



UNITED STATES DEPARTMENT *of* JUSTICE

Overview of the Freedom of Information Act, President Obama's FOIA Memorandum and Attorney General Holder's FOIA Guidelines

Achieving a New Era of Open Government



The Freedom of Information Act

July 4, 1966

President Lyndon Johnson signed into law the Freedom of Information Act (FOIA)



The Freedom of Information Act

FOIA provides any person with a right of access to federal agency records unless those records are protected from disclosure under the law



The Freedom of Information Act

United States Supreme Court:

“The basic purpose of [the Freedom of Information Act] is to ensure an informed citizenry, vital to the functioning of a democratic society, needed to check against corruption and to hold the governors accountable to the governed.”



The Freedom of Information Act

FOIA is often described as a means
for the public to know
“what their **Government** is up to”



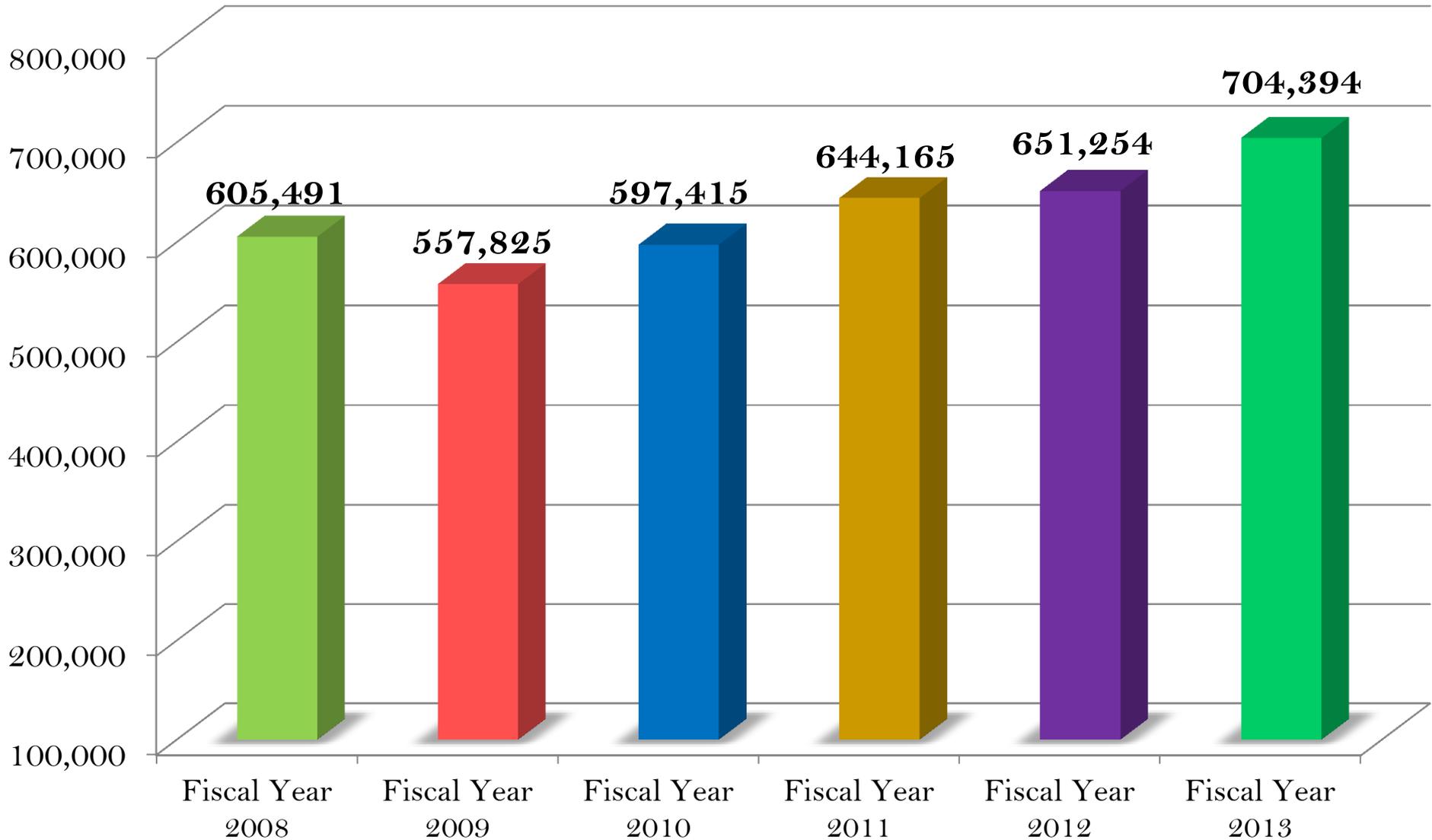
The Freedom of Information Act

- Freedom of Information laws are spreading around the world
- Sweden had first such law adopted in 1766



