

# United States Department of Justice



## 2023 Chief FOIA Officer Report



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## Introduction

The Freedom of Information Act (FOIA) requires each agency Chief FOIA Officer to “review and report to the Attorney General, through the head of the agency, at such times and in such formats as the Attorney General may direct, on the agency’s performance in implementing [the FOIA].”<sup>1</sup> Implementing this provision, the Department of Justice issued new [FOIA Guidelines](#) in March of 2022 directing agency Chief FOIA Officers to annually review all aspects of their FOIA administration and to report to the Department on steps taken to improve their FOIA programs.

The Department’s Office of Information Policy (OIP) is responsible for encouraging compliance with the FOIA both within the Department and across the federal government. Each year, OIP provides guidance to agencies on the content of these reports, which for 2023 focus on: (1) FOIA leadership and the presumption of openness, (2) ensuring fair and effective FOIA administration, (3) proactive disclosures, (4) utilizing technology to improve efficiency, and (5) reducing barriers to access, improving timeliness, and reducing backlogs. The Department of Justice itself follows these guidelines and issues its own Chief FOIA Officer Report.

This marks the fourteenth year in which agencies, including the Department of Justice, have issued a Chief FOIA Officer Report. The 2023 Chief FOIA Officer Report for the Department of Justice details notable achievements and challenges in its administration of the FOIA. The Department’s accomplishments during the last year include closing the ten oldest requests, administrative appeals, and consultations; acquiring new technologies to improve FOIA processing; and continuing to provide virtual FOIA trainings for agency FOIA professionals. The 2023 Report also describes challenges components faced over the past year, such as lingering impacts of the pandemic, staffing and technology resource limitations, increased volume and complexity of requests, and the impact of litigation on processing requests.

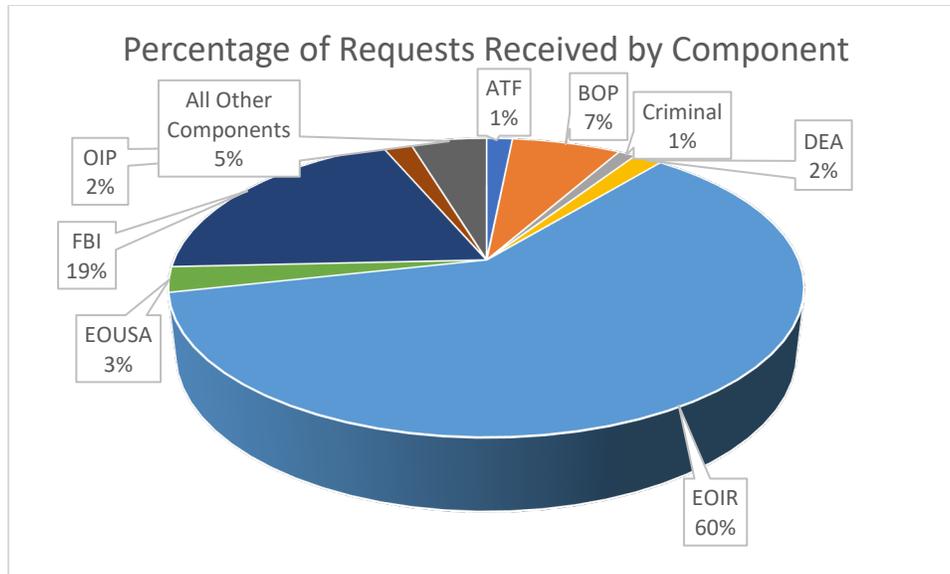
The following report provides a comprehensive review of the steps taken throughout the Department of Justice to improve its FOIA administration since the issuance of the last [Chief FOIA Officer Report](#) in March 2022.

## Overview of DOJ FOIA Processing and Key Metrics

The Department of Justice administers the FOIA on a decentralized basis, with thirty-one separate FOIA offices handling requests made to the various Department components. The Department received 93,370 FOIA requests in 2022. The Executive Office for Immigration Review (EOIR) received 56,544 requests in FY 2022, constituting 60.56% of the Department’s total requests received. Nine components received fewer than 100 requests.

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<sup>1</sup> [5 U.S.C. § 552\(j\)\(2\)\(D\) \(2018\)](#).



OIP is responsible for processing FOIA requests for the Senior Leadership Offices of the Department, specifically of the Offices of the Attorney General, Deputy Attorney General, Associate Attorney General, Legislative Affairs, Legal Policy, and Public Affairs, as well as OIP. The remaining thirty Department components are responsible for processing requests received for their own records, based upon guidance provided by OIP. The Department processed 82,868 requests in FY 2022, which is 7,357 more requests than FY 2021. Twenty-one components processed more requests in FY 2022 compared to FY 2021. The Administrative Appeals Staff of OIP adjudicates administrative appeals of FOIA denials for all Department components.

## Section I: FOIA Leadership and the Presumption of Openness

The principle underlying the Attorney General's [FOIA Guidelines](#) is the presumption of openness affirming that "[t]ransparency in government operations is a priority of this Administration and this Department." The FOIA Guidelines also stress that "effective FOIA administration requires support from agency leadership." The Department has engaged in a number of efforts to engage leadership and prioritize the presumption of openness, including issuing new FOIA Guidelines, adding foreseeable harm language to FOIA response letters, and incorporating the FOIA into the agency's core mission.

### Leadership Support for FOIA

The FOIA charges the Chief FOIA Officer with "agency-wide responsibility for efficient and appropriate compliance" with the Act and requires that the role of the Chief FOIA Officer be handled by a senior official at the agency at the Assistant Secretary or equivalent level. Associate Attorney General Vanita Gupta, the third-ranking official at the Department of Justice, serves as the Department's Chief FOIA Officer.

The Department has taken significant steps to incorporate FOIA into the agency's core mission. The Department's [Strategic Plan for Fiscal Years 2022-2026](#) states that the FOIA should be read generously as part of efforts to reaffirm and strengthen policies foundational to the rule of law. One of the key performance indicators listed for this goal is the ratio of backlogged to incoming FOIA requests. The Department's Strategic Plan objective on promoting good government states that the Department will “emphasize user-centered design practices and plain language to ensure that its public-facing technology tools provide clear, concise, and usable information to the public.” The FOIA case management systems used by components, component FOIA websites, and FOIA.gov are developed and updated through user-centered design and implement plain language best practices.

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For more than fifty years, the Freedom of Information Act (FOIA), 5 U.S.C. § 552, has been a vital tool for ensuring transparency, accessibility, and accountability in government.

*-Attorney General's FOIA Guidelines*

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Some of the Department's components also integrated FOIA into their missions and strategic plans. For instance, the Federal Bureau of Investigation (FBI) incorporated FOIPA initiatives and measures into its strategic plan.

One of the Office of Community Oriented Policing Services' (COPS) strategic goals is to “build strong staff and continue a culture of high performance to advance Administration priorities for supporting law enforcement.” This goal has led to investment in COPS FOIA program resources such as tools, training, professional development, and technologies to maximize staff skills and abilities. This investment ensures COPS can address its FOIA workload requirements and priorities.

The Environment and Natural Resources Division's (ENRD) core mission incorporates and embraces FOIA's presumption of openness. ENRD management encourages a collaborative approach to developing responses to FOIA requests, and strongly encourages the support of staff at all levels. One example of this collaboration at work is that technical staff within ENRD's information management office consider FOIA needs when implementing new data management software.

Other components are currently developing strategic plans that will incorporate FOIA principles and objectives. For example, Justice Management Division (JMD) plans to develop a strategic plan in the next six months. JMD's overall strategic plan will include a vision, mission, goals, and clear objectives, including FOIA milestones. The United States National Central Bureau (USNCB) has incorporated FOIA principles into its draft strategic plan.

Integration of FOIA principles and goals into the Department and component level strategic plans demonstrates leadership support for transparency and has led to investment in resources to assist FOIA offices in complying with the FOIA.

## Presumption of Openness

### Foreseeable Harm Language

The Attorney General's 2022 FOIA Guidelines provide that “agencies should confirm in response letters to FOIA requesters that they have considered the foreseeable harm standard when reviewing records and applying FOIA exemptions.” OIP's FOIA Language Database provides suggested

foreseeable harm language that all the Department's components can use in their response letters. All DOJ components have added language to their final determination letters stating they have considered the foreseeable harm standard when reviewing records and applying FOIA exemptions.

### Glomar (Neither Confirm nor Deny) Responses

If acknowledging the existence of records would harm an interest protected by a FOIA exemption, agencies may respond to a requester that it can neither confirm nor deny the existence of requested records. This is commonly referred to as a *Glomar* response. Currently, there is no requirement to track and report on the use of Glomars. Of the Department's thirty-one components, twenty-two did not track whether the use of any exemptions involved a *Glomar* response, primarily because these components have never issued a *Glomar* response due to the nature of their records. Some components that use non-automated tracking systems reported that *Glomar* information could be tracked by adding a column to their FOIA tracking spreadsheet. Other components indicated that they could search within their existing tracking system for *Glomar* responses. Nine components that use automated tracking systems reported that tracking and reporting on *Glomar* responses would require updates to their tracking system, which generally require funding, resources from the Office of the Chief Information Officer (OCIO), and involvement of contracting offices.

Case management systems for the Federal Bureau of Prisons (BOP), the Drug Enforcement Administration (DEA), and United States Marshals Service (USMS) already incorporate tracking of *Glomar* responses. This functionality enables these components to generate reports on the use of the *Glomar* responses as needed. Criminal Division (CRM) and Tax Division (TAX) are working with their vendors to incorporate a *Glomar* field into their tracking systems.

Components that track *Glomar* responses reported issuing 106 such responses during the reporting period. The chart below indicates the number of *Glomar* responses issued by component and, when available, the exemptions cited.

