



## U.S. Department of Justice

Office of Information Policy

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### **DESCRIPTION OF DEPARTMENT OF JUSTICE EFFORTS TO ENCOURAGE AGENCY COMPLIANCE WITH THE FREEDOM OF INFORMATION ACT**

During 2011, the Department of Justice, through its Office of Information Policy (OIP), engaged in a wide range of activities to meet the Department's responsibility to encourage agency compliance throughout the Executive Branch with the Freedom of Information Act (FOIA), 5 U.S.C. § 552 (2006 & Supp. IV 2010). Significantly, OIP provided comprehensive guidance and training to all agencies concerning the continued implementation of President Obama's FOIA Memorandum and Attorney General Holder's FOIA Guidelines issued, respectively, on January 21, 2009 and March 19, 2009. See 74 Fed. Reg. 4683 (Jan. 21, 2009); 74 Fed. Reg. 51879 (Oct. 8, 2009). These Memoranda call for federal executive departments and agencies to administer the FOIA with a presumption of openness in order to achieve an unprecedented level of transparency in the work of the Executive Branch. Also during 2011, OIP managed the second submission of the Chief FOIA Officer Reports required by the Attorney General's FOIA Guidelines and launched FOIA.Gov, the Department's new governmentwide, comprehensive FOIA website. After the submission of the Chief FOIA Officer Reports, OIP prepared an assessment of the progress made by the Executive Departments in implementing the Attorney General's FOIA Guidelines. A summary of OIP's efforts to encourage agency compliance with the FOIA, which is required by subsection (e)(6) of the FOIA, 5 U.S.C. § 552(e)(6), is set forth below.

*"In our democracy, the Freedom of Information Act (FOIA), which encourages accountability through transparency, is the most prominent expression of a profound national commitment to ensuring an open Government."*

*- President Barack Obama*

### **Policy Guidance**

The primary means by which the Department of Justice encourages compliance with the FOIA is through the issuance of policy guidance designed to ensure that the Act is being properly implemented across the government. During 2011, OIP continued to provide comprehensive guidance to federal agencies, addressing a wide range of issues related to the call for increased transparency set forth in the President's FOIA Memorandum and the Attorney General's FOIA Guidelines. This policy guidance was provided in writing and made available to agencies and the public alike on OIP's website in the electronic newsletter entitled [FOIA Post](#). In



addition to issuing guidance, during 2011, OIP worked directly with agencies and held multiple agencywide conferences to discuss the continued implementation of the Administration's FOIA Memoranda and related policy guidance.

### Chief FOIA Officer Reports

As noted above, on January 21, 2009, President Obama signed the "Presidential Memorandum for the Heads of Executive Departments and Agencies on the Freedom of Information Act," which established a new policy for Executive Branch departments and agencies concerning disclosure and transparency. The President directed all agencies to administer the FOIA with a clear presumption in favor of disclosure, to resolve doubts in favor of openness, and to not withhold information based on "speculative or abstract fears." In addition, the President called on agencies to ensure that requests are responded to with "a spirit of cooperation," that disclosures are timely, and that modern technology is used to make information available to the public even before a request is made.

On March 19, 2009, during Sunshine Week, the Attorney General issued comprehensive new [FOIA Guidelines](#). These Guidelines stressed that the FOIA should be administered with the presumption of openness called for by the President. They also emphasized the necessity for agencies to create and maintain an effective system for responding to requests. Additionally, the Attorney General directed agencies to not withhold records simply because a FOIA exemption may technically apply. He encouraged agencies to make discretionary disclosures of information whenever possible. Furthermore, the Attorney General stated that, where full disclosure of a record is not possible, agencies should consider whether a partial disclosure can be made.

Significantly, the Attorney General established a new standard for defending agency decisions to withhold information, stating that when a FOIA request is denied, agencies will be defended "only if (1) the agency reasonably foresees that disclosure would harm an interest protected by one of the statutory exemptions, or (2) disclosure is prohibited by law." Finally, the FOIA Guidelines called on agency Chief FOIA Officers to review their agencies' FOIA administration annually and to report to the Department of Justice on the steps taken to achieve improved transparency.

In his FOIA Guidelines, the Attorney General gave OIP the responsibility of providing guidance to agencies on the content of their Chief FOIA Officer Reports. That guidance, which OIP first issued in September 2009 and later expanded upon in November 2010 and October 2011, required agencies to address five distinct areas. First, each agency was required to describe the steps it had taken to apply the presumption of openness. Second, each agency was required to describe the steps taken to ensure that the agency has an effective and efficient system in place to respond to requests. Third, agencies were required to describe their efforts to increase proactive disclosures. Fourth, agencies were required to describe the steps taken to greater utilize technology in administering the FOIA. Fifth, agencies were required to provide information about any backlog of requests or appeals and the steps being taken to reduce backlogs and improve timeliness in responding to requests. In November 2010, OIP further refined those requirements for the 2011 Chief FOIA Officer Reports and added a new section for agencies to highlight a success story emblematic of their increased transparency efforts. In



October 2011, OIP again updated its guidance to address developing FOIA issues. Specifically, in order to improve transparency and shed light on agencies' use of the FOIA's statutory exclusions contained in 5 U.S.C. § 552(c), OIP asked agencies to publicly report for the first time the number of times each agency used a statutory exclusion in the past year. Additionally, agencies were directed to address new questions that built on the successes of the prior years. For example, in addition to describing their efforts to make information available on their websites, agencies were asked to address any steps they had taken to make that posted information more useful to the public. OIP also updated the format of the Chief FOIA Officer Report and added a section dedicated to the Chief FOIA Officer Reports on its new website. Significantly, this new section included OIP's updated guidance on preparing the Chief FOIA Officer Reports, as well as a template which agencies could use to prepare their 2012 Reports.

