Department of Justice
Chief FOIA Officer Report

2020

2020 Chief FOIA Officer Report
United States Department of Justice

Chief FOIA Officer:
Principal Deputy Associate Attorney General Claire McCusker Murray

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

This marks the eleventh year in which agencies, including the Department of Justice, have issued a Chief FOIA Officer Report. The 2020 Chief FOIA Officer Report for the Department of Justice details how despite a five-week government shutdown the Department continued to attain notable achievements in its administration of the FOIA. This 2020 Chief FOIA Officer Report describes many of the Department's accomplishments during the last year, including closing the oldest requests, consultations, and appeals, upgrading the Annual FOIA Report Tool and data functionality on FOIA.gov, and engaging in robust FOIA training, outreach, and proactive disclosure efforts.

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[1] 5 U.S.C. § 552(j)(2)(D) (2018).

Decentralized Nature of FOIA Processing at the Department of Justice

At the Department of Justice, the FOIA is administered on a decentralized basis, with thirty-one separate FOIA offices handling requests made to the various Department components. The Department received 95,119 FOIA requests in Fiscal Year (FY) 2019. The number of FOIA requests received varies widely between components, from the Executive Office for Immigration Review (EOIR), which received 55,499 requests in FY 2019, constituting over 58% of the Department's total requests received, to nine components that each received fewer than 100 requests.

Number of Requests Received by Component
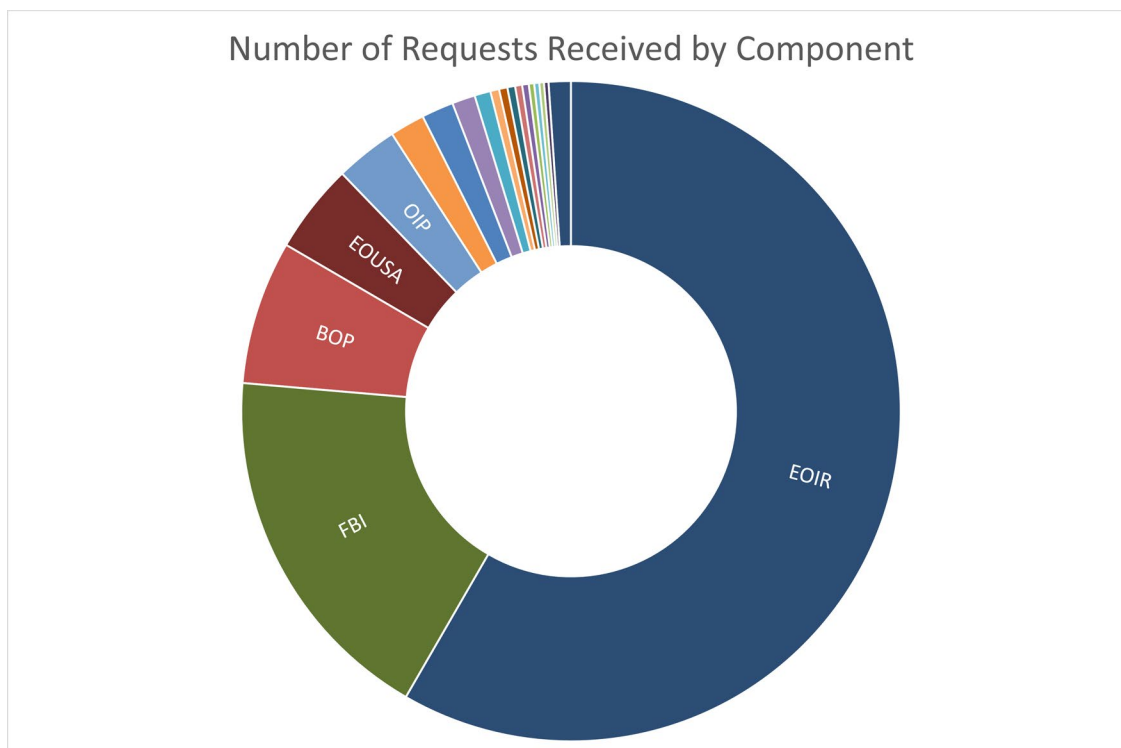
OIP, which is responsible for encouraging compliance with the FOIA both within the Department and across the federal government, is also responsible for processing FOIA requests for the Senior Leadership Offices of the Department, specifically of the Offices of the Attorney General, Deputy Attorney General, 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 2019, the Department had 414 full-time FOIA employees. These employees were joined by others who work on FOIA part of the time, which combined amounted to the equivalent of 478.5 full-time FOIA staff. In an effort to meet the high demand of the incoming requests, Department employees processed 88,668 requests.

The following report provides a comprehensive review of the steps taken throughout the Department of Justice to improve its FOIA administration since the issuance of the last Chief FOIA Officer Report in March 2019.

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. Principal Deputy Associate Attorney General Claire McCusker Murray, the third-ranking official at the Department of Justice, serves as our Chief FOIA Officer.

