

National Archives and Records Administration
Office of Government Information Services (OGIS)
Webinar: FOIA Requests for CDC COVID-19 Records
May 12, 2020
Transcript

Michelle [event producer]: Ladies and gentlemen, welcome and thank you for joining today's webinar, "FOIA Requests for CDC COVID-19 Records." Before we begin, please ensure that you have opened the WebEx participants and chat panels by using the associated icons located at the bottom of your screen. Please note that all audio connections are muted at this time. You are welcome to submit written questions throughout the presentation which will be addressed at the Q&A session of the webinar. To submit a written question, select all panelists from the drop-down menu in the chat panel. Then enter your question in the message box provided and send. If you require technical assistance, please send a chat to the event producer. With that, I'll turn the webinar over to Alina Semo, Director of the Office of Government Information Services at the National Archives. Semo please go ahead.

Alina M. Semo: Thank you, Michelle. Good morning, everyone. As the Director of the Office of Government Information Services, or OGIS, it is my pleasure to welcome you all to this event titled "FOIA Requests for CDC COVID-19 Records." I hope everyone who is joining us today has been staying safe, healthy, and well. Shortly, I will go through some basic housekeeping rules, review our general agenda, and set some expectations for today's meeting. First, I would like to give you some background on today's event and how OGIS became involved.

As many of you know, OGIS is the Federal FOIA Ombudsman and in that role we work to improve the FOIA process in a number of ways: by reviewing agency compliance, by offering dispute resolution services to assist requesters and agencies, by chairing and managing bodies like the FOIA Advisory Committee and the Chief FOIA Officers Council and more. In that role, OGIS has a unique perspective on FOIA programs across the federal government. We have been watching with interest the impact of the COVID-19 emergency on both how agencies are processing FOIA requests and the types of requests agencies are receiving now that "work from home" and "stay at home" have become the rule rather than the exception.

Many agencies' FOIA programs are doing their best to adjust their operations in response to the impact of COVID-19. We have heard success stories of FOIA programs in certain agencies that have managed to make a relatively seamless transition from full time in office work to 100%--or close to 100%--telework. We have also heard of challenges that other agencies' FOIA programs face, including for example that remote work has resulted in delays, and other process disruptions across the government. While many agencies have been in a reactive mode, we were very excited to hear from the CDC's FOIA program about their plans to be proactive, and reach out to their stakeholders and requestors, and that is how the idea for this webinar that OGIS is co-hosting today was born.

The purpose of today's event is to hear from the CDC about how they are working to make COVID-19 records available, and what they need from the requester community to make the agency-requester partnership as successful as possible. With regards to today's agenda, we

will hear from Roger Andoh, CDC's FOIA Director and FOIA Officer. In conjunction with Roger's presentation today, we direct you to the [PowerPoint](#) that will run during the webinar today, and that is also accessible on the OGIS website, archives.gov/ogis. Roger will then be joined by Bruno Viana, the current CDC Acting FOIA Officer, as we turn to focus to your question.

We will be taking questions throughout the presentation, so as you think of your questions, please type them using the chat function of the webinar. We will also open the telephone lines after Roger's presentation for those of you who'd like to ask general questions. We will do our best to answer as many questions we receive today via chat and telephone. If we are unable to get to your question, we'll follow up with questions and answers that we would post on our website after today's webinar event. An important reminder with regards to your question, please be aware that this is not the right time to ask questions about specific FOIA request.

However, if you have a general question about the CDC's FOIA process or records, we are glad to hear about it. We are also recording today's session and we'll post a video of this event on the OGIS website as soon as it becomes available. At this time, I would like to take a minute to introduce our main presenter today, Roger Andoh. Roger joined the CDC on June 27th, 2016 as the FOIA Director and FOIA Officer. Roger transferred from the Nuclear Regulatory Commission where he served as the agency's FOIA Officer. Roger has extensive experience supervising units responsible for handling high profile and highly sensitive FOIA requests.

In 2014, Roger was awarded the Greater Kansas City Federal Executive Board's Federal Employee Distinguished Leadership Award for his work in processing multiple FOIA requests for information surrounding the Boston Marathon bombing and his benchmark work in handling highly sensitive information involving designated terrorist groups as a Supervisory Government Information Specialist with the U.S. Citizenship and Immigration Services. Roger is a licensed attorney and a certified privacy professional.

Although Bruno will not be presenting, I would like to take this opportunity to introduce him as he promises to be an active participant during the Q&A session that follows.

Bruno Viana currently serves as the acting CDC FOIA officer, and has been the CDC deputy FOIA officer since 2011. Bruno's entire federal career has been as part of the CDC FOIA office which he joined in 2004. At this point, I will turn the program over to CDC FOIA officer Roger Andoh. Roger over to you.

Roger Andoh: Thank you, Alina. Good morning, everyone. The Centers for Disease Control and Prevention and Department of Health and Human Services have been engaged in dealing with COVID-19. Excuse me. It's not surprising that both CDC and HHS have seen a steep increase in COVID-19 FOIA requests. The CDC FOIA office is adapting to this unexpected flood of FOIA requests and we are eager to respond to requests as quickly as we can. We view the relationship between the agency and the requester community, especially journalists as a partnership. Good communication with requesters is key to any successful FOIA

Roger Andoh: operation. We reached out to OGIS to assist us in facilitating this call today. The goal is how best you can help us help you.

That's the goal. How best you can help us help you. In my presentation today, I will cover three main topics. One, CDC's FOIA process. Two, how CDC is responding to COVID-19 requests, and finally share some tips with you on how to submit a successful FOIA request. But before I do so, let me please share a little bit about the mission of CDC and the Agency for Toxic Substances and Disease Registry, ATSDR. Next slide, please. The CDC and ATSDR are both agencies of the United States Department of Health and Human Services. However, CDC carries out executive functions for the Agency for Toxic Substances and Disease Registry.

The CDC Director also acts as Administrator for ATSDR. Just something for you to know. CDC is the nation's health protection agency. We work 24/7, we carry out... we conduct critical science, we provide health information that protects the public against dangerous health threats and respond to threats when they'll get like we're responding right now to the coronavirus pandemic. CDC promotes quality of life and works to prevent the leading causes of disease, injury, disability, and death. We have more than 12,000 employees, 75% of CDC employees are located in Atlanta, Georgia. We have 2000 employees who are stationed in 60 countries around the world.

The types of documents that CDC typically generates are varied. I would say that if you want to submit a FOIA request to CDC and to any agency, the first place you start with is go to the [website](#). That will give you a sense of what it is that they're doing, go to their website. Secondly, take a look at their FOIA log. Their FOIA log would give you the road back to the types of documents that any agency tends to create, and CDC posts... we post our [FOIA log](#) on our website, and so that would be a good place to start. If you want to know the types of documents that we... that agency creates, but I'll just give you a few examples today.

CDC is involved in outbreak investigations, so obviously this coronavirus is one of them, others that we have been involved in have been included are Salmonella outbreaks, Virgenes disease, E. Coli, the Ebola outbreak, measles. CDC has labs, so you can make a request for lab safety records. CDC has oversight in labs. For example, select agent labs. CDC issues guidelines, for example on opioids, sexually transmitted diseases, vaccines, immunizations just to name a few.

Finally, you can also request data and statistics from CDC, so CDC works with local and state authorities and obtains a tremendous amount of data that we analyze and do research on their behalf. Some of the requests that we receive involve influenza, mortality rates, opioids, gun violence, lung injury associated with vaping and e-cigarettes to name a few.

Next slide please. The agency for Toxic Substances and Disease Registry. What do they do? They protect the people's health from environmental hazards that are present in the air we breathe, the water we drink, and the world that sustains us. How do they do this? By investigating the relationship between environmental factors and health, by developing guidance, and by building partnerships to support healthy decision making. Like I said earlier

Roger Andoh: and I'm going to restate, ATSDR is an independent operating division within the Department of HHS. However, CDC carries out its administrative functions. One of those functions include handling their FOIA request.

What type of documents could you get from ATSDR? Document of nature and climate and health program, food safety, air safety, safe water. We're involved in the water... in the Flint water crisis and the Camp Lejeune water crisis. ATSDR also is involved in cruise ship inspection that might be of interest to some and they also create health reports. For example, they study the human exposure to environmental contaminants.

