



# U.S. DEPARTMENT OF COMMERCE

## 2025 CHIEF FOIA OFFICER REPORT



[eFOIA@doc.gov](mailto:eFOIA@doc.gov)

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## Message from the Chief Privacy Officer and Director of Open Government



The Freedom of Information Act (FOIA) is more than a statute—it is a cornerstone of democracy, a mechanism through which accountability is strengthened, trust is built, and the work of government is made accessible to the people we serve.

Every day the Department's FOIA professionals operate at the intersection of law, policy, and public service, often navigating complex requests, evolving challenges, and the ever-present demand to do more with less. Yet, through it all, they remain steadfast in their mission.

At times, progress has felt incremental, but each disclosure and each engagement with a requester represents a step forward. And, with each step forward, we deliver on our commitment to ensuring that transparency and openness are not just aspirations, but a reality.

As we look ahead, we recognize that the road is not always smooth, but our commitment remains clear. The work of FOIA is not just about compliance; it is about fostering a culture of openness, ensuring that government remains accessible, and reaffirming that transparency is not a burden—it is a responsibility.

Charles R. Cutshall  
Chief Privacy Officer & Director of Open Government  
Office of Privacy and Open Government  
U.S. Department of Commerce

Inquiries about this report may be directed to the Office of Privacy and Open Government by phone at (202) 482-1190 or via e-mail at [eFOIA@doc.gov](mailto:eFOIA@doc.gov). This report, as well as previous reports, can be found on the Department's FOIA website ([www.commerce.gov/FOIA](http://www.commerce.gov/FOIA)) under FOIA Reports.

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 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.

## 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 Department's case management system is not currently configured to track *Glomar* responses.) The operating units within the Department that issued a *Glomar* response coupled with the number of times follow:

BIS – Seven (7) full *Glomar* responses and two (2) partial *Glomar* responses  
ITA – 33 full *Glomar* responses  
OIG – Three (3) full *Glomar* responses and one (1) partial *Glomar* response  
USPTO – Two (2) 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 – Nine (9)  
Exemption 4 – 33  
Exemption 5 – 33  
Exemption 6 – Two (2)  
Exemption 7(C) – Five (5)

6. 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 operating units to ensure the presumption of openness follow:

BEA holds monthly meetings where the FOIA team discusses FOIA regulations, including but not limited to the presumption of openness, the monthly progress of FOIA requests, and FOIAXpress application user training.

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 the business units to ensure they are segregating information where possible reminding them of the presumption of openness. ITA FOIA Staff maintains an index for templates to ensure greater efficiency when drafting responses to requesters.

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.

The OIG continues to proactively disclose materials such as semiannual reports to Congress, audit and evaluation reports, and congressional testimony on its public-facing website to promote transparency.

USPTO regularly provides on the spot training to custodians so that they can better search and locate agency records. Starting in January 2025, the FOIA office plans to provide quarterly FOIA training to USPTO's business units' FOIA coordinators 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.

The Department's FOIA Office hosted two FOIA trainings on the following topics: FOIA Administrative Case Files (March 14, 2024) and FOIA Libraries & Proactive Disclosures (August 21, 2024). Also, the Department provided desk-side case management system trainings to several end users throughout the year.

A department-wide training co-organized and co-hosted by the Office of Privacy and Open Government and the U.S. Census Bureau made as part of its Sunshine Week Event (March 13, 2024) covered Exemption 3 statutes, both those used government-wide and those specific to the Commerce Department.

Department personnel attended the American Society of Access Professionals (ASAP) National Training Conference (June 3-5, 2024) and the ASAP FOIA-Privacy Act Training Workshop (September 4-6, 2024).

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

- Introduction to the Freedom of Information Act (April 3, 2024);
- Processing a Request from Start to Finish (April 10, 2024);
- Procedural Requirements and Fees and Fee Waivers Training (May 7, 2024);
- Litigation Training (May 21, 2024)
- Administrative Appeals, FOIA Compliance, and Customer Service Training (May 23, 2024)
- Exemption 1 and Exemption 7 Training (June 4, 2024);
- Exemption 4 and Exemption 5 Training (June 12, 2024);
- Privacy Considerations Training (July 9, 2024);
- Continuing FOIA Education Training (July 11, 2024);
- Virtual Annual FOIA Report Refresher and Quarterly Report Training (October 3, 2024);
- Virtual Chief FOIA Officer Report Refresher Training (October 16, 2024);
- Virtual Introduction to the Freedom of Information Act (November 6, 2024);
- Virtual Litigation Seminar (November 13, 2024);
- Virtual Procedural Requirements and Fees Training (December 4, 2024);
- Virtual Exemption 1 and Exemption 7 Training (December 11, 2024);

Virtual Exemption 4 and Exemption 5 Training (January 15, 2025);  
Virtual Privacy Considerations Training (January 22, 2025);  
Virtual Administrative Appeals, FOIA Compliance, and Customer Service Training (January 29, 2025);  
Virtual Advanced Freedom of Information Act Training (February 5, 2025).

