

Recommendation for Funding Federal FOIA Offices

In its annual appropriation language to federal agencies, Congress should require federal agencies to fund their FOIA function at a level sufficient to enable them to fulfill their FOIA requests timely. In determining appropriate funding direction it would provide, Congress should consider an agency's average workforce size, including any contract staff; changes in the volume and complexity of its requests over the past five years; its average backlog over the past five years; and its operational structure, among other influencing factors.

Introduction

The Freedom of Information Act (FOIA) is a cornerstone of governmental transparency, promoting accountability and ensuring that citizens have access to public records. In many federal departments and agencies (agencies), however, funding their FOIA function at a level sufficient to address their FOIA demand has historically taken a backseat to funding the agencies' specific mission and other priorities. As a result, many federal FOIA offices face challenges stemming from this inadequate funding, leading to delays in providing requested records, inefficiencies in processing requests due to outdated technology tools, and costly litigation.

Proposal

This recommendation addresses this persistent problem by proposing that Congress, in its annual appropriations language, adopt a funding model that directs federal agencies to resource their FOIA operations at a level that enables them to respond to their FOIA requests timely. Funding direction to agencies would be based on a consideration of the size of the workforce served by each of their FOIA offices with adjustments to account for several influencing factors. In determining the appropriate funding level to be outlined in each agency's appropriation language, Congress would consider the average of the past five years of the agency's personnel allocation. Then, it would take a fixed percentage of that number as a starting point, creating a baseline funding figure. It would then adjust that number up or down to address, at a minimum, the following considerations:

- Use of contract staff: Agencies relying on a large number of contract staff, whose records are also subject to FOIA, could need their baseline funding figure increased;
- Request workload: Trends in agency request volume and complexity should be evaluated and reflected in the funding figure;
- Backlog: The size of each agency's backlog over the past five years should impact the baseline funding figure, up or down; and

- Operational structure: How an agency manages its FOIA work, through a centralized or decentralized structure, might also need to be accounted for in the baseline funding figure.

In addition to these considerations, Congress should evaluate an agency's overall FOIA performance against prior years' funding levels to ensure continued appropriate funding for high performing agencies where resources are well balanced against workload and to identify any developing trends that need to be addressed. Further, Congress should establish a minimum required funding threshold for every agency, including those with smaller personnel allocations and low backlogs, so their FOIA operations continue to function properly.

Funding for agency FOIA offices would include resources for full-time equivalent staff (FTE), training for FOIA professionals and agency record custodians, technology upgrades, and other FOIA-related requirements, as identified by the agency.

Rationale for the Funding Model

Ensuring Adequate Resources

Congress annually must allocate scarce resources to multiple competing priorities within agencies. However, it is important to note that not all agency functions are nondiscretionary duties imposed by statute with enforceable consequences for noncompliance, as is fulfillment of the FOIA. This recommendation seeks to ensure that agency FOIA operations are funded sufficiently to ensure this statutorily required business function is consistently met. Just as agencies must ensure human capital and information technology services are reliably provided for, agencies must adequately support their FOIA obligations. By making FOIA a required element of agencies' operating budget, Congress would enable FOIA offices across the federal government to keep pace with an ever-increasing workload.

Improving Efficiency and Responsiveness

With increased and consistent funding, FOIA offices can hire additional staff, invest in training, and implement advanced technologies to streamline request processing. This will lead to improved efficiency, reduced backlogs, and more timely responses to FOIA requests, thus enhancing public trust and satisfaction. In addition, adequate funding of agencies' FOIA function will result in agency cost avoidance as it will reduce the necessity to expend limited agency resources on costly litigation due to untimely responses.

Adjusting to Fluctuations

The model accounts for inevitable fluctuations in an organization's size and FOIA workload by annually assessing performance and need. Basing the initial funding figure on the five-year average of agency personnel allocations and then adjusting that figure, in consideration of

influencing factors, such as existing backlog and changes in request volume and complexity enables Congress to tailor its funding direction appropriately. This built-in rightsizing will enable FOIA offices to address shifts in workload, ideally before large backlogs develop and impede agencies' timely response to FOIA requests.

Conclusion

As highlighted in the [final report](#) of the FOIA Funding Working Group of the Legislative Subcommittee of the FOIA Advisory Committee's 2018-2020 Term and its Recommendation 20, "The single most consistent challenge agencies encounter when attempting to properly implement FOIA derives from limited resources." Congress has an opportunity to directly address the challenge of chronic underfunding of agencies' FOIA operations by taking legislative action to build sufficient, recurrent, and adequate funding into agency budgets. This approach ensures that agencies direct adequate resources towards fulfilling their FOIA obligations, promotes timely responses to public records requests, and ultimately strengthens the transparency and accountability of government operations.