



UNITED STATES DEPARTMENT *of* JUSTICE

*New OIP Guidance &
Resources*



New OIP Guidance & Resources

- National FOIA Portal
Interoperability
- Chief FOIA Officer Designations
- Controlled Unclassified
Information
- Importance of Quality Requester
Services



New OIP Guidance & Resources

- OIP Guidance: 2018 Chief FOIA Officer Report Review and Assessment Guidance
- OIP Guidance: Adjudicating Administrative Appeals under the FOIA



Significant Litigation Development

Supreme Court to hear Exemption 4 case

Food Marketing Inst. v. Argus Leader Media
(No. 18-481)



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*National FOIA Portal
Interoperability*



National FOIA Portal Interoperability

- Guidance issued for Achieving Interoperability with the Freedom of Information Act (FOIA) Portal on FOIA.gov, February 12, 2019.



National FOIA Portal Interoperability

The *FOIA Improvement Act of 2016* required agencies to create a central, online request portal to allow members of the public to submit a request to any agency from a single website.



National FOIA Portal Interoperability

Two statutory standards for interoperability:

1. Agencies can accept requests via a structured Application Programming Interface (API), or
2. Agencies can accept requests via a formal, structured e-mail to a designated e-mail box.



National FOIA Portal Interoperability

To support interoperability each agency shall:

1. Maintain an account on FOIA.gov where agencies update their information about FOIA administration and their contact information, and
2. Maintain a customized FOIA request form tailored to an agencies own FOIA regulations.



National FOIA Portal Interoperability

Timeline for Achieving
Interoperability:

By May 10, 2019, agencies must provide a plan to OMB for how they intend to achieve full interoperability.¹⁰



UNITED STATES DEPARTMENT *of* JUSTICE

*Chief FOIA Officer
Designations*



Chief FOIA Officer Designations

- The FOIA requires agencies to designate a Chief FOIA Officer who is charged with “agency-wide responsibility for efficient and appropriate compliance” with the Act.
- The FOIA directs that these Chief FOIA Officers “shall be a senior official of such agency (at the Assistant Secretary or equivalent level).”



Chief FOIA Officer Designations

- The Department of Justice has long maintained that “[i]mproving agency FOIA performance requires the active participation of agency Chief FOIA Officers.”
- The Department of Justice issued a memorandum dated January 30, 2019, reminding agencies to review their CFO designations to ensure they are at the Assistant Secretary level or equivalent.



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Controlled Unclassified Information



Controlled Unclassified Information

DOJ and NARA have issued guidance on Decontrolling Controlled Unclassified Information (CUI) in response to a FOIA request, November 19, 2018.

- CUI designations do not control whether information can be disclosed by an agency
- FOIA should not be used as a CUI safeguard or as a disseminating control authority for CUI



Controlled Unclassified Information

- Disclosure determinations are based on the content of the information and applicable FOIA exemptions, not CUI designations.
- Once information has been disclosed in response to a FOIA request, it can no longer be protected as CUI and is essentially decontrolled by the agency.
- If agency nonetheless seeks to maintain CUI designation, it must consult legal counsel and/or OIP.



UNITED STATES DEPARTMENT *of* JUSTICE

**The Importance of Quality
Requester Services: Roles and
Responsibilities of FOIA Requester
Service Centers and FOIA Public
Liaisons**



Importance of Quality Requester Services

The *FOIA Improvement Act of 2016* reinforced the important role played by FOIA Public Liaisons, and FOIA Requester Service Centers, providing more opportunities for engagement during additional stages of the FOIA process.



Importance of Quality Requester Services

FOIA Requester Service Centers

- First point of contact for requesters
- Staffed by FOIA professionals
- Information resource



Importance of Quality Requester Services

FOIA Requester Service Centers

- Instruct the public on how to make a request or answer questions about the status of an existing request.
- Provide key resources:
 - FOIA Reference Guide
 - FOIA regulations
 - FOIA contact information



Importance of Quality Requester Services

FOIA Requester Service Centers

Assist members of the public with:

- Identifying information already posted
- Formulating requests
- Describing processing tracks/average processing times
- Answering questions about expedited processing/fees



Importance of Quality Requester Services

FOIA Public Liaisons

- Report to the agency CFO
- Serve as supervisory officials



Importance of Quality Requester Services

FOIA Public Liaisons

Key duties:

- Assist in reducing delays
- Increase transparency/understanding of the status of requests
- Assist in the resolution of disputes



Importance of Quality Requester Services FOIA Public Liaisons

Two specific responsibilities:

1. When “unusual circumstances” exist and the requester has been provided an opportunity to limit the scope of the request or to arrange an alternative time for processing, agencies must make their FOIA Public Liaison available to assist in the process.



Importance of Quality Requester Services FOIA Public Liaisons

Two specific responsibilities:

2. When processing is complete and agencies issue their response, they must notify requesters of their right to seek assistance from the FOIA Public Liaison.



