



Office of Government Information Services

National Archives and Records Administration

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FOIA Requirements, Agency Best Practices, and OGIS Recommendations

Requirements	Observed Agency Best Practices	OGIS Recommended Best Practices
<p>President Obama’s Memorandum for the Heads of Executive Departments and Agencies on the Freedom of Information Act</p> <p>Issued: Jan. 21, 2009</p>	<ul style="list-style-type: none"> • Apply a presumption of openness and a presumption in favor of disclosure 	<ul style="list-style-type: none"> • Department of Labor and Nuclear Regulatory Commission: Developed training programs for staff on implementing the President’s and Attorney General’s memoranda; the new requirements of the OPEN Government Act of 2007 and the “foreseeable harm” standard • Establish procedures for identifying information appropriate for disclosure and establish categories of records that can be disclosed regularly, such as calendars and travel records of senior agency leaders • Provide FOIA training to all new employees, including political appointees, and provide annual FOIA refresher training for all employees
<p>Attorney General Holder’s Memorandum for Heads of Executive Departments and Agencies on the Freedom of Information Act</p> <p>Issued: Mar. 19, 2009</p>	<ul style="list-style-type: none"> • Deny disclosure only if the agency can reasonably foresee that disclosure would harm an interest protected by a statutory exemption 	<ul style="list-style-type: none"> • Department of Agriculture/Animal and Plant Health Inspection Service: Implemented a universal foreseeable harm standard to determine the appropriate withholdings under FOIA Exemptions 2, 5, and 7 • Department of Commerce: Requires certification that a foreseeable harm analysis has been applied to all withheld documents with a determination that disclosure would result in harm • Department of Agriculture/Forest Service: Employees wishing to withhold records under Exemptions 2 or 5 must provide in writing the harm that would result from the release of the requested information
	<ul style="list-style-type: none"> • Make partial discretionary disclosures of requested records when full disclosure cannot be made 	<ul style="list-style-type: none"> • Department of Justice/Federal Bureau of Prisons: Released 8 pages in full, 21 in part of Federal prison records that • Establish procedures for identifying information appropriate for discretionary disclosure

Requirements

Observed Agency Best Practices

OGIS Recommended Best Practices

Attorney General
Holder's
Memorandum for
Heads of Executive
Departments and
Agencies on the
Freedom of
Information Act
Issued: Mar. 19, 2009

could have been properly withheld under
FOIA Exemptions 2 and 5

- **Department of Justice/FBI:** In response to a high volume of requests, made a discretionary release of 333 pages of FBI investigatory records on Michael Jackson, who died June 25, 2009
- **Department of Transportation:** Released documents that could have been withheld under Exemption 5, including internal managerial e-mails discussing a controversial proposed agency policy and e-mails regarding safety issues for medical air ambulances

- Make proactive disclosures by readily and systematically posting information online

- **Department of Agriculture/Food Safety and Inspection Service:** Offers subscriptions to e-mail notifications of updates to its log of FOIA requests; more than 9,100 people subscribe
- **Department of Agriculture/Agriculture Marketing Service:** Posted online a searchable database of 50,164 animal care inspection reports for 2006, 2007, and 2008; the number of incoming FOIA requests dropped by nearly 35 percent
- **Department of Justice/Bureau of Alcohol, Tobacco, Firearms and Explosives:** Posted lists of all active Federal firearms licenses and Federal explosives licenses in the United States

- Establish categories of records that can be disclosed regularly
- Post online significant documents that have been released under FOIA without waiting for a second FOIA request
- If feasible, post previously released documents, of whatever age, in searchable form on agency FOIA web page

Freedom of
Information Act,
5 U.S.C. § 552, as
amended by the
OPEN Government
Act of 2007

- Make a determination on a records request and notify the requester within 20 business days after receiving the request

- **Department of State:** Processes FOIA requests incrementally, releasing documents on a rolling basis instead of waiting until processing of requested documents ends

- Keep requesters informed about the timeframe for release and how they can track their requests, even if the agency cannot meet 20-day response time
- Develop an online or e-mail system for filing FOIA requests, allowing requesters to easily check the status of their requests