Component	Number of <i>Glomar</i> Responses	Exemptions Cited
Antitrust Division (ATR)	6 Full Denials	Exemption 3
BOP <sup>2</sup>	3 Full Denials	Exemptions 6, 7(A), 7(C), 7(E), and 7(F)
CRM	30 Full Denials	Not available in system report
DEA <sup>3</sup>	49 Full Denials	Exemptions 6, 7(A), 7(C), 7(D), 7(E), and 7(F)
OPR	14 (13 Full/1 Partial Denial)	Exemptions 6 and 7(C)
USMS <sup>4</sup>	5 Full Denials	Exemptions 3, 6, and 7(C)

## Section II: Ensuring Fair and Effective FOIA Administration

As emphasized by the Attorney General's [FOIA Guidelines](#), "[e]nsuring fair and effective FOIA administration requires . . . proper training, and a full understanding of FOIA obligations by the entire

<sup>2</sup> BOP began tracking *Glomar* responses in December 2022.

<sup>3</sup> DEA began tracking *Glomar* responses in October 2022.

<sup>4</sup> USMS began tracking *Glomar* responses in August 2022.

agency workforce.” The FOIA Guidelines reinforce longstanding guidance to “work with FOIA requesters in a spirit of cooperation.” The Attorney General also “urge[s] agency Chief FOIA Officers to undertake comprehensive review of all aspects of their agency’s FOIA administration” as part of ensuring fair and effective FOIA administration. The Department has undertaken efforts to ensure fair and effective FOIA administration, including continuing to host robust virtual FOIA trainings, releasing updated interactive FOIA training modules, engaging in outreach with the public to improve understanding of the FOIA process, evaluating personnel needs and limitations of FOIA programs, and using data in innovative ways to identify best practices and challenges in administering the FOIA.

## FOIA Training

The FOIA directs agency Chief FOIA Officers to ensure that FOIA training is offered to agency personnel. See 5 U.S.C. § 552(j)(2)(F). A proper understanding of the FOIA, including the correct application of the statute’s provisions, is the first step towards any successful FOIA operation. As the federal office responsible for encouraging government-wide compliance with the FOIA, OIP continues to conduct a wide range of training activities to educate FOIA personnel at all federal agencies on the legal requirements of the FOIA and applicable policy directives.

Between March 2022 and March 2023, over 5,500 federal employees registered to attend OIP-hosted virtual training sessions on topics including the FOIA’s procedural requirements, FOIA exemptions, fees, litigation considerations, improving customer service, and ensuring an effective FOIA administration. These trainings are also made available to and used by Department personnel.

During this reporting period, OIP continued to offer virtual courses to facilitate the broadest participation. FOIA professionals within the Department and from across the government attended the following events:

- *Virtual Introduction to the Freedom of Information Act* – This course 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 to recognize and handle FOIA-related problems that may arise in other areas of agency activity.
- *Virtual Continuing Education* – This course provides a discussion of current topics in FOIA administration, including legal and policy developments, as well as an overview of recent FOIA court decisions.
- *Virtual Procedural Requirements* – This course provides an overview of the FOIA’s procedural requirements including: the definition of “agency records,” perfected FOIA requests, time limitations, expedited processing, reasonable searches, responses to FOIA requests, appeal rights, consultations, and referrals.
- *Virtual Fees and Fee Waiver Workshop* – This course explains the three categories of requesters, types of fees, restrictions on charging fees, and fee waivers.
- *Virtual Exemptions 1 and 7 Workshop* – This course covers the analysis used to determine whether exemptions to protect national security classification and law enforcement information should be applied and recent case law related to such analysis.

- *Virtual Exemptions 4 and 5 Workshop* – This course covers the analysis used to determine whether exemptions to protect trade secrets and commercial or financial information and privileged information should be applied and recent case law related to such analysis.
- *Virtual Processing from Start to Finish Workshop* – This course walks FOIA professionals through each stage of the FOIA process from intake to final response.
- *Virtual FOIA Litigation Seminar* – This course is designed for agency attorneys and FOIA professionals and focuses on the issues that arise when FOIA requests become the subject of litigation.
- *Virtual Privacy Considerations*– This course covers factors that distinguish processing requests under the Privacy Act and/or the FOIA and the FOIA’s privacy exemptions.
- *Virtual Refresher Training for FY 2022 Annual FOIA Reports and 2023 Chief FOIA Officer Reports* – These training events provide agencies with a refresher on their FOIA reporting obligations.
- *Virtual Advanced FOIA Training* – This course is designed for experienced FOIA professionals and supervisors. It covers advanced topics in FOIA administration, such as the FOIA’s personal privacy exemptions, the various FOIA procedural requirements, and FOIA’s requirements to make information available proactively to the public.

Further, OIP continued to provide virtual specialized training to agencies on any topic of interest, tailoring instruction to the needs of the agency involved. In addition to the events hosted by OIP, twenty-seven professional staff members from OIP gave a total of twenty-nine training presentations during the year, including training sessions designed to meet the specific FOIA-training needs of individual agencies. Such individualized training sessions were conducted for the following agencies:

- Council of the Inspectors General on Integrity and Efficiency
- Department of Agriculture
- Department of Defense, Defense Health Agency
- Department of Education
- Department of Energy
- Department of Health and Human Services, Center for Disease Control and Prevention
- Department of Homeland Security, Federal Emergency Management Agency
- Department of Justice, Federal Bureau of Prisons and Executive Office for United States Attorneys
- Department of the Treasury
- Department of Transportation, Federal Aviation Administration
- Small Business Administration

In 2022, OIP released updated interactive [FOIA training modules](#) for senior executives, federal employees, and FOIA professionals available for use on agency e-learning systems. An in-depth course for FOIA professionals provides a training session on the major procedural and substantive requirements of the law. A shorter course for federal employees provides a brief primer on the FOIA and highlights their responsibilities under the law. A brief course for agency senior executives emphasizes the importance of leadership support for an agency’s FOIA program. All three courses

are available on *LearnDOJ*, the Department e-learning management system that used by most components. Five components have already begun using these updated training resources to train their FOIA professionals. BOP, Civil Rights Division (CRT), COPS, and the Office of Justice Programs (OJP) have also incorporated these training modules into the mandatory core curriculum for all employees, including non-FOIA professionals. The Executive Office for United States Trustees' (EOUST) senior leadership completed the FOIA training module for senior executives.

In addition, Associate Attorney General Vanita Gupta, the Department's Chief FOIA Officer, issued a [memorandum](#) to agency Chief FOIA Officers and General Counsels emphasizing the importance of FOIA training and highlighting the availability of the three new [FOIA training modules](#) for all agencies. OIP also updated its [FOIA Infographic](#), a one-page resource to help new employees understand what the FOIA is and how the FOIA process works at their agencies.

In addition to providing government-wide training, OIP also hosted its annual DOJ FOIA Conference in April 2022, which provided training to the Department's FOIA offices on topics such as the new FOIA Guidelines; developing and updating standard operating procedures; consultations, referrals and defining a record; DOJ FOIA data and Power BI; and significant new case law. In May 2022, OIP also co-hosted along with the Department of Homeland Security a government-wide FOIA Summit for Agency Professionals, which covered trends in FOIA litigation, using FOIA data for program management, FOIA reports from the Government Accountability Office, and the impact of COVID on FOIA programs.

OIP also holds monthly calls with FOIA professionals from all the Department's components, during which OIP provides counsel on current FOIA issues and recent case law. During FY 2022, the Department had 442 full-time FOIA employees and the equivalent of 92.26 full-time FOIA staff who worked on FOIA as a portion of their responsibilities for the Department. Of these, 86.29% attended substantive FOIA training offered by OIP, the component FOIA office, or another entity.

The Department's components also provided substantive training for their staff. For example:

- BOP's Central Office FOIA staff hosted a two-day, in-person training on how to process investigations, sensitive records, and requests for COVID information. In addition, BOP's Supervisory FOIA Attorney emailed all FOIA staff with substantive and procedural guidance on issues affecting BOP's FOIA practice. BOP's Senior FOIA Processor emailed all FOIA staff processing tips to improve effectiveness and consistency.
- DEA hosted FOIA Best Practices Workshops in October and November 2022 for all Regional and Division Counsel assigned to DEA's domestic field offices covering topics such as: staff obligations under the FOIA, expectations concerning record searches, FOIA process improvements, and the importance of effective communication between the field and FOIA staff. A FOIA/PA Educational Series document was also shared with Regional and Division Counsel and their division employees. The document contained definitions of the FOIA and Privacy Act (PA) and exemptions, agency employees' responsibilities, definitions of foreseeable harm and reasonable search, and an explanation of DEA's internal FOIA/PA processing procedures. The Educational Series document is also available on the FOIA/PA Unit's intranet page and available to all agency personnel. DEA's FOIA/PA intranet page contains additional training resources for agency personnel to include a FOIA/PA Guidebook, a DEA FOIA internal process map, and an outline of the overlap and differences between the FOIA and PA.

- Tax Division Counsel hosted “FOIA and Coffee” events every other month for trial attorneys representing the agency in FOIA litigation. Topics of discussion during these events included the foreseeable harm standard, the legal and factual challenges in assertion of the *Glomar* doctrine, and a *Glomar* primer.

Several components engaged in cross-training with another agency's FOIA programs through detail opportunities. FBI and the Department of State conducted an inter-agency FOIA personnel exchange program. The objective of the exchange was to develop strategic partnerships between federal agency FOIA programs, foster collaboration on best practices, and provide leadership development for FOIA professionals. Each agency selected an experienced FOIA professional to immerse with the host agency's FOIA program for one month. Participants shared home agency perspectives and ideas with the host and upon returning to their home agency applied new solutions to challenges. The Federal Claims Settlement Commission’s (FCSC) also sent a staff member to the Department of Education on a FOIA detail.

In addition to making available OIP’s e-learning modules to agency employees as discussed above, components informed non-FOIA professionals of their obligations under the FOIA through regular briefings on active cases or specialized FOIA training. For example, CRT's FOIA Unit provided training on the FOIA's Procedural Requirements for several of its litigation sections. FBI conducted numerous presentations throughout FY 2022 to non-FOIA FBI agency personnel and other agencies on various aspects of FOIA obligations and the FBI’s FOIPA program and best practices. The Office of the Inspector General (OIG) presented a virtual FOIA training to OIG program offices, giving insight into the FOIA program, which included FOIA intake, processing, conducting searches, and record collection. OIG also discussed the legal requirements for conducting and documenting proper searches for electronic records in response to FOIA requests with the IT staff. The United States Parole Commission (USPC) includes FOIA and Privacy Act training as part of new employee training and conducts refresher FOIA training for all employees at the same time as annual ethics training. Many components also provide FOIA information on their intranet pages as a resource for non-FOIA professionals.

