



## **Assessing Freedom of Information Act Compliance through the 2017 National Archives and Records Administration's Records Management Self-Assessment**

### **EXECUTIVE SUMMARY**

In 2017 the Office of Government Information Services (OGIS) continued its collaboration with the Chief Records Officer (CRO) for the U.S. Government to gather government-wide information about Freedom of Information Act (FOIA) policies and procedures. Data collected through FOIA questions included in the 2017 Records Management Self-Assessment (RMSA) complements the observations we make through working with agencies and requesters on FOIA compliance and dispute resolution and through our leadership of the Chief FOIA Officers Council and the National Archives and Records Administration (NARA)'s FOIA Advisory Committee.

The 2017 RMSA survey included six questions regarding FOIA implementation. The questions examine the relationship between the agency's FOIA and records management operations; communication with requesters; and FOIA search practices. Key results include:

- FOIA and Records Officers generally work together and FOIA Officers report that records needed to respond to FOIA requests are generally accessible.
- Records tend to be more readily accessible when FOIA professionals and records managers are located in the same office/division and when the Records Officer and FOIA Officer have a good working relationship – or are the same person.
- Most agencies report that FOIA offices can conduct some searches without contacting other agency employees.
- Most agencies are notifying requesters of OGIS's dispute resolution services during the FOIA process.
- A majority of agencies are primarily using email to send records – and responses – to FOIA requesters.

CRO often points out that strong records management is the backbone of open government; the ability to find and provide records is essential to a successful FOIA program. OGIS has long recognized that strong records management is essential to an efficient and compliant FOIA program and ensures a smoother FOIA process. We look forward to continuing our collaboration with the CRO and sharing our analysis of the results with the public following the 2018 RMSA results.

## **BACKGROUND**

OGIS launched our coordination with the CRO for the U.S. Government to collect government-wide information related to Freedom of Information Act compliance through the 2016 Records Management Self-Assessment (RMSA) survey. The RMSA is an annual agency self-assessment and reporting tool developed and managed by the CRO. The CRO has issued reports on RMSA results since 2009.<sup>1</sup>

Our partnership with the CRO allows OGIS to leverage NARA's investments in survey technology and the CRO's expertise in collecting self-reported compliance information. The high response rate the RMSA has generated in the last few years<sup>2</sup> helps OGIS develop a better understanding of FOIA implementation across the government, and complements the observations we make through working with agencies and requesters on FOIA compliance and dispute resolution and through our leadership of the Chief FOIA Officers Council and NARA's FOIA Advisory Committee.

The 2017 RMSA, conducted early in Calendar Year (CY) 2018, included six questions regarding FOIA implementation. Three questions examined the relationship between the agency's FOIA and records management operations; two of these questions are similar to questions included in the 2016 RMSA. Two questions related to the agency's communications with requesters, including whether the agency is informing requesters of OGIS' dispute resolution services as required by the law. The one remaining question concerned agency search procedures, which is a topic addressed during the 2016-2018 term of the FOIA Advisory Committee, established by NARA to foster dialogue between Federal agencies and FOIA requesters, and develop recommendations for improving FOIA administration.

## **DISCUSSION OF RMSA RESULTS**

### **Records Management and FOIA**

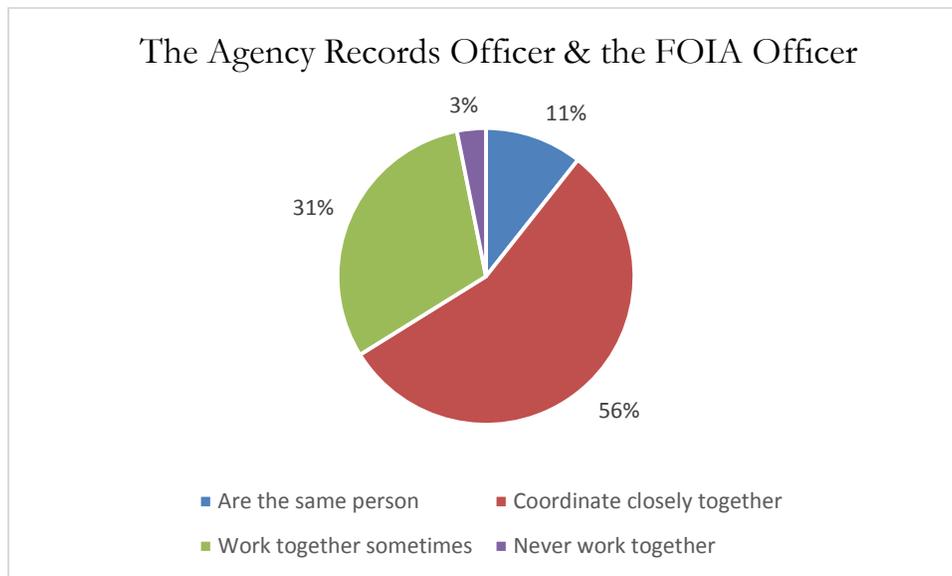
Responses to the 2017 RMSA built on the baseline information we collected in the 2016 RMSA regarding the relationship between agency FOIA programs and records management programs, and provided us with additional insights into agency operations.

