



OFFICE OF GOVERNMENT INFORMATION SERVICES

COMPLIANCE REVIEW OF THE

UNITED STATES COAST GUARD'S

FREEDOM OF INFORMATION ACT PROGRAM

EFFECTIVE MANAGEMENT OF DECENTRALIZED PROGRAM, BETTER USE OF TECHNOLOGY, AND IMPROVED COMMUNICATION WITH REQUESTERS NEEDED

A Message from the Director

The OPEN Government Act of 2007 established the Office of Government Information Services (OGIS), codified at 5 U.S.C. 552(h), and mandated the office with reviewing agencies' Freedom of Information Act (FOIA) policies, procedures and compliance. This report is one of six reviews we are completing of components of the Department of Homeland Security (DHS). At the completion of our reviews, we will also release a set of agency-wide recommendations.

Since OGIS opened in 2009, we have been a resource for both FOIA requesters and federal agencies. This assessment of the United States Coast Guard's FOIA program is in line with this purpose.

This report addresses the Coast Guard's compliance with FOIA and is based on interviews with employees and officials of the agency, direct observation of the Coast Guard's FOIA case files, and a review of applicable documents.

The recommendations herein have been developed using our office's knowledge of the statute and best practices, and have been discussed in draft with those responsible for the program. We hope this report and our recommendations will assist the Coast Guard in fulfilling its FOIA responsibilities. We will follow up with appropriate individuals about the status of these recommendations in 120 days.

JAMES V.M.L. HOLZER

Director

Executive Summary

What OGIS Found

The Coast Guard's decentralized FOIA process creates challenges in managing its FOIA program. In particular, the dispersed nature of the process makes it difficult for the Coast Guard to allocate resources and ensure processors have adequate training. Between Fiscal Year (FY) 2010 and FY 2014, the Coast Guard's backlog and the number of requests processed have stayed relatively consistent despite fluctuations in staffing.¹

Despite the challenges, the Coast Guard uses several customer-friendly practices that help improve requester understanding of the process and ensure that responses are sent out in timely fashion. The Coast Guard has also worked to improve management of the FOIA process by logging all requests into a centralized system. The Coast Guard also has developed a staffing plan for a centralized process.

Failure to respond to requesters in a timely fashion continues to be an issue for the agency. Although the Coast Guard reported no litigation-related costs from FY 2009 to 2014, lack of a response was a factor in six of the seven FOIA lawsuits filed against the Coast Guard since 2009. The Coast Guard also provides FOIA processors that are located in the field with a lengthy and outdated manual.

OGIS's three primary findings are:

- The Coast Guard is not effectively managing challenges created by decentralization;
- Technology is under-utilized; and
- Communication needs improvement.

What OGIS Recommends

Among other things, OGIS recommends that the Coast Guard create a plan to unify the FOIA process and that the Coast Guard fully implement its FOIA processing system. We also recommend that the Coast Guard update its FOIA manual and create an at-a-glance manual for employees who process FOIA requests as a collateral duty.

¹ DHS Freedom of Information Act Reports for FY 2009-2014.

Introduction

The Freedom of Information Act (FOIA) directs the Office of Government Information Services (OGIS) to review agency FOIA policies, procedures and compliance, 5 U.S.C. §§ 552(h)(2)(A) and (B). We assess individual agency FOIA programs by visiting agencies and reviewing regulations, internal guidance for processing requests, agency request and appeal files, annual reports to the U.S. Department of Justice (DOJ), and litigation, among other sources. Our mandate is to determine compliance with FOIA.²

