



U.S. Department of Justice

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FOIA – 100% OF KEY AGENCIES TOOK CONCRETE STEPS

Since the President issued his FOIA Memorandum directing greater transparency efforts on his first full day in office, the Administration has shifted the way it operates and created a more open and accountable government. The President's directive was followed by the Attorney General's Memorandum on FOIA of March 19, 2009, and implementation efforts have continued since. The Chief FOIA Officer Reports submitted to the Department of Justice this week indicate that significant institutional changes are taking hold. 100% of Cabinet and other key agencies took concrete steps to implement the President's directive. (Please note that the following summary is preliminary and subject to further analysis and revision.)

Agriculture: Decreasing Backlogs; Increasing Releases

- USDA's Departmental Management (DM) implemented an electronic tracking system, consistent with the instruction to employ modern technology. USDA's Food Safety and Inspection Service (FSIS) also gave its employees guidance titled, "Your Responsibility Under the FOIA" in June 2009, instructing employees of the need to be responsive to FOIA requests in light of the President's FOIA Memorandum and the Attorney General's FOIA Guidelines.
- USDA's backlog decreased 35% from 2008.
- USDA had more full releases and more partial releases than in 2008.

Commerce: Transparency Starts at the Top

- The Commerce Department's International Trade Administration (ITA) has instituted a new certification requirement for its program offices. When transmitting responsive records to the FOIA Officer for review, each office must now certify that "[a] foreseeable harm review and analysis has been completed for all withheld documents and portions of documents and it has been determined that disclosure of the withheld information would result in harm to an interest protected by the asserted exemption or that the disclosure is prohibited by law."
- The Commerce Department's National Oceanic and Atmospheric Administration (NOAA) is currently developing an in-house web-based system that will track FOIA requests and incorporate processing of the FOIA Annual Report. When developed, NOAA hopes to extend the web-based system to all FOIA contacts within the line and staff offices.

- The Office of the Secretary increased by 29 percent the requests that it granted in full, and decreased the number of records entirely withheld by 75 percent, between FY 08 and FY 09.
- The Office of the Secretary decreased by 60 percent its backlog of FOIA requests, between FY 08 and FY 09.
- Even as the Census Bureau receives an increasing number of requests, its backlog remains near zero: At the end of FY 09, its only backlogged case was 51 days old.
- In the Patent and Trade Office, the highest number of days pending for a single FOIA request dropped between FY08 and FY 09 from 318 days to just 58 days - an almost 80 percent reduction.

Defense: Improving Systems and Changing Ways of Doing Business

- At the Department of Defense, components heavily emphasized the presumption of openness through training. For example, the Department of the Army provided FOIA training to over 500 personnel, with special emphasis on openness and how to provide this presumption directly to information that qualifies for discretionary release.
- The Office of the Secretary of Defense/Joint Staff have seen many military leaders blogging, Twittering, and podcasting. Adm. Mullen, Chairman of the Joint Chiefs of Staff (CJCS), has over 15,000 followers on Twitter and one of the most downloaded podcasts on the Pentagon Channel iTunes site.
- The Department reduced its FOIA backlog by 250 cases for FY 2009.

Education: Increased Releases; More Proactive Disclosures

- The Department is conducting a multi-level review whereby any document deemed not to be fully releasable gets a second review to ensure that as much information as possible is identified for release.
- The Department has increased by 12 percent the number of requests released in full from 644 to 720 between FY 08 and FY 09.
- The Department reduced the age of its oldest request by almost four years in FY 09 -- from 1/26/05 to 12/4/08.
- Education is increasing its proactive disclosure of records and facilitating public access by including hyperlinks to program offices.

Energy: Using Technology and Training

- The Department established an online FOIA Request Form, enabling requesters to seek documents electronically, and created an IT support group within the Office of

Management to provide technical support for the FOIA tracking system, creating a faster more effective system to respond and measure the efficacy of FOIA responses.

- The Department instituted training for all DOE federal and contractor employees with FOIA responsibilities.

Health and Human Services: Assessing and Improving Systems

- HHS launched a Department-wide assessment of the FOIA process to identify new tools, technologies, and possible system changes that need to be made across the Department to improve its FOIA process.
- HHS's backlog dropped 10%, by close to 2000 requests in a single year.

Homeland Security: Directives and Results

- The Department's Chief FOIA Officer issued a memorandum in May, directing all employees to comply with the FOIA, and in August released guidance to all employees emphasizing the need for proactive disclosures. The Department followed-up, by giving guidance on the proactive posting of the Department's senior officials' calendars online. Every component in the Department issued "Best Practices" to its employees.
- The number of full grants increased 46% in FY09 over 2008. The number of partial grants increased 73%.

Housing and Urban Development: Reducing Backlogs, Releasing Drafts

- For the first time in HUD's history, the agency began releasing drafts on request.
- HUD was able to reduce its FOIA backlog by over 50% in fiscal 2009; from 368 as of October 1, 2008 to 192 as of September 31, 2009.
- HUD increased the number of full grant responses between 2008 and 2009 from 159 in fiscal year 2008 to 351 in fiscal year 2009.

