



**Office of Management and Budget  
2019 Chief Freedom of Information Act  
Officer Report**

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## **Introduction**

The Freedom of Information Act (FOIA) requires all agency Chief Freedom of Information Act Officers to report to the Attorney General on their performance in implementing the FOIA. *See* 5 U.S.C. § 552(j)(2)(D). The Office of Management and Budget (OMB)'s Chief FOIA Officer has reviewed all aspects of the agency's FOIA administration and issues this Report, in accordance with the Department of Justice's Guidelines for 2019 Chief FOIA Officer Reports, on the steps OMB has taken to improve FOIA operations and facilitate information disclosure. The reporting period for this Report is March 2018 through March 2019. Copies of this Report are available for download on OMB's FOIA website at <https://www.whitehouse.gov/omb/freedom-information-act-foia/>.

### **I. Steps Taken to Apply the Presumption of Openness**

#### *FOIA Leadership*

OMB has designated its General Counsel, Mark Paoletta, a senior official equivalent to an Assistant Secretary in the agency, as its Chief FOIA Officer.

#### *FOIA Training*

OMB has made a substantial investment in training on FOIA practices during the reporting period. Given the relatively small number of personnel in OMB who regularly perform FOIA duties on a full-time basis, OMB does not conduct its own FOIA training courses but relies heavily on courses offered by the Department of Justice (DOJ) and other entities. Over the course of the past year, 100 percent of OMB FOIA staff who have daily FOIA processing responsibilities attended FOIA training offered by DOJ.

These training sessions have included programs such as an "Introduction to the Freedom of Information Act," "The Freedom of Information Act for Attorneys and Access Professionals," and the "FOIA Litigation Seminar." For example, on July 12, 2018, OMB's FOIA staff attended a private training session hosted by DOJ at its Washington, D.C. office on best practices. Additionally, on July 23-25, 2018, OMB FOIA staff attended a local training conference offered by the American Society for Access Professionals (ASAP). Topics addressed at the three-day conference included "Overview of FOIA Exemptions One Through Nine," "FOIA Backlogs," "Current FOIA Case Law," "In-depth Review of FOIA Exemptions," "Fee Determinations," and "Litigation Considerations." Furthermore, a group of FOIA subject-matter experts from DOJ's Office of Information Policy provided a tailored, half-day training session for OMB's Office of General Counsel staff on August 30, 2018.

In addition to specialized training courses, OMB FOIA staff who have daily FOIA responsibilities meet weekly and those meetings generally include informal training. In such meetings, specific areas of FOIA law or procedure are discussed and staff review current best practices, developments in FOIA caselaw, and updated guidance and advisories issued by DOJ.

#### *Outreach to the Requester Community*

OMB engages in outreach to the requester community through various means. For instance, during this reporting period OMB engaged the requestor community through the notice-and-comment process that OMB conducted regarding its updated agency FOIA regulation. OMB

collected twelve public comments during that 30-day comment period, four of which gave substantive commentary on OMB's proposed regulation. OMB FOIA staff also attended events during Sunshine Week in 2018, which included an event hosted by the National Archives and Records Administration (NARA) in which members of the requester community participated in panel discussions. Additionally, OMB FOIA staff interacted with representatives of the requester community participating in panel discussions at the three-day training conference hosted by ASAP, as mentioned above. OMB FOIA staff regularly contact individual requesters to better understand requests and this process often provides valuable insight into the perspectives of requesters.

#### *Other Initiatives to Apply the Presumption of Openness*

OMB FOIA staff are trained to consider whether partial disclosure of non-exempt information is possible. To the extent practicable, OMB FOIA staff assess whether this can be accomplished through segregation. OMB's adherence to this practice is evident in the number of partially released documents provided in response to FOIA requests.

OMB's onboarding training includes training on employees' responsibilities to preserve records under the Federal Records Act, which also includes a discussion of the FOIA. OMB's staff who regularly work on FOIA activities make an effort to reach out to new staff, particularly those coming to OMB from outside of the Executive Branch, on their responsibilities under the FOIA. OMB has also administered specialized FOIA presentations for incoming political appointees to provide an introduction to the FOIA and OMB's FOIA processes. OMB is adding FOIA-related performance standards to employee performance plans for employees who have a full-time role in administering the FOIA.