In addition, the following operating units either attended or conducted the following trainings:

A member of EDA's Office of Chief Counsel (OCC) took a FOIA training from the American Bar Association and another took a desk-side training on the case management system, respectively. Additionally, EDA ensures FOIA training is made available and used by attorneys in EDA's OCC responsible for processing FOIA requests. All newly hired OCC employees participate in a FOIA training within their first 90 days of employment with the agency. The OCC staff then provides ad hoc training to other staff in their respective offices to ensure that individuals responsible for producing records understand their roles and responsibilities.

MBDA new employee orientation covers FOIA responsibilities.

NOAA conducted two Indigenous Knowledge trainings, as well as Quarterly FOIA Roundtables for NOAA line offices and regional offices. NOAA also continued to hold monthly FOIA Legal Experts Calls that outlined changes to FOIA-related case law and regulatory guidance. FOIA case management system and FOIA training sessions provided guidance on key FOIA processing requirements, best practices and protocols, and NOAA separately carried out case management system training for its users. And NOAA provided Clearwell e-Discovery Training for users of the e-Discovery software used by NOAA for FOIA processing. Additionally, an internal google site was created making all training materials and FOIA related guidance centralized and easily accessible to NOAA FOIA personnel.

USPTO has ensured that proper FOIA training is made available and used by agency personnel through budget allocation, work flexibilities, and by ensuring widespread access to virtual training and meeting platforms.

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.

98%.

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 personnel regularly engage, with non-FOIA personnel, including senior leaders, supervisors, managers, and IT staff, to ensure they are informed about BEA’s FOIA responsibilities, the FOIA process, relevant developments, and available resources.

BIS provides both reading materials for FOIA processing training and hands-on reviewing exercises to non-FOIA professionals. BIS provides training to any new employees or contractors who have the need to process FOIA requests. It is generally on a as needed and one-on-one basis. BIS senior leaders are briefed on an as needed basis.

CEN provided training to Department personnel on the requirements of FOIA through its direct participation in the Department's Annual Privacy Day and Sunshine Week Event.

EDA's new personnel typically receive FOIAs received a FOIA overview training from OCC as part of onboarding. Staff that infrequently receive FOIA requests receive individual briefings on FOIA responsibilities in the event a FOIA arises that implicates their work. On a regular basis, 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 EDA's FOIA Officer on the agency's FOIA resources, obligations, and expectations.

The IOS FOIA Officer offers employees within the IOS office units training opportunities and briefings on FOIA whenever requested.

ITA FOIA personnel hold annual trainings for senior leaders and business units. ITA emphasizes open communication and transparency to ensure compliance with the applicable laws and obligations. Additionally, ITA FOIA personnel conduct in-person one-on-one guidance.

MBDA now includes FOIA training as a requirement for all its employees through the Commerce Learning Center.

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 with 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.

NTIA OCC trained senior staff and other program offices regarding FOIA and regularly field questions about disclosures from various program offices.

OIG makes an electronic FOIA training available to all of its employees, which includes an overview of the statute and associated responsibilities. In addition to the structured training offered, the OIG FOIA Officer maintains an open-door policy for questions related to FOIA search, production, and other issues.

USPTO provided training to its Patent Trial and Appeal Board and each of its regional offices and plans to begin providing quarterly FOIA training/ check-ins with its FOIA coordinators. Also, USPTO provides on the spot FOIA training to its records' custodians so that they can better search and locate agency records. USPTO senior leaders are regularly part of these trainings.

## **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. All the Department's FOIA operating units contact requesters at various stages of processing to clarify or narrow the scope of requests to hasten a response.

Specific types or examples of such outreach and dialogue follow:

BEA maintains communication with requesters to ensure clarity in the scope of the request and avails themselves to requesters to discuss any aspect of the request, both prior to and following submission.

BIS offers the requester its aggregate export license reports which are fully releasable as opposed to the initial requests which are often for copies seeking copies of export licenses which are withheld in their entirety from release under a separate statute.

NOAA unilaterally engages with OGIS in mediation, prior to requester instigation to improve FOIA

administration and identify possible areas where NOAA can better FOIA engagement with the public.

NTIA regularly suggests ways requesters might modify or clarify requests including shortening the time frame, limiting the custodians or search terms, etc.

