



United States Department of Commerce
Chief FOIA Officer Report

Fiscal Year 2022



U.S. Department of Commerce 2022 Chief FOIA Officer Report



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Department Components/FOIA Offices

BEA	Bureau of Economic Analysis
BIS	Bureau of Industry and Security
Census	Bureau of the Census
DOC	Department of Commerce
EDA	Economic Development Administration
InfoLaw (OGC)	Information Law (Office of General Counsel)
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
OUSEA	Office of the Under Secretary for Economic Affairs
USPTO/PTO	United States Patent and Trade Office



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Section I: Steps Taken to Apply the Presumption of Openness

The guiding principle underlying Department of Justice’s (DOJ’s) FOIA Guidelines is the presumption of openness. The DOJ’s FOIA Guidelines of 2009, declared that agencies are to reaffirm the government’s “commitment to accountability and transparency” leading to new Era of Open Government.

The importance of agencies to ensure that they: a) Apply a presumption of openness; b) Have an effective system for responding to requests; c) Make proactive disclosures; d) Use technology and d) Promptly respond to requests. The Department of Justice emphasizes that “each agency must be fully accountable its administration of the FOIA” The Chief FOIA Officers are to review “all aspects of their agencies’ FOIA administration” and to report each year to the Department of Justice on the steps taken “to improve FOIA operations and facilitate information disclosure.”

The following questions describe the steps the Department has taken to ensure that the presumption of openness is being applied to all decisions involving the FOIA, to include additional information that proves how the Department has and continues working to apply the presumption of openness.

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.

Jennifer Goode, PhD, Acting Chief Privacy Officer and Director of Open Government

3. 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 Department Chief FOIA Officers ensured proper FOIA training was offered to agency personnel via virtual training, web applications, online training modules and training courses, broad based conferences, conference calls and FOIA Council meetings, and various platforms. Additional efforts included one-on-one personalized training offered to every new FOIA professional, FOIAonline tutorials for new users, and the individual FOIA overviews given to new Senior Executive Service personnel and political appointees. Additionally, Department of Justice/Office of Information Privacy (DOJ/OIP), OGC, and the Census Bureau provided training to personnel via weekly FOIA knowledge

briefs, training manuals and materials on designated shared drives, slide presentations, and e-discovery tools. Cross training opportunities were also provided.

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4. 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

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

Training attended by Department FOIA professionals and personnel with FOIA responsibilities include:

- **DOJ/OIP training modules via the Commerce Learning Center (CLC).**
- **Annual FOIA Report Training – Statutory Requirements, Overview of Process and General Guidance, Section-by-Section Overview of the Annual Report, Tips and Tricks and instructions for submitting the report to OIP.**
- **Chief FOIA Officer Report Training - Guidelines for 2021 Chief FOIA Officer Reports, Summary of Agency Chief FOIA Officer Report for 2020 and the Assessment of Agency Progress in FOIA Administration with OIP Guidance for Further Improvement.**
- **Best Virtual Practices in FOIA**
- **FOIA Best Practices During the Pandemic.**
- **FOIA Continuing Education Seminar.**
- **Intro to FOIA Virtual Training: Overview of the initial process of a FOIA request from receipt by the agency to the final response to the requester to include a broad overview of each FOIA exemption.**
- **The Freedom of Information Act for Attorneys and Access Professionals – comprehensive overview of the FOIA, including, FOIA’s procedural requirements; FOIA exemptions; processing FOIA Requests; relationship between FOIA and the Privacy Act (PA).**
- **FOIA Best Practices - information on how to greater utilize technology for FOIA and how best to implement best practices to improve their overall FOIA administration.**
- **Artificial Intelligence for FOIA Professionals.**
- **DOJ Virtual Procedural Requirements and Fees.**



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- **DOJ Virtual Litigation Workshop.**
- **DOJ Virtual Best Practices FOIA Administration During the Pandemic.**
- **Exemption 7 -- overview of the FOIA's primary exemption for law enforcement records, including this exemption's threshold requirement and substantive subparts.**
- **DOJ Virtual Processing from Start to Finish Workshop.**
- **DOJ FOIA training for the Census Bureau, which covered exemptions, procedural requirements, and litigation considerations.**
- **Exemption 1 - overview of Executive Order 13526 and the withholding of classified national security information.**
- **Exemption 4 – overview of the requirements for imposing Exemption 4 to protect trade secrets, certain commercial and financial information, and the submitter-notice process for exemption determinations.**
- **Exemption 5 -- overview and requirements for imposing Exemption 5 to protect interagency or intra-agency communications, which would not be available by law to a party other than an agency in litigation with the agency.**
- **Exemption 7 -- overview of the FOIA's primary exemption for law enforcement records, including this exemption's threshold requirement and substantive subparts.**
- **FOIA Fee Waiver – overview of the FOIA's fee and fee waiver provisions.**
- **Privacy Considerations Workshop – overview of FOIA's privacy exemptions and the Privacy Act, including the interface between both acts and an overview of Exemptions 6 and 7(c).**
- **FOIA Litigation Workshop – FOIA litigation issues, including guidance on successful litigation strategy, advanced litigation considerations, and details on the preparation of Vaughn indices and declarations.**
- **FOIA Continuing Education – current topics in FOIA administration, including an update on legal and policy developments, as well as an overview of recent FOIA court decisions.**

American Society for Access Professionals:

- **Annual National Training Conference – combined fundamental training topics issues associated with FOIA and Privacy Act processing, and records management. Breakout sessions provided**



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individual agency participants a unique opportunity for questions and answers as they pertain to their own agency policies, bringing together their supervisors and employees from different offices to achieve face-to-face communication and understanding.

- **“Food for Thought” Training – Case Law Development**

Office of Government Information Services:

- **Finding a Needle in a Haystack: Enterprise-wide FOIA Searches at CDC.**

Department of Commerce:

- **Department’s Sunshine week events included several FOIA workshops on FOIA processes and information.**
- **Department FOIAonline training focused on the FOIAonline system and new system improvements.**
- **“Freedom of Information Act (FOIA) Training for Professionals” via the Commerce Learning Center included the end-to-end processing of FOIA’s.**
- **Relativity Training focused on introducing FOIA professionals to this electronic discovery software platform that allows users to efficiently search, review, consult, and redact records all in one program. Training included using the search features, coding of documents, redacting of documents and reporting features.**
- **FOIA professionals at the Department including the Department of Justice (DOJ) online module “Freedom of Information Act (FOIA) Training for Professionals” available through the Department of Commerce Learning Center.**

Other:

- **The RM930 FOIA Conference highlighted various FOIA data systems and programs.**

Specific training conducted by Department FOIA professionals include:

- **The ITA FOIA Team conducted training related to “Processing, redacting, and general FOIA guidance” throughout ITA. Examples include training on the use of Adobe Acrobat to perform E-redactions. The ITA FOIA Team attended DOJ Training on FOIA exemptions, FOIA Online, and other FOIA processing and updates throughout the FY2021.**

NOAA conducted FOIA Roundtables, issued FOIA guidance, conducted FOIA Legal Experts Calls, and provided training for all bureau FOIA personnel.



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6. 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.

An estimated average of 97% of Department FOIA professionals attended substantive FOIA training during the reporting period.

7. 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

8. Did the personnel at your agency who have FOIA responsibilities attend training in federal records management during this reporting period?

