



March 2021

# FREEDOM OF INFORMATION ACT

## Actions Needed to Improve Agency Compliance with Proactive Disclosure Requirements



A Century of Non-Partisan Fact-Based Work

# GAO@100 Highlights

Highlights of [GAO-21-254](#), a report to congressional requesters

## Why GAO Did This Study

FOIA, enacted into law more than 50 years ago, requires federal agencies to provide the public with access to government records and information, including through proactive disclosures. FOIA proactive disclosures enhance transparency by ensuring that certain information about the operations and activities of the government is publicly available.

GAO was asked to review federal agencies' efforts to implement FOIA requirements regarding proactive disclosures. This report assesses the extent to which selected agencies (1) aligned their policies and procedures with FOIA requirements, and (2) tracked and reported these disclosures. GAO also assessed the effectiveness of the tools, resources, and oversight provided by DOJ and NARA to address known challenges to agencies' FOIA compliance.

GAO selected three agencies—FAA, HUD, and VHA—that reflect, among other things, a range in the agency-reported number of FOIA requests received and records proactively disclosed. GAO reviewed DOJ, NARA, FAA, HUD, and VHA documents and interviewed agency officials.

## What GAO Recommends

GAO is making eight recommendations to FAA, HUD, VHA, and OIP. These include that OIP should follow up with agencies that report zero proactive disclosures. FAA, HUD, and OIP agreed with the recommendations and OIP said it has begun following up with agencies that report zero proactive disclosures. VA provided comments too late to be included in the report but agreed with the recommendation.

View [GAO-21-254](#). For more information, contact Michelle Sager at (202) 512-6806 or [Sagem@ga.gov](mailto:Sagem@ga.gov).

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### Actions Needed to Improve Agency Compliance with Proactive Disclosure Requirements

## What GAO Found

The FOIA Improvement Act of 2016 expanded the requirement for agencies to proactively disclose certain records—making the records publicly available without waiting for specific requests. Of the three agencies GAO reviewed—Federal Aviation Administration (FAA), Department of Housing and Urban Development (HUD), and Veterans Health Administration (VHA)—only VHA aligned its policies and procedures with applicable Freedom of Information Act (FOIA) proactive disclosure requirements. Although FAA officials stated that the agency has processes to identify and post proactive disclosures, it has not documented these processes. HUD has FOIA regulations, updated in 2017, that address proactive disclosure, but its standard operating procedures have outdated sections that do not reflect statutory requirements.

GAO also found that HUD, VHA, and FAA did not fully comply with the statutory reporting requirements and Department of Justice's (DOJ) guidance to accurately report proactive disclosures. The FOIA Improvement Act of 2016 requires agencies to report the number of records the FOIA and program offices proactively disclosed each fiscal year. From fiscal years 2017 through 2019, HUD incorrectly reported zero proactive disclosures, while VHA and FAA did not track and report all required categories of proactive disclosures in fiscal year 2019 (see table).

**Selected Agencies' Freedom of Information Act (FOIA) Offices' Reported Proactive Disclosures**

Fiscal year	Federal Aviation Administration	Housing and Urban Development	Veterans Health Administration
2019	8	0	16
2018	89,687	0	0
2017	90,486	0	58
2016	68,046	12	0

Source: FOIA.gov. | GAO-21-254

DOJ's Office of Information Policy (OIP) is responsible for encouraging agencies' compliance with FOIA, including overseeing the *Annual FOIA Report* that agencies submit to OIP. OIP told GAO that it asked agencies that report zero proactive disclosures to confirm that this was accurate, but it did not follow up with these agencies. For example, OIP asked HUD officials to confirm that HUD intentionally reported zero proactive disclosures, but did not ask why HUD had zero proactive disclosures. In addition, GAO's review of annual FOIA data found that 25 of 118 agencies reported zero proactive disclosures in fiscal years 2018 and 2019. OIP said that agencies with a low volume of requests may have fewer records to proactively disclose. However, by not following up with agencies that report zero proactive disclosures, OIP is not using an available tool that may strengthen its efforts to encourage agencies to make required disclosures.

OIP and National Archives and Records Administration (NARA)'s Office of Government Information Services (OGIS) officials stated that making proactive disclosures accessible is a challenge for agencies. To assist agencies in addressing such challenges, OGIS periodically reviews agencies' compliance with FOIA and recently issued a report that included strategies for making proactive disclosures accessible.

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Figure 1: Simplified Overview of the Federal Government's  
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## Abbreviations

DOJ	Department of Justice
DOT	Department of Transportation
FAA	Federal Aviation Administration
FOIA	Freedom of Information Act
HUD	Department of Housing and Urban Development
NARA	National Archives and Records Administration
OGIS	Office of Government Information Services
OIP	Office of Information Policy
VA	Department of Veterans Affairs
VHA	Veterans Health Administration

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March 10, 2021

### Congressional Requesters

The Freedom of Information Act (FOIA), enacted more than 50 years ago, is one of several laws that seeks to improve the public's access to government information and promote the principles of openness and accountability in government.<sup>1</sup> FOIA requires federal agencies to provide the public with access to government records.<sup>2</sup> Each year, individuals and entities file hundreds of thousands of these requests for information on numerous topics that contribute to the understanding of government actions.

FOIA also requires agencies to proactively disclose certain records—making the records publicly available without waiting for specific requests.<sup>3</sup> When agencies make proactive disclosures, they enhance transparency by ensuring that certain information about the operations and activities of the government is readily and efficiently made available to all. Additionally, publicly releasing records on a popular topic could reduce the number of FOIA requests for the same records an agency receives.

The FOIA Improvement Act of 2016 expanded proactive disclosures by requiring agencies to make available for public inspection in an electronic format records that have been released in response to a FOIA request and requested three or more times.<sup>4</sup> It also created a new requirement for agencies to report on the number of proactive disclosures in their *Annual*

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<sup>1</sup>We recently reported on another of these federal efforts to increase government transparency. See GAO, *Open Data: Agencies Need Guidance to Establish Comprehensive Data Inventories; Information on Their Progress is Limited*, [GAO-21-29](#) (Washington, D.C.: Oct. 8, 2020). The Open, Public, Electronic and Necessary Government Data Act, which is Title II of the Foundations for Evidence-Based Policymaking Act of 2018, Pub. L. No. 115-435, 132 Stat. 5534 (Jan. 14, 2019), and the Digital Accountability and Transparency Act, Pub. L. No. 113-101, 128 Stat. 1146 (May 9, 2014), among other efforts, have sought to improve the availability, transparency, and quality of federal data.

<sup>2</sup>5 U.S.C. § 552.

<sup>3</sup>5 U.S.C. § 552(a)(2).

<sup>4</sup>FOIA Improvement Act of 2016, Pub. L. No. 114-185, 130 Stat. 538 (June 30, 2016), *codified at* 5 U.S.C. § 552.

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*FOIA Reports*, which agencies submit to the Department of Justice's (DOJ) Office of Information Policy (OIP).<sup>5</sup> According to agency-reported data, which DOJ posts on FOIA.gov, agencies proactively disclosed more than 114 million records in fiscal year 2019.

