Achieving Transparency
Through Proactive Disclosures
& the Use of Technology
Achieving Transparency

The “FOIA is often explained as a means for citizens to know ‘what their government is up to.’”

The Supreme Court stressed that “[t]his phrase should not be dismissed as a convenient formalism.” Rather, “[i]t defines a structural necessity in a real democracy.”
Achieving Transparency

FOIA is not only about “FOIA Requests”:

The law also requires agencies to make certain categories of records available to the public without a FOIA request.

These are called “proactive disclosures.”
Proactive Disclosures

Enhance transparency
– Prompt disclosure of records about agency operations create an informed citizenry by revealing “the operations and activities” of government

…with more efficiency
– By making information available to many people at once, agencies can promptly satisfy public demand without having to process repeated -- or any -- FOIA requests
Proactive Disclosures

**FOIA (a)(2): The Proactive Disclosure Rule**

Agencies must *routinely* make specific operation and “frequently requested records” proactively available without waiting for a FOIA request.
FOIA (a)(2): The Proactive Disclosure Rule

Four Categories of Required Disclosures

Three types of “operational” documents:
1. Final Opinions and Orders
2. Statements of Policy & Interpretations
3. Administrative Staff Manuals & Instructions

And records of significant public interest:
4. Frequently requested, or “Hot Topic,” Records

...unless such records are already made available under (a)(1) or are otherwise offered for sale.
FOIA (a)(2): The Proactive Disclosure Rule

“Operational” Category #1: Final Opinions & Orders

“Final opinions, including concurring and dissenting opinions, as well as orders, made in the adjudication of cases.”

Key Features:

• **Final**: carries legal weight
• **Adjudicatory**: quasi-judicial function
• **Precedential value**: influences the basis of a future opinion/order
“Operational” Category #2: Policy Statements

“Statements of policy and interpretations which have been adopted by the agency.”

Key Features:
- *Adopted by*: reflect an agency’s actual, current policy
- *Authority*: author is in a position to articulate policy
"Operational" Category #3: Staff Manuals & Instructions

"Administrative staff manuals and instructions to staff that affect a member of the public"

Key Features:

• Limited to administrative (i.e. not law enforcement) records
• *Affects the public*: of more than purely internal significance
Category #4: Frequently Requested Records

Records released in response to a FOIA request that “the agency determines have become or are likely to become the subject of subsequent requests for substantially the same records.”

Key Features:

• “Rule of three”: third request triggers proactive disclosure

• “Hot topics”: an expectation of future interest also triggers proactive disclosure

• FOIA-processed records: applies only to records previously disclosed under FOIA

…always consider a discretionary disclosure of all “hot topic” information after the first request.
Category #4: Frequently Requested Records

OIP encourages agencies to proactively post any records that are likely to be of interest to the public, even before the first request.
Historically, agencies made information proactively available in physical “Reading Rooms”;

After the E-FOIA Amendments of 1996, agencies implemented online “electronic Reading Rooms” (now called FOIA Libraries);

FOIA Libraries should be located in an agency’s FOIA website.

• The FOIA requires that (a)(2) records created since November 1, 1996 be proactively posted online
• The President and the Attorney General direct agencies to post information online whenever possible
FOIA Libraries

Agencies are encouraged to make information available wherever, and in whatever format, is most useful to the public, considering the needs of the community of individuals who access their websites.

- **Operational Records** may be posted in FOIA Libraries, elsewhere on the web, or both;

- **Frequently Requested Records** and other FOIA releases should still be included in the FOIA Library

...records must be identifiable and easy to locate to comply with FOIA’s “indexing” requirement.
FOIA Libraries

Department of Justice documents made available online by OIP

Many documents are available to the public without having to make a FOIA request. These documents are called “proactive disclosures” because they are automatically posted online by all Department components. Please find links below to all Department of Justice components to access their documents that are available online.

FOIA Processed Documents: Documents in this category have been disclosed, in full or with redactions, pursuant to previous FOIA requests. While all components post “frequently requested records,” or those which have been released three or more times to FOIA requesters, they may also post other FOIA-processed documents which are likely to be of interest to the public.

Operational Documents: Documents in this category consist of policy statements, staff manuals and instructions, final opinions and orders, which are always available without making a FOIA request. The proactive disclosure of these records allows you to instantly access information which relates to the Department’s day-to-day operations.