March 2011 marked the second year that agencies submitted to OIP their Chief FOIA Officer Reports describing the steps taken to improve their FOIA operations and facilitate information disclosure. All ninety-seven agency Chief FOIA Officer Reports were submitted to OIP for review in early 2011. OIP conducted a comprehensive review of all the Reports to ensure compliance with OIP's reporting guidelines and worked with agencies to resolve any deficiencies in their Reports prior to clearing them for posting. As the Chief FOIA Officer Reports were being posted during Sunshine Week of 2011, OIP compiled and posted on FOIA.Gov a list of [FOIA Success Stories](#) illustrating significant steps all twenty-six key agencies had taken to increase

*"While there is always work that remains to be done, for the second year in a row agencies have shown that they are improving FOIA compliance and increasing transparency."*

*- OIP Director Melanie Ann Pustay*

transparency. OIP then conducted an extensive review and analysis of the Chief FOIA Officer Reports and prepared an assessment of the progress made by the Executive Departments, which account for nearly 80% of all FOIA requests processed by the government. Notably, in 2011, OIP [scored](#) the Departments on elements from all five of the key areas addressed in their Chief FOIA Officer Reports. This assessment was designed to not only promote greater accountability in implementing the Attorney General's Guidelines, but also to showcase the impressive progress made by the Departments.

Building on the results of its review of agency Chief FOIA Officer Reports, OIP reconvened the FOIA Technology Working Group formed in 2010 to provide a forum for interested agencies to exchange ideas and experiences in utilizing technology to improve the administration of the FOIA. The Group had very productive meetings on October 27, 2011 and January 26, 2012, during which agencies engaged in discussions about the tools and applications available to assist with FOIA processing, including technology to aid in the search and review of documents, shared platforms that allow for simultaneous review and comment on documents, and electronic capabilities that automatically identify duplicative material.

### Annual FOIA Reports

In 2011, OIP also continued to provide [guidance](#) on the reporting requirements for agencies to use in preparing their Annual FOIA Reports. These reporting requirements included



both data elements required to be reported as a result of the OPEN Government Act of 2007, as well as data that OIP determined would be useful to report, such as the numbers of backlogged requests and appeals. Additionally, on October 13, 2011, OIP hosted a refresher training session to discuss the reporting requirements for the Fiscal Year 2011 Annual FOIA Reports. OIP posted the [slides](#) used in the presentation on its website, so that all agency personnel, as well as the public would have access to them.

As was done with the Chief FOIA Officer Reports, OIP managed the submission of agency Annual FOIA Reports by first reviewing all ninety-seven agency Annual FOIA Reports in draft form, then working with the agencies to resolve any issues, and finally clearing the Reports for posting. OIP then created and made available on its website a summary of the key statistics reported by agencies in their Annual FOIA Reports. The [Summary of Agency Annual FOIA Reports](#) discussed the numbers of requests received and processed by agencies, the disposition of the requests, and details concerning the time taken to respond. The Summary also provided details about the numbers of consultations and administrative appeals received and processed, as well as data on backlogs of requests and appeals. Finally, the Summary provided overall figures for the numbers of personnel working on FOIA and the costs to the government. Notably, for the first time, OIP prepared the Summary by utilizing FOIA.Gov, which allowed for a more detailed analysis of statistics that were not readily available in the past years. This yearly Summary of Annual FOIA Reports is not only useful for agency personnel, but open government groups have come to look forward to its issuance as well. The Summary provides both agencies and the public with an overall picture of FOIA processing governmentwide.

In 2011, OIP worked closely with the Department's IT staff to update the tool the Department created to assist agencies in converting their Annual FOIA Reports into an XML format. Working together, OIP and the Department's IT staff created the tool in 2010 in light of the Open Government Directive, which required that the Annual FOIA Reports be made available in an "open" format. The tool once again ensured that all agency Annual FOIA Reports were made available in a uniform "open" format, and therefore, were electronically compatible so that the public is able to easily compare data across agencies. The updated tool continued to include built-in math checks to assist agencies in compiling their data, thereby resulting in greater accuracy in the Annual FOIA Reports. The Department has received very positive feedback from agencies regarding the tool and the accompanying guidance for preparing their Annual FOIA Reports.

#### *Referrals, Consultations, and Coordination*

During 2011, in response to concerns raised by the FOIA requester community, OIP issued [guidance](#) to agencies on the handling of document referrals and consultations. Referrals and consultations have long been widely accepted practices. However, concerns were raised by the FOIA requester community that these necessary procedures can sometimes cause frustrating delays and confusion about the status of a request. OIP's new guidance addressed these concerns by providing agencies new procedures to follow when making or receiving referrals and consultations. The guidance also addressed those exceptional cases where coordination rather than the standard referral is necessary to protect personal privacy or national security interests.