United States FOIA Statistics

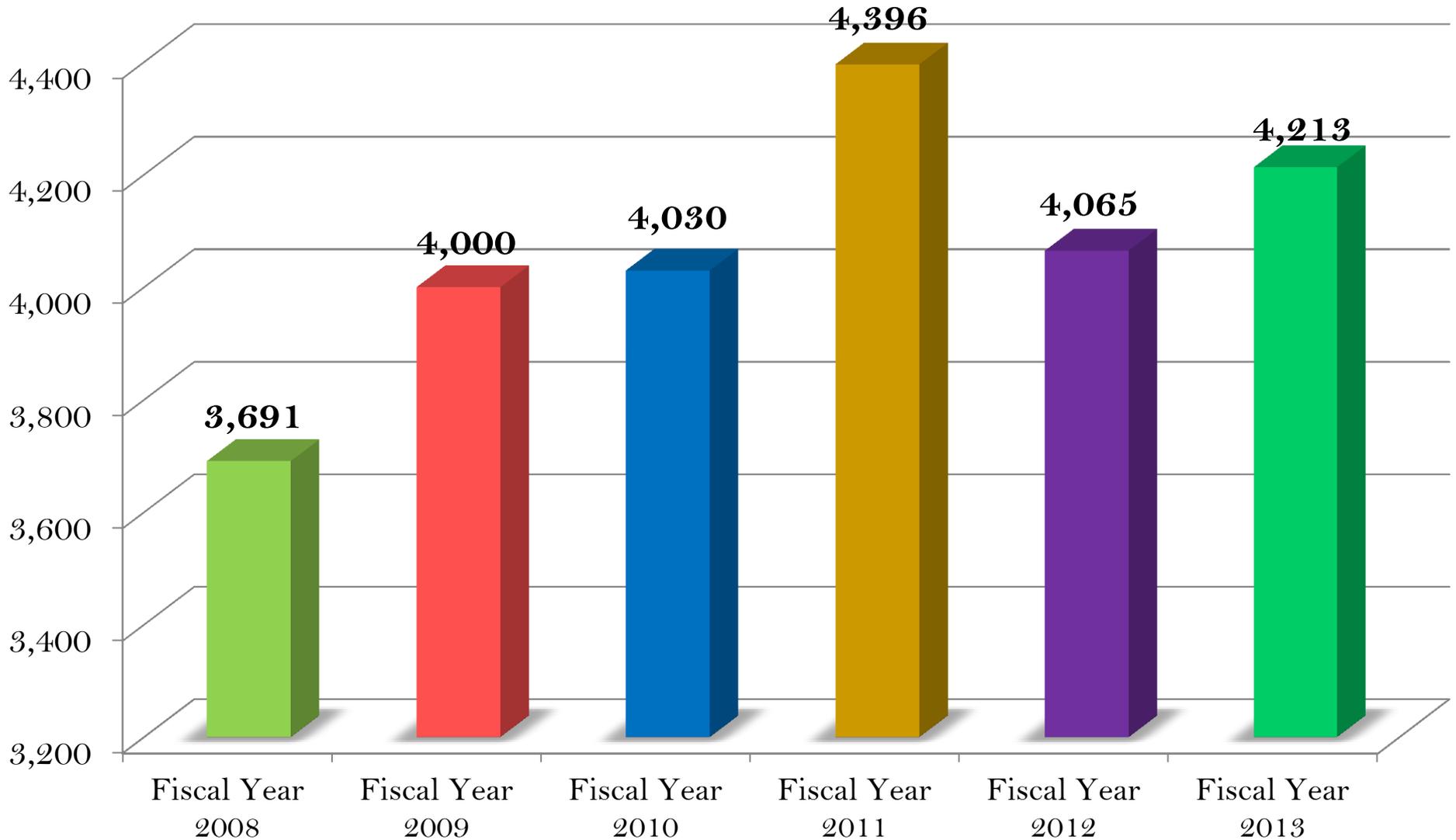
Total Number of Requests Received





United States FOIA Statistics

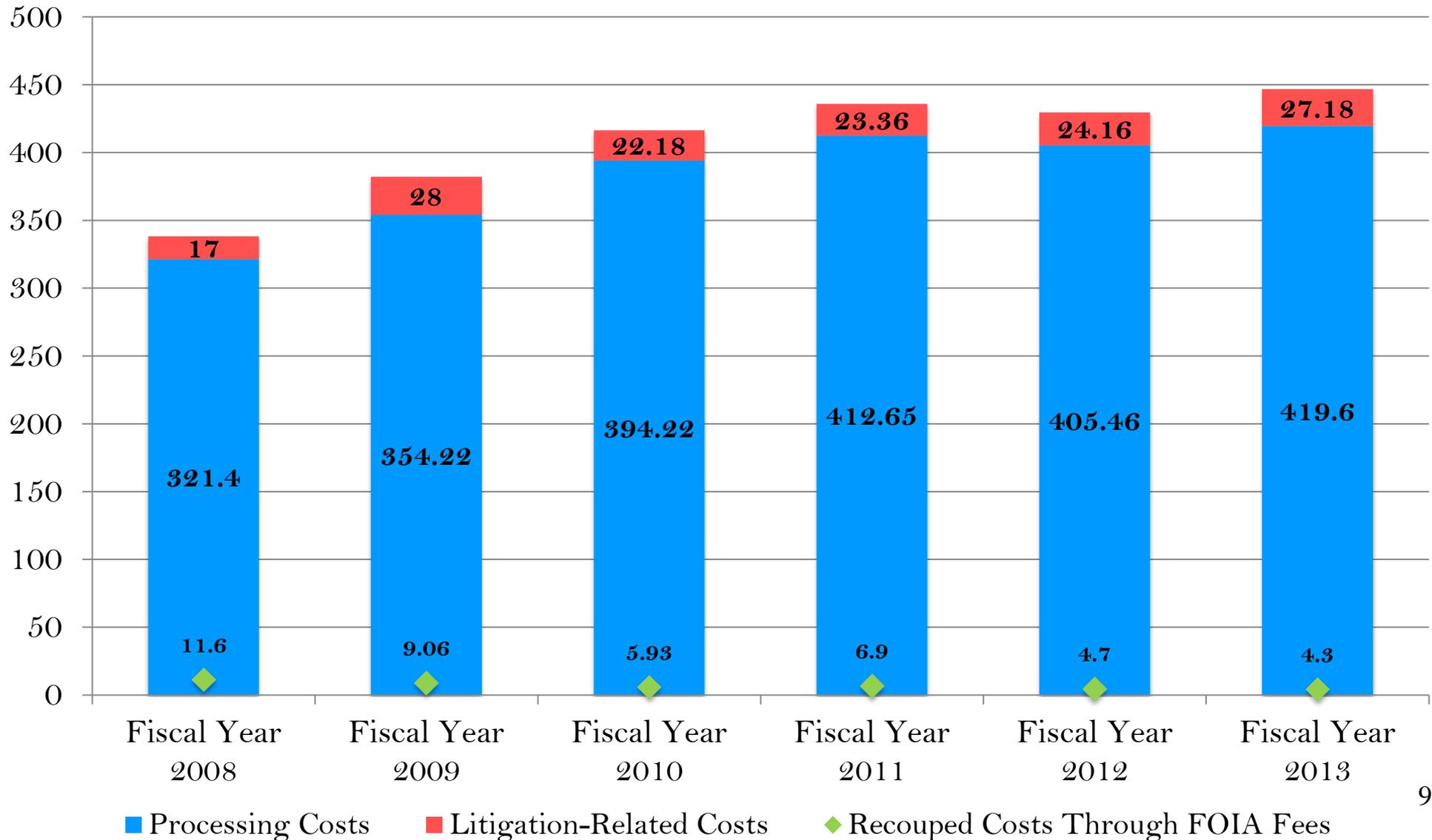
Number of "Full-Time FOIA Staff" Across the Government





United States FOIA Statistics

Approximate Cost of all FOIA Related Activities (in millions of dollars)





The Freedom of Information Act

FOIA applies to the Executive
Branch of the federal government



The Freedom of Information Act

States have their own access laws
for state records



The Freedom of Information Act



Basic Structure

- Subsection (a) – The FOIA Disclosure Provisions
- Subsection (b) – The FOIA Exemptions
- Subsection (c) – The Law Enforcement Exclusions
- Subsection (d) – FOIA & Congressional Access
- Subsection (e) – FOIA Annual Report Req.



The Freedom of Information Act

FOIA requires certain automatic disclosures, including records that are frequently requested under the FOIA.



The Freedom of Information Act

FOIA provides a right to request federal agency records.



Time Limits for Responding to a Request

- Basic time period: twenty working days
- In “unusual circumstances,” time period may be extended by written notice



The Freedom of Information Act

FOIA provides for expedited processing of requests in certain instances



The Freedom of Information Act

FOIA provides for charging
of fees



The Freedom of Information Act

- FOIA establishes three categories of requesters and three types of fees
- Different fees are assessed based on requester category



Fee Waivers – The Standard

Documents shall be furnished without any charge or at reduced rate . . . If disclosure of the information is in the public interest because it is [2] likely to contribute [4] significantly to [3] public understanding of the [1] operations or activities of the government and is not [6] primarily in the [5] commercial interest of the requester.



