# United States Department of Justice

# 2024 Chief FOIA Officer Report

# Contents

# Introduction

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 issued new Attorney General FOIA Guidelines in March of 2022 directing 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.

The Department's Office of Information Policy (OIP) is responsible for encouraging compliance with the FOIA both within the Department and across the federal government. Each year, OIP provides guidance to agencies on the content of these annual reports, which for 2024 focus on: (1) FOIA leadership and the presumption of openness, (2) ensuring fair and effective FOIA administration, (3) proactive disclosures, (4) utilizing technology to improve efficiency, and (5) reducing barriers to access, improving timeliness, and reducing backlogs. The Department of Justice itself follows these guidelines and issues its own Chief FOIA Officer Report.

This marks the fourteenth year in which agencies, including the Department of Justice, have issued a Chief FOIA Officer Report. The 2024 Chief FOIA Officer Report for the Department of Justice details notable achievements and challenges in its administration of the FOIA. The Department's accomplishments during the last year include reducing the request backlog, processing a record number of requests, and reducing the ratio of backlogged to incoming FOIA requests. The 2024 Chief FOIA Officer Report also describes challenges components faced over the past year, such as staffing and technology resource limitations, increased volume and complexity of requests, and the impact of litigation on processing 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 2023.

# Overview of DOJ FOIA Processing and Key Metrics

The Department of Justice administers the FOIA on a decentralized basis, with thirty-two separate FOIA offices handling requests made to the various Department components. The Department received 110,934 FOIA requests in Fiscal Year (FY) 2023. The Executive Office for Immigration Review (EOIR) received 70,475 requests, constituting 63.52% of the Department's total requests received. Ten components received fewer than 100 requests.

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[1] [5 U.S.C. § 552(j)(2)(D) (2018).](5 U.S.C. § 552(j)(2)(D) (2018).)

## Percentage of Requests Received by Component

All Other Components 4%
CRM 1%
DEA 1%
ATF 2%
OIP 2%
USMS 2%
EOUSA 3%
BOP 5%
FBI 17%
EOIR 63%
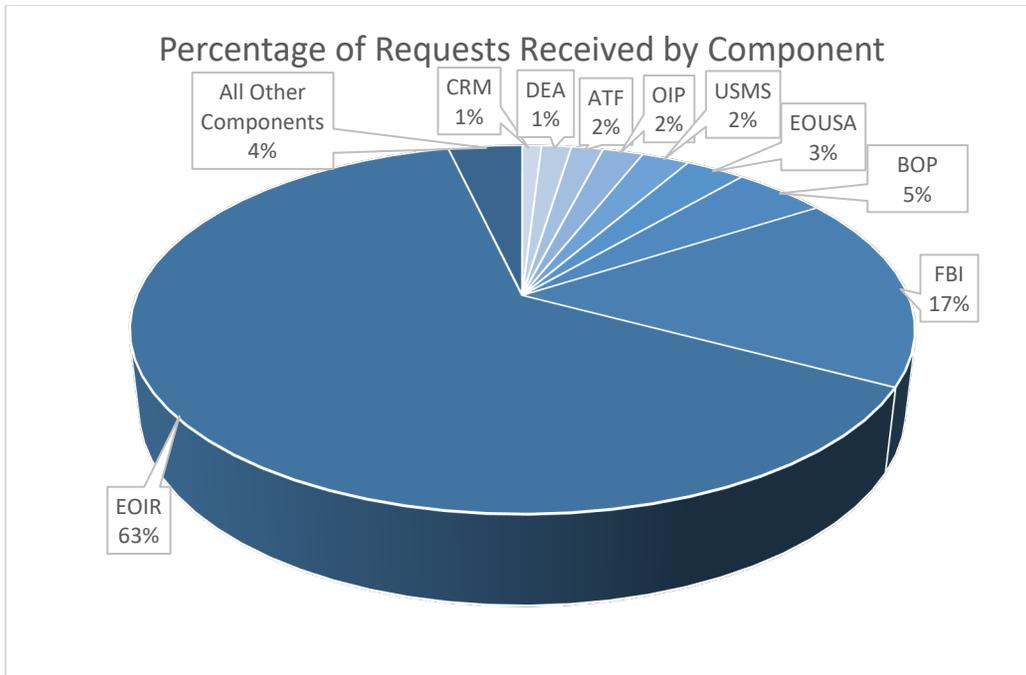
OIP is responsible for processing FOIA requests for the Senior Leadership Offices of the Department, specifically the Offices of the Attorney General, Deputy Attorney General, Associate Attorney General, Legislative Affairs, Legal Policy, and Public Affairs, as well as OIP. During FY 2023, OIP also processed requests for the Offices of Special Counsels Hur and Smith. The remaining thirty-one Department components are responsible for processing requests received for their own records, based upon guidance provided by OIP. The Department processed 144,065 requests in FY 2023, which is 61,197 more requests than in FY 2022. Twenty components processed more requests in FY 2023 compared to in FY 2022.

## Section I:  FOIA Leadership and the Presumption of Openness

The principle underlying the Attorney General's 2022 FOIA Guidelines is the presumption of openness affirming that "[t]ransparency in government operations is a priority of this Administration and this Department." The FOIA Guidelines also state that "fair and effective FOIA administration requires support from agency leadership." The Department has engaged in several efforts to engage leadership and prioritize the presumption of openness by incorporating the FOIA into the agency's core mission and strategic plans.

### Leadership Support for FOIA

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. Acting Associate Attorney General Benjamin C. Mizer, the third-ranking official at the Department of Justice, serves as the Department's Chief FOIA Officer.

The Department has incorporated FOIA into the agency's core mission. The Department's Strategic Plan for Fiscal Years 2022-2026 states that the FOIA should be read generously as part of efforts to reaffirm and strengthen policies foundational to the rule of law. One of the key performance indicators listed for this goal is the ratio of backlogged to incoming FOIA requests. The Department made substantial progress toward this indicator in FY 2023

and continuing into FY 2024, reducing its backlog significantly as compared to FY 2022. The Department's Strategic Plan also states that the Department will "emphasize user-centered design practices and plain language to ensure that its public-facing technology tools provide clear, concise, and usable information to the public." The FOIA case management systems used by many of the components, component FOIA websites, and FOIA.gov are developed and updated using user-centered design and have also implemented plain language best practices.

The Office of Legal Counsel (OLC) has fully embraced the FOIA principle of openness, and formally integrated it into the Office's Opinions practice. The "Best Practices for OLC Legal Advice and Written Opinions for OLC" refers directly to the Attorney General's 2022 FOIA Guidelines and includes an explicit OLC commitment to "maximize its efforts to post opinions online quickly and systematically in advance of any public request."

Integration of FOIA principles and goals into the Department and component-level strategic plans demonstrates leadership support for transparency and has led to investment in supporting FOIA offices in complying with the FOIA.

## Presumption of Openness

### Foreseeable Harm Language
The Attorney General's 2022 FOIA Guidelines provide that "agencies should confirm in response letters to FOIA requesters that they have considered the foreseeable harm standard when reviewing records and applying FOIA exemptions." OIP's FOIA Language Database provides suggested foreseeable harm language that all the Department's components can use in their response letters. All DOJ components continue to include language in their final determination letters stating they have considered the foreseeable harm standard when reviewing records and applying FOIA exemptions.

### Glomar (Neither Confirm nor Deny) Responses
If acknowledging the existence of records would harm an interest protected by a FOIA exemption, an agency may respond to a requester that it can neither confirm nor deny the existence of requested records. This is commonly referred to as a *Glomar* response. Currently, there is no requirement to track and report on the use of *Glomar* responses in agency Annual FOIA Reports. To bring greater transparency to the use of *Glomar* responses, OIP has asked agencies to report on them in their Chief FOIA Officer Reports. Of the Department's thirty-two components, twenty-four either did not track whether the use of any exemptions involved a *Glomar* response or, if they did track, indicated that they did not issue a *Glomar* response during the reporting period. Some components that use non-

automated tracking systems, such as COPS or CRS, reported that *Glomar* information could be tracked by adding a column to their FOIA tracking spreadsheet. Other components, such as OIG and USPC, indicated that they could search within their existing tracking system for *Glomar* responses. Components using automated systems, such as OJP, CIV, and FBI, indicated that they would need to update their case management systems to track *Glomar* responses.

