THE DEPARTMENT OF JUSTICE
FREEDOM OF INFORMATION ACT
2015 LITIGATION AND COMPLIANCE REPORT

In accordance with 5 U.S.C. § 552(e)(6) (2012), every year by April 1, the Attorney General submits to Congress a report detailing the Department of Justice's efforts to encourage agency compliance with the Freedom of Information Act (FOIA), as well as a listing of all FOIA litigation cases received and decided in the prior calendar year. For 2015, the Department submits the following report to Congress.

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

During 2015, the Department, through its Office of Information Policy (OIP), engaged in a wide range of activities to meet its responsibility to encourage agency compliance with the FOIA throughout the Executive Branch. OIP provided comprehensive guidance and training to all agencies concerning the application of the FOIA statute and the continued implementation of President Obama's FOIA Memorandum and the

> *"A democracy requires accountability, and accountability requires transparency."*
>
> *- President Barack Obama*

Department of Justice's 2009 FOIA Guidelines. See 74 Fed. Reg. 4683 (Jan. 21, 2009); 74 Fed. Reg. 51879 (Oct. 8, 2009). The President's FOIA Memorandum and Department's FOIA Guidelines call on federal agencies to administer the law with a presumption of openness, to utilize technology and to make information available proactively, so that the public is informed about what is known and done by their government.

During 2015, OIP also managed the submission of agencies' Fiscal Year 2015 Annual FOIA Reports as well as their 2015 Chief FOIA Officer Reports, which are based on guidance developed by OIP. After the submission of the 2015 Chief FOIA Officer Reports, OIP prepared a comprehensive summary of the efforts made by agencies in complying with the Department's FOIA Guidelines, and once again assessed each of the one hundred agencies subject to the FOIA on these efforts. OIP also managed the quarterly reporting requirement instituted in 2013 for all agencies on four key FOIA statistics that are displayed in one

central location on FOIA.gov, the Department's government-wide, comprehensive FOIA website. Additionally, OIP made substantial progress working on five new government-wide initiatives that are part of the Administration's commitments to FOIA modernization set forth in the Second United States Open Government National Action Plan. These efforts included work on developing a consolidated online FOIA service, leveraging FOIA best practices across the government to improve internal processes, developing new, electronic FOIA training resources for every level of the federal workforce, assessing the feasibility and developing potential content for a "core" FOIA regulation, and engaging in collaboration and outreach through participation on a FOIA Federal Advisory Committee. More recently, OIP has also committed to leading three new initiatives included in the Third United States Open Government National Action Plan. These commitments include expanding the services offered on FOIA.gov, conducting a proactive disclosure pilot for posting FOIA-released records online, and improving agencies' FOIA websites. These are just a few examples of the many efforts OIP engaged in this past year to improve agencies' FOIA administration and to encourage compliance with the law. A full summary of OIP's efforts, as required by subsection (e)(6) of the FOIA, is set forth below.

A. Policy Guidance

The primary means by which the Department of Justice encourages compliance with the FOIA is through the issuance of policy guidance designed to ensure that the Act is being properly implemented across the government. During 2015, OIP continued to provide comprehensive guidance to federal agencies, addressing a range of issues related to the FOIA and the call for increased transparency set forth in the President's FOIA Memorandum and the Department's FOIA Guidelines. This policy guidance was provided in writing and made available to agencies and the public in the OIP Guidance section of OIP's website. In addition to issuing guidance, during 2015 OIP worked directly with agencies and held multiple government-wide conferences to discuss the continued implementation of the Administration's FOIA Memoranda and related policy guidance.

OIP Guidance on Chief FOIA Officer Reports

On his first full day in office, January 21, 2009, President Obama signed the "Presidential Memorandum for the Heads of Executive Departments and Agencies on the Freedom of Information Act," which established a new policy for Executive Branch departments and agencies concerning disclosure and transparency. The President directed all agencies to administer the FOIA with a clear presumption in favor of disclosure, to resolve doubts in favor of openness, and to not withhold information based on "speculative or abstract fears." The President also called on agencies to ensure that requests are responded to with "a spirit of cooperation," that disclosures are timely, and that modern technology is used to make information available to the public even before a request is made. In closing, the President directed the Department of Justice "to issue new guidelines governing the FOIA to the heads of executive departments and agencies, reaffirming the commitment to accountability and transparency."

During Sunshine Week on March 19, 2009, the Department issued new FOIA Guidelines that reinforced the President's call for the FOIA to be administered with a presumption of openness. The Guidelines also emphasize the importance of agencies creating and maintaining an effective system for responding to requests. The Guidelines

direct agencies to not withhold records simply because a FOIA exemption may technically apply and encourage agencies to make discretionary disclosures of information whenever possible. Where full disclosure of a record is not possible, the Guidelines stress that agencies should consider whether a partial disclosure can be made. Finally, the FOIA Guidelines call on agency Chief FOIA Officers to review their agencies' FOIA administration annually and to report to the Department of Justice on the steps taken to achieve improved transparency.

OIP is responsible for providing guidance to agencies on the content of their Chief FOIA Officer Reports. That guidance, which OIP first issued in September 2009, and has expanded upon in each subsequent year, consistently requires agencies to address five distinct topics all tied to the key areas covered in the Department's 2009 FOIA Guidelines. First, each agency is required to describe the steps it has taken to apply the presumption of openness. Second, agencies are required to describe the steps taken to ensure that they have an effective and efficient system in place to respond to requests. Third, agencies must describe their efforts to increase proactive disclosures. Fourth, agencies are required to describe the steps taken to greater utilize technology in administering the FOIA. And finally, agencies are required to provide information about any backlog of requests or appeals and the steps being taken to reduce these backlogs and improve timeliness.

Each year, as agencies' implementation of the FOIA Guidelines has matured, OIP has modified the requirements for the Chief FOIA Officer Reports to build on the successes of the previous years. For example, with regard to the first section of the Chief FOIA Officer Report on applying the presumption of openness, OIP began by asking agencies to report on two questions: (1) what steps were taken to ensure that the presumption is being applied to all decisions involving FOIA, and (2) whether the agency had shown an increase in the number of requests where records were released in full or where records were released in part. In subsequent years, OIP expanded this section of the Chief FOIA Officer Report by asking agencies to report on their efforts to provide FOIA training, their outreach to the requester community, and their processes for making discretionary releases and examples of the types of materials released during the year as a matter of discretion.

On September 15, 2015, OIP once again issued new guidance to agencies on the content of their 2016 Chief FOIA Officer Reports. As it did the year before, OIP continued to have two sets of reporting requirements for agencies depending on the volume of FOIA requests received, with more detailed reporting required for those agencies that receive 1,000 requests or more each year. By doing so OIP can more easily address the different circumstances and challenges faced by those agencies with smaller-volume FOIA workloads, while continuing to focus in-depth on those agencies that receive a higher volume of FOIA requests. For example, high-volume agencies were required to provide details about their outreach to the requester community or civil society, while for low-volume agencies this question was optional.

As it has done previously, OIP adjusted the questions for the 2016 Chief FOIA Officer Report Guidelines based on agencies' successes in meeting a number of milestones over the years. Updating the questions each year allows OIP, as well as the agencies themselves, to identify best practices and common challenges as we continue to refine our FOIA processes. For the 2016 Guidelines, OIP added new questions to Sections II, III, and IV of the Chief FOIA Officer Report.