Background

The Department of Homeland Security (DHS) receives the largest number of FOIA requests of any federal department or agency—291,242 requests in Fiscal Year (FY) 2014—and also had the largest backlog of FOIA requests as of September 30, 2014: 103,480.³ The United States Coast Guard received 3,203 requests and processed 2,620 requests in FY 2014 and had 1,261 backlogged requests at the end of the fiscal year.⁴ Despite changes in the number of staff in the FOIA office, the Coast Guard’s backlog has stayed relatively consistent.⁵ DHS components vary greatly in size and mission, and most components operate their FOIA programs independent of DHS’ Privacy Office,⁶ which provides guidance on FOIA issues to the components and is responsible for annual reporting on DHS’ FOIA programs to the Attorney General. OGIS consulted with the DHS Privacy Office to identify six operational components to review. OGIS released a report on the Federal Emergency Management Agency’s FOIA program on September 18, 2015.⁷ In addition to the Coast Guard, OGIS will review the Transportation Security Administration (TSA), Customs and Border Protection (CBP), the U. S. Secret Service (USSS), and Immigration and Customs Enforcement (ICE). We will issue separate reports on each component and subsequently, a report on DHS’ FOIA operations based on our review of the six components.

The Coast Guard’s mission is “to protect the public, the environment, and U.S. economic interests—in the nation's ports and waterways, along the coast, on international waters, or in any maritime region as

² 5 U.S.C. § 552(h)(2)(B).

³ “DHS 2014 Freedom of Information Act Report to the Attorney General of the United States, February 2015,” page ii, accessed August 10, 2015, http://www.dhs.gov/sites/default/files/publications/dhs-foia-annual-reports-fy-2014_0.pdf.

⁴ DHS 2014 Freedom of Information Act Report, pages 4 and 19.

⁵ DHS Freedom of Information Act Reports for FY 2009-2014.

⁶ This office has responsibility for both the Privacy Act and FOIA, according to its website, accessed August 10, 2015, <http://www.dhs.gov/privacy-office>.

⁷ <https://ogis.archives.gov/Assets/FEMA+Compliance+Report+FINAL+18+SEPT+2015+web.pdf?method=1>, accessed September 21, 2015.

required to support national security.”⁸ The Coast Guard FOIA program, located in the Management Programs and Policy Division of Coast Guard Headquarters in Washington, D.C., is staffed by three federal employees and two contractors. The Office of Investigations and Casualty Analysis, located in the same building as the FOIA Office, processes the bulk of requests to the Coast Guard.⁹ Final memorandums on maritime disasters and records pertaining to investigations into boating accidents are frequently requested under FOIA.

The Coast Guard’s FOIA process is decentralized meaning that requests received in the nine districts and more than 1,200 units are processed by those districts and units, generally as a collateral duty. FOIA coordinators within these units are usually military personnel who rotate every three to four years.¹⁰ The FOIA Office assigns requests tracking numbers and tasks FOIA coordinators in the Coast Guard’s districts and units to search for records and respond directly to the requester. Requests sent directly to a unit or district are forwarded to the FOIA Office for assignment of a FOIA tracking number, processed by the unit or/district, and approved by the legal office within that unit or district. A copy of the final response letter is sent to the FOIA Office.

Unit and district responses to requests are sent to the Coast Guard’s FOIA Office for approval when the request is deemed significant or the FOIA Office is coordinating a response for records from multiple units or districts. The FOIA Office administers and processes all FOIA appeals—28 in FY 2014¹¹—for approval by the Coast Guard’s Commandant. The office that processed the request sends the FOIA Office the entire administrative file and all responsive records.

What We Reviewed

This report is the result of interviews with FOIA officials and staff; direct observations of initial request and appeal case files; results of an online survey; and a review of DHS FOIA regulations,¹² the Coast Guard FOIA website,¹³ and other written material including agency FOIA litigation since 2009. On June 22, 2015, we interviewed the Coast Guard FOIA Officer and the Data Administration and FOIA

⁸ “Coast Guard Civilian Careers: Working at the USCG,” last modified May 29, 2014,

http://www.uscg.mil/civilian/wa_mission.asp.

⁹ Of the 2,620 requests the Coast Guard processed in FY 2014, the Office of Investigations and Casualty Analysis processed 1,453 requests.

¹⁰ Nearly one-quarter—22 percent—of respondents to OGIS’s online survey said they have worked as FOIA professionals for less than one year.

¹¹ DHS 2014 Freedom of Information Act report, page 7.