> *"FOIA is often explained as a means for citizens to know 'what their Government is up to.'"*
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> -NARA v. Favish, 541 U.S. 157, 171-72 (2004) (quoting DOJ v. Reporters Comm. for Freedom of the Press, 489 U.S. 749, 773 (1989)).

Training:

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. In 2019 alone, over 2,300 employees registered for OIP-hosted 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 an effective FOIA administration. OIP also provides training material [online](#).

During this reporting period, which goes from March 2019 to March 2020, OIP hosted the following training events that were attended by FOIA professionals within the Department and across all agencies:

- *The Freedom of Information Act for Attorneys and Access Professionals* – This two-day program is designed for attorneys, Government Information Specialists, and other FOIA professionals with limited prior experience working with the FOIA who are now or soon will be working extensively with the Act. This program provides an overview of the FOIA. During this course, OIP provides lectures on procedural issues and the FOIA's exemptions, as well as a discussion on proactive disclosures and the FOIA's fee and fee waiver requirements. This training was offered four times during the reporting period.

- *Advanced Freedom of Information Act Seminar* – At this seminar, OIP provides advanced instruction on selected topics under the FOIA, including up-to-date policy guidance and significant new court decisions. This program also serves as a forum for the exchange of ideas useful in addressing common issues that arise in administering the FOIA. This training was offered twice during the reporting period.

- *Introduction to the Freedom of Information Act* – This program provides a basic overview of the FOIA for agency personnel who do not specialize in access law. It is designed for those who either work with the FOIA only occasionally or need only a general familiarity with the FOIA in order to recognize and handle FOIA-related problems that may arise in other areas of agency activity.

- *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.

- *Refresher Training for FY 2019 Annual FOIA Reports and 2020 Chief FOIA Officer Reports* – These training events provide agencies with a refresher on their FOIA reporting obligations.

- *Best Practices Workshops* – Each workshop focuses on a specific FOIA topic, with a panel of representatives sharing experiences, lessons learned, and strategies for success. Through these workshops, agencies can continue to learn from one another and leverage the successes of others in their own organizations for the overall benefit of FOIA administration across the government. The topic covered during this reporting period was *Administrative Appeals*.

- *Continuing FOIA Education* – This course provides a discussion of current topics in FOIA administration, including legal and policy developments, as well as an overview of recent FOIA court decisions.

Further, OIP continued to provide specialized training to agencies on any topic of interest, tailoring instruction to the needs of the particular agency involved. In addition to the events hosted by OIP, 21 professional staff members from OIP gave a total of 18 training presentations during the year, including several training sessions designed to meet the specific FOIA-training needs of individual agencies. Such individualized training sessions were conducted for the:

- Department of Education
- Department of Health and Human Services
- Department of Homeland Security
- Department of Justice components
- Department of the Treasury
- Office of the Director of National Intelligence
- Social Security Advisory Board
- United States Postal Service
- U.S. Trustees Program

Within the Department, OIP also holds regular monthly calls with FOIA professionals from all the components, during which OIP provides counsel on current FOIA issues. In addition to the training events and resources offered through OIP, many of the Department's components held their own training events over the course of the reporting period. For instance, the Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF) hosted its first-ever annual FOIA Staff Development Day, an all-hands training and team building event. ATF also hosted an initial meeting of the DOJ Law Enforcement Component FOIA Working Group, which meets twice a year to discuss FOIA operations (e.g., organization/structure, volume, staffing and technology) as well as best practices and challenges. The DOJ Law Enforcement Component FOIA Working Group consists of DOJ's five law enforcement agencies – ATF, Drug Enforcement Administration (DEA), Federal Bureau of Investigation (FBI), U.S. Marshal Service (USMS), and Bureau of Prisons (BOP). BOP held a three day National Training in DC entitled "Sustain, Change, and Train: Promoting Transparency One Request at a Time." Highlights of the training included: Regional and Central offices processes and best practices; a question and answer discussion/session on BOP's strengths and weaknesses; counter-terrorism, special investigations, threat groups, and intelligence and FOIA; and unique considerations to processing contracts. DEA's Freedom of Information and Privacy Act Unit staff conducted FOIA training for employees and managers assigned to DEA's Intelligence Division. The Executive Office of Immigration Review's (EOIR) Supervisory FOIA Attorney and FOIA Attorney conducted FOIA Training for Managers and FOIA Training for New Immigration Judges. The Environment and Natural Resources Division (ENRD) trained new attorneys on their FOIA responsibilities during its annual training. The Tax Division's Senior Division Counsel holds sessions approximately every other month to discuss FOIA litigation consideration matters with the Division trial attorneys who handle FOIA cases.