Components listed in the chart below incorporate tracking of *Glomar* responses into their case management systems. These components reported issuing 306 such responses during the reporting period. The chart below indicates the number of *Glomar* responses issued by component and, when available, whether they were full or partial denials and the exemptions cited.

| Component | Number of *Glomar* Responses | Exemptions Cited |
|---|---|---|
| Antitrust Division (ATR) | 1 Full Denials | Exemption 3 |
| ATF | 17 | Exemptions 6 and 7(C) |
| Federal Bureau of Prisons (BOP) | 24 Full Denials | Exemptions 6 and 7(C) |
| Criminal Division (CRM)[2] | 78 Full Denials | Exemptions 6, 7(A), and 7(C) |
| Drug Enforcement Administration (DEA) | 144 (143 Full /1 Partial Denial) | Exemptions 6, 7(A), 7(C), 7(D), 7(E), and 7(F) |
| Office of Professional Responsibility (OPR) | 19 (17 Full/2 Partial Denial) | Exemptions 6 and 7(C) |
| U.S. Marshal Service (USMS) | 5 Full Denials | Exemptions 6, 7(C), and 7(E) |
| Tax Division (TAX)[3] | 18 Full Denials | Not available in system |

## Section II: Ensuring Fair and Effective FOIA Administration

As stated in the Attorney General's 2022 [FOIA Guidelines](#), "[e]nsuring fair and effective FOIA administration requires . . . proper training, and a full understanding of FOIA obligations by the entire agency workforce." The FOIA Guidelines reinforce longstanding guidance to "work with FOIA requesters in a spirit of cooperation." The Attorney General also "urge[d] agency Chief FOIA Officers to undertake comprehensive review of all aspects of their agency's FOIA administration" as part of ensuring fair and effective FOIA administration. The Department has undertaken efforts to ensure fair and effective FOIA administration, including continuing to host robust virtual FOIA trainings, prioritizing outreach with the public to improve understanding of the FOIA process, assessing personnel needs of FOIA programs, and using data to identify best practices and address challenges in administering the FOIA.

### FOIA Training
The FOIA directs agency Chief FOIA Officers to offer FOIA training to agency personnel. *See* 5 U.S.C. § 552(j)(2)(F). Training on FOIA administration, including how to correctly apply the statute's exemptions, enhances an agency's ability to administer the law. OIP continues to conduct a wide

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[2] CRM began tracking Glomar responses in early 2023.
[3] TAX began tracking Glomar responses in 2023.

range of training activities to educate FOIA personnel at all federal agencies on the policy and legal requirements of the FOIA.

Between March 2023 and March 2024, over 7,680 federal employees registered for OIP-hosted virtual training sessions on topics including the FOIA's procedural requirements, FOIA exemptions, fees, litigation considerations, improving customer service, and ensuring an effective FOIA administration.

During this reporting period, OIP continued to offer virtual courses to facilitate the broadest possible participation. FOIA professionals within the Department and from across the government attended the following events:

- *Virtual Introduction to the Freedom of Information Act* – This course 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 to recognize and handle FOIA-related problems that may arise in other areas of agency activity.
- *Virtual Procedural Requirements and Fees Workshop* – This workshop provides an overview of the FOIA's procedural requirements, fees, and fee waivers, and a discussion of the FOIA's proactive disclosure requirements.
- *Virtual Fees and Fee Waiver Workshop* – This workshop explains the three categories of requesters for fee purposes, types of fees, restrictions on charging fees, and fee waivers.
- *Virtual Exemption 1 and Exemption 7 Workshop* – The Exemption 1 workshop gives an overview of Executive Order 13526 and the withholding of classified national security information. The Exemption 7 workshop gives an overview of the FOIA's primary exemption for law enforcement records, including this exemption's threshold requirement and substantive subparts.
- *Virtual Exemption 4 and Exemption 5 Workshop* - The workshop provides an overview of Exemption 4, which protects trade secrets, certain commercial and financial information, and the submitter-notice process for exemption determinations. Additionally, the workshop provides an overview of Exemption 5, which incorporates civil discovery privileges into the FOIA.
- *Virtual Processing from Start to Finish Workshop* – This workshop takes attendees through the process of a FOIA request from receipt by the agency to final response to the requester.
- *Virtual Litigation Workshop* – This workshop covers considerations that arise during FOIA litigation, including guidance on successful litigation strategy, as well as the preparation of Vaughn Indices and declarations.
- *Virtual Privacy Considerations* - This course covers the FOIA's privacy exemptions and the Privacy Act. Topics include the interface between the FOIA and the Privacy Act, as well as an overview of FOIA Exemptions 6 and 7(C).
- *Virtual Refresher Training for FY 2023 Annual FOIA Reports and 2024 Chief FOIA Officer Reports* – These training events provide agencies with a refresher on their FOIA reporting obligations.

- *Virtual Privacy Considerations* - This course covers the FOIA's privacy exemptions and the Privacy Act. Topics include the interface between the FOIA and the Privacy Act, as well as an overview of FOIA Exemptions 6 and 7(C).

Further, OIP continued to provide virtual specialized training to agencies on any topic of interest, tailoring instruction to specific agency needs. Twenty-nine professional staff members from OIP gave a total of twenty-six training presentations during the year. Individualized training sessions were conducted for the following agencies:

- Central Intelligence Agency
- Department of Education
- Department of Energy, Office of Hearings and Appeals
- Department of Interior
- Department of Justice, Office of Access to Justice
- Department of the Treasury
- U.S. Nuclear Regulatory Commission

OIP hosted its annual DOJ FOIA Conference in April 2023, providing training to the Department's FOIA offices on topics such as updates to FOIA.gov, FOIA Business Standards, trends in FOIA litigation, and significant new case law.

OIP holds monthly calls with FOIA professionals from all the Department's components, during which OIP discusses issues impacting components and recent case law. During FY 2023, the Department had 443 full-time FOIA employees and the equivalent of 128.27 full-time FOIA staff who worked on FOIA as a portion of their responsibilities. Of these, 86.09% attended substantive FOIA training offered by OIP, the component FOIA office, or another entity.

The Department's components also lead substantive training for their staff. For example:

- ATF's weekly FOIA staff meetings included 20–30-minute practical training exercises. The short training sessions within the weekly staff meetings were a critical ingredient of the FOIA program's efforts to ensure the continuous professional development of staff throughout the year. ATF's FOIA leadership team also provided several in-depth training opportunities for staff, including training on the processing of Federal Firearm Licensee (FFL) inspection records for public release to ensure a baseline level of knowledge and expertise for tens of thousands of FFL inspection records that ATF processes each year. ATF's Office of Chief Counsel also led a training on historical precedent and practice under FOIA relating to important ATF information equities, including unique FOIA Exemption 3 and Exemption 7 concerns. Numerous practical examples and exercises were included in the trainings.
- The Environment and Natural Resources Division (ENRD) FOIA staff conducted a series of targeted FOIA trainings on the "foreseeable harm" standard and segregability requirements for dozens of ENRD attorneys, managers, and professional staff. ENRD also posted updated training materials on the Division's intranet site to reach a broader audience. ENRD's FOIA team also meets on a regular basis and routinely discusses best practices in responding to requests.

