

2016



Department of Justice Chief FOIA Officer Report





2016 Chief FOIA Officer Report
United States Department of Justice
Chief FOIA Officer: Acting Associate Attorney General Stuart F. Delery

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 Department of Justice to issue new guidelines governing the FOIA that would reaffirm the federal government's commitment to accountability and transparency.

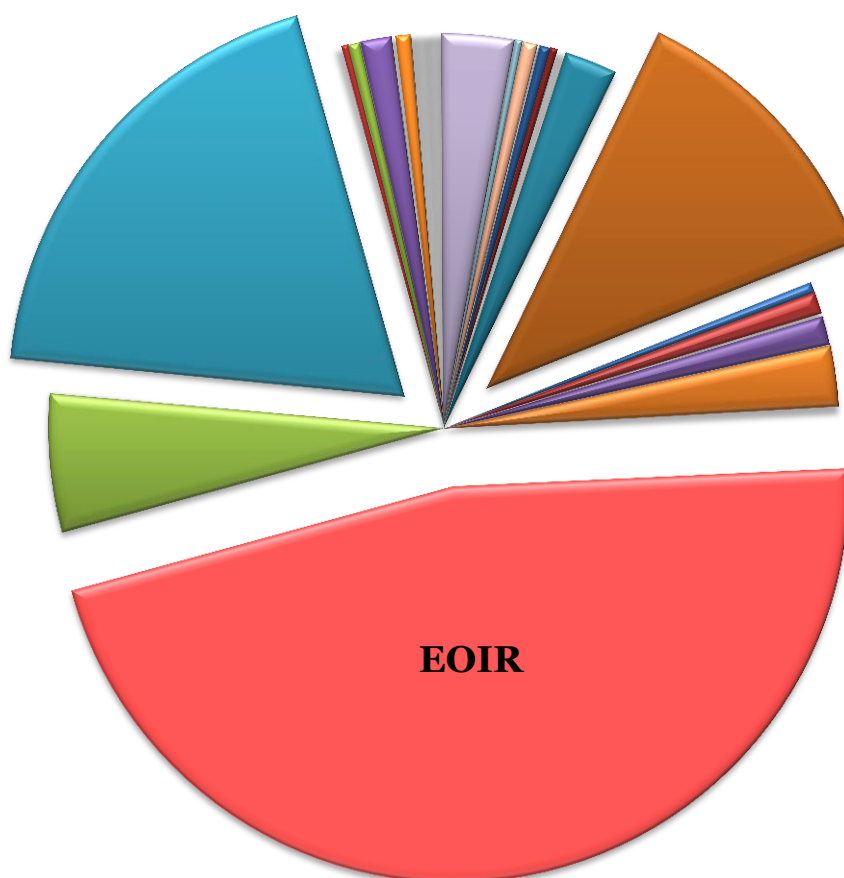
On March 19, 2009, the Department issued new [FOIA Guidelines](#) implementing the President's policy. In these Guidelines, the Department emphasized not only the presumption of openness, but also the need for agencies to ensure that they have in place "an effective system for responding to requests." The Guidelines highlighted the important role played by agency Chief FOIA Officers in ensuring that their agencies effectively and efficiently comply with the FOIA. They 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 and DOJ's FOIA Memoranda.

This marks the seventh year in which agencies, including the Department of Justice, have issued a Chief FOIA Officer Report. The 2016 Chief FOIA Officer Report for the Department of Justice details how in the face of increasing numbers of incoming FOIA requests we continued to improve our administration of the FOIA. This 2016 Chief FOIA Officer Report describes many of the Department's accomplishments during the last year, which include processing more requests than the prior year, improving processing times, closing our older requests, appeals and consultations, and maintaining a high release rate of 93.4%. As described below, the Department also engaged in robust training, outreach, and proactive disclosure efforts, and we continued to look for new ways to greater utilize technology to facilitate a more efficient FOIA administration.

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 more than 67,000 FOIA requests in Fiscal Year 2015. The range in the number of FOIA requests received varies widely between the components, from the Executive Office for Immigration Review (EOIR) which received 31,513 requests in Fiscal Year 2015, constituting over 46% of the Department's total requests received, to nine components that each received less than 100 requests.

Number of Requests Received by Component



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 Affairs. 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 Fiscal Year 2015, 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 498.66 full-time FOIA staff. As noted above, in an effort to meet the high demand of the incoming requests, Department employees managed to process more requests than were received this past fiscal year. More impressively, the Department increased its processing from the prior fiscal year by nearly 8%.

The following report provides a comprehensive review of the steps taken throughout the Department since the issuance of the last [Chief FOIA Officer Report](#) in March of 2015 to continue to implement the President's FOIA Memorandum and the Department of Justice's 2009 FOIA Guidelines.

Section I: Steps to Apply the Presumption of Openness

The guiding principle underlying the President's [FOIA Memorandum](#) and the Department of Justice's [FOIA Guidelines](#) is the presumption of openness. As the President instructed, "[t]he Freedom of Information Act should be administered with a clear presumption: In the face of doubt, openness prevails." The Department has engaged in a number of efforts to ensure that this presumption is fully integrated into its administration of the FOIA, including issuing government-wide guidance on the presumption, conducting a robust training program, engaging in outreach with the public, and making numerous discretionary releases of information each year.

Training:

A proper understanding of the FOIA, including the correct application of the statute's provisions and the Department's 2009 FOIA Guidelines, 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 the policy directives of the President and the Department of Justice. In 2015 alone, OIP trained nearly 2,000 employees by hosting and participating in 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 an effective FOIA administration. OIP also provides training material [online](#).

"The Freedom of Information Act should be administered with a clear presumption: In the face of doubt, openness prevails."

- President Barak Obama

For this reporting period, which goes from March 2015 to March 2016, OIP hosted the following training events which 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 previous 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, including a discussion of the [President's FOIA Memorandum](#) and the [Department of Justice's FOIA Guidelines](#). During this course OIP also provides lectures on the various FOIA exemptions and on procedural issues, 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.

- *FOIA Processing Workshop* – This program is designed for any agency FOIA professionals who are involved in the processing of FOIA requests. OIP provides hands-on instruction and facilitates discussion on administrative matters arising under the FOIA, including such matters as receipt and acknowledgment of requests, communicating with requesters, searching for and reviewing records, and preparing final determinations.
- *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 Fiscal Year 2015 Annual FOIA Reports and 2016 Chief FOIA Officer Reports* – This training event provides agencies with a refresher on their FOIA reporting obligations.
- [Best Practices Workshops](#) – OIP launched the Best Practices Workshop Series in 2014 as a part of the [Second Open Government National Action Plan's](#) commitment to modernizing FOIA and improving internal agency FOIA processes. Each workshop focuses on a specific FOIA topic, with a panel of representatives sharing experiences, lessons learned, and strategies for success in these areas. 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 topics covered during this reporting period include *Best Practices for Small Agencies* and *Reducing Backlogs and Improving Timeliness*.
- *Overview of Agency Responsibilities Under FOIA* – As a new course, OIP provided training designed specifically for new agency personnel with supervisory responsibilities. The course provides an overview of the agency's general responsibilities under the FOIA, including receiving and processing requests, making proactive disclosures, and compiling various FOIA reports.
- *DOJ Component Conference and Training* – This program is designed for DOJ components specifically. OIP provides instruction on various FOIA topics that are important to the Department's components in their FOIA administration. This past year the topics addressed at the DOJ Conference included reporting requirements, document review procedures, privacy issues, and customer service initiatives.

