



OGIS Issue Assessment: Freedom of Information Act (FOIA) Performance Measures for Non-FOIA Professionals

What OGIS Found	What OGIS Recommends
<ol style="list-style-type: none"> 1. Agencies largely communicate FOIA responsibilities to employees, including non-FOIA professionals. (<i>Recommendation 1</i>) 2. Agency implementation of FOIA performance measures for non-FOIA professionals varies. Barriers include competing priorities and limited resources. (<i>Recommendations 2 & 3</i>) 3. There is no one-size-fits-all approach to implementation. Agencies that have implemented some degree of performance measures for non-FOIA professionals have used model performance standards and example appraisal elements; created new measures; and/or used a blended approach. (<i>Recommendation 4</i>) 	<ol style="list-style-type: none"> 1. Agencies should continue to highlight efforts and successes surrounding efforts to inform non-FOIA professionals of their obligations under FOIA. 2. Agencies should involve all key stakeholders in implementing performance measures; keep communication open; evaluate steps taken; and encourage inter-agency sharing of lessons learned. 3. Agencies should formally recognize that FOIA is everyone’s responsibility, and create, implement, and/or refine performance measures that address the FOIA responsibilities of employees who have no explicit FOIA duties. 4. Agencies should be flexible; review existing examples for performance standards and appraisal elements; and modify as applicable.

What OGIS Reviewed
<p>In response to a recommendation from the 2016-2018 term of the FOIA Advisory Committee, the Archivist of the United States tasked OGIS with examining the use of FOIA performance measures for federal employees. We reviewed:</p> <ul style="list-style-type: none"> • Responses to Question 26 of the 2018 Records Management Self-Assessment (RMSA), conducted in 2019, which asked: “<i>Do your agency’s employee performance work plans and appraisals include FOIA performance measures for non-FOIA professionals to ensure compliance with the requirements of FOIA?</i>” • 2019 Chief FOIA Officer reports from agencies responding “Yes” to the above question. • Responses to a subsequent online survey, OGIS Review of FOIA Performance Standards for Non-FOIA Professionals” conducted in May and June 2020.

Introduction

As the Freedom of Information Act (FOIA) Ombudsman, the Office of Government Information Services (OGIS) plays a unique role in the FOIA process, identifying and surfacing issues and recommending opportunities for change. FOIA directs OGIS to offer dispute resolution services to requesters and agencies; review agency FOIA policies, procedures and compliance; and identify procedures and methods for improving compliance.¹

Background

The FOIA Advisory Committee, 20 FOIA experts from inside and outside the government who are appointed by the Archivist of the United States (the Archivist), studies the FOIA landscape government-wide and advises on improvements to FOIA administration by all 15 Cabinet-level departments and 103 independent agencies. As the Committee noted in its 2016-2018 Final Report and Recommendations,² the U.S. Assistant Attorney General for Administration (AAG/A) issued a memorandum in October 2015, instructing the heads of Department of Justice (DOJ) components to “incorporat[e] appropriate [FOIA] performance standards in employee appraisal records and work plans.”³ This memorandum included six model performance standards, including two for individuals who are not traditional FOIA professionals but are called upon to help FOIA professionals in any number of ways, including in conducting timely searches for responsive records. (The other performance standards are for executives and supervisors, as well as employees who have responsibility for FOIA and/or open government.)

In 2016, DOJ emphasized to all Federal agencies the importance of FOIA and Open Government through performance standards for all employees: “As the number of FOIA requests received across the government continues to rise, all agencies are encouraged to include appropriate FOIA- and Open Government-Related performance standards for all employees who have any role in administering these key programs. By doing so, they can help ensure that the principle that ‘FOIA is everyone’s responsibility’ will be fully recognized.”⁴

¹ 5 U.S.C. § 552(h)(2).

² [Report to the Archivist of the United States, Final Report and Recommendations](#), 2016-2018 FOIA Advisory Committee, April 17, 2018.

³ [DOJ Memorandum for Heads of Department Components from AAG/A, Ensuring Compliance with Freedom of Information Act and Open Government Directive Requirements in Employee Performance Appraisal Records and Work Plans](#), October 2, 2015.

⁴ DOJ Office of Information Policy blog, [DOJ Stresses Importance of FOIA and Open Government Through Performance Standards](#), January 7, 2016.

