



Department of Justice Chief FOIA Officer Report

2021



**2021 Chief FOIA Officer Report
United States Department of Justice**

**Chief FOIA Officer:
Acting Associate Attorney General Matthew Colangelo**

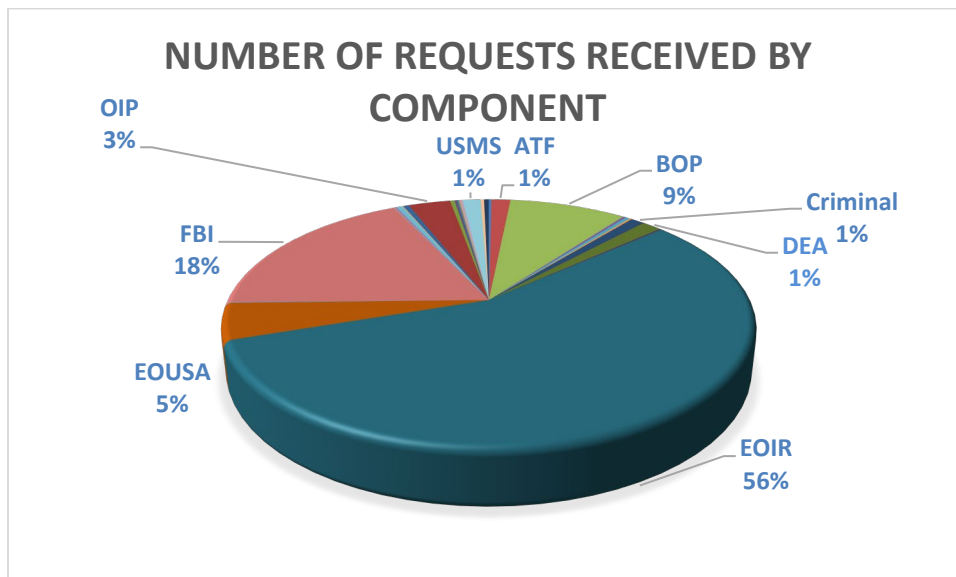
The Freedom of Information Act (FOIA) requires each agency Chief FOIA Officer to "review and report to the Attorney General, through the head of the agency, at such times and in such formats as the Attorney General may direct, on the agency's performance in implementing [the FOIA]."¹ Implementing this provision, the Department of Justice's [FOIA Guidelines](#) directed agency Chief FOIA Officers to annually review all aspects of their FOIA administration and to report to the Department on steps taken to improve their FOIA programs. Each year, the Department's Office of Information Policy (OIP) provides guidance to agencies on the content of these reports, which focus on: (1) applying a presumption of openness, (2) having an efficient system in place for responding to requests, (3) increasing proactive disclosures, (4) utilizing technology, and (5) reducing backlogs and improving timeliness. The Department of Justice itself follows these guidelines and issues its own Chief FOIA Officer Report.

This marks the twelfth year in which agencies, including the Department of Justice, have issued a Chief FOIA Officer Report. The 2021 Chief FOIA Officer Report for the Department of Justice details notable achievements in its administration of the FOIA. This 2021 Chief FOIA Officer Report describes many of the Department's accomplishments during the last year, including closing the ten oldest administrative appeals and consultations, as well as eight of the ten oldest requests; increased proactive disclosures; and new virtual FOIA trainings for agency FOIA professionals.

¹ [5 U.S.C. § 552\(j\)\(2\)\(D\) \(2018\)](#).

Decentralized Nature of FOIA Processing at the Department of Justice

At the Department of Justice, the FOIA is administered on a decentralized basis, with thirty-one separate FOIA offices handling requests made to the various Department components. The Department received 86,729 FOIA requests in FY 2020. The number of FOIA requests received varies widely between components, from the Executive Office for Immigration Review (EOIR), which received 48,885 requests in FY 2020, constituting over 56% of the Department's total requests received, to ten components that each received fewer than 100 requests.



OIP, which is responsible for encouraging compliance with the FOIA both within the Department and across the federal government, is also responsible for processing FOIA requests for the Senior Leadership Offices of the Department, specifically of the Offices of the Attorney General, Deputy Attorney General, Associate Attorney General, Legislative Affairs, Legal Policy, and Public Affairs, as well as OIP. The remaining thirty Department components are responsible for processing requests received for their own records, based upon guidance provided by OIP. The Administrative Appeals Staff of OIP adjudicates administrative appeals of FOIA denials for all Department components.

During FY 2020, the Department had 445 full-time FOIA employees and the equivalent of 78.32 full-time FOIA staff who worked on FOIA as a portion of their responsibilities for the Department. In an effort to meet the high demand of the incoming requests, Department employees processed 84,442 requests.

The following report provides a comprehensive review of the steps taken throughout the Department of Justice to improve its FOIA administration since the issuance of the last [Chief FOIA Officer Report](#) in March 2020.

Section I: Steps Taken to Apply the Presumption of Openness

The Department has engaged in a number of efforts to ensure that the presumption of openness is fully integrated into its administration of the FOIA, including issuing government-wide guidance, conducting a robust training program, and engaging in outreach with the public.

FOIA Leadership:

The Department of Justice's [FOIA Guidelines](#) have long maintained that "[i]mproving FOIA performance requires the active participation of agency Chief FOIA Officers." The FOIA charges the Chief FOIA Officer with "agency-wide responsibility for efficient and appropriate compliance" with the Act and requires that the role of the Chief FOIA Officer be handled by a senior official at the agency at the Assistant Secretary or equivalent level. Acting Associate Attorney General Matthew Colangelo, the third-ranking official at the Department of Justice, serves as our Chief FOIA Officer.

"Never was it more important than in our times of mass society, when government affects each individual in so many ways, that the right of the people to know the actions of their government be secure."

- Ramsey Clark, Attorney General, July 4, 1967

Training:

The FOIA directs agency Chief FOIA Officers to ensure that FOIA training is offered to Agency personnel. See 5 U.S.C. § 552(a)(j)(2)(F). A proper understanding of the FOIA, including the correct application of the statute's provisions, is the first step towards any successful FOIA operation. As the federal office responsible for encouraging government-wide compliance with the FOIA, OIP continues to conduct a wide range of training activities to educate FOIA personnel at all federal agencies on the legal requirements of the FOIA and applicable policy directives. Between March 2020 and March 2021, over 5,256 federal employees attended OIP-hosted virtual training sessions addressing issues ranging from utilizing proper administrative procedures, understanding exemptions, applying the FOIA's fee and fee waiver provisions, litigation considerations, improving customer service, and ensuring an effective FOIA administration. These trainings are also made available to and used by Department personnel. In 2020, OIP also revamped all of the training materials provided [online](#).

During this reporting period, OIP quickly adapted its training programs to offer virtual courses to accommodate agencies teleworking in response to COVID-19. In order to maximize attendance, OIP offered shorter topical workshops more often throughout the year, rather than the full or multi-day trainings OIP has traditionally offered in-person. The virtual setting also expanded the capacity for agency participation with respect to the both the number and geographic location of attendees, which had been limited by physical space in the past. The following events were attended by FOIA professionals within the Department and across all agencies:

- *Virtual Introduction to the Freedom of Information Act* – This program provides a basic overview of the FOIA for agency personnel who do not specialize in access law. It is designed for those who either work with the FOIA only occasionally or need only a general familiarity with the FOIA in order to recognize and handle FOIA-related problems that may arise in other areas of agency activity.
- *Virtual Procedural Requirements* – This workshop provides an overview of Procedural Requirements of the FOIA including: defining "agency records," perfected FOIA requests, time limitations, expedited processing, reasonable searches, responding to FOIA requests, appeal rights, consultations and referrals.
- *Virtual Fees and Fee Waiver Workshop* – This workshop explains the four requester categories, types of fees, restrictions on charging fees, and fee waivers.
- *Virtual Exemptions 1, 4, 5, and 7 Workshop* – These workshops cover the analysis used to determine whether each exemption should be applied and recent case law related to such analysis.
- *Virtual Processing from Start to Finish Workshop* – This course walks FOIA professionals through each stage of the FOIA process from intake to final response.
- *FOIA Litigation Seminar* – This course is designed for agency attorneys and FOIA professionals and focuses on the issues that arise when FOIA requests become the subject of litigation.
- *Virtual Privacy Considerations*– This session covers factors that distinguish processing requests under the Privacy Act and/or the FOIA.
- *Refresher Training for FY 2020 Annual FOIA Reports and 2021 Chief FOIA Officer Reports* – These training events provide agencies with a refresher on their FOIA reporting obligations.
- *Virtual Continuing FOIA Education* – This course provides a discussion of current topics in FOIA administration, including legal and policy developments, as well as an overview of recent FOIA court decisions.

