



UNITED STATES DEPARTMENT OF JUSTICE
CHIEF FREEDOM OF INFORMATION ACT OFFICER REPORT FOR 2013

On his first full day in office, President Barack Obama [directed](#) the heads of all federal executive Departments and Agencies to administer the Freedom of Information Act (FOIA) with a “clear presumption: In the face of doubt, openness prevails.” The President called on agencies to take affirmative steps to proactively make information available to the public and to utilize modern technology to streamline processes as a means to create a more informed citizenry. The President also instructed the Attorney General to issue new guidelines governing the FOIA that would reaffirm the federal government’s commitment to accountability and transparency.

On March 19, 2009, Attorney General Eric Holder issued new [FOIA Guidelines](#) implementing the President’s policy. In his Guidelines the Attorney General emphasized not only the presumption of openness, but also the need for agencies to ensure that they have in place “an effective system for responding to requests.” The Attorney General highlighted the important role played by agency Chief FOIA Officers in ensuring that their agencies effectively and efficiently comply with the FOIA. The Attorney General also directed agency Chief FOIA Officers to annually review all aspects of their agency’s FOIA administration and to report to the Department of Justice on the steps taken to implement the President’s Memorandum and Attorney General’s Guidelines to improve FOIA operations and facilitate information disclosure.

This marks the fourth year in which agencies, including the Department of Justice, have issued a Chief FOIA Officer Report. The 2013 Chief FOIA Officer Report for the Department of Justice details how the Department has continued to improve its administration of the FOIA by both building on our efforts undertaken in the past three fiscal years, and in developing new

initiatives to further streamline our FOIA processes and improve transparency. This 2013 Chief FOIA Officer Report describes many of the Department's accomplishments during the last year, which include processing more requests, releasing information in 94.3% of requests in which responsive material was reviewed for disclosure, averaging less than nineteen days to process requests in its "simple track," increasing the amount of material made available proactively, and utilizing technology to facilitate collection from all agencies of four key FOIA statistics each quarter, enabling the public for the first time to have access to key data on governmentwide FOIA administration throughout the course of the current fiscal year.

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-two separate FOIA offices handling requests made to the various Department components.¹ The range in the number of FOIA requests varies widely between the components, from the Executive Office for Immigration Review (EOIR) which received 23,151 requests in Fiscal Year 2012, one-third of the Department's total, to eleven components which each received less than 100 requests.

The Department has 440 full-time FOIA employees. They are joined by others who work on FOIA part of the time, so that combined, the Department has the equivalent of a full-time FOIA staff of 529 employees. This is virtually the same number as in Fiscal Year 2011, and is fifteen more than reported in Fiscal Year 2010. Despite the relative stability of the FOIA staffing numbers over the past couple years, the Department has continued to increase the numbers of FOIA requests processed each year.

The Office of Information Policy (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 on behalf of itself and the Offices of the Attorney General, Deputy Attorney General, Associate Attorney General, Legislative Affairs, Legal Policy, and Public

¹ During 2012, the National Drug Intelligence Center and Office of Dispute Resolution were consolidated within the Drug Enforcement Administration and Office of Legal Policy, respectively.

Affairs.² The remaining thirty-one 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, with the exception of the United States Parole Commission.

The following report provides a comprehensive review of the steps taken throughout the Department since the issuance of the last [Chief FOIA Officer's Report](#) in March of 2012 to continue to implement the President's FOIA Memorandum and the Attorney General's FOIA Guidelines.

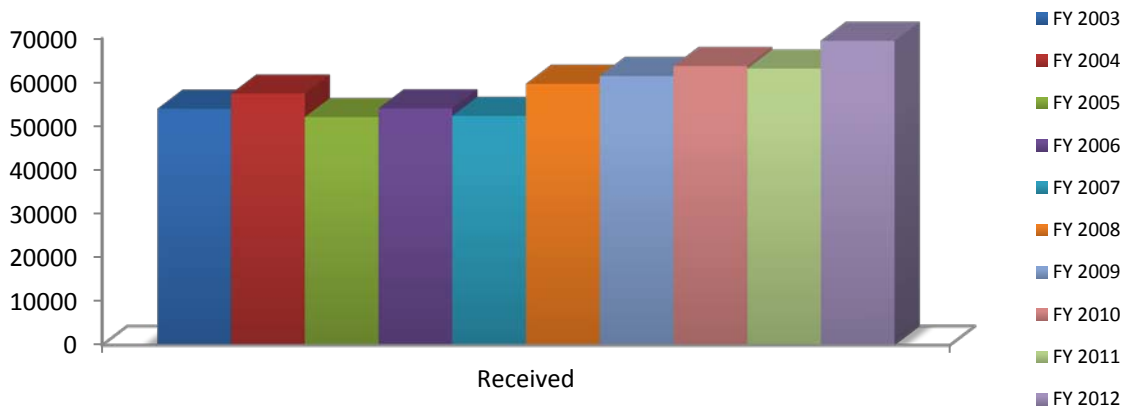
Overview of Fiscal Year 2012

Increased Numbers of Incoming Requests

In FY 2012 the Department received 69,456 requests, the second highest amount of incoming requests for the entire government and the most since the operations of the former Immigration and Naturalization Service (INS) were transferred to the Department of Homeland Security in FY 2002. This reflects a 10.1% increase over FY 2011 and 9.0% more than the Department's previous benchmark of 63,682 requests received in FY 2010. This increase in requests continues a trend seen in the four years since the President's FOIA Memorandum was issued. In the six years prior to the President's Memorandum (FY 2003 through FY 2008), the Department received an average of 54,857 requests per year, and never more than 59,615. In the four years since, the Department has received an average of 64,408 requests per year, and never less than 61,391.

² During 2012, the Office of Intergovernmental and Public Liaison was consolidated within the Office of Legislative Affairs.

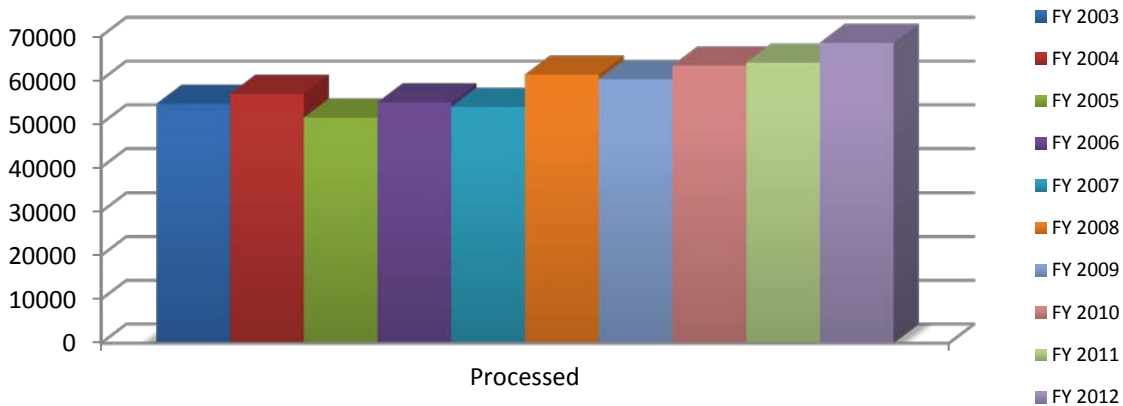
FOIA Requests Received Since FY 2002



Increased Numbers of Requests Processed

In response to the historically high numbers of incoming requests, the Department was able to establish a new benchmark for the number of requests processed. The Department processed 68,531 requests, which is a 7.1% increase over FY 2011 and the most processed since FY 2002. Indeed, for the past four years the Department has increased the number of requests processed each year, despite receiving more than 61,000 requests each of those years.