Access OIP documents
Access documents for all DOJ components
President Obama’s FOIA Memorandum & Attorney General Holder’s FOIA Guidelines
Both the President and the Attorney General Emphasized the Importance of Proactive Disclosures and the Use of Technology in Achieving Open Government
President’s FOIA Memorandum and Attorney General’s FOIA Guidelines

Government should be transparent

Government should be participatory

Government should be collaborative
President’s FOIA Memorandum and Attorney General’s FOIA Guidelines

Technology as a Transparency Tool

- President Obama called on agencies
  - “[T]o use modern technology” to inform citizens about their government; and
  - To make “innovate” steps in making government more collaborative and transparent.

- The Attorney General stated that
  - Agencies should “readily and systematically post information online in advance of any public request.”
President’s FOIA Memorandum and Attorney General’s FOIA Guidelines

Making Information Available in New Ways

Where possible, information should be “usable” -- not just “available”

• New Media & Web 2.0
• Social Media
• Mashable Data

• Topical Websites
• Interactive Data
• Agency-Public Interface
Making Information Available in New Ways

69 of 97 agencies reported using social media in FY 2010

The Chairman of the Joint Chiefs of Staff has over 49,000 followers on Twitter.

The President has nearly 9 million.
FOIA.Gov
What is FOIA?

The FOIA is a law that gives you the right to access information from the federal government. It is often described as the law that keeps citizens in the know about their government.

LEARN ABOUT FOIA
EXPLORE FOIA DATA

FOIA DATA AT A GLANCE - FY 2008 & FY 2009 & FY 2010

<table>
<thead>
<tr>
<th>Requests Received</th>
<th>Disposition of Requests</th>
<th>Backlog</th>
</tr>
</thead>
<tbody>
<tr>
<td>561,016</td>
<td>597,415</td>
<td>130,419</td>
</tr>
</tbody>
</table>
FOIA.Gov

FOIA DATA AT A GLANCE - FY 2008 & FY 2009 & FY 2010

Requests Received
FY 2008: 561,016
FY 2009: 514,541
FY 2010: 597,415

Disposition of Requests
Released in Full FY 2010: 130,415
Released in Part FY 2010: 75,594
Denied in Full FY 2010: 59,526

Backlog
FY 2009: 227,227
FY 2009: 29,072
FY 2010: 180,194

What Do These Charts Mean?

HIGHLIGHTS - AGENCIES FY 2010

REPORTS
You can explore the FOIA data that makes up an agency's annual FOIA report. Search for data from a single agency or compare data from multiple agencies. Just follow these steps:

1. At the "Select Report" column, click on a category, such as "Requests" or "Administration" to select the type of report you would like to run. Learn more about these categories at the Glossary.
2. Use the (+) or (-) signs appearing next to the text box to select the agency/agencies you want to lookup, selecting up to four at a time.
3. Choose the year you would like to see data from.
4. Click "Generate Report". Scroll down to see your customized report.

For help interpreting a report, scroll over the ? icon. You can also export the data to a CSV file or print your report.
FREQUENTLY ASKED QUESTIONS

- What is FOIA.gov?
- What is on FOIA.gov?
- Who can make a FOIA Request?
- How do I make a FOIA Request?
- Where do I send a FOIA Request?
- Is there a special form I have to use to make a FOIA request?
- What can I ask for under the FOIA?
- Who oversees the FOIA?
- Who handles FOIA requests?
- How is a FOIA request processed?
- Can I ask that any fees be waived?
- What will I receive in response to a FOIA request?
- How long will it take before I get a response?
- Can I ever have my request processed faster than usual or expedited?
- Are there special requirements for obtaining records on myself?
- What about requirements for obtaining records on someone else?
- What are exemptions?
- What is an appeal?
- How are FOIA requests regulated?
Achieving Transparency

Establishing Effective Systems to Identify Records for Posting Online

- Identifying interest in records through FOIA requests
- Public feedback
- Quarterly records searches
- Coordination among FOIA staffs and Open Government teams
- Intra-agency coordination to identify records as they are created
- Posting “most requested” topics
- Posting FOIA Logs
Achieving Transparency

Timely Disclosure is Paramount

Agencies are increasingly relying on technology to make FOIA processing faster and more efficient.
Over 90 agencies received and/or processed requests electronically in FY 2010
Achieving Transparency

87 of 97 agencies prepared their Annual FOIA Reports electronically in FY 2010
Achieving Transparency

Many agencies are launching technology that allows FOIA requesters to track their requests online.
The FOIA statute requires agencies to post both “operational” and “frequently requested records” online without waiting to receive a FOIA request for them.
Conclusion

By developing new ways to provide information that otherwise wouldn’t be released, agencies have found dynamic ways to inform the public about government operations.
Conclusion

By implementing new technology in their FOIA administration, agencies are making FOIA processing more efficient.