In one instance, after contacting a requester about narrowing the scope of a request and using their eDiscovery tool, USPTO limited a responsive record set from over 500,000 pages to about 5,000 pages. Also, USPTO set up a monthly production schedule with the requester for the same request.

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.

The Department hosted its annual Sunshine Week event in March 2024 with all sessions being open to members of the public. 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 of FOIA professionals from 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 2024 (please provide a total number or an estimate of the number for the agency overall).

Approximately 60 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:

CEN forecasts an increase in the number of received requests in coming years due to the upcoming decennial operations and has begun the process of budgeting and planning accordingly.

EDA plans to hire and onboard a hiring a Management Analyst responsible for its FOIA processing.

ITA added two contractor positions. Additionally, an administrative assistant began assisting with intake.

NIST added one employee dedicated to processing requests for CHIPS-related FOIA requests. Also, a Senior Management Analyst has been leveraged to help with its backlogged requests.

NOAA increased FOIA staffing to support its program.

NTIA is currently training its OCC personnel to increase the number of full-time employee time spent processing FOIA requests.

OS added an additional full-time employee (Government Information Specialist) position.

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 follow:

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.

Examples of the Department's operating units use of data or processing metrics follow:

BEA maintains an internal dashboard to track the status of requests.

CEN case management reports are utilized monthly to assess the efficiency of the program, to include cases received, closed and its backlog.

ITA utilizes SharePoint to organize case files and documentation. A tasking and tracking system are also utilized on SharePoint with ITA's business units.

NOAA utilizes a FOIA backlog scrub Tiger Team. The Tiger Team identifies requests in the first-in, first-out processing methodology to advance record searches and processing expediting the release of records for backlogged FOIA requests. A litigation case load is also provided to NOAA by the Department's Office of the General Counsel to identify timelines for processing.

NTIA examines the FOIA workload weekly to appropriately assign tasks to personnel. Additionally, NTIA FOIA staff hold meetings every Monday, Wednesday and Friday to examine incoming cases, and determine how proceed on each case and assign priorities.

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

USPTO tracks information related to the number of complex track and simple track requests, as well as the status of each pending request at various stages.

12. The federal [FOIA Advisory Committee](#), comprised of agency representatives and members of the public, was created to foster dialogue between agencies and the requester community, solicit public comments, and develop recommendations for improving FOIA administration. Since 2020, the FOIA Advisory Committee has issued a number of [recommendations](#). Please answer the below questions:

- Is your agency familiar with the FOIA Advisory Committee and its recommendations?

Yes.

- Has your agency implemented any of its recommendations or found them to be helpful? If so, which ones?

The Department found the following recommendations particularly helpful:

2020-01 -- The Department of Justice, Office of Information Policy will issue guidance related to the inclusion of records management-related materials and FOIA handbooks on agency websites.

2020-03 -- Agencies will work toward the goal of collecting, describing, and giving access to FOIA-released records in one or more central repositories, and on agency websites.

2020-11 -- The Department of Justice Office of Information Policy will provide guidance to agencies on the use of e-discovery tools to assist agencies in their searches of electronic records in response to FOIA requests.

2020-17 -- The Chief FOIA Officers Council will work with agency leadership to issue an annual memorandum on the importance of FOIA.

BEA, MBDA, and USPTO implemented the following recommendation:

2023-01 -- The Department of Justice Office of Information Policy should issue guidance stating that when agencies use FOIA Exemption 5 to withhold information they should identify the corresponding privilege(s) invoked (e.g., deliberative process, attorney-client, etc.) in redaction labels and, if the record is withheld in full, in its determination letter.

NOAA and USPTO implemented the following recommendations:

2024-02 -- The Department of Justice Office of Information Policy should issue guidance encouraging agencies to proactively offer requesters the opportunity to discuss their request with an agency representative.

2024-03 -- The Department of Justice Office of Information Policy should issue guidance encouraging agencies to provide requesters an interim response consisting of a small sample of documents found as the result of searches conducted and subsequently reviewed for partial or full withholding.

**13. 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.

Creation of Indigenous Knowledge (IK) Appendix which guides individuals on how to respect knowledge

sovereignty while abiding by the segregability requirements of the FOIA when ingesting and processing IK. Effective coordination and consultation with Tribes is essential for NOAA's mission and required pursuant to EO 13175. Inclusion of IK in NOAA's decision making can facilitate meaningful coordination and consultation and help to fulfill our trust responsibilities and respect tribal treaty rights. As Under Secretary of Commerce for Oceans and Atmosphere & NOAA Administrator Dr. Spinrad pointed out in his Guidance and Best Practices for Engaging and Including Indigenous Knowledge in Decision-Making, this collaboration will also form partnerships with Indigenous Peoples and will inform and enrich NOAA's work.

