

Individualized Tracking Numbers

- NARA Massive FOIA Fraud
- Hatch Act Violations?
- Decertify FOIA.gov
- DOJ OIP Compliance Inquiry

by

Robert Hammond, foiacompliance@gmail.com

[@foiacompliance](https://twitter.com/foiacompliance) (Twitter)

Copy to:

United States Associate Attorney General Vanita Gupta

Attorney General Merrick Garland

Designed by pngtree

Outline

- [Preface – NARA FOIA Misconduct and Hatch Act Violations; DOJ OIP](#)
- [Recommendations](#)
- [DOJ OIP Compliance Inquiry](#)
- [FOIA Request - Debra Wall Emails](#)
- [Hammond Public Comments](#)

Preface

(DOJ continues to approve known false annual FOIA reports, and FOIA.gov data is garbage.)

See DOJ OIP Compliance Inquiry attached.

- NARA has perhaps the worst published FOIA statistics, yet even those statistics are massively false. Further, NARA's FOIA Officer, Gary Stern, under the direction of Acting Archivist and NARA Appellate Authority, Debra Wall, is cheating like hell.
- Here, NARA has unlawfully assigned the same tracking number (NGC22-105) to twenty-two distinct FOIA requests, and apparently assigned the same appeal number (NGC22-056A) to twenty-two distinct appeals of those FOIA requests (citing "appeal" in the singular). This is a pattern at NARA involving potentially one thousand requests and appeals, which results in massive false FOIA reporting.
- Per DOJ OIP's website (<https://www.justice.gov/oip/assigning-tracking-numbers-and-providing-status-information-requests-updated-guidance>):
"Subsection (a)(7)(A) of the FOIA **mandates** that agencies "assign an individualized tracking number for each request received that will take longer than ten days to process."
Thus, if the request will take longer than ten days to process, agencies are required to assign tracking numbers to each such request and to provide that number to the requester."
- Hatch Act violations and inappropriate emails confirmed by NARA's OIG (as well as similar unconfirmed records I am seeking, along with whether NARA senior leadership deleted emails/texts) are of great public interest.

TRUTH, transparency, and accountability matter!

Recommendations

FOIA Advisory Committee and Chief FOIA Officers Council:

- Seek DOJ OIP and OIGIS advisories articulating that there is no circumstance where an individualized tracking number is not required for a request that will take longer than ten days to process. This includes instances where an agency has aggregated requests for fee determination purposes (though NARA has not claimed this in relation to their malfeasance).
- Seek a posted disclaimer that FOIA.gov data is materially false and cannot be used for any purpose. Only certified agency data (per below) may be used.
- Require agencies to certify that: 1) their FOIA quarterly and annual FOIA report data is accurate to the best of their knowledge or 2) that such data is known to be inaccurate (no in between). Further, such certifications be publicly posted for FOIA.gov and annual FOIA reports/annual FOIA raw data.
- Seek FOIA.gov development and sustainment records to ascertain functional requirements and execution.
- Seek a NARA OIG audit of NARA FOIA data and processes.
- Reiterate the requirement for all federal agencies to post their contemporaneous FOIA logs now, per two FOIA Advisory Committee past. recommendations.

DOJ OIP Compliance Inquiry

From: perseverance2013@aol.com <perseverance2013@aol.com>

Sent: Sunday, November 20, 2022 12:09 AM

To: 'OIP.ComplianceInquiry@usdoj.gov' <OIP.ComplianceInquiry@usdoj.gov>; 'bobak.Talebian@usdoj.gov' <bobak.Talebian@usdoj.gov>; 'bobak.Talebian@usdoj.gov' <bobak.Talebian@usdoj.gov>; 'debra.wall@nara.gov' <debra.wall@nara.gov>; 'Vanita.Gupta19@usdoj.gov' <Vanita.Gupta19@usdoj.gov>

Cc: 'perseverance2013@aol.com' <perseverance2013@aol.com>; 'foiacompliance@gmail.com' <foiacompliance@gmail.com>; 'foiacomplaine@gmail.com' <foiacomplaine@gmail.com>; 'dod.foia.pa@gmail.com' <dod.foia.pa@gmail.com>; 'AskDOJ@usdoj.gov' <AskDOJ@usdoj.gov>; 'media@usdoj.gov' <media@usdoj.gov>

Subject: DOJ OIP Compliance Inquiry. NARA Unlawful Failure to Assign Individualized Tracking Numbers. Decertify DOJ.gov. NARA Hatch Act Violations. FW: NGC22-056A Appeal Response of Denial of Expedited Processing

Attachments:

NGC22-056A Appeal Denial of Exp Processing_Final.pdf;
Sample Hammond Public Comments. Document Cloud Alphabetical .docx;
Request Confirmation.pdf;
NARA 22-P.I. Trump, Biden, Sanders Emails. Steidel Wall.pdf

Ms. Gupta & Mr. Talebian:

Please provide me with DOJ OIP's unique case number for this compliance inquiry and promptly provide me a response prior to the December 1, 2022 FOIA Advisory Committee meeting.

My singular OIP Compliance Inquiry complaint is that in the example below and attached, NARA has unlawfully assigned the same tracking number to twenty-two distinct FOIA requests, and apparently assigned the same appeal number to twenty-two distinct appeals of those FOIA requests (citing "appeal" in the singular). This is a pattern at NARA involving potentially one thousand requests and appeals, which results in massive false FOIA reporting.

