



# Department of Justice Chief FOIA Officer Report

**2022**



**2022 Chief FOIA Officer Report  
United States Department of Justice**

**Chief FOIA Officer:  
Associate Attorney General Vanita Gupta**

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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].”<sup>1</sup> Implementing this provision, the Department of Justice’s [FOIA Guidelines](#) direct 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.

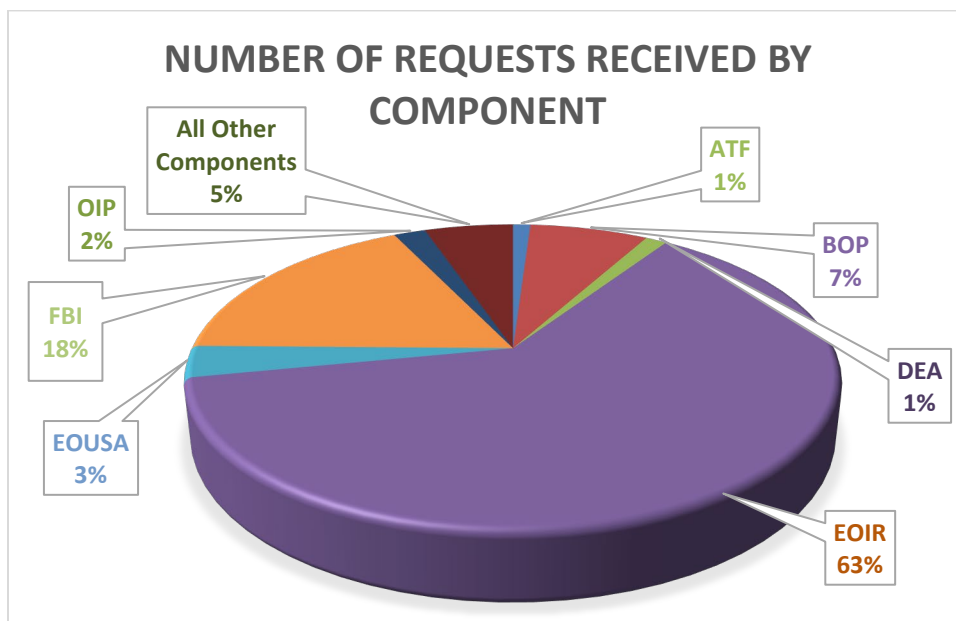
This marks the thirteenth year in which agencies, including the Department of Justice, have issued a Chief FOIA Officer Report. The 2022 Chief FOIA Officer Report for the Department of Justice details notable achievements in its administration of the FOIA. This 2022 Chief FOIA Officer Report describes many of the Department’s accomplishments during the last year, including closing the ten oldest requests, administrative appeals, and consultations; a substantial increase in proactive disclosures; and continuing to provide virtual FOIA trainings for agency FOIA professionals. The 2022 Report also describes some of the challenges that components faced over the past year, such as continued impacts due to the pandemic, staffing and resource limitations, and increased volume and complexity of requests.

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<sup>1</sup> [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 97,490 FOIA requests in FY 2021, more than any other year to date. The number of FOIA requests received varies widely between components, from the Executive Office for Immigration Review (EOIR), which received 60,996 requests in FY 2021, constituting over 63% of the Department's total requests received, to nine 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 2021, the Department had 455 full-time FOIA employees and the equivalent of 84.44 full-time FOIA staff who worked on FOIA as a portion of their responsibilities for the Department.

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 2021.

*"In a democracy, the public deserves as much transparency as possible...."*

- President Biden

## **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. Associate Attorney General Vanita Gupta, the third-ranking official at the Department of Justice, serves as the Department’s Chief FOIA Officer.

### **Training:**

The FOIA directs agency Chief FOIA Officers to ensure that FOIA training is offered to agency personnel. *See* 5 U.S.C. § 552(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 2021 and March 2022, over 6,700 federal employees registered to attend OIP-hosted virtual training sessions on topics including the FOIA’s procedural requirements, FOIA exemptions, fees, litigation considerations, improving customer service, and ensuring an effective FOIA administration. These trainings are also made available to and used by Department personnel. In 2021, OIP began revamping interactive FOIA training modules for senior executives, federal employees, and FOIA professionals designed for use on agency e-learning systems. The Senior Executives course emphasizes the importance of leadership support of the agency’s FOIA program. The FOIA For Federal Employees course describes the obligations that all agency employees have under the FOIA. The FOIA for FOIA Professionals course provides an in-depth overview of the FOIA’s legal and procedural requirements. OIP looks forward to making these training modules available to all agencies in the coming weeks.

During this reporting period, OIP continued 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. FOIA professionals within the Department and from across the government attended the following events:

- *Virtual Introduction to the Freedom of Information Act* – This course 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 Continuing 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.
- *Virtual Procedural Requirements* – This course provides an overview of the FOIA’s procedural requirements including: the definition of “agency records,” perfected FOIA requests, time limitations, expedited processing, reasonable searches, responses to FOIA requests, appeal rights, consultations, and referrals.
- *Virtual Fees and Fee Waiver Workshop* – This course explains the three categories of requesters, types of fees, restrictions on charging fees, and fee waivers.
- *Virtual Exemptions 1 and 7 Workshop* – This course covers the analysis used to determine whether exemptions to protect national security classification and law enforcement information should be applied and recent case law related to such analysis.
- *Virtual Exemptions 4 and 5 Workshop* – This course covers the analysis used to determine whether exemptions to protect trade secrets and commercial or financial information and privileged information 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.
- *Virtual 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 course covers factors that distinguish processing requests under the Privacy Act and/or the FOIA and the FOIA’s privacy exemptions.
- *Virtual Refresher Training for FY 2021 Annual FOIA Reports and 2022 Chief FOIA Officer Reports* – These training events provide agencies with a refresher on their FOIA reporting obligations.
- *Virtual Advanced FOIA Training* – This course is designed for experienced FOIA professionals and supervisors. It covers advanced topics in FOIA administration, such as the FOIA’s personal privacy exemptions, the various FOIA procedural requirements, and FOIA’s requirements to make information available proactively to the public.

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 were held virtually due to maximum telework. In addition to the events hosted by OIP, twenty-two professional staff members from OIP gave a total of forty-one 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 following agencies:

- Department of Transportation
- Department of Housing and Urban Development
- Office of Management and Budget
- Department of Defense
- Department of Education
- Department of Homeland Security
- Department of Treasury

In addition to providing trainings, OIP also holds regular monthly calls with FOIA professionals from all the Department's components, during which OIP provides counsel on current FOIA issues and recent case law. OIP also hosted its annual DOJ FOIA Conference in April 2021, 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.

The Federal Bureau of Prisons (BOP) regularly updated its FOIA Training and Continuity Book, both of which are accessible to FOIA staff throughout the country. All new BOP FOIA staff members followed a detailed and individualized training program that covered substantive and procedural topics, component-specific information, and myriad other FOIA topics. BOP held virtual trainings in January and February of 2022 covering topics including processing emails, the importance of training non-FOIA staff, redacting videos and phone transcripts, and conducting thorough searches. Additionally, once a month, BOP's Senior FOIA Processor emailed processing tips to the component's FOIA staff to improve effectiveness and consistency.

The Tax Division's Senior Counsel, as supervisor of the Tax Division trial attorneys litigating nationwide FOIA cases, held FOIA and Coffee sessions to discuss substantive FOIA law and litigation strategies and tips. In November 2021, the Senior Counsel and a Tax Division trial attorney taught a FOIA Litigation Primer to Tax Division trial attorneys new to FOIA.

Several components also attended training provided by other organizations. For example, BOP and United States National Central Bureau (USNCB) staff attended training provided by the American Society of Access Professionals covering significant FOIA cases. In November of 2021, the Executive Office for United States Trustees (EOUST) personnel with FOIA responsibilities completed the National Archives and Records Administration's (NARA) online Records Management Training for FOIA.

Since last March, approximately 95% 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. 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](#).

### *Records Management Training*

All Department employees and contractors, including those with FOIA responsibilities, are required to take the Office of Records Management and Policy (ORMP) annual Records Information Management (RIM) refresher training virtually through the Department's learning portal. New employees are required to complete the Records and Information Training course within 60 days of onboarding.