Further, OIP continued to provide specialized training to agencies on any topic of interest, tailoring instruction to the needs of the particular agency involved. Many of the specialized training continued virtually due to maximum telework. In addition to the events hosted by OIP, eight professional staff members from OIP gave a total of four training presentations during the year, including several training sessions designed to meet the specific FOIA-training needs of individual agencies. Such individualized training sessions were conducted for the:

- Department of Commerce
- Department of Education
- Department of Energy
- Department of the Interior

In addition to the virtual trainings, OIP also holds regular monthly calls with FOIA professionals from all the components, during which OIP provides counsel on current FOIA issues and recent case law. OIP also hosted its annual FOIA Conference in February 2020, which provided training to the Department's FOIA offices on topics such as FOIA/Privacy Act Interface, procedural and litigation issues, and case law updates. In addition to the training events and resources offered through OIP, many of the Department's components held their own training events over the course of the reporting period.

For instance, The Bureau of Prisons (BOP), Federal Bureau of Investigation (FBI), and U.S. Parole Commission (USPC) provided individualized training for new FOIA hires and periodic refresher trainings. The FBI's training includes several multiple week courses covering topics such as the application and analysis of the FOIA and Privacy Act (PA) exemptions to responsive records, the intake, acknowledgement, search and import of responsive records, and front-end determinations in response to requests.

In addition, the Civil Rights Division, Environment and Natural Resources Division (ENRD), and Executive Office for U.S. Attorneys (EOUSA) conducted in-house training for the FOIA professional staff. Seasoned Office of the Solicitor General (OSG) FOIA personnel mentored new hires for at least a year from the date of their arrival. The Tax Division (Tax) held sessions every other month to discuss FOIA litigation consideration matters with Tax Division trial attorneys who handle nationwide FOIA cases. EOUST worked on developing a short FOIA introduction training video that, once completed, will be made available to all employees.

Some components also attended training provided by other organizations. For example, the U.S. Marshals Service (USMS) funds training opportunities on FOIA conducted by the Graduate School USA. BOP and U.S. National Central Bureau (USNCB) funded training opportunities through the American Society of Access Professionals for their FOIA staff. Many components also attended OIP's "Artificial Intelligence 101" event, which featured the Chief FOIA Officer Council Technology Committee. The event provided agency FOIA professionals a primer on different types of AI and AI-adjacent technologies, key terms, and leveraging these technologies to improve the efficiency of the FOIA process, and allowed attendees to exchange information regarding currently-utilized technologies.

Since last March, approximately 90% of the Department's FOIA professionals attended substantive FOIA training. In the upcoming year, the Department will continue its efforts to ensure that core, substantive FOIA training is offered to all agency FOIA professionals virtually. OIP will continue to provide comprehensive FOIA training to both the Department's FOIA professionals and FOIA professionals across the government. OIP will also continue to provide targeted training to agencies and the Department's components upon request. Details on upcoming training opportunities provided by OIP can be found on the [Training](#) page of [OIP's website](#).

Outreach:

To improve not only the Department's, but also the government's overall FOIA administration, the Department continues to engage in outreach with the requester community and other outside stakeholders in a variety of ways. The Director of OIP serves on the FOIA Federal Advisory Committee, which is made up of both government and non-

government members of the FOIA community and serves as a forum for exchanging ideas on FOIA administration. The Director of OIP is also a co-chair of the [Chief FOIA Officer's Council](#), which hosts at least one meeting per year that is open to the public and provides an opportunity for public comment. Additionally, during the reporting period, OIP's Director and other senior staff met with a group of representatives from various civil society groups to discuss various topics related to FOIA and government transparency. Finally, as part of the Department's efforts to enhance the services on FOIA.gov, OIP conducted outreach to the requester community as part of the redesign of the FOIA.gov Data page as well as a recent initiative to explore a centralized capability to search across agency FOIA Libraries.

Many components also engaged in outreach with the requester community during the reporting period. For example, the Executive Office for U.S. Attorneys (EOUSA) often holds outreach telephone conferences with press, public interest organizations, frequent requesters, and groups of requesters seeking similar categories of records to provide explanations about how such records are maintained, the strategic approach employed to collect and process these records, and to suggest alternative or consolidated approaches that could more effectively or expediently achieve the results sought.

The Bureau of Alcohol, Tobacco, and Firearms (ATF) hosted a number of virtual meetings and conference calls with requesters, including key stakeholder groups, government watchdog organizations, and national news media entities that file multiple requests with ATF throughout the year. These engagements helped ATF to effectively allocate resources to FOIA productions, manage requester expectations, and reduce the number of lawsuits. During the past reporting period, there were no new ATF-specific FOIA lawsuits filed by organizational requesters or representatives of the media, and the overall number of pending FOIA lawsuits decreased at ATF for the second consecutive year.

Communication with requesters early on in the request process ensured that requests were directed to the proper component and were well-defined at the outset. Components reported that their requester outreach enables them to clarify requests, narrow search terms, and avoid litigation in many instances. For example, the FBI assigns Negotiation Professionals to initiate dialogue with requesters in order to provide additional assistance with narrowing the scope of their requests. In FY 2020, approximately 540 requesters provided additional information to reduce the scope of their requests and subsequently reduce associated processing times and applicable fees. Through this dialogue, the FBI was also able to assist numerous requesters with articulating the information sought in future requests. The FBI also offers unsatisfied requesters an option to mitigate concerns prior to appeal through dispute resolution services. On average, the FBI handled six dispute resolutions per month in FY 2020.

The Civil Division receives regular requests for data. The process for producing this data is particularly time consuming for a number of offices, which increases the amount of time necessary to respond to the recurring request. As a result of outreach and dialogue with a repeat requester, the Civil Division adjusted its response to meet the specific needs of the requester more efficiently.

The Civil Rights Division regularly communicates with requesters to negotiate rolling productions, provide status updates, or distill requests from sweeping inquiries to more targeted requests. Similarly, BOP proactively contacted certain FOIA requesters, such as

state law enforcement agencies, seeking records that could be provided through routine use exceptions to the Privacy Act more quickly than through the FOIA process.

Other Initiatives:

As the Department has long [declared](#), "FOIA is everyone's responsibility." OIP and the Department are fully committed to ensuring that all Department employees have a full understanding of their responsibilities in implementing this important law. The Department continued to utilize e-Learning training modules that OIP created during this reporting period to ensure all employees have proper FOIA training, whether they are FOIA professionals or program personnel whose records are subject to the FOIA. A distinct training module was available for non-FOIA professionals that provided a primer on the FOIA and highlights ways in which they can assist their agency in administering the law. Updates to these modules are underway and OIP looks forward to releasing them in the upcoming year. OIP continues to make available an infographic that is designed to serve as a resource on FOIA basics for all employees new to the federal workforce, as well as a short video designed to brief senior executives on their responsibilities under the FOIA. In addition to utilizing these resources, many of the Department's components engage in other efforts to ensure employees are aware of their FOIA responsibilities.

Many components provide in-person meetings with program personnel to brief them on their important role in the FOIA process. For example, the Office of the Pardon Attorney's (PARDON) Records and Information Management Specialist provides tips sessions with the staff about their responsibilities under both the FOIA and Privacy Act. Obligations under FOIA are discussed during OCDETF staff onboarding, regular all-hands meetings, and as part of mandated records management online training. The Executive Office for Immigration Review (EOIR) conducted FOIA training for new Court Administrators and six FOIA Trainings for new Immigration Judges, Assistant Chief Immigration Judges, Appellate Immigration Judges, the Chairman of the Board of Immigration Appeals, and new Judicial Law Clerks.