FOIA Requests Processed Since FY 2002



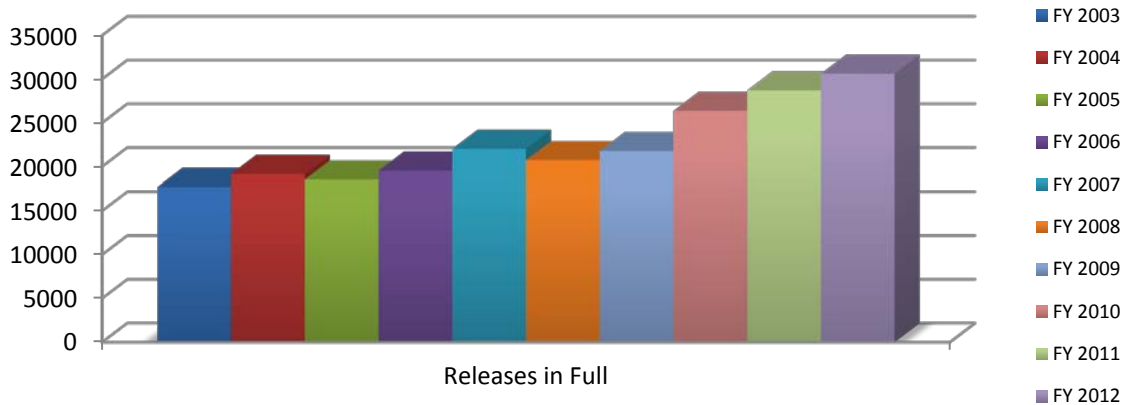
Maintained a 94% Release Rate for the Fourth Straight Year

In processing a historically high number of requests, the Department was able to continue its long-held trend of releasing information to the public. In responding to 40,929 requests in

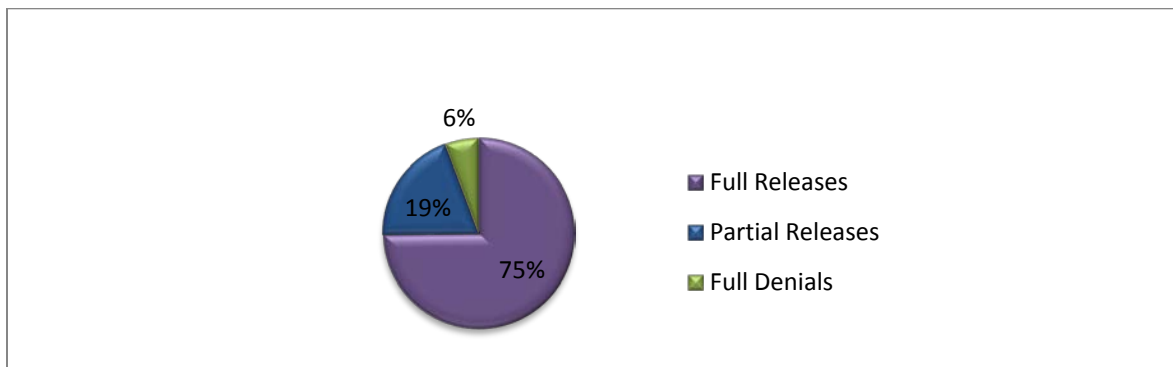
which the Department analyzed responsive records for potential release, the Department released information in 38,592 instances. Termed differently, for 94.3% of requests in which the Department located records and processed them for release, those records were released either in full or in part. This marks the fourth consecutive year the Department has maintained a release rate of at least 94%.

Not only did the Department maintain its high release rate, but it also continued to release more records in full in response to FOIA requests. In fact, in 79.4% of the requests for which the Department released information, it released the records in full, with no information withheld. Specifically, the Department released records in full, without invocation of any FOIA exemptions, 30,623 times in FY 2012, a 6.6% increase over FY 2011. This represents the fourth consecutive year the Department’s full releases have increased. Moreover, it reflects a 40.5% increase over the number of full releases in FY 2009, the year the President’s Memorandum was issued.

Releases in Full Since FY 2002



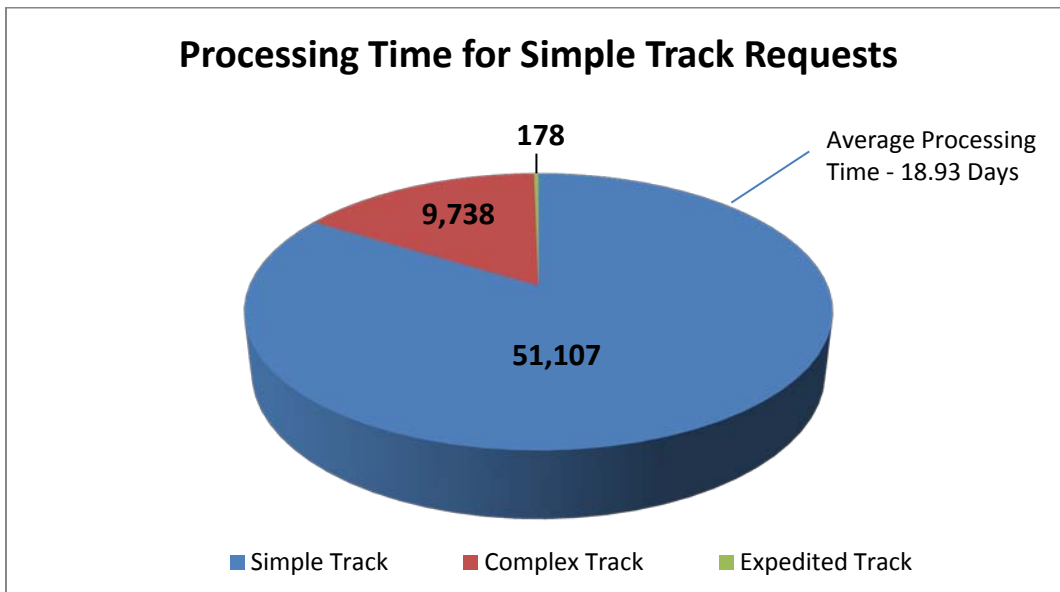
Full Releases, Partial Releases, and Full Denials for FY 2012



Improved Processing Time

After reviewing agencies' 2012 Chief FOIA Officer Reports, OIP issued [guidance](#) suggesting that those agencies that do not have multi-track processing, and which take longer than an average of twenty days to process requests, should consider establishing a multi-track system for processing requests. A multi-track system provides agencies with a mechanism to process "simple" requests in a different queue from "complex" requests, which in turn can allow for improved timeliness for simple track requests. The goal is to process all simple track requests within an average of twenty working days.