Some components also provide additional training and RIM support. For instance, the Justice Management Division (JMD) Records Program staff and records custodians meet quarterly to discuss records management questions that arise. The Federal Bureau of Investigation (FBI) "Records Management for All" training, required annually for all FBI employees, provides an overview of FBI records management, the responsibilities of FBI personnel, the laws and regulations governing 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.

### **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 meetings that are open to the public and that provide opportunities for public comment. Additionally, OIP's Director and other senior staff have quarterly brown bag meetings 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 continued to conduct outreach to the requester community, including outreach about an 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 Bureau of Alcohol, Tobacco, Firearms, and Explosives (ATF) Division Chief continues to regularly engage directly with key stakeholder groups, such as advocacy organizations, gun industry groups, major news organizations, journalists, frequent FOIA litigants, and other organizations or individuals who frequently request information from ATF. These efforts have improved relationships with the requester community overall and have helped ATF to significantly reduce the number of FOIA lawsuits over the last three years. Working with stakeholder groups has also enabled

ATF to manage expectations, candidly identify issues and challenges concerning certain kinds of requests, and establish informal production agreements with many of its most frequent requesters. ATF recently hired two new attorney advisors who will focus on direct engagement with the requester community.

BOP's Supervisory Attorney engaged in outreach with the FOIA requester community, particularly as reflected in a recent book published by an academic expert on FOIA. In 2021, Professor Margaret Kwoka published *Saving the Freedom of Information Act*, which quotes BOP's Supervisory Attorney in his official capacity multiple times regarding BOP's FOIA operations, the challenges BOP faces, transparency initiatives, funding, BOP's requester base and their interests.

The Executive Office for United States Attorneys (EOUSA) FOIA/PA Staff held several telephone conferences with frequent requesters, journalists, public interest organizations, and groups of requesters seeking similar categories of records to provide explanations about how such records are maintained and the strategic approach employed to process these requests and to suggest alternative or consolidated approaches that could more effectively or expediently achieve the results sought.

Several components achieved success through early and frequent communication with requesters as part of the processing of their requests. Such communication helps ensure that requests are directed to the proper component and are well-defined at the outset. Components reported that their requester outreach enabled them to clarify requests, narrow search terms, and avoid litigation in many instances. For example, the Office of Legal Counsel (OLC) was able to negotiate a request potentially requiring review of over 30,000 documents down to the provision of lists of records and eventual production of several hundred documents. The lists will provide valuable information to the public while requiring far less processing time.

The Civil Rights Division (CRT) engages with the requester community on a regular basis via Zoom or Webex. CRT tailors this engagement to the particulars of an individual request to negotiate rolling productions, furnish status updates or narrow requests.

The FBI assigns Negotiation Professionals to initiate dialogue with requesters to provide additional assistance with narrowing the scope of their requests. In FY 2021, approximately 467 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 five dispute resolutions per month in FY 2021.

### **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. As mentioned above, OIP is in the process of updating e-learning training modules that will help ensure all employees have proper FOIA training, whether they are FOIA professionals or program personnel whose records are subject to the FOIA. 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. OIP's Director has also provided FOIA briefings to the senior leadership offices on all aspects of the Department's FOIA administration.

In addition to utilizing these resources, many of the Department's components engage in other efforts to ensure all employees, including senior leaders, are aware of their FOIA responsibilities. Examples of these component-specific efforts are provided below.

The ATF Division Chief regularly briefs ATF executives on FOIA requests and critical issues impacting the FOIA program. In addition, ATF FOIA program staff continue to participate in regular ATF meetings to discuss FOIA issues, review more challenging requests, and address challenges impacting FOIA operations. The ATF Division Chief has also personally met with Executives and senior managers to improve their overall understanding of the component's FOIA responsibilities.

BOP continued to proactively inform non-FOIA staff of their obligations under the FOIA. BOP's Supervisory Attorney filmed a FOIA training for BOP's Public Information and Affairs officers covering FOIA, the release of personally identifiable information (PII), the Privacy Act, and the relationship between the FOIA and the role of the Public Affairs Office (PAO). BOP's PAO intends to use the video for various trainings of non-FOIA staff. BOP's Senior Government Information Specialist (GIS) taught social workers about their obligation under FOIA and how to protect PII. In addition, BOP FOIA attorneys and directorates discussed the importance of searching for and providing records, FOIA-related performance standards, and the importance of thoroughly documenting search efforts. At BOP senior executive meetings, the General Counsel emphasized the importance of complying with BOP's obligations under the FOIA. Executive Assistants for each directorate usually serve as the point of contact for obtaining records from a directorate, and the BOP Office of General Counsel staff regularly updated Executive Assistants, Regional Directors, and Wardens of BOP's FOIA compliance obligations. Finally, all legal staff who work with FOIA, including the General Counsel, the Senior Deputy General Counsel, and all Regional and Deputy Regional Counsel, have FOIA-related performance standards.

In celebration of Sunshine Week 2021, EOUST's Office of the General Counsel sent an email to all United States Trustees, Assistant United States Trustees, and EOUST Senior Staff directing those staff members to forward the email to all of their employees. This email directed recipients to review the infographic briefing developed by OIP, which explains the purpose and operation of the FOIA. The email also reminded recipients of their obligations under the FOIA, informed them what records are subject to the FOIA, and reinforced the Department's commitment to proactive disclosures. In addition, EOUST's FOIA Counsel gave a presentation to EOUST's United States Trustees and other senior leaders, as well as the Program's Government Information Working Group, regarding the Supreme Court's decision in U.S. Fish & Wildlife Service v. Sierra Club, Inc., 141 S. Ct. 777 (2021), and the implication of that decision on EOUST's FOIA processing. Finally, EOUST's FOIA professionals provide search and review training each time they email detailed FOIA search requests to record custodians.

The FBI's FOIA and Privacy Act (FOIPA) program provided senior leaders an extensive briefing on each unit's responsibilities, the volume and resources associated with the continued growth in FOIA litigation, and a staffing proposal to mitigate the growth. Updates to FOIPA resources and standard operating procedures (SOPs) were reviewed by

leadership as well. Lastly, non-FOIA FBI agency personnel were provided a program overview to familiarize them with the FBI FOIPA program and FOIA obligations. FBI's FOIPA collaborated in 30 meetings with other governmental agencies, including non-FOIA and FOIA personnel, about best practices to fulfill agency FOIA obligations.

FOIA training is available to all United States Marshals Service (USMS) employees on LearnUSMS, the Agency's training database. Operational personnel are given training on the requirements of FOIA as needed and in connection with any FOIA-related collateral duties.

Many components held meetings with program personnel to brief them on their important role in the FOIA process. For example, CRT provides training to incoming new hires on FOIA objectives and procedures. The CRT FOIA Office sends instructions on the standard for a legally adequate search when asking custodians to conduct a search. The CRT FOIA Office gives detailed guidance to each new program section FOIA contact and periodically meets with Program Section personnel to provide overviews and guidance.

The Office of Community Oriented Policing Services' (COPS) new employee training includes an overview of the FOIA and how non-FOIA professionals can assist the office in meeting its FOIA responsibilities. The COPS training for non-FOIA personnel includes information on the responsibility of program staff to provide responsive documents for requests. COPS also includes a record search checklist with each search request to assist staff with documenting the location of records searched and search terms used. In addition, COPS has an internal policy that provides COPS staff processing guidelines for responding to FOIA and Privacy Act requests and provides periodic meetings and trainings of FOIA point of contacts.

EOIR's FOIA Chief and FOIA Attorney provide regular FOIA training for all new Court Administrators, Immigration Judges, Assistant Chief Immigration Judges, Appellant Immigration Judges, and Judicial Law Clerks.

An Environment and Natural Resources Division (ENRD) FOIA manager provides information on FOIA responsibilities during orientation sessions for Honors Program hires, new attorneys, and incoming political appointees. ENRD FOIA attorneys and GIS also provide instruction and advice to non-FOIA staff advising how to proceed handling FOIA matters, both with respect to general questions and handling specific requests.

