Officers Council. The Technology Committee highlighted recent accomplishments including its participation in two best practices workshops, a draft paper discussing video redaction, and progress in drafting other deliverables as outlined in committee charters. The Committee on Cross-Agency Collaboration and Innovation provided an overview of its origin and three subcommittees: the Pandemic/Virtual Offices Subcommittee, the Government Information Specialist Job Series Subcommittee and the Standardizing Technology Subcommittee. The Chief Data Officers Council provided an overview of its four statutory goals and a summary of its structure and Fiscal Year 2021 activities and mentioned that it looks forward to collaborating with the CFO Council in the future.

Subsequently, on November 17, 2021, the Associate Attorney General of the United States provided remarks at the Chief Officers Council meeting emphasizing the importance of FOIA and the key role played by Chief FOIA Officers. Members of the Council also heard updates from the Committee on Cross-Agency Collaboration and Innovation and the Technology Committee. Specifically, members heard a discussion regarding estimated dates of completion as well as comments from the Pandemic/Virtual FOIA Offices Subcommittee Chair. The Technology Committee highlighted its Fiscal Year 2021 accomplishments including finishing a report on best practices for video redactions and a report on FOIA searches. Additionally, the Technology Committee noted that it began planning the [NexGen FOIA Tech Showcase](#) scheduled for February 9 and 10, 2022. The Showcase is intended to identify FOIA technology solutions for federal agencies in response to existing FOIA case processing challenges. The event is also designed to help federal agencies better understand the potential of advanced and emerging technologies for case processing.

These 2021 meetings were open to the public and livestreamed online. OIP continued to publish all meeting materials on the Chief FOIA Officers Council section of its [website](#). In addition to these public meetings, the two committees of the Chief FOIA Officers Council meet regularly throughout the year and made noticeable achievements in sharing best practices on key areas of FOIA administration.

FOIA Advisory Committee

As part of another ongoing initiative, the Director of OIP continued serving on the [FOIA Federal Advisory Committee](#). The FOIA Federal Advisory Committee met four times in 2021 (March 3, June 10, September 9, and December 9, 2021) and discussed a range of issues related to FOIA administration, including first-party requests, increasing access to information in the legislative branch, public access and the private sector, and Glomar responses. OIP continues its work to review and consider how it may implement the recommendations of the 2018-2020 FOIA Advisory Committee issued in July 2020.

H. Outreach

To improve not only the Department's, but also the government's overall FOIA administration, the Department engages in outreach with the requester community and other outside stakeholders in a variety of ways. For example, in 2021 OIP invited members of civil society to attend its annual Sunshine Week. OIP's Director also regularly met with a group of representatives from various civil society organizations during 2021. Additionally, OIP engaged with outside stakeholders and advocates, as well as the public, through its participation in the Chief FOIA Officers Council and its membership on the FOIA Federal Advisory Committee.

I. Training, Public Presentations, and Briefings

As yet another method for encouraging compliance with the FOIA, OIP held a [variety of training programs](#) throughout the year. In 2021, due to COVID-19 and maximum telework, OIP was once again pleased to furnish speakers and workshop instructors for virtual agency training sessions conducted to promote proper administration of the FOIA within the Executive Branch.

OIP conducted numerous FOIA-training programs in 2021, which ranged from half-day introductory sessions for non-FOIA personnel to advanced programs for highly experienced FOIA personnel. Specifically, in 2021 OIP hosted the following events:

- *Virtual Procedural Requirements and Fees Workshop* – This provides an overview of the FOIA's procedural requirements, fees, and fee waivers, and a discussion of the FOIA's proactive disclosure requirements. This virtual workshop was held three times in 2021.
- *Virtual Exemption 1 and Exemption 7 Workshop* – The Exemption 1 workshop gives an overview of Executive Order 13526 and the withholding of classified national security information. The Exemption 7 workshop gives an overview of the FOIA's primary exemption for law enforcement records, including this exemption's threshold requirement and substantive subparts. This workshop was held twice in 2021.
- *Virtual Exemption 4 and Exemption 5 Workshop* - The workshop provides an overview of Exemption 4 which protects trade secrets, certain commercial and financial information, and the submitter-notice process for exemption determinations. Additionally, the workshop provides an overview of Exemption 5, which incorporates civil discovery privileges into the FOIA. This workshop was held twice in 2021.
- *Virtual Privacy Considerations* - This program covers the FOIA's privacy exemptions and the Privacy Act. Topics include the interface between the FOIA and the Privacy Act, as well as an overview of FOIA Exemptions 6 and 7(C). This session was held twice in 2021.
- *Virtual Litigation Workshop* – This workshop covers considerations that arise in the course of FOIA litigation. Sessions include guidance on successful litigation strategy,

*2021 FOIA Litigation and Compliance Report
United States Department of Justice*

as well as, details on the preparation of Vaughn Indices and declarations. This course was held once in 2021.

- *Virtual Continuing FOIA Education* – This course is designed as a program for experienced FOIA professionals with lectures on new or recent developments in FOIA administration as well as an update on recent FOIA court decisions. This course was held twice in 2021.
- *Virtual Introduction to the Freedom of Information Act* – This program provides a basic overview of the FOIA for agency personnel who do not specialize in access law. It is designed for those who either work with the FOIA only occasionally or need only a general familiarity with the FOIA in order to recognize and handle FOIA-related problems that may arise in other areas of agency activity. This course was held twice in 2021.
- *Virtual Processing from Start to Finish Workshop* – This workshop takes attendees through the process of a FOIA request from receipt by the agency to final response to the requester. This course was held once in 2021.
- *Virtual Annual/Quarterly FOIA Report Training* – These training events provided agencies with a refresher on their FOIA reporting obligations. This training event was held one time in 2021.
- *Virtual Chief FOIA Officer Report Training* – This training event provided agencies with a refresher on their Chief FOIA Officer reporting obligations. This training event was held one time in 2021.
- *[Best Practices Workshops](#)* – As noted above, OIP launched the Best Practices Workshop Series in 2014 as a part of the [Second United States Open Government National Action Plan's](#) commitment to modernizing FOIA and improving internal agency FOIA processes. Each workshop focuses on a specific FOIA topic, with a panel of representatives sharing experiences, lessons learned, and strategies for success in these areas. Through these workshops, agencies can continue to learn from one another and leverage the successes of others in their own organizations for the overall benefit of FOIA administration across the government. In 2021, OIP hosted two Best Practices Workshops focused on [FOIA administration during the pandemic for both IC and non-IC community agencies](#).

In addition to the events hosted by OIP, approximately 24 professional staff members from OIP gave a total of 7 agency training presentations during the year, including sessions designed to meet the specific FOIA-training needs of the individual agencies. Such individualized training sessions were conducted for the:

- Department of Defense
- Federal Aviation Administration
- U.S. Customs and Border Protection
- Defense Health Agency
- Department of Education

*2021 FOIA Litigation and Compliance Report
United States Department of Justice*

- Housing and Urban Development
- Census Bureau

In addition, OIP provided training for components of the Department of Justice. In 2021, approximately 5,762 individuals registered for training at OIP-hosted courses.

J. Legislative and Regulatory Proposals

During 2021, OIP reviewed numerous draft or preliminary legislative proposals relating to the FOIA or to information policy more generally. As a result of this review, OIP made recommendations in many instances, most frequently in connection with the technical sufficiency of proposed statutory nondisclosure provisions intended to serve as Exemption 3 statutes under the Act. OIP likewise continues to review and make suggested revisions to language contained in proposed FOIA regulations of other agencies.

