



U.S. DEPARTMENT OF COMMERCE

2024 CHIEF FOIA OFFICER REPORT



eFOIA@doc.gov

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Component Abbreviation	Bureau or Operating Unit (Component)
BEA	Bureau of Economic Analysis
BIS	Bureau of Industry and Security
CEN	Census Bureau
EDA	Economic Development Administration
InfoLaw	Information Law Division
IOS	Immediate Office of the Secretary
ITA	International Trade Administration
MBDA	Minority Business Development Agency
NIST	National Institute of Standards and Technology
NOAA	National Oceanic and Atmospheric Administration
NTIA	National Telecommunications and Information Administration
NTIS	National Technical Information Service
OIG	Office of Inspector General
OS	Office of the Secretary
USPTO	U.S. Patent and Trademark Office

Section I: FOIA Leadership and Applying the Presumption of Openness

The guiding principle underlying the Attorney General's 2022 [FOIA Guidelines](#) is the presumption of openness. The Guidelines also highlight the importance of agency leadership in ensuring effective FOIA administration. Please answer the following questions about FOIA leadership at your agency and describe the steps your agency has taken to ensure that the presumption of openness is being applied to all decisions involving the FOIA.

A. Leadership Support for FOIA

1. The FOIA requires each agency to designate a Chief FOIA Officer who is a senior official at the Assistant Secretary or equivalent level. See 5 U.S.C. §552(j)(1) (2018). Is your agency's Chief FOIA Officer at this level?

Yes.

2. Please provide the name and title of your agency's Chief FOIA Officer.

Charles R. Cutshall, Chief Privacy Officer and Director of Open Government

3. What steps has your agency taken to incorporate FOIA into its core mission? For example, has your agency incorporated FOIA milestones into its strategic plan?

The U.S. Department of Commerce (the "Department") incorporates FOIA into its core mission through its bureau operating units' (components) organizational structure (through Department Organization Orders (DOO) and Department Administrative Orders (DAO)) and into its employee's performance plans who have FOIA duties and responsibilities. For example, the National Oceanic and Atmospheric Administration

promulgates NAO 205-14 (Freedom of Information Act) to implement Strategic Goal 5 of the Department's 2022-2026 Strategic Plan: *Provide 21st Century Service with 21st Century Capabilities*.

B. Presumption of Openness

4. The Attorney General's 2022 FOIA Guidelines provides 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." Does your agency provide such confirmation in its response letters?

Most of the Department's components include confirmation in response letters to FOIA requesters that they have considered the foreseeable harm standard when reviewing records and applying FOIA exemptions as set out in the Attorney General's 2022 FOIA Guidelines.

5. In some circumstances, agencies may respond to a requester that it can neither confirm nor deny the existence of requested records if acknowledging the existence of records would harm an interested protected by a FOIA exemption. This is commonly referred to as a *Glomar* response. If your agency tracks *Glomar* responses, please provide:

- the number of times your agency issued a full or partial *Glomar* response (separate full and partial if possible).

The bureau or operating units within the Department that issued a *Glomar* response coupled with the number of times follows:

BIS – Six (6) full *Glomar* responses
NOAA – One (1) full *Glomar* response
OIG – Four (4) full *Glomar* responses

USPTO – Three (3) full *Glomar* responses

- the number of times a *Glomar* response was issued by exemption (e.g., Exemption 7(C) – 20 times, Exemption 1 – 5 times).

The number of times a *Glomar* response was issued by exemption follow:

Exemption 3 – Five (5)

Exemption 4 – One (1)

Exemption 5 – Two (2)

Exemption 6 – Two (2)

Exemption 7(A) – One (1)

Exemption 7(C) – Seven (7)

Exemption 7(E) – One (1)

6. If your agency does not track the use of *Glomar* responses, are you planning to track this information in the future?

Not currently. To track the use of *Glomar* responses efficiently and more accurately, the Department's FOIA case management system would require customization.

7. Optional -- If there are any other initiatives undertaken by your agency to ensure that the presumption of openness is being applied, please describe them here.

Initiatives undertaken by the Department's bureaus or operating units to ensure the presumption of openness follow:

CEN updated its FOIA webpage to allow the public to locate and navigate its electronic FOIA Library easier.

ITA regularly provides guidance to program staff on the FOIA including the presumption of openness and conducting foreseeable harm reviews. ITA FOIA Staff consistently works with its business units to ensure they are segregating information where possible reminding them of the presumption of openness.

NOAA created a FOIA training library, which includes training via the NOAA FOIA Roundtables that have been conducted, specific FOIA processes, exemption applicability, and the FOIA case management system utilized by the department, FOIAXpress.

USPTO regularly provides on the spot FOIA training to custodians so that they can better search and locate agency records. In Fiscal Year 2024, its FOIA office plans to provide an in-depth FOIA bootcamp to USPTO's business units about their responsibilities under the FOIA. USPTO continues to post an enormous amount of its data publicly, including: patent applications, trademark applications, PTAB and TTAB decisions, and OED disciplinary actions. USPTO is continuously evaluating posting more data sets on its website.

Section II: Ensuring Fair and Effective FOIA Administration

The Attorney General's 2022 [FOIA Guidelines](#) provide that "[e]nsuring fair and effective FOIA administration requires . . . proper training, and a full understanding of FOIA obligations by the entire agency workforce." The Guidelines reinforce longstanding guidance to "work with FOIA requesters in a spirit of cooperation." The Attorney General also "urge[s] 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.

A. FOIA Training

1. The FOIA directs agency Chief FOIA Officers to ensure that FOIA training is offered to agency personnel. See 5 U.S.C. §552(a)(j)(2)(F). Please describe the efforts your agency has undertaken to ensure proper FOIA training is made available and used by agency personnel.