- The Office for Access to Justice (ATJ) provided FOIA training to staff during their staff retreat in April 2023 and provided FOIA training for new staff.
- USMS Office of the General Counsel funded FOIA training opportunities conducted by the Graduate School USA and other entities.
- DEA's Unit Chiefs and senior FOIA staff conducted numerous trainings for employees assigned to the FOIA/PA Unit.  Training topics included FOIA Exemptions 6 and 7; records processing; conducting record searches; requester outreach training; *Glomar* and categorical denial responses; processing email records, requester categories and fees, and use of the (c)(1) exclusion.
- The Professional Responsibility Advisory Office (PRAO) provided comprehensive briefings to its entire staff, encompassing both FOIA and non-FOIA personnel, with the goal of strengthening adherence to current FOIA practices and policies.  The briefings consisted of a presentation, supplemented by a question-and-answer segment, directly conducted by OIP.

OIP continued to make the interactive FOIA training modules for senior executives, federal employees, and FOIA professionals available to agency employees on *LearnDOJ*, the Department's e-learning management system.  In addition, components informed non-FOIA professionals of their obligations under the FOIA through regular briefings on active cases or specialized FOIA training and resources.  For example, ATR discussed its FOIA resources, obligations, and expectations with its senior leadership as part of ATR's work-force planning activities.  ATR also provided training for non-FOIA staff on the FOIA process and how it relates to their work.  The Office of Community Oriented Policing Services (COPS) employees received an overview of the FOIA and how non-FOIA professionals can assist the office in meeting its FOIA responsibilities.  The Civil Rights Division's (CRT) FOIA Unit offered ad hoc training to CRT's litigating sections along with detailed coordination and training for FOIA litigation matters.  CRT's FOIA Unit also provided FOIA training sessions to incoming employees, detailed guidance to each new Program Section FOIA contact; and periodically met with Program Section staff to provide specialized guidance.  ENRD's FOIA Attorney and Government Information Specialists (GIS) regularly work with section contacts and document custodians on effectively narrowing requests, conducting reasonable searches, reviewing and coding documents, and the use of electronic tools.  The U.S. National Central Bureau (USNCB) provided FOIA guidance as part of its caseworker's manual, a resource used across the agency.  The Office of the Inspector General (OIG) added mandatory FOIA training to the GIS' performance workplans to ensure they receive proper FOIA training each year.  The Office of the Pardon Attorney (PARDON) GIS conducts a FOIA training with each onboarding class of new employees during their first week of onboarding.  Many components also provide FOIA information on their intranet pages as a resource for non-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 with the Requester Community

To improve the Department's and government-wide FOIA administration, the Department continues to engage in outreach with the requester community both outside of, and as part of, the standard request process.

## Outreach Outside of the Standard Request Process

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. The Director of OIP is also a co-chair, along with the Director of the Office of Government Information Services (OGIS), of the [Chief FOIA Officer's (CFO) Council](#), which hosts meetings that are open to the public and that provide opportunities for public comment. Additionally, OIP's Director and other senior staff participate in outreach with members of the public and representatives from various civil society groups to discuss topics related to FOIA and government transparency, such as work related to [commitments](#) to strengthen access to government information through FOIA contained in the [Fifth United States Open Government National Action Plan](#).

Many components also engaged in outreach with the requester community during the reporting period, including public policy groups, major news organizations and journalists, frequent FOIA litigants, and organizations or individuals who frequently request information. For example, BOP's General Counsel and Senior Deputy General Counsels regularly communicate with leadership at Families Against Mandatory Minimums (FAMM) about providing attorneys representing incarcerated clients' certain records quickly and permitting attorneys to certify identities on behalf of incarcerated clients when they affirmatively state they are representing the client. Office of General Counsel leadership and FAMM are discussing ways to potentially provide such attorneys other records in a streamlined manner pursuant to FOIA requests.

The Executive Office for United States Attorneys (EOUSA) FOIA Staff held outreach telephone conferences with requesters and/or groups of requesters seeking similar categories of records. During these calls, EOUSA provided explanations about how such records are maintained, the strategic approach EOUSA was employing to collect and process records, and suggested alternatives or consolidated approaches that could more effectively or expediently achieve the results sought.

ATF's FOIA program continued to work proactively with stakeholders, including firearms industry trade associations, gun violence prevention organizations, Second Amendment advocacy groups, and news media organizations, through conference calls, virtual meetings, emails, and phone calls. ATF's proactive requester engagement approaches improved communications, strengthened relationships, and avoided unnecessary conflict or litigation. In many cases, ATF was able to work with requesters prior to the submission of requests to ensure that FOIA requests were drafted clearly so that ATF could respond as quickly as possible.

## Outreach as Part of the Standard Request Process

As part of the standard request process, DOJ's FOIA professionals proactively contact requesters concerning complex or voluminous requests to clarify or narrow the scope of requests. Many

components achieved success through early and frequent communication with requesters as part of the processing of their requests. Such communication helped ensure that requests were directed to the proper component and were well-defined at the outset. Components reported that their requester outreach enabled them to clarify requests, narrow search terms, and avoid litigation in many instances. This communication also provided opportunities to explain certain limitations components have regarding their record keeping systems, search capabilities, and ability to release certain records. For example, the JMD FOIA Program developed a process for FOIA intake and a triage process for new requests that includes proactive contact with requesters for partially overlapping, overly complex and/or broad requests.

ATR regularly contacted requesters with complex requests and attempted to negotiate the scope of requests. ATR worked with an organizational requester with numerous complex requests to discuss the scope of work involved. ATR also regularly contacted requesters for clarification and found it helpful to explain that some of the records are withheld from disclosure pursuant to statute, which requires ATR to apply FOIA Exemption 3 to those records.

DEA's intake staff helped requesters narrow or clarify requests and directed requesters to frequently requested records available in DEA's FOIA Library. DEA's FOIA Unit Chiefs and other staff also conducted frequent outreach with requesters to discuss complex and voluminous requests, often negotiating to reach a manageable timeline or volume of records for search and processing.

The Office on Violence Against Women (OVW) often receives requests for successful grant applications. OVW has found it helpful to explain to prospective applicants that a successful grant application has limited relevance as each applicant's proposal is unique to their proposal, their community, and their needs. OVW staff have suggested additional ways for prospective applicants to think about what information should be included in a complete application during pre-application webinars to address this gap.

### FOIA Public Liaison

The FOIA describes the role of FOIA Public Liaisons as supervisory officials for agency FOIA Requester Service Centers who are "responsible for assisting in reducing delays, increasing transparency and understanding of the status of requests, and assisting in the resolution of disputes."[4] FOIA Requester Services Centers and the FOIA Public Liaisons play an essential role in providing quality service and effective communication with requesters. Components within the Department each have their own FOIA Requester Service Center and FOIA Public Liaison to assist the public with any questions they might have regarding their FOIA requests 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 submit FOIA requests.

The Department estimates that its FOIA Public Liaisons received more than 2,384 inquiries from members of the public via phone and e-mail. The frequency and number of times that requesters reached out to different components' FOIA Public Liaisons varied a great deal based on the number

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[4] 5 U.S.C. § 552(l).

of requests and types of records a given component handles.  For example, some of the Department's components that receive small numbers of requests estimated receiving less than 50 requests for assistance per year, with some reporting receiving none.   In contrast, the Federal Bureau of Information (FBI) negotiated the scope of 732 requests and resolved 132 disputes with requesters.

Components that received inquiries from the public reported that their FOIA Public Liaisons played a significant role in keeping requesters informed and answering their questions.  Requesters' inquiries ranged from issues specific to an individual's request to general information sought about how the FOIA works and what records the component maintains.  Inquiries directed to the FOIA Public Liaison represent only a fraction of requester interactions with the Department's components.  Many more inquiries are also made to the components' FOIA Requester Service Centers or directly to the FOIA professional handling any given request.

## Other Initiatives

### Allocation of FOIA Personnel Resources Required to Meet FOIA Demand

During the reporting period, components reviewed their FOIA-related staffing capabilities to identify resources needed to respond to current and anticipated FOIA demands and improve recruitment and retention of qualified FOIA professionals.  Several components hired or are in the process of hiring additional FOIA staff to support their programs and address backlogs.  CRT conducted a series of desk audits which resulted in the alignment of managers and GIS compensation with other agencies.