## 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.

BEA, as a data-producing agency, proactively publishes or otherwise makes available data, methodologies, research, reports, publications, and other materials allowable under Federal law or regulation. BEA only restricts access to company confidential, embargoed, or other information protected by law.

BIS continues to actively post published opinions and related case information on its Electronic FOIA portal.

CEN evaluates all requests for the potential to be included as a proactive disclosure based on the frequency in which the information is requested.

The EDA FOIA Officer tracks frequently requested items through a central list of requests.

NIST communicates the importance of proactive disclosure to its Public Affairs and Open Government Offices.

NOAA has taken records that it believes are of significant public informative value and routinely places them on its FOIA Reading Room site. The NOAA FOIA reading room has been accessed by over 54,917 visitors in 2024.

NTIA discusses any (a)(2) required disclosures during its regular FOIA staff meetings.

OIG proactively posts documents of presumed public interest, including semiannual reports to Congress, audit and evaluation reports, congressional testimony, and information on current and planned activities.

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

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

The Department (excluding USPTO) began posting logs of its FOIA requests to the Department's FOIA Library in August 2024.

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

The FOIA logs consist of a list of the prior month's closed FOIA requests. The fields 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 are searchable PDF file types.

- Please provide a link to the page where any FOIA logs are posted. If applicable, please provide component links.

<https://www.commerce.gov/opog/foia/electronic-foia-library>

3. Provide examples of material (with links) 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).

All the Department's operating units 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>.

IOS posts the Secretary of Commerce's daily schedule on:  
<https://www.commerce.gov/opog/foia/electronic-foia-library>.

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).

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>

Code: <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>

NOAA publicly released Marine Mammal Inventory Reports (MMIRs), FOIAXpress Training Guides, climate data, weather modifications, FOIA Guidance, hurricane information, FOIA training, and public comments for non-rulemaking Federal Register Notices, made available here: <https://www.noaa.gov/organization/information-technology/foia-reading-room>.

NTIA is currently undertaking a massive program to proactively disclose records regarding our broadband grant programs, which includes the grant agreement materials, reports, environmental documents, training materials, etc. For example, for the Middle Mile Grant program, NTIA proactively posted 10 applications packages so far – <https://www.ntia.gov/recipient-submitted-documentation>. For the Broadband Infrastructure Program, NTIA established webpages for each recipient have posted information about each grant that links to reports and other documentation from each grantee – <https://www.internetforall.gov/funding-recipients/broadband-infrastructure-program>.

OIG proactively disclosed items such as its Semi-annual Reports to Congress, OIG Top Management Challenges reports, and audit reports available at <https://www.oig.doc.gov/reports/>.

USPTO posts the file wrappers of most granted patents at <https://patentcenter.uspto.gov> and trademarks at <https://tmsearch.uspto.gov/>. USPTO publishes the Office of Enforcement and Discipline disciplinary actions at <https://foiadocuments.uspto.gov/oed>, all of the Patent Trial and Appeal Board

decisions at <https://www.uspto.gov/patents/ptab> and the Trademark Trial and Appeal Board decisions at <https://ttab-reading-room.uspto.gov>. USPTO also posts a number of Patents and Trademarks bulk data products at <https://www.uspto.gov/learning-and-resources/bulk-data-products>.

4. Please provide a link (or component links, if applicable) where your agency routinely posts its frequently requested records.

BEA – <https://www.bea.gov/data/economic-accounts/regional>; <https://www.bea.gov/data/economic-accounts/national>

BIS – <https://efoia.bis.doc.gov/index.php/electronic-foia/index-of-documents>

CEN – [https://www.census.gov/about/policies/foia/foia\\_library.html](https://www.census.gov/about/policies/foia/foia_library.html)

EDA - <https://www.eda.gov/foia/disclosures>

IOS – <https://www.commerce.gov/opog/foia/electronic-foia-library>

NOAA - <https://www.noaa.gov/organization/information-technology/foia-reading-room>

OIG – <https://www.oig.doc.gov/reports/>

OS – <https://www.commerce.gov/opog/foia/electronic-foia-library>

USPTO – <https://patentcenter.uspto.gov>; <https://tmsearch.uspto.gov/>; <https://foiadocuments.uspto.gov/oed>; <https://www.uspto.gov/patents/ptab>; <https://ttab-reading-room.uspto.gov>; <https://www.uspto.gov/learning-and-resources/bulk-data-products>; <https://developer.uspto.gov/diversity-data/us-demographic-profile>

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? If yes, please provide examples of such improvements, such as steps taken to post information in open and machine readable formats. If not taking steps to make posted information more useful, please explain why.

