



UNITED STATES DEPARTMENT *of* JUSTICE

OIP Updates & Resources

July 11, 2024



OIP Updates & Resources

- New OIP Guidance
- Training and e-Learning
- Self-Assessment Toolkit
- Updated DOJ Guide to the FOIA
- Court Decision Summaries
- Chief FOIA Officers Council and Committees
- Best Practices Workshops
- FOIA.gov



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OIP Guidance



OIP Guidance: Standard Operating Procedures for FOIA Offices

- OIP's guidance defines Standard Operating Procedures (SOP) and outlines the benefits to employees, managers, and requesters in maintaining an SOP.
- The guidance also includes advice on:
 - Content of Agency FOIA SOPs
 - Format of Agency FOIA SOPs
 - Implementing and Maintaining Agency FOIA SOPs



Guidance for Further Improvement Based on 2023 Chief FOIA Officer Report Review and Assessment

Guidance following 2023 CFO Report review reminds agencies to:

- Prioritize processing simple track requests within 20 working days.
- Ensure their systems remain interoperable with FOIA.gov in line with joint guidance and continue to keep agency information updated.
- Confirm in response letters that they have considered the foreseeable harm standard when reviewing records and invoking exemptions, in line with the Attorney General's 2022 FOIA Guidelines and OIP guidance.



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Training and E-Learning



OIP-Led Training Courses

- OIP regularly hosts free virtual training to federal employees on a wide variety of topics.
- All trainings are hosted on Webex and require a .gov or .mil email address to register.
- OIP can also provide specialized training to agencies upon request.

Upcoming Events and Deadlines

Keyword search Start Date End Date

mm/dd/yyyy mm/dd/yyyy

Apply Filters Reset Filters

4 Results Sort by Date

Privacy Considerations Training

Washington, DC

Tuesday, July 9, 2024 (10:00am to 12:30pm EST)

Dates of upcoming training can be found on OIP's [Key Dates](#) page.

Training slides for all offered training courses can be found on OIP's [Training](#) page.

OIP Training Material

The materials below are provided to assist agencies participating in OIP's FOIA training courses. OIP will update the materials as needed to incorporate changes in FOIA law and policy. Please contact OIP's Training Coordinator at (202)-514-FOIA (3642) with questions or feedback.

Training Materials for OIP Courses

- [Proactive Disclosures](#)
- [Advanced Proactive Disclosures](#)
- [Procedural Requirements](#)
- [Advanced Procedural Requirements](#)
- [Overview of Exemptions](#)



E-Learning Modules

In 2022, OIP released three interactive FOIA training modules:

- **Training for Executives:** A 15-minute course that provides a basic overview of the FOIA and explains how this law impacts agency leaders.
- **Training for Federal Employees:** A 1-hour course that provides a primer on the FOIA and explains how employees can assist your agency in FOIA administration.
- **Training for FOIA Professionals:** An in-depth course designed specifically for FOIA professionals and addressing the major procedural and substantive requirements of the law.

Department of Justice
Freedom of Information Act
Training for Executives
START

Proactive Disclosure

Proactively Disclose Certain
Categories of Records

- Final agency orders and opinions rendered in the adjudication of administrative cases
- Certain policy statements
- Staff manuals and instructions that affect a member of the public
- Records that are frequently requested




FOIA Infographic

In 2022, OIP also updated its FOIA Infographic, a one-page resource to help new employees understand what the FOIA is and how the FOIA process works at their agencies.

The Freedom of Information Act


The Freedom of Information Act, known as the FOIA, is a law that gives any person the right to request federal agency records. The FOIA also requires federal agencies to make certain types of information available to the public without the need to submit a request.



Who?

Anyone can make a FOIA request, regardless of citizenship, including:


- Individuals, Partnerships, Corporations, and Organizations



What?


Any agency records can be requested, including:

- Paper documents, emails, audio and video recordings, and other electronic records



When?

Generally, an agency has 20 working days to respond to a request, unless there are unusual circumstances



How?