The Chief FOIA Officer hosts an annual Sunshine Week Event that includes FOIA training sessions and panel discussions available to all agency personnel. Also, the Department makes U.S. Department of Justice's Office of Information Policy (OIP) FOIA training modules available through the Commerce Learning Center, its enterprise-wide training system.

2. Did your FOIA professionals or the personnel at your agency who have FOIA responsibilities attend substantive FOIA training during the reporting period such as that provided by the Department of Justice?

Yes.

3. If yes, please provide a brief description of the type of training attended or conducted and the topics covered.

The Department makes U.S. Department of Justice's OIP FOIA training modules available through the Commerce Learning Center, its enterprise-wide training system.

Department-wide trainings organized and hosted by the Office of Privacy and Open Government (OPOG) and made available to all Department personnel conducted as part of its Sunshine Week Event (March 15, 2023) included:

DOC FOIA 101 - An overview of the administrative FOIA processing at the U.S. Department of Commerce;

Transparency while Applying FOIA Exemption 5 – A session that discussed how NOAA maintains transparency while applying FOIA Exemption 5;

A session about an e-Discovery tool (Relativity) for FOIA workflows;

Minimizing Attorney Fees under FOIA; and

DOC FOIA/PA Professionals Roundtable: Calculating Estimated Dates of Completion.

Personnel from the following components attended the American Society of Access Professionals (ASAP) National Training Conference (June 27-29, 2023) and the ASAP FOIA-Privacy Act Training Workshop (September 6-8, 2023): BIS, CEN, IOS, NOAA, OIG, and OS.

Department personnel attended the following U.S. Department of Justice's OIP-led trainings:

Introduction to the Freedom of Information Act (April 4, 2023);

Processing a Request from Start to Finish (April 12, 2023);

Procedural Requirements and Fees Training (May 3, 2023);

Litigation Workshop (May 10, 2023);

Administrative Appeals, FOIA Compliance, and Customer Service (May 17, 2023);

Exemption 1 and Exemption 7 Training (June 6, 2023);

Exemption 4 and Exemption 5 Training (June 21, 2023);

Privacy Considerations Training (July 11, 2023);
Continuing FOIA Education (July 12, 2023);
Virtual Annual Refresher and Quarterly Report Training (October 4, 2023);
Virtual Chief FOIA Officers Report Training (October 11, 2023);
Virtual Introduction to the Freedom of Information Act (November 7, 2023);
Virtual Litigation Seminar (November 14, 2023);
Virtual Procedural Requirements and Fees Training (December 6, 2023);
Virtual Exemption 1 and Exemption 7 Training (January 4, 2024);
Virtual Exemption 4 and Exemption 5 Training (January 11, 2024);
Virtual Privacy Considerations Training (January 18, 2024);
Virtual Administrative Appeals, FOIA Compliance, and Customer Service Training (January 25, 2024);
Virtual Advanced Freedom of Information Act Training (February 6, 2024).

Department personnel also attended the FOIA Best Practices Workshop on Innovative Methods for Using and Sharing Resources hosted by the Chief FOIA Officers Council Committee on Cross-Agency Collaboration and Innovation (COCACI) (October 25, 2023).

In addition, the following bureaus either attended or conducted the following trainings:

OPOG conducted a training session titled “Standard Operating Procedures” (December 20, 2023) for Department personnel. The next planned training session is tentatively scheduled for March 2024 with the topic TBD.

Two members of EDA’s Office of Chief Counsel received FOIA case management system training provided by OPOG.

ITA held a training session for its employees related to processing, redacting, and general FOIA guidance.

NOAA holds monthly “FOIA Legal Experts Calls” and held FOIA case management system and FOIA training that provided guidance on key FOIA processing requirements, best practices, and

FOIAXpress application user training. NOAA's Alaska Regional Office hosted a FOIA Roundtable covering three topics: FOIA, Privacy Act Compliance, and Privacy/Security Controls.

OIG hosted a FOIA training session for its personnel with occasional FOIA duties.

4. Please provide an estimate of the percentage of your FOIA professionals and staff with FOIA responsibilities who attended substantive FOIA training during this reporting period.

95%.

5. OIP has [directed agencies](#) to "take steps to ensure that all of their FOIA professionals attend substantive FOIA training at least once throughout the year." If your response to the previous question is that less than 80% of your FOIA professionals attended training, please explain your agency's plan to ensure that all FOIA professionals receive or attend substantive FOIA training during the next reporting year.

N/A

6. Describe any efforts your agency has undertaken to inform non-FOIA professionals of their obligations under the FOIA. In particular, please describe how often and in what formats your agency provides FOIA training or briefings to non-FOIA staff; and if senior leaders at your agency received a briefing on your agency's FOIA resources, obligations and expectations during the FOIA process.

Efforts undertaken by the Department to inform non-FOIA professionals of their obligations under the FOIA follow:

BEA FOIA staff engage with non-FOIA staff, including senior leaders, supervisors and managers, and IT staff about BEA's FOIA responsibilities, FOIA process and developments, and resources.

BIS provides training to any new employees or contractors who have the need to process a FOIA request by providing both reading materials for FOIA processing training and hands-on reviewing exercises.

EDA's FOIA Officer emphasizes the importance of FOIA to non-FOIA professionals through memorandums and FOIA updates communicated to the agency's staff when fanning out a request. EDA's senior leadership team is also briefed by its FOIA Officer on the agency's FOIA resources, obligations, and expectations. EDA provides its new personnel with FOIA overview training from its Office of Chief Counsel as part of their onboarding if their position frequently receives FOIA requests for processing. Other employees receive individual briefings about the FOIA as the need arises.

IOS' FOIA Officer sends quarterly spreadsheets of outstanding FOIA taskings to its office units and hosts meetings with its office unit FOIA points of contact to provide guidance.

ITA emphasizes open communication and transparency to ensure compliance with the applicable laws and obligations and provides tailored training to its office units as needed. For example, ITA FOIA Staff conducted training with the Office of the Chief Financial and Administrative Officer training and Global Markets.