¹² 5 U.S.C. § 552(6)(D)(i) & (ii) and DHS Freedom of Information Act and Privacy Act Procedures; Interim Final Rule, 6 CFR § 5.5(b), accessed July 9, 2015, http://www.dhs.gov/xlibrary/assets/FOIA_FedReg_Notice.pdf. (Note that DHS, on July 29, 2015, published in the Federal Register a Notice of Proposed Rulemaking, Freedom of Information Act Regulations.)

¹³ “CG-611 Management Programs and Policy Division: Freedom of Information & Privacy Acts,” last modified February 26, 2015, <http://www.uscg.mil/foia/>.

Division Chief in the Office of Investigation and Casualty Analysis. On June 23, 2015, we interviewed the Chief of the Office of Information Management.

The Coast Guard granted us access to its case files and allowed us to view the system the agency uses to track the processing of requests and appeals. Before our visit, the Coast Guard provided us with a list of its FOIA cases closed in FY 2014. Using data from the Department of Homeland Security 2014 Annual FOIA Report, we chose a non-generalizable sample of 50 case files to review, selecting cases based exemption use, fees issues, referrals, appeals and other topics that would give us a broad view of the Coast Guard FOIA program. As discussed below, we reviewed more appeal files than we otherwise would. We reviewed the case files on June 22-23, 2015.

Limitation of the Review

As referenced above, unless a request response is appealed, the FOIA Office maintains only final determination letters for FOIA requests from units and districts outside of Washington, D.C., making a thorough review difficult. The Coast Guard received 32 appeals and processed 28 during FY 2014.¹⁴ In light of this, we focused on reviewing 24 appeals files and 26 FOIA request files from the Office of Investigation and Casualty Analysis. Our review of appeals provided a snapshot of how Coast Guard offices outside of Washington, D.C., process requests.

Finding 1: The Coast Guard is not effectively managing challenges created by decentralization.

The decentralized nature of the program contributes to many of the issues we observed with the Coast Guard's ability to process FOIA requests. Despite large changes in the number of staff devoted to the FOIA office, the Coast Guard's backlog has stayed relatively consistent. The Coast Guard also is not adequately training staff or using standard operating procedures and quality control measures. The Coast Guard's legal review policy and the agency's use of Department of Defense email addresses delay the FOIA process.

Staffing and Decentralization

The Coast Guard's FOIA office relies on a small staff of full time personnel. At the time of our review, the Coast Guard had three staff members: one who managed intake, one who managed initial responses, and one who processed appeals; two of the three were contractors. In June 2011, the Coast Guard FOIA Office employed eight contractors, all of whom left the office in September 2011 when their contracts expired. During FY 2015, the Coast Guard brought on two contractors to help log requests and responses into the case management system from the various units; the current contracts are expected to expire at the end of FY 2015. Despite the eight contractors in FY 2011, the Coast Guard's backlog

¹⁴ DHS 2014 Freedom of Information Act report, page 20.

increased from 407 requests at the end of FY 2010 to 527 requests at the end of FY 2011.¹⁵ As mentioned above, the Coast Guard processed 28 FOIA appeals in FY 2014; as such, we recommend that the agency consider using its own Administrative Law Judge (ALJ) program, which processes appeals for other DHS components on a reimbursable basis.¹⁶

The decentralized nature of the Coast Guard's FOIA program contributes to many of the issues we observed during our review of the Coast Guard's FOIA office; in particular, decentralization makes it difficult for the Coast Guard to ensure that staff is properly trained and applies the law consistently because FOIA processors work around the country; additionally, FOIA processing is a collateral duty.¹⁷ The Coast Guard's decentralized approach also makes it difficult for the agency to allocate resources or manage the process, including managing the Coast Guard's ability to communicate with requesters. Our review of the Coast Guard's FOIA litigation shows that the Coast Guard's lack of response was a factor in six of the seven FOIA lawsuits filed against the component since 2009.¹⁸ Despite those lawsuits, the Coast Guard reported no litigation costs for FY 2009 through FY 2014.¹⁹

An April 2014 draft study of the Coast Guard's FOIA program by the agency's Process and Metrics Branch of the Business Operations Division cited a number of issues arising from the Coast Guard's decentralized approach. The study, which used Lean Six Sigma methodology, a set of techniques and tools for process improvement, noted that in attempting to map the Coast Guard's FOIA process, the team identified wide variation in the way that the Coast Guard handles FOIA requests. The lack of consistent and reliable data contributed to the decision to suspend the study.²⁰

The Chief of the Office of Information Management informed us that the office proposed increasing the number of staff in the Coast Guard's FOIA office to 16 fulltime employees, which she estimated would be needed to centralize the Coast Guard's FOIA process. While the Coast Guard has a blueprint for

¹⁵ Report on Coast Guard FOIA backlogs FY 2009 – FY 2014, foia.gov, accessed September 2, 2015.

