



**Assessing Freedom of Information Act (FOIA) Compliance through
the 2016 National Archives and Records Administration's
Records Management Self-Assessment**

EXECUTIVE SUMMARY

In 2017, the Office of Government Information Services (OGIS) collaborated with our National Archives and Records Administration (NARA) colleagues in the Office of the Chief Records Officer (CRO) to learn more about agency Freedom of Information Act (FOIA) policies and procedures through an annual survey called the Records Management Self-Assessment (RSMA). This partnership allowed OGIS to leverage over eight years of experience with conducting agency self-assessments and allowed OGIS, for the first time since our doors opened in 2009, to gather comprehensive data about FOIA operations from almost every agency that is subject to FOIA.

Key points that OGIS identified in the responses to FOIA questions included in the RMSA survey:

- *Most agencies are aware of their responsibility to identify records that are of general interest or use to the public and that are appropriate for public disclosure, and many agencies have a process in place for doing so.*
- *Most agencies report that they use basic management tools in their FOIA operations, including having Standard Operating Procedures, and using performance-based measures; a small number of agencies reported that they do not use performance measures for FOIA due to the low number of requests received which allows them to meet the statutory 20-working-day response time without the use of performance measures.*
- *Most agencies report using technology during the FOIA process; the agencies that reported not using technology processed a relatively small number of requests during FY 2016.*
- *Agencies use a variety of tools to track FOIA requests; access to de-duplication tools can be useful for processing a large volume of electronic records, particularly email.*
- *A majority of agencies report that they alert requesters as to OGIS's dispute resolution services; OGIS's caseload statistics indicate that requesters are confused by the correspondence they receive from certain agencies.*

BACKGROUND

OGIS is statutorily required to review agencies' FOIA policies and procedures, review and assess agencies' compliance with the FOIA, and identify procedures and methods for improving compliance with the FOIA. OGIS accomplishes this mandate through various interactions with agencies and requesters. Through our Compliance Program, we review and recommend changes to agencies' policies and procedures in our assessments of agency FOIA programs and FOIA issues, and we regularly comment on proposed agency FOIA regulations. We also learn about agency practices through our leadership of NARA's FOIA Advisory Committee and the Chief FOIA Officers Council; The FOIA Advisory Committee in particular is a valuable resource for fostering dialogue among members of the FOIA community (both Federal and private sector) and members of the public, and for development of recommendations to improve FOIA administration. Our understanding of FOIA policies and procedures is also informed through our work helping the public and Federal agencies better understand FOIA and resolve FOIA disputes through the use of dispute resolution.

Our collaboration with the CRO to include FOIA questions in the 2016 RMSA has significantly expanded our understanding of FOIA policies and procedures across the government. Since OGIS officially stood up its compliance program in 2015, we have published in-depth compliance assessments of 10 FOIA programs at three agencies and provided comments on FOIA regulations proposed or issued by more than half of the 115 agencies currently subject to FOIA.¹ OGIS has also taken an in-depth look at the policies and procedures related to a particular type of requester correspondence at 20 agencies as part of our assessment of the use of "still interested letters"² and approximately 127 FOIA professionals from 49 agencies participated in a self-assessment survey OGIS developed to help FOIA professionals identify potential compliance issues in 2016. Still, there were some agencies, particularly those that do not process many FOIA requests each year, with which we have had very limited, or no interaction. Answers to the 11 FOIA questions in the CRO's Calendar Year (CY) 2016 RMSA help close that gap.³

Each year, Federal agencies, which are subject to the Federal Records Act,⁴ are required to conduct a RMSA and submit those findings to NARA. The goal of the self-assessments is to determine whether Federal agencies are compliant with statutory and regulatory records management requirements. NARA's CRO has issued reports on RMSA results since 2009.⁵ Our partnership allowed OGIS to

¹ The website www.foia.gov lists 117 agencies that are subject to FOIA; two of those agencies, the Special Inspector General for Iraq Reconstruction, and the Recovery Accountability and Transparency Board, closed in October 2013 and September 2015, respectively; accessed November 13, 2017, <https://www.foia.gov/report-makerequest.html>. As a result, for purposes of this report OGIS will use 115 as the total agency number.