In recent years, we have reported on various aspects of federal agencies' efforts to implement FOIA.<sup>6</sup> You asked us to review federal agencies' efforts to implement the changes made by the FOIA Improvement Act of 2016. This report assesses the extent to which (1) the policies and procedures of selected agencies aligned with FOIA statutory requirements, and DOJ and other guidance regarding proactive disclosure; (2) selected agencies tracked and reported their proactive disclosures; and (3) DOJ and the National Archives and Records Administration (NARA) Office of Government Information Services (OGIS) provided effective tools, resources, and oversight to address known challenges to agency compliance with proactive disclosure requirements.

To address these objectives, we selected the Department of Housing and Urban Development (HUD); Department of Transportation (DOT), Federal Aviation Administration (FAA); and the Department of Veterans Affairs (VA), Veterans Health Administration (VHA) for review. We selected this set of agencies to reflect a range in the agency-reported number of FOIA requests received and records proactively disclosed; variety in the systems the agencies used to process requests; and to include at least

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<sup>5</sup>U.S.C. § 552(e)(1)(Q). The DOJ OIP and the National Archives and Records Administration Office of Government Information Services 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.

<sup>6</sup>For example, GAO, *Freedom of Information Act: Update on Federal Agencies' Use of Exemption Statutes*, [GAO-21-148](#) (Washington, D.C.: Jan. 12, 2021); *Freedom of Information Act: Federal Agencies' Recent Implementation Efforts*, [GAO-20-406R](#) (Washington, D.C.: Mar. 11, 2020); *Freedom of Information Act: Agencies Are Implementing Requirements, but Additional Actions Are Needed*, [GAO-18-365](#) (Washington, D.C.: June 25, 2018); *Freedom of Information Act: Litigation Costs for Justice and Agencies Could Not Be Fully Determined*, [GAO-16-667](#) (Washington, D.C.: Sept. 8, 2016); *Freedom of Information Act: Department of Labor Can Improve Management of Its Program*, [GAO-16-248](#) (Washington, D.C.: June 2, 2016); and *Freedom of Information Act: Additional Actions Can Strengthen Agency Efforts to Improve Management*, [GAO-12-828](#) (Washington, D.C.: July 31, 2012).

one agency with responsibilities under the CARES Act (see table 1).<sup>7</sup> These agencies serve as illustrative examples; they are not a representative sample of all federal agencies.

**Table 1: Selected Agencies' Freedom of Information Act (FOIA) Operations and Agency Characteristics**

Agency-reported data as posted to FOIA.gov for fiscal years 2018 to 2019				
Agency	Average FOIA requests received	Average proactive disclosures (FOIA and program offices)	CARES Act Funding	FOIA System Used
Federal Aviation Administration	11,335	51,577	✓	FOIA National Tracking System <sup>a</sup>
Housing and Urban Development	2,262	0	✓	FOIAXpress
Veterans Health Administration	16,307	8	✓	FOIAXpress

Legend:

✓ = The agency received funding under the CARES Act.

Source: GAO analysis of FOIA.gov data; the CARES Act, Pub. L. No. 116-136, 134 Stat. 281 (March 27, 2020); and agency websites. | GAO-21-254

<sup>a</sup>As of January 2021, Federal Aviation Administration expects to migrate to FOIAXpress in August 2021.

To assess the proactive disclosure policies and procedures of selected agencies, we reviewed agency documents—including FOIA policies, guidance, handbooks, and websites related to proactive disclosure—and interviewed agency officials. We then compared these against FOIA requirements, OIP guidance, and *Standards for Internal Control in the Federal Government*.<sup>8</sup>

To assess selected agencies' proactive disclosure data, we reviewed agencies' proactive disclosures as reported to DOJ and posted to FOIA.gov for fiscal years 2016 to 2019. Additionally, we evaluated documentation and interviewed agency officials about how selected agencies measure, track, and report proactive disclosures, and how, if at

<sup>7</sup>The number of FOIA requests received and number of proactive disclosures were averages of agency-reported data posted to FOIA.gov for fiscal years 2018 to 2019. CARES Act, Pub. L. No. 116-136, 134 Stat. 281 (Mar. 27, 2020). Agencies may use systems such as FOIAXpress, FOIAonline, or an agency's own system to manage and track FOIA operations.

<sup>8</sup>GAO, *Standards for Internal Control in the Federal Government*, GAO-14-704G (Washington, D.C.: Sept. 10, 2014).



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all, the agencies use the data to manage their FOIA programs. We compared these processes against FOIA requirements and OIP guidance.

To assess DOJ and NARA's tools, resources, and oversight to address known challenges to agency compliance with FOIA requirements, we reviewed DOJ OIP's guidance, training materials, and FOIA reports, agency-reported data on proactive disclosures and FOIA requests posted on FOIA.gov, and NARA OIG's recommended best practices, compliance reviews, and issue assessments. We also interviewed OIP and OIG agency officials about challenges and any resources to address these challenges. Further, we interviewed officials from the selected agencies about challenges to compliance with FOIA proactive disclosure requirements and the usefulness of OIP's and OIG's tools, resources, and guidance to address these challenges. We compared OIP's and OIG's tools, resources, and guidance against their goals and statutory requirements.

To assess the reliability of the FOIA.gov data elements we analyzed for the case study agencies, we reviewed documentation, interviewed agency officials, and performed checks on the data to compare OIP summary data to that available on FOIA.gov. We determined that these data were sufficiently reliable for identifying agency-reported proactive disclosures and requests received from fiscal year 2016 to 2019.

We conducted this performance audit from March 2020 to March 2021 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.

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## Background

FOIA requires federal agencies to proactively disclose the following types of records:<sup>9</sup>

- final opinions, including concurring and dissenting opinions, and orders made in the adjudication of cases;

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<sup>9</sup>For the purposes of this report, we use the term "proactive disclosures" to describe the proactive disclosures required by the FOIA statute. 5 U.S.C. § 552(a)(2).

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- statements of policy and interpretations which have been adopted by the agency and are not published in the Federal Register;
  - administrative staff manuals and instructions to staff that affect a member of the public;
  - records that have been released in response to a FOIA request and (1) that the agency determines have become, or are likely to become, the subject of subsequent requests, or (2) that have been requested three or more times; and
  - a general index of records that have been released in response to a FOIA request and (1) that the agency determines have become, or are likely to become, the subject of subsequent requests, or (2) that have been requested three or more times.

Agencies post proactive disclosures on their websites. OIP encourages agencies to post records that have been, or are likely to be frequently requested, and the index of those records, in their FOIA library websites. OIP guidance also encourages agencies to post other proactive disclosures on whichever web page interested parties are most likely to see them.

In 2018, we reported on the extent to which 18 agencies had proactively disclosed required categories of records.<sup>10</sup> We found that 3 of the 18 agencies—the Department of the Interior, National Aeronautics and Space Administration, and National Transportation Safety Board—had not complied with proactive disclosure requirements and therefore we recommended they proactively disclose all required categories of records. In response, these three agencies implemented processes to post records, as required.