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<sup>1</sup> See <https://www.archives.gov/records-mgmt/resources/self-assessment.html>.

<sup>2</sup> In Calendar Year (CY) 2014, the RMSA response rate was 98 percent; in CY 2015 and CY 2016, the response rate was 100 percent each year; and in CY 2017 the RMSA response rate was 99 percent.

In its 2016 report on records management at Federal agencies, the CRO noted that the responses showed FOIA and Records Officers work together and that FOIA Officers thought they could find records responsive to FOIA requests as needed.<sup>3</sup> We note similar results in the 2017 RMSA survey.

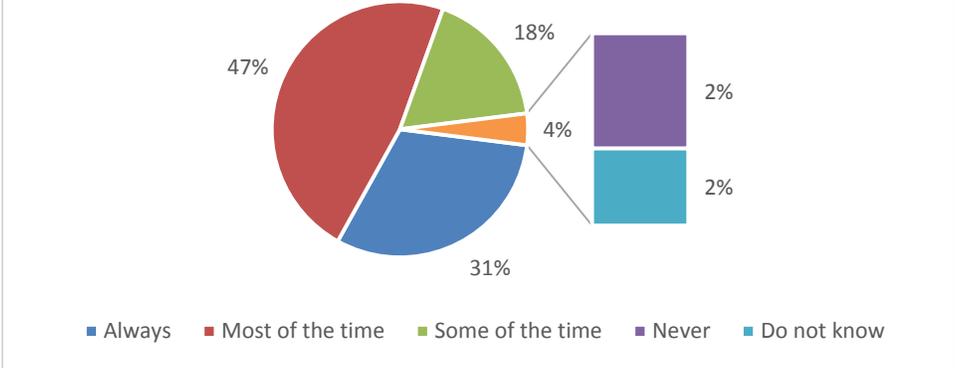


About two-thirds of agencies reported that the Agency Records Officer and FOIA Officer are the same person or that they collaborate closely. Compared to the 2016 RMSA survey, a much smaller percentage of agencies reported that the Records and FOIA Officer do not work together: in 2016, 24 percent of agencies reported the Records Officer and FOIA Officer “know each other but do not work together,” and in 2017 only 3 percent of agencies responded that they “never work together.” In 2017, agencies were also given the option to say the Records Officer and Agency Officer “work together sometimes.”

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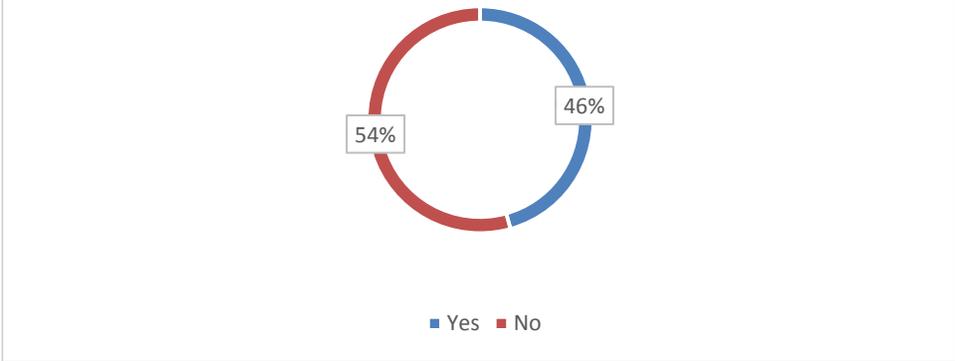
<sup>3</sup> See <https://www.archives.gov/files/records-mgmt/resources/2016-federal-agency-records-management-annual-report.pdf>.

