

*National Archives Records Administration  
Freedom of Information Act Advisory Committee  
2022-2024 Term*

*Resources Sub-Committee White Paper*



*Recommendation: FOIA Training Should be  
Mandatory for Non-FOIA Government Professionals*

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## **Resources Subcommittee Recommendations**

We recommend that the Department of Justice (DOJ), Office of Information Policy (OIP), issue guidance to all Chief FOIA Officers outlining the minimum requirements for training to agency staff, including non-FOIA professionals, outlining the requirements of Section (j)(2)(F) of the FOIA which states: “The Chief FOIA Officer shall offer training to agency staff regarding their responsibilities under this section.” Suggested guidance includes:

1. **Mandatory annual FOIA training for non-FOIA professionals in the federal government; and**
2. **Mandatory FOIA training for all new employees, including non-FOIA professionals, within 60 days of onboarding.**

## **Previous FOIA Advisory Committee Recommendations**

Two recommendations were made previously by the FOIA Advisory Committee surrounding the education and training of government employees to ensure compliance with the requirements of the FOIA. The first, Recommendation 2018-07, recommended that: “The Archivist of the United States will direct the Office of Government Information Services (OGIS) to examine the use of appropriate performance standards in federal employee appraisal records and work plans to ensure compliance with the requirements of FOIA and OGIS will submit the results of its assessment and any recommendations to Congress and the President in accordance with 5 U.S.C. § 552(h)(5).” This recommendation has since been marked completed by OGIS, with OGIS reporting that they: “found that agencies largely communicate FOIA responsibilities to employees, including non-FOIA professionals; agency implementation of FOIA performance measures for non-FOIA professional varies; and there is no one-size-fits-all approach to implementation.” The second, Recommendation 2020-05, recommended that: “The Department of Justice, Office of Information Policy (OIP), will issue guidance *requesting* agencies to provide annual mandatory FOIA training to all new and current employees and contractors. The Office of Government Information Services (OGIS) and OIP will review agencies’ current FOIA training requirements and content.” (emphasis added). This recommendation was also marked complete when the Associate Attorney General issued a memorandum to agency General Counsels and Chief FOIA Officers in August of 2022 emphasizing three e-Learning FOIA training modules created by OIP for the federal workforce.

## **Background, Research, & Analysis for Recommending Mandatory FOIA Training for Non-FOIA Professionals**

The Resources Subcommittee analyzed Section 1, question 10 for the FY2022 Chief FOIA Officer reports (CFO), as well as questions 3, 5, and 10 of Section 1 of the FY2023 CFO report to determine the current state and status of the training of non-FOIA professionals. Fifty-four (54) agency responses were reviewed for FY2022, and sixty-seven (67) for FY2023. The questions were as follows:

Section 1, Question 10 (FY2022 CFO Report): Describe any efforts your agency has undertaken to inform non-FOIA professionals of their obligations under the FOIA. In particular, please describe how often and in what formats your agency

provides FOIA training or briefings to non-FOIA staff and if senior leaders at your agency received a briefing on your agency’s FOIA resources, obligations, and expectations during the FOIA process.

Section II, Questions 3, 5, and 10 (FY2023 CFO Report): [P]lease provide a brief description of the type of training attended or conducted and the topics covered; OIP has directed agencies to 'take steps to ensure that all of their FOIA professionals attend substantive FOIA training at least once throughout the year.' If your response to the previous question is that less than 80% of your FOIA professionals attended training, please explain your agency’s plan to ensure that all FOIA professionals receive or attend substantive FOIA training during the next reporting year; Has your agency evaluated the allocation of agency personnel resources needed to respond to current and anticipated FOIA demands? If so, please describe what changes your agency has or will implement.

With the exception of a few federal agencies, no reference to mandatory training – either at onboarding or annually – appeared for non-FOIA personnel in the FY2023 CFO reports reviewed.<sup>1</sup> The responses to the FY2022 report, however, did directly ask this question, and as might be expected, resulted in most agencies reporting FOIA training to all non-FOIA staff either annually or as a part of orientation. Some agencies, such as Merit Systems Protection Board (MSPB) and State, reported that their FOIA training for non-FOIA staff consisted of a single FOIA-related module within a larger records management training required for all staff to complete on an annual basis. The subcommittee notes that the Environmental Protection Agency (EPA) reported that it not only requires annual FOIA training for all EPA personnel in the FOIA, but also includes in its senior management performance contracts FOIA-related metrics. This is notable because attaching FOIA performance to job performance, at least in some way, incentivizes leadership to “buy-in” to “FOIA is everyone’s responsibility” as articulated in the latest Attorney General’s FOIA Memo to Agency Heads.