Yes. Most of the Department's operating units utilize web analytics, customer feedback, and regular updates to improve the usefulness of posted information. The department-wide Public Access Link Reading Room allows for its components the ability to immediately post records online.

Examples of such improvements follow:

BEA processes web-based customer feedback to enhance its publications, providing data in machine-readable formats, open-source code, and thorough documentation, through its GitHub repository to replicate its well-being charts and tables. Moreover, BEA modernized its journal of records, enabling near-daily publication of economic content in response to user feedback. It also offers data through APIs and other tools compatible with open source programming languages, further supporting transparency and accessibility.

The BIS website is currently being redesigned with improvements to layout and user-interface deployed to the user community via the new website. The legacy BIS website is still active while the new site continues to be deployed.

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

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.

NOAA's FOIA Reading Room has been organized by subject matter allowing requesters to retrieve commonly requested items. NOAA's postings within the reading room are largely machine readable. However, some files must be posted in .jpg, or flattened .pdf format in order to properly redact exempt information which renders them non-OCR, and non-machine readable. When possible, NOAA releases the records in native format, or OCR capable, to enable machine readability. Searches in FOIAXpress can be conducted by case number, topic, requester, or other key characteristics for ease of access by the public. Additionally, NOAA has recorded training videos to allow immediate access to the public without having to redirect to outside websites.

NTIA recently went through the process of revising materials on its website to make it more accessible and easier to search for and locate information.

6. 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. Most of the Department's operating units work with their respective Office of the Chief Information Officers to assist with website postings and email searches to varying degrees.

Examples of these interactions follow:

In collaboration with the Office of the U.S. Trade Representative, ITA publishes text and datasets for important trade agreements that impact commercial industries.

NOAA's National Marine Fisheries Service identified an IT solution for pro-actively disclosing marine mammal inventory reports.

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

Proactive disclosures of frequently requested records on a recurring basis relieves the administrative burden on FOIA processors and sets expectations for predictable releases among the FOIA requester community. As a prerequisite to this process, the Department's FOIA Officers working alongside their peers and senior leadership at program offices to communicate the types of records of significant interest to the public. Because records created by the Department often contain information that is subject to withholding under one or more FOIA Exemptions, the line-by-line review process as well as any consultations among agencies are among the most common challenges to the proactive disclosure process.

Some best practices taken by the Department's operating units include:

The IOS FOIA Officer receives the Secretary's calendars for the previous month a regular recurring basis.

NOAA's FOIA program leadership routinely meets with Line Office FOIA professionals to identify frequently requested records and determine the feasibility of proactive disclosure.

NTIA uses tracking tools to ensure that releases are both timely and consistent processes across its programs.

OIG utilizes regular internal review and feedback collection from the public to improve its proactive disclosures.

## 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?

Yes.

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

OIG utilized a blanket purchase agreement to acquire access to Relativity (eDiscovery platform).

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, OIG, OS, and USPTO; and ITA and NTIA utilize Microsoft Purview eDiscovery.

In addition, NOAA and OS utilize 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 2024 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 2025.

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 2023 Annual FOIA Report and, if available, for your agency's Fiscal Year 2024 Annual FOIA Report.

<https://www.commerce.gov/opog/foia/foia-reports/annual-reports>

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.

## **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.

Policy reasons are outlined in OIG's [System of Records Notice for OIG Investigative Records](#).

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) are able to 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.

CEN publishes data tools and processes on its website.

NTIA is very aggressive in posting information on its website, include data, data analysis, and tools for research to assist the public in understanding our work and progress on our mandates.

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 it is posted can be accessed more easily and efficiently.

## **B. Timeliness**

4. For Fiscal Year 2024, 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 2024 Annual FOIA Report.

9.8 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 2024 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.

N/A

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 2024?

No.

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

Yes. A decrease of approximately 26 days from 59.3 to 33.7 days.

9. Please provide the percentage of requests processed by your agency in Fiscal Year 2024 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.

79%.

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 2024, 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 2023?

No. The backlog of requests increased from 1,083 to 1,410 during Fiscal Year 2024.

12. If not, according to Annual FOIA Report Section XII.D.1, did your agency process more requests during Fiscal Year 2024 than it did during Fiscal Year 2023?

Yes. The Department processed 1,317 more requests during Fiscal Year 2024 (3,410 requests) compared to Fiscal Year 2023 (2,093 requests).