MBDA plans to include FOIA training as a required training for its incoming employees and advertised this through its January 2024 newsletter.

NIST conducts training to organizational unit stakeholders on a regular basis. In training sessions and when discussing specific requests, the NIST FOIA Officer emphasizes the importance of openness as a factor to consider when reviewing records.

NOAA trains incoming leadership staff on their FOIA responsibilities. NOAA also engages its Office of General Counsel to ensure dissemination of FOIA requirements and to assist OGC in their incorporation of changes in FOIA case law and DOJ OIP Guidance into OGC's advice for the NOAA client during the monthly FOIA Legal Experts Calls.

OIG made a FOIA training module available to all OIG employees which includes an overview of the statute and associated responsibilities. In addition to the structured training offered, the OIG FOIA

office maintains an open-door policy for questions related to FOIA search, production, and other issues.

USPTO's senior leaders regularly part of ad hoc trainings and will play a vital role in its upcoming FOIA bootcamp training.

B. Outreach

7. As part of the standard request process, do your FOIA professionals proactively contact requesters concerning complex or voluminous requests in an effort to clarify or narrow the scope of the request so requesters can receive responses more quickly? Please describe any such outreach or dialogue, and, if applicable, any specific examples.

Yes. Specific types or examples and outreach and dialogue follow:

BIS routinely points requesters to aggregated export license reports. Also, on occasion, BIS offers to schedule calls between program subject matter expert and the requester to help requesters amend the scope of their requests.

IOS asks requesters if they would be willing to omit publicly available information.

For requests involving higher volume record sets, MBDA asks requesters to prioritize certain categories of documents to enable quicker responses.

NOAA mediated multiple disputes with requesters to improve its administration of the FOIA and identified possible areas where NOAA can better engage with members of the public.

USPTO retrieved over 14,000 pages of records in response to one FOIA request. However, after meeting with the requester about narrowing, and using its eDiscovery software to easily identify the desired records, USPTO successfully narrowed the responsive record set to less than 100 pages.

8. Outside of the standard request process or routine FOIA Liaison or FOIA Requester Service Center interactions, did your FOIA professionals engage in any outreach or dialogue, with the requester community or open government groups regarding your administration of the FOIA? For example, did you proactively contact frequent requesters, host FOIA-related conference calls with open government groups, or provide FOIA training to members of the public? Please describe any such outreach or dialogue and, if applicable, any specific examples of how this dialogue has led to improvements in your agency's FOIA administration.

Along with hosting its annual Sunshine Week event in March 2024 with several sessions available to members of the public, the Department informed requesters of its upcoming departure from FOIAonline through banner messaging on its [website](#) that instructed requesters that they would still be able to electronically file FOIA requests through the FOIA.gov website following the Department's departure from FOIAonline (March 31, 2023). Also, the Department published a [federal register notice](#) on June 5, 2023, amending its regulations under the Freedom of Information Act to reflect the changes related to the Department's transition to a new FOIA case management system. Additionally, Department employees who attend the ASAP National Training Conference and workshops have the opportunity to engage with members of the public.

OIG participates in an informal working group consisting of FOIA professionals within other federal agency OIGs to discuss FOIA developments.

9. The FOIA Improvement Act of 2016 requires additional notification to requesters about the services provided by the agency's FOIA Public Liaison. Please provide an estimate of the number of times requesters sought assistance from your agency's FOIA Public Liaison during Fiscal Year 2023 (please provide a total number or an estimate of the number for the agency overall).

Approximately 40 times.

C. Other Initiatives

10. Has your agency evaluated the allocation of agency personnel resources needed to respond to current and anticipated FOIA demands? If so, please describe what changes your agency has or will implement.

Yes. Changes that have been made or will be implemented follow:

BIS added contract personnel to address backlogged requests.

CEN added FOIA resources to assist with its backlogged requests.

ITA is restructuring its process to provide additional support to the FOIA program.

MBDA hired a director for information management and began the process of adding additional FOIA staff.

NIST onboarded additional personnel who assist with FOIA processing part time.

NOAA obtained additional funding for FOIA contract support to increase output and decrease response times to the requester community. Also, NOAA obtained additional Electronic Document Review (EDR) licenses to fill a gap in its eDiscovery process. Further, NOAA's Alaska Regional Office began to utilize a centralized search capability.

USPTO hired an additional FOIA Attorney in July 2023 in response to the rising number of incoming FOIA appeals and litigation.

11. How does your agency use data or processing metrics to ensure efficient management of your FOIA workload? For example, case management reports, staff processing statistics, etc. In addition, please specifically highlight any data analysis methods or technologies used.

The Department's FOIA case management system allows for the generation of reports for further analysis, including the ability to monitor trends of incoming and processed requests. Additional examples of the Department's use of data or processing metrics follows:

Weekly administrative workload reports are provided to the Department's FOIA analysts and management. These reports become part of a monthly trending metric provided to the Office of the Chief Financial Officer and Assistant Secretary for Administration (OCFO-ASA) on the number of requests pending, received per month, and processed per month. Also, the Department continuously updates a list of its 20 oldest OS/ IOS requests, and 10 oldest Department requests.

BEA maintains an internal dashboard to track the status of cases to help ensure efficient management of its FOIA workload.

BIS produces weekly reports for its leadership and tracks all requests internally on a spreadsheet.

CEN evaluates the number of requests received/processed, the number of cases assigned to analysts, and individual analysts' performance regarding the amount of time taken to process requests.

IOS provides weekly updates to OCFO-ASA regarding numbers of incoming requests as well as updates a list of the 20 oldest requests under IOS purview.

