

OGIS Issue Assessment: The Freedom of Information Act’s Inclusion in Agency Performance Plans and Reports

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What OGIS Found	What OGIS Recommends
<p>Finding 1: One-quarter of departments and agencies we reviewed included FOIA in their agency performance plans.</p> <p>Finding 2: FOIA performance goals and measures vary widely across agencies that include FOIA in their annual performance plans.</p>	<p>Recommendation 1: All federal agencies that receive more than 50 FOIA requests annually should include FOIA in their annual performance plans.</p> <p>Recommendation 2: Agencies should include specific FOIA goals along with metrics in their annual performance plans for accountability and to leverage FOIA toward furthering an agency’s mission.</p>
What OGIS Reviewed	
<p>OGIS reviewed the available annual performance plans and reports for all 15 Cabinet-level departments and the independent agencies that received more than 50 FOIA requests in the Fiscal Year 2020. OGIS assessed whether agencies’ annual performance plans and performance reports mentioned FOIA and, if so, included FOIA performance goals, measures, and results.</p>	
Why OGIS Conducted this Review	
<p>In its final report, the 2018-2020 term of the FOIA Advisory Committee recommended that OGIS and OIP “examine the FOIA performance measures used in performance plans and reports to encourage agencies to include FOIA in their performance plans.” <i>[Recommendation No. 2020-07]</i></p>	

Background

In its final report to the Archivist of the United States, the 2018-2020 term of the Freedom of Information Act (FOIA) Advisory Committee—a group of 20 FOIA experts from inside and outside the government appointed by the Archivist— made 22 recommendations to improve the implementation of FOIA. Four of the recommendations centered on “Raising the Profile of FOIA

Within Agencies.”¹ One of these four, [Recommendation 2020-07](#), pertained to FOIA in agency performance plans. It stated:

The Office of Government Information Services (OGIS) and the Department of Justice, Office of Information Policy (OIP), [will] examine the FOIA performance measures used in Agency Performance Plans and Reports to encourage agencies to include FOIA in their performance plans. We further recommend that OGIS submit the results of its assessment and any recommendations to Congress and the President in accordance with 5 U.S.C. § 552(h)(5).

OGIS and OIP discussed and agreed that OGIS would conduct the assessment.

Most agencies must publish annual performance plans that include establishing a list of performance goals for each program as required by the [Government Performance and Results Act \(GPRA\) of 1993](#), as updated by the [GPRA Modernization Act of 2010 \(GPRAMA\)](#). However, some agencies are exempt from the GPRAMA requirements. (See Methodology, below.) Furthermore, federal agencies report progress on their performance goals in either their Annual Performance Reports or their annual Performance and Accountability Reports.

The 2018-2020 FOIA Advisory Committee’s Final Report noted the importance of FOIA’s inclusion in agency performance plans and cited a 2018 academic study which indicated that open government and transparency measures, including FOIA, are absent from many federal agency performance plans.² The Committee’s final report suggested that inclusion of FOIA performance goals in agency performance plans would boost government accountability and transparency.

OGIS searched for performance plans and performance reports from all 15 Cabinet-level departments and a majority of the independent agencies subject to FOIA. From that group of 117 agencies, OGIS found 58 plans or reports and assessed whether those 58 mentioned FOIA and included FOIA performance goals, measures, and results.

It should be noted that the data and information represents a snapshot in time. Agencies may have updated or changed their performance plans since we conducted the research for this report. A copy of the data we compiled during our review is available on this spreadsheet. [COMING SOON!]

Findings and Recommendations

¹ See Recommendations Nos. 2020-07, 2020-08, 2020-09, and 2020-10 from the 2018-2020 FOIA Advisory Committee, [Final Report and Recommendations to the Archivist of the United States](#), July 9, 2020.

² See Suzanne J. Piotrowski, et al., [Levels of Value Integration in Federal Agencies' Mission and Value Statements: Is Open Government a Performance Target of U.S. Federal Agencies?](#), *Public Administration Review*, 78: 705 (2018).

Finding 1: One-quarter of departments and agencies we reviewed included FOIA in their agency performance plans.

Of the 58 agency performance plans and reports we reviewed, 60 percent (35 out of 58) did not mention the term “Freedom of Information Act” and slightly fewer, 58 percent (34 out of 58), did not mention the acronym “FOIA.” In addition, 76 percent (44 out of 58) of the agency plans made no mention of the term “access to information.”

Inclusion of FOIA in performance plans ranged from mentioning the FOIA program to setting performance goals, and some but not all included specific performance measures for determining a goal’s success.

- Only 24 percent (14 out of 58) of the agency performance plans OGIS reviewed included specific FOIA *performance goals*. The remaining 44 agencies that mentioned FOIA did not list or indicate FOIA performance goals.
- Seventeen percent (10 out of 58) of the plans OGIS reviewed included specific FOIA *performance measures*. The remaining 48 agencies did not include FOIA performance measures.

Some performance plans we reviewed—21 percent (12 out of 58) —included specific FOIA *performance results*. The remaining 46 agencies did not include FOIA performance results.

Recommendation 1: All federal agencies receiving more than 50 FOIA requests annually should include FOIA in their annual performance plans.