- Step 1:** A request is submitted to an agency for records
- Step 2:** The agency searches for responsive records
- Step 3:** Records are reviewed for disclosure*
- Step 4:** Agency responds to requester and releases disclosable info


*Information can only be withheld if it falls within one of nine exemptions & we can reasonably foresee that disclosure would cause harm, or disclosure is prohibited by law.

Why?

"The basic purpose of [the] FOIA is to ensure an informed citizenry, vital to the functioning of a democratic society, 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)

FOIA at Your Agency

FOIA is everyone's responsibility. Any documents you create or maintain as part of your job may be responsive to a FOIA request. FOIA professionals at your agency will receive and respond to requests, but they may call on you for assistance in searching for responsive records and reviewing those records for release. These professionals are a critical resource. If you have any questions about the FOIA, you should contact them.



MOST CITED EXEMPTIONS:
6 & 7 (C)
 which protect individual personal privacy

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FOIA by the Numbers

Requests received and processed government-wide

Fiscal Year	Received	Processed
FY2017	~80,000	~80,000
FY2018	~85,000	~85,000
FY2019	~85,000	~85,000
FY2020	~80,000	~80,000
FY2021	~85,000	~85,000

visit foia.gov



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FOIA Self-Assessment Toolkit



FOIA Self-Assessment Toolkit

- OIP released a comprehensive update to its Self-Assessment Toolkit in 2023, fulfilling a commitment in the Fifth U.S. Open Government National Action Plan.
- The 2023 update includes modules for proactive disclosures and administrative appeals, plus additional milestones on the use of technology and requirements of the Attorney General’s 2022 FOIA Guidelines.
- Fillable spreadsheets facilitate easier completion and tracking of milestone action items.

Module 14: Proactive Disclosures

This module examines whether your Agency has an efficient and effective proactive disclosure process. Optimizing methods for identifying and posting proactive disclosures can help agencies to achieve greater efficiencies in complying with FOIA proactive disclosure requirements and can reduce the need to respond to numerous requests for the same record(s). This module has two subsections.

SCORE	DESCRIPTION
4	The Agency has done this and has strong evidence of success.
3	The Agency generally does this, but there are inconsistencies, lack of evidence, or room for improvement.
2	The Agency has a policy of doing this, but it does not regularly occur in practice.
1	The Agency is not yet doing this and/or there are major obstacles to progress.

A. Identifying Proactive Disclosures

MILESTONE	SCORE	EVIDENCE FOR THIS SCORE	AREAS FOR IMPROVEMENT/NEXT STEPS
1.A Agency publishes current descriptions of its organization and the established places and methods for obtaining information, in the Federal Register.			
2.A Agency publishes current general statements regarding the agency’s methods of operation, in the Federal Register.			
3.A Agency publishes current rules of procedure and descriptions of forms or the places at which forms may be obtained, and instructions as to the scope and contents of all papers, reports, or examinations, in the Federal Register.			

4.A Agency general	A	B	C	D	E	F	G
5.A Agency covered Register	Module 1: Initial Request Intake and Review	A. Current FOIA Request Intake and Initial Review Process	1.A	Requesters can submit FOIA requests to your Agency electronically and the requests are automatically ingested into your case management system.	1		
	Module 1: Initial Request Intake and Review	A. Current FOIA Request Intake and Initial Review Process	2.A	Your Agency is interoperable with FOIA.gov in accordance with DOJ/OMB Guidance.	2		
	Module 1: Initial Request Intake and Review	A. Current FOIA Request Intake and Initial Review Process	3.A	Designated trained personnel, including backups, monitor all forms of request intake and can identify duplicative submissions and requests that can be closed quickly, for instance that can be satisfied with proactively released records already available.	3		
	Module 1: Initial Request Intake and Review	A. Current FOIA Request Intake and Initial Review Process	4.A	FOIA Staff enter requests into the Agency’s tracking system promptly upon receipt to facilitate efficient assignment for processing.	4		
	Module 1: Initial Request Intake and Review	A. Current FOIA Request Intake and Initial Review Process	5.A	FOIA Staff in decentralized agencies quickly recognize and properly route misdirected requests within 10			



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*Guide to the Freedom of
Information Act
Updates*



DOJ Guide to the FOIA

- Comprehensive legal treatise on the FOIA available on OIP's website.
- Includes detailed discussions of the FOIA's procedural requirements, nine exemptions, and litigation considerations.
- Contains detailed analysis of the key judicial opinions issued on the FOIA.