OIP, 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.

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<sup>10</sup>[GAO-18-365](#).

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- OGIS's responsibilities include reviewing agencies' policies, procedures, and compliance with FOIA. The FOIA Improvement Act of 2016 also directed OGIS to identify methods to improve compliance.<sup>11</sup>
  - The Chief FOIA Officers Council was established by the FOIA Improvement Act of 2016 to assist in FOIA compliance and efficiency.<sup>12</sup> The Council is co-chaired by the Director of OIP and the Director of OGIS.

Federal agencies are required to submit to the Attorney General: (1) the *Annual FOIA Report*, and (2) the *Chief FOIA Officers Report*.<sup>13</sup> The *Annual FOIA Report* is also submitted to OGIS. In fiscal years 2018 and 2019, 118 agencies submitted *Annual FOIA Reports*. These reports contain detailed statistics on, among other things, the number of statutorily-required proactive disclosures an agency made that fiscal year for both their FOIA and program offices.<sup>14</sup>

In recent years, OIP's *Chief FOIA Officers Report* guidelines have required agencies receiving more than 50 FOIA requests to report on five key areas of FOIA administration. These reports include information on their proactive disclosures, such as examples of material the agency has proactively disclosed and steps the agency is taking to increase proactive disclosures. For agencies' *Chief FOIA Officers Reports*, DOJ's guidance instructs agencies to include information on all proactively disclosed records available on agency websites, not just statutorily-required proactive disclosures.

As shown in figure 1, the proactive disclosure process includes six main steps.

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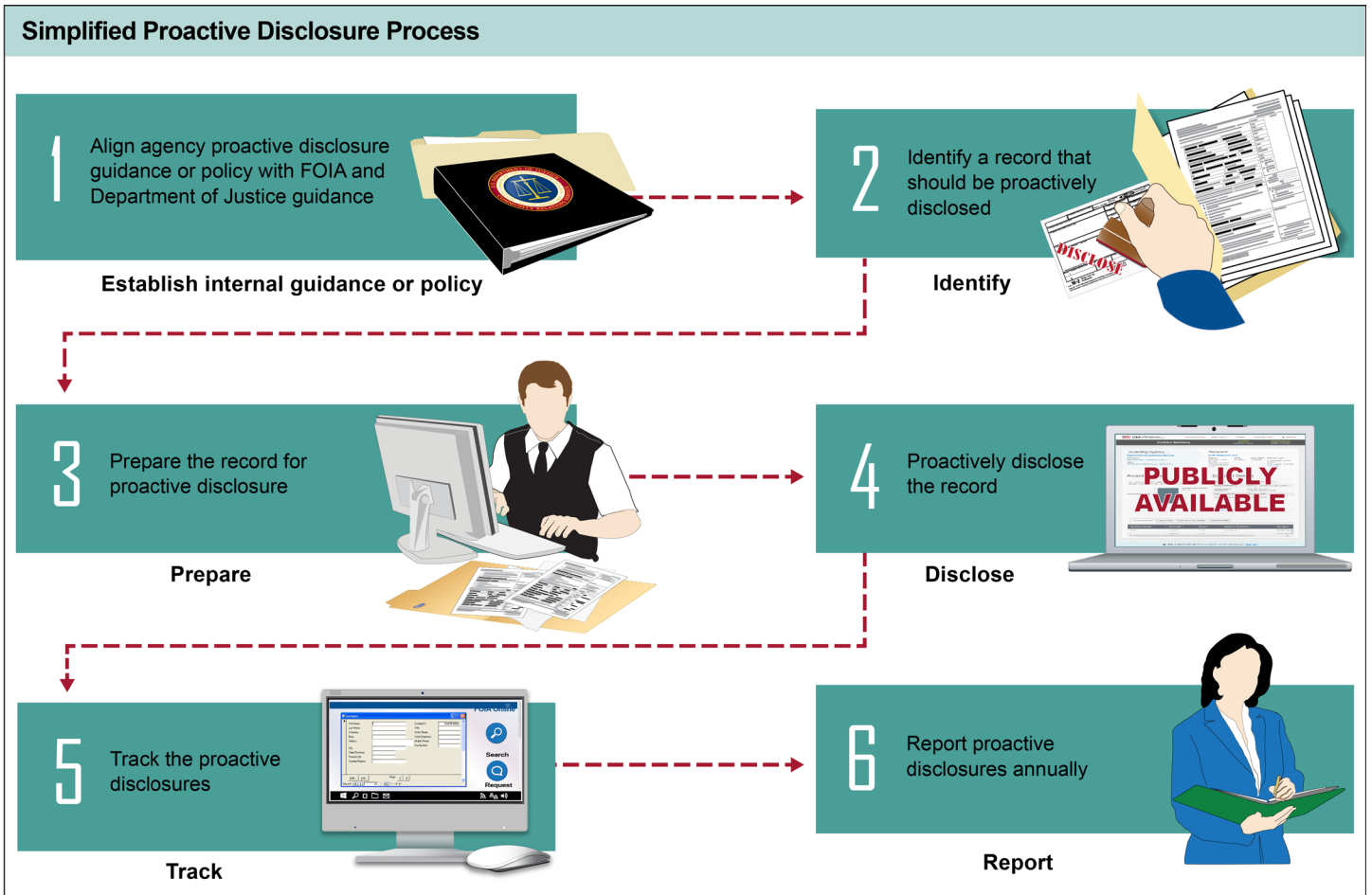
<sup>11</sup>Pub. L. No. 114-185, § 2, 130 Stat. at 541, *codified at* 5 U.S.C. § 552.

<sup>12</sup>Pub. L. No. 114-185, § 2, 130 Stat. at 543, *codified at* 5 U.S.C. § 552.

<sup>13</sup>FOIA requires the Chief FOIA Officer of each agency to review and report to the Attorney General on the agency's performance in implementing FOIA, in accordance with guidance from the Attorney General. 5 U.S.C. § 552(j)(2)(D). For the purposes of FOIA, "agency" is defined as each authority of the United States Government, whether or not it is subject to review by another agency, but excludes, among others, Congress, courts, territories or possessions, and the District of Columbia. 5 U.S.C. § 551(1).

<sup>14</sup>5 U.S.C. § 552(e)(1)(Q).

