



441 G St. N.W.  
Washington, DC 20548

March 11, 2020

Congressional Requesters

### **Freedom of Information Act: Federal Agencies' Recent Implementation Efforts**

The Freedom of Information Act (FOIA), enacted into law more than 50 years ago, requires federal agencies to provide the public with access to government records and information based on the principles of openness and accountability in government.<sup>1</sup> As required by law, 118 agencies reported their FOIA activities to the Department of Justice (DOJ) for fiscal year (FY) 2018.

DOJ's Office of Information Policy (OIP), National Archives and Records Administration's Office of Government Information Services (OGIS), and the Chief FOIA Officers Council each have roles supporting agency implementation of FOIA. Specifically, OIP is responsible for "encouraging agencies' compliance with FOIA and overseeing their implementation of the Act." OGIS's responsibilities include reviewing agencies' policies, procedures, and compliance with the FOIA, and identifying methods to improve compliance. The Chief FOIA Officers Council, which is co-chaired by the Director of OIP and the Director of OGIS, was established to assist in FOIA compliance and efficiency.

You asked us to review federal agencies' efforts to implement the FOIA Improvement Act of 2016.<sup>2</sup> This report provides information on

1. government-wide FOIA activity from fiscal year (FY) 2012 through 2018,
2. steps OIP and OGIS have taken to assist agencies in implementing the FOIA Improvement Act of 2016 since 2018, and
3. progress selected agencies have made on updating FOIA regulations since 2018.

Earlier this month, we briefed your staff on the results of our review. This letter formally transmits the briefing slides (see enclosure I).

To describe government-wide FOIA activity, we reviewed FY 2012 through 2018 data from the agencies required to report key FOIA statistics to DOJ for posting on FOIA.gov. These data included government-wide statistics on the number of FOIA requests and backlogged requests, processing timeliness, denials of requests, and agency-reported FOIA resources (staff and spending). We assessed the reliability of the data by reviewing related documentation, interviewing knowledgeable agency officials, and conducting data testing for missing data,

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<sup>1</sup>5 U.S.C. § 552.

<sup>2</sup>FOIA Improvement Act of 2016, Pub. L. No. 114-185, 130 Stat. 538 (2016) (provisions codified at 5 U.S.C. § 552).

outliers, and obvious errors. We found the data sufficiently reliable for the purposes of describing government-wide FOIA activity for FY 2012 through 2018.

To describe OIP and OGIS efforts to support FOIA implementation, we reviewed recent policies, guidance, and other relevant documentation OIP and OGIS provided to agencies and interviewed OIP and OGIS officials.

To describe selected agencies' efforts to update FOIA regulations as we recommended in 2018, we reviewed the Federal Register and interviewed officials from the six agencies that we previously recommended should update their regulations about the status of their efforts.<sup>3</sup> These agencies were the American Battle Monuments Commission, U.S. Agency for Global Media, Department of State, National Aeronautics and Space Administration, Office of Management and Budget, and U.S. African Development Foundation.

We conducted this performance audit from October 2019 to March 2020 in accordance with generally accepted government auditing standards. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives.

In summary, we found the following:

- **Federal Agencies' FOIA Activity.** Agencies reported an increase of more than 30 percent in the number of FOIA requests received from FY 2012 to 2018. Agencies are generally required to respond to a FOIA request within 20 business days with a determination of the scope of the documents they will produce and the exemptions they will claim with respect to any withheld document. Agencies are then required to promptly provide the responsive documents, if any. From FY 2012 to 2018, the backlog of requests—that is, the number of requests or administrative appeals that are pending beyond FOIA's required time period for a response at the end of the FY—increased over 80 percent.<sup>4</sup> However, with the exception of FY 2014, the growth in the backlog has generally tracked the growth in the number of requests. From FY 2015 through 2018, the backlog was around 15 percent of requests received. Agencies also reported that resources spent on FOIA implementation increased from FY 2012 to 2018.
- **OIP and OGIS Assistance.** Since 2018, OIP continued to provide a range of resources for federal agencies including policy guidance and training for agency personnel. OIP also managed the submission of agency reporting requirements and used these data to assess agency compliance with FOIA as well as determine the need for additional resources to guide agencies. OGIS, as the Federal FOIA Ombudsman, provided

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<sup>3</sup>GAO, *Freedom of Information Act: Agencies Are Implementing Requirements but Additional Actions Are Needed* [GAO-18-365](#) (Washington, D.C.: June 25, 2018).

<sup>4</sup>The FOIA defines unusual circumstances when an agency may extend this deadline by an additional 10 business days. These include (I) the need to search for and collect the requested records from field facilities or other establishments that are separate from the office processing the request; (II) the need to search for, collect, and appropriately examine a voluminous amount of separate and distinct records which are demanded in a single request; or (III) the need for consultation, which shall be conducted with all practicable speed, with another agency having a substantial interest in the determination of the request or among two or more components of the agency having substantial subject-matter interest therein. 5 U.S.C. § 552(a)(6)(B)(iii).

resources to both federal agencies and the general public, such as dispute resolution services. OGIS also identified methods to improve agency compliance.

- **FOIA Regulation Updates.** As of February 2020, two out of six agencies—National Aeronautics and Space Administration and the Office of Management and Budget—updated their FOIA regulations to comply with the FOIA Improvement Act of 2016, as we recommended in 2018.<sup>5</sup> Agency officials from all four of the agencies that have not yet updated their regulations—the American Battle Monuments Commission, U.S. Agency for Global Media, Department of State, and U.S. African Development Foundation—told us that they are taking steps to do so. Until these four agencies publish updated regulations that address the necessary requirements, as called for in FOIA and OIP guidance, they likely will be unable to provide the public with required regulatory and procedural information to ensure transparency and accountability in the government.