NOAA utilizes a backlog scrub tiger team. The tiger team routinely pulls a backlog listing and identifies requests in the first-in, first-out processing methodology that are right for disclosure or that could have an expedited search conducted to process and release records to the requester to reduce the backlog. NOAA also disseminates weekly and monthly reports. A litigation case load is also provided to NOAA by the Department's General Law Division used to identify timelines for processing. NOAA's National Marine Fisheries Service also tested MITRE's FOIA Assistant.

NIST utilizes small tiger teams to process more complex and voluminous requests more effectively.

OIG maintains a spreadsheet of active requests and holds a weekly meeting to ensure timely processing.

USPTO uses the reporting tool and metrics in FOIAXpress to track and measure each of its FOIA professional's caseloads. USPTO also tracks information related to the number of complex and simple requests along with the different stage of each pending request.

12. Optional --If there are any other initiatives undertaken by your agency to ensure fair and effective FOIA administration, please describe them here.

The Departmental FOIA/PA Officer chairs a monthly FOIA Council Meeting that consists of the FOIA Officers of their designated representatives as well as OGC representatives. The FOIA Council offers a chance to widely distribute FOIA guidance, information on upcoming trainings, and opportunities to increase efficiency and cooperation within the Department.

Initiatives undertaken by the Department at the bureau level follow:

CEN streamlined its FOIA processes, improved communication among its FOIA processing staff, and more in-house training opportunities.

NOAA's agile approach to FOIA processing (e.g., tiger teams) allows the ability to surge resources to its office units as needed. Also, NOAA direct engagement at the line office level allows its FOIA office personnel to identify trends and head off processing challenges proactively.

USPTO abides by the "first in, first out" principle to ensure fairness in processing. Also, for requests that involves high volumes of responsive records, USPTO strives to provide monthly interim productions.

Section III: Proactive Disclosures

The Attorney General's 2022 [FOIA Guidelines](#) emphasize that "proactive disclosure of information is...fundamental to the faithful application of the FOIA." The Guidelines direct agencies to post "records online quickly and systematically in advance of any public request" and reiterate that agencies should post records "in the most useful, searchable, and open formats possible."

1. Please describe what steps your agency takes to identify, track, and post (a)(2) proactive disclosures.

The Department's bureaus have taken the following steps to identify, track, and post (a)(2) proactive disclosures:

BEA, as a data-producing agency, proactively publishes or otherwise makes available data, methodologies, research, reports, publications, and other materials.

CEN posts frequently requested records, or records it anticipates being of interest, to its reading room.

NIST collaborates with its Public Affairs and Open Government Offices to communicate the importance of proactive disclosures.

NOAA identifies records of significant public informative value and uploads them to its FOIA Reading Room. NOAA's FOIA Reading Room has been accessed by over 55,000 visitors in 2023.

USPTO meets bi-weekly to discuss frequently requested records and address whether they can be posted publicly.

2. How long after identifying a record for proactive disclosure does it take your agency to post it?

Across the Department the timeframe ranges from two (2) days to 30 days.

3. Does your agency post logs of its FOIA requests?

The Department plans to resume proactively posting department-wide FOIA logs (with the exception of USPTO) every month beginning in the first quarter of calendar year 2024 to coincide with the refresh of OPOG's website. Prior to March 31, 2023, the Department utilized FOIAonline to make FOIA logs publicly available in real time and some components posted FOIA logs on their respective FOIA libraries.

- If so, what information is contained in the logs?

The FOIA logs will consist of a list of the prior month's closed FOIA requests. The fields will include: Tracking Number, Component, Request Description, Received Date, Closed Date, and Final Disposition.

- Are they posted in CSV format? If not, what format are they posted in?

No. The format posted will be searchable PDF file types.

4. Provide examples of material that your agency has proactively disclosed during the past reporting year, including records that have been requested and released three or more times in accordance with 5 U.S.C. §552(a)(2)(D). Please include links to these materials as well.

All the Department's bureaus make the majority of released records available through their respective [FOIA libraries](#) or on the Department's Public Access Link Reading Room at <https://foia-pal.commerce.gov/app/ReadingRoom.aspx>. Also, the following examples include of proactive disclosures throughout the Department:

BEA receives many requests for regional and national economic information; however, this information is already publicly available on BEA's website at <https://www.bea.gov/data/economic-accounts/regional> and <https://www.bea.gov/data/economic-accounts/national>.

EDA proactively releases project narratives from the winners of its most popular programs.

IOS posts the Secretary of Commerce's daily schedule.

The Tariff Tool system that consolidates and distills thousands of pages of U.S. Free Trade Agreement (FTA) tariff commitments down into a simple, online database (available at <https://beta.trade.gov/fta/tariff-rates-search>).

ACCESS is the repository for all records filed in anti-dumping and countervailing duty (AD/CVD) proceedings. ACCESS provides the capability for registered E-Filers to submit documents to the record of an AD/CVD proceeding and allows the public to view versions of all documents submitted (available at <https://access.trade.gov/login.aspx>; free registration).

NOAA publicly released Marine Mammal Inventory Reports (MMIRs), FOIA training material and guidance, climate data, weather modifications, hurricane information, and public comments for non-rulemaking federal register notices available at the following website (<https://www.noaa.gov/organization/information-technology/foia-reading-room>).

Federal science technical reports and documents in the NTIS collection are free of charge for discovery, searching, and downloading from the NTIS database. This repository is open to the public through the [National Technical Reports Library](#).

NIST provides public access to scientific data through <https://data.gov> as well as a data portal on NIST's website, <https://data.nist.gov>. Publications are available within 12 months of publication through the National Institutes of Health's PubMed Central at <https://www.ncbi.nlm.nih.gov/pmc/funder/nist> and through the Government Publishing Office's govinfo at <https://www.govinfo.gov/collection/nist>. Most programming code written at NIST is developed as part of our research programs and is developed to address specific and unique mission-related research problems. We make our code discoverable on <https://code.nist.gov>, and openly share this software through public Github repositories for potential re-use by our stakeholders. Software is also

available from <https://www.nist.gov/services-resources/software>. NIST has worked with The Internet Archive under an arrangement with the Library of Congress to digitize nearly 25,000 technical reports the agency has published over the last 100+ years.