NARA unlawfully states:

"Your requests were aggregated into one request and assigned the tracking number NGC22-105."

Per DOJ OIP's website (<https://www.justice.gov/oip/assigning-tracking-numbers-and-providing-status-information-requests-updated-guidance>):

"Subsection (a)(7)(A) of the FOIA mandates that agencies "assign an individualized tracking number for each request received that will take longer than ten days to process." Thus, if the request will take longer than ten days to process, agencies are required to assign tracking numbers to each such request and to provide that number to the requester."

(Note. There are no fee issues as NARA is not entitled to fees. 5 USC § 552(a) (4)(A) (viii). See also DOJ OIP “In light of FOIA Improvement Act of 2016 there are further limitations on agencies’ ability to charge certain fees if the FOIA’s time limits are not met. Moreover, each FOIA request is distinct and cannot be aggregated into a single FOIA request to conduct the searches or provide the records. Nevertheless, any claim that requests may be aggregated for determining fees (which NARA has never asserted) does not negate the mandatory requirement to assign individual tracking numbers to each.

36 C.F.R. § 1250.54 General information on fees for NARA operational records
h) If we determine that you (acting either alone or with others) are breaking down a single request into a series of requests in order to avoid or reduce fees, we may aggregate all these requests in **calculating the fees.**)

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Below is for information, context and assignment of accountability.

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Then, DOJ.gov data is absolute garbage and cannot be used for any purpose whatsoever. See my public comments at <https://www.documentcloud.org/app?q=%2Buser%3Arobert-hammond-106693%20>

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DOJ OIP and OIGIS share responsibility for FOIA compliance with DOJ approving agency annual FOIA reports and OIGIS, in addition to other actions, purports to audit agency FOIA data.

DOJ cannot approve knowingly false NARA or DOD annual FOIA reports, just based on my posted public comments. I may place 2,000 or more examples into the public domain.

Both NARA and DOD have refused to provide their contemporaneous FOIA processing logs sought under FOIA.

Debra Wall, NARA’s Acting Archivist of the United States and appellate authority is ultimately responsible for NARA’s violations for FOIA statute and policies and the materially false FOIA reporting.

Vanita Gupta is the United States Associate Attorney General, who oversees DOJ OIP as a subordinate entity is ultimately responsible for known materially false agency annual FOIA reports and the complete garbage in FOIA.gov, whose data should be decertified, labeled with disclaimers and which is unusable for any purpose.

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NARA Hatch Act Violations.

Through review of sample emails, NARA’s OIG (and Office of Special Counsel) determined that Hatch Act violations by senior NARA officials occurred in the 2016 Presidential election cycle,

and at a minimum that inappropriate emails were sent in the 2020 Presidential election cycle. The attached FOIA request related to Debra Wall (and other similar FOIA requests) seek records that will reveal if additional impropriety/Hatch Act violations by NARA senior leadership occurred in 2020 and if such persons unlawfully deleted records after I sought them. Clearly, searches for records sought related to Ms. Wall cannot be combined with searches related to Ms. Semo or former Archivist David Ferriero for example.)

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Expedited processing. In the unlawful aggregated appellate denial, NARA misquoted its own regulation, 36 C.F.R. 1250.28(h):

3) An urgent need to inform the public about an actual or alleged Federal government activity (this last criterion applies only to those requests made by a person primarily engaged in disseminating information to the public).

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With my deep respect,

Robert Hammond

Copy to:

GAO
NARA OIG
Attorney General Merrick Garland
Media@usdoj.gov

From: NARA NGC General Counsel FOIA <foia@nara.gov>
Sent: Friday, November 18, 2022 2:20 PM
To: perseverance2013@aol.com
Cc: FOIA <FOIA@nara.gov>
Subject: NGC22-056A Appeal Response of Denial of Expedited Processing

Dear Mr. Hammond:

This is in response to your Freedom of Information Act (FOIA) appeal to the National Archives and Records Administration (NARA), General Counsel's Office in relation to the denial of Expedited Processing of your FOIA request assigned NGC22-105 which consisted of 22 of your FOIAonline requests.

Please see our full response attached to this email.

Sincerely,

NGC FOIA Team
Deputy Freedom of Information Act Officer/Archivist

National Archives and Records Administration
Office of General Counsel
College Park, MD
FOIA@nara.gov

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NATIONAL ARCHIVES *and*
RECORDS ADMINISTRATION

8601 ADELPHI ROAD
COLLEGE PARK, MD 20740-6001
www.archives.gov

[Sent via email to perseverance2013@aol.com](mailto:perseverance2013@aol.com)

November 18, 2022

Robert Hammond
Perseverance2013@aol.com

RE: Freedom of Information Act Request
NGC22-056A

Dear Mr. Hammond:

This is in response to your Freedom of Information Act (FOIA) appeal to the National Archives and Records Administration (NARA), General Counsel's Office in relation to the denial of expedited processing for FOIA request tracking number NGC22-105 which consisted of 22 of your *FOIAonline* requests. Your appeals (listed below), were submitted via *FOIAonline* on December 16, 2021, and assigned NGC22-056A:

Appeal FOIAonline #	Request FOIAonline #	Requester #
NARA-NGC-2022-000453	NARA-NGC-2022-000190	NARA 22-P.A.1
NARA-NGC-2022-000454	NARA-NGC-2022-000191	NARA 22-P.B.1
NARA-NGC-2022-000455	NARA-NGC-2022-000192	NARA 22-P.C.1
NARA-NGC-2022-000456	NARA-NGC-2022-000193	NARA 22-P.D

NARA-NGC-2022-000457	NARA-NGC-2022-000194	NARA 22-P.D
NARA-NGC-2022-000458	NARA-NGC-2022-000195	NARA 22-P.F
NARA-NGC-2022-000459	NARA-NGC-2022-000196	NARA 22-P.G
NARA-NGC-2022-000460	NARA-NGC-2022-000197	NARA 22-P.H
NARA-NGC-2022-000461	NARA-NGC-2022-000198	NARA 22-P.I
NARA-NGC-2022-000462	NARA-NGC-2022-000199	NARA 22-P.J.
NARA-NGC-2022-000463	NARA-NGC-2022-000200	NARA 22-P.K
NARA-NGC-2022-000464	NARA-NGC-2022-000201	NARA 22-P.M.
NARA-NGC-2022-000465	NARA-NGC-2022-000202	NARA 22-P.N.
NARA-NGC-2022-000466	NARA-NGC-2022-000203	NARA 22-P.O
NARA-NGC-2022-000467	NARA-NGC-2022-000205	NARA 22-P.R.
NARA-NGC-2022-000468	NARA-NGC-2022-000206	NARA 22-P.S.
NARA-NGC-2022-000469	NARA-NGC-2022-000207	NARA 22-P.T.
NARA-NGC-2022-000470	NARA-NGC-2022-000208	NARA 22-P.U.
NARA-NGC-2022-000471	NARA-NGC-2022-000209	NARA 22-P.V.
NARA-NGC-2022-000472	NARA-NGC-2022-000210	NARA 22-P.W.
NARA-NGC-2022-000473	NARA-NGC-2022-000211	NARA 22-P.X.
NARA-NGC-2022-000474	NARA-NGC-2022-000212	NARA 22-P.Y.

Background

In your original requests dated November 7, 2021, you requested from multiple NARA staff, all emails (with attachments and metadata) sent by 22 NARA staff that includes the words “Joe Biden” or “Bernie Sanders” or “Donald Trump” or “Trump” between January 1, 2020, and November 3, 2020. You also requested a fee waiver and expedited processing. Your requests were aggregated into one request and assigned the tracking number NGC22-105.

Your request for expedited processing under the above FOIA requests raise three arguments:

1. “The information sought involves possible questions about the government’s integrity that affect public confidence.”
2. You state you are an “individual/organization primarily engaged in the dissemination of information who can prove the information is urgently needed to inform the public concerning some actual or alleged government activity.” You further state that your “primary activity is informing the public, which [you] do through a variety of means, such as open meeting public comments, blogs, etc., and [that you] may from time to time collaborate on articles.”
3. “The subject is of widespread and exceptional media interest.” You also state, “There is extraordinary, off the charts interest in the subject matter of this meeting and NARA’s execution.”

Through *FOIAonline*, an NGC staff member responded to your request for expedited processing, stating,

“The requester has not provided sufficient information to establish he meets one of the criteria required under the National Archives and Records Administration (NARA) regulation 36 C.F.R. 1250.28 (a) to justify expedited processing. Specifically, you have not provided evidence that there is an urgent need to inform the public of a government activity, or widespread and exceptional media interest involving questions affecting public confidence in the Government’s integrity that can be addressed by the records you seek.”

Through *FOIAonline* you appealed the denial of your request for expedited processing for all the above cases stating:

Basis for Appeal.

1. My FOIA request sought expedited processing; therefore, this appeal must be expedited.
2. The Agency’s expedited processing determination did not address the specific issues raised warranted expedited processing and why they did not meet standards
3. I sought expedited processing under multiple criteria. The Agency did not read them all and address them all in the Agency’s expedited processing determination.

4. My expedited processing justifications for each of my FOIA requests are not all the same. The Agency cannot apply a blanket determination that does not address all criteria.

Analysis

NARA processes FOIA requests on an expedited basis if it is determined that the request meets one or more of the following criteria described in its FOIA Regulation, at 36 C.F.R. § 1250.28:

- (1) A reasonable expectation of an imminent threat to an individual's life or physical safety;
- (2) A reasonable expectation of an imminent loss of a substantial due process right; An urgent need to inform the public about an actual or alleged Federal Government activity (this criterion applies only to those requests made by a person primarily engaged in disseminating information to the public); or
- (3) A matter of widespread and exceptional media interest in which there exist possible questions that affect public confidence in the Government's integrity.

After carefully reviewing your initial request for expedition as well as your appeal, I have determined that expedited treatment is not warranted under the criteria you cited. Your request fails to meet the standard of the third criteria listed above because you are not a person primarily engaged in disseminating information to the public. You have not, furthermore, demonstrated that the records you requested are a matter of current exigency to the American public, or shown that processing the request in the non-expedited queue would negatively impact a significant, recognized interest. Your request does not satisfy the fourth criteria for expedited processing because the interest of a single requester does not constitute widespread and exceptional media interest affecting public confidence in government integrity.