Yes

9. Did your FOIA professionals engage in any outreach or dialogue, **outside of the standard request process**, with the requester community or open government groups regarding your administration of the FOIA? 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

Yes

Examples of such are as follows:

- **Although the Information Law Division does not engage in outreach with the requester community, we are open to dialogues with the requester community regarding appeals and litigation, and we have had sporadic discussions on that basis.**
- **The OIG participated in an informal working group consisting of FOIA professionals within other federal agency OIGs to discuss FOIA developments. As far as interactions within the requester community, we generally defer to the Department to conduct outreach efforts on behalf of the entire Department. The OIG did reach out to individual requesters on a regular basis if we had questions about their requests. Proactive updates are also provided to requesters as appropriate.**
- **Department and bureau FOIA professionals attended the American Society for Access Professionals where they can engage in dialogue with the requester community and other access professionals regarding the administration of the FOIA.**

- **The PTO FOIA professionals attended the American Society of Access Professionals (ASAP) national training conference where we are often afforded opportunities to speak to various members of the requester community either face-to-face or during panel discussions, and we are members and attended the Committee on Cross-Agency Collaboration & Innovation (COCACI) where we collaborate and share best FOIA practices with other government agency FOIA Officers.**
 - **The Department engaged in outreach through its Annual Sunshine Week event. The public event showcased recent initiatives, agency FOIA activities, and FOIA related presentations. The event allowed the public to engage in a dialogue with the Department about the importance of open government.**
10. 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.

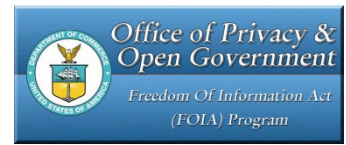
Department FOIA Offices continued to engage with non-FOIA professionals, emphasizing open communication and transparency to ensure compliance with applicable laws, regulations, and obligations. FOIA professionals worked with non-FOIA professionals from program offices, program staff, senior managers, line offices, and regional offices on an ongoing basis to inform them of their obligations under the FOIA. FOIA professionals relayed the importance of FOIA, open government and transparency through memoranda and FOIA updates communicated to agency staff when tasking requests for fee estimates or record searches. Individual formal FOIA training was also provided to non-FOIA professionals on a needed basis, and FOIA staff were available to answer questions. In addition, contact information for FOIA professionals is provided in outgoing FOIA assignment and tasking memoranda.

Additional outreach to non-FOIA staff included:

- **BEA FOIA professionals collaborated with non-FOIA professionals (such as staff, program office management, and the Office of the Chief Information Officer) to inform them of their obligations under FOIA. This was communicated verbally and via BEA's FOIA manual and policy. BEA also updated its internal FOIA site, which will educate all staff about their obligations under the FOIA.BEA**
- **BIS FOIA professionals provided both reading materials for FOIA processing training and hands-on reviewing exercises to non-FOIA professionals. BIS provided training to new employees and contractors on the FOIA process. FOIA professionals also provided BIS senior leadership training.**
- **EDA's Chief FOIA Officer regularly emphasized the importance of FOIA to non-FOIA professionals through memorandums and FOIA updates communicated to the agency's staff when fanning out a request. Additionally, new employees are provided ad hoc training to understand**



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their FOIA responsibilities. EDA's senior leadership team was also briefed by the Chief FOIA Officer on the agency's FOIA resources, obligations, and expectations.

- **IOS encouraged non-FOIA professionals are to take FOIA training via the Commerce Learning Center. IOS FOIA staff engaged with non-FOIA professionals and emphasized open communication and transparency to ensure compliance with applicable laws, regulations, and obligations. Program offices, program staff, and senior managers were informed on a regular basis of their obligations under the FOIA. IOS FOIA staff relayed the importance of FOIA, open government and transparency through memoranda and FOIA updates communicated to agency staff when tasking requests for fee estimates or record searches. Individual formal FOIA training was also provided on a needed basis. In addition, contact information for FOIA professionals is provided in outgoing FOIA assignment and tasking memoranda. IOS FOIA staff provided training to those employees assigned FOIA responsibilities in other offices via Teams meetings, including the use of FOIAonline, conducting proper searches for potentially responsive records, and their overall duties and responsibilities under FOIA. FOIA training was provided to Senior Executive Service members and their staff. IOS staff worked closely with non-FOIA professionals when responding to requests. IOS staff provided presentations on FOIA record types, and record search responsibilities.**
- **ITA's FOIA Staff remained available to answer questions from program staff and provided program staff with FOIA point-of-contact telephone numbers on outgoing taskers. ITA emphasized open communication and transparency to ensure compliance with the applicable laws and obligations. Additionally, ITA FOIA Staff conducted in-person one-on-one guidance.**
- **MBDA continued to train non-FOIA professionals on an ongoing basis as needed.**
- **NIST conducted training to organizational unit stakeholders on a regular basis. NIST's FOIA Officer emphasized the importance of openness as a factor to consider when reviewing records via training sessions and in response to specific requests. In addition, the FOIA Office and the NIST Office of the Chief Counsel carefully reviewed all suggested withholdings, placing a priority on the presumption of openness, and considered the foreseeable harm prior to making a final determination to withhold records or information.**
- **NOAA engaged with its General Counsel's Office to ensure dissemination of FOIA requirements and to assist as legal counsel's incorporation of changes in FOIA case law and DOJ OIP Guidance into advice for the NOAA client. NOAA FOIA also briefed the NOAA CIO Council multiple times regarding FOIA obligations, budget, and program requirements for transparency.**
- **NTIA/OCC conducted training throughout the year as a part of a concerted effort to assist NTIA employees in understanding their roles and responsibilities under FOIA. In addition, NTIA/OCC FOIA staff provided information to NTIA staff regarding their**

FOIA obligations. This included training of senior leaders regarding the agency FOIA process and their obligations. These were held virtually using a prepared PowerPoint presentation and discussion format. Also, each request for fee estimates or search sent to NTIA employees included detailed instructions regarding how to conduct a proper fee estimate or search. On a case-by-case basis, FOIA training materials are provided to new staff or those that were seeking information regarding their FOIA obligations. NTIA/OCC staff provided a FOIA Q&A posted on NTIA's intranet for additional information. NTIA/OCC staff also regularly answered questions regarding FOIA and provided help when asked.

- NTIS continued to utilize and encourage FOIA staff to take the CLC (Commerce Learning Center) class on FOIA.
- OGC/Information Law presented a FOIA overview session during the Department's Sunshine Week event in March 2021. They were available to provide similar sessions when requested.
- The Office of the Secretary emphasized open communication and transparency with non-FOIA professionals to ensure compliance with applicable laws, regulations, and obligations. FOIA Professionals continued to collaborate with non-FOIA professionals from other program offices and informed them of their obligations and expectations under the FOIA. Office of Secretary FOIA professionals also stressed the importance of the FOIA to non-FOIA professionals through correspondence and memorandums.
- OUSEA FOIA professionals collaborated with non-FOIA professionals (such as staff, program office management, and the Office of the Chief Information Officer) to inform them of their obligations under FOIA. This was communicated verbally and via a FOIA manual and policy.
- The members of the USPTO FOIA Office conducted training sessions for new attorneys in the Headquarters Office, as well as been participants on agency-wide Q&A panels for supervisory -level employees throughout the Agency. The FOIA Officers also provided one-on-one FOIA training and guidance to senior leadership and administrative judges in the Agency. FOIA Coordinators in each business unit assisted the FOIA Office in ensuring that non-FOIA professionals understood their obligations. FOIA training materials are made available to USPTO employees on the USPTO intranet.

