



UNITED STATES DEPARTMENT *of* JUSTICE

# *Office of Information Policy Updates*

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## **Office of Information Policy (OIP)**

- Encourages and oversees agency compliance with the Freedom of Information Act (FOIA)
- Develops government-wide policy guidance on FOIA
- Provides legal counsel and training to agency personnel
- Issues reporting guidelines, works with agencies to fulfill reporting obligations, and reviews agency progress in administering the FOIA
- Manages the Department of Justice's FOIA obligations

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## OIP Updates & Resources

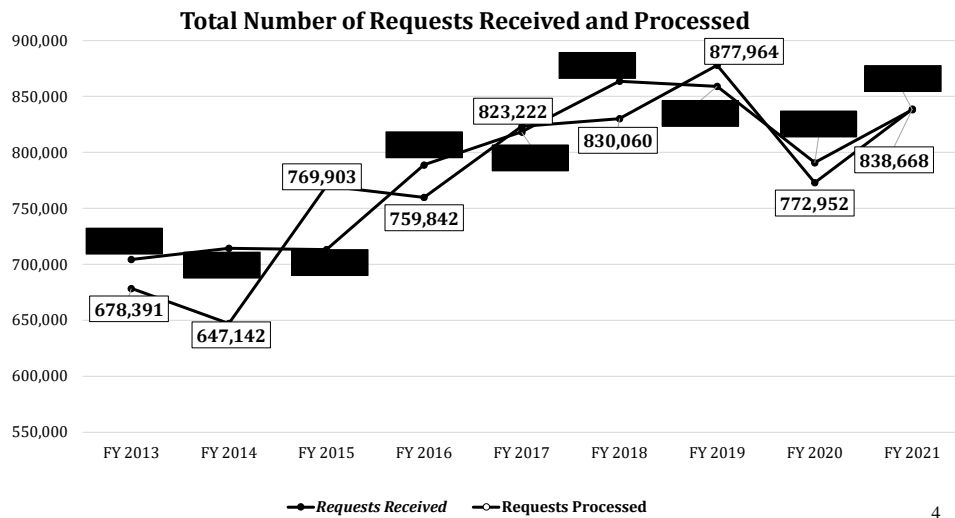
- FOIA Data
- Attorney General’s 2022 FOIA Guidelines
- OIP Resources
- Chief FOIA Officers Council
- National FOIA Portal on FOIA.gov
- Current Challenges and Best Practices in FOIA Administration

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## FOIA Requests Received & Processed



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## **FOIA Data – Fiscal Year 2021**

- Over 75% of all FOIA requests were received and processed by 5 Departments: Homeland Security, Justice, Defense, Health and Human Services, and Veterans Affairs
- Disposition of requests:
  - Information released in 60% of requests processed
  - Less than 5% of cases fully denied based on the use of an exemption
  - Remaining 35% of requests closed for procedural reasons
- 37.3 million (a)(2) proactive disclosures posted

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## ***Attorney General's 2022 FOIA Guidelines***

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## **Attorney General FOIA Guidelines**

- Attorney General Garland announced new FOIA Guidelines on March 17, 2022
- New Guidelines update and strengthen our commitment to FOIA
- OIP will be issuing guidance to aid agency implementation
- OIP will also be reviewing and updating FOIA reporting guidelines

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## **Attorney General FOIA Guidelines**

### **Applying a Presumption of Openness**

- Emphasizes FOIA's foreseeable harm standard
- "In case of doubt, openness should prevail"
- Encourages discretionary disclosures where appropriate
- When we cannot make full disclosures should consider whether partial disclosures are possible

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## Attorney General FOIA Guidelines

### **Applying a Presumption of Openness**

- Agencies should confirm the application of the foreseeable harm standard in their response letters.
- Language that can be used: *“Please be advised that we have considered the foreseeable harm standard when reviewing records and applying FOIA exemptions.”*
- Agencies may consult with DOJ when there are close cases.

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## Attorney General FOIA Guidelines

### **Proactive Disclosures**

- Agencies should post frequently requested records as soon as feasible.
- Agencies should maximize efforts to most more records online quickly and systematically before receiving a request.

