



## U.S. Department of Justice

### Office of Information Policy

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## OIP Guidance and Suggested Best Practices for Improving Transparency

### **I. APPLYING THE PRESUMPTION OF OPENNESS**

*The guiding principle underlying the President's FOIA Memorandum and the Attorney General's FOIA Guidelines is the presumption of openness.*

#### Increase Awareness of New Transparency Policies

1. To make the President's and Attorney General's goals a reality across the government, all agencies must ensure that they employ active, aggressive approaches to improving transparency at their agencies.

2. In order to ensure that every agency is applying the presumption of openness correctly, each agency should require that its personnel, both FOIA and non-FOIA, attend training so they understand the President's message and the Attorney General's FOIA Guidelines on transparency.

3. Agencies should offer guidance that is tailored to the type of records they typically process in response to FOIA requests.

#### Increase Discretionary Disclosures

4. Agencies should institute a system, or add a step in their processing procedures, to affirmatively consider whether more information can be released as a matter of administrative discretion. This step should be employed at both the initial review level and on administrative appeal.

#### Increase Releases of Information

5. Chief FOIA Officers, as well as other agency FOIA professionals, should regularly track the number of full and partial releases made throughout the year to ensure that sufficient focus is being paid to this issue. With each request that has responsive documents that are being processed, agencies should be asking if a document that would typically be withheld in full could in fact be released in part. Likewise, for each document that would typically be released in part, agencies should be asking if the document could in fact be released in full.

## **II. CREATING AN EFFECTIVE SYSTEM FOR RELEASING INFORMATION**

As the Attorney General emphasized in his FOIA Guidelines, “[a]pplication of the proper disclosure standard is only one part of ensuring transparency. Open government requires not just a presumption of disclosure, but also an effective system for responding to FOIA requests.”

1. Chief FOIA Officer should take steps to ensure that agency IT personnel are fully supporting their FOIA professionals.

2. All agencies should ensure that their Chief FOIA Officer is of sufficiently high level within the agency and has sufficient authority to be able to carry out these statutory duties. The Chief FOIA Officer at each agency obviously plays a critical role in ensuring that the agency has an effective system in place to respond to requests. For those agencies that reported the active involvement of their Chief FOIA Officers, that involvement was linked to the existence of sufficient IT support, increases in staff, and enhanced cooperation with non-FOIA personnel.

3. Conduct regular reviews of pending FOIA cases and make resource and staff adjustments as needed.

4. Consider increasing FOIA staff or resources if needed.

5. Improve customer service. OIP has issued guidance addressing the importance of agencies taking the following steps to improve relations with FOIA requesters:

- a. Provide requesters with contact information;
- b. Discuss with requesters the scope of their requests;
- c. Provide interim releases;
- d. Limit “still interested” letters.

The FOIA itself requires agencies to provide requesters with status information about their request. There should be mechanisms in place to accomplish all these customer service functions.

6. Take steps to improve working relationships with non-FOIA staff to facilitate prompter responses from program officials and to facilitate record searches.

7. Improve search capabilities to achieve greater efficiency.

## **III. INCREASING PROACTIVE DISCLOSURES**

President Obama declared that the presumption of disclosure “means that agencies should take affirmative steps to make information public.” In his FOIA Guidelines, Attorney General Holder directed agencies to “readily and systematically post information online in advance of any public request.”

1. Given the importance to the public of being able to readily review online the vast quantity and variety of materials generated or obtained by agencies, every agency should exponentially increase the amount of material available on its website.

2. All agencies should ensure that they, including all their components, are identifying documents for proactive disclosure and have an on-going process of posting documents of interest to the public. To be successful, this agency-wide process should encompass a team of personnel, including FOIA professionals, IT personnel, and program office officials, who can collectively identify records appropriate for posting.

3. Ensure that materials are posted in an “open” format and that information is readily searchable.

4. Agencies should constantly be looking for new ways to be transparent. They should explore the full array of media available to them to increase their proactive disclosures of information.