**Action taken on Recommendation [2018-07](#):** OGIS published an issue assessment titled “[Freedom of Information Act \(FOIA\) Performance Measures for Non-FOIA Professionals](#)” in September 2020. The assessment contains three findings and four recommendations. OGIS submitted the assessment results to Congress and the President in 2021 as part of OGIS's Annual Report for FY 2020. OGIS found: 1) Agencies largely communicate FOIA responsibilities to employees, including non-FOIA professionals; 2) Agency implementation of FOIA performance measures for non-FOIA professionals varies; and 3) There is no one-size-fits-all approach to implementation.

**Action taken on Recommendation [2020-05](#):** DOJ issued a memorandum to agency General Counsels and Chief FOIA Officers in August 2022 emphasizing three e-Learning FOIA training modules for the federal workforce: executives, federal employees whose primary responsibility is not FOIA, as opposed to FOIA professionals. All three modules can be uploaded into agency online learning systems. In the end, it was OIP that reviewed agencies’ FOIA training. OIP used

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<sup>1</sup> The subcommittee notes that the FY 2023 CFO questions did not specifically ask about FOIA training for non-FOIA staff, but the FY2022 CFO report did.

the [2021](#), [2022](#) and [2023 Chief FOIA Officer Reports](#) to ask about training, including topics covered and to what extent non-FOIA staff and senior leaders are trained about FOIA.

### ***2023 Chief FOIA Officer Report Responses Concerning Training.***

Question 3: "[P]lease provide a brief description of the type of training attended or conducted and the topics covered."

Question 10: "Has your agency evaluated the allocation of agency personnel resources needed to respond to current and anticipated FOIA demands? If so, please describe what changes your agency has or will implement."

The Resources Subcommittee analyzed Section II, Questions 3, 5, and 10 of the FY2023 FOIA Chief FOIA Officer reports (CFO reports) which concern FOIA training.<sup>2</sup> With the exception of the following federal agencies, no reference to mandatory training – either at onboarding or annually – appeared for non-FOIA personnel.

### **Select Federal Department Responses to the Chief FOIA Officer Report:<sup>3</sup>**

#### *Department of Education:*

Mandatory FOIA Training for Political Appointees and Familiarization for New Employees

#### *Department of Justice:*

In 2022, OIP released updated interactive FOIA training modules for senior executives, federal employees, and FOIA professionals available for use on agency e-learning systems. An in-depth course for FOIA professionals provides a training session on the major procedural and substantive requirements of the law. A shorter course for federal employees provides a brief primer on the FOIA and highlights their responsibilities under the law. A brief course for agency senior executives emphasizes the importance of leadership support for an agency's FOIA program. All three courses are available on [LearnDOJ](#), the Department e-learning management system that is used by most components. Five components have already begun using these updated training resources to train their FOIA professionals. Bureau of Prisons (BOP), Civil Rights Division (CRT), Office of Community Oriented Policing Programs (COPS), and the Office of Justice Programs (OJP) have also incorporated these training modules into the mandatory core curriculum for all employees, including non-FOIA professionals. The Executive Office for United States Trustees' (EOUST) senior leadership completed the FOIA training module for senior executives.

#### *Department of the Interior:*

*Question 3:* "The Departmental FOIA Office (DFO) provided mandatory FOIA training to all incoming political staff, created a new intranet site for all employees that provides links to training opportunities available from the Department of Justice (DOJ) Office of Information Policy (OIP),

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<sup>2</sup> The CFO reports were accessed via the following website <https://www.justice.gov/oip/chief-foia-officer-reports-2023>. Only NASA's CFO report was not reviewed due to a "404 error" when attempting to access that link from the above-referenced DOJ OIP website.