The Freedom of Information Act

Adequacy of Search for FOIA Request

Reasonably calculated to uncover all relevant documents



Reviewing Records for Disclosure

Congress sought to create a workable balance between “right of the public to know and need of the government” to protect certain information.



Reviewing Records for Disclosure

Congress included nine exemptions in the FOIA in order to protect certain information from disclosure.



Reviewing Records for Disclosure

Exemptions protect interests such as national security, personal privacy, privileged communications, and law enforcement.



President Obama's Freedom of Information Act Memorandum

January 21, 2009



President Obama's FOIA Memorandum

“A democracy requires
accountability and accountability
requires transparency.”



President Obama's FOIA Memorandum

FOIA should be administered with a clear presumption: **“In the face of doubt, openness prevails.”**



President Obama's FOIA Memorandum

Information should not be kept confidential merely because:

- officials might be embarrassed,
- errors and failures might be revealed, or
- because of speculative or abstract fears



Attorney General Holder's Freedom of Information Act Guidelines

March 19, 2009



Attorney General Holder's FOIA Guidelines

The Attorney General's FOIA Guidelines were written to underscore our nation's **“fundamental commitment to open government.”**



New Era of Open Government

When applying FOIA exemptions under Attorney General Holder's FOIA Guidelines, agencies must consider whether they reasonably foresee that disclosure would harm an interest protected by one of the exemptions.



New Era of Open Government

In the absence of such harm, agencies are encouraged to make a disclosure of the information in keeping with the President's call for greater transparency.



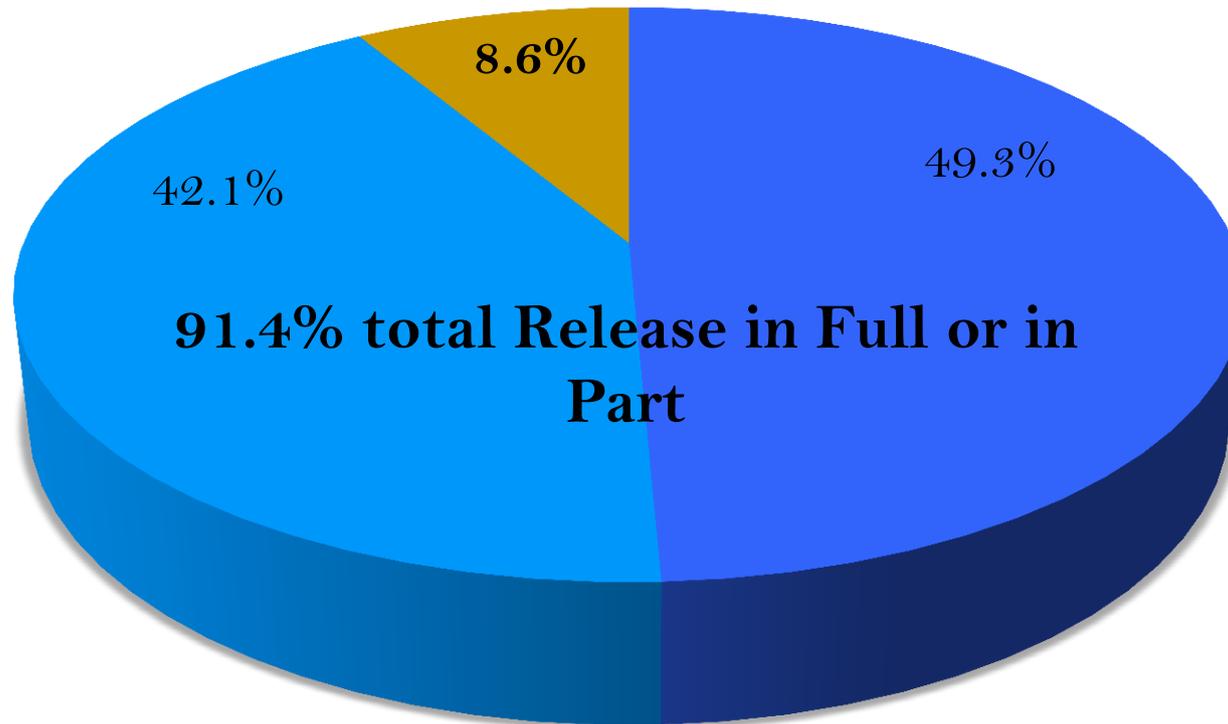
Attorney General Holder's FOIA Guidelines

The Attorney General “strongly encourage[s] agencies to make discretionary disclosures of information.”



United States FOIA Statistics

Disposition of Fiscal Year 2013 Requests Processed for Exemption Applicability



■ Release in Full (49.3%) ■ Release in Part (42.1%) ■ Denied in Full Based on FOIA Exemptions (8.6%)



Attorney General Holder's FOIA Guidelines

FOIA operations
should be efficient.