#### **IV. INCREASING USE OF TECHNOLOGY**

The President and Attorney General have called on agencies to increase their use of technology to make information available to the public. As President Obama directed, agencies should “use modern technology to inform citizens about what is known and done by their Government.”

1. Virtually all agencies already receive requests electronically, either by e-mail or through electronic request forms. Given this widespread use of technology to simplify the request-making process, during the next year those few agencies that do not receive requests electronically should consider doing so. Moreover, for all agencies that utilize a decentralized system to receive requests, the components that are not receiving requests electronically should expand so that the agency is able to report next year an increased capacity to receive requests electronically.

2. Given that the FOIA requires agencies to provide requesters with information on the status of their request, it is vitally important that agencies have available to them a ready way to ascertain where a request is in the system. Thus, for those agencies that process on a decentralized basis, during the course of the next year, the capacity to track requests electronically should be expanded. For those few agencies not yet tracking electronically they should explore doing so.

3. Agencies clearly realize the benefits of utilizing technology to process requests. Still, for the decentralized agencies that do not universally employ technology to process requests, efforts should be made to ensure that the entire agency utilizes technology. Similarly, for those few agencies which still do not use technology to process requests, they should actively explore doing so.

4. Given the tremendous amount of highly-detailed data that must be collected by agencies to compile their Annual FOIA Reports, and given the need to be as accurate as possible

in those Reports, those agencies, or components of agencies not currently utilizing technology to compile Annual FOIA Report statistics should take steps to do so within the next year.

5. A key aspect of FOIA processing involves searching for records within the agency. In today's workplace such searches frequently entail searching through voluminous numbers of e-mail messages and disparate records systems throughout the organization. Achieving real efficiency in FOIA processing will entail agencies maximizing their electronic record-keeping capacities to facilitate identification of the location of records responsive to requests.

6. In managing their agency's FOIA workload, it is vital that Chief FOIA Officers and other FOIA professionals have the ability to take snapshots of where the agency stands throughout the year. There are six key metrics that should be available to FOIA managers throughout the course of the year. These metrics are: 1) the number of requests received; 2) the number of requests processed; 3) the number of requests in the agency's backlog; 4) the number of requests resulting in a release in full of the requested records; 5) the number of requests resulting in a release in part of the requested records; and 6) the number of requests where all requested records were withheld in full.

## **V. REDUCING BACKLOGS AND IMPROVING TIMELINESS**

Both the President and the Attorney General emphasized the importance of improving timeliness in responding to FOIA requests.

1. Two-thirds of agencies either are reducing their backlog or have no backlog at all. Of those agencies with a backlog, only eleven reported that the backlog increased beyond twenty-five requests. All thirty-two agencies that reported any increase in their backlog need to take additional steps to reverse that trend.

2. Every agency should establish a goal of closing its ten oldest requests each fiscal year. While most agencies were able to report progress in this area and the closing of their oldest requests, the age of requests across the government continues to be too old.

3. All agencies should continue to focus on closing their oldest appeals and should have as their goal the closing of the ten oldest administrative appeals each year.

4. Agency FOIA professionals should work closely with their Chief FOIA Officer to address the challenges that are causing backlogs at their agency. It is the Chief FOIA Officer who is charged with the responsibility of ensuring that each agency's FOIA operations are properly staffed and funded. The Chief FOIA Officer can also assist in re-prioritizing projects to ensure that FOIA operations are given sufficient attention in the agency. Whenever possible, agencies should ensure that they dedicate a sufficient number of personnel solely to FOIA responsibilities.

5. While each agency must examine its own system and capacities in devising approaches that will work to reduce its backlog and to improve timeliness, all agencies should ensure that sufficient resources are being devoted to FOIA administration at their agency and that sufficient training on the new presumption of openness is being provided.

6. Beyond ensuring that adequate resources and training are provided, agencies should set goals and monitor progress throughout the year so that they can achieve meaningful backlog reduction.