## **II. Steps Taken to Ensure that Your Agency Has an Effective System in Place for Responding to Requests**

During the report period, OMB periodically assessed its FOIA program, including the agency's allocation of resources, staff and technology as well as the agency's FOIA intake and review process. Accordingly, OMB is increasing the number of FOIA contractors, implemented new streamlined workflow procedures, instituted new benchmarks and output requirements, and provided more hands-on management to oversee the work of the FOIA staff to ensure high-quality output and timely responses. Additionally, as discussed further in Section IV below, OMB is procuring an automated tracking and reporting system to increase efficiency in the management of its FOIA program.

#### *Processing Procedures*

During the reporting period, OMB followed a "first-in, first-out" FOIA processing approach, and did not adjudicate requests for expedited processing. As part of a review of its FOIA program, OMB has adopted a multi-track processing system in its recently revised agency FOIA regulation, which will enable OMB to segregate and track "simple," "complex," and "expedited" requests. OMB periodically reviews its FOIA workflow and systems to find ways to increase efficiencies. This includes examining how to conduct searches at a greater speed and finding opportunities to streamline document review procedures.

## *Requester Services*

OMB continues to focus on improving the FOIA requester services it makes available to the public. Whenever feasible, OMB communicates with requesters over the phone or through e-mail in order to provide the quickest response or feedback. Requesters use these resources several times a week to receive general information about the type of documents maintained by OMB or for status updates on requests they file with the agency. Additionally, in accordance with the FOIA, all of OMB's response letters inform requesters of the mediation services available at NARA's Office of Government Information Services (OGIS) and provide contact information for that office. OMB provides notification to requesters about the services provided by the agency's FOIA Public Liaison, in accordance with the FOIA Improvement Act of 2016. No requesters sought assistance from OMB's FOIA Public Liaison during FY 2018.

### **III. Steps Taken to Increase Proactive Disclosures**

#### *Posting Material and Other Initiatives*

When OMB completes a response to a FOIA request, staff review those records to determine whether it would be helpful to post any material on OMB's FOIA website. As part of this review, OMB staff consider whether the information is subject to frequent requests. OMB's FOIA Library also contains material proactively posted by OMB on its own initiative.

The FOIA Library is available on the OMB FOIA website at <https://www.whitehouse.gov/omb/freedom-information-act-foia>. This site includes, for example, the publication of the OMB Director's calendars on a rolling basis and the public comments regarding Government reorganization.

#### *Making Material Posted Online More Useful and Other Initiatives*

OMB has continued to build out its FOIA website, adding information on submitting requests and appeals, names of key staff, and a link to the National FOIA Portal. OMB continually looks for ways to make more information available to the public.

### **IV. Steps Taken to Greater Utilize Technology**

#### *Technology Initiatives*

OMB reviewed its website in FY 2018 to ensure that it contains the elements noted in DOJ's 2016 guidance regarding agency FOIA websites, including improving the information and resources available to requesters. OMB is procuring an automated case management system to manage its FOIA program. OMB has determined that its requirements for such a system will include automated case tracking, centralized communication with requesters, integrated document management, and automated reporting. The new system will integrate with OMB's existing eDiscovery document processing system, OMB's email system, and the National FOIA Portal.

#### *Communicating with Requesters*

OMB has also implemented a file sharing tool for transmitting document sets of all sizes to requesters regardless of the limitations on email. This has allowed OMB to send large

documents instantly in an electronic format, providing faster and higher quality service to requestors. Furthermore, OMB FOIA staff use email to communicate with requestors whenever feasible. Requesters can also submit new requests and status inquiries to OMB via email at [OMBFOIA@omb.eop.gov](mailto:OMBFOIA@omb.eop.gov).

#### *Quarterly Reports*

OMB has produced quarterly FOIA reports for every quarter of the last fiscal year using DOJ's report generation tool. OMB has also posted its FY 2018 reports to its website and plans to continue doing so for FY 2019.

#### *Availability of Raw Statistical Data*

OMB makes its raw statistical data (*i.e.*, FOIA log) used to create annual reports available to anyone who asks for it without charge, license, or registration requirement in an aggregated, searchable format that may be downloaded in bulk in accordance with the FOIA.