Specifically, for Section II of the 2016 Report, which addresses the need for effective systems to respond to requests, agencies were asked to report on their compliance with OIP's new guidance on the proper procedures to be used in the event an agency has a reason to inquire whether a requester is still interested in the processing of his or her request. Another question was added to survey agencies about their FOIA Requester Service Centers and FOIA Public Liaisons. FOIA Requester Service Centers and FOIA Public Liaisons provide a very important service for requesters, informing them about how the FOIA process works and providing specific details on the handling of their individual requests. The FOIA also calls on agency FOIA Requester Service Centers and FOIA Public Liaisons to assist requesters in resolving disputes. Accordingly, agencies were asked to explain any steps they took during the year to strengthen their FOIA Requester Service Centers and FOIA Public Liaison services.

In Section III, as in previous years, OIP asked agencies to report on their process for identifying records for proactive disclosure. OIP added a new question which asked agencies to report whether their agency's FOIA professionals are involved in coding records for compliance with Section 508 of the Rehabilitation Act or otherwise preparing them for posting. One of the challenges often noted by agencies for proactively disclosing documents online are the resources required to "code" the records and prepare them for posting. We believe our survey questions will allow us to better understand the technical challenges agencies face in posting more records on their websites.

In Section IV, high-volume agencies were asked to report on whether they conducted training for FOIA staff on any new processing tools during the reporting period, such as for a new case management system, or for search, redaction, or other processing tools. OIP has consistently asked agencies to report on the substantive FOIA training that their agency has held or attended. The new question allows agencies to highlight other types of training they provided for FOIA professionals to ensure they are taking full advantage of efficiencies offered by new technologies.

March 2015 marked the sixth year that agencies submitted to OIP their Chief FOIA Officer Reports describing the steps taken to improve their FOIA operations and facilitate information disclosure. All one hundred agency Chief FOIA Officer Reports were submitted to OIP for review in early 2015. OIP conducted a comprehensive review of all the Reports to ensure compliance with OIP's reporting guidelines and worked with the agencies to resolve any issues in their Reports prior to clearing them for posting. After the Chief FOIA Officer Reports were posted during Sunshine Week of 2015, OIP compiled a Summary and Assessment of Agency 2015 Chief FOIA Officer Reports, discussed in greater detail in Section B, Efforts to Promote Agency Accountability, below.

OIP Guidance on Annual FOIA Reports

To assist agencies with their statutory reporting obligations, OIP continued to use and disseminate the comprehensive Annual FOIA Report Handbook compiled in 2013. The Handbook includes all of the legal, procedural, and technical requirements concerning agency Annual FOIA Reports. The Handbook contains all the legal requirements from the Department's 2008 guidance on the content of agency Annual FOIA Reports, along with additional guidance and tips for compiling the report. The Handbook also contains

instructions for using the Annual FOIA Report Tool developed by the Department. The Handbook centralizes all of the guidance and instructions for agency Annual FOIA Reports into one resource designed for both agency FOIA professionals and those professionals responsible for producing the Annual FOIA Report after the end of each fiscal year. The Handbook is a "living document" that OIP will continue to update as changes to legal, procedural, or technical requirements are made. The Department looks forward to working with agencies and finding new ways to further improve the Annual FOIA Report process in the upcoming years.

As was done with the Chief FOIA Officer Reports, OIP managed the submission of agency Fiscal Year 2014 Annual FOIA Reports by first reviewing all one hundred agency Annual FOIA Reports in draft form, then working with the agencies to resolve any issues, and finally clearing the Reports for posting. As further discussed below, OIP then created and made available on its website a summary of the key statistics reported by agencies in their Annual FOIA Reports.

OIP Guidance for Further Improvement Based on 2015 Chief FOIA Officer Report Review and Assessment

As noted above, in 2015 OIP conducted a detailed assessment of agencies' progress in improving transparency and implementing the Department's 2009 FOIA Guidelines based on a review of their 2015 Chief FOIA Officer Reports and the data reported in their Fiscal Year 2014 Annual FOIA Reports. As a result of this review and assessment, on July 23, 2015, OIP issued guidance for all agencies to assist them in making additional improvements in the years ahead.

OIP's assessment revealed that the vast majority of agencies are either holding training conferences or sending their FOIA professionals to training hosted by other agencies. The level of training needed by agency FOIA professionals will necessarily vary based on the numbers and complexity of the requests the agency receives. It is important that all professionals that handle FOIA requests at an agency, whether small or large, participate in necessary FOIA training throughout the year so that they can be current with the state of the law. OIP's guidance emphasized that a proper understanding of the FOIA, including the correct application of the statute's provisions and the Department's 2009 FOIA Guidelines, is the first step towards any successful FOIA administration. OIP's 2015 Chief FOIA Officer Report Guidelines required agencies to provide an update on the implementation of their plans for ensuring that substantive FOIA training is offered to all of their FOIA professionals by March 2016. Accordingly, OIP continued to encourage agencies to provide substantive FOIA training and take advantage of training opportunities provided by OIP, including the suite of e-Learning FOIA courses, discussed in greater detail in Section G, Additional Government-wide Initiatives, below.

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> *- OIP Guidance for Further Improvement Based on 2015 Chief FOIA Officer Report Review and Assessment*

OIP's assessment also demonstrated that most agencies communicate with requesters electronically by default. In its guidance, OIP reiterated the importance of ensuring good communication with requesters and referenced our 2013 guidance on using technology to facilitate effective communication.

Finally, OIP encouraged agencies that have an average processing time of more than twenty days for simple track requests to reexamine their FOIA process and strive to meet this milestone. OIP also continued to encourage agencies to work to reduce their backlogs and close their ten oldest pending requests, appeals, and consultations. Sustained efforts in this area are essential to reducing the age of the government's backlog.

OIP Guidance on Limitations on Use of "Still-Interested" Inquiries

On July 2, 2015, OIP issued guidance to agencies on the use of "still-interested" inquiries, along with an implementation checklist. This new guidance follows-up on 2010 guidance in which OIP explained that occasionally, "when the passage of time or a change in circumstance gives rise to a question of whether a FOIA requester is still interested in obtaining the requested records," agencies may contact the requester to determine whether they are still interested in the records. This is appropriate when done judiciously because agencies should not spend resources on processing requests in which the requester is no longer interested. The 2010 guidance advised agencies to be "mindful of the manner in which such inquiries are made," and to afford requesters a reasonable amount of time to indicate their continued interest.

The new guidance built on that previous directive and for the first time outlined a series of procedures that agencies should use when inquiring whether a requester remains interested in the continued processing of his or her request. These procedures include only sending a "still-interested" inquiry when the agency has a reasonable basis to believe that the requester's interest in the records may have changed. The guidance directs that absent good cause, agencies should not send multiple "still-interested" inquiries and when doing so, should use a requester's preferred method of communication. Significantly, the guidance establishes a minimum time period of no less than thirty days that should be afforded to requesters to respond to the inquiry and specifies that agencies should provide an easy method for response, such as a phone call or reply to an email. Finally, and most importantly, the guidance specifies that agencies should ensure that requesters are not disadvantaged by the process. The guidance directs that if a requester responds to a "still-interested" inquiry within a reasonable time period after the deadline given by the agency, the agency should reopen the request and place it back in the processing queue in the same position it was originally.

These steps will help agencies use their limited resources most efficiently while also ensuring that requesters receive good customer service. OIP included with its guidance a checklist to assist agencies in implementing the new procedures. By following the guidance and implementation checklist agencies will help ensure that they are working with requesters in a true spirit of cooperation and for the benefit of everyone involved in the FOIA process.

