

FOIA Implementation Survey Summary

Implementation Subcommittee, FOIA Advisory Committee

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Method

This survey of federal agency Chief FOIA Officers was conducted by the Implementation Subcommittee of the FOIA Advisory Committee to get a sense for whether progress has been made in improving the FOIA process through previous committee recommendations. An email was sent on Oct. 26, 2023, from the Office of Information Policy on behalf of Implementation Subcommittee Co-Chair David Cuillier to all 120 agencies that are subject to FOIA. Of those agencies, 22 receive 0-10 requests annually, and more than half receive less than 100 requests. A link was provided to an online Qualtrics survey that included 37 questions. Participants were told in the email that the survey would take about 20 minutes to complete, was voluntary, and that no identifying information would be provided to the committee or OIP – only aggregated data (below) would be disseminated. A reminder email was sent after a few weeks, and the survey closed Nov. 14, 2023. In all, 22 agencies filled out the survey, representing a range of large and small agencies. Responses are provided below with the raw number of responses and percentages (some percentages do not add up to 100% because of rounding). Most questions closely mirrored the wording of a previous committee recommendation, and the specific recommendation link is provided below for each question. While a relatively small response rate (therefore perhaps skewed toward agencies excelling in FOIA processing), this may still be instructive for following-up interviews and in conjunction with other data and insights.

1. Does your agency conduct mandatory FOIA training for the following? (check all that apply)

(2020-05)

All new employees	13	48%
All current employees	8	30%
For FOIA staff	2	7%
No mandatory training	4	15%

2. How effective, in your opinion, has this training been in improving the FOIA process at your agency?

Very effective	12	55%
Moderately effective	3	14%
Slightly effective	2	9%
Not applicable	3	14%
Not sure	1	5%
No answer	1	5%

3. Does your agency require briefings on FOIA for incoming senior leaders? (2020-06)

Yes	10	48%
No	10	48%
Doesn't apply	1	5%

4. If yes, how effective have these briefings been in improving the FOIA process at your agency?

Very effective	6	55%
Moderately effective	4	36%
Slightly effective	1	9%

5. Has your agency incorporated appropriate performance standards in all employee appraisals and work plans to ensure compliance with the requirements of FOIA? (2018-07)

Yes	3	14%
No	18	86%

6. Does your agency leadership issue an annual memo to employees reminding them of their responsibilities and obligations under FOIA? (2020-17)

Yes	2	10%
No	19	90%

7. Does your agency use the new online FOIA training modules developed by the Office of Information Policy? (Check all that apply.) (2020-04)

For all employees	4	16%
For FOIA workers	14	56%
For executives	2	8%
Created our own	2	8%
No	3	12%

8. If your agency uses the new online FOIA training modules, how effective have they been in improving FOIA in your agency?

Extremely effective	1	5%
Very effective	6	29%
Moderately effective	4	19%
Slightly effective	3	14%
Not applicable	6	29%

9. Does your agency provide on your website plain language, step-by-step explanations on how to file a FOIA request, in addition to your FOIA regulations? (2020-01)

Yes	20	91%
No	2	9%

10. Does your agency publish records to an online public reading room/library? (2018-05)

Yes	20	91%
No	2	9%

11. Does your agency post on its FOIA website information for requesters about Glomar (Neither Confirm Nor Deny) responses, and why they might receive such a response? (2022-03)

Yes	2	9%
No	14	64%
Don't issue	6	27%

12. To what extent does your agency comply with 508 requirements in posting documents on your FOIA website? (2018-06)

All comply with 508	14	67%
Some comply	4	19%
All do not comply	2	10%
Don't know	1	5%

13. What recommendations do you have that you think would make it easier for agencies to post material online that complies with 508 requirements?

- To allow agencies to post the documents without 508 compliance and only make the index 508 compliant. The agency can then make a specific document 508 compliant upon request.
- There is confusion related to 508 compliance. Many agencies struggle with this due to the issues related to pictures/graphs etc. Text is generally easy; however, hurdles remain.
- Specific, clear guidance for what makes a document 508 compliant.
- Send conventional materials to OIP and have OIP convert the materials.
- None.
- (Our agency) has a dedicated person that handles this for all employees who post online.
- An automated check or tool to assist with making documents 508 compliant.
- Ability to post for a certain period before the 508 obligations kick in (e.g., 30 days).

14. Does your agency release records online in machine-readable formats, such as CSV, Excel, XML, or other structured data formats? (2020-12)

Always	3	14%
Most of the time	4	19%
Sometimes	9	43%
Never	3	14%
Not sure	2	10%

15. Does your agency post in your FOIA library FOIA logs in searchable structured data formats, such as Excel or CSV files? (2022-10)

Yes	9	43%
No	11	52%
Don't know	1	5%

16. Does your agency use e-discovery tools to search for records? (2020-11)

Yes	17	77%
No	4	18%
Not needed	1	5%

17. Does your agency use machine learning or artificial intelligence in the FOIA process (e.g., searching for records, filtering for exemptions)? (2020-22 and 2018-02)

Yes	5	23%
No	17	77%

18. Does your agency follow the 18 best practices recommended by the Office of Government Information Services in posting records to your online FOIA reading room? (2018-05)

Yes	15	71%
No	5	24%
Don't know	1	5%

19. How helpful has the Chief FOIA Officers Council's Technology Committee been in identifying best practices that can be implemented in your agency? (2018-01)

Extremely helpful	2	9%
Somewhat helpful	4	18%
Neither helpful nor unhelpful	12	55%
Somewhat unhelpful	2	9%
Not aware of this committee	2	9%