Some components also attended training provided by other institutions. For example, the Criminal Division Deputy Chief attended the D.C. Bar CLE, "Basics of Filing and Litigating Freedom of Information Act Requests 2019." She then presented the material to the entire Criminal Division FOIA/PA Unit Staff. The Office of the Inspector General (OIG) attended the American Society of Access Professionals (ASAP) FOIA-Privacy workshop. Other components, such as the Civil Division, also took advantage of non-FOIA related training which would be beneficial to their FOIA professionals, including training honing document review skills.

Since last March, approximately 94.17% 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.

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.

In addition to the outreach conducted by OIP, many other components also engaged in outreach with the requester community during the reporting period. Components reported that their requester outreach enables them to clarify requests, narrow search terms, and avoid litigation in many instances. For example, the ATF Disclosure Division Chief now has reoccurring calls or meetings with a number of organizational and individual requesters, including national advocacy organizations, industry groups, journalists, major new publications, and government watchdog groups. These meetings allow the Disclosure Division Chief to talk candidly with requesters about their requests while endeavoring to build and maintain strong working relationships that enable ATF and all interested parties to informally resolve disputes over production timelines, scope, and applicability of FOIA exemptions. ATF also anticipates that this effort to negotiate will decrease the need for litigation. The Civil Rights Division's (CRT) dialogue with requesters enables the Division to tailor its responses to the particular needs of an individual request, by negotiating rolling productions, furnishing status updates, or distilling broad requests to the core information being sought. BOP found that direct communication with members of the media or special interest organizations permitted it to explain certain limitations regarding record keeping systems, search capabilities, and ability to release certain privacy-related records. These discussions often led to BOP being able to provide records in a more expedient manner.

The Executive Office for U.S. Attorneys (EOUSA) held outreach telephone conferences with groups of requesters seeking similar categories of records to provide explanations about how such records are maintained and the strategic approach being employed to collect and process them, also at times suggesting alternative or consolidated approaches that could more effectively or expediently achieve the results sought.

Communication with requesters early on in the process also ensured that requests were directed to the proper component and were well-defined at the outset. The Office of Legal Council (OLC) regularly 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. These discussions resulted in at least a dozen fewer misdirected requests.

Other Initiatives:

As the Department has long [declared](), "FOIA is everyone's responsibility." OIP and the Department are fully committed to ensuring that all Department employees have a full understanding of their responsibilities in implementing this important law. The Department continues to utilize e-Learning training modules that OIP created to ensure all employees have proper FOIA training, whether they are FOIA professionals or program personnel whose records are subject to the FOIA. A distinct training module is available for non-FOIA professionals that provides a primer on the FOIA and highlights ways in which they can assist their agency in administering the law. In early 2020, the Office of Justice Programs (OJP) initiated mandatory FOIA training for all OJP federal staff through LearnDOJ and placed the required training on all OJP staff's learning plans. Additionally, OIP continues to make available an infographic that is designed to serve as a resource on FOIA basics for all employees new to the federal workforce, as well as a short

video designed to brief senior executives on their responsibilities under the FOIA. In addition to utilizing these resources, many of the Department's components engage in other efforts to ensure employees are aware of their FOIA responsibilities.

Many other components provide in-person meetings with program personnel to brief them on their important role in the FOIA process. For example, at a United States Trustee meeting, the Executive Office of U.S. Trustees (EOUST) Deputy General Counsel spoke regarding the Supreme Court's decision in *Food Marketing Institute v. Argus Leader Media*, and how the decision may impact the Program's handling of commercial/financial information under the FOIA going forward. ENRD's GIS instructs non-FOIA professionals on their duties under the FOIA and directs them in searching for and reviewing records in response to a FOIA request for which they are a document custodian. INTERPOL's GIS provided FOIA training to new INTERPOL Washington employees and interns twice during the reporting period. The training involved an overview of the FOIA and Privacy Act, as well as how FOIA requests are processed at INTERPOL Washington, and responsibilities of employees and interns if directed to assist with a FOIA request. USPC provided training for victim witness specialists on issues related to disclosure of victim-related information and disclosure of USPC decisions to victims.

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

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

Processing Procedures:

Expedited Processing

The FOIA contains a requirement that agencies establish procedures in their regulations that provide "for expedited processing of requests" in certain circumstances. 5 U.S.C. § 552(a)(6)(E)(i) (2018). Specifically, the FOIA directs agencies to afford expedited processing whenever the requester demonstrates a "compelling need," or "in other cases determined by the agency." Id. § 552(a)(6)(E)(i)(I), (II). For FY 2019, the Department reported an average of 9.07 days to adjudicate requests for expedited processing and 78.81% of requests for expedited processing were adjudicated within 10 calendar days.