For these reasons, your request for expedited processing was properly denied.

For your information, the Office of Government Information Services (OGIS), the Federal FOIA Ombudsman's office, offers mediation services to resolve disputes between FOIA requesters and Federal agencies as a non-exclusive alternative to litigation. Using OGIS's mediation services does not affect your right to pursue litigation. You may contact OGIS in any of the following ways noted below:

Office of Government Information
Services National Archives and
Records Administration 8601
Adelphi Road – OGIS

College Park, MD
20740-6001
ogis@nara.gov
ogis.archives.gov
202-741-5770
1-877-684-6448

Your administrative remedies are now exhausted. If you are dissatisfied with my action on your appeal, the FOIA permits you to file a lawsuit in federal district court in accordance with 5 U.S.C. § 552(a)(4)(B). You may seek judicial review in the District of Columbia, in the United States District Court for the judicial district in which you reside or do business, or the judicial district where you believe the records are located – in this instance, in the U.S. District of Maryland.

Sincerely,

Meghan Ryan Guthorn

For

DEBRA STEIDEL WALL
Deputy Archivist of the United States

FOIA Request - Debra Wall Emails

November 7, 2021

Subject: FOIA Request NARA 22-P.I Trump, Biden, Sanders Emails. Steidel Wall

I am submitting this request under the Freedom of Information Act (“FOIA”), 5 U.S.C. § 552 et seq., as amended. *If you deny all or any part of this request, please cite each specific exemption you think justifies your decision not to release the information and notify me of appeal procedures available under the law. References cited below apply.*

******This Request will be timely for Judicial Review in twenty working days******

RECORDS SOUGHT VIA FOIA.

NARA 22-P.I Trump, Biden, Sanders Emails. Steidel Wall

See PDF.

See Requested Format.

For NARA employee:

Deputy Archivist of the United States

Debra Steidel Wall

debra.wall@nara.gov

From: January 1, 2020 thru November 3, 2020

1. All emails (with attachment and metadata) sent by this employee including the words “Joe Biden” or “Bernie Sanders” or “Donald Trump” or “Trump” (capitalized without the word President preceding “Trump.”)
2. This is a simple FOIA request. Any entry level IT staff person can write the query and execute it in less than an hour. (I worked in IT for decades.) For a similar FOIA request, DOJ Office of Information Policy released emails of its former Director, Melanie Pustay, using her email address and key word searches within those emails, as have countless others.
3. Responsive records are retrievable by and should be retrieved by information technology specialists within NARA's Executive/Chief Information Officer (CIO) Office.
4. Any deletion of potentially responsive records by the employee or the Agency may be a violation of law. Failure of NARA's FOIA Officer and Chief Information Officer to preserve records may also be a violation of law.
5. There should not be any redactions whatsoever. These are antecedent records that do not involve deliberative process. Additionally, there is no privacy exemption for the identities of federal employees.
 - a. Per DOJ Office of Information Policy's guide to FOIA “Civilian federal employees who are not involved in law enforcement of sensitive occupations generally **have no expectation of privacy** regarding their names, titles, grades,

salaries, and duty stations as employees or regarding parts of their successful employment applications that show their qualifications for their positions.” [OPM Regulations, 5 C.F.R. 293.311 (2011), *FLRA v. U.S. Dep't of Commerce*, 962 F.2d 1055, 1059-61 (D.C. Cir. 1992); *Core v. USPS*, 730 F.2d 946, 948 (4th Cir. 1984); *Leadership Conference on Civil Rights v. Gonzales*, 404 F. Supp. 2d 246, 257 (D.D.C. 2005); *Knittel v. IRS*, No. 07-1213, 2009 WL 2163619, at *6 (W.D. Tenn. July 20, 2009); *Cowdery, Ecker & Murphy, LLC v. Dep't of Interior*, 511 F. Supp. 2d 215, 219 (D. Conn. 2007); *Barvick v. Cisneros*, 941 F. Supp. 1015, 1020 n.4 (D. Kan. 1996).]

- b. Employment records may be releasable, under the FOIA, as it pertains to federal employees pursuant to Office of Personnel Management (OPM) regulations. OPM regulations indicate that federal employees generally have no expectation of privacy regarding their names, titles, grades, salaries, bonuses, position descriptions, and duty stations. [Ibid.]
6. I am also seeking a copy of this FOIA Request, which is an Agency record subject to FOIA that exists and is in the Agency's possession at the time of my FOIA request. This record is a responsive record integral to my Request. Release of the Agency's copy is not optional.

REQUESTED FORMAT.

I am also seeking records in their native MS. Outlook format without encryption or with a decryption key. Only if this cannot be done and justification provided, I may accept (if asked) records in PDF format with embedded links to all enclosures. However, I must not be charged printing fees. This is accomplished using the Outlook, File => Save as PDF function or by using commercial software achieving the same result

Additionally, I am seeking an ADA accessible PDF file by return email with: (1) a signed and dated cover letter (citing my personally assigned requester control number); (2) with record page count for all records released records (3) a copy of this request in your reply. I seek records via email in PDF format with an imbedded copy of my requests to (1) impede the agency from not addressing the FOIA Request; (2) impede the Agency from not providing the documents stated in the Agency's letter reply, and (3) make it obvious in any subsequent review what the Agency has or has not done.