Figure 1: Simplified Overview of the Federal Government’s Freedom of Information Act Proactive Disclosure Process



Source: GAO analysis of the Freedom of Information Act (FOIA) proactive disclosure process. 5 U.S.C. § 552. | GAO-21-254

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## Two of Three Selected Agencies Did Not Update Policies or Processes to Align with 2016 Proactive Disclosure Requirements

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### FAA Lacks Documentation of Roles and Responsibilities for Proactive Disclosures

DOT's FOIA regulations and FAA's policy address proactive disclosure. FAA's FOIA program operates under DOT's FOIA regulations, which were last updated in 2019. The regulations include proactive disclosure requirements for records that have been previously released and requested three or more times.<sup>15</sup> FAA's FOIA policy, updated in April 2015, also establishes an expectation for staff to disclose records proactively without specific requests from the public. It encourages FAA's program offices to post information as proactive disclosures on their website, including records that may become the subject of subsequent requests.<sup>16</sup>

FAA officials told us they use the following processes for proactive disclosure:

- Program staff search for records requested three or more times when logging and assigning a FOIA request in their tracking system. FAA officials also stated that FOIA program staff receive a reminder of this step during their weekly staff meetings.
- Program staff can proactively identify records of interest to the public. FAA's FOIA coordinators, who serve as the liaison between their program office and the FOIA program, also can propose records for posting to FAA's FOIA library website. For example, the online library features Boeing 737 MAX records requested under FOIA that FAA determined would likely become the subject of subsequent records or had been requested three or more times, and records that it determined of sufficient public interest to disclose. FAA added this new web page in March 2020 and has continued to update it with new

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<sup>15</sup>49 C.F.R. § 7.12.

<sup>16</sup>FAA Order, Freedom of Information Act Program, April 30, 2015.

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records as of November 2020. FAA officials stated that its coordinators receive reminders about this process during their monthly meetings.

However, FAA has not documented these procedures. FAA's FOIA procedural manual, which is a separate document from the FOIA policy, is used by FOIA office staff as their standard operating procedures for processing FOIA requests. However, it does not document the day-to-day processes that FAA officials described to comply with proactive disclosure requirements.

FAA officials attributed the lack of documentation for these processes to management turnover. FAA's current FOIA manager, hired in September 2018, has focused on making program improvements, such as establishing new processes to track records posted to the FOIA library and checking for updates monthly.

FAA officials also stated that they plan to complete a full update of the procedural manual, last updated in 2015, by September 2021. FAA officials told us that the manual is updated periodically and this update will include proactive disclosure processes. Additionally, FAA's FOIA program has set a goal to develop new guidance for its coordinators on identifying proactive disclosures by September 2021. However, the officials could not provide any additional details about these plans.

Effective documentation establishes and communicates the knowledge necessary for personnel to implement processes, and allows management to hold personnel accountable for their assigned responsibilities, according to *Standards for Internal Control in the Federal Government*.<sup>17</sup> Documentation also provides a means to retain organizational knowledge and mitigate the risk of having that knowledge limited to a few personnel.

By not documenting proactive disclosure processes, FAA's FOIA program has an increased risk for losing organizational knowledge with further staff turnover. In addition, the program cannot readily evaluate how well its processes work for implementing proactive disclosure requirements.

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<sup>17</sup>[GAO-14-704G](#).

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## HUD's Implementation of Proactive Disclosures Is Hampered by Outdated Standard Operating Procedures

In 2017, HUD updated its FOIA regulations to, among other things, align with the statutory requirements for proactive disclosures.<sup>18</sup> In addition, its regulations provide a list of records generally made available on its FOIA website, such as HUD's highest scoring grant funding applications.<sup>19</sup>

However, HUD has not updated its policies to align with its regulations and the statutory requirements for proactive disclosure. The FOIA handbook, which provides departmental employees with guidance on processing FOIA requests and is posted on HUD's FOIA website, is dated June 1991.

Additionally, HUD's FOIA standard operating procedures document also has outdated sections, particularly the processes related to proactive disclosure. HUD officials estimated that the document is from around 2012. For example, the procedures direct FOIA staff to review requests for frequently-requested records to be posted on the FOIA website. These procedures lack a clear definition for a frequently-requested record and do not reflect the statutory requirement to proactively disclose records that have been released in response to a FOIA request and requested three or more times.

Although HUD officials described changes in their process, HUD has not revised its standard operating procedures to account for those changes. For example, the standard operating procedures state that FOIA intake staff should search for similar or duplicate FOIA requests when logging a new request into HUD's tracking system. However, HUD officials told us that they currently have no intake staff and that their former intake staff had not been responsible for performing searches related to proactive disclosure.

HUD officials stated they faced challenges ensuring compliance with proactive disclosure requirements amid staff turnover and competing agency priorities. According to agency officials, HUD's FOIA program has lost several experienced staff since 2018 and had frequent managerial turnover from 2016 to 2020. In addition, HUD filled these positions with staff transferred from other HUD offices that had little to no experience with FOIA.

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<sup>18</sup>82 Fed. Reg. 3622 (Jan. 12, 2017).

<sup>19</sup>24 C.F.R. § 15.101.

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According to HUD officials, they have the capacity to update the proactive disclosure sections of the standard operating procedures document in 2021 and may consider updating other policies, such as the FOIA handbook. HUD officials also stated that the department is committed to fully staffing the FOIA program as their budget permits. However, HUD officials did not provide any additional details on the potential updates.

Under *Standards for Internal Control in the Federal Government*, effective documentation establishes and communicates the knowledge necessary for personnel to implement processes, and allows management to hold personnel accountable for their assigned responsibilities. Documentation also provides a means to retain organizational knowledge and mitigate the risk of having that knowledge limited to a few personnel.

Without updated policies that document current requirements, roles, and responsibilities, HUD is likely to continue to face difficulties in monitoring and evaluating compliance with statutory requirements and its FOIA regulations.

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### Outdated Procedures and Staffing Challenges Contributed to HUD's Noncompliance with Proactive Disclosure Requirements in Fiscal Years 2016 through 2020

HUD did not proactively disclose some of the required records on its FOIA web page, nor was all the content kept current. As of January 2021, HUD's FOIA library did not contain any records that either (1) the agency determined had become or were likely to become the subject of subsequent requests, or (2) had been requested three or more times. The library contained a frequently-requested materials index that provided links to HUD program office web pages and topics listed as generally available online in its federal regulations. However, we found outdated content on some of these links, such as the most recent listing of FOIA requests processed from 2010.

HUD officials told us that HUD's program offices continued to proactively post information of interest to the public about their programs and operations. For example, in their 2018 *Chief FOIA Officer Report*, HUD reported posting updates to the Neighborhood Watch Early Warning System web-based application, which can be used to monitor the performance of HUD-insured mortgage loans. HUD most recently updated the system and its data in November 2020. This system is accessible on one of the web pages linked from the frequently-requested materials web page.

Officials also stated that some information previously proactively disclosed on HUD's FOIA website is available on other federal websites. For example, from 2007 through 2014, HUD posted lists of the highest



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scoring grant applications as frequently-requested records on the HUD FOIA website. Officials stated that records through 2020 are available on grants.gov, but we found that HUD did not document how to access this information on its own website.

According to HUD officials, because of HUD's outdated procedures and staff turnover, they have not been tracking and posting records that may have been requested three or more times. However, HUD officials told us that the department is committed to dedicating sufficient staffing to meet its statutory proactive disclosure requirements. This effort includes updating HUD's FOIA library. Although HUD has been filling vacant staff positions, HUD officials did not provide additional details regarding when HUD will implement these efforts.

By not proactively disclosing records as required, HUD is not complying with statutory or regulatory requirements and may be missing the opportunity to reduce the number of FOIA requests by identifying and posting frequently-requested records. In addition, the lack of information available online limits government transparency.