ENRD re-allocated processing tasks among staff to maximize the use of available staffing resources.  ENRD also trained student paralegals to handle simple and moderately complex requests and trained a new team member on drafting correspondence.  ENRD anticipates that these changes will continue to allow its GIS and FOIA attorneys more time to focus on the most complex requests.  Additionally, ENRD's FOIA team requested and obtained the support of a contract paralegal to assist with some of its backlogged FOIA requests from 2022.

CRM is reorganizing its FOIA Unit to create specialized teams.  Currently, GIS and Trial Attorneys work on both litigation and administrative matters.  The CRM FOIA Unit plans to reallocate GIS staff from litigation to create a "Complex Processing Team" that only handles administrative requests, consultations, and referrals.  Additionally, CRM will create a "Litigation Team" that will only handle litigation matters.

In 2023, ATF invested heavily in human capital by hiring twenty new staff, including FOIA Specialists, supervisors, and a Presidential Management Fellow.  ATF also restructured to create new subunits and new management positions to oversee subunits.   ATF developed intensive training and onboarding programs to fully integrate new team members.  Over 60% of ATF's FOIA staff were hired within the last year, including nearly all new managers.  While onboarding a new team has presented some challenges, the extraordinary restructuring and hiring efforts of FY 2023 establish a firm foundation for excellence.

Finally, in October 2023, the CFO Council Committee on Cross-Agency Collaboration and Innovation Resources Working Group organized a Best Practices Workshop that focused on innovative methods for using and sharing resources, including how to build or rebuild a successful agency information

program, practices in FOIA technologies and areas where technology falls short in addressing challenges in FOIA administration, and innovative staffing opportunities.

## FOIA Data and Processing Metrics

The Department uses a range of data and processing metrics to ensure efficient management of its FOIA workload.  OIP's Component Improvement Initiative (CII) conducted an annual in-depth review of the Department's FOIA processes, FOIA data, best practices, and challenges.  As discussed in detail in Section V below, the CII team worked closely with several components to develop comprehensive backlog reduction plans.  OIP's CII team also worked with the Office of the Chief Information Officer (OCIO) to develop a Power BI dashboard to automate the compilation of data metrics and charts that the CII team uses to provide data analysis to components.   The dashboard will also enable components to assess their FOIA programs over time, against  metrics included in OIP's Assessment of Agency Chief FOIA Officer Reports, and to compare their performance to other components.  OIP plans to launch the Power BI dashboard in Spring 2024.

The Department's components also rely on data to track overall performance and workload, and to identify areas for improvement.  Aside from the backlog, BOP tracks the number of requests processed and received per FOIA professional, average processing time for requests in the simple track, and the status of BOP's ten oldest requests.  These metrics help BOP determine how to best manage its FOIA workload.  BOP consults various reports -- including, draft annual reports, lists of oldest requests, lists of requests assigned to each FOIA staff member, and status of requests -- and prioritizes efforts based on these findings.

Several components reported using productivity metrics to adjust staff workload and hiring needs.  For instance, the FBI's FOIA program held a monthly backlog meeting to inform its leadership on evaluation and assignment of simple and medium complexity cases, assignments for expedited processing, and discussion of top-level projects that could greatly impact backlog management.  The FBI FOIA Unit also utilized a heavily metrics-driven employment program as part of promoting professional development of its staff.

DEA's FOIA Unit managers and senior staff closely monitor individual employee and office-wide workload.   DEA plans to obtain additional personnel resources to sustain a long-term fair and effective FOIA administration, particularly to meet anticipated increased demand for FOIA requests related to the agency's use of new technology.

ATF's FOIA program began tracking page counts to track work, establish realistic production goals, hold team members accountable, and offer meaningful data to its component leadership to aid ATF's budgeting and workforce planning processes.   ATF's search team obtained and prepared for processing over 1.1 million pages of records in response to nearly 1,800 FOIA requests.  In addition, over 420,000 pages of records were processed in response to FOIA requests.

OIP's Appeals Team consults reports drawn from its case management system to examine monthly trends including appeals received, reviewed, closed, backlogged, and pending.  These metrics enable the Appeals Team to evaluate productivity, the status of all the pending appeals, and progress in meeting annual team and individual attorney productivity goals.  Assignments of administrative

appeals to OIP attorneys are determined based on appeal production metrics multiple times per week.  These metrics track attorneys' appeal dockets and permits supervisors to maximize efficiency when assigning appeals to achieve annual productivity and backlog reduction goals.

## Other Initiatives to Ensure Fair and Effective FOIA Administration

As noted above, OIP's Director co-chairs the Chief FOIA Officers Council (CFOC).  OIP staff members continued to serve on several CFOC Working Groups.  OIP staff served on the CFOC Technology Committee Data Working Group, which conducted informational interviews with agency FOIA staff who use data to identify best practices and recommendations on the use of FOIA data for program management and reporting; processing data sets; and collaboration between agency Chief Data Officers and Chief FOIA Officers.

An OIP staff member served as a subject matter expert on the CFOC Committee FOIA Reference Model Working Group, which published a white paper defining the model and explaining its purpose, scope, and potential applications.  The FOIA Reference Model was used as a basis to develop FOIA Business Standards as part of the ongoing effort aligned with the Federal Integrated Business Framework.

OIP also leads a multi-agency working group in the development of draft FOIA Business Standards as part of the Federal Integrated Business Framework.  The draft FOIA Business Standards will be posted in the Federal Register for public comment in 2024.  The FOIA Business Standards provide specifications for common services in FOIA such as the technical requirements for FOIA case management systems.  Developing FOIA Business Standards is also a commitment included in the government's Fifth Open Government National Action Plan.

JMD is finalizing a JMD-specific FOIA directive that defines the JMD FOIA Program's elements, roles, and responsibilities.  This will ensure consistent, systematic management of FOIA requests and responses for JMD information, and support JMD compliance with statutory and regulatory mandates.

# Section III: Proactive Disclosures

In line with the Attorney General's 2022 FOIA Guidelines, which note that agencies should continue to maximize efforts to post more records online "quickly and systematically," the Department has made significant efforts to ensure a wide variety of records are proactively posted online without waiting for individual requests to be received.

## Steps Taken to Identify, Track, and Post (a)(2) Proactive Disclosures

The FOIA requires agencies to proactively release certain information in the Federal Register and post on their websites certain operational and "frequently requested" records that have been requested and released three or more times.  *See* 5 U.S.C. § 552(a)(1)-(2).  Components described a range of methods to identify records for proactive disclosure.  Components that do not receive a large volume of requests often rely on staff knowledge to identify records for posting.  During the reporting period, ATR reviewed requests during intake to identify potential duplicate subjects that might have already been processed, or that might be pending.  Once ATR identified any materials released three or more

times, the Division's Web Services Section worked to post those records. In the upcoming year, ATR will assign a GIS to take a historical look at FOIA logs to determine what additional records can be proactively disclosed. PARDON proactively publishes presidential grants and denials organized by President and date on PARDON's website. PARDON experienced a high volume of FOIA requests wanting to know the decisional track record for each President, so PARDON now releases the information proactively.

Some components go beyond the requirements to post records that have been frequently requested. For instance, the Organized Crime and Drug Enforcement Task Force (OCDETF) made efforts to post any documents released in response to a FOIA request. BOP reviewed media requests to determine if other requesters, including, but not limited to, other members of the media, previously requested the same records. This helps BOP in making release determinations.

Components reported that the timeframe for posting records varies widely and can be impacted by the time needed to make records compliant with accessibility requirements or for the clearance process within the component. The Executive Office for Immigration Review (EOIR) and ATR posted certain types of documents within a few hours of identifying records. DEA, OCDETF, OPR, ENRD, CRM, and CRT reported that posting materials can take one to four weeks. Some components reported that they can post updates directly to their FOIA Libraries, while others rely on a webmaster to post their records.

