

2017



# Department of Justice Chief FOIA Officer Report





**2017 Chief FOIA Officer Report  
United States Department of Justice  
Chief FOIA Officer: Acting Associate Attorney General**

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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’s 2009 FOIA Guidelines directed 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. Each year, the Department’s Office of Information Policy (OIP) provides guidance to agencies on the content of these reports, which focus on: (1) applying a presumption of openness, (2) having an efficient system in place for responding to requests, (3) increasing proactive disclosures, (4) utilizing technology, and (5) reducing backlogs and improving timeliness. The Department of Justice itself follows these guidelines and issues its own Chief FOIA Officer Report.

This marks the eighth year in which agencies, including the Department of Justice, have issued a Chief FOIA Officer Report. The 2017 Chief FOIA Officer Report for the Department of Justice details how in the face of increasing numbers of incoming FOIA requests the Department continued to improve its administration of the FOIA. This 2017 Chief FOIA Officer Report describes many of the Department’s accomplishments during the last year, which include processing a record high number of requests, maintaining a high release rate of 93.5%, and closing our oldest requests, appeals and consultations. As described below, the Department also engaged in robust training, outreach, and proactive disclosure efforts, and we continued to look for new ways to greater utilize technology to facilitate a more efficient FOIA administration.

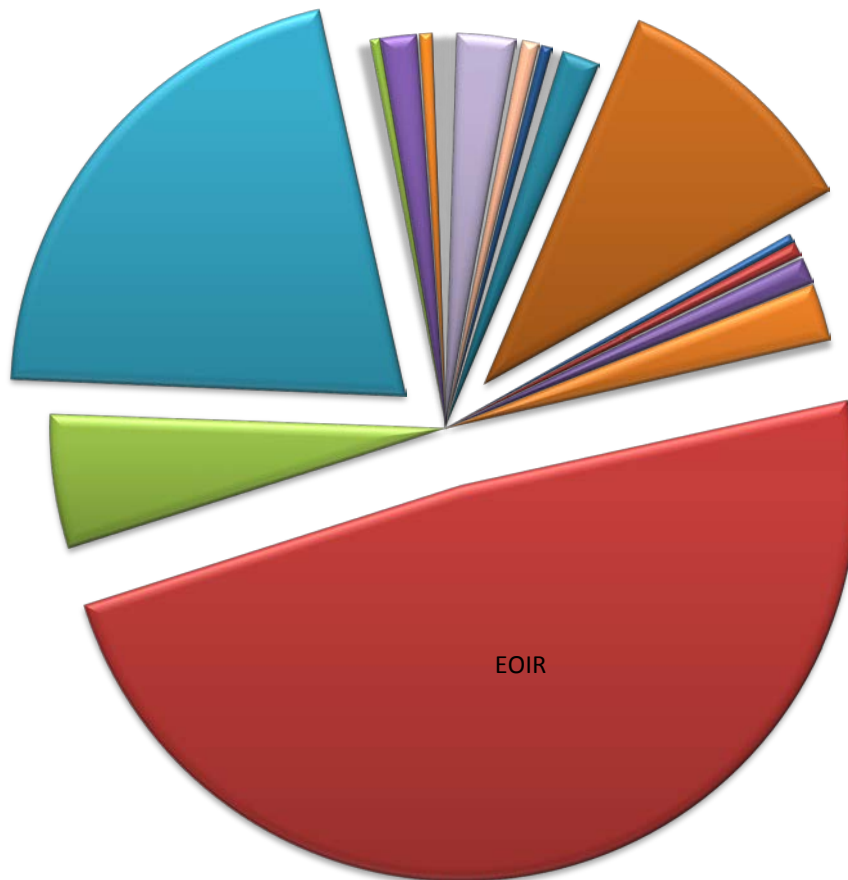
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<sup>1</sup> [5 U.S.C. § 552\(j\)\(2\)\(D\) as amended by Pub. L. No. 114-185, 130 Stat. 538.](#)

## **Decentralized Nature of FOIA Processing at the Department of Justice**

At the Department of Justice, the FOIA is administered on a decentralized basis, with thirty-one separate FOIA offices handling requests made to the various Department components. The Department received more than 73,000 FOIA requests in Fiscal Year (FY) 2016. The range in the number of FOIA requests received varies widely between the components, from the Executive Office for Immigration Review (EOIR) which received 35,500 requests in FY 2016, constituting over 48% of the Department's total requests received, to fifteen components that each received less than 100 requests.

**Number of Requests Received by Component**



OIP, which is responsible for encouraging compliance with the FOIA both within the Department and across the federal government, is also responsible for processing FOIA requests on behalf of itself and the Offices of the Attorney General, Deputy Attorney General, Associate Attorney General, Legislative Affairs, Legal Policy, and Public Affairs. The remaining thirty Department components are responsible for processing requests received for their own records, based upon guidance provided by OIP. The Administrative Appeals Staff of OIP adjudicates administrative appeals of FOIA denials for all Department components.

During FY 2016, the Department had 414 full-time FOIA employees. These employees were joined by others who work on FOIA part of the time, which combined amounted to the equivalent of 489.64 full-time FOIA staff. As noted above, in an effort to meet the high demand of the incoming requests, Department employees managed to process more than 71,000 requests. Notably, the Department increased its processing from the prior fiscal year by nearly 6%.

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 2016.

## **Section I: Steps to Apply the Presumption of Openness**

*The Department has engaged in a number of efforts to ensure that the presumption of openness is fully integrated into its administration of the FOIA, including issuing government-wide guidance on the presumption, conducting a robust training program, and engaging in outreach with the public.*

### **Training:**

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. In 2016 alone, OIP trained over 2,100 employees by hosting and participating in a variety of training sessions addressing issues ranging from utilizing proper administrative procedures, understanding exemptions, applying the FOIA's fee and fee waiver provisions, achieving transparency through proactive disclosures, improving customer service, and ensuring an effective FOIA administration. OIP also provides training material [online](#).

*"[T]he basic purpose of the Freedom of Information Act [is] 'to open agency action to the light of public scrutiny.'"*

- Supreme Court: Air Force v. Rose, 425 U.S. 352, 372, (1976).

During this reporting period, which goes from March 2016 to March 2017, OIP hosted the following training events which were attended by FOIA professionals within the Department and across all agencies:

- *FOIA Amendments Training* – On June 30, 2016, the FOIA Improvement Act of 2016 was signed into law making several procedural and substantive changes to the FOIA. This training session provided agency personnel with an overview of the amendments and an opportunity for attendees to ask OIP's Director about the new provisions.
- *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. During this course, OIP provides lectures on procedural issues and the FOIA's exemptions, as well as a discussion on proactive disclosures and the FOIA's fee and fee waiver requirements. This training was offered three times during the reporting period.
- *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 during the reporting period.