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### VHA Implemented Proactive Disclosure into Its Policy and Day-to-Day Procedures

VHA's policy directive, updated in February 2018, established responsibilities and procedural requirements that reflect the statutory proactive disclosure requirements, including ensuring that records that have been released in response to a FOIA request and requested three or more times be publicly posted, in electronic format, on VA's FOIA library.<sup>20</sup> Further, in May 2020, VHA updated their FOIA search request template to ask program offices whether previously-posted information could be used to respond to the request or whether the records compiled to respond to the request could be publicly posted as a new proactive disclosure. VHA officials stated that their proactive disclosure of frequently-requested records has allowed their program offices to concentrate on other priorities, such as the Coronavirus Disease 2019 response, rather than searching for records.

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<sup>20</sup>VA officials stated that VA's department-wide FOIA directive, published in 1998, is being updated (VA Handbook 6300.3, Procedures for Implementing the Freedom of Information Act, January 12, 1998). According to VA officials, VA's new directive will provide updated policies and procedures for VA's FOIA processing, which VHA officials said is largely modeled on VHA's most recent directive from February 2018. As of November 2020, VA officials stated that they expected to release the updated FOIA directive by May 2021.

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## The Three Selected Agencies Did Not Accurately Track and Report Proactive Disclosures

The FOIA Improvement Act of 2016 requires agencies to report the number of records they proactively disclosed each fiscal year in their *Annual FOIA Report*.<sup>21</sup> OIP guidance specifies that agencies must report the number of records both their FOIA and program offices proactively disclosed, although OIP allows agencies to estimate the latter. According to OIP guidance, frequently-requested records are generally posted to the FOIA office's website. Operational and other documents that are proactively disclosed, but have not been requested three or more times, may be posted to either the FOIA or program office website. In addition, OIP guidance instructs agency FOIA officials to coordinate with the appropriate program offices or other agency contacts to provide an estimate of the number of records posted to program office websites.

FAA, HUD, and VHA did not track and report on their proactive disclosures as required by statute and OIP guidance.

- **FAA.** The agency reported substantially fewer proactive disclosures in fiscal year 2019 than 2018 (see table 2). According to FAA officials, the decrease is probably the result of changes to how records were counted. Specifically, officials said that they think individual line items were counted as individual disclosures prior to a 2019 management change. By this method, one dataset posted to the FOIA library could be counted as many proactive disclosures. However, officials did not have any documentation to confirm how records were counted. Starting in fiscal year 2019, each record posted to the FOIA library is to be counted as one proactive disclosure.

FAA took steps to improve data quality but did not track and report all required categories of proactive disclosures. Officials in the agency's FOIA office said that they reported on the number of requests for records to be posted to the FOIA library, but they did not report the number of records its program offices proactively disclosed. These include records in required categories, such as final opinions, statements of policy, and administrative manuals. Officials told us that for the fiscal year 2019 *Annual FOIA Report*, they did not request data on proactive disclosures from the program offices because they were unaware that they needed to include proactive disclosures made by program offices.

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<sup>21</sup>Pub. L. No. 114-185, § 2, 130 Stat. at 540, *codified at* 5 U.S.C. § 552.

**Table 2: Department of Transportation (DOT) and Federal Aviation Administration (FAA) Reported Freedom of Information Act (FOIA) Proactive Disclosures**

Fiscal year	DOT FOIA offices (total)	DOT program offices (estimated total)	FAA FOIA office	FAA program offices (estimated total)
2019	40	3,768	8	0
2018	89,714	17,944	89,687	13,458
2017	90,654	13,077	90,486	12,506
2016	68,595	1,146	68,046	364

Source: FOIA.gov. | GAO-21-254

Note: The DOT FOIA offices (total) and DOT program offices (estimated total) count data for all DOT FOIA offices and program offices, respectively. FAA FOIA office data count only records disclosed by that office. FAA program offices (total estimated) counts proactive disclosure data for all FAA program offices.

- HUD.** The agency did not meet its FOIA proactive disclosure reporting requirements. From fiscal years 2017 to 2019, HUD reported no proactive disclosures in its *Annual FOIA Report* (see table 3). HUD officials stated that they had reported incorrect data and told us they had proactively disclosed some records about HUD’s programs and operations during this period. They provided a few examples of these proactive disclosures for fiscal years 2017 and 2018 but could not tell us the total number of proactive disclosures because they had not tracked the data.

Officials said they did not track proactive disclosures because of competing priorities and staffing challenges during the last 5 years. According to officials, there is now a renewed emphasis on ensuring that they review materials for compliance.

**Table 3: Department of Housing and Urban Development (HUD) Reported Freedom of Information Act (FOIA) Proactive Disclosures**

Fiscal year	HUD FOIA offices (total)	HUD program offices (estimated total)
2019	0	0
2018	0	0
2017	0	0
2016	12	0

Source: FOIA.gov. | GAO-21-254

- VHA.** The agency did not track all required categories of proactive disclosures. According to VHA officials, they did not meet the requirement to count and report data on proactive disclosures for fiscal years 2016 through 2019. During those years, VHA generally only counted proactive disclosures of frequently-requested records for its submission to the *VA Annual FOIA Report* (see table 4). VHA did not count or report proactive disclosures of agency data or records published on program office websites or Open Data at [data.va.gov](http://data.va.gov) as part of its *Annual FOIA Report*. According to VHA officials, their agency does not have a policy for how to count proactive disclosures made through program office websites, so they did not have relevant data.

According to officials, the VHA FOIA Office has reached out to the VA FOIA Service to discuss a department-wide methodology for counting and reporting proactive disclosures that are posted to program office websites.<sup>22</sup> Officials said that VA expects to have a methodology for counting and reporting proactive disclosures that are posted to program office websites by March 2021. However, VA is in the initial discussions around such a methodology and noted that the concept of counting and reporting proactive disclosures posted to program office websites is new to VA.

**Table 4: Department of Veterans Affairs (VA) and Veterans Health Administration (VHA) Reported Freedom of Information Act (FOIA) Proactive Disclosures**

Fiscal year	VA FOIA offices (total)	VA program offices (estimated total)	VHA FOIA office	VHA program offices (estimated total)
2019	66	0	16	0
2018	27	0	0	0
2017	759	326	58	42
2016	12	212	0	0

Source: FOIA.gov. | GAO-21-254

Note: The VA FOIA offices (total) and VA program offices (estimated total) count data for all VA FOIA offices and program offices, respectively. VHA FOIA office data count only records disclosed by that office. VHA program offices (total estimated) counts proactive disclosure data for all VHA program offices.

<sup>22</sup>The VA has a decentralized system for handling FOIA requests; VA FOIA Services is to provide department-wide oversight of these efforts.