K. Congressional and Compliance Inquiries

In 2021, OIP responded to two congressional inquiries pertaining to FOIA-related matters. OIP also looked into fifteen matters (sometimes involving multiple issues) from members of the public who had concerns about how the FOIA was being administered at an agency. In response to each of these compliance inquiries, OIP discussed the issues with the agency involved and, whenever appropriate, provided guidance on the steps needed to address the concern.

LISTS OF FOIA LITIGATION CASES RECEIVED AND DECIDED DURING 2021

In accordance with [5 U.S.C § 552\(e\)\(6\)](#), the Department of Justice is required to provide a "listing of the number of cases arising under this section; a listing of each subsection, and any exemption, if applicable, involved in each case arising under this section; the disposition of each case arising under this section; and the cost, fees, and penalties assessed under subparagraphs (E), (F), and (G) of subsection (a)(4)." Because FOIA cases are often brought in one year, but not resolved until a subsequent year, the Department attaches to this report two separate lists of FOIA litigation cases for 2021, one showing the FOIA cases "received" or filed during 2021 and the second showing the dispositions "rendered" or decided in 2021. These lists will also be posted on OIP's website in an "open" format so that the public may manipulate and sort through the data in accordance with their particular interests.

List of Cases Received in 2021

The first list contains all of the cases filed as FOIA claims in federal district court during 2021. This information is derived directly from the federal courts' docketing systems through the Public Access to Court Electronic Records ([PACER](#)). According to PACER, in 2021, 608 cases were filed in the federal district courts as FOIA claims. This represents a fraction of one percent of the hundreds of thousands of FOIA requests agencies have historically received every year. For example, in Fiscal Year 2020 alone the government overall received 790,688 FOIA requests.

*2021 FOIA Litigation and Compliance Report
United States Department of Justice*

It is important to note that not all claims that are originally filed as FOIA claims remain as such on the court's docket. In many instances a court will determine after a case is filed that the lawsuit does not actually pertain to an agency action under the FOIA. During 2021, OIP observed 17 cases in which the courts dismissed claims because they were not actually FOIA actions. This can happen, for example, when a requester attempts to file a lawsuit against a state agency or public organization that is not subject to the FOIA. This list does not include those cases.

List of Decisions Rendered in 2021

The second list attached to this report contains all of the FOIA cases in which a decision was rendered by the federal courts in 2021. The list was compiled through the [Summary of Court Decisions](#) issued by OIP on a weekly basis and a survey of [PACER](#). The list is organized alphabetically, and as required by [Section \(e\)\(6\) of the FOIA](#), contains a description of the disposition in each case, each subsection and the exemptions (if any) involved, and any costs, fees or penalties assessed. If a court assessed attorney fees and costs pursuant to [5 U.S.C. § 552\(a\)\(4\)\(E\)](#), the amount is noted under "Fees and Costs" and subsection (a)(4)(E) is noted under "Subsections and Exemptions." Going beyond the requirements of the FOIA, the "Fees and Costs" list also reflects those cases where court filings indicate that a party agreed to pay attorney fees or costs. In such cases, the amount is included under "Fees and Costs," however, no subsection is listed since fees and costs were not assessed by the court.

The list does not include cases that were dismissed as non-FOIA claims (e.g., a case brought against a state agency) or "reverse" FOIA lawsuits, which are actions brought under the Administrative Procedure Act. They do include cases involving the National Labor Relations Board, the Securities and Exchange Commission, the Equal Employment Opportunity Commission, the Tennessee Valley Authority, and the National Railroad Passenger Corporation, all of which, by statutory authority or agreement with the Attorney General, handle FOIA cases in which they are the defendant. Finally, it should be noted that this list of cases may include cases which were listed in previous reports. For example, a case initially decided in 2020, but appealed and affirmed in 2021, would be found on the lists of cases in which a decision was rendered for both 2020 and 2021.

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

During 2021, the United States courts made no written findings pursuant to [5 U.S.C. § 552\(a\)\(4\)\(F\)\(i\)](#). Accordingly, no notification to the U.S. Office of Special Counsel was necessary.