Section

11. 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.



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The Department FOIA Office continued to provide compliance and operational oversight for the administration of the FOIA with emphasis on ensuring the presumption of openness was applied.

Examples of other initiatives undertaken by the bureaus to ensure openness was applied include:

- **BIS used modern technology such as e-discovery tool in administering the FOIA to provide timely disclosure of information to the public. This is a concrete step to use technology tools to improve multiple aspects of our FOIA process such as de-duplication and redactions.**
- **CENSUS proactively uploaded all FOIA logs, custom tabulations, and correspondences regarding key Census operations to their website.**
- **EDA provided joint Chief Counsel and Regional Counsel review of all items flagged for redaction or withholding under FOIA exemptions, with an emphasis on the presumption of openness.**
- **The IOS FOIA staff emphasized and ensured that the presumption of openness was applied in the FOIA program. When reviewing documents for disclosure the staff encouraged the office units to make discretionary releases of information where possible. In addition, the IOS staff continued to provide a proactive openness policy with respect to agency records and informational material made available to the public through its website. For instance, FOIA logs are publicly available through FOIAonline.**
- **ITA regularly provided guidance to program staff on the FOIA including the presumption of openness and conducting foreseeable harm reviews. ITA FOIA Staff consistently worked with the business units to ensure they were segregating information where possible reminding them of the presumption of openness. ITA FOIA Staff is worked with Chief Information Officer (CIO)/Technology Services and Innovation (TSI) to implement e-discovery tools to allow for more efficient processing, which in turn will lead to a greater presumption of openness. ITA FOIA Staff maintained an index for templates to ensure greater efficiency when drafting responses to requesters.**
- **NOAA engaged with Line Offices to examine potential proactive disclosures of Video Conference Recordings, to ensure that meetings which do not include any exempt material were made available to the public, when possible.**
- **NTIA continued to have a proactive openness policy with respect to agency records and informational material made available to the public through its website and social media, including blogs and press releases. For example, NTIA worked diligently to post grants, contracts, other agreements, reports, key correspondence, advisory committee minutes, speeches, congressional testimony, public notices and other regulatory matters, and comments in Federal Communications Commission proceedings. In FY2021, NTIA had new responsibilities regarding broadband grants and posted information regularly on the**

- **progress of these programs, which are of high community interest. That information is available at <https://broadbandusa.ntia.doc.gov/resources/grant-programs>.**
- **OGC continued to provide guidance on the proper understanding, interpretation, and execution of FOIA.**
- **The OIG adhered to public posting requirements under The Inspector General Act, as amended, for OIG products. OIG audit, evaluation, and certain other products and correspondence received a public release review and were proactively made publicly available on the OIG website, as appropriate, under the terms of FOIA.**
<https://www.oig.doc.gov/Pages/default.aspx>

PTO made notices of suit, judicial decisions of interest, and data points related to patents and trademarks available at: http://www.uspto.gov/ip/boards/foia_rr/index.jsp. The USPTO FOIA Office highlighted the presumption of openness in its training materials and training presentations for Business Units and individual employees.

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

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

The following questions describe the steps the Department of Commerce (Department) taken to ensure that the management of Department FOIA program is effective and efficient to include additional information that that describes your agency's efforts in this area.

1. For Fiscal Year 2021, 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 2021 Annual FOIA Report.

The average number of days for the Department to adjudicate an expedited request in Fiscal Year 2021 was 31.

2. 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 2021 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.

The Department FOIA office will continue to conduct outreach to the BOU FOIA Officers to

emphasize the importance of adjudicating expedited processing in fewer than 10 calendar days. The



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days to adjudicate requests for expedited processing will continue to be monitored via weekly reporting through the fiscal year to ensure that it is being reduced over time. In addition, BOUs will be prioritizing expedited processing requests, adding additional resources, monitoring requests submitted via FOIAonline routinely, revising internal timelines and using automated reminders. Some Bureau Operating Units have certain timeframes where this is due to high levels of complex cases for example, Census Bureau receives during the Census year and in the past Immediate Office of the Secretary see uptake in requests during some administrations versus others. In addition, on any given day a BOU could receive 100 or more requests in a day, which the Department has seen in the past, this could cause a slowdown in the processing of the expedited processing requests.

3. The FOIA Improvement Act of 2016 required all agencies to update their FOIA regulations within 180 days. In 2016, OIP issued Guidance for Agency FOIA Regulations and the accompanying Template for Agency FOIA Regulations to assist agencies in updating their regulations in accordance with the statute. Has your agency updated its FOIA regulations in accordance with the FOIA Improvement Act of 2016? If not, what is your agency's plan to update your regulations?

Yes.

4. Standard Operating Procedures (SOPs) generally document your agency's internal processes for administering the FOIA beyond your FOIA regulations and FOIA Reference Guide. As noted in OIP's guidance, having SOPs can improve the consistency and quality of an agency's FOIA process. SOPs can also serve as a significant resource for incoming FOIA professionals and a way to preserve much of the agency's institutional knowledge on administering the FOIA from how to handle requests from start-to-finish, to identifying and making proactive disclosures, to maintaining a FOIA website. Does your agency have up-to-date internal SOPs for your FOIA administration?

Yes

5. If not, please provide a timeline for when your agency plans to develop, or update is SOPs.

N/A

6. Has your agency established alternative means of access of first party requested records outside of the FOIA process?

Yes

7. If yes, please provide examples. If no, please explain if such opportunities exist at your agency and whether there are any challenges in establishing alternative means of access.

Examples of the established means of access include:

- **A Secure File Transfer Solution is used by the Immediate Office of the Secretary and Office of Privacy and Open Government to receive, e.g., requests for personnel information, job vacancy**

information etc. The Secure File Transfer Solution allows the Department to receive and send certifications of identity and access these first-party requests.

- NOAA currently has responded to multiple (d)(1) access requests and allows for verification of identity incident to processing of these requests pursuant to DOJ Guidelines. This process first examines Privacy Act Access, and only upon the assertion of an applicable PA Exemption does the request convert to FOIA processing.
8. Did your agency conduct a self-assessment of its FOIA administration during the reporting period? If so, please describe the self-assessment methods used, such as analyzing Annual Report or raw data, using active workflows and track management, reviewing, and updating processing procedures, etc. In addition, please specifically highlight any data analysis methods or technologies used to assess your agency's FOIA program.

Yes

Self-Assessment methods we used included:

- Reviewed and analyzed Annual Report data, quarterly metrics, monthly metrics, and raw data
- Reviewed and adjusted workflows
- Utilized track management
- Analyzed monthly and weekly report data to identify processes which may be streamlined to improve quality and timeliness of processing.
- The Department continued to engage senior management to emphasize the importance of FOIA to the Department and BOUs.
- The Department also added staff, such as temporary staff on detail or contractors.
- The Department used OIP resources.
- Additionally, the Department encourages BOUs to use the Annual Report tips tool.

Highlights of data analysis methods or technologies used by BOU's to assess its FOIA program include:

- BIS tracked the information necessary for each request throughout the fiscal year so that the information can be easily compiled at the end of the year. Before submitting their completed report to the Department, BIS reviewed and compared raw data in the FOIAonline Annual Report Tool to ensure components listed are correct and consistent with past years and made corrections



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to remove any discrepancies. BIS routinely assessed their FOIA data and pending cases, especially during quarterly data calls to the Department. BIS often reallocated resources to cases that are considered the oldest and marked with priority (fee paid, sensitive topics, litigations, expedited processing, etc.). BIS also implemented a two-step quality check procedure and developed a redaction quick guide this fiscal year.

