



## **OFFICE OF GOVERNMENT INFORMATION SERVICES**

### **COMPLIANCE REVIEW OF U.S. CITIZENSHIP AND IMMIGRATION SERVICES, U.S. DEPARTMENT OF HOMELAND SECURITY**

#### **FREEDOM OF INFORMATION ACT PROGRAM**

#### **EFFICIENT FOIA PROCESS SUPPORTED BY STRONG MANAGEMENT AND CUSTOMER SERVICE; INVESTMENTS IN TECHNOLOGY CAN FURTHER IMPROVE PERFORMANCE**

##### **A Message from the Director**

The Freedom of Information Act (FOIA) mandates that the Office of Government and Information Services (OGIS) “shall ... review policies and procedures of administrative agencies ... review compliance ... by administrative agencies; and identify procedures and methods for improving compliance under this section.” 5 U.S.C. § 552(h)(2). OGIS’s compliance program includes reviewing and commenting on agency FOIA regulations; reviewing FOIA issues and trends observed through providing dispute resolution to requesters and agencies; reviewing and suggesting improvements to agency FOIA websites and template correspondence; and working with agencies on policies and procedures that appear to be inconsistent with FOIA law or policies.

The OGIS Compliance Team also periodically conducts independent, systematic reviews of agencies to evaluate their compliance with FOIA. This report is an assessment of the FOIA program at the U.S. Citizenship and Immigration Services (USCIS), Department of Homeland Security (DHS). OGIS’s report addresses the program’s compliance with the FOIA and is based on direct observations and review of USCIS’