## Agency Comments and Our Evaluation

We provided a draft of this report to the Department of Justice, National Archives and Records Administration, American Battle Monuments Commission, U.S. Agency for Global Media, Department of State, National Aeronautics and Space Administration, Office of Management and Budget, and U.S. African Development Foundation. We received written comments from the National Archives and Records Administration that are reprinted in enclosure II and summarized below. We received email comments from the U.S. African Development Foundation that are also summarized below. The Department of Justice, National Archives and Records Administration, Department of State, and U.S. Agency for Global Media provided technical comments, which we incorporated as appropriate. The American Battle Monuments Commission, National Aeronautics and Space Administration, and Office of Management and Budget told us that they had no comments.

The National Archives and Records Administration's Office of Government Information Services stated that it balances assessing agency-specific compliance with government-wide compliance issues. Although government-wide assessments have taken priority in recent years, it has not stopped assessing individual agency FOIA programs. Accordingly, we have reflected this information in our report.

The Associate General Counsel of the U.S. African Development Foundation stated that the lack of updated regulations does not affect the public because the agency does not charge fees. We believe fully implementing FOIA requirements will better position agencies to provide the public with necessary access to government records and ensure openness in government.

As agreed with your offices, unless you publicly announce the contents of this report earlier, we plan no further distribution until 5 days from the report date. At that time, we will send copies to the appropriate congressional committees, the Attorney General of the United States, Archivist of the United States, Secretary of the American Battle Monuments Commission, Chief Executive Officer and Director of the U.S. Agency for Global Media, Secretary of State, Administrator of the National Aeronautics and Space Administration, Director of the Office of Management and Budget, President and Chief Executive Officer of the U.S. African Development Foundation, and other interested parties. In addition, the report is available at no charge on the GAO website at <https://www.gao.gov>.

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<sup>5</sup>[GAO-18-365](#).

If you or your staff have any questions about this report, please contact me at (202) 512-6806 or [SagerM@gao.gov](mailto:SagerM@gao.gov). Contact points for our Offices of Congressional Relations and Public Affairs may be found on the last page of this report. GAO staff members who made major contributions to this report were Susan E. Murphy (Assistant Director), Melissa L. King (Analyst In Charge) Giny Cheong, Ann L. Czapiewski, Andrew Howard, Gina M. Hoover, Amalia Konstas, Samantha Lalisan, Neelaxi Lakhmani, Krista Loose, Lori D. Martinez, and Joseph Recht.

A handwritten signature in black ink that reads "Michelle Sager". The signature is written in a cursive, flowing style.

Michelle Sager  
Director  
Strategic Issues

Enclosures - 2

*List of Requesters*

The Honorable Dianne Feinstein  
Ranking Member  
Committee on the Judiciary  
United States Senate

The Honorable Carolyn Maloney  
Chairwoman  
The Honorable Jim Jordan  
Ranking Member  
Committee on Oversight and Reform  
House of Representatives

The Honorable John Cornyn  
United States Senate

The Honorable Charles E. Grassley  
United States Senate

The Honorable Patrick Leahy  
United States Senate



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# Freedom of Information Act: Federal Agencies' Recent Implementation Efforts

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Information Presented to Congressional Requesters  
March 2020

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Slide 1



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## Introduction

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- The *Freedom of Information Act* (FOIA), enacted into law more than 50 years ago, requires federal agencies to provide the public with access to government records and information based on the principles of openness and accountability in government.<sup>1</sup>
- As required by law, 118 agencies reported their FOIA activities to the Department of Justice (DOJ) for fiscal year (FY) 2018. DOJ's Office of Information Policy (OIP), the National Archives and Records Administration's (NARA) Office of Government Information Services (OGIS), and the Chief FOIA Officers Council each have roles supporting agency implementation of FOIA.

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<sup>1</sup>5 U.S.C. § 552.



## Objectives

You asked us to provide information on federal agencies' efforts to implement the FOIA Improvement Act of 2016.<sup>2</sup> This briefing provides information on

1. government-wide FOIA activity from FY 2012 through 2018,
2. steps OIP and OIGIS have taken to assist agencies in implementing the FOIA Improvement Act of 2016 since 2018, and
3. progress selected agencies have made on updating FOIA regulations since 2018.

<sup>2</sup>FOIA Improvement Act of 2016, Pub. L. No. 114-185, 130 Stat. 538 (2016) (provisions codified at 5 U.S.C. § 552).





## Scope and Methodology

- **Federal Agencies' FOIA Activities.** To describe government-wide FOIA activity, we reviewed FY 2012 through 2018 data from the agencies required to report key FOIA statistics to DOJ for posting on FOIA.gov. These data included government-wide statistics on the number of FOIA requests and backlogged requests, processing timeliness, disposition of requests, and agency-reported FOIA resources (staff and spending).
- **OIP and OGIS Assistance.** To describe OIP and OGIS efforts to support FOIA implementation, we reviewed recent policies, guidance, and other relevant documentation OIP and OGIS provided to agencies and interviewed OIP and OGIS officials.
- **FOIA Regulation Updates.** To describe selected agencies' efforts to update FOIA regulations as we recommended in 2018, we reviewed the *Federal Register* and interviewed officials from the six agencies that we previously recommended should update their regulations about the status of their efforts.<sup>3</sup> These agencies were the American Battle Monuments Commission, U.S. Agency for Global Media, Department of State, National Aeronautics and Space Administration, Office of Management and Budget, and U.S. African Development Foundation.