² In the course of processing FOIA requests, some Federal agencies ask requesters if they are still interested in the requested records; these letters typically come after a fairly lengthy delay in responding to the request and set a deadline for the requester's affirmative response; receiving none, the agency closes the request.

³ The Records Management Self-Assessment, conducted annually since 2010, is a requirement for Federal agencies subject to the Federal Records Act (44 U.S.C. Chapter 31). For more information about the survey, see <https://www.archives.gov/records-mgmt/resources/self-assessment.html>.

⁴ See 44 U.S.C. Chapter 31.

⁵ For more information about the survey, see <https://www.archives.gov/records-mgmt/resources/self-assessment.html>.

leverage NARA's over eight years of experience with conducting the RMSA, and the high response rate the RMSA has generated in the last few years.⁶

In the last several years, NARA has made several changes in records management policies, particularly with regard to email. These changes have significant implications for FOIA programs because of the increased volume of electronic records that may be responsive to a request. The questions we included in the 2016 RMSA are designed to increase our understanding of the relationship between FOIA and records management. Some of the questions helped us assess agencies' efforts to identify records for proactive disclosure. We also included questions designed to further inform observations we have made during our formal agency assessments regarding overall management of the FOIA program, use of technology, and communications with requesters.⁷

CRO often points out that strong records management is the backbone of open government, and OGIS has long recognized the importance of strong records management to an efficient and compliant FOIA program and smoother FOIA process. In addition to the questions discussed in detail below, OGIS asked agencies to report on the relationship between their Agency Records Officers and FOIA Officers, and whether the FOIA office is able to easily locate records. In its 2016 oversight report, the CRO noted, based on the responses to this question, that

The ability to find and provide records is essential to a successful FOIA program. FOIA and RM programs are usually separate within agencies; however, there should be a working relationship between the two. Agency Records Officers should use the ability of the FOIA program to locate information as one measure of effective records management implementation. In the RMSA, we found that FOIA and Records Officers work together and FOIA Officers felt they could find records responsive to FOIA requests as needed.⁸

⁶ In CY 2014, the RMSA response rate was 98 percent; and in CY 2015 and CY 2016 the response rate was 100 percent, respectively.

⁷ OGIS's assessments of agency FOIA programs, consistent with FOIA's mandate that OGIS review agency FOIA policies, procedures and compliance, 5 U.S.C. § 552(h)(2), focus on program management, technology and communications. For more information about OGIS's compliance program, see <https://www.archives.gov/ogis/foia-compliance-program/about-compliance-program>.

⁸ For additional information about the CRO's oversight reports, including a discussion of additional responses to the 2016 RMSA and the methodology, see <https://www.archives.gov/files/records-mgmt/resources/2016-federal-agency-records-management-annual-report.pdf>.

DISCUSSION OF RMSA RESULTS

PROACTIVE DISCLOSURE

Questions asked in this section relate to agency efforts to identify records that are suitable for proactive disclosure.

The FOIA Improvement Act of 2016 amended the Federal Records Act, 44 U.S.C. § 3102, to require that agencies establish “procedures for identifying records of general interest or use to the public that are appropriate for public disclosure, and for posting such records in a publicly accessible electronic format.”

Even before the 2016 FOIA amendments (which now require agencies to post records that are requested three or more times), OGIS had recommended that agencies identify records to proactively disclose. In agency-specific assessments, OGIS has recommended that agencies create processes for ensuring that released records of interest to the public are placed in a public repository, and that agencies regularly identify records to release proactively.⁹ The U.S. Department of Justice’s Office of Information Policy (OIP) released guidance in 2015 that encouraged agencies to release documents to the public before a FOIA request is made.¹⁰ To increase our understanding of agency efforts to identify records for proactive disclosure, OGIS asked two questions about the ability of the public to access agency records without having to file a FOIA request.¹¹