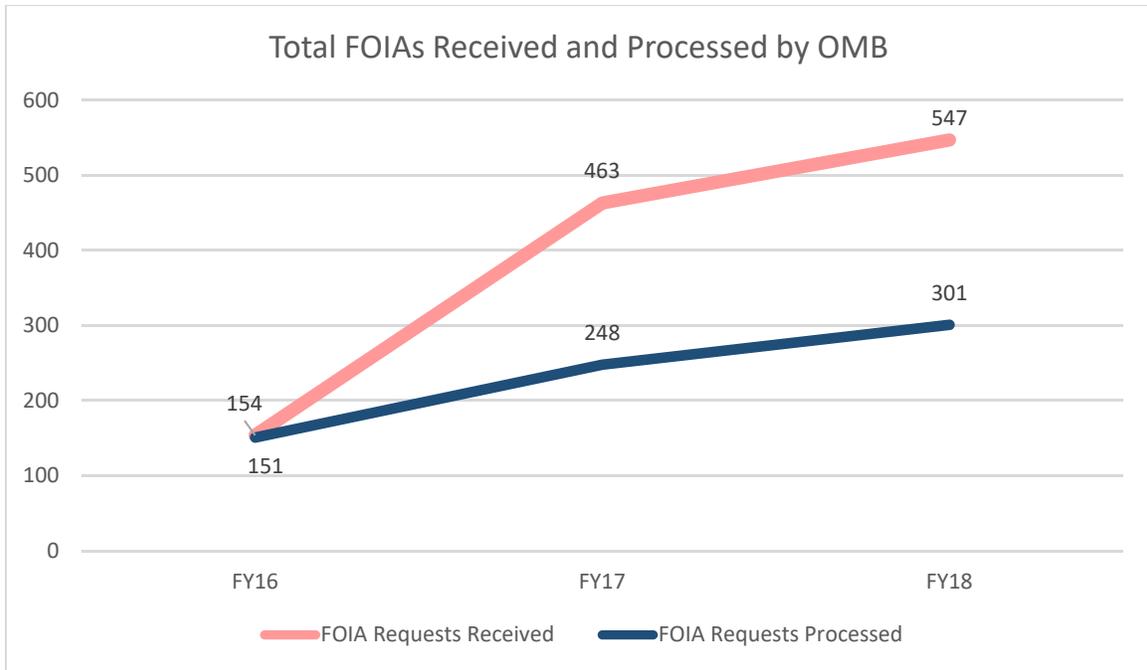
### **V. Steps Taken to Improve Timeliness in Responding to Requests and Reducing Backlogs**

#### *Tracking*

Generally, during the reporting period OMB continued to use a "first-in, first-out" FOIA processing approach. The average processing time to respond to all non-expedited requests, including requests reported as simple and complex, was approximately 174 days, while the median was approximately 83 days. OMB continuously reviews its FOIA procedures to identify areas for improvement.

#### *Backlogs*

The number of FOIA requests in OMB's backlog increased from 231 at the close of FY 2017 to 510 at the close of FY 2018, and the number of outstanding FOIA appeals increased from five at the end of FY 2017 to 11 at the end of FY 2018. This increase in OMB's backlogs of requests and appeals is attributable to a number of factors, including an increase in FOIA-related litigation, a rise in the complexity of FOIA requests, and most importantly, a record number of incoming requests for the second year in a row. As reported in OMB's FY 2018 Annual FOIA Report OMB received 547 new requests in FY 2018. Therefore, the percentage of requests that comprise the backlog out of the total number received during FY 2018 is 93.2 percent.



**Figure 1, FOIA Requests Received and Processed by Fiscal Year, FY2016 to FY2018.**

To respond to this trend, OMB has devoted additional resources to its overall FOIA processing effort. As a result of these efforts, OMB has responded to all of the backlog requests from before FY 2017.

*Status of Ten Oldest Requests, Appeals, and Consultations*

OMB has closed nine of the ten oldest pending perfected requests reported in its FY 2017 Annual FOIA Report; OMB has closed nine of the ten oldest pending consultations reported in the FY 2017 Annual FOIA Report; and OMB has not closed any of five open appeals from FY 2017 in FY 2018. As reported in the FY 2018 Annual report, OMB had a total of 11 appeals in its appeals backlog at the end of FY 2018. OMB received four new appeals in FY 2018. Therefore, the percentage of appeals that comprise the total appeals backlog out of the total appeals received in FY 2018 was 275 percent. OMB did not process more appeals in FY 2018 than in FY 2017. The primary obstacles facing OMB in its efforts to resolve these oldest requests and oldest appeals is the amount of potentially responsive material and the complex nature of those documents. To address these obstacles, OMB has hired additional FOIA contractors to focus on alleviating the FOIA backlog.