

Recommendation SR-4¹

We recommend that Congress create a new Article III “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 accessed 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—and especially the DDC—as well as to ensure that the judges that hear FOIA claims are bringing interest and expertise to the topic, Congress should create a new, specialized Article III court that only hears FOIA claims.⁷ 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 consistency in the resulting decisions. Appeals from this specialty court could be directed to the D.C. Circuit, which is already known for its expertise in FOIA law. To the extent there are other laws related to open-government, transparency, or public access—*e.g.*, the Federal Records Act,⁸ Presidential Records Act,⁹ Privacy Act,¹⁰ Government in Sunshine Act,¹¹ *etc.*—that either provide for judicial review, or can be enforced through the Administrative Procedure Act, Congress might consider expanding the subject-matter jurisdiction of the specialty “FOIA Court” to hear those claims, too. 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 with general jurisdiction to manage the rest of the civil and criminal dockets.

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 Trade¹² and Foreign Intelligence Surveillance Court.¹³ It also has created the Judicial Panel on Multidistrict Litigation.¹⁴ And there are various Article I tribunals with specialty jurisdiction, including the Court of Federal Claims,¹⁵ bankruptcy courts,¹⁶ Tax Court,¹⁷ and Patent and Trademark Trial and Appeal Boards, among others. A specialized court staffed with judges committed to proper application of the FOIA, and who are not otherwise obliged to prioritize other criminal or civil matters,¹⁸ could go a long way to changing how quickly FOIA disputes are resolved. And it would have the added benefit of creating a uniform body of caselaw. In the long term, this has the potential to increase judicial efficiency, as well as predictability and stability in FOIA jurisprudence (which benefits agencies and requesters alike).

⁷ *Id.* Congress would need to decide whether this new court’s jurisdiction should be *exclusive*—meaning, all FOIA claims must be brought there—or *concurrent*, leaving in place the venue options now set out in Section 552(a)(4)(B).

⁸ 44 U.S.C. § 3101 *et seq.*

⁹ *Id.* § 2201 *et seq.*

¹⁰ 5 U.S.C. § 552a *et seq.*

¹¹ *Id.* § 552b *et seq.*

¹² *See* 28 U.S.C. § 251.

¹³ *See* 50 U.S.C. § 1803.

¹⁴ *See* 28 U.S.C. § 1407.

¹⁵ *See id.* § 171.

¹⁶ *See id.* § 151.

¹⁷ *See* 26 U.S.C. § 7441.

¹⁸ 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).