

#### OIP Updates & Resources

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#### OIP Guidance



## OIP Guidance: Standard Operating Procedures for FOIA Offices

- ➤ OIP's <u>guidance</u> defines Standard Operating Procedures (SOP) and outlines the benefits to employees, managers, and requesters in maintaining an SOP.
- The guidance also includes advice on:
  - Content of Agency FOIA SOPs
  - > Format of Agency FOIA SOPs
  - > Implementing and Maintaining Agency FOIA SOPs



#### Guidance for Further Improvement Based on 2023 Chief FOIA Officer Report Review and Assessment

Guidance following 2023 CFO Report review reminds agencies to:

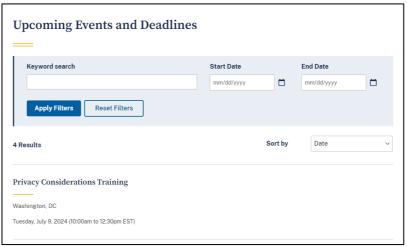
- Prioritize processing simple track requests within 20 working days.
- Ensure their systems remain interoperable with FOIA.gov in line with joint guidance and continue to keep agency information updated.
- Confirm in response letters that they have considered the foreseeable harm standard when reviewing records and invoking exemptions, in line with the <u>Attorney General's</u> 2022 FOIA Guidelines and OIP guidance.



### Training and E-Learning

#### **OIP-Led Training Courses**

- ➤ OIP regularly hosts free virtual training to federal employees on a wide variety of topics.
- All trainings are hosted on Webex and require a .gov or .mil email address to register.
- ➤ OIP can also provide specialized training to agencies upon request.



Dates of upcoming training can be found on OIP's Key Dates page.

Training slides for all offered training courses can be found on OIP's <u>Training</u> page.





#### E-Learning Modules

In 2022, OIP released three interactive FOIA training modules:

- Training for Executives: A 15-minute course that provides a basic overview of the FOIA and explains how this law impacts agency leaders.
- ➤ Training for Federal
  Employees: A 1-hour course that provides a primer on the FOIA and explains how employees can assist your agency in FOIA administration.
- ➤ Training for FOIA

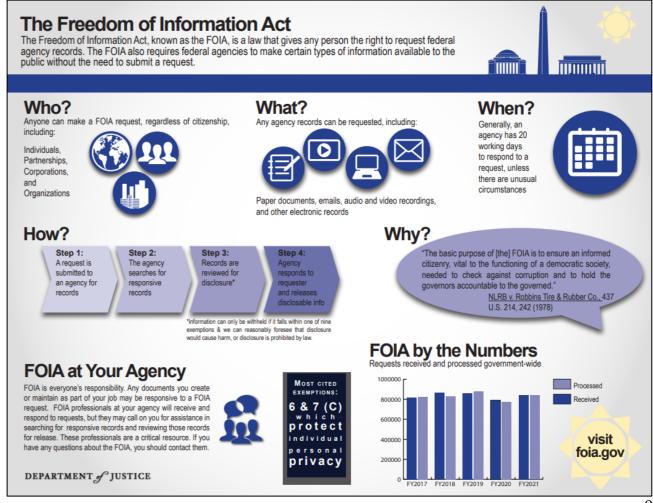
  Professionals: An in-depth course designed specifically for FOIA professionals and addressing the major procedural and substantive requirements of the law.





#### FOIA Infographic

In 2022, OIP also updated its FOIA Infographic, a one-page resource to help new employees understand what the FOIA is and how the FOIA process works at their agencies.





#### FOIA Self-Assessment Toolkit



#### FOIA Self-Assessment Toolkit

- OIP released a comprehensive update to its Self-Assessment Toolkit in 2023, fulfilling a commitment in the Fifth U.S. Open Government National Action Plan.
- The 2023 update includes modules for proactive disclosures and administrative appeals, plus additional milestones on the use of technology and requirements of the Attorney General's 2022 FOIA Guidelines.
- Fillable spreadsheets facilitate easier completion and tracking of milestone action items.