Further, OIP continued to provide specialized training to agencies on any topic of interest, tailoring instructions to the needs of the particular agency involved. Specially,

between March 2015 and March 2016, OIP provided specialized training for the following agencies: the Departments of Homeland Security, Agriculture, Labor, and Treasury, the Internal Revenue Service, the Census Bureau, the National Archives and Records Administration, the Office of the Director of National Intelligence, the Privacy and Civil Liberties Oversight Board, and the Federal Reserve Board.

As noted last year, in the spirit of the Department's declaration that "FOIA is everyone's responsibility," in March 2015 OIP released a new suite of government-wide FOIA training resources designed for every level of the federal workforce from the senior executive, to the FOIA professional, to other federal employees who should have a basic understanding of the FOIA. The new training tools released by OIP include:

- An infographic that can serve as a resource on FOIA basics for all employees new to the federal workforce;
- A brief video from the Director of OIP aimed at senior government executives, which provides a general overview of the FOIA and emphasizes the importance of their support to their agency's FOIA program;
- An in-depth e-Learning training module specifically designed for FOIA professionals which addresses all the major procedural and substantive requirements of the law, as well as the importance of customer service; and
- A separate e-Learning training module for all other federal employees that provides a primer on the FOIA and highlights ways in which they can assist their agency in administering the law.

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 example:

- The Antitrust Division conducted training on new FOIA court decisions, customer service and dispute resolution, acknowledgment letters, fees, and the provisions of DOJ's new FOIA regulations.
- ATF provided training to FOIA personnel on Exemption 5 of the FOIA and making discretionary releases.
- The Bureau of Prisons (BOP) held a three-day FOIA Training event in May which was attended by almost 40 BOP FOIA Professionals from throughout the nation. The topics for this training included, processing considerations, fees and fee waivers, Exemptions 4, 6, 7(C), and 7(E), litigation considerations, OIP resources, and general Q&A. Attendees also participated in round table discussions on conducting an adequate search, leadership principles, BOP IT resources, and general best practices.

Additionally, BOP's Supervisory Attorney prepared an instructional video for all BOP personnel who review FOIA requests. The video, which is available for personnel to watch at their convenience, explains substantive requirements and demonstrates how to utilize BOP's electronic database.

- The Civil Division conducted training on the adequacy of searches, fees and fee waivers, the intersection of the FOIA and Privacy Act, and Exemption 5.
- The Criminal Division held training sessions numerous times covering topics such as procedural considerations and the proper application of Exemptions 5, 6, and 7(C).
- The Drug Enforcement Administration (DEA), held several in-house trainings for various program offices on a range of issues concerning FOIA's procedural requirements.
- The Environment and Natural Resources Division (ENRD) held a training event that covered a general overview of the FOIA, including the exemptions, relevant case law and commonly asked questions. ENRD's Public Liaison also provided an overview of the FOIA to new attorneys during their orientation in September.
- The EOIR conducted an internal FOIA training on the Department's new FOIA regulations and strategies for reducing backlogs.
- The Executive Office for United States Attorneys (EOUSA) provided its FOIA/PA Staff training on the Department's new FOIA regulations, best practices for intake, FOIA processing procedures, dispute resolution, consultations, fees, and discretionary disclosures. Further, EOUSA provided training to the U.S. Attorneys Offices on their FOIA obligations. Additionally, new EOUSA employees (both FOIA and component staff) received FOIA overview training during EOUSA's New Employee Orientations.
- The FBI conducted training, in conjunction with the Departmental Review Committee, for FOIA professionals that focused on the declassification review process. The FBI also conducted training on a range of other topics including, an introduction to the FOIA and basic FOIA processing.
- The Office of Legal Counsel (OLC) conducted training for staff on referrals and consultation, the FOIA's exemptions, segregation, and discretionary releases.
- The Tax Division conducted training sessions on the FOIA's history and purpose, the presumption of openness, exemptions, and litigation considerations.
- The Office of General Counsel at INTERPOL (USNCB) provided FOIA training to about twenty employees on an overview of the FOIA and Privacy Act.
- The United States Parole Commission (USPC) provided staff a refresher training on the FOIA and the Privacy Act.

Finally, many of the Department's FOIA professionals took advantage of training opportunities provided by other agencies and organizations, such as the Office of the Director of National Intelligence, the Department of Energy, the National Archives and

Records Administration, the American Society of Access Professionals (ASAP), the District of Columbia Bar, and the Graduate School USA.

Since the Department's 2015 Chief FOIA Officer Report, approximately 88.2% of its 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 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](#). In addition to these efforts, OIP will continue to hold FOIA Conferences for the Department's components.

Outreach:

To improve not only the Department's, but also the government's overall FOIA administration, the Department has been heavily engaged in outreach with the requester community and open government groups in a variety of ways. OIP has regularly engaged civil society on the various FOIA modernization initiatives that are part of the Department's Open Government Plan and the Second United States Open Government Partnership National Action Plan (NAP). 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 the exchange of ideas on FOIA administration. OIP also engaged with civil society representatives as part of its work leading the NAP commitment to study the feasibility and potential content of a "core" FOIA regulation. Further, OIP continued to consult with civil society as part of its work in issuing policy and reporting guidelines to agencies. For example, OIP solicited feedback from civil society organizations prior to issuing the [2016 Chief FOIA Officer Report Guidelines](#) as well as its new guidance on [the Limitations on Use of "Still Interested" Inquiries](#).

In addition to the outreach conducted by OIP, many other components also engaged in outreach to the requester community during the reporting period. For example, ATF FOIA staff reached out to a frequent requester organization to discuss how ATF maintains its records and the type of information that is typically releasable. The meeting allowed the organization to be better positioned to tailor its request in a way that would allow for a quicker response. Similarly, BOP worked with frequent requesters to streamline the processing time necessary to answer their requests. During this outreach, BOP was able to explain to the requesters certain limitations that exist regarding its record keeping system and search capabilities. BOP also committed to calling requesters more frequently to discuss their requests. Often times, when speaking to requesters, BOP asks what it can do to improve its program, and it has directly incorporated some of that feedback in its processes.

The DEA FOIA office is developing an online survey in an effort to solicit requester feedback to improve customer service. At EOIR, the General Counsel answered questions at a stakeholder meeting with the American Immigration Lawyers Association. EOIR has also engaged non-governmental organizations regarding greater access to its decisions, and as a result, is preparing to pilot an expanded posting of Board of Immigration Appeals decisions. At EOUSA, its FOIA staff coordinated telephone conferences with frequent requesters seeking similar categories of records to provide explanations about how such records are

maintained and processed, as well as suggestions for how to tailor requests in order to get a more expedient response.

OLC has continued an ongoing dialogue with two requesting organizations in an effort to help them better understand certain aspects of its FOIA processing practices and records systems. OLC was informed by one of these requesters that the discussions were extremely informative and that they will help them formulate future requests. In addition, several members of OLC's staff have corresponded with another requester organization about OLC's FOIA resources, staffing, processing tracks and queues, and available email searching methods and tools, with a broader eye toward identifying ways in which the organization can tailor their FOIA request to ensure that their requests encompass the records actually sought, while also facilitating timely and efficient processing.

Discretionary Disclosures:

In the 2009 FOIA Guidelines, the Department of Justice "strongly encouraged agencies to make discretionary disclosures of information." After reviewing the first set of agency Chief FOIA Officer Reports submitted in 2010, OIP found a strong correlation between those agencies that reviewed their documents with the presumption of openness in mind and those agencies that were able to identify additional information that could be released as a matter of discretion. Accordingly, OIP issued guidance that each agency "should institute a system, or add a step in their processing procedures, to affirmatively consider whether more information can be released as a matter of administrative discretion."