13. If your agency's request backlog increased during Fiscal Year 2024, 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 following Department's operating units either experienced either a backlog reduction or continuation of no backlogged requests from the previous year: BEA (zero (0) backlogged requests), CEN (90 to 19), NOAA (84 to 57), NTIS (5 to 1), OIG (zero (0) backlogged requests), USPTO (26 to 25).

The main factors that contributed to the increase of the overall backlog within the Department included a combination of an increase in the number and complexity of requests received (4,048 received in FY 2024 compared to 2,241 received in FY 2023 - an increase of approximately 57%), a loss of staff and resulting delay in backfilling FOIA professional positions, inefficient search and review processes, and FOIA litigation.

Two organizations accounted for approximately 47% of all requests received by the Department in Fiscal Year 2024. This influx of requests placed a heavy administrative burden on the Department's FOIA program as many requests were oftentimes misdirected and not reasonably described. This resulted in delays in the processing of other requests due to the sheer volume of requests received.

Litigation continues to be a factor that siphons resources from initial processing to support the General Litigation Division to respond to production and other court driven deadlines.

Also, topics of high interest among the public predictably result in an influx of requests outside of the normal range of requests received by some of the Department's operating units. For example, the passage of the

CHIPS Act and additions to the Entity List have resulted in increased numbers of requests being filed with NIST and BIS, respectively.

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 2024. 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."

35%.

## **Backlogged Appeals**

15. If your agency had a backlog of appeals at the close of Fiscal Year 2024, 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 2023?

No. The backlog of appeals increased from 235 to 252 during Fiscal Year 2024.

16. If not, according to section XII.E.1 of the Annual FOIA Report, did your agency process more appeals during Fiscal Year 2024 than it did during Fiscal Year 2023?

Yes. The Department processed 12 more appeals during Fiscal Year 2024 (41 appeals) compared to Fiscal Year 2023 (29 appeals).

17. If your agency's appeal backlog increased during Fiscal Year 2024, 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 Department's appeal backlog increased at a slower rate over Fiscal Year 2024 (235 to 252) than Fiscal Year 2023 (180 to 235). However, the main factor that contributing to an increase in the number of backlogged appeals continues to be 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 2024. 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 2024 and/or has no appeal backlog, please answer with "N/A."

442%.

## D. Backlog Reduction Plans

19. In the 2024 guidelines for Chief FOIA Officer Reports, any agency with a backlog of over 1000 requests in Fiscal Year 2023 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 2024?

No. The Department's FOIA Office is currently drafting a department-wide backlog reduction plan and anticipates finalizing it by March 2025.

20. If your agency had a backlog of more than 1,000 requests in Fiscal Year 2024, please explain your agency's plan to reduce this backlog during Fiscal Year 2025.

The number of the Department's backlogged FOIA requests increased again this past fiscal year (from 1,083 to 1,410). Over the past year, the Departmental FOIA/PA Officer and other representatives within the Office of Privacy and Open Government met with each of the Department's FOIA Officers and representatives from Office of the General Counsel to discuss the challenge of backlog reduction as well as each's role in making measured progress in reducing the number of backlogged requests. The Department's backlog reduction approach will couple the identification of root causes with recommended solutions.

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

### Ten Oldest Requests

21. In Fiscal Year 2024, 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 2023 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.

Steps that some of the Department's bureaus have taken to reduce the overall age of pending request follow:

CEN dedicates 16 hours per week to working on its oldest requests.

ITA prioritizes its 20 oldest pending requests.

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

NOAA routinely reaches out to line offices to identify which of their requests can be closed quickly and to identify which of the requests involve records of significant public interest. Also, NOAA contacts requesters to see if requests may be limited in scope to release records of the highest interest in the shortest amount of time.

OIG prioritizes requests with the closest statutory deadlines to ensure timely responses. Additionally, OIG continuously reviews and streamlines its search and review processes to improve efficiency and reduce the overall age of pending requests.

USPTO worked with requesters to assist in narrowing high volume requests when possible and when not possible provided monthly interim productions. Additionally, USPTO broadened signatory authority so more experienced FOIA professionals can review and sign off on requests.

## **Ten Oldest Appeals**

24. In Fiscal Year 2024, did your agency close the ten oldest appeals that were reported pending in Section VI.C.5 of your Fiscal Year 2023 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 2023 Annual FOIA Report. If you had less than ten total oldest appeals to close, please indicate that.

One (1).

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

OIG prioritizes appeals with the closest statutory deadlines to ensure they are processed promptly and efficiently.

USPTO did not have any backlogged appeals and typically closes all appeals within the statutory timeframe.

### **Ten Oldest Consultations**

27. In Fiscal Year 2024, did your agency close the ten oldest consultations that were reported pending in Section XII.C. of your Fiscal Year 2023 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 2023 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 2025.