- **Census FOIA Management created multiple internal tracking forms to assist with assessing and measuring our performance. These included phone log tracking sheets as well as performance sheets. Census also utilized the FOIA Online tracking tools to assist in our assessments.**
- **During the reporting period, EDA conducted a self-assessment of its FOIA program with a continual emphasis on proactive disclosures. EDA reviewed the FOIA requests received in the last year to determine the relative frequency of requests and whether any such requests should be added to the FOIA Reading Room. EDA followed Department’s processing procedures.**
- **ITA maintained a team of contractors and other experts to strategize backlog reduction, conduct an inventory of existing requests, improve processes, and develop Standard Operating Procedures to assist the bureau in improving its FOIA program. ITA developed its first fully encompassing Standard Operating Procedure (SOP) that covers the FOIA program from exemptions, revisions, references, ITA responsibilities, communication, procedures/processes, fees, reporting requirements, records, etc. ITA worked on updating its SOP throughout the reporting period, as it finds ways to continuously improve the process and make it more efficient.**
- **The NIST FOIA Office held monthly meetings to assess progress and any management issues with processing requests. NIST also held regular meetings among the FOIA Officer and FOIA staff to discuss program inefficiencies and remediations. FOIA staff often worked together on large and complex requests. NIST conducted quarterly reports to gauge status on oldest requests as well as other aspects of the FOIA program.**
- **NOAA conducted monthly FOIA Reporting analyses, which were provided to leadership and reported the status of processing, FOIA metrics, backlog, and litigation.**
- **NTIA/OCC staff with significant FOIA responsibilities met regularly and as needed to discuss individual cases, case load, workflow, and ways to improve NTIA’s FOIA processing.**
- **NTIS conducted meetings with supervisory Records Manager to go through the BOU’s backlogged requests.**
- **Periodically, the USPTO FOIA Office reviewed the quarterly reports in conjunction with FOIAXpress data to self-assess its efficiency and deficiencies.**

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



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sought assistance from your agency's FOIA Public Liaison during FY 2021 (please provide a total number or an estimate of the number).

Collectively, the Department and its components provided FOIA Public Liaison assistance approximately 86 times.

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

Yes

11. Optional -- Please describe

Best practices used to ensure that your FOIA system operates efficiently and effectively.

- **The Department and BOUs continued to assess the current FOIA tracking system and provide input for system updates. Some BOUs conducted weekly conference calls with staff responsible for managing FOIA requests to discuss various topics including tracking system use. Conducting monthly FOIA Council meetings with all Department FOIA Officers and other FOIA professionals representing the BOUs to discuss operational efficiency and effectiveness of a tracking system. Conducting market and system research to keep current on new technology and other tracking system options. Constant communication between the Department and bureaus, and across bureaus, to share problems and solutions with the system.**

Any challenges your agency faces in this area

- **Frequent system outages and poorly timed updates. New staff not being knowledgeable of the system. Lack of funding for new systems. Training associated with new users. Finding a system that fits our processing requirements and needs.**

Section III: Steps Taken to Increase Proactive Disclosures

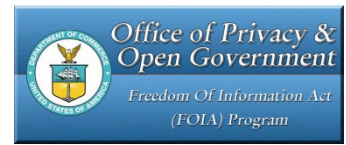
The Department of Justice has long focused on the need for agencies to be proactive in posting information online without waiting for individual requests to be received. Please answer the following questions to describe the steps your agency has taken to increase the amount of material that is available on your agency websites. In addition to the questions below, you should also describe any additional steps taken by your agency to make and improve proactive disclosures of information

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

The Department and its bureaus continue to identify, track, and post (a)(2) proactive disclosures. Some Examples from our BOUs are:



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- **BEA being a Principle Federal Statistical Agency and it is critical to its mission to publish all materials of common value. Our mission is to disseminate data; therefore, by default, the process of proactively releasing information is a core role for BEA and considered to be a normal operating procedure. In 2021, less than 1 percent of FOIA requests required a unique disclosure. BEA’s goal is to publish as much of our findings as we can. BEA’s current site effectively discloses information as outlined in Department of Justice’s explanation of 5 U.S.C. section 552(a)(2)(D). BEA receives many requests for regional and national economic information; however, this information is already publicly available on BEA’s website. That said, when we receive these requests, we refer the requester to BEA’s website. Since BEA’s FOIA program began only five years ago, it is possible that as time goes on, BEA will receive consistent requests that would warrant a proactive disclosure release. To date, this has not been the case.**
- **EDA various steps to identify, track, and post (a)(2) proactive disclosures are: a. Run a search in the FOIAOnline system for requests to identify the frequency based on the terms of the request. b. After running the search, EDA verifies the records that were released in the similar request and confirms that the records are visible to the public. More than likely, it is visible to the public both on our agency’s website and through the FOIAOnline system. c. Lastly, the request is flagged on our internal FOIA log as a frequent request for future reference.**
- **IOS has identified the Secretary’s calendar to be a frequently requested record and has that reviewed for disclosure and posted. In addition, work along side the Office of Public Affairs on what types of information we could post such as speeches, work with a scheduler to post public versions of the daily calendars of executives. Perhaps work with schedulers to proactively post**
- **public versions of trip schedules/itineraries both domestic and international.**
- **MBDA suggests for each program that has high demand for information, the agency provides FAQs or QandAs to minimize public requests for information.**
- **NIST works with the Public Affairs Office and Open Government Office to communicate the importance of proactive disclosures for NIST.**
- **NOAA has taken records that it believes are of significant public informative value, and routinely places them in the FOIA reading room. This includes records about FOIA guidance, processing, and releases made in other litigations.**
- **NTIS Info posted to <https://www.ntis.gov/about/foia.html>**
- **OIG proactively posts documentation expected to be of public interest.**
- **Office of Secretary has identified frequent request for subject matter Purchase Card holders.**

- The Office Under Secretary's Office is directed by the Chief Economist and Deputy Chief Economist, and the responsibilities related to the Federal Data Strategy and the Foundations for Evidence-Based Policymaking Act of 2018 ("Evidence Act"), guided by the Department's Chief Data Officer, Statistical Official, and Evaluation Officer. Therefore, by default it works through BEA and other offices to ensure the process of proactively releasing information is a core normal operating procedure.
2. Provide examples of any 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 5U.S.C. § 552(a)(2)(D). Please include links to these materials as well.

Examples of the Department's records proactively disclosed during FY 2021, including records that have been requested and released three or more times are identified below.

