



UNITED STATES DEPARTMENT *of* JUSTICE

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



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

“Operational” Category #2: Policy Statements

“[S]tatements 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



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

“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



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

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.



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

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.



FOIA Libraries

- 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

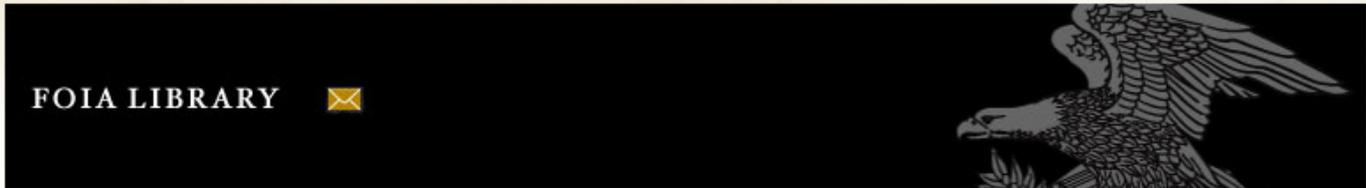
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Department of Justice documents made available online by OIP

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](#)

GENERAL INFORMATION OFFICE OF INFORMATION POLICY

LEADERSHIP

Melanie Ann Pustay
Director

CONTACT

Office of Information Policy
(202) 514-FOIA (3642)

FOIA LIBRARY



President Obama's FOIA
Memorandum & Attorney General
Holder's FOIA Guidelines



President's FOIA Memorandum and Attorney General'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