DOJ Guide to the FOIA

- OIP continues to make rolling updates to individual chapters, recently including:
 - Exemption 2 and 5
 - Litigation Considerations 1 and 2
 - Reverse FOIA
- Agencies are encouraged to use the Guide in conjunction with other resources provided by OIP.



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Court Decision Summaries



Court Decisions

- Each year the federal courts issue hundreds of decisions in FOIA cases that shape the way the law is interpreted and applied.
- To aid those professionals, and to facilitate greater understanding of the FOIA overall, OIP posts summaries of FOIA decisions to our [Court Decisions](#) page.



Court Decisions

COURT DECISION

Smolen v. FAA, No. 22-44, 2023 WL 3818105 (S.D.N.Y. June 2, 2023) (Liman, J.)

June 2, 2023

Smolen v. FAA, No. 22-44, 2023 WL 3818105 (S.D.N.Y. June 2, 2023) (Liman, J.)

Re: Request for records concerning decision to realign responsibility for Newark sector airspace from New York Terminal Radar Approach Control Facility to Philadelphia Air Traffic Control Tower

Disposition: Granting defendant's motion for summary judgment; denying plaintiff's cross-motion for summary judgment

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COURT DECISION

Sarama v. DEA, No. 19-1116, 2023 WL 3763742 (M.D. Fla. June 1, 2023) (Klindt, Mag. J.)

June 1, 2023

Sarama v. DEA, No. 19-1116, 2023 WL 3763742 (M.D. Fla. June 1, 2023) (Klindt, Mag. J.)

Re: Request for records concerning plaintiff

View Court Decisions

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Keyword Search

Topic

- Any -

Start Date

mm/dd/yyyy

End Date

mm/dd/yyyy

Apply Search

Displaying 1 - 10 of 3231

COURT DECISION

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Court decisions can be viewed chronologically, or searched by topic, text, or date.



Court Decisions

- Users can subscribe to receive email updates whenever new cases are posted.

Smolen v. FAA, No. 22-44, 2023 WL 3818105 (S.D.N.Y. June 2, 2023) (Liman, J.)



Share >

Date

Friday, June 2, 2023

Smolen v. FAA, No. 22-44, 2023 WL 3818105 (S.D.N.Y. June 2, 2023) (Liman, J.)

Re: Request for records concerning decision to realign responsibility for Newark sector airspace from New York Terminal Radar Approach Control Facility to Philadelphia Air Traffic Control Tower

Disposition: Granting defendant's motion for summary judgment; denying plaintiff's cross-motion for summary judgment

- **Exemption 4:** The court holds that defendant appropriately withheld portions of two draft memoranda of understanding ("MOUs") "relat[ing] to [National Air Traffic Controllers Association ("NATCA")] bargaining unit employees' pay and other conditions of employment."

First, the court finds that "Defendant has established that the withheld information is commercial or financial in character." "The Draft MOUs contain NATCA's proposals and FAA's counterproposals with respect to the Realignment Determination." "Each of the proposals and counterproposals related to the pay and other conditions of employment of the business unit employees represented by NATCA." "Plaintiff argues that NATCA's information cannot constitute 'commercial or financial information' because NATCA is a non-commercial tax-exempt organization and the Draft MOUs do not contain quintessential commercial information such as 'sales statistics, inventories' or information instrumental to a commercial entity's operations." "Plaintiff further argues that the information cannot be 'commercial or financial' because NATCA has the exclusive right to represent all federally employed air traffic controllers and thus does not face competition from another labor organization." "Those arguments disregard the rules of statutory interpretation." "[A]n association need not generate taxable profits for its information be 'commercial or financial" "There is no qualifier that the association or organization be for profit or generate taxable income; public organizations, for example, frequently do not generate taxable income." "It



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Chief FOIA Officers Council



Chief FOIA Officers Council

- OIP continues to co-lead the Chief FOIA Officers Council.
- For details on upcoming meetings, see the [CFO Council](#) page on FOIA.gov.
- The **Technology Committee** hosted the NexGen 2.0 Tech Showcase in May 2024.
- The **Committee on Cross-Agency Collaboration and Innovation** hosted a Best Practices Workshop on Innovative Methods for Using and Sharing Resources and launched a new Working Group focused on improving recruitment and retention of FOIA employees.