If asked, due to file size, I may accept records downloaded from FOIAonline, where all records should be posted and available to the public.

Further, I request that these records be sent in any digital formats in which they exist (such as PDF and Excel). Under the terms of the E-FOIA Amendments of 1996, Section 5, if a document exists in electronic format, it must be released in that format upon request.

Each record must be provided as a distinct record in their native format. Emails should be provided as MS Outlook files, if not encrypted or otherwise unable to be opened by me. Only if this is not possible,

emails should be produced with their embedded hyperlinked attachments by using the "File => Save as Adobe PDF" command within Outlook or by other software that produces the same result.

I am also seeking the "**Description Available to the Public**" field I FOIAonline be set to yes and that all records be released to and viewable in the application by the general Public. The release type must be set to "**Unredacted – Releasable to the General Public: Will be available to the general public,**" or to "**Redacted – Releasable to the General Public: Will be available to the general public.**"

This request is distinctly separate from any other. Please do not combine this request with any other request in your reply. I am requesting that each element of the records sought be specifically addressed in the reply.

FEE WAIVER/ PUBLIC INTEREST/PUBLIC RELEASE. Notwithstanding my agreement to pay fees below if my fee waiver is denied, I am seeking a fee waiver due to significant public interest in this information. The subject of the requested records concerns "the operations or activities of the government." The disclosure is "likely to contribute" to an understanding of government operations or activities. There is no commercial interest. There is significant public interest.

AGREEMENT TO PAY FEES.

I agree to pay fees for searching or copying the records up to \$25. If the fees exceed this amount please advise me of the cost before proceeding. I do not believe that there should be any charge for providing these records, as there is public interest in government operations. I am a private individual not seeking documents for commercial use, such that the following applies: "No fees may be charged by any DoD Component if the costs of routine collection and processing of the fee are likely to equal or exceed the amount of the fee. With the exception of requesters seeking documents for a commercial use, Components shall provide the first two hours of search time, and the first one hundred pages of duplication without charge." I would note that because I am requesting an electronic file, there should not be a per page copy fee. The OMB Guidelines direct that searches for responsive records should be done in the "most efficient and least expensive manner." See OMB Fee Guidelines, 52 Fed. Reg. at 10,017. As an "all others" requester, I may only be assessed search and duplication fees and not fees for review. See 32 CFR 286.12 - Schedule of fees. Also, please note that, should payment become necessary, the Coinage Act of 1965, specifically Section 31 U.S.C. 5103, entitled "Legal tender," states: " United States coins and currency (including Federal reserve notes and circulating notes of Federal reserve banks and national banks) are legal tender for all debts, public charges, taxes, and dues. Foreign gold or silver coins are not legal tender for debts.

([Pub. L. 97-258, Sept. 13, 1982, 96 Stat. 980](#) ; [Pub. L. 97-452, §1\(19\), Jan. 12, 1983, 96 Stat. 2477](#) .)

EXPEDITED PROCESSING.

I am seeking expedited processing. The subject is of widespread and exceptional media interest and the information sought involves possible questions about the government's integrity that affect public confidence.

Additionally, I am an individual/organization primarily engaged in the dissemination of information who can prove the information is urgently needed to inform the public concerning some actual or alleged government activity. My primary activity is informing the public, which I do through a variety of means, such as open meeting public comments, blogs, etc., and I may from time to time collaborate on articles. There is extraordinary, off the charts interest in the subject matter of this meeting and NARA's execution.

DOD POLICY – PUBLIC TRUST.

Reference (c) states, "DoD personnel are expected to comply with the FOIA, this Regulation, and DoD FOIA policy in both letter and spirit. This strict adherence is necessary to provide uniformity in the implementation of the DoD FOIA Program and to create conditions that will promote public trust."

STILL-INTERESTED PREEMPTIVE REPLY. This is a preemptive reply to the Justice Department guidelines the procedure known as a "still interested" inquiry, through which a FOIA officer can confirm that the requester has not lost interest in obtaining the documents.

My interest in all FOIA requests submitted to your office is enduring, meaning that my interest in seeking replies to all past and future FOIA request remains in effect until each request has been answered fully and the time for judicial review has passed. Please do not initiate any "still interested" inquiries. This serves as my notice of enduring interest and automatic reply to any future questions of interest by your office. There are no reasonable grounds to ever conclude in the future that I am not interested in this request.

Implementation Checklist for DOJ OIP Guidance on "Still-Interested" Inquiries

1. Ensure there are reasonable grounds to make a "still-interested" inquiry in first instance.
2. Absent good cause, do not make multiple "still-interested" inquiries.
3. Use requester's preferred method of communication and in the absence of a preference, communicate by telephone or email as the default.
4. Memorialize any decision by a requester to withdraw a request that is conveyed by telephone by sending the requester a brief email or letter noting the withdrawal.
5. Provide requesters no less than thirty (30) working days to respond to the "still-interested" inquiry and ensure that there is a simple way to do so.
6. Advise the requester that if they elect not to respond to the inquiry, the request will be administratively closed at the conclusion of the designated time period (which must be at least 30 working days).
7. Prior to administratively closing a request based upon the lack of a response by the requester, make good faith efforts to reach out to the requester using multiple methods of communication.