Table 1: Model Department of Justice FOIA Performance Standards for Non-FOIA Professionals

Recommended For	Performance Standard	Measure
Professional positions that have responsibilities for certain aspects of the Department's compliance with disclosure obligations, which may include searching for and reviewing records for disclosure.	Promptly and thoroughly reviews and analyzes FOIA requests and prepares proper responses within the required time frames consistent with all governing legal and regulatory provisions.	Fully Successful performance is demonstrated by realistic planning and required analysis to ensure tasks are completed in an accurate, thorough, and timely manner. Appropriate responses (interim/final) are provided in accordance with assigned timelines; including identification of and collaboration with necessary partners for input and responses are released with a 95% accuracy rate.
Support positions which provide administrative support to meet goals for timely responses to FOIA requests.	Promptly reviews incoming requests and logs them into tracking systems or databases based on dates of receipt, and provides administrative support to staff related to processing and responding to requests.	Fully Successful performance is demonstrated when incoming requests are properly logged and tracked for timeliness, and outgoing FOIA correspondence is checked for quality to ensure that records are properly assembled, all responsive records are attached, and responses are released with a 95% accuracy rate.

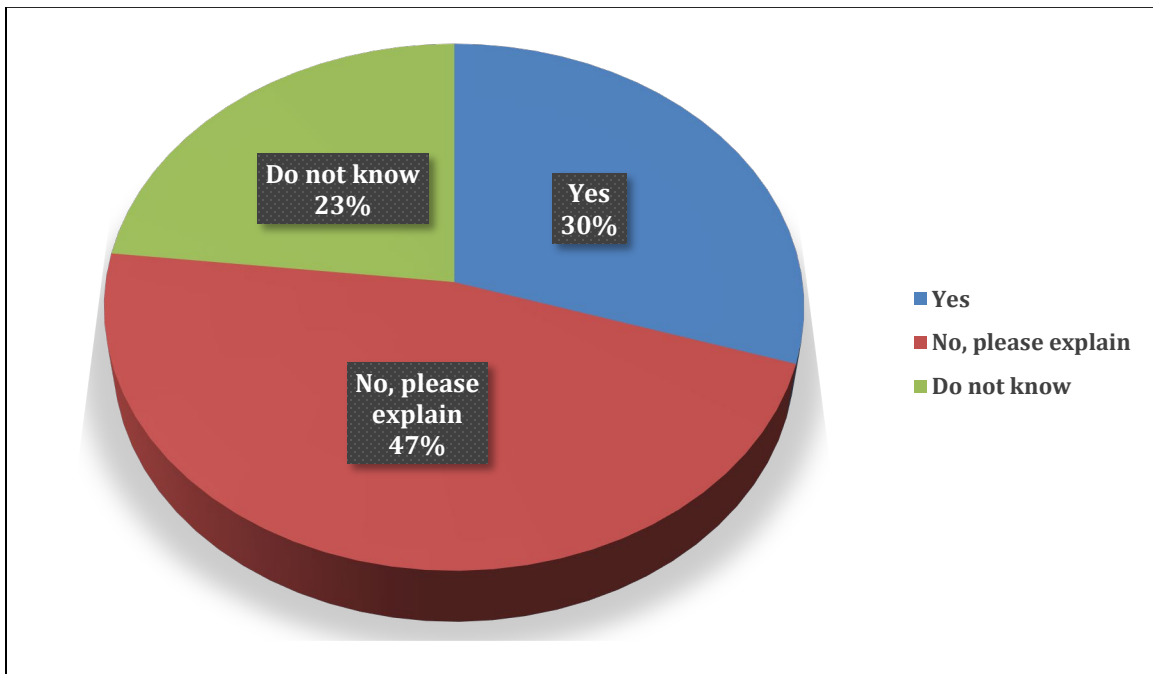
OGIS teamed with the Chief Records Officer (CRO) for the U.S. Government to ask Federal agencies the following question (Q) as part of the CRO’s annual Records Management Self-Assessment (RMSA) for 2018,⁵ administered in the spring of 2019: *Q26. Do your agency’s employee performance work plans and appraisals include FOIA performance measures for non-FOIA professionals to ensure compliance with the requirements of FOIA? (Note: The 2016-2018 term of the Freedom of Information Act Advisory Committee endorsed inclusion of FOIA performance standards in Federal employee evaluations and work plans government-wide.)*