¹⁶ "Chief FOIA Officer and General Counsel Memorandum, 'Reassignment of Certain Freedom of Information Act (FOIA) Appeals to the United States Coast Guard Administrative Law Judges, July 8, 2011,'" accessed September 4, 2015. <http://www.dhs.gov/sites/default/files/publications/reassignment-of-pending-and-future-ogc-foia-appeals-to-uscg-administrative-law-judges.pdf>.

¹⁷ Thirty percent of respondents to OGIS pre-assessment survey report that they are dissatisfied or very dissatisfied with the Coast Guard's policies and procedures on how to process a FOIA request.

¹⁸ *Detroit International Bridge Co. v. Dept of State*, et al, 1:113-cv-01876, D.D.C.; *Alliance to Protect Nantucket Sound v. DHS*, et al, 1:13-cv-01027, D.D.C.; *Water Keeper Alliance et al v. United States Coast Guard and Taylor Energy Company LLC*, 1:13-cv-00289, D.D.C.; *Public Employees for Environmental Responsibility v. USCG*, 1:13-cv-00249, D.D.C.; *Center for Constitutional Rights, Inc. v. Dept of Defense*, et al, 1:2011cv03533, S.D.N.Y.; *Calypso Cargo Limited v. U.S. Coast Guard*, 850 F.Supp.2d 1 (D.D.C. 2011); *Chesterfield Associates, Inc. v. U.S. Coast Guard*, 1:2008-cv-04674, E.D.N.Y.

¹⁹ DHS Freedom of Information Act Reports to the Attorney General for FY 2009-2014.

²⁰ "Freedom of Information Act (FOIA) Continual Process Improvement (CPI): White Paper," April 2014, obtained from the agency.

staffing a centralized FOIA process, we recommend that Coast Guard FOIA leadership work with Coast Guard leaders to create a plan to unify the FOIA process.

Training

A more robust training program would improve several areas of the Coast Guard's FOIA program. Coast Guard FOIA training is ad hoc because of the geographical challenges of a decentralized program. Employees in the Washington, D.C., area tend to receive more FOIA training, including Department of Justice FOIA training and other training from professional organizations, federal agencies, and non-profits. Coast Guard FOIA professionals informed us that district FOIA coordinators receive training from their legal offices. The scarcity of training opportunities, particularly for staff outside of D.C., likely contributes to some of the lack of certainty about FOIA's requirements that we observed. For example, almost 20 percent of respondents to OGIS' survey indicated that they are only somewhat confident or not at all confident that they know the correct legal procedures for how to properly process a FOIA request and 23 percent reported that they do not know if the office clearly marks an exemption at the place in the record where the redaction is made.

In addition to training on the substance of the FOIA and the Attorney General's FOIA guidelines,²¹ we observed a need for training on the intersection between FOIA and laws that protect personal privacy, including the Privacy Act and the Health Insurance Portability and Accountability Act (HIPAA). We also recommend training on the agency's FOIA regulations. For example, we observed that the Coast Guard administratively closes some appeals because, according to the Coast Guard's response, the appeal letter did not "include the specific reason(s) for a reconsideration of the denial," nor did it "refer to the tracking number assigned to your request by the Coast Guard." Neither the FOIA statute²² nor DHS' current or recently proposed FOIA regulation²³ requires requesters to include specific reasons for an appeal or to cite the FOIA tracking number. The Coast Guard's final appeals responses also did not alert requesters to their statutory right to OGIS mediation services as a non-exclusive alternative to litigation; DOJ issued guidance in 2010 directing FOIA offices to make requesters aware of OGIS services,²⁴ and DHS's recently proposed regulations include a similar requirement.²⁵

²¹ Sixty-one percent of respondents to OGIS's survey reported that the Coast Guard has no process for applying the harm analysis or they do not know if the Coast Guard has such a process.