OIP will continue to provide comprehensive FOIA training to both the Department’s FOIA professionals and FOIA professionals across the government. OIP will also continue to provide targeted training to agencies and the Department’s components upon request. Details on upcoming training opportunities provided by OIP can be found on the [Training](#) page of [OIP’s website](#).

### Outreach with the Requester Community

To improve the Department's and government-wide FOIA administration, the Department continues to engage in outreach with the requester community both outside of, and as part of, the standard request process.

### Outreach Outside of the Standard Request Process

The Director of OIP serves on the FOIA Federal Advisory Committee, which is made up of both government and non-government members of the FOIA community and serves as a forum for exchanging ideas on FOIA administration. The Director of OIP is also a co-chair, along with the Director of the Office of Government Information Services (OGIS), of the [Chief FOIA Officer’s Council](#), which hosts meetings that are open to the public and that provide opportunities for public comment.

Additionally, OIP's Director and other senior staff have periodic brown bag meetings with a group of representatives from various civil society groups to discuss various topics related to FOIA and government transparency.

Many components also engaged in outreach with the requester community during the reporting period, including public policy groups, major news organizations and journalists, frequent FOIA litigants, and organizations or individuals who frequently request information. Specifically, the Bureau of Alcohol, Tobacco, Firearms, and Explosives (ATF) maintains continuous dialogues with gun industry groups and government watchdog groups. ATF has also invited several FOIA requester groups to open-houses in the past year and have set up meetings to discuss transparency efforts with key stakeholder groups.

In March of 2022, EOIR held stakeholders' meetings on the use of EOIR's Court & Appeals System (ECAS) through which representatives can immediately access and obtain Record of Proceedings (ROP) electronically. In July 2022, EOIR held a public forum with stakeholders regarding the new process to request and obtain an ROP directly from the Immigration Court and the Board of Immigration Appeals, and the process for requesting records through EOIR FOIA. This new initiative allows first-party requesters to receive their ROPs more quickly than going through the FOIA process.

A representative of the FBI's FOIPA program participated on a panel as part of OGIS's Annual Open Meeting to discuss the challenges and opportunities presented by the estimated date of completion (EDC) requirements. This session was open to the public.

The Executive Office for United States Attorneys (EOUSA) FOIA Staff hosted telephone conferences with frequent requesters and groups of requesters seeking similar categories of records. Often these outreach calls involved press and public interest organizations. EOUSA provided explanations about how such records are maintained and the strategic approach EOUSA was employing to collect and process the records. EOUSA also suggested alternative or consolidated approaches that could more effectively or expediently fulfill requests.

#### Outreach as Part of the Standard Request Process

As part of the standard request process, DOJ's FOIA professionals proactively contact requesters concerning complex or voluminous requests to clarify or narrow the scope of requests so requesters can receive responses more quickly. Many components achieved success through early and frequent communication with requesters as part of the processing of their requests. Such communication helped ensure that requests were directed to the proper component and were well-defined at the outset. Components reported that their requester outreach enabled them to clarify requests, narrow search terms, and avoid litigation in many instances. This communication also provided opportunities to explain certain limitations components have regarding their record keeping systems, search capabilities, and ability to release certain privacy-related records. For example, BOP contacted state law enforcement agencies seeking records through FOIA to discuss the possibility of using Privacy Act routine uses to obtain records. BOP also worked with its Correctional Programs Division, to significantly streamline the time necessary to provide records to law enforcement agencies.

CRM has seventeen sections and more than 600 prosecutors. When requests require Division-wide searches with various search terms that would result in voluminous pages to review, CRM FOIA/PA personnel contact requesters to discuss narrowing the request. In one instance, this resulted in

narrowing the request to one Division section and in another narrowed the search to only four Division sections with substantially more targeted search terms. This reduced the personnel time required to complete the search and review records for both requests and ensured that the requesters received the records as quickly as possible.

ENRD routinely receives requests for “any and all” records related to a topic of interest, which often involve complex searches that result in a voluminous amount of responsive records. In such cases, ENRD’s FOIA professionals immediately communicate with requesters to identify the difficulties that would be faced in processing the request within statutory time limits. These communications were effective in prioritizing and narrowing multiple requests and, most importantly, established goodwill with the requester and resulted in the efficient use of ENRD’s limited resources.

EOUST’s FOIA Counsel contacts requesters to discuss narrowing requests that would require all Program employees to search for records. Because the Program employs approximately 1,000 staff members distributed across the country, this type of request would take an inordinate amount of time to process. By contacting the requester to specify which offices and/or custodians the requester is most interested in searching, EOUST can process the request much more quickly and efficiently.

FBI assigns Negotiation Professionals to initiate dialogue with requesters and provide additional assistance with narrowing the scope of certain categories of requests. In FY 2022, approximately 506 requesters provided additional information to reduce the scope of their requests and subsequently reduced associated processing times and applicable fees. In addition, FBI’s interim release policy ensures fair and effective FOIPA administration. These are processed in 500-page rolling release increments until completion. This allows the FBI to provide more requesters with more information releases more frequently.

#### FOIA Public Liaison

The FOIA describes the role of FOIA Public Liaisons as supervisory officials for agency FOIA Requester Service Centers who are “responsible for assisting in reducing delays, increasing transparency and understanding of the status of requests, and assisting in the resolution of disputes.”<sup>5</sup> FOIA Requester Services Centers and the FOIA Public Liaisons who supervise them play an essential role in providing quality service and effective communication with requesters. Each component within the Department has set up its own FOIA Requester Service Center and FOIA Public Liaison to assist the public with any questions they might have regarding their FOIA requests or the FOIA in general. In addition, OIP fields numerous calls from the public, assisting requesters in understanding how the FOIA works, including how and where to submit FOIA requests.

Overall, the Department estimates that its FOIA Public Liaisons received more than 30,897 inquiries from members of the public via phone, e-mail, and fax. The frequency and number of times that requesters reached out to different components’ FOIA Public Liaisons varied a great deal based on the number of requests and types of records the component handles. For example, some of the Department’s components that receive small numbers of requests estimated receiving less than 50 requests for assistance per year, some even received none. In contrast, FBI public liaison received 29,200 inquiries.

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<sup>5</sup> [5 U.S.C. § 552\(l\)](#).

Components that received inquiries from the public reported that their FOIA Public Liaisons played a significant role in keeping requesters informed and answering their questions. Requesters' inquiries ranged from specific issues on an individual's request to general information sought about how the FOIA works and what records the component maintains. Inquiries directed to the FOIA Public Liaison represent only a fraction of requester interactions with the Department's components. Many more inquiries are also made to the components' FOIA Requester Service Centers or directly to the FOIA professional handling any given request.

## Other Initiatives

### Allocation of FOIA Personnel Resources Required to Meet FOIA Demand

During the reporting period, components reviewed their FOIA-related staffing capabilities to identify resources needed to respond to current and anticipated FOIA demands and improve recruitment and retention of qualified FOIA professionals. Several components hired or are in the process of hiring additional FOIA staff to support their programs and address backlogs. The Office of the Solicitor General (OSG) hired a full-time federal employee in January 2022 and a second part-time employee in November 2022 to support the FOIA program. The Office on Violence Against Women (OVW) is hiring three new attorneys to enable OVW to respond to FOIA requests in a timely manner. OPR hired a full-time GIS with extensive FOIA experience. USMS has requested funding to onboard additional staff to handle FOIA requests and process requests for body-worn camera footage including redacting footage for dissemination to third parties.

ATF hired additional staff, including two attorneys, and is hiring five additional first-line supervisors, who will supervise individual branches within the FOIA program. ATF also created a second Deputy Division Chief position.

The Civil Division (CIV) is currently recruiting a new Chief of the FOIA and Privacy Office. Once a new Chief has been installed, CIV anticipates hiring an additional FOIA and Privacy attorney.

DEA's FOIA Office has requested ten positions to support an anticipated surge in FOIA requests for law enforcement officers' body-worn camera footage. DEA also sought approval to hire four additional GS-13 Expert GIS with authorization to release processed records to requesters and to support the review of complex cases. The additional staff and supervisory support are necessary to reduce DEA's FOIA backlog.

In April 2022, ENRD hired a full-time attorney, with substantial FOIA experience, exclusively assigned to work on incoming FOIA requests and handle other FOIA matters. Having a specialized, experienced FOIA attorney has greatly improved the Division's expertise on the FOIA and increased consistency in our responses.

EOIR is taking a multipronged approach to addressing its FOIA staffing needs. First, EOIR is hiring five GIS to process backlogged FOIA requests. Second, EOIR is increasing contractor support to reduce the backlog of incoming FOIA requests and order records from Federal Records Centers, which will reduce delays in obtaining records. Finally, EOIR used ten FOIA employees detailed from other Department components for several weeks to assist with the ongoing surge of incoming FOIA requests and backlog reduction.

EOUST's new Privacy Counsel, a detailee from the EOUST's Pittsburgh Field Office, has substantive FOIA experience and is meaningfully assisting with complex requests received. This availability resulted from proactive efforts by EOUST leadership to ensure that EOUST's FOIA staffing needs were appropriately met with additional experienced professionals—including field office experience.

In FY 2022, FBI secured supplemental funding for additional FOIPA contractors to support the Initial Processing workforce in Winchester, Virginia. These contractors contribute to the overall disclosure effort to review more pages for dissemination annually and address the backlog of requests. Also, the FBI requested a robust budget enhancement for FY 2024 for increased staffing to keep pace with the growth of incoming requests and litigation. The funding, if authorized, would allow the FBI to establish an additional disclosure processing unit.

### FOIA Data and Processing Metrics

The Department uses a range of data and processing metrics to ensure efficient management of its FOIA workload. Since 2014, OIP, through its Component Improvement Initiative (CII), has conducted an annual in-depth review of the Department's FOIA processes. As part of this initiative, OIP reviews components' FOIA data and discusses best practices and challenges highlighted by the data. As a result of its 2022 review, OIP conducted an analysis of appeal remands to identify trends in the types of requests being remanded to components and provide guidance to components on common issues that arise in appeals across the Department. The CII team also works closely with OIP staff leading the Ten Oldest Initiative, which monitors component progress in closing their ten oldest requests, will expand its tracking to include component's eleventh to twentieth oldest requests and ten oldest consults. OIP's CII team is also working with OCIO to compile matrixes that will compare features of FOIA-specific technologies used for request processing, case management, and e-discovery. These matrixes will enable components interested in various FOIA technologies to quickly gauge if any technologies already used within the Department may meet their needs and potentially enable the Department to leverage procurement opportunities that will lower costs, particularly for smaller components.