Self-Assessment

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

In 2014, OIP launched a Component Improvement Initiative to conduct an in-depth review of the Department's FOIA processes. As part of this initiative, every year OIP reviews components' FOIA data and provides them with direct feedback. Now entering its sixth year, an outgrowth of the initiative was the creation of a self-assessment toolkit. The toolkit is a resource for all agencies to conduct their own comprehensive self-assessments. The toolkit takes a modular approach to self-assessment allowing agencies to focus on specific areas where they would like to see improvement. The individual modules include assessments for: 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, and FOIA Website Development and Maintenance. Finally, as part of the lessons learned from creating the self-assessment toolkit, OIP identified six best practices for conducting self-assessments. These best practices include:

- Finding the time to evaluate your program
- Understanding your FOIA process and having the ability to uncover all relevant information
- Looking to find new ways to use existing data or information to evaluate your program
- Proving your findings and making recommendations

- Setting reasonable and attainable goals
- Expanding your focus as time goes on and repeating the process on a set schedule.

Many of the Department's components took advantage of the self-assessment process during the reporting year to improve their FOIA operations. Components that engaged in a self-assessment used OIP's toolkit and reviewed Annual and Quarterly FOIA Report data, workflows, and current policies and procedures. BOP provided data for each region and Central Office to appropriate personnel at key times throughout the year to pinpoint strengths and weaknesses and focus on improving issues. CRT conducted a monthly assessment of its FOIA program by reviewing the status of referrals and pending requests in order to move requests forward that required special attention. EOIR used the Quarterly Reports to review the trend of cases processed each quarter as compared to previous years. FBI conducted weekly and monthly reviews to discuss and evaluate discrepancies and to develop triage strategies for incoming high visibility and complex requests.

Other components established new workflows to maximize efficiencies based on their FOIA professionals' expertise and familiarity with certain subject matters. Based on the Criminal Division's review of Annual Report data, it identified trends that needed to be addressed and set goals for the upcoming fiscal year. To meet court ordered production schedules, the Division's FOIA/PA Unit began assigning certain Government Information Specialists to assist with the disclosure review for litigation matters. In reviewing the overall quality of the training and onboarding experience for new employees, the Division's FOIA/PA Unit Management also revamped its onboarding program. New employees now follow a specific sequence to familiarize themselves with the life cycle of a FOIA/PA request and to get a better understanding of the Division's responsibilities and the type of records generated.

Requester Services:

FOIA Public Liaison

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

For the DOJ components that received inquiries from the public, they all reported that their FOIA Public Liaisons played a significant role in keeping requesters informed and answering their questions. Overall, the Department estimates that its FOIA Public Liaisons received more than 14,800 inquiries from members of the public via phone, e-mail and

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[2] 5 U.S.C. § 552(l).

fax. The inquiries ranged from specific issues on an individual's request to general information sought about how the FOIA works and what records the component maintains. Of course, there are also untold numbers of inquiries made to the components' FOIA Requester Service Centers or directly to the FOIA professional handling any given request. Inquiries directed to the FOIA Public Liaison represent only a fraction of the totality of interactions requesters have with the Department's components.

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, FBI and ATF Public Liaisons received thousands of inquiries. In contrast, some of the Department's components that receive small numbers of requests estimated receiving 10 or fewer requests for assistance per year, some even having received none.

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

The Department's components reported a range of challenges during this reporting year that they worked to overcome. One common challenge is an increase in not only the number of incoming requests, but also the complexity of requests. Compounding this challenge is the increased amount of resources required to handle FOIA litigation that inevitably results in slower processing times for requests in the administrative phase. Many components cited the five-week government shutdown at the beginning of 2019 as having had the most impact on their component's ability to process requests and appeals. Several components experienced staff turnover or delays in on-boarding new or replacement staff. Some components also faced new technical challenges with their FOIA case management systems that resulted in significant work stoppages and delays.

In the face of these challenges, the Department employed many of the best practices described above to continue to have effective and efficient systems in place for responding to requests. As noted above, several components conducted self-assessments and then reworked or established new workflows to promote greater efficiencies. Staff redistributions, use of overtime funds, and telework are also some other tools used to manage large FOIA demands. Another strategy focused on mini-surges throughout the year to push requests through the pipeline. A few components also noted that they transitioned to using new FOIA case management tools that have greatly improved their FOIA processing, tracking, and reporting.

In addition to these examples, a few components had some innovative methods of addressing challenges listed above. BOP surveyed new FOIA personnel by asking them to provide their insights on practices and procedures, as they provide a unique and fresh

perspective. ENRD's FOIA Public Liaison and Government Information Specialist (GIS) meet each week to discuss the processing of each open FOIA request and any other relevant FOIA topics including appeals, litigation, and digital and/or other systematic operations. FBI's FOIPA program incorporated special teams into its business framework in order to maximize resources. The following teams have since been developed: special litigation team, high-volume requester team, a consultation initial processing team, and a team of analysts which process "quick closure" requests. Additionally, a small-case team was established in order to release a high number of requests as efficiently as possible. These special teams have substantially increased the FBI's processing capabilities. The Office of the Solicitor General (OSG) implemented the use of an internal expedited processing sign-off sheet, which allows for quick indication of which processing standard the request falls under, and whether to grant/deny the request.