The Department met that goal this past fiscal year. The Department improved its average processing time for simple track requests in FY 2012, processing those requests within an average of 18.93 days. This was a reduction from the average of 24.94 days in FY 2011. This accomplishment is all the more significant because requests falling within the simple track make up 75% of the requests processed by the Department. That means that on average for over 51,000 requests the Department was able to promptly respond to the request within an average of less than twenty working days.



I. Steps Taken to Apply the Presumption of Openness

The guiding principle underlying the President's FOIA Memorandum and the Attorney General's FOIA Guidelines is the presumption of openness. The Department has engaged in a number of efforts to ensure that this presumption is fully integrated into its administration of the FOIA.

Training

As the federal office responsible for encouraging governmentwide 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 as well as the policy directives of the President and Attorney General. OIP trains thousands of employees each year, through a variety of training sessions addressing issues ranging from utilizing proper administrative procedures, understanding exemptions, applying the FOIA's fee and fee waiver provisions, achieving transparency through proactive disclosures, improving customer service, and ensuring effective FOIA administration. OIP makes the [training material](#) for these courses and many others available online. OIP's training sessions are open to FOIA professionals within the Department as well as to agency FOIA professionals across the government. The FOIA directives from the President and Attorney General are an integral part of OIP's many training programs, and have been the subject of OIP policy guidance. Moreover, the directives have been incorporated into the processing of FOIA requests throughout the Department.

OIP is continually expanding its training programs. In the summer of 2012, OIP launched its Director's Lecture Series, designed to provide an opportunity for FOIA professionals to interact directly with the Director of OIP on a range of FOIA topics. This series complemented OIP's regular training programs and allowed FOIA professionals from across the government to pose questions and engage in discussion with the Director of OIP. In 2012 the Director's Lecture Series included three specialized training sessions: "Focusing on FOIA Fundamentals," "Achieving FOIA Goals," and "Tracking Agency Progress to Implement the FOIA Guidelines."

Recognizing that travel requirements may limit the ability of FOIA personnel to attend training sessions, during this past year OIP has launched yet another training initiative, offering [video conference training sessions](#) open to all federal employees, with priority given to those outside of the Washington, D.C. area. This use of technology to conduct training is a cost-effective means of reaching a wider audience of federal FOIA professionals. Moreover, in 2012 OIP continued to provide specialized training to agencies on any topic of interest, tailoring instruction to the needs of the particular agency involved.

OIP also held a Department of Justice FOIA Conference specifically for our own FOIA professionals, addressing a range of issues of interest to the Department's FOIA administration. Separately, the Department's components have emphasized the call for transparency within their own offices. Almost every Department component reports either having held or attended a FOIA training session within the past year, with the majority of components having done both. For example, the Office of Community Oriented Policing Services and National Security Division include FOIA training as part of their orientation of all new employees. The Executive Office for United States Trustees (EOUST) provided a presentation at the December 2012 United States Trustees meeting, at which senior EOUST officials discussed a variety of issues related to the FOIA.

The Federal Bureau of Investigation (FBI) continues to set a high standard for training of FOIA staff. By volume, the FBI is the third-largest FOIA component in the Department. However, the requests processed by the FBI are significantly different than those processed by EOIR and the Federal Bureau of Prisons (BOP), the two Department components who received more FOIA requests in FY 2012. Generally speaking, initial requests submitted to EOIR and BOP are first-party requests – requests from individuals seeking records on themselves. While the FBI does receive a significant amount of first-party requests, it also receives requests for records on a wide range of investigatory and historical matters. These requests may concern issues of current, breaking news or matters decades in the past yet still of public interest.

To meet the demand of this voluminous and complex workload, all new FBI FOIA employees receive a three-week training session on the principles of the FOIA. The FBI also conducts a certification program required of employees at each grade level, which includes

formal classroom training, comprehensive exams, on-the-job experience, and supervisor verification. This process requires a minimum of two and a half years of FOIA processing experience before employees are certified. As of the end of FY 2012, 191 FBI employees had completed this certification process.

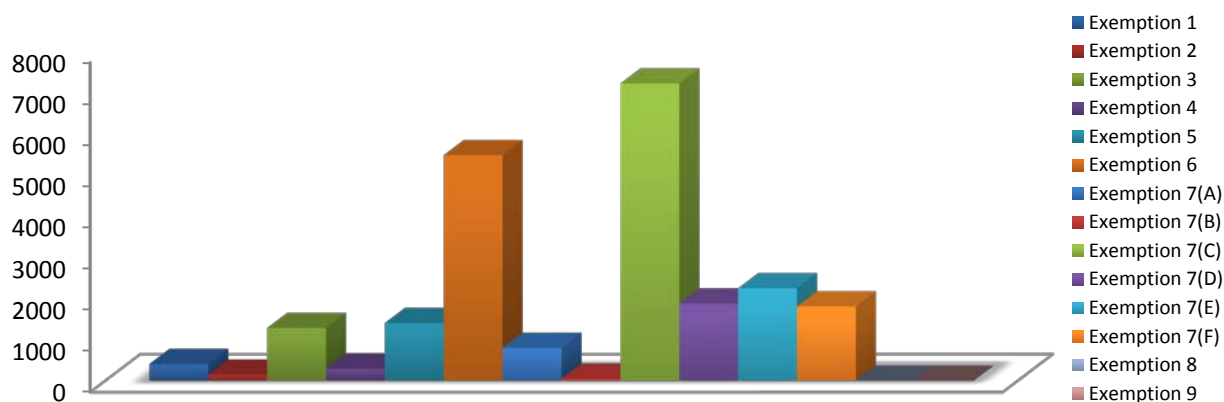
While the appropriate training of agency personnel helps ensure compliance with the President's Memorandum and the Attorney General's Guidelines, OIP has continued its efforts to expand knowledge of these directives outside of the federal government. OIP has continued its [Requester Roundtable series](#), where private individuals meet with OIP's Director and staff to discuss issues of specific interest to the requester community. OIP and Department staff also maintain a close relationship with the American Society of Access Professionals (ASAP), a private organization that brings together agency access professionals with stakeholders from outside the government who share a common interest in FOIA and open government. OIP was awarded the ASAP Directors' Award in December of 2012 for its contribution in providing ASAP members and the public with training on "access, privacy and fair information laws, policies, and practices."

