



UNITED STATES DEPARTMENT *of* JUSTICE

# *OIP Updates & Resources*



# OIP Updates & Resources

- Attorney General's 2022 FOIA Guidelines
- E-Learning Training Modules
- Updated DOJ Guide to the FOIA
- Court Decision Summaries
- Chief FOIA Officers Council and Committees



# New OIP Guidance & Resources

- OIP Guidance for Further Improvement Based on 2021 Chief FOIA Officer Report Review and Assessment
- OIP Guidance: The Supreme Court's Exemption 5 Ruling in *U.S. Fish & Wildlife Service v. Sierra Club, Inc.*
- FOIA.gov and the National FOIA Portal



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*Attorney General's 2022  
FOIA Guidelines*



# Attorney General FOIA Guidelines

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



# Attorney General FOIA Guidelines

## **Applying a Presumption of Openness**

- Agencies should confirm the application of the foreseeable harm standard in their response letters.
- Agencies may consult with DOJ when there are close cases.

## **Proactive Disclosures**

- Agencies should post frequently requested records as soon as feasible.



# Attorney General FOIA Guidelines

## Removing Barriers to Access

- Examining alternative means of access
- Ensuring FOIA websites are navigable and records are easy to find
- Timely disclosure of records
- Good communication with the requester (see OIP Guidance)



# Attorney General FOIA Guidelines

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

- Emphasizes role of Chief FOIA Officers
- Comprehensive reviews & new Chief FOIA Officer Report guidelines
- Regular FOIA training for the entire workforce



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# *FOIA E-Learning Training Modules*



# 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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*Guide to the Freedom of  
Information Act  
Updates*



# DOJ Guide to the FOIA

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



# DOJ Guide to the FOIA

- OIP continues to make rolling updates to individual chapters, recently including:
  - 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 Decision Summaries*



# Court Decisions

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



# Court Decisions

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

**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 - 

**Search Text**

**Post Date**  
-Month   
-Year 

**SEARCH** **RESET**



# Court Decisions

- Users can subscribe to receive email updates whenever new cases are posted, such as last year's Supreme Court case.

*U.S. Fish & Wildlife Serv. v. Sierra Club*, No. 19-547, 2021 WL 816352 (S. Ct. Mar. 4, 2021) (Barrett, J.)

March 4, 2021

*U.S. Fish & Wildlife Serv. v. Sierra Club*, No. 19-547, 2021 WL 816352 (S. Ct. Mar. 4, 2021) (Barrett, J.)

Re: Request for records generated during EPA's rule-making process concerning cooling water intake structures

Disposition: Reversing and remanding Court of Appeals for the Ninth Circuit's affirming in part, reversing in part, and remanding of district court's grant in part and denial in part of parties' cross-motions for summary judgment

- **Exemption 5, Deliberative Process Privilege:** The Supreme Court of the United States holds that "[t]he deliberative process privilege protects the draft biological opinions from disclosure because they are both predecisional and deliberative." The court finds that "[t]he deliberative process privilege protects the draft biological opinions at issue here because they reflect a preliminary view – not a final decision – about the likely effect of the EPA's proposed rule on endangered species." The court finds that "the administrative context confirms that the drafts are what they sound like: opinions that were subject to change." "Consider the regulatory process that generates a draft biological opinion." "The governing regulation distinguishes between draft and final biological opinions by separating the steps at which each is produced." "If the Services prepare a biological opinion, they must 'make available' to the action agency – in this case, the EPA – a 'draft' of that opinion and generally may not issue the final opinion 'while the draft is under review' by the action agency." "This provision thus specifically contemplates



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# *FOIA Self-Assessment Toolkit*



# 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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# *Chief FOIA Officers Council*



# Chief FOIA Officers Council

- For details on upcoming meetings, see OIP'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



# 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. <sup>22</sup>



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*OIP Guidance for Further  
Improvement Based on 2021  
Chief FOIA Officer Report  
Review and Assessment*



# Chief FOIA Officer Report Review and Assessment

- Importance of FOIA training for both FOIA and non-FOIA staff
- Plan ahead and leverage lessons learned to reduce backlogs and processing times
- Develop and maintain current Standard Operating Procedures
- Update agency FOIA regulations



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*OIP Guidance: The Supreme Court's Exemption 5 Ruling in U.S. Fish & Wildlife Service v. Sierra Club, Inc.*



# U.S. Fish & Wildlife Service v. Sierra Club, Inc.

- On March 4, 2021, the Supreme Court issued an opinion in U.S. Fish & Wildlife Serv. v. Sierra Club, 141 S. Ct. 777 (2021).
- Holding: Draft biological opinions, created by the U.S. Fish and Wildlife Service and the National Marine Fisheries Service to address whether a proposed Environmental Protection Agency action would jeopardize the existence of threatened or endangered species, could be withheld pursuant to the deliberative process privilege in conjunction with Exemption 5. <sup>26</sup>



# OIP Guidance: U.S. Fish & Wildlife Service v. Sierra Club, Inc.

- OIP's guidance highlights two key principles from the opinion when applying the deliberative process privilege:
  1. The key consideration in whether a record is final is whether the document communicates a policy or position on which the agency has settled.
  2. When determining whether the agency has settled on a policy or position for purposes of the deliberative process privilege, the agency should consider the “real operative effect” of the record by looking at the record's legal consequences rather than its practical<sup>27</sup> consequences.



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*National FOIA Portal on  
FOIA.gov*



# National FOIA Portal on FOIA.gov

- 2011: Launched as a “dashboard” for agencies’ Annual FOIA Report Data.
- 2018: National FOIA Portal released, allowing requesters to submit a request to any agency from a single site.
- 2019: DOJ/OMB issued guidance for achieving interoperability
- 2021-present: Agencies will achieve full interoperability and continue to maintain their agency and component pages



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 [National.FOIAPortal@usdoj.gov](mailto:National.FOIAPortal@usdoj.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





# FOIA.gov/quarterly.html

- To improve the user experience, OIP redesigned the FOIA.gov Quarterly Report Data page.
- The new page is mobile friendly and searchable across years, agencies, and components. Historical data will be available moving forward.
- Agencies now enter their Quarterly Data directly into FOIA.gov.
- The Quarterly and Annual Data pages can help agencies analyze their FOIA data over time.

### Create a Quarterly Report

FOIA.gov provides a more real-time picture of agency FOIA administration through its display of Quarterly Report data. Each quarter, agencies must provide the number of requests received, processed, and in the agency's backlog. Additionally, agencies must report the status of the agency's ten oldest pending requests each quarter. Users can filter data by agency, data type, and quarter.

- Select Agencies or Components** ⓘ  

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**Agency or Component Name**

  
[+ Add Another Agency or Component](#) [Select All Agencies](#)
- Select Data Type(s)** ⓘ  

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Adding more than one data filter will return results that fit any one of the filters provided. For example, a search for exemption data with the filters "Ex. 5 is 0" + "Ex. 6 is 0" will return data that satisfy either criteria, rather than limiting the results to data that satisfy both criteria.

**Data Type**

  
[+ Add Another Data Type](#)
- Select Fiscal Years** ⓘ  

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2022  2021

[Select All](#) | [Select None](#)
- Select Quarters** ⓘ  

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1  2  3  
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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.



*Questions?*