The OLC New Employee Handbook provides new OLC staff with guidance on good record keeping practices to ensure that work-related emails are properly retained, while also making sure non-record material is periodically expunged or is stored in a separate location. This helps ensure FOIA searches of staff email is not needlessly burdened with non-responsive material, thus increasing the speed of searches and document review. The Manual for Attorney-Advisors: Practices and Procedures, issued to all new OLC attorneys, includes a copy of OLC's public Best Practices memorandum, which contains a section on the intersection between OLC's Opinions practice and FOIA. This familiarizes OLC attorneys with OLC's overall approach to meeting the requirements of FOIA, as well as the various Administration directives and memoranda that have been issued over the years, with the goal of openness and disclosure. Moreover, when a FOIA request falls within the scope of the substantive responsibilities of an attorney who does not ordinarily have substantive FOIA responsibilities, that individual is briefed on applicable requirements, and

a strategy for identifying potentially responsive records is devised in close collaboration with the OLC's FOIA professionals. Finally, after the January 2021 change in Administration, OLC's FOIA and Records Management Attorney provided the new members of Office Leadership with an overview of OLC's FOIA processing, FOIA litigation, and FOIA advising procedures.

The Office of Justice Programs (OJP) FOIA staff meet with program office managers and FOIA points of contact to discuss requests and offer suggestions on how to search records in a manner that best supports the request. The FOIA attorney and FOIA Officer hold ad-hoc meetings with OJP staff and FOIA contacts as requested. During the reporting period, FOIA staff developed a document to assist the program and business office staff on how to respond to a request for records from the FOIA office.

As part of its work-force planning activities with leadership, the Antitrust Division (ATR) facilitates discussions on conducting searches, processing records for disclosure determinations, and the Division's FOIA resources, obligations, and expectations.

The Office of the Inspector General (OIG) FOIA division routinely communicated with non-FOIA personnel when requesting record searches and initiated internal FOIA training to help non-FOIA program offices gain a better understanding of the FOIA, including how to conduct a reasonable search.

The EOUSA FOIA/PA staff is in constant communication with the U.S. Attorneys' Offices (USAO) regarding search instructions and fee procedures. Every two years, the EOUSA FOIA/PA staff also provide 2.5 days of training for non-FOIA professionals whose collateral duties involve FOIA responsibilities within the USAOs. The Assistant Director routinely discusses FOIA resources and expectations with EOUSA senior leadership.

The Civil Division regularly provides guidance to Senior Leadership and Civil Division employees about their obligations under the FOIA. In addition, the FOIA staff also assisted in hosting Civil Division training for non-FOIA professionals pertaining to records management and e-discovery and the relationship to the FOIA.

The Drug Enforcement Administration (DEA) partners with the Human Resources Division to distribute FOIA/PA Guidebooks to each newly hired DEA employee. The guidebook outlines employees' responsibilities for complying with the FOIA/PA and outlines DEA's internal FOIA processes and procedures. DEA's FOIA Officer regularly meets with managers across DEA to discuss pending FOIA requests and educates the managers on their responsibilities under the FOIA.

## **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 requires 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 2021, the Department reported an average of 14.24 days to adjudicate requests for expedited processing and 73.33% of requests for expedited processing were adjudicated within 10 calendar days.

The Department’s higher average time to adjudicate requests for expedition was impacted in particular by EOUSA. EOUSA migrated its data to a different system this fiscal year, and as a result of data migration challenges, EOUSA’s processing times for adjudicating requests for expedition appear unusually high and are not accurate. This had an impact on EOUSA’s reported average as well as the Department’s overall average time to respond to requests for expedited processing. EOUSA plans to correct this error this fiscal year. To ensure timely adjudication moving forward, components with higher than usual expedited processing adjudication times plan to allocate additional human resources, modify their intake process for requests seeking expedition, provide additional training on identifying and processing such requests, more effectively track requests for expedited processing in their case management system, set reminders when deadlines are approaching, and provide weekly reports to leadership on the status of these requests.

#### *FOIA Regulations*

The FOIA Improvement Act of 2016 required agencies to update their FOIA Regulations. 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.

#### *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. Over 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. Eight components plan to complete the development of SOPs for their FOIA programs by the end of 2022. 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.

### *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. OIP has nearly completed 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 2022.

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, through its 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 2021 review, OIP is developing additional resources to assist components, including acquisitions and procurement tips for FOIA offices looking to purchase FOIA processing technologies and FOIA administration standard operating procedure (SOP) templates for components to use in drafting or updating their SOPs.

The 2020 Component Improvement Initiative resulted in the formation of various working groups that meet quarterly to discuss topics related to small components, processing protocols, FOIA technology, and FOIA litigation. The FOIA Litigation Working

Group continued to meet quarterly throughout Fiscal Year 2021 to discuss maximizing resources, developing litigation expertise, and challenges components face with regard to litigation. The Small Component Working Group met for the first time in July 2021 to provide an opportunity for small components to share best practices and challenges that may differ from large components such as the importance of intake as part of backlog prevention and best practices for case management with small teams handling the breadth of FOIA administrative tasks. The FOIA Technology Working Group met for the first time in July 2021 to share best practices and challenges meeting various FOIA administrative needs with available FOIA technologies.

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. Many components also examined and adjusted their processes for greater efficiency.

For instance, ATR reviewed current and historical receipt and closure data from its tracking system. ATR also conducted weekly discussions with Government Information Specialists and administrative staff to identify work-flow efficiencies, challenges, and potential solutions.

BOP regularly conducted self-assessments of its FOIA program to determine what adjustments were necessary during the COVID pandemic. Data for each Region and Central Office was reviewed throughout the year to assist in pinpointing their strengths and weaknesses and developed methods to improve their efficiency. Throughout the year, BOP's Supervisory Attorney and Senior GIS emailed candid assessments of BOP's FOIA program along with recommendations to all BOP FOIA Professionals. BOP staff also strategized methods to improve workflows and achieve its priorities. BOP used OIP's FOIA Self-Assessment Toolkit as a resource when evaluating BOP's FOIA program.

The Civil Division conducted a self-assessment of its FOIA program by evaluating its case management system, reviewing search and review procedures, streamlining workflows, updating proactive disclosure procedures, and focusing on methods to ensure continued closure of the ten oldest requests and a decrease in backlog.

OJP continuously reviews workflows and procedures in conjunction with assessing staff changes and new personnel. OJP has identified that it can improve workflows and tracking of outstanding requests for documents from the OJP program offices via its case management system.

The Tax Division's Senior Division Counsel for FOIA and Privacy Act matters continued to assess data and processing practices with the Division's processing specialist, including evaluating personnel skills and abilities. The Senior Division Counsel and full-time paralegal specializing in FOIA met weekly to enhance the methods used to track and/or process FOIA requests and to follow up on pending interim tasks with the goal of reducing processing times.

Other components examined and adjusted their processes for greater efficiency. During the reporting period, the Criminal Division's (CRM) FOIA/PA Unit Management monitored workflows to identify areas for potential improvement and introduced additional functionality into their case management system to identify older requests that should be

prioritized for closure. Additionally, CRM's FOIA/PA Unit Management is developing a mechanism that consolidates the notation and internal reporting requirements for Unit Staff, which will create a more cohesive history of each case and allow for quick access to processing details. CRM FOIA/PA Management reviews Annual Report data to identify any trends that need to be addressed and set goals for the upcoming fiscal year.

EOUSA's Assistant Director conducted multiple self-assessments and reviewed historical data in comparison to real-time data, which was critical as EOUSA transitioned to a new case management system. EOUSA self-assessments also included communications with the USAOs and several workshops with the EOUSA FOIA/PA staff.

OLC's FOIA and Records Management Attorney reviewed OLC's FOIA operations and provided leadership with results and recommendations for updating FOIA processing procedures.

The Professional Responsibility Advisory Office (PRAO) reviewed its FOIA data and procedures for handling FOIA requests. PRAO determined that similar types of FOIA requests could be processed more efficiently by expanding and improving its library of response templates. As a result, PRAO updated and edited existing templates and added new ones.

Some components also incorporated best practices and lessons learned from self-assessments into their standard operating procedures (SOP), discussed further below. For instance, the DEA's Chief FOIA Officer, along with the FOIA Unit Chiefs, conducted a self-assessment of the FOIA Program and made several changes to increase the efficiency of internal procedures. This included the updating templates and several DEA SOPs to assist FOIA staff carry out routine operations, such as processing certain types of records. In addition, The DEA Chief FOIA Officer, FOIA Unit Chiefs, and Office of Chief Counsel attorneys met to review and discuss complex requests, which allowed the team to formulate plans of action to address difficult requests.