	Requirements	Observed Agency Best Practices	OGIS Recommended Best Practices
<i>Response Time:</i>	<ul style="list-style-type: none"> Determine within 10 days of receiving request whether requester has demonstrated “compelling need” requiring expedited processing 		<ul style="list-style-type: none"> Make rolling releases in cases with many records Establish procedures for promptly analyzing and responding to requests for expedited processing Designate one senior staff member, and other employees as necessary, to act quickly on requests for expedited processing
	<ul style="list-style-type: none"> Determine an appeal within 20 business days of appeal’s receipt 	<ul style="list-style-type: none"> Surface Transportation Board: Adopted an informal policy accepting administrative FOIA appeals in cases in which the only reason to refuse the appeal is technical, such as the appeal was received after the deadline for filing an appeal 	<ul style="list-style-type: none"> Establish online procedure for tracking appeal status
<i>Tolling:</i>	<ul style="list-style-type: none"> Extend 20-day processing time for no more than 10 days only after giving written notice of “unusual circumstances” 	<ul style="list-style-type: none"> Defense Intelligence Agency: Detail in interim response letters to requesters the “unusual circumstances” preventing the agency from responding to request within required time period 	<ul style="list-style-type: none"> Explain to requester the “unusual circumstances” causing the need for 10 extra days to respond to request Advise the requester of option to narrow request or arrange an alternative timeframe for processing request with the agency
	<ul style="list-style-type: none"> Extend time for processing a request only in unusual circumstances and only after consulting with another agency, or two or more components within an agency with a “substantial interest” in the request 	<ul style="list-style-type: none"> Department of Defense: In cases requiring referral to another agency, an Air Force FOIA officer created a FOIA document-sharing platform to streamline FOIA referrals and consultations 	<ul style="list-style-type: none"> When a request is referred, notify the requester of the referral, the agency it was sent to, and how to follow up on the status of the request Use technology to maximize efficiency of referral/consultation process Develop intra- and interagency agreements (MOUs) regarding processing routine agency-specific documents, releases, and withholdings to avoid the need for referral/consultation
	<ul style="list-style-type: none"> Agency may make one request for additional information and toll the 20-day processing time while waiting for a response from requester 		
<i>Fee categories:</i>	<ul style="list-style-type: none"> Commercial use: reasonable standard charges for search, duplication, review 	<ul style="list-style-type: none"> U.S. Census Bureau: Provides customers with clear breakdown of fees 	<ul style="list-style-type: none"> Post clear information about and examples of agency determinations on fee categories

Requirements	Observed Agency Best Practices	OGIS Recommended Best Practices
<ul style="list-style-type: none"> • Educational, noncommercial scientific institutions, and representatives of the news media: reasonable standard charges for document duplication • All other requesters: reasonable standard charges for document search and duplication 		<ul style="list-style-type: none"> • Make public information easy to find for requesters • Develop guidance for determining whether bloggers meet the “representative of the news media” status • Negotiate lower fees with requesters willing to narrow the scope of their requests • Provide requesters with a breakdown of the total fee estimate
<p><i>Fee waivers:</i></p> <ul style="list-style-type: none"> • Charge no fee if the costs of routine fee collection and processing are likely to equal or exceed the fee amount. Charge no fees for first two hours of search and first 100 pages of duplication for noncommercial requesters • Charge no fees or reduced fees if disclosure is in the public interest and likely to contribute significantly to public understanding of operations or activities of the Government and is not primarily in the commercial interest of the requester • Assess no fees if the agency fails to comply with any time limit, if no unusual or exceptional circumstances apply to processing the request • No advance payment required unless fee will exceed \$250, or requester has previously failed to pay fees 	<ul style="list-style-type: none"> • Department of Agriculture/Forest Service: A FOIA analyst informed a requester who was willing to pay thousands of dollars to obtain records that he could easily download the data free from the Federal Procurement Data System 	<ul style="list-style-type: none"> • Develop guidance on how to analyze requests for fee waivers • Post in plain language information about and examples of agency determinations on fee waivers • Develop guidance on types of information that would be in the public interest to disclose • Adopt an expansive view of information that is in the public interest to disclose
<p><i>Tracking requests:</i></p> <ul style="list-style-type: none"> • Assign and provide to requester a tracking number for each request that will take longer than 10 days to process • Provide requesters with an estimated time of completion of request 	<ul style="list-style-type: none"> • Environmental Protection Agency: Operates a national FOIA hotline allowing callers to speak to a FOIA specialist about their requests or get answers to general FOIA questions 	<ul style="list-style-type: none"> • Provide in writing to the requester the tracking number and contact information for the FOIA Public Liaison as quickly as possible • Provide requester with an estimate of how long the request is likely to take to process