<sup>3</sup> Information below concerning specific federal agency responses is excerpted. Full responses can be found in [the attachment].

and distributed notifications about OIP training to FOIA processors via email. In January 2022, the DFO also hired a Training Program Manager, who will evaluate the Department’s FOIA training needs, as well as design and implement a comprehensive training plan.”

*Question 10:* “In 2021, the Director of the DFO continued to engage in regular communications with bureau leadership to help ensure they are fully apprised of the status of their organizations’ FOIA operations, provide meaningful support to their FOIA offices, and hold employees across their organizations accountable for compliance with the FOIA. As referenced above, the DFO provided incoming political staff with a FOIA-specific briefing concerning their legal obligations under FOIA. This training provided political staff with the practical knowledge needed to effectively and timely respond to search requests from the Department’s FOIA offices. The briefing materials were also provided to the Bureau FOIA Officers to encourage the same level of onboarding training be provided to other new employees within bureaus and offices. In addition, the Secretary of the Department of the Interior issued a memorandum to senior leadership specifically on the importance of the FOIA.”

*Department of Transportation:*

The DOT Learning Management System also contains the following three FOIA training modules available to all DOT personnel: The Freedom of Information Act, The Freedom of Information Act (FOIA) for Federal Employees, and the Freedom of Information Act (FOIA) for FOIA Professionals. The FAA Office of Chief Counsel (Information Law Practice) and the FOIA Program Management Division hosted two workshops on FOIA Processing, presented in 2 one-hour sessions.

**Select Federal Agencies Responses to the Chief FOIA Officer Report:<sup>4</sup>**

*Court Services and Offender Supervision Agency:*

The Agency’s FOIA Officer provided FOIA training to staff and newly hired Agency personnel at the Agency’s New Employees Orientation. The training consisted of an overview of the FOIA and the FOIA Exemptions, specifically, (b)(6), (b)(7)(C), and (b)(7)(E).

*Farm Credit Administration (FY22):*

FCA has a FOIA training section as part of FCA’s Human Resources onboarding presentation for all newly hired employees. During each orientation session, an overview of the FOIA, including records disclosure guidelines and employees’ FOIA responsibilities, is part of the training. This is an on-going activity that occurs regularly throughout the year.

*U.S. Agency for International Development:*

Every member of the USAID workforce must complete one of the two online courses detailed below each year: Records-Management for Senior Officials is a mandatory online course for individuals in executive positions at USAID who are responsible for oversight, management, and decision-making. The course describes the role and importance of senior officials in properly managing Federal Government records and complying with the FOIA. Records-Management for Everyone is a mandatory-online course for non-senior officials designed to inform USAID’s

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<sup>4</sup> Information below concerning specific federal agency responses is excerpted. Full responses can be found in [the attachment].

workforce of their records-management responsibilities and obligation to adhere to the requirements of the FOIA.

### ***Interview Results:***

This Resources Subcommittee interviewed several senior FOIA leaders across government to ask them a variety of questions involving FOIA, including a number of questions involving training, to determine the state of FOIA training government wide. The results were both intriguing and eye opening when it comes to how federal government agencies train staff regarding FOIA.

The short answer is that most do not train non-FOIA personnel on FOIA. For example, responses from throughout the government showed that there was almost no FOIA training provided to new staff at onboarding, not only not for new FOIA employees but for anyone. The great majority of senior FOIA leaders who were interviewed stated that the most that was accomplished was a brief session to senior leaders at onboarding.

In addition, we learned that most agencies have no formal training or annual training for non-FOIA staff. A common theme across the interviews was that FOIA was not just the FOIA staff responsibility, but the responsibility of everyone. Therefore, there was a strong desire to have mandatory annual FOIA training for all government employees, just like records management training. Revealing as well during these interviews was the fact that almost every single agency relies in some part on DOJ OIP to provide the necessary training for their staff whether it be FOIA or non-FOIA professionals. After conducting these interviews and reviewing the results, this Subcommittee can only conclude that mandatory FOIA training should be required across government for non-FOIA personnel as well as a requirement at onboarding for everyone.