Agencies reported that they generally are aware of the new requirement and are identifying records that are appropriate for proactive disclosure. Only 7 percent of agencies reported that they were not aware of the FOIA Improvement Act’s changes to the Federal Records Act; 83 percent of respondents said they were familiar with changes to the law and 11 percent said they were familiar with the statutory changes to some extent.¹² Of those agencies that responded that they are aware of the new requirement, 83 percent reported that their agencies have started to identify records that are of general interest or use to the public that are appropriate for public disclosure; 14 percent responded that they had done so to some

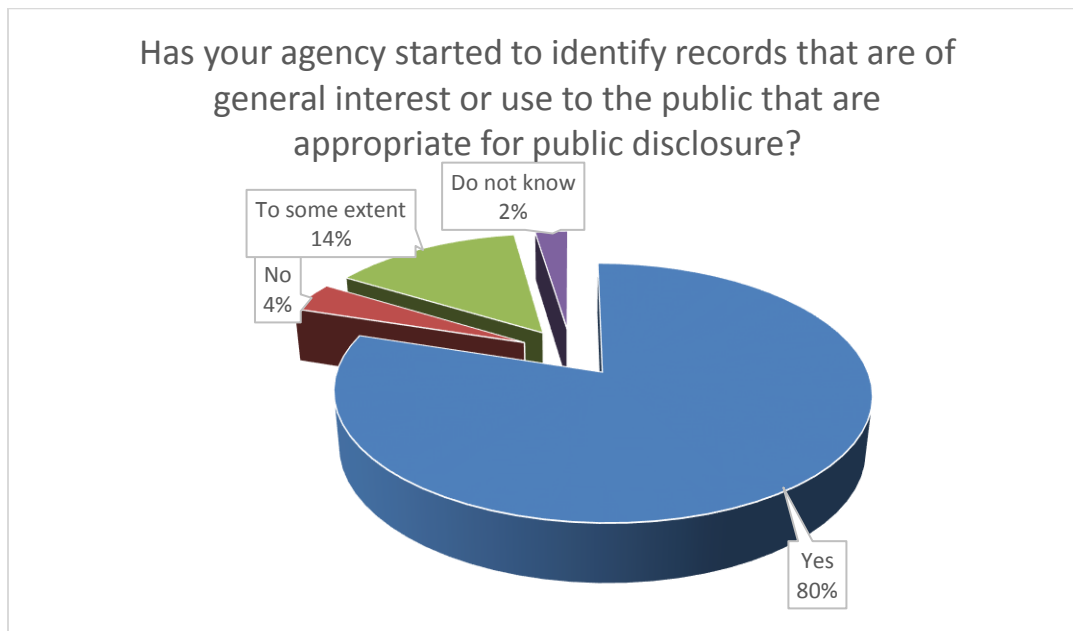
⁹ OGIS Compliance Review of US Customs and Border Protection, “Good Management Practices in Place; Clear Communication and Increased Technology Use Needed,” March 9, 2016, accessed November 13, 2017, <https://www.archives.gov/files/ogis/assets/cbp-foia-compliance-report.pdf>, and OGIS Assessment of the National Archives and Records Administration’s FOIA Program, Phase I: Operational Records, September 24, 2014, accessed November 13, 2017, <https://www.archives.gov/files/ogis/assets/nara-foia-assessment-phase-i-final.pdf>.

¹⁰ “Office of Information Policy Releases New Guidance for Agency Proactive Disclosures,” accessed November 13, 2017, <https://www.justice.gov/oip/blog/oip-releases-new-guidance-agency-proactive-disclosures>.

¹¹ “32. Have FOIA Programs throughout your agency identified performance measures for FOIA activities?” and “33. If no: Why Not?”

¹² Some percentages may appear to add up to greater or less than 100 percent because percentages have been rounded up to whole numbers.

extent, while 6 percent said that they had not started or did not know if their agency had started to identify records.



