



UNITED STATES DEPARTMENT *of* JUSTICE

Customer Service and the FOIA



2022 Attorney General FOIA Guidelines

- Applying a Presumption of Openness
- Proactive Disclosures
- Removing Barriers to Access and Reducing FOIA Request Backlogs
- Ensuring Fair and Effective FOIA Administration



Office of the Attorney General
Washington, D. C. 20530

March 15, 2022

MEMORANDUM FOR HEADS OF EXECUTIVE DEPARTMENTS AND AGENCIES

FROM: THE ATTORNEY GENERAL *Merrick Garland*

SUBJECT: FREEDOM OF INFORMATION ACT GUIDELINES

For more than fifty years, the Freedom of Information Act (FOIA), 5 U.S.C. § 552, has been a vital tool for ensuring transparency, accessibility, and accountability in government. As the Supreme Court has explained, the Act's "basic purpose . . . is to ensure an informed citizenry," which is "vital to the functioning of a democratic society [and] needed to check against corruption and to hold the governors accountable to the governed." *NLRB v. Robbins Tire & Rubber Co.*, 437 U.S. 214, 242 (1978). The guidelines set forth below update and strengthen the federal government's commitment to the fair and effective administration of FOIA.

A. The Presumption of Openness

1. As amended in 2016, the Freedom of Information Act provides that a federal agency or department (hereinafter "agency") may withhold responsive records only if: (1) the agency reasonably foresees that disclosure would harm an interest protected by one of the nine exemptions that FOIA enumerates; or (2) disclosure is prohibited by law. 5 U.S.C. § 552(a)(8)(A)(i).
2. Information that might technically fall within an exemption should not be withheld from a FOIA requester unless the agency can identify a foreseeable harm or legal bar to disclosure. In case of doubt, openness should prevail. Moreover, agencies are strongly encouraged to make discretionary disclosures of information where appropriate.
3. When an agency determines that it cannot make full disclosure of a requested record, FOIA requires that it "consider whether partial disclosure of information is possible" and "take reasonable steps necessary to segregate and release nonexempt information." *Id.* § 552(a)(8)(A)(ii).
4. To help ensure proper application of the foreseeable harm standard, agencies should confirm in response letters to FOIA requesters that they have considered the foreseeable harm standard when reviewing records and applying FOIA exemptions.



Communication with Requesters

- A key aspect of good FOIA customer service is open and frequent communication with requesters, as emphasized in OIP's Guidance on Applying a Presumption of Openness and the Foreseeable Harm Standard.
- FOIA requesters often do not know how agency records are organized or what might be involved in searching for the records they seek.
- Having the ability to talk through an approach to the request and reach an understanding can be very helpful to both the requester and the agency.
- As part of the presumption of openness, the Attorney General's 2022 Guidelines direct agencies to confirm in response letters that they have considered the foreseeable harm standard when reviewing records and applying FOIA exemptions.



Estimated Dates of Completion

- The FOIA requires agencies to provide an “estimated date” by which processing will be complete. 5 U.S.C. § 552(a)(7).
- Agencies should make a reasonable judgment as to when they believe they will complete the request.

ASSIGNING TRACKING NUMBERS AND PROVIDING STATUS INFORMATION FOR REQUESTS (UPDATED GUIDANCE)

Assigning Tracking Numbers and Providing Status Information for Requests (Updated Guidance)

Subsection (a)(7) of the Freedom of Information Act (FOIA), 5 U.S.C. § 552(a)(7) (2006 & Supp. IV 2010), imposes two requirements on agencies connected with tracking the status of FOIA requests. First, subsection (a)(7)(A) requires agencies to assign an individualized tracking number to requests that will take longer than ten days to process. Second, subsection (a)(7)(B) requires agencies to establish a telephone line or Internet service that requesters can use to inquire about the status of their requests using the request's assigned tracking number.