NexGen 2.0 Tech Showcase

- The purpose of the NexGen showcase series is to assist federal agencies in identifying FOIA technology solutions.
- The NexGen 2.0 Showcase intended to raise awareness of the different case process management systems leveraging advanced technology, including artificial intelligence.
- You can access the vendor responses to the request for information and the playlist of vendor demonstrations on the [NexGen 2.0 FOIA Tech Showcase](#) page on FOIA.gov.



Best Practices Workshop Series

- The Best Practices Workshop series focuses on specific FOIA topics with a panel of representatives across the federal government sharing strategies for success.
- The most recent Best Practices Workshop was attended by more than 400 federal employees and addressed 3 key issues:
 - How to build – or rebuild – a successful agency information program
 - FOIA technology
 - Innovative FOIA staffing opportunities
- The next Best Practices Workshop will focus on Backlog Reduction Plans and will take place on July 31. Registration is required and the link can be found on our website.



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*National FOIA Portal on
FOIA.gov*



National FOIA Portal on FOIA.gov

- 2011: Launched as a “dashboard” for agencies’ Annual FOIA Report Data.
- 2018: National FOIA Portal released, allowing requesters to submit a request to any agency from a single site.
- 2019: DOJ/OMB issued guidance for achieving interoperability
- 2022: OIP launches new CFO Council page on FOIA.gov.
- 2023: The new Search Tool powered by machine learning launches on FOIA.gov. Included are six pre-defined user journeys which assist requesters in identifying common types of records.
- 2024: A new seventh user journey will be deployed assisting requesters in identifying Law Enforcement records and agencies.



National FOIA Portal on FOIA.gov

What information are you looking for?

Select a common topic

Immigration or Travel records Tax records Social Security records Medical records Personnel records

Military records Law Enforcement records

Or search for something else

Please enter one to two sentences describing what you're searching for, including relevant keywords.

FOIA.gov Search Wizard Tool with the seven pre-defined user journeys



National FOIA Portal on FOIA.gov

The new Law Enforcement user journey guides requesters in locating a variety of law enforcement and related records, including criminal law enforcement, consumer protection, and more.

Okay, you're looking for: "Federal law enforcement records"

Are you seeking records regarding any of the following:

- Records about a specific federal criminal or civil case
- Federal prison and parole records
- Background investigation and security records
- Court records
- Oversight of the environment, natural resources, and agriculture
- Oversight of U.S. financial institutions
- Oversight of the workplace
- Consumer protection
- Oversight of federal agencies
- Law enforcement/criminal justice policies and programs



National FOIA Portal on FOIA.gov

Okay, you're looking for: "**Law Enforcement records**"

Select the type of record you are seeking from the list below:

- 911 calls
- Arrest and/or investigation records
- Prison records
- Body worn camera footage
- Background check for employment
- Court records

The user journey additionally provides guidance for requesters who aren't sure if the records they are seeking are federal records or state/local records.

FOIA.gov Law Enforcement records user journey



National FOIA Portal on FOIA.gov

If a user indicates they are looking for records held by a state/local agency, they are informed that the FOIA only applies to federal agencies.

Okay, you're looking for: **"State or local law enforcement records"**

If you are looking for non-federal records, such as state or local records, we suggest that you contact the proper state or local authority in accordance with the appropriate state or local records access law.

[Learn more about why you got these results.](#)

FOIA.gov Law Enforcement records user journey



Questions? Contact Us:

Email: DOJ.OIP.FOIA@usdoj.gov

FOIA Counselor Line: (202) 514-FOIA (3642)