As the publications are digitized, they are made accessible to the public through appropriate sources including: <https://www.worldcat.org>, <https://archive.org/details/NISTresearchlibrary>, <https://www.nist.gov/digitalarchives>, and <https://www.nist.gov/nist-museum>.

Data: <https://data.nist.gov> and
<https://data.gov>

Code: <https://code.nist.gov>,
<https://www.nist.gov/services-resources/software>, and
<https://github.com/usnistgov>

Peer-reviewed publications: <https://www.ncbi.nlm.nih.gov/pmc/funder/nist>

Agency publications: <https://www.govinfo.gov/collection/nist>

Other information: <https://www.worldcat.org>,
<https://archive.org/details/NISTresearchlibrary>,
<https://www.nist.gov/digitalarchives>, and
<https://www.nist.gov/nist-museum>.

OIG proactively disclosed items such as its semi-annual report to Congress, audits, evaluations, the OIG top management challenges report on issues facing the Department, congressional testimony, and information on current and planned activities. These materials can be found at <http://www.oig.doc.gov/Pages/default.aspx>.

USPTO posts the file wrappers of most granted patents at <https://patentcenter.uspto.gov> and trademarks at <https://tmsearch.uspto.gov/>. USPTO also publishes OED discipline at <https://foiadocuments.uspto.gov/oed> and all of PTAB decisions <https://www.uspto.gov/patents/ptab> and TTAB decisions <https://ttab-reading-room.uspto.gov>.

5. Beyond posting new material, is your agency taking steps to make the posted information more useful to the public, especially to the community of individuals who regularly access your agency's website?

Yes. Most of the Department's bureaus utilize web analytics, customer feedback, and regular updates to improve the usefulness of posted information.

6. If yes, please provide examples of such improvements. In particular, please describe steps your agency is taking to post information in open, machine-readable, and machine-actionable formats, to the extent feasible. If not posting in open formats, please explain why and note any challenges.

The implementation of a department-wide [Public Access Link Reading Room](#) allows for its components the ability to immediately post records online. The case management system does not allow for the posting of records in open, machine-readable formats. Also, the Department worked in conjunction with the U.S. Department of Justice's Office of Information Policy in support of the FOIA Wizard project.

BEA modernized its journal of record to offer near daily publication of economic content, responding to customers' feedback. Also, BEA provides data in machine-readable and other open formats. BEA offers data through an API and provides data tools through the open-source programming language, R. BEA for the first time in fiscal year 2023 provided the public open-source code and related documentation to replicate BEA's well-being charts and tables through its [GitHub repository](#).

CEN reorganized their FOIA website this year, with a goal of allowing individuals to find what they are looking for easier. Formats tend to be the original format, such as PDF, and are 508 compliant, but not necessarily machine-readable.

EDA redesigned its website to make it easier to find and access information.

ITA's FOIA website provides information about the bureau and information requests.

NOAA's FOIA Reading Room has been organized into subject matters, allowing requesters to identify topics of interest to retrieve commonly requested items. NOAA's postings within its reading room are largely machine readable. However, some of the files, at the time of posting, are either .jpg, or flattened .pdf format, in order to properly redact exempt information. This renders them non-OCR, and non-machine readable. However, when possible, NOAA releases the records in native format, or OCR capable, to enable machine readability. In addition, NOAA posts captured recorded training videos to allow immediate ease of access to the public without having to redirect to outside websites. NOAA also routinely posts its training videos about how their requests will be processed and to provide a transparent view into the requirements necessary for the FOIA coordinators who handle those requests.

NIST provides public access to narrative publications and data that result from its research. Also, NIST developed an infrastructure to support collection of metadata in an inventory and archival of the research products themselves in machine-readable, machine-actionable formats in a secure repository. Data 'authors' are encouraged to make their data available in non-proprietary formats as well. However, they are not prevented from making data available in a proprietary format (e.g., a format employed by a particular piece of lab equipment) if it makes sense to do so. Data, publications, authors, and the organizational structure of NIST itself are associated with persistent identifiers (e.g., digital object identifiers, ORCIDs) that interconnect research outputs (e.g., a paper is associated with the data that underpins it) and their producers.

USPTO updated the patent application portion of our website to address stakeholder concerns and to make it more user friendly. Additionally, USPTO provides users with a variety of ways that information can be searched and organized (e.g., by year, by type of decision). For the most part, the data is provided in open, machine-readable formats. USPTO posts a large amount of bulk data products and graphical tools that assist in providing visual displays derived from patents and trademarks data. More information about USPTO's bulk data products can be found here: <https://www.uspto.gov/learning-and-resources/bulk-data-products>.

7. Does your proactive disclosure process or system involve any collaboration with agency staff outside the FOIA office, such as IT or data personnel? If so, describe this interaction.

Yes. All the Department's bureaus work with the Office of the Chief Information Officer to assist with website postings and email searches to varying degrees.

8. Optional -- Please describe the best practices used to improve proactive disclosures and any challenges your agency faces in this area.

ITA proactively publicizes important disclosures on ITA websites, <https://www.trade.gov> and <https://www.export.gov>. In collaboration with the Office of the U.S. Trade Representative, ITA publishes text and datasets for important trade agreements that impact commercial industries. ITA continues to seek opportunities to expand disclosures of this nature with a focus on transparency and openness.

NOAA's FOIA program leadership routinely meets with Line Office FOIA professionals to identify frequently requested records and determine the feasibility of proactive disclosure. The size of NOAA's organization requires decisions on record proactive disclosures to be made at the Line Office level, often by non-FOIA staff. Additionally, the Controlled Unclassified Information (CUI) categories do not have a one-to-one correlation to FOIA Exemptions. As such, CUI material will sometimes be non-exempt under the FOIA, but still not be appropriate for proactive disclosure.