- *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 FY 2016 Annual FOIA Reports and 2017 Chief FOIA Officer Reports* – This training event provides agencies with a refresher on their FOIA reporting obligations.
- [\*Best Practices Workshops\*](#) – Each workshop focuses on a specific FOIA topic, with a panel of representatives sharing experiences, lessons learned, and strategies for success. 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 this reporting period include *Best Practices from the Requester's Perspective* and *Best Practices for FOIA Training Programs*.
- *Continuing FOIA 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.
- *DOJ Component Conference and Training* – This program is designed for DOJ components specifically. OIP provides instruction on various FOIA topics that are important to the Department's components in their FOIA administration. This past year the topics addressed at the DOJ Conference included the FOIA Improvement Act of 2016, the Department's FY 2016 Annual FOIA Report, the appeals process, the Department's Component Improvement Initiative, the Department's updated FOIA regulations, and recent developments in FOIA case law.

Further, OIP continued to provide specialized training to agencies on any topic of interest, tailoring instruction to the needs of the particular agency involved. Specifically, between March 2016 and March 2017, OIP provided specialized training for the following agencies: the Departments of Treasury, Labor, Defense, Education, Homeland Security, Health and Human Services, the National Archives and Records Administration, National Council on Disability, United States Postal Service, Federal Reserve Board, Office of Government Ethics, Census Bureau, Office of Personnel Management, Office of the Director of National Intelligence, Nuclear Regulatory Commission, Consumer Financial Protection Bureau, United States Institute of Peace, Federal Deposit Insurance Corporation, Small Business Administration, and Federal Communications Commission.



As noted the past few years, in the spirit of the Department's declaration that "FOIA is everyone's responsibility," in March 2015 OIP released 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 other federal employees who should have a basic understanding of the FOIA. These training tools are frequently utilized by DOJ components and agencies across the government as part of their FOIA training regimen and this past year was no exception. The tools 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 executive support for agency FOIA programs;
- 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 employees that provides a primer on the FOIA and highlights ways in which they can assist their agency in administering the law.

In addition to the training events and resources offered through OIP, many of the Department's components held their own training events over the course of the reporting period. For example:

- The Antitrust Division conducted training on new FOIA court decisions, the FOIA Improvement Act of 2016, and efforts to improve internal processing procedures.
- The Bureau of Alcohol, Tobacco, Firearms, and Explosives (ATF) conducted training on fees and fee waivers, the standards for granting expedited processing, and the FOIA Improvement Act of 2016.
- The Bureau of Prisons (BOP) held seven regional FOIA training sessions during FY 2016. A supervisory FOIA attorney visited each region and led a one-day training session specifically catering to the particular needs of each region. Topics included: The 2016 Update to DOJ's FOIA Regulations, Processing Considerations, Fees and Fee Waivers, Exemption 4, Exemptions 6 and 7C and the Use of Glomar, Exemption 7E, Litigation Considerations, OIP Website Resources, Good Customer Service and Accountability, Methods for Improving Consistency and Accuracy, Methods for Improving Search, and Tips for Processing Databases.

Additionally, BOP ensured that all new staff members followed a detailed and individualized one to two-week training program specifically tailored to their understanding of the FOIA and BOP records.

- The Civil Division conducted training on the fundamentals of, and intersection between, the FOIA and the Privacy Act of 1974, as well as the relationship between FOIA, records management, and e-Discovery.
- In addition to attending several training sessions held by OIP, the Criminal Division required each new employee to complete the e-Learning FOIA training module mentioned above within six weeks of arrival.
- The Drug Enforcement Administration (DEA) held an in-house training for its FOIA professionals. The topics covered during the training included the FOIA's procedural requirements, fees and fee waivers, and Exemptions 5, 6, 7C, and 7E.
- EOIR conducted an internal FOIA training focused on the importance of good customer service, improving timeliness and reducing its backlog, and limiting "still interested" inquiries.
- The Federal Bureau of Investigation (FBI) conducted training on a variety of topics during the reporting period, including:
  - Initial Processing of FOIA/PA Requests: This six to seven-week training course covers the intake and acknowledgement of requests, the search and import of responsive records, and the initial review of records for disclosure.
  - FOIA/PA Disclosure: This three to four-week training course covers the review of responsive records and proper application of exemptions.
  - Classification Review and Declassification: This week long training course covers the review of classified documents or information and subsequent declassification procedures pursuant to Executive Order (EO) 13,526.
  - Automatic Declassification Review and Determinations: This training course covers the recognition of classified documents and information, the intricacies of the automatic declassification review process, and the procedures for defending these determinations before the Department Review Committee (DRC).
  - Regulation Changes and Amendments to the FOIA: These training courses provide guidance and communicate new operating procedures that have been implemented as a result of regulation changes and amendments to the FOIA.
  - Critical Thinking: The FBI's Records Management Division (RMD) began a multi-year series of lessons/exercises specifically designed to help develop individual analytical skills for use by FOIA professionals during the processing of FOIA requests.
  - Expert/Supervisor FOIA/PA Analysis: This bi-weekly continuing education session stresses analytical methodologies for specific substantive issues.
- The Justice Management Division (JMD) held training for its Procurement Services Staff (PSS) who are involved in the FOIA process. The training included procedural requirements, exemption applicability, and roles and responsibilities in managing FOIA requests.



- The Tax Division’s Senior Counsel for FOIA and Privacy matters gave a lecture on FOIA litigation considerations to its client agency, the Office of Chief Counsel’s Office at the Internal Revenue Service.

Since last March, approximately 93.4% of the Department’s FOIA professionals attended substantive FOIA training. In the upcoming year, the Department will continue its efforts to ensure that core, substantive FOIA training is offered to all agency FOIA professionals. OIP will continue to provide comprehensive FOIA training to both the Department’s FOIA professionals and 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](#). In addition to these efforts, OIP will continue to hold FOIA Conferences for the Department’s components.

### **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 open government groups in a variety of ways. OIP has regularly engaged civil society on the various FOIA modernization initiatives that are part of the Department’s Open Government Plan and the Third United States Open Government Partnership National Action Plan (NAP). 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. OIP also engaged with civil society representatives as part of its work leading the NAP commitment to study the feasibility of a “Release to All” presumption. Further, 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 [Guidelines for the 2017 Chief FOIA Officer Reports](#).

In addition to the outreach conducted by OIP, many other components also engaged in outreach to the requester community during the reporting period. For example, BOP worked with frequent requesters to streamline the processing time necessary to respond to their requests. BOP also explained certain limitations regarding its record keeping system, search capabilities, and ability to release certain privacy related records. These communications resulted in improved relations between BOP and its frequent requesters.

BOP also worked with public defenders (a significant community of requesters for BOP) in two distinct ways. First, BOP proactively contacted public defenders seeking their clients’ records to determine the precise records they sought so that it could gather and process these records in a more expeditious manner. Through these interactions, BOP discovered that while public defenders would often ask for entire files, they were mostly interested in receiving a more discrete set of records. Second, BOP provided more information to the public defenders on the “Clemency Project” process and the appropriate mechanism for receiving inmate records through that process. As a result, the public defenders were better informed about how to receive this information more efficiently.