²² 5 U.S.C. § 552

²³ 6 C.F.R. Part 5 and DHS Freedom of Information Act and Privacy Act Procedures; Interim Final Rule, 6 CFR § 5.5(b), accessed July 9, 2015, http://www.dhs.gov/xlibrary/assets/FOIA_FedReg_Notice.pdf. (Note that DHS on July 29, 2015, published in the Federal Register a Notice of Proposed Rulemaking, Freedom of Information Act Regulations.)

²⁴ "Notifying Requesters of the Mediation Services Offered by OGIS." Last modified June 16, 2015, <http://www.justice.gov/oip/blog/foia-post-2010-oip-guidance-notifying-requesters-mediation-services-offered-ogis>.

The FOIA Office recognizes the need for standardized training and plans to provide mandatory training through the web-based DHS Learning Management System (LMS) to which all DHS Federal employees have access. DHS Privacy Office is reviewing the training, which was released by the Department of Justice’s Office of Information Policy in March 2015.²⁶ We recommend the Coast Guard take advantage of the online training as soon as it is available. We also recommend that the Coast Guard expand its training curriculum to include privacy laws and, when finalized, DHS’s regulation.

Standard Operating Procedures and Quality Control

While the decentralized nature of the program explains some of the variety in the Coast Guard’s process, we noticed variances in processing procedures within the FOIA office, specifically in response letters. It is also not clear who has the authority to sign certain responses. We also noted that the same edits would be made to a template letter a number of times before the template was updated and that the Coast Guard’s letters included incorrect dates or other relatively minor mistakes.

Although the Coast Guard has a manual for processing FOIA and Privacy Act requests, it is lengthy—172 pages—and outdated. For example, it references a portion of Exemption 2 that the U.S. Supreme Court struck down in 2011²⁷ and there is no reference to the need for DOJ review before using an exclusion.²⁸ We recommend that the Coast Guard create clear standard operating procedures on how to handle initial responses by updating its manual. We also recommend that the Coast Guard consider creating at-a-glance procedures for processing a FOIA request for personnel for which processing a FOIA request is a collateral duty. Finally, we recommend the Coast Guard edit its template letters and distribute them to FOIA processors.

Legal Review of Responses

All Coast Guard FOIA responses with redactions are reviewed by legal counsel before release; responses from units are reviewed by attorneys at the District level. The time legal review takes varies greatly depending on the workload of the counsel’s office. For example, the Office of General Counsel at headquarters, which is responsible for reviewing responses from the central FOIA office and the Office of Investigations and Casualty Analysis, has one lawyer dedicated to information policy issues; in addition to FOIA, the lawyer is responsible for Privacy Act and other information issues.

²⁵ 5 U.S.C. § 552(6)(D)(i) & (ii) and DHS Freedom of Information Act and Privacy Act Procedures; Interim Final Rule, 6 CFR § 5.5(b), accessed July 9, 2015, http://www.dhs.gov/xlibrary/assets/FOIA_FedReg_Notice.pdf. (Note that DHS on July 29, 2015, published in the Federal Register a Notice of Proposed Rulemaking, Freedom of Information Act Regulations.)

²⁶ “Training,” last modified August 11, 2015, <http://www.justice.gov/oip/training>.

²⁷ Milner vs. The Department of the Navy 131 S. Ct. 1259 (2011).

²⁸ Implementing FOIA’s Statutory Exclusion Provisions,” last modified August 15, 2014, <http://www.justice.gov/oip/blog/foia-guidance-6>.

To address the delay that legal review adds to the Coast Guard's FOIA process, we recommend that the Coast Guard evaluate its policy regarding what responses must be reviewed, or that the Coast Guard ensures there is appropriate legal staffing to handle the volume of requests that must be reviewed.