## Posting Records and FOIA Logs
## Material Proactively Disclosed

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 FOIA-related information was added this past year to the Department's website. Examples of these new postings are summarized below.

Through its blog, *[FOIA Post](#)*, OIP continued to inform both agencies and the public of new developments and upcoming events concerning the FOIA. 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. OIP posted updated *[Department of Justice Guide to the Freedom of Information Act](#)* chapters relating to Exemptions [2](#) and [5](#).

OIP posted the following guidance articles to agencies on the implementation of the FOIA:

- [Department of Justice Handbook for Agency Annual Freedom of Information Act Reports](#) (September 27, 2023)
- [OIP Guidance for Further Improvement Based on 2023 Chief FOIA Officers Report Review and Assessment](#) (September 20, 2023)
- [OIP Guidance: Standard Operating Procedures for FOIA Offices](#) (August 25, 2023)
- [OIP Guidance: Applying a Presumption of Openness and the Foreseeable Harm Standard](#) (March 13, 2023)

OIP also posted the following sample of records in its FOIA Library:

- Records Concerning Former National Security Advisor John Bolton's Book [Posted January 19, 2024]
    - Supplemental Response (June 13, 2020)
- Records Concerning Judicial Nominations [Posted January 19, 2024]
    - Interim Response (February 16, 2021 - July 28, 2021)
- United States Department of Justice Statement on PCAST Report: Forensic Science in Criminal Courts: Ensuring Scientific Validity of Feature-Comparison Methods [Posted January 18, 2024]
    - Interim Response (September 1, 2016 - April 11, 2019)

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.

Examples of other proactive disclosure efforts by components include:

- ATF's FOIA program played an instrumental role in one of ATF's most ambitious proactive transparency efforts in decades by processing for web publication, consistent with all legal obligations and restrictions, nearly 4,000 pages of Federal Firearm Licensee inspections conducted pursuant to the ATF's Enhanced Regulatory Enforcement Policy. After meeting with requesters, ATF's FOIA program and ATF leadership expanded the amount and variety of firearms trace data to include firearms trace statistics for major US cities.
- ATR proactively disclosed 90 press releases, 23 speeches, upcoming hearings and trials, and Statements of Interest.
- BOP proactively disclosed the hearing schedule and the Agency Rules and Procedures Manual.
- COPS posted program documents to its website including records related to its School Violence Prevention Program and Anti-Heroin Task Force Program.
- CRM posted the National Strategy for Child Exploitation Prevention and Interdiction and A Resource Guide to the U.S. Foreign Corrupt Practices Act, Second Edition.
- ENRD disclosed consent decrees and corresponding comment periods, monthly editions of Environmental Crimes Bulletins, and agency policy statements.
- EOIR proactively disclosed updated statistical information of EOIR's Workload and Adjudication statistics, updated voluminous Case Data, and expanded the posting of precedent decisions issued by the Board of Immigration Appeals, decisions issued by the Office of the Chief Administrative Hearing Officer, Memoranda of the Director of EOIR, Interactive Map of Pro Bono Legal Service Providers, and the Immigration Court Manuals.
- FBI manages a robust FOIA Library through its site, "The Vault." The Vault contains over 6,700 documents and other media. During the reporting period, the FBI posted Mobile Devices and Mobile Applications Policy Number 1119PG and FBI FISA Query Guidance.
- JMD posted its 2024 Budget and Performance Summary.
- OCDETF posted the Congressional Budget Submissions and several Center Charter and Amendments in its FOIA reading Room.

- OLC has released additional [historical OLC documents](#), including a [Memorandum for John A. Eisenberg, Legal Advisor to the National Security Council, Re: January 2020 Airstrike in Iraq against Qassem Soleimani (March 10, 2020)](#).
- OIG proactively disclosed the following reports:
  - [Semiannual Report to Congress](#) April 1, 2023-September 30, 2023
  - [Report of Investigation Regarding the Circumstances Surrounding the Death of Inmate Jamel Floyd at the Metropolitan Detention Center (MDC) Brooklyn](#)
  - [Inspection of the Federal Bureau of Prisons' Federal Correctional Institution Tallahassee](#)
  - [Audit of the Department of Justice's Law Enforcement and Corrections Components' Use of Force Policies](#)
  - [An Investigation of Alleged Misconduct by United States Attorney Rachael Rollins](#)
- OPR posted [significant investigative reports](#) and [investigative summaries](#).
- Office of the Solicitor General (OSG) routinely posts all its filed [Supreme Court briefs](#) in its "Electronic Reading Room."
- PARDON proactively disclosed [clemency statistics](#) and [clemency forms](#).
- USMS proactively discloses [Intergovernmental Service Agreements](#) and [Court Security Officer](#) records.

Numerous components also reported that they post logs of their FOIA requests including:  OCDETF, OIP, DEA, BOP, USNCB, ATJ, PARDON, OPR, Executive Office for the U.S. Trustees (EOUST), and FBI. Components post a range of information in their FOIA logs such as, received date, closure date, disposition, request description or subject, exemption(s) cited, component sub-office or unit, and request tracking number.  FOIA logs are posted as PDF, excel, or .csv files.

## Making Posted Information More Useful to the Public

The Department has also continued to work to find ways to make information posted online more useful to the public, especially for communities of individuals who regularly access the agency's website.  The Department began releasing modernized pages on [Justice.gov](#) in 2022 and completed this work in 2023.  As part of this modernization, components reviewed all web content to ensure the greatest usability of their sites.  The Department continues to solicit public feedback on the new Justice.gov and components continue to work to maximize usability on the new site.

Components took additional steps to make information more user-friendly.  For instance, ATR's publicly posted documents can be text-searched, filtered, and sorted.    Requesters can track the status of their requests on BOP's public FOIA web page.  The table of contents in BOP's records section makes it easier for requesters and the public to navigate through electronic postings to locate records.

Other components have revamped their websites to ensure the content is accessible and user-friendly.  CRT is currently rebuilding its FOIA Library.  OIG is also in the final stages of modernizing its FOIA website to increase categories of records posted in its FOIA library.  The Office on Violence Against Women (OVW) redesigned its website and worked to make the information more readily accessible by employing graphics, headings, links and organizing information.  EOIR redesigned its

public-facing website to enhance the functionality by improving the navigation and visibility of key information to meet the requirements of the 21st Century Integrated Digital Experience Act and of the U.S. Web Design System.  ATR updated its entire external website and upgraded to a new design.

COPS released a new version of its [Resource Center](#) (RC) site.  The modernized RC is an updated version of two legacy systems, the Resource Information Center and the TRACKS system.  RC still serves as a centralized repository for digital and physical resources for the nation's state, local, territorial, and tribal law enforcement agencies.  It is an external document repository and information tool that allows both internal and external customers to retrieve a variety of resources, including publications, brochures, and toolkits to share the knowledge, research, and promising practices in addressing a wide range of topics advancing community policing.

## Steps Taken to Post Information in Open, Machine-Readable, and Machine-Actionable Formats

According to the Attorney General's 2022 [FOIA Guidelines](#), "agency FOIA websites should be easily navigable, and records should be presented in the most useful, searchable, and open formats possible."  The Department continued to make posted information available in open formats.

Several components posted records in in machine-readable and machine-actionable formats.  For instance, ATR continues to maintain a well-organized repository of documents on its website.  ATR's publicly posted documents can be text-searched, filtered, and sorted.  ATR also submits its machine-readable postings to Data.gov.

The USMS FOIA Unit periodically reviews posted material and content on the agency's public facing FOIA webpage, to ensure the content is accessible and easy to understand.  Additionally, the USMS FOIA case management system enables USMS to download and post records in open, machine-readable, and machine-actionable formats.