8. In the event a requester responds to the “still- interested” inquiry within a reasonable time after the deadline has passed, reopen the request and place it back into the processing queue where it would have been.

PRESERVE RECORDS AND SEARCHES FOR JUDICIAL REVIEW.

Please search for, locate, and preserve all responsive or potentially responsive records and records of your searches in your FOIA case file until the statutory date for judicial review has passed (should that be necessary) or in accordance with a NARA approved records schedule, if longer. NARA GRS 4.2 requires that FOIA and Privacy Act case files be retained for 6 years after final agency action or 3 years after final adjudication by the courts, whichever is later. Records of responsive searches would include but not be limited to: searches conducted for each specific record sought and all other records known to the Agency, including dates, manner of searching, responsible agent or employee conducting each search and the results thereof. Such persons determining the locations of responsive records must be inclusive of persons who would know such locations and their identities and manner of determining search locations must be preserved.

In any subsequent proceedings, I may seek sworn declarations and a court order appointing a special counsel, as appropriate. Similarly, I may pursue additional venues.

Any deletion of potentially responsive records by any party having knowledge of this Request may be a violation of law. In as much as applicable staff and leadership have knowledge of my subject request, the Agency must search for, locate, and preserve all responsive or potentially responsive records and records of searches in their FOIA case file, and leadership must ensure that this is done. Failing to do so and allowing records to be deleted IAW any other records management schedule may be a violation of law.

ELECTRONIC RECORDS PRESERVATION.

The Agency must preserve all electronically stored information, copies and backup, as defined by Rule 34 of the Federal Rules of Civil Procedure, along with any paper files which the Agency maintains, relevant to this action I am seeking electronic data in the Agency’s custody and control that is relevant to this action, including without limitation emails, along with metadata, and other information contained on Agency computer systems and any electronic storage systems. I consider this electronic data and paper files to be valuable and irreplaceable sources of discoverable information in this matter. No procedures should have been implemented to alter any active, deleted or fragmented data. Moreover, no electronic data should have been disposed of or destroyed. (ETL Institute for Advancement of America’s Legal System).

Further, to properly fulfill your preservation obligation, stop all scheduled data destruction, electronic shredding, rotation of backup tapes, and the sale, gift or destruction of hardware. Notify all individuals and of the need and duty to take the necessary affirmatives steps to comply with the duty to preserve evidence. (2008 Thomson Delmar Learning).

The Agency's Director of Information Operations or similar organization must initiate procedures to preserve electronic records.

ALTERATION/DESTRUCTION OF RECORDS

Whoever knowingly alters, destroys, mutilates, conceals, covers up, falsifies, or makes a false entry in any record, document, or tangible object with the intent to impede, obstruct, or influence the investigation or proper administration of any matter within the jurisdiction of any department or agency of the United States or any case filed under title 11, or in relation to or contemplation of any such matter or case, shall be fined under this title, imprisoned not more than 20 years, or both. 18 U.S. Code § 1519 - Destruction, alteration, or falsification of records. (Added Pub. L. 107-204, title VIII, §802(a), July 30, 2002, 116 Stat. 800.).

18 U.S.C. 641 and 2071. The penalties for the unlawful or accidental removal, defacing, alteration, or destruction of Federal records or the attempt to do so, include a fine, imprisonment, or both (18 U.S.C. 641 and 2071).

36 CFR § 1230 UNLAWFUL OR ACCIDENTAL REMOVAL, DEFACING, ALTERATION, OR DESTRUCTION OF RECORDS

§1230.3

Unlawful or accidental destruction (also called unauthorized destruction) means disposal of an unscheduled or permanent record; disposal prior to the end of the NARA-approved retention period of a temporary record (other than court-ordered disposal under §1226.14(d) of this subchapter); and disposal of a record subject to a **FOIA request**, litigation hold, or any other hold requirement to retain the records.

IMPROPERLY WITHHOLDING RECORDS

Pursuant to FOIA:

“Whenever the court orders the production of any agency records improperly withheld from the complainant and assesses against the United States reasonable attorney fees and other litigation costs, and the court additionally issues a written finding that the circumstances surrounding the withholding raise questions whether agency personnel acted arbitrarily or capriciously with respect to the withholding, the Special Counsel shall promptly initiate a proceeding to determine whether disciplinary action is warranted against the officer or employee who was primarily responsible for the withholding. The Special Counsel, after investigation and consideration of the evidence submitted, shall submit his findings and recommendations to the administrative authority of the agency concerned and shall send copies of the findings and recommendations to the officer or employee or his representative. The administrative authority shall take the corrective action that the Special Counsel recommends.” 5 U.S.C. § 552(a)(4)(F)(i).