<sup>3</sup>GAO, *Freedom of Information Act: Agencies Are Implementing Requirements but Additional Actions Are Needed* [GAO-18-365](#) (Washington, D.C.: June 25, 2018).



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## Summary

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- **Federal Agencies' FOIA Activity.** Agencies reported an increase of more than 30 percent in the number of FOIA requests received from FY 2012 to 2018. Agencies are generally required to respond to a FOIA request within 20 business days with a determination of the scope of the documents it will produce and the exemptions it will claim with respect to any withheld document. Agencies are then required to promptly provide the responsive documents, if any. From FY 2012 to 2018, the backlog of requests—that is, the number of requests or administrative appeals that are pending beyond FOIA's required time period for a response at the end of the FY—increased more than 80 percent. However, with the exception of FY 2014, the growth in the backlog has generally tracked the growth in the number of requests. From FY 2015 through FY 2018, the backlog was around 15 percent of requests received. Agencies also reported that resources spent on FOIA implementation increased from FY 2012 to FY 2018.
- **OIP and OGIS Assistance.** Since 2018, OIP has continued to provide a range of resources for federal agencies including policy guidance and training for agency personnel. OIP also managed the submission of agency reporting requirements and used these data to assess agency compliance with FOIA as well as determine the need for additional resources to guide agencies. OGIS provided resources to both federal agencies and the general public, such as dispute resolution services. OGIS also identified methods to improve agency compliance through both government-wide issue assessments and agency-specific compliance assessments.
- **FOIA Regulation Updates.** As of February 2020, two of six agencies—the National Aeronautics and Space Administration and the Office of Management and Budget—updated their FOIA regulations to comply with the FOIA Improvement Act of 2016, as we recommended in 2018. Agency officials from all four of the agencies that have not yet updated their regulations—the U.S. African Development Foundation, U.S. Agency for Global Media, American Battle Monuments Commission, and Department of State—told us that they are taking steps to do so. Until these four agencies publish updated regulations that address the necessary requirements, as called for in FOIA and OIP guidance, they likely will be unable to provide the public with required regulatory and procedural information to ensure transparency and accountability in the government.

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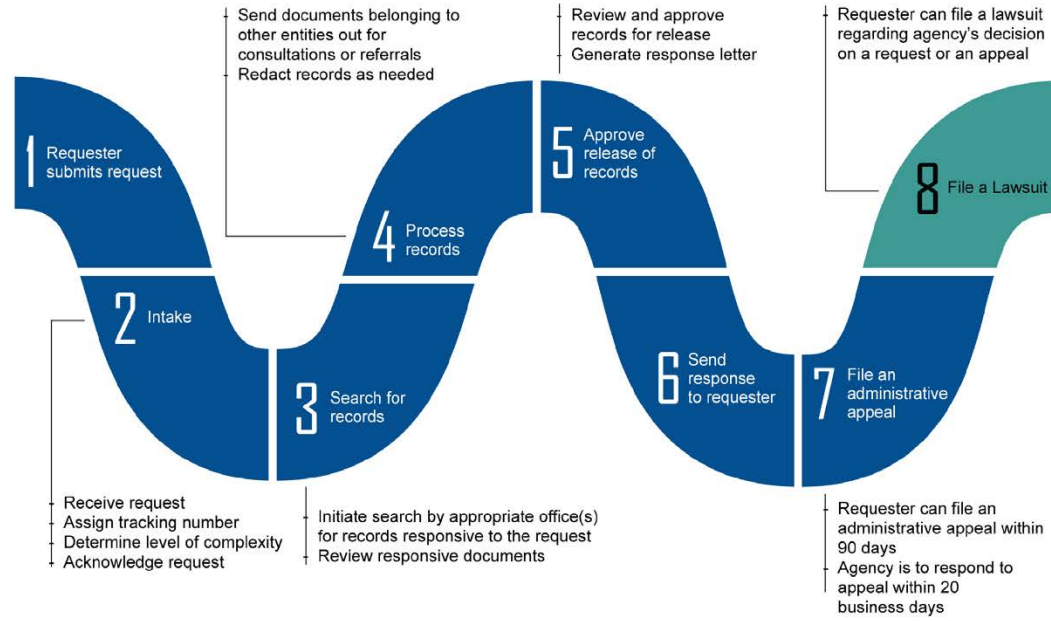
Slide 5

# What Steps Are Involved in the FOIA Request and Appeals Process?

Figure 1: Simplified Overview of the Federal Government's Freedom of Information Act Request and Appeal Process

**FOIA Requests**  
 Agencies are generally required to respond to a FOIA request within 20 business days with a determination of the scope of the documents it will produce and the exemptions it will claim with respect to any withheld documents and are required to promptly provide the responsive documents, if any. Once received, the request is to be processed through multiple phases, which include assigning a tracking number, searching for responsive records, and releasing the records response to the requester.

**FOIA Appeals**  
 FOIA allows a requester to challenge an agency's final decision on a request through an administrative appeal or a lawsuit. Agencies generally have 20 business days to respond to an administrative appeal.



■ Represents the **typical** Freedom of Information Act (FOIA) administrative process  
 ■ Represents a FOIA **litigation** process

Source: GAO analysis of simplified FOIA process. | GAO-20-406R



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## What Did the FOIA Improvement Act of 2016 Change?