Attorney General Holder's FOIA Guidelines

The Attorney General highlights the key roles played by both the agency Chief FOIA Officers and the FOIA professionals in each agency.



Attorney General Holder's FOIA Guidelines

Chief FOIA Officers:

- Senior official at Assistant Secretary or higher level
- agency-wide responsibility for “efficient and appropriate compliance” with FOIA



Attorney General Holder's FOIA Guidelines

Chief FOIA Officers:

- monitor compliance and keep agency head and Attorney General informed
- recommend “adjustments to agency practices, policies, personnel, and funding as may be necessary”
- report to the Attorney General on agency's performance



Attorney General Holder's FOIA Guidelines

FOIA Public Liaisons:

- serve as supervisory officials to whom requesters can raise concerns after initial response from FOIA Requester Service Center

- assist in:
 - reducing delays
 - increasing transparency and understanding of status of requests
 - resolving disputes



Attorney General Holder's FOIA Guidelines

FOIA Public Liaisons:

- when extending the time to respond to a request agency must make FOIA Public Liaison available to requester



Working with Requesters

“Unnecessary bureaucratic hurdles have no place in the ‘new era of open Government’ that the President has proclaimed.”

Attorney General Holder
March 19, 2009



Proactive Releases

In addition to required disclosures, agencies should “proactively” post information online in advance of FOIA requests

Example: FBI’s “vault”



Improving FOIA Administration

Utilize technology to improve
FOIA administration

DOJ FOIA Information Technology
Working Group



The Freedom of Information Act

All Three Branches of
Government Have Role in FOIA



The Freedom of Information Act

Congress:

- Enacted FOIA in 1966 after decade of debate
- Amended FOIA periodically over the years



The Freedom of Information Act

Legislative Amendments to the FOIA:

- 1974: narrowed law enforcement and national security amendments and broadened procedural provisions, such as requiring segregation
- 1976: narrowed Exemption 3
- 1978 and 1984: technical amendments
- 1986: broadened law enforcement protection and created new fee and fee waiver standards
- 1996: addressed electronic records and proactive disclosures



The Freedom of Information Act

Legislative Amendments to the FOIA:

- 2002: precluded intelligence agencies from responding to requests made by foreign governments or international governmental organizations
- 2007: addressed procedural issues such as tolling, document marking, recovery of attorney fees, tracking requests, providing status updates and created new Office of Government Information Services (OGIS) within NARA
- 2009: substantively changed Exemption 3, which pertains to matters specifically exempted from release by statute ⁴⁷



The Freedom of Information Act

- Congress holds FOIA oversight hearings
- GAO conducts periodic audits of agencies



The Freedom of Information Act

Judicial Branch:

- Courts issue opinions in FOIA cases
- Out of the hundreds of thousands of requests received each year by agencies, less than 1% go to litigation.
- Under Attorney General Holder's FOIA Guidelines, agencies will now be defended "only if the agency reasonably foresees that disclosure would harm an interest protected by one of the statutory exemptions, or disclosure is prohibited by law."



The Freedom of Information Act

Supreme Court has decided over thirty FOIA cases:

- Forsham (agency records)
- Reporters Committee (privacy)
- Grolier (attorney work product privilege)
- Dow Jones (law enforcement threshold)
- Milner (internal personnel rules and procedures)



The Freedom of Information Act

Executive Branch:

- responsible for implementing FOIA
- ninety-nine agencies currently subject to the FOIA



*Role of the United States
Department of Justice
In FOIA Administration*

- Encouraging proper administration of FOIA
- Oversight of agency compliance



OIP encourages agencies
to properly administer the
FOIA in a variety of ways.



Responsibilities of the Department of Justice

Department of Justice prepares legal treatise analyzing court decisions interpreting the FOIA

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DEPARTMENT OF JUSTICE GUIDE TO THE FREEDOM OF INFORMATION ACT

The *United States Department of Justice Guide to the Freedom of Information Act* is a comprehensive legal treatise on the FOIA. The *Guide* includes detailed discussions of the FOIA's procedural requirements, nine exemptions, and litigation considerations. Each section contains a detailed analysis of the key judicial opinions issued on the FOIA.

Each chapter of the *Guide* will be updated by OIP on a rolling basis as significant new developments in FOIA occur. OIP's *Court Decisions* page also provides a regularly updated review of significant FOIA decisions with detailed summaries searchable by key terms and topical categories.

All sections are available as Portable Document Format files, which may be viewed with a free copy of *Adobe Acrobat Reader*.