LEGAL FRAMEWORK OF FOIA

1. The definition of “records” includes:
“[A]ll books, papers, maps, photographs, machine readable materials, or other documentary materials, regardless of physical form or characteristics, made *or received* by an agency of the United States Government under Federal law or in connection with the transaction of public business and preserved or appropriate for preservation by that agency or its legitimate successor as evidence of the organization, functions, policies, decisions, procedures, operations, or other activities of the Government or because of the informational value of data in them.”
44 U.S.C. § 3301 (emphasis supplied).
2. FOIA requires that “each agency, upon any request for records which (i) reasonably describes such records and (ii) is made in accordance with published rules stating the time, place, fees (if any), and procedures to be followed, shall make the records promptly available to any person” 5 U.S.C. § 552(a)(3)(A).
3. FOIA requires that “each agency shall establish a system to assign an individualized tracking number for each request received that will take longer than ten days to process and provide to each person making a request the tracking number assigned to the request” 5 U.S.C. § 522(a)(7)(A).
4. FOIA requires that each agency shall “establish a telephone line or Internet service that provides information about the status of a request to the person making the request using the assigned tracking number, including the date on which the agency originally received the request; and an estimated date on which the agency will complete action on the request. 5 U.S.C. § 522(a)(7)(B).
5. FOIA also requires federal agencies to make a final determination on FOIA administrative appeals that it receives within twenty days (excepting Saturdays, Sundays, and legal public holidays) after the receipt of such appeal, unless the agency expressly provides notice to the requester of “unusual circumstances” meriting additional time for responding to a FOIA request. 5 U.S.C. § 552(a)(6)(A)(ii).
6. FOIA expressly provides that a person shall be deemed to have constructively exhausted their administrative remedies if the agency fails to comply with the applicable time limitations provided by 5 U.S.C. § 552(a)(6)(A)(I) - (ii). *See also* 5 U.S.C. § 552(a)(6)(C).
7. FOIA provides that any person who has not been provided the records requested pursuant to FOIA, after exhausting their administrative remedies, may seek legal redress from the Federal District Court to enjoin the agency from withholding agency records and to order the production of any agency records improperly withheld from the complainant.
8. Regarding the names of the FOIA requesters, the courts have held that under the FOIA requesters do not have an expectation of privacy. *Stauss v. IRS*, 516 F. Supp. 1218, 1223 (D.D.C. 1981),
9. Under FOIA, the federal agency has the burden of sustaining its actions. 5 U.S.C. § 552(a)(4)(B).
10. Pursuant to FOIA, a Court may assess attorney fees and litigation costs against the United States if the Plaintiff prevails in an action thereunder. 5 U.S.C. § 552(a)(4)(E).

11. Department of Justice (DOJ) has issued a handbook addressing FOIA Annual Reports. See DOJ, *Handbook for Agency Annual Freedom of Information Act Reports*, “Disposition of FOIA Requests,” (available at http://www.justice.gov/sites/default/files/oip/pages/attachments/2014/11/04/department_of_justice_handbook_for_agency_annual_freedom_of_information_act_reports.pdf) (“DOJ Handbook”).

12. Among other things, the DOJ Handbook states, “All requests (perfected and non-perfected), appeals, and consultations that were pending at any time during the relevant fiscal year [October 1st through September 30th] will be captured.”

13. The DOJ Handbook also states:

“[E]ach agency is ultimately responsible for the accuracy and completeness of its Annual FOIA Report. It is therefore essential for agencies to take steps that will ensure that they are adequately tracking all of the information necessary to complete the Annual FOIA Report sections detailed below. Agencies that utilize a tracking or case management system for this purpose are responsible for ensuring that the system they are using can produce an accurate Annual FOIA Report that is in compliance with the law and Department of Justice guidance.” DOJ Handbook, at 3.

I believe that I have adequately described the records that I am seeking. If you believe that my request is unclear, if you have any questions, or if there is anything else that you need from me to complete this request in a timely manner, please contact me in writing, so that I may perfect my request. If you deem that any portion of my request is unclear, answer the remaining portions and I will perfect a request for additional material as needed.

Thank you very much in advance.

With my respect,

/s/

Robert Hammond
Requester
Whistleblower

References:

- (a) The Freedom of Information Act (“FOIA”), 5 U.S.C. § 552 *et seq.*, as amended,
- (b) Joint publication of U.S. Department of Justice, Executive Office of the President and U.S. General Services Administration of July 2011, “Your Right to Federal Records”
- (c) The Privacy Act (“PA”) of 1974, 5 U.S.C. § 552a, *et seq.*, as amended
- (d) DoD 5400.11-R, May 14, 2007, Department of Defense Privacy Program
- (e) DoD 5400.7-R, September 1998, DoD Freedom of Information Act (FOIA) Program
- (f) DoD 6025.18-R, Jan. 24, 2003, DoD Health Information Privacy Regulation
- (g) GAO Report GAO-12-828 of July 2012, subject Freedom of Information Act
- (h) Department of Justice Handbook for Agency Annual Freedom of Information Act Reports

