

CHIEF FOIA OFFICERS COUNCIL



Public Meeting

Wednesday November 17, 2021

10:00 am -12:30 pm

**Alina M. Semo and Bobak Talebian
Co-Chairs**



WELCOME - HOUSEKEEPING

Chat to “All Panelists” to ensure your comments are seen by our moderators



WELCOMING REMARKS

David S. Ferriero,
Archivist of the United States

Vanita Gupta,
Associate Attorney General

CHIEF FOIA OFFICERS COUNCIL



**UPDATES FROM
U.S. DEPARTMENT OF JUSTICE -
OFFICE OF INFORMATION POLICY (OIP)**



OIP Updates

- Reporting Requirements
- Guidance for Further Improvement
- Ex. 5 Guidance
- FOIA.gov Interoperability Requirements
- Forthcoming Resources



Fiscal Year 2021 Annual FOIA Report

- Annual FOIA Report Deadlines
 - **November 15, 2021** - Agencies required to submit their Fiscal Year 2021 Annual FOIA Report to OIP for review and clearance through [FOIA.gov](https://www.foia.gov).
 - **March 1, 2022** - Agencies required to post the final human readable and NIEM-XML versions of their Fiscal Year 2021 Annual FOIA Report on their websites.
- The [Department of Justice Annual FOIA Report Handbook](#), recently updated, contains instructions for compiling and submitting agency reports on [FOIA.gov](https://www.foia.gov).



2022 Chief FOIA Officer Report Guidelines

- Chief FOIA Officer Report Deadlines
 - **January 10, 2022** - Agencies receiving more than 50 requests must submit their reports to OIP for review.
 - **February 11, 2022** - Agencies receiving 50 requests or less that choose to report should provide their reports to OIP for review
 - **March 14, 2022** - All agency Chief FOIA Officer Reports should be posted online in final form



2022 Chief FOIA Officer Report Guidelines

- The Guidelines focus on five key areas of FOIA Administration:
 - Applying the Presumption of Openness
 - Ensuring there are Effective Systems for Responding to Requests
 - Increasing Proactive Disclosures
 - Increasing the Utilization of Technology
 - Improving Timeliness and Reducing any Backlogs



- The [2022 Guidelines](#) include new or modified questions on:
 - Federal Records Management Training
 - Requester Outreach
 - Senior Leader Awareness of FOIA Obligations
 - Standard Operating Procedures
 - Frequent First-Party Requests and Alternative Access
 - Use of Technology
 - FOIA-related Staffing Capabilities
 - Identification, Tracking, and Posting of (a)(2) Proactive Disclosures
 - Dissemination of Common Types of Material Outside of FOIA
 - Impact of COVID-19 on Agency Backlog
 - Development and Execution of Backlog Reduction Plans



Updated Quarterly FOIA Report Guidance

- OIP recently issued [updated quarterly report guidance](#).
- Guidance provides that Agency Managers now submit their Quarterly Report data directly into [FOIA.gov](https://www.foia.gov).
- Overall data points and deadlines remain the same.



Updated [FOIA.gov](https://www.foia.gov) Quarterly Data Page

- Quarterly Report data page updated similarly to Annual Report data.
- Moving forward, historical quarterly data will be available.

Create a Quarterly Report

1. Select Agencies or Components ⓘ

Agency or Component Name

⊕ Add Another Agency or Component

2. Select Data Type(s) ⓘ

Adding more than one data filter will return results provided. For example, a search for exemption data will return data that satisfy either criteria, rather than satisfy both criteria.

Data Type

⊕ Add Another Data Type

3. Select Fiscal Years ⓘ

2022 2021

Report Results

Received, processed, and backlogged FOIA requests

Agency	Component	Fiscal Year	Quarter	Number of requests received	Number of requests processed	Number of requests backlogged
Department...	ATF	2021	4	233	582	855
Department...	ArtOfTravel	2021	4	38	51	123
Department...	BOP	2021	4	1566	1688	4212
Department...	COPS	2021	4	39	37	0
Department...	CRS	2021	4	1	1	0
Department...	Civil	2021	4	119	94	44
Department...	Civil Rights	2021	4	82	49	249
Department...	Criminal	2021	4	223	249	806
Department...	DEA	2021	4	289	251	1388
Department...	ENRD	2021	4	44	45	55
Department...	EOIR	2021	4	17620	12610	26779
Department...	EOUSA	2021	4	989	1388	2247
Department...	EOUST	2021	4	20	22	0
Department...	FBI	2021	4	4422	4882	5859



Guidance for Improvement Based on 2021 CFO Report Review and Assessment

Accompanying the Summary and Assessment is OIP's [Guidance for Further Improvement](#):

- Highlights the importance of FOIA training for FOIA professionals and agency program personnel.
- Encourages agencies to plan ahead and leverage lessons learned to reduce backlogs and processing times.
- Emphasizes importance of updating Standard Operating Procedures.
- Encourages all agencies that have not updated their regulations in accordance with the FOIA Improvement Act of 2016 to do so as soon as feasible.