Search Permissions from the Department of Defense

The Coast Guard's unique position as a component of DHS and as a military service branch of the armed forces of the United States²⁹ creates a particular issue for the Coast Guard when responding to some FOIA requests. In response to FOIA requests for emails, the Coast Guard may be required to search DHS information technology systems and coordinate with Department of Defense (DoD) FOIA processors to search records hosted on DoD servers, which delays the FOIA process. We recommend that the Coast Guard study how to streamline the agency's ability to access Coast Guard records housed on DoD servers.

Finding 2: Technology is Under-utilized

The Coast Guard is not fully using its FOIA processing and software system to improve data quality or overcome particular challenges. We also observed that the Coast Guard's FOIA website is out-of-date and includes incorrect information.

FOIA Processing and Tracking System

Embracing technology could help improve the Coast Guard's FOIA program. As noted previously, districts and units use a variety of methods to track and process requests rather than using the Coast Guard's new proprietary FOIA processing system. The Coast Guard informed us that it originally intended to have all of the districts and units use the software to track and process requests; however, because the Coast Guard's workforce is so dispersed and personnel change frequently due to redeployments, the agency said it is not able to effectively train FOIA processors on how to use the software and decided against implementing it agency-wide. The agency continues to use a variety of tracking systems to help process FOIA requests.

As previously noted, a draft April 2014 Coast Guard study found that adoption of the system across the Coast Guard could help improve data quality and streamline the FOIA process. The study also noted that agency-wide implementation of a new FOIA processing system by the Coast Guard could help improve data quality and make FOIA processing more efficient. The study noted that such improvements would be possible only if the same software is used consistently and accurately by all of the Coast Guard's units and if changes in lines of authority allow the FOIA office or another authority to direct and hold accountable all personnel who respond to requests.³⁰ The Government Accountability Office

²⁹ Title 14 of the United States Code.

³⁰ FOIA CPI White Paper.

recommended in November 2014 that the Coast Guard fully implement its processing system.³¹ We also recommend that the Coast Guard fully implement the FOIA processing system.

We observed that the Coast Guard's FOIA administrative record would be improved by consistent use of a centralized processing system. We observed that the Coast Guard's appeals officer frequently had to research and document previous actions the initial processors took on a request to create a complete administrative record.

Website

The Coast Guard FOIA web page is outdated. The "Frequently Asked Questions" page is fairly straightforward and readable; however, it includes references to "Chapters" that are not explained. The "Freedom of Information Act/ Privacy Tutorial" includes misleading information and is not user-friendly. For example, the FOIA section of the tutorial states that all FOIA requesters must submit a notarized statement or a statement signed under the penalty of perjury, which is not required under the law or DHS regulation;³² the tutorial also includes outdated contact information. The tutorial also will not allow users to rewind or review any information already viewed.³³ The webpage also includes a link to "Annual FOIA reports" but the page includes only reports from 2003 to 2006. We also observed that several of the links to the "frequently requested records" on the Coast Guard's web page are broken. We recommend an overhaul of the FOIA web page, including reviewing all reference material for accuracy and fixing broken links.

One reason that the website is not frequently updated is that the FOIA office must rely on the Coast Guard's Information Technology (IT) staff to make any changes to the website. The Coast Guard's FOIA office reports that it has a good relationship with IT professionals, but that delays occur because it is a collateral duty for IT staff. These personnel resource limitations have affected the ability of the Coast Guard to fulfill its obligations to proactively disclose records.³⁴ The FOIA office informed us that since our review, it hired an IT professional who will update the Coast Guard's FOIA website.

Proactive Disclosure

We also recommend that the Coast Guard use its website to inform the public about events or documents of interest. We specifically recommend that the Coast Guard post on its FOIA page a link to the

³¹ GAO-15-82, Freedom of Information Act, DHS Should Take Steps to Improve Cost Reporting and Eliminate Duplicate Processing, November 2014, page 33, accessed August 10, 2015, <http://www.gao.gov/products/GAO-15-82>.