Discretionary Releases

In his FOIA Guidelines, the Attorney General "strongly encouraged agencies to make discretionary disclosures of information." For FY 2012, a wide range of Department components, twenty-nine in total, reported making a discretionary release of material, illustrating that discretionary disclosures have become an integral part of applying the presumption of openness at the Department of Justice.

At the Department the most frequently used exemptions are Exemptions 6 and 7(C), which both protect personal privacy, and which do not afford agencies an opportunity to make discretionary releases.

Department of Justice Exemption Use in FY 2012



The Department has, however, looked for opportunities to make discretionary releases of information protected by other exemptions and has found such opportunities for material exempt under Exemptions 5, 7(D), and 7(E). The discretionary release of certain law enforcement information otherwise protected under Exemption 7 was made in response to requests seeking historical or closed matters, where the Department elected to make a discretionary release to further the public's access to such records, in keeping with the Attorney General's FOIA Guidelines.

As explained in OIP's guidance on the [President's FOIA Memorandum and the Attorney General's FOIA Guidelines](#), it is Exemption 5 that holds the greatest potential for agencies to make discretionary releases and many of the Department's components routinely focus on these types of records in making discretionary disclosures.

Some examples of the discretionary releases made by the Department this past year include:

- Emails discussing the Department's handling of the request for a presidential pardon of the late boxer, Jack Johnson, which were released on behalf of the Office of the Deputy Attorney General;
- The Civil Rights Division's (CRT) release of criminal investigation memoranda providing the legal and factual rationale for actions taken or not taken in specific law enforcement efforts. These memoranda had previously been withheld in full but once the

cases were closed CRT released material as a matter of discretion, protecting only personally identifiable information related to subjects, victims, or witnesses;

- The Criminal Division's release of the 2010 and 2011 Reports on the use of Pen Registers and Trap and Trace Devices by Law Enforcement Agencies, whereas previously only the summaries had been released;
- The Criminal Division also released a historical document sent to the Director of the FBI from the Assistant Attorney General that was protected by the attorney work-product privilege;
- EOIR released deliberative information from internal reports and documents as well as e-mail communications between high ranking personnel;
- EOIR also released statistical data that provides the public with greater understanding of the information being released;
- The Civil Division's most common discretionary releases consisted of deliberative or attorney work-product records that were older than twenty-five years;
- The Executive Office for United States Trustees (EOUST) released e-mails containing deliberative information concerning the civil enforcement efforts of a particular United States Trustees Program (USTP) office;
- EOUST also released internal e-mails concerning a large-scale bankruptcy case, as well as e-mails from a USTP field office concerning the processing of a request;
- Records, including recommendations from the Federal Detention Trustee and memoranda discussing in detail the Office of the Inspector General audit analysis related to intergovernmental agreements for detention services were released on behalf of the Office of the Deputy Attorney General;
- The Foreign Claims Settlement Commission released predecisional material from its Cuba claims program;
- The Environment and Natural Resources Division (ENRD) released an attorney's handwritten notes regarding calls made in connection with a case;
- The Justice Management Division (JMD) released internal comment and recommendation memoranda;
- Records related to a Department memorandum on the Department of the Interior's use of polygraphs in criminal investigations – consisting of a detailed recommendation and

supporting analysis from the Criminal Division regarding the Attorney General's approval of a polygraph policy proposed by Department of the Interior -- were released on behalf of the Offices of the Attorney General and Deputy Attorney General;

- The Office of Legal Counsel released older opinions from prior administrations;
- Talking points drafted for use in a conference call with state Attorneys General concerning the acquisition of sodium thiopental by various states for the purposes of lethal injections were released on behalf of the Offices of the Attorney General and Deputy Attorney General;
- The Tax Division released correspondence between a Department attorney and other government personnel related to an inactive criminal case concerning the requester;
- The FBI routinely releases historic law enforcement information that could legally be withheld under Exemptions 5 and 7(D). Of particular note this past year is the FBI's processing and release of thousands of pages from its Operation SOLO files, which are a chronicle of one of the most successful counterintelligence operations. In releasing these records, the FBI only protected information identifying sources and personal privacy;
- The Office of Professional Responsibility routinely reviews and has released information previously withheld under Exemption 5 from its Reports of Investigation (ROIs), as well as deliberative notes made by its attorneys;
- OIP released draft correspondence including extensive editorial notes and recommendations, and attorney and professional staff deliberative discussions and analysis related to the processing of various FOIA requests and administrative appeals;
- OIP also released the Department of Justice draft White Paper entitled "Lawfulness of a Lethal Operation Directed against a U.S. Citizen Who Is a Senior Operational Leader of Al-Qa'ida or An Associated Force";
- E-mail and "backgrounder" information prepared in preparation for a media interview in connection with the Department's efforts in responding to and investigating the Deepwater Horizon oil spill in the Gulf of Mexico were released on behalf of the Offices of the Attorney General, Deputy Attorney General, and Associate Attorney General;
- Litigation reports, submitted to the Attorney General and Deputy Attorney General by federal prosecutors, detailing developments in a homicide prosecution being pursued as a

result of investigations by the Multi-Agency Homicide Task Force, were released on behalf of the Offices of the Attorney General and Deputy Attorney General;

- Invoicing information regarding a private company's independent evaluation of the Gulf Coast Claims Facility were released on behalf of the Office of the Associate Attorney General and in coordination with the private entity; and
- Memoranda (dating from the 1970's) regarding the FBI's interception of wire communications involving the African Liberation Day Coordinating Committee were released on behalf of the Office of the Attorney General.

These are only some of the many examples of discretionary disclosures made by the Department this past year. These select examples coupled with the Department's sustained high release rate of more than 94% for the past four years, as well as our increase in full releases, all concretely demonstrate that the presumption of openness is fully incorporated into the FOIA processing decisions made at the Department of Justice.

II. Steps Taken to Ensure that the Department Has an Effective System for Responding to FOIA Requests

Information Technology Support, Staffing, and Additional Measures Taken To Ensure an Effective FOIA System

The Attorney General stated in his [Guidelines](#) that "responsibility for effective FOIA administration belongs to all of us – it is not merely a task assigned to an agency's FOIA staff." At the Department of Justice we believe that the effective administration of a FOIA program that continues to see historically high levels of requests requires an efficient system that streamlines techniques, reduces redundancies, and facilitates communication between the appropriate stake holders. Part of this process is ensuring that the Department's components have sufficient information technology (IT) support. Although IT requirements vary greatly throughout the Department, all components continue to maintain strong working relationships with their respective IT support staff, engaging in frequent communication with them, and having excellent rapport.

Over the past year, the Department's components also continued to conduct periodic evaluations of their FOIA systems and workload to ensure adequate staffing. This includes monitoring the complexity and number of requests, the time taken to process requests, and the appropriate use of personnel based on specialized skills. Overall, the Department's total number of "Full-time FOIA Staff" (529 full-time staff) remained unchanged from FY 2011. Some components, however, reported considering additional staffing needs and making efforts to fill outstanding vacancies. These are challenging fiscal times, but as demonstrated by the historic increases in the numbers of requests processed by the Department and the timelines in which they are processed, the Department's FOIA offices are doing more with less.