First, OIP's new guidance directed agencies that routinely make or receive referrals or consultations concerning the same or similar types of information to collaborate with each other to see if a standard processing procedure can be adopted that would alleviate the need for repeated referrals or consultations. Such processing agreements would improve the overall processing times for both agencies by reducing the number of referrals or consultations they would have to handle.

In the absence of a processing agreement, OIP's new guidance requires agencies to identify records that require a referral as soon as practicable and to promptly send these records to the agency or component where they originated. Additionally, to facilitate the processing of the referral, the agency making the referral must review the records for any equity it may have and provide disclosure recommendations for the receiving agency to consider. These disclosure determinations are to be provided in a referral package which contains the original FOIA request, the records being referred, the date the request was received, and the original FOIA request number assigned by the agency that received the request. Finally, agencies are required to keep requesters fully informed of the process by notifying them that the referral is being made and providing them with the name and contact information of the agency where the referral is being sent.

Agencies that receive referrals are similarly required to apprise requesters of the status of the referral by promptly sending an acknowledgment that the referral was received. This acknowledgement must include both the original FOIA request number and the new number assigned by the agency receiving the referral, so that the requester can readily link the referred records to his or her original request. The acknowledgement should also include a telephone number or internet service that can be used by the requester to obtain status updates on the referred records. Finally, in order to ensure that requesters are not disadvantaged by the referral process, agencies are required to place the records that make up the referral in the appropriate processing track according to the date the FOIA request was first received by the agency that made the referral.

As noted above, there are certain situations where the standard procedures for referrals cannot be followed, because identifying the referral source itself could risk personal privacy or national security interests. OIP provided new procedures that ensure accountability for these situations, where coordination rather than referral is necessary, as well. For example, when coordination is necessary, the agency whose views are being sought is required to assign the records a tracking number that will be accounted for in the agency's Annual FOIA Report. Further, the agency that received the request will continue to respond to any status inquiries made by the requester. The agency whose views are being sought will assist in this regard by, upon request, promptly providing updated status information to the agency that received the request.

Finally, when making consultations, agencies were directed to utilize the most time-efficient mechanism for conducting this process, such as through a phone call or e-mail. When this is not possible, agencies were advised to promptly provide the agency being consulted a copy of the FOIA request, the documents at issue, and any other information that may be useful for the consultation. In order to make the process even more efficient, agencies were directed to



engage in the consultations simultaneously, rather than sequentially, whenever possible. In order to keep the requester fully informed, agencies were also directed to provide information concerning the consultation when giving status updates, including, when possible, the name of the agency being consulted. Finally, agencies were directed to assign tracking numbers to the consultations they receive in order to facilitate both the handling of these consultations and their inclusion in the Annual FOIA Report.

OIP has received very positive feedback regarding these new procedures, which not only maximize efficiency in the referral, consultation, and coordination process, but also ensure that agencies are held accountable for their handling of these records and that FOIA requesters are not disadvantaged by the process.

#### *Exemption 2 after *Milner v. Department of the Navy**

On March 7, 2011, the Supreme Court issued an opinion that overturned thirty years of established FOIA precedent and significantly narrowed the scope of Exemption 2 of the FOIA. See *Milner v. Dep't of the Navy*, 131 S. Ct. 1259 (2011). Prior to *Milner*, agencies had long followed the expansive interpretation of Exemption 2 provided by the Court of Appeals for the District of Columbia Circuit in *Crooker v. ATF*, 670 F.2d 1051, 1073-74 (1981). A substantial body of case law was developed over the years based on the *Crooker* opinion. The Supreme Court in *Milner*, however, rejected the *Crooker* Court's recognition of "High 2" as inconsistent with the plain language of Exemption 2. This altered the three-decade-old approach to information which agencies had protected under "High 2," including homeland-security and critical infrastructure information, law enforcement procedures, audit criteria, and other information that, if disclosed, could risk circumvention of the law.

In the wake of *Milner*, OIP issued [guidance](#) to agencies that summarized the Supreme Court's ruling, outlined the new parameters of Exemption 2, and discussed possible alternatives to Exemption 2 for protecting sensitive information. Additionally, as discussed below, OIP provided training on the impact of the *Milner* opinion to agency personnel and worked extensively to coordinate with agencies on their efforts to safeguard potentially sensitive information left exposed by the *Milner* decision.

#### *Exemption 3 Statutes*

In 2011, OIP updated its website to make it easier for agency personnel and the public to locate information. As part of this update, an independent section was added to OIP's website dedicated to [Exemption 3 of the FOIA](#). In June 2011, OIP posted in this section a [chart](#) of all the statutes agencies reported using in conjunction with Exemption 3 in the Fiscal Year 2010 Annual FOIA Reports. Additionally, in order to assist agencies both in properly processing FOIA requests and in preparing their Annual FOIA Reports, in August 2011, OIP updated its chart of statutes that courts have found to qualify as Exemption 3 statutes under the FOIA. OIP posted this [chart](#), which included a description of the material covered by the statutes and the corresponding case citations, in the Exemption 3 section of its website.