OIP Guidance: [U.S. Fish & Wildlife Serv. v. Sierra Club](#), 141 S. Ct. 777 (2021)

- On March 4, 2021, the Supreme Court issued an opinion in [U.S. Fish & Wildlife Serv. v. Sierra Club](#), 141 S. Ct. 777 (2021).
- The Court held that draft biological opinions, created by the U.S. Fish and Wildlife Service and the National Marine Fisheries Service to address whether a proposed Environmental Protection Agency action would jeopardize the existence of threatened or endangered species, could be withheld pursuant to the deliberative process privilege in conjunction with Exemption 5.
- On September 29, 2021, OIP issued [guidance](#) containing a brief discussion of the decision and highlighting two key principles from the opinion when applying the deliberative process privilege.



[FOIA.gov](https://www.foia.gov) Updates: 10x FOIA Libraries Project

- Over the past two years, GSA's 10x team completed Phases 1 and 2 of OIP's proposal to investigate a centralized search capability that would allow the public to search across agencies' existing FOIA Libraries for posted documents.
- 10x approved the project for "Phase 3," a more in-depth development phase, which will soon be underway.
- OIP will continue to work with 10x and consult with agencies and the public on this effort.



[FOIA.gov](https://www.foia.gov) Interoperability

- Joint DOJ/OMB Guidance for Achieving Inter-operability with the National FOIA Portal (February 12, 2019)
- Agencies with automated case management systems were required to implement an API by the end of FY21, unless granted an exception by DOJ/OMB.
- Agencies with non-automated solutions have already achieved interoperability via structured email.



[FOIA.gov](https://www.foia.gov) Updates: 18F Discovery

- OIP has been working with GSA's 18F team to conduct discovery to examine the need and feasibility for additional functionality on FOIA.gov.
- Purpose: To develop a path analysis for future development efforts.
- Functionalities considered have included:
 - Features to more effectively guide a requester to the correct agency
 - Request status tracking
- Project team consulted with members of the public and agencies.
- OIP looks forward to building on the results of this path analysis as we continue to enhance FOIA.gov for requesters and agencies.



Forthcoming Resources

➤ Updated E-learning Courses

- OIP currently revamping and updating three e-learning courses to provide training for Senior Executives, Federal Employees, and FOIA Professionals
- First two courses will provide a primer on the FOIA and highlight ways in which federal employees can assist their agency in administering the law.
- More in-depth course for FOIA Professionals will cover major procedural and substantive requirements of FOIA and importance of customer service.

➤ FOIA Self Assessment Toolkit

- OIP currently updating the “Self-Assessment Toolkit” to account for changes in law in policy. Toolkit covers FOIA administration from request intake to the maintenance of agency FOIA websites.
- Updated toolkit will include new modules for proactive disclosures and administrative appeals.



Additional Resources



VIEW COURT DECISIONS CHRONOLOGICALLY	SEARCH COURT DECISIONS
<p>August 28, 2020 </p> <p>Ctr. for Pub. Integrity v. DOD, No. 19-3265, 2020 WL 5095520 (D.D.C. Aug. 28, 2020) (Kollar-Kotelly, J.)</p> <p>August 28, 2020</p> <p>Nova Oculus Partners, LLC v. SEC, No. 19-666, 2020 WL 5095485 (D.D.C. Aug. 28, 2020) (Friedrich, J.)</p> <p>August 28, 2020</p> <p>NPR, Inc. v. FBI, No. 18-03066, 2020 WL 5095526 (D.D.C. Aug. 28, 2020) (Nichols, J.)</p>	<p>Topic</p> <p>- Any - <input type="button" value="v"/></p> <p>Search Text</p> <input type="text"/> <p>Post Date</p> <p>-Month <input type="button" value="v"/></p> <p>-Year <input type="button" value="v"/></p> <p><input type="button" value="SEARCH"/> <input type="button" value="RESET"/></p>

CHIEF FOIA OFFICERS COUNCIL



QUESTIONS?