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## Attorney General FOIA Guidelines

### **Removing Barriers to Access**

- Examine alternative means of access
- Ensure FOIA websites are navigable and records are presented in the most useful, searchable, and open formats possible.
- Review FOIA programs to ensure searches, reviews, and productions of records are done as efficiently as possible.
- Work actively with requesters and communicate promptly (see OIP Guidance)<sup>11</sup>

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## Attorney General FOIA Guidelines

### **Ensuring Fair and Effective FOIA Administration**

- Chief FOIA Officers should:
  - Comprehensively review their agency's FOIA administration
  - Carefully review backlogs of requests and evaluate the allocation of agency resources to FOIA operations
  - Participate in CFO Council
- Provide regular FOIA training for the entire workforce<sup>12</sup>

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## **Attorney General FOIA Guidelines**

### **Ensuring Fair and Effective FOIA Administration**

*“The federal government could not process the hundreds of thousands of FOIA requests that are received every year without its dedicated FOIA professionals. FOIA professionals deserve the full support of their Chief FOIA Officers and all their agency colleagues.”*

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## ***OIP Resources***

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## OIP Guidance

Recent guidance:

- Guidance for Further Improvement Based on 2021 Chief FOIA Officer Report Review and Assessment
  - Importance of FOIA training; Planning ahead and leveraging lessons learned; Standard Operating Procedures; FOIA regulations
- Guidance: The Supreme Court's Exemption 5 Ruling in U.S. Fish & Wildlife Service v. Sierra Club, Inc.

All guidance available at <https://www.justice.gov/oip/oip-guidance>

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## DOJ Guide to the FOIA

- Comprehensive legal treatise on the FOIA
- OIP continues to make rolling updates to individual chapters, recently including:
  - Procedural Requirements
  - Exemptions 3, 4, 7, 7(A), 7(B), 7(C), 7(F), 9
  - Exclusions
- Agencies are encouraged to use the Guide in conjunction with other resources provided by OIP.

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## Court Decisions

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

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## Court Decisions

Court decisions can be viewed chronologically, or searched by topic, text, or date. Users can subscribe to receive email updates.

**VIEW COURT DECISIONS CHRONOLOGICALLY**

March 12, 2021  
Citizens for Resp. & Ethics in Wash. v. DHS, No. 20-1400, 2021 WL 950415 (D.D.C. Mar. 12, 2021) (Cooper, J.)

March 11, 2021  
Jud. Watch, Inc. v. HHS, No. 19-00876, 2021 WL 930350 (D.D.C. Mar. 11, 2021) (McFadden, J.)

March 10, 2021  
ACLU Immigrants' Rts. Project v. ICE, No. 19-7058, 2021 WL 918235 (S.D.N.Y. Mar. 10, 2021) (Daniels, J.)

March 10, 2021  
Grey v. Cuccinelli, No. 18-01764, 2021 WL 914245 (D.S.C. Mar. 10, 2021) (Norton, J.)

March 9, 2021  
Kwoka v. IRS, No. 19-5310, 2021 WL 865347 (D.C. Cir. Mar. 9, 2021) (Tatel, J.)

[MORE COURT DECISION SUMMARIES »](#)

**SEARCH COURT DECISIONS**

**Topic**  
- Any -

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-Year

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## FOIA Self-Assessment Toolkit

- To incorporate changes in FOIA law and policy, OIP looks forward to soon releasing an updated “Self-Assessment Toolkit” that covers FOIA administration from request intake to the maintenance of agency FOIA websites.
- The updated toolkit will:
  - Include new modules for proactive disclosures and administrative appeals.
  - Incorporate additional technology-related milestones into existing modules.
  - Include a fillable version to more easily facilitate agency completion of each module.

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## FOIA E-Learning Training Modules

OIP has updated three e-learning FOIA training modules:

- Executive Briefing Course
- FOIA for Federal Employees
- FOIA for FOIA Professionals

Courses will soon be available to agencies upon request so they can load them into their own learning management systems (LMS). We are also working to make the courses available at a link online for agencies that do not have an LMS.

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## FOIA E-Learning Training Modules

Select any image to learn more. You must select each image to continue the course.

FOIA Professionals Course contains six modules covering all aspects of the FOIA process and agencies' obligations under the FOIA.

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## FOIA E-Learning Training Modules

Select each marker to decide which records are subject to the FOIA.

Interactive learning activities reinforce content and test users' skills throughout the course.

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# FOIA E-Learning Training Modules

FOIA Insights allow users to learn practical tips from FOIA professionals.

**Exemption 5:**

Exemption 5 protects inter- or intra-agency records that are normally privileged in the civil discovery context. What does it mean for a record to be "inter- or intra-agency"? In most instances, this means that the records were created by a federal government agency and exchanged within or between agencies. Generally, when agencies receive the help of an "outside consultant" who provides neutral, expert advice to a federal agency, communications with that consultant are considered to be "intra-agency" records. If a record satisfies the criteria, it may be protected under Exemption 5 if it is also covered by a civil discovery privilege.

the three most common legal privileges used by federal agencies under Exemption 5:

- Deliberative process privilege
- Attorney-client privilege
- Work product

Select this FOIA Insights button to hear some insights about Exemption 5.