<u>*OIP Guidance on Proactive Disclosure of Non-Exempt Agency Information*</u>

On March 16, 2015, OIP issued <u>guidance</u> to agencies on proactive disclosures, along with an <u>implementation checklist</u>. Subsections (a)(1) and (a)(2) of the FOIA require agencies to make certain categories of non-exempt records available to the public without waiting for a formal request. Beyond these required proactive disclosures, President Obama's <u>FOIA Memorandum</u> directs agencies to "take affirmative steps to make information public," and the <u>Department of Justice's 2009 FOIA Guidelines</u> direct agencies to "readily and systematically post information online in advance of any public request."

OIP's guidance provides an overview of the FOIA's legal requirements to make various types of records proactively available. It also addresses ways in which agencies can take additional steps to improve transparency through proactive disclosures. The new guidance provides information on a variety of proactive disclosure topics, including methods for disclosures, strategies for identifying frequently requested records, and ensuring that posted information is useable. OIP also provided agencies a checklist which serves as an easy reference and resource for implementing the guidance. The implementation checklist provides tips for identifying frequently requested records, as well as any records of public interest, and for establishing procedures for posting this material online in user-friendly formats. This guidance will help ensure that agencies are complying with the FOIA's proactive disclosure requirements while also encouraging agencies to proactively disclose additional records in furtherance of overall government transparency.

B. Efforts to Promote Agency Accountability

The Department, through OIP, has engaged in a number of efforts to keep agencies accountable for their administration of the FOIA. During 2015, these efforts included publishing a <u>summary and detailed assessment</u> of agencies' progress based on the <u>2015 Chief FOIA Officer Reports</u>, posting a detailed <u>summary of agencies' Fiscal Year 2014 Annual FOIA Reports</u>, overseeing the government-wide <u>quarterly FOIA reporting requirement</u>, and meeting with agency Chief FOIA Officers.

<u>*Summary of 2015 Chief FOIA Officer Reports and Assessment of Agency Progress in Implementing the President's and Attorney General's FOIA Memoranda*</u>

As discussed in the Policy Guidance section above, 2015 marked the sixth year in which agencies submitted their Chief FOIA Officer Reports to the Department of Justice. These reports detail each agency's efforts throughout the year in implementing the Department's 2009 FOIA Guidelines. After reviewing all of the 2015 Chief FOIA Officer Reports for completeness and clearing them for posting, OIP undertook an extensive analysis of the reports to determine the government's overall progress in implementing the 2009 FOIA Guidelines and to identify any areas for improvement. As a result of this analysis, on July 22, 2015, OIP issued a comprehensive <u>Summary of Agency Chief FOIA Officer Reports for 2015 and Assessment of Agency Progress in Implementing the President's FOIA Memorandum and the Attorney General's FOIA Guidelines</u>.

OIP's <u>narrative summary</u> of the Chief FOIA Officer Reports provides a wealth of examples from large and small agencies describing the various efforts made to implement each of the key areas addressed in the <u>2009 FOIA Guidelines</u>. The <u>summary</u> also highlights

those areas in which improvements could be made such as continuing to focus on closing the ten requests, appeals, and consultations. Sustained efforts to close the ten oldest consultations in particular ensures that the agencies that sent the consultations can have the responses they need in order to close out those requests.

In addition to the narrative summary, OIP for the fourth year created a detailed assessment of the efforts made by agencies in implementing the Department's 2009 FOIA Guidelines and improving FOIA administration. As was done in 2014, OIP's assessment covered all one hundred agencies subject to the FOIA. In conducting this assessment, OIP identified and scored each of the agencies on several milestones tied directly to the five key areas addressed in the 2009 FOIA Guidelines, including efforts to conduct or attend FOIA training, the making of discretionary releases, improvements to efficiency, having processes for making proactive disclosures, and improvements in timelines and reductions in backlogs. To make the assessment progressively more challenging, and with the input of civil society, for 2015 OIP changed several of the milestones used in 2014 based on the progress agencies had already made in implementing the FOIA Guidelines.

In 2015, as it did in 2014, OIP used an expanded scoring system to have five levels, instead of the previous three levels, to more accurately illustrate the levels of success achieved by agencies. An overall agency score was also provided for each of the assessed sections. Additionally, narrative information from agency reports was provided in the 2015 assessment for sections that did not lend themselves to scoring. Finally, OIP also included a detailed methodology of how each milestone was scored and how the overall scores for each section were calculated.

Agency	Acronym	Overall Score for Section I	Overall Score for Section II	Overall Score for Section IV	Overall Score for Section V
Department of Justice	DOJ				
Department of Labor	Labor				
Department of State	State				
Department of the Interior	DOI				
Department of the Treasury	Treasury				
Department of Transportation	DOT				
Department of Veterans Affairs	VA				
Environmental Protection Agency	EPA				
Equal Employment Opportunity Commission	EEOC				
Export-Import Bank	Ex-Im Bank				
Farm Credit Administration	FCA				
Farm Credit System Insurance Corporation	FCSIC				
Federal Communications Commission	FCC				
Federal Deposit Insurance Corporation	FDIC				
Federal Election Commission	FEC				

2015 Chief FOIA Officer Reports - Assessment of Federal Departments and Agencies — U.S. Department of Justice, Office of Information Policy

2015 Chief FOIA Officer Report Assessment

The issuance of this comprehensive assessment was designed to promote greater accountability in implementing the Department's 2009 FOIA Guidelines, and to encourage improvement in the government's overall FOIA administration, while also showcasing some of the impressive progress made by agencies over the past year. The assessment illustrates the many areas where agencies have made real progress as well as those areas where further

improvements can be made. By assessing agencies on a wide variety of factors that all contribute to improving information disclosure, the public, as well as the agencies themselves, can readily see where agencies have excelled, and where further work can still be done, in improving the administration of the FOIA.

Summary of Agency Annual FOIA Reports and FOIA.gov

As noted above, each year agencies are required by law to submit an Annual FOIA Report to the Attorney General detailing a range of statistics regarding their agency's FOIA activities, such as the numbers of requests processed and received, and the time taken to process them. In addition to issuing guidance to agencies on the content of these reports and reviewing them for completeness, OIP, in accordance with 5 U.S.C. § 552(e)(4), compiles and posts all agency Annual FOIA Reports on the Reports page of its website. For Fiscal Year 2014, one hundred reports were submitted and centrally posted on OIP's website.

During 2015, OIP also uploaded the data for agencies' Fiscal Year 2014 Annual FOIA Reports onto FOIA.gov, the Department's comprehensive, government-wide FOIA website, so that it could be easily sorted and compared by agency and over time. In addition to many other features, FOIA.gov shines a light on agencies' administration of the FOIA by taking the detailed statistics contained in the Annual FOIA Reports and displaying them graphically. Moreover, the website contains various featured reports that highlight key measurements, such as the agencies with the highest numbers of full grants and the government's overall backlog of FOIA requests for the past several years.

Further, in order to provide a snapshot of government-wide FOIA activity, every year as part of its review of agencies' Annual FOIA Reports, OIP issues a detailed summary of the information contained in these reports for the given fiscal year. On May 1, 2015, OIP issued its Summary of Annual FOIA Reports for Fiscal Year 2014, which discusses the numbers of requests received and processed by agencies, the disposition of those requests, and details concerning the time taken by agencies to respond. The summary also provides details about the numbers of consultations and administrative appeals received and processed, as well as data on backlogs of requests and appeals. Finally, the summary provides overall figures for the numbers of personnel working on FOIA and the costs to the government.

For the fifth year, OIP prepared this detailed summary of agency Annual FOIA Reports by using FOIA.gov, which allows for a detailed analysis of statistics that was not readily available in past years. This yearly summary of agencies' Annual FOIA Reports is useful for both agency personnel and open government groups, who continue to look forward to its issuance each year. The Summary provides both agencies and the public with an overall picture of FOIA processing government-wide.