All Department components continue to have a process for considering whether a discretionary release can be made prior to using a FOIA exemption to withhold information. At OIP, a formal process is in place in which the Initial Request Staff's senior management reviews any instance of exemption usage along with the initial processor's recommendations regarding discretionary release. This tiered approach ensures that exemptions are not only applied properly, but that they are only asserted when there is a foreseeable harm in disclosure or when disclosure is prohibited by other legal authorities. The FBI routinely considers the age and sensitivity of its files to determine if a discretionary release is possible. BOP has instituted a requirement in its tracking system that requires FOIA professionals to first note whether a discretionary release is being made before allowing the request to be closed.

Like OIP, many of the Department's components employ a multi-tiered approach in reviewing records for discretionary release. DEA, for example, has a three level review process to ensure that it is maximizing efforts for discretionary releases. Also, to help ensure that an appropriate analysis of whether to make a discretionary release is considered as a part of processing each FOIA request, DEA has modified its FOIA tracking system to add a mandatory field that tracks, for each request, whether a disclosure was made as a matter of discretion.

During this reporting period, the Department found many opportunities to make discretionary releases of information. While the most frequently used exemptions by the Department continue to be Exemptions 6 and 7(C), which both protect individual personal privacy and do not afford agencies an opportunity to make discretionary releases, the

Department looked for opportunities to make discretionary releases of information protected by other exemptions. In doing so it has found such opportunities to make discretionary releases for material covered under Exemptions 2, 5, 7(D), and 7(E). In keeping with the Department's 2009 FOIA Guidelines, 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.

As explained in OIP's [guidance](#) on the President's FOIA Memorandum and the Department's 2009 FOIA Guidelines, Exemption 5 holds the greatest potential for agencies to make discretionary releases. Accordingly, many of the Department's components have focused on these types of records in making discretionary disclosures. Much of the Department's discretionary releases continue to be for information that could have been covered under this exemption. Indeed, Exemption 5 only accounted for less than 5% of all the exemptions cited by the Department in Fiscal Year 2015.

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

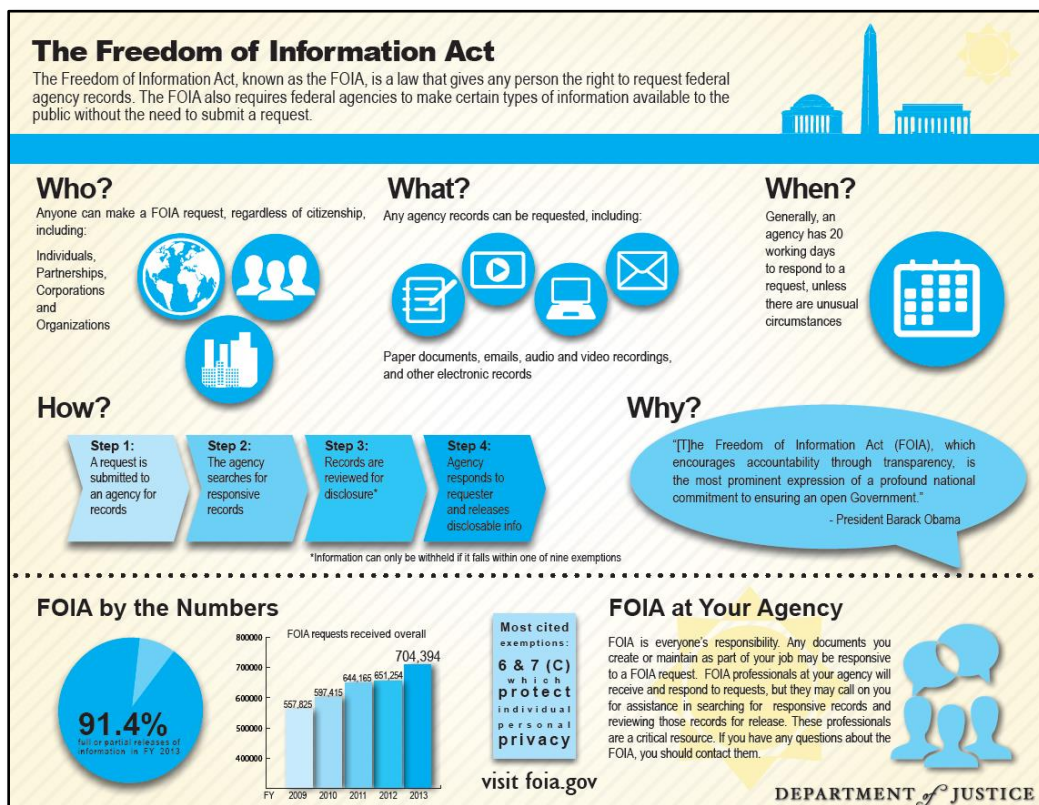
- ATF made discretionary releases of draft memoranda covered under the deliberative process privilege and portions of ATF's Operational Plans that could have been withheld pursuant to Exemption 7(E).
- BOP made discretionary releases of Exemption 5 material from contractual records, recommendations for administrative remedies, and information about its potential use of medication assisted treatment for drug addiction.
- The Civil Division released historically significant material that was otherwise protected under Exemption 5.
- The Criminal Division released historically significant communications with the FBI.
- The Civil Rights Division (CRT) released a lengthy analysis of legal and factual issues related to police misconduct matters.
- EOUSA made discretionary releases of draft pleadings, plea agreements, waiver information, factual proffers, and criminal complaints.
- OIP's Initial Request Staff made discretionary releases of internal OIP correspondence, draft historical correspondence from the Office of the Attorney General, historical draft memoranda from the Office of the Deputy Attorney General, a memorandum recommending modifications to the hiring process for immigration judges, and DOJ components' requests for exemptions to the hiring freeze.
- The Executive Office of United States Trustees (EOUST) released information regarding the performance of private bankruptcy trustees overseen by the the United States Trustees Program.

- The FBI released material related to investigative techniques, informant information, and internal deliberative processes that were no longer sensitive based on the date of the information. For example, the FBI released some of the information received from Richard Aoki, a deceased and publically acknowledged informant, regarding various 1960's organizations. The FBI also released informant information involving members of the various radical organizations and groups located in Berkley, California. Copies of the releases are available to the public directly from the [FBI's Vault](#).
- The Foreign Claims Settlement Commission (FCSC) released draft decisions and staff memoranda concerning the adjudication of claims.

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 93.4%, demonstrates that the presumption of openness is fully incorporated into the FOIA processing decisions made at the Department of Justice.

Other Initiatives:

As the Department's FOIA Guidelines emphasize: "FOIA is everyone's responsibility." OIP and the Department are fully committed to ensuring that all Department employees have a full understanding of their responsibilities in implementing this important law. As mentioned above, on March 12, 2015, OIP released a suite of new training resources designed for all levels of the federal workforce.



For non-FOIA professionals, the new training resources include: (1) an infographic that can serve as a resource on FOIA basics for all employees new to the federal workforce; (2) a brief video from the Director of OIP aimed at senior government executives, providing a general overview of the FOIA and emphasizing the importance of leadership support to agency FOIA programs; and (3) an e-Learning training module for all federal employees that provides a primer on the FOIA and highlights ways in which they can assist their agency in administering the law. The fourth resource is specifically designed for FOIA professionals and is a comprehensive e-Learning training program covering all the major procedural and substantive requirements of the FOIA. On October 28, 2015, the Department's Acting Associate Attorney General and Chief FOIA Officer sent a memorandum to agency General Counsels and Chief FOIA Officers encouraging them to take advantage of these new training materials.