As OGIS reported in February 2020, of 254 respondents, fewer than one-third (30 percent) reported that their agencies have FOIA performance measures for non-FOIA professionals, while

⁵ Office of Government Information Services, [Assessing FOIA Compliance through the 2018 National Archive and Records Administration RMSA](#), February 11, 2020.

nearly half (47 percent) reported that they do not. Furthermore, almost one-quarter (23 percent) said that they did not know. A handful of agencies responded that they were working or were planning to work with their agency’s human resources offices to establish FOIA performance measures for non-FOIA professionals. This data is helpful in understanding agency progress with putting in place FOIA performance measures for all employees.

Figure 1: 2018 RMSA Responses to “Do your agency’s employee performance work plans and appraisals include FOIA performance measures for non-FOIA professionals to ensure compliance with the requirements of FOIA?”



Why OGIS Did this Assessment

The Archivist tasked OGIS with conducting this assessment to fulfill a recommendation from the 2016-2018 term of the FOIA Advisory Committee. As noted above, agency employee performance work plans and appraisals generally do not include FOIA performance measures for non-FOIA professionals. This assessment examines the challenges of and opportunities for implementing FOIA performance measures for non-FOIA professionals with the goal of offering recommendations for other agencies interested in implementing similar measures. The 2016-2018 term of the FOIA Advisory Committee further recommended that OGIS submit the results of its assessment and any recommendations to Congress and the President.⁶

⁶ In accordance with 5 U.S.C. § 552(h)(5).

What OGIS Reviewed

OGIS reviewed the 2018 RMSA data, specifically the responses to the question of whether the agency's performance work plans and appraisals include FOIA performance measures for non-FOIA professionals to ensure compliance with FOIA (Q26). This review examined possible trends and produced observations on individual agency/component efforts regarding the implementation of FOIA performance measures for non-FOIA professionals.

The review formed the basis for a voluntary OGIS Review of FOIA Performance Standards for Non-FOIA Professionals online survey (OGIS survey) that OGIS conducted in May and June 2020. In the first round of the survey we focused on DOJ components since the heads of those offices had received the memorandum from the AAG/A. In the second round of the survey we expanded our target audience to include additional non-DOJ agencies that had responded "Yes" to RMSA Q26. We received a total of 37 responses to both rounds of the survey. OGIS notes that the COVID-19 pandemic may have affected the response rate and responder availability. OGIS looked for better understanding of particular agency/component efforts rather than to call out agencies as to the degree of compliance or current status of implementation.

OGIS's online survey sought to assess the challenges and benefits of implementing FOIA performance measures and to offer best practices for other agencies interested in implementing such standards. Thirty-one respondents indicated willingness to engage in follow-up discussions with OGIS. OGIS followed up with FOIA professionals at these agencies and components where applicable. The qualitative nature of responses provided OGIS with the opportunity to observe trends and key points. Findings 2 and 3, including the specific examples quoted, are based on these survey responses.

Finding 1: Agencies Largely Communicate FOIA Responsibilities to Employees, Including Non-FOIA Professionals

A review of CFO reports shows that agencies are generally informing all employees of their responsibilities under FOIA. Recognizing that "FOIA is everyone's responsibility" sets the foundation for implementing FOIA performance standards for non-FOIA professionals. Many agencies train their employees and share information about FOIA responsibilities, a good first step to creating awareness of model performance standards that can be implemented.

While new employee orientations and recurring training are welcome, opportunities for improvement exist. Agency initiatives to educate and inform employees of FOIA responsibilities form a strong foundation for FOIA improvement work and should be encouraged. The awareness of FOIA responsibilities often does not translate directly to formal implementation of performance measures.

The following examples from CFO Reports show agency efforts to inform non-FOIA professionals of their obligations under FOIA.