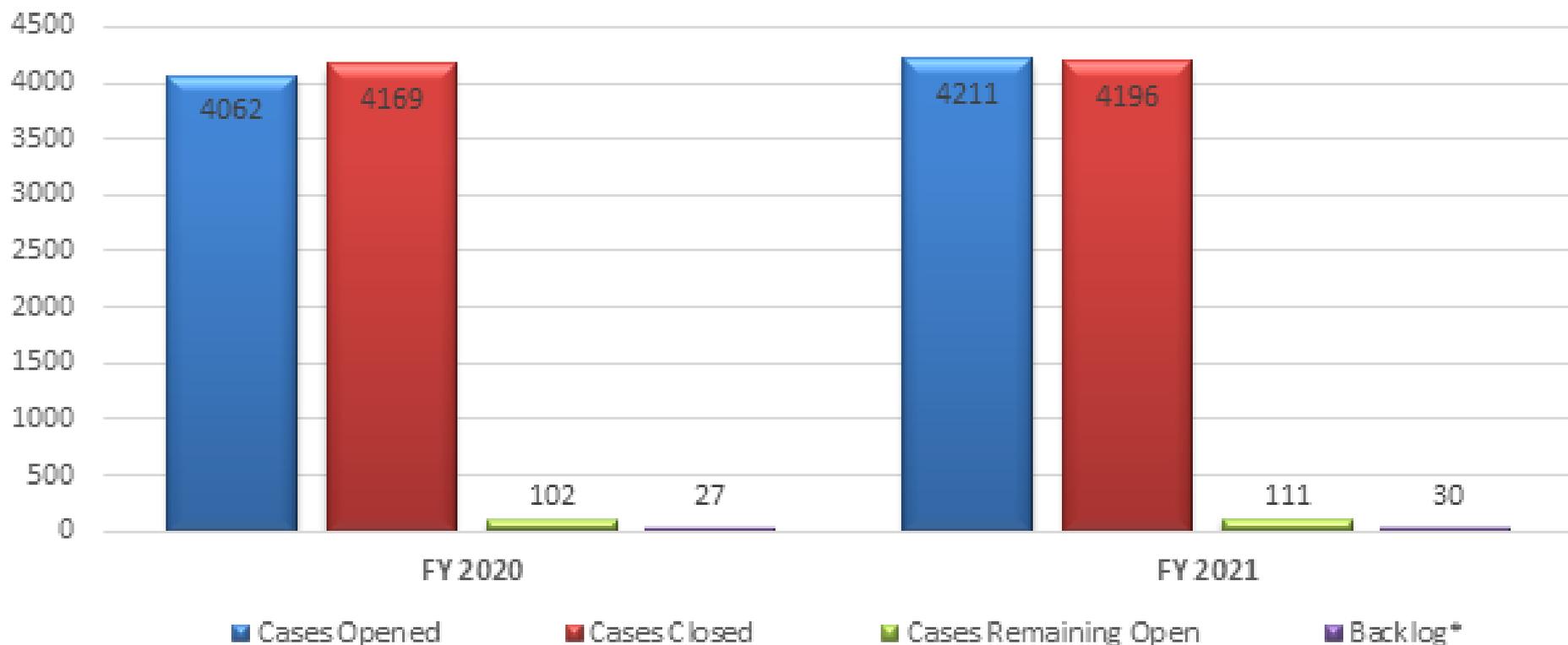


UPDATES FROM THE OFFICE OF GOVERNMENT INFORMATION SERVICES (OGIS)

CHIEF FOIA OFFICERS COUNCIL



OGIS Dispute Resolution Cases - FY 2020 & 2021





Estimated Dates of Completion (EDCs)

- 85% of requests for OGIS assistance involving delays in FY 2021 occurred after requesters asked for but did not receive an EDC
- An EDC is just that: an estimate



Estimated Dates of Completion (EDCs)