³² Requesters who are seeking access to records about themselves are required to submit such a statement. 6 C.F.R. Part 5 and DHS Freedom of Information Act and Privacy Act Procedures; Interim Final Rule, 6 CFR § 5.5(b), accessed July 9, 2015, http://www.dhs.gov/xlibrary/assets/FOIA_FedReg_Notice.pdf.

³³ "Freedom of Information Act and Privacy Act Tutorial," accessed, July 17, 2015, <http://www.uscg.mil/foia/foiapatutorial/>.

³⁴ 5 U.S.C. § 552(a)(2)(D). See also <http://www.justice.gov/oip/oip-guidance-5>.

agency's open investigations database. The Coast Guard receives a large number of requests for records relating to open investigations. Linking to the database on the page and explaining that records related to ongoing investigations are exempt under FOIA could cut down on the number of requests for records related to open investigations. We also recommend that the Coast Guard send a link to the database to all requesters who seek investigative records; the agency currently sends this link to some requesters, but not consistently.

Finding 3: Communication needs improvement.

The Coast Guard's customer service is notable in several ways. However, the Coast Guard needs to take additional steps to reduce requester confusion and use plain language in its communication with requesters.

Customer Service

The Coast Guard uses several best practices to communicate with requesters. Notably, the Coast Guard briefly summarizes the topic of the request in all communications with requesters, which helps ensure the agency and the requester share an understanding of the request and is particularly helpful for requesters who have made a number of requests; this is an OGIS best practice. The Coast Guard also frequently informs requesters of the terms used in the search for records and how the search was performed; this practice improves the requester's understanding of the agency's actions and helps ensure that the agency has conducted an adequate search. The Coast Guard's final response to requests also lists both the processor and the person who approved the agency's final decision, information that helps build a relationship between the agency and the requester.³⁵ Finally, we observed that the Coast Guard regularly grants requesters appeal rights on interim responses; allowing requesters to appeal before all responsive records are processed is good customer service, and can help the agency avoid repeating mistakes in processing a voluminous request.

When a request requires responses from multiple units or districts, the Coast Guard encourages the different offices to respond to the requester as soon as possible. The Coast Guard treats the responses from the units as interim responses; the Coast Guard's central FOIA office coordinates the responses and closes the request once all of the offices have responded. This an OGIS best practice because it prevents requesters from having to wait for all of the offices to finish their search and review of records before receiving a response. However, we note that the practice confuses some requesters who are not notified that they would be receiving interim responses. We recommend that the Coast Guard's FOIA office either alert requesters that they will receive a response from multiple offices or that a response indicates that it is an interim or final response from a particular district. Such an explanation would help the requester anticipate additional responses and understand the process.

³⁵ "The Importance of Good Communication with FOIA Requesters 2.0: Improving Both the Means and the Content of Requester Communications," last modified August 15, 2014, <http://www.justice.gov/oip/blog/foia-guidance-0>.

We also observed that when it is necessary for the Coast Guard to change a tracking number, it does not provide the requester with the original tracking number. For example, when the FOIA attorney remands an appealed request—returns it to the processing office for further processing—the Coast Guard assigns a new FOIA tracking number. Current OIP guidance suggests that agencies assign a new tracking number or modify the tracking number to note the remand.³⁶ We recommend that the Coast Guard avoid confusing requesters by including all of the tracking numbers associated with a request on correspondence with requesters.

Plain Language

We observed a general lack of clarity in written communication with requesters, particularly with regard to descriptions of exemptions used to withhold material. In some instances the description of the exemption was vague and in at least one letter we reviewed, the exemption is not explained at all. Providing requesters with a brief, easy-to-understand description of the exemptions an agency uses is critical for improving understanding of the law and the agency's action.

We also observed that letters from the Coast Guard to requesters sometimes also included terms or references that are not familiar to the general public. For example, the Coast Guard's letters frequently refer to units or offices by Coast Guard's internal alphanumeric coding system, including CG-611, which is the FOIA Office. Several letters included references to the Code of Federal Regulations (CFR). We also noted that some of the Coast Guard's letters included a reference to a requester's "file number." The "file number" is different than the FOIA tracking number, and the letter does not include any sort of an explanation about the use of the file number.