Cabinet-Level and Components

- **Department of Commerce (DOC):** FOIA professionals inform non-FOIA professional[s] from other program offices of their obligations under the FOIA. FOIA Officers “also stress the importance of the FOIA to non-FOIA professionals through memorandums and FOIA updates communicated to agency staff when tasking requests for fee estimates or record searches.”⁷ The 2019 DOC CFO report details examples at the bureau and office level.
- **Department of Defense (DoD):** DoD components reported that the most effective tool for informing non-FOIA professionals about FOIA “is senior leadership awareness and reinforcement of the importance of FOIA.”⁸ The 2019 DoD CFO report provides component-level examples.
- **Department of Energy (DOE):** DOE “continues to make every effort to inform non-FOIA professionals on their obligations under the FOIA.” For example, at the National Nuclear Security Administration (NNSA), “non-FOIA professionals have been educated on their requirements via email, conference call, training and meeting. NNSA is also working to implement the publicized standards and is currently researching the best options for achieving this goal.”⁹
- **Department of Health and Human Services (HHS):** “HHS continues in its efforts to educate and increase awareness by all agency employees of their responsibilities under the FOIA.” The Centers for Disease Control and Prevention (CDC), for example, provides “annual training during the CDC FOIA Training Forum to give every employee the opportunity to learn more about the FOIA and the implementation processes. The responsibilities and obligations of all staff members to comply with and support FOIA operations is emphasized.”¹⁰

In recognizing the CDC FOIA Office in 2019 for reducing its backlog by more than 60 percent, the HHS CFO noted several best practices, including “setting performance goals

⁷ [Department of Commerce Chief Freedom of Information Act Officer Report](#), 2019.

⁸ [Department of Defense Chief Freedom of Information Act Officer Report](#), 2019.

⁹ [Department of Energy Chief Freedom of Information Act Officer Report](#), 2019.

¹⁰ [Department of Health & Human Services Chief Freedom of Information Act Officer Report - Section 1](#), 2019.

for processing staff and maintaining accountability” and “obtaining CDC leadership support for FOIA.”¹¹

- **Department of Justice (DOJ):** DOJ provides a training module to non-FOIA professionals that “provides a primer on the FOIA and highlights ways in which they can assist their agency in administering the law.” The 2019 DOJ CFO report notes individual component efforts to increase employee awareness of FOIA responsibilities. For example, the Federal Bureau of Investigation “requires all of its employees to watch a training film developed for records management that also provides an overview of the FOIA and stresses the importance of meeting the agency’s FOIA obligations.”¹²
- **Department of the Interior (DOI):** DOI reported that it “intends to include FOIA-related performance standards in employee work plans for employees who have any role in administering the FOIA.” The Department notes that it “issued a Secretary’s Order on the FOIA that underscores ‘[t]he Department is fully committed to an equitable FOIA program that ensures compliance with statutory requirements of transparency, accountability, and prompt production [of records]’ and emphasize[s] the responsibility of every employee to cooperate with FOIA staff throughout the Department.”¹³
- **Department of the Treasury:** The Department reported that a number of offices have modified their performance plans to include a FOIA element.¹⁴

Independent

- **Federal Mediation and Conciliation Service:** The CFO reported initiating “informal conversations with non-FOIA professionals of the Agency – principally, IT personnel, mediators and mediator supervisors, and Regional Directors with geographical field responsibility – to educate them as to their responsibilities under the FOIA.”¹⁵
- **Peace Corps:** “The FOIA Officer distributed to all FOIA points of contact DOJ’s model performance standards and measures. This first-time agency initiative provided supporting staff with the details for the annual performance plan outlining performance

¹¹ [Department of Health & Human Services Chief Freedom of Information Act Officer Report - Section 5](#), 2019.

¹² [Department of Justice Chief Freedom of Information Act Officer Report](#), 2019.

¹³ [Department of the Interior Chief Freedom of Information Act Officer Report](#), 2019.

¹⁴ [Department of the Treasury Chief Freedom of Information Act Officer Report](#), 2019.

¹⁵ [Federal Mediation and Conciliation Service Chief Freedom of Information Act Officer Report](#), 2019.

standards, measures, as well as general responsibilities and duties in support of the FOIA.”¹⁶

- **Pension Benefit Guaranty Corporation (PBGC):** All new PBGC employees, including contractors, receive FOIA training in orientation. The PBGC also reported promoting the inclusion of DOJ’s suggested FOIA standards for non-FOIA professionals.