CENSUS

- <https://www.census.gov/programs-surveys/decennial-census/decade/2020/planning-management/operational-adjustments.html>
- https://www.census.gov/about/policies/foia/foia_library/frequently_requested_records/2020-questions-discussions.html
- <https://www2.census.gov/about/policies/foia/records/2020-census-and-ac/20200327-memo-on-undocumented.pdf>

EDA

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

IOS

- https://www.osec.doc.gov/opog/FOIA/Documents/2020_sec_calendar_redacted.pdf

ITA

- <https://beta.trade.gov/fta/tariff-rates-search>
- <https://access.trade.gov/login.aspx>
- <https://www.trade.gov/national-travel-and-tourism-office>

NIST

- <https://data.gov>; <https://data.nist.gov>
- <https://www.ncbi.nlm.nih.gov/pmc/funder/nis>
- <https://www.govinfo.gov/collection/nist>

NIST cont'd

- <https://code.nist.gov>
- <https://www.nist.gov/services-resources/software>
- <https://www.worldcat.org>
- <https://archive.org/details/NISTresearchlibrary>
- <https://www.nist.gov/digitalarchives>



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- <https://www.nist.gov/nist-museum>
- <https://data.nist.gov>
- <https://data.gov>
- <https://code.nist.gov>
- <https://www.nist.gov/services-resources/software>
- <https://github.com/usnistgov> Peer-reviewed publications
- <https://www.ncbi.nlm.nih.gov/pmc/funder/nist>
- <https://www.govinfo.gov/collection/nist>
- <https://www.worldcat.org>
- <https://archive.org/details/NISTresearchlibrary>
- <https://www.nist.gov/digitalarchives>
- <https://www.nist.gov/nist-museum>

NTIA

- <https://www.broadbandusa.ntia.doc.gov/>

OIG

- <https://www.oig.doc.gov/Pages/default.aspx>

OS

- https://www.osec.doc.gov/opog/FOIA/Documents/Cardholder_Redacted_FY21.pdf

3. Does your agency disseminate common types of material outside of FOIA, including in online databases where the public may access them? If yes, please provide examples and, if applicable, statutory authority.

Yes

Examples of databases used to disseminate common types of material outside of FOIA include:

- With the use of FOIAonline, ITA made previously requested documents available to the public after they have been processed using the FOIA, when appropriate. Furthermore, other examples of material ITA has posted proactively included: 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>).
- In addition to the posted research-oriented outputs listed in prior question, NIST also made other types of material available including information about NIST patents (<https://www.nist.gov/patents>), spending (<https://usaspending.gov>), and grants (<https://www.grants.gov/>).

- Hurricane Dorian-related requests alone accounted for approximately 10% of all of NOAA’s incoming FOIA requests last fiscal year. Given the significant public interest in the records consistent with the 2016 FOIA Improvement Act, NOAA responded concurrently to all Dorian-related FOIA requests with rolling interim releases of the records through the FOIA Reading Room (<https://www.noaa.gov/foia/reading-room/hurricane-dorian-related-records/foia/reading-room/hurricane-dorian-related-records>), Hurricane Dorian Related Records. Comprehensive Hurricane coverage, spanning the entire National Hurricane Data Archive. This combined expansive data trove proved indispensable, and provided the public, news media, and incident responders with a massive library of proactively disclosed material to aid in Hurricane prediction, tracking, and response during the critical Hurricane season. This data library includes the Tropical Cyclone Reports (<http://www.nhc.noaa.gov/data/#tcr>), Tropical Cyclone Advisories (<http://www.nhc.noaa.gov/data/#advisories>), Graphical Tropical Weather Outlook (<http://www.nhc.noaa.gov/data/#gtwo>), Marine and Advisory Text Products (<http://www.nhc.noaa.gov/data/#text>), Marine Graphical Products (<http://www.nhc.noaa.gov/data/#marine>), Best Track Data (<http://www.nhc.noaa.gov/data/#hurdat>), Past Track Seasonal Maps (http://www.nhc.noaa.gov/data/#tracks_all), Past Track Maps of U.S. Landfalling Major Hurricanes (http://www.nhc.noaa.gov/data/#tracks_us), Tropical Cyclone GIS Data Format (<http://www.nhc.noaa.gov/data/#gis>), Tropical Cyclone “Storm Wallet” Electronic Archive (<http://www.nhc.noaa.gov/data/#wallet>), Tropical Cyclone Monthly Summary Archive (<http://www.nhc.noaa.gov/data/#monthly>), Tropical Cyclone Annual Summaries from 1872-2006 (<http://www.nhc.noaa.gov/data/#annual>), Seasonal Outlooks (<http://www.nhc.noaa.gov/data/#outlooks>), Cyclone Climatology (<http://www.nhc.noaa.gov/data/#climo>), Forecast Verification (<http://www.nhc.noaa.gov/data/#verif>), Aircraft Reconnaissance Archive (<http://www.nhc.noaa.gov/data/>), Reports of Cyclones by Death Rate, Cost, and Intensity (<http://www.nhc.noaa.gov/data/#extreme>), and Hurricane Histories (<http://www.nhc.noaa.gov/data/#cphc>), Weather and Climate Data (<http://www.ncdc.noaa.gov/>) Ocean Data (<http://www.nodc.noaa.gov/>), Coastal Data (<http://www.ncddc.noaa.gov/>), Geophysical Data (<http://www.ngdc.noaa.gov/>), Fisheries Data across the Alaska (<http://www.alaskafisheries.noaa.gov/>), Greater Atlantic (<http://www.greateratlantic.fisheries.noaa.gov/>), Pacific Island (<http://www.fpir.noaa.gov/>), Southeast and Caribbean Island (<http://sero.nmfs.noaa.gov/>), and West Coast (<http://www.westcoast.fisheries.noaa.gov/>), regions, as well as Program-related data, scientific research, observer program data, National Marine Mammal Laboratory information, Habitat and Ecological Process data, and International Research data. Programmatic information is routinely released regarding: Sustainable Fisheries, Protected Resources, Habitat Conservation, Science and Technology and Data Portals International Affairs and Seafood Inspection, Law Enforcement, and Aquaculture. (<http://www.nmfs.noaa.gov/>), Nautical Charts and the NOAA Coast Survey data (<http://oceanservice.noaa.gov/facts/find-charts.html>), NOAA Tides and Currents Data from the Center for Operational Oceanographic Products and Services (<http://oceanservice.noaa.gov/facts/find-tides-currents.html>), Marine Debris (<http://oceanservice.noaa.gov/hazards/marinedebris/>), Infographic representations (<http://oceanservice.noaa.gov/infographics/>), Story Maps (<http://oceanservice.noaa.gov/map-stories/welcome.html>), National Weather Service Alerts (<http://www.weather.gov/alerts>), Forecast Maps (<http://www.weather.gov/forecastmaps>), Doppler Radar National Mosaic (<http://www.weather.gov/Radar>), River, Lake, and Rainfall data (<http://water.weather.gov/ahps/>),



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Air Quality (<http://airquality.weather.gov/>), Satellite Images (<http://www.weather.gov/satellite>), and past weather data (<http://www.weather.gov/climate> and Marine and Aviation Operations Accident Investigations and Lessons Learned, including Safety News, Diving Incident Reports, Environmental Spill Reports, and Marine Investigations and Lessons Learned (http://www.oma.noaa.gov/accident_investigations_lessons_learned/index.html).

- NOAA Research activities, including NOAA Research Laboratories, National Sea Grant College Programs, NOAA Office of Ocean Exploration and Research, NOAA Climate Program Office, Office of Weather and Air Quality, NOAA Unmanned Aircraft Systems, and NOAA Ocean Acidification Programs <https://research.noaa.gov/About-Us/WhoWeAre.aspx>.
- NTIA has created a webpage to publish and distribute data regarding broadband availability in the United States through NTIA's Indicators in Need map. This data included an interactive map and resources to study broadband in the U.S. This is available at: <https://broadbandusa.ntia.doc.gov/resources/data-and-mapping>.
- Proactive posts included semi-annual reports to Congress; audit, evaluation, and other reports; 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>.

4. 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

5. 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.