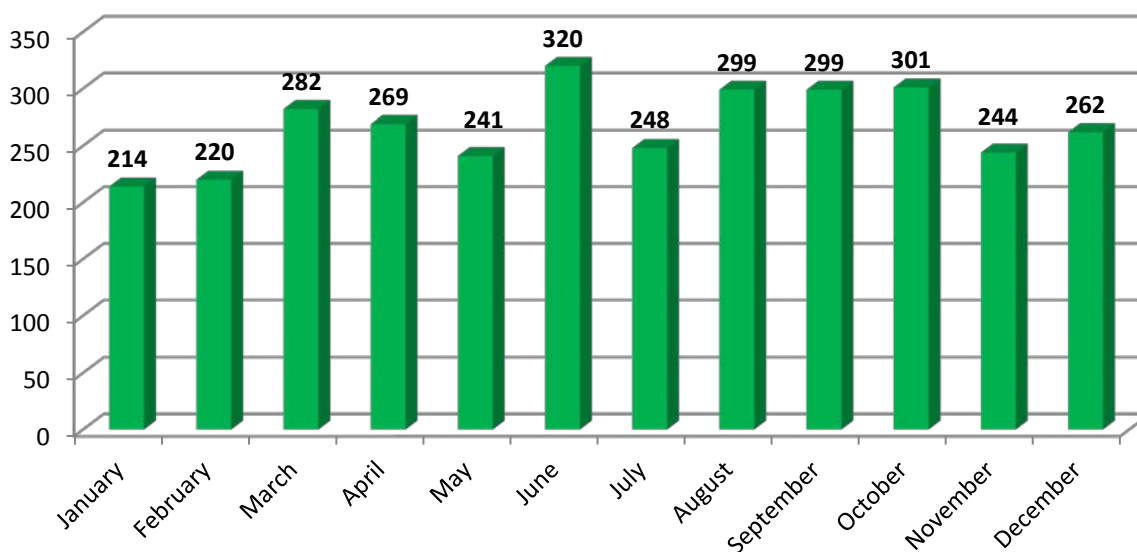


## Counseling and Consultations

In addition to providing written policy guidance and conducting seminars on such guidance, OIP also provided direct, one-on-one counseling for agency personnel and other interested parties during 2011, as a further means of encouraging agency compliance with the FOIA. OIP's counseling activities were conducted largely over the telephone by experienced OIP attorneys known to FOIA personnel throughout the Executive Branch as "FOIA Counselors." Through this FOIA Counselor service, OIP provided information, advice, and policy guidance to FOIA personnel governmentwide, as well as to other persons with questions regarding the proper interpretation or implementation of the Act. OIP has established and publicized a special telephone line to facilitate its FOIA Counselor service -- (202) 514-3642 (514-FOIA) -- which it publicizes widely. While most of this counseling was conducted by telephone, other options were made available as well. The counseling services provided by OIP during the year are summarized below.

OIP provided FOIA Counselor guidance to agencies on a broad range of FOIA-related subjects, including guidance pertaining to the continued implementation of the President's FOIA Memorandum and the Attorney General's FOIA Guidelines. Most of the FOIA Counselor calls received by OIP involve issues regarding proposed agency responses to initial FOIA requests or administrative appeals, but many are more general anticipatory inquiries regarding agency responsibilities and administrative practices under the Act. The Department of Justice specifies that all agencies intending to deny FOIA requests raising novel issues should consult with OIP to the extent practicable. See 28 C.F.R. § 0.23a(b) (2011). OIP has found that such consultations are very valuable in ensuring agency compliance with the Act. More than 3,189 requests for guidance were received by OIP through its FOIA Counselor service during 2011.

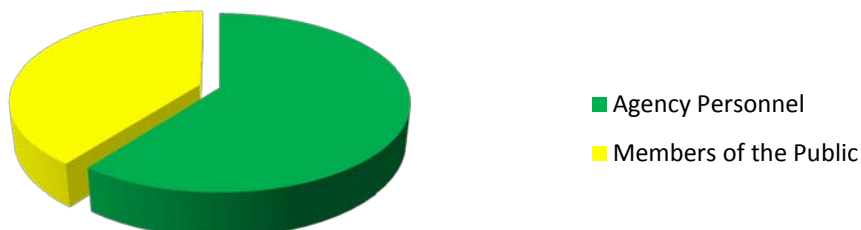
**Calls to the FOIA Counselor by Month in 2011**





Approximately forty percent of the calls received by OIP were from members of the public. Often these individuals contact OIP with questions about how to make a FOIA request or locate a particular document.

### **Estimated Breakdown of Callers to the FOIA Counselor in 2011**



Sometimes a determination is made that a FOIA Counselor inquiry requires more extensive discussion and analysis by OIP attorneys, including supervisory attorneys. On such occasions, OIP often convenes a meeting or teleconference between agency representatives and senior OIP staff to thoroughly discuss and resolve all factual, legal, and policy issues related to the matter. OIP conducted similar discussions within the Department of Justice as well.