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<p>Introduction (posted July 24, 2013)</p> <ul style="list-style-type: none"> Structure of the FOIA History of the FOIA <p>President Obama's FOIA Memorandum and Attorney General Holder's FOIA Guidelines (posted July 02, 2013)</p> <p>Proactive Disclosures (posted August 10, 2009)</p> <ul style="list-style-type: none"> Subsection (a)(2): Making Records Available for Public Inspection Categories of Records Required to be Disclosed Proactively Disclosing Records Proactively to Achieve Transparency Electronic Availability of Proactive Disclosures Indexing Proactive Disclosures 	<p>Exemption 6 (posted January 10, 2014) (cont.)</p> <ul style="list-style-type: none"> FOIA Public Interest Assigning a Weight to the FOIA Public Interest Nexus Between the Requested Information and the Public Interest Derivative Use of the Information Public Servant Accountability Evidentiary Showing Public Interest in Agency Compliance with Federal Statutes Balancing a Privacy Interest in Nondisclosure Against a Public Interest in Release Names and Home Addresses Redacting Identifying Information "Glomar" Responses <p>Exemption 7 (posted August 10, 2009)</p>
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*United States Department of Justice
Guide to the Freedom of Information Act
<http://www.justice.gov/oip/foia-guide.html>*



Responsibilities of the Department of Justice

Department of Justice develops and issues FOIA policy guidance to all agencies

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OIP GUIDANCE



The FOIA is constantly evolving as court decisions, Presidential FOIA Memoranda, and new Attorney General FOIA Guidelines are issued, and as Congress passes statutory amendments to the law.

In keeping with its statutory authority to encourage agency compliance with the FOIA, the OIP regularly develops and issues policy guidance to all agencies on proper implementation of the FOIA.

In addition, guidance is issued on a wide range of legal and procedural issues involving the FOIA to improve administration of the law, to promote best practices, and to increase transparency.

2013 | 2012 | 2011 | 2010 | 2009 | 2008 | Archived Guidance

2013

The Importance of Good Communication with FOIA Requesters 2.0: Improving Both the Means and Content of Requester Communications (November 22, 2013)

Calculating Response Times after the Government Shutdown (October 29, 2013)

Department of Justice Handbook for Agency Annual Freedom of Information Act Reports (September 26, 2013)

Guidelines for 2014 Chief FOIA Officer Reports (September 19, 2013)

Guidance for Further Improvement Based on 2013 Chief FOIA Officer Report Review and Assessment (August 13, 2013)

Guidance for Quarterly FOIA Reporting (Updated April 11, 2013)

Using Metadata in FOIA Documents Posted Online to Lay the Foundation for Building a Government-Wide FOIA Library (March 12, 2013)

TRAINING AND OUTREACH

NEXT EVENTS

March 26, 2014
Training: Advanced Freedom of Information Act Seminar (Washington, DC)

April 16, 2014
Training: Introduction to the Freedom of Information Act (Washington, DC)

For a full list of upcoming events, visit our [Key Dates](#) page.

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Responsibilities of the Department of Justice

Department of Justice provides FOIA training to all agencies

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TRAINING

OIP regularly conducts training sessions throughout the year on all aspects of the FOIA and on a wide variety of FOIA related topics. Here you will find descriptions and dates of various training seminars, meetings, and events offered by OIP, including [yearly training](#) offered in connection with the Office of Legal Education, specialized training sessions, as well as public training events, meetings, and town halls. Additionally, training materials such as slide presentations and handouts accompanying OIP's most popular programs are provided below. Feel free to [contact OIP](#) if your agency is interested in specialized FOIA training.

YEARLY TRAINING COURSES OFFERED BY OIP AND OLE

The Freedom of Information Act for Attorneys and Access Professionals

This two-day program is designed for attorneys, FOIA 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 [Attorney General's FOIA Guidelines](#). This course also provides lectures on the various FOIA exemptions and on procedural issues, as well as a discussion on proactive disclosures and the FOIA fee and fee waiver requirements.

November 19-20, 2013 (Washington, DC)
 February 25-26, 2014 (Washington, DC)
 May 13-14, 2014 (Washington, DC)
 July 15-16, 2014 (Washington, DC)

Advanced Freedom of Information Act Seminar

This seminar is designed for FOIA professionals and legal advisors of all federal agencies. It provides advanced instruction on selected topics under the FOIA, including up-to-date policy guidance and views from the FOIA requester community. This program also serves as a forum for the exchange of ideas useful in dealing with problems that commonly arise in administering the FOIA.

TRAINING AND OUTREACH

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Responsibilities of the Department of Justice

FOIA Counselor Service
(202) 514-FOIA

Office of Information Policy's Website:
<http://www.justice.gov/oip/>



Understanding the FOIA

Sources for Guidance in Applying the FOIA

- Statute itself
- Judicial Opinions
- OIP Guidance
- Agency Regulations
- President Obama's FOIA Memorandum of January 21, 2009
- Attorney General Holder's FOIA Guidelines



The Department of Justice
has oversight of agency
FOIA compliance.