Next slide, please. This is the current CDC organizational structure. The purpose of this chart would be... you could use this as a reference point for custodians of records when it comes to specifically COVID-19 requests. Now, that does not mean that you want to target everybody on this list and say I want all their records, because not all of them are involved in the response, and not all of them are involved in every aspect of the response, so you have to be very targeted as to what individual records you're seeking. Now, if you haven't noticed, I'll point it out to you --some of them have an asterix beside their names.

Those individuals are in acting positions, so they're not permanent, it could change. The person highlighted in yellow, Sherri Berger, she's highlighted because the FOIA office is now part of her office. We used to report to the Chief Information Officer. A Chief Information Officer reports to the Chief Operating Officer, and sometimes I think in 2017, we were reorganized and moved to directly to report to her. That shows the support that the agency has for the FOIA program and how important they know it is. She's been very supportive of the FOIA program, and I have to put that plug in for her.

Next slide please. This shows you the slide that the Office of Director for ATSDR, as you can see that it has a deputy director, so they still fill it and if you look at the previous slide, she reports to the director for CDC. As I said earlier, and just to reiterate the director of CDC is the administrator of ATSDR. Just a quick note, the vast majority of probably all the COVID-19 records that we've received have been for CDC records, so this is just a takeaway for you in case at some point you want to make a non-COVID related request for ATSDR records. This will be a good guide for you.

Next slide please. This is just an illustration of the divisions within the program. Next slide please. Now, this is an organizational chart for the office of the Chief Operating Officer. As I indicated, the FOIA office reports directly to her. Previously we reported to the office of the Chief Information Officer. As you can see from the chart, the Chief Information Officer reports to the office of the Director. Next slide please. The CDC FOIA office. The CDC FOIA office handles all FOIA requests for the entire agency, period. Also handles requests for ATSDR. What we do is, when a FOIA request comes in, we do our best to identify what programs within the agency would have responsive records, and most times we use our institutional knowledge on the FOIA request.

You have someone like Bruno, he's been there for a very long time, so he's very familiar with some of the records the programs generate and sometimes the requesters would give us

enough information to direct us which way to go. We do this electronically, so we send through our automated tracking system or we call a request for documents to a program or multiple programs, and we send... we attached a copy of the FOIA request and we basically don't tell them how to conduct the search. The requester directs how the search is going to be conducted.

Now, if the program has concerns or needs clarification with a request, they can reach back out to us to help them out. Now, sometimes we facilitate direct communication with a requester and sometimes they've been helpful in helping their programs get what the requester needs or sometimes with the requester the program will say, look we can help you outside of the FOIA process. Can we just do that? It's short and then that request is closed, and they assisted us at the FOIA program. CDC has Centers Institutes and Offices, so for short if I refer to CIOs, that's what I mean. We also have Business Service Offices, BSOs. The BSOs are the offices that are more in the support roles, so they support the CIO. The Human Resources Division for example is a BSO because it supports the programs.

Each CIO and BSO has FOIA coordinator, embedded within their organization. They are the ones who are the liaison between the program and the CDC office. We submit our FOIA request to the FOIA coordinator who coordinates this, and then they triage the request within their programs or centers how they deem fit. We don't direct them as to how they do it; they do all that. We give them a set amount of time to respond to FOIA a request, to give us records. If they ask for an extension, we tell them, "We don't give extensions, you'd just be late." We have an overdue list that we track, that we report up to our leadership when we have outstanding FOIA requests for the programs.

It's a way of making sure that people take FOIA seriously. Now once the FOIA officer receives documents, then our job is to review the documents. Now, let me pause and step back, so you have a sense of what actually it takes. A FOIA record comes in, and they might come in as e-mails, PDFs, a spreadsheet, you name it. Once those documents come in, those documents need to be uploaded into our processing system. Depending upon the volume, it might take a few minutes, or it could take hours to upload into the assigned request that needs to be processed. Once those documents are uploaded into the system, then the FOIA office needs to start going through those documents to locate responsive records.

Sometimes the set of records that are given to us are very targeted and there are very few documents that are what we refer to as out of scope of the request. The more documents are within the scope of the request, the faster it is to process. The more documents that we have to review that are outside the scope of request, the more time it takes to go through to process a FOIA request. Once an analyst completes processing the request, typically it has to go through a second layer of review, so we make sure that we're not making any improper releases. Sometimes, it could be a third or fourth review.

What I've done with the program is to make sure that they are comfortable giving us records as well their concerns when I first came to CDC was that they didn't like to give records to the FOIA office because sometimes they got blindsided by what was released, and they were

Roger Andoh: upset with some of the stuff that got out, weren't very happy, and so their knee-jerk reaction was, rather than give it to you because if we give it to you, it's going to go out, so what I did was, look if you guys have concerns about the records that we're releasing, sometimes we don't know how sensitive it might be. It might not be obvious to us, let us know. Okay, let us know. I give the subject matter experts the opportunity in some cases--not all cases-- because I say, look we can't do that for every case.

In some cases, the opportunity to take a look at what we're going to release, so they are comfortable doing... okay we have no concern, and sometimes when they say we want you to redact A, Y, Z, and I don't agree with them, I say "I'm not going to do it." We can't do it, it's not defensible because ultimately under HHS regulations, the FOIA officer for each operating division makes the final determination of what can or cannot be released under the FOIA. At the end of the day, the buck stops with whoever the FOIA officer is and they know that. I make sure that they understand that. All you do is to recommend; you don't dictate what goes out and what doesn't go out.

Next slide please. This is an illustration of the typical life cycle of a FOIA request. Once we receive the request, we acknowledge it within 48 hours. Let me explain the acknowledgment for a brief second. Right now, most of our FOIA requests are inputted by the FOIA requester themselves to our public access link, which is the public face in portion of our FOIA Xpress tracking system, or when folks go to the national FOIA portal which is a DOJ.gov site and they submit a FOIA request to CDC, it automatically enters our present system and we just did that this year.

We made sure that we're integrated with their portal, so that once you submit a FOIA request to CDC from that site, it automatically enters the system and, in both instances, you're supposed to get an announcement that your request has been received, which is a good thing. But you will see a formal acknowledgement letter. Our goal is to send it to you in 48 hours. Our regulation says we can send it to you in up to 10 days, but we try to do better, so we want to send it to you within 48 hours. In that acknowledgement letter, we're going to tell you a couple of things. What track that you're in, we'll tell you... we'll make a notification on whether you... if you made a FOIA request for expedited processing, if you made a request for free waiver.

All those determinations should be notified at that point. We'll tell you what your request number is, we will tell you whether you... what your fee category is and whether you could be charged fees, and if so what types of fees you could be charged. We also will tell you what is the estimated date of completion which is just an estimate. I get calls a lot from folks going, "Hey, I got this request. I'm going to come visit you. You say six months down the road, I'm concerned about it." I say look, it is just an estimate and we base that on the level of work, how much time that we think it's going to take us to respond to the request. It is not our drop-dead date. We don't say just because we said it's six months out, it's means we're going to slow work on the request and respond to you in six months.

Roger Andoh: No, our goal, my goal, Bruno's goal, all of us, we want to get requests out as quickly as we can, and I can't say this enough, we have no desire to hold onto FOIA requests. None. We want to respond to FOIA requests as soon as we can. That's why we need your help to do that because we both have the same goal. Now, when your request is acknowledged, sometimes we may come back to you and say we need you to clarify or narrow the scope of your request. That can happen at any point in time. Once we've agreed on a clarified request or a narrow your scope of request and discuss fees, then the next stage will be that we send it to the programs to search for responsive records.

Then the programs like I said earlier, they collect the documents, they not only send out the documents, they also have to document how the search was conducted. Who conducted the search? Where they looked? Those kinds of things because we want to be able to go back and go, when we get challenged, on the adequacy of the search, that we don't have to rely on people's memories for how a search was conducted. That's also the opportunity for them to highlight for us if they have any concerns, will it be so that the information they're providing to us might contain confidential business information, it might contain PII.