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One of the ways agencies are held accountable for their administration of the law is through the *Annual FOIA Report*. OIP's guidance states that agencies should take steps to adequately track all information necessary to complete the report and that agencies are responsible for the accuracy of their data submissions. VHA officials noted that they were unaware of any negative effect of not implementing this guidance and that they had not received any complaints from the public or concerns from OIP or OGIS regarding VHA's non-compliance. However, without accurate and complete data, agency officials are not able to make fully informed decisions about their agencies' proactive disclosure process and evaluate their performance. Further, these agencies are not providing information that would be useful to the Congress and the public in assessing the agencies' transparency.

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## OIP Provided Guidance and Training but Could Strengthen its Oversight

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### OIP Issued Guidance and Conducted Training on Proactive Disclosure Requirements

To encourage agency compliance with proactive disclosure requirements, OIP published guidance and hosted training on the topic. For example, OIP included a chapter on the topic in the *Department of Justice Guide to the Freedom of Information Act*, which described the types of records agencies are required to proactively disclose, records exempt from disclosure, and details of the requirement to post records electronically. It also noted the importance of technology in effective implementation of proactive disclosure requirements. OIP also published an implementation checklist with the steps agencies should take to identify and post frequently-requested records.

To help agencies prepare their *Chief FOIA Officers Reports*, OIP issued updated guidance for agencies to address in their annual reports. The guidance directs each agency to describe examples of records it has proactively disclosed, steps it took to make the posted information more useful to the public, and any best practices the agency used and challenges the agency faced related to proactive disclosures.

Similarly, to help agencies prepare their *Annual FOIA Reports*, OIP issues guidance and provides training to agencies. Consistent with its

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statutory role to encourage compliance, OIP's guidance states that agencies should have a practice of systematically posting information online before any FOIA requests are received. The guidance also states that all agencies should identify documents for proactive disclosure and substantially increase the amount of material available on their websites.

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### OIP Inquired about Data Accuracy but Did Not Follow Up with Agencies Reporting Zero Proactive Disclosures

OIP summarizes the agencies' *Annual FOIA Reports* each year. OIP's summaries of the *Annual FOIA Reports* include a paragraph on proactive disclosures with the total number and what agency reported the most proactive disclosures. These reports did not include information on agencies reporting zero proactive disclosures. OIP officials noted that this information can be found on DOJ's FOIA.gov website where it can be searched and compared. Our review of agency-reported proactive disclosure data posted on FOIA.gov found that 25 of 118 agencies reported zero proactive disclosures in fiscal years 2018 and 2019.<sup>23</sup>

OIP officials told us that they had not followed up during the *Annual FOIA Report* review process to ask why an agency was not making proactive disclosures. According to OIP officials, agencies are responsible for the accuracy and completeness of their *Annual FOIA Reports*. OIP officials said that they asked agencies that report zero proactive disclosures to confirm the accuracy of the reporting and, in some cases, confirmed that an agency understands what records are required to be proactively disclosed. OIP officials also noted that agencies have differing abilities to increase their proactive disclosures each year. For example, OIP said that some agencies with a low volume of requests or primarily first-party access requests may not receive multiple requests for the same record.<sup>24</sup>

For example, HUD reported zero proactive disclosures for fiscal years 2017 to 2019. As part of its 2018 review process, OIP asked HUD to confirm the accuracy of its proactive disclosure reporting, but did not ask why HUD had zero proactive disclosures. OIP officials also noted that when they met individually with Chief FOIA Officers to discuss FOIA

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<sup>23</sup>Of the 25 agencies that reported zero proactive disclosures in both fiscal years 2018 and 2019, 14 received fewer than 10 FOIA requests, on average, in those years. According to DOJ officials, agencies with a low volume of requests might not have proactive disclosures—in particular, proactive disclosures of frequently requested records—to report.

<sup>24</sup>"First-party" requests are FOIA requests from individuals seeking access to records about themselves.

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reports and any associated challenges, the discussions covered proactive disclosures.

By not noting which agencies reported zero proactive disclosures in its summary of the *Annual FOIA Reports* and not following up with agencies that reported zero proactive disclosures, OIP is not using two available tools that may strengthen its efforts to encourage agencies to make proactive disclosures as required by FOIA. These agencies may also be missing opportunities to reduce time spent responding to requests for substantially the same information.

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### OIP's *Annual FOIA Report* Guidance on Reporting Proactive Disclosures Lacks Clarity

Consistent with its statutory role to encourage compliance, OIP provides annual guidance and training for agencies on how to prepare the *Annual FOIA Report*. The guidance includes the categories of proactive disclosures to report and states that agencies should report the number of records that were proactively disclosed. OIP guidance also states that one of the ways agencies are held accountable for their administration of the law is through the *Annual FOIA Report*. OIP's 2018, 2019, and 2020 *Annual FOIA Report* training materials included information regarding the categories of proactive disclosures to report.

However, neither OIP's guidance nor training materials specified what to count as a record. OIP officials stated that there is no standard for defining a record, but they generally advise agencies to count one post as one record. They also said that datasets may be counted differently depending on how the dataset is posted. For example, multiple datasets could be counted as multiple records or a dataset drawing from multiple datasets could be counted as one record.

Without clear guidance from OIP, approaches to counting proactive disclosures varied among agencies and over time, even within an agency. OGIS officials also stated that agencies are inconsistently applying OIP's *Annual FOIA Report* guidance on reporting proactive disclosures. Some agencies are reporting the number of pages proactively disclosed while other agencies are reporting the number of records posted, according to OGIS officials.

Two of the selected agencies had difficulties with counting and reporting proactive disclosures. First, VHA officials told us they found OIP's *Annual FOIA Report* guidance to be unclear about how to count certain proactive disclosures. For example, they said it is not clear whether to count a zip file with multiple data sets as one record or multiple records, and whether to count every update to a data set as another record. Second, FAA

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officials said that it may have reported each individual line item as a proactive disclosure in fiscal years 2016 through 2018.

Agencies that experience FOIA staff turnover may have gaps in their knowledge of proactive disclosure reporting requirements and therefore have a greater need for clear guidance about proactive disclosure reporting requirements. The Chief FOIA Officers Council Technology Committee reported that some agencies experience high turnover rates for employees with FOIA responsibilities, which can be a hurdle for maintaining consistent practices.<sup>25</sup> Both FAA and HUD officials also reported management turnover in their FOIA offices.

OIP's lack of clear guidance to agencies about how to count proactive disclosures for the *Annual FOIA Reports* may result in inaccurate or inconsistent proactive disclosure reporting by agencies. In addition, inaccurate or inconsistent reporting by agencies could hinder OIP's ability to encourage agency implementation of proactive disclosure requirements as OIP would lack reliable information to inform their actions.

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## OGIS Provided Agencies with Information and Conducted Compliance Reviews to Help Address Challenges

As part of its role to review agency FOIA compliance, OGIS identified barriers to agency implementation. OIP and OGIS officials stated that making records accessible to people with disabilities is a challenge for agencies' proactive disclosures.<sup>26</sup> OGIS recently published a report that included information from 25 agencies and found that nearly half of those agencies stated that making proactive disclosures accessible was a challenge.<sup>27</sup>

Making records accessible can be resource intensive and thus potentially could prevent an agency from posting the record, according to OGIS officials. They said that the process to make each record accessible includes more than 10 different steps, which can be a challenge for agencies with a high volume of records to post because each record must be addressed individually. OGIS officials stated that making records

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<sup>25</sup>Chief FOIA Officers Council, *Report of the Technology Committee of the Chief FOIA Officers (CFO) Council – Best Practices and Recommendations*, Feb. 14, 2020.