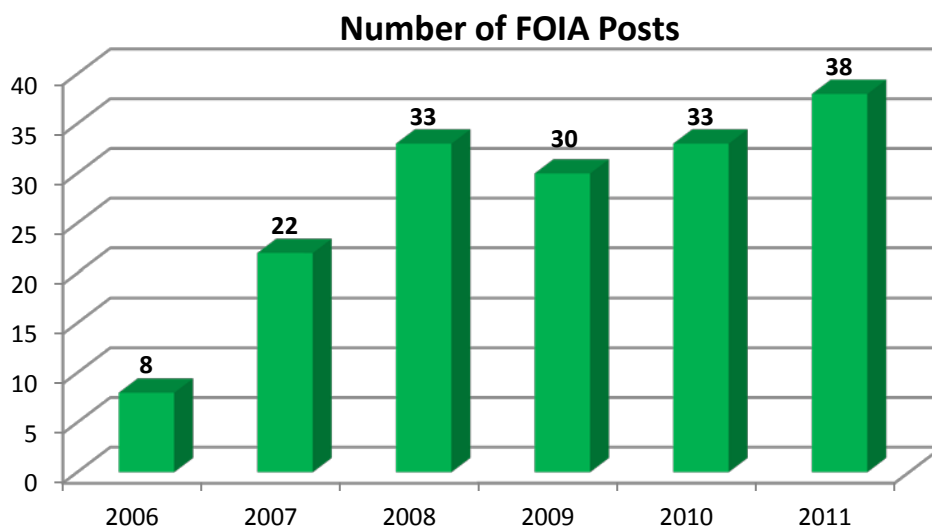
An additional counseling service provided by OIP pertains to FOIA matters in litigation, where advice and guidance are provided at the request of the Department's litigating divisions. This service involves OIP review of issues and proposed litigation positions in a case from both legal and policy standpoints. In many such instances, OIP is asked to consult on litigation strategy and in the drafting of briefs to be filed at the district or appellate court levels. Further, OIP is consulted in all instances in which the Department of Justice must decide whether to pursue a FOIA or FOIA-related issue on appeal. OIP is also regularly consulted on all FOIA cases, as well as all FOIA-related issues, that are handled by the Office of the Solicitor General. In 2011, OIP was involved in the preparation of two cases involving FOIA that went before the Supreme Court. Also during 2011, OIP was asked to make recommendations concerning the advisability of seeking initial appellate review, rehearing en banc, or petition for certiorari in several FOIA cases.





## *FOIA Post*

In 2011, the Department of Justice completed its tenth year of publishing *FOIA Post*, an online and cost-efficient replacement for OIP's longtime *FOIA Update* newsletter. *FOIA Post* continues to be one of the primary means by which OIP disseminates information concerning the FOIA to government personnel. In 2011, *FOIA Post* made use of electronic links to reference documents and other sources of information and served as an example of the Act's emphasis on the disclosure of agency information to the public in a user-friendly format through use of the internet. Notably, in 2011, OIP revamped its website and added a full-text search tool for *FOIA Post* and *FOIA Update*.



During 2011, OIP disseminated a variety of different items to federal agencies through *FOIA Post*. As described above, all the various OIP guidance articles issued in 2011 were disseminated to agencies – and made available to the public – on *FOIA Post*. OIP also used *FOIA Post* to announce its first-ever FOIA Requester – Agency Town Hall meeting, several FOIA Requester Roundtables, the reconvening of the FOIA Technology Working Group, and the launches of FOIA.Gov and OIP's new revamped website. All training programs and FOIA conferences were likewise publicized on *FOIA Post*.

### Summaries of Court Decisions

In addition to substantive and procedural policy guidance concerning the continued implementation of the President's FOIA Memorandum and the Attorney General's FOIA Guidelines, each month through *FOIA Post*, OIP provided [detailed summaries](#) of every FOIA case decided in the United States, at both the district court and appellate levels. For every court decision, OIP highlighted each FOIA exemption and procedural or litigation-related issue that was discussed in the opinion. Because court decisions play such an important part in the interpretation of the FOIA and its proper administration, OIP provides these summaries to help ensure that all FOIA professionals have ready and current access to the most recently decided court opinions. OIP ensures that these summaries are easy to review and cross-reference. In



2011, OIP compiled these summaries in one central location on OIP's new website and made them sortable by topic so that agencies and the public can review FOIA case law quickly and comprehensively.

Sunshine Week Activities

Finally, *FOIA Post* was used to announce activities held to commemorate Sunshine Week 2011. To Mark the Second Anniversary of the Attorney General's FOIA Guidelines, the Department held a celebration on March 14, 2011, the first day of Sunshine Week. At the celebration, the Associate Attorney General [highlighted](#) a number of the FOIA success stories from the prior year and addressed additional transparency initiatives moving forward. Also during Sunshine Week, OIP used *FOIA Post* to announce several major developments, including the launch of the Department's new governmentwide, comprehensive FOIA website, FOIA.Gov, and the first-ever FOIA Requester – Agency Town Hall Meeting.

*"Where there has been a culture of 'protecting' information that one could credibly withhold, we want to replace it with a culture of pushing out – and affirmatively pushing out – the information that will empower us to a better, more informed relationship with our government."*

- Former Associate Attorney General Tom Perrelli

**Additional FOIA Reference Materials**

In addition to utilizing *FOIA Post* to timely disseminate policy guidance and other useful information concerning the FOIA, OIP also creates or makes additional FOIA reference materials available for agencies to use.