This is in part the result of the efforts of the Department's components to analyze their own processing systems to make them more effective and efficient. For example, BOP reviewed its FOIA staffing and conducted an internal audit of the strengths and weaknesses of its FOIA program to identify areas of improvement. The FBI, like many other components, also evaluated its FOIA production, training, and staffing needs on a regular basis. EOIR engaged in a self-assessment of its FOIA processes and has made improvements to its process. EOIR generated monthly reports on the status of its FOIA cases to constantly assess its workload and has also streamlined its consultation process. The Criminal Division similarly conducted a program review and evaluation focused on streamlining its FOIA workflow, the use of technology, and employee training. As part of this effort, the Division's Deputy Chief met with OIP and representatives of other FOIA offices within the Department to identify best practices, and the Division's senior leadership recently approved a wide array of programmatic improvements that are now being implemented. EOUST worked to improve its search processes and expedited review of records by training FOIA staff on the use of technology that assists with the searchability of records. Finally, the Civil Division revised its management structure to increase its focus on prompt FOIA processing.

Within OIP, the Office's Initial Request (IR) Staff conducted a thorough assessment of its workflow in processing FOIA requests from beginning to end. Additionally, the IR Staff of OIP regularly communicates with requesters by e-mail or through the Office's online portal whenever possible to facilitate a more efficient exchange of information. Given the amount of time that consultations can add to the processing of requests, the IR Staff also conducted a separate assessment of the Office's consultation process and instituted new practices that have

improved this historically time consuming process. These efforts this past year to improve the Office's processing system has clearly paid off as OIP was able to improve its timeliness in responding to requests.

In order to help improve efficiencies across the Department, OIP also assessed the Department's current consultation and referral procedures and examined opportunities for improvement. As noted above, the process of engaging in a FOIA consultation or referral has historically required some additional time to be added to the overall processing of a request. One of the contributing factors for this is the time lost in transmitting the consultation or referral through the mail, and the uncertainty involved in not knowing when or whether an agency has received the records. More significantly, frequently records require multiple consultations with various agencies or agency components and the coordination of all the views being solicited can be quite time consuming. To tackle this problem for the Department overall, OIP examined a range of solutions including the use of more advanced technology such as shared platforms for document review. After much weighing and analysis, OIP determined that the simplest and most immediately effective solution was to streamline the process through the organized use of e-mail.

Accordingly, on February 21, 2013, OIP issued a [memorandum](#) to all of the Department components providing a new protocol for transmitting consultations and referrals. The memorandum instructed Department components to create a specific e-mail account for sending and receiving consultations and referrals, and to consistently utilize e-mail both to transmit document referrals and to distribute documents for consultation. By using dedicated e-mail accounts the time required for transmitting consultations and referrals should be improved. Further, the new protocol instructs components with records that require multiple consultations to send their request for views on disclosability to all involved components in one e-mail. By doing so, the components in receipt of the consultation will know immediately which other components have been asked for their views, which can be helpful in providing their own views. Similarly, the new protocol requires components to reply to all the components that received the consultation request so that again, the other components can have the benefit of each other's views on the proper handling of the documents. This protocol will allow the Department's components to operate more effectively by creating a collaborative environment for views to be shared, eliminating the need to coordinate various stakeholder views in a piecemeal manner.

This simple set of procedures has the potential to improve coordination, reduce consultation response times, and eliminate costs associated with paper and postage.

In its role as the guidance authority for all government agencies, after reviewing agencies' 2012 Chief FOIA Officer Reports, OIP issued guidance for further improvement. The guidance provided a number of suggestions for agencies to consider for improving their FOIA administration. While noting that more than half the agencies in 2012 reported utilizing advanced technology to help with core FOIA processing tasks like improved document searches, streamlined consultation processes, and more efficient document review, OIP encouraged those agencies that had not explored these options to assess the cost effectiveness, as well as the benefits of more advanced technological tools that could be used to achieve greater efficiency in the core elements of FOIA processing. OIP also advised those agencies that did not offer multi-track processing, and which took longer than twenty working days on average to respond to requests, to consider establishing a multi-track processing system. As noted above, a multi-track system provides a mechanism for an agency to process simple requests in a different queue from "complex" requests, which in turn can allow for improved timeliness for the simple track requests. Additionally, by establishing multiple processing tracks, agencies can more readily offer requesters the option of tailoring their request so that it fits within the simple track and can be processed more quickly.

***Continued Active Engagement of Chief FOIA Officer and
Coordination with Open Government Team***

The Associate Attorney General serves as the Department's Chief FOIA Officer. He is the most senior Chief FOIA Officer within the government and has been actively engaged in improving FOIA, not just at the Department, but across the government as well. The Associate Attorney General continued to regularly meet with the Chief FOIA Officers from other cabinet agencies this past year to discuss their FOIA administration and the full implementation of the Attorney General's Guidelines. The Associate Attorney General also established a FOIA Council within the Department to regularly discuss our FOIA administration with the head of each component. He has also continued to engage with the Department's FOIA professionals,

demonstrating his commitment to providing his support and affording high-level visibility to the administration of the law.

The Open Government Directive directed agencies to develop Open Government Plans to address the three key principles of transparency, collaboration, and participation that drive open government. The development of these plans is conducted by designated open government teams. The Director of OIP, who is responsible for managing the Department's FOIA operations, is a member of the Department's Open Government Team. Her participation ensures a seamless integration of FOIA initiatives with those of open government. In April of 2012, the Department released its latest version of its [Open Government Plan](#), detailing both ongoing and anticipated efforts to increase openness, including the use of technology to achieve greater efficiencies in FOIA administration.

III. Steps Taken to Increase Proactive Disclosures

The President's FOIA Memorandum and the Attorney General's FOIA Guidelines recognize that increasing transparency requires more than improvements to an agency's FOIA process. Achieving a more open government also requires agencies to make proactive disclosures of records of interest to the public, in advance of receiving a FOIA request. The Department continues to increase the amount of material made available on its website and to enhance the usability of that information as well.

New Material Added to the Department's Websites

The Department has embraced the ideals of openness and transparency through regular postings of material to its website. Every Department component³ maintains a FOIA Library on its website to centralize, organize, and publicize proactive disclosures made in connection with FOIA administration and components also frequently post material elsewhere on their websites, locating it where it would best serve the communities most interested in the material. A wealth of information was added this past year to both the Department's [FOIA Libraries](#) and throughout its websites. Some examples of these new postings include:

³ OCDETF is currently developing a component website and, with it, a FOIA Library.