Section III: Steps Taken to Increase Proactive Disclosures

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

Posting Material:

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

- OIP regularly posted new material and FOIA resources on its website. Some examples of material posted since March 2019 include:

  o Through its blog, *FOIA Post*, OIP continued to inform both agencies and the public of new developments and upcoming events concerning the FOIA.

  o 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:

    ▪ Exemption 4 after the Supreme Court's Ruling in *Food Marketing Institute v. Argus Leader Media* (October 3, 2019)

    ▪ Step-by-Step Guide for Determining if Commercial or Financial Information Obtained from a Person is Confidential Under Exemption 4 of the FOIA

    ▪ OIP Guidance for Further Improvement Based on 2019 Chief FOIA Officer Report Review and Assessment

    ▪ Guidelines for 2020 Chief FOIA Officer Reports

  o OIP also posted the following in its FOIA Library:

    ▪ Records Concerning the Handling of FOIA Requests Seeking a Copy of the Special Counsel's Report [Posted December 31, 2019]
    Part 1 (March 26, 2019 - April 9, 2019)
    Part 2 (April 9, 2019)
    Part 3 (April 9, 2019 - November 21, 2019)

    ▪ Records of Correspondence Between the Office of Legal Policy and Brett M. Kavanaugh from January 20, 2001 to May 30, 2006 [Posted December 5, 2019]

Interim Response (December 11, 2001 - May 6, 2013)

- FOIA-Processed Report on the Investigation into Russian Interference in the 2016 Presidential Election (March 2019) [Originally posted May 6, 2019] [Updated June 21, 2019]
  Volume 1
  Volume 2
  Appendices

- Attorney General Memorandum Lifting the Hiring Freeze (April 9, 2019)

o 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.

o 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.

o CRT posted The Attorney General's Eighth Annual Report to Congress Pursuant to the Emmett Till Unsolved Civil Rights Crime Act of 2007 and Second Annual Report to Congress Pursuant to the Emmett Till Unsolved Civil Rights Crimes Reauthorization Act of 2016 - June 2019

o Antitrust posted Sherman Act Violations Yielding a Corporate Fine of $10 million or More

o DEA posted Forensic Sciences Publications and Micrograms

o EOUSA regularly releases national caseload data in response to monthly requests

o EOUST made several proactive disclosures to ensure that the public received adequate information on how the United States Trustee Program (USTP) would implement the Small Business Reorganization Act ("SBRA") (Pub. L. No. 116-54 (2019)) and the Honoring American Veterans in Extreme Need Act ("HAVEN Act") (Pub. L. No. 116-54 (2019)), which represent substantial changes to bankruptcy law and practice. These disclosures included an article on the USTP's implementation of the HAVEN Act and SBRA and a bulletin titled "USTP Position on Legal Issues Arising Under the HAVEN Act of 2019 – Frequently Asked Questions and Answers."

o EOIR posted Credible Fear and Asylum Statistics for Fiscal Year 2019

o ENRD identified and posted a large number of records related to Marine Shale Processors Superfund Site

- The Foreign Claims Settlement Commission (FCSC) posted its [Opinions and Orders](#)

- OSG posted all filed [Supreme Court briefs](#)

- The National Security Division (NSD) posted [Carter Page FISA applications](#), in coordination with the FBI

- The Justice Management Division (JMD) Posted the [Special Counsel's Office Statement of Expenditures: Statement of Expenditures April 1, 2018 to September 30, 2018 and Statement of Expenditures October 1, 2018 through May 31, 2019](#)

- The Office of the Inspector General (OIG) posted its [Report to Congress on Implementation of Section 1001 of the USA Patriot Act](#)

- OLC posted the [Exclusion of Agency Counsel from Congressional Depositions in the Impeachment Context (Nov. 1, 2019).](#) The Publication Committee posted [fourteen previously unpublished opinions](#) from between 2009 and 2019. OLC will be publishing approximately 102 previously unpublished opinions written between 1934 and 1976.

- The Office of the Pardon Attorney's (PARDON) [Clemency Case File Finder](#) provides the ability for the public to confirm the status of a clemency case, regardless of whether is pending, granted, denied, or administratively closed since 1989.

- The Tax Division (Tax) posted documents related to [Tax Schemes and Scams](#) and the [Swiss Bank Program](#)

- The Office of Professional Responsibility (OPR) posted its [Report of Investigation into the Conduct of Former United States Attorney R. Booth Goodwin II and Former Assistant U.S. Attorney Steven Ruby in *United States v. Blankenship*](#).

- 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:
  - [Deputy Director McCabe Office of Professional Responsibility Investigation](#)
  - [FBI Communication of Discovery of Hillary Clinton emails on Anthony Weiner's Laptop Computer](#)
  - [Pulse Nightclub Shooting FBI Lab Ballistics Reports](#)
  - [Supreme Court Justice Brett Kavanaugh Supplemental Background Investigation and Related Tip Records](#)
  - [The Weinstein Company](#)

Not only has the Department continued its trend of posting more information online, but it has also continued to work to find ways to make that information more useful to the public. For instance, OIP continues to post information online in open formats.   ATF's website is now available in a Spanish-language version. Some components, like EOIR, also expanded their use of integrated web links, which redirect users to other agencies' posted materials. In order to ensure website stability for high traffic sites, JMD started using a content delivery network to offload website traffic. The Department has also continued to make information more useful on FOIA.gov, including by adding a listing of all agencies to the homepage and working to revamp the reporting data search functionality.