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- **New procedural requirements.** Proactive disclosure provisions of the act require agencies to make records publicly available in an electronic format if they have been released in response to a FOIA request and requested three or more times. Further, agencies were required to update their regulations within 180 days to:
  - Notify requesters that they have at least 90 days to file an administrative appeal;
  - Provide dispute resolution services at various times throughout the FOIA process;
  - Describe the rights of requesters for denied requests; and
  - Inform requesters of additional restrictions on agencies for charging certain fees.
- **Changes to responsibilities.** The act created more duties for Chief FOIA Officers, including requiring them to offer training to agency staff regarding FOIA responsibilities. It also changed responsibilities for FOIA leadership:
  - Required OGIS to identify procedures and methods for improving compliance with FOIA.
  - Created the Chief FOIA Officers Council to assist in compliance and efficiency.
  - Required OMB, in consultation with DOJ, to create a consolidated online FOIA request portal that allows the public to submit a request to any agency through a single website.



## What Data Are Available on FOIA Activities?

- Each year, federal departments and agencies are required by law to submit a report to the U.S. Attorney General detailing various statistics regarding their agency's FOIA activities, such as the numbers of requests processed and received, the size of the backlog of requests, and the time taken to process requests. In addition, agencies are required to provide DOJ quarterly reporting of key FOIA statistics for posting on FOIA.gov.
- The data from the annual FOIA reports are compiled and uploaded to FOIA.gov, the DOJ's government-wide FOIA website launched in 2011. Since 2018, FOIA.gov has allowed members of the public to submit a FOIA request to an agency or be directed to an agency's online submission form, if that agency's FOIA system is not linked to FOIA.gov.
- FOIA.gov also contains information for the public about filing FOIA requests with agencies, including average processing times, points of contact, and a web-based form for submitting FOIA requests. The site provides basic instructions on the FOIA process and answers to frequently asked questions for the general public.

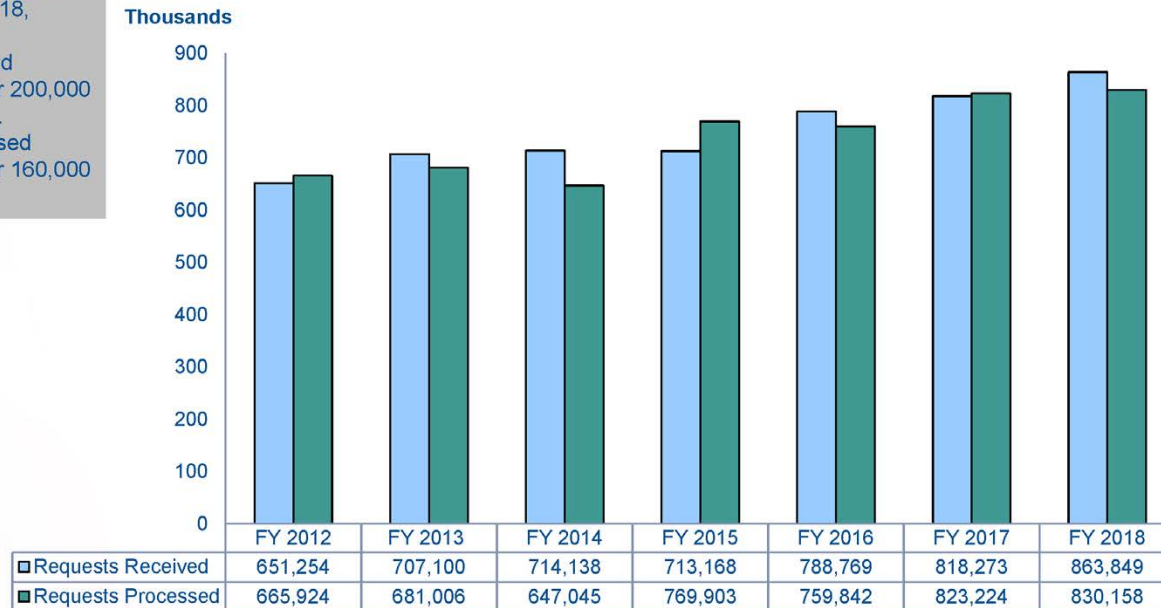


## Agencies Reported Increases in FOIA Requests Received and Processed from Fiscal Years 2012 to 2018

Figure 2: Agencies Reported Increases in FOIA Requests Received and Processed from Fiscal Years (FY) 2012 to 2018

**FOIA Requests Increased**  
From FY 2012 to 2018, agencies reported

- Requests received increased by over 200,000 (over 30 percent).
- Requests processed increased by over 160,000 (25 percent).



Source: GAO analysis of agency-reported Freedom of Information Act (FOIA) data on FOIA.gov | GAO-20-406R



## In FY 2018, Agencies Reported Granting About a Quarter of FOIA Requests in Full

### FOIA Request Denials

If an agency denies or partially denies a request, it must cite an exemption or procedural reason for doing so.