Importance of Quality Requester Services

FOIA Public Liaisons are charged with working to reduce delays and improve timeliness which can include:

- Conducting self-assessments
- Maximizing technology
- Utilizing processing metrics
- Training
- Publicizing proactive disclosures



Importance of Quality Requester Services

FOIA Requester Service Centers and FOIA Public Liaisons play a vital role in FOIA administration by providing quality services to members of the public. In providing quality service:

- Agency contact information should be kept current
- Effective communication and engagement should be courteous, appropriate, service-oriented, easy, prompt, helpful and cooperative.²⁷



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*OIP Guidance for Further
Improvement Based on 2018
Chief FOIA Officer Report
Review and Assessment*



Chief FOIA Officer Report Review and Assessment

- Strategically Managing Backlogs
- Closing Ten Oldest Consultations
- Posting Raw Data from Annual FOIA Reports



UNITED STATES DEPARTMENT *of* JUSTICE

*OIP Guidance: Adjudicating
Administrative Appeals under the
FOIA*



Administrative Appeals

The FOIA provides requesters with a statutory right to administratively appeal an “adverse determination” an agency makes on a FOIA request.

The administrative appeal process affords benefits to both agencies and requesters.



Administrative Appeals

Setting out appeal procedures in FOIA regulations

- Ensures agency personnel and requesters understand the appeal process
- Requesters have 90 days to file an appeal
- Absent “unusual circumstances” agencies have 20 days to make a determination on appeal
- Notice of judicial review
- Notice of mediation services - OGIS



Administrative Appeals

Conducting an Independent, “De Novo” Review on Appeal

- Appeal authority should be separate from initial denial authority
- Agencies should use the “De Novo” standard of review for appeals



Administrative Appeals

Engaging with FOIA Professionals & Reinforcing Sound FOIA Processing Practices

- Appeals analysts should engage and communicate during the appeals process with FOIA professionals who initially handled the request.



Administrative Appeals

Ensuring an Adequate Administrative Record for Fee Waiver & Expedited Processing Decisions

- Judicial standard of review for decisions on requests for fee waivers

- Judicial standard of review for decisions on:
 - Requests for fee waivers &
 - Requests for expedited processingis based on record before the agency at time of determination.



Administrative Appeals

Communicating Effectively with the Requester

- Engagement can facilitate the effective adjudication of an appeal, focus the issues raised on appeal, bridge information gaps, and resolve or narrow the appeal.



Administrative Appeals

Communicating Effectively with the Requester

- Actions taken at the initial level can be affirmed, reversed, remanded, or a combination thereof by the appellate authority.
- Clearly communicate appeal determinations and actions taken to requesters.



Administrative Appeals

Offering the Option to Appeal Interim Responses

- Agencies should make interim or rolling releases when requests involve voluminous records, to facilitate access to the records.
- Requesters should be afforded the opportunity to appeal initial determinations made in each interim release.



Administrative Appeals

Consultations and Coordinations

- Agencies that received the request and provided the initial response should review the records on appeal.



Administrative Appeals

Effectively Managing Administrative Appeals Dockets

- Triage appeals based on complexity and expedited processing
- Triage appeals based on subject matter expertise
- Quality control and employee oversight



Links to OIP Guidance

- National FOIA Portal Interoperability

**Joint DOJ/OMB Guidance for Achieving Interoperability with the National Freedom of Information Act Portal on FOIA.gov
(February 12, 2019)**

<https://www.justice.gov/oip/page/file/1131466/download#Joint%20DOJ/OMB%20Guidance%20for%20Achieving%20Interoperability%20with%20the%20National%20Freedom%20of%20Information%20Act%20Portal%20on%20FOIA.gov>



Links to OIP Guidance

- Chief FOIA Officer Designations

Memorandum from the Principal Deputy Associate Attorney General to Agency General Counsels and Chief FOIA Officers regarding Chief FOIA Officer Designations

<https://www.justice.gov/oip/page/file/1127861/download>



Links to OIP Guidance

- Controlled Unclassified Information

*Decontrolling Controlled Unclassified Information
(CUI) in Response to a Freedom of Information Act
(FOIA) Request
(November 19, 2018)*

[https://www.justice.gov/oip/page/file/1118266/download#Decontrolling%20Controlled%20Unclassified%20Information%20\(CUI\)%20in%20Response%20to%20a%20Freedom%20of%20Information%20Act%20\(FOIA\)%20Request](https://www.justice.gov/oip/page/file/1118266/download#Decontrolling%20Controlled%20Unclassified%20Information%20(CUI)%20in%20Response%20to%20a%20Freedom%20of%20Information%20Act%20(FOIA)%20Request)



Links to OIP Guidance

· Importance of Quality Requester Services

The Importance of Quality Requester Services: Roles and Responsibilities of FOIA Requester Service Centers and FOIA Public Liaisons (June 12, 2018)

<https://www.justice.gov/oip/oip-guidance-5>



Links to OIP Guidance

- **OIP Guidance: 2018 Chief FOIA Officer Report Review and Assessment Guidance**

*OIP Guidance for Further Improvement Based on 2018 Chief FOI Officer Report Review and Assessment
(July 19, 2018)*

<https://www.justice.gov/oip/oip-guidance/OIP%20Guidance%20for%20Further%20Improvement%20Based%20on%202018%20Chief%20FOIA%20Officer%20Report%20Review%20and%20Assessment>



Links to OIP Guidance

- **OIP Guidance: Adjudicating Administrative Appeals under the FOIA (February 14, 2019)**

<https://www.justice.gov/oip/oip-guidance/Adjudicating%20Administrative%20Appeals%20under%20the%20FOIA>



Questions?