The DEA FOIA office is continuing to develop an online survey in an effort to solicit requester feedback to improve customer service. EOIR continued working on its previous

engagement with non-governmental organizations regarding greater access to its decisions. As a result of these efforts, EOIR is currently undergoing efforts to expand its posting of Board of Immigration Appeals decisions. The FOIA staff at the Executive Office for United States Attorneys (EOUSA) coordinated telephone conferences with frequent requesters seeking similar categories of records to provide explanations about how such records are maintained and processed, as well as suggestions for how to tailor requests. The Office of Legal Counsel (OLC) has continued an ongoing dialogue with multiple requesting organizations in an effort to help them better understand certain aspects of its FOIA processing practices and records systems. Specifically, OLC worked with one organization to come up with various statistics that would allow the public to gain a more accurate view of OLC's classified opinions practice.

### **Other Initiatives:**

As the Department has long declared, "FOIA is everyone's responsibility." OIP and the Department are fully committed to ensuring that all Department employees have a full understanding of their responsibilities in implementing this important law. As mentioned above, on March 12, 2015, OIP released a suite of training resources designed for all levels of the federal workforce.

For non-FOIA professionals, the training resources include: (1) an infographic that can serve as a resource on FOIA basics for all employees new to the federal workforce; (2) a brief video from the Director of OIP aimed at senior government executives, providing a general overview of the FOIA and emphasizing the importance of leadership support to agency FOIA programs; and (3) an e-Learning training module for all federal employees that provides a primer on the FOIA and highlights ways in which they can assist their agency in administering the law. Department components continue to use these resources to ensure all non-FOIA professionals are fully informed of their important obligations under the FOIA.

In addition to this effort, many of the Department's components have taken a range of steps to inform their employees of their FOIA obligations. For example, many components provide their new employees with briefing materials on the FOIA as part of their orientation. The FBI requires all of its employees to complete an online course, entitled "Records Management for All," which in addition to records management includes specific training on the FOIA. In addition, a yearly briefing is provided to FBI field office representatives, which includes an overview of the FOIA program and some of the more common issues involving FBI's FOIA administration.

DEA FOIA professionals conduct in-house training for newly designated FOIA coordinators and other FOIA points of contact at DEA program offices to ensure that they are familiar with their FOIA obligations. The Criminal Division instituted a mandatory FOIA training requirement for all of its personnel. The Civil Division offered Department-wide training on the relationship between FOIA, Records Management, and e-Discovery. And, as a final example, BOP included general FOIA obligations and the FOIA Improvement Act of 2016 in its Office of General Council's presentation at a National Leadership Training, which was attended by all BOP Wardens and Executive Staff.

## **Section II: Steps Taken to Ensure that the Department Has an Effective System in Place for Responding to Requests**

*As the Department of Justice has emphasized, “[a]pplication of the proper disclosure standard is only one part of ensuring transparency. Open government requires not just a presumption of disclosure, but also an effective system for responding to FOIA requests.” It is essential that agencies effectively manage their FOIA program.*

### **Processing Procedures:**

#### *Expedited Processing*

The FOIA contains a requirement that agencies establish procedures in their regulations that provide “for expedited processing of requests” in certain circumstances. [5 U.S.C. § 552\(a\)\(6\)\(E\)\(i\) as amended by, Pub. L. No. 114-185, 130 Stat. 538](#). 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\(a\)\(6\)\(E\)\(i\)\(I\), \(II\) as amended by, Pub. L. No. 114-185, 130 Stat. 538](#). For FY 2016, the Department reported an average of 7.58 days to adjudicate requests for expedited processing.

#### *Self-Assessment*

One important tool that agencies can use to ensure that they have an effective and efficient process in place for responding to FOIA requests is a self-assessment. Taking an objective and comprehensive look at internal processes and procedures often will help agencies find new efficiencies and either enhance current workflows or create new ones. Many components in the Department have engaged in self-assessment efforts to improve their FOIA processing procedures.

In 2014, OIP launched a Component Improvement Initiative to conduct an in-depth review of the Department’s FOIA processes. As part of this initiative, every year OIP reviews components’ FOIA data and provides them with direct feedback. Now entering its fourth year, an outgrowth of the initiative is the current development of a self-assessment toolkit, which was also announced in the [Department’s Open Government Plan 4.0](#). The toolkit will be a resource for all agencies to conduct their own comprehensive self-assessments. The toolkit will take a modular approach to self-assessment allowing agencies to focus on specific areas where they would like to see improvement. The individual modules will include assessments for: Initial Mail Intake and Review, FOIA Processing Workflows, Searching for Responsive Records, Processing Responsive Records, Consultations and Referrals, Responses and Language, Training and Personnel Development, Customer Service, FOIA Reporting, and FOIA Website Development and Maintenance. Finally, as part of the lessons learned from creating the self-assessment toolkit, OIP identified six best practices for conducting self-assessments. These best practices include:

- Finding the time to evaluate your program
- Understanding your FOIA process and having the ability to uncover all relevant information

- Looking to find new ways to use existing data or information to evaluate your program
- Proving your findings and making recommendations
- Setting reasonable and attainable goals
- Expanding your focus as time goes on and repeating the process on a set schedule

Many of the Department's components also took advantage of the self-assessment process during the reporting year to improve their FOIA processes. Components that engaged in a self-assessment used Annual and Quarterly FOIA Report data, as well as a review of workflows and current policies and procedures as evaluative tools. For example, ATF had success by regularly reviewing data from the prior month to establish goals for the upcoming month. As a result of this strategy, ATF was able to significantly reduce its backlog by 28%. The Antitrust Division had success focusing on workflow management by grouping requests on topics together and assigning them to designated FOIA professionals.

In addition to working on the toolkit mentioned above, OIP, which processes requests for the Department's Senior Leadership Offices, instituted some significant workflow changes based on the results of its own self-assessment. For years OIP processed requests from "cradle to grave," meaning the assigned FOIA professional would handle all aspects of the processing during the entire life of the request. After the self-assessment, OIP determined that the "cradle to grave" approach, while certainly having some benefits, was not the most efficient means to handle the continuously increasing volume of requests received. Instead, OIP created three distinct teams that would handle specific aspects of FOIA request processing. The establishment of the three teams paid immediate dividends. Over the course of the first seven months of FY 2016 (October through April), OIP processed 980 requests and reduced its backlog by 107 requests. In the remaining five months of the fiscal year, OIP processed 1,118 requests and reduced its backlog by 141 requests. These successes have continued into the first quarter of FY 2017, with OIP having already processed the most requests ever during the first quarter of a fiscal year.

### *Commercial Use Requesters*

The FOIA provides three types of requester categories for purposes of determining whether a requester should be assessed applicable fees for review, search, or duplication.<sup>2</sup> The three requester categories include: (1) commercial use requesters, (2) educational institutions, noncommercial scientific institutions, and representatives of the news media, and (3) all requesters who do not fall within either of the preceding two categories.<sup>3</sup> As a result of some academic literature proposing that the FOIA may be monopolized, at certain agencies, by "commercial use" requesters, there was interest in the FOIA community in determining what proportion of FOIA requests are from that fee category. To help create a better understanding of the issue, the [2017 Chief FOIA Officer Guidelines](#) directed all "high" and "medium" volume agencies to include in their Chief FOIA Officer Report an estimate of how many of the requests processed during FY 2016 were from a "commercial use" requester. OIP intends to compile this data government-wide. Overall, the Department estimated that only about 1.4% of requests processed in FY 2016 were from "commercial use" requesters. Nearly one-third of the Department's components reported receiving no

<sup>2</sup> [5 U.S.C. § 552\(a\)\(4\)\(A\)\(ii\)\(I\)-\(III\) as amended by, Pub. L. No. 114-185, 130 Stat. 538.](#)

<sup>3</sup> [Id.](#)

commercial requests at all. Finally, no component reported receiving a majority of their requests from “commercial use” requesters.