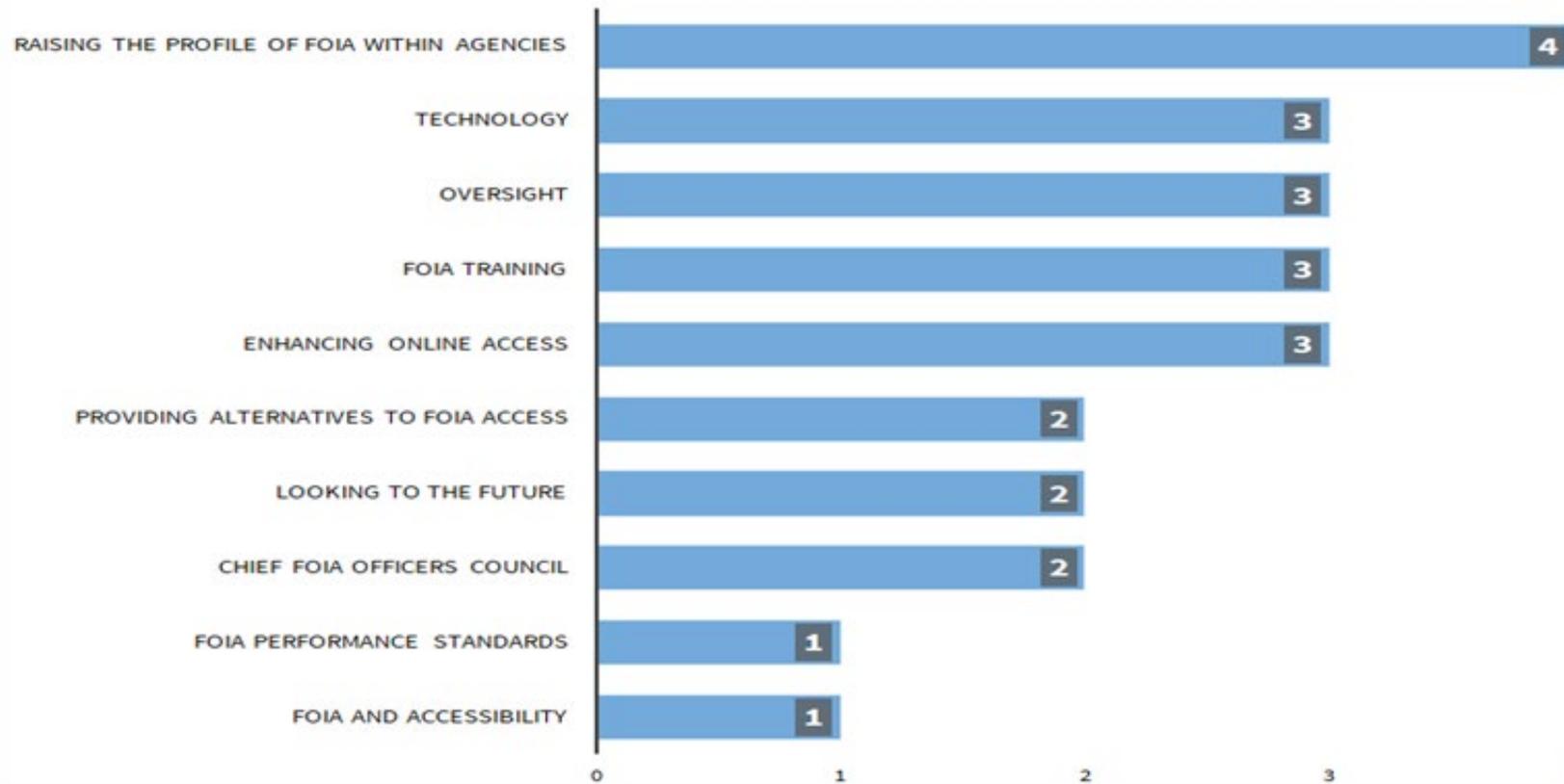
OGIS Recommendation:

“Chief FOIA Officers should ensure that FOIA professionals have the necessary resources to provide EDCs to FOIA requesters. If necessary, Chief FOIA Officers should use their statutory authority to recommend to the head of the agency adjustments to agency FOIA practices, policies, personnel, technology, and funding.”