To ensure accountability and compliance with FOIA, OGIS recommends that agencies consider including FOIA performance goals and measures in their annual performance plans. As the Attorney General’s [FOIA Guidelines](#) note, “[t]ransparency in government operations is a priority of this Administration and this Department” of Justice. Including FOIA annual performance plans is one way to “make real the Freedom of Information Act’s promise of a government that is open and accountable to the American people.”³

If agencies across the government include FOIA in their performance plan, one result might be data and information that could be used to track the effectiveness of FOIA programs across federal agencies. In addition, performance results would allow agencies to identify areas within their FOIA programs that may need streamlining (*e.g.*, more efficient processes and policies) and/or additional resources (*e.g.*, technology enhancements, staffing, etc.)

Finding 2: FOIA performance goals and measures vary widely across agencies that include FOIA in their annual performance plans.

As discussed in Finding 1, of the 58 plans and reports in which the “Freedom of Information Act” or “FOIA” was referenced, fewer than one in four (24 percent) included performance

³ Memorandum for Heads of Executive Departments and Agencies, March, 15, 2022, <https://www.justice.gov/ag/page/file/1483516/download>

goals, and fewer than one in five (17 percent) referenced specific measures for those goals. Of those minority of agencies, commonly included measures and goals included:

- Backlogs
- Response Time
- Proactive Disclosures
- Technology/Modernization
- Training
- Customer Service

The goals across agencies varied widely. Some examples include:

- “Continually reduce the FOIA backlog by 3% over the prior year backlog.” (U.S. Department of Energy);
- “Respond to FOIA and other public inquiries in a timely manner.” (National Labor Relations Board);
- “Ensure that the public, through efficient FOIA processing, can obtain information about the Board, the programs it administers, and the actions it takes.” (Surface Transportation Board); and
- “Enhance the agency’s FOIA processing system by developing internet-based capabilities.” (Occupational Safety and Health Review Commission)

Metrics in the plans varied widely from increased internet traffic (page views) to backlog reduction goals.

Recommendation 2: Agencies should include specific FOIA goals along with metrics in their annual performance plans for accountability and to leverage FOIA toward furthering an agency’s mission.

Metrics and goals included with the annual performance plan goals quantify the goals clearly and specifically. Quantifying goals in this way can aid in identifying resource gaps, focus agency efforts, and motivate staff to achieve the goal. This helps with communicating FOIA needs and successes with agency leadership, thereby elevating the profile of FOIA programs and helping the agency shed light on their mission-critical operations. This was noted specifically by the Securities and Exchange Commission during an interview in April 2021:

“FOIA ... has really always had an elevated position here at the agency and it’s important to our senior leadership. We are on the support side of the SEC and then there is the mission side but I have never felt like we are a lesser office because we are not on the mission side of the SEC. We play a big part in carrying out several key roles. Partnering with mission-critical offices within an agency really goes a long way.”⁴

⁴ OGIS Interview with Securities and Exchange Commission, April 22, 2021 regarding their agency performance plan.

Agency FOIA programs with clear, measurable goals and data are better able to illustrate their resource needs and challenges to both agency senior leadership and Congress.

Methodology

In a search for the performance plans or reports of the Cabinet-level departments and independent agencies, OGIS found that 58 (including 13 of the 15 Cabinet-level departments) had published performance plans in Fiscal Year 2020. It is important to note that some agencies are exempted by law from the GPRAMA requirements regarding agency performance plans.⁵ It is also unclear whether the Executive Office of the President (EOP), the Office of the Vice President, or an entity located within the EOP, such as the Office of Management and Budget (OMB), meet the definition of "agency" under GPRAMA.⁶

OGIS assessed whether the 58 performance plans and reports, all published between January 2020 and August 2021, mentioned FOIA and included FOIA performance goals, measures, and results. This analysis revealed that there were 24 agency plans that had at least one mention of FOIA.

Agency plans were accessed through the [Performance.gov](https://www.performance.gov) portal. Access via this site ensured that OGIS reviewed the most recent plans submitted to the OMB at the time of our assessment.

Conclusion

The 2018-2020 term of the FOIA Advisory Committee noted that “inclu[ding] FOIA performance goals in agency strategic plans would boost the government’s overall accountability and transparency.”⁷ Few agencies or departments provide detailed goals and accomplishments regarding the implementation of FOIA resources in their agency performance plans. Those that do should provide a standard for other agencies.

Robert Ripson, an Archivist with the Accessioning and Basic Processing Section, conducted this review on temporary assignment to OGIS as part of a National Archives and Records Administration Cross-training Program.

⁵ Under GPRAMA, the term "agency" includes executive branch agencies, but explicitly does not include the Central Intelligence Agency, United States Postal Service, Postal Regulatory Commission, and the Government Accountability Office (a legislative branch agency that is included in some statutory definitions of "executive agency" and is not subject to FOIA). See [GPRAMA, Section 2, 5 U.S.C. §306\(f\)](#); and [Section 3, 31 U.S.C. §1115\(h\)\(1\)](#), both of which refer to [5 U.S.C. §105](#).

⁶ See Clinton T. Brass, “[Congressional Resources Report- Reexamination of Agency Reporting Requirements: Annual Process Under the GPRAMA Modernization Act of 2010 \(GPRAMA\)\(R42490\)](#).” Congressional Research Service, May 29, 2013.

⁷ See Final Report and Recommendations of the 2018-2020 FOIA Advisory Committee, July 9, 2020, page 18.