In addition to this effort, many of the Department's components have taken a range of steps to inform their employees of their FOIA obligations. For example, many components provide their new employees with briefing materials on the FOIA as part of their orientation. The FBI requires all of its employees to complete an on-line course, entitled "Records Management for All," which in addition to records management includes specific training on the FOIA. In addition, a yearly briefing is provided to FBI field office representatives, which includes an overview of the FOIA program and some of the more common issues involving FBI's FOIA administration.

DEA FOIA professionals conduct in-house training of newly designated FOIA coordinators as well as points of contacts at DEA program components to ensure that non-FOIA professionals are familiar with FOIA guidelines, rules and regulations. The Criminal Division instituted a mandatory FOIA training requirement for all its personnel. The Civil Division offered Department-wide training on the relationship between FOIA, Records Management, and e-discovery to non-FOIA professionals. And as a final example, in February, the Director of BOP signed a memorandum emphasizing the importance of agency obligations under the FOIA. BOP also routinely emphasized the importance of effective management of their FOIA program during its senior executive meetings.

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

As the Department of Justice emphasized in its [2009 FOIA Guidelines](#), "[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, Routing Misdirected Requests & Still Interested Inquiries:

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\(a\)\(6\)\(E\)\(i\) \(2006 & Supp. IV 2010\)](#). 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 Fiscal Year 2015, the Department reported an average of 7.34 days to adjudicate requests for expedited processing.

Misdirected Requests

The [Open Government Act of 2007](#) amended the FOIA, by among other things, adding a new routing requirement concerning the handling of misdirected requests. Upon passage of the amendment, OIP published [guidance](#) to agencies on this new requirement. In accordance with the FOIA's routing provision, the twenty working-day time period to process a request commences "on the date on which the request is first received by the appropriate component of the agency, but in any event not later than ten days after the request is first received by any component of the agency that is designated in the agency's regulations under this section to receive requests." 5 U.S.C. § 552(a)(6)(A)(1).

As detailed in OIP's guidance, all components of an agency that are designated by the agency's regulations to receive FOIA requests, must ensure that they promptly review each FOIA request upon receipt to make the threshold determination whether they are the appropriate FOIA office within the agency to process that request. If there is information in the request letter that indicates the request was misdirected, the receiving FOIA office must be sure to route the FOIA request to the proper FOIA office within the agency within ten working days. If the receiving FOIA office fails to route the misdirected request within ten working days, and the request is otherwise a proper FOIA request, the twenty-day response time period commences on the tenth day nonetheless. As a result, agency FOIA offices must be sure that they avoid the situation where their delayed routing of a request results in the proper FOIA office losing some or even all of its response time.

The Department has paid careful attention to ensure that requests are efficiently routed to the appropriate component FOIA offices. The routing of misdirected requests is a topic that was discussed with components as part of our comprehensive review of each

component's FOIA operations during the Department's "Component Improvement Initiative." Moreover, the Department provides to the public its Mail Referral Unit (MRU) as an Office where requests can be sent if the requester does not know where within the Department they should send their request. Upon receipt of these requests, the MRU assists the requester by routing the request to the most appropriate component within the Department based on the description of the records sought.

Still-Interested Inquiries

There are occasions during the FOIA process where the passage of time or a change in circumstance gives rise to a question of whether a FOIA requester is still interested in obtaining the records that are responsive to a request. When this occurs, many agencies contact the requester to inquire whether he or she is "still-interested" in having the request processed. As stated in OIP's [2010 guidance](#), "[w]hen done judiciously, this is entirely appropriate because agency resources should not be expended on processing a request when the requester is no longer interested in the records." In that event, rather than expending limited time and resources on a request that is no longer of interest, agency FOIA professionals can move on to processing the next requests in their processing queues, ensuring that those requests are not delayed unnecessarily. Nevertheless, there are many things agencies should consider when asking whether a requester is still interested that are very important to keeping to the President's call for agencies to work with requesters "in a spirit of cooperation."

On July 2, 2015, OIP issued new [guidance](#) to agencies outlining a series of procedures that should be used when inquiring whether a requester remains interested in the continued processing of their request. All Department of Justice components comply with the new procedures set out in the guidance. These new procedures ensure that agencies have reasonable grounds for making a still-interested inquiry, that there are limitations on the number of still-interested inquiries that are made on a request, that agencies are using the requester's preferred method of communication, and that requesters are provided a reasonable amount of time and method to respond. The guidance also ensures that requesters are never disadvantaged by the process.

Requester Services – FOIA Requester Service Centers and Public Liaisons:

Over the past seven years, the Department has put a significant emphasis on the importance of customer services and good communication with requesters. In 2010 and again in 2013, OIP issued [government-wide guidance](#) on this important topic. FOIA Requester Services Centers and the FOIA Public Liaisons who supervise them are an essential piece of providing good customer service and having effective communications with requesters. Here at the Department, 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 as well as how and where to make requests.

Notably, the Department put an emphasis on the role of the FOIA Public Liaison, as well as other FOIA contacts, in its new FOIA regulations issued in April 2015. In accordance with the Department's new FOIA regulations, "[e]ach component has a FOIA Public Liaison who can assist individuals in locating records particular to a component." 28 C.F.R § 16.2 (Apr. 3, 2015). Further, "[b]efore submitting their requests, requesters may contact the component's FOIA contact or FOIA Public Liaison to discuss the records they are seeking and to receive assistance in describing the records." *Id.* at § 16.3(b). If a component determines a request is not reasonably described, "it shall inform the requester what additional information is needed or why the request is otherwise insufficient." *Id.* The regulations further provide that "[r]equesters who are attempting to reformulate or modify such a request may discuss their request with the component's designated FOIA contact, its FOIA Public Liaison, or a representative of [OIP], each of whom is available to assist the requester in reasonably describing the records sought." *Id.* When fees are at issue, the regulations declare that "[c]omponents shall make available their FOIA Public Liaison or other FOIA professional to assist any requester in reformulating a request to meet the requester's needs at a lower cost." *Id.* at § 16.10(e)(4).

In addition to these Department-wide efforts, several components have taken proactive approaches to further strengthen these customer services for the public. The Initial Request Staff of OIP, which processes requests for the Department's six senior management offices, launched an initiative to contact all requesters whose request was older than one year. This initiative provided requesters with, when applicable, updated points of contact, the status of their request, and an opportunity to discuss any aspect of the request's processing. Similarly, the DEA FOIA Office reports that it has increased the frequency of sending "Status Letters" to requester to keep them informed of the status of their requests. The FBI FOIA Office has designated a team responsible for contacting all requesters whose responsive documents are in excess of 2,500 pages to determine if the number of pages could be reduced to facilitate a speedier response. In Fiscal Year 2015, the team contacted 244 requesters and it was able to reduce 83% of the pages, totaling 2.9 million pages, initially determined to be responsive to these requests.

Other Initiatives:

In addition to the above, the Department has engaged in a number of other initiatives to ensure that its administration of the FOIA is as efficient and effective as possible. The Acting Associate Attorney General, who also serves as the Department's Chief FOIA Officer, continued to hold meetings of the Department's FOIA Council. The FOIA Council was established to serve as a high-level forum within the Department for senior component officials to discuss cross-cutting FOIA issues and overall administration of the FOIA.