The Departmental FOIA/PA Officer reminded each of the operating units of the importance of prioritizing the oldest pending requests, appeals, and consultations and encouraged each to make progress towards the closure of their own 10 oldest requests in their own bureau or operating unit queue. The progress of these oldest requests, appeals, and consultations will continue to be monitored at the Department level. Many of the Department’s operating units will continue their own monitoring efforts through quarterly goals, tiger team efforts, and outreach to requesters to move each towards closure.

## **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:

Yes. 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.

- The number and nature of requests subject to litigation?

As of mid-January 2025, the Department and/or its components (excluding FOIA lawsuits involving only USPTO or OIG), had 26 open FOIA lawsuits. These lawsuits span 37 initial FOIA requests and 10 appeals involving those requests. These lawsuits were initiated in FY2019 (1 matter); FY2021 (2 matters); FY2022 (3 matters); FY2023 (6 matters); FY2024 (9 matters); and FY2025 (5 matters).

The nature of the requests will be restricted to the most recent FOIA lawsuits. Since the start of FY2024, 17 FOIA lawsuits were filed (including 5 in FY2025), 3 of which are now closed. Those matters span 25 FOIA requests submitted to the Department and/or its components, and 10 appeals over some of those requests.

Those matters follow:

*Energy and Policy Institute v. DOC*, D.D.C. No. 24-cv-173 (2024-01-19) - The underlying FOIA request seeks Residential Propane Price Analysis Reports from 2011 to 2022. (Closed 2024-03-20.)

*Stavola v. DOC, Raimondo, NMFS, and Coit*, D.N.J. No. 24-cv-397 (2024-01-24) - Stavola appears to be acting on behalf of an organization called Save Long Beach Island Incorporated, which submitted comments to proposed rulemaking for providing authorization (pursuant to the Marine Mammal Protection Act) for construction of the Atlantic Shores South Project. The request seeks records connecting various survey vessels to their respective incidental harassment authorization; field verification plans for vessel surveys required by the Bureau of Ocean Energy Management; materials used in the noise exposure modeling report underlying National Marine Fisheries Services' (NMFS) proposed rulemaking for the Atlantic Shores Project; and internal modeling or other noise impact work performed for the Atlantic Shores or Ocean Wind 1 projects. (Closed 2024-09-04.)

*Cole v. NIST and FEMA*, D.C. Cir. No. 24-5216 (2024-09-24) - Appeal regarding the holdings and judgment in *Cole v. NIST and Federal Emergency Management Agency (FEMA)*, No. 15-cv-1991 (D.D.C.). At core, plaintiff sought certain records used by FEMA for a World Trade Center report. The district court granted summary judgment to FEMA and dismissed claims against NIST as moot. (Closed 2025-01-13.)

*Bernstein v. NIST and DOC*, D.D.C. No. 23-cv-2938 (2023-10-03) - The underlying FOIA request sought records of the NIST Post-Quantum Cryptography Standardization Project.

*Ecological Rights Foundation v. USACE and NMFS*, N.D. Cal. No. 23-cv-5309 (2023-10-18) - The two FOIA requests that EcoRights submitted to NMFS relate to correspondence within NMFS and between the Corps and NMFS regarding Daguerre Point Dam, the Brophy Diversion, the Cordua Diversion, Englebright Dam, and the Narrows 1 and Narrows 2 hydropower facilities on the Yuba River in California.

*Americans for Prosperity Foundation v. DOC and NIST*, D.D.C. No. 24-cv-91 (2024-01-10) - The underlying FOIA requests seek records related to EO 14110 - "Safe, Secure, and Trustworthy Development and Use of Artificial Intelligence". More specifically, the request to DOC seeks records reflecting statutory authority to require AI developers to provide information specified in section 4.2 of the EO; communications from certain employees containing certain keywords, and any final memoranda/guidance/policy regarding AI. The request to NIST seeks records regarding the formation of the AI Safety Institute, communications from certain employees containing certain keywords, and any final memoranda/guidance/policy regarding AI.

*Center for Biological Diversity, Natural Resources Defense Council, and Animal Welfare Institute v. NMFS*, D.D.C. No. 24-cv-1898 (2024-04-04) - The underlying request seeks the full comparability finding applications submitted under the MMPA Imports RULE, 50 C.F.R. § 216.24(h)(6), by Canada, Mexico, South Africa, United Kingdom, India, South Korea, France, Indonesia, Ecuador, Fiji, and Norway, including records submitted with or regarding those applications.

*Cahill v. DOC*, D.D.C. No. 24-cv-1351 (2024-05-08) - The underlying FOIA request seeks the audio file for *Ex Parte Cahill*, PTAB Docket #2023-3033.