Through FOIA.gov and OIP's summary of the Annual FOIA Reports, the Department continues to shed an unprecedented amount of light on agencies' administration of the FOIA. By allowing the data from agency Annual FOIA Reports to more easily be compared across agencies and over time, the Department is ensuring that agencies are accountable for their FOIA administration and that the government is fully transparent concerning its FOIA responsibilities.

Quarterly Reporting Requirement

Pursuant to the quarterly FOIA reporting requirement instituted by OIP in January 2013, OIP continued to facilitate agencies' quarterly reporting of FOIA data in 2015. Through the use of APIs, agencies are required to post their quarterly data online so that it then collectively appears on FOIA.gov. The quarterly data consists of: the number of requests received during the reporting period, the number of requests processed during the reporting period, the number of requests in an agency's backlog at the end of the reporting period, and the progress being made to close the agency's ten overall oldest pending FOIA requests from the prior fiscal year. This quarterly reporting of FOIA data allows for a more real-time assessment of the flow of FOIA requests handled by the government throughout the year. The quarterly reporting of these key FOIA statistics not only provides the public with more timely access to important FOIA data, but it also assists agencies and agency components in actively assessing the state of their FOIA caseloads through the year in order to take the appropriate measures to reduce backlogs and improve timelines.

Meetings with Chief FOIA Officers

In yet another effort to assist agencies in their administration of the FOIA and to promote further accountability, in 2015 the Acting Associate Attorney General, who is also the Department's Chief FOIA Officer, met with the Chief FOIA Officers from the agencies that receive and process the overwhelming share of the government's FOIA requests. At the meeting the Acting Associate Attorney General and agency representatives discussed their implementation of the Department's 2009 FOIA Guidelines and other open government initiatives. The Director of OIP also individually met with many of these Chief FOIA Officers to discuss their agency's FOIA administration in further detail, including their performance based on the most recent Annual and Chief FOIA Officer Reports. These meetings have become an invaluable opportunity for the Chief FOIA Officers to hear directly from the Department of Justice as we reinforce our joint commitment to openness and transparency and further promote the goals of the President and the Attorney General.

C. Counseling and Consultations

In addition to providing written policy guidance to agencies and conducting seminars on such guidance, OIP also provided direct, one-on-one counseling for agency personnel and other interested parties during 2015, as a further means of encouraging agency compliance with the FOIA. OIP's counseling activities were conducted largely over the telephone by experienced OIP attorneys known to FOIA personnel throughout the Executive Branch as "FOIA Counselors." Through this FOIA Counselor Service, OIP provided information, advice, and policy guidance to FOIA personnel government-wide, as well as to other persons with questions regarding the proper interpretation or implementation of the Act. OIP has established a special telephone line to facilitate its FOIA Counselor Service – (202) 514-3642 (514-FOIA) – which it publicizes widely. While most of this counseling was conducted by telephone, other options were made available as well. The counseling services provided by OIP during the year are summarized below.

OIP provided FOIA Counselor guidance to agencies on a broad range of FOIA-related subjects, including guidance pertaining to the continued implementation of the President's FOIA Memorandum and the Department's 2009 FOIA Guidelines. Most of the FOIA

Counselor calls received by OIP involve issues regarding proposed agency responses to initial FOIA requests or administrative appeals, but many are more general anticipatory inquiries regarding agency responsibilities and administrative practices under the Act. The Department of Justice specifies that all agencies intending to deny FOIA requests raising novel issues should consult with OIP to the extent practicable. See 28 C.F.R. § 0.24(i) (2013). OIP has found that such consultations are very valuable in ensuring agency compliance with the Act. Over 2,370 requests for guidance were received by OIP through its FOIA Counselor service during 2015.

Calls to the FOIA Counselor by Month in 2015
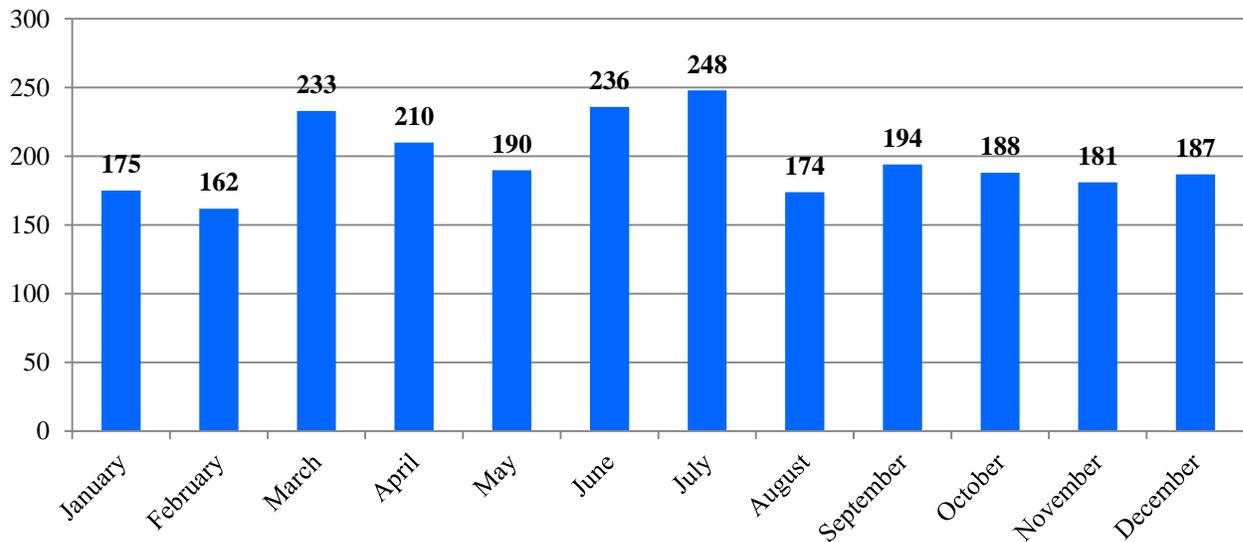
Although the FOIA Counselor Service is intended to assist agency personnel, OIP has found that the public frequently contacts the FOIA Counselor Service as well. Approximately forty-four percent of the calls received in 2015 were from members of the public. Often these individuals contact OIP with questions about how to make a FOIA request or locate a particular document.

**Estimated Breakdown of Callers
to the FOIA Counselor in 2015**

■ Agency Personnel (56%)   ■ Members of the Public (44%)
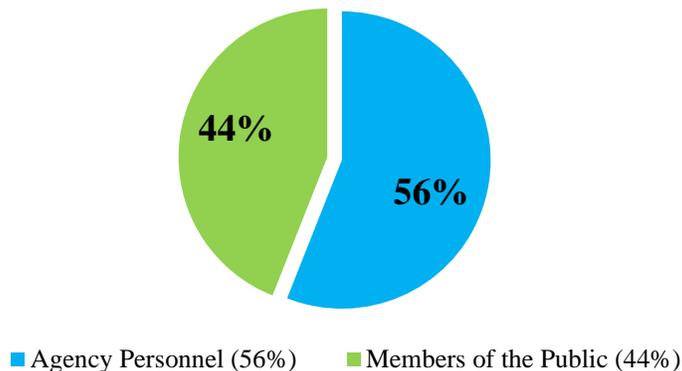
Sometimes a determination is made that a FOIA Counselor inquiry requires more extensive discussion and analysis by OIP attorneys, including supervisory attorneys. On such occasions, OIP often convenes a meeting or teleconference between agency representatives and senior OIP staff to thoroughly discuss and resolve all factual, legal, and policy issues related to the matter. OIP conducts similar discussions within the Department of Justice as well.