### **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."<sup>2</sup> 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 requests 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

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<sup>2</sup> [5 U.S.C. § 552\(l\)](#).

questions. For instance, OLC's FOIA Public Liaison often spoke with requesters who were contemplating sending a FOIA request to OLC, when OLC would not have been the appropriate component to process the request. The conversations provided the requesters with an overview of how FOIA requests are processed within the Department; a description of what OLC does and does not do; what records OLC would likely have; recommendations as to which components or agencies would most likely have the records the requester was seeking; links to component and agency contact lists; and guidance on how to utilize the services of the Department's Mail Referral Unit, which can direct requests to the proper component. This resulted in several fewer misdirected requests to OLC.

Overall, the Department estimates that its FOIA Public Liaisons received more than 31,982 inquiries from members of the public via phone, e-mail and fax. 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, 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. In contrast, the FBI public liaison received 25,079 inquiries.

Requesters' 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.

### *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. Some components have established alternative means of access to these records outside of the FOIA process. For instance, EOIR implemented the [EOIR Court & Appeals System \(ECAS\)](#), which is an online portal for the attorney of record to access court filings regarding non-citizens currently in Immigration Court proceedings and pending appeal information with the Board of Immigration Appeals. Starting March 8, 2022, EOIR established a new policy allowing any party to a proceeding and their representative of record to obtain copies of the official record of proceedings that are not prohibited to the party (e.g., classified information, documents under a protective order) directly from the Immigration Courts or from the Board of Immigration Appeals, without the need for a FOIA request. In the alternative, parties may file a request for information pursuant to the FOIA.

BOP received thousands of first party requests including, but not limited to, requests for medical records, central files, educational records, investigative files, and employment files. Current inmates are encouraged to use local access procedures to obtain their files. BOP worked with the Health Services Directorate to make it easier for former inmates who received COVID vaccines while confined to receive copies of their vaccine cards. BOP also continued a process created and implemented as a result of the COVID pandemic, which enabled attorneys' access to their clients' medical records within twenty-four hours when



requested for compassionate release/home confinement reasons.

Since FY 2020, DEA's Health Services Unit agreed to handle requests from current employees for access to certain records within their medical files, while the FOIA Office will continue to process requests from current or former employees seeking access to their entire medical file.

The FBI [Criminal Justice Information Services Division](#) allows requesters to access Identity History Summary Check records outside the FOIA process. The application instructions and forms for obtaining these records are available online. Another common first-party request is a request for any investigative records about oneself. While these requests are handled through the FBI's FOIA process, automated searching capabilities facilitate more streamlined retrieval and processing of records.

### **FOIA-Related Staffing Capabilities:**

During the reporting period, components reviewed their FOIA-related staffing capabilities to identify resources needed to respond to current and anticipated FOIA demands and improve recruitment and retention of qualified FOIA professionals. As a result, several components, including DEA and OJP, reorganized their staffing models by establishing specialized FOIA teams for request intake, processing, backlog reduction, and litigation. Other components, such as DEA and EOUSA created supervisory FOIA positions or instituted additional tiers of review to ensure quality control in processing requests. Many components successfully on-boarded new FOIA professionals during the fiscal year to fill newly created or vacant GIS, FOIA attorney, FOIA specialist, and paralegal positions, including OIP, CRS, ENRD, EOIR, and the Executive Office for Organized Crime Drug Enforcement Task Forces (OCDETF). Several components converted temporary student positions to permanent positions to maintain FOIA expertise within the FOIA program. FOIA offices within the Department, such as OIP and JMD, continue to take advantage of Summer Law Student Interns (SLIPs) and volunteer law student interns to assist staff and begin building a FOIA career pathway for law students. Due to the pandemic, the 2021 interns often worked remotely. Finally, the FBI, EOIR, JMD, OPR, and Office of the Solicitor General (OSG), sought additional resources for contract support or new staff positions required to reduce backlogs or handle litigation.

### **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 consistently leveraged their human capital to identify areas for improvement and innovative solutions to challenges. The CRT FOI/PA Branch worked with the Division's senior management staff to develop oversight to support sections

with fewer resources and the greatest potential for improvement. These efforts succeeded in achieving closure of the component's ten oldest FOIA requests. The CRT FOI/PA Branch also regularly works with Information Technology specialists to analyze its processes for improvement. FOIA staff presented challenges and adopted suggested solutions for improving their use of technology. The CRT FOI/PA Branch has also streamlined the process to review records requests relating to the Office of Assistant Attorney General (OAAG), whose staff is best able to identify the areas of the Division likely to possess responsive records. The CRT FOI/PA Branch also has weekly conferences with the Chief Counsel to discuss the status of the searches for the FOIA requests and status of the pending FOIA lawsuits. OIG implemented a bi-weekly GIS staff meeting to discuss and monitor OIG's FOIA program. These meetings are designed to discuss any issues encountered and to share best practices.

The Department's components reported a range of challenges during this reporting period that they worked to overcome. The pandemic continued to impact some components' abilities to process certain requests and appeals, particularly due to limitations on building or file access. EOIR experienced the greatest challenges in its ability to process new requests during the pandemic. The vast majority of FOIA requests to EOIR are for records of proceedings. Many of EOIR's historical records of proceedings are maintained at the National Archives and Records Administration's Federal Records Centers (FRC). Most of the FRCs have been closed since the middle of 2020, which has significantly impaired EOIR's ability to access the records for approximately 20-30 percent of its requests. In addition, immigration courts allow parties to review records of proceedings, but these courts were also closed until June 2021. And between June 2021, when immigration courts reopened, and September 2021, EOIR received about 20,000 new requests. However, as described in more detail below, EOIR carefully reviewed its processes to identify potential hurdles to accessing information and is taking a number of concrete steps to improve its backlog and the timely production of its records. BOP also faced several challenges that diverted staff's time from working on FOIA requests, including an increase in the volume of Privacy Act and privacy-related questions raised by staff due to COVID, and a need to redirect staff resources to meet institutional needs and to respond to compassionate release and home confinement requests.

The greatest challenge cited by many components are hiring, retaining, and training adequate staffing to address the growing volume and complexity of cases and the substantial rise in litigation, which often requires shifting resources unexpectedly. 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 professionals with years of experience, current staff had to spend time training and assisting new staff. As part of the Component Improvement Initiative, OIP compiled and shared best practices and resources with components about hiring and creating a career path for FOIA professionals. Additionally, the Department's updated telework and remote work policies are intended in part to promote recruitment and retention.

### **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.*

#### **Identifying, Processing and Posting Proactive Disclosures:**

The FOIA requires agencies to proactively release certain information in the Federal Register and post on their websites certain operational and “frequently requested” records that have been requested and released three or more times. *See* 5 U.S.C. § 552(a)(1)-(2). Components described a range of methods to identify records for proactive disclosure. Components that do not receive a large volume of requests often rely on staff knowledge to identify records for posting. ATR reviews requests at intake to identify potential duplicate subjects that might have already been processed, or that might be pending, to identify records for posting. The Federal Claims Settlement Commission’s (FCSC) requests and decisions are monitored by the Chief Administrative Counsel. As additional materials are identified, the Chief Administrative Counsel ensures that they are posted to the Commission’s website.

Several large components have automated the process of identifying records for proactive disclosure. The FBI designated a project manager and proactive disclosure team to identify proactive disclosures related to agency policies and administrative documents to be posted monthly. Additionally, frequently requested subject records are tracked, associated, and processed in the FBI’s case management system. This eliminates administrative burden by providing information related to subjects of interest to the public in a more streamlined and available manner. OJP’s FOIA staff also search their case management system to identify any records for posting. The Civil Division reviews its docket for multiple requests for the same records. Once the same set of records are released three times, the FOIA Office posts the information online.

The DEA’s FOIA professionals engage with field and Headquarters offices to identify frequently requested data and information, and work together to prioritize records for posting. FOIA staff continuously identify items of interest to the public. Items posted to DEA.gov are linked to the FOIA page to make the information easily accessible to FOIA requesters.

Finally, some components make an effort to go beyond the requirements to post records that have been frequently requested, and instead have chosen to implement a “release to one release to all” approach. For example, OLC posts opinions that are released in response to a single FOIA request after the first time they are provided to the FOIA requester. OLC plans to post a batch of such records during the reporting period.

#### **Collaboration with Agency Staff Outside of the FOIA Offices:**

To identify and post proactive disclosures, FOIA offices often collaborate with agency staff outside of the FOIA office. Component leadership is often consulted when identifying and preparing proactive disclosures for posting. For instance, BOP’s Information, Policy, and Public Affairs Directorate and Health Services Directorate work together with the

Director's Office to ensure information related to COVID, vaccines, the First Step Act, Home Confinement, Clinical Practice Guidelines, and Prison Rape Elimination Act reports are posted in a timely fashion. When BOP's FOIA Office comes across a record it believes should be proactively posted, the Supervisory Attorney works with the appropriate directorate to have the record posted online.