With the support of the Acting Associate Attorney General, OIP also continued to build on the work from its Component Improvement Initiative. OIP regularly reviews component's FOIA data and provides them direct feedback. Now entering its third year, the Component Improvement Initiative started in Fiscal Year 2014 as an in-depth review of the Department's FOIA processes. That effort continued during Fiscal Year 2015 at both the Department and individual component level. Building on the efforts in Fiscal Year 2014, OIP continued to gather data to evaluate component progress throughout the year and proactively addressed issues as they developed. This past year, OIP continued its efforts

with the Component Improvement Initiative by using lessons learned and the best practices developed during the first two years of this project to reexamine components' FOIA programs. OIP is also working on expanding this important effort to other agencies so they too can benefit from this model of self-assessment.

Many of the Department's components have also taken steps to make sure their FOIA operations are operating efficiently and effectively. For example, the Criminal Division reports that it continuously reviews its procedures and conducts self-assessments to improve its FOIA program. Significantly, the Unit's new Deputy Chief conducted a comprehensive program review and a number of the findings and recommendations from this assessment have resulted in improved procedures and increased efficiencies. EOIR took a similar approach by evaluating its existing process to identify any areas that could be improved and to eliminate unnecessary redundancies.

OIP's IR Staff has continued to leverage e-discovery tools within its search process in order to inject greater efficiency in its FOIA administration. Last year, the IR Staff concluded its pilot for employing these tools and this past year it began using them regularly as the default for searches of emails, thereby saving countless hours that would have been required to conduct the same searches prior to these tools being available. OSG reports that it recently began using these tools to improve its efficiency as well. The FBI has similarly placed an emphasis on technology to ensure effective systems are in place. The FBI FOIA Office enhanced its FOIA case management system significantly to:

- Allow the public to electronically submit FOIA requests and receive responses through the fbi.gov portal. This enhancement allows the FBI's case management system to ingest FOIA requests from the portal, provide correspondence regarding the request to the requester, and deliver final products to the requester community, all without paper.
- Import a search slip directly into the database.
- Allow supervisors to select multiple work items for assignment at one time. The application automatically recognizes the analyst and auto-populates the analyst identification number into the classification stamps. In addition, through automation, the system allows the analyst to declassify based on the date of the document through newly developed menu selections.

Similarly, the Office of Professional Responsibility (OPR) has implemented a complete electronic processing, reviewing, and signature process. By implementing this process, OPR reduced the amount of time taken to process responsive records. The electronic signature implementation has also reduced the amount of paper that is used when processing FOIA requests.

Section III: Steps Taken to Increase Proactive Disclosures

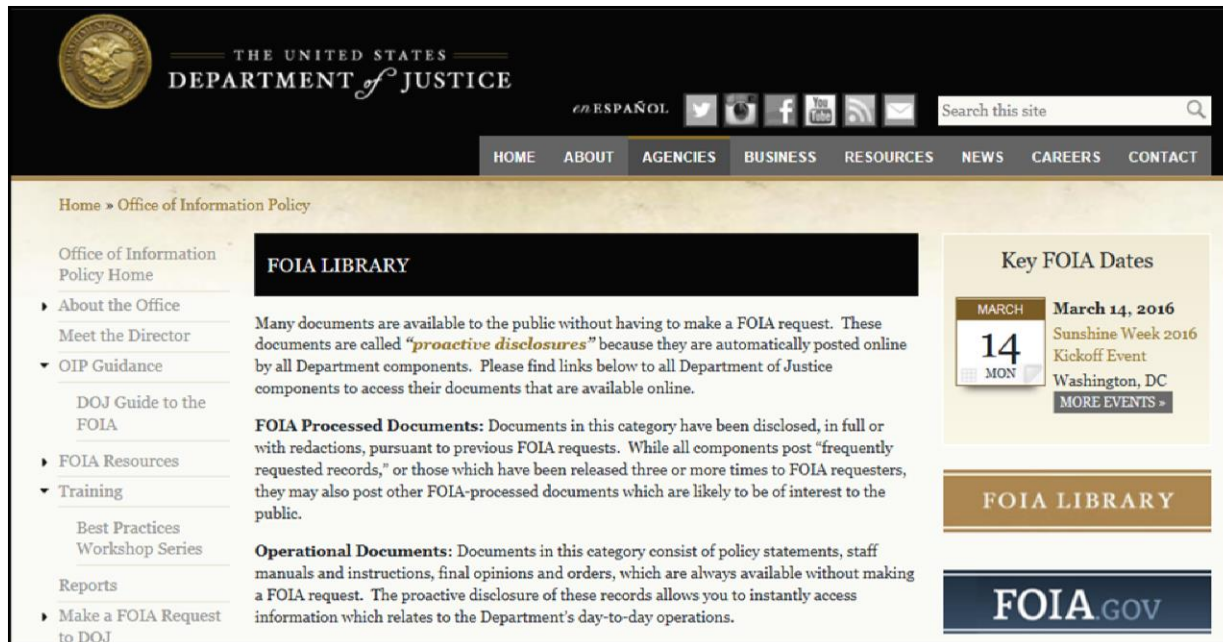
Both the [President](#) and the [Department of Justice](#) have focused on the need for agencies to work proactively to post information online without waiting for individual requests to be received. The Department has continued to make records available to the public proactively, posting a wide range of material.

Posting Material:

In order to answer the Department's call for agencies to "readily and systematically post information online" it is important that each agency have a process in place to identify records for proactive disclosures. The Department has put processes in place to identify records of public interest that can be proactively posted online. While components use different strategies for identifying this information, components have tailored their process or method of identifying proactive disclosures based on their current operations and the types of records that are of interest to the community of individuals that most frequently visit their websites.

For example, BOP personnel recommend records for posting each month. CRT established procedures that require each program section of the Division to post all significant program activity proactively. EOUSA's FOIA professionals work in collaboration with the Strategic Communications Staff to identify information of general public interest for posting. EOUST FOIA professionals attend EOUST's Open Government Team meetings, which include IT and Office of Planning and Evaluation professionals, to identify records suitable for proactive disclosure and updating. Finally, the OLC publication process ensures that many of its opinions are released without the need for a FOIA request. In addition to eventually being placed in a bound volume, published OLC opinions can also be found on the "Opinions" page of OLC's [website](#).

The FOIA itself requires proactive disclosure of those records released under the FOIA "which, because of the nature of their subject matter, the agency determines have become or are likely to become the subject of subsequent requests." 5 U.S.C. § 552(a)(2)(D). The Department's components use different methods for identifying "frequently requested" records including: monitoring for such requests as part of their ongoing case management process, conducting periodic reviews of FOIA logs, and holding monthly meetings that include not only FOIA professionals but other interested stake holders like IT and Communications personnel.



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 2015 include:
 - Through its blog, [FOIA Post](#), OIP continued to inform both agencies and the public of new developments and upcoming events concerning the FOIA.
 - OIP continued to post its guidance articles to agencies on the implementation of the FOIA. Specifically, OIP posted the following guidance articles this past reporting period:
 - [Guidelines for 2016 Chief FOIA Officer Reports](#)
 - [Guidance for Further Improvement Based on 2015 Chief FOIA Officer Report Review and Assessment](#)
 - [Limitations on Use of "Still-Interested" Inquiries](#)
 - [Implementation Checklist for OIP Guidance on Limitations on Use of "Still-Interested" Inquiries](#)
 - [Proactive Disclosures of Non-Exempt Agency Information: Making Information Available Without the Need to File a FOIA Request](#)
 - [Implementation Checklist for OIP Guidance on Proactive Disclosures of Non-Exempt Agency Information](#)
 - OIP also posted the following in its FOIA Library:

- [Attorney General Memorandum to Department Justice Attorneys Issuing Guidance Regarding § 851 Enhancements in Pleas Negotiations](#)
 - [Emails on the 2014 Clemency Project](#)
 - [Deputy Attorney General Memorandum for All United States Attorneys Regarding the Authorization for Certain Early Disposition Programs](#)
 - [Attorney General Memorandum for all Federal Prosecutors Regarding Revisions to Death Penalty Protocol](#)
 - [Letters submitted to Congress pursuant to 28 U.S.C. § 530D](#)
- 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. Further, OIP and the Office of Public Affairs posted [Calendars](#) for the Attorney General and other Senior Department Officials
- 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](#), [resources on Exemption 3 statutes](#), and new, updated sections of the [Department's Guide to the Freedom of Information Act](#).
- Among other items, the Antitrust Division updated its [website](#) with new press releases, speeches, Division Guidelines, Victim-Witness Hearing Notification Postings, International Program Updates, information on the Antitrust Consent Decree Review, Division Newsletters, workload statistics, Antitrust Division appropriations figures, and Sherman Act violations yielding a corporate fine of \$10 million or more. The Antitrust Division also continued working on its project to digitize and post older documents, which include signed copies of court filings and incoming request letters seeking business reviews. During this reporting period 171 new documents were posted as part of this project.
- ATF has continued to post a [listing of Federal Firearms Licensees](#) (FFL's). This listing is updated on a monthly basis, and is available for download as a nationwide listing, or on a state-by-state basis. Additionally, ATF posted an [Annual Firearms Manufacturing and Export Report](#) and new [Firearms Trace Data](#).
- BOP posted [press releases](#), [new policies and forms](#), its [Certified Religious Diet Specifications Quote Sheet](#), the [FY 2016 National Menu](#), BOP's [Clinical Practice Guidelines for Management of Tuberculosis](#), and data on BOP [inmates](#), [staff](#), [population](#), and [serious assaults on staff](#).
- The Civil Division's Office of Immigration Litigation continues to post its [monthly bulletin](#).

- CRT continues to post records concerning its [cases, appellate briefs and opinions, selected case summaries](#), and [DOJ agreements and resolutions](#).
- The Criminal Division posted hundreds of [press releases](#), speeches, and testimony detailing significant investigations and prosecutions, in addition to the Criminal Division's policies on matters of significance to the public. In addition, the Criminal Division's FOIA/PA Unit redesigned its [FOIA Library](#) with various links to Criminal Division Section websites, which post a great deal of information concerning the operations and activities of the Division.
- EOIR posted [Board of Immigration Appeals Precedent Decisions](#), [Office of the Chief Administrative Hearing Officer Published Decisions](#), [List of Disciplined Practitioners and Decisions](#), [EOIR's Statistical Yearbook](#), [EOIR's publication of Immigration Law Advisor](#), [Asylum Statistical Charts](#), [Operating Policy and Procedure Memoranda for Immigration Courts](#), [List of Free Legal Service Providers](#), and [EOIR News](#)
- EOUSA posted its [Social Media Directory](#), [Annual Statistical Report](#), [National Caseload Data](#), [United States Attorneys' Bulletins](#), [United States Attorneys' Manual](#), and [National Caseload Data](#).
- The FBI's manages a robust FOIA Library through its site, "[The Vault](#)." The Vault contains over 6,700 documents and other media. This past year alone the FBI added documents to the Vault on 31 new subjects. Below is a sampling of some new items available in the Vault:
 - Files concerning FBI investigations of violent threats made against actor, producer, and well known disk jockey, Casey Kasem.
 - 1969 background investigation records of Shirley Temple Black when Ms. Black was under consideration for executive appointment. Also included are two small files regarding threats made against Ms. Black.
 - Records related to the investigation of Alger Hiss who was convicted of perjury in 1950.
 - FBI investigations of violent threats made against Joan Rivers.
 - Records concerning a 2002 investigation of former Boston Mayor Thomas Menino that did not lead to prosecution.
 - Records related to the FBI's BOMBROB Case, which concerned a number of Midwestern bank robberies involving explosives by a white separatist group during 1995-1996.
 - Records related to the FBI's investigation of the Oklahoma City bombing.
 - The FBI's January 3, 2014 "Digital Evidence Policy," which covers the proper handling, reviewing, and processing of digital evidence collected in the course

of FBI investigations.

- Records from FBI files related to President Ronald Reagan.
- Records concerning the joint investigation of the D.C. Sniper by the FBI, state, regional, and local law enforcement.
- The Justice Management Division (JMD) posted its [FY 2014 Annual Report to Congress on Debt Collection Recovery Activities for Civil Debts Referred for Collection](#), and a revised version of the [Claims Collection Litigation Report](#), which is utilized by other federal agencies for referring claims to DOJ. JMD also posted its [Annual FBI Whistleblower Report to the President](#). On its [Budget and Performance page](#), JMD posted new Budget and Performance Summaries, Budget Fact Sheets, Congressional Budget Submissions, Exhibit 300's, and Annual Performance Report & Annual Performance Plans.
- The Office of the Solicitor General (OSG) posted each [brief](#) that it filed with the Supreme Court.
- The National Security Division (NSD) posted national security related [press releases](#) and [NSD statements, testimony and reports](#).
- OLC continues to post [opinions](#) that are appropriate for publication.
- The Office of Violence against Women (OVW) posted [information](#) about grant awards, including the name of the grantee, award amount, and the OVW grant program.
- The Office of the Pardon Attorney (OPA) proactively disclosed [Executive Clemency Statistics](#).
- USNCB posted its [FOIA logs](#) and [press releases](#).

Several of the Department's components also made efforts to publicize when new materials were posted online so that those who were interested were aware of their availability. For example, the Antitrust Division has 128,299 subscribers to its [GovDelivery email subscription service](#). In addition, the Division's web team sent 374 [RSS feed updates](#) to five feed categories, which include Civil Case Filings, Criminal Case Filings, Press Releases, Speeches, and Upcoming Public Hearings. Several of the components use social media platforms such as Twitter, Facebook and YouTube. Further, some components explained that they publicize their proactive disclosures by spotlighting them on their websites, using scrolling marquees on their home page, and through online newsletters. OIP continued to highlight a number of newly posted material on its website through its Twitter feed and its blog, *FOIA Post*.

While the Department strives to proactively post as much information on its websites as possible, there are sometimes limitations 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 not appropriate for release. For example, EOIR

primarily handles first-party Immigration records, which cannot be posted online. 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. For example, the CRT has many historical documents that due to their age and paper quality cannot be scanned in a way that would allow them to easily become compliant with Section 508. The majority of the DOJ components reported that while the coding for Section 508 is done outside of their FOIA offices, the additional resources that are needed by the offices responsible for the coding continues to pose a challenge for posting records.

Other Initiatives:

In addition to the efforts described above, several components reported additional steps taken to further promote proactive disclosure practices. For example, BOP leadership emphasized the importance of promoting openness and transparency in their meetings and directorates are encouraged to post records demonstrating how BOP operates. The FBI established a strategic measure to increase the number of proactive disclosures on the Vault by 20% in FY 2015, and they exceeded this goal by posting substantially more records on thirty-one new topics.

OIP has also taken steps to further encourage proactive disclosures across the government. On March 16, 2015, OIP issued new guidance to agencies entitled [*Proactive Disclosures of Non-Exempt Agency Information: Making Information Available Without the Need to File a FOIA Request*](#). The new guidance provides information on a variety of proactive disclosure topics, including methods for disclosures, strategies for identifying frequently requested records, and ensuring that posted information is useable. The guidance includes a [checklist](#) which serves as an easy reference and resource for agencies implementing the guidance. Additionally, in July 2015, the Department launched a Proactive Disclosure Pilot which was designed to test the feasibility of posting FOIA responses online so that they are available to all requesters. OIP is gathering additional data from the pilot participants and will then compile its findings and release a report on the outcome of the pilot. Further emphasizing the importance of proactive disclosures, OIP added a session on Best Practices on Collaborative Approaches for Proactive Disclosures to its April and June Advanced FOIA Seminars.