That's the opportunity to tell us or it contains predication legal documents, attorney-client privilege. That's the opportunity to flag and say, "Hey, we have concerns with some information," or that's the opportunity for them to say, "No concerns." We have no concerns with this information, you can let it go. Do that. Then we process the document and the request is closed. That is a general life. I went and looked at where statistics in FY19, more than 95% of our searches were conducted by the programs, and I want you to remember this, because we're going to talk about the impact of COVID-19 on searches you would understand. More than 95% of the searches were not conducted by the FOIA office, they were conducted by the programs.

Next Slide. When you take a look at any federal agency's FOIA personnel, it could be deceptive. It might seem that they have a lot more staff working on FOIAs than they really do, because basically anybody working in a FOIA office is tagged as FOIA personnel, when not everybody works on processing FOIA requests. The same is true for CDC and as you can see from this chart, FOIA personnel for CDC, let's look at the blue column has stayed pretty stagnant. When I joined CDC in 2016, I believe we had eight FOIA analysts and CDC had contractors because they had a huge backlog, so we have got the support contractors to help us with our backlog.

Sometime when I came in 2017, as a result of some of the changes that we made, we're able to basically terminate the contract early because we no longer needed them. Basically, we didn't have enough work for the contractors because the contractors were paid based upon production, page count, so if there were no pages for them to process, they were not making money. At some point it was like, we don't have cases to give you because if we give it to you, then analysts will be doing nothing. One has to just let you guys go, so we saved the agency close to a million dollars just by doing that.

Roger Andoh: Before I start and then we lost one member of this staff who left to go to EPA. Right now, we're having around six teams. Right now, we're currently 16 FTEs, that includes Bruno and myself. Now we're down to 14. Of these 14 that we have, we have one IT person, so he does the IT searches, we have two appeals staff who handle FOIA appeals, so they don't process any FOIA requests because they only handle appeals. We have one communication person, so now we're down to 10 people who actually process requests. Of these 10, only seven of them do it full time.

The way we handle a FOIA request is that it's from cradle to grave. A request is assigned to an analyst and they keep that case until it closes generally speaking. Any communication that you'd have with them, even though the letters would be signed with my name, you're actually dealing with an analyst who sent it to you. Whoever is calling you or you are emailing, that's the person who is assigned to your request and they take your case from the... from once its assigned to them up until the request is closed.

Right now, we have seven of them and we're losing one very soon because she's moving on to different... pursuing a different career, so we're going to be down to six. Now we have three we refer to them as workstream leaders, they help us in a support role. They manage their FOIA service request online. For those if you want the number is (770)488-6399. I'll say it again. The FOIA request service line is (770)488-6399. We answer the phone anytime, so if you have questions related to a FOIA request, you can call that number. Although preferably I'd prefer that you deal directly with the analyst handling your case, that way things don't get lost in translation.

They also manage our FOIA mailbox. We have a FOIA mailbox. foiarequest@cdc.gov. They also manage the mailbox. Every day emails are coming in and they have to triage these emails, right? They also have to review cases. They do second line reviews and they also assign cases, so they have to process cases. There's a lot going on that they have to do, so in a nutshell the number of folks who are actually processing FOIA requests for the entire agency including ATSDR is ten, with one IT person helping to conduct searches. We used to have a contractor, but we lost the contractor. We are in the process of trying to recruit for another IT person just to help us with the volume of work that we have to deal with. We also have been approved for FTEs, for additional staff.

One of the challenges at least I've had since I've been at CDC is because we are based in Atlanta and typically government information specialist positions are not very highly graded. It's difficult to get people to move to Atlanta to accept positions, so we tend to get applicants who are not ideal, and my view is I'll rather have it vacant than have somebody that I know can't do the job.

Right now we are actually recruiting and Bruno is actually reviewing some applicants and we're hopeful that in the next couple of months we'd have an increase in that. We are looking for a few staff, so it's not counting against our FOIA requesters, but we've also been approved for two term positions to help us with the COVID-19 requests. At some point we're going to try and recruit for two positions to help us strictly for COVID-19 and it's a temp

Roger Andoh: position, so at some point they're not going to terminate at some point if they're going to leave the federal government unless we convert them at some point.

Next slide. This is a chart of the CDC FOIA office and you look FOIA request receives processed and pending. I want you to first look at the number of requests pending at the start of each fiscal year. In 2015, CDC had pending 685. That's on stage two 685 requests that had been carried over from the year before, and so in 2015 they received a thousand and twenty requests. The total number of requests at some point would be 685 plus 1020. That's how backlogs happen when you have too many requests pending at the end of the fiscal year.

As you're seeing the progression, by 2019 our pending was now down to 130. When I say the CDC... that we... our interest is in responding to FOIA requests, I'm not just saying that I mean that. Our data shows that that is what we are committed to doing and we've demonstrated that consistently. If you look at in 2016, which was when we had the highest number of pending FOIA requests, 749. That's a lot of work and what do we do that year? We closed out 1445 requests. That's a lot of work, it's what we did. By the end of 2019, we had reduced like I said, the number of requests pending to a very low number and that is our goal. That's what we want to do. Moving forward, that's what we want to do with COVID-19, that's what we want to do, period. Whatever the situation is.

Next slide. FOIA request response time for all process perfected requests. We track how much time it takes us to respond to a FOIA request, and so let me first talk about simple requests and complex requests. CDC has only two tracks, some agency has a simple track, complex track, etc. CDC we only have two. The track that we place your request in is based on the estimated amount of time and work it's going to take us to respond to your FOIA request. If you want your FOIA requests to be responded to timely, you want to get it into a simple track. That's where you want to be, because that means we estimate that it's going to take us a very short amount of time to close out your request.

Now if you could see, it's that by 2018 we were on average spending only 54.88 days to respond to a complex FOIA request and 12.25 days to respond to a simple request. The 2019 data and Alina pointed out this out to me and I had to go back and look at our data. Unfortunately, somebody made a keying in error. The number that is showing that we... it took us 122.6 days to respond to a simple request is actually inaccurate.

It's actually 12.6 days, but it is what it is, but at least we know that that was a mistake and that same number is reflected the annual Department of Justice report... the data from the annual reports, but it's okay. Our complex as you see... our complex cases where we span into an average within 26.23 days. This goes to show you what CDC... how committed we are to respond to FOIA requests timely.

Next slide. This chart tells you the types of exemptions that we apply. What is an exemption? Exemption under FOIA statute is a basis for which an agency could use to withhold information from release. There are nine exemptions, CDC primarily uses only a couple of them. Exemption 3, 4, 5 & 6. The exemption that we apply the most is Exemption 6, and then Exemption 5, and then Exemption 4, and to a very small extent Exemption 3.

Roger Andoh: Next slide, please. What is an Exemption 3 statute? Exemption 3 statute is basically that the agency is reliant on another Act passed by Congress that lays out the circumstance under which information may be withheld from release, so we rely on another statute, another FOIA statute, to withhold information. The very first one, the Ethics in Government Act of 1978, that is used to protect confidential financial disclosure information.

Some CDC employees for example, the CDC Director are supposed to complete well it first was a form 458 and that information is going to contain confidential financial information of these individuals and this information would... is protected from our release. I want to talk about 242m(d). Identifiable information for certain research and statistical activities. CDC receives quite a bit of data from local and state authorities asking for CDC to conduct research or statistical analysis. Sometimes the services that CDC is conducting requires that we agree that the participants' information be kept confidential, and so for those types of research that in place at the beginning of the process an assurance of confidentiality, AOCs.

If an AOC applies to a data set, they were requesting for, any more likelihood that some types of data requested that we cannot release because of the statute. With regard to the stockpile, CDC no longer applies this exemption because the stockpile has now been removed from... CDC no longer... the employees of the strategic national stockpile are now part of the Office of the Assistant Secretary for Preparedness and Response, ASPAR. It's now directly under Health and Human Services, so any requests for stockpile information will be referred to HHS.

The last one 262a(h) bioterrorism related information. CDC has select agent labs, CDC has oversight over select agent labs and some types of information that are collected that are contained within the records on these select agent labs can be withheld from release.