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

Best Practices and Challenges:

While the Department strives to proactively post as much information on its websites as possible, there are sometimes challenges that can make such postings difficult. Some of the Department's components reported that additional postings were not feasible because the majority of the records they handle are first-party requests that are not appropriate for public release due to privacy concerns. However, for those instances where records are appropriate for posting, one challenge continues to be the additional resources required to code the records so that they are compliant with Section 508 of the Rehabilitation Act.

 The Department's best practices in this area remain focused on identifying those records that should be posted online either because they are frequently requested or because there is a strong public interest in access to them.

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. In addition to using the Internet to make proactive disclosures, agencies should also be exploring ways to utilize technology in responding to requests. 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. OIP piloted a technology that uses artificial intelligence to enhance OIP's ability to identify search terms, efficiently de-duplicate email strings, and identify potentially responsive records using tools that visually map the content of the records. The deduplication feature of this technology will greatly improve efficiency by reducing the amount of time staff must compare documents. This technology would also be capable of hosting very large quantities of records, which would streamline OIP's ability to search for records directly, rather than relying on IT staff to run searches.

Numerous components have acquired new case management systems, which can significantly improve efficiency in collaborating on the processing of requests, providing responses to requesters, and tracking workloads. OIP customized and launched a case management system, the FOIA System for Tracking Appeals and Requests (FOIA STAR). EOIR is acquiring a new FOIA case management tool, which will enable requesters to obtain status updates and responsive records online, communicate with Government Information Specialists regarding FOIA requests, and will reduce the use of paper, enhance record keeping and enable use of redaction software. The FBI allocated funding to provide system integration, development, and support services to replace its document processing system. The new system will incorporate state of the art functionality; such as, pre-redaction, machine learning, and artificial intelligence.

Other components have shifted to "cloud-based" tools that enhance their ability to efficiently search for and/or send responsive records. For example, the COPS Office transitioned to a new case management system that utilizes cloud technology to store, search, and send records. Since CRT began placing all email into the "cloud" its email searches are more efficient and thus less costly. BOP is evaluating whether to move its FOIA database to the cloud.

Components also reported using technologies to efficiently process requests. The Criminal Division began using a plug-in for Outlook, which allows users to extract emails that were uploaded into an e-Discovery tool and create PDF versions without metadata. The Criminal Division is also exploring other plug-ins for Adobe to make the process of marking records more efficient. BOP is also exploring deduplication and string deduplication software, which would significantly to decrease the volume of records BOP must process. DEA utilized software programs to review, organize, and analyze data responsive to voluminous FOIA requests and litigation. DEA acquired an additional "add on" tool for document review, which will enable staff to improve document processing particularly for

requests that involve thousands of documents. ENRD has transitioned most of its FOIA processing to an online document review system in order to facilitate effective and efficient review, ensure consistent disclosures, and improve response time. JMD is re-evaluating its eDiscovery processes to enhance productivity associated with FOIA requests.

Finally, components have used technology to address issues specific to the types of records they handle so that they are more accessible to the public. For examples, EOIR is currently converting outdated cassette tapes of Immigration Court hearings onto a computer disk to provide FOIA requesters with greater access to listen to the audio hearings using his or her own computer. To handle the increasing level of audio, visual, and photographic media presence within FBI case files, the FBI allocated funding and is streamlining processing of media-related FOIA/Privacy Act requests.

FOIA Websites:

OIP issued guidance in 2017 on the content and style of agency FOIA websites. The guidance detailed key information and resources that should be made available on every FOIA website as well as some additional considerations such as adopting consistent styling, using plain language, regularly reviewing for accuracy and updated links, and collaborating to identify areas for improvement. Agencies were encouraged to regularly review their websites in light of this guidance to ensure that they contain essential resources, and are informative and user-friendly. The Department's components have each reviewed their websites in accordance with the guidance. As a result, INTERPOL Washington is considering major revisions to its FOIA website to make contact information and certification of identity forms more readily accessible. During the reporting period, OIP also conducted an independent review of components' FOIA websites as part of the Component Improvement Initiative. OIP will once again review these sites as part of the Component Improvement Initiative this upcoming year.