Interior: Increased Disclosures of Investigative Reports

- The Office of the Chief Information Officer is now coordinating with the Office of Communication to systematically identify and post documents of interest online. Bureaus and offices may now make discretionary releases of exempt material after consulting with their designated FOIA attorneys.
- Interior's Office of Inspector General (OIG) has provided unprecedented access to its work by taking a proactive approach to providing the public with audit, evaluation, and inspection reports in a timely manner on its Web page.
- During the first two quarters of FY10, OIG has posted six Special Reports, eight Audit, Evaluation, and Inspection reports, and 10 ROO reports.

Justice: Reversing A Trend, Increased Rate of Disclosure

- The Attorney General implemented historic new guidelines in a directive to other federal agencies.
- The Department completely reversed the 2008 trend of a reduction in the rate of disclosures. In 2009, the Department had 1,000 more full releases and nearly 1,000 more partial releases than in the year before, even as the requests reviewed dropped slightly.
- The Department's non-FBI backlog fell in FY 2009 – and its FBI backlog increased only because of policy changes that ensured more comprehensive searches and responses to requesters.
- The Executive Office of Immigration Review (EOIR) re-reviewed and released thousands of documents previously withheld in full.
- The Foreign Claims Settlement Commission created a searchable database of older FCSC decisions.

Labor: Driving Home the Message and Releasing More Information

- DOL included elements of the President's and the Attorney General's FOIA Memoranda as part of a webinar for all DOL attorneys who are assigned FOIA duties.
- DOL is increasing proactive disclosures: Bureau of International Labor Affairs (ILAB) has begun placing some evaluation reports on the website rather than waiting for FOIA requests, and the Job Corps office has published on its website numerous handbooks, data, performance reports, purchase records, and strategic planning records.
- Department-wide, DOL increased its releases as a percentage of requests processed from 59.4% to 67.5%.

State: Investments in FOIA Administration

- The State Department has established a Rapid Response Team and a litigation team to focus on the most pressing FOIA responses and related work.
- The Department also established a task force dedicated to processing the Department's 250 oldest requests. It has committed \$700,000, and is currently transitioning to a more advanced electronic case tracking system.

Transportation: Reducing FOIA Backlog

- The Department of Transportation has placed greater emphasis on the need to make releases in all cases where there is no foreseeable harm – and is finding that even where a document is a “partial release,” more information is being released, and fewer draft documents are being withheld in their entirety.

- DOT's Chief FOIA Officer also directed the Departmental FOIA Officer to conduct comprehensive reviews of each component's FOIA programs. The reviews were conducted in January and February 2010.
- Department of Transportation has consistently and dramatically reduced its FOIA request backlog in the last fiscal year, cutting the requests backlog by 12% in a single year.

Treasury: Using Technology to Improve Process, Reduce Backlog

- The Department of Treasury has used technology to improve its effectiveness in evaluating and processing FOIA requests. By implementing some of these improvements, the departmental offices increased the number of processed requests by 44 percent during FY 2009.
- The IRS provided the Administration's Transparency and FOIA memos to all IRS staff and also added to the IRS search memorandum language that reinforces the presumption of openness and cites to the Attorney General Guidelines.
- The Department also educated FOIA contacts about the Attorney General's foreseeable harm standard, and is developing a training module on Transparency and Open Government that will be available to all Departmental employees on the agency's learning management system.
- The 44 percent increase in processed requests occurred while the department experienced an almost fourfold increase in the number of requests for expedited treatment and despite a 22 percent increase in the number of overall requests in FY 2009.

Veterans Affairs: Leadership from the Top and Drastically Reducing Backlog

- A Department-wide memorandum issued by Secretary Shinseki reinforced his commitment to the principles of transparency and openness and asked that key officials ensure that information be made available in a timely manner.
- VA acquired a web-based FOIA tracking system, which allows FOIA Officers to track the status of FOIA requests, transfer cases electronically, and upload FOIA correspondences with requesters. This tool allows VA's geographically dispersed FOIA Officers to be up-to-date on any FOIA requests received.
- VA also reduced its backlog by 82%, and shortened the age of both its oldest pending request and oldest pending appeal by more than three years.

Environmental Protection Agency: Reducing Backlogs and Making Information Available

- EPA has made databases of frequently requested records available to the public, including a database of certifications required to export automobiles, making information that used to be available only upon request – taking days or weeks – accessible in seconds.

- EPA's Office of Pesticide Programs (OPP) has changed its policy to make tens of thousands of records available on its website without waiting for FOIA requests for that information. As a result, FOIA requests for frequently requested material have plummeted from 20% to 3% of all requests received by OPP.
- EPA has drastically reduced its request backlog by more than half, from 783 in FY 2008 to 332 in FY 2009.
- EPA launched a website called "Status of My FOIA Request" which allows requesters to easily obtain information on the status of their requests online.