Department of Justice Guide to the Freedom of Information Act

The preeminent reference document created by OIP is the [United States Department of Justice Guide to the Freedom of Information Act](#). This publication is a legal treatise on the FOIA and is widely relied on by government personnel as well as members of the public. The Guide to the FOIA contains an extensive discussion of the case law interpreting the FOIA's procedural requirements, its exemptions and exclusions, as well as litigation-related issues. The Guide also reflects the President's and Attorney General's Memoranda on the FOIA as well as all the changes made to the FOIA by the OPEN Government Act of 2007. OIP is currently working on a 2012 edition of the Guide to the FOIA which will reflect recent changes in FOIA interpretation. Additionally, building on OIP's commitment of promoting the use of technology with the FOIA, OIP will be transitioning to a web-based Guide, which will provide enhanced search capabilities.

*"OIP will continue to work diligently to help agencies achieve even greater transparency in the years ahead."*

- OIP Director Melanie Ann Pustay



Throughout 2011, OIP distributed copies of the 2009 edition of the Guide to the FOIA to federal agency personnel and other interested parties. OIP also facilitated the wide distribution of the Guide within the Executive Branch and made it available without cost through the Department of Justice's FOIA training programs. The Guide to the FOIA was also made available to agencies and to the public through the Government Printing Office. Additionally, to afford electronic access and keyword-search capabilities, OIP placed a digital copy of the Guide to the FOIA on the Department's website and in the "OIP Guidance" section of OIP's new website.

### Centralized Access to all Agency Annual FOIA Reports

Agencies are required to compile and submit to the Attorney General an Annual FOIA Report each year in accordance with 5 U.S.C. § 552(e)(1). In 2011, for the fifth year in a row, OIP completed and posted the Department's Annual FOIA Report well in advance of the statutory deadline. By completing and publicly posting the Department's Annual FOIA Report early, OIP continues to serve as an example to other agencies.

As mentioned above, as part of its governmentwide guidance responsibilities, each year OIP reviews each agency's Annual FOIA Report prior to it being posted. Once they are

*"[The] responsibility for effective FOIA administration belongs to all of us."*

*- Attorney General Eric Holder*

finalized, OIP makes all such reports promptly available on its central electronic site. In 2011, OIP continued this practice of reviewing all agencies' Annual FOIA Reports prior to their being posted. This review was conducted in accordance with a 2002 GAO report which encouraged such discretionary OIP review activities and found that they "have resulted in

improvements to both the quality of agencies' annual reports and on-line availability of information." A follow-up GAO study published in 2004 likewise found improvements in agencies' annual reporting due to OIP's governmentwide review efforts.

In accordance with another provision of the FOIA, 5 U.S.C. § 552(e)(4), the Department of Justice in 2011 maintained "a single electronic access point" for the consolidated availability of the Annual FOIA Reports of all federal agencies. In both 2011 and 2012, OIP posted all agency Annual FOIA Reports in human-readable and "open" formats on its centralized Annual FOIA Report website.

### Proactive Disclosures

In keeping with the Attorney General's focus on increasing proactive disclosures, OIP proactively posted a variety of information useful to agencies and the public alike on its website. Notably, in addition to proactively posting information on its website, in 2011, OIP made this information more useful to the public by updating and reformatting its website to make it easier to locate specific material. OIP's new website includes a separate "FOIA Resources" section, which provides information about OIP's FOIA Counselor Service, the FOIA statute, and FOIA fee guidelines. The above-referenced updated chart of Exemption 3 statutes approved by the courts, as well as the chart of statutes agencies reported using in conjunction with Exemption 3



in Fiscal Year 2010, were also posted under the new "FOIA Resources" section. OIP's new website provides separate sections for "[Court Decisions](#)," "[Training](#)," and "[Key Dates and Reporting Requirements](#)," which were all continuously updated throughout 2011. Under the "Key Dates and Reporting Requirements" section, a calendar of FOIA events, including training sessions, workshops, and conferences, as well as key deadlines for federal agencies were provided. The calendar is presented both chronologically, by month, and topically. Under the new "Training" section, OIP continued to provide updated information concerning the various FOIA training programs it offers in conjunction with the Department's Office of Legal Education. Under this section, OIP also continued its practice of posting many of the slides that were used at various 2011 training conferences, including those used at OIP's Fee Summit and for training on Exemption 2 after the Supreme Court's ruling in Milner v. Department of the Navy.

*"The President's memorandum instructs agencies to 'use modern technology to inform citizens what is known and done by their Government.' Accordingly, agencies should readily and systematically post information online in advance of any public request."*

*- Attorney General Eric Holder*

OIP's new website also includes a separate "[FOIA Library](#)" section designed to centralize proactive disclosures posted online by not just OIP, but all Department of Justice components. The FOIA Library replaces the old "Reading Room" and is reorganized to facilitate use by the public. The FOIA Library contains both FOIA Processed Documents, which are documents that have been disclosed in full or with redactions pursuant to previous FOIA requests, and Operational Documents, which include policy statements, staff manuals and instructions, and final opinions and orders. In order to make these records even more accessible, the new FOIA Library section provides separate hyperlinks for [OIP documents](#) and documents proactively disclosed by [all DOJ components](#).