Next slide, please. Expedited processing that's probably of interest to a lot of people. In order to qualify for expedited processing, it is driven... our decision to grant or deny an expedited processing, or EP, is driven by the FOIA statute and by agencies FOIA regulations. There are only two that CDC applies. I know that some agencies have other provisions for when they can expedite, but CDC only has two. One is that the requester, you have to articulate that if we don't provide you these documents, that somebody or an individual would be... life would be in danger basically. That somebody's life or safety would be in danger.

Secondly, another way that you can make a case for why you should grant expedited processing is that there's an urgency to inform the public about a government activity, an alleged or actual government activity. Typically, it has to be done by somebody who's primarily in the business of disseminating information. A.K.A it's easier for a news media person, or a journalist, or a group that disseminates information a lot to make the case that they qualify under the regulations for expedited processing.

In 2019, we barely approved any expedited processing primarily because the requesters were not able to make the case for why they should be granted expedited processing. But in every single case, we provide the requester appeal right so they could have an appeal date. If you go back and look at our data, it goes to show that even in spite of the fact that we did not grant

Roger Andoh: expedited processing, we responded to FOIA requests pretty timely. I didn't say this but I'd say this now, our complex queue which is the queue you probably don't want to be in, the majority of the case that we closed in FY19, we closed most of... most complex requests were closed within 60 days, which is pretty good for an agency to do.

In spite of the fact that we didn't grant expedited processing, we did a pretty good job at making sure that requesters got response to their request very timely. What does an expedited processing mean? All it means is that you get to jump the line, that's all it means. It means that we get to process your request outside of the normal process of processing FOIA requests. The statute does not lay out a specific amount of time that it should take to respond to an expedited processing request. You're supposed to respond to it as soon as possible. When the CDC office receives the FOIA request and we are conducting a search for records and we ask for records from the programs, we do not put expedited requests at the front of the queue.

We basically tell them you're supposed to respond for all requests at the normal time. If you're late, you're late. We don't give an extension. We don't discriminate, but what we do is once we get a request for expedited processing has been granted, we process those requests ahead of requests that have not been granted expedited processing. However, if multiple requests have been granted expedited processing, then you're within an expedited processing queue.

Even though we technically don't have one, our tracking system tracks requests for expedited processing that have been granted, it puts them in order of when it was approved, so there's an order to that. In 2019, the average response time for expedited processing was 35 days. Unfortunately, we can't do that. I don't think that we can meet that metric now but the goal is that hopefully if we can get FOIA requesters to work with us, make their requests more targeted and more specific, we'll be able to do that.

Next slide, please. Request for fee waivers. Fee waivers are driven by the FOIA statute and agency regulations. You'd ask for a fee waiver because you're saying based upon my fee category, a fee could be imposed on me, and I'm asking that for a particular reason that I have to articulate, that I should be granted a fee waiver. Sometimes we do see requests for fee waivers where they go, "Well, I'm a non-profit organization, therefore give me a fee waiver." Or "I don't have money, give me a fee waiver." you have to show that for the records you requested that there's a public interest.

Two, that you are requesting these documents not primarily in your commercial interest. But in order to make sure that your fee waiver is granted, your best bet is to take a look at the HHS FOIA regulation or the regulations for the agencies whose record you're requesting and make sure you articulate in great detail why you're entitled to a fee waiver for that request. A fee waiver is not carte blanche that we say this organization, or this person is entitled to a fee waiver for all your requests. Your fee waiver is tied to a particular request that you're making. A request for expedited processing is tied to the particular request you're making, not for all requests. Something for you to keep in mind.

We adjudicate fee waiver determinations very quickly and in 2019, you'd see on the chart that quite a few were denied. Now you might go, "Does it mean that we charge fees now?" Even though we deny quite a few waivers, we didn't end up necessarily charging fees. In fact, CDC in FY19 only collected in fees \$30,000. I did the math, we closed out 1263 requests, that comes up to \$25 for each request.

Next slide. The number of incoming requests and complete FOIA responses. As you can see, in FY20 and this data right now is not outdated. I checked yesterday and we had reached 1700+ requests. That is more requests than we see for the entire fiscal year of 2019, more than we received in '18, more than we received in '17, '16, '15. We are probably on track to maybe hitting 2000, maybe more than that at the end of the fiscal year.

Next slide, please. In this chart I just want you to concentrate and focus your attention on the number of CDC personnel supporting the outbreak. Remember I said earlier that in 2019, over 95% of the searches that were conducted were conducted by the programs-- A.K.A. by the custodians of the records themselves. With the COVID-19 and we have 4600 CDC personnel, probably more than a quarter of CDC staff supporting the response, that has impacted our ability to collect records from the programs directly.

Next slide. Here I just want to talk about the impact of COVID-19 specifically, so as it's obvious you can see it from the two slides prior that FOIA office has received a significant number of COVID-19 literally requested. I believe we are probably approaching 500 requests. Bruno if I'm wrong correct me at some point. We experienced a 100% increase in incoming requests over the same period last year. Thousands of our CDC staff have been activated to assist with the pandemic, and that has impacted our ability to obtain records directly from the programs, so our FOIA analysts are now currently having a 500% increase in their workload.

They averaged 15 to 20 requests three months ago after all the hard work they did to bring the FOIA backlog to its lowest point in recorded history for CDC. In FY19 our FOIA backlog was 18. Now they have a workload of 80. Very soon they might be pushing a hundred every single day give or take because as you close you get assigned new cases, and that's a lot of things they have to juggle. But nevertheless, in spite of all that we are committed every day to locating records and responding timely to all FOIA requests including COVID-19 FOIA requests. Next slide, please.

Now the vast majority of COVID-19 FOIA requests have been approved for expedited processing. The last time I checked it was yesterday. We've approved I believe a hundred and sixty-one requests have been granted expedited processing and like I said earlier, expedited means that you have processed... you have prioritized ahead of non-expedited requests. We have received not a lot of this from what I can tell, but we've received requests where they were seeking records that have been requested in other requests.

What we're working to do is to make sure that to the extent that we can close out multiple requests with our response, we'll do that. For example, if your FOIA request involved item 1, 2 and 3 and Bruno requested one and two, and Roger requested one. The smarter thing... the

Roger Andoh: more efficient thing for us to do would be to process it once, so we'll process the ones who requested one, two and three and then we'd give all requesters 1, 2 and 3, so you get more than you ask for. That way we don't have to process the same document three times. The only disadvantage, if you want to call it that, is you get more than what you ask for which is okay.

Now, the primary methods for searches that are conducted are, the FOIA office conducts the search independently, or two we seek the assistance from the COVID-19 emergency operation center, so let me talk about how the FOIA office does searches because that is probably a matter of interest. The FOIA office, I believe sometime maybe two years ago, secured an e-discovery tool to assist us improve efficiency in responding to FOIA requests. We have an e-discovery tool that we use to independently conduct searches.

Once we've notified the respective programs and people that we're going to conduct a search for their documents. Now in 2019, we only used that for a hundred and nine requests. More than 1,100 requests were sent to the program's records. Now because of COVID-19 and the fact that we have 4600 people activated or working in some capacity with the pandemic, we no longer send FOIA requests to the programs to ask them to assist us to look at the records. We don't do that anymore because an EOC has been stood up.

CDC activated emergency operation and once that happens, they set up a FOIA liaison to handle requests for documents related to that EOC. In this case, every COVID-19 related request that is not independently searched for by the FOIA office has to go to the EOC to ask for assistance in locating records. In some instances, they are a disadvantage because they may not have historical knowledge for the programs. These are folks who are rotating in and out, people just moved on in and they move out, so they're doing the best they can in assisting us either by giving us leads, by giving us names of people who'd be best to contact, by giving us email boxes that which they think we should search against and so on so forth.

Next slide. CDC is proactively releasing quite a bit of COVID-19 related information, and these are two examples of information that's being proactively released by the agency. Once you click on the link, both bullets are linkable, it will take you directly to the site. CDC just like every other agency under the 2016 amendments to the FOIA statute are required to post on our website any document that has been requested three more times. We do have some requests that fit into that category. We have not been able to post any documents yet.