Assigning a Tracking Number

The first requirement imposed by subsection (a)(7)(A) of the FOIA requires agencies to establish a system whereby any request that will take more than ten days to process is assigned a tracking number. That number, in turn, must be provided to the requester. The simplest way to provide the number, and the method employed by many agencies, is to include the tracking number in an acknowledgment letter or email sent to the requester upon receipt of the request.

As a threshold matter, for those requests where an agency can quickly make a response, i.e., can respond within ten days or less, there is no requirement that a tracking number be assigned. In those circumstances, the agency can simply respond to the requester by providing the responsive records and need not be slowed down by the necessity of assigning a tracking number to the request. Nevertheless, even though an individualized tracking number is not required for such requests, agencies should be certain to keep track of all requests they handle so that they are properly included in the agency Annual FOIA Reports.

Q & A

Question: What if an agency can respond to a request within ten days, but it still would prefer to assign the request a tracking number. Is that permissible?

Answer: Yes. Agencies are free to assign all requests tracking numbers if they find it efficient to do so. As mentioned above, because agencies need to keep track of all FOIA requests they receive and process so that they may be included in the agency Annual FOIA Report, the use of tracking numbers for all requests can be beneficial.

Question: What if an agency does not use tracking numbers, but instead keeps track of requests by some other method, such as by the name of the requester. Is that still allowed?

Answer: Subsection (a)(7)(A) of the FOIA mandates that agencies "assign an individualized tracking number for each request received that will take longer than ten days to process." Thus, if the request will take longer than ten days to process, agencies are required to assign tracking numbers to each such request and to provide that number to the requester.

Providing a Telephone Line or Internet Service

Subsection (a)(7)(B) of the FOIA also requires agencies to establish a phone number or an Internet site that will provide information to the requester "using the assigned tracking number." The information required to be provided to the requester includes: (1) the date the request was received by the agency and (2) an estimated date by which the agency will finish processing the request.

Agencies have two alternatives for providing this information to requesters. They can establish an Internet service which can be accessed by the requester using his or her tracking number. Alternatively, agencies can establish a telephone line where requesters can contact the agency by phone to inquire about the status of their request. Whatever method is utilized to provide status information concerning a given request, the FOIA mandates that both the date of receipt and the estimated date of completion for the request be provided to the requester.

When providing an estimated date of completion, agencies should keep in mind that often a requester will not know how complicated their request might be, or may not understand that the agency might have a long processing queue. The requester understandably is very interested in knowing when he or she can reasonably expect to receive their requested records. Agencies necessarily will be able to provide more targeted estimates as processing commences, but at whatever stage it is requested, agencies should strive to give their best estimate to the requester so that he or she has a realistic expectation of when records will likely be provided. Providing an estimate is often a good



Estimated Dates of Completion Best Practices

- EDCs should be provided promptly.
- Compare the time it took to process similar requests in the past.
- Utilize data available in the agency Annual FOIA Report or on FOIA.gov.
- Consider whether providing proactive updates via your case management system is appropriate.
- Provide an updated timeframe when an EDC passes.



FOIA Requester Service Center and FOIA Public Liaison

Agency FOIA Requester Service Centers and FOIA Public Liaisons serve a vital role in providing helpful and timely explanations of the FOIA process to members of the public.

Department of Justice >
Office of Information Policy

Agency mission

The mission of the Office of Information Policy (OIP) is to encourage and oversee agency compliance with the Freedom of Information Act (FOIA). OIP is responsible for developing government-wide policy guidance on all aspects of FOIA administration. OIP also provides legal counsel and training to agency personnel. In addition to its policy functions, OIP oversees agency compliance with the requirements of the FOIA, including the requirement to report to the Department of Justice on their FOIA compliance through FOIA Reports and Chief FOIA Officer Reports. OIP also provides guidelines for those reports, issues guidance, training to agencies to help them comply with the requirements, reviews and compiles summaries and progress in administering the law. The Department also provides and assessments, as well as OIP guidance and resources are made publicly available.

OIP also manages the Department of Justice's FOIA appeals under the FOIA. This includes adjudicating appeals from the actions of any Department component arising under the FOIA or the Freedom of Information Act and handling initial requests for records from the Attorney General, Deputy Attorney General, and the Offices of the Attorney General, as well as the Offices of the Inspector General, Public Affairs and Legal Policy.