- A listing of all [Federal Firearms Licensees](#) (FFLs), a downloadable list of all FFLs, organized by state;
- The Environment and Natural Resources Division's [FY 2012 Accomplishments Report](#);
- The Criminal Division's [Annual Report to the United States Sentencing Commission](#);
- A listing of all [Purchase Card Holders](#);
- Information concerning the Antitrust Division's September 10, 2012 workshop on [Most-Favored-Nations Clauses and Antitrust Enforcement Policy](#), including eleven workshop presentations and public comments;
- A collection of [Board of Immigration Appeals \(BIA\) Precedent Decisions](#) and an index of interim BIA decisions;
- The [National Caseload Statistical Data](#), covering U.S. Attorney caseloads from October 1, 2004, through December 31, 2012;
- Updates to portions of the [United States Trustee Program Policy and Practices Manual](#), specifically as they relate to [case administration](#) and [ethics](#);
- An updated [Department of Justice organizational chart](#) and those of its [components](#);
- The Department's [Human Capital Strategic Plan](#);
- A collection of [Office of the Inspector General \(OIG\) reports](#) by component;
- Various OIG Reports, including a report concerning [implementation of Section 1001 of the USA PATRIOT Act](#);
- A listing of Antitrust Division [case filings](#);
- A collection of [historical Office of Legal Counsel opinions](#);
- A statistical breakdown of [clemency requests](#) from 1900 through December of 2012;
- A searchable database of [Office of the Solicitor General briefs](#); and
- A listing of Office on Violence Against Women grants awarded by [state](#) or [program](#).

New Quarterly Reporting Requirement

Just this past year, OIP instituted a new quarterly reporting requirement for all agencies. Starting with this current fiscal year, agencies must report four key FOIA statistics each quarter, 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 that quarter, as well as the status of the agency's ten oldest pending requests. This new reporting requirement is specifically designed to provide even greater transparency to the FOIA process by proactively shedding light on agencies' raw statistics throughout the fiscal year and not just at the end. The data for the first Quarter of Fiscal Year 2013 has already been added to FOIA.gov allowing the public to easily access this information from one central location.

FOIA.gov Updated and Enhanced with New Capabilities and Functionality

Launched during Sunshine Week two years ago, FOIA.gov remains the Department's Flagship Initiative under the Open Government Plan and serves as the government's one-stop shop for FOIA data and resources. Among many other functions, FOIA.gov takes the detailed statistics contained in agency Annual FOIA Reports and displays them graphically. The website also allows users to search and sort the data in any way they want, so that comparisons can be made between agencies and over time. This past year the Department continued its efforts to enhance FOIA.gov to provide additional resources and up-to-date information for the benefit of the public. Just this past January, the Department redesigned the "Reports" page of the website to feature Snapshot Reports of Annual FOIA Report data and the new Quarterly Report data that agencies are now required to provide. Additionally, the Department added to the website the data from agencies' Fiscal Year 2012 Annual FOIA Reports so that they too can now be sorted and compared by agency and over time. New charts and graphs show the evolution of key FOIA statistics over the past five fiscal years. FOIA.gov also continued to be updated with recent FOIA news and spotlights on the new releases agencies have made that are likely to be of interest to public.

Making Information More Useful to the Public

The Department continues to make strides in enhancing the usefulness of the material it makes available to the public. For example, in keeping with the Department's commitment to making government more transparent and accessible, the Antitrust Division added a new Spanish

website that is accessible from its homepage and that contains links to some of the Division's commonly searched documents. OIP and the Department added a similar feature to OIP's website and FOIA.gov last year. During the past year, EOIR continued to accept and review public feedback and comments received through the website. EOIR also improved the searchability of its website by using a tool that allows the public to conduct text searches of the records posted on the site.

Several other components have also improved their websites in this way or taken measures to make it easier for interested parties to search for information. For example, the Office of Community Oriented Policing Services made documents available for public download. The Executive Office for United States Trustees provides both statistical records concerning its [Language Assistance Program](#) as well as a codebook that explains the codes used within the raw data. The Office of the Solicitor General provides the capability to search across its online briefs by year, type, and subject, along with providing explanatory material describing how the briefs are organized and their available formats. Moreover, the FBI maintains a negotiation team which assists requesters in identifying the records of specific interest to them. During FY 2012, the FBI's negotiators were able to eliminate over 800,000 pages of material from its review process by simply discussing the records at hand with the requester.

Further, in an effort to reach new audiences in different ways, the Department also continues to maintain a strong presence on various social media platforms, including [Facebook](#), [YouTube](#), and [Twitter](#). In addition to the primary Department accounts on those platforms, many Department components maintain similar accounts that provide information uniquely important to that component. To highlight just a few, the Civil Rights Division, Office of Justice Programs, OIP, FBI, EOIR, and many of the United States Attorney's Offices maintain Twitter accounts that are frequently updated. These accounts provide a constant stream of information of interest to the public related to ongoing litigation, indictments, issuance of guidance, notice of upcoming conferences, press releases, the investiture of immigration judges, and many other topics.

IV. Steps Taken to Greater Utilize Technology

The Department continues to embrace the use of technology to improve all aspects of FOIA administration. Going beyond the use of technology to receive and track requests in order to find technological solutions to help with the core functions of document processing has great potential to significantly improve the efficiency of the FOIA process.

Electronic Receipt of Requests

Electronic receipt of FOIA requests – be it by e-mail or an online portal – is a simple but highly-effective way to make submission of requests easier. To that end, every Department component maintains either an e-mail account solely dedicated to the receipt of FOIA requests or, in the case of OIP, an [online portal](#) through which they can be submitted.

Online Tracking of Requests

Currently, OIP provides electronic tracking of all requests submitted through its portal, and the [FBI](#) and [BOP](#) both also provide tracking services on their websites that will provide a requester with the status on any pending request. Additional Department components have indicated that they are taking steps to establish similar online tracking capabilities.

Through the online tracking capabilities currently available from OIP, FBI, and BOP, requesters are provided with a variety of information concerning the status of their request. This includes information indicating that a search for responsive records is ongoing, that responsive material is pending review, that the Department is awaiting fee payment, that the request has been forwarded to another Department component, or that its processing has been completed. Currently, none of these online tracking systems provides automated estimated dates of completion.

Use of Technology to Facilitate Processing of Requests

OIP has been leading the effort to explore the use of more advanced technologies to assist in the core document processing functions associated with FOIA administration. There are clear advantages to automating what have heretofore been manual processes, such as conducting and refining searches of multiple records custodians and de-duplicating what are frequently thousands of e-mails that are located in response to searches. Employing electronic systems that can consolidate and perform some of these necessary administrative tasks frees FOIA professionals to focus their efforts on reviewing responsive material for disclosure, increasing efficiency and improving timeliness in responding to requests.

Several components of the Department, including OIP, have begun using commercial document management software typically used in the litigation context to assist with FOIA processing. While the advantages to using such “digital tools” were readily apparent to FOIA professionals, the Department thought it important to build the business case for greater use of such tools in the FOIA context. To do so, OIP teamed with the Department’s Civil Division to conduct a pilot to measure the differences that using the digital tools provided.