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

D. Disseminating Information through *FOIA Post*

 OIP continued to disseminate information using the *FOIA Post* blog in 2015. In 2012 the Department enhanced its popular *FOIA Post*, an online and cost-efficient replacement for OIP's longtime *FOIA Update* newsletter, by converting it into a blog. As the Department's first-ever FOIA blog, the improved *FOIA Post* allows for quick transmittal of the most up-to-date FOIA news and information to both the public and government personnel. The blog includes a search feature that allows users to use key terms to search through all of OIP's blog posts for any information that is of particular interest. Similar full-text search tools are also provided for the archived articles issued through the original version of *FOIA Post* and *FOIA Update*.

FOIA Post continued to serve as one of the primary means by which OIP disseminated information concerning the FOIA to government personnel and the public during 2015. All the OIP guidance articles issued in 2015 were disseminated to agencies – and made available to the public – on *FOIA Post*. OIP also used *FOIA Post* to announce several Best Practices Workshops, the issuance of the abovementioned summaries and assessment of agencies' FOIA administration, and other relevant FOIA news. All training programs and FOIA conferences were likewise publicized on *FOIA Post*.

FOIA Best Practices Workshops

FOIA Post was used to recap the lessons and principles discussed during several FOIA *Best Practices* workshops held throughout the year. As part of the Second United States Open Government National Action Plan's commitment to further modernizing FOIA and improving internal agency FOIA processes, OIP began holding a series of FOIA *Best Practices* workshops in 2014, and continued the workshops in 2015. Each workshop in this series focuses on a specific FOIA topic, with a panel of representatives sharing experiences, lessons learned, and strategies for success in these areas. Through these workshops, agencies can continue to learn from one another and leverage the successes of others in their own organizations for the overall benefit of FOIA administration across the government. Three workshops were held during 2015 on the following topics: FOIA Customer Service, Best Practices for Small Agencies, and Reducing Backlogs and Improving Timeliness. Following each workshop, OIP published a summary of the best practices

identified during the session on *FOIA Post*. OIP also announced on FOIA Post the creation of a new section of OIP's website that compiles all of the best practices discussed as well as any related guidance or resources onto one page for easy access.

Sunshine Week Events

OIP used FOIA Post to announce the Department of Justice's 2015 Sunshine Week Kick-off Event. The Department emphasized in its 2009 FOIA Guidelines the critical importance of FOIA professionals to the day-to-day implementation of the law. In its annual event commemorating the sixth anniversary of the issuance of the 2009 FOIA Guidelines, the Department recognized and celebrated the accomplishments of these agency FOIA professionals. Agencies were invited to nominate FOIA professionals for various awards recognizing their service. At the event, the Department presented awards for each of the following categories: Exceptional Service by a FOIA Professional, Exceptional FOIA Service by a Team of Agency Professionals, Lifetime Service Award, Excellence in Management, Outstanding Contributions by a New Employee, and Outstanding Customer Service. Acting Associate Attorney General and Department of Justice Chief FOIA Officer Stuart Delery served as the keynote speaker and highlighted the FOIA improvement initiative underway at the Department, the electronic FOIA training materials recently released by OIP, and the new Best Practices Workshop Series. Following the celebration, OIP summarized the event and listed the award recipients on *FOIA Post*.

New Department of Justice FOIA Regulations

FOIA Post was also used to announce the publication of the Department's updated FOIA regulations, which became effective on May 4, 2015. As highlighted in *FOIA Post,* the regulations include:

- A focus on the role of the Department's FOIA Contacts and FOIA Public Liaisons to assist requesters both before and after a request is made;
- Proactive notification to requesters of which processing track their request falls into and an opportunity for requesters to narrow their requests to fit a faster track;
- Procedures on referrals, consultations and coordinations, which among other things require agencies to provide requesters the name and FOIA contact information of any agency where records are referred; and
- An emphasis on good communication practices, which include the Department's commitment to communicate with requesters electronically whenever feasible, as well as other practices that ensure communications are made in a spirit of cooperation.

The new FOIA regulations were developed with public feedback and useful suggestions from requesters. Many of the changes incorporate best practices from OIP's guidance that improve the FOIA process for both the Department and requesters.

Importance of Proper Case Management

OIP also used *FOIA Post* to discuss the importance of case management tools and to announce that OIP would begin using FOIAonline as its FOIA tracking system in 2016.

FOIAonline is a multi-agency FOIA tracking system developed by a partnership of agencies. The post explained that one of the main tools agencies use for tracking the efficiency of their FOIA workflows and ensuring the accuracy of their Annual FOIA Report is their case management system. Agencies currently use various case management systems for tracking and processing their FOIA requests. OIP emphasized that each agency should ensure that they are using the system that best serves their particular FOIA needs.

Third United States Open Government National Action Plan

FOIA Post was also used to announce the release of the Administration's Third Open Government National Action Plan. The Department is proud to be working on a number of initiatives which promote the principals of open government and together will improve public services, access to information, government integrity and the administration of justice. OIP will be working on three initiatives as part of the commitment to modernize implementation of the FOIA. The three initiatives include: expanding services offered on FOIA.gov, conducting a proactive disclosure pilot for posting FOIA-released records online, and improving agency FOIA websites. Each of these initiatives are discussed in further detail in Section G, below.

FOIA and Open Government Performance Standards for DOJ Employees

The Department also announced on *FOIA Post* its recent updates to employee performance standards for FOIA and open government positions. Agency accountability for ensuring open government flows directly from the efforts of the many individuals within agencies who have a role in responding to FOIA requests or overseeing open government policies and activities. Ensuring that those activities are afforded their proper importance as a key aspect of job performance is an important way to both ensure accountability and to promote open government. As part of the Department of Justice's own efforts to improve its open government, the Assistant Attorney General for Administration sent a memorandum to the heads of all department components on October 2, 2015, reminding them "of the importance of ensuring compliance with the requirements of the Freedom of Information Act (FOIA), and the Open Government Directive by incorporating appropriate performance standards in employee appraisal records and work plans."

Other FOIA News

FOIA Post was also used to disseminate other types of FOIA news. For example, OIP publicized the launch of an eFOIA mobile app by the Privacy Office at the Department of Homeland Security (DHS). Using their mobile devices, requesters can now submit requests to DHS and check the status of existing requests from any place and at any time.

E. Use of Social Media

In an effort to reach a wider audience and disseminate important FOIA information as soon as practical, during 2015 OIP continued to use its Twitter account to notify the public of the Office's activities and the most recent FOIA news. Further, as part of its efforts to provide governmentwide electronic training resources to as broad an audience as possible, OIP posted its FOIA video briefing to senior government executives on the Department's YouTube Channel. In announcing the use of Twitter through *FOIA Post*, OIP

noted that "[a]s agencies and offices continue to proactively disclose information online, it is important that the public be made aware of such releases [and that] . . . [s]ocial media offers government offices an efficient way to notify the public of proactive disclosures." OIP also noted that "by utilizing social media, agencies can rapidly convey information to a broad audience, in a timely fashion, keeping with the FOIA's goal of letting the public know what their government is doing."

F. Providing Additional FOIA Reference Materials

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

Department of Justice Guide to the Freedom of Information Act

The preeminent reference document created by OIP is the *United States Department of Justice Guide to the Freedom of Information Act*. This publication is a legal treatise on the FOIA and is widely relied on by government personnel as well as members of the public. The *Guide to the FOIA* contains an extensive discussion of the case law interpreting the FOIA's many procedural requirements, its exemptions and other relevant topics such discretionary disclosures and waiver, as well as litigation-related issues. The *Guide* also discusses the President's and the Department of Justice's Memoranda on the FOIA as well as all the changes made to the FOIA by the OPEN Government Act of 2007.