The Department's components also rely on data to track overall performance, workload, and to identify areas for improvement and best practices. For instance, ATF is maximizing the features of its new tracking system by developing comprehensive metrics and reports to better assess FOIA program performance. A key metric that ATF uses is page counts, including average page counts for requests, because page volume is one of the most accurate indicators of workload required to complete a request. The number of requests is becoming less and less accurate for determining workload, as requests call for increasingly large and voluminous productions of records. ATF also uses audit reports that identify cases in various stages of the FOIA workflow, including intake, search, processing, review.

ATR reviews current and historical receipt and closure data from its tracking system to project future work demands. As a result, ATR determined that it needs to recruit additional FOIA Specialists. ATR also continues to hold regular discussions with staff to identify work-flow efficiencies, challenges, and potential solutions based on the data.

BOP evaluates numerous FOIA metrics including backlog, the number of requests processed and received per FOIA professional, average processing time, and the status of BOP's ten oldest requests. These metrics enable BOP to determine how to best manage the FOIA workload. BOP also focuses

its efforts on key metrics, such as processing simple requests and adjudicating requests for expedited processing within the statutory limits. These methods have enabled BOP to keep average processing times for simple track requests below the twenty-day statutory period.

EOIR reviews quarterly reports and compares each quarter for timeliness and productivity. EOIR also compares annual data with previous years to identify trends in the volume of requests received and processed, and timeliness in relation to staffing levels. EOIR monitors staffing productivity through weekly reports indicating processing of FOIA intake, request closures, and responses from field offices with responsive records.

Several components reported using productivity metrics to adjust staff workload and hiring needs. CRT and OJP leverage the reporting features in their case management systems to ascertain productivity metrics and have used that data to make distinct personnel changes this year. In addition, DEA monitors employee FOIA caseloads and an assignment dashboard to ensure incoming requests are appropriately assigned to staff.

OIP's Appeals Team uses various metric reports within its case management system to examine monthly trends such as: the numbers of appeals received, submitted for review, closed, backlogged, and pending. Reviewing these metrics provides a monthly high-level view of both the appeal team's productivity and status of all the pending appeals in the adjudication process. It also allows the Appeals Team to monitor progress in meeting annual team and individual attorney productivity goals and in adjusting goals as needed. The Appeals Team supervisor responsible for assigning administrative appeals to OIP attorneys uses the advanced search and reporting functions of OIP's case management system to pull appeal production metrics multiple times per week. The metrics provide a "snapshot" of each team members' current administrative appeal docket, which allows the supervisor to maximize team efficiency when assigning appeals. Additionally, analyzing these metrics helps the supervisor identify when there may be a need to shift appeals between team members to ensure efficiency and to help the team meet its annual productivity and backlog reduction goals.

### [Other Initiatives to Ensure Fair and Effective FOIA Administration](#)

As noted above, OIP's Director co-chairs the Chief FOIA Officers Council (CFOC). OIP staff members also served on several newly formed CFOC Working Groups. OIP staff served on the CFOC [Technology Committee](#) Data Working Group, which aims to identify best practices and recommendations on the use of FOIA data for program management and reporting; processing data sets; and collaboration between agency Chief Data Officers and Chief FOIA Officers. OIP staff also provided input as a subject matter expert on the CFOC [Committee on Cross-Agency Collaboration and Innovation](#) FOIA Reference Model Working Group, which assisted efforts to establish a FOIA Reference Model describing the intricacies of the entire federal FOIA process. The FOIA Reference Model may be used to acquire and design technologies to meet the needs of FOIA programs, assess FOIA programs, determine FOIA program staffing needs, and provide context on the nuances of the FOIA process to Congress and the public.

The FOIA Reference Model will also be leveraged to develop FOIA Business Standards as part of the Federal Integrated Business Framework. The FOIA Business Standards will provide specifications for common services in FOIA such as the technical requirements for FOIA case management systems.

Led by OIP, developing FOIA Business Standards is also a commitment included in the government's [Fifth Open Government National Action Plan](#).

## Section III: Proactive Disclosures

In line with the Attorney General's [Guidelines](#), which stress the importance of posting records online "quickly and systematically," the Department has made significant efforts to ensure a wide variety of records are proactively posted online without waiting for individual requests to be received.

### Steps Taken to Identify, Track, and Post (a)(2) Proactive Disclosures

The FOIA requires agencies to proactively release certain information in the Federal Register and post on their websites certain operational and "frequently requested" records that have been requested and released three or more times. *See* 5 U.S.C. § 552(a)(1)-(2). Components described a range of methods to identify records for proactive disclosure. Components that do not receive a large volume of requests often rely on staff knowledge to identify records for posting.

During the reporting period, ATF and EOIR met with requester groups to gain a better understanding of the types of documents they would like to see posted proactively. One of these discussions generated an agreement to publish reports containing more aggregate firearms trace data for dozens of cities around the United States. ATF is also undertaking a massive effort to publish a multi-volume report entitled the National Firearms Commerce and Trafficking Assessment, which contains hundreds of pages of data and analysis concerning firearms trends and enforcement challenges. One volume of this report was published this year. EOIR held online public forums and sessions with stakeholders to obtain feedback on posted material. EOIR reviews incoming FOIA requests for trends and significant matters of public interest, then posts material deemed of significant interest to the public.

BOP and EOUST rely on their intake process and staff knowledge of requests to identify frequently requested records for posting. BOP uses a three-pronged approach to identify records requested three or more times. First, processors located throughout the country inform the Supervisory Attorney of frequently requested records. BOP FOIA Professionals are encouraged to identify records they believe are suitable to be proactively posted. Second, the Supervisory Attorney reviews the FOIA logs to identify frequently requested records. Third, BOP reviews media requests to determine if other requesters previously requested the same records.

To identify records for posting, EOUST's FOIA paralegal inputs FOIA requests into a database and searches for similar requests. The paralegal informs the FOIA team of any information that has been previously requested while performing FOIA request intake functions. Frequently requested records, as well as other EOUST program-developed records that are of interest or assistance to bankruptcy system stakeholders, are also raised by the Government Information Working Group to keep a continuous and cross-operational focus on the proactive disclosure requirement.

Other components have automated the process of identifying records for proactive disclosure. All of the Office of the Pardon Attorney (PARDON)'s FOIA requests are routed through its electronic case management system, which enables PARDON to identify the subject of requested records and to check for multiplicity.

Finally, some components go beyond the requirements to post records that have been frequently requested. For instance, instead of waiting for an Office of Legal Counsel (OLC) opinion to be sought three times, OLC's practice is to post all OLC opinions that are released in response to a FOIA request after the first time they are provided to a FOIA requester. Moreover, OLC's "[Best Practices for OLC Legal Advice and Written Opinions](#)" for attorneys now include an explicit commitment to "maximize OLC's efforts to post opinions online quickly and systematically in advance of any public request." OIG also proactively makes available to the public non-exempt information without waiting for a specific request. OIG is also in the process of modernizing its FOIA website to increase categories of records posted in OIG's FOIA reading room.

## Material Proactively Disclosed

Every Department component maintains a [FOIA Library](#) on its website to centralize, organize, and publicize proactive disclosures made in connection with their FOIA administration. Components also frequently post material elsewhere on their websites where it would best serve the communities most interested in the material. A wealth of information was added this past year to the Department's website. Examples of these new postings are summarized below.

Through its blog, [FOIA Post](#), OIP continued to inform both agencies and the public of new developments and upcoming events concerning the FOIA. In addition, OIP continued to post monthly [FOIA logs](#) for requests made to OIP and the Offices of the Attorney General, Deputy Attorney General, Associate Attorney General, Legislative Affairs, Public Affairs, and Legal Policy. OIP posted updated [Department of Justice Guide to the Freedom of Information Act](#) chapters relating to Exemptions [6](#), [7\(A\)](#), [7\(C\)](#), [7\(D\)](#), [8](#), [Exclusions](#), [Waiver and Discretionary Disclosure](#).

OIP posted the following guidance articles to agencies on the implementation of the FOIA:

- [Department of Justice Handbook for Agency Annual Freedom of Information Act Reports](#) (updated September 14, 2022)
- [The Interface Between the FOIA and Privacy Act](#) (September 15, 2022)
- [Guidelines for 2023 Chief FOIA Officer Reports](#) (September 14, 2022)
- [OIP Guidance for Further Improvement Based on 2022 Chief FOIA Officer Report Review and Assessment](#) (August 25, 2022)

OIP also posted the following sample of records in its [FOIA Library](#):

- Records Concerning the 2020 Presidential Election [Posted January 18, 2023]
  - [Response](#) (December 26, 2020 - January 1, 2021)
- State of Georgia's Election Integrity Act of 2021 (April 16, 2021 - October 5, 2021)
  - [Final Response](#) (April 16, 2021 - October 5, 2021)
- [Deputy Attorney General Memorandum Concerning Interim Changes to Procedures for Authorization Not to Seek the Death Penalty](#) (January 25, 2022)
- [Department of Justice Summary of Unmanned Aircraft Systems \(UAS\) Operations During Fiscal Year 2022](#) (December 1, 2022)

Finally, OIP continued to update both its website and [FOIA.gov](https://www.foia.gov) with new data and resources on the FOIA. For example, OIP continued to update the public with [summaries of new FOIA decisions](#), [FOIA training material](#), [FOIA Best Practices](#), all [FOIA Reports](#), and [resources on Exemption 3 statutes](#).