Additionally, Office of the Pardon Attorney (PARDON) leadership is involved in decisions about proactive disclosures. OIG's Office of General Counsel also advises the OIG leadership and the OIG's reporting division on proactive disclosure considerations. OJP's proactive disclosures may require collaboration with OJP's Office of Communications and the Office of the Chief Information Officer. Proactive disclosure of OLC records requires collaboration with the Publication Committee, which, in turn, may require consultation with other agencies or officials in the Executive Branch.

Some components designate personnel to specifically focus on proactive disclosure-related efforts. For example, 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 providing a forum to consider additional proactive disclosures not previously identified or considered. Separately, JMD's Office of Planning and Evaluation personnel regularly participate in a Department of Justice-level working group on data architecture requirements. A goal of participation in both groups is to aid in future efforts to disclose data proactively.

The FBI has designated a project manager and proactive disclosure team to handle the proactive disclosure of FBI policies and administrative documents. Each year, the project manager identifies policy documents that likely should be proactively disclosed and, before processing the documents, works with the respective Division Policy Officer at the applicable FBI Headquarters Division to ensure that any law enforcement sensitivities are protected.

Components often collaborate with Web Services and IT to coordinate postings. For example, to post monthly national caseload data releases, the EOUSA FOIA Office works with the Data Analysis staff. The Civil Division works closely with the Division's IT professionals to create web ready documents and, once a determination is made to proactively post, the Civil Division is often able to post the records the same day. The Civil Division ensures the records are adequately categorized making them more accessible to the public and continuously works to ensure a streamlined process when reviewing records for proactive disclosure.

ENRD FOIA personnel work with ENRD's Office of Information Management (OIM) and ENRD's Office of Internet Technology (OIT) when posting records for public access. OIM is responsible for posting content online and they coordinate OIT before proactively posting certain records.

Some component FOIA offices collaborate regularly with other program offices to identify proactive disclosures and improve the disclosure process. For instance, DEA FOIA professionals meet with stakeholders in the Office of Forensic Sciences, the Information Systems Division, the Diversion Control Division, and the Office of Congressional and

Public Affairs to discuss agency records and data appropriate for posting on DEA.gov. These discussions detail which records are frequently requested and appropriate to proactively disclose. DEA's FOIA professionals continue to engage with field and Headquarters offices to identify frequently requested data and information, and the offices work together to prioritize records for posting on DEA.gov within the FOIA Library. JMD's Asset Forfeiture Management Staff collaborates with all enforcement agencies within DOJ and the Department of Homeland Security in making proactive disclosures.

### **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 are summarized below.

- 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:
    - [Updated Guidance for Quarterly FOIA Reporting](#) (October 4, 2021)
    - [Department of Justice Handbook for Agency Annual Freedom of Information Act Reports](#) (updated October 7, 2021)
    - [Guidelines for 2022 Chief FOIA Officer Reports](#) (September 30, 2021)
    - [Supreme Court's Exemption 5 Ruling in \*United States Fish & Wildlife Service v. Sierra Club, Inc.\*](#) (September 29, 2021)
    - [OIP Guidance for Further Improvement Based on 2021 Chief FOIA Officer Report Review and Assessment](#) (September 21, 2021)
  - OIP posted updated [Department of Justice Guide to the Freedom of Information Act](#) chapters relating to [Procedural Requirements](#), Exemptions [1](#), [3](#), [4](#), [7\(B\)](#), [7\(F\)](#), and [9](#).
  - OIP also posted the following in its [FOIA Library](#):
    - Records Related to the Events of January 6<sup>th</sup>, 2021 (January 7, 2022)

- [Final Response Part 1](#) (January 4, 2021 – January 17, 2021)
  - [Final Response Part 2](#) (December 20, 2020 – January 19, 2021)
  - [Interim Response](#) (December 30, 2019 – January 22, 2021)
- Records Pertaining to the Department of Justice’s Investigation or Prosecution of Huawei or Meng Wanzhou [Posted January 6, 2022]
    - [Interim Response](#) (January 29, 2019 - February 25, 2019)
  - Brief Drafted by an Outside Lawyer Acting on Behalf of President Trump Regarding Challenges to the 2020 Presidential Election Results for the Department of Justice to File with the Supreme Court
    - [Final Response](#) (December 2020)
  - Records on the Federal Government’s Policies and Instructions Regarding the Re-Calendaring of Immigration Cases for DACA Recipients [Posted January 24, 2022]
    - [Final Response](#) (July 5, 2018 - July 6, 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](#).
  - CRT 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 [Attorney General’s Cyber-Digital Task Force Cryptocurrency Enforcement Framework](#), Asset Forfeiture: [Restoration Guidelines](#), and [Health Care Fraud and Abuse Control Annual Report](#).
- DEA proactively disclosed Frequently requested DEA forms; [Final Opinions and Orders 2000 to present](#); [Drug Intelligence Bulletins](#); [National Clandestine Laboratory Register Data](#); [Forensic Sciences’ Quality System Documents](#); [National Take Back Day Initiative October 2020](#) results; DEA policies; and frequently requested forms on its [Additional Resources page](#). In addition to the above, each [DEA Domestic Division](#) maintains a website with useful information for the public, such as press releases and local fugitives.
- ENRD posted new policy documents and guidance on its [website](#), and also identified previously issued directives and delegations that could be made public. In addition, ENRD regularly posts new consent decrees, speeches, accomplishment reports, and other information about the Division on its public web page. The Division also proactively discloses its monthly Environmental Crimes Bulletin on a rolling basis.
- 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. EOUSA uses GovDelivery, a subscription service through which individuals can receive email notice when a given site or page is updated.
- 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 for Quarter 2 \(January – March 2021\) of FY 2021](#) and [USTP Marijuana Enforcement Actions by District and Chapter for Quarter 3 \(April - June 2021\)](#).
- EOIR proactively disclosed updated statistical information of EOIR’s Workload and Adjudication statistics and updated the posted voluminous [Case Data](#), expanded the posting of already posted material such as EOIR Memoranda, [precedent decisions issued by the Board of Immigration Appeals](#), [decisions issued by the Office of the Chief Administrative Hearing Officer](#), [Memoranda of the Director of EOIR](#), [Interactive Map of Pro Bono Legal Service Providers](#), 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:
  - [Fingerprint and Latent Fingerprint Identification Policy Guide 0973PG](#)
  - [FBI Ethics Pocketguide](#)
  - [Crisis Intervention Program Policy Guide 0999PG](#)

- [Term Limit for Instructors and Training Program Management Personnel PD 1100D](#)
- The JMD Asset Forfeiture Management website allows the public to import and produce reports from the [Consolidated Asset Tracking System \(CATS\)](#).
- The Office of the Inspector General (OIG) proactively disclosed the following reports:
  - [Recommendations Issued by the Office of the Inspector General that were Not Closed as of September 30, 2021](#)
  - [Investigation and Review of the Federal Bureau of Investigation's Handling of Allegations of Sexual Abuse by Former USA Gymnastics Physician Lawrence Gerard Nassar](#)
- OLC posts its [formal opinions](#), subject to any countervailing considerations, including classification, law enforcement interests, and executive branch confidentiality interests. These opinions are searchable by date, title, or volume.
- OSG 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. During FY 2021, PARDON began proactively disclosing the number of pending clemency cases on a weekly basis and added a downloadable excel spreadsheet, updated monthly to include the status of all clemency cases submitted to the Department since 1989.
- The Tax Division posted 34 press releases pertaining to its civil criminal enforcement matters. The [press releases](#) include the sentencing of taxpayers, or their pleading guilty to employment tax fraud and other crimes. The Tax Division also posts information about [schemes and scams](#), and [criminal employment enforcement news](#).
- 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, especially for communities of individuals who regularly access the agency's website. For instance, the Antitrust Division's



publicly posted documents can be text-searched, filtered, and sorted. The Division also submits its machine-readable postings to Data.gov.

In addition, the COPS Office has deployed a ChatBot, which uses artificial intelligence to provide users answers to questions or the location of information on the COPS website. CRT 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. DEA's FOIA Office partnered with the Office of Congressional and Public Affairs to revise the FOIA/PA webpages on DEA.gov making them more informative and user friendly for the requester community. Similarly, EOIR reorganized its webpage to group similar items together.