Section IV: Steps Taken to Greater Utilize Technology

A key component of FOIA administration is using technology to make information available to the public and to gain efficiency in FOIA processing. The Attorney General's 2022 [FOIA Guidelines](#) emphasize the importance of making FOIA websites easily navigable and complying with the [FOIA.gov](#) interoperability requirements. Please answer the following questions to describe how your agency is using technology to improve its FOIA administration and the public's access to information.

1. Has your agency reviewed its FOIA-related technological capabilities to identify resources needed to respond to current and anticipated FOIA demands?

The Department's technological priorities for the FOIA program over Fiscal Year 2024 include exploring possible artificial intelligence applications towards more efficient and timely processing while keeping transparency at the forefront and eDiscovery solutions for the FOIA program.

Also, NOAA began looking for solutions to address a video redaction functionality gap.

2. Please briefly describe any new types of technology your agency began using during the reporting period to support your FOIA program.

The Department activated its Public Access Link that enables requesters to file requests electronically as well as check the status of submitted requests by this method. Also, some components began using the EDR module within FOIAXpress to assist with responsive reviews of record sets found responsive to requests.

3. Does your agency currently use any technology to automate record processing? For example, does your agency use machine learning, predictive coding, technology assisted review or similar tools to conduct searches or make redactions? If so, please describe and, if possible, estimate how much time and financial resources are saved since implementing the technology.

The following Department components utilize Relativity (eDiscovery platform) to automate record processing: BIS, CEN, IOS, OS, and USPTO; and ITA utilizes Microsoft Purview eDiscovery.

In addition, NOAA utilizes FOIAXpress' tagging, batching, and deduplication capabilities. Also, NOAA maintains a second eDiscovery license through Veritas Clearwell.

Generally, no reliable estimates for time and financial resources savings exist since implementation of this technology.

4. OIP issued [guidance](#) in 2017 encouraging agencies to regularly review their FOIA websites to ensure that they contain essential resources and are informative and user-friendly. Has your agency reviewed its FOIA website(s) during the reporting period to ensure it addresses the elements noted in the guidance?

Yes.

5. Did all four of your agency's [quarterly reports](#) for Fiscal Year 2023 appear on FOIA.gov?

Yes.

6. If your agency did not successfully post all quarterly reports on FOIA.gov, please explain why and provide your agency's plan for ensuring that such reporting is successful in Fiscal Year 2024.

N/A

7. The FOIA Improvement Act of 2016 requires all agencies to post the raw statistical data used to compile their Annual FOIA Reports. Please provide the link to this posting for your agency's Fiscal Year 2022 Annual FOIA Report and, if available, for your agency's Fiscal Year 2023 Annual FOIA Report.

https://www.osec.doc.gov/opog/foia/FOIA_Reports_Annual.html

8. In February 2019, DOJ and OMB issued joint [Guidance](#) establishing interoperability standards to receive requests from the National FOIA Portal on FOIA.gov. Are all components of your agency in compliance with the guidance?

Yes.

9. Optional -- Please describe the best practices used in greater utilizing technology and any challenges your agency faces in this area.

The Department continues to review its use of eDiscovery software to respond to FOIA requests and FOIA requests in litigation more efficiently.

In addition, the following bureaus identified the following best practices and challenges faced:

ITA is working with contractors to develop more sophisticated data visualizations (i.e., dashboards) and analytical reporting, using Tableau software, to improve the overall FOIA program operations.

NOAA's FOIA professionals leverage the Veritas Clearwell e-Discovery solution, EDR, and DOC has fulfilled NOAA's request for additional EDR licenses which has decreased processing times and increased efficiency for FOIA professionals.

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

The Attorney General's 2022 [FOIA Guidelines](#) instruct agencies "to remove barriers to requesting and accessing government records and to reduce FOIA processing backlogs." Please answer the following questions to describe how your agency is removing barriers to access, improving timeliness in responding to requests, and reducing FOIA backlogs.

A. Remove Barriers to Access

1. Has your agency established alternative means of access to first-party requested records, outside of the typical FOIA or Privacy Act process?

Yes.

2. If yes, please provide examples. If no, please indicate why not. Please also indicate if you do not know.

NOAA established a Bureau Chief Privacy Officer review mechanism with the Office of Human Capital Services in personnel related requests.

First-party requests for records maintained by the OIG, if any, are customarily made in the context of OIG's investigative system of records, which is covered by the Privacy Act of 1974, as amended. For various policy reasons, we have not established a means of access to first-party investigative records outside of the FOIA or Privacy Act process.

USPTO posts most trademark and patent information on its website. Users can access their own trademark and patent applications (if not already public) via their MyUSPTO account. Additionally, parties before the Patent Trial and Appeal Board (PTAB) or the Trademark Trial and Appeal Board

(TTAB) can access information about their cases through USPTO's Patent Trial and Appeal Case Tracking System (P-TACTS) or the Electronic System for Trademark Trials and Appeals (ESTTA).

3. Please describe any other steps your agency has taken to remove barriers to accessing government information.

EDA proactively posts narratives from the winners of its most popular grant programs so FOIA requests are not necessary.

NIST is in communication with its CIO Office and the Department to discuss ways in which they can update / make clearer language on the agency's website.

USPTO tries to post as much Patents and Trademarks material as possible. USPTO considers all stakeholder feedback and is always evaluating if there is additional information that can be posted publicly or if the information that is posted can be accessed more easily and efficiently.

B. Timeliness

4. For Fiscal Year 2023, what was the average number of days your agency reported for adjudicating requests for expedited processing? Please see Section VIII.A. of your agency's Fiscal Year 2023 Annual FOIA Report.

Approximately 45 days.