- ATF continues to proactively disclose the listing of all active [Federal Firearms Licensees](#) on a monthly basis, [Firearms Trace Data Reports](#), and the [Annual Firearms Manufacturing and Export Report](#).
- BOP proactively disclosed [Daily COVID Updates](#), [Program Statements, Operations Memorandums, and Change Notices](#), [Key Statistics](#), and [Clinical Practice Guidelines](#).
- CRM proactively disclosed the following records:
  - [Supplemental Policy Regarding Applications for Protective Orders Pursuant to 18 U.S.C. § 2705\(b\)](#)
  - [Further Revisions to Corporate Criminal Enforcement Policies Following Discussions with Corporate Crime Advisory Group](#)
  - [Department of Justice Use of Certain Law Enforcement Tools to Obtain Information from, or Records of, Members of the News Media; and Questioning, Arresting, or Charging Members of the News Media 2021 and 2015](#)
  - [Annual Report to the U.S. Sentencing Commission \(2022\)](#)
- CRT proactively disclosed [Cold Case](#) material.
- DEA proactively disclosed [Monthly FOIA Logs for FY 2021 and FY 2022](#), [DEA's Interim Body-Worn Camera Policy](#), [National Forensic Laboratory Information System publications](#), and [Pharmacy Burglary and Armed Robbery Theft Reports for Controlled Substances 2015-2018](#).
- EOIR proactively disclosed updated statistical information of EOIR's [Workload and Adjudication statistics](#) and updated the posted voluminous [Case Data](#), expanded the posting of [precedent decisions issued by the Board of Immigration Appeals](#), [decisions issued by the Office of the Chief Administrative Hearing Officer](#), [Memoranda of the Director of EOIR](#), Interactive [Map of Pro Bono Legal Service Providers](#), and the [Immigration Court Practice Manual](#).
- EOUSA proactively disclosed its [Annual Statistical Report](#), which contains statistical tables displaying both national and district caseload data. EOUSA also posted the [Justice Manual](#) (previously the United States Attorneys' Manual) and [Public USAO Criminal Discovery Policies](#).
- EOUST posted the latest statistics under [Chapter 11 Information](#). [USTP's Positions on Select SBRA Legal Issues](#) appear in the American Bankruptcy Institute Journal's November 2022 issue and is posted on the Program's [Bankruptcy Articles webpage](#). These legal position disclosures play an important educational role and reduce uncertainty for bankruptcy system participants, including small businesses who may be considering filing a case. EOUST also posted a notice regarding [Guidelines for United States Trustee Program Enforcement Related to Bifurcated Chapter 7 Fee Agreements \("Guidelines"\)](#). The Guidelines address important access issues in the bankruptcy system. Enhancing access to justice not only includes removing barriers to entry, but also ensuring that all debtors who seek bankruptcy protection in good faith and comply with the Bankruptcy Code's requirements receive the relief the law affords them. The Guidelines help ensure that debtors are properly and adequately

represented by their attorneys, who in turn are negotiating the terms of their fee arrangements and representation. In September 2022, EOUST published an article in the American Bankruptcy Institute Journal titled [Ensuring “Access” and “Justice” – USTP’s Enforcement Guidelines for Bifurcated Fee Agreements](#) addressing bifurcated fee agreements and the Guidelines. This ABI Journal article is posted on the Program’s [Bankruptcy Articles webpage](#).

- FBI manages a robust FOIA Library through its site, “[The Vault](#).” The Vault contains over 6,700 documents and other media. Below is a sampling of some new items available in the Vault:
  - [Managing Nonrecord Information and Information Expiration Policy Directive 1075D](#)
  - [Performance and Development Program Policy Guide 1083PG](#)
  - [Police Officer Hiring Policy Guide 0961PG](#)
  - [Confidential Human Source Policy Guide 1018PG](#)
  - [Digital Evidence Policy Guide 0830PG](#)
  - [Official Bureau Name and Contact Information Policy Directive 1064D](#)
- FCSC posted [final opinions and orders](#).
- OLC has released 324 [historical OLC documents](#), none of which had been previously publicly available.
- OIG proactively disclosed the following reports:
  - [Report to Congress on Implementation of Section 1001 of the USA PATRIOT Act](#)
  - [Audit of the Office of Justice Programs Cooperative Agreement Awarded to Reaching Above Hopelessness and Brokenness \(RAHAB\) Ministries, Incorporated, Canton, Ohio](#)
  - [Investigation and Review of the Bureau of Prisons’ Handling of the Transfer of Inmate James “Whitey” Bulger](#)
  - [Evaluation of Gender Equity in the Federal Bureau of Investigation’s Training Process for New Special Agents and Intelligence Analysts at the FBI Academy](#)
- OJP posted list of funding awards from the [Bureau of Justice Assistance](#), the [National Institute of Justice](#), [Office of Juvenile Justice and Delinquency Prevention](#), and [Office for Victims of Crime](#).
- OPR posted [significant investigative reports](#) and [investigative summaries](#).
- PARDON proactively disclosed [clemency statistics](#), [clemency denials](#), and [clemency recipients](#).
- TAX posted 150 [press releases](#) pertaining to its civil criminal enforcement matters. The press releases include the sentencing of taxpayers for employment tax fraud and other crimes. TAX also posts information about [schemes and scams](#), civil and criminal [employment tax enforcement](#) information.
- USMS posted its [Body Worn Camera Interim Policy Directive](#).

## Making Posted Information More Useful to the Public

The Department has also continued to work to find ways to make information posted online more useful to the public, especially for communities of individuals who regularly access the agency's website. During the reporting period, the Department began releasing modernized pages on [Justice.gov](https://www.justice.gov) and continues to do so in 2023. As part of this modernization, components reviewed all web content in an effort to ensure the greatest usability of their sites. The Department continues to solicit public feedback on the new Justice.gov and components continue to work to maximize usability on the new site.

Components took additional steps to make information more usable. For instance, requesters can track the status of their requests on BOP's public FOIA web page, which includes a description of what each of the various status codes mean. The table of contents in BOP's records section and the numerous links to various types of records make it easy for requesters and the public to navigate through electronic postings and locate what they are looking for.

EOUST launched a [robust public resource page](#) to assist the public in complying with the rule entitled Uniform Periodic Reports in Cases Filed Under Chapter 11 of Title 11 ("Final Rule"). The Final Rule requires that certain Chapter 11 debtors and trustees file monthly operating reports and post-confirmation reports using streamlined, data-embedded, uniform forms in every judicial district where EOUST operates. This resource page not only serves as the central location for form updates and form instructions, but also provides private software developers with the tools to create their own products that generate compliant forms. The tools include a complete data dictionary and XML schema for each of the required forms. During this reporting period, the public resource page provided several important technical updates to report filers to ensure the reliability of the forms.

FBI's Vault is equipped with an advanced search capability to allow users to search for various terms and subjects located within responsive documents.

Other components have revamped their websites to ensure the content is accessible and user-friendly. ENRD's Office of Information Management made format changes to ENRD's public facing website in FY 2022 to make the site more user friendly. Additionally, ENRD's Executive Office recently initiated a Division-wide process to coordinate updates to the content posted on its website.

PARDON and OLC will be overhauling their FOIA Libraries utilizing the new Justice.gov format to provide additional features and functionality. In addition, OLC plans to provide users with a more sophisticated website, an intuitive organizational structure, robust search and sort capabilities, and better accommodate future mass-batch postings without overwhelming the "readability" of the FOIA Library.

Based on feedback OJP received, a detailed description and contact information for the National Criminal Justice Reference Service was added to the [FOIA webpage](#). Now requesters can visit the FOIA webpage to inquire about locating publicly available publications and reports directly, rather than submitting a FOIA request.

Some components made accessibility updates to their websites and systems based on public feedback. In March 2022, EOIR held the first of a series of online public forums for respondents and practitioners before the Immigration Courts regarding the Access EOIR Initiative to improve access to information and resources on EOIR's website to ECAS and the Immigration Court Online Resource

(ICOR). During the session, EOIR listened to comments, complaints, and concerns from stakeholders. Based on this feedback EOIR updated the accessibility of the ICOR relating to the ECAS website for [attorneys and accredited representatives](#), and for the [Department of Homeland Security](#). EOIR also updated the [practice manuals](#) for the Board of Immigration Appeals, the Immigration Court, and the Office of the Chief Administrative Hearing Officer, and the [ECAS user manual](#) based on feedback from stakeholders. EOIR also launched a new search feature for [manuals and referenced material](#).

Finally, COPS has released a new version of the COPS mobile application in the Apple and Google Play stores for download. The app includes new features, such as a new interface for better navigation and a slicker look, accordions to organize and offer more information to the public, additional Beats audio podcasts to promote COPS podcasts, and a new GRANTS How to Video.

### Steps Taken to Post Information in Open, Machine-Readable, and Machine-Actionable Formats

According to the Attorney General's [FOIA Guidelines](#) "agency FOIA websites should be easily navigable, and records should be presented in the most useful, searchable, and open formats possible." The Department continued to make posted information available in open formats.

Several components posted data in machine-readable and machine-actionable formats. For instance, ATR continues to maintain a well-organized repository of documents on the agency website. ATR's publicly posted documents can be text-searched, filtered, and sorted. Certain documents susceptible to machine-readable and machine-actionable posting are available on the [ATR's web page](#) in XLS format, including Workload Statistics FY 2010-2019, Appropriation Figures Since FY 1903, and Sherman Act Violations Yielding a Corporate Fine of \$10 Million or More. The Division also submits its machine-readable and machine-actionable postings to Data.gov.

DEA's Chief Data Officer and FOIA Officer have discussed ensuring the most frequently requested datasets are posted in open, machine-readable formats to the extent possible. The datasets will be posted on the [Data and Statistics webpage](#) and linked to the FOIA Library.

OIP posts various data on its website in .csv format including its [FOIA logs](#), [Exemption 3 Statute Charts](#), and [Litigation and Compliance Case Charts](#). All [Annual FOIA Report data](#) is posted in open formats on FOIA.gov. OIP is also integrating FOIA.gov with [Data.gov](#) via an API, so that all FOIA.gov data is automatically posted on Data.gov.

### Collaboration with Agency Staff Outside of the FOIA Offices

To identify and post proactive disclosures, FOIA offices collaborate with a wide range of agency staff outside of the FOIA office. Component leadership, IT departments, public affairs offices, and subject matter experts are often consulted when identifying and preparing proactive disclosures for posting. For example, BOP's Supervisory FOIA Attorney works with the appropriate directorate to have records posted. Because of the relationship CIV has built with the Division's IT professionals, CIV is often able to post records the same day. FBI coordinated with the Office of Public Affairs and the FBI's Office of General Counsel, to proactively post declassified 9/11 records.