CHIEF FOIA OFFICERS COUNCIL



FOIA Advisory Committee Pending and In Progress Recommendations by Category



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FOIA ADVISORY COMMITTEE
RECOMMENDATIONS DASHBOARD

**[https://www.archives.gov/ogis/
foia-advisory-committee/dashboard](https://www.archives.gov/ogis/foia-advisory-committee/dashboard)**

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OGIS Issue Assessment: Commonly Requested Categories of First-party Records

Published August 30, 2021



UNITED STATES PENITENTIARY 97 LEAVENWORTH, KANSAS	
Name	William G. Rogers
Number	35846
Admission Date	Aug 20 1938
Release Date	Aug 20 1940
Classification	Probation
Work Status	Probation
Medical Status	Probation
Disciplinary Status	Probation
Administrative Status	Probation
Remarks	

UNITED STATES PENITENTIARY LEAVENWORTH, KANSAS	
Name	William G. Rogers
Number	35846
Admission Date	Aug 20 1938
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Classification	Probation
Work Status	Probation
Medical Status	Probation
Disciplinary Status	Probation
Administrative Status	Probation
Remarks	

Inmate File of William G. Rogers

National Archives Identifier: 30624253



[Assessing Freedom of Information Act Compliance through the 2020 National Archives and Records Administration's Records Management Self-Assessment](#)

Published September 28, 2021

When Agency Records Officers and Chief FOIA Officers work in harmony, FOIA works better. [National Archives ID: 535858](#)





Two upcoming events:

Thursday, Nov. 18th - 5:00 pm-6:00 pm:

“Saving the Freedom of Information Act”

**A discussion of Professor Margaret Kwoka’s
new book moderated by Tom Susman**

https://www.youtube.com/watch?v=xo3JFFEdE_o

Thursday, December 9th - 10:00 am-1:00 pm:

Next FOIA Advisory Committee Meeting

**Stay tuned for Eventbrite and NARA YouTube
information -- www.archives.gov/ogis**

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OGIS IS HIRING!!!

[GS-13 Management & Program Analyst for our Compliance Team](#)

Open & closing dates:
11/15/2021 to 11/23/2021

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QUESTIONS?





UPDATES FROM COMMITTEE ON CROSS-AGENCY COLLABORATION AND INNOVATION (COCACI)



COCACI Origins

- In 2020, the CFO Council co-chairs created the COCACI, which joined the Technology Committee as the second Council committee.
- COCACI would build on the recommendations of the 2018-2020 FOIA Advisory Committee -- in particular [Recommendation No. 2020-16](#) -- and the innovations accomplished by agency FOIA Offices during the pandemic.



COCACI Subcommittees

- **Government Information Specialist (GIS) Professionalism Subcommittee**
 - Review and promote initiatives for clear career trajectories for FOIA professionals, building on the GIS job series in coordination with existing agency efforts.
- **Pandemic/Virtual FOIA Offices Subcommittee**
 - Focus on taking lessons learned from the pandemic to transform FOIA Offices to thrive in a virtual environment.
- **FOIA Resources Subcommittee**
 - Provide information on accessing revenues streams and resources that would particularly benefit smaller agencies.



COCACI:

GIS Professionalism Subcommittee



GIS Professionalism Subcommittee

- FOIA Advisory Committee Rec. No. 2020-16
- Focused on reviewing and promoting initiatives for clear career trajectories for FOIA professionals, building on the GIS job series and identifying areas to coordinate with existing agency efforts.



GIS Professionalism Subcommittee

- What we are examining (long-term): Recruitment strategies, hiring and retention strategies, uniform pay scale assignments and key competencies for civil servants, and professional certification testing.
- Where we are now: Studying problems contributing to GIS professionalization obstacles to ultimately propose data-backed solutions:
 - Survey of FOIA Professionals (in development);
 - Interviews with leaders and experts (ongoing); and
 - Information gathering (ongoing).
- Planned Deliverable: White Paper with recommendations for next steps.



COCACI:
Pandemic/Virtual FOIA Offices
Subcommittee



Pandemic/Virtual FOIA Offices Subcommittee

- Analyze and review the capability of FOIA professionals to effectively work from a virtual location during the pandemic. This group will work to gather the most relevant user experiences to highlight best practices, compile frequently asked questions and answers, user guides, and identify recommendations to improve the virtual work experience to better support FOIA processing throughout federal agencies.



Pandemic/Virtual FOIA Offices Subcommittee

- Long Term: Compile and make available lessons learned from teleworking and make recommendations to federal agencies pertaining to best practices for teleworking as a FOIA professional building upon the best practices that have already been examined and applying the best practices post COVID.
- Progress Made: Framing questions for survey to send to FOIA professionals in order to receive feedback pertaining to the transition from an in office FOIA environment to a teleworking FOIA environment.
- Planned Deliverable: Publish a list of best practices and lessons learned focusing on tactics, techniques and procedures that were effective in making the transition from an in office FOIA environment to a teleworking FOIA environment which is sustainable post COVID.