Requirements	Observed Agency Best Practices	OGIS Recommended Best Practices
	<ul style="list-style-type: none"> • Department of Agriculture/Animal and Plant Health Inspection Service/Office of the Assistant Secretary for Civil Rights: immediately acknowledges requests and provides name and contact information of FOIA specialist assigned to the case • Department of Justice/Bureau of Alcohol, Tobacco, Firearms and Explosives: Created acknowledgment tracking log to allow the chief FOIA officer to track the progress of each FOIA request 	<ul style="list-style-type: none"> • Post a case log on agency FOIA web page allowing requesters to search by tracking number; update weekly
<i>Multitracking requests:</i>	<ul style="list-style-type: none"> • Develop multitrack system for requests based on amount of work and/or time involved in processing the requests • Department of Justice/Executive Office for U.S. Attorneys: Created a multitrack system for processing FOIA requests—expedited, complex, and simple; simple requests no longer must wait until larger, more complex requests are finished • National Archives and Records Administration: Expanded the use of multiple tracking queues to ensure that simple, easily processed requests are not caught behind more complex requests. For very old cases, NARA contacts requesters to determine whether requesters are still interested in the requested record or if they are willing to narrow the request to a smaller subset of records 	<ul style="list-style-type: none"> • Improve multitracking system for efficient FOIA administration • Advise requesters, where appropriate, to narrow search
<i>FOIA Public Liaisons (FPLs):</i>	<ul style="list-style-type: none"> • Designate FOIA Public Liaisons (FPLs) within each agency who shall assist in resolving disputes between requesters and agencies 	<ul style="list-style-type: none"> • FPLs should be FOIA professionals with good communication skills • Publicize widely the FPL’s name, telephone number, and e-mail address on the agency’s FOIA web page, within the agency, government-wide, and in the FOIA requester community

Requirements	Observed Agency Best Practices	OGIS Recommended Best Practices
<p><i>OGIS:</i></p> <ul style="list-style-type: none"> • Offer “mediation services” to resolve FOIA disputes between requesters and agencies • Issue advisory opinions if warranted when mediation fails to resolve dispute • Review agency FOIA policies and procedures • Review agency compliance with the FOIA • Recommend policy changes to Congress and the President 	<p>The following agencies currently include OGIS language in their appeal letters:</p> <ul style="list-style-type: none"> • Department of Agriculture • Department of Health and Human Services • Department of Homeland Security/U.S. Citizenship and Immigration Services & U.S. Immigration and Customs Enforcement • Department of the Interior • Department of Justice/Office of Information Policy and National Drug Intelligence Center • Department of Veterans Affairs • Corporation for National and Community Service • Social Security Administration • U.S. Postal Service 	<ul style="list-style-type: none"> • Set up FOIA professionals’ voice mail to accept messages, and respond to requesters • Create a general FOIA e-mail account to which requesters can write with concerns or questions • Attend OGIS dispute resolution skills training • Include OGIS language in agency final appeal letters to advise requesters that OGIS can assist in resolving any FOIA disputes as an alternative to litigation • Include OGIS link and information on agency FOIA web pages • Update agency FOIA regulations to reflect new requirements added to the FOIA by the OPEN Government Act of 2007 • Post agency FOIA regulations on the FOIA web page

Additional recommended OGIS Best Practices:

- Contacting requesters need not always be by mail. Often, it may be more efficient to contact requester by e-mail or by telephone; these messages can be memorialized in writing later.
- Agencies should post their FOIA regulations on their FOIA web pages.
- Agencies should update their FOIA regulations to reflect new requirements added to the FOIA by the OPEN Government Act of 2007.