Finally, launched during Sunshine Week four years ago, FOIA.gov continues to serve 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. The most recent set of data to be made available on FOIA.gov is the data from agencies' Fiscal Year 2015 Annual FOIA Reports. New charts and graphs will be added to show the evolution of key FOIA statistics over the past several 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.

Section IV: Steps Taken to Greater Utilize Technology

A key component of the President's [FOIA Memorandum](#) was the direction to "use 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. Particularly, we have found great potential in technological solutions that help with the core functions of document processing.

Making Material Posted Online More Usable:

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. 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.

Several components improved their websites by making information posted online more accessible and easier to locate. OIP continues to improve the usability of several of the FOIA reports and resources on its website by posting them in open formats. For example, during the reporting period, OIP posted agency Annual FOIA Report data, its Chart of Exemption 3 Statutes, Assessment of Agency Annual and Chief FOIA Officer Reports, and Litigation and Compliance Report data in both human readable and open formats. Similarly, ATF posted its Federal Firearms Licensee (FFL) listing in both Microsoft Excel and open text formats. The data is also made available through Socrata in machine readable formats.

In another effort to make the material posted online more useful to the public, several components redesigned their websites to make it easier for the public to locate information. For example, the Criminal Division revamped its FOIA website to make it easier for the public to locate policy documents, congressional reports, frequently requested records, and other information of public interest. During the reporting period, OLC also updated its FOIA Library to include categories of posted records so that specific records could be more easily located.

Several of the Department's components reported that their FOIA professionals interacted with other agency staff, such as technology specialists, public affairs, or communications professionals in order to identify new and effective ways of posting information online. BOP's FOIA Office works with its IT and public affairs professionals to evaluate methods to make it easier for the public to use its website. USNCB worked with its IT professionals to launch a mobile application for the iPhone and iPad. EOUST's FOIA professionals regularly meet with IT and Office of Planning and Evaluation staff at meetings of the Open Government Team to find new ways of posting component information online.

Use of Technology to Facilitate Processing of Requests:

Recognizing the importance of fully utilizing technology to improve their FOIA administration, many of the Department's components provided training to their staff during this reporting period on a range of new case management and processing tools. ATF, BOP, DEA, EOUSA, OIP, and the FBI all provided new training to their FOIA professionals on the proper use of the features provided in their FOIA case management systems. The full utilization of an agency's case management system is critical to keeping track of request workflow throughout the year and ensuring proper accounting at the end of the year. By way of a few examples, BOP dedicated a full day during its annual FOIA training event on how to better utilize its case management system. The FBI trained its staff on new features added to its case management systems to further promote efficiency. Finally, as OIP transitioned to using FOIAonline for its case management system, both its Initial Request and Administrative Appeals Staff received training on how to use the new system.

Furthermore, several components provided training to their staff on technology that assists with the actual processing of records. FOIA professionals at the Antitrust Division, ATF, and EOIR received training on the software they use to redact information. OIP, ENRD, EOUST, JMD, OLC, and the Tax Division all provided training to their FOIA staff on sophisticated tools that allow for advanced search capabilities and deduplication.

OIP and the Department continue to champion the use of advanced technological solutions that assist with the core functions of document processing as a key component of improving 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. During Sunshine Week 2016, OIP will reconvene [the FOIA IT Working Group](#) to discuss some of these technologies, and in particular, the leveraging of tools that can further improve search and deduplication capabilities.

In addition to OIP, many of the Department's components including, the Antitrust Division, ENRD, EOIR, EOUSA, JMD, OIG, OLC, OPA and the Civil Division are now using tools to search for, sort, and de-duplicate responsive documents. Using these tools to automate many of the internal processes for handling FOIA requests can bring great benefits in efficiency. For example, conducting an adequate search for responsive records often involves the review of both paper and electronic records originating with multiple employees throughout the agency. In turn, these searches can locate hundreds, if not thousands, of pages of material that need to be reviewed for both responsiveness and duplication before a FOIA disclosure analysis can be conducted. With the widespread use of email and the common practice of employees forwarding the same email to multiple other people, with each employee then building still further on that email, long chains of overlapping and duplicative email are frequently created. The benefits of using technology to de-duplicate, sort, and thread all those emails automatically, rather than doing so manually, are readily apparent.

Components identified some additional tools that could be beneficial to utilize in the future including, shared platforms, audio and visual redaction tools, and for those that do not yet have access to e-discovery-like tools, technology that improves and automates search and deduplication functions.

Other Initiatives – Quarterly Reports & Electronic Communications:

In January 2013, OIP instituted a new 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 new 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 Fiscal Year 2015.

On November 22, 2013, OIP issued a second installment of [guidance](#) on the importance of good communication with FOIA requesters. Building off guidance issued in 2010, this new guidance directed agencies to, among other things, communicate with requesters electronically as a default. All of the Department's components report communicating with requesters electronically whenever feasible.

Section V: Steps Taken to Improve Timeliness in Responding to Requests and Reducing Backlogs

The [President](#) and the [Department of Justice](#) both emphasized the importance of improving timeliness in responding to requests. The data referenced in this section of the Report comes from the Department's Fiscal Year 2015 Annual FOIA Report. As discussed above, in the face of increasing numbers of incoming requests, during Fiscal Year 2015, the Department's FOIA offices were able to process more requests than they received and more than was processed in the prior year. While continuing to maintain a high release rate (93.4%), the Department overall also improved its processing times for simple FOIA requests and closed all of its ten 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 Fiscal Year 2015 was 29.83, which is a reduction of almost two days from last fiscal year. Nearly 69% of the requests processed by the Department this past fiscal year were categorized as simple requests. As such, the overwhelming majority of requests processed by the Department were responded to in an average of less than 30 days.

Backlogs – Requests and Appeals:

Requests

As indicated above, by responding to 67,825 FOIA requests, the Department's FOIA offices were able to process more requests than were received this year and more than was processed in the prior year. Despite these accomplishments, as a result of an increase in the number of incoming requests and a continued increase in the complexity of the requests received, unfortunately the Department's overall request backlog increased. Even with the increase, however, the Department's overall request backlog amounted to less than 15% of the total number of requests received in Fiscal Year 2015. Reviewed component by component, there were many successes in backlog reduction. A total of twelve components decreased their backlogs and three maintained a nominal backlog of two or less, with one component remaining at zero. Eleven components reported only a slight increase in their backlogs of twenty requests or less.

As to the challenges that contributed to the component backlogs that occurred, in addition to more incoming requests and the increasing complexity of requests, components also noted the following challenges as contributing to an increase to their backlogs: staff shortages and turnover, staff reorganizations, the time needed to fully train new staff, and efforts to fill positions often held by seasoned and long tenured professionals.

Appeals

Despite receiving nearly 4,000 administrative FOIA appeals, the Department was able to process a record high 4,109 appeals, which resulted in a nearly 7% reduction in backlog. Notably, this was also the fourth year in a row that the Department reduced its

appeals backlog. The appeals backlog at the end of Fiscal Year 2015 made up only 6.92% of the total number of appeals the Department received.