Records needed to respond to a FOIA request are readily accessible & located by staff responsible for FOIA



Most agencies (78 percent) responded that records needed to respond to a FOIA request are readily accessible and located by staff responsible for FOIA “all” or “most” of the time. Only 2 percent of agencies said that records can “never” be located; and 2 percent responded that they do not know. In 2016, agencies reported the ease of locating records needed to respond to a FOIA request on a sliding scale between 1 and 5, with 1 being “with difficulty” and 5 being “easily.” The proportion of respondents providing scores between 4 and 5 in 2016 roughly matches the proportion of respondents in 2017 who said that records are found “all” or “most” of the time. Similarly, the proportion of respondents who responded 1 to 1.9 is similar to the proportion of respondents who reported records responsive to FOIA requests are “never” readily accessible and located.

Are the Agency Records Officer & the FOIA Officer in the same office/division within your agency?



The 2017 RMSA also asked agencies to share information about the organizational placement of the FOIA and Records Management Offices. More than half of the agencies (54 percent) reported that the FOIA and Records Management Programs are not located in the same office or division.

We analyzed the data to better understand how the organizational structure of the agency and the relationship between the FOIA and Records Officer affect the ability of the agency to locate records for FOIA purposes.

<b>Records needed to respond to a FOIA request are readily accessible &amp; located by staff responsible for FOIA</b>		
	When programs are in same office/division	When programs are not in same office/division
Always	31%	30%
<b>Most of the time</b>	<b>53%</b>	<b>43%</b>
Some of the time	14%	21%
Never	1%	4%
Do not know	1%	2%

We found that similar proportions of respondents reported that records can “always” be readily found regardless of the agency’s organizational structure; a similar proportion of respondents in each category said that records are readily available “most” or “some” of the time, although the segment of agencies reporting records are readily available “most” of the time was larger when the programs were in the same office/division and the segment of agencies reporting records are “never” readily accessible was larger among agencies where the programs are not in the same division.

<b>Records needed to respond to a FOIA request are readily accessible &amp; located by staff responsible for FOIA</b>			
	When Records Officer and FOIA Officer never work together	When Records Officer and FOIA Officer sometimes & never work together	When Records Officer and FOIA Officer collaborate & are the same person
Always	25%	27%	33%
Most of the time	13%	34%	54%
Some of the time	50%	28%	12%
Never	0%	6%	1%
Do not know	13%	5%	4%

Agencies generally reported that records are less likely to be readily accessible when the Records Officer and the FOIA Officer never work together: in this category, 50 percent of respondents said records are readily accessible to FOIA staff only some of the time. Similarly, the percentage of agencies that reported records are always readily accessible or readily accessible most of the time is lower among agencies where the Records Office and the FOIA Officer only sometimes or never work together.

## Observations:

- FOIA Officers and Records Officers generally worked together and FOIA Officers reported records needed to respond to FOIA requests were generally accessible.
- FOIA and records management were in the same office/division at slightly less than half of the agencies.
- Records tended to be more readily accessible when FOIA and Records Management Programs were located in the same office/division and when the Records Officer and the FOIA Officer have a good working relationship or are the same person.

## Communication

While our compliance assessment process recognizes that there is no one-size-fits-all approach to administering FOIA—each agency’s records are unique and as such, management of the FOIA process differs—we have observed that successful FOIA programs share three general characteristics: they manage their resources appropriately; they use technology effectively; and they communicate well with requesters. The 2017 RMSA included two questions about agency communication with requesters:

- At what point in the FOIA process does your agency inform requesters of the Office of Government Information Services’ (OGIS) dispute resolution services? and
- What mode does your agency most often use to release records under FOIA?

The FOIA Improvement Act of 2016 requires agencies to alert requesters of OGIS’s dispute resolution services when there is an adverse determination as well as to notify the requester when the agency needs more than 10 additional days to process a request due to unusual circumstances. OIP issued guidance directing agencies to notify requesters of OGIS’s services at these two stages of the administrative process.<sup>4</sup> In addition, 2010 OIP guidance directed agencies to inform requesters in the agency’s appeal response letters about the availability of OGIS’s dispute resolution services as a non-exclusive alternative to litigation.<sup>5</sup> OGIS and OIP have posted model language agencies can use to satisfy these requirements.<sup>6</sup>