We will do so. At some point we will work on getting that done, but at this point we haven't done so. However, in spite of the fact that we haven't been able to do that, what we've done is that we have worked with the EOC and the SMEs to help requesters who are seeking data, surveillance data submitted to CDC by the local state authorities related to the human infection. It's called the case report form, sometimes referred to as the PUI form. We're having quite a few requests for this information. Well people are asking for a variety of data related to it. Gender, ethnicity, age, that kind of stuff, so what we said was look, "Can you guys come up with a public use data set that people could access so that we can take them outside of the FOIA process?"

I'm happy to report that that was established I think last week, we've closed out some requests for that, but that does not mean that if a FOIA requester goes and looks at our dataset and goes, "That doesn't work for me." That they can't submit a FOIA request. We are hopeful that it would be sufficient. But if you are not... if that doesn't satisfy your request, then you're certainly welcome to submit a FOIA request to the agency.

Next slide. What can you do to help us get records that you seek? It's a good question. One, keep your request brief. But before I say that let me say this, a successful FOIA request starts with you. That's who it starts with. You get to decide whether your FOIA request is successful or not. We all have a role to play in it, but it starts with you. Keep your request brief. Sometimes we get requests that are two, three, four pages long.

Or an EOC person who has to look at a FOIA request that we submitted for records and having to decipher what it is that you're asking. By keeping your request brief or at least bottom-line up front, it makes it easier. You can add whatever it is you want to add somewhere else as an appendix, but just key in what do you want so we can get to the point. Give us enough information up front so we can quickly process your request. Sometimes, you know exactly what you want, you have the context but your context is buried in some newspaper article that you saw somewhere or some document we have to decipher by reading the document.

I'll give an example, there was a request that I was reviewing, and they had sent out... the request is too broad, it's not clear. We're trying to figure out where to get records and I kept looking at this stuff and I say well, let me keep reading and I started reading the fee waiver portion of the request and it dawned on me that he gave me the context for the request. Now, that's me. That same request with my IT person who's not a FOIA person, he might miss that. He's looking at just where it says, I'm seeking or I'm requesting one, two, and three that's it.

He's not clear on that, that means he starts going down the path that he shouldn't go because he's going by what he's reading in the request. Ask for what you want and nothing more. Sometimes we get FOIA requests like let's just throw everything out at them because we fear that if we tell them what we want, we may not get it. I'll say this, take it for what it's worth, but I really mean it. If you tell us what you want and the document exists, we'll find it. If we can't release it for whatever reason, we'll tell you we can't release it, and if you disagree with the agency, you can file an appeal, you can file a lawsuit.

But you can believe that we're not going to purposely say we are not going to give this document, so we're going to play dumb. We're not going to do that. Just ask us for what you want and nothing more. Work with us to do that. Keep your request as narrow and as specific as possible, that helps out a lot with everyone, folks in the FOIA office, with the programs, with the IT person, it keeps it simple. It's really easy when it's very narrow and specific.

Try and get your request into the simple track. A request will go into the complex track under certain conditions. One, that we have estimated that it's going to take more time and work to respond, so if we make that determination it's going to go into a complex track. Two, we'll put in the complex track if it will result in us collecting records from multiple programs. If

Roger Andoh: multiple CIOs are involved in a record collection, it's going to go in a complex track. If the documents collected could be voluminous, that would put you in a complex track. Finally, and we don't have to check all the boxes, any one of them and you'd go into the complex queue.

Finally, you could be placed in a complex track if we have to consult with other programs, other federal agencies or to make a pre-disclosure notification to a submitter of confidential information. We are required under this FOIA statute to notify submitters of confidential business information before their records can be released. We have to give them a certain number of days, so I think it's initially working days and then if there's disagreement, if they object to disclosure of information and the agency disagrees with their objection, we still have to give them an opportunity to file what we refer to as reverse FOIA. Basically, they file a lawsuit to stop us... stop the agency from responding.

If the documents you're requesting are contract documents, you can 100% guarantee that you'll be in the complex queue because we have to factor all those things in, in a response time. COVID related responses-there are going to be allowed a consultation because there are multiple agencies involved in it, FEMA NIH, FDA, HHS. What you're asking for, if you know based upon your request that it covers all these multiple agencies, then don't be surprised if you get placed in a complex queue. If you don't want to be placed in the complex queue, then try and target it and only seek CDC originated records, makes it easier.

Finally, be realistic about the response time. Once it's obvious on the face of a request that what you're asking is not, we're not going to respond to it within 21 days, we just can't. Be realistic about response time, work with us on your request. If you do, we're more than happy to do everything that we can to respond to your request timely.

Next slide. What does it take to narrow your scope of request? Some of which you might have received a letter from us saying your request is overly broad and we need you to down the scope of your request. Sometimes some of you push back, you push back we... sometimes we go ahead and say, "Okay let's do it," and sometimes we push back and say, "No we can't do it. You need to narrow the scope of your request." How can you narrow the scope of a request?

Give us names and emails to be searched. Tell us who the custodians of these records are, tell us upfront because the more back and forth that we do with you, the longer it's going to take to respond to your FOIA request. That's just the reality, so if you want us to get to do it quickly, then the more information you give us up front then the less time we go back and forth with regard to the scope of your requests and how to conduct the search. Tell us that right away so we can get moving.

Give us a time frame, the shorter the better. Let's use COVID-19: every single day all of us and I can't imagine how many requests generally, agencies are getting or sending every day. A ton of emails, that's pretty much how we conducted business, a ton. So, if you were to seek records for-- let's say you're seeking a request for the documents for maybe one of the top three leaders in CDC. Let's use [Dr. \[Anne\] Schuchat](#) for example. You want all emails where

Roger Andoh: the word “coronavirus” is mentioned. You’re pretty much asking for an entire mailbox for that period. That’s what you’re asking for.

So you haven’t really identified for us what specific thing about “coronavirus” you really want. That’s what you need to get to because otherwise, you’re pretty much asking for... for the most part her entire mailbox, because probably pretty much every single email that she’s going to send or receive might contain that word, I’ll venture a guess. A month might be too much under the circumstances. A day or two, three days, a week might be better.

Target fewer people, most of the time these leaders are copied on emails, and so you don’t need to target everyone because you can target one person and you get emails that they send or received because most of them get copied and those who’re not being copied are not in the loop. Even if you say I want the documents, it will end up with no hits on them because they weren’t on the loop on that particular subject matter.

Provide us with keywords. Combining keywords is very helpful. Again, like I said, sending keywords are unhelpful because they’re probably going to appear in every single... right now if somebody made a request seeking my documents for example since January with the word “coronavirus”, you’re going to find something. Probably nothing that would be of interest to you, but you’re going to find something because pretty much... I can’t imagine any single CDC FOIA employee who has not received something about coronavirus in a week. We all are, so that word is not helpful--by itself it’s not helpful.

We have to combine keywords to make it more helpful. Tie the keywords to other words. The closer the proximity, the better. Maybe identify a subject matter that you’re looking for. It makes it easier because oftentimes, at least I make sure as a matter of fact that as I do this that my subject line speaks to what it is that the content of my email is, so if you’re able to identify the subject, then a search can be done against that subject. Even if you don’t have the full subject line, for as long as that word appears in a subject, if we independently do a FOIA search, it’s going to pull every email that has that word contained in the subject line. That probably is more likely to respond to your request because they’re talking about what it is that you’re asking about.

As opposed to a keyword, any document that contains that word. That could appear in an attachment, it could appear in a newsletter, it could be... appear in anything and it’ll be totally unrelated to what it is you’re asking for, and if we have to go through all those documents just to respond to you, that’s not helpful to you. Limit the volume of the records that you are seeking, and this is speaking more generally to reporters. I see myself a lot, I see stories being written on a few documents and email here to emails there, a particular document that was provided.

You don’t really need a whole lot to write a story. If that’s your goal, if that’s what you want to do, then if you help us with your request in terms of fashioning your request in such a way that we can get you that email that’s going to be your lead, or that’s going to reveal what it is that you want to write a story about, the better for you the better for us. If you go with this kind of approach about them asking for everything then you aren’t likely to get the document

Roger Andoh: as soon as you want, not because we don't want to respond to you timely, it's just because we can't under the circumstances.