*Informed Consent Action Network v. NOAA*, D.D.C. No. 24-cv-1898 (2024-06-28) - The underlying FOIA request seeks "All communications sent or received by Daniel Murphy, Maya Abou-Ghanem, Karl D. Froyd, Michael J. Lawler, Christopher Maloney, and Gregory P. Schill from January 1, 2019, through the date of the search that contain the term(s) 'aluminum', 'Al', 'lead', 'Pb', 'copper', and/or 'Cu'."

*VLSI Technology v. PTO and DOC*, D.D.C. No. 24-cv-2244 (2024-07-31) - The underlying FOIA requests seek records regarding the handling of USPTO proceedings involving recipients of CHIPS money.

*Informed Consent Action Network v. NOAA*, D.D.C. No. 24-cv-2744 (2024-09-25) - The underlying FOIA request seeks “All records concerning the economy act interagency agreement between NOAA and NASA’s Aircraft Operations Division at Johnson Space Center for the use of the WB-57 aircraft in NOAA SABRE field missions.”

*Husch Blackwell LLP v. DOC and BIS*, D.D.C. No. 24-cv-2733 (2024-09-25) - The underlying FOIA requests seek documents related to the decision to place Yangtze Memory Technologies Corporation and Yangtze Memory Technologies Corporation (Japan) on the Entity List. More specifically, they are seeking the proposals submitted to the End-User Review Committee in support of those actions.

*America First Legal Foundation v. State, USAID, and DOC*, D.D.C. No. 24-cv-2873 (2024-10-09) - The underlying FOIA request to ITA seeks documents “concerning the banning of the social media platform X in Brazil.”

*American Oversight v. NARA, OMB, OPM, DOC, and Census*, D.D.C. No. 24-cv-3406 (2024-12-06) - The underlying FOIA requests to NARA, OMB, OPM, and Census seek records since 2020-10-01 reflecting officials with the authority to initiate or implement a Reduction in Force (RIF), including, but not limited to, Personnel Delegation documents or memoranda concerning policies and procedures for RIFs.

*Oceana, Inc. v. NMFS*, D. Alaska No. 24-cv-279 (2024-12-19) - The lawsuit claims they seek an order compelling NMFS to release records related to the take of marine mammals in North Pacific groundfish fisheries. The three FOIA requests at issue: photos and/or video records of documented human-caused serious injury or mortality of marine mammals in the federal North Pacific groundfish trawl fisheries from 2009 to present; photos and/or videos of orca takes in Alaska groundfish fisheries from 2019 to the present; and records associated with the take of orcas in North Pacific groundfish fisheries, records identifying the stock(s) of orcas for the above described takes, and records describing any genetic information collected that is related to the above described takes.

*Oceana, Inc. v. NMFS*, C.D. Cal. No. 24-cv-10929 (2024-12-19) - The lawsuit claims they seek an order compelling NMFS to release records related to bycatch from the California halibut trawl fishery. The actual request, as amended, seeks, inter alia, photos and videos from the Fisheries Service and the Pacific States Marine Fisheries Commission’s West Coast Groundfish Observer Program for the

California Halibut trawl sector (including all Limited Entry and Open Access) from June 2007 until the present.

*Judicial Watch v. DOC and DiGiacomo*, D.D.C. No. 25-cv-71 (2025-01-10) - The underlying FOIA request seeks records (starting March 1, 2022) from a specified set of individuals concerning the implementation of the “Internet for All” infrastructure law, specifically including: requirements for internet service providers under Broadband Equity Access and Deployment Program (BEAD) to engage in “green initiatives”; requirements under BEAD to employ unionized labor; stipulated hiring preferences under BEAD; State applications for BEAD; and funds allocated per state under BEAD.

USPTO received two (2) new FOIA litigations this reporting period, which brings the total number of FOIA litigations to eight (8). These lawsuits were either due to constructive or challenging USPTO’s application of FOIA exemptions.

- Common causes leading to litigation?

The most common cause of litigation was the inability for the Department and/or its components to respond to requests within 20 working days. By comparison, only a small number of lawsuits were filed solely out of dissatisfaction with the withholdings or the adequacy of the search.

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

FOIA litigation frequently becomes a time-consuming endeavor for the Department’s program office personnel, the Department’s OGC attorneys, DOJ attorneys, FOIA Officers, and agency FOIA professionals due to the amount of time required to draft answers to complaints, declarations, Vaughn indices, etc. typically with relatively short turnaround times. The cumulative and indirect effects of FOIA litigation hinder the Department’s ability to process backlogged requests.