Examples of improvements are:

- BEA's Communications Staff regularly reviewed a wide array of web analytics, customer feedback, and survey responses to improve web usability, web content, and information dissemination.
- NOAA's reading room has been organized into subject matters, allowing requesters to identify topics of interest to retrieve commonly requested items. Providing in a CSV file data used to create the Indicators in Need Broadband Map discussed above. Creating plans overseen by Federal Advisory Committee Act board to keep posted information current. Reviewed web analytics, customer feedback and used survey responses to improve web usability, web content, and information dissemination.

- **The Census FOIA Office not only posts frequently requested records, we now also proactively link to additional Census public facing sites that contain current information on high profile highly requested information like the 2020 Census operations, COVID-19, and population counts.**
- **The EDA used headings for the posted material so that potential requesters can easily find the information on EDA’s website before considering sending EDA a FOIA request. The Chief FOIA Officer continued to communicate to staff with FOIA responsibilities that if any frequently requested document(s) needs to be posted to EDA’s Reading Room, the Chief FOIA Officer will review the document(s) and then forward to EDA’s IT team to upload on the agency’s website. The agency will upload the document(s) to the FOIAonline system as well for public viewing. In addition, the agency’s Chief FOIA Officer had discussions with Regional Offices as to what proactive disclosures might be useful and appropriate for EDA stakeholders (conversations are always on-going). EDA has not faced any challenges in this area.**
- **ITA’s public facing FOIA specific site provided information about the bureau and information requests. ITA’s public facing webpage ties to the Commerce Office of Privacy and Open Government (OPOG) website where requesters can access Frequently Requested Records and view System of Records Notices.**
- **NIST has provided public access to narrative publications and data that result from our research. We have 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 postings within the reading room are largely machine readable. However, some of the files, at the time of posting, are either .jpg, or flattened .pdf format, to properly redact Exempt information. This renders them non-OCR, and non-machine readable. However, when possible, NOAA released records in native format, or OCR capable, to enable machine readability.**
- **NTIA provided in a CSV file data used to create the Indicators in Need Broadband Map discussed above.**
- **The OIG continued to welcome feedback on the content and presentation of posted material and regularly reviewed the website to make sure that posted information is clearly presented to the public.**



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- **USPTO FOIA professionals identified frequently requested records based on their knowledge about what FOIA requests, including regular reviews of FOIA logs and discussions at FOIA Office meetings concerning trends and regularly requested records. In addition, USPTO FOIA professionals engaged with business units to identify frequently requested search terms and records, to increase the efficiency and thoroughness of the search process.**

6. Optional -- Please describe:

Best practices used to improve proactive disclosures

- **IOS continued to work with FOIA Council to create a working group for proactive disclosure in deciding on types of records and what records would be best to proactively post.**
- **ITA proactively publicized important disclosures on ITA websites, trade.gov and export.gov. In collaboration with the Office of the U.S. Trade Representative, ITA published text and datasets for important trade agreements that impact commercial industries.**
- **NOAA routinely met with Line Office FOIA professionals to identify frequently requested records and determine the feasibility of proactive disclosure.**
- **NTIA continued to make it a practice to be as proactive as possible posting as much material as possible regarding its programs.**

Any challenges your agency faces in this area

- **Lack of employees and turnover of staff throughout the Department.**
- **The size of NOAA's organization requires decisions on records for proactive disclosure to be made at the Line Office level, often by non-FOIA staff. Additionally, the 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.**

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

Yes, FOIA professionals routinely reach out to subject matter experts in various business units to identify records that can be made publicly available. For example, the Director's office for executive calendars; the Communications/Congressional and Public Affairs office for public topics of interest; Research offices for reports and publications; Decennial Census offices for census-

specific information; and Acquisition offices for grant applications, awards documents and reports that otherwise would have to be obtained through FOIA requests.

Section IV: Steps Taken to Greater Utilize Technology

A key component of FOIA administration is using technology to make information more accessible. In addition to using the internet to make proactive disclosures, agencies should also be exploring ways to utilize technology in responding to requests.

Please answer the following questions to describe how your agency is utilizing technology to improve its FOIA administration and the public's access to information. You should also include any additional information that that describes your agency's efforts in this area.

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

Yes

Technological capabilities to identify resources needed to respond to current and anticipated FOIA demands included:

- **BIS used FOIAonline and an internal excel spreadsheet to track all FOIA requests, referrals, and consultations. At the beginning of this fiscal year, BIS also acquired the e-discovery tool, Relativity, to assist with records processing and review.**
- **CEN is currently exploring new software (Relativity) to help process FOIA's faster and more efficiently by helping identify duplicate pages in responsive documents. Also, we are planning to enhance our internal FOIA SharePoint site to include workflows that will help with communicating with key program areas that have roles and responsibilities processing FOIA requests.**
- **The IOS FOIA staff participated in monthly meetings with the Department's FOIA Council. One of the ongoing topics included the operational efficiency and effectiveness of FOIAonline. The Department's FOIA office will discontinue the utilization of FOIAonline, and are researching the market for a new, efficient, and effective FOIA electronic tracking system.**
- **On an on-going basis NTIA/OCC staff evaluated ways to improve processing and responsiveness to requests especially focusing on available technologies.**
- **OGC will be reviewing alternatives to replace FOIAonline as the Department's FOIA tracking software.**



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- 2 Please briefly describe any new types of technology your agency began using during the reporting period (March 2021 – March 2022) to support your FOIA Program.
- **BIS used Relativity, a cloud-based eDiscovery software that offers case assessment, fact management, review, production, analytics, and legal hold functionalities within a suite.**
 - **CEN used Relativity software.**
 - **IOS continued to utilize Relativity software which is an eDiscovery platform to handle voluminous requests or requests for agency e-mails. Relativity allows for efficient and thorough document search, retrieval, review, and redactions. Relativity is also effective in reducing the number of potentially responsive records that must be processed by eliminating duplicates and applying key word searches. Specifically, the software allows for email threading and deduplication which is helpful in getting the requester the records they are seeking and reduces the time it takes processors to apply the FOIA to records and respond.**
 - **New technology is regularly used to facilitate overall FOIA efficiency in ITA. ITA used FOIAonline to share documents among participating agencies (especially for consultations and referrals). ITA worked with TSI to procure and implement a new e-discovery tool such as Relativity. ITA also used Microsoft OneDrive for business units to compile responsive records. These records can then be seamlessly shared with the ITA FOIA Staff and any other authorized users of the system. Secure file sharing is routinely used to transmit documents containing PII or other sensitive information within the bureau, Department, or with other Federal agencies. ITA conducted email searches via the Microsoft Office 365 portal using its native search capability.**
 - **In 2021, NOAA issued guidance, and prepared a template search form, instructing Line Office staff, when possible, to rely on centralized FOIA searches through the Google Vault ecosystem, to improve search adequacy and consistency in search terms and custodians.**
- 3 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**
4. Did all four of your agency’s quarterly reports for Fiscal Year 2021 appear on your agency’s website and on FOIA.gov?
- Yes, on our agency website, however Q4FY20 and Q1FY21 did not appear on FOIA.gov due to failure to receive administrative rights for the quarterly postings.**
5. If your agency did not successfully post all quarterly reports, with information appearing on FOIA.gov, please explain why and provide your agency’s plan for ensuring that such reporting is successful in Fiscal Year 2022.

The roles and methods of posting quarterly reports on FOIA.gov have been clearly established for all responsible parties. DOC will ensure all quarterly reports are posted on FOIA.gov.