Finally, I will say that contact us to assist you with scoping out your request and I mean this. You can contact myself; you can contact Bruno; you can contact the special analyst who is assigned your case for assistance with scoping out your request.

Next slide, please. This slide is now at our FOIA access link and I happened to see this at a congressional research service ditto wrote up a short summary on how different agencies were responding to FOIA requests by posting things on our website. So I was surprised to see that CDC's made it into their research into the document. Well, obviously we don't want you to send that FOIA request to us by mail because now all of us are 100% teleworking. There's nobody in the office, no one. We are dreading... Bruno was saying we probably going to get back to a room full of FOIA requests, we don't know, we hope not.

We definitely don't want you to submit FOIA requests by mail. Now, we also started to say that this side of May 1st, we didn't want FOIA request to be submitted to us via email. Then you go, why not? I have very few staff working on FOIA requests. I want to optimize their production; I want them to focus on the real work of responding to FOIA requests. The less time they spend logging requests, the better. We want FOIA requesters... we want you to input your own request. It's easier and you can do that through our FOIA public access link, you can do it through the COVID-19, you can do that through foia.gov.

You're literally inputting your own request and it's just easier on you, it is easier on us and I checked today, it's been successful. We've only received six FOIA requests coming through our mailbox since Saturday... it doesn't mean that if we get a request through the FOIA mailbox we're not going to log it, we will do it. We just wanted to discourage people from doing that, that's all. Certainly, when we get back to the office, we'll resume accepting FOIA requests by mail and that will continue.

Next slide. These are just resources available to you and at this point I will open the floor for any questions for me or for Bruno.

Alina M. Semo: Roger, thank you so much. You've done an outstanding job. I think you've covered a lot of material today that I think everyone will find very helpful. We have received a few questions on chat. I also want to give our event producer the opportunity to provide information again about how to call with a question. Michelle may I ask you to do that, please?

Michelle [Event Producer]: Absolutely ladies and gentlemen as we enter Q&A. If you would like to ask a question over the telephone, please press #2 on your telephone keypad. You will hear a notification when your line is unmuted, at that time please state your question. Once again, its #2 to ask a question over the phone.

Alina M. Semo: Thanks, Michelle. Do we have any questions waiting on the phone line?

Michelle [Event Producer]: There are currently no questions on the phone.

Alina M. Semo: Great. Roger, I'll go ahead and begin by asking you a few questions that we received via chat about searching. Folks had questions about that. The first question is as follows. Are CDC FOIA staff trained by the various CDC components to allow for a better understanding of the CDC's internal responsive documents? If not, will such training foster a stronger collaboration between FOIA staff and stakeholders from various CDC components?

Roger Andoh: The CDC FOIA, we do have training for our staff where we had it over the years where we bring in subject matter experts from the different programs to tell us about the documents that they collect, the sensitivity around the documents. We have not been able to do that for COVID-19 requests for obvious reasons, so there's difficulty with doing that. Then I would admit that are there challenges with us being able to locate records outside on our own now? Yes, because it's a moving situation and people rotate in and out, and so we have to primarily rely on going to the EOC's for... to assist in locating documents, or we conduct the research independently if we can do so using our discovery tool.

Alina M. Semo: Great, thank you. Bruno anything you want to add to that?

Bruno Viana: No, I think that's good. Like Roger was saying, we've had speakers or members of CDC staff coming from different areas, so we had someone come and discuss food outbreaks and the different outbreaks that occur at CDC and kind of give us the ins and out the types of records that are created. We do have... we touch base with subject matter experts and they come in and teach us, but we don't just rely on that training either, right, so during the processing of requests if we have a question we'll go to them, they offer their concerns when they provide the documents so there are different touch points that we use to better process the documents.

Alina M. Semo: While we've been chatting, there've been some other questions about searches particularly about emails, so I'm just going to ask them in the order in which they came in out of fairness to those folks. Someone asked a question to clarify whether the search process documentation is also generated by a computer program, and I think relatedly if you could clarify why the computer program would be impacted by those who are working for the pandemic. Isn't this just a computer program/software that conducts searches based on the request?

Roger Andoh: To conduct our e-discovery searches, the IT specialist has to manually put in the keywords, so the combinations of the keywords, identify the mailboxes, and other information that the requester has provided to conduct a search. That's how the search is conducted. Yes, that's how... it's not a computer quote-unquote "generated" search in that sense. Somebody has to input information into the search tools, and then the system then runs, and then it identifies documents based upon the keywords or information that it is searching against.

Bruno Viana: Real quick I want to add to that, so during Roger's presentation as well, he did... he mentioned somewhere in there that programs are affected by the current COVID-19 response and I want to differentiate between a computer program and the program offices, and so maybe that's a CDC term or a government term but when we say program in this

Bruno Viana: instance, we mean the program office, the office that is the subject matter expert that's doing that work, so there's a difference there between... there is software that we used to do electronic searches, so you can call that a program but in this instance it meant the program office of the folks doing the work.

Alina M. Semo: Thanks. That does clarify that question. The next question is how can a requestor avoid a "chicken/egg" situation with identifying the subject of a request? A lot of times requesters do not know the exact title of a document or record, but know that certain records exist based on other recordings, tweets or a leader's press conferences. Any advice on that?

Roger Andoh: That's true. We don't expect you to know the subject matter. If you don't know it then you don't make it up, but give us enough information to help us ask the right questions. I have routinely gone out of my way and said, "Ask, reach out to people within the program to say, 'Hey, we have a FOIA request for this, what would a good place for us to go?'" Because sometimes the e-discovery is limiting because, or it might be an inefficient way to look for the document-- when we can just ask and go, "Oh, yes, these people worked on it, they can get it for you." We certainly reach out... we don't... if you don't know the subject matter, give us enough context.

Give us a tweet. Give us this statement that a person made, give us when they made it because that gives us context so we could say, Oh, well we can go and they go, "Yes we've heard about this tweet. We know this happened but no discussions we had about this," or "this is where you need to go to talk about this to get records related to this subject matter." That helps us out with that.

Alina M. Semo: Thank you. Bruno, anything you wanted to add or you're good?

Bruno Viana: I mean I would just echo what Roger said. You don't need to know the specific title of a document, but if you can pinpoint a few days around the time it came out or like Roger said when the tweet came out, the guidance on wearing masks or something like that. You can pinpoint when a document was released, or information was released. If you can just get us in the area, we'll be... all you need to do is describe the document you're looking for. You don't need to give us pinpoint accuracy on the exact title of the document.

Alina M. Semo: Great. Another email related question. How are requesters supposed to provide email addresses for search? Most emails are redacted under (b)(6), Exemption 6 under the FOIA and it's hard for requesters to guess the email addresses.

Roger Andoh: Let me be more precise in my response. When we say email addresses, email addresses of external employees. You don't need to give us the email address for a CDC employee. We got that one, you don't have to worry about that. Therefore, if you say you're asking for an external person and you just give us a name, you know who that person is, we might not know who that person is, and so it is easier for us to do a search using an email domain name.

Roger Andoh: Even if you don't know the email address of that person, but you know the domain name for where the person works, that's good enough, we can use that. That's how this is. That's what we mean by... to the extent that you can give us... the more information you can give us to conduct the search the better. If you don't know... again context matters, that would be helpful to us.

Alina M. Semo: Folks can also avail themselves of the organizational charts that are posted on the CDC website, that are also displayed on the PowerPoint today, so they can get a better understanding of where folks fit in to the organization. Another email related question. Can you talk about what search capabilities you have with email searches? For example, terms and connectors like "and," "were," "not," and wild cards for keywords.

Roger Andoh: Bruno, you want to take that?

Bruno Viana: Yes, I'll take that one. We can as far as email search capability we can use all of those and I've just learned as well we can do "near", so like if you wanted "coronavirus" and another term, you can give us how many words within coronavirus you want the other term? That might be another way to link a document but still... because we run into instances where let's say "coronavirus" and "mask", just as an example, coronavirus and mask maybe in that document but "coronavirus" is on the tippy top whereas the "mask" is somewhere on page 93 where they're talking about a mask or... it's a different document altogether, but the word mask is there. So by linking or using the near feature we can do so: "within so many words," "within ten words" coronavirus and mask would likely be in the same discussions, so instead of just in totally opposite ends of the document. We can do... "and" as a good one because it links the two, we can do "or," "not". I guess any of those Boolean search terms that you use, I think we have access to most of them.