Each year the FBI requires all employees to watch a training video called "Records Management for All." The video provides an overview of FBI records management, including the responsibilities of FBI personnel, outlines the laws and regulations that govern federal records management, and defines various terms related to FBI records. It also gives concrete examples of how proper records management contributes to the success of the FBI mission.

DEA's FOIA Office published an Educational Series on the FOIA and Privacy Act, which was disseminated to DEA management within the domestic divisions, foreign regions, laboratories, and Headquarters offices. The Educational Series described both the FOIA and PA and exemptions, offered fundamental information on how requests are processed, and outlined agency employees' responsibilities under the FOIA/PA. DEA managers across the agency were encouraged to share the Educational Series with their staff. DEA's FOIA Office also posted the Educational Series on the FOIA/PA intranet page for easy access by agency personnel.

EOUST briefed new Assistant U.S. Trustees (AUST) at the 2020 AUST Virtual Orientation of their obligations under the FOIA, and the role the AUSTs play in EOUST's FOIA process. EOUST is also developing a short FOIA introduction training video which,

once completed, will be made available to all employees. Additionally, ATF provided training to ATF's Human Resources Office on the "Privacy Act and Applicability of FOIA Exemption 6" relating to privacy interests in records.

Section II: Steps Taken to Ensure that the Department Has an Effective System in Place for Responding to Requests

As the Department of Justice has emphasized, "[a]pplication of the proper disclosure standard is only one part of ensuring transparency. Open government requires not just a presumption of disclosure, but also an effective system for responding to FOIA requests." It is essential that agencies effectively manage their FOIA program.

Processing Procedures:

Expedited Processing

The FOIA contains a requirement that agencies establish procedures in their regulations that provide "for expedited processing of requests" in certain circumstances. [5 U.S.C. § 552\(a\)\(6\)\(E\)\(i\) \(2018\)](#). Specifically, the FOIA directs agencies to afford expedited processing whenever the requester demonstrates a "compelling need," or "in other cases determined by the agency." [Id. § 552\(a\)\(6\)\(E\)\(i\)\(I\), \(II\)](#). For FY 2020, the Department reported an average of 6.96 days to adjudicate requests for expedited processing and 90.49% of requests for expedited processing were adjudicated within 10 calendar days.

Self-Assessment

One important tool that agencies can use to ensure that they have an effective and efficient process in place for responding to FOIA requests is a self-assessment. Taking an objective and comprehensive look at internal processes and procedures often will help agencies find new efficiencies and either enhance current workflows or create new ones. Many components in the Department have engaged in self-assessment efforts to improve their FOIA processing procedures.

OIP continued to make available its [FOIA Self-Assessment Toolkit](#), which was developed as a resource for agencies to use when assessing their administration of the FOIA. OIP has [encouraged](#) agencies to conduct self-assessments to review and improve their FOIA program. By examining their procedures, practices, and results, agencies can improve their FOIA administration by, for instance, streamlining request processing, identifying new ways to use technology, and increasing proactive disclosures.

The [FOIA Self-Assessment Toolkit](#) consists of 13 modules, each focusing on a distinct aspect of the FOIA process including Initial Mail Intake and Review, FOIA Processing Workflows, Searching for Responsive Records, Processing Responsive Records, Consultations and Referrals, Responses and Language, Training and Personnel Development, Customer Service, FOIA Reporting, FOIA Website Development and Maintenance. It uses an evidence-based approach to help agencies objectively and meaningfully evaluate their performance. During 2020, OIP began a comprehensive review to update and expand the *Toolkit* as a result of agency feedback and changes to FOIA law and policy. OIP plans to add modules covering Administrative Appeals and Proactive Disclosures. In addition, throughout the *Toolkit*, OIP expanded milestones and best practices related to implementing FOIA technologies and using data to inform FOIA administration. OIP looks forward to releasing the updated version of the *Toolkit* in 2021.

Many of the Department's components engaged in a self-assessment review of Annual and Quarterly FOIA Report data, workflows, and current policies and procedures. Since 2014, OIP's Component Improvement Initiative has conducted an annual in-depth review of the Department's FOIA processes. As part of this initiative, OIP reviews components' FOIA data and discusses best practices and challenges highlighted by the data. As a result of its 2020 review, OIP also developed additional resources to assist components, including organizing working with the Office of Attorney Recruitment & Management to create a step-by-step hiring guide for FOIA offices within the Department. In order to raise the profile of FOIA opportunities within the Department, OIP also participated in several webinars and panels on FOIA careers for law students. As a result of a Component Improvement Initiative recommendation from 2020, OIP began hiring Volunteer Law Student Interns, who have offered valuable support to the office, with some deciding to stay on with OIP for an additional semester.

The Department also encourages component engagement via working groups. For instance, the Executive Office for U.S. Trustees (EOUST) FOIA professionals serve as members of the Government Information Working Group, which increases program-wide awareness of FOIA administration, best practices, and fosters collaboration that facilitates proactive disclosures. These Government Information Working Group meetings have improved EOUST's FOIA administration by facilitating informed discussions with other employees regarding both the FOIA and its administration, and provided a forum to consider additional proactive disclosures not previously identified or considered.

The 2020 Component Improvement Initiative resulted in the formation of various working groups to discuss topics related to small components, processing protocols, FOIA technology, and FOIA litigation. The FOIA Litigation Working Group co-led by OIP and Tax hosted their inaugural meeting in January 2021 to discuss maximizing resources, developing litigation expertise, and challenges components face with regard to litigation.

As part of their self-assessment efforts, several components analyzed their FOIA program's staffing, training, and technology needs to improve response times and efficiency of their FOIA administration. For instance, OCDETF conducted an informal review of the FOIA program as part of a comprehensive review of OCDETF staffing needs. This review resulted in the hiring of a Chief Counsel and identified the need for a full time OCDETF FOIA/Privacy Act/Records Management Attorney. Additionally, ATF hired two new FOIA specialists and a paralegal during the reporting period, as well as recruited for an attorney-advisor and a law clerk under a staff augmentation contract in February 2021.

Other components examined and adjusted their processes for greater efficiency. During the annual reporting period, OSG examined its workflow and adjusted its process for responding to requests for expedited processing. Antitrust conducted weekly discussions with Government Information Specialists to identify workflow efficiencies, challenges, and potential solutions.

The Professional Responsibility Advisory Office (PRAO) reviewed its FOIA data, its procedures for handling FOIA requests and entering data into the FOIA database, and the accuracy and accessibility of its public facing FOIA information. As a result, PRAO instituted additional review and coordination to insure internal consistency and intra-agency cooperation.

The Tax Division increased its once weekly meetings to twice per week to achieve the goal of decreasing the number of days requests remain open. This enabled the Tax FOIA staff to enhance the methods used to track, process FOIA requests, and pending interim tasks.

The Criminal Division (CRM) FOIA/PA Chief regularly reviews the FOIA program, which was particularly important this year in light of the increased litigation demand on the FOIA/PA Unit's overall resources. CRM frequently evaluates the overall quality of the training and onboarding experience of new FOIA/PA employees and adjusts this process as necessary. New CRM FOIA employees now follow a specific training sequence to familiarize themselves with the life cycle of a FOIA/PA request and to gain a comprehensive understanding of CRM responsibilities and the type of records generated. This year, additional tracking capabilities were introduced into the CRM workflow software to allow Unit Management to better monitor and evaluate the search process.

Standard Operating Procedures:

Having Standard Operating Procedures (SOP) can improve the consistency and quality of a component's FOIA process. In addition, describing a component's standard practices for handling FOIA requests on component FOIA websites can help requesters better understand how their request will be handled. Nearly half of the Department's components have SOPs that outline general processes for handling FOIA requests and appeals. Components reported that their SOPs are reviewed and updated to account for changes in law, best practices, and technology every year or on a regular basis. Six components are working to develop SOPs for their FOIA programs. Further, fourteen components reported posting or otherwise describing their standard processes for handling requests on their websites. Component-specific FOIA SOPs are used for training, set forth proper procedures for recordkeeping and processing of FOIA requests, standardize best practices for that component, and document institutional knowledge.