6. 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 2020 Annual FOIA Report and, if available, for your agency's Fiscal Year 2021 Annual FOIA Report.

The link to the posting of the Department's Fiscal Year 2020 Annual FOIA Report and the 2021 Fiscal Year Annual FOIA Report will be posted at is:

https://www.osec.doc.gov/opog/FOIA/FOIA_reports_annual.html

7. Optional -- Please describe:

Best practices used in greater utilizing technology.

- **Relativity software greatly assisted BIS in processing large complex FOIA requests. A few examples are the automation of deduplication process, grouping similar records in batches to expedite the review process, and utilizing the analytic tools to assist on pinpointing where and how to search among a large volume of records.**
- **In addition to using the FOIAonline system, EDA used Microsoft Excel to create a FOIA log spreadsheet to streamline the processing and tracking FOIA requests efficiently.**
- **IOS continued to utilize an e-discovery tool to search email boxes with search terms for responsive records. The tool allows for search terms to be used and the realm of documents are not as large. The tool allows for deduplicating and will also pull an email string one time for review. IOS uses a secure file system for submitting certifications of identity as needed for requests. IOS continued to use a Secure file-sharing system.**
- **ITA worked with contractors to develop more sophisticated data visualizations (i.e., dashboards) and analytical reporting, using Tableau software, to improve the overall FOIA program operations. In early FY20 ITA volunteered to be part of the Department's pilot program for Relativity, an electronic documentation system. ITA is currently working with its own CIO to identify and rollout an E-discovery platform.**
- **NOAA leveraged the Veritas Clearwell e-Discovery solution, which has now been made available for all Staff and Line Offices to improve deduplication, records processing, and Vaughn indexing.**



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- **NTIA/OCC continued to explore software and other web or electronic tools available to improve processing and shorten response times, as permitted by budget and other resources. NTIA/OCC staff worked with the NTIA IT office to ensure the appropriate equipment and tools are available and functioning properly for those that process FOIA requests including search, de-duplication, and redaction tools.**
- **OGC utilized FOIAonline to streamline the appeals process. We also used the Department's secure file-sharing system, when transmitting documents with the BOUs.**

Any challenges your agency faces in this area.

- **BIS has reached a challenge of a cost burden if they continue using the Relativity software.**
- **A budgetary challenge exists for the Department as the search for a new technological system to process and track FOIA requests is being sought.**
- **Frequent staff turnover and budget restrictions limited consistency and creativity in decision making on IT projects in ITA.**
- **NOAA has a broad, non-centralized FOIA program. As such, most NOAA FOIA analysts are not FTE FOIA personnel, but rather partial FOIA FTEs, whose primary responsibilities are outside of FOIA, but who perform FOIA work when assigned. As such, a "per-person" licensing structure is not efficient for decentralized FOIA programs. The alternative is a storage-based license, or other licensing structure for e-Discovery platforms for most vendor-based solutions. This structure can be problematic when there are extremely large, or voluminous requests that are not predicable in terms of periodicity or volume across NOAA.**

[Section V: Steps Taken to Improve Timeliness in Responding to Requests and Reducing Backlogs](#)

The Department of Justice has emphasized the importance of improving timeliness in responding to requests. This section of your Chief FOIA Officer Report addresses both time limits and backlog reduction. Backlog reduction is measured both in terms of numbers of backlogged requests or appeals and by looking at whether agencies closed their ten oldest requests, appeals, and consultations.

For the figures required in this Section, please use the numbers contained in the specified sections of your agency's FY 2019 and 2020 Annual FOIA Reports.

Section VII.A of your agency's Annual FOIA Report, entitled "FOIA Requests – Response Time for All Processed Requests," includes figures that show your agency's average response times for processed requests.

For agencies utilizing a multi-track system to process requests, there is a category for "simple" requests, which are those requests that are placed in the agency's fastest (non-expedited) track, based on the low volume and/or simplicity of the records requested.

- 1 Does your agency utilize a separate track for simple requests?

Yes

2. 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 2021?

No, the overall average number of days to process simple requests was 60.3 days for the Department.

3. Please provide the percentage of requests processed by your agency in Fiscal Year 2021 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.

The percentage of requests processed by the Department in Fiscal Year 2021 that were placed in a simple track was 50%.

4. 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?

Not Applicable.

Section XII.A of your agency's Annual FOIA Report, entitled "Backlogs of FOIA Requests and Administrative Appeals" shows the numbers of any backlogged requests or appeals from the fiscal year. You should refer to these numbers from your Annual FOIA Reports for both Fiscal Year 2020 and Fiscal Year 2021 when completing this section of your Chief FOIA Officer Report.

5. If your agency had a backlog of requests at the close of Fiscal Year 2021, 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 2020?

No, the backlog did not decrease when compared with the backlog reported at the end of Fiscal Year 2020. In 2020 the backlog was 629. The backlog at of Fiscal Year 2021 was 773. This was a 23% increase.

6. If not, according to Annual FOIA Report Section XII.D.1, did your agency process more requests during Fiscal Year 2021 than it did during Fiscal Year 2020?



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Yes, the Department processed more requests during Fiscal Year 2021. In Fiscal Year 2020, the Department processed 2108 and in Fiscal Year 2021, the department processed 2195. This was a 4% increase.

7. If your agency's request backlog increased during Fiscal Year 2021, 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.
- Impact of COVID-19 and workplace and safety precautions.
- Any other reasons – please briefly describe or provide examples when possible.

The Department did have an increase in the number of backlogged requests in Fiscal Year 2021. The backlog increased from 629 to 773 which is a 23% increase. The backlog increase was due to staffing and resource limitations, an increase in the number of complex requests, the number of responsive records, the reviewing and redacting of the voluminous responsive records, an outdated and cumbersome tracking and management system, the transition of a new administration, turnover of federal and contracting employees, abundance of other duties and projects as assigned to FOIA professional due to short staffing, delays in receiving completed records searches from program office/units, complex requests requiring submitter's notices and document review going to various

program/office units within the department and to other federal agencies and the delay of these reviews being returned to the Department. In addition, the impacts of COVID-19 prompting closures which greatly diminished the Department's ability to access hard copy records and files responsive to backlogged requests.

8. 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 2021. 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."

The percentage of requests that make up the backlog out of the total number of requests received by the Department in Fiscal Year 2021 is 34%.

9. If your agency had a backlog of appeals at the close of Fiscal Year 2021, 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 2020?

No, the backlog of appeals did not decrease. The Department had an 81% increase in the backlog of appeals at the close of Fiscal Year 2021. The backlog of appeals for Fiscal Year 2021 was 143 and the backlog reported at the end of Fiscal Year 2020 was 79.

10. If not, according to section XII.E.1 of the Annual FOIA Report, did your agency process more appeals during Fiscal Year 2021 than it did during Fiscal Year 2020?

No, the Department did not process more appeals during Fiscal Year 2021 than it did during Fiscal Year 2020? OGC processed 26 appeals in Fiscal Year 2021 and processed 95 appeals in Fiscal Year 2020. This was a 73% decrease in the number of appeals processed in Fiscal Year 2021 from the number of appeals processed in Fiscal Year 2020.

11. If your agency's appeal backlog increased during Fiscal Year 2021, 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.**
- **Impact of COVID-19 and workplace and safety precautions.**
- **Any other reasons – please briefly describe or provide examples when possible.**

The Department's appeal backlog increased during Fiscal Year 2021. The causes that contributed to the Department not being able to reduce its backlog are:

- **Census appeals and litigation.**
- **Lack of resources in the Office of General Counsel.**

12. 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 2021. 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 2021 and/or has no appeal backlog, please answer with "N/A."