The pilot program involved four requests of similar size and complexity – two of which were processed using traditional methods, two using digital tools. In the two requests processed using the digital tools, the universe of documents to be searched numbered over four million. By simply running this corpus of records through a software program that identifies duplicate material, more than one million documents were removed from the process. This universe of records was then searched using appropriate date restrictions and terms provided by FOIA personnel, eventually leaving less than four thousand documents identified as responsive to the two requests. Termed differently, 0.08% of the original universe of records was ultimately determined to be responsive to the requests.

The savings in terms of both cost and time are significant. Using traditional means, OIP required over eighty hours to complete its records searches in the two pilot requests processed using status quo methods. Using digital tools, the searches conducted of the other two pilot requests were completed in less than five hours. Moreover, by using digital tools the electronic

material could be searched multiple times simultaneously, using ever more precise terms or entirely new terms identified during the processing of the request, allowing for a more-focused and appropriate search without adding any significant amount of time to the process. When the time required to de-duplicate material was also factored in, significant cost savings were also achieved.

The results of this pilot show the benefit to the FOIA process that digital tools provide. The Department's FOIA personnel, like those around the government, are highly-trained, specialized professionals with expertise in the appropriate application of FOIA exemptions and disclosure policies. Their skills are best utilized when directed towards the review of responsive records, not to the important, though administrative, tasks of conducting records searches and identifying duplicative documents. Put simply, the faster an agency can identify the corpus of records responsive to a request, the faster it can make appropriate disclosure determinations on that material and respond to the requester.

Yet the potential benefits of these digital tools do not end there. Various platforms are available that allow for the electronic processing, review, and redaction of records. The OIP-Civil pilot program utilized one such program. Again, the benefits were obvious immediately to the users of the platform. In comparing cases of similar size and complexity, OIP required 47.75 hours to complete its initial review of the documents response to a request. Using the digital platform, the initial review for a similar sized request was completed in 14.25 hours, a savings of over thirty business hours and another significant cost reduction.

The Department shared the results of its pilot at a conference held on February 21, 2013. At the conference FOIA professionals from around the government were given an overview of the methodology and results of the pilot, a demonstration of some of the digital tools used, and had an opportunity to collaborate not only with Department representatives, but also with others interested in developing such programs in their own agencies. Participants also heard from a representative of the Commodity Futures Trading Commission who discussed her agency's successful use of digital tools to help manage an unprecedented demand for documents. The Department will continue its work in this area, to further develop its capabilities in the use of

these digital tools and to expand understanding of their benefits, with the goal of helping all agencies employ similar tools for the overall benefit of FOIA administration.

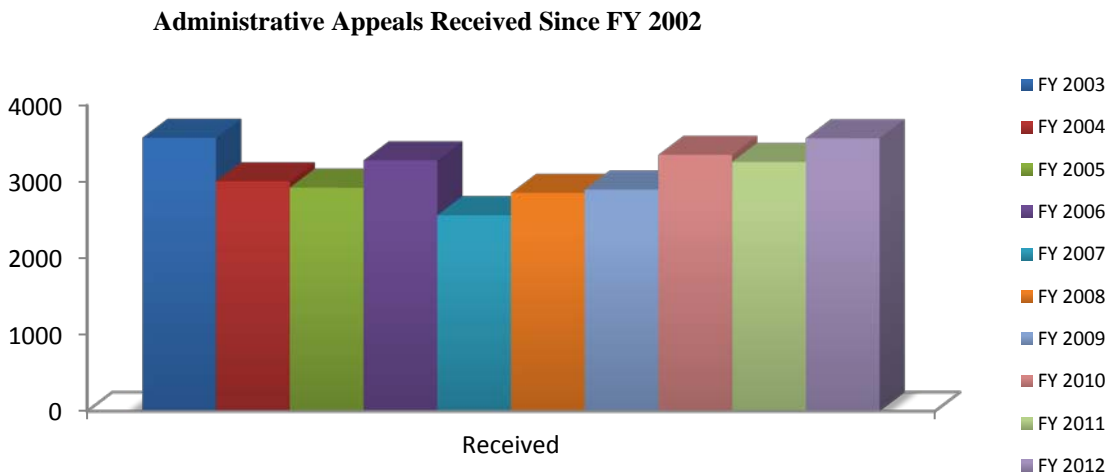
V. Steps Taken to Reduce Backlogs and Improve Timeliness in Responding to Requests

In Fiscal Year 2012 the Department received 69,456 requests, which was an increase of more than 6,000 requests from last fiscal year. This figure marked the second highest number of requests received by any agency across the federal government. The Department worked to increase the number of requests processed and achieved significant success in that area, processing 68,531 requests, which was more than 4,500 requests than last fiscal year. While the increase in processing was not enough to completely offset the increase in incoming requests, it did significantly mitigate their impact. As a result, although there was an increase in the Department's overall request backlog, the increase was only 1,378 requests, which is equal to 7% of the 69,456 requests received by the Department during the fiscal year.

Moreover, many Department components were able to reduce their initial request backlogs. Fourteen Department components have an initial request backlog of fewer than ten requests. Four have no backlog at all. EOIR, the Department's largest FOIA component in terms of volume, reduced its backlog for the second consecutive year, achieving a 32.2% reduction over that two-year period. This was done in spite of EOIR experiencing a 32.3% increase in its incoming requests over that same time frame. Similarly, the Office of Legal Counsel achieved a 71.9% decrease in its initial request backlog over the last two years despite a 68.8% increase in its incoming numbers of requests in FY 2012. The Drug Enforcement Administration achieved a 55.4% reduction in its initial request backlog over the last two years despite a 12.0% increase in its incoming in FY 2012. Lastly, OIP, which processes on behalf of the Department's senior management offices, achieved backlog reduction for the Offices of the Attorney General, Deputy Attorney General, and Associate Attorney General of 12.4%, 6.5%, and 35.0%, respectively. This was achieved despite OIP experiencing a 19.6% increase in incoming requests in FY 2012.

The Department also closed its ten oldest requests, reduced the age of its requests, and improving the timeliness in which it responded to requests. This marks the fifth consecutive year that the Department has closed its ten oldest pending requests. Over that time, the Department has reduced the age of its oldest pending request from 4,978 days to 1,030 days. Individually, twenty-seven components closed their respective ten oldest pending requests⁴, including OIP which did so on behalf of itself and seven senior leadership offices.

