

Recommendation SR-4¹

We recommend that Congress create a new “FOIA Court” with specialized jurisdiction over FOIA claims.

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The volume of FOIA litigation steadily increases every year. In Fiscal Year 2024, requesters filed 889 FOIA suits.² Although this number was quite small relative to the total number of new civil cases,³ a disproportionate share was brought in the U.S. District Court for the District of Columbia (“DDC”). Indeed, according to data obtained through PACER, 680 of those 889 FOIA cases were filed in the DDC, representing roughly 76.5% of all new litigation reported by the Department of Justice’s Office of Information Policy. The concentration of FOIA suits in the DDC has hardly changed in the past year. Data available from the Federal Judicial Center indicates that, in calendar year 2025, 65% of all new FOIA suits—*i.e.*, 649 out of 997—were still brought in the DDC.⁴ The next most popular jurisdictions were the Southern District of New York (6%) and the Northern District of California (3%), which is consistent with historical trends.

The fact that most FOIA cases are (and will likely continue to be) filed in the DDC has not gone unnoticed by that court’s members. Judge Trevor McFadden, in *American Center for Law & Justice v. Department of Homeland Security*, voiced real frustration about the impact FOIA litigation and its monopolization of the time and attention of DDC judges, who already face crushing dockets. Judge McFadden underscored how “[c]ourt dockets in this district overflow with [FOIA] matters. . . . Judges in this district currently have 991 active FOIA cases, which represent almost a quarter of the district’s entire civil docket. And many of those take years to resolve.”⁵

Others have remarked on the impact of FOIA litigation, too:

The volume of FOIA litigation nationwide has outpaced the ability of federal courts to deal with those cases in a timely manner. And most FOIA litigators and DOJ attorneys would agree that, quite apart from the increased volume of lawsuits, FOIA cases are often given the least attention of any on a district judge’s docket. To be sure, there are always exceptions; but few judges appear to enjoy, let alone dedicate much of their time and attention to FOIA questions.⁶

¹ This recommendation was crafted by the Enforcement Working Group (David Cuillier, Margaret Kwoka, and Ryan Mulvey) within the Statutory Reform Subcommittee of the 2024-2026 term of the FOIA Advisory Committee.

² Dep’t of Justice Office of Info. Pol’y, 2024 Freedom of Information Act Litigation and Compliance Report at 20 (Mar. 7, 2025), *available at* <https://www.justice.gov/oip/media/1392641/dl?inline>.

³ See U.S. Courts, “Federal Judicial Caseload Statistics 2024,” <https://www.uscourts.gov/data-news/reports/statistical-reports/federal-judicial-caseload-statistics/federal-judicial-caseload-statistics-2024> (listing 347,991 new “civil cases” for the 12-month period ending on March 31, 2024).

⁴ This data can be access at the Federal Judicial Center’s Integrated Database: <https://www.fjc.gov/research/idb>.

⁵ 573 F. Supp. 3d 78, 79, 83 (D.D.C. 2021).

⁶ Ryan P. Mulvey & James Valvo, “Creating a Freedom of Information court,” *Ams. for Prosperity*, Mar. 14, 2022, <https://americansforprosperity.org/blog/creating-a-freedom-of-information-court/>.

To alleviate the pressure on district courts—especially the DDC—and to ensure that the judges who hear FOIA claims are able to bring their interest and expertise to bear, Congress should create a new, specialized Article III⁷ court that only hears FOIA claims.⁸ This specialty court should be staffed by newly appointed judges who are noted experts in public-access law and related topics, ensuring that cases are given adequate attention so as to improve the quality of the litigants’ experience and ensure consistency in the resulting decisions.⁹ Appeals from this specialty court could be directed to the D.C. Circuit, which is already known for its expertise in FOIA law. In short, a new federal-transparency tribunal, housed within the judicial branch, could help improve the timely and expert adjudication of open-government claims, while leaving traditional district courts of general jurisdiction to manage the rest of the civil and criminal dockets. Again, in the long term, this would have the added benefit of creating a uniform body of case law, leading to predictability and stability in FOIA jurisprudence, which benefits agencies and requesters alike.