Requester Services:

FOIA Public Liaison

The FOIA describes the role of FOIA Public Liaisons as supervisory officials to agency FOIA Requester Service Centers who are "responsible for assisting in reducing delays, increasing transparency and understanding of the status of requests, and assisting in the resolution of disputes."² FOIA Requester Services Centers and the FOIA Public Liaisons who supervise them play an essential role in providing quality service and having effective communication with requesters. Each component within the Department has set up its own FOIA Requester Service Center and FOIA Public Liaison to assist the public with any questions they might have regarding their FOIA request or the FOIA in general. In addition, OIP fields numerous calls from the public, assisting requesters in understanding how the FOIA works, including how and where to make requests.

Components that received inquiries from the public reported that their FOIA Public Liaisons played a significant role in keeping requesters informed and answering their questions. Overall, the Department estimates that its FOIA Public Liaisons received more

² [5 U.S.C. § 552\(l\)](#).

than 25,929 inquiries from members of the public via phone, e-mail and fax. The inquiries ranged from specific issues on an individual's request to general information sought about how the FOIA works and what records the component maintains. Inquiries directed to the FOIA Public Liaison represent only a fraction of the totality of interactions requesters have with the Department's components. Many more inquiries are also made to the components' FOIA Requester Service Centers or directly to the FOIA professional handling any given request.

The frequency and number of times that requesters reached out to different components' FOIA Public Liaisons varied a great deal by component based on the number of requests and types of records the component handles. For example, the FBI and EOIR Public Liaisons handled over a thousand inquiries from the public. In contrast, some of the Department's components that receive small numbers of requests estimated receiving less than 50 requests for assistance per year, some even having received none.

First-Party Requests

Some components frequently receive common categories of first-party requests. The types of first-party requests include those seeking information about litigation, settlement or confidentiality agreements, criminal or prison records, or personnel, investigative, medical, and bankruptcy files. Due to the nature of some first-party records, the FOIA process remains the only avenue to obtain certain categories of records. However, a few components have established alternative means of access to these records outside of the FOIA process. For instance, EOIR is rolling out a paperless Immigration Court filing and tracking system called eCASE in which the attorney representing the individuals can access records without filing a FOIA request. Additionally, the attorney can review these documents at the Immigration Court, and a limited number of copies of the documents can be released to the attorney at the court's direction. The FBI [Criminal Justice Information Services Division](#) allows requesters to access Identity History Summary Check records outside the FOIA process; application instructions and necessary forms for obtaining these records is available online.

FOIA Regulations:

The FOIA Improvement Act of 2016 required agencies to update their FOIA Regulations to include provisions indicating procedures for proper submission of FOIA requests, fee schedules and procedures for fee waivers, provisions for expedited processing, submitter notification process, and dispute resolution procedures. Pub. L. No. 114-185, 130 Stat. 538.

In September 2016, OIP issued updated [Guidance for Agency FOIA Regulations](#) and a [Template for Agency FOIA Regulations](#) with suggested language for agencies to refer to when drafting updates to their regulations. Many agencies have used the Guidance and Template to update their agency FOIA regulations. In accordance with the FOIA Improvement Act of 2016, the Department updated its FOIA regulations in January 2017.

Impact of COVID-19:

The Department worked to mitigate the impact of the COVID-19 pandemic on FOIA processing. Many of the Department's FOIA programs were able to shift most FOIA administration to full-time remote work, particularly where the office was already telework ready prior to the pandemic. Nonetheless, components have adjusted their FOIA administration in numerous ways since March 2020.

The strategies components have used to meet the needs of requesters during the pandemic include: flexible work hours for staff, increasing and improving communication within and between offices, redistributing workloads, altering workflows or creating specific queues to track FOIA requests related to COVID, implementing new technology or relying more heavily on available technologies, and providing notices and instructions on their websites or otherwise increasing direct communication with requesters. Components also found workarounds for other traditionally paper-based procedures. For instance, due to the limited ability of attorneys to visit their clients during the pandemic and the urgent nature of certain requests, BOP worked with attorneys to be able to provide their client's consent electronically.

Ten components actually processed more requests in FY 2020 as compared to FY 2019, providing an opportunity for components to examine what efficiencies may have resulted from implementing these strategies. Early in the pandemic, BOP processed more requests than were received and ultimately processed more requests in FY 2020 than it did in FY 2019. However, as a result of staff attrition and the need for some FOIA staff to assume additional duties, including correctional and institutional missions unrelated to FOIA, as well as assistance with compassionate release and home confinement requests, BOP was unable to sustain that momentum.

Components that search and process classified documents have experienced delays in processing due to office closures for portions of 2020 or continuing limitations on office capacity. Classified systems cannot be searched remotely and documents cannot be accessed or processed while teleworking. For example, the FBI, in order to accommodate social distancing precautions and the need for in-person work, had to operate with reduced staffing, resulting in significant delays in processing requests, but has worked to maintain operations as much as feasible. In addition, while continuing to periodically collect physical mail while in maximum telework, components experienced delays in retrieving paper mail requests. Furthermore, sending hard copy responses by mail is taking longer as well. This impacted BOP in particular because inmate requesters are unable to receive electronic mail. To address these challenges that require staff to physically go to the office, components have established staggered, alternating, or alternative work schedules so that FOIA professionals can collect mail and scan it or access classified systems to process requests. Components have also posted notices on their websites encouraging requesters to submit requests electronically and note potential processing delays in acknowledgement letters.

Other Initiatives, Challenges and Best Practices:

In addition to the above, the Department maintains its FOIA response language repository as well as a series of FOIA processing checklists to assist its FOIA professionals in providing timely and quality responses to requesters. These resources are made available to

all FOIA professionals on the Department's intranet. The language repository is intended to standardize components' response letters and ensure that the language used in these letters is clear and easy to understand. The checklists serve as a guide for FOIA professionals to follow as they process FOIA requests. The checklist topics cover everything from intake and procedural requirements to exemption application.

The Department's components reported a range of challenges during this reporting period that they worked to overcome. One common challenge was an increase in not only the number of incoming requests, but also the complexity of requests. Compounding this challenge was the increased amount of resources required to handle FOIA litigation that inevitably results in slower processing times for requests in the administrative phase.

Many components cited the pandemic as having had the most impact on their component's ability to process requests and appeals. For instance, many of EOIR's historical records of proceedings are maintained at the Federal Records Centers (FRC). The FRCs were closed for most of the fiscal year or had limited staff (20% at many centers), which contributed to extensive delays in processing responsive records to FOIA requests. Some of EOIR's Immigration Courts, where some records are stored were opened, closed, and re-opened at various times due to local conditions related to COVID-19. During those times, staff were unable to process FOIA requests. BOP also faced several challenges, including an increase in the volume of Privacy Act and privacy-related questions raised by staff due to COVID, which diverted staff's time from working on FOIA requests.

Several components experienced delays in on-boarding new or replacement staff, or had to shift staff to other duties. In other cases, experienced FOIA staff departed from FOIA offices during the year. As a result, not only did those offices lose years of experience, current staff had to spend time training and assisting new staff.

Nevertheless, components implemented best practices and devised innovative methods of addressing many of the challenges listed above. For example, DEA established three FOIA Units in October of 2020, which include Intake, Processing, and Legal and External Affairs. This enabled DEA to reorganize the high-volume workload under a specialized team approach. New FOIA staff are assigned to the Intake Unit to learn the full scope of the FOIA process from start to finish, and are trained by senior FOIA staff. Cases are categorized and assigned based on volume and complexity. Staff must demonstrate their ability to take on more challenging work in order to transition to the Processing Team. The Legal and External Affairs Unit has specialized knowledge to handle litigation, coordination, referrals, and appeals.