Alina M. Semo: Thanks, that's really helpful. Another question is CDC conducting independent searches on COVID-19 requests at all, or is the FOIA office asking the COVID-19 emergency operations center to conduct all searches?

Roger Andoh: We're doing both. This year I think I looked at data which show we have conducted as of yesterday 244 independent searches for COVID related requests. I'll probably go and say about slightly more than 50% of COVID related requests are being done by the FOIA office, so the difference is being sent to EOCs. It's a split, it's not exclusively going to EOCs and it's not exclusively being done by the FOIA office. Sometimes you might have a request where it's a hybrid where parts of it can be done by us and part of it, we need to go to EOC.

Bruno Viana: I would say given current circumstances we're trying as many as we can do, we're trying to help out in any way that we can so if we can pull a search and not have to pull someone off or even try to ask to pull someone off to do a search. We're doing everything we can in order to assist CDC staff to where we can take care of a FOIA apart and they can go take care of their normal everyday duties.

Alina M. Semo: That makes sense. I'm just going to pause for a second. We have a number of other chat questions just to check in with our event producer. Are any callers waiting on the line?

Michelle [Event Producer]: They're currently no calls in queue. Once again, ladies and gentlemen #2 enters you into the verbal question queue.

Alina M. Semo: All right, great. Thanks. Continuing with our chat question. Could you talk about any efforts CDC is working on regarding proactive release of records. There's no doubt a lot of FOIA requests. Are they seeking COVID-19 related records? Is your office working to proactively release that data? I think you guys already covered this during the presentation, but...

Roger Andoh: Bruno, you want to take that one and I'll piggy back off you?

Bruno Viana: Yes, I mean CDC is proactively releasing some information like Roger said. Just last week we had some new tool that could be used to pull data. The CDC FOIA office, as we respond to FOIA requests, we do plan to post information on the CDC FOIA website. We just haven't gotten to that point yet. But I know if you look there now, there's not a whole lot to see but we'll be improving in that aspect in posting records in the future.

Roger Andoh: I do want to second that in that we take ownership of the fact that we have not been able to do that. Well, I'm not going to make any excuses for that, but we will definitely work on making sure that requests that meet that the three or more requirement are posted to the website.

Alina M. Semo: Can you explain how the CDC gets and gathers state-level data on the number of people tested, numbers of those numbers of people tested, morbidity, cause of death where death occurred in a nursing home, homeless shelter, or hospital. I don't know whether you're able to answer substantive questions, someone did ask that question.

Roger Andoh: Let me... I'll give it a shot and this is... let me take my FOIA hat off please, so I'm not giving an agency response, I'm giving a Roger response. As you read some of our... what do you call it-- MMWR reports-- they show how the agency has been collecting data from local and state and counties. If you read them, they also show that sometimes information that's provided is faulty. They don't provide information for all the columns. CDC just takes what they can get. I also recall, I think recently, the vice president ordered or directed, let me use that word-- directed-- that certain types of information especially nursing homes and hospitals and bed equipment needed to be submitted to report it to CDC.

To what extent-- what information they collect on a daily basis, I don't know the details, but I know that we are collecting information, we are receiving information, and I said... let me say this, I was kind of surprised when they said, some of this information can be sent by email. Think about it, if they're sending... if CDC is receiving by email data from the state, somebody has to take that data and put in something else. If you make inquiry request and say I'm looking for this data, don't be surprised if we can't get it to you soon because they're still working on trying to take that information submitted through an email or in a form

because it's not... and then putting it into some spreadsheet or some data that he can analyze. That takes time.

If they say we can't respond, there's nothing really a FOIA office could do at that point but just to wait. Our push would be, "Hey, can you come up with a public use data set that way we can push these people out of the FOIA process?"

Alina M. Semo: One of my colleagues is directing folks to cdc.gov/mmwr/index.html. That's the link for the information that this person was asking about. Michelle, our event producers informing me that we have a call on the line. Our caller can you please go ahead.

Michelle [Event Producer]: Caller your line is unmuted. You may ask your question.

Greg Bridges: Hi, my name is Greg Bridges. I work at FEMA's FOIA office. I was just wondering what are you all doing to prioritize the responses to the COVID requests against non COVID related FOIA requests? Particularly non COVID related requests that also qualify for expedited processing.

Roger Andoh: Thank you for the question. I would say the overwhelming number of FOIA requests that CDC is responding to right now are COVID related. Fortunately, and I didn't give this data, but I'll go and say it now. Even though as of yesterday, we received 1706 incoming requests, we have responded to a thousand and ninety-one. Probably most of the non COVID related responses, we've responded to most of them, and to right now what we are really dealing with for the most part COVID-19 related responses and our non COVID related responses are generally... I don't believe that we have any one of those requests where they have requested expedited processing.

That doesn't mean that we are not prioritizing them. We want to respond to all requests but if a request has been given expedited processing, then obviously that comes ahead of a non-expedited request. But at the end of the day... it's driven by whether there are records to process, so if you don't... if we've granted expedited processing but there are no records to process, and we have a non COVID related request with records, it's going to be processed to go out. We are trying to work and respond to all our COVID requests as soon as we can. That's our bottom line.

I mean we pride ourselves on being one of the best FOIA programs at least within HHS, for sure we can say that, and we don't want to slip back to where we used to be where CDC's FOIA program was always in the news for delaying FOIA responses, telling requesters it would take three or four years to respond to a FOIA request. We don't want to go back there at all. That's why one of the reasons why we had this meeting is because we want to be proactive and work with requesters and paint the picture for you to understand that we're doing the best we can, but as I said before a FOIA request starts with you.

You can help us with the way you craft your request, you can help us with your willingness to be open to modifying the scope of your request so that we can respond to your request as soon as we can, because we both have the same goal. You want records, we want to close that request down.

Alina M. Semo: Thanks very much for that question. Another chat question related to searches. You said that when you pass a request along to the appropriate record keeper, that record keeper's given a deadline. What is the consequence for missing these deadlines, and how much do missed deadlines contribute to extending your turnaround time?

Roger Andoh: Let me start with the consequences. The CDC office, we don't... we can't impose any penalties on them for not providing documents. We can't do that, and I don't know whether they get in trouble with their supervisor. But this is what we do for accountability purposes. Like we said we have an overdue list that we send out to the program's leadership every month, so there's visibility. That drives competition because nobody ... they want their programs to look good.

I know for a fact when I first started in CDC, the overdue list was running about 400 to 500 requests a month. At some point in 2008, we had zero. That's how committed people are. They take it seriously; they don't want to be on that list. The fact that they are on that list is not because they don't care or are not working on it, it's because there are factors beyond their control, so we are telling you today, I'm not going today blame the program for delaying responses. That's beyond their control because they're really working hard to give us responses. 83% of CDC's FOIA responses were responded to timely, I can say that.

That slide shows 83% of the FOIA requests that we have responded to, we responded to them timely, so we are continuing to work with the programs to get us records as soon as we can. We will push them and that's what we've offered to them. We say, "Hey look, if you can give us a lead, a person, an email box to search again, whatever it is that you can do to help us locate a document, we'll do that so you don't have to worry about it."

Bruno Viana: I can answer that a little bit. Like Roger was saying, when he got here the overdue report had about 480, I think, request on it and the attitudes of program was kind of understandably, I would argue, the CDC FOIA office is behind, why should I kill myself to get you these documents if they're just going to sit in a closet somewhere. We work very hard to improve our processes and things and I can tell you that the program people responsible for giving these responses take it very seriously, so Roger sends out a monthly report that I prepare for him.

I'm the lucky guy-- he says to them, if you have any questions, please contact Bruno, so I'm the lucky guy that gets those emails, but people are... they take it very seriously, their management takes it seriously, and you can tell because I get every month as soon as that report goes out, "Oh my gosh, let me clean this up, let me clean that up." We send this week-- I get contacted a lot when that report goes out either by the manager or themselves or the people in charge of pulling those records. Like Roger said, we were at 480 or so when he got here, and I think it was September or October of last year.