[FOIA Reference Guide](#)
[FOIA Regulations](#)

Contact

- [FOIA Requester Service Center](#) ☒
202-514-3642
- [Valeree Villanueva, FOIA Public Liaison](#) ☒
202-514-3642
- [Douglas Hibbard, Chief, Initial Request Staff](#)
441 G St, NW, 6th Floor
Washington, DC 20530

Average processing time for 2022

- 13 working days for simple requests
- 526 working days for complex requests

The records or information you're looking for may already be public.

<https://www.foia.gov/?id=8216158f-8089-431d-b866-dc334e8d4758&type=component#agency-search>



FOIA Requester Service Center and FOIA Public Liaison

- The FOIA Requester Service Center is the first point of contact for requesters and should be ready to provide information about the status of a request.
- The FOIA Public Liaison is intended to supervise the Requester Service Center and ensure a service-oriented response to FOIA requests and FOIA-related inquiries.

THE IMPORTANCE OF QUALITY REQUESTER SERVICES: ROLES AND RESPONSIBILITIES OF FOIA REQUESTER SERVICE CENTERS AND FOIA PUBLIC LIAISONS

The Importance of Quality Requester Services: Roles and Responsibilities of FOIA Requester Service Centers and FOIA Public Liaisons

Introduction

The Department of Justice has long emphasized the importance of agencies working with FOIA requesters "in a spirit of cooperation." Two of the established ways that agencies interact with the public during the FOIA request process are through their FOIA Requester Service Centers and FOIA Public Liaisons. These bodies were originally required to be established by Executive Order 13,392, 70 Fed. Reg. 75373 (Dec. 14, 2005), and their existence was later codified by the OPEN Government Act of 2007, Pub. L. No. 110-175, 121 Stat. 2524. The FOIA Improvement Act of 2016, Pub. L. No. 114-185, 130 Stat. 538, reinforced the important role played by FOIA Public Liaisons, and by extension FOIA Requester Service Centers, providing more opportunities for engagement during additional stages of the FOIA process.

Agency FOIA Requester Service Centers and FOIA Public Liaisons serve a vital role in providing helpful and timely explanations of the FOIA process to members of the public. This guidance provides an overview of the roles and responsibilities of both these critical resources.

FOIA Requester Service Centers

FOIA Requester Service Centers typically serve as the first point of contact at agencies for any requester (or potential requester) who has a question about how the FOIA works. Such questions can range from very general inquiries about the kinds of records maintained at the agency, to more specific questions directly related to a request that has already been made. Depending on the size of their FOIA operations, agencies may need to designate multiple employees to serve as their FOIA Requester Service Center. Moreover, decentralized agencies with several components are likely to need a dedicated FOIA Requester Service Center for each component. The staff of the FOIA Requester Service Center is typically made up of FOIA professionals who handle initial requests made to the agency. Indeed, agencies may designate their entire initial request staff to serve as the FOIA Requester Service Center.

The FOIA Requester Service Centers are intended to be a helpful source of information about the FOIA and how it is administered at each agency. There are many available resources to assist FOIA Requester Service Centers in answering inquiries. These include each agency's:

- FOIA Reference Guide,
- FOIA Regulations, and
- FOIA website.

In addition, the government-wide FOIA website, FOIA.gov, provides a wealth of information about the FOIA for each agency and can serve as a ready source of information that can be utilized by FOIA Requester Service Center personnel.

Even before a request is made, the FOIA Requester Service Center should be able to assist members of the public by:

- identifying sources of information that is already posted and available, thereby potentially obviating the need to make a FOIA request in the first instance;
- informing potential requesters about the types of records maintained by the agency (or agency component) and providing suggestions for formulating requests;
- describing the agency's various processing tracks and providing the average processing times for the various tracks; and
- answering questions about expedited processing standards and the FOIA's fee provisions.