BOP prioritized the processing simple requests within seven days of receipt, which resulted in an average processing time of 7.58 days. To improve efficiencies, BOP's national search coordinator spearheaded efforts for requests requiring searches in multiple locations throughout the country. BOP's Central Office has a detailed list of each staff member's primary and secondary roles and responsibilities, which helped avoid duplication of effort and significantly decreased issues when staff members were on leave or otherwise occupied. Finally, each region managed and processed its requests, which permitted more individualized attention to the status of open and old requests.

The Civil Rights Division FOIA/Privacy Act Branch worked with the Division's senior management staff to develop oversight mechanisms to improve the processing times for sections with the greatest potential for improvement. These efforts succeeded in achieving closure of the Division's ten oldest requests.

ATF continues to identify databases and record systems that the Division can directly access for information, without any intermediary, in order to streamline the process of locating and retrieving records for processing. This also eases the burden on program offices. ATF has experienced success with its new methods, implemented last year, of directly pulling investigative records, firearms industry inspections records, and certain regulatory documents.

To address the increase in litigation, OIP's Initial Request Litigation Team has taken advantage of volunteer law student interns to assist staff and begin building a FOIA career pathway for law students. Several of OIP's Summer Law Student Interns (SLIPs) stayed on as volunteer interns for the Fall of 2020 and have expressed an interest in careers as FOIA attorneys post-law school. OIP has also had numerous volunteer interns extend their internship for six months or more. Due to the pandemic, the 2020 internship cohorts have been working remotely.

Section III: Steps Taken to Increase Proactive Disclosures

The [Department of Justice](#) has long focused on the need for agencies to work proactively to post information online without waiting for individual requests to be received. The Department has continued to make records available to the public proactively, posting a wide range of material.

Posting Material:

Every Department component maintains a [FOIA Library](#) on its website to centralize, organize, and publicize proactive disclosures made in connection with their FOIA administration. Components also frequently post material elsewhere on their websites where it would best serve the communities most interested in the material. A wealth of information was added this past year to the Department's website. Some examples of these new postings include:

- OIP regularly posted new material and FOIA resources on its website. Some examples of material posted since March 2020 include:
 - Through its blog, [FOIA Post](#), OIP continued to inform both agencies and the public of new developments and upcoming events concerning the FOIA.
 - OIP continued to post its guidance articles to agencies on the implementation of the FOIA. Specifically, OIP posted the following guidance articles this past reporting period:
 - [Department of Justice Handbook for Agency Annual Freedom of Information Act Reports](#) (updated October 6, 2020)
 - [Guidelines for 2021 Chief FOIA Officer Reports](#) (September 24, 2020)
 - [OIP Guidance for Further Improvement Based on 2020 Chief FOIA Officer Report Review and Assessment](#) (September 24, 2020)
 - [Guidance for Agency FOIA Administration in Light of COVID-19 Impacts](#) (May 28, 2020)
 - OIP posted updated [Department of Justice Guide to the Freedom of Information Act](#) chapters relating to [Exemption 2](#), [Fees and Fee Waivers](#), and [Proactive Disclosures](#).
 - OIP also posted the following in its [FOIA Library](#):
 - [Use of Body-Worn Cameras By Federally Deputized Task Force Officers](#) (October 8, 2020)

- Records Concerning the Religious Liberty Task Force [Posted December 3, 2020]
 - [Final Response](#) (March 3, 2018 - November 19, 2018)
 - Records Concerning Special Counsel Report and Office of Legal Counsel Opinion Related to Whether "A Sitting President Should Not Be Indicted Even if the Charges Remain Sealed." [Posted December 4, 2020]
 - [Interim Response](#) (March 23, 2019 - August 26, 2020)
 - Records Concerning Roger Stone and Related to the Cases of *United States v. Roger Stone* and *United States v. Michael Flynn* [Posted December 8, 2020]
 - [Interim Response](#) (January 20, 2020 - February 25, 2020)
 - Records Concerning the Cost of "Family Separation" Policy [Posted December 11, 2020]
 - [Final Response](#) (May 10, 2018 - October 17, 2018)
- In addition, OIP continued to post monthly [FOIA logs](#) for requests made to OIP and the Offices of the Attorney General, Deputy Attorney General, Associate Attorney General, Legislative Affairs, Public Affairs, and Legal Policy.
- Finally, OIP continued to update both its website and [FOIA.gov](#) with new data and resources on the FOIA. For example, OIP continued to update the public with [summaries of new FOIA decisions](#), [FOIA training material](#), [FOIA Best Practices](#), all [FOIA Reports](#), and [resources on Exemption 3 statutes](#).
- ATF continues to proactively disclose the listing of all active [Federal Firearms Licensees](#) on a monthly basis, and the [Annual Firearms Manufacturing and Export Report](#) during this period.
- BOP proactively disclosed [Daily COVID Updates](#), [Program Statements](#), [Operations Memorandums](#), and [Change Notices](#), [Key Statistics](#), and [Clinical Practice Guidelines](#).
- The Civil Division proactively disclosed the Division's FOIA logs, case records pertaining to specific cases which were requested three or more times, and multiple settlement agreements which were frequently requested and the subject of increased interest. The Civil Division's postings can be found in the [FOIA Library](#).
- The Civil Rights Division proactively disclosed [Appellate Briefs](#), [Educational Opportunities Cases](#), Employment Litigation [Complaints and Decrees](#), [Housing and Civil Enforcement Section Cases](#), [Law Enforcement Conduct Records](#), and [Amicus Brief and Statements of Interest](#) in Voting Rights Cases.

- CRM proactively disclosed the [Fraud Section Year in Review](#) and the [2020 Annual Intellectual Property Report to Congress](#).
- DEA proactively disclosed statistical reports on domestic arrests, National Take Back Day results, Domestic Cannabis Eradication and Suppression Program results; the National Drug Threat Assessment Summaries; DEA policies; and frequently requested forms on its [Additional Resources page](#).
- EOUSA proactively disclosed its [Annual Statistical Report](#), which contains statistical tables displaying both national and district caseload data, covering the many priorities of the United States Attorneys in both criminal prosecution and civil litigation.
- EOUST proactively disclosed an [April 7, 2020, Notice to Chapter 7 and 13 Trustees Regarding Recovery Rebates Paid to Consumer Debtors Under the CARES Act of 2020](#). EOUST's public website continues to provide links to [Bankruptcy Data & Statistics](#). EOUST also proactively disclosed the following information in its FOIA Library [USTP Marijuana Enforcement Actions by District and Chapter from 2010 through the third calendar quarter \(July-September\) of 2019](#), [USTP Marijuana Enforcement Actions by District and Chapter for Quarter 1 \(October – December 2019\) of FY 2020](#), and [USTP Marijuana Enforcement Actions by District and Chapter for Quarter 2 \(January – March 2020\) of FY 2020](#).
- EOIR proactively disclosed [Memoranda of the Director of EOIR](#), [Interactive Map of Pro Bono Legal Service Providers](#), [Amicus Invitations](#), [Temporary Protected Status Notifications](#), the [BIA Manual](#), and the [Immigration Court Practice Manual](#).
- The FBI manages a robust FOIA Library through its site, "[The Vault](#)." The Vault contains over 6,700 documents and other media. Below is a sampling of some new items available in the Vault:
 - [Hostage Rescue Team Policy Guide 1051PG](#)
 - [IMD Statement of Authorities and Responsibilities 0457D](#)
 - [Importing Non-Transitory Records into Sentinel 1001D](#)
 - [Policy and Forms Processes Policy Guide 1085PG](#)
 - [Prepublication Review Policy Guide 1065PG](#)
 - [Time Utilization and Recordkeeping Directive 1078D](#)
 - [Office of the Ombudsman Statement of Authorities and Responsibilities Policy Directive 1086D](#)
- The Office of the Inspector General (OIG) proactively disclosed the following reports:
 - [Review of Four FISA Applications and Other Aspects of the FBI's Crossfire Hurricane Investigation](#)
 - [Audit of the Drug Enforcement Administration's Community-Based Efforts to Combat the Opioid Crisis](#)
 - [COVID-19 Challenges for the U.S. Department of Justice](#)