Federal Reserve Bank

- The Board nearly doubled its resources directed to FOIA operations and implemented phased enterprise-wide document searches to ensure that responses to complex financial crisis-related requests are comprehensive. To improve timeliness, senior staff in the Office of the Secretary have assumed processing duties for some of the oldest requests.
- Even as total requests processed dipped slightly, the number of full releases remained constant, and the number of partial releases increased 10%.

ADDITIONAL HIGHLIGHTS

U.S. Agency for International Development: Granting More Requests

- U.S. Agency for International Development issued an agency-wide notice announcing the President's FOIA Memorandum and the Attorney General's FOIA Guidelines. Also, USAID is adding guidance concerning these documents in its Automated Directives System (ADS).
- USAID's partial grants increased 30% over FY 2008, and its full releases went up slightly.

Central Intelligence Agency: Reducing Backlogs and Improving Process

- CIA has implemented several refinements to its automated case management system to better address workflow and other system issues. In FY 2009, CIA significantly reduced its request backlog by 37% over FY 2008 and reduced the age of its oldest request by over eight years. CIA also cut its median number of days to process simple and complex cases from 28 to 15 days, and 68 to 51 days, as compared to FY 2008.
- CIA made several historically significant discretionary disclosures in FY 09, including first-ever official acknowledgments of previously undisclosed information relating to the role of Air America pilots in the Vietnam conflict. CIA is posting documents from closed FOIA cases every month, including information of high public interest such as the Family Jewels collection and Warsaw Pact documents.
- CIA increased its full releases almost 67% over 2008.

General Services Administration: Training and Technology

- The General Services Administration (GSA) elevated the signatory level of authority to a higher level to ensure that all possible information is provided to the requester and to maintain consistency and uniformity throughout GSA.
- GSA is updating its website to provide a centralized resource to allow the public to locate contract information easily and quickly, is offering an hour-long seminar on FOIA to all new employees.
- GSA had more full releases and partial releases than in FY 2008 – increasing partial releases by 25%.

NASA: Technology Solutions Improve FOIA Process

- In FY 2010 NASA implemented FOIAXpress as its web-based FOIA tracking program. This system has enabled decentralized NASA offices to process records using electronic redaction tools and, more importantly, enabling FOIA requesters to monitor the status of their FOIA requests.

- NASA is also continually analyzing all requests to ensure compliance with the President's Memorandum on the FOIA and the Attorney General's Guidelines.

National Science Foundation: Using Technology and Releasing More Records

- In the last year, NSF developed and implemented an electronic FOIA tracking system that logs and tracks requests and responses.
- The number of full requests granted more than doubled between FY 2008 and FY 2009.

Nuclear Regulatory Commission: Requiring Explanations for Exemptions and Improving Processing

- The NRC now specifically requires “foreseeable harm” statements for any documents to be withheld under Exemptions 2 (high) and 5 (deliberative process) and, unless the underlying harm is obvious, for documents to be withheld under Exemptions 6, 7(A), and 7(C).
- NRC reduced the number of times Exemption 5 was invoked by 5.2%, from FY 2008 to FY 2009.
- NRC closed 82% of its simple requests in 20 days or less in FY 2009, compared to 74% in FY 08.

OPM: Reducing the Backlog

- In January 2010, the position of Chief FOIA Officer, which is held by the agency’s Chief Information Officer, was elevated. The CFO/CIO now reports directly to the agency head and is in daily contact with the most senior executives who influence FOIA administration across the agency. OPM has also hired a full time FOIA coordinator to review incoming requests and work with requesters to perfect them.
- The CFO/CIO established a records management unit led by a senior official to integrate the review of personnel records disclosure (a frequent type of request received by OPM) with broader management of the FOIA program.
- OPM has consistently and significantly reduced its backlog of FOIA requests. Between FY 2008 and the first quarter of FY 2010, OPM’s backlog of FOIA requests dropped nearly 75%.

Small Business Administration: Reviewing Responses and Releasing More

- The SBA immediately provided DOJ guidance to its FOIA Public Liaisons and its Service Center Representatives, and reviews all FOIA responses to ensure that they comply with the presumption of openness.
- In response to initial requests, SBA released more information in full and in part in FY 2009 compared to FY 2008, and denied in full fewer requests in FY 2009 than in FY

2008. SBA's full grants increased 42% and partial grants increased 41%. Full denials dropped 45%.

Social Security Administration: Fewer Exemptions and Reducing Backlogs

- The Social Security Administration (SSA) has launched training for employees on the new FOIA guidelines.
- For the frequently requested Appeals Council Working Papers, SSA's FIOA workgroup reviewing agency practices determined that information that used to be withheld under exemption 2 should be released. The information is now routinely released – as are additional segregable portions of ACWP documents that used to be withheld in full.
- SSA has reduced the amount of information it withheld under FOIA exemptions in the last year: SSA's invocation of Exemption 2 fell from 221 times in FY 2008 to 69 times in FY 2009; its invocation of Exemption 5 fell from 212 times in FY 2008 to 86 invocations in FY 2009.
- SSA reduced its backlog 39% from FY 2008 and FY 2009.