The EOUST launched a [robust public resource page](#) to assist the public in complying with a new rule requiring that Chapter 11 debtors-in-possession and trustees, other than in small business and Subchapter V cases, file monthly operating reports and post-confirmation reports using streamlined, data-embedded, uniform forms in every judicial district where the USTP operates. This resource page not only serves as the central location for form updates and form instructions, but also provides private software developers with the tools to create their own products that generate compliant forms. The tools include a complete data dictionary and XML schema for each of the required forms.

OLC is currently improving the functionality of the entire OLC website, including its FOIA Library, to make it easier to use and to support the ever-increasing volume of posted documents. In particular, OLC will provide an improved layout and more robust search and sort capabilities.

OPR's website includes an extensive [FAQ section](#) to explain how it operates and what matters are investigated by OPR. The FAQs provide context for members of the public reviewing posted reports or report summaries.

As part of the Department's revamp of the Justice.gov site, components were required to audit their webpages, including their component FOIA pages, to reorganize information on the site and improve the public's ability to find information about the component's work.

The Department welcomes public feedback through its main website and 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 also have separate mechanisms for receiving public feedback on their individual web pages.

### **Disseminating Common Materials Outside of FOIA:**

In line with the Department's commitment to transparency, components make significant efforts to ensure information of interest to the public is also disseminated outside of the FOIA, including through online databases. Some examples include COPS's grant award information, along with other resources available on COPS's website, such as its podcasts (The Beat), and newsletter (The Dispatch). CRT continues to post its "Cold Case" posting on its website in a searchable format. CRT also has websites dedicated to specific subject matters, including those which highlight important civil rights cases from the 1950's

and 1960's and various civil rights pleadings in significant litigation from the various components.

ENRD's website provides links to [consent decrees](#) that the Division has recently lodged in the federal district courts and on which the Division is currently accepting public comment. In some instances, a copy of the complaint is also provided. ENRD provided a separate link to *Deepwater Horizon* records.

The FBI's Office of Public Affairs, through coordination with other FBI Divisions and Field Offices, posted [additional proactive disclosures](#) to the FBI's external website, fbi.gov, for public inspection including the 2020 CJIS Year in Review, 2020 Internet Crime Report, 2020 NCIC Missing Person and Unidentified Person Statistics, Active Shooter Incidents 20-Year Review, 2000-2019, Crime in the United States, 2020, Elder Fraud Report, 2020, Hate Crime Statistics, 2020, Law Enforcement Officers Killed and Assaulted, 2020, Strategic Intelligence Assessment and Data on Domestic Terrorism, and The FBI Story 2020.

OJP program offices publicly post grant information and publications on their office webpages. As a result, FOIA inquiries that request solicitations, or general award information can be quickly identified. Similarly, where publications are posted on program office webpages or on the National Criminal Justice Reference Service (NCJRS) site, FOIA staff can quickly process a request or guide a requestor to the information.

Further several components make additional disclosures online as mandated by statute. For example, the Bankruptcy Code and related Federal Rules of Bankruptcy Procedure dictate that meetings of creditors are open to the public and that anyone may access these recordings. Consequently, EOUST FOIA professionals have advised local field offices to release this information directly to anyone who submits a written request. This facilitates an efficient information release to requesters that avoids the need for a formal FOIA request. The EOUST's public FOIA webpage advises requesters on the process for contacting individual field offices to obtain copies of these recordings. In addition, EOUST makes its fiscal year [Criminal Referral Report](#) to Congress publicly available pursuant to Section 1175 of the Violence Against Women and Department of Justice Reauthorization Act of 2005, Public Law 109-162, and its [Chapter 7 Trustee Final Report Data](#) publicly available pursuant to 28 U.S.C. § 589b(b).

FCSC posts [completed programs](#) under the International Claims Settlement Act. The OIG posts numerous reports on its public website, including but not limited to audit reports and the semi-annual report to Congress, pursuant to the Inspector General Act of 1978, as amended.

### **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 any backlogs; the internal vetting process required for posting to the component's website; and the size of files that can be more time consuming to post and view, particularly where posting requires splitting a document into numerous portions or sections. To ensure data integrity and consistency, prior to posting data sets, significant time and resources are needed to manually standardize the datasets.

EOUST makes proactive disclosures of data detailing the United States Trustee Program's nationwide civil enforcement activities. Doing so requires manual data standardization for significant numbers of individual case entries. To ensure data integrity and consistency in measurement, this standardization must occur before the data is proactively disclosed. Due to the large size of these datasets, significant time and resources are required to complete this standardization work.

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.

General Service Administration's [10x](#) program funds, supports, and develops ideas for how technology can improve the public's experience with the government. 10x selected as one of its funding projects OIP's proposal to improve searchability of records across agency FOIA Libraries. Such a searchability function will significantly improve the public's access to information. 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. In 2021, 10x began to investigate 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 creating efficiencies in agency FOIA operations as resources are directed to processing FOIA requests for information not already available to the public. Phases 1 and 2 of this project have been completed, and the 10x team will continue to develop a prototype as part of Phase 3. OIP looks forward to advancing this initiative in 2022.

Components use a variety of other 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. OCDETF is currently conducting a benchmarking survey to other small components to determine how to best address its needs, in hopes of identifying and acquiring new software for FOIA management in FY 2022.

A few components have worked with developers to tailor tracking systems to their specific needs. For instance, DEA's FOIA Office partnered with the Information Systems Division to establish a central, online request portal that allows members of the public to create a profile, submit a request, check the status of their request, and receive responsive records. Since the system launched in September 2021, it has streamlined DEA's process and made it easier for requesters to obtain detailed information pertaining to all requests they submit to DEA.

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. ATF deployed a new end-to-end FOIA system to automate and integrate nearly all aspects of ATF's FOIA processes. EOIR transitioned to a case management system that allows

requesters to submit their FOIA request online, track its status, and receive the final response electronically. EOUSA also transitioned to a new case management system and is developing best practices for its use. USMS also procured an automated case management system that provides USMS a central repository for FOIA requests and responses and more fluid redaction capabilities within the system. U.S. National Central Bureau (USNCB) acquired a new case management system, which was set up, deployed, and configured on an USNCB on-premise server as a cost-effective approach for this component's needs.

Several components explored or acquired new technology to improve their e-discovery and document review capabilities, including the use of artificial intelligence-type tools. BOP participated in a pilot program to use artificial intelligence software to help review and redact videos and transcripts of phone calls. OJP is also exploring an AI add-on for their current tracking system.

OIP worked with JMD's OCIO e-discovery team to import the majority of its client officials' records from into its newly acquired e-discovery platform. The incorporation of this e-discovery platform enabled OIP to access records in less time, thereby decreasing the wait time to review initial searches, and facilitate the review of potentially responsive records and close cases.

CRM's FOIA/PA Unit acquired a new e-discovery tool that offers more functionality for reviewing records and support for the litigation support team.

The Civil Division's use of advanced technology has enabled the Division to leverage shared resources within the Division used in e-discovery including sorting, searching, and de-duplicating functionalities. This allows the Division to efficiently narrow the scope of the universe of records and make responsiveness determinations. In addition, the Civil Division often attends meetings and demonstrations showcasing the newest and most innovative document review technology on the market.

DEA's FOIA Office acquired and implemented an electronic document review system, which allows for more efficiency in review by leveraging e-discovery technology to quickly filter, de-duplicate, and categorize responsive content in large volumes of records. DEA also acquired the technology needed to redact video/audio records and trained staff on its use.

ENRD is testing the use of a new document management, review, and coding tool. ENRD has transitioned most of its FOIA processing to an online document review system to facilitate effective and efficient review, ensure consistent disclosures, and improve response times.

Additionally, components took advantage of training opportunities to enhance staff capabilities in FOIA processing. FOIA Staff from several components, including CRT, OIG, and OJP, attended the User Conference hosted by their case management system vendor. The FOIA staff at CRT also attended Administrator Training and bootcamp for their e-discovery platform. An OPR FOIA staff member was trained on proper analysis, compilation, and review of search results for JMD's e-discovery system.