In 2011, OIP continued to add material to its FOIA Library. These disclosures included multiple months of the Attorney General's daily Calendar for the years 2009 to 2011. Additionally, OIP proactively disclosed many Operational Documents, including, the Attorney General Memorandum to All Federal Prosecutors on Changes to Death Penalty Protocol, Departmental Memoranda on the Department of Justice Budget, and Department Policies and Procedures on Crack Cocaine Sentencing.

For additional reference purposes, OIP continued during 2011 to make available on its website all issues of its former newsletter, *FOIA Update*, in a digital and keyword searchable format.

#### *FOIA Reference Guide*

OIP also continued to maintain on the Department's FOIA website an electronic copy of its [Department of Justice Freedom of Information Act Reference Guide](#), which provides the public with information about how to make a request to the Department, describes how the FOIA process works, and contains descriptions of each of the Department's components and the type of records they maintain.



## FOIA.Gov

On March 14, 2011, the first day of Sunshine Week, OIP launched [FOIA.Gov](http://FOIA.Gov), the Flagship Initiative under the Department's [Open Government Plan](#). With well over a million visitors since its launching, FOIA.Gov has revolutionized the way in which FOIA data is made available to the public and has become a valuable resource for both agency personnel and the public. While initially envisioned as a "dashboard" to illustrate statistics collected from agency Annual FOIA Reports, the Department almost immediately began expanding its capabilities and still



continues to explore new features that can be added. FOIA.Gov shines a light on the operation of the FOIA by taking the detailed statistics contained in agency Annual FOIA Reports and displaying them graphically. FOIA.Gov allows users to search and sort this data in any way they want, so that comparisons can be made between agencies and over time. Additionally, the website contains various featured reports that highlight key measurements, such as the number of FOIA requests received by agencies with law enforcement and intelligence missions and the FOIA request backlog at the three largest agencies.

FOIA.Gov also serves as an educational resource for the public by providing useful information about how the FOIA works, where to make requests, and what to expect through the FOIA process. Explanatory videos are embedded into the website and the site contains a section addressing frequently asked questions as well as a glossary of FOIA terms. The website also provides updated contact information for each agency, including their Chief FOIA Officer and all their FOIA Requester Service Centers and FOIA Public Liaisons. Additionally, significant FOIA releases are spotlighted on the website to give the public examples of record sets made available by agencies to the public.

Recently, FOIA.Gov was expanded even further to serve two new functions. A new "[Find](#)" feature was added that allows the public to enter search terms to locate information on

*"[T]he FOIA.Gov website will shine a light on the operation of the FOIA itself."*

*- OIP Director Melanie Ann Pustay*

any topic across all federal government websites. This new search feature captures not just those records posted in agency FOIA Libraries, but also records posted anywhere on an agency's website. This more expansive search capability is particularly significant given the steady stream of information that agencies are proactively making available on their websites. FOIA.Gov's "Find" feature provides an easy way for potential FOIA requesters to first see what information is already available on a topic. This might preclude the need to even make a request in the first instance, or might allow for a more targeted request to be made.

Another new feature to FOIA.Gov is the addition of hyperlinks to agency online request forms. Currently, there are 111 offices throughout the government that have developed the capability to accept FOIA requests online. Recently, OIP launched a similar online capability which allows the public to make and track the status of their requests and administrative appeals



online. The hyperlinks for these online forms have been added to FOIA.Gov to make it easier than ever for individuals to make requests electronically.

## **Training, Public Presentations, and Briefings**

As yet another method for encouraging compliance with the FOIA, OIP held a variety of training programs throughout the year. These programs included continued training on the President's and Attorney General's FOIA Memoranda. During 2011, OIP furnished speakers and workshop instructors for seminars, conferences, individual agency training sessions, and similar programs conducted to promote the proper administration of the FOIA within the Executive Branch. Additionally, OIP conducted presentations aimed at fostering a greater understanding of the Act's administration outside the Executive Branch. This included developing a greater international understanding of the FOIA.

In conjunction with the Department of Justice's National Advocacy Center, OIP conducted numerous FOIA-training programs in 2011, which ranged from half-day introductory sessions for non-FOIA personnel to advanced programs for highly experienced FOIA personnel. OIP's basic two-day training course entitled "The Freedom of Information Act for Attorneys and Access Professionals" was conducted four times and the course entitled "Introduction to the FOIA" was conducted once.

For those agency personnel who already have experience working with the FOIA, in 2011, OIP held an "Advanced Freedom of Information Act Seminar." This seminar provides advanced instruction on selected substantive and procedural topics under the FOIA, including up-to-date policy guidance. For 2011, the seminar included sessions on the FOIA Guidelines, requirements for Annual FOIA Reports, recent FOIA decisions, and administrative and litigation considerations.

OIP also conducted a "FOIA Litigation Seminar." The seminar, designed for agency attorneys and FOIA personnel, focused on the issues that arise when FOIA requests become the subject of litigation. Notably, the course provided guidance on successful litigation strategy and addressed "Open America" stays and the preparation of Vaughn indices and declarations.

Also in 2011, OIP held four training sessions on dispute resolution and customer service skills for FOIA professionals, which it co-sponsored with the Office of Government Information Services (OGIS). These training sessions emphasized the value of effective communication with requesters and gave an overview of the communication techniques utilized by dispute resolution specialists.