OGIS Observations

- 1. Agency Records Officers report that most agencies are aware of their responsibility to identify records that are of general interest or use to the public and that are appropriate for public disclosure.*
- 2. Agency Records Officers report that many agencies have a process in place for doing so.*

FOIA PROGRAM MANAGEMENT

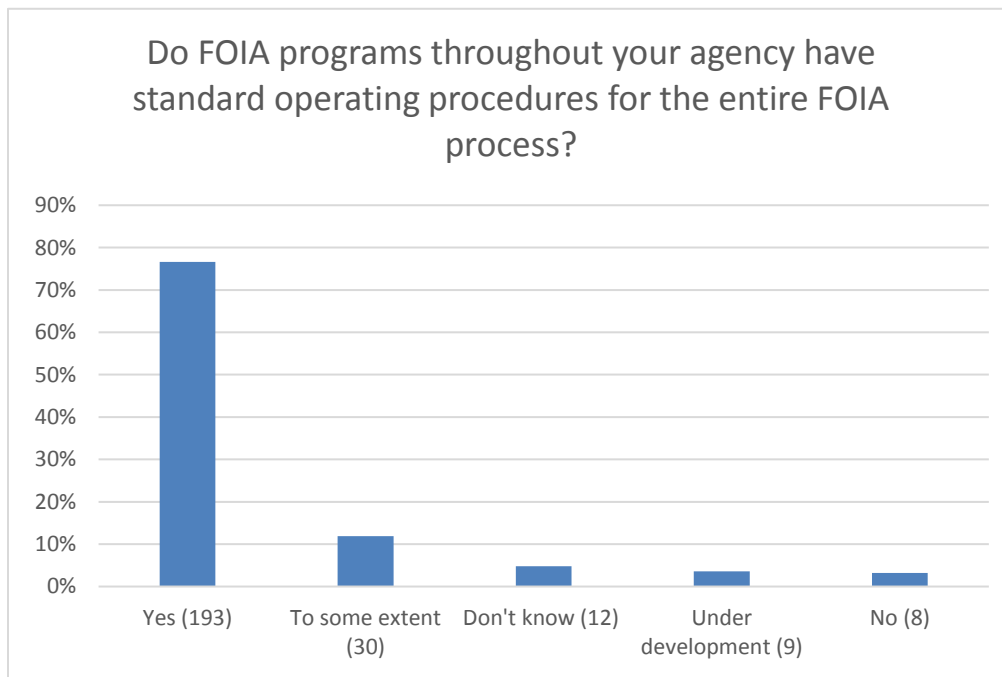
Questions asked in this section relate to agency use of Standard Operating Procedures (SOPs) and performance metrics to oversee and manage the FOIA program.

Management of an agency's FOIA program is a key area OGIS reviews as part of its agency assessments. OGIS has observed that FOIA programs that appropriately manage their resources, including staff, are generally more efficient and effective than those programs that do not use basic management tools, including SOPs and performance metrics.

SOPs ensure that FOIA employees have a shared understanding of their responsibilities, and can be a valuable training tool for new employees. In the compliance assessments that OGIS has published to date, OGIS observed that four agencies lacked SOPs for all or part of the FOIA process. One NARA FOIA office had no SOPs for processing operational records and relied instead on the institutional

knowledge and a good working relationship between the office’s two FOIA processors.¹³ Shortly after our review, one of the office’s FOIA processors left. The draft SOPs the office has been developing have been useful in smoothing the transition of new personnel as they join the office. Two other FOIA offices we reviewed had procedures for only parts of the FOIA process,¹⁴ and a fourth office was missing SOPs for processing a type of FOIA request that the agency receives frequently.¹⁵

A slightly larger percentage of respondents reported having SOPs than those in OGIS’s small sample of agencies that have gone through our assessment program. Seventy-seven percent of survey respondents reported having SOPs for processing FOIA requests. Twelve percent reported SOPs for some parts of the FOIA process, while 4 percent said they are developing SOPs.



OGIS also has observed that efficient FOIA programs often have performance measures, including the number of pages processed, reduction in response times, reduction in backlog, or increase in proactive disclosures. In our assessments of two DHS components, Customs and Border Protection (CBP) and Immigration and Customs Enforcement (ICE), we noted that the adoption of performance measures was key to their success in decreasing their backlogs and improving the timeliness of responses. After we

¹³ National Archives and Records Administration’s FOIA Program: Phase I: Operational Records, September 24, 2014; accessed November 13, 2017, <https://www.archives.gov/files/ogis/assets/nara-foia-assessment-phase-i-final.pdf>.