Once a member of the public has made a request to the agency, the FOIA Requester Service Center should stand ready to provide information about the status of that request, including an estimated date of completion. Agencies may elect to have the analyst assigned to the request serve in the capacity of the FOIA Requester Service Center and provide information about its status directly to the requester. OIP has issued guidance to agencies about providing an *estimated completion date*. As detailed in that guidance, agencies should make a reasonable judgment as to when they believe processing will be complete, based upon what remains to be done in a given case, including conducting any necessary consultations.

In short, the FOIA Requester Service Center must be ready to assist the public in understanding all aspects of the FOIA and how it works at their agency.

FOIA Public Liaisons



Interim Responses

- Interim responses can facilitate open communication with the requester.
- When a request involves voluminous records or searches in multiple locations, agencies should provide the requester with interim responses, whenever feasible, rather than waiting until all records are located and processed.



Interim Responses

- This can help the requester better understand the type of records the agency has and can release, so that the requester can determine if there is still an interest in the request continuing to be processed.
- Providing interim responses may also facilitate clarification or narrowing of the request.



Posting Records Online

- In making FOIA proactive disclosures, agencies should post records online as soon as feasible.
- Agencies should also continue to maximize their efforts to post more records online quickly and systematically in advance of any public request.

RECENT RELEASES

Records Concerning Protests at the Residences of Supreme Court Justices [Posted April 20, 2023]

Interim Response (May 12, 2021 - May 26, 2022)

Records of Communications Between the Department of Justice and National Rifle Association, National Rifle Association Institute for Legislative Action, or National Shooting Sports Foundation [Posted April 20, 2023]

Supplemental Response (November 15, 2019 - May 12, 2020)

Concerning Certain Terms Related to the Kavanaugh Confirmation Process and Related Investigation [Posted April 19, 2023]

Interim Response - Part 1 (September 13, 2018 - October 4, 2018)

Interim Response - Part 2 (September 17, 2018 - October 6, 2018)

Emails of the Office of Public Affairs Concerning George Floyd and Related Matters [Posted April 19, 2023]

Interim Response (May 13, 2020 - June 2, 2020)

United States Department of Justice Statement on PCAST Report: Forensic Science in Criminal Courts: Ensuring Scientific Validity of Feature-Comparison Methods [Posted April 19, 2023]

Interim Response (June 13, 2016 - July 13, 2016)

Records Created by DOJ as a Consequence of Executive Order 14019 [Posted April 18, 2023]

Interim Response (November 3, 2021 - November 4, 2021)

Communications External to the United States Government Relating to a Search Warrant Carried Out at Mar-a-Lago on or About August 8, 2022 [Posted April 18, 2023]

Interim Response (August 8, 2022 - August 28, 2022)

Death of Ashli Babbitt at the U.S. Capitol on January 6, 2021 [Posted April 18, 2023]

Interim Response (January 7, 2021 - April 14, 2021)

Incident Involving Agents of the U.S. Customs and Border Protection Encountering Migrants Crossing the U.S. Border on September 19, 2021 [Posted April 18, 2023]



Website Navigation

- The 2022 FOIA Guidelines note that “agency websites should be easily navigable, and records should be presented in the most useful, searchable, and open formats possible.”
- OIP’s guidance on agency FOIA websites addresses key elements that should be included.
- Overall, consider how to best serve your agency’s community of users when organizing your site and posting records.



Website Navigation Tips

- Include a clear link to FOIA on your agency homepage
- Ensure your FOIA homepage contains key information and resources
- Conspicuously label proactive disclosures
- Consider posting frequently asked questions to clarify the request process and reduce misdirected requests
- Adopt consistent styling
- Use plain language
- Regularly review website for accuracy and updated links
- Collaborate with IT staff to identify areas for improvement



Chief FOIA Officers

- Chief FOIA Officers play a critical role in ensuring fair and effective FOIA administration.
- As noted in the Attorney General's FOIA Guidelines, "FOIA professionals deserve the full support of their Chief FOIA Officers and all their agency colleagues."



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Questions?