We recommend that the Coast Guard create templates which include brief descriptions of the FOIA exemptions it uses most often that can be used in correspondence with requesters. We further recommend that the Coast Guard revise its template letters so that they use plain language³⁷ and less jargon, making them easier for the general public to understand. Creating these templates may also help eliminate some of the errors we observed in the Coast Guard's communication with requesters, including noting incorrect dates of correspondence and failing to note that the requester updated the scope of the request. The Coast Guard could make this language available to units and district offices by updating template letters and/or posting it on the Coast Guard intranet.

³⁶ "OIP Guidance: Annual and FOIA Q & As," last modified August 21, 2014, <http://www.justice.gov/oip/blog/foia-post-2009-annual-foia-report-q-0>.

³⁷ Plain Writing Act of 2010, Public Law 111-274.

Checklist of OGIS Recommendations for the Coast Guard's FOIA Program

Management

- Create a plan to centralize the Coast Guard's FOIA process
- Create clear standard operating procedures for the FOIA process by updating the Coast Guard FOIA manual
- Create at-a-glance procedures for processing FOIA requests for personnel for which processing FOIA is a collateral duty
- Expand the Coast Guard's training curriculum to include privacy laws, DHS FOIA regulation, and DHS online training
- Evaluate the policy regarding what responses must be reviewed by the Office of General Counsel
- Study the Coast Guard's ability to access records housed on Department of Defense servers
- Consider using the Coast Guard's own Administrative Law Judge (ALJ) program for processing appeals

Technology

- Fully implement the Coast Guard's FOIA processing system
- Overhaul the Coast Guard FOIA web page, including reviewing all reference material for accuracy and fixing broken links
- Post link to agency's open investigations database
- Send a link to the open investigations database to all requesters who seek investigative records

Communication

- Send a link to the open investigations database to all requesters who seek investigative records
- Alert requesters that they will receive a response from multiple offices, when applicable, or ensure that a response indicates that it is an interim or final response from a particular district

- Include all tracking numbers associated with a remanded request, including the newly assigned tracking number as well as the original tracking number
- Create templates which include brief descriptions of the FOIA exemptions the Coast Guard uses most often
- Revise template letters so the letters use plain language and less jargon
- Delete from the appeal template language which informs the requester that the Coast Guard cannot provide an estimated date of completion

Scope and methodology³⁸

OGIS Review Team Lead Kirsten Mitchell along with Team members Amy Bennett and Kate Gastner assessed the Coast Guard's FOIA program. This report is the result of interviews with Coast Guard FOIA officials and staff; direct observations of initial request and appeal case files; results of an online OGIS survey completed by Coast Guard FOIA processors³⁹; and a review of DHS FOIA regulations, which govern the Coast Guard, the agency's FOIA website and other written material including agency FOIA litigation. On June 22, 2015, we interviewed the Coast Guard FOIA Officer, and Chief of Data Administration and the FOIA Division in the Office of Investigation and Casualty Analysis. On June 23, 2015, we interviewed the Chief of the Office of Information Management and a FOIA contractor. The Coast Guard granted us access to its case files and allowed us to view the system the agency uses to process requests and appeals. Before our visit, the Coast Guard provided us with a list of its FOIA cases closed in FY 2014. We reviewed the list to determine categories of cases including but not limited to exemptions, fees, referrals, appeals and other topics that would give us a broad view of the Coast Guard FOIA program and, based on data from the agency's Annual FOIA Report to DOJ, chose a non-generalizable sample of 50 case files to review. We reviewed the case files on June 22-23, 2015 and based our findings on OGIS's Elements of an Effective FOIA Program, based on

- the FOIA statute;
- Office of Management and Budget Guidelines for Fees;
- Presidential Memorandums;
- Attorney General Memorandums;
- Guidance from the Department of Justice's Office of Information Policy, including DOJ's Guide to the Freedom of Information Act;
- OGIS Best Practices; and
- Inconsistencies and non-compliance observed during OGIS's mediation services.

³⁸ Please direct questions to OGIS at ogis@nara.gov or 202-741-5770.

³⁹ Sixty Coast Guard FOIA processors started the survey and 52 completed it, for an 86-percent completion rate.