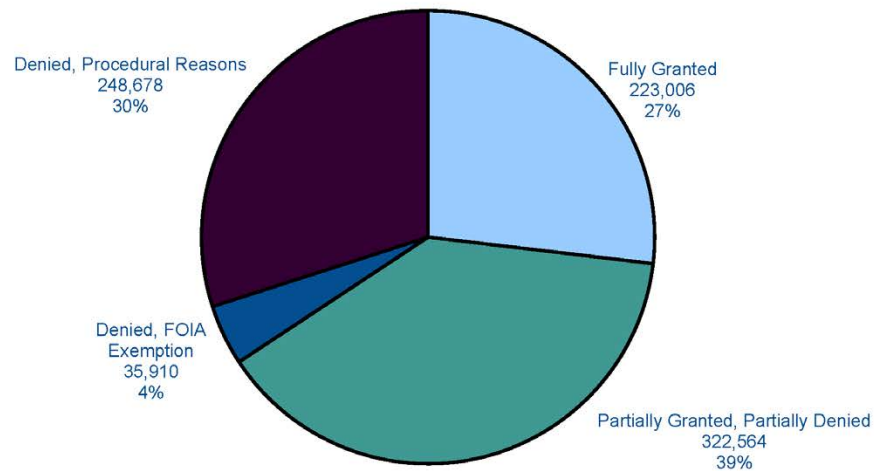
- Denials citing FOIA exemptions. The act identifies nine specific categories of information that are exempt from disclosure. Agencies may cite more than one reason for denying a request.
- Procedural reasons for denial. These include the agency identifying no relevant records and duplicate requests, among other reasons.

### FOIA Request Disposition

From FY 2012 to 2018, FOIA requests

- granted in full decreased from 35 percent to 27 percent of all requests
- partially granted/partially denied increased from 30 percent to 39 percent of all requests
- denied in full—either because of an exemption or for procedural reasons—were each a similar percent of total requests.

Figure 3: Agencies Reported Granting in Full About a Quarter of FOIA Requests in Fiscal Year 2018



Source: GAO analysis of agency-reported Freedom of Information Act (FOIA) data on FOIA.gov | GAO-20-406R



# FOIA Data Show That the Government-wide Backlog of Requests Increased Over 80 Percent from FY 2012 to 2018, Driven in Part by Increased Requests

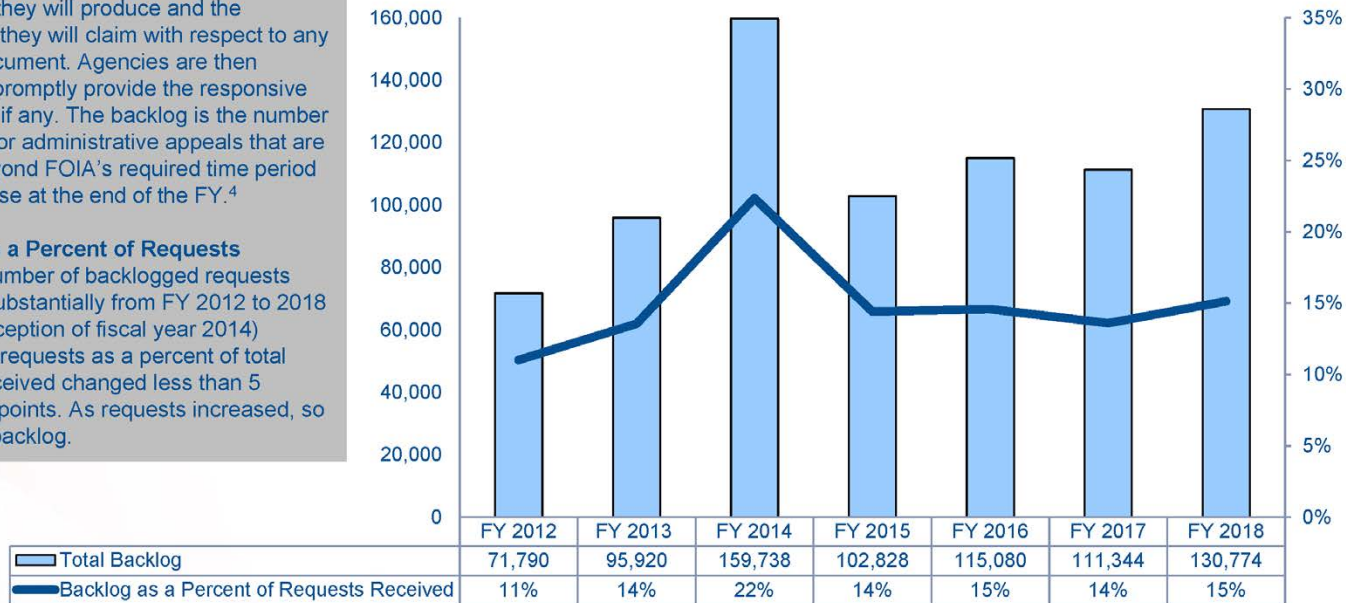
### Request Backlog

Agencies are generally required to respond to a FOIA request within 20 business days with a determination of the scope of the documents they will produce and the exemptions they will claim with respect to any withheld document. Agencies are then required to promptly provide the responsive documents, if any. The backlog is the number of requests or administrative appeals that are pending beyond FOIA's required time period for a response at the end of the FY.<sup>4</sup>

### Backlog As a Percent of Requests

While the number of backlogged requests increased substantially from FY 2012 to 2018 (with the exception of fiscal year 2014) backlogged requests as a percent of total requests received changed less than 5 percentage points. As requests increased, so too did the backlog.

Figure 4: FOIA Data Show That the Government-wide Backlog of Requests Increased Over 80 Percent from Fiscal Years (FY) 2012 to 2018



Source: GAO analysis of agency-reported Freedom of Information Act (FOIA) data on FOIA.gov | GAO-20-406R

<sup>4</sup>FOIA also defines unusual circumstances—such as the need to search for and collect the requested records from field facilities or other establishments that are separate from the office processing the request—when an agency may extend this deadline by an additional 10 business days.