Quarterly Reports:

In January 2013, OIP instituted a quarterly reporting requirement for all agencies on four key FOIA statistics, thereby allowing for a more real-time assessment of the flow of FOIA requests handled by the government throughout the year. The four key statistics are the numbers of requests received, processed, and in an agency's backlog for each quarter of the fiscal year, as well as the status of the agency's ten oldest pending requests. This reporting requirement is specifically designed to provide even greater transparency to the FOIA process by proactively shedding light on agencies' statistics throughout the fiscal year and not just at the end. To facilitate the viewing of this data by both agencies and the public, all agency quarterly reporting is displayed on the Reports page of FOIA.gov. In accordance with the January 2013 Guidance for Quarterly Reporting, the Department posted all of the required quarterly FOIA reports for FY 2019.

Raw Statistical Data from Fiscal Year 2018 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 2018 Annual FOIA Report and posted it alongside PDF and XML versions of the final report.

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

Often the technology that FOIA professionals leverage to search and review records are not specifically designed with FOIA in mind. As such, the Department's IT and FOIA Offices have built strong relationships, which enable the Department to make the most of available technologies by sharing best practices and adapting processes across the agency. For example, as part of the development of OIP's new FOIA STAR system, OIP sought input from other DOJ components about their own needs for a FOIA tracking system so that the system could potentially be adapted for use by additional DOJ components. By working closely with our technological experts and conveying the unique nuances of the FOIA process, we are able to ensure that the technology we are using is being leveraged to the fullest extent possible for FOIA purposes. Strong IT support can also be helpful in finding new solutions, such as when useful new tools become available.

Additionally, the Department continues to focus on enhancing interoperability with the National FOIA Portal. On February 12, 2019, the Office of Management and Budget and DOJ jointly released M-19-10, requiring agencies to submit an action plan for interoperability with the National FOIA Portal on FOIA.gov, by May 10, 2019. Each DOJ component submitted its plan to OIP. As components become interoperable with FOIA.gov, they will be able to receive FOIA requests directly into their case management system through FOIA.gov's structured application programming interface (API). OIP has already been working with DOJ components and other agencies on their efforts to become interoperable.

Several components continue to seek technological solutions for some of the challenges they face. For example, when releases involve voluminous first-party records containing personally identifiable information, which cannot be transmitted by email due to its size or sensitive data, some components, such as EOIR, have difficulty using technology to provide such large quantities of data efficiently. Despite piloting different ediscovery and tracking systems, some programs also reported being unable to locate a suitable software program to meet their specific needs. As a result, some components are considering developing customized systems.

Other components faced resource challenges related to technology. ENRD at times lacked capacity to upload or code documents for review due to resource constraints. INTERPOL Washington is working on upgrading from its existing method of tracking requests and creating reports which currently relies on a database. ATF is also actively conducting market research for the potential acquisition of a new FOIA case management system and eDisclosure tools to replace its current system.

Some of the best practices the Department followed this year include sharing component experiences with various technological systems and pilots, pooling resources when acquiring new technology, and ensuring customized systems are also agile enough that other components may also adapt them in order to maximize the benefits for the Department as a whole.

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 2019 Annual FOIA Report. During FY 2019 the Department processed 88,668 requests and successfully closed its oldest requests, consultations and appeals.

Simple Track:

The Department utilizes multi-track processing to manage its FOIA administration. The Department's overall average number of days for processing simple track requests during FY 2019 was 49.94 days. Notably, however, eighteen of the Department's components processed their simple requests in an average of twenty days or less. Approximately 68.16% of the requests processed by the Department in FY 2019 were categorized as simple requests.

Backlogs – Requests and Appeals:

Requests

Despite a five-week government shutdown, the Department was able to respond to 88,668 FOIA requests in FY 2019, which is more than any other year except for FY 2018 when the government processed 91,383. Factoring in for the shutdown, the Department was well on its way of hitting a new record for the number of requests processed. Nevertheless, as result of the shutdown and the Department's continued receipt of over 90,000 requests a year, the Department's overall request backlog increased from 17,400 to 25,558. The Department's overall request backlog amounted to less than 27% of the total number of requests received in FY 2019. Additionally, while the Department's overall backlog increased, seventeen components either achieved backlog reduction or maintained the same level of backlog. Eleven components maintained a nominal backlog of twenty or fewer requests.

In addition to more incoming requests and the increasing complexity of those requests, several components also noted the following challenges contributing to the overall increase in backlogs: staff shortages and turnover, staff reorganizations, the time needed to fully train new staff, efforts to fill positions often held by seasoned and long tenured professionals, the five-week government shutdown, increased litigation, and significant issues with FOIA case management systems that caused work stoppages and delays. The resource demands of litigation have become an increasing challenge for components. For instance, EOIR reported an 800% increase in litigation compared to Fiscal Year 2018. OLC reported that court-ordered partial and rolling productions are increasingly consuming more of its resources and interfere with OLC's ability to process regular FOIA requests.

Appeals

The Department received 3,496 administrative FOIA appeals in FY 2019, and adjudicated 3,209 appeals. Overall the Department processed fewer appeals than in Fiscal

Year 2018; however, similar to requests, the Department's ability to process more appeals was significantly impacted by the government shutdown. Accordingly, as a result of that and an increase in incoming appeals, the Departments backlog of appeals increased from 161 to 454 appeals. Notably, however, this represented just 12.98% of the total number of appeals the Department received in FY 2019.