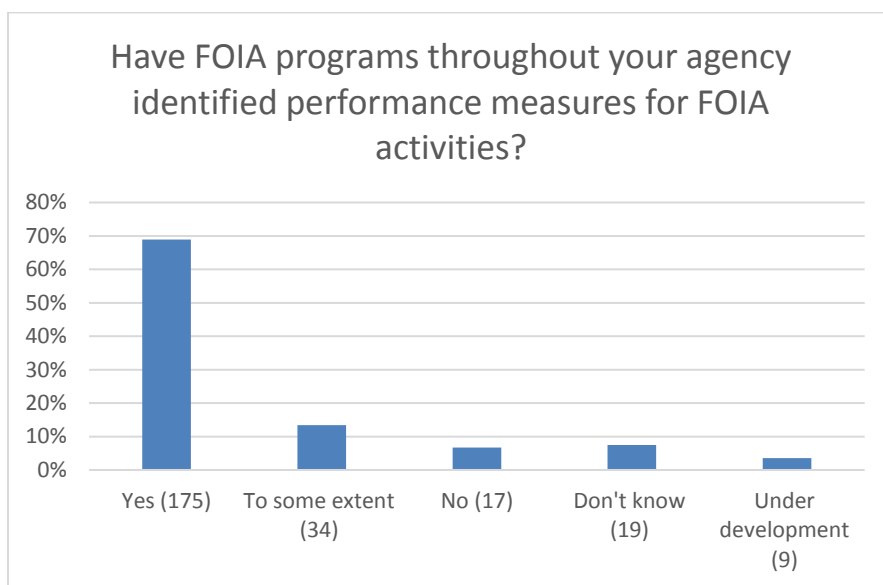
¹⁴ OGIS Compliance Review of Transportation Security Administration’s FOIA Program: “Management Oversight, Training on Technology Use, and Clear Communication with Requesters Needed,” January 11, 2016; accessed November 13, 2017, [https://www.archives.gov/files/ogis/assets/transportation-security-administration-\(tsa\)-freedom-of-information-act-\(foia\)-compliance-report.pdf](https://www.archives.gov/files/ogis/assets/transportation-security-administration-(tsa)-freedom-of-information-act-(foia)-compliance-report.pdf). OGIS Compliance Review of the U.S. Coast Guard: “Effective Management of Decentralized Program, Better Use of Technology, and Improved Communication with Requesters Needed,” September 25, 2015; accessed November 13, 2017, <https://www.archives.gov/ogis/foia-compliance-program/agency-compliance-reports/dhs/uscg>.

¹⁵ OGIS Compliance Review of U.S. Secret Service’s FOIA Program: “Management Control, Technology Support, and Improved Communication Needed,” July 27, 2016, accessed November 13, 2017, <https://www.archives.gov/ogis/foia-compliance-program/agency-compliance-reports/dhs/ussc>.

published our assessment of the Transportation Security Administration (TSA), TSA reported that adopting performance measures consistent with OGIS’s recommendations led to backlog reductions and improved timeliness.

Agencies largely report that they have used performance metrics to monitor and oversee their FOIA program. Almost 70 percent of respondents reported having performance measures for FOIA activities, such as number of pages processed, reduction in response times, reduction in backlog, or increase in proactive disclosures.

About half of the 7 percent of respondents who reported having no performance measures reported that their agencies do not need such measures because their agencies receive so few FOIA requests that they are able to respond to requests within the statutory 20-working-day response period.