### ***Mandatory Annual Training Example:***

In FY2023, the U.S. Department of Interior (DOI) implemented mandatory bi-annual FOIA training for all employees by utilizing the three targeted online FOIA training modules developed by the Department of Justice (DOJ) Office of Information Policy (OIP) for FOIA personnel, executives, and all other employees. We recently had the opportunity to sit down and discuss with the DOI's Deputy Chief FOIA Officer (DCFO) the reasoning for utilizing the DOJ OIP training modules and how DOI was able to make the trainings mandatory for all employees. We learned that while the FOIA office delivers in-person and virtual FOIA training to hundreds of employees each year, DOI was able to leverage the DOJ OIP online training modules to reach all employees in DOI efficiently and effectively by uploading them into DOI's online training platform. We further learned that their office was able to make the trainings mandatory based on Secretary's Order (No. 3378) that made the DCFO responsible for "providing mandatory training to FOIA personnel and other Department employees, as appropriate" and requiring that "[a]ll Department employees must comply with FOIA and the Department's FOIA regulations, policies, and guidelines; and timely respond to FOIA-related requests." This opened the door for a justification for mandatory training for all employees, including those employees who do not process FOIA requests as a primary or collateral duty.

***Office of Information Policy | Training (justice.gov)***

***Agencies, therefore, do not need to start from scratch., DOJ OIP already has taken the initiative and lead in creating targeted FOIA trainings for FOIA personnel, executive and all federal employees. They can be found here:***

In fact, OIP has developed a suite of FOIA resources designed to train all levels of the federal workforce to understand their FOIA responsibilities. DOI uses two of the three training modules agencies can use for free in e-learning systems:

- 1) FOIA Training for Executives- a 15-minute course that provides a basic overview of the FOIA and explains how this law impacts agency leaders. Topics covered include an overview of the FOIA, proactive disclosure, reporting and accountability, and FOIA resources and support.
- 2) FOIA Training for Federal Employees- a 1-hour course that provides a primer on the FOIA and explains how employees can assist your agency in FOIA administration. Topics covered include who can make a request, the FOIA's time limits, and searching for responsive records.

The files for the FOIA e-Learning modules can be accessed through OMB Max Drive which can be directly uploaded into an agency Learning Management System. If an agency does not have a Learning Management System to load the files, the courses can be accessed via web browser. These trainings were announced by the Associate Attorney General Vanita Gupta to Agency General Counsels and Chief FOIA Officers of Executive Departments in a memorandum dated August 17, 2022 (discussed below). DOI simply implemented these e-Learning modules into its current training system.

DOI then discussed with us the challenges of creating mandatory FOIA training for everyone. Primarily, this challenge was that even though the training was free, there was a cost associated with tracking who has taken the training across the DOI. However, as DOI explained, almost every federal agency has a pre-established training budget for mandatory training across the agency. Therefore, for DOI there was no added expense that was taken out of their FOIA budget to implement the training. The cost to track the training was rolled into the departmental training budget. Even though there was a cost associated with the training, each department has an overall training budget from which mandatory training is funded. Most importantly though, as explained by DOI, any expense would easily outweigh the cost saved from decreased FOIA litigation and appeals, which hopefully would occur from training all employees across government (discussed more below).

When a government agency fails to meet its FOIA obligations with respect to a particular request, at either the initial request stage or at the appeals stage, the FOIA allows requesters to seek resolution in a federal district court, including provisions requiring the government to pay attorney fees to the requesters. For this reason, failure to understand and properly execute one's duties under the FOIA presents significant potential liability for an agency in FOIA litigation.

This Subcommittee thanks DOI for taking the time to speak with us about how it implemented mandatory FOIA training for non-FOIA professionals, and we hope this can be just one example moving forward of other federal agencies implementing mandatory training.

### **Rationale for the Three Recommendations**

A mandatory FOIA training requirement is critical to ensure that the federal workforce (to include federal employees, contractors, Senior Executives, political appointees, volunteers, and others) who create, receive, access, or use federal records on behalf of their respective agency, are well-educated about the importance of administering the FOIA and the role/responsibilities that the FOIA statute mandates. .

The Attorney General [March 15, 2022, FOIA Guidelines Memorandum](#) states: “Successful FOIA administration also requires proper training and a commitment to FOIA compliance by agency personnel. Simply put, **FOIA is everyone's responsibility**. I encourage each agency head to provide regular and proper training to your workforce that explains the importance of FOIA and every individual's role in administering it. The Justice Department's Office of Information Policy has issued several guidance documents and articles on the topics discussed in this memorandum, including resources to assist you with ensuring proper training and compliance with FOIA. See <https://www.justice.gov/oip/training>. I urge agencies to consult these resources.”