Twenty-five professional staff members from OIP gave a total of 315 training presentations during the year, including several training sessions designed to meet the specific FOIA-training needs of individual agencies. Such individualized training sessions were conducted for the Department of Defense, Department of Agriculture, Department of State, Department of the Navy, Department of Labor, Department of Homeland Security, Department of Housing and Urban Development, Department of Transportation, Department of Education, Department of Veterans Affairs, Department of the Treasury, Department of Energy, the



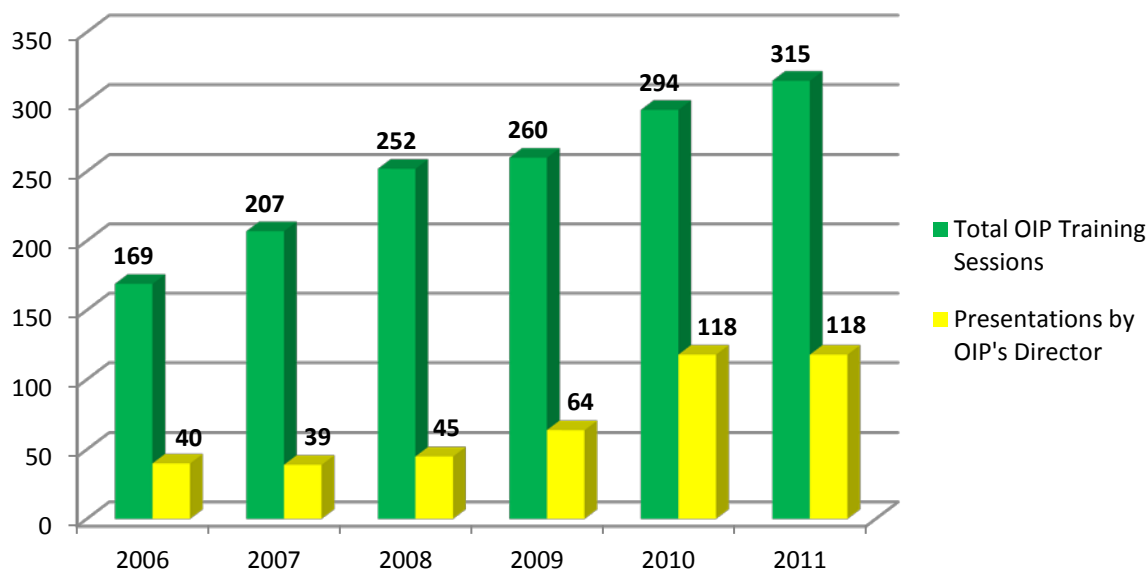


National Archives and Records Administration, Department of Commerce, Department of Health and Human Services, the United States Agency for International Development, and the Central Intelligence Agency. In addition, OIP provided training for components of the Department of Justice. In 2011, approximately 2,000 individuals were trained by OIP sponsored training alone.

Furthermore, OIP continued to reach out to the requester community and members of the public. In 2011, OIP professionals gave training presentations at seminars hosted by the American Society for Access Professionals, an association which includes members of the FOIA requester community. Additionally, OIP hosted four Requester Roundtable events which were open to any interested members of the FOIA community. These events continue to serve as a unique opportunity for the requester community and OIP's FOIA professionals to engage in a dialogue and share ideas for improving FOIA administration. In response to interest expressed by agency FOIA professionals in being able to attend the Requester Roundtables, and the enthusiastic response by the requester community to the idea of meeting with those FOIA professionals, shortly after Sunshine Week 2011, OIP held the first-ever FOIA Requester-Agency Town Hall meeting. The Town Hall event was a great success, bringing agency FOIA personnel and frequent FOIA requesters together to exchange ideas, share concerns, and engage in a discussion of common issues.

During 2011, the Director of OIP gave a total of 118 presentations at a variety of FOIA-training programs and other forums. In addition to the training programs described above, the Director met with a number of representatives from foreign countries interested in learning about the American experience with open government, particularly in light of the Administration's new FOIA Memoranda.

The number of trainings and briefings provided by OIP has steadily increased over the past few years, with the Director again providing a high number of trainings, presentations, and briefings.





## **Inter- and Intra-agency Coordination Activities**

During 2011, OIP reviewed numerous draft or preliminary legislative proposals relating to the FOIA or to information policy more generally. As a result of this review, OIP made recommendations in many instances, most frequently in connection with the technical sufficiency of proposed statutory nondisclosure provisions intended to serve as Exemption 3 statutes under the Act. OIP likewise identified issues and suggested revisions to language contained in proposed legislative testimony and other legislative submissions made by agencies on FOIA-related issues as well.

## **Congressional and Public Inquiries**

In 2011, OIP responded to twenty-four congressional inquiries pertaining to FOIA-related matters. OIP also handled twenty matters from members of the public who had concerns about how the FOIA was being administered at an agency. In response to these compliance inquiries, OIP discussed the issues with the agency involved and, whenever appropriate, made recommendations on the steps needed to address the concern.

## **Report on any Notification to the Special Counsel**

During 2011, the United States courts made no written findings pursuant to 5 U.S.C. § 552(a)(4)(F)(i). Accordingly, no notification to the Special Counsel was necessary.