Additionally, the PBGC Disclosure Division annually recognizes and celebrates its “Top Ten Supporters” (and their supervisors) who are non-FOIA professionals serving as FOIA liaisons as a collateral duty. “This activity creates visibility for high performers, and the individualized vignettes provide a descriptive crosswalk between FOIA requirements and performance. The PBGC will continue promoting FOIA-specific performance standards for non-FOIA professionals.”¹⁷

- **Environmental Protection Agency (EPA):** The EPA Acting Administrator emailed all agency employees explaining the importance of transparency, timeliness, quality, and professionalism with regards to FOIA activities. “Other strategies included mandatory annual training; the addition of FOIA-related performance standards to FOIA manager performance agreements, and development of EPA FOIA self-learning resources via a shared platform.”¹⁸
- **U.S. Office of Special Counsel (OSC):** “OSC advises non-FOIA professionals of their obligations under the FOIA during the onboarding process for new employees.... Employees are also given a sheet summarizing their responsibilities under the FOIA.”¹⁹

Recommendation 1: Agencies should continue to highlight efforts and successes surrounding efforts to inform non-FOIA professionals of their obligations under FOIA.

A model for this is PBGC’s annual recognition of non-FOIA professionals with collateral duties for FOIA who contribute to successful FOIA administration.

¹⁶ [Peace Corps Chief Freedom of Information Act Officer Report](#), 2019.

¹⁷ [Pension Benefit Guaranty Corporation Chief Freedom of Information Act Officer Report](#), 2019.

¹⁸ [Environmental Protection Agency Chief Freedom of Information Act Officer Report](#), 2019.

¹⁹ [U.S. Office of Special Counsel Chief Freedom of Information Act Officer Report](#), 2019.

Finding 2: Agency Implementation of Performance Measures Varies; Barriers Include Competing Priorities and Limited Resources

The RMSA data and responses to the OGIS Review of FOIA Performance Standards for Non-FOIA Professionals survey \ show that the levels of implementation including FOIA performance measures for non-FOIA professionals in employee performance work plans and appraisals varies among agencies. Implementation ranges from *full* (completely implemented component-wide) to *not at all and not in progress*. Formalizing the commitment that FOIA is everyone's responsibility through FOIA-inclusive performance measures would help to clarify expectations for *all* employees.

The following responses to the OGIS survey show an approach in situations where formal implementation has not taken place while noting FOIA responsibilities and need for accountability:

There is not a FOIA specific performance measures for anyone other than the [FOIA professionals on staff] but [others, i.e non-FOIA professionals] have an 'other duties as assigned' metric in their PWP (personal work plans) so that if they are asked to work on FOIA matters, that will be covered in their appraisal.

In considering whether to implement FOIA performance measures for non-FOIA professionals, agencies considered factors including:

- accountability and transparency through clarifying responsibilities and expectations;
- compliance with FOIA, departmental guidelines, etc.;
- program support by prioritizing FOIA and need for responsiveness to internal/external customers, especially in components with a large volume of requests;
- recommendations such as direct communications from agency senior management; and
- perceived needs, constraints, and/or priorities of individual components.

OGIS survey respondents identified FOIA Officers, Records Management and Human Capital professionals, and senior management as the stakeholders and decision-makers involved in implementing FOIA performance standards for non-FOIA professionals.

As the 2016-2018 term of the FOIA Advisory Committee noted, delays in the FOIA process often occur because "most agencies do not have centralized search capabilities and FOIA searches are very often not conducted by FOIA experts."²⁰ To address this issue and shorten

²⁰ [Report to the Archivist of the United States, Final Report and Recommendations](#), 2016-2018 FOIA Advisory Committee, April 17, 2018.

delays, the Committee endorsed DOJ's approach of FOIA performance standards for non-FOIA professionals as an incentive to respond to requests to search for records in a timely manner.

OGIS survey respondents at agencies that put in place FOIA performance measures for non-FOIA professionals noted successes including:

- "Effective management of the FOIA program..."
- "Eliminated excessive time period (more than 100 days) for closing out FOIA requests."
- "We reduced our FOIA backlog from over 100 to approximately 10 requests."

However, one participant noted that they "successfully determined that it was not necessary to create additional performance measures for non-FOIA professionals because [their] current records management models already optimized FOIA responses."