#### Module 14: Proactive Disclosures This module examines whether your Agency has an efficient and effective proactive disclosure process. Optimizing methods for identifying and posting proactive disclosures can help agencies to achieve greater efficiencies in complying with FOIA proactive disclosure requirements and can reduce the need to respond to numerous requests for the same record(s). This module has two subsections. The Agency has done this and has strong evidence of success. The Agency generally does this, but there are inconsistencies, lack of evidence, or room for improvement. The Agency has a policy of doing this, but it does not regularly occur in practice. The Agency is not yet doing this and/or there are major obstacles to progress. A. Identifying Proactive Disclosures AREAS FOR EVIDENCE FOR IMPROVEMENT/NEXT MILESTON THIS SCORE 1.A Agency publishes current descriptions of its organization and the established places and methods for obtaining information, in the 2.A Agency publishes current general statements regarding the agency's methods of operation, in the Federal Register. 3.A Agency publishes current rules of procedure and descriptions of forms or the places at which forms may be obtained, and instruction: as to the scope and contents of all papers, reports, or examinations in the Federal Register. Completion Target general Milestone Date Completed 5.A Ag A. Current FOIA Requesters can submit FOIA requests Register to your Agency electronically and the Request Intake and Initial requests are automatically ingested

Your Agency is interoperable with

of request intake and can identify

requests that can be closed quickly, for instance that can be satisfied

with proactively released records already available.

FOIA Staff enter requests into the

Agency's tracking system promptly

upon receipt to facilitate efficient

FOIA Staff in decentralized agencies

quickly recognize and properly route misdirected requests within 10

duplicative submissions and

FOIA.gov in accordance with

DOJ/OMB Guidance.

Designated trained personnel, including backups, monitor all forms

A. Current FOIA

A. Current FOIA

Request Intake

A. Current FOIA

A. Current FOIA

and Initial

and Initial

and Initial

Request Intake

Module 1: Initial

Request Intake

Module 1: Initial

Request Intake



# Guide to the Freedom of Information Act Updates



#### **DOJ** Guide to the FOIA

- Comprehensive legal treatise on the FOIA available on OIP's website.
- ➤ Includes detailed discussions of the FOIA's procedural requirements, nine exemptions, and litigation considerations.
- Contains detailed analysis of the key judicial opinions issued on the FOIA.



#### **DOJ** Guide to the FOIA

- ➤ OIP continues to make rolling updates to individual chapters, recently including:
  - Exemption 2 and 5
  - Litigation Considerations 1 and 2
  - Reverse FOIA
- Agencies are encouraged to use the Guide in conjunction with other resources provided by OIP.



# Court Decision Summaries

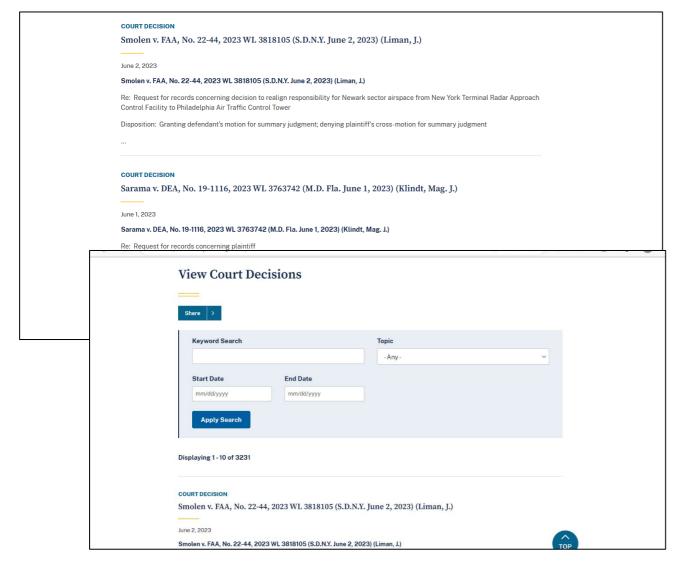


#### **Court Decisions**

- Each year the federal courts issue hundreds of decisions in FOIA cases that shape the way the law is interpreted and applied.
- To aid those professionals, and to facilitate greater understanding of the FOIA overall, OIP posts summaries of FOIA decisions to our <u>Court Decisions</u> page.



#### **Court Decisions**



Court decisions can be viewed chronologically, or searched by topic, text, or date.



#### **Court Decisions**

Users can subscribe to receive email updates whenever new cases are posted.

Smolen v. FAA, No. 22-44, 2023 WL 3818105 (S.D.N.Y. June 2, 2023) (Liman, J.)



#### Date

Friday, June 2, 2023

Smolen v. FAA, No. 22-44, 2023 WL 3818105 (S.D.N.Y. June 2, 2023) (Liman, J.)

Re: Request for records concerning decision to realign responsibility for Newark sector airspace from New York Terminal Radar Approach Control Facility to Philadelphia Air Traffic Control Tower

Disposition: Granting defendant's motion for summary judgment; denying plaintiff's cross-motion for summary judgment

Exemption 4: The court holds that defendant appropriately withheld portions of two draft memoranda of understanding
 ("MOUs") "relat[ing] to [National Air Traffic Controllers Association ("NATCA")] bargaining unit employees' pay and other
 conditions of employment."