5. If your agency's average number of days to adjudicate requests for expedited processing was above ten calendar days, according to Section VIII.A. of your agency's Fiscal Year 2023 Annual FOIA Report, please describe the steps your agency will take to ensure that requests for expedited processing are adjudicated within ten calendar days or less.

Half (seven) of the Department's 14 FOIA components (BIS, EDA, ITA, NIST, NOAA, OIG, and OS) adjudicated requests for expedited processing under 10 calendar days. Five of the components (CEN, IOS, MBDA, NTIA, and USPTO) adjudicated requests for expedited processing over 10 calendar days. Two other components (BEA and NTIS) received no requests for expedited processing.

The Departmental FOIA Officer will continue to make a point of emphasis at the Department's monthly FOIA Council meetings that requests for expedited processing should be adjudicated in 10 calendar days or less.

6. Does your agency utilize a separate track for simple requests?

Yes.

7. If your agency uses a separate track for simple requests, according to Annual FOIA Report section VII.A, was the agency overall average number of days to process simple requests twenty working days or fewer in Fiscal Year 2023?

No.

8. If not, did the simple track average processing time decrease compared to the previous Fiscal Year?

Yes. A decrease of approximately two (2) days from 61 to 59 days.

9. Please provide the percentage of requests processed by your agency in Fiscal Year 2023 that were placed in your simple track. Please use the following calculation based on the data from your Annual FOIA Report: (processed simple requests from Section VII.C.1) divided by (requests processed from Section V.A.) x 100.

69%.

10. If your agency does not track simple requests separately, was the average number of days to process all non-expedited requests twenty working days or fewer?

N/A

C. Backlogs

Backlogged Requests

11. If your agency had a backlog of requests at the close of Fiscal Year 2023, according to Annual FOIA Report Section XII.D.2, did that backlog decrease as compared with the backlog reported at the end of Fiscal Year 2022?

No. The backlog of requests increased from 906 to 1,083 during Fiscal Year 2023.

12. If not, according to Annual FOIA Report Section XII.D.1, did your agency process more requests during Fiscal Year 2023 than it did during Fiscal Year 2022?

Yes. The Department processed 320 more requests during Fiscal Year 2023 (2,093 requests) compared to Fiscal Year 2022 (1,773 requests).

13. If your agency's request backlog increased during Fiscal Year 2023, please explain why and describe the causes that contributed to your agency not being able to reduce its backlog. When doing so, please also indicate if any of the following were contributing factors:

- An increase in the number of incoming requests.
- A loss of staff.
- An increase in the complexity of the requests received. If possible, please provide examples or briefly describe the types of complex requests contributing to your backlog increase.
- Litigation.
- Any other reasons –please briefly describe or provide examples when possible.

The main factors that contributed to the increase of backlog included a combination of an increase in the number and complexity of requests received by most bureau operating units as compared to the previous fiscal year (every component except for IOS reported an increase in the number of requests received in Fiscal Year 2023 as compared to the previous fiscal year). These factors combined with delays surrounding the transition to the FOIA case management system (initial launch and legacy data transfer) led to an overall increase in the backlog of 20% (906 to 1,083).

14. If you had a request backlog, please report the percentage of requests that make up the backlog out of the total number of requests received by your agency in Fiscal Year 2023. Please use the following calculation based on data from your Annual FOIA Report: (backlogged requests from Section XII.A) divided by (requests received from Section V.A) x 100. This number can be greater than 100%. If your agency has no request backlog, please answer with "N/A."

48%.

Backlogged Appeals

15. If your agency had a backlog of appeals at the close of Fiscal Year 2023, according to Section XII.E.2 of the Annual FOIA Report, did that backlog decrease as compared with the backlog reported at the end of Fiscal Year 2022?

No. The backlog of appeals increased from 180 to 235 during Fiscal Year 2023.

16. If not, according to section XII.E.1 of the Annual FOIA Report, did your agency process more appeals during Fiscal Year 2023 than it did during Fiscal Year 2022?

Yes.

17. If your agency's appeal backlog increased during Fiscal Year 2023, please explain why and describe the causes that contributed to your agency not being able to reduce its backlog. When doing so, please also indicate if any of the following were contributing factors:

- An increase in the number of incoming appeals.
- A loss of staff.
- An increase in the complexity of the requests received. If possible, please provide examples or briefly describe the types of complex requests contributing to your backlog increase.
- Litigation.
- Any other reasons –please briefly describe or provide examples when possible.

The main factor that contributed to an increase in the Department's appeal backlog was a lack of resources devoted to processing FOIA appeals.

18. If you had an appeal backlog please report the percentage of appeals that make up the backlog out of the total number of appeals received by your agency in Fiscal Year 2023. Please use the following calculation based on data from your Annual FOIA Report: (backlogged appeals from Section XII.A) divided by (appeals received from Section VI.A) x 100. This number can be greater than 100%. If your agency did not receive any appeals in Fiscal Year 2023 and/or has no appeal backlog, please answer with "N/A."

287%.

D. Backlog Reduction Plans

19. In the 2023 guidelines for Chief FOIA Officer Reports, any agency with a backlog of over 1000 requests in Fiscal Year 2022 was asked to provide a plan for achieving backlog reduction in the year ahead. Did your agency implement a backlog reduction plan last year? If so, describe your agency's efforts in implementing this plan and note if your agency was able to achieve backlog reduction in Fiscal Year 2023?

N/A

20. If your agency had a backlog of more than 1,000 requests in Fiscal Year 2023, please explain your agency's plan to reduce this backlog during Fiscal Year 2024.

The Departmental FOIA Officer has met with each of the Department's FOIA Officers along with responsible management officials in the InfoLaw to discuss the unique challenges and opportunities unique to each that has led to the rise in both FOIA requests and appeals during this past year.

The U.S. Department of Commerce's Office of Privacy and Open Government plans to finalize and begin implementation a department-wide backlog reduction plan with input from each component during the second half of Fiscal Year 2024.