Backlog Reduction Plans:

In the 2015 Guidelines for agency Chief FOIA Officer Reports, any agency with a backlog of over 1,000 requests in Fiscal Year 2014 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 and improving efficiencies. Further, as the Department's Chief FOIA Officer, the Associate Attorney General continued to convene the Department's FOIA Council to manage the Department's overall FOIA administration and to provide top level support for backlog reduction efforts. As noted last year, many of the components also had individualized plans, which they have reported working on this past year. Many of these plans included hiring additional staff, leveraging new technology, providing more training focused on efficiencies and best practices, further outreach to requesters to facilitate more efficient responses, and greater utilization of multiple processing tracks.

Moving forward, the Department remains committed to backlog reduction and we continue to take affirmative steps to achieve that goal in Fiscal Year 2016. 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, which for many components already resulted in a reduction of backlog. Component plans this year also included new ways of actively managing FOIA workflow, continued emphasis on FOIA training, digitizing the FOIA processing process, and hiring additional FOIA professionals.

To further assist both the Department and all agencies across the government with backlog reduction efforts, in December 2015 OIP hosted its second [Best Practices Workshop](#) dedicated to Reducing Backlogs and Improving Timeliness. The panelists included representatives from a number of agencies that have had particular successes in this area. The panel discussion was once again very well-received and highlighted a number of new best practices that have proven successful in improving timeliness and reducing backlogs.

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 on a number of occasions 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 Fiscal Year 2014. Notably, this marks the eighth consecutive year that the Department closed its ten oldest pending requests and appeals. Of the ten oldest requests that were closed one was withdrawn by the requester. The requester was not provided with an interim response prior to the withdrawal.

Interim Responses:

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 processed for disclosure, and facilitate the agency's ultimate response. All of the Department's components reported having a process in place to provide interim responses to requesters when appropriate. Over the past year, the Department has provided an interim release in response to approximately 700 requests that are in its backlog.

Use of the FOIA's 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 government-wide [guidance](#) on the proper application of exclusions.

During Fiscal Year 2015, the Department invoked an exclusion in response to 154 requests, which is 0.22% of all requests processed.

Spotlights on Success

The Department met the high demand of increasing numbers of incoming requests in Fiscal Year 2015 by processing even more requests. The nearly 68,000 requests processed this past year were not only more than was received, but also an increase of over 7% from the number of requests processed in the prior fiscal year. Further, the Department improved its processing times, closed its oldest requests, appeals and consultations, and maintained a high release rate of 94.8%.

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. OIP issued new guidance to agencies on the proactive disclosure provisions of the FOIA, which focuses on a variety of topics, including methods of disclosures, strategies for identifying "frequently requested records," and ensuring that posted information is useable. OIP also issued guidance on best practices observed in agencies' 2015 Chief FOIA Officer Reports and new standards for making "still interested" inquiries. In addition to issuing guidance, OIP trained nearly 2,000 employees on a range of FOIA topics such as utilizing proper administrative procedures, understanding exemptions, achieving transparency through proactive disclosures, improving customer service, and ensuring an effective FOIA administration. To further support agencies' FOIA training needs, in March of 2015 OIP released a suite of electronic FOIA training resources designed for every type of agency personnel from new employees, to senior executives, to FOIA professionals, to all other employees who may be called upon to assist their agency in administering the law.

In April 2015, the Department published new FOIA regulations, which streamline language and reflect a range of practices that embrace the President's FOIA Memorandum and the Department's 2009 FOIA Guidelines. The new regulations incorporate best practices that improve the FOIA process for both the Department and requesters. For example, the regulations focus on the roles of the Department's FOIA Contacts and FOIA Public Liaisons, and they emphasize good communication practices such as corresponding with requesters electronically as a default.

Other Success Stories Reported by the Department's Components

Antitrust Division:

- Despite an increase in the number of FOIA requests received in Fiscal Year 2015, the Antitrust Division reduced its Fiscal Year 2015 backlog by 24%.
- The Antitrust Division closed its ten oldest pending requests for the third straight year.
- During Fiscal Year 2015, the Antitrust Division had 128,229 subscribers to its GovDelivery email subscription service, an increase of 19 percent over last year. The Division sent 2,548,602 updates to those subscribers across 13 Antitrust content categories.

BOP:

- BOP formed a FOIA Working Group and through its efforts they have significantly improved their efficiency, effectiveness, consistency, and accountability. The Group's charter includes discussing ways to improve BOP's FOIA operations and issuing consolidated guidance to all BOP FOIA Professionals. As a result of the Working Group, FOIA Professionals throughout the country at BOP have more ownership of the program and are much more willing to raise issues and contact other FOIA Professionals for guidance.

Civil Division:

- For the third consecutive year, the Civil Division has reduced its backlog by 10%.

Community Oriented Policing Services (COPS):

- COPS continues to post the successful grant applications for grant programs administered by the agency and makes all of its publications available for viewing and downloading by the general public.

Criminal Division:

- The Criminal Division is very proud of its newly installed training requirements. All new Division personnel, not just FOIA professionals, are required to take the Department's e-Learning training entitled "FOIA Training for Federal Employees." By educating all new staff members about the requirements of the FOIA and the Department's FOIA policies, the Criminal Division expects its non-FOIA professional colleagues to be more fully appreciative of the importance of the President's directives.

EOIR:

- During FY 2015, the EOIR FOIA Service Center implemented a pilot to help reduce its backlog. New procedures instituted by EOIR have increased the speed with which the FOIA Service Center receives files for review and has resulted in a backlog reduction of over 21%.
- Additionally, EOIR expanded its use of technology with the new electronic search tools.
- EOIR is also taking advantage of a newly created quarterly Records and Information Management Newsletter to develop FOIA awareness articles that will be disseminated to the entire component.

EOUSA:

- In the face of more incoming requests and staffing shortages, EOUSA processed more requests than were received and more than was processed in the prior fiscal year.

EOUST:

- EOUST's success story focuses on proactive disclosures. EOUST responded to the anticipated interest of bankruptcy stakeholders concerning a recent Supreme Court ruling in *Baker Botts LLP v. ASARCO LLC*, 135 S. Ct. 2158 (2015) ("ASARCO"), by posting guidance in the form of eight FAQs.
- The EOUST utilized "Important Notices" on the EOUST homepage to announce that it had released the ASARCO FAQs.

FBI:

- The FBI's Records Management Division/Record Information/Dissemination Section established the eFOIA strategic initiative for Fiscal Year 2015. The eFOIA initiative was an enhancement to its existing FOIA case management system, which allows the public to electronically submit FOIA requests and receive responses through the fbi.gov portal. This enhancement allows FBI's case management system to ingest FOIA requests from the portal, provide correspondence regarding the request to the requester, and deliver final products to the requester community all digitally.
- On September 21, 2015, the FBI began the "open beta" testing period for its eFOIA initiative. The system continues in an "open beta" format in order to optimize the process for requesters. In 2016, the FBI plans to move eFOIA into full production mode.

OIG:

- During this reporting period, OIG has implemented a protocol to routinely make proactive postings of certain investigative summaries. OIG also implanted a new case management system that will greatly enhance its FOIA administration.

OLC:

- OLC processed more requests than the prior fiscal year despite losing staff with substantive FOIA responsibilities.

OPR:

- OPR implemented and continues to effectively use a completely electronic processing, reviewing, and signature process. By implementing this process, OPR reduced the amount of time taken by the Government Information Specialist to process responsive records, and the amount of time needed by the Special Counsel for FOIA/PA to review responsive records. The electronic signature implementation has also reduced the amount of paper that is used when processing FOIA requests. Overall, OPR's electronic implementation has made the initial processing to the final response to the requester more efficient.

USMS:

- As a result of new training provided to USMS staff, the overwhelming majority of staff now regularly process requests using electronic processing tools.