<sup>26</sup>Section 508 of the Rehabilitation Act of 1973 requires federal departments and agencies to make their electronic and information technology accessible to individuals with disabilities who are members of the public. 29 U.S.C. § 794d(a).

<sup>27</sup>Office of Government Information Services, *OGIS Issue Assessment: Methods Agencies Use to Prepare Documents for Posting on Agency Freedom of Information Act (FOIA) Websites*, Dec. 16, 2020.



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accessible was particularly difficult for those that have been redacted or that include multiple graphics because these records generally require additional steps.

In our interviews of the three selected agencies, none identified making records accessible as a challenge. However, HUD did not report any proactive disclosures from fiscal years 2017 to 2019 and thus would not have needed to make proactive disclosures accessible. Additionally, FAA officials stated that its FOIA office has a compliance specialist for making records accessible. Further, VHA officials said their FOIA office uses a suite of software tools to make records accessible.

OIP and OGIS are working to help agencies make proactive disclosures accessible.<sup>28</sup> The Chief FOIA Officers Council, co-chaired by the Directors of OIP and OGIS, recently formed a technology committee working group to address making proactive disclosures accessible. In 2020, an OIP workshop focused on best practices for the use of technology, such as posting more records online.

In addition, OGIS recently issued a report that included information on two challenges agencies face when preparing a record for posting, which is one of the steps to proactively disclosing a record. The two identified challenges are related to making records accessible and searchable. The report included impediments to agencies making records accessible, strategies for making proactive disclosures accessible, and examples of how particular agencies are complying.<sup>29</sup> For example, the report suggested that an agency partner with agency information technology staff to streamline the process for posting records. Agency staff with information technology expertise can help ensure that FOIA records are accessible. The report also discussed making proactive disclosures more

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<sup>28</sup>OIP officials stated that OIP does not provide guidance to agencies on compliance with accessibility requirements under Section 508 of the Rehabilitation Act of 1973. The U.S. Access Board and the General Services Administration are responsible for providing assistance concerning the Section 508 requirements. The U.S. Access Board develops and maintains Section 508 accessibility requirements and provides training and technical assistance. The General Services Administration has been charged with educating federal employees and building the infrastructure to support Section 508 implementation. <sup>29</sup> U.S.C. § 794d(b).

<sup>29</sup>*OGIS Issue Assessment: Methods Agencies Use to Prepare Documents for Posting on Agency Freedom of Information Act (FOIA) Websites.*

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useful to the public by ensuring that records are searchable so that users can retrieve accurate and complete search results.

OGIS also conducted 10 agency FOIA compliance reviews since 2016. The most recent of these compliance reviews examined the extent to which an agency's regulations and guidance reflected proactive disclosure requirements. Three other compliance reviews mentioned requirements to make records accessible.

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## Conclusions

Federal agencies' proactive disclosures, required by the FOIA Improvement Act of 2016, help enhance government transparency and the efficient use of agency resources.<sup>30</sup> However, FAA and HUD have not fully updated their policies and processes to reflect current proactive disclosure requirements. This increases the risk of agency noncompliance, especially when the agencies experience staff turnover. Additionally, by not proactively disclosing records, HUD is not complying with FOIA requirements. Further, by not reporting complete and accurate information on their proactive disclosures, as required, FAA, HUD, and VHA lack information useful for managing their FOIA programs and for Congress and the public to assess the agencies' transparency.

In providing government-wide guidance and training on FOIA, OIP has a key role in supporting agency compliance with proactive disclosure and reporting requirements. By not following up with agencies that report zero proactive disclosures, OIP is missing an opportunity to help make government information more readily available and potentially decrease the number of incoming FOIA requests. Further, without clear guidance to agencies on how to count proactive disclosures, OIP increases the risk that agencies will report inconsistent and inaccurate information.

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## Recommendations for Executive Action

We are making eight recommendations: two to FAA, three to HUD, one to VHA, and two to OIP.

- The FAA Administrator should document proactive disclosure requirements and procedures to clearly establish roles and responsibilities for complying with the FOIA statute and DOT regulations. (Recommendation 1)
- The HUD Chief FOIA Officer should update HUD proactive disclosure policies, such as its standard operating procedures, to document

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<sup>30</sup>Pub. L. No. 114-185, § 2, 130 Stat. at 540, *codified at* 5 U.S.C. § 552.

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current requirements, roles, and responsibilities for complying with the FOIA statute and HUD regulations. (Recommendation 2)

- The HUD Chief FOIA Officer should comply with proactive disclosure requirements, including identifying and electronically posting all records that have been released in response to a FOIA request and requested three or more times. (Recommendation 3)
- The FAA Administrator should track the number of proactive disclosures for all required categories and report this information in DOT's *Annual FOIA Report*. (Recommendation 4)
- The HUD Chief FOIA Officer should track the number of proactive disclosures and report this information in its *Annual FOIA Report*. (Recommendation 5)
- The VA Under Secretary for Health should track the number of proactive disclosures for all required categories and report this information in VA's *Annual FOIA Report*. (Recommendation 6)
- The Director of the Office of Information Policy should encourage agencies that report zero proactive disclosures to proactively disclose as required by FOIA by, for example, including information on which agencies are reporting zero proactive disclosures in its summary of *Annual FOIA Reports* and following-up with these agencies. (Recommendation 7)
- The Director of the Office of Information Policy should clarify how agencies should count proactive disclosures for the *Annual FOIA Report* by, for example, including this information in the *Annual FOIA Report* guidance or training. (Recommendation 8)

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## Agency Comments and Our Evaluation

We provided a draft of this report to DOJ, NARA, DOT, HUD, and VA for review. In comments reproduced in appendix I, OIP, responding for DOJ, agreed with the recommendations and noted that OIP has added a step in its process for the FY 2020 *Annual FOIA Report* to follow up with agencies reporting zero proactive disclosures and request an explanation. We will continue to monitor OIP's progress implementing this additional process step.

NARA provided comments, which are reproduced in appendix II. NARA noted that OGIS similarly found that agencies did not fully comply with FOIA's statutory proactive disclosure requirements. In comments reproduced in appendix III, DOT agreed with the recommendations. HUD agreed with the recommendations by email. OIP, NARA, and HUD provided technical comments, which we incorporated, as appropriate. We


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received comments from VA too late to be included in the final product, but VA agreed with the recommendation. Although the comments were not included, they do not significantly affect the facts or conclusions we presented.

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As agreed with your offices, unless you publicly announce the contents of this report earlier, we plan no further distribution until 9 days from the report date. At that time, we will send copies to the appropriate congressional committees and the heads of the Department of Justice, National Archives and Records Administration, Department of Transportation, Department of Housing and Urban Development, and Department of Veterans Affairs. In addition, the report is available at no charge on the GAO website at <https://www.gao.gov>.