OGIS Observations:

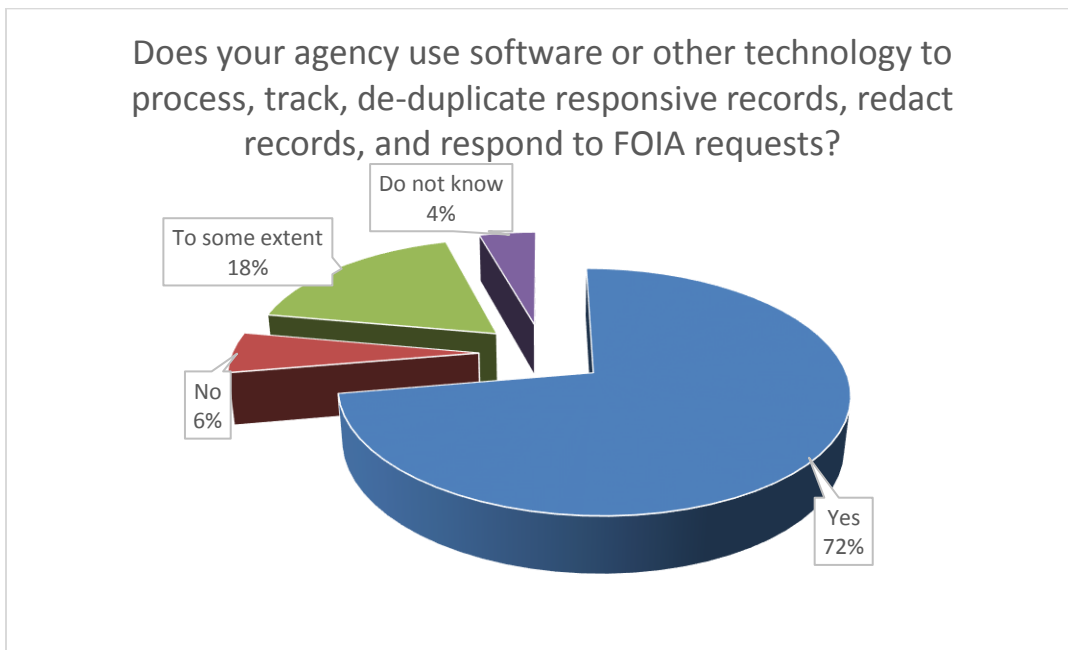
- 1. Most agencies report that they have SOPs in place for their FOIA programs, and that they use performance measures.***
- 2. Some agencies do not use performance-based measures for FOIA because a low number of requests received allow them to meet the statutory 20-working-day statutory response time without the use of performance measures.***

TECHNOLOGY

Questions asked in this section relate to agency use of technology during the FOIA process.

During an agency assessment, OGIS reviews whether the agency is effectively and efficiently using technology throughout the process. In our assessments of TSA, the Federal Emergency Management Administration, the U.S. Coast Guard, and the U.S. Secret Service, we found that the ineffective use of technology created delays in the process and contributed to an insufficient administrative record. Conversely, the use of technology was key to successful backlog reductions at CBP and ICE. Additionally, we found that the use of technology is crucial to the ability of the Consumer Financial Protection Bureau to respond to most FOIA requests within the statutory deadline.

To add to our understanding of the kinds of technologies agencies are using throughout the FOIA process, we asked respondents whether they use software or other technology to process, track, de-duplicate responsive records, redact records, and respond to FOIA requests. Less than 10 percent of respondents reported that the agency does **not** use technology or reported they do not know if the agency uses technology during the FOIA process. Agencies that closed fewer than 275 FOIA requests during FY 2016 reported that they do not use technology to assist with processing requests; most of those agencies closed fewer than 50 FOIA requests during FY 2016.



OGIS has observed that agencies are using a wide range of technology tools to help with the FOIA process—from sophisticated tracking systems able to handle large volumes of requests to simple spreadsheets to track volumes of requests so small as to not require investing in a processing system. Twenty-seven percent of the 15 Cabinet-level departments have FOIA tracking systems custom-built for their individual departments. *FOIAonline*, a government-built tracking and processing system, is used by one or more agencies at four of the 15 Cabinet-level departments, and *FOIAXpress*, a proprietary

tracking and processing system, is used by components at 11 of the 15 Cabinet-level departments. None of the agencies that reported using a simple spreadsheet to process requests closed more than 250 FOIA requests in FY 2016.