The percentage of appeals that make up the backlog out of the total number of appeals received by the Department in Fiscal Year 2021 is 152%.

13. In the 2021 guidelines for Chief FOIA Officer Reports, any agency with a backlog of over 1000 requests in Fiscal Year 2020 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 2021?



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Not Applicable

- 14 If your agency had a backlog of more than 1,000 requests in Fiscal Year 2021, please explain your agency's plan to reduce this backlog during Fiscal Year 2022. In particular, please also detail how your agency developed and plans to execute your backlog reduction plans.

Not Applicable

Section VII.E, entitled "Pending Requests – Ten Oldest Pending Requests," Section VI.C.(5), entitled "Ten Oldest Pending Administrative Appeals," and Section XII.C., entitled "Consultations on FOIA Requests – Ten Oldest Consultations Received from Other Agencies and Pending at Your Agency," show the ten oldest pending requests, appeals, and consultations. You should refer to these numbers from your Annual FOIA Reports for both Fiscal Year 2019 and Fiscal Year 2020 when completing this section of your Chief FOIA Officer Report.

15. Fiscal Year 2021, did your agency close the ten oldest pending perfected requests that were reported in Section VII.E. of your Fiscal Year 2020 Annual FOIA Report?

No

16. 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 2021 Annual FOIA Report. If you had fewer than ten total oldest requests to close, please indicate that.

Two (2) of the Department's ten oldest request from Fiscal Year 2020 Annual FOIA Report were closed in 2021.

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

Steps the Department took to reduce the overall age of the Department's pending requests included:

The Department hired additional staff, prioritized the older requests, met with the program office units to prioritize completion of records searches, met with FOIA staff to discuss current status and inefficiencies and remediations, created tiger teams to focus on the 10 oldest requests and provided surge support to assist line offices with the processing of the oldest complex requests. The Department also focused on outreach to requesters seeking opportunities to narrow requests for quicker processing and/or to identify requested information already available to the public. This enabled us to close pending requests, set goals to provide requesters interim responses every 30 days or less and on a rolling basis, monitor the status of the searches, review the production to ensure that all cases are responded to as expeditiously as possible, and reach out to requesters to see if they were still interested in receiving responsive documents.

Section VII.E, entitled "Pending Requests – Ten Oldest Pending Requests," Section VI.C.(5), entitled "Ten Oldest Pending Administrative Appeals," and Section XII.C., entitled "Consultations on FOIA Requests – Ten Oldest Consultations Received from Other Agencies and Pending at Your Agency," show the ten oldest pending requests, appeals, and consultations. You should refer to these numbers from your Annual FOIA Reports for Fiscal Year 2020 and Fiscal Year 2021 when completing this section of your Chief FOIA Officer Report.

18. In Fiscal Year 2021, did your agency close the ten oldest appeals that were reported pending in Section VII.C.5. of your Fiscal Year 2020 Annual FOIA Report?

No

19. 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 2020 Annual FOIA Report. If you had fewer than ten total oldest appeals to close, please indicate that.

N/A

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

The InfoLaw division continues to focus on the closing their older requests.

21. In Fiscal Year 2021, did your agency close the ten oldest consultations that were reported pending in Section XII.C. of your Fiscal Year 2020 Annual FOIA Report?

No

22. 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 2020 Annual FOIA Report. If you had fewer than ten total oldest consultations to close, please indicate that.

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23. Briefly explain any obstacles your agency faced in closing its ten oldest requests, appeals, and consultations from Fiscal Year 2021.

Obstacles the Department faced in closing its ten oldest requests, appeals, and consultations from Fiscal Year 2021 are:

- For requests: **An influx of complex requests that resulted in large volumes of responsive records; difficulty locating former administration related materials; office units' failure to respond to search requests; high staff turnover; training required for new staff; extensive amounts of**



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submitter notifications and legal review; high number of complex FOIA requests; and increased need for communication across multiple Department BOU's and federal agencies.

- For appeals: **The lack of access to the required hard copy documents as the Department remained in a maximum telework status due to COVID-19.**
- For consultations: **Several other Agencies struggled to respond to consultations in a timely manner, which delayed NOAA's ability to promptly respond to the requester. This particularly was problematic in instances where the anticipated Exemptions to apply were non-discretionary and fell under the denial authority of the consulting agency.**

24. If your agency was unable to close any of its ten oldest requests because you were waiting to hear back from other agencies on consultations you sent, please provide the date the request was initially received by your agency, the date when your agency sent the consultation, and the date when you last contacted the agency where the consultation was pending.

N/A

25. If your agency did not close its ten oldest pending requests, appeals, or consultations, please provide a plan describing how your agency intends to close those "ten oldest" requests, appeals, and consultations during Fiscal Year 2022.

The Department's plans for closing the "ten oldest" requests, appeals, and consultations during Fiscal Year 2022 are:

- For requests: **To ensure appropriate priority is given to the ten oldest requests, establish a schedule to send interim responses; coordinate with the program offices/units to make records search and retrieval a priority, contact requesters to confirm that the requested information is still relevant and coordinate, strategize with program office units to address any issues in their searches and reviews of responsive documents, schedule quarterly meetings with FOIA staff and program office units to gauge the ten oldest requests, develop time lines for responsive records to be given to FOIA Officers, and to provide surge support to line offices to assist in processing backlogged request and adjusting and/or shifting FOIA caseloads among staff.**
- For appeals: **Once our staff regains access to the necessary hard copy documents, we will prioritize closing these appeals.**
- For consultations: **To ensure appropriate priority is given to the ten oldest requests, schedule meetings with program office units to help with the reviewing and redacting of the records, setting timelines to received interim sets of documents from the program office units and reviewing each of the ten oldest during the FOIA Council monthly meetings.**



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VI. Success Stories

Out of all the activities undertaken by your agency since March 2020 to increase transparency and improve FOIA administration, please briefly describe here at least one success story that you would like to highlight as emblematic of your agency's efforts. The success story can come from any one of the five key areas but should not be something that you have reported in a prior year. As noted above, OIP will highlight these agency success stories during Sunshine Week. To facilitate this process, all agencies should use bullets to describe their success story and limit their text to a half page. The success story is designed to be a quick summary of key achievements. A complete description of all your efforts will be contained in the body of your Chief FOIA Officer Report.

ITA successfully continued telework protocols that allowed for efficient processing of FOIAs during the mandatory work-from-home guidance. ITA saw no drop off in processing rates due to the pandemic, despite 100% of its staff working remotely. ITA lost about half of their FOIA staff and was able to hire new staff and train them effectively to continue processing cases and work towards reducing its backlog.

NOAA crafted guidance and conducted training for the creation of Video Conferencing records, which included record storage, FOIA processing, and privacy implications. This training was also presented to internal and external stakeholders during the IT Security and Privacy Conference. Through this guidance and training, NOAA was able to adapt to the virtual environment of the pandemic, continue its essential mission-related communications in an effective video conferencing media, and still maintain its FOIA obligations. We provided all NOAA personnel with the technological tools needed to continue this essential communication without running afoul of existing FOIA, Privacy, and Records Management requirements. The Department highlighted this approach during the Department Privacy Council, outlining how Bureaus could conduct, and record, videoconferencing, while adhering to required Privacy and FOIA standards.