ENRD made formatting and content changes to its public-facing website in FY 2023 to make the site more user-friendly.  ENRD continually evaluates how to make information more accessible to the public.

OIP posts all [Annual FOIA Report data](#) in open formats on [FOIA.gov](#).  In addition, the Department provides metadata to [Data.gov](#) about the data available on FOIA.gov so that Data.gov users can easily locate the FOIA data.

## Collaboration with Agency Staff Outside of the FOIA Offices

To identify and post proactive disclosures, FOIA offices collaborate with a wide range of agency staff outside of the FOIA office.  Component leadership, Information Technology (IT) departments, public affairs offices, and subject matter experts are often consulted when identifying and preparing proactive disclosures for posting.  For example, OSG collaborates with the OSG Research & Publications team and coordinates with OCIO to post briefs.  ATR works with its library staff to publish older business reviews and post historical records.  The DEA's FOIA Officer and Data Officer identify DEA datasets appropriate for proactive disclosure.  JMD collaborates with all enforcement agencies

within DOJ and at the Department of Homeland Security as needed when posting information with law enforcement equities.

The Office of Justice Program's (OJP) proactive disclosure process requires collaboration between OJP's program and business offices. Many of the program offices proactively post information related to their program activities, awards, and funding. Also, OJP's Office of the Chief Information Officer and the Office of Communications assists the FOIA, program, and business offices with proactively posting records to the OJP.gov website.

Other directorates in BOP, including the Information, Technology and Data Division, the Health Services Directorate, the Re-Entry Services Directorate, and the Correctional Programs Review Directorate, regularly post records of public interest. Examples of information proactively posted include records related to The First Step Act, Clinical Practice Guidelines, and Prison Rape Elimination Act.

Finally, PARDON, ENRD, NSD, CRM, and OPR work with Information Technology Specialists and/or Data Specialists to maintain their FOIA websites.

### Best Practices and Challenges Related to Proactive Disclosures

In line with the Department's commitment to transparency, components employ best practices to ensure information of interest to the public is proactively disclosed on the agency's website and to mitigate challenges that arise in this area.

EOIR holds public sessions with stakeholders to obtain feedback on posted materials and works to continually expand the posting of material that is of significant interest to the public, such as workload adjudication statistics, precedential decisions, and policy memoranda. With every FOIA response, OLC and CRM consider whether released documents should be posted proactively. EOUST makes proactive disclosures of data detailing the Program's nationwide civil enforcement activities. This requires manual data standardization for significant numbers of individual case entries. This standardization must occur before the data is proactively disclosed to ensure data integrity and consistency in reporting. Due to the large size of these datasets, significant time and resources are required to complete this standardization work.

Several components identified staffing and funding challenges as barriers to ensuring records are promptly posted to FOIA libraries and that postings are 508 compliant.

## Section IV: Steps Taken to Greater Utilize Technology

Technology is essential to implementing an effective and efficient FOIA administration. The Department is continually evaluating its use of current technologies and exploring cutting-edge technologies that can address current and anticipated challenges in processing FOIA requests.

### FOIA-Related Technological Capabilities Required to Meet FOIA Demand

After evaluating their FOIA technology needs during the reporting period, several components acquired and began using new FOIA technologies to assist with case management, e-discovery, and request processing. For example, PRAO conducted a thorough review of its FOIA data and procedures

for processing FOIA requests, including the entry of information into internal FOIA databases. As a result, PRAO began using a new database that offers enhanced functionality to improve efficiency and effectiveness in managing FOIA-related tasks.  OVW has created a new SharePoint folder for its FOIA log and FOIA files.  OVW is transitioning to an all-electronic records system for FOIA requests.

OPR is exploring the possibility of procuring more up-to-date document management software.  During the reporting period OPR attended demos with an eye toward evaluating the software's ability to accurately track, make important date notifications, and store reporting data used in the processing of OPR's FOIA requests.

## Exploring New FOIA Technologies

The Department is continually exploring new technologies to meet the demand of increasingly complex and voluminous requests.  The Department also collaborates with other agencies to share information about available technology for FOIA.  During the reporting period, OIP launched a new Search Tool on FOIA.gov that uses machine-learning to search for previously released FOIA records and to identify appropriate agencies for new FOIA requests.  The new tool was showcased during the November 2023 Chief FOIA Officer Council meeting.

OIP's CII team is working with OCIO to develop technology comparison matrixes that will compare features of FOIA technologies used across the Department for request processing, case management, and e-discovery.  Components interested in various FOIA technologies will be able to use these comparison charts to quickly gauge if any technologies already used within the Department may meet their needs.  Many components plan to attend the second NextGen FOIA Tech Showcase the Chief FOIA Officer Council plans to host in Spring 2024 to learn more about available FOIA technologies.

In addition, components continue to explore technologies that may meet their specific needs.  For instance, PRAO implemented a new database with enhanced functionality that has been instrumental in improving overall FOIA processes.  OLC is developing a new tool for tracking new and historical FOIA requests that will allow for direct data transfer into the Annual FOIA Report.  Currently, OLC manually enters and formats data for the Annual FOIA Report.

CRT is searching for a case management tool with eDiscovery functionality and improved functionality for requesters.  Specifically, CRT seeks a portal that allows a requester to search for previous similar requests and a direct link to the online FOIA Library housing those agency records.  This functionality has been shown to reduce the influx of similar requests by various requesters thereby reducing duplication.

DEA's FOIA Office and Chief of DEA's Digital Evidence Laboratory's eDiscovery Unit established a workflow allowing the FOIA Office staff to utilize eDiscovery software to expedite the initial review and organization of hundreds, and sometimes thousands, of email records and attachments.  Since the start of FY 2023, the FOIA Office began ingesting large volumes of records potentially responsive to FOIA requests to expedite the initial responsiveness review and reduce the amount of time it takes the FOIA Unit staff to process records.  The FOIA Office will continue to leverage technology to accelerate processing.  This will enable DEA to release responsive records quicker in the future and reduce backlog.

## Leveraging Technology to Automate Record Processing and Facilitate Efficiency

The Department is comprised of numerous components, some of which receive less than 100 requests and others that receive tens of thousands of requests annually. Technology required to automate record processing differs based on the size of the component and the types of records the component maintains. Smaller components that receive fewer than 100 requests generally do not use automated request tracking and processing tools because the cost is prohibitive given the small number of requests they receive. Instead, basic technology solutions are used, such as Excel or Access databases for request tracking and Adobe for processing records.

Components with larger request volumes often use automated case management systems and more advanced processing tools to conduct searches or make redactions, such as machine-learning, predictive coding, or technology assisted review. For instance, EOUST uses batch coding to redact repetitive information in records. This automated process saves time and resources as it prevents having to redact each instance of the information separately, but EOUST requires software that can batch redact on a much larger scale than its current software. In FY 2023, funding was approved for DEA's Artificial Intelligence (AI) "add-on" tool. DEA plans to utilize predictive coding in the future to identify potentially exempt material. EOIR is exploring commercial off the shelf AI solutions.

ATF tools to quickly find and apply common redactions, recommend redactions, and identify cases where the user has previously redacted identical or similar information. These capabilities have dramatically improved ATF's ability to manage and process records for release. Some of ATF's experienced FOIA staff members have suggested that these new processing tools and features have helped to cut processing times by as much as 50%. ATF's best estimate is that this technology has contributed to a 20-30% increase in overall productivity. The use of technology has certainly been a critical ingredient in ATF's reduction of the FOIA backlog over the last few years. Thanks in part to the technology, the ATF FOIA program processed its highest number of requests in nearly two decades and the backlog is at its lowest point in a decade. The FOIA program will undoubtably see more productivity gains as the entire team receives additional training and becomes more skilled at making the best use of these technological capabilities.