# FOIA Data Show That the Percent of Requests Resolved in a Timely Manner Decreased or Remained Constant from Fiscal Years 2012 to 2018

### Simple and Complex Requests

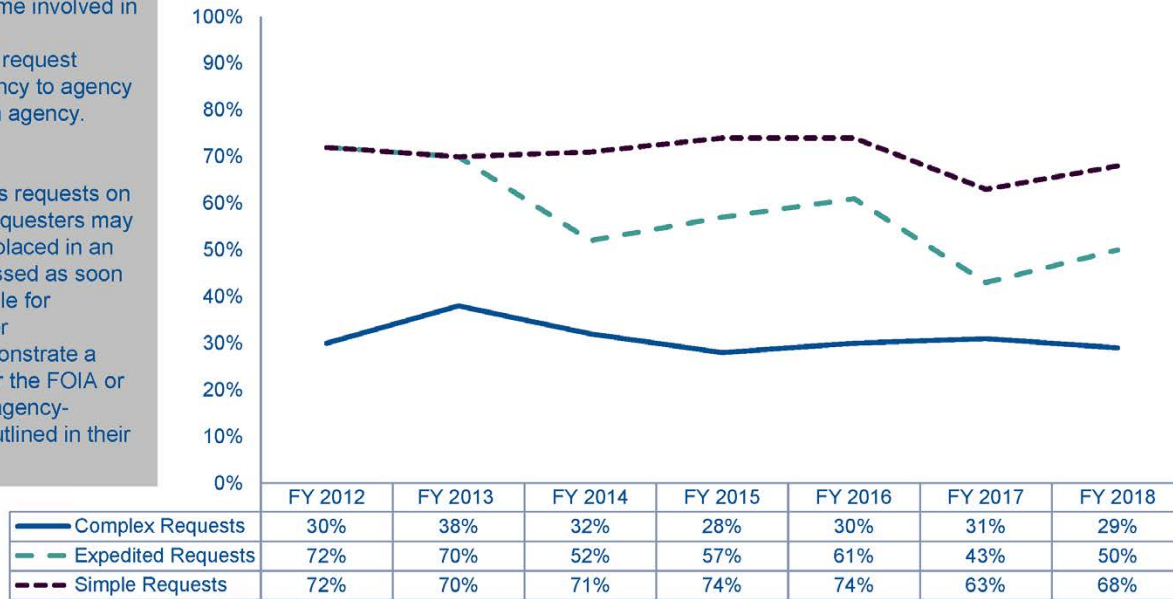
- Agencies may classify FOIA requests as either simple or complex based on the amount of work or time involved in processing the request.
- The factors that make a request complex differ from agency to agency and are defined by each agency.

### Expedited Processing

Agencies generally process requests on a first-in, first-out basis. Requesters may ask for their request to be placed in an expedited track and processed as soon as practicable. To be eligible for expedited processing either

- the requester must demonstrate a “compelling need” under the FOIA or
- the request must meet agency-specific requirements outlined in their FOIA regulations.

Figure 5: Agencies Reported the Percent of FOIA Requests Resolved Within 20 Days Decreased or Remained Constant from Fiscal Years (FY) 2012 to 2018



Source: GAO analysis of agency-reported Freedom of Information Act (FOIA) data on FOIA.gov | GAO-20-406R

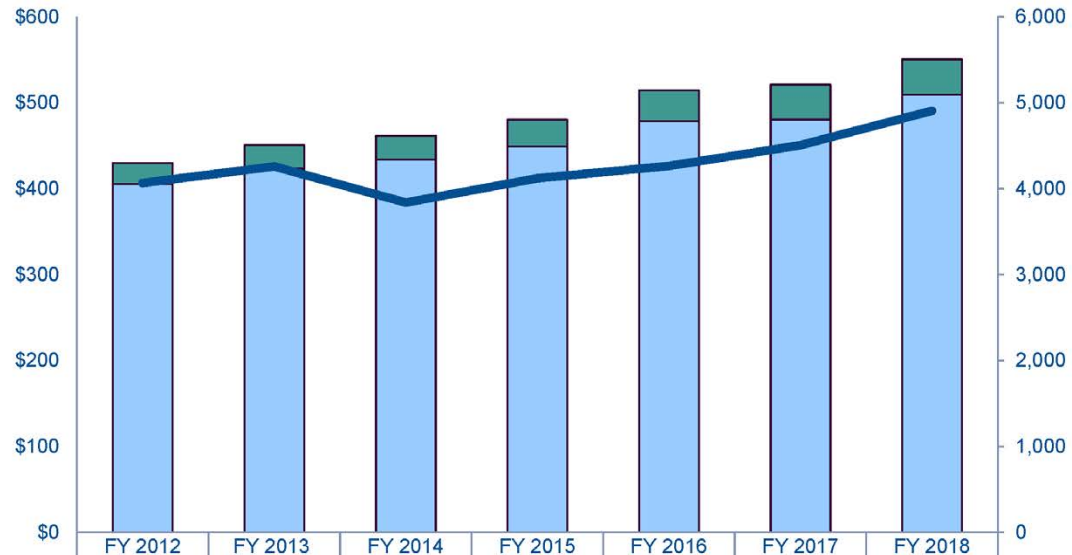


# FOIA Data Show That Over \$550 Million and Almost 5,000 Employees Were Dedicated to Processing and Litigating FOIA Requests in Fiscal Year 2018

Figure 6: Government-wide FOIA Costs and Staffing Increased from Fiscal Years (FY) 2012 to 2018, According to Agency Reports, Dollars in Millions

**Cost Increases**  
 Agency data show that from fiscal years 2012 to 2018, the nominal  
 • cost to process FOIA requests increased over \$100 million (26 percent).  
 • costs to litigate FOIA requests increased over \$16 million (69 percent).