- [Finding of Misconduct by a Senior Official in the Executive Office for Immigration Review for Engaging in a Prohibited Personnel Practice](#)
- OPR proactively disclosed the [Executive Summary of the Epstein report](#).
- OSG's website proactively disclosed all of its filed [Supreme Court briefs](#).
- OVW provides links to [grant awards](#) as quickly as possible after those decisions are made. In addition, OVW provides links to Congressionally mandated [reports](#), [conferrals](#) with stakeholders, and selected OVW [publications](#), as well as information about grant-funded activities through a cooperative agreement with the Muskie School of Public Service at the University of Southern Maine for the [Measuring Effectiveness Initiative](#).
- PARDON proactively disclosed the [status](#) of over 70,000 clemency petitioners since 1989, [clemency statistics](#) for the Trump Administration, a [list](#) of all individuals granted clemency by the Trump Administration, and a [list](#) of all individuals denied clemency by the Trump Administration.
- The Tax Division proactively disclosed 14 press releases pertaining to its civil criminal enforcement matters. The 14 [press releases](#) include the sentencing of taxpayers, or their pleading guilty to employment tax fraud and other crimes.
- USNCB proactively disclosed [Press Releases](#) and YouTube videos on [Project Terminus Master 1](#) and [USNCB Director Expresses Support for Project Terminus](#)
- The USMS proactively disclosed [Intergovernmental Service Agreements and Court Security Officer contracts](#).

Not only has the Department continued its trend of proactively disclosing more information online, but it has also continued to work to find ways to make that information more useful to the public and available in open formats. For instance, OIP has a section dedicated to Recent Releases to make this information easier to find. The Department has also continued to make information more useful on FOIA.gov, including by redesigning the Annual FOIA Report Data page. PARDON has enabled the public to download data into a spreadsheet format, which can be used to more easily sort and use the data. The Civil Rights Division convened a group of prosecutors, FOIA specialists, and Information Technology experts to develop better ways of searching and displaying records of interest to the Civil Rights community. USMS is reformatting the public facing USMS website to make the website more informational and user friendly.

DEA is currently working to update certain pages on the FOIA website to give the website a new look and feel while ensuring the content remains useful to individuals who frequently access the website. DEA posts its FOIA logs as excel spreadsheets that can be easily exported as comma separated values (CSV) files. In addition, the newly added [Additional Resources](#) page contains numerous searchable PDFs.

EOIR launched [two new public resources](#) on EOIR's website that increase the ease of accessibility to information about immigration law and EOIR proceedings. The Immigration Court Online Resource (ICOR) and the Pro Bono Portal provide information about representation before EOIR's immigration courts and Board of Immigration Appeals that benefits both aliens in the proceedings and those representing such respondents.

EOUST's web authors group, which is responsible for posting EOUST's records to the public website, posts records in an open, machine-readable, and machine-actionable format, to the extent feasible. When files, especially PDFs, are posted to the website, they are tagged as much as possible using the PDF tool to allow screen readers to recognize the text in the relevant documents and to make the file as machine-actionable as feasible without changing the form.

The Department welcomes public feedback through its main website and it strives to implement any suggestions that would make the information posted online more useful. Apart from the main site, many of the Department's components have also built in separate mechanisms for receiving public feedback on their individual web pages.

Best Practices and Challenges:

While the Department strives to proactively post as much information on its websites as possible, there are sometimes challenges that can make such postings difficult. Some of the Department's components reported that additional postings were not feasible because the majority of the records they handle are first-party requests that are not appropriate for public release due to privacy concerns. However, for those instances where records are appropriate for posting, challenges include the additional staffing resources required to code the records so that they are compliant with Section 508 of the Rehabilitation Act; competing priorities such as managing the backlog; the internal vetting process required for posting to the component's website; large files can be more time consuming to post and view, particularly where posting requires splitting a document into numerous portions or sections. In order to ensure data integrity and consistency, prior to posting data sets, significant time and resources are needed to manually standardize the datasets.

The Department's best practices in this area include focusing on identifying those records that should be proactively disclosed online either because they are frequently requested or because there is a strong public interest in them, building strong collaborative relationships with IT staff, distributing posted information via social media and e-mail subscription services through GovDelivery, and designating a FOIA professional or team to identify and handle proactive disclosures.

Section IV: Steps Taken to Greater Utilize Technology

A key component of a successful FOIA administration is the use of modern technology to inform citizens about what is known and done by their government. The Department continues to embrace the use of technology to improve all aspects of our FOIA administration.

Leveraging and Exploring New Technology to Facilitate Efficiency:

OIP and the Department continue to champion the use of advanced technological solutions that assist with the core functions of FOIA administration. OIP has led the effort to explore the use of these more advanced technologies for the benefit of not only the Department, but all agencies' FOIA administration.

During 2020, OIP's proposal for the General Service Administration's [10x](#) program was accepted. 10x funds, supports, and develops ideas for how technology can improve the public's experience with the government. OIP submitted a pitch to improve searchability of records across agency FOIA Libraries. Across the government, hundreds of online FOIA Libraries contain a wealth of information, yet these libraries are disconnected and lack an effective centralized search capability to allow the public to easily navigate the records. During Phase 1, 10x began to investigate the potential for a centralized search capability that would allow the public to search across all agency FOIA Libraries. Such a capability would enhance the public's interaction with government by facilitating the discovery of records already in the public domain and create efficiencies in agency FOIA operations as resources are directed to processing FOIA requests for information not already available to the public. The 10x team will continue this project with more detailed discovery and development as part of Phase 2, and OIP looks forward to advancing this initiative.

Components use a variety of technologies to facilitate FOIA administration. Some small components that do not receive a large volume of requests use low-cost high-impact technologies, such as Adobe or Excel, to process and track requests. A few components have worked with developers to tailor tracking systems to their specific needs. Other components use a variety off-the-shelf technologies for FOIA administration. Numerous components have recently acquired or are planning to acquire new case management systems, which will significantly improve efficiency in collaborating on the processing of requests, providing responses to requesters, and tracking workloads.

For instance, in 2020, OIP transitioned to a new tracking system, the FOIA System for Tracking Appeals and Requests (FOIA STAR). FOIA STAR includes a customized workflow, along with greater automation and tracking capabilities, allowing the Initial Requests and Administrative Appeals Teams to process requests and appeals with greater efficiency. FOIA STAR's annual reporting functionality provided significant efficiencies in validating and compiling raw data to complete the Department's Annual FOIA Report.

Additionally, ATF acquired a state-of-the-art FOIA processing platform. This new system combines the best available FOIA case management and records processing capabilities for ATF's needs, as well as advanced analytics and a high degree of automated functions for high volume document reviews. This end-to-end FOIA business platform is

due to be deployed by early spring of 2021. It will be ATF's first-ever FOIA business platform, replacing a variety of outdated tools and improving processing speeds.

Some components are exploring Artificial Intelligence (AI) technologies to enhance their FOIA processing. OIP is currently piloting an ediscovery technology that uses AI, which has significant potential to enhance OIP's ability to search, identify, and process records. OJP is also exploring an AI add-on for their current tracking system.

The FBI is exploring two technology enhancements simultaneously. First, The FBI allocated funding to provide system integration, development, and support services to replace its existing FOIPA Document Processing System (FDPS) with the Gateway System, which has an overarching workflow system to manage the entire FOIPA process and provides transparency into the FOIPA workflow management process via comprehensive, multifaceted analytics and reporting. Such reporting focuses on the ability to accurately indicate the current and previous status of cases on any date, at any point, over the course of the case's life span and after case closure. The creation of the case, outgoing correspondence, search, responsive case documents, case backlog, FOIPA and classification assignment, release, and closings shall be capable of being logged indefinitely, along with any relevant personnel assignments and impending actions, until the case is otherwise administratively removed from the system. The Gateway System will also incorporate state of the art functionality, such as, pre-redaction, machine learning, and artificial intelligence.