Backlog Reduction Plans:

In the 2019 Guidelines for agency Chief FOIA Officer Reports, any agency with a backlog of over 1,000 requests in FY 2019 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, acquiring new technology for efficient processing, providing more training focused on efficiencies and best practices, proactive outreach to requesters to narrow or clarify requests, and greater utilization of multitrack processing.

Antitrust focused on processing older requests in the complex track and on more efficiently closing requests in the simple track. This approach enabled Antitrust to close a record number of FOIA requests in Fiscal Year 2019, despite an ongoing staff vacancy and the government shutdown. The Civil Division aims to close all requests from the prior calendar year by the end of each fiscal year.

Several components mentioned that as seasoned FOIA professionals retire or leave the Department their replacements take time to onboard and train which can result in lower productivity. Components with limited staffing resources utilized temporary staff such as details and summer interns to specifically focus on their oldest cases. The FBI's FOIPA Program adopted a new strategy by hiring contractors for open positions. These new resources produced approximately 91,000 pages released to the public in FY 2019.

To address the trend of requests involving high volumes of records, OLC has made efforts to narrow complex requests and prioritize its oldest backlogged requests. ENRD's GIS and FOIA manager meet weekly to discuss unique problems as they surface, identifying sticking points, and formulating solutions to expedite their closure.

Moving forward, the Department remains committed to backlog reduction and we continue to take affirmative steps to achieve that goal in FY 2020. For example, OIP will continue with its backlog reduction efforts that are part of the Component Improvement Initiative. A number of components have also reported plans to continue with the efforts they started last year, particularly those components that saw backlog reduction.

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 is pleased to report that it successfully closed its ten oldest pending requests, appeals, and

consultations from FY 2018. Notably, this marks the twelfth consecutive year that the Department closed its ten oldest pending requests and appeals.

Beyond closing 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. OIP monitors the ten oldest requests for each component, ensuring that there is ongoing attention paid to this important metric. Similarly, BOP places a greater focus on the age of its backlog by monitoring its 100 oldest requests. Components such as OIP and EOUSA also designate teams or certain FOIA professionals to focus solely on the component's oldest requests, thereby ensuring that those more complex requests are continually being worked on. OIP has also taken measures to ensure that the age of the Department's appeals remains low. At the end of FY 2019, the oldest appeal pending at OIP was from November 2018.

Spotlights on Success

- The Department also 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. This reporting period, OIP updated all sections of the [DOJ Guide to the FOIA](#), which serves as a reference for FOIA professionals across the government. OIP also issued new guidance to agencies and provided FOIA training to thousands of FOIA professionals across the government on a range of topics covering all aspects of FOIA administration.

- The Department also continued to enhance the National FOIA Portal on FOIA.gov. Requesters are able to submit requests and explore Annual FOIA Report data from 2008-2019 for any agency via the site. Enhancements to the site during the reporting period included the development of an Annual FOIA Report Tool that streamlined agencies' abilities to create and submit their Annual FOIA Report data to OIP and an upgrade of the Agency FOIA data functions.

- In addition to the National FOIA Portal, OIP and the Department continue to champion the use of advanced technological solutions that assist with the core functions of FOIA administration. OIP piloted a technology that uses artificial intelligence to enhance OIP's ability to identify search terms, efficiently de-duplicate email strings, and identify potentially responsive records using tools that visually map the content of the records. The FBI is also incorporating state of the art functionality such as pre-redaction, machine learning, and artificial intelligence, in its new document processing system. Further, OIP customized and launched a new FOIA case management system, the FOIA System for Tracking Appeals and Requests (FOIA STAR), which can be leveraged by any DOJ component.

- The Department also continues to proactively make more information available online, allowing easy access to records that are of public interest without the need for a FOIA request. By way of just one example, the FBI continued to add records to *[The Vault](#)*, which was established as the FBI's primary source for posting records. *[The](#)*

Vault currently contains over 6,700 documents and other media available for public access.

Other Success Stories Reported by the Department's Components

- Antitrust implemented workflow improvements in FY19 which led to a record number of FOIA closures. Some of the improvements included: revamping the intake process, creating new acknowledgement letters, updated FOIA tracking system practices, multi-track management, and active engagement with team members.

- The Civil Division achieved its lowest fiscal year backlog to date.

- DEA restructured its Initial Review Team (IRT) to handle the initial research of all incoming FOIA/PA requests and improve customer service by contacting requesters to clarify unclear or incomplete requests. With the IRT's efforts to strengthen internal processes and procedures, DEA was effectively able to decrease FOIA/PA appeals by 54% compared to FY 2018.

- OIG mitigated a significant increase in incoming requests by processing a significantly higher number of requests in FY 2018.

- OSG has successfully reduced its number of consultations pending. OSG processed more consultations this year than previous years.