A “FOIA Court” would not be unprecedented in the sense that Congress has already created a number of Article III specialty courts, including the Court of International Trade¹⁰ and Foreign Intelligence Surveillance Court.¹¹ It also has created the Judicial Panel on Multidistrict Litigation.¹² And there are various Article I tribunals with specialty jurisdiction, including the Court of Federal Claims,¹³ bankruptcy courts,¹⁴ the Tax Court,¹⁵ and the Patent and Trademark Trial and Appeal Boards, among others. A specialized court staffed with judges committed to

⁷ *Id.* Congress may, in the alternative, consider creating an Article I tribunal to hear these claims. Any such court, however, would need to be subject to the same robust procedural and evidentiary rules as an Article III court, have mechanisms in place to protect the independence of the tribunal’s judges, and ensure a right of appeal to an Article III court of appeals. All things being equal, we think it makes better sense for Congress to place a specialized FOIA Court within the existing Article III structure.

⁸ Congress may also consider giving the FOIA Court jurisdiction to hear claims arising under the Privacy Act, 5 U.S.C. § 552a *et seq.*, which is a federal statute that governs the collection, maintenance, use and dissemination of information about individuals maintained in any “system of records”—a technical phrase that refers to a grouping of records from which information can be retrieved by the name of an individual or an identifier (*e.g.*, number) assigned to him or her.

⁹ Importantly, Congress would need to decide whether the FOIA Court’s jurisdiction is *exclusive*—meaning all FOIA claims must be brought there—or *concurrent*, which would leave in place the venue options now set out in Section 552(a)(4)(B). The Committee has considered both approaches and cannot agree upon the best course of action. On the one hand, exclusive jurisdiction would likely maximize judicial efficiency and uniformity in FOIA case law—both of which are reasons why a specialty court is desirable. Concurrent jurisdiction, on the other hand, would accommodate requesters who desire to seek judicial review but do not have the resources to avail themselves of a specialty court outside of their home venue. Additionally, concurrent jurisdiction would avoid the complex questions that arise *vis-à-vis* complainants who file lawsuits containing both FOIA claims *and* other causes of action. Under an exclusive-jurisdiction model, these lawsuits would either no longer be possible, or Congress would need to give the FOIA Court ancillary jurisdiction to adjudicate non-FOIA claims in such rare instances. Alternatively, Congress could create some kind of statutory exception to ensure subject-matter jurisdiction in a regular district court.

¹⁰ *See* 28 U.S.C. § 251.

¹¹ *See* 50 U.S.C. § 1803.

¹² *See* 28 U.S.C. § 1407.

¹³ *See id.* § 171.

¹⁴ *See id.* § 151.

¹⁵ *See* 26 U.S.C. § 7441.

proper application of the FOIA, and who are not otherwise obliged to prioritize other criminal or civil matters,¹⁶ could go a long way to changing how quickly FOIA disputes are resolved.¹⁷

¹⁶ District courts were previously obliged to prioritize FOIA lawsuits under the 1974 statute. *See* 5 U.S.C. § 552(a)(4)(D) (“Except as to cases the court considers of greater importance, proceedings before the district court, as authorized by this subsection, and appeals therefrom, take precedence on the docket over all cases and shall be assigned for hearing and trial or for argument at the earliest practicable date and expedited in every way.”). Congress repealed that requirement in 1984. Pub. L. No. 98-620, title IV, § 402(2), 98 Stat. 3335, 3357 (Nov. 8, 1984).

¹⁷ As part of the preparation of this recommendation, members of the Statutory Reform Subcommittee conducted limited interviews with members of the judicial branch, including two judges and an employee with the Administrative Office of the U.S. Courts. They also spoke with current or former Executive Branch officials involved with FOIA litigation. All these stakeholders expressed great enthusiasm for a specialized FOIA Court.