Second, the FBI's FOIPA Program uses an automated search function utilizing information provided by the requester via the eFOIPA portal and standard mail. Currently, the system is utilized for Privacy Act (PA) requests only. The system automatically searches eligible subjects within the appropriate databases and provides a disposition of the results. In cases which have the disposition of 'No Record', the system will automatically generate the appropriate response to be reviewed by an FBI analyst prior to submission to the requester. The FBI's FOIPA Program is evaluating ways to expand the automated search function for other types of requests in FY 2021 to streamline certain functions of the FOIPA process.

Other components have also worked to improve their search capabilities. ENRD has identified ways to better use document-management technology to search and collect records, remove duplicates, and track the input of reviewers. ENRD is also moving towards more centralized search functions. The Civil Division has increased efforts to utilize new software including software with sorting, searching, and de-duplicating functionality. In addition, the Civil Division often attends meetings and demonstrations showcasing the newest and most innovative document review technology on the market.

FOIA Websites:

OIP issued [guidance](#) in 2017 on the content and style of agency FOIA websites. The guidance detailed key information and resources that should be made available on every FOIA website as well as some additional considerations such as adopting consistent styling, using plain language, regularly reviewing for accuracy and updated links, and collaborating to identify areas for improvement. Agencies were encouraged to regularly review their websites in light of this guidance to ensure that they contain essential resources, and are informative and user-friendly. The Department's components have each reviewed their

websites in accordance with the guidance. During the reporting period, OIP also conducted an independent review of components' FOIA websites as part of the Component Improvement Initiative. OIP will once again review these sites as part of the Component Improvement Initiative this upcoming year.

Quarterly Reports:

In January 2013, OIP instituted a quarterly reporting requirement for all agencies on four key FOIA statistics, thereby allowing for a more real-time assessment of the flow of FOIA requests handled by the government throughout the year. The four key statistics are the numbers of requests received, processed, and in an agency's backlog for each quarter of the fiscal year, as well as the status of the agency's ten oldest pending requests. This reporting requirement is specifically designed to provide even greater transparency to the FOIA process by proactively shedding light on agencies' statistics throughout the fiscal year and not just at the end. To facilitate the viewing of this data by both agencies and the public, all agency quarterly reporting is displayed on the [Reports](#) page of [FOIA.gov](#). In accordance with the January 2013 [Guidance for Quarterly Reporting](#), the Department posted all of the required quarterly FOIA reports for FY 2020.

Raw Statistical Data from Fiscal Year 2019 Annual Report:

In accordance with 5 U.S.C. § 552(e)(3), OIP consolidated all of the Department's raw data from its Fiscal Year 2019 Annual FOIA Report and [posted](#) it alongside PDF and XML versions of the final report.

Best Practices and Challenges on the use of Technology in FOIA:

Often the technology that FOIA professionals leverage to search and review records are not specifically designed with FOIA in mind. As such, the Department's IT and FOIA Offices have built strong relationships, which enable the Department to make the most of available technologies by sharing best practices and adapting processes across the agency. By working closely with our technological experts and conveying the unique nuances of the FOIA process, we are able to ensure that the technology we are using is being leveraged to the fullest extent possible for FOIA purposes. Another common challenge amongst components is fully understanding the available technologies and their capabilities, so as to take advantage of all of the available functions. Strong IT support has proven to be helpful in finding new solutions, particularly when useful new tools become available.

Some of the best practices the Department followed this year include sharing component experiences with various technological systems and pilots and pooling resources when acquiring new technology. For example, the use of advanced technology has enabled the Civil Division to leverage shared resources throughout the Division to assist in providing similar functions used in electronic discovery including sorting, searching and de-duplicating functionalities among others.

Other challenges identified by components include having sufficient resources, including modern database software for tracking FOIA requests, the capacity to run large searches across multiple custodians, or staff to upload or code documents for review, and

the reality that human review of documents will always be an element of the FOIA process to ensure accurate disclosure determinations prior to release.

The Department also continued to work towards achieving full interoperability with the National FOIA Portal. The *FOIA Improvement Act of 2016* required the creation of a central, online request portal that allows a member of the public to submit a request for records under the FOIA to any Federal agency from a single website. On February 19, 2019, OIP and the Office of Management and Budget (OMB) issued [joint guidance](#) establishing interoperability standards for the National FOIA Portal on FOIA.gov. The guidance explains that agencies can achieve interoperability with the Portal in one of two ways: 1) agencies can accept FOIA requests directly to their current case management platforms via a structured Application Programming Interface (API) or 2) agencies can accept FOIA requests via a formal, structured e-mail to a designated e-mail inbox. The guidance further explains that, unless an exception is granted by OMB and the Department, agencies with automated case management systems will be required to achieve full interoperability with the National FOIA Portal by accepting requests through a structured API. Agencies with non-automated solutions will be required to achieve full interoperability by accepting FOIA requests through the National FOIA Portal via a structured email to a designated e-mail box. The Department is on track to achieve full interoperability in accordance with the memo by the end of Fiscal Year 2021.

Section V: Steps Taken to Improve Timeliness in Responding to Requests and Reducing Backlogs

Improving timeliness in responding to requests is an important aspect of a successful FOIA administration. The data referenced in this section of the Report comes from the Department's FY 2020 Annual FOIA Report. During FY 2020, the Department processed 84,442 requests and successfully closed eight of its ten oldest requests, and all ten of its oldest consultations and appeals from FY 2019.

Simple Track:

The Department utilizes multi-track processing to manage its FOIA administration. The Department's overall average number of days for processing simple track requests during FY 2020 was 64.37 days. Notably, however, sixteen of the Department's components processed their simple requests in an average of twenty days or less. Approximately 68.14% of the requests processed by the Department in FY 2020 were categorized as simple requests.

Backlogs – Requests and Appeals:

Requests

The Department was able to respond to 84,442 FOIA requests in FY 2020, which is third most of any fiscal year. Despite challenges presented by COVID-19, eleven of the Department's components were able to process more requests than in FY 2019. The Department's overall request backlog increased from 25,558 to 29,933, and overall the Department processed fewer requests than in FY 2019. The Department's overall request backlog amounted to 35.45% of the total number of requests received in FY 2020. Additionally, while the Department's overall backlog increased, ten components achieved backlog reduction and four components continued to have zero backlog. Eleven components maintained a nominal backlog of twenty or fewer requests.

The most commonly cited challenges contributing to the overall backlog increase were the impact of COVID-19 on FOIA administration, an increase in incoming requests, the increasing complexity of those requests, staff shortages and turnover, and increased litigation demands.

Appeals

The Department received 2,802 administrative FOIA appeals in FY 2020, and adjudicated 2,801 appeals. The Department's ability to process appeals was also significantly impacted by the pandemic, particularly appeals involving paper records and appeals requiring review of classified records. However, the Department was still able to achieve a reduction in its backlog of appeals from 454 to 443 appeals. Notably, this represented just 15.8% of the total number of appeals the Department received in FY 2020.

Backlog Reduction Plans:

In the 2020 Guidelines for agency Chief FOIA Officer Reports, any agency with a backlog of over 1,000 requests in FY 2020 was asked to provide a plan for achieving backlog reduction in the year ahead. The Department has implemented the plan described in last year's Report. Building on past efforts through the Component Improvement Initiative, OIP worked closely with Department components to identify areas of improvement with a focus on backlog reduction, track management, and improving efficiencies. Many components implemented individualized backlog reduction plans, which included hiring staff or shifting staff resources, acquiring new technology for efficient processing, proactive outreach to requesters to narrow or clarify requests, and modifying workflows to improve FOIA administration. Of course, in implementing these plans the Department also saw new, unforeseen challenges, as described above, such as the impact of the pandemic on its FOIA programs.

Moving forward, the Department remains committed to backlog reduction and will continue to take affirmative steps to achieve that goal in FY 2021. For example, OIP will continue with its backlog reduction efforts that are part of the Component Improvement Initiative. A number of components have also reported plans to continue with the efforts they started last year, particularly those components that saw backlog reduction.