EOIR's Office of Technology posts a voluminous data extract of the CASE database, which is comprised of data from the Immigration Courts and the Board of Immigration Appeals. EOIR's also collaborates with its Office of Communication and Legislative Affairs Division to post new material and provide

notification to the public through press releases, social media, email subscriptions services, and postings of material on EOIR's website.

EOUST leadership routinely identifies multiple channels for distribution of disclosures. Leadership's involvement ensures that staff have the necessary context to maximize public awareness. Separately, EOUST's FOIA professionals, personnel from EOUST's Office of Planning and Evaluation, Office of Information Technology (OIT), Office of Oversight, Office of Administration, and representatives from field offices participate in a Government Information Working Group. The Working Group identifies records suitable for proactive disclosure. Finally, EOUST Office of Planning and Evaluation personnel regularly participate in a Department-wide working group on data architecture requirements. A goal of participation in both groups is to aid in future efforts to disclose data proactively.

OLC's proactive disclosure process includes collaboration with the Publication Committee, which may require consultation with other agencies or officials in the Executive Branch. As a provider of legal advice containing the equities of its clients throughout the Executive Branch, OLC must consult with relevant client agencies and Department leadership prior to publishing opinions. Opinions selected for publication, are circulated to Executive Branch officials and agencies that might be affected by publication. This practice ensures that OLC is aware of any concerns regarding publication of the opinion. In cases where delaying publication may be sufficient to address any of these concerns, OLC will reconsider the publication decision later.

### Best Practices and Challenges Related to Proactive Disclosures

In line with the Department's commitment to transparency, components employ best practices to ensure information of interest to the public is proactively disclosed on the agency's website and to mitigate challenges that arise in this area.

DEA's FOIA Unit has been challenged by staffing shortages, specifically nineteen vacancies as of November 2022. Once the vacant positions are filled, DEA plans to establish a team to manage all proactive disclosures in the future. The team will be assigned to identify and post frequently requested records to the FOIA Library monthly.

EOIR reports several best practices including hosting online public forms and sessions with stakeholders to obtain feedback on posted material, conducting internal reviews of posted materials by the various components within EOIR for outdated information and web link accessibility, and continuous expansion of posted material deemed significant interest to the public.

EOUST experienced several challenges in making data detailing nationwide civil enforcement activities available to the public. Prior to posting, EOUST must manually standardize significant numbers of individual data entries. Standardization ensures data integrity and consistency in measurement. Due to the large size of these datasets, significant time and resources are required to complete this standardization work.

### Section IV: Steps Taken to Greater Utilize Technology

Technology is essential to implementing effective and efficient FOIA administration. The Department is continually evaluating its use of current technologies and exploring cutting-edge technologies that can address current and anticipated challenges in processing FOIA requests.

## FOIA-Related Technological Capabilities Required to Meet FOIA Demand

After evaluating their FOIA technology needs during the reporting period, several components acquired and began using new FOIA technologies to assist with case management, e-discovery, and request processing. For example, Antitrust began the use of a new tool for processing large volumes of records. ATF, JMD, and USMS obtained new case management systems to track requests and facilitate compilation of data for the Annual FOIA Report.

CRM, CRT, PRAO, and OIP began using new e-discovery platforms during the reporting period. CRM launched a new e-discovery tool that offers improved functionality for reviewing records, structured analytic email threading and de-duplication tools, and support from the litigation support team. Due to an exponential increase in dataset sizes resulting from custodian searches CRT has migrated review and redaction to a new e-discovery tool. CRT plans to integrate resources, IT Services, and Litigation Support Services under an overarching FOIA umbrella.

Previously, PRAO maintained one database for its core mission records and one separate database for FOIA administration. This year, PRAO seamlessly integrated FOIA records into the primary core mission record database. PRAO's new database for retention and organization of records will allow records to be fully searchable and searches to be completed quickly.

OIP began using two new e-discovery tools this year. The first allows OIP, for the first time, to have real-time access to the emails and files for current officials within OIP's client offices. The second is a new e-discovery review platform which improves OIP's ability to review a large volume of search results.

### Exploring New FOIA Technologies

The Department is continually exploring new technologies to meet the demand from increasingly complex and voluminous requests. The Department also collaborates with other agencies to share information about FOIA technologies available. As a follow up to the [NextGen FOIA Tech Showcase](#) held in February 2022, OIP hosted a workshop in March 2022. During the event, a panel of agency representatives discussed their experiences using different types of FOIA technologies.

In addition, components continue to explore technologies that may meet their specific needs. For instance, EOUST has reviewed and is aware of the technological capabilities needed to better respond to current and anticipated FOIA demands. However, EOUST has experienced challenges in locating the proper software to meet these needs and demands, specifically the removal of duplicate documents. As a result, EOUST continues to explore additional technologies to meet its needs. OIG is also exploring technologies that can assist the FOIA program with the increasing volume of records. OSG is currently exploring new technology with the support of OCIO to identify a system that meets its current store, search, and retrieval requirements.

DEA has requested technological resources to expedite the initial review of large volumes of emails and attachments responsive to FOIA requests. During FY 2022, DEA's FOIA Officer partnered with the Chief of DEA's Digital Evidence Laboratory's e-discovery Unit to establish a workflow which will enable the FOIA staff to utilize new e-discovery tools to expedite the initial review and organization of hundreds, and sometimes thousands, of email records and attachments. The FOIA/PA Unit staff attended a two-day training course to learn how to use this new tool to organize large volumes of

records and conduct a responsiveness review prior to the redaction of records. In FY 2023, DEA began to ingest large volumes of records potentially responsive to FOIA requests into this new tool to expedite the initial responsiveness review and reduce the amount of time it takes the FOIA/PA Unit staff to process records. This will facilitate faster responses to requesters and backlog reduction.

In FY 2022, ENRD began piloting the use of a document management review and coding tool. ENRD continues to test the new system and currently is pushing the system to end users. ENRD also began exploring the possibility of implementing a centralized search approach for electronic records.

EOUST FOIA professionals, in conjunction with EOUST's OIT, continually research and pilot new software options to assist with the processing of requests. Finally, by assisting with processing of EOIR's FOIA requests, EOUST's FOIA Counsel was exposed to several other forms of technology that allowed her to assess their suitability for use within EOUST.

In partnership with FBI's Technology Innovation Section, FBI's FOIA Office is currently developing a next generation system to upgrade its current system and lay the foundation for future technological enhancements. Additionally, FBI is evaluating the expansion of automated search functions and enhanced integration with the FBI eFOIPA portal to gain efficiencies in the FOIPA request process. The eFOIPA portal system allows the receipt of FOIPA requests online and delivery of certain FOIPA correspondence and releases via an online delivery system. FBI is evaluating the expansion of integrated technology to allow automated search correspondence to be delivered electronically to requesters through the eFOIPA portal versus standard mail. This would reduce the amount of time and resources it takes to print and mail hard copies to requesters.

OPR is exploring and evaluating the possibility of procuring a more robust document management software capable of searches-within-searches, graphic presentation of metrics and trends, documentation, and storage. The ideal system would also be more efficient in the FOIA context for request tracking, responsiveness review, and provide metrics for FOIA reporting. As a result, OPR is attending demos, comparing, and evaluating the potential of various systems to augment and improve OPR's capabilities in these areas.

### [Leveraging Technology to Automate Record Processing and Facilitate Efficiency](#)

The Department is comprised of numerous components, some of which receive under 100 requests and others that receive tens of thousands of requests annually. Technology required to automate record processing differs based on the size of the component and the types of records the component maintains. Smaller components that receive fewer than 100 requests generally do not use automated request tracking and processing tools because the cost is prohibitive given the small number of requests they receive. Instead, basic technology solutions are used, such as Excel or Access databases for request tracking and Adobe or Word for processing records.

Components with larger request volumes often use automated case management systems and more advanced processing tools to conduct searches or make redactions, such as machine-learning, predictive coding, or technology assisted review. For instance, DEA's Chief FOIA Officer has partnered with the Chief of the e-discovery Unit to identify methods to improve FOIA/PA request processing. DEA's FOIA/PA Unit requires machine-learning tools to expedite the processing of records under the FOIA/PA and to reduce its backlog. DEA is working to secure funding to acquire an artificial intelligence (AI) "add-on" tool for its current FOIA/PA case management system. An AI "add-on"

would enable DEA's FOIA/PA Unit to utilize predictive coding to identify potentially exempt information.

EOUST uses batch coding to redact items such as repetitive cell phone numbers. This automated process saves time and resources. EOUST continues to research and pilot software that can batch redact on a much larger scale than its current software.

BOP and USMS leveraged video and audio redaction tools to improve accuracy and timely review of video and audio files. BOP recently acquired software that permits staff to redact video and audio transcripts. However, even with the software, redacting videos is extremely time-consuming. USMS's FOIA Unit uses a new technology to process body-worn camera footage. The tool is designed to auto-redact certain features in the footage, such as faces, but videos must still be reviewed frame-by-frame to confirm all redactions are appropriately asserted.

TAX's FOIA office continues to modify the way it uses existing technology and personnel to increase the adequacy of searches. TAX has an Automated Litigation Support Unit, which sets up and trains litigation and FOIA processing personnel on a variety of tools that facilitate review and organization of records, and deduplication of identical or substantially similar email chains. TAX's FOIA Office expanded the use of its e-discovery tools for medium sized requests.

Moreover, TAX's FOIA Office increased collaboration with its Information Technology (IT) personnel on search and collection of electronically stored information. In the past, TAX's FOIA specialist and non-FOIA paralegals would conduct searches. More recently, TAX Senior Division Counsel has delegated most electronic searches, particularly searches of e-mails, to IT personnel. IT participation in the search stage enables TAX's FOIA team to spend more time reviewing records already collected in response to pending requests. Moreover, the IT staff is best able to accurately record the details of its electronic searches.