Agency leadership should actively support FOIA programs, policies, and initiatives, and a great first step for an agency to promote its support towards FOIA programs is by implementing a requirement for mandatory FOIA training for **all** agency personnel. FOIA programs across all federal agencies rely on the federal workforce to promote transparency and build public trust in the government's actions. The federal workforce should be encouraged to help improve their agency's FOIA response efforts. The success of those efforts across all federal agencies will reinforce the government's commitment to conducting its business in an open and transparent manner.

The 2018-2020 NARA FOIA Advisory Committee previously made a FOIA training recommendation ([2020-05](#)) “**requesting** agencies to provide annual mandatory FOIA training to all agency employees”. This recommendation would make it a **requirement** to provide annual mandatory training to the federal workforce.

The Associate Attorney General [August 17, 2022, Memorandum on FOIA Training](#) states: “A proper understanding of the FOIA and of the Attorney General's FOIA Guidelines, which were issued in March 2022, is **fundamental to any agency's successful FOIA operation**.” (emphasis added). As the Attorney General's Guidelines explain, “[s]uccessful FOIA administration . . . requires proper training and a commitment to FOIA compliance by agency personnel.” The Guidelines therefore encourage agency heads to “provide regular and proper training to [their] workforce that explains the importance of FOIA and every individual's role in administering it.” “To that end, and to ensure that FOIA training resources are available to all agency employees, the Department of Justice's Office of Information Policy (OIP) has released three new electronic FOIA training modules, designed to suit the needs of all federal agencies and personnel.”



Embracing the principle from the Attorney General's Guidelines that "FOIA is everyone's responsibility," these training modules are tailored to various levels of the federal workforce and are readily available for any federal agency to use or replicate. These new modules include Freedom of Information Act Training for Executives, Freedom of Information Act Training for Federal Employees and Freedom of Information Act Training for FOIA Professionals.

FOIA programs are severely understaffed and face extremely tight deadlines. Establishing the requirement for annual FOIA mandatory training would result in a well-educated federal workforce that is familiar with the basic principles of the FOIA as well as knowledge about their FOIA related responsibilities/duties. As a direct result of the training, FOIA personnel across the federal government and the public, could dramatically benefit in the following ways:

- 1) Record search response time would be more efficient and timelier than it currently is; hopefully the FOIA personnel would receive minimal pushback for obtaining the results of the search;
- 2) Record review response time would decrease as the Federal workforce is familiar with their responsibilities as the subject matter expert in the content of the record(s) being reviewed;
- 3) The already understaffed FOIA personnel would spend much less time training the federal workforce about the basics of FOIA and about/how the non-FOIA personnel must administer it; the valuable time spent training staff would allow for the FOIA personnel to directly work on the FOIA cases, back-logged cases, report, etc.;
- 4) FOIA related appeals and litigation costs would decrease in the long term;
- 5) And it could potentially increase senior leadership and employee buy in to devote more resources to their FOIA Programs.

Instituting a mandatory FOIA training requirement directly supports the premise of the Attorney General's Guidelines Memorandum that "FOIA is everyone's responsibility," not only the FOIA personnel's responsibility to train the Federal workforce about the FOIA. So far, only a few agencies such as the EPA and the Department of the Interior have implemented mandatory FOIA training for all agency personnel.

The Department of Justice's Office of Information Policy has already created three FOIA e-Learning modules that "can be accessed through OMB Max Drive. These files should be directly uploaded into your agency's Learning Management System. You can share these links with or provide the downloaded .zip files to your agency's e-Learning staff. The courses must be uploaded into the Learning Management System before they can be taken by agency staff."

Moreover, DOJ explains that "If your agency does not have a Learning Management System to load the above files, the courses can be accessed via web browser at the below links."

Of course, each federal agency would have the option to create their own module, course or training and offer that annual mandatory training in numerous ways that are the most convenient.

Most Federal agencies are facing an unprecedented volume of FOIA requests that only grows year by year. Despite this enormous challenge, we believe that all Federal agencies are committed to conducting their business in an open and transparent manner and will continue to take steps to improve the efficacy and efficiency of its FOIA process.