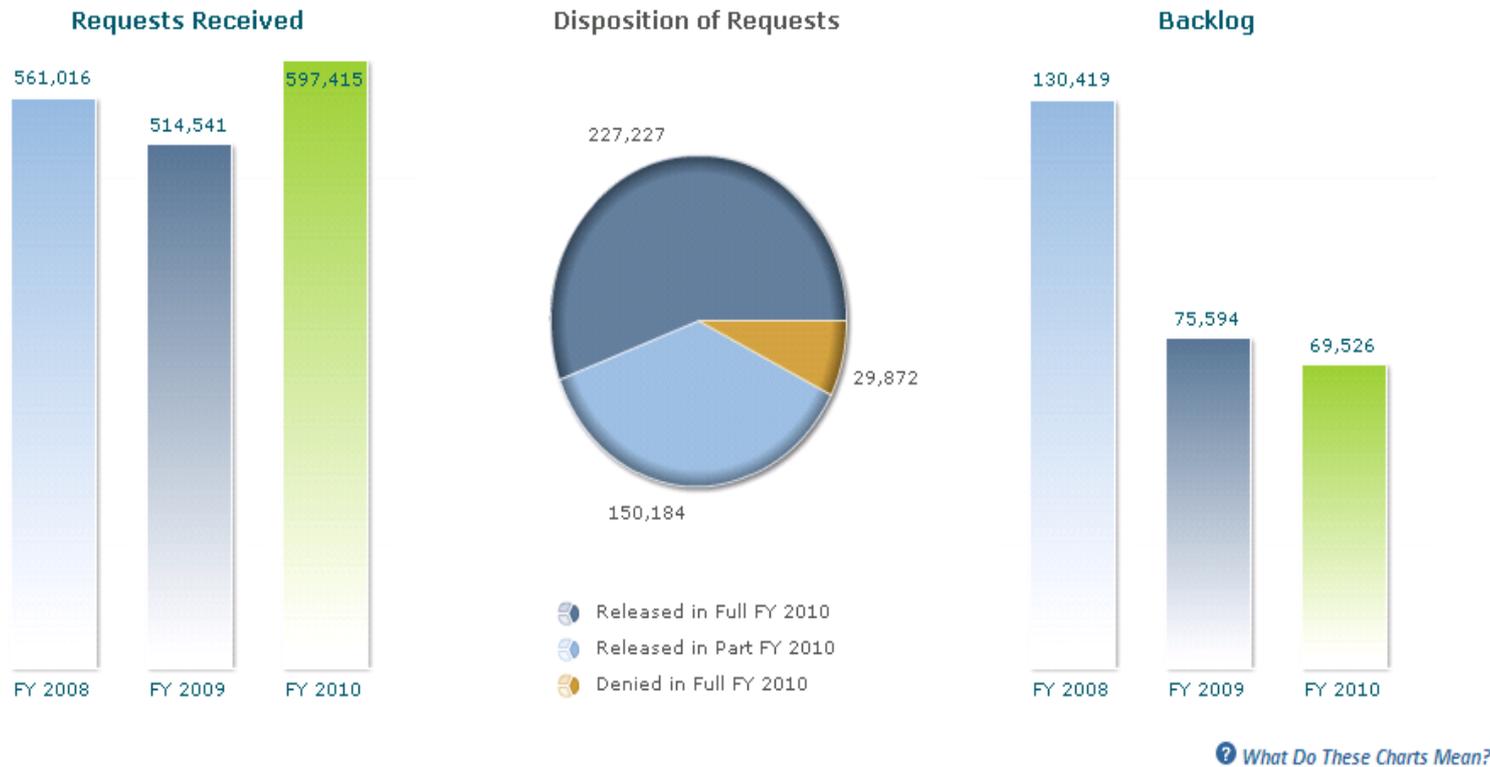
FOIA.Gov

The screenshot shows the FOIA.Gov website interface. At the top right, it says 'UNITED STATES DEPARTMENT of JUSTICE'. Below that is a navigation bar with 'Home', 'Data', 'Reports', and 'Learn'. To the right of the navigation bar are links for 'News', 'Glossary', and 'Feedback'. The main content area features a large image of a stack of papers on the left and a text block on the right titled 'What is FOIA?' with a descriptive paragraph. Below the text are two green buttons: 'LEARN ABOUT FOIA' and 'EXPLORE FOIA DATA'. At the bottom, there is a section titled 'FOIA DATA AT A GLANCE - FY 2008 & FY 2009 & FY 2010' containing three bar charts: 'Requests Received' (561,016 for 2008, 514,541 for 2009, 597,415 for 2010), 'Disposition of Requests', and 'Backlog' (130,419).



FOIA.Gov

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



[HIGHLIGHTS - AGENCIES FY2010](#)

[REPORTS](#)



FOIA.Gov

CREATE REPORT

[? Basic Report Information](#) [⚙ Create an Advanced Report](#)

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.

SELECT REPORT

Requests

Exemptions

Appeals

Processing Time

Fee Waiver

Administration

Backlog

Consultations

Comparisons

SELECT AGENCY



[Show List of Agencies](#) [All Components](#) [Select Components](#)

SELECT FISCAL YEAR

FY 2010

FY 2009

FY 2008

All Available Years

GENERATE REPORT



FOIA.Gov

FOIA SPOTLIGHT



Department of the Interior BP/ Deepwater Oil Spill Documents

The Bureau of Ocean Energy Management, Regulation and Enforcement provides access to documents that have been cleared for public.

[LEARN MORE](#)



CIA Releases Analysis of Korean War

The CIA released more than 1,300 documents on developments on the Korean Peninsula during 1947-1954.

[LEARN MORE](#)



FBI Releases Records of 2001 Anthrax Investigation

The FBI released its interim records of their investigation into what became the worst biological attacks in U.S. history.

[LEARN MORE](#)



FAA Releases Transcripts of the Hudson River Plane Crash

The FAA released the transcripts for US Airways flight 1549, which landed in the Hudson River in January 2009.

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FREQUENTLY ASKED QUESTIONS

[What is FOIA?](#)

[How to Make a FOIA Request](#)

[Where to Make a FOIA Request](#)

[Open Government](#)

[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 categorized?](#)



Achieving Transparency

Establishing Effective Systems to Identify Records for Posting Online

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



Achieving Transparency

Timely Disclosure is Paramount

Agencies are increasingly relying on technology to make FOIA processing faster and more efficient.



Achieving Transparency

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



Conclusion

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.