## Chief FOIA Officers Council



## Chief FOIA Officers Council

- For details on upcoming meetings, see OIP's and OGIS's CFO Council page.
- Over the past year, the **Technology Committee**:
  - Published white papers on FOIA Searches – Key Challenges and Findings and Best Practices for Video Redaction
  - Organized the NexGen FOIA Tech Showcase, featuring two days of vendor presentations (videos available online)
  - Updated its working groups: Search/AI, FOIA IT Platforms, Data, IT Integration, 508 Compliance, FOIA and Classified, Technology Best Practices, FOIA Reference Model

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## Chief FOIA Officers Council

- The **Committee on Cross-Agency Collaboration and Innovation** formed 3 working groups:
  - **Government Information Specialist (GIS) Professionalism:** Review and promote initiatives for clear career trajectories for FOIA professionals, building on the GIS job series and in coordination with existing agency efforts.
  - **Pandemic/Virtual FOIA Offices:** Review lessons learned from the pandemic to transform FOIA offices to thrive in fully virtual and hybrid environments.
  - **FOIA Resources:** Provide information on accessing revenue streams and resources that would particularly benefit smaller agencies.

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## *National FOIA Portal on FOIA.gov*

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## National FOIA Portal on FOIA.gov

FOIA.gov

Thank you for visiting FOIA.gov, the government's central website for FOIA. We'll continue to make improvements to the site and look forward to your input. Please submit feedback to [NationalFOIAPortal@doj.gov](mailto:NationalFOIAPortal@doj.gov).

Learn about FOIA ▾ Before you request ▾ Create a request ▾ Agency FOIA data ▾ Agency login

The basic function of the Freedom of Information Act is to ensure informed citizens, vital to the functioning of a democratic society.

This site can help you determine if filing a FOIA request is the best option for you and help you create your request when you're ready.

[Tips for making a request](#) or [Start your request](#)

Do research and determine if you need to make a FOIA request, then get ready.

[Do research before you request](#) + [Identify the right agency](#) + [What happens next](#) +

- 2011: Launched as a “dashboard” for agencies’ Annual FOIA Report Data.
- 2018: National FOIA Portal released, allowing requesters to submit a request to any agency from a single site.
- 2019: DOJ/OMB issued guidance for achieving interoperability
- Present: Agencies achieving full interoperability and continue to maintain their agency and component pages

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## Future Efforts

- OIP is planning to enhance FOIA.gov with a “guided requester” feature that would help the public:
  - Locate information that is already publicly available
  - Identify the correct agency to which they should submit their FOIA request
- Goals: Make it easier for requesters to find information that is already online and minimize misdirected or unnecessary requests.
- We look forward to engaging agencies and the public in this effort in the coming months.

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## *Current Challenges and Best Practices in FOIA Administration*

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## Technology and Case Management

- Challenge: Finding case management and search tools that are cost effective given limited budgets and time involved in researching and acquiring new systems.
  - Cross-government collaboration through committees and events to improve agency access to advanced technology
  - Increased trend of agencies working with IT staff to conduct searches more efficiently
  - Agencies piloting systems more frequently to continually evaluate new tools

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## Hiring and Retaining FOIA Staff

- Challenge: Agencies report lack of qualified staff due to experienced staff leaving and difficulty filling positions.
  - COCACI GIS Professionalism working group focus on developing more career paths for FOIA
  - Increased trend of agencies cross-training non-FOIA staff or shifting FOIA staff resources around to address surges in FOIA workloads
  - Some agencies have leveraged detailees and increased contractor support
  - Importance of SOPs

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## Volume and Complexity

- Challenge: Increased volume and complexity of requests, in addition to increased volume and variety of formats of agency records.
  - Agencies report using data and reporting to more effectively manage workloads and actively address older requests
  - Longer term/multi-year backlog reduction strategies for sustainable results
  - Importance of communication

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## Litigation

- Challenge: Litigation can exacerbate processing challenges due to additional time involved and court-ordered productions impacting work on administrative cases
  - Some agencies with higher volumes of litigation dedicate staff to work on litigated requests so that other requests can continue to be processed
  - Proactive communication with requesters is critical to providing requesters what they seek more quickly and lowering likelihood of litigation

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# *Questions?*

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