Other components are using existing technologies in new ways. For example, the

Tax Division's FOIA Office has modified the way it uses its existing technology and personnel. In the past, the Division used an e-discovery tool to process requests involving records medium to large in size; the FOIA Office has expanded the use of this tool by lowering the number of pages it deems to constitute the medium size category. The FOIA Office has increased its collaboration with the Information Technology group with regard to the search and collection of electronically stored information potentially responsive to certain complex requests. In the past, the Division's FOIA specialist and non-FOIA paralegals assisting with the processing of FOIA requests would conduct searches. More recently, the Senior Division Counsel has delegated most of the electronic searches, particularly searches of e-mails, to its Information Technology (IT) personnel. This approach enables the FOIA team to spend more time on review of records already collected in response to pending requests. Moreover, the IT staff has the ability to record accurately and efficiently the details of its electronic searches.

In FY 2021, the FBI enhanced its system with upgrades to letter templates, enabled report modifications and corrections, among other enhancements. The FBI is also exploring functionality enhancements within the integrated eFOIPA portal system. The eFOIPA portal system allows the receipt of FOIPA requests online and delivery of certain FOIPA correspondence and releases via an online delivery system. The FBI is evaluating the expansion of integrated technology to allow automatic batch search correspondence to be delivered electronically to requesters through the eFOIPA portal. This would reduce the amount of time it takes to print and mail hard copies to requesters. The next generation upgrade will allow for future enhancements that include predictive automated redaction toolsets and expanded automated searching functions to further assist in the timely and accurate processing of FBI records and information.

Finally, components have worked to improve their search capabilities. The Civil Division has increased efforts to utilize new software that includes sorting, searching, and de-duplicating functionality. ENRD uses search functions built into its document management tools, as well as the search functions built into Microsoft Outlook programs to search and collect responsive FOIA documents. 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. OLC has benefitted from working with the specialists with the Office of the Chief Information Officer (OCIO) to develop a workflow allowing OLC to directly submit email data requests into OCIO's tracking system, eliminating a step in the email search process.

### **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 that they 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. In accordance with OIP's 2013 [Guidance for Quarterly Reporting](#) and [updated Guidance](#) issued in 2021 the Department posted all of the required quarterly FOIA reports for FY 2021.

During the reporting period, the Department launched a revamped Data page on FOIA.gov that improves the user experience in accessing both [Annual](#) and [Quarterly FOIA Report](#) data. The public can now search [Quarterly FOIA Report data](#) from 2021 and 2022 for any agency via the site, download the data in .csv format, and will be able to view historical data added over time. Previously, users could only view the current fiscal year's quarterly data. The site also streamlined the Quarterly FOIA Report data submission process for agencies, as reflected in OIP's updated [Guidance for Quarterly FOIA Reporting](#).

### **Raw Statistical Data from Fiscal Year 2020 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 2020 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:**

Components implemented best practices and devised innovative methods of addressing many of the challenges related to the use and acquisition of FOIA technologies.

Some components implemented, or will implement, new technology and databases to improve their FOIA administration. For example, to address the time to enter records into PRAO's searchable database, PRAO has contracted for the development of a new database system that will decrease data entry time and improve the efficiency of searches. As another example, the FBI allocated funding to install the Operational Wide Area Network to convert, process, and store media related to FOIPA requests in response to an increasing level of audio, visual, and photographic media presence within FBI case files and in order to mitigate the risk of introducing malware to FBI systems,.

The Department engaged in several practices to promote the successful and efficient use of new technologies. These best practices include sharing component experiences with various technological systems and pilots, and pooling resources when acquiring new technology. For example, PARDON uses the same system for FOIA as it does for other case management purposes, which enables staff to constantly monitor and review cases, and reduces time needed to learn and manage two different types of technologies.

DEA has found that ensuring staff are adequately trained to use new technology is very important for successful implementation. DEA found training that offered a more hands-on approach that used samples of records for processing in test environments allowed staff to feel comfortable with the technology before using it to process active cases.

As a member of the Small Component Working Group, USNCB advocates for collaboration between large and small components when soliciting for new FOIA software that is cloud based, to benefit from potential price discounts or cost-sharing. This is aimed at helping smaller components with smaller budgets to be able to afford new tracking and processing software that is cloud based.

The Department also achieved interoperability with the National FOIA Portal in accordance with the [joint guidance](#) establishing interoperability standards that was issued by the Department and the Office of Management and Budget's (OMB). 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. The joint 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 are required to achieve full interoperability with the National FOIA Portal by accepting requests through a structured API. Agencies with non-automated solutions achieved interoperability by accepting FOIA requests through the National FOIA Portal via a structured email to a designated e-mail box. Apart from a small number of components that were granted an extension under the guidance, the Department achieved interoperability in accordance with the memo by the end of Fiscal Year 2021.

However, Department components faced certain challenges with the use of technology. Often the technologies that FOIA professionals use to search and review records are not specifically designed with FOIA in mind. For example, OPR currently uses two database systems to track and store FOIA-related materials. Neither was designed to handle the FOIA workflow efficiently. Database software designed for FOIA intake, storage, review, and correspondence would increase efficiency and would allow OPR to compile all documents located in one system under one request number and more efficiently organize the case files. Also, FOIA-specific software would eliminate the need to convert non-PDF documents into PDF for review and redaction processing and would also allow OPR to store and find all the information for each case in one system.

To help address some of these technical issues, the Department's IT and FOIA Offices have built strong relationships that enable the Department to make the most of available technologies by sharing best practices across the agency. By working closely with our technological experts and conveying the unique nuances of the FOIA process, we can ensure that the technology we use is leveraged to its fullest extent for FOIA purposes.

Another common challenge among 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.

Components identified several other challenges, including the need for sufficient resources, the need to modernize database software for tracking FOIA requests, and the capacity to run large searches across multiple custodians.

Finally, although new technologies will likely create efficiencies in the long term, implementing new technologies creates challenges in the shorter term. For example, the ATF has implemented a new case management and record processing system, but these new tools require training and changes in the way the agency operates. While these changes will ultimately improve operations, there is a learning curve for the new technology to be effectively understood and fully implemented. With the new tools, there is a greater focus on methodologies more closely aligned with e-discovery, and this has been a great paradigm shift for many staff in how records are retrieved and processed. In addition, ATF does not have centralized system for finding information across the Bureau. Information is housed in dozens of different systems and offices. Integration of record keeping systems across the Bureau would improve its ability to search effectively and efficiently. ATF is currently building a comprehensive SOP to leverage its new system most effectively.

## **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 2021 Annual FOIA Report. During FY 2021, the Department processed 75,511 requests, and successfully closed all of its ten oldest requests, appeals, and consultations from FY 2020.*

### **Simple Track:**

The Department uses multi-track processing to manage its FOIA administration. The Department's overall average number of days for processing simple track requests during FY 2021 was 69.58 days. The Department recognizes that this average processing time requires improvement and is working to identify ways to improve. In addition, as explained below regarding backlogs, the Department's processing times were also impacted by COVID-related closures and/or limited access where a physical presence was required to conduct a search or review records. The processing times were similarly impacted by the lengthy closure of the FRCs. Notably, however, fourteen of the Department's components processed their simple requests in an average of twenty days or less. Approximately 58.55% of the requests processed by the Department in FY 2021 were categorized as simple requests.

### **Backlogs – Requests and Appeals:**

#### *Requests*

The Department responded to 75,511 FOIA requests in FY 2021. Despite challenges presented by COVID-19, twelve of the Department's components processed more requests in FY 2021 than in FY 2020. The Department's overall request backlog increased from 29,933 to 49,959, and overall, the Department processed fewer requests than in FY 2020. The Department's request backlog amounted to 51.25% of the total number of requests received in FY 2021. While the Department's overall backlog increased, all but three components either maintained a zero backlog, reduced their backlogs, or had a more modest increase of less than one hundred requests.

The number of requests the Department processed and the increase in backlog is largely due to COVID-19 related issues outside the control of the components' FOIA offices. The increase in EOIR's backlog (an increase of 18,812) accounted for nearly all of the Department's backlog increase. EOIR's backlog increased for several reasons. As noted above, many requests to EOIR are for records maintained at FRCs, which were closed for most of FY 2021, and immigration courts, which were closed until June 2021. As a result, EOIR was unable to conduct a majority of its searches for records. In addition, during FY 2021, EOIR received approximately 10,000 more FOIA requests than usual, and received approximately 20,000 requests in the last quarter of FY 2021, making it difficult to process those requests in a condensed period of time before the end of the fiscal year.