Agency Accountability

Chief FOIA Officer Reports

Chief FOIA Officers report each year to the Department of Justice on the steps “taken to improve FOIA operations and facilitate information disclosure at their agencies.”



Agency Accountability

Annual FOIA Reports

Agencies file each year with the Department of Justice an Annual FOIA Report with detailed statistics on numbers and disposition of FOIA requests, time to process, costs incurred.



Department of Justice compiles
assessment of agency performance.



UNITED STATES DEPARTMENT of JUSTICE

Agency	Section I: Applying the Presumption of Openness				Section II: Effective Systems for Responding to Requests			Section III: Increasing Proactive Disclosures		Section IV: Utilization of Technology (Tech.)		Section V: Reducing Backlogs & Improving Timeliness in Responding to Requests (Req.) and Appeals (App.)								
	Conducted or Attended FOIA Training or Conferences	Made Discretionary Disclosures of Information	High Release Rate for Req. Processed for Disclosure		FOIA Staff Has Sufficient IT Support	FOIA Staff Works with Open Gov. Team	Taken Steps to Assess if there is Adequate Staffing	Taken Steps to Make Website More Useful to Public	Added New Material to Website	Offers Ability to Make FOIA Requests Electronically	Utilizing Advanced Tech. to Increase FOIA Efficiency	Processed Simple Req. in 20 Working Days or Less			Agency Decreased Number of Backlogged:		Closed All Ten Oldest Req. & App. If not, # closed in FY 2012			
			Score	Release Rate								Simple Track Y/N:	Score	Avg. No. of Days	Req.	App.	Req., Y/N:	If no, # closed	App. Y/N:	If no, # closed
DOD	●	●	●	92.9%	●	●	●	●	●	●	●	Y	●	11	●	●	●	6/10	●	4/10
ED	●	●	●	95.0%	●	●	●	●	●	●	●	Y	●	35.71	●	●	●	9/10	●	5/10
DOE	●	●	●	97.1%	●	●	●	●	●	●	●	Y	●	39.92	●	●	●	4/10	●	7/10
HHS	●	●	●	88.5%	●	●	●	●	●	●	●	Y	●	35	●	●	●	N/A	●	N/A
DHS	●	●	●	99.2%	●	●	●	●	●	●	●	Y	●	72	●	●	●	8/10	●	6/10
HUD	●	●	●	93.6%	●	●	●	●	●	●	●	Y	●	20.13	●	●	●	N/A	●	N/A
DOJ	●	●	●	94.3%	●	●	●	●	●	●	●	Y	●	18.93	●	●	●	N/A	●	N/A
Labor	●	●	●	87.3%	●	●	●	●	●	●	●	Y	●	48	●	●	●	9/10	●	8/10
State	●	●	●	55.6%	●	●	●	●	●	●	●	Y	●	88	●	●	●	N/A	●	N/A
DOI	●	●	●	96.1%	●	●	●	●	●	●	●	Y	●	2	●	●	●	N/A	●	N/A
Treasury	●	●	●	93.2%	●	●	●	●	●	●	●	Y	●	17.26	●	●	●	2/10	●	9/10
DOT	●	●	●	98.8%	●	●	●	●	●	●	●	Y	●	20.71	●	●	●	9/10	●	9/10
VA	●	●	●	79.6%	●	●	●	●	●	●	●	Y	●	10.61	●	●	●	5/10	●	3/10
EPA	●	●	●	98.2%	●	●	●	●	●	●	●	Y	●	16.93	●	●	●	8/10	●	6/10
EEOC	●	●	●	85.4%	●	●	●	●	●	●	●	Y	●	18	●	●	●	N/A	●	N/A



Agency Accountability

Quarterly FOIA Reports

Agencies are required to provide quarterly reporting of four key FOIA statistics to the Department of Justice that will be posted on FOIA.gov



Agency Accountability

- 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
- the progress being made to close the agency's *ten overall oldest* pending FOIA requests from the prior fiscal year



FOIA.gov

Department of Justice website
containing governmentwide FOIA
statistics and information.



FOIA.gov

➤ Learn:

- learn about FOIA, how it works, frequently asked questions

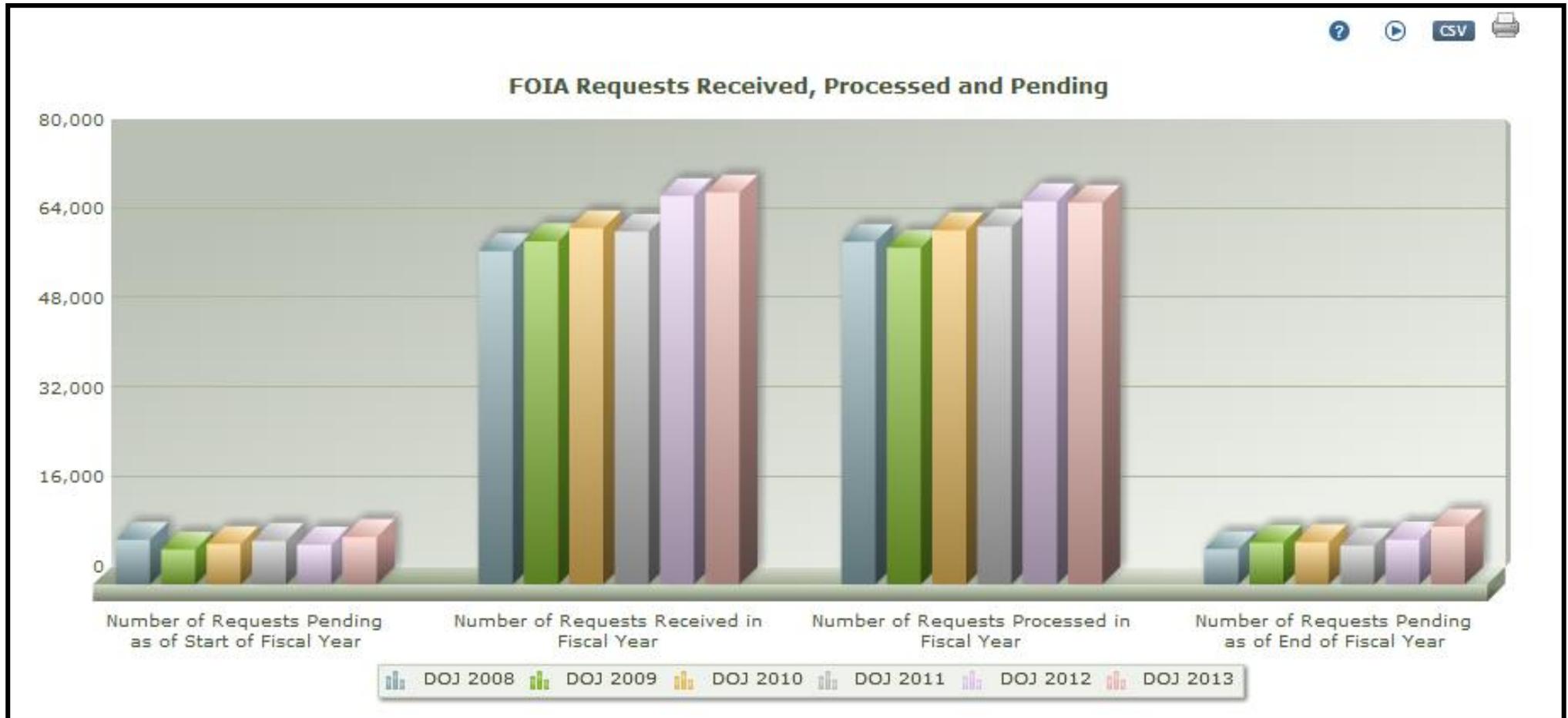
The screenshot shows the FOIA.gov website interface. At the top, there is a navigation bar with links for News, Glossary, FAQs, en Español, Feedback, and FOIA Contacts. Below this is a secondary navigation bar with buttons for Home, Data, Reports, Find, and Learn. The 'Learn' button is highlighted. The main content area is titled 'FREQUENTLY ASKED QUESTIONS' and features a sidebar on the left with links to 'What is FOIA?', 'How to Make a FOIA Request', 'Where to Make a FOIA Request', 'Open Government', 'Frequently Asked Questions', and 'FOIA en Español'. The main content area contains a list of 14 frequently asked questions, such as 'What is FOIA.gov?', 'What will I receive in response to a FOIA request?', and 'How long will it take before I get a response?'. A 'Printer-Friendly version' link is also visible.



FOIA.gov

➤ Measure

- measure how agencies perform by reviewing graphically numbers and dispositions of requests





FOIA.gov

➤ Find:

- find posted material by simply entering search term

The screenshot displays the FOIA.gov website interface. At the top, there is a navigation bar with links for News, Glossary, FAQs, Feedback, and FOIA Contacts. Below this is a secondary navigation bar with buttons for Home, Data, Reports, Find, and Learn. The 'Find' button is highlighted. The main content area is titled 'FIND' and contains a sidebar with links for 'What is FOIA?', 'How to Make a FOIA Request', 'Where to Make a FOIA Request', 'Open Government', and 'Frequently Asked Questions'. The main text explains that before making a FOIA request, users can search federal agencies' websites for information already available online. It notes that the Attorney General's FOIA Guidelines encourage agencies to post information proactively. A search box is located at the bottom of the page with the placeholder text 'Please enter search term(s)' and a search icon.



The Freedom of Information Act

Nearly fifty years ago, the FOIA
was signed into law

Today it is a vital part of our
democracy