COCACI: FOIA Resources Subcommittee



FOIA Resources Subcommittee

- Identify opportunities for standardization in a variety of resources (including procurement vehicles and technology) available to FOIA Offices to increase efficiency and ease of use across government agencies.
- Compile and create reference materials and training sessions to help agencies explore these resources.
- Identify opportunities for resources (including procurement vehicles and technology) to be standardized to increase efficiency and ease of use across government agencies.
- Identify and highlight resources that are already standardized.



COCACI Conclusion

- We are three subcommittees: GIS, Pandemic, and Resources
- Improving collaborative efforts across the federal government to
 - Examine the current state of the GIS profession with a goal of harmonizing recruitment, retention, pay, and development of the career
 - Take lessons learned from the pandemic and applying them to the future of the FOIA
 - Review common resources and uncover existing needs in federal FOIA offices to standardize resources, improving access and efficiency

CHIEF FOIA OFFICERS COUNCIL



UPDATES FROM THE TECHNOLOGY SUBCOMMITTEE



About Us

- In response to Rec. No. 2018-01 of the 2016-2018 term of the FOIA Advisory Committee, the Archivist of the United States proposed that the Chief FOIA Officers (CFO) Council establish a technology subcommittee, in partnership with the Chief Information Officers (CIO) Council, to study the utilization and deployment of technology in FOIA programs across agencies and identify best practices and recommendations that can be implemented across agencies.
- Membership:
 - 39 members from at least 23 departments/agencies



About Us

- Public Website:
 - <https://www.archives.gov/ogis/about-ogis/chief-foia-officers-council/technology-committee>
 - <https://www.justice.gov/oip/chief-foia-officers-council>
 - Seven Technology Committee Working Groups:
 - 508 Compliance and Collaborative Tools | [Charter](#)
 - Artificial Intelligence | [Charter](#)
 - FOIA and Classified Information | [Charter](#)
 - FOIA Searches | [Charter](#)
 - FOIAonline | [Charter](#)
 - FOIAXpress | [Charter](#)
 - Video Review and Redactions | [Charter](#)
- [Recap: Chief FOIA Officers Council, Technology Committee Update for the Chief FOIA Officers Council \(Oct 14, 2020\)](#)



FY 2021 Accomplishments

- Completed work on recommendations in February 2020 Report
- [OIP Hosts Artificial Intelligence Event Featuring CFO Council Technology Committee Working Group](#) - Nov. 2020
- Posted Charters Publicly - <https://www.archives.gov/ogis/about-ogis/chief-foia-officers-council/technology-committee> - Jan. 2021
- Office of Information Policy (OIP) Best Practices Workshops
 - Intelligence Community Session (March 11, 2021)
 - Federal FOIA Community Session (March 30, 2021)
- Briefed at April 2021 CFOC Meeting



FY 2021 Accomplishments

- Finished Two Reports
 - [Best Practices for Video Redaction - Technology Committee of the Chief FOIA Officers \(CFO\) Council](#) (Jul 29, 2021)
 - [FOIA Searches: Key Challenges and Findings - Technology Committee of the Chief FOIA Officers Council](#) (Sep 29, 2021)
 - Met with FOIA Advisory Council (FAC) Members Regarding FOIA Search Capabilities at Agencies
- Developed plans for FOIA Technology Showcase in February 2022
 - An opportunity for vendors to connect with FOIA professionals
 - Details available at <https://foia.blogs.archives.gov/2021/11/12/foia-technology-showcase-request-for-information-published-on-sam-gov/>



Next steps

- Update Working Group Charters - Updated Deadlines
 - Discussion of potential new working groups on data, interoperability of IT tools, and more
 - Dig deeper into technical issues at agencies
 - Complete Pending Deliverables in Charters
- FOIA Technology Showcase Event in Early 2022
 - Request for Information (RFI) Currently on SAMS
- Solicit Feedback from FOIA Advisory Committee, Chief FOIA Officers Council, federal agencies, and the public on topics of interest or shared best practices.
- Add new members to the Technology Committee



Questions & contact information

- Eric F. Stein, SteinEF@state.gov
- Michael Sarich, michael.sarich@va.gov



PUBLIC COMMENTS



*Please limit your
comments to 3
minutes*

CHIEF FOIA OFFICERS COUNCIL



See you in Spring 2022!