BOP had an increase in its backlog of 860 requests, largely resulting from staff reallocations to respond to the pandemic. During the pandemic, BOP's resources were

reallocated to address prison's institutional demands that were exacerbated by COVID-19 protocols. In addition, BOP staff responsible for responding to FOIA requests were also assigned to respond to compassionate/home release requests, contributing to BOP's backlog increase. The other most commonly cited challenges contributing to the overall backlog increase were the increasing complexity of requests, staff shortages and turnover, and increased litigation demands.

Components also noted learning curves associated with hiring new staff or switching case management systems, and higher demands on FOIA personnel to complete non-FOIA tasks. Additionally, components reported the complexity of requests and the ratio of staff to workload that made it challenging to timely close larger cases. Components often list several of these reasons simultaneously impacting their backlog during the reporting period.

Components that did not have a significant backlog also proactively implemented strategies intended to maintain or improve processing times. For instance, CRT continuously explored opportunities to incentivize staff to retain qualified and enthusiastic FOIA Professionals, allowing the Division to benefit from their institutional knowledge and camaraderie. FCSC increased its use of template responses to speed up the response time for requests and improve consistency of responses. JMD's FOIA Program will address its backlog with the assistance of contractor or detail support while also exploring a triage approach to help to prevent further backlog buildup.

### *Appeals*

The Department received 2,614 administrative FOIA appeals in FY 2021 and adjudicated 2,771 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 443 to 378 appeals. Notably, this represented just 14.46% of the total number of appeals the Department received in FY 2021.

### **Backlog Reduction Plans:**

In the 2021 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 continued impact of the pandemic on its FOIA programs and an increase in the complexity of requests and FOIA litigation.

Moving forward, the Department remains committed to backlog reduction and will continue to take affirmative steps to achieve that goal in FY 2022.

EOIR has already taken a number of steps to help address its backlog and improve efficiencies going forward. EOIR plans to leverage its new FOIA case management system to monitor request progress and change its practice to deliver documents electronically for download rather than on CD, which will eliminate duplication of effort and conserve time. EOIR is also working to refill vacant FOIA positions and add up to four GIS positions. In addition, as noted above, EOIR implemented the ECAS system, which allows an attorney of record to access court filings and appeal information electronically, which will allow EOIR FOIA staff to focus on reducing backlog. EOIR also plans to authorize overtime to close backlogged requests and 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. Most significantly, EOIR recently announced a new policy to its stakeholders on accessing immigration court proceeding records, which comprise the majority of EOIR's FOIA requests. Any party to a proceeding and their representative may obtain copies of the official record of proceedings directly from the immigration courts without the need for a FOIA request. All these efforts combined are aimed at providing records to requesters as quickly and efficiently as possible.

BOP actively manages the status of all backlogged requests. BOP FOIA professionals plan to conduct more searches for requests seeking statistical records using BOP's Management Analysis Portal, reducing the number of requests for documents sent to other offices. BOP is improving communication between FOIA professionals and records custodians to assist custodians in understanding records requests. BOP will seek clarification and narrowing of requests to improve customer service and response times for requests. BOP will also post more records on its web page to reduce the number of new requests. To maximize expertise of FOIA professionals, BOP assigns requests seeking similar records to the same processor. BOP will continue to conduct mini surges to close requests within a few weeks. Finally, BOP plans to hire FOIA personnel to replace staff who have left the Department.

Other components will likewise focus on reducing their respective backlogs. For example, OIP will continue with its backlog reduction efforts that are part of the Component Improvement Initiative. OIP will also work with components on the new challenges that occurred this past fiscal year. Several components have also reported plans to continue with the efforts they started last year, particularly those components that saw backlog reduction.

ATF's backlog reduction plan focused on several fundamental elements: human capital, technology, process improvement, and direct engagement with the requester community. ATF continued to reduce its backlog and critical elements within its overall strategy or plan were achieved in FY21. Most notably, ATF deployed new enterprise technology, and created and hired for several new positions.

DEA's FOIA Office was reorganized at the beginning of FY 2021 to allow for more efficient management of complex FOIA requests and litigation. As part of the reorganization, three specialized units were established: Intake, Processing, and Legal and External Affairs, each led by a GS-14 Unit Chief. This reorganization was intended to strengthen the FOIA Office's ability to handle the growing demands placed upon staff. The addition of GS-14 level supervisors within the FOIA Office is intended to assist DEA in reducing the backlog in the future. The FOIA Office's management team meets on a regular basis to discuss the ten oldest cases and they work closely with their team members to move

the oldest cases toward closure. The managers ensure requesters are kept informed of the status of their requests and they work with their staff to conduct rolling releases whenever possible.

The FBI's FOIPA Program's backlog reduction plan is tied to a strategic goal: a commitment to develop and leverage advances in technology that will enhance and elevate current system processing capability by automating manual processes. The FBI's backlog reduction plan includes additional staffing; enhancements to the case management system, prioritizing processing needs; specialized teams such as the special litigation teams, high-volume requester team, the initial processing operations team for consultations, and an automated request processing and review team. Perhaps the most impactful team is the small-case team. The team was established to prioritize quick and efficient release of records for small track cases. These special teams have substantially increased the FBI's processing capabilities and are integral to keeping pace with case closures.

USMS plans to address the backlog through the continued implementation of its new case management system and additional staffing.

### **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 ten of its ten oldest pending requests, appeals, and consultations from FY 2020. At the end of FY 2021, the oldest appeal pending at OIP was from October 2019.

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, ATF plans to focus on resolving any request that has been pending for more than 180 days. The Civil Division seeks to close all consultations from the prior calendar year by the end of each fiscal year while continuing to focus on closing the oldest requests.

The FBI has a strategic goal of closing all consultations received within one year of receipt date. These pending consultations are tracked monthly. Coordination with each unit is conducted to determine a status update regarding the pending consultations to ensure a timely completion to strengthen confidence within the requester community.

Components that have been successful in closing their ten oldest requests and appeals have used several strategies including hiring staff, assigning staff to work on consults specifically, and prioritizing closure of the ten oldest requests and consults while simultaneously keeping up with incoming requests in order to reduce their backlogs. Sixteen components did not have any pending consults.

## 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. Enhancements during the reporting period included updating the Agency Manager and Administrator Guides for FOIA.gov, making improvements to the agency Annual FOIA Report tool that make submitting large agency reports more efficient. The Department also explored the feasibility of providing new features for the site, such as graphic representations of FOIA data in FOIA.gov, a Guided User Experience for requesters to determine where and how to submit a proper request, and the potential for two-way communication between FOIA.gov and agency FOIA case management systems. OIP also began Phase 3 of its 10x partnership to improve searchability of records across agency FOIA Libraries. In 2021, 10x began to investigate 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 creating 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 to develop a prototype as part of Phase 3.
- The Department's Program Offices more than doubled their proactive disclosures since FY 2020. Within the Department the Civil Rights Division, DEA, and OJP had the most significant increases in the number of proactive disclosures. These components, along with OIP and Antitrust accounted for 92% of the Department's Program Office proactive disclosures. While other components with smaller numbers of postings also had significant increases in postings since FY 2020.

### *Other Success Stories Reported by the Department's Components*

- The Antitrust Division closed a near-record total of FOIA requests and consultations in FY21, despite fewer FOIA personnel compared to prior years.
- The FBI FOIPA program reduced its FOIA backlog in FY 2021 compared to FY 2020 by rapidly adjusting its queue management strategy upon return from the limited staffing due to the COVID-19 pandemic. The FBI distributed more simple cases across the Section, including disclosure processing support units at remote locations. Additionally, the FBI closed more requests by implementing a flexible distribution model focused on initial processing analysts work queues. The FBI also modified some initial review practices connected to its automated search function which enhanced responsiveness to common types of requests.

- OCDETF identified the need for a full time OCDETF FOIA/Privacy Act Attorney, who was hired in late FY21. This attorney is currently addressing both the short and long terms needs of the component, from working on the backlog to determining the component's future needs for dedicated FOIA management and processing systems.
- This reporting period, after several prior requests for a sub-set of enforcement data the EOUST collects, and discussions within the Government Information Working Group, it was decided that personnel from EOUST would proactively post this data on a quarterly basis in the USTP's FOIA Library. As a result, EOUST did not receive a single FOIA request for this information once it began posting the material proactively, and instead of spending time on the processing of these requests, which requests were extremely time consuming to process, EOUST was able to focus on responding to other types of requests, which contributed to a decrease in EOUST's overall processing time.