20. Does your agency have standard operating procedures defined for FOIA processing? (2020-08)

Yes	20	95%
No	1	5%

21. If so, in your opinion, are these standard operating procedures adequate? Have they made a difference?

- a. Yes; however, they are in process of being updated.
- b. Yes. They inform agency employees of our process and assist in training for new employees with FOIA responsibilities.
- c. Yes. We are a small agency with three employees working part-time on FOIA (two processing requests). We generally have less than 100 requests annually and sometimes less than 50. While our process and procedures are a bit antiquated and our technology is limited, they are sufficient for our FOIA program.
- d. Yes, the standard operating procedures are adequate.
- e. Yes, I believe they are adequate. They may need to be revisited since we have seen an uptick of FOIA requests within the last quarter.
- f. we have recently received a FOIA request for these SOPs, so we will be reevaluating the benefit of having them. That said, they are helpful.
- g. They're adequate. We get very few requests.
- h. They are in draft so we don't know how adequate they will be yet.
- i. They are being newly updated, and we anticipate that the new version will be impactful.
- j. The SOP is reviewed annually and as needed. We find them adequate.
- k. SOPs have helped to ensure FOIA cases submitted to CIA are processed more effectively and consistently.

22. Does your agency include FOIA in its agency performance standards, as recommended by the Office of Government Information Services? (2020-07)

Yes	4	18%
No	10	45%
Only for FOIA staff	4	18%
Not sure	4	18%

23. Do your agency regulations, directives, policies and guidance allow individuals access to records about themselves, regardless of whether they have legal representation in agency proceedings? (2022-12)

Yes	15	68%
No	1	5%
Doesn't apply	4	18%
Don't know	2	9%

24. Has your agency considered providing alternatives to FOIA for commonly requested documents? (2020-15)

Yes	15	68%
No	7	32%

25. Does your agency identify common categories of records requested frequently by individuals seeking records about themselves, and then establish alternative processes for providing access to requesters? (2020-14 and 2022-13)

Yes	7	33%
No	7	33%
Doesn't apply	7	33%

26. Which of the following best describes your awareness of the Federal FOIA Advisory Committee under NARA?

I was/am a committee member	3	14%
I am familiar with the committee's work	9	41%
I have heard of the committee	9	41%
I have never heard of the committee	1	5%

27. Which of the following best describes your awareness of the Committee's recommendations to the Archivist?

I have enacted changes in response	1	5%
I am familiar with them	6	27%
I am somewhat aware of them	5	23%
I did not know about them	10	45%

28. If your agency has enacted changes based on Committee recommendations, please briefly describe the nature of the changes.

- a. Well, for one, whenever our agency relies on Exemption 5, we always identify the corresponding privilege. We already allow individuals to access information about themselves. As for easier first-person access, our employees can generally access their personal files through the government-wide personnel sites, e.g., EPP. With regard to parties in our cases, we are rolling out a beta program in the next week or two which will allow parties to electronically access their case files. Finally, some of the other recommendations are to address challenges not routinely encountered by our agency.
- b. We track and report on "Neither Confirm Nor Deny"/Glomar responses.
- c. One example is the recommendation to post FOIA logs, which has been helpful.
- d. (Our agency) upgraded its FOIA website. (We) also created templates that provide more detailed information about (our) search efforts. Additionally, (our) FOIA specialists are required to collaborate with FOIA requesters whenever there is any ambiguity regarding

the information being requested, and to keep FOIA requesters updated about the status of their FOIA requests.

29. If your agency has not implemented changes in response to the Committee's recommendations, why might that be?

- a. We are a small independent agency that receives a maximum of 12 FOIA requests per year. Have had no appeals. The process we have in place seems sufficient.
- b. Many of the recommendations were already implemented before the Committee's recommendations.
- c. Lack of FOIA staff and resources.
- d. (Our agency) interprets these recommendations to be for the Archivist of the United States and OIP, which have at times been integrated into Chief FOIA Officer Reporting or new OIP requirements and (our agency) responds accordingly.
- e. A lot of the recommendations are not scalable for our agency.

30. Is there anything else you would like to add, or questions/suggestions you might have for the FOIA Advisory Committee?

- a. We're an agency with an FTE of 5. We have a very narrow mission and very few records that would be available under FOIA. I feel like most advisory committees forget that agencies like ours exist. I worry with the development of things like the online portal that we're going to see increasingly burdensome reporting requirements and fewer guardrails around the process. I'm already noticing a uptick in my number of requests and 99% of them are clearly designed for other agencies. I suppose I'm just saying this to remind the advisory committee that agencies like ours exist and should be considered where possible.
- b. One of the biggest challenge (our agency) FOIA unit faces is when a FOIA requester seeks "any and all" records without narrowing down or identifying specific topics.
- c. I would like for the Committee to keep in mind that smaller agencies, such as ours, simply do not encounter many of the problems experienced by larger agencies. In the end, many of the well-intentioned solutions, guidance, and requirements imposed on agency FOIA staff government-wide amounts to burdensome, busy work for some of us. This is especially so for agencies that do not have full-time FOIA personnel. Therefore, alternative solutions, guidance, and requirements for smaller or understaffed agencies would be much appreciated. That being said, I do believe that there was/is an initiative by the Committee to address small agency issues, which I greatly appreciate. I also I acknowledge my lack of involvement in helping to address these concerns in recent years (because FOIA is not my full-time responsibility). However, I hope that moving forward I can assist the Committee in improving the FOIA landscape for small agencies.
- d. How best to encourage agency management to use a FOIA performance measure in PMAPs, require agency FOIA training nonFOIA staff, and increase resources for eDiscovery outside of litigation and other limited situations.