**Staffing Changes**  
 From FY 2012 to 2018, agencies' data show that full-time equivalents increased by 840 (21 percent).



Litigation Cost	\$24,160,095	\$27,320,773	\$27,833,951	\$31,253,284	\$36,159,539	\$40,672,512	\$40,792,395
Processing Cost	\$405,464,200	\$423,106,202	\$433,651,423	\$448,982,684	\$478,455,050	\$480,309,148	\$509,598,755
Full-time Equivalents	4,065	4,258	3,839	4,122	4,264	4,506	4,905

Source: GAO analysis of agency-reported nominal Freedom of Information Act (FOIA) spending data on FOIA.gov | GAO-20-406R



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## OIP Provided a Range of Resources to Guide Agencies in Their Administration of the FOIA Improvement Act of 2016

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According to OIP officials, OIP provides resources to federal agencies in accordance with OIP's mission "to encourage and oversee agency compliance" with FOIA.

OIP regularly developed and issued policy guidance. For example:

- The *United States Department of Justice Guide to the Freedom of Information Act* is intended to address all aspects of FOIA. According to OIP officials, the guide has been fully updated with significant new developments, such as court decisions, through the end of 2019.
- OIP issued government-wide policy guidance on topics, such as adjudicating administrative appeals under FOIA, in 2019, as well as annual guidance on agency reporting obligations.

OIP offered training and legal counsel to agencies. For example:

- In FY 2019, OIP conducted 15 FOIA training programs for federal agencies, which ranged from half-day introductory sessions for non-FOIA personnel to advanced programs for highly experienced FOIA personnel, for 1,972 registered attendees.
- In FY 2019, OIP conducted a total of 21 training sessions requested by federal agencies.
- OIP's FOIA Counselor Service provided confidential legal advice and policy guidance to agencies. In 2019, OIP handled 1,072 requests for guidance from agency personnel.



## OIP Reviewed Agency Compliance with FOIA

To promote agency accountability, OIP officials reported that OIP

- Issued an annual summary of agencies' Chief FOIA Officer reports, which included an assessment of the government's overall progress in implementing the DOJ FOIA guidelines and identified areas for improvement,
- Issued an annual summary of agencies' annual FOIA reports with highlights of key government-wide FOIA data,
- Issued an annual report on compliance and litigation focusing on OIP's efforts, such as guidance and counseling,
- Managed the quarterly reporting requirement for agencies to post key FOIA statistics on FOIA.gov, and
- Individually met with selected Chief FOIA Officers to discuss their agency's administration of FOIA, including their agency's performance based on the most recent reports.

OIP reviewed draft FOIA regulations during the proposed rule process or reviewed the published regulations for consistency with FOIA and OIP guidance. As of February 2020, OIP officials reported that 79 agencies have updated their FOIA regulations and 23 agencies have updates in process. Sixteen agencies have not provided a status update to OIP or have no plans to update their regulations.

In addition, OIP asked agencies to provide details on self-assessments and other steps taken to improve efficiency in their Chief FOIA Officer reports. Several agencies reported using OIP's FOIA Self-Assessment Toolkit to assess their FOIA programs in 2018 and 2019.



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## Increasing Proactive Disclosure Remains a Challenge

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According to FOIA.gov, federal agencies reported that FOIA offices made more than 1.5 million proactive disclosures in FY 2017, but fewer than 155,000 proactive disclosures in FY 2018. DOJ officials attributed this change to a component within the Department of Commerce and how it reported the number of disclosures.

For the annual Chief FOIA Officer reports, OIP required agencies to provide information about the steps taken to increase proactive disclosures and scored agencies on certain questions.

- For example, in 2019, 69 of the 72 agencies that received more than 50 FOIA requests reported that they took steps to make the posted information more useful to the public or that they already make the information available in its most useful format.

OGIS supports the FOIA Advisory Committee, which develops recommendations for improving FOIA administration and proactive disclosures. During the 2016-2018 term, the committee formed a subcommittee to examine specific areas in which federal agencies could implement initiatives to improve public disclosures.

- As a result, the Committee identified categories of records recommended for inclusion as part of the best practices for proactive disclosure, such as agency organizational charts and agency directories listing contact information for all offices.



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## OGIS Serves as a Resource for Federal Agencies and the General Public

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As the Federal FOIA Ombudsman, OGIS works with federal agencies and the general public to resolve disputes and provide education about the FOIA process.

OGIS provided a dispute resolution program that includes options such as mediation and informal facilitation between federal agencies and requesters. OGIS also worked with individual agencies on specific issues that arose in the course of providing dispute resolution services.

- OGIS closed 4,681 requests for dispute resolution assistance in FY 2018 and 4,649 requests in FY 2019.

OGIS also published its first two issues of the *FOIA Ombuds Observer* on its website in 2018 and, according to OGIS officials, will publish another issue in March 2020. The *Observer* is an educational publication for the public on questions and issues frequently seen in OGIS's individual cases, such as using FOIA to access immigration records.

In addition, OGIS issued its first advisory opinion on agency communication with requesters in July 2018 and, according to OGIS officials, will issue its second opinion in March 2020.<sup>5</sup> OGIS examines the interactions between requesters and federal agencies government-wide for patterns and trends that impede the FOIA process, which then becomes a topic for an advisory opinion.

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<sup>5</sup>As part of its statutory mandate, OGIS may issue advisory opinions "at the discretion of the Office or upon request of any party to a dispute." 5 U.S.C. § 552(h)(3).