### ***Requester Services:***

#### *FOIA Public Liaison*

The FOIA describes the role of FOIA Public Liaisons, who serve as supervisory officials to agency FOIA Requester Service Centers, and 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>4</sup> FOIA Requester Services Centers and the FOIA Public Liaisons who supervise them are an essential aspect of providing good customer service and having effective communication with requesters. Here at the Department of Justice, each component 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 request or the FOIA in general. In addition, OIP fields numerous calls from the public, assisting requesters in understanding how the FOIA works as well as how and where to make requests.

As noted above, on June 30, 2016, the FOIA Improvement Act of 2016 was signed into law. The new law contained several substantive and procedural amendments to the FOIA. Among the changes is the new requirement that agencies include in their response letters a notification about the services provided by their FOIA Public Liaison.<sup>5</sup> All Department components reported that their FOIA Public Liaisons played a significant role in keeping requesters informed and answering their questions. Overall, the Department’s FOIA Public Liaisons received more than 53,000 inquiries from members of the public via phone, e-mail and fax. The 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.

The frequency and number of times that requesters reached out to different components’ FOIA Public Liaisons varied a great deal by component based on the number of requests and types of records the component handles. For example, the FBI, which received 15,202 requests in FY 2016, reported that its FOIA Public Liaison responds to a significant volume of inquiries. In FY 2016 alone the FBI FOIA Public Liaison responded to 1,395 phone inquiries, 14,018 e-mails, and 1,809 faxes from the public. In contrast, some of the Department’s small components, which receive small numbers of requests, estimated receiving 30 or less requests for assistance per year. Additionally, other components reported seeing less calls to the FOIA Public Liaison because of having established very robust Requester Service Centers.

#### *Mechanisms for Feedback*

In addition to making their FOIA Public Liaisons available, many of the Department’s components also offer other mechanisms where a requester can provide feedback about their FOIA experience. For example, the FBI website provides an online

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<sup>4</sup> [5 U.S.C. § 552\(l\) as amended by, Pub. L. No. 114-185, 130 Stat. 538.](#)

<sup>5</sup> [See 5 U.S.C. § 552\(a\)\(6\)\(A\)\(i\) as amended by, Pub. L. No. 114-185, 130 Stat. 538.](#)

form for users to submit feedback on their experience with the FOIA process. Users are able to provide suggestions regarding navigation of the website or what information they would like to see posted to the FBI Vault, as well as general feedback on any part of the FOIA process. DEA FOIA professionals are also currently working on an online survey to solicit requester feedback to improve customer service and response times.

### *FOIA Reference Guide*

The FOIA Improvement Act of 2016 also amended the FOIA to require agencies to make their reference material or guide for requesting records electronically available to the public.<sup>6</sup> The Department of Justice FOIA Reference Guide can be accessed at: <https://www.justice.gov/oip/departments-justice-freedom-information-act-reference-guide>.

### ***Other Initiatives:***

In addition to the above, the Department maintains its FOIA response language database as well as a series of FOIA processing checklists to assist its FOIA professionals in providing timely and quality responses to requesters. These resources are made available to all DOJ FOIA professionals on the Department's intranet website. The language database is intended to standardize components' response letters and ensure that the language used in these letters is clear and easy to understand. The checklists serve as a guide for FOIA professionals to follow as they process FOIA requests. The checklist topics cover everything from intake and procedural requirements to exemption application.

Many of the Department's components have also taken steps to make sure their FOIA operations are functioning efficiently and effectively. For example, ATF's Disclosure Division initiated a reorganization that included hiring contractors to assist with all aspects of the Division's major workloads (FOIA processing, FOIA appeals, FOIA litigation, and Privacy). The reorganization involved establishing teams and a peer review process. After a year of full implementation, the reorganization resulted in a 45% increase in closed FOIA requests.

BOP had members of its Office of General Counsel conduct an independent review of BOP's FOIA operations at the national level. Additionally, as new FOIA personnel onboard, BOP asks them to provide any insight and a fresh perspective on BOP's FOIA administration.

DEA's FOIA professionals created a checklist to identify and track multi-subject requests in an effort to ensure that the subjects are linked together to avoid redundancy in the search process.

The Environmental and Natural Resources Division (ENRD) is continuing its transition to a more advanced records management system to expedite and streamline processing. The new system will create significant efficiencies by allowing multiple reviewers to work simultaneously, de-duplicating documents based on metadata, and allowing email conversations to be threaded.

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<sup>6</sup> See [5 U.S.C. § 552\(g\) as amended by Pub. L. No. 114-185, 130 Stat. 538](#).

The Office of Professional Responsibility (OPR) implemented a processing system that is entirely electronic. It includes a tool for review and processing, including digital signatures. By implementing this process, OPR reduced the amount of time taken to review and process responsive records for complex cases. The electronic signature implementation has also reduced the amount of paper that is used when processing FOIA requests.

In addition to the examples above, a few other components also noted that they transitioned to using new FOIA case management tools that have greatly improved their FOIA processing, tracking, and reporting. Some of those offices, like OPR, have also moved to 100% electronic processing.



### **Section III: Steps Taken to Increase Proactive Disclosures**

*The [Department of Justice](#) has long focused on the need for agencies to work proactively to post information online without waiting for individual requests to be received. The Department has continued to make records available to the public proactively, posting a wide range of material.*

#### **Posting Material:**

In order to answer the Department's call for agencies to "readily and systematically post information online" it is important that each agency have a process in place to identify records for proactive disclosures. The Department has put processes in place to identify records of public interest that can be proactively posted online. While components use different strategies for identifying this information, components have tailored their process or method of identifying proactive disclosures based on their current operations and the types of records that are of interest to the community of individuals that most frequently visit their websites.

For example, BOP personnel recommend records for posting each month. The Civil Rights Division (CRT) established procedures that require each program section of the Division to proactively post material on all significant program activities. EOUSA's FOIA professionals work in collaboration with the Strategic Communications Staff to identify information of general public interest for posting. The Executive Office for United States Trustees (EOUST) FOIA professionals attend EOUST's Open Government Team meetings, which include IT and Office of Planning and Evaluation professionals, to identify records suitable for proactive disclosure. Finally, the OLC publication process ensures that many of OLC's opinions are released without the need for a FOIA request. In addition to eventually being placed in a bound volume, published OLC opinions can also be found on the "Opinions" page of OLC's [website](#).

The FOIA itself requires proactive disclosure of those records released under the FOIA "that, because of the nature of their subject matter, the agency determines have become or are likely to become the subject of subsequent requests for substantially the same records; or that have been requested 3 or more times."<sup>7</sup> The Department's components use different methods for identifying "frequently requested" records including: monitoring for such records as part of their ongoing case management process, conducting periodic reviews of FOIA logs, and holding monthly meetings that include not only FOIA professionals but other interested stake holders like IT and Communications personnel.