OIP continued to update the *Guide to the FOIA* to reflect recent changes in FOIA law. In 2013, the *Guide* was transitioned from a paper publication to a 100% online resource that serves as a "living document" that is regularly updated to include significant new developments in FOIA as they occur. In addition to allowing for the more timely transmission of information to those who rely on the *Guide* to understand and implement the FOIA statute, this online publication allows users to conduct keyword searches throughout the entire *Guide*, and also includes links to source material. In 2015, OIP posted updated *Guide* chapters concerning: Exemptions 3, 7(F), 8 and Attorney Fees.

Resources on Exemption 3 Statutes

In 2013, OIP established a dedicated section on its website, under FOIA Resources, to address Exemption 3 of the FOIA. This section is designed to offer resources to assist agencies in properly processing FOIA requests and aid requesters in understanding the scope of Exemption 3. In 2015, OIP added to this section of its website an updated chart of all the statutes reported in agencies' Fiscal Year 2014 Annual FOIA Reports as used by them in conjunction with Exemption 3. To further assist agencies in properly processing requests and in preparing their Annual FOIA Reports, in 2015 OIP also continued to update its chart of all the statutes that courts have found to qualify as Exemption 3 statutes under the FOIA. This chart, which includes a description of the material covered by the various statutes and the corresponding case citations, is also posted on the FOIA Resources page of OIP's website.

Summaries of Court Decisions

Each year the federal courts issue hundreds of decisions in FOIA cases, addressing all aspects of the law. These decisions shape the way the law is interpreted and applied by the thousands of attorneys and access professionals across the government who handle FOIA requests, administrative appeals, and litigation. To aid those professionals, in addition to substantive and procedural policy guidance, OIP provides agencies and the public with detailed summaries of every FOIA case decided in the United States, at both the district court and appellate levels. For every court decision in its summaries, OIP highlighted each FOIA exemption and procedural or litigation-related issue that was discussed in the opinion. Because court decisions play such an important part in the interpretation of the FOIA and its proper administration, OIP provides these summaries to help ensure that all FOIA professionals have ready and current access to the most recently decided court opinions. All of the summaries are compiled in one central location on the Court Decisions section of OIP's website. As a result of improvements made to this section of OIP's website in 2013, these cases can all be searched by topic, chronologically and through key words.

Centralized Access to all Agency Annual FOIA Reports

As noted above, agencies are required to compile and submit to the Attorney General an Annual FOIA Report each year in accordance with 5 U.S.C. § 552(e)(1). For Fiscal Year 2014, for the eighth year in a row, OIP completed and posted the Department's Annual FOIA Report in advance of the statutory deadline. By completing and publicly posting the Department's Annual FOIA Report early, OIP continues to serve as an example to other agencies.

As is also mentioned above, as part of its government-wide guidance responsibilities, every year OIP reviews each agency's Annual FOIA Report prior to it being posted. Once they are finalized, OIP makes all of the agencies' Annual FOIA Reports promptly available on its central electronic site. In 2015, OIP continued this practice of reviewing all agencies' Annual FOIA Reports prior to their being posted. This review was conducted in accordance with a 2002 Government Accountability Office (GAO) report which encouraged such discretionary OIP review activities and found that they "have resulted in improvements to both the quality of agencies' annual reports and on-line availability of information." A follow-up GAO study published in 2004 likewise found improvements in agencies' annual reporting due to OIP's government-wide review efforts.

In accordance with another provision of the FOIA, 5 U.S.C. § 552(e)(4), the Department of Justice in 2015 maintained "a single electronic access point" for the consolidated availability of the Annual FOIA Reports of all federal agencies. OIP posted all agency Annual FOIA Reports in a human-readable and uniform "open" format on its centralized Annual FOIA Report website.

Proactive Disclosures

In keeping with the Department's focus on increasing proactive disclosures, OIP proactively posted a variety of information concerning the FOIA that is useful to both agencies and the public alike on its website. In 2015, OIP continued to update the FOIA Resources section of its website with the Exemption 3 charts discussed above. As noted above, OIP also posted government-wide guidance on the FOIA on its website and regularly

used its blog, *FOIA Post*, to notify agencies and the public about new FOIA developments and events. Under the Court Decisions section of OIP's website, OIP regularly posted summaries of the new FOIA decisions issued by the federal courts. OIP also continued to update the Training section of its website to notify agency personnel and the public of upcoming FOIA training opportunities and events. In 2015, OIP added to this section of its website newly released training materials, including a FOIA infographic for all agency employees and a video briefing for agency senior executives, as well as information about

accessing two e-Learning FOIA modules, as discussed below. The Key Dates and Reporting Requirements section was also updated throughout 2015 with a calendar of key FOIA events, including training sessions, workshops, and conferences, as well as key deadlines for federal agencies. The calendar is presented both chronologically, by month, and topically.

> *"The President's memorandum instructs agencies to 'use modern technology to inform citizens what is known and done by their Government.' Accordingly, agencies should readily and systematically post information action online in advance of any public request."*
>
> *- Attorney General's FOIA Guidelines*

As described in the Department's 2015 and 2016 Chief FOIA Officer Reports, OIP also continued to update its FOIA Library in 2015 by posting a number of new records and updates to the Calendar of Public Events for the Attorney General and other Senior Department Officials. 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.

As noted above, for additional reference purposes, OIP continued during 2015 to make available on its website all issues of the original *FOIA Post*, as well as OIP's former newsletter, *FOIA Update*, in a digital and keyword searchable format.

FOIA Reference Guide

OIP also continued to maintain on the Department's FOIA website an electronic copy of its *Department of Justice Freedom of Information Act Reference Guide*, which provides the public with information about how to make a request to the Department, describes how the FOIA process works, and contains descriptions of each of the Department's components and the type of records they maintain.

G. Additional Government-wide Initiatives for Further Improving the Administration of the FOIA

During 2015, OIP made substantial progress on five initiatives from the Second United States Open Government National Action Plan and the commitment in that Plan to further modernize FOIA administration. As the Administration nears completion of those initiatives, it released the Third United States Open Government National Action Plan, which builds on the commitment to modernize FOIA with additional initiatives, discussed below.

Second United States Open Government National Action Plan

The first FOIA initiative of the [Second Open Government National Action Plan](#) was to establish a consolidated online FOIA service that allows the public to submit a request to any Federal agency from a single website and includes additional tools to improve the customer experience. This project has progressed in three phases. During 2014, the Department collaborated with the General Services Administration (GSA) and worked with an interagency task force to guide this project and gather input from civil society and agency stakeholders. As part of the second phase, in 2015, the Department and GSA continued to work on this project and launched Open.FOIA.gov, which serves as a sandbox for design and function concepts. At the end of 2015 and into 2016, the Department began the third phase of this project by taking lessons learned from Open.FOIA.gov and working with its Technology experts and leadership to evaluate requirements for existing tools and resources that could be leveraged for the consolidated portal.

The second FOIA initiative was to assess the feasibility and develop the potential content of a "core" FOIA regulation that could be applicable to all agencies while also allowing for individual requirements. In 2014, OIP launched this project by meeting with both agencies and civil society to get their initial input. OIP then formed an interagency taskforce which began the process of exploring the possibility and potential content of "core" regulatory language. OIP continued this work in 2015, leading the interagency taskforce in arriving at consensus draft language. This work has continued into 2016. Throughout the process of developing common language and practices, OIP and the working group have been, and will continue to be, engaged with civil society.