### [FOIA Websites Contain Essential FOIA Resources and Information](#)

The [FOIA Guidelines](#) indicate that "agency FOIA websites should be easily navigable, and records should be presented in the most useful, searchable, and open formats possible." OIP issued [guidance](#) in 2017 on the content and style of agency FOIA websites. The guidance detailed key information and resources that should be made available on every FOIA website as well as some additional considerations such as adopting consistent styling, using plain language, regularly reviewing for accuracy, updating links, and collaborating to identify areas for improvement. Agencies were encouraged to regularly review their websites based on this guidance to ensure that they contain essential resources, and that they are informative and user-friendly. The Department's components have each reviewed their websites in accordance with the guidance. During the reporting period, OIP also conducted an independent review of components' FOIA websites as part of CII. OIP will once again review these sites as part of the Component Improvement Initiative this upcoming year.

### [Quarterly FOIA Reports Appear on FOIA.gov](#)

In January 2013, OIP instituted a quarterly reporting requirement for all agencies on key FOIA statistics, thereby allowing for a more real-time assessment of the flow of FOIA requests handled by the government throughout the year. The four key statistics are the numbers of requests received,

processed, and backlogged for each quarter of the fiscal year, as well as the status of the agency's ten oldest pending requests. In accordance with OIP's [Updated Guidance for Quarterly Reporting](#), the Department posted all of the required quarterly FOIA reports for FY 2022. The Department's quarterly reports are accessible to the public, appearing on the FOIA.gov [Quarterly FOIA Report](#) data page.

### [Raw Data from the Fiscal Year 2021 Annual Report](#)

In accordance with 5 U.S.C. § 552(e)(3), OIP consolidated all of the Department's raw data from its Fiscal Year 2021 Annual FOIA Report and [posted](#) it alongside PDF and XML versions of the final report.

### [Compliance with the Interoperability Requirements](#)

The Department also achieved interoperability with the National FOIA Portal in accordance with the [joint guidance](#) establishing interoperability standards that was issued by the Department and the Office of Management and Budget's (OMB). 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. The joint guidance explains that agencies can achieve interoperability with the Portal in one of two ways. Agencies can accept FOIA requests directly to their current case management platforms via a structured Application Programming Interface (API). Agencies that do not use automated case management systems can accept FOIA requests via a formal, structured e-mail to a designated e-mail inbox. The guidance further explains that, unless an exception is granted by OMB and the Department, agencies with automated case management systems are required to achieve full interoperability with the National FOIA Portal by accepting requests through a structured API. A small number of components were granted an exception until no later than the end of Fiscal Year 2023. All remaining components are full interoperable. Accordingly, the Department is currently in accordance with the joint guidance.

### [Best Practices and Challenges in the Use of FOIA Technology](#)

As a best practice, the Department's IT and FOIA Offices have built strong relationships that enable the Department to make the most of available technologies by sharing best practices across the agency. By working closely with our technological experts and conveying the unique nuances of the FOIA process, we can ensure that the technology used is fully leveraged for FOIA purposes.

EOIR's best practice for providing records to requesters is the use of the Justice Enterprise File Sharing (JEFS) service. JEFS is a Department-approved secure file sharing system that allows users to share sensitive files with authorized personnel within the Department or other approved outside users. The information is only maintained for sixty days and is encrypted in transit and at rest. JEFS allows the FOIA staff to provide responsive records to FOIA requesters in electronic format through a web link and allows EOIR's FOIA Service Center to receive scanned ROPs in an electronic format.

ENRD's best practices include taking preliminary steps to determine if a new technology is a good fit for the FOIA process. ENRD attended information-gathering sessions for e-discovery tools and piloted software prior to implementation, including end-user testing to inform the development of FOIA-review protocols. As a result, ENRD has transitioned its FOIA processing to an online document review system that facilitates effective and efficient review, ensures consistent disclosures, and improves response time. In addition, ENRD continues to identify existing technology that may assist

with the processing of FOIA requests. For example, ENRD has identified search functions built into its document management tools and Microsoft Outlook programs that are used to search and collect responsive FOIA documents.

Components identified several challenges, including deduplication of email chains, bottlenecks in the review process, and identification of technologies that meet multiple requirements unique to certain FOIA Offices. For example, BOP and EOUST face challenges finding technology to identify and remove duplicate search results, particularly email chains. Computer searches produce all records meeting the search criteria, and current technology often cannot differentiate between responsive and completely unrelated records. These components have found that AI is unreliable and costly; and de-threading software is not always effective at reducing the volume of duplicate emails. As a result, FOIA staff spend significant amounts of time manually deduplicating or processing the same records multiple times.

Although DEA's FOIA/PA Unit has acquired additional technological tools to assist the staff with more efficient review and processing of high-volume records, the management team continues to struggle with the number of high volume and complex cases requiring final review before release to a requester. The DEA's Chief FOIA Officer has requested additional personnel resources at the GS-13 and GS-14 level to support the final review of records responsive to FOIA/PA requests.

## Section V: Steps Taken to Remove Barriers, Improve Timeliness in Responding to Requests, and Reducing Backlogs

As indicated in the [FOIA Guidelines](#), "Each agency should actively work with requesters to remove barriers to access and to help requesters understand the FOIA process and the nature and scope of the records the agency maintains. Agencies should also ensure that they promptly communicate with requesters about their FOIA requests." In accordance with the [FOIA Guidelines](#) and [OIP's Guidance](#), the Department continues to work with FOIA requesters in "a spirit of cooperation."

The data referenced in this section of the Report comes from the Department's FY 2022 Annual FOIA Report. During FY 2022, the Department processed 82,868 requests, and successfully closed all the ten oldest requests, appeals, and consultations from FY 2021.

### Removing Barriers to Access

#### First-Party Requests

Some components frequently receive common categories of first-party requests. The types of first-party requests include those seeking information about litigation, settlement or confidentiality agreements, criminal or prison records, personnel, investigative, medical, and bankruptcy files. Several components have established alternative means of access to these records outside of the FOIA process. For instance, parties may obtain copies of certain creditor meeting recordings in any bankruptcy case directly from an EOUST field office in lieu of submitting a FOIA Request.

BOP worked with its Health Services Directorate to make it easier for former inmates, who received COVID vaccines while confined, to receive copies of their vaccine cards. Inmates can contact their last institution and receive a copy without going through the FOIA process. BOP also continued a

process created and implemented in 2020 after the COVID pandemic began, and drastically improved attorneys' access to their clients' medical records responsive to certain first-party requests. Attorneys usually receive medical records when requested for compassionate release or home confinement reasons records within twenty-four hours.

DEA's Chief FOIA Officer and the Office of Training have an agreement regarding processing of first-party requests for training records, which the FOIA/PA Unit receives from former DEA Special Agents (SA). Since SA training records rarely contain third-party information the Office of Training reviews and discloses the records to first-party individuals directly, rather than via the FOIA/PA process.

EOIR implemented a customer service initiative in which the respondent and the representative may [obtain ROPs](#) directly through the Immigration Courts and the Board of Immigration Appeals. An attorney who entered an appearance with the Immigration Court and the Board of Immigration Appeals may also schedule an in-person review of ROPs. Additionally, as of February 2022, newly filed EOIR Immigration Court records are accessible to the respondent's attorney using ECAS, an online portal that allows the attorney of record to access a PDF of the court filings for non-citizens currently in Immigration Court proceedings. In addition, attorneys and non-citizens can obtain basic case status information using either a 1-800 toll free number, and EOIR's website using EOIR's [Automated Case Information System](#).

FBI uses an enhanced automated search function for simple first-party requests, such as requests for investigative records. Upon receipt, electronically submitted first-party requests are automatically searched within the FBI's Central Records System. Approximately 66% of all incoming simple first-party requests eligible for automated search resulted in a 'No Records' response in FY 2022. This automatic search function allows the FBI to commit finite resources to other more complex requests and rapidly locate records to be processed for disclosure processing.

## Timeliness

### Expedited Processing

The FOIA requires that agencies establish procedures in their regulations that provide "for expedited processing of requests" in certain circumstances. [5 U.S.C. § 552\(a\)\(6\)\(E\)\(i\) \(2018\)](#). Specifically, the FOIA directs agencies to afford expedited processing whenever the requester demonstrates a "compelling need," or "in other cases determined by the agency." [Id. § 552\(a\)\(6\)\(E\)\(i\)\(I\), \(II\)](#).

For FY 2022, the Department reported an average of 22.23 days to adjudicate requests for expedited processing and 60.84% of requests for expedited processing were adjudicated within ten calendar days. Eighteen of the Department's components adjudicated requests for expedited processing within an average of ten days or had no requests for expedited processing to adjudicate. The remaining components provided plans for reducing the average adjudication times for expedited processing requests. Some examples of these plans are listed below and include adjusting processing procedures and staffing structures or providing specialized training.

DEA, EOUSA, JMD, OLC, and Community Relations Service (CRS) have modified their processing procedures to improve adjudication of requests for expedited processing. DEA established a specific queue to quickly identify requests for expedited treatment. DEA closely manages this queue, monitoring weekly reports of incoming requests for expedited processing to ensure that requests are

adjudicated within ten calendar days. EOUSA implemented a bi-weekly reporting process for open expedited processing requests to ensure completion in a timely manner. JMD reviewed its FOIA intake and triage process to identify requests for expedited processing and adjudicate those requests in a timelier manner. OLC streamlined its acknowledgement letter workflow to improve adjudication time for expedition determinations.

CRS has revised its FOIA procedures to include several layers of internal checks ensuring that requests for expedited processing are handled in a timely manner. All requests are logged into a CRS request tracking spreadsheet, which tracks requests by name of requester, the date of the request, and date of adjudication. All FOIA personnel have access to an individual FOIA shared drive, and FOIA personnel attend a weekly meeting to discuss outstanding requests and other FOIA matters.

EOIR has a team designated to adjudicate requests for expedited processing. EOIR plans to implement monthly reports on the status of requests for expedited processing determinations, and to improve the processing time of logging in mailed and emailed FOIA requests that require adjudication of expedited processing requests.

OPR and USMS provided staff training to ensure requests for expedited processing are adjudicated within ten or fewer calendar days. OPR training topics included the standards to apply in assessing whether to grant or deny requests for expedited processing and processing protocols, such as including due dates in emails requesting final review and using acknowledgement templates. USMS issued guidance to FOIA Specialists on the importance of responding to requests for expedited processing within the statutory timeframe and to review newly assigned requests at least twice per week.