BOP's video redaction software can automatically redact selected faces and other items. However, as with written records, BOP still needs to do a frame-by-frame analysis to process other portions of a video and to ensure automatic reductions were made. The amount of time saved with this technology depends on the length of a video or the volume of a set of records, how much additional redactions are needed, and the error rate of the automatic redactions.

Other components found ways to incorporate basic technologies to improve processing of FOIA requests. For instance, EOIR implemented the use of Microsoft OneDrive to coordinate multiple individuals from various components and field offices within EOIR working on the same project to upload, review, and edit documents which include Word, Excel, and PDFs.

## FOIA Websites Contain Essential FOIA Resources and Information

The Attorney General's 2022 FOIA Guidelines indicate that "agency FOIA websites should be easily navigable, and records should be presented in the most useful, searchable, and open formats possible." This is consistent with other recent memoranda issued by the Office of Management and Budget (OMB) that prioritize the usability of government websites. OIP issued guidance in 2017 on the content and style of agency FOIA websites, which detailed key information and resources that should be made available on every FOIA website as well as some additional considerations. Examples of such considerations included adopting consistent styling, using plain language, regularly reviewing for accuracy, updating links, and collaborating to identify areas for improvement. Agencies were encouraged to regularly review their websites based on this guidance to ensure that they contain essential resources, and that they are informative and user-friendly. The Department's components have each reviewed their websites in accordance with the guidance. During the reporting period, OIP also conducted an independent review of components' FOIA websites as part of CII. OIP will once again review these sites as part of the CII this upcoming year.

> "Because digital channels are now the primary way the public interacts with the Federal Government, executive agencies must design and develop websites and digital services to meet the public's expectations for high-quality digital experiences that are simple to use, seamless across journeys, and secure by design to improve customer experience, satisfaction, and trust."
>
> - OMB M-23-22, "Delivering a Digital-First Public Experience" Memorandum, Sept. 22, 2023

## Quarterly FOIA Reports Appear on FOIA.gov

In January 2013, OIP instituted a quarterly reporting requirement for all agencies on 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 backlogged for each quarter of the fiscal year, as well as the status of the agency's ten oldest pending requests. In accordance with OIP's Updated Guidance for Quarterly Reporting, the Department posted all of the required quarterly FOIA reports for FY 2023. The Department's quarterly reports are accessible to the public, appearing on the FOIA.gov Quarterly FOIA Report data page.

## Raw Data from the Fiscal Year 2022 Annual Report

In accordance with 5 U.S.C. § 552(e)(3), OIP consolidated all of the Department's raw data from its FY 2022 Annual FOIA Report and posted it alongside PDF and XML versions of the final report.

## Compliance with the Interoperability Requirements

The Department also achieved interoperability with the National FOIA Portal in accordance with the joint guidance establishing interoperability standards that was issued by the Department and OMB. The *FOIA Improvement Act of 2016* required the creation of a central, online request portal that allows a member of the public to submit a request for records under the FOIA to any Federal agency

from a single website. The joint guidance explains that agencies can achieve interoperability with the Portal in one of two ways. Agencies can accept FOIA requests directly to their current case management platforms via a structured Application Programing Interface (API). Agencies that do not use automated case management systems can accept FOIA requests via a formal, structured e-mail to a designated e-mail inbox. The guidance further explains that, unless an exception is granted by OMB and the Department, agencies with automated case management systems are required to achieve full interoperability with the National FOIA Portal by accepting requests through a structured API. All of the Department's components are now linked to FOIA.gov where they are able to receive requests through either the API or by e-mail. Four components, however, are continuing to work on achieving interoperability via the API. Two of these components are acquiring a new case management system that will implement the API and one has needed more time than initially expected to integrate their system via the API. The fourth is resolving errors that occurred when implementing the API.

## Best Practices and Challenges in the Use of FOIA Technology

One of the benefits of the Department's decentralized system for processing FOIA requests is that it allows for a diversity in operating procedures and techniques amongst the Department's many components. Several components found that eDiscovery tools were helpful in their processing workloads as opposed to other typical FOIA software. For instance, CRT found that eDiscovery tools were better equipped to handle large amounts of records compared to common FOIA request management tools. By harnessing the power of eDiscovery, CRT was better able to handle particularly large datasets. ATR also found e-Discovery tools to be especially advantageous in the processing of large requests because the tools can segregate documents by specific categories and better identify potentially responsive records. This greatly reduced the need for staff to review documents for relevance in processing. JMD also highlighted the use of the eDiscovery programs as providing efficiency in locating JMD staff information across multiple repositories.

TAX embraced collaboration with their Information Technology group for assistance in search and collection of electronically stored information potentially responsive to certain complex requests. By delegating most of its electronic search requests, particularly in the searching of email, to its IT personnel, the FOIA team was able to allocate more time to the review of records already collected in other pending requests. The IT staff also has an enhanced ability to record the details of its electronic searches in an efficient manner.

Over the last decade, ATF's experience has shown that the volume and complexity of FOIA requests seem to increasingly mirror the kinds of information demands pursued in the civil discovery context. As a result of this clear evolution within FOIA, ATF incorporated existing best practices from the larger e-Discovery and information governance contexts. ATF believes continuing to shift FOIA business and processing functions into a single, secure Cloud computing environment will enable ATF to maximize its use of AI and other technological advancements well into the future, as those developments become available and proven in the broader e-Discovery realm.

Components identified several challenges, including deduplication of email chains, and identification of technologies that meet multiple requirements unique to certain FOIA Offices. For example, EOUST

has been unable to locate a suitable software program to assist with processing and the removal of duplicate FOIA records.  Many components, particularly those that post high volumes of records, also identified challenges related to finding tools that enable FOIA programs to quickly and efficiently bring large volumes of records into compliance with Section 508 of the Rehabilitation Act.  OIP encourages components to post in open and machine readable formats, which reduces the work involved in making records compliant, and to collaborate with web services teams to find efficiencies in posting where possible.

# Section V:  Steps Taken to Remove Barriers, Improve Timeliness in Responding to Requests, and Reduce Backlogs

As indicated in the Attorney General's 2022 FOIA Guidelines, "[e]ach agency should actively work with requesters to remove barriers to access and to help requesters understand the FOIA process and the nature and scope of the records the agency maintains.  Agencies should also ensure that they promptly communicate with requesters about their FOIA requests."  In accordance with the FOIA Guidelines and OIP's Guidance, the Department continues to work with FOIA requesters in "a spirit of cooperation."

The data referenced in this section of the Report comes from the Department's FY 2023 Annual FOIA Report.  During FY 2023, the Department processed a record 144,065 requests, and successfully closed all the ten oldest requests, appeals, and consultations from FY 2022.

## Removing Barriers to Access

### First-Party Requests

Some components frequently receive first-party requests.  The types of first-party requests include those seeking information about litigation, settlement or confidentiality agreements, criminal or prison records, personnel, investigative, medical, and bankruptcy files.  Several components have established alternative means of access to these records outside of the FOIA process.  For instance, EOUST field offices provide parties in any bankruptcy case with copies of recordings of meetings of creditors held pursuant to 11 U.S.C. § 341 in lieu of submitting a FOIA request.[5]

EOIR continued its customer service initiative in which the respondent and their representative may obtain a copy of the record of proceeding (ROP) directly through the Immigration Courts and the Board of Immigration Appeals.  In addition, newly filed EOIR Immigration Court records are accessible to the respondent's attorney using an electronic filing system called EOIR Court & Appeals System (ECAS).  EOIR's ECAS system is an online portal that allows the attorney of record to access court filings for non-citizens currently in Immigration Court proceedings.  Attorneys and non-citizens can obtain basic case status information using either a 1-800 toll free number or EOIR's website using EOIR's Automated Case Information System.  An attorney who has entered an appearance with the

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[5] Except those bankruptcy cases filed in Alabama and North Carolina where the United States Trustee Program does not operate.

Immigration Court and the Board of Immigration Appeals may also schedule an in-person review of the ROP.