Barriers to implementation noted by respondents included:

- "Other competing priorities" and "other key compliance issues that currently have our attention."
- "Small agency with limited resources and very small FOIA-related staff."
- "Culture shift [is needed ... and] education that FOIA is everyone's responsibility."
- "One of our challenges is that FOIA work for non-professionals is [considered a] collateral duty, and it is difficult to set performance measures when FOIA work is not a full-time duty."
- "I think there will be some difficulty in implementing performance measures for non-FOIA professionals agency-wide because some employees will never be involved [in] responding to FOIA requests."
- In offices where FOIA requests come up infrequently, FOIA-related information and training is not retained as easily, so the topic must be revisited regularly.

OGIS asked survey respondents to describe any additional recommendations and agency-to-agency advice discovered as a result of local implementation:

- "Management needs to either allocate resources or redistribute existing resources to meet the goals, [and/or] allocate appropriate funding to meet the goals ... [as well as] support from Senior Management to stress the importance of FOIA to meet goals."
- "Persistence; patience; commitment."

The OGIS survey results also showed that FOIA work for non-FOIA professionals often falls into administrative tasks, collateral duties, and “other duties as assigned.” Agencies should consider how they prioritize the creation of FOIA-inclusive performance measures for individuals not formally assigned FOIA work.

Recommendation 2: Agencies should involve all key stakeholders—including senior management—in implementing performance measures; keep communication open; evaluate steps taken; and encourage inter-agency sharing of lessons learned.

Recommendation 3: Agencies should formally recognize that FOIA is everyone’s responsibility; and create, implement, and/or refine performance measures that address the FOIA responsibilities of employees who have no *explicit* FOIA duties.

Finding 3: There is No “One-Size-Fits-All” Approach to Implementation

The OGIS survey results show that agencies that have implemented some degree of performance measures for non-FOIA professionals have used model performance standards and example appraisal elements; created new measures; and/or used a blended approach.

OGIS followed up with those respondents who indicated on the RMSA that their agency uses FOIA performance standards for non-FOIA professionals. OGIS asked that subgroup to explain whether they chose to use an existing FOIA performance standard for their non-FOIA professionals such as the model outlined in the October 2015 DOJ memorandum from AAG/A to Heads of Department Components or if they chose to create new standards. The responses indicated a fairly even split in approaches (*i.e.*, creating a new measure versus using an existing standard or a modified version of an existing standard) for non-FOIA professionals.

OGIS asked these same respondents to explain if they chose to use an existing appraisal element or instead establish a new element for non-FOIA professionals’ appraisal records and work plans. As stated in the October 2015 DOJ AAG/A memorandum: “Components may evaluate compliance using an existing appraisal element, such as ‘Accountability for Organizational Results’ or ‘Accountability for Customer Service,’ or they may establish a new element for this purpose.”²¹

Respondents tended to use existing appraisal elements although some respondents indicated that they chose to establish new FOIA appraisal elements or use a blended approach. For example, two respondents stated:

- “We used existing appraisal element(s): Customer Service The customer service element works well because it captures cooperation, timeliness, and accuracy. We have

²¹ DOJ AAG/A memo.

emphasized in FOIA training that non-FOIA professionals should work with FOIA professionals to quickly respond to FOIA requests.”

- “We established new FOIA appraisal element(s)...incorporated the old measures such as timeliness, customer services, and accountability but include new FOIA appraisal elements to provide more clarity.”

Recommendation 4: Agencies should review existing examples for performance standards and appraisal elements; modify as applicable; and remain flexible in their approaches.

Conclusion

While agencies largely communicate FOIA responsibilities to all employees, it is not surprising that agency approaches to and implementation of FOIA performance standards for non-FOIA professionals vary. Competing priorities and limited resources challenge many FOIA programs, but tools such as DOJ’s model FOIA performance measures for non-FOIA professionals and collaboration with key stakeholders can assist in implementing performance measures for those whose FOIA duties are collateral or infrequent. Above all, it is important to note there is no one-size-fits-all approach to implementation.

Brittany Parris, an Archivist with the Jimmy Carter Presidential Library and Museum in Atlanta, conducted this assessment on temporary assignment to OGIS as part of a National Archives and Records Administration Cross-training Program.

See an idea here that you wish to know more about? Contact OGIS & we will put you in touch with your counterparts at other agencies.

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