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## OGIS Conducts Both Government-wide and Agency-Specific Efforts

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OGIS also seeks to identify methods to improve agency compliance and conducts a training program on dispute resolution.

OGIS officials stated that, with consideration for their priorities and resources, they balance their compliance program between government-wide issue assessments and agency-specific compliance assessments.

- OGIS published one issue assessment in FY 2018 (on required notification of dispute resolution services) and one in FY 2019 (on leveraging technology to improve agency searches for records). OGIS officials stated that they plan to publish another issue assessment in March 2020.
- OGIS published two agency compliance assessments in FY 2018 and one in FY 2019. OGIS officials stated that they plan to publish another agency assessment later this year.

OGIS offered an interagency version of their Dispute Resolution Skills for FOIA Professionals training program a total of three times in FY 2018-2019. OGIS also conducted this training for 12 individual agencies by request.



## Two of Six Selected Agencies Updated Their FOIA Regulations as We Recommended in 2018

In June 2018, we recommended that 6 of the 18 agencies selected for our 2018 review update their FOIA regulations to comply with selected requirements of the FOIA Improvement Act of 2016.<sup>6</sup>

Figure 7: Selected Agencies' Compliance with 2016 FOIA Improvement Act Requirements for Updating Regulations

	Described dispute resolution services	Described appeals process for denied requests	Notified requester of 90 days for appeal	Informed requester of unusual circumstance fees	Updated regulations in a timely manner <sup>a</sup>
American Battle Monuments Commission	○	○	○	○	○
U.S. Agency for Global Media <sup>b</sup>	○	●	○	○	○
Department of State	●	●	○	●	○
National Aeronautics and Space Administration	■	●	■	●	○
Office of Management and Budget	■	■	■	■	○
U.S. African Development Foundation	●	●	●	○	○

● Implemented as of 2018   ■ Implemented in 2019   ○ Not implemented as of February 2020

Note: Excerpted from Figure 4 of *Freedom of Information Act: Agencies Are Implementing Requirements, but Additional Actions Are Needed* (GAO-18-365, June 2018).

<sup>a</sup> Agencies were required to update their regulations within 180 days after enactment of the FOIA Improvement Act of 2016.

<sup>b</sup> U.S. Agency for Global Media was known as the Broadcasting Board of Governors until August 2018.

Source: GAO analysis of selected agencies' Freedom of Information Act (FOIA) compliance. | GAO-20-406R

<sup>6</sup>GAO-18-365.





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## Two of Six Selected Agencies Updated Their FOIA Regulations as We Recommended in 2018 (continued)

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Two of the six agencies that we recommended update their FOIA regulations to meet selected requirements of the FOIA Improvement Act of 2016 have done so.



The **National Aeronautics and Space Administration** published updated regulations on **October 11, 2019**.



The **Office of Management and Budget** published updated regulations on **May 21, 2019**.



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## Four of Six Selected Agencies Have Not Updated Their FOIA Regulations as We Recommended in 2018

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Officials from all four of the agencies that have not yet updated their regulations told us that they are doing so. They also stated that they are using OIP guidance in the drafting process, including using the template regulations, in part or in full.



The **American Battle Monuments Commission** FOIA regulations were last updated February 26, 2003. The agency published proposed revised regulations on February 18, 2020, following review by OIGIS and OIP in 2019.



The **U.S. Agency for Global Media**—known as the Broadcasting Board of Governors until August 2018—FOIA regulations were last updated February 27, 2002. According to officials, the agency anticipates publishing proposed updates for notice and comment in spring 2020, followed by a final rule.



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## Four of Six Selected Agencies Have Not Updated Their FOIA Regulations as We Recommended in 2018 (continued)

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The **Department of State** FOIA regulations were last updated April 6, 2016. The regulations do not provide the requester with 90 days to appeal a denial, but otherwise meet the tested requirements of the FOIA Improvement Act of 2016. According to officials, as of February 2020, the agency's draft updated regulations were undergoing review in preparation to publish a Notice of Proposed Rulemaking in the *Federal Register*.



The **U.S. African Development Foundation** FOIA regulations were last updated February 3, 2017. The regulations do not inform the requester of fees for unusual circumstances, but otherwise meet the tested requirements of the FOIA Improvement Act of 2016. According to officials, the agency does not charge FOIA fees, but plans to amend its FOIA regulations to include the required information in the first half of calendar year 2020.

Enclosure II: Comments from the National Archives and Records Administration



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3 March 2020

Michelle Sager  
Director, Strategic Issues  
United States Government Accountability Office  
441 G Street, NW  
Washington, DC 20548

Dear Ms. Sager:

Thank you for the opportunity to comment on the draft briefing, *Freedom of Information Act: Federal Agencies' Recent Implementation Efforts (GAO-20-406R)*. I appreciate your highlighting the important work of the Office of Government Information Services (OGIS), the federal Freedom of Information Act (FOIA) Ombudsman.

As OGIS strives to improve FOIA administration for all, it offers a range of services both agency-specific and government-wide. It is important to note that OGIS has balanced assessing agency-specific compliance with assessing government-wide FOIA compliance issues and is not abandoning assessing individual agency FOIA programs. At the same time, OGIS has shifted the focus of its Dispute Resolution Skills for FOIA Professionals training from inter-agency to agency specific because of increased demand from agencies.

If you have any questions regarding this memo, please contact Kimm Richards, NARA's Audit Liaison at 301-837-1668 or via email at [kimm.richards@nara.gov](mailto:kimm.richards@nara.gov).

Sincerely,

DAVID S. FERRIERO  
Archivist of the United States

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