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 who made key contributions to this report are listed in appendix IV.



Michelle Sager  
Director  
Strategic Issues

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*List of Requesters*

The Honorable Charles E. Grassley  
Ranking Member  
Committee on the Judiciary  
United States Senate

The Honorable Jim Jordan  
Ranking Member  
Committee on the Judiciary  
House of Representatives

The Honorable Carolyn B. Maloney  
Chairwoman  
The Honorable James Comer  
Ranking Member  
Committee on Oversight and Reform  
House of Representatives

The Honorable John Cornyn  
United States Senate

The Honorable Dianne Feinstein  
United States Senate

The Honorable Patrick Leahy  
United States Senate

# Appendix I: Comments from the Department of Justice, Office of Information Policy



U.S. Department of Justice  
Office of Information Policy  
Sixth Floor  
441 G Street, NW  
Washington, DC 20530-0001

Telephone: (202) 514-3642

February 15, 2021

Ms. Michelle Sager  
Director, Strategic Issues  
Government Accountability Office  
Washington, D.C. 20548

Dear Ms. Sager:

Thank you for the opportunity to review and comment on the draft Government Accountability Office (GAO) report on the Freedom of Information Act's (FOIA) proactive disclosure requirements. The Department takes very seriously its responsibility of overseeing and encouraging governmentwide compliance with the FOIA. In particular, the Department has engaged in a range of efforts to encourage the proactive disclosure of information. As GAO notes, the [Department's FOIA Guidelines](#) emphasize that "agencies should readily and systematically post information online in advance of any public request." OIP has also issued comprehensive [guidance](#) on all aspects of proactive disclosures and held both regular trainings and multiple workshops to assist agencies in identifying best practices and strategies for promoting proactive disclosures. As you know, OIP has also dedicated a whole section of agencies' Chief FOIA Officer Reports to reporting on proactive disclosures.

OIP has also taken great efforts to assist agencies in complying with their Annual FOIA Reporting obligations. The [Department of Justice Annual FOIA Report Handbook](#) details all of the requirements for this report and OIP provides annual training to agencies on fulfilling this important obligation. In addition, OIP works directly with each agency to assist them in identifying and resolving any data quality issues that can be identified by reviewing the aggregate metrics. In addition to reviewing each report and these established trainings and resources, OIP's FOIA Compliance Staff is made available to any agency with questions concerning the reporting requirements. As noted in our technical comments, we believe GAO should reference all of these efforts when you are describing OIP's actions with respect to proactive disclosures and the publication of the Annual Report. This would provide greater detail and ensure that OIP's efforts are put into the appropriate context.

We look forward to strengthening these efforts even further by implementing GAO's recommendations. To further promote consistency in the reporting of proactive disclosures in the Annual FOIA Report, OIP will update its guidance to more clearly detail how these metrics should be calculated. Additionally, OIP has already established an additional step in its Annual FOIA Report review process to obtain more information about why an agency may be reporting zero proactive disclosures. The majority of agencies that report zero

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**Appendix I: Comments from the Department of  
Justice, Office of Information Policy**

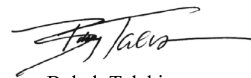
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proactive disclosures receive a very low volume of requests and our review of the reports for Fiscal Year 2020 so far confirms that some of these agencies simply do not have records that fall within the specific requirements of Subsection (a)(2) of the FOIA. This is not to say, however, that they have not proactively posted other information beyond that which is required by the FOIA consistent with OIP's guidance.

Thank you again for the opportunity to review the draft report. If you have any questions regarding this response, you or your staff may contact me at (202) 514-3642.

Sincerely,



Bobak Talebian  
Director

# Appendix II: Comments from the National Archives and Records Administration



Archivist of the  
United States

16 February 2021

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 report, *Freedom of Information Act: Actions Needed to Improve Agency Compliance with Proactive Disclosure Requirements* (GAO-21-254). Your findings that three agencies do not fully comply with FOIA's statutory requirements for proactive disclosure reflect similar findings by the Office of Government Information Services (OGIS).

I appreciate your referencing OGIS's important work on this issue in your report. OGIS's assessment report, [Methods Agencies Use to Prepare Documents for Posting on Agency Freedom of Information Act \(FOIA\) Websites](#), found that nearly half of the 25 agencies OGIS surveyed in 2020 for its assessment report cited compliance with the accessibility requirements of Section 508 of the Rehabilitation Act, as amended, as a roadblock to posting documents to their respective electronic FOIA libraries/reading rooms.

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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National Archives and Records Administration • 700 Pennsylvania Avenue, NW • Washington, DC 20408 • [www.archives.gov](http://www.archives.gov)



# Appendix III: Comments from the Department of Transportation

U.S. Department of  
Transportation

Office of the Secretary  
of Transportation

February 10, 2021

Michelle Sager  
Director, Strategic Issues  
U.S. Government Accountability Office (GAO)  
441 G Street NW  
Washington, DC 20548

Assistant Secretary  
for Administration

1200 New Jersey Ave., SE  
Washington, DC 20590

Dear Ms. Sager:

The Federal Aviation Administration (FAA) is committed to complying with the Freedom of Information Act (FOIA) of 2016's statutory requirements by proactively disclosing records without waiting for specific requests from the public. The FAA has established a business goal to develop guidance on how to identify Agency records that fall into the four categories identified pursuant to the FOIA, including those that are of sufficient public interest to warrant proactive disclosure, making them readily available for public inspection. The FAA is actively engaged in developing this guidance and collaborating via an intra-FAA working group, in consultation with the Department of Transportation (DOT) Chief FOIA Officer, to document and implement a standard operating procedure necessary to ensure compliance with proactive disclosure requirements.

Upon review of GAO's draft report, the Department concurs with the two recommendations that the FAA Administrator should (1) document proactive disclosure requirements and procedures to clearly establish roles and responsibilities for complying with the FOIA statute and DOT regulations and (2) track the number of proactive disclosures for all required categories and report this information to DOT's *Annual FOIA Report*. We will provide a detailed response to each recommendation within 180 days of final report issuance.

We appreciate the opportunity to respond to the GAO draft report. Please contact Madeline Chulumovich, Audit Relations and Program Improvement, at (202) 366-6512, with any questions or if the GAO would like to obtain additional details about these comments.

Sincerely,



Keith Washington  
Deputy Assistant Secretary for Administration

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# Appendix IV: GAO Contact and Staff Acknowledgments

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## GAO Contact

Michelle Sager, 202-512-6806 or [sagerm@gao.gov](mailto:sagerm@gao.gov)

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## Staff Acknowledgements

In addition to the contact named above, Susan E. Murphy (Assistant Director), Melissa L. King (Analyst In Charge), Maya Chakko, Jacqueline Chapin, Giny Cheong, Gina M. Hoover, Samantha Lalisian, Hannah Laufe, Krista Loose, Joseph Recht, and Robert Robinson.

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