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. Some examples of these new postings include:

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<sup>7</sup> [5 U.S.C. § 552\(a\)\(2\)\(D\)\(ii\)\(I\)-\(II\) as amended by, Pub. L. No. 114-185, 130 Stat. 538.](#)

- OIP regularly posted new material and FOIA resources on its website. Some examples of material posted since March 2016 include:
  - Through its blog, [FOIA Post](#), OIP continued to inform both agencies and the public of new developments and upcoming events concerning the FOIA.
  - OIP continued to post its guidance articles to agencies on the implementation of the FOIA. Specifically, OIP posted the following guidance articles this past reporting period:
    - [Department of Justice Handbook for Agency Annual Freedom of Information Act Reports](#) (updated February 16, 2017)
    - [Defining a “Record” Under the FOIA](#) (January 11, 2017)
    - [Prohibition on Assessing Certain Fees When the FOIA’s Time Limits Are Not Met](#) (October 19, 2016)
      - [Decision Tree for Assessing Fees](#)
    - [New Requirements for Agency Annual FOIA Reports](#) (October 6, 2016)
    - [Guidance for Agency FOIA Regulations](#) (updated September 8, 2016)
      - [Template for Agency FOIA Regulations](#)
    - [Guidelines for 2017 Chief FOIA Officer Reports](#) (August 29, 2016)
    - [Guidance on the New Requirements for FOIA Response Letters, Including Affording Ninety Days to File an Administrative Appeal, and New Notification Requirement for Notices Extending FOIA’s Time Limits Due to Unusual Circumstances](#) (July 18, 2016)
      - [Implementation Checklist for OIP Guidance on New Requirements for FOIA Response Letters](#)
    - [Guidance for Further Improvement Based on 2016 Chief FOIA Officer Report Review and Assessment](#) (May 9, 2016)
  - OIP also posted the following in its FOIA Library:
    - [Documents Previously Released Related to Supreme Court Nominee Merrick Garland](#)
    - [Associate Attorney General Memorandum Regarding Statement of Principles for Selection of Corporate Monitors in Civil Settlements and Resolutions](#)
    - [Report of the Special Task Force on Interrogation and Transfer Policies](#)
    - [Procedures for Approving Direct Action Against Terrorist Targets Located Outside the United States and Areas of Active Hostilities](#)
    - [2012 Detention Policy Report](#)
  - 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.
  - Finally, OIP continued to update both its website and [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](#), [resources on Exemption 3 statutes](#), and [new resources concerning the FOIA Improvement Act of 2016](#).

- Among other items, the Antitrust Division updated its [website](#) with new press releases, speeches, Division Guidelines, Victim-Witness Hearing Notification Postings, International Program Updates, information on the Antitrust Consent Decree Review, Division Newsletters, workload statistics, Antitrust Division appropriations figures, and Sherman Act violations yielding a corporate fine of \$10 million or more. The Antitrust Division also continued working on its project to digitize and post older documents, which include signed copies of court filings and incoming request letters seeking business reviews. During this reporting period 142 new documents were posted as part of this project.
- ATF has continued to post a [listing of Federal Firearms Licensees](#) (FFL's). This listing is updated on a monthly basis, and is available for download as a nationwide listing, or on a state-by-state basis.
- BOP posted 37 [Program Statements](#) and [Operations Memoranda](#); 30 [PREA Reports](#); 35 [Institution Visiting Regulations](#); 25 [Institution Admission and Orientation Handbooks](#); 24 [Commissary Lists](#); 6 [Key Statistics](#); 3 [Clinical Practice Guidelines](#); [National Menu Lunch and Dinner Choices](#); [National Menu Breakfast Choices](#); [Religious Diet Specifications](#); [National Menu Specifications](#); and [Per Capita Costs](#) for FY 2015.
- The Civil Division's Office of Immigration Litigation continues to post its [monthly bulletin](#).
- COPS has taken numerous steps to increase the amount of information proactively made available to the public through its website. COPS established a link from its FOIA website to its grants and funding page. Every publicly available COPS publication is now available for viewing and download by the general public, without the need to file a FOIA request for the material. Numerous publications were made available during this reporting period. For example, COPS posted its [FOIA logs](#), [program documents](#), [grants and funding information](#), and Information on Community Policing & Unmanned Aircraft Systems (UAS): Guidelines to Enhance Community Trust.
- CRT continues to post records concerning its [cases](#), [appellate briefs and opinions](#), [selected case summaries](#), and [DOJ agreements and resolutions](#).
- The Criminal Division posted hundreds of [press releases](#), speeches, and testimony detailing significant investigations and prosecutions. In addition, the Criminal Division's FOIA/PA Unit redesigned its [FOIA Library](#) with various links to Criminal Division Section websites, which post a great deal of information concerning the operations and activities of the Division.

- DEA posted Automated Reports and Consolidated Ordering System ([ARCOS](#)) data from 2000-2015. ARCOS is a data collection system in which manufacturers and distributors report their controlled substance transactions to the DEA.
- ENRD regularly posts new [staff manuals and instructions](#), [accomplishment reports](#), and other information about the Division on its public web page. The Division also proactively discloses its monthly [Environmental Crimes Bulletin](#) on a rolling basis. In addition, ENRD's [public wildlife trafficking site](#) contains materials related to the 2014 National Strategy for Combating Wildlife Trafficking and the Presidential Task Force on Wildlife Trafficking. The site is frequently updated.
- EOIR posted [Board of Immigration Appeals Precedent Decisions](#), [Office of the Chief Administrative Hearing Officer Published Decisions](#), [List of Disciplined Practitioners and Decisions](#), [EOIR's Statistical Yearbook](#), [EOIR's publication of \*Immigration Law Advisor\*](#), [Asylum Statistical Charts](#), [Operating Policy and Procedure Memoranda for Immigration Courts](#), [List of Free Legal Service Providers](#), and [EOIR News](#)
- EOUSA posted its [Social Media Directory](#), [Annual Statistical Report](#), [National Caseload Data](#), [United States Attorneys' Bulletins](#), [United States Attorneys' Manual](#), and [National Caseload Data](#).
- The 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:
  - Records on the FBI Recreational Association(s): The FBI Recreation Association (FBIRA) began in 1931 as the FBI Athletic Association, operating in cooperation with the Bureau to serve FBI employees.
  - Contract for Assistance Regarding Syed Farook's iPhone: On December 2, 2015, Syed Farook and his wife attacked their co-workers at a San Bernardino Department of Public Works office party, killing 14 and injuring 20. During the subsequent investigation, FBI personnel obtained an encrypted cell phone owned by Farook. This release consists of FBI documents from 2016 related to obtaining a contract with a third party to access the data on Farook's phone.
  - D. B. Cooper: On November 24, 1971, a man calling himself Dan Cooper, a.k.a. D.B. Cooper, bought a one-way ticket on a flight bound for Seattle, Washington. While the flight was en-route, he hijacked the plane and made several demands. Later, while the plane was in the air, he jumped out of it with a parachute and the ransom money he had been given. He was never found. This release consists of FBI's investigative files from its search for "Cooper" between November 1971 and May 1992.
  - Asian American Political Alliance: The Asian American Political Alliance was a protest group formed at the University of California, Berkeley, in 1968. This release covers the FBI investigation of the group and its leaders from 1969 through 1972. The FBI was especially interested in the contact the group or its

members had with Chinese communists abroad.