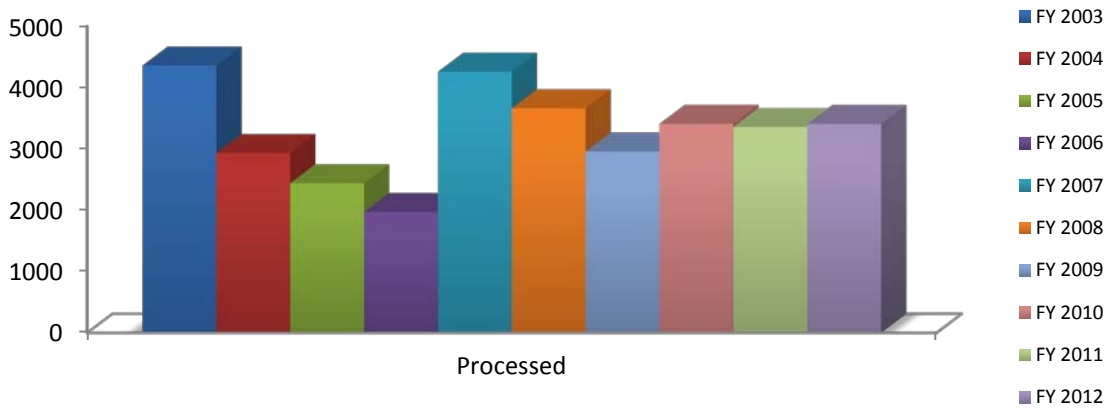
As has occurred with regard to the number of initial FOIA requests received by the Department, the number of administrative appeals received has also continued to escalate. In FY 2012, the Department received 3,569 administrative appeals, returning the Department to a level of incoming administrative appeals not seen since FY 2003 and marking the fourth time over the last five years that the Department’s incoming numbers of administrative appeals has increased. In fact, over the past five years, the number of administrative appeals submitted to the Department has increased 39.4%.



With this continued increase in its appeal workload, the Department was not able to process more administrative appeals than it received for the first time since FY 2006. The Department did increase the number of appeals it adjudicated, increasing by 50 appeals the number adjudicated in FY 2012, but given the increase in incoming appeals, and as explained in more detail below, the appeal backlog did increase.

⁴ Including some components which had no pending requests at the beginning of FY 2012.

Administrative Appeals Processed Since FY 2002



For the fifth consecutive year, as it did with initial requests, the Department closed its ten oldest pending administrative appeals. Over that time, the Department also reduced the age of its oldest pending administrative appeal from 249 days to 148.

Managing the Initial Request and Administrative Appeals Backlog

The reasons for the increase in the Department's initial request backlog were multifaceted. As detailed above, the Department experienced a 10.1% increase in the number of requests received in FY 2012. This increase was only partially offset by the Department's 7.1% increase in the number of requests it processed in FY 2012. In addition, although the Department as a whole maintained its overall FOIA staffing levels from FY 2011, several components reported having a significant amount of vacancies within their FOIA staff, including positions that remained unfulfilled for over a year, whereas other components reported experiencing an increase in the complexity of the requests received. Lastly, several components, including OJP, USMS, OSG, FBI, and the Civil Division, indicated that a large portion of their FOIA resources were dedicated throughout the year to processing voluminous requests that were either subject to litigation or congressional inquiry. In fact, the backlog increase experienced by

these five Department components alone comprises 77.5% of the Department's overall backlog increase for FY 2012.

Likewise, there are multiple reasons for the increase in the Department's backlog of administrative appeals. As with initial requests, the Department experienced a 9.5% increase in its incoming administrative appeals, which was only partially offset by the 1.4% increase in the number of administrative appeals processed. Also, the Department experienced prolonged staff vacancies within its administrative appeal staff, coupled with increased demands placed on them by other initiatives, including the implementation of new FOIA processing software and, significantly, the drafting of an updated *Department of Justice Guide to the Freedom of Information Act*, to be published in 2013.

Interim Releases

OIP has issued [guidance](#) to all agencies encouraging them to provide interim responses whenever possible, particularly when processing requests that involve a voluminous amount of material or that require searches in multiple offices. These interim responses foster continued communication between the agency and the requester, provide records more readily as they are deemed appropriate for disclosure, and facilitate the agency's ultimate response by reducing the amount of responsive material that remains to be processed. Over the past year, the Department has provided an interim release in response to approximately 350 backlogged requests that were not otherwise closed.

Use of Law Enforcement Exclusions

In the 1986 FOIA amendments, Congress created three law enforcement exclusions, which authorize agencies under certain exceptional circumstances, to "treat the records as not subject to the requirements of [the FOIA]."

In September of 2012, OIP issued [guidance](#) on the use of exclusions. In FY 2012, the Department invoked an exclusion in response to 174 requests, which is 0.2% of all requests processed.

Spotlight on Success

The Department continues to lead by example, both in its own administration of the FOIA and in its policy and oversight role for all agencies' administration of the statute. In Fiscal Year 2012, for the fourth straight year, the Department has increased the numbers of requests it has processed, despite receiving more than 61,000 requests each of those years, and receiving nearly 70,000 in Fiscal Year 2012 alone. In processing those requests the Department has released records in full or in part in response to more than 94% of the requests where records were processed for disclosure and when records were released, they were released in full, with no information withheld, for more than 70% of such requests. The Department has also reduced its average processing time for simple track requests to under twenty-working days.

The Department has continued to make more information available online proactively and the efforts of the FBI are particularly noteworthy in this area. [*The Vault*](#) remains the FBI's primary source for publicly-available records. Since its launch in April 2011, its purpose has been simple – to provide greater public access to FBI records. Over the last two years, *The Vault* has been recognized as one of the outstanding free reference websites by the American Library Association, downloaded in full by several university libraries, and, during FY 2012, received an average of over 106,000 weekly pages views.

The introduction of *The Vault* dramatically opened FBI files to the public. Initially including records on 240 subjects, it now maintains records on nearly 500. In many instances, the physical quality and clarity of individual files have been improved through electronic file optimization. *The Vault* also allows users to search within files, solicits user feedback through surveys, and provides a Rich Site Summary (RSS) feed which automatically advises subscribers of recent developments.

Notable additions within the last year include records concerning Operation SOLO. The Operation SOLO files chronicle one of the FBI's most successful counterintelligence operations – a ten-year operation during which senior officials within the Communist Party of the United States (CPUSA) provided the FBI with invaluable intelligence

on the Communist Bloc and information on the Soviet Union's secret program to fund the CPUSA.

Finally, in its guidance and oversight role, the Department has launched another significant initiative this past year. As detailed above, the Department instituted a new reporting requirement for all agencies. For the first time, agencies will publicly report on four key FOIA statistics during each quarter of the current fiscal year, allowing for public access to more timely data on agency FOIA administration throughout the course of the fiscal year, rather than only after its conclusion. To assist agencies in implementing this new requirement the Department developed a web-based template that is easy for agencies to use and allows the Department to collect the data through use of an Applied Programming Interface, or API, for display on FOIA.gov. Through this use of technology, the Department both simplified the mechanics of reporting and facilitated the posting of the key FOIA statistics on FOIA.gov.

All these successes are illustrative of the Department's commitment to fully implementing the President's FOIA Memorandum and the Attorney General's FOIA Guidelines both at the Department and throughout the government.