E. Reducing the Age of Requests, Appeals, and Consultations

Ten Oldest Requests

21. In Fiscal Year 2023, did your agency close the ten oldest pending perfected requests that were reported in Section VII.E. of your Fiscal Year 2022 Annual FOIA Report?

No.

22. If no, please provide the number of these requests your agency was able to close by the end of the fiscal year, as listed in Section VII.E of your Fiscal Year 2022 Annual FOIA Report. If you had less than ten total oldest requests to close, please indicate that.

One (1).

23. Beyond working on the ten oldest requests, please describe any steps your agency took to reduce the overall age of your pending requests.

The specific steps that some of the Department's bureaus have taken to reduce the overall age of pending request follows:

OS and IOS monitor the progress of their 20 oldest pending requests through a continuously updated SharePoint report as well as an overall 10 oldest requests report of the overall oldest requests from throughout the Department. The Departmental FOIA Officer also met with all the bureau's FOIA Officers or their delegated representatives from throughout the reporting period to better understand bottlenecks in their respective processes and offer/ aid where appropriate.

Regarding its oldest request, BIS set a monthly release goal, which resulted in 23 interim releases.

CEN added temporary staff to help address its oldest requests. Also, CEN streamlined processes with reviews to free up time to focus on these oldest requests.

NIST utilizes tiger teams to help concentrate efforts on voluminous and complex requests.

NOAA reached out to each of its line offices and identified which of their requests could be processed quickly and to identify which requests had records that were of significant public interest.

USPTO worked with requesters to assist in narrowing voluminous requests when possible and when not possible provided monthly interim productions. USPTO also hired a new FOIA attorney to assist with appeals and litigation, so that the rest of the FOIA staff was able to focus on reducing the backlog. Additionally, USPTO delegated signatory authority for certain types of responses from its FOIA Officers to its Government Information Specialists which has sped up the processing of simple requests.

Ten Oldest Appeals

24. In Fiscal Year 2023, did your agency close the ten oldest appeals that were reported pending in Section VI.C.5 of your Fiscal Year 2022 Annual FOIA Report?

No.

25. If no, please provide the number of these appeals your agency was able to close by the end of the fiscal year, as listed in Section VII.C.(5) of your Fiscal Year 2022 Annual FOIA Report. If you had less than ten total oldest appeals to close, please indicate that.

Zero (0).

26. Beyond working on the ten oldest appeals, please describe any steps your agency took to reduce the overall age of your pending appeals.

InfoLaw now has the assistance of four non-FOIA professionals to assist with the appeal backlog.

Ten Oldest Consultations

27. In Fiscal Year 2023, did your agency close the ten oldest consultations that were reported pending in Section XII.C. of your Fiscal Year 2022 Annual FOIA Report?

No.

28. If no, please provide the number of these consultations your agency was able to close by the end of the fiscal year, as listed in Section XII.C. of your Fiscal Year 2022 Annual FOIA Report. If you had less than ten total oldest consultations to close, please indicate that.

Five (5).

Additional Information Regarding Ten Oldest

29. If your agency did not close its ten oldest pending requests, appeals, or consultations, please explain why and provide a plan describing how your agency intends to close those “ten oldest” requests, appeals, and consultations during Fiscal Year 2024.

The Departmental FOIA Officer will identify and work with each of the bureau operating units identified as possessing an overall “ten oldest” request, appeal, and consultation and work on a tailored action plan to close or move towards closure by the end of the fiscal year. Separately, each of the components will be reminded of the importance of prioritizing the oldest pending requests, appeals, and consultations and make meaningful progress towards the closure of their own 10 oldest requests in their own bureau or operating unit queue.

F. Additional Information about FOIA Processing

30. Were any requests at your agency the subject of FOIA litigation during the reporting period? If so, please describe the impact on your agency’s overall FOIA request processing and backlog. If possible, please indicate:

In Fiscal Year 2023, the Department (excluding USPTO) received 16 new lawsuits encompassing 19 FOIA requests and four (4) FOIA appeals. The impact on FOIA request processing and backlog at the micro level is negligible, as the first step within litigation is generally to complete any outstanding administrative processing. However, the impact on overall FOIA request processing and backlog is significant. The largest impact is to resources – litigation can entail time-consuming reevaluation of withholding decisions if withholdings are challenged, and the same resources are often needed to prepare Vaughn indices and declarations describing the search for responsive documents, the review, and detailed reasoning about foreseeable harm and how the exemptions may have applied to specific documents.

Because the Department does not have a dedicated team supporting litigation, the same FOIA professionals who process initial requests also provide administrative support to the General Law Division during all requests that enter a litigation state. This has the adverse effect of siphoning resources (time and personnel) away from initial processing and working towards reducing the Department's FOIA backlog.

USPTO received six (6) new FOIA litigations during this reporting period, bringing its total number of active FOIA litigations to nine (9).

- The number and nature of requests subject to litigation?

Four (4) related to fishery management or atmospheric monitoring, four (4) related to the decennial census, three (3) are incomprehensible pro se lawsuits, two (2) from former employees, and the remaining related to other functions of the department such as BIS, ITA, NTIS, and USPTO.

- Common causes leading to litigation?

Administrative response was not fast enough, communications regarding progress of administrative response was poor, or the application of FOIA exemptions.

- Any other information to illustrate the impact of litigation on your overall FOIA administration

NOAA had approximately eight (8) active FOIA litigation cases that we were processing during Fiscal Year 2023 that required significant intensive processing across multiple disciplines and requested records types and utilized a high volume of FOIA personnel hours for processing, General Counsel time for review, and expenses for attorney's fees. This required the crafting of detailed Vaughn indices across thousands of pages of produced records and multiple declarations to support motions for summary judgment.

USPTO spends hundreds of hours each year on year on FOIA litigation which has made it difficult for the agency to close its oldest requests and reduce its backlog.