The third FOIA initiative was to improve internal agency FOIA processes by leveraging best practices and successful strategies across the government. As discussed above, in 2014 OIP launched a series of FOIA Best Practices Workshops to convene agency FOIA professionals and members of the requester community to share best practices in FOIA administration. Each workshop focuses on a specific topic in FOIA administration where agency representatives with particular success on those topics share their best practices and successful strategies. OIP continued the Best Practices Workshops in 2015. These workshops provide a unique opportunity for agencies to learn from each other and apply innovative solutions to their own FOIA practices. OIP publishes the best practices discussed at the Workshops, as well as any related guidance or resources, [on its website](#) as a reference for all agencies.

The fourth FOIA initiative from the Second United States National Action Plan which the Department has spearheaded is improving FOIA training by making standard electronic resources available for all federal employees. In 2014, OIP worked on the development of a new suite of government-wide FOIA training resources designed for every level of the federal workforce from the senior executive, to the FOIA professional, to the everyday federal employee who should have a basic understanding of the FOIA. The new training tools, which OIP released in March 2015, include:

- An infographic that can serve as a resource on FOIA basics for all employees new to the federal workforce;

- A brief video from the Director of OIP aimed at senior government executives, which provides a general overview of the FOIA and emphasizes the importance of their support to their agency's FOIA program;

- An in-depth e-Learning training module specifically designed for FOIA professionals which addresses all the major procedural and substantive requirements of the law, as well as the importance of customer service; and

- A separate e-Learning training module for all other federal employee that provides a primer on the FOIA and highlights ways in which they can assist their agency in administering the law.

The infographic and briefing video are available on the Training page of OIP's website. OIP has also made the e-Learning training modules available to all agencies. This new suite of FOIA training tools not only provides important resources for all agencies, but they also reemphasize the important message from the Department of Justice's 2009 FOIA Guidelines that "FOIA is everyone's responsibility." To encourage agencies' use of these important resources, on October 28, 2015, the Department's Acting Associate Attorney General, who is also DOJ's Chief FOIA Officer, issued a memorandum to agency General Counsels and Chief FOIA Officers emphasizing the importance of FOIA training and the availability of these new tools.

Finally, as part of the fifth FOIA initiative in the Second United States National Action Plan, in 2015 the Director of OIP served on the FOIA Federal Advisory Committee. The FOIA Federal Advisory Committee met four times in 2015 (January 27, April 21, July 21, and October 20) and discussed a range of issues related to FOIA administration, including assessment of fees under the statute and proactive disclosures.

Third United States Open Government National Action Plan

On October 27, 2015, the Administration released the Third United States Open Government National Action Plan, which outlined forty-five commitments to deepen and expand upon existing open government efforts. The Department is proud to be working on a number of commitments, several of which are related to improvements to FOIA. As part of this effort, the Department is working to: 1) expand the services on FOIA.gov, 2) conduct a proactive disclosure pilot for posting FOIA-released records online, and 3) improve agency FOIA websites.

During 2015, building on the work done as part of the Second Open Government National Action Plan, and now part of the commitment in the Third Open Government National Action Plan, the Department continued its evaluation of the requirements for enhancing FOIA.gov, to among other things, feature a consolidated FOIA portal. The feasibility of additional new features were also explored, including creation of a guided request tool, online tracking of request status, simplified reporting methods for agencies, improved FOIA contact information, and tools that will enhance the public's ability to locate already posted information. This work is continuing in 2016.

In July 2015, the Department launched a six-month proactive disclosure pilot for posting FOIA-released records online. The program was designed to test the feasibility of posting most FOIA responses online so that they are available not just to a single FOIA requester, but to the general public as well. OIP worked with the participating agencies throughout the pilot, which extended into 2016. Throughout the pilot, the public was

invited to provide their feedback and any suggestions for overcoming implementation challenges.

For the third initiative, the Department will work collaboratively with the Office of Government Information Services, as well as agency and public stakeholders, in developing guidance and best practices for agency FOIA web pages, including providing a template for key elements to encourage all agencies to update their FOIA websites to be consistent, informative, and user-friendly.

H. Outreach

To improve not only the Department's, but also the government's overall FOIA administration, the Department has been heavily engaged in outreach with the requester community and civil society in a variety of ways.

OIP has regularly engaged civil society on the five initiatives mentioned above as part of our work on the Second United States Open Government National Action Plan. Additionally, in putting together the Third United States Open Government National Action Plan, the U.S. engaged with the general public, civil society groups, foundations, academia, and the private sector. OIP will continue to engage civil society throughout its work on the new FOIA modernization initiatives.

Additionally, as in past years, OIP continued to consult with civil society as part of its work in issuing policy and reporting guidelines to agencies. For example, OIP solicited feedback from civil society organizations prior to issuing the [2016 Chief FOIA Officer Report Guidelines](#) as well as its new guidance on the [Limitations on Use of "Still Interested" Inquiries.](#)

FOIA.gov

With well over two million visitors since it was launched in 2011, [FOIA.gov](#) continues to revolutionize the way in which FOIA data and information is made available to the public. While it was initially a project undertaken by the Department in response to a strong interest by open government groups to have a "dashboard" that illustrates statistics collected from agencies' Annual FOIA Reports, the Department almost immediately began to expand its capabilities and has continued to add new features over time.

As described above, [FOIA.gov](#) takes the detailed statistics contained in agency Annual FOIA Reports and displays them graphically. The website allows users to search and sort the data in any way they want, so that comparisons can be made between agencies and over time. In 2015, the Department added the data from agencies' Fiscal Year 2014 Annual FOIA Reports so that it too can now be sorted and compared. New charts and graphs were added that showed the evolution of key FOIA statistics over the past four fiscal years. During 2015, OIP and the Department also captured on FOIA.gov's [Reports](#) page agencies' Quarterly Report data. FOIA.gov was also updated throughout 2015 with recent FOIA news and spotlights on the new releases agencies have made that are likely to be of interest to public.

FOIA.gov also serves as an educational resource for the public by providing useful information about how the FOIA works, where to make requests, and what to expect through the FOIA process. Explanatory videos are embedded into the website and the site contains a section addressing frequently asked questions as well as a glossary of FOIA terms. The website also provides updated contact information for each agency, including their FOIA Requester Service Centers and FOIA Public Liaisons. Additionally, the site includes hyperlinks to over 100 agency online request forms. With this added feature, when a requester is on the site and decides to make a request to an agency with an online request-making capability, he or she may do so directly from FOIA.gov with just a couple of clicks.

In addition to these resources, FOIA.gov offers users a "Find" feature that allows the public to enter search terms to locate information on any topic across all federal government websites. The search feature captures not just those records posted in agency FOIA Libraries, but also records posted anywhere on an agency's website. This more expansive search capability is particularly significant given the steady stream of information that agencies are proactively making available on their websites. FOIA.gov's "Find" feature provides an easy way for potential FOIA requesters to first see what information is already available on a topic. This might preclude the need to even make a request in the first instance, or might allow for a more targeted request to be made.

Finally, in keeping with the Department's commitment to making government more transparent and accessible, FOIA.gov offers select content in English and Spanish. Individuals with limited English proficiency can now access the Spanish translations for the "What is a FOIA?" and "Learn" sections of FOIA.gov.