OPR's most frequent first-party requests are for investigations into professional misconduct. For first parties who are subjects of an OPR investigation and who have signed confidentiality agreements, OPR provides direct full review of the draft Record of Investigation to provide the individual an opportunity for explanations and corrections.

## Timeliness

### Expedited Processing

The FOIA requires 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 2023, the Department reported an average of 21.36 days to adjudicate requests for expedited processing, reducing the average processing time by nearly a day compared with FY 2022. The Department adjudicated 61.77% of requests for expedited processing within ten calendar days. Eighteen of the Department's components adjudicated requests for expedited processing within an average of ten days or had no requests for expedited processing to adjudicate. The remaining components provided plans for reducing the average adjudication times for expedited processing requests. Some examples of these plans are listed below and include adjusting processing procedures and staffing structures or providing specialized training.

JMD, CRT, EOIR, and OIP have a staff member or team dedicated to screening for and adjudicating requests for expedited processing. JMD made significant progress in reducing the average number of days to adjudicate requests for expedited processing from 21.33 days in FY 2022 to 12.7 days in FY 2023. The Civil Division, OVW, and USMS plan to hire more staff to support adjudication of requests for expedited processing. PARDON provided staff training to ensure requests for expedited processing are adjudicated within ten or fewer calendar days.

DEA established a specific queue to quickly identify requests for expedited treatment which are closely managed to ensure that requests are adjudicated within ten calendar days. DEA's Unit Chief also receives a weekly report on incoming requests for expedited processing. This report has helped DEA reduce average processing times for adjudication of requests for expedited processing from 25.36 days in FY 2022 to 13.62 days in FY 2023.

### Simple Track

The Department uses multi-track processing to manage its FOIA administration. The Department's overall average number of days for processing simple track requests during FY 2023 was 159.86 days. This increase from FY 2022 is explained by the Department's focus on closing the oldest requests and backlogged requests. Notably, however, twenty-one of the Department's components processed their simple requests in an average of twenty days or less. Approximately 67.67% of the requests processed by the Department in FY 2023 were categorized as simple requests.

## Backlogged Requests

The Department's overall request backlog decreased from 64,982 to 43,927. This reduction is primarily due to EOIR's efforts to reduce their backlog from 43,808 in FY 2022 to 21,623 in FY 2023. The Department responded to 144,065 FOIA requests in FY 2023. Twenty of the Department's components processed more requests in FY 2023 than in FY 2022. The Department's request backlog amounted to 39.59% of the total number of requests received in FY 2023. In addition to the Department's overall backlog decrease, twenty-three components either maintained a zero backlog, reduced their backlogs, or had a modest increase of less than one hundred requests.

## Backlog Reduction Plans

The 2023 Guidelines for Agency Chief FOIA Officer Reports asked any agency with a backlog of over 1,000 requests in FY 2022 to provide a plan for achieving backlog reduction in the year ahead. The Department implemented the plan described in last year's Report. Building on past efforts through the CII, 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 focus on one or more of these four strategies: hiring personnel, maximizing the use of technology, improving processes, and providing targeted training.

Many components experienced an increase in the number and complexity of requests and an increase in litigation. For instance, OLC identified three factors contributing to the difficulties OLC has had in closing its oldest requests, including: the requests are extraordinarily complex; the requests involve elaborate, nuanced keyword searches and separate date-ranges for multiple parts of the request; or they require the processing of high volumes of records, lengthy consultations with multiple entities, coordination with litigators, and searches and processing of classified documents.

ATF developed standard operating procedures with training guides. ATF also worked with outside consultants to help evaluate their FOIA program and processes, from start to finish, and to develop recommendations for new processes and investments to optimize program performance.

Other components found that their main challenge in addressing backlogs is maintaining or increasing staffing levels. To reduce its backlog, DEA has streamlined the process for signing of determination letters and authorization to release records. DEA worked to fill vacant positions on the FOIA team and approved overtime for two-thirds of their staff. DEA also worked closely with requesters to narrow requests, cross-trained staff, and paired new staff with experienced staff to facilitate onboarding.

To reduce the backlog, EOIR detailed employees from other sections of EOIR to assist in obtaining records from Federal Records Centers, digitizing records, and completion of FOIA requests. EOIR also plans to hire more GIS to process responsive records as part of their backlog reduction plan. EOUST utilizes additional attorneys and support personnel, when necessary, to promote the timely processing of requests.

In addition, to reduce the Department's overall backlog, at the direction of the Deputy Attorney General, OIP worked closely with eight components that account for the largest portion of the

Department's backlog or had a backlog increase of more than 65% since 2018. Components were asked to create plans to reduce their backlogs and outline new processes to avoid future increases in the backlog. In developing their backlog reduction plans, components reevaluated the strengths of their FOIA programs, considered alternative ways to address the root causes of their backlogs, and identified what would be needed to reach reduction targets. Some common strategies emerged, including investment in staffing resources, retaining staff, acquiring new technologies, restructuring FOIA programs, and strengthening training. The plan development process also supported increased communication throughout the components, and between the components and OIP, on the importance of FOIA and backlog reduction strategies. OIP will track component progress in implementing these plans and will develop government-wide guidance for agencies on backlog reduction strategies and preparation of backlog reduction plans.

## Backlogged Appeals

The Department received 2,044 administrative FOIA appeals in FY 2023 and adjudicated 2,126 appeals. For the fourth year in a row, the Department was able to achieve a reduction in its backlog of appeals from 321 to 240 appeals. This represented just 11.74% of the total number of appeals the Department received in FY 2023. At the end of FY 2023, the oldest appeal pending at OIP was from May 2023.

## Reducing the Age of the 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 successfully closed its ten oldest pending requests, appeals, and consultations from FY 2022.

Beyond working to close 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. For instance, in FY 2024, OIP focused on closing its 400-oldest requests. In FY 2023 OIP closed 200 of its 400 oldest requests.

ATF's FOIA program cut processing times across the board over the past year, which helped to reduce the number of older requests. For example, ATF reduced average processing times for simple track requests by nearly ten days, from 27.64 days in FY 2022 to just 17.96 days at the end of FY 2023. Similarly, for complex FOIA requests, ATF reduced its average processing times by 157 days, down from an average of 366 days in FY 2022 to an average of 209.66 days in FY 2023. ATF also focused on closing cases received prior to 2020 as well as cases housed in its legacy FOIA system.

## FOIA Litigation

The Department has experienced a steady increase in FOIA litigation in recent years. During the reporting period, the Department had approximately 2,852 FOIA cases in litigation representing 2.57% of requests received in FY 2023. The nature of the requests in litigation are complex and/or involve voluminous records. Components cited the most common basis for litigation to be constructive exhaustion, challenges to withholdings, and denials of expedition. In addition to

litigation itself, components also reported that they have referrals and consultations of records for review from components and other agencies involved in litigation.

Nearly every component involved in litigation reported that the increase and resource demands of litigation had a significant impact on the processing of non-litigation FOIA requests. Significant staffing resources are required to effectively coordinate with litigating counsel, review court filings, draft declarations and Vaughn Indexes, negotiate attorney fees, and otherwise participate in FOIA litigation. For example, OPR struggled to close some of its ten oldest requests due to an increase in the number of FOIA litigations to which it is a party. In response to court-ordered joint status reports and/or court-ordered production, timely processing, often under deadline pressure, significantly decreased the amount of time staff were available to work on closing older FOIA requests, especially since older FOIA requests are typically complicated, may be classified, demand review of voluminous amounts of pages of responsive records, and require communications with outside components and/or agencies to close. Limited FOIA staff and resources must be leveraged to meet court-imposed deadlines and productions in litigation cases, leaving fewer resources devoted to processing increasingly complex and voluminous non-litigation FOIA requests and consultations on a first-in first-out basis. Some components reported that this creates a snowball effect, increasing the number of litigation cases filed due to constructive exhaustion.