We did not ask what technology an agency uses for which part of the FOIA process; however, 11 agency respondents specifically mentioned that they either do not have software to de-duplicate responsive records or their capability is extremely limited. OGIS has observed that de-duplication software can increase efficiency and lower processing costs by removing the time-consuming and imprecise task of manually removing duplicate responsive records. Agencies report that this tool is particularly useful for processing email records, which are becoming increasingly important as the volume of email records generated and managed electronically continues to increase.

OGIS Observations:

- 1. Most agencies report using technology during the FOIA process; the agencies that reported not using technology processed a relatively small number of requests during FY 2016.*
- 2. Agencies use a variety of tools to track FOIA requests.*
- 3. Access to de-duplication tools are useful for processing a large volume of electronic records, particularly email.*

COMMUNICATION

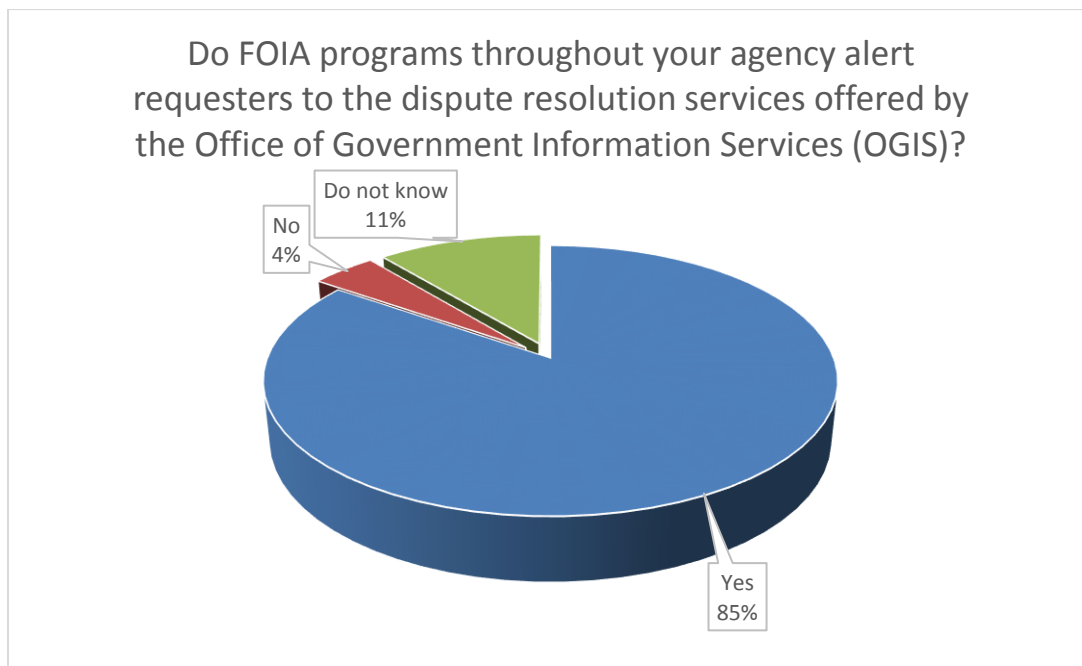
Questions asked in this section relate to agencies' alerting requesters to OGIS's dispute resolution services as required.

In addition to OGIS's compliance activities, we also provide dispute resolution services to help resolve—and prevent—disputes between FOIA requester and agencies. Through our interactions with agencies and requesters, we have observed that requesters are often confused about what steps they should take to complete the FOIA administrative process. In reviewing agency correspondence that requesters send us or that we review as part of our agency assessments, we have noted that some agency response letters are confusing, often leaving out certain key information, such as the contact information for the agency FOIA Public Liaison. This has led to a number of misdirected inquiries to OGIS. We have worked with individual agencies to address these issues and have explored the issue of clearer communication about our dispute resolution services with requesters through the Chief FOIA Officers' Council, our blog posts and our website. We have encouraged agencies to use the updated model template language in their response letters posted on both OGIS's and OIP's websites.¹⁶

¹⁶ "Model Language for Agency Response Letters," accessed November 27, 2017, <https://www.archives.gov/ogis/mediation-program/model-letter-language>; "Implementation Checklist and Sample Language for OIP Guidance on New Requirements for FOIA Response Letters and Notices Extending the FOIA's Time Limits Due to Unusual Circumstances," accessed November 27, 2017, <https://www.justice.gov/oip/oip-guidance/implementation-checklist-and-sample-language-for-new-requirements-for-foia-response-letters>.