### Simple Track

The Department uses multi-track processing to manage its FOIA administration. The Department's overall average number of days for processing simple track requests during FY 2022 was 134.03 days. This was an increase from FY 2021. As explained below regarding backlogs, the Department's processing times were impacted by lingering effects of COVID-related closures and limited access to search or review hard copy records, particularly for EOIR. Notably, however, nineteen of the Department's components processed their simple requests in an average of twenty days or less. Approximately 54.13% of the requests processed by the Department in FY 2022 were categorized as simple requests.

### Unusual Circumstances

An agency may extend the twenty-day time limit for processing a FOIA request an additional ten days by providing written notice to the requester invoking one or more of three "unusual circumstances" defined by the FOIA.<sup>6</sup> These are the need to search for and collect records "from field facilities or other establishments that are separate from the office" processing the request; search for, collect, and examine "a voluminous amount" of records "demanded in a single request"; and the need to consult with another agency or two or more agency components.<sup>7</sup> According to the Department's FY 2022 raw data, unusual circumstances were invoked for 119,061 processed and pending requests.

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<sup>6</sup> [5 U.S.C. § 552\(a\)\(6\)\(B\)\(i\).](#)

<sup>7</sup> [5 U.S.C. § 552\(a\)\(6\)\(B\)\(ii\).](#)

Approximately 77.7% of the Department's processed and pending requests in FY 2022 involved unusual circumstances.

### Backlogged Requests

The Department's overall request backlog increased from 49,959 to 64,982; however, the Department processed more requests in FY 2022 than in FY 2021. The Department responded to 82,868 FOIA requests in FY 2022. Twenty-one of the Department's components processed more requests in FY 2022 than in FY 2021. The Department's increase in backlog is largely due to lingering impacts of COVID-19, particularly for EOIR. The increase in EOIR's backlog (an increase of 14,073 requests) accounted for nearly all the Department's backlog increase. The Department's request backlog amounted to 69.59% of the total number of requests received in FY 2022. While the Department's overall backlog increased, all but five components either maintained a zero backlog, reduced their backlogs, or had a more modest increase of less than one hundred requests.

### Backlog Reduction Plan

The 2022 Guidelines for Agency Chief FOIA Officer Reports asked any agency with a backlog of over 1,000 requests in FY 2021 to provide a plan for achieving backlog reduction in the year ahead. The Department implemented the plan described in last year's Report. Building on past efforts through the CII, OIP worked closely with Department components to identify areas of improvement with a focus on backlog reduction, track management, and improving efficiencies. Many components implemented individualized backlog reduction plans, which included focus on one or more of these four strategies: hiring personnel, maximizing the use of technology, improving processes, and providing targeted training.

EOIR's backlog is primarily the result of an inability to catch up after Court and Federal Records Center closures during the pandemic and exacerbated by a loss of staff, contractor turnover, and an increase in the number of requests received. To reduce the backlog, EOIR implemented several strategies. EOIR temporarily increased staffing through the use of overtime, hired summer interns and contractors, and detailed FOIA staff from other components of EOIR and the Department. EOIR monitored quarterly request data and monthly productivity reports to make necessary adjustments to staffing and processing. EOIR continued to order records from the Federal Records Center and from field offices. EOIR also worked closely with the Immigration Courts to establish alternative means for attorneys and individuals to obtain ROPs outside of the FOIA process.

Many components experienced an increase in the number and complexity of requests. For instance, the primary cause of ENRD's increased backlog is an increase in the complexity of requests received, which has also increased ENRD's processing times. Compared to FY 2021, ENRD received twice as many more complex requests in FY 2022. ENRD's oldest requests require complex multi-component and agency consultation.

BOP received requests seeking voluminous lists of items, which required many different directorates or institutions to conduct searches. To address these challenges, BOP is exploring centralization of FOIA programs without requiring any formal personnel changes. Some of the key components of this strategy include implementing one Standard Operating Procedure (SOP) for BOP's entire FOIA program; adjusting review procedures to promote consistency; and the Central Office will adjudicate requests for expedited processing to improve BOP's response time. As a result of this strategy,

regional FOIA staff should see a reduction in the amount of extra duties they perform, allowing them to become more proficient in FOIA and focus on processing FOIA requests. In addition, operating under one SOP and consolidating many of the functions will improve BOP's ability to analyze what staffing levels and organizations are needed to improve efficiency and effectiveness.

FBI continues to receive increasingly complex, multi-pronged, and voluminous requests pertaining to national security, pending investigations, and sensitive FBI equities. These requests require increased time and coordination with internal and external stakeholders, and multiple layers of review. Furthermore, FBI has seen an influx in requests requiring extensive and complex searches, extending to thousands of searches for cross-reference records—records that relate to a subject, but are not directly about the subject. FBI implements a multi-pronged backlog reduction strategy, including short and long-term plans. These include streamlining workflows, realigning resources, establishing specialized teams, utilizing remote site processing offices, expanding contractor staff, automating work processes, and requesting an FY 2024 budget enhancement to further increase staffing. FBI's existing staff levels are insufficient to meet the steady increase of incoming complex and voluminous requests.

Despite OLC's best efforts to reach narrowing agreements with requesters, requests in OLC's backlog are consistently more complex in several ways. The requests often involve nuanced keyword searches and separate date-ranges for each part, require the processing of high volumes of records, lengthy consultations with multiple entities, coordination with litigators, and processing of classified documents. In addition, court-ordered partial and rolling productions are obstacles to decreasing OLC's backlog.

Other components found that their main challenge is maintaining or increasing staffing levels. During the last four months of the reporting period, OJP's backlog team became fully staffed after experiencing turnover. OJP reduced its backlog and closed the ten oldest requests by shifting staff to focus on processing backlogged requests. OJP also frequently re-evaluates its FOIA intake and processing workflow to make the FOIA process as efficient as possible. CRT has experienced a dramatic increase in requests and has lost veteran staff that it has been unable to replace. These challenges made it difficult to process increasingly complex and voluminous requests.

DEA took several steps to address its staffing needs and reduce its FOIA backlog. First, DEA established specific queues for various types of simple requests. Second, DEA has created new positions and is filling previously vacant positions. DEA is hiring four GS-13 Expert Government Information Specialists (EGIS) who will be assigned to review complex FOIA cases, conduct final review, sign determination letters, and authorize release of processed records to requesters. DEA also plans to fill vacant GIS positions. DEA is also working with the Office of Acquisition Management to review proposals from companies seeking to provide FOIA Analyst support services to DEA. FOIA Analysts are required to have three years of experience and a four-year college degree, experience that was not required in previous contracts. DEA also plans to create a second Processing Sub-Unit and a Special Projects Sub-Unit to better manage the high-volume workload.

OPR achieved a significant backlog reduction in FY 2022 by increasing staffing and implementing SOPs. OPR hired a full-time contract GIS and permanent GIS with extensive FOIA experience. Furthermore, OPR's FOIA/Privacy Act Assistant Counsel developed SOPs and flow charts, which increased OPR's processing efficiency. Finally, regular collaboration between OPR's FOIA team and OPR management occurs through bi-monthly meetings to address the backlog.

Finally, USMS implemented a backlog reduction plan in FY 2022 that included migrating all cases from the prior USMS FOIA database into its new database. During this transfer, all pending cases were reviewed closely to ensure they were still pending and to remove duplicates. Pending requests were triaged and simple requests were targeted for quick closure.

### Backlogged Appeals

The Department received 2,048 administrative FOIA appeals in FY 2022 and adjudicated 2,126 appeals. For the third year in a row, the Department was able to achieve a reduction in its backlog of appeals from 378 to 321 appeals. This represented just 15.67% of the total number of appeals the Department received in FY 2022.

### Reducing the Age of the Ten Oldest Requests, Appeals, and Consultations

In addition to focusing on reducing the number of requests in an agency's backlog, OIP has issued guidance stressing the importance of agencies reducing the age of their backlogs by closing their ten oldest requests, appeals and consultations. The Department successfully closed ten of its ten oldest pending requests, appeals, and consultations from FY 2021. At the end of FY 2022, the oldest appeal pending at OIP was from March 2022.

Beyond working to close the ten oldest requests, appeals, and consultations, the Department also has taken a proactive approach to make sure that the overall age of requests at the Department are reduced. For instance, in FY 2023, OIP is focusing on closing the 400-oldest requests. If all 400 are closed the age of OIP's oldest request will reduce by almost two and half years.

ATF conducted an internal audit of all pending FOIA requests and created a target list of older requests to close. ATF then set deadlines and conducted regular meetings to assess progress toward closure of the oldest requests.

ENRD FOIA staff meet weekly to discuss each open FOIA request and assess delays and develop plans to close them. ENRD FOIA staff discuss unique processing challenges as they surface and formulate solutions to expedite request closure. ENRD has also implemented separate weekly meetings and new tracking methods to facilitate closing requests on similar topics to ensure consistency.

### FOIA Litigation

The Department has experienced a steady increase in litigation in recent years. OIP reports that in the last five years, the number of open OIP litigation matters has increased 66%, from 68 to 103. During the reporting period, the Department had over 290 FOIA cases in litigation. The nature of the requests in litigation are complex or voluminous and most often involved issues of public interest and first-party requests. Components cited the most common causes of litigation as constructive exhaustion, challenges to withholdings, and denials of expedition. In addition to litigation itself, components also reported that they have referrals and consultations of records for review from components and other agencies involved in litigation.

Nearly every component involved in litigation reported that it had a significant impact on the processing of non-litigation FOIA requests. Significant staffing resources are required to effectively coordinate with litigating counsel, review court filings, draft declarations, and Vaughn Indexes,

negotiate attorney fees, and otherwise participate in FOIA litigation. For example, JMD's Litigation Team handles approximately 5% of JMD's cases overall, but JMD's FOIA Litigation staff is the same size as the team that handles the remaining 95% of FOIA cases. Limited FOIA staff and resources must be leveraged to meet court-imposed deadlines and productions in litigation cases, leaving fewer resources devoted to processing increasingly complex and voluminous non-litigation FOIA requests and consultations on a first-in first out basis. Some components reported that this creates a snowball effect, increasing the number of litigation cases filed due to constructive exhaustion.