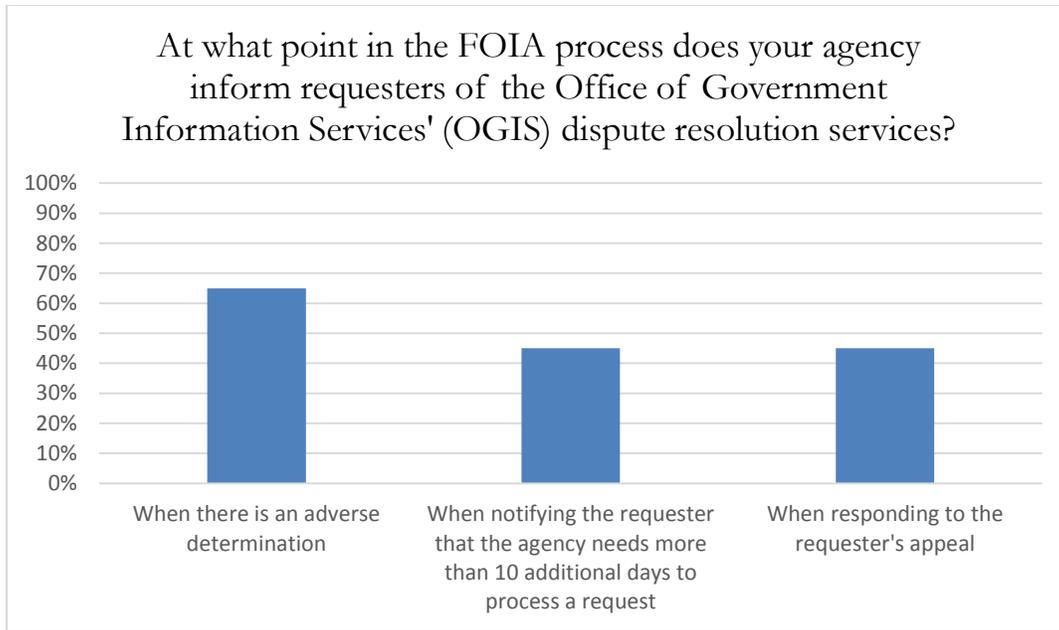
In the 2016 RMSA, 85 percent of agencies reported that they were alerting requesters of OGIS’s dispute resolution services; 4 percent of agencies reported that they were not alerting requesters of OGIS’s dispute resolution services, and the remaining agencies said they did not know. The percentage of agencies responding that they never alerted requesters of OGIS’s dispute resolution services dropped to 2 percent in 2017. The agencies that reported never alerting requesters of OGIS’s dispute resolution services generally processed very few or no FOIA requests.

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<sup>4</sup> See [https://www.justice.gov/oip/oip-guidance/new\\_requirements\\_for\\_FOIA\\_response\\_letters\\_from\\_FOIA\\_improvement\\_act\\_of\\_2016](https://www.justice.gov/oip/oip-guidance/new_requirements_for_FOIA_response_letters_from_FOIA_improvement_act_of_2016).

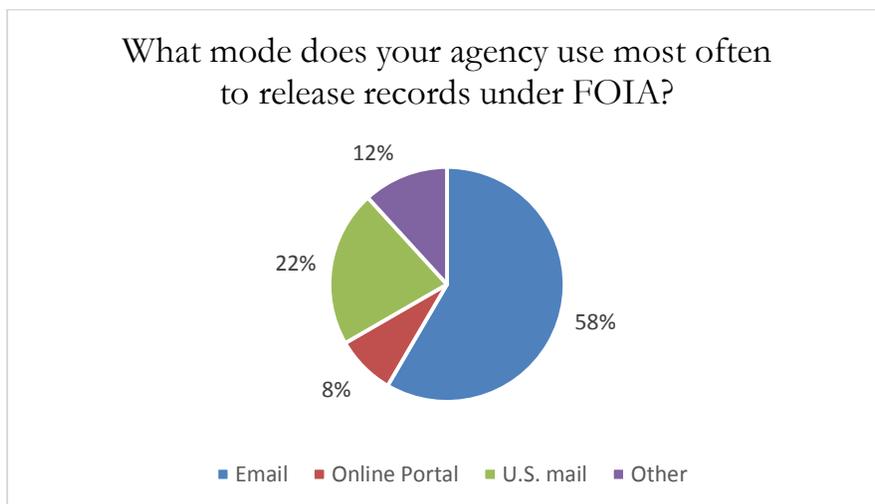
<sup>5</sup> See <https://www.justice.gov/oip/blog/foia-post-2010-oip-guidance-notifying-requesters-mediation-services-offered-ogis>.

<sup>6</sup> See <https://www.archives.gov/ogis/mediation-program/model-letter-language>.