- (i) (b) Administrative Instruction 106, “Alternative Dispute Resolution (ADR) Program,” January 30, 2014
- (j) DoD Directive 5145.01, “General Counsel of the Department of Defense (GC DoD),” December 2, 2013, as amended
- (k) DoD Directive 5145.04, “Defense Legal Services Agency (DLSA),” April 16, 2012
- (l) (f) DoD Directive 5400.11, “DoD Privacy Program,” October 29, 2014
- (m) DoD Manual 8910.01, Volume 1, “DoD Information Collections Manual: Procedures for DoD Internal Information Collections,” June 30, 2014
- (n) Executive Order 12988, “Civil Justice Reform,” February 5, 1996
- (o) Public Law 101-552, “Administrative Dispute Resolution Act,” November 15, 1990
- (p) Public Law 104-320, “Administrative Dispute Resolution Act of 1996,” October 19, 1996
- (q) Presidential Memorandum for Heads of Executive Departments and Agencies, “Designation of Interagency Committees to Facilitate and Encourage Agency Use of Alternate Means of Dispute Resolution and Negotiated Rulemaking,” May 1, 1998
- (r) United States Code, Title 5
- (s) DoD Instruction 5145.05, “Alternative Dispute Resolution (ADR) and Conflict f
- (t) Alternate Dispute Resolution Handbook (opm.gov/policy-data-oversight/employee-relations/employee-rights-appeals/alternative-dispute-resolution/handbook.pdf)
- (u) President Obama's FOIA Memorandum and Attorney General Holder's FOIA Guidelines (justice.gov/sites/default/files/oip/legacy/2014/07/23/foia-memorandum.pdf)

Hammond Public Comments

#	Hammond Public Comments. Document Cloud Alphabetical (25 per page on web, not alphabetical) https://www.documentcloud.org/app?q=%2Buser%3Arobert-hammond-106693%20
1	2022- 2024 FOIA Advisory Committee Bylaws - Recommended Changes
2	2022- 2024 FOIA Advisory Committee Inaugural Meeting. DOJ OIP OGIS Grossly Underfunded
3	All Panelist Chat to June 9 2022 FOIA Advisory Committee Meeting. OGIS DOJ Funding + Miss
4	DOD FOIA Misconduct Part IV. FY 2018 Appeals Disappeared + DOJ OIP & OGIS Underfunded, Thus Ineffective
5	DOD FOIA Misconduct Part V. Navy FY 2018 Appeals Dispositions Bases Not Reported
6	DOD Massive False FOIA Reporting. Part 1. Letter to SECDEF, Complaint to DOJ OIG
7	DOD MASSIVE FALSE REPORTING PART II + Still Interested Abuse. Updated July 27, 2022
8	DOD Massive False Reporting Part III. 5-year Late Acknowledgements Unusual Circumstances Abuse +
9	DOD' Cites Change to CFR 32 CFR part 286.4 as Unlawful Basis for Omitting OGIS Mediation Rights
10	DOJ OIP (Inaccurate) CFO Report Assessment 2022
11	DOJ OIP Compliance Inquiries
12	DOJ OIP Improper and Unlawful Standard Glomar Responses With Implicit (b)(1) & (b)(7)
13	Failure - FOIA Compliance Oversight & Funding. Part 2. No Joking Matter
14	FOIA Line-Item Budgets Now. Let the citizens be heard. Retire FOIA Bob.
15	FOIAonline - Recommended System Changes
16	Foreseeable Harm Standard Vanita Gupta. November 3, 2022 CFO Meeting
17	Foreseeable Harm Standard. DOJ OIP Misinformation + Navy Misconduct and Idiocy?
18	Hammond FOIA Public Comments Posted to Document Cloud
19	Hammond Questions Comments for September 8 2022 Meeting. OGIS and DOJ OIP Lack of Funding w.attach1
20	Hammond Recommendations and Chat Comments to 4.7.2022 FOIA Advisory Committee Meeting
21	HOT! Semo OGIS. Budget Numbers do not Comport w. NARA Published Budgets!
22	Individualized Tracking Numbers. NARA Fraud. Hatch Act Violations
23	Mandatory Right to OGIS Dispute Resolution - OGIS Malfeasance 20220616

24	Moot Appellate Determinations
25	NARA FOIA & Financial Malfeasance \$789,730 + Alteration of Records and Loss of Public Trust
26	NARA FY 2022 Data Stripped From FOIA.gov
27	NARA, PLEASE FUND OGIS!! (PART 1). Robert Hammond September 9, 2021 Speaker Notes
28	Navy FY 2018 Appeals Dispositions Bases Not Reported
29	OGIS & DOJ OIP Misstate Recommendation to Post FOIA Logs - Why
30	OGIS Funding and Case Accountability Logs
31	OGIS Negligence Generally & Improper June 29, 2022 FOIA Meeting
32	OGIS Posting Policy for Public Comments
33	Posting FOIA Logs. Tech Committee Recommendation #2. FOIA Ombudsman Inaccurate Citation
34	Preserve FOIAonline Records + Decertify FOIA.gov + Audit NARA + Post FOIA Logs
35	QUESTIONS for June 29, 2022 OGIS Annual FOIA Meeting v2
36	Response to Hon. David S. Ferriero June 10 2021 Comments to FOIA Advisory Committee
37	Sample FOIA Template to Combat Agency Misconduct 20220616
38	Senator Grassley - DOJ OIP'S Position Doesn't Pass the "Common Sense Test"
39	Senators Unite to Slam FOIA Compliance + POGO
40	Subpoena Threat and Congressional Demand for OGIS to Release Records. OMB Kills Recommendations
41	Sued into Oblivion. Foreseeable Harm Standard
42	Violations of the ADA in FOIA Redactions, Simple Solution