- FBI Assistance Provided to Local Law Enforcement During the Black Lives Matter Movement: This release consists of FBI materials concerning assistance provided to local law enforcement agencies during the Black Lives Matter demonstrations in July and August 2016.
- Muhammad Ali: Muhammad Ali, born Cassius Clay, (1942-2016) was a famed Olympian, professional boxer and noted public figure. This release consists of materials from FBI files that show Ali's relationship with the Nation of Islam in 1966.
- JMD posted its [FY 2015 Annual Report to Congress on Debt Collection Recovery Activities for Civil Debts Referred for Collection](#). JMD also posted its [Annual FBI Whistleblower Report to the President](#). On its [Budget and Performance page](#), JMD posted new Budget and Performance Summaries, Budget Fact Sheets, Congressional Budget Submissions, Exhibit 300's, and Annual Performance Report & Annual Performance Plans.
- The Office of the Solicitor General (OSG) posted each [brief](#) that it filed with the Supreme Court.
- The National Security Division (NSD) posted national security related [press releases](#) and [NSD statements, testimony and reports](#).
- OLC continues to post [opinions](#) that are appropriate for publication.
- OJP posts information about its [grant awards](#) by program office.
- The Office of Violence against Women (OVW) posted [information](#) about grant awards, including the name of the grantee, award amount, and the OVW grant program.

Several of the Department's components also made efforts to publicize when new materials were posted online so that those who were interested were aware of their availability. Several components use social media platforms such as Twitter, Facebook and YouTube to publicize their postings. Further, some components explained that they publicize their proactive disclosures by spotlighting them on their websites, using scrolling marquees on their home page, and through online newsletters. The FBI utilizes a "Recently Added" section on the FBI Vault to notify the requester community of recent publications. In addition, subscribers to FBI Vault releases are notified via Twitter as new documents are made available. OIP continued to highlight a number of newly posted material on its website through its Twitter feed and its blog, *FOIA Post*.

While the Department strives to proactively post as much information on its websites as possible, there are sometimes challenges that can make such postings difficult. Some of the Department's components reported that additional postings were not feasible because the majority of the records they handle are not appropriate for public release. For example,

EOIR primarily handles first-party immigration records, which cannot be posted online. However, for those instances where records are appropriate for posting, one challenge continues to be the additional resources required to code the records so that they are compliant with Section 508 of the Rehabilitation Act. Another challenge associated with posting material online, is not simply coding the records for posting, but the process of posting the records themselves. Some components noted that few personnel have the ability to actually post something on an agency website, which can create a bottleneck in the process for these records to be posted.

**Other Initiatives:**

In addition to the efforts described above, the Department has worked extensively on a “Release to One is a Release to All” policy presumption. The work began with a 6-month pilot program with seven volunteer Federal agencies to assess the viability of a policy that would direct agencies to proactively post online their FOIA responses. This concept would ensure that all citizens—not just those making a request—have access to information released under FOIA. Over the course of the Pilot, DOJ worked with participating agencies to capture metrics on the time and resources associated with implementing this policy, as well as any impacts on interested stakeholders.

In June 2016, in conjunction with the signing the FOIA Improvement Act of 2016, OIP briefed the newly established [Chief FOIA Officers Council](#) on the [lessons learned](#) from the DOJ Pilot program and examined the issues critical to such a policy, including assessing the impact on investigative journalism efforts, as well as how best to address technological and resource challenges.

The Department published a draft policy that reflected considerations from both the [lessons learned](#) from the DOJ Pilot and all of the issues discussed at the [Chief FOIA Officers Council](#), including certain exceptions to the policy and two different options for the timing of when documents should be posted online. The Department solicited public feedback and comments on the policy and is currently considering those comments and working to determine the best approach forward.



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

*A key component of a successful FOIA administration is the use of modern technology to inform citizens about what is known and done by their Government. In addition to using the Internet to make proactive disclosures, agencies should also be exploring ways to utilize technology in responding to requests. The Department continues to embrace the use of technology to improve all aspects of our FOIA administration. Particularly, we continue to find great potential in technological solutions that help with the core functions of document processing.*

### **Making Material Posted Online More Usable:**

Not only has the Department continued its trend of posting more information online, but it has also continued to work to find ways to make that information more useful to the public. The Department welcomes [public feedback](#) through its main website and it strives to implement any suggestions that would make the information posted online more useful. Apart from the main site, many of the Department's components have also built in separate mechanisms for receiving public feedback on their individual web pages.

Several components improved their websites by making information posted online more accessible and easier to locate. OIP continues to improve the usability of several of the FOIA reports and resources on its website by posting them in open formats. For example, during the reporting period, OIP posted agency Annual FOIA Report data, its Chart of Exemption 3 Statutes, Assessment of Agency Annual and Chief FOIA Officer Reports, and Litigation and Compliance Report data in both human readable and open formats. Relatedly, OLC is working on a document remediation project to improve the organization and searchability of its older records.

In another effort to make the material posted online more useful to the public, several components redesigned their websites to make it easier for the public to locate information. For example, BOP uses the DOJ Google search appliance, which is particularly user friendly. The Community Oriented Policing Services (COPS) has reorganized its website to provide the list of all awardees for its grant programs on each grant program's webpage. Additionally, as noted above, COPS' FOIA page now links directly to their grant and funding webpages. The Foreign Claims Settlement Commission (FCSC) implemented search and indexing features that allow for greater use and easier access to their collection of decisions.

Several of the Department's components reported that their FOIA professionals interacted with other agency staff, such as technology specialists or public affairs, legislative affairs, or communications professionals in order to identify new and effective ways of posting information online. BOP's FOIA Office began an effort to work with their public affairs professionals to create workflows that will make posting records easier and more timely. EOUST's FOIA professionals regularly meet with IT and Office of Planning and Evaluation staff at meetings of the Open Government Team to find new ways of posting component information online. OLC worked with JMD to get direct access to modify the content of its webpages, thereby allowing for faster posting and more updated information.



### **Use of Technology to Facilitate Processing of Requests:**

Recognizing the importance of fully utilizing technology to improve their FOIA administration, many of the Department's components provided training to their staff during this reporting period on a range of new case management and processing tools. ATF, BOP, DEA, EOUSA, OIP, NSD, Office of the Inspector General (OIG), OJP, and the FBI all provided new training to their FOIA professionals on the proper use of their FOIA case management systems. The full utilization of an agency's case management system is critical to keeping track of request workflows throughout the year and ensuring proper accounting at the end of the year. By way of a few examples, BOP dedicated a full day during its annual FOIA training event on how to better utilize its case management system. The FBI trained its staff on new features added to its case management system as a result of a recent upgrade. The training focused on the increased functionality and simplified workflows the system upgrade offered to further promote efficiency. EOUSA transitioned to the FOIAonline case management system and received training on its functionality and how to use the system.

