

Recommendation for Funding Federal FOIA Offices

A Proposal to Enhance Transparency and Efficiency

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 (D/A), however, funding the D/A's FOIA office at a level sufficient to address their FOIA requests and ensure this transparency has historically taken a backseat to funding the D/A's 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this inadequate funding, leading to delays in providing requested records, inefficiencies in processing requests due to outdated technology tools, and costly litigation.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 require D/As to implement a funding model that requires them to allocate a portion of their operating budget to fund their FOIA operations proportional to the size of the workforce served by the D/A's FOIA Office. The D/A's FOIA Office's budget would be determined as a fixed percentage of the D/A's five-year average of its personnel allocation. Adjustments to account for D/As with large numbers of contract staff, whose records are also subject to FOIA, would be necessary in some instances. Also recommended is the establishment of a baseline threshold of funding so that even smaller D/As with lower personnel allocations would have a minimum budget set aside for their FOIA operations, coupled with congressional direction to D/As with budget set asides insufficient to meet current request volume upwardly adjust their FOIA funding. In arriving at the proper funding formula, Congress should consider other complicating factors, as well, such as differences in how D/As are appropriated, centralization/decentralization of FOIA operations, delegated authority, and so forth.

By making FOIA funding proportional to D/As' workforce size and a required element of D/As' operating budget, Congress would enable FOIA offices across the federal government to keep pace with an ever-increasing workload.

Rationale for the Funding Model

Ensuring Adequate Resources

Congress annually must allocate scarce resources to multiple competing priorities within D/As. However, it is important to note that not all D/A functions are nondiscretionary duties imposed by statute with enforceable consequences for noncompliance, as is fulfillment of the FOIA. This recommendation seeks to ensure that D/As' FOIA operations are funded sufficiently to ensure this statutorily required business function is consistently met. Just as D/As must ensure human capital and information technology services are reliably provided for, D/As must adequately support their FOIA obligations.

By tying the funding of FOIA offices to the number of FTE and contract staff, this model ensures that resources are scaled appropriately to the size and operational scope of each D/A. FTE and contract staff are, ultimately, the creators of agency records, so the funding of a FOIA office to service them should be commensurate with that workload. Larger D/As with more employees are likely to have larger quantity of data and records created by FTE as well as a higher volume of FOIA requests, necessitating greater resources to handle them effectively and in a transparent, accountable manner.

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 D/As' FOIA function will result in agency cost avoidance as it will reduce the necessity to expend limited D/A resources on costly litigation due to untimely responses.

Adjusting to Fluctuations

The model accounts for inevitable fluctuations in an organization's size by basing the calculation on the five-year average of agency personnel allocations. This built-in rightsizing will enable FOIA offices to address backlogs and incoming requests, gradually increasing or decreasing based on changes in D/A size. Natural attrition will account for any necessary downward adjustments, should they occur, without resorting to Reductions in Force.

Requiring D/As to fund their FOIA offices in proportion to their size, as measured by FTE and contract staff, ensures that D/As dedicate adequate resources to the appropriate management of public disclosure of the records those personnel create.

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 D/A FOIA operations by taking legislative action to build into D/A budgets sufficient, recurrent, and adequate funding. Implementing a funding model that requires D/As to allocate a predetermined percentage of their operating budget based on their size, as measured by personnel allocation, will significantly enhance the capacity and efficiency of FOIA offices. This approach ensures that D/As direct adequate resources towards fulfilling their FOIA obligation, promotes timely responses to public records requests, and ultimately strengthens the transparency and accountability of government operations.