The FOIA Improvement Act of 2016 requires agencies to alert requesters to dispute resolution services offered by OGIS when there is an adverse determination as well as when notifying the requester that the agency needs 10 additional days to process a request due to unusual circumstances. OIP updated its 2016 guidance directing agencies to notify requesters of OGIS’s services at these two stages of the administrative process.¹⁷ In addition, 2010 OIP guidance directed agencies to inform requesters in the agency’s appeal response letter about the availability of OGIS’s dispute resolution services as a non-exclusive alternative to litigation.¹⁸

In response to whether FOIA programs alert requesters to the dispute resolution services offered by OGIS, 85 percent of survey respondents said that their agencies **do** inform requesters of OGIS’s services. Four percent said their agencies **do not** inform requesters of OGIS’s services. And 11 percent said they were not sure whether their agencies told requesters about OGIS services.



These numbers are consistent with OGIS’s 160-percent increase in cases between Fiscal Year (FY) 2016, when we logged 1,759 cases and FY 2017, when we logged 4,560 cases. What is not clear from the RMSA responses is at what *point* in the FOIA process agencies are informing requesters of OGIS’s services, the clarity of agencies’ written communications with requesters, and therefore the ultimate effectiveness of those communications.

¹⁷ “New Requirements for FOIA Response Letters, Including Affording Ninety Days to file an Administrative Appeal, and New Notification Requirements for Notices Extending FOIA’s Time Limits Due to Unusual Circumstances,” July 18, 2017, accessed November 13, 2017, https://www.justice.gov/oip/oip-guidance/new_requirements_for_FOIA_response_letters_from_FOIA_improvement_act_of_2016

¹⁸ “Notifying Requesters of the Mediation Services Offered by OGIS,” July 9, 2010, accessed November 13, 2017, <https://www.justice.gov/oip/blog/foia-post-2010-oip-guidance-notifying-requesters-mediation-services-offered-ogis>

OGIS Observations

- 1. A majority of agencies report that they alert requesters as to OGIS's dispute resolution services.***
- 2. OGIS's caseload statistics indicate that requesters are confused by the correspondence they receive from certain agencies.***
- 3. Agencies are encouraged to use the model template language that is available on both OGIS's and OIP's websites.***

CONCLUSION

OGIS is grateful for the CRO's willingness to include FOIA questions in the RMSA, and we look forward to continuing our work together on the RMSA. The RMSA is a valuable tool for helping us expand our review of agency FOIA policies and procedures, and for identifying potential compliance issues that merit further exploration. We also believe that continuing to include FOIA questions in the RMSA will help encourage coordination and awareness between FOIA Officers and Agency Records Officers, which will be invaluable as the government transitions to fully electronic record keeping.

METHODOLOGY

The self-assessment began on January 9, 2017 and had a response deadline of March 17, 2017. The CRO's office conducts the RMSA via an online survey tool that creates a unique link used to submit survey responses. For the past two years, the RMSA has had a nearly 100-percent response rate. All 258 agencies which received the RMSA link completed this year's assessment in accordance with NARA's responsibility to report on the state of Federal records management.

The respondent list includes records officers at all Cabinet-level departments, departmental components, and independent agencies. A few non-Executive Branch agencies voluntarily take part in the assessment, but are not subject to FOIA, bringing the total number of FOIA responses to 254. NARA instructed Agency Records Managers to consult with their agency FOIA Officers to answer the FOIA-related questions.

The full RMSA contains scored and non-scored questions. The scored, or "core," questions remain largely the same every year in order to track essential elements of a compliant records management program. None of the FOIA questions were scored.

To see the full text of the survey including background information and questions, see Question 26 through Question 36 in Appendix IV (Pages 51-54 of the PDF): <https://www.archives.gov/files/records-mgmt/resources/2016-federal-agency-records-management-annual-report.pdf>.