Furthermore, several components provided training to their staff on technology that assists with the actual processing of records. FOIA professionals at the Antitrust Division, ATF, DEA, EOIR, and EOUSA received training on the software they use to redact information. OIP, Civil Division, Criminal Division, CRT, ENRD, EOIR, EOUST, JMD, OLC, and the Tax Division all provided training to their FOIA staff on sophisticated tools that allow for advanced search capabilities and deduplication.

OIP and the Department continue to champion the use of advanced technological solutions that assist with the core functions of document processing as a key component of improving FOIA administration. OIP has led the effort to explore the use of these more advanced technologies for the benefit of not only the Department, but all agencies' FOIA administration. During Sunshine Week 2017, OIP will reconvene [the FOIA IT Working Group](#) to discuss some of these technologies.

In addition to OIP, many of the Department's components, including ENRD, EOIR, EOUSA, JMD, OIG, OLC, Public Affairs, and the Antitrust, Tax, Civil, Civil Rights, and Criminal Divisions are now using tools to search for, sort, and de-duplicate responsive documents. Some of these tools can also compile a Vaughn Index for use in litigation, saving components a significant amount of time. Using these tools to automate many of the internal processes for handling FOIA requests can bring great benefits in efficiency. For example, conducting an adequate search for responsive records often involves the review of both paper and electronic records originating with multiple employees throughout the agency. In turn, these searches can locate hundreds, if not thousands, of pages of material that need to be reviewed for both responsiveness and duplication before a FOIA disclosure analysis can be conducted. With the widespread use of email and the common practice of employees forwarding the same email to multiple other people, with each employee then building still further on that email, long chains of overlapping and duplicative email are frequently created. The benefits of using technology to de-duplicate, sort, and thread all those emails automatically, rather than doing so manually, are readily apparent.

Some components did identify additional tools that could be beneficial to utilize in the future, including shared platforms, audio and visual redaction tools, new case

management systems, and for those that do not yet have access to e-Discovery-like tools, technology that improves and automates search and deduplication functions. Some components identified difficulties in using certain technologies for classified information. Finally, although it's not a new tool, a few components suggested that the ability to send emails with larger attachment sizes would create efficiencies.

**Other Initiatives – Quarterly Reports:**

In January 2013, OIP instituted a new quarterly reporting requirement for all agencies on four 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 in an agency's backlog for each quarter of the fiscal year, as well as the status of the agency's ten oldest pending requests. This reporting requirement is specifically designed to provide even greater transparency to the FOIA process by proactively shedding light on agencies' statistics throughout the fiscal year and not just at the end. To facilitate the viewing of this data by both agencies and the public, all agency quarterly reporting is displayed on the [Reports](#) page of [FOIA.gov](#). In accordance with the January 2013 [Guidance for Quarterly Reporting](#), the Department posted all of the required quarterly FOIA reports for FY 2016.

## **Section V: Steps Taken to Improve Timeliness in Responding to Requests and Reducing Backlogs**

*Improving timeliness in responding to requests is an important aspect of a successful FOIA administration. The data referenced in this section of the Report comes from the Department's FY 2016 Annual FOIA Report. As discussed above, in the face of increasing numbers of incoming requests, during FY 2016 the Department processed a record high 71,854 requests while continuing to maintain a high release rate of 93.5%. The Department overall also closed all of its ten oldest requests, consultations and appeals.*

### **Simple Track:**

The Department utilizes multi-track processing to manage its FOIA administration. The Department's overall average number of days for processing simple track requests during FY 2016 was 29 days, which is a reduction of almost a day from last fiscal year. Approximately 69% of the requests processed by the Department in FY 2016 were categorized as simple requests. As such, the majority of requests processed by the Department were responded to in an average of 29 days or less.

### **Backlogs – Requests and Appeals:**

#### *Requests*

By responding to 71,854 FOIA requests in FY 2016, the Department's FOIA offices were able to process over 4,000 more requests than were processed in the prior year. Despite this impressive accomplishment, as a result of an increase in the number of incoming requests and a continued increase in the complexity of the requests received, unfortunately the Department's overall request backlog increased. Even with the increase, however, the Department's overall request backlog amounted to less than 15% of the total number of requests received in FY 2016. Additionally, even though the Department's overall backlog increased, there were many components that had great success in reducing their backlog in FY 2016. A total of sixteen components decreased their backlog of FOIA requests and eleven maintained a nominal backlog of ten or less requests. Three components had no backlogged requests at the end of the year.

As to the challenges that contributed to the overall increase in backlog, in addition to more incoming requests and the increasing complexity of those requests, several components also noted the following challenges: staff shortages and turnover, staff reorganizations, the time needed to fully train new staff, and efforts to fill positions often held by seasoned and long tenured professionals.

#### *Appeals*

The Department received 3,342 administrative FOIA appeals in FY 2016, and adjudicated 3,460 appeals. As a result of these efforts the Department achieved a backlog reduction for administrative appeals of over 15%. Notably, this was also the fifth year in a row that the Department reduced its appeals backlog. The appeals backlog at the end of FY 2016 made up only 6.85% of the total number of appeals the Department received.

### **Backlog Reduction Plans:**

In the 2016 Guidelines for agency Chief FOIA Officer Reports, any agency with a backlog of over 1,000 requests in FY 2015 was asked to provide a plan for achieving backlog reduction in the year ahead. The Department has implemented the plan described in last year's Report. Building on past efforts through the Component Improvement Initiative, OIP worked closely with Department components to identify areas of improvement with a focus on backlog reduction, track management, and improving efficiencies. Further, as the Department's Chief FOIA Officer, the Associate Attorney General continued to convene the Department's FOIA Council to manage the Department's overall FOIA administration and to provide top level support for backlog reduction efforts. As noted last year, many of the components also had individualized plans, which they have reported working on this past year. Many of these plans included hiring additional staff, leveraging new technology, providing more training focused on efficiencies and best practices, further outreach to requesters to facilitate more efficient responses, and greater utilization of multiple processing tracks.

Moving forward, the Department remains committed to backlog reduction and we continue to take affirmative steps to achieve that goal in FY 2017. For example, OIP will continue with its backlog reduction efforts that are part of the Component Improvement Initiative. A number of components have also reported plans to continue with the efforts they started last year, which for many components already resulted in a reduction of backlog. Component plans this year also included new ways of actively managing FOIA workflows, continued emphasis on FOIA training, digitizing the FOIA processing process, and hiring additional FOIA professionals.

### **Status of 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 on a number of occasions stressing the importance of agencies reducing the age of their backlogs by closing their ten oldest requests, appeals and consultations. The Department is pleased to report that it successfully closed its ten oldest pending requests, appeals, and consultations from FY 2015. Notably, this marks the ninth consecutive year that the Department closed its ten oldest pending requests and appeals. None of the ten oldest requests that were closed were withdrawn by the requester.

### **Interim Responses:**

OIP has issued [guidance](#) to all agencies encouraging them to provide interim responses whenever possible, particularly when processing requests that involve a voluminous amount of material or that require searches in multiple offices. These interim responses foster continued communication between the agency and the requester, provide records more readily as they are processed for disclosure, and facilitate the agency's ultimate response. All of the Department's components reported having a process in place to provide interim responses to requesters when appropriate. Over the past year, the Department has provided an interim release in response to approximately 750 requests that are in its backlog.