BOP actively manages the status of all backlogged requests. The national search coordinator closely monitors requests requiring searches by multiple directorates and institutions throughout the country. BOP FOIA professionals plan to conduct more searches for requests seeking statistical records using BOP's Management Analysis Portal, reducing the amount of requests for documents sent to other offices. BOP is improving communication between FOIA Professionals and records custodians to assist custodians in understanding the need to provide records. BOP will also post more records on its web page, in an effort to reduce the number of new requests. To maximize expertise of FOIA professionals, BOP assigns requests seeking similar records to the same processor. Finally, BOP will continue to conduct mini-surges to close requests within a few weeks.

EOIR reviews weekly statistical reports to monitor FOIA productivity of incoming requests, completed requests, and backlogged requests. EOIR plans to implement quarterly deadlines for closing the ten oldest requests. The EOIR FOIA Service Center plans to order records directly from the Federal Records Center and send FOIA professionals to obtain records from field sites, which will improve timeliness of retrieving records. EOIR will proactively reach out to requesters to scope requests and inquire if still interested in the completion of the FOIA request. Finally, EOIR also plans to redistribute duties as necessary to process FOIA requests and explore the use of additional resources from other components of EOIR on an as needed basis.

EOUSA recently filled two Attorney positions that were vacant for the majority of FY 2020, which will help address staffing shortages that contributed to the increased backlog.

The FBI's FOIPA Program will continue to utilize separate track sizes to increase processing of simple cases. In addition, the FBI will continue the enhancement of its FOIA technologies to improve efficiencies.

USMS hopes to address the backlog through the procurement of a new case management system and additional staffing.

The Civil Division plans to continue to increase its use of technological tools to increase the efficiency in processing requests. The Civil Division was able to reduce the backlog and utilize technological tools, but due to the pandemic, was unable to maximize the use of these tools in FY 2020. The Civil Division will also continue to prioritize closing its ten oldest requests and decreasing the backlog. Other than our ten oldest, the Civil Division seeks to close all of our requests from the prior calendar year by the end of each fiscal year and reduce the amount of time it takes to close requests.

OPR decreased its backlog by focusing on communicating with requesters, providing interim responses for older FOIA requests, and closing newer simple requests to keep the FOIA docket moving. In addition, OPR filled an open FOIA attorney position in June 2020. That attorney provides a review and approval of requester correspondence and final FOIA responses.

OSG worked to improve its internal and external process to reduce its backlog. OSG had previously been short staffed with only one full-time FOIA staffer, but toward the end of FY 2020 hired an additional staff member. Staffing affected OSG's ability to quickly address the backlog, as well as its ability to transition to a full electronic process in light of COVID-19. OSG continues to improve upon an end-to-end electronic FOIA process.

In June 2020, the Tax core FOIA team increased its FOIA operations meetings to twice a week. As expected, the team's FOIA Operations meetings work resulted in the reduction of its backlog for FY 2020, including closing its oldest backlogged requests.

Status of Ten Oldest Requests, Appeals, and Consultations:

In addition to focusing on reducing the number of requests in an agency's backlog, OIP has issued guidance stressing the importance of agencies reducing the age of their backlogs by closing their ten oldest requests, appeals and consultations. The Department successfully closed eight of its ten oldest pending requests, and all ten of its oldest appeals and consultations from FY 2019. At the end of FY 2020, the oldest appeal pending at OIP was from March 2019.

OIP monitors the ten oldest requests for each component, ensuring that there is ongoing attention paid to this important metric. Requests, appeals, and consultations involving classified records require additional layers of review and coordination that are difficult to implement under the pandemic conditions or via telework. This directly impacted both of the requests that the Department did not close during the fiscal year. One of the requests, initially received on September 25, 2012, involved a consultation with another agency sent on June 14, 2018. OIP continued to follow-up on this consultation right up until the end of the fiscal year. During FY 2021, the Department will work to overcome the challenges of processing these older request implicating classified records.

Beyond working to close the ten oldest requests, appeals, and consultations, the Department also has taken a proactive approach to make sure that the overall age of requests at the Department are reduced. For instance, the FBI had several ten oldest

requests open wherein all FBI documents had been processed and released, however, there were still outstanding consultations with other government agencies. The FBI did analysis on those requests dependent on such consultations and determined which agencies had the most outstanding consults. As a result, the FBI led coordination efforts with several agencies to discuss future processing of consults from these agencies. The FBI reached agreements with these agencies, which reduced the number of program level consultations occurring between each agency. The agreements also detailed new safeguards for sensitive FBI sources, methods, investigative techniques and equities.

Spotlights on Success

- The Department continues to provide government-wide training and resources during the reporting period, quickly adapting to the workplace precautions as a result of the COVID-19 pandemic, by providing frequent virtual trainings and offering [guidance](#) to agencies as they navigated the impacts of the pandemic on their FOIA administration. OIP continues to provide advice to agencies through its FOIA Counselor Service, uninterrupted by the pandemic, and has continued making rolling updates to the [DOJ Guide to the FOIA](#).
- The Department also continued to enhance the National FOIA Portal on FOIA.gov and work with agencies to achieve interoperability in receiving requests from the site. Requesters are able to submit requests and explore Annual FOIA Report data from 2008-2020 for any agency via the site. Enhancements during the reporting period included making improvements to the agency Annual FOIA Report tool and launching a revamped Data page that improves the user experience in accessing Annual FOIA Report data.
- The Department also continues to proactively make more information available online, allowing easy access to records that are of public interest without the need for a FOIA request. By way of just two examples pertinent to the Department's response to the pandemic, BOP proactively disclosed [Daily COVID Updates](#) and OIG proactively disclosed [COVID-19 Challenges for the U.S. Department of Justice](#).

Other Success Stories Reported by the Department's Components

- In 2020, ATF reduced its backlog to its lowest point since 2013. This is the third consecutive year in which ATF managed to sustain net backlog reduction. This year's progress marks a 33% backlog reduction from Fiscal Year 2019 to 2020]. The end result is that, in 2020, ATF has successfully erased about seven years' worth of backlog gained since 2013. The FOIA program has established a new baseline that should allow ATF to achieve even greater backlog reduction (with additional investments and programmatic changes) over the next few years. For the third consecutive year, ATF consistently closed more cases than it received. This sustained processing rate, leading to net reductions of the backlog over time, is a promising indicator of the Division's sustained capacity to achieve meaningful backlog reduction.
- BOP staff's dedication and devotion towards FOIA and BOP's overall mission exemplified what being a civil servant entails. Despite a myriad of challenges both related and unrelated to FOIA, the staff's incredible efforts resulted in an average 7.58

days to process simple requests and 2.35 days to adjudicate requests for expedited processing. Although BOP's backlog increased in FY 2020, BOP received 11% more requests and, impressively, processed 9% more requests in FY 2020 than in FY 2019.

- In October 2020, EOIR implemented a new FOIA software system that leverages technology and improves customer service by digitizing the FOIA process, eliminating and/or reducing paper-based processes, providing acknowledgement letters through electronic means, providing easier access to responsive records and final responses, minimizing duplication of efforts, and improving management of workflows and productivity. The system also provides new shared drives, use of redaction software, and improving records management.
- EOUST ended the fiscal year without a backlog and reported improved processing times. As with other components, shortly after entering a max telework posture, EOUST placed a notice on the FOIA webpage to advise requesters that EOUST would generally process email requests more expeditiously than those submitted through paper mail. EOUST likewise communicated with requesters to let them know about logistical limitations on the processing of paper records. This forthright and upfront communication allowed requesters to tailor their requests, as needed, to ensure that they could obtain useful and relevant electronic information. EOUST's FOIA professionals continued to pilot and research new technology to expedite and improve the Program's FOIA techniques and processes.
- The USPC completely eliminated its backlog and significantly reduced the number of pending requests while adjusting to the extraordinary challenges of the pandemic. Despite occasional difficulties with the availability of records and staff working from home, USPC was still able to locate records, provide timely disclosure to requestors, and complete last-minute requests. Although much has changed for the requesters this year, the service they have come to expect from USPC has been steadfast.