First, the court finds that "Defendant has established that the withheld information is commercial or financial in character." "The Draft MOUs contain NATCA's proposals and FAA's counterproposals with respect to the Realignment Determination." "Each of the proposals and counterproposals related to the pay and other conditions of employment of the business unit employees represented by NATCA." "Plaintiff argues that NATCA's information cannot constitute 'commercial or financial information' because NATCA is a non-commercial tax-exempt organization and the Draft MOUs do not contain quintessential commercial information such as 'sales statistics, inventories' or information instrumental to a commercial entity's operations." "Plaintiff further argues that the information cannot be 'commercial or financial' because NATCA has the exclusive right to represent all federally employed air traffic controllers and thus does not face competition from another labor organization." "Those arguments disregard the rules of statutory interpretation." "[A]n association need not generate taxable profits for its information be 'commercial or financial...." "There is no qualifier that the association or organization be for profit or generate taxable income; public organizations, for example, frequently do not generate taxable income." "It



### Chief FOIA Officers Council



#### **Chief FOIA Officers Council**

- OIP continues to co-lead the Chief FOIA Officers Council.
- For details on upcoming meetings, see the <u>CFO Council</u> page on FOIA.gov.
- The **Technology Committee** hosted the NexGen 2.0 Tech Showcase in May 2024.
- The Committee on Cross-Agency Collaboration and Innovation hosted a Best Practices Workshop on Innovative Methods for Using and Sharing Resources and launched a new Working Group focused on improving recruitment and retention of FOIA employees.



#### NexGen 2.0 Tech Showcase

- The purpose of the NexGen showcase series is to assist federal agencies in identifying FOIA technology solutions.
- The NexGen 2.0 Showcase intended to raise awareness of the different case process management systems leveraging advanced technology, including artificial intelligence.
- You can access the vendor responses to the request for information and the playlist of vendor demonstrations on the NexGen 2.0 FOIA Tech Showcase page on FOIA.gov.

#### **Best Practices Workshop Series**

- The Best Practices Workshop series focuses on specific FOIA topics with a panel of representatives across the federal government sharing strategies for success.
- The most recent Best Practices Workshop was attended by more than 400 federal employees and addressed 3 key issues:
  - ➤ How to build or rebuild a successful agency information program
  - FOIA technology
  - > Innovative FOIA staffing opportunities
- The next Best Practices Workshop will focus on Backlog Reduction Plans and will take place on July 31. Registration is required and the link can be found on our website.



# National FOIA Portal on FOIA.gov



- ➤ 2011: Launched as a "dashboard" for agencies' Annual FOIA Report Data.
- ➤ 2018: National FOIA Portal released, allowing requesters to submit a request to any agency from a single site.
- > 2019: DOJ/OMB issued guidance for achieving interoperability
- ➤ 2022: OIP launches new CFO Council page on FOIA.gov.
- ➤ 2023: The new Search Tool powered by machine learning launches on FOIA.gov. Included are six pre-defined user journeys which assist requesters in identifying common types of records.
- ➤ 2024: A new seventh user journey will be deployed assisting requesters in identifying Law Enforcement records and agencies.

Select a common topic				
Immigration or Travel re	ecords Tax records	Social Security records	Medical records	Personnel records
Military records	Law Enforcement records			
Or search for somethin	g else			

FOIA.gov Search Wizard Tool with the seven pre-defined user journeys

The new Law
Enforcement user journey
guides requesters in
locating a variety of law
enforcement and related
records, including
criminal law
enforcement, consumer
protection, and more.

Okay, you're looking for: "Federal law enforcement records"

#### Are you seeking records regarding any of the following:

- Records about a specific federal criminal or civil case
- Federal prison and parole records
- Background investigation and security records
- Court records
- Oversight of the environment, natural resources, and agriculture
- Oversight of U.S. financial institutions
- Oversight of the workplace
- Consumer protection
- Oversight of federal agencies
- Law enforcement/criminal justice policies and programs

Okay, you're looking for: "Law Enforcement records"

#### Select the type of record you are seeking from the list below:

- 911 calls
- Arrest and/or investigation records
- Prison records
- Body worn camera footage
- Background check for employment
- Court records

The user journey additionally provides guidance for requesters who aren't sure if the records they are seeking are federal records or state/local records.

FOIA.gov Law Enforcement records user journey

If a user indicates they are looking for records held by a state/local agency, they are informed that the FOIA only applies to federal agencies.

Okay, you're looking for: "State or local law enforcement records"

If you are looking for non-federal records, such as state or local records, we suggest that you contact the proper state or local authority in accordance with the appropriate state or local records access law.

Learn more about why you got these results.

FOIA.gov Law Enforcement records user journey



#### Questions? Contact Us:

Email: DOJ.OIP.FOIA@usdoj.gov

FOIA Counselor Line: (202) 514-FOIA (3642)