## Spotlights on Success

The Department met the high demand of increasing numbers of incoming requests in FY 2016 by processing more requests in any year since 2002,<sup>8</sup> which was prior to the departure of the then Immigration and Naturalization Service (INS).<sup>9</sup> Further, while processing a record high number of requests, the Department maintained a high release rate of 93.5% and closed its oldest requests, appeals, and consultations.

The Department also continues to lead by example, both in its own administration of the FOIA and in its policy and oversight role for all agencies' administration of the statute. Signed into law on June 30, 2016, the FOIA Improvement Act of 2016 contained several substantive and procedural amendments to the FOIA, as well as new reporting requirements for agencies. In order to assist agencies in understanding all of the new changes to the FOIA, OIP added two new resources to its website immediately after the Act was signed. First, OIP created a [detailed summary of all of the changes to the law](#). Second, OIP created a [redline version of the FOIA](#) which outlines each of the changes within the law.

OIP continued to assist agencies with implementation of the new statutory amendments by providing training, issuing guidance, and leading government-wide efforts in accordance with the various new provisions of the law. For example:

- OIP held a [training event](#) on the new FOIA amendments. The training included an overview of the amendments, as well as an opportunity for agency FOIA personnel to ask OIP's Director questions about the new provisions.
- OIP released [guidance](#) addressing the new requirements for agency response letters and for notices extending the FOIA's time limits due to "unusual circumstances." In addition to the guidance, OIP also provided agencies with an implementation [checklist](#) to assist them meeting the new requirements.
- On July 22, 2016, the [Chief FOIA Officers \(CFO\) Council](#), created by the FOIA Improvement Act of 2016, held its inaugural meeting. As one of the Chairs for the Council, the Department coordinated this inaugural meeting to both immediately establish this new body and to receive feedback on the potential implementation of a "Release to One is a Release to All" presumption for FOIA responses. OIP's Director opened the meeting by providing an overview of the responsibilities of agency CFOs and then briefed the Council on the Department's six-month Proactive Disclosure Pilot designed to assess the viability of a "Release to One is a Release to All" presumption.

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<sup>8</sup> Prior to 2009, agencies included in their Annual FOIA Reports the number of first-party requests processed solely under the Privacy Act. In accordance with [OIP's guidance](#), since 2009 agencies have only included Privacy Act requests in their numbers if the FOIA was utilized in any way to process the request. Impressively, the nearly 72,000 FOIA requests processed by the Department in FY 2016 is more than the Department has processed in any year going back to 2002, including those years when Privacy Act requests were included in the Annual FOIA Report data.

<sup>9</sup> On March 1, 2003, the functions of the INS were placed under three agencies within the Department of Homeland Security.

- OIP released an updated version of its [Guidance for Agency FOIA Regulations](#), along with an [updated FOIA Regulation Template](#).
- OIP published [guidance](#) to assist agencies in meeting the new Annual FOIA Report requirements from the 2016 amendments.

### ***Other Success Stories Reported by the Department's Components***

#### **ATF:**

- ATF reduced its request backlog by nearly 30%, closed its 34 oldest requests, and closed more requests in FY 2016 than it has in the past ten fiscal years.

#### **Antitrust Division:**

- The Antitrust Division closed its ten oldest pending requests for the fourth straight year. During FY 2016, the Antitrust Division had 142,648 subscribers to its GovDelivery email subscription service, an increase of 11% over last year. The Division sent 2,915,641 updates to those subscribers across 13 Antitrust content categories.

#### **BOP:**

- Although BOP had 20% fewer FOIA personnel in FY 2016, it: significantly lowered processing times for complex track requests by 17.6% from 82.33 days to 67.79 days; lowered processing times for simple track requests by 5% from 20.66 days to 19.62 days; reduced the time to adjudicate requests for expedited processing by 22% from 12.41 days to 9.69 days; and closed its ten oldest requests.

#### **Civil Division:**

- The Civil Division reduced its backlog by 5%.

#### **Criminal Division:**

- This past year, the Criminal Division focused on training FOIA/PA Unit Staff on processes and technologies to improve its responses to the public, both in terms of timeliness and quality. The Criminal Division also participated in a brown bag meeting with the leadership of the Section within the Division that generates the most FOIA requests. The information shared was very helpful and the flow of information between the FOIA/PA Staff and that Section has greatly improved.

#### **CRT:**

- CRT closed all ten of its oldest requests, despite facing a challenging workload of FOIA litigation.

**DEA:**

- DEA was able to decrease its request backlog by 43% in FY 2016. Additionally, DEA's FOIA Office partnered with its Office of Diversion Control to post more online content to the DEA website. The FOIA Office also facilitated several meetings with DEA's Office of Forensic Sciences to increase FOIA visibility. DEA conducted a series of training for several program offices on its FOIA guidelines and policies, updates to the law, response times, and the adequacy of searches.

**ENRD:**

- ENRD has continued to expand its use of technology to improve FOIA processing. ENRD FOIA professionals have established systems to electronically search for, collect, review, redact, and produce documents. These systems permit seamless communication between FOIA professionals, document custodians, subject matter experts, and managers, and have facilitated a more efficient and effective review process.

**EOIR:**

- During FY 2016, EOIR experienced a 12% increase in incoming FOIA requests and still managed to reduce its backlog by 16%. EOIR expanded its proactive disclosure program by launching a new effort to redact and post non-precedential decisions of the Board of Immigration Appeals. EOIR FOIA personnel worked with IT staff and the General Counsel to gain access to new e-Discovery software that will enhance EOIR's electronic searches and processing.

**EOUST:**

- EOUST posted detailed information on its website concerning the proposed rule for *the Procedures for Completing Uniform Periodic Reports in Non-Small Business Cases Filed Under Chapter 11 of Title 11; Proposed Periodic Reports and Instructions*. The proposed rule sets forth procedures and criteria that non-small debtors in possession and trustees can use when accounting for the receipt, administration, and disposition of property. EOUST held a public hearing, and interested parties expressed their views on the proposed rule and forms to a panel of program officials. EOUST utilized their "Important Notices" on the EOUST homepage to announce that it had released these important records.

**FBI:**

- The increasing prevalence of media located within responsive case files created a pressing need for FBI FOIA staff to be trained in audio, video, and photograph redaction. In response, the FBI FOIA personnel worked with the FBI Operational Technology Division to develop a robust media processing center to meet the expanding media processing needs. The center is capable of digitizing existing media, including historic film and recordings to a proliferation of modern formats.



The cadre of FOIA processors who processed these requests completed over 229 FOIA requests last fiscal year representing over 1,748 hours of processing. A number of completed media requests can be found on the [FBI Vault](#).

**OIG:**

- During this reporting period, OIG deployed a new FOIA processing, reporting, and tracking software package. This new software has greatly enhanced OIG's performance in promptly handling, tracking, and reporting on its FOIA administration.

**OJP:**

- OJP participated in the [DOJ Proactive Disclosure Pilot](#) and worked with OIP to put out the final assessment on its efforts during that program. OJP was also able to procure a new case management system that will create efficiencies in its FOIA administration. Finally, OJP was able to reduce its backlog in FY 2016 by 36%.