Sixty-five percent of agencies reported including a notice of OGIS’s dispute resolution services in letters to requesters when there is an adverse determination; 45 percent of agencies indicated that they alert requesters to OGIS’s dispute resolution services when notifying requesters that there are unusual circumstances and the agency will need additional time beyond the law’s 30-day deadline to process the request. Forty-five percent of agency respondents also indicated they alert requesters of OGIS’s dispute resolution services when responding to a requester’s appeal.

Thirty-one percent of agencies also reported that they share information about OGIS’s dispute resolution services at other times during the FOIA process. Agencies reported that they include information about OGIS’s dispute resolution services in all correspondence with requesters; in initial acknowledgement letters; in fee assessment letters; in interim responses to FOIA requests; on their websites; and in conversations with requesters.



A majority of agencies reported that they primarily release records to FOIA requesters using email, about one-quarter of agencies primarily send requesters records in the regular mail, and less than one-tenth primarily use an online portal. The remaining agencies reported that they were exempt from FOIA or had not released records under FOIA; use email and mail or email and a portal equally; or that they used a secure file transfer to transmit records to requesters.

### **Observations**

- Most agencies are notifying requesters of OGIS's dispute resolution services during the FOIA process.
- Not all agencies comply with the statute's directive to alert requesters of OGIS's dispute resolution services at key moments in the FOIA process.
- Most agencies are primarily using email to send records to FOIA requesters.

### **Searches**

The 2016-2018 term of the FOIA Advisory Committee identified agency searches for records responsive to FOIA requests as one of the challenges that agency FOIA programs face in light of an ever-increasing volume of electronic records. During its deliberations, the FOIA Advisory Committee considered the results of a survey regarding agency FOIA search practices conducted by the National Security Archive and the Project On Government Oversight (POGO).<sup>7</sup> In its survey results, the National Security Archive and POGO point out that it is often more efficient to have FOIA offices conduct searches for records, rather than have the FOIA office rely on program offices to conduct searches and forward responsive records to the FOIA office for processing.

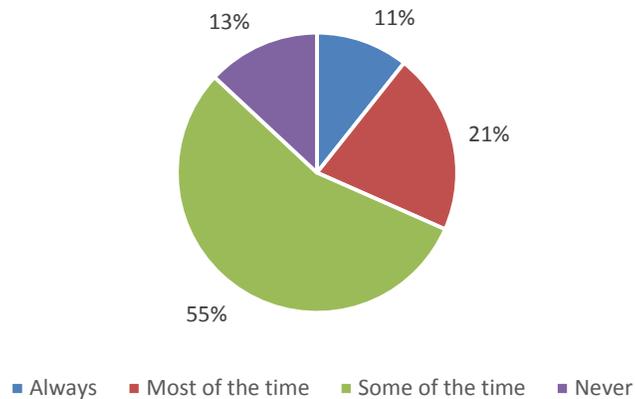
In its Final Report and Recommendations, the Committee noted a need for more comprehensive and uniform information regarding how agencies search for records that are responsive to FOIA requests.<sup>8</sup> To improve our understanding of how FOIA searches are conducted across the government, the RMSA asked agencies to report on whether FOIA offices can conduct searches without contacting others (*i.e.*, program offices).

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<sup>7</sup> See <https://unredacted.com/2017/03/31/foia-search-survey-results-and-analysis/>.

<sup>8</sup> See <https://www.archives.gov/files/final-report-and-recommendations-of-2016-2018-foia-advisory-committee.pdf>.

Staff responsible for FOIA can search for records without contacting others (*i.e.*, program offices):



A large majority of agencies responded that the FOIA office can conduct some searches without contacting others. Thirteen percent of agencies reported that the agency never conducts FOIA searches without contacting others; 11 percent of agencies reported that the FOIA program can always conduct searches without contacting others.

**Observations:**

- The 2016-2018 FOIA Advisory Committee identified a need for comprehensive and uniform information regarding agency search procedures.
- Most agencies report that FOIA offices can conduct some searches without contacting others.

**CONCLUSION**

OGIS is grateful for the CRO’s continued willingness to include FOIA questions in the RMSA, and we look forward to continuing this successful collaboration. 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. The tie between strong records management and a compliant and efficient FOIA process is crucial, and helps promote a more open and transparent government.

## METHODOLOGY

The self-assessment began on January 8, 2018, and had a response deadline of March 16, 2018. 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 three years, the RMSA has had a nearly 100 percent response rate. Ninety-nine percent of 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 that are not subject to FOIA voluntarily take part in the assessment which brings the total number of FOIA responses to 255. 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.

The CRO posts the full results of RMSA surveys on this web page: <https://www.archives.gov/records-mgmt/resources/self-assessment.html>.