I. Training, Public Presentations, and Briefings

As yet another method for encouraging compliance with the FOIA, OIP held a variety of training programs throughout the year. These programs included continued training on the President's and the Department of Justice's 2009 FOIA Memoranda. During 2015, OIP furnished speakers and workshop instructors for seminars, conferences, individual agency training sessions, and similar programs conducted to promote the proper administration of the FOIA within the Executive Branch. Additionally, OIP conducted presentations aimed at fostering a greater understanding of the Act's administration outside the Executive Branch. This included developing a greater international understanding of the FOIA.

In conjunction with the Department of Justice's National Advocacy Center, OIP conducted numerous FOIA-training programs in 2015, which ranged from half-day introductory sessions for non-FOIA personnel to advanced programs for highly experienced FOIA personnel. Specifically, in 2015 OIP hosted the following events:

- *The Freedom of Information Act for Attorneys and Access Professionals* – This two-day program is designed for attorneys, Government Information Specialists, and other FOIA professionals with limited previous experience working with the FOIA who are now or soon will be working extensively with the Act. This program

provides an overview of the FOIA, including a discussion of the [President's FOIA Memorandum](#) and the [Department of Justice's FOIA Guidelines](#). During this course OIP also provides lectures on the various FOIA exemptions and on procedural issues, as well as a discussion on proactive disclosures and the FOIA's fee and fee waiver requirements. This training was offered four times in 2015.

- *Advanced Freedom of Information Act Seminar* – At this seminar, OIP provides advanced instruction on selected topics under the FOIA, including up-to-date policy guidance and significant new court decisions. This program also serves as a forum for the exchange of ideas useful in addressing common issues that arise in administering the FOIA. This training was offered twice in 2015.

- *Introduction to the Freedom of Information Act* – This program provides a basic overview of the FOIA for agency personnel who do not specialize in access law. It is designed for those who either work with the FOIA only occasionally or need only a general familiarity with the FOIA in order to recognize and handle FOIA-related problems that may arise in other areas of agency activity.

- *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.

- *Refresher Training for Fiscal Year 2015 Annual FOIA Reports and 2016 Chief FOIA Officer Reports* – This training event provided agencies with a refresher on their FOIA reporting obligations.

- [*Best Practices Workshops*](#) – As noted above, OIP launched the Best Practices Workshop Series in 2014 as a part of the [Second United States Open Government National Action Plan's](#) commitment to modernizing FOIA and improving internal agency FOIA processes. Each workshop focuses on a specific FOIA topic, with a panel of representatives sharing experiences, lessons learned, and strategies for success in these areas. Through these workshops, agencies can continue to learn from one another and leverage the successes of others in their own organizations for the overall benefit of FOIA administration across the government. The topics covered during 2015 include *Customer Service and Dispute Resolution, Best Practices for Small Agencies* and *Reducing Backlogs and Improving Timeliness*.

- *Overview of Agency Responsibilities Under FOIA* – As a new course, OIP provided training designed specifically for new agency personnel with supervisory responsibilities. The course provided an overview of the agency's general responsibilities under the FOIA, including receiving and processing requests, making proactive disclosures, and compiling various FOIA reports.

In addition, OIP provided training for components of the Department of Justice. In 2015, approximately 1,945 individuals were trained by OIP-sponsored training alone.

Recognizing that travel requirements limit the ability of some FOIA personnel to attend training sessions in Washington, DC, in 2015, OIP provided training on-site to the Department of Homeland Security, U.S. Citizenship and Immigration Services in Missouri.

In addition to the events hosted by OIP, twenty-four professional staff members from OIP gave a total of 68 training presentations during the year, including several training sessions designed to meet the specific FOIA-training needs of individual agencies. Such individualized training sessions were conducted for the:

- Department of Agriculture
- Department of Labor
- Department of the Treasury
- Equal Employment Opportunity Commission
- Federal Deposit Insurance Corporation
- Internal Revenue Service
- National Council on Disability
- National Oceanic and Atmospheric Administration
- Nuclear Regulatory Commission
- Office of the Director of National Intelligence
- Office of Management and Budget
- Privacy and Civil Liberties Oversight Board
- U.S. Customs and Immigration Services
- U.S. Postal Service

Furthermore, in 2015, OIP professionals gave training presentations at seminars hosted by the American Society for Access Professionals, an association which includes members of the FOIA requester community as well as agency FOIA professionals.

During 2015, the Director of OIP gave a total of twenty-six presentations at a variety of FOIA-training programs and other forums. In addition to the training programs described above, the Director and other senior OIP staff met with a number of representatives from foreign countries interested in learning about the American experience with open government.

J. Legislative and Regulatory Proposals

During 2015, OIP reviewed numerous draft or preliminary legislative proposals relating to the FOIA or to information policy more generally. As a result of this review, OIP made recommendations in many instances, most frequently in connection with the technical sufficiency of proposed statutory nondisclosure provisions intended to serve as Exemption 3 statutes under the Act. OIP likewise identified issues and suggested revisions to language contained in proposed FOIA regulations submitted by agencies.

K. Congressional and Compliance Inquiries

In 2015, OIP responded to fifteen congressional inquiries pertaining to FOIA-related matters. OIP also received thirteen matters from members of the public who had concerns about how the FOIA was being administered at an agency. In response to these compliance inquiries, OIP discussed the issues with the agency involved and, whenever appropriate, made recommendations on the steps needed to address the concern.

LISTS OF FOIA LITIGATION CASES RECEIVED AND DECIDED DURING 2015

In accordance with 5 U.S.C § 552(e)(6), the Department of Justice is required to provide a "listing of the number of cases arising under this section, the exemption involved in each case, the disposition of such case, and the cost, fees, and penalties assessed under subparagraphs (E), (F), and (G) of subsection (a)(4)." Because FOIA cases are often brought in one year, but not resolved until a subsequent year, the Department attaches to this report two separate lists of FOIA litigation cases for 2015, one showing the FOIA cases "received" during 2015 and the second showing the dispositions "rendered" in 2015. These lists will also be posted on OIP's website in an "open" format so that the public may manipulate and sort through the data in accordance with their particular interests.

List of Cases Received in 2015

The first list contains all of the cases filed as FOIA claims in federal district court during 2015. This information is derived directly from the federal courts' docketing systems through the Public Access to Court Electronic Records (PACER). According to PACER, in 2015, 483 cases were filed in the federal district courts as FOIA claims. It is important to note, however, that not all claims that are originally filed as FOIA claims remain as such on the court's docket. In many instances a court will determine after a case is filed that the lawsuit does not actually pertain to an agency action under the FOIA. During 2015, OIP observed over 27 cases in which the courts dismissed claims because they were not actually FOIA actions. This can happen, for example, when a requester attempts to file a lawsuit against a state agency or public organization that is not subject to the FOIA. This list does not include those cases.

As a point of reference, during Fiscal Year 2015 the government overall received 713,168 FOIA requests. In comparison to the number of lawsuits filed during Calendar Year 2015, this only amounts to 0.067% of the requests agencies reported receiving in Fiscal Year 2015.

List of Decisions Rendered in 2014

The second list attached to this report contains all of the FOIA cases in which a decision was rendered by the federal courts in 2015. The list was compiled through the Summary of Court Decisions issued by OIP on a weekly basis and a survey of PACER. The list is organized alphabetically, and as required by Section (e)(6) of the FOIA, contains a description of the disposition in each case, the exemptions (if any) involved, and any costs, fees or penalties assessed.

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

case initially decided in 2014, but appealed and affirmed in 2015, would be found on the lists of cases in which a decision was rendered for both 2014 and 2015.

Report on any Notification to the Special Counsel

During 2015, the United States courts made no written findings pursuant to 5 U.S.C. § 552(a)(4)(F)(i). Accordingly, no notification to the Special Counsel was necessary.