I think it was last year when we had zero overdue for the entire agency. At least responsive records coming from the program office to the FOIA office, there was zero for that month. It is taken seriously, we obviously take it seriously because we need those records to do our job

Bruno Viana: and they take it seriously because they don't want their managers coming in behind them and saying "Hey, why isn't this being responded to?"

Alina M. Semo: All right. Well, that's great, thank you. Couple more search questions. We have one that asks what keywords do you recommend using when trying to identify communications, planning resources sent from the CDC to state?

Roger Andoh: Bruno?

Alina Semo: You can think about that one. You can answer it later if you can't answer right now.

Bruno Viana: Yes, I think it's a good... maybe this isn't a perfect response because this kind of gives you a view into what we're working with. I don't have a perfect response to give you as far as what the keyword should be, but we can run a search and we can always, if we respond to requests and we say we didn't find anything or become very little and we turn it over to you. That doesn't have to be the end of the process there. You can adjust from that point, submit a new request. You can call us and say "Hey, I'm trying to get this document but the response that you sent me wasn't exactly what I was looking for," so we can work together to try to find a document. We can reach out to the program, get some insights.

Maybe they have a better idea than we would because they're the ones that are doing the sending to the states or receiving stuff from the states however that relationship is happening. We can reach out to them because they would have more insight than the FOIA office would and then we can work with the requester in order to try and pinpoint the exact document that you are looking for.

Roger Andoh: I thought I'd brought something now that Bruno has said something, which will be a different route rather than using a keyword. For example, if you can identify the state department or local state agency that CDC interacted with, for instance any email correspondence between CDC employees and the state, that would include presumably this document you're referring to, so you don't know the keywords, but at least you know the players, you know the people that CDC would have contacted in the state and that's your in-route into getting the document because we can easily, locate the documents through our e-discovery about email conversation between CDC personnel in California, or Georgia, or whatever state it is, because it's only a few people.

Alina M. Semo: One more question we have on searches. Does the CDC FOIA office conduct cross-reference searches from the beginning or is that something that needs to be specified in the requests or on appeal, on administrative appeal?

Roger Andoh: Could that person clarify what you mean by cross references searches?

Alina M. Semo: I can just give you a clarification from my own personal experience having worked at the FBI for almost 15 years, so there's some information that is only mentioned in a particular file. It's not the main subject of a file and so some requesters are interested in that information as well. But perhaps you're... the way you're conducting your searches is not

Alina M. Semo: conducive to that, but maybe you could talk about that for a minute in terms of subject matter versus something that's just a mere mention, a passing reference to a subject matter.

Roger Andoh: Well, with our such capabilities if you just give us a word and you give us the names of the people and the custodians of those records, if that word happens to appear in any document that they received, or sent, or came over... or anything, it would come up. The computer would look for it for us because it's going to identify that word in whatever document however it is located based upon the search parameters.

Alina M. Semo: Thank you. Moving on we actually have one exemption related question and I will leave it to your discretion if you think it's broad enough to answer with regard to contract and procurement information. Does the CDC apply Exemption 3 to contract or bid and proposal information after the contract has been awarded by the agency? Or does the CDC use Exemption 4 to withhold this information in addition to Exemption 3?

Roger Andoh: I can only speak for my experience at CDC and voice range with records that I'm familiar with. We primarily withhold contract documents using Exemption 4. Have we maybe used Exemption 3 in some circumstances, possibly, but primarily we use Exemption 4.

Bruno Viana: Right. There's some information in contracts like Roger says can be withheld under Exemption 4, there's going to be some that's just withheld under Exemption 3: proposal related information in some instances, so it just depends on the contract itself. What point in the contract, if it was awarded or not awarded? There's a lot of factors that go into that question, so I can't give you a hard and fast like paint-by-numbers yes or no, whatever, but there are instances, yes that [Exemptions] 3 and 4 will be used in both.

Alina M. Semo: We just received one question just shortly before we started our webinar today. I'm not sure if you'll be able to answer it, but I'm just going to close it. How was FOIA or HIPAA (the Health Insurance Portability and Accountability Act) apply to information contained and death certificates or in state agencies' Vital Statistics databases.

Roger Andoh: I would pass on that question. I can't speak to HIPAA, so I can't answer that question.

Alina M. Semo: I'm going to ask Michelle. Do we have any other questions on the line? Because I believe we've exhausted our chat question.

Michelle [Event Producer]: There are currently no questions on the line.

Alina M. Semo: All right. I'm just going to double check if I've asked you all the questions. It looks like we have, and I think we can give folks back the gift of time, give them a few minutes off early to go and have lunch. We again want to thank Roger and Bruno for their time today. Lots of great information. We're all living under these unprecedented circumstances. The CDC in particular is uniquely situated to really experience what's going

Alina M. Semo: on, and we very much hope that everyone's found this information, helpful, and insightful. I do want to remind everyone we posted the PowerPoint...

Michelle [Event Producer]: We did just get a question on the line Alina, sorry.

Alina M. Semo: The PowerPoint presentation is online on the OGIS website, so I want to invite everyone to take a look at that and our event producer informs us that we have one call on the line. Go ahead please.

Roger Andoh: That question is for Bruno.

Michelle [Event Producer]: Alright. Caller your line is now unmuted.

Zack Newman: Thank you. I'm sorry to squeeze in there. My name's Zack Newman with 9News based in Denver. I know one thing I'm trying to wrap my head around is the responses from the various agencies, between FEMA and HHS and then CDC within HHS, and so I'm curious about the recommendation for making sure that all bases are covered within the FOIA process because specifically we'll be filing FOIAs within Colorado, but was curious if there's particular difference in like document names, or just in general as I'm requesting that I should be aware of between all those agencies.

Bruno Viana: What I would say is as far as if you need documents from HHS, CDC, and FEMA, as far as HHS and CDC portions would go, I think it'd be cleaner if you sent that request to HHS. They will then refer down our portions for us to respond to. Well, like Roger was saying at the beginning during his presentation, clearly there's going to be a lot of consultation that's going to be required and built on that FOIA.

Each agency only makes its determination on their own record. If HHS or if FEMA equities are contained within the CDC portions, we would either consult or refer that to them for them to respond either directly to you or to give us their response and that so that we could respond for our portions, or within our portion. But as far as names of documents and terms in that, that's far as that goes as I don't... it would depend on what you're asking for, but I wouldn't have any insider knowledge as to how HHS or FEMA structures their documents or the documents they collect, or anything like that.

Roger Andoh: I would say this just as an addition. Take a look at NIH's website, take a look at FDA's website, take a look at FEMA's website, take a look at some of the statements that are being made by officials working at this agency. That would give you an insight as to who's doing what for example. So if the CDC director went into something, somewhere about something on us and they send you here then you know, if you're looking for stuff around or about that subject matter, you would come to the CDC. If it's communications that say between FEMA DHS about let's say PPEs or whatever it is and consultations with CDC, then you should automatically know that CDC is going to have to go to FEMA and consult with them or vice versa.

If you're willing to wait for all that process to go forward, then by all means make that FOIA request. But if you want something quickly then you might want to focus on targeting

Roger Andoh: requests that would not require consultation, or not a lot of consultation. We receive consultations from FEMA for example, at least FEMA, and we try and respond to them very quickly. I mean we take a day to go through it because we know, look they're under the gun like everybody else and we're not going to hold it.

But that's CDC-- I can't speak to what other agencies are doing-- but when we get a consultation from another federal agency, we try as much as possible to look at CDC's equities, give them our disclosed demolitions and just keep it moving.

Alina M. Semo: Thank you very much. Any other callers on the line before we close up?

Michelle [Event Producer]: I do not see any additional questions.

Alina M. Semo: All right. Well again, Roger, thank you very much, Bruno, thank you very much, and I hope everyone, and their families remain safe, healthy, and resilient. Take care everyone, have a great day.

Roger Andoh: Thank you.

Bruno Viana: Thank you.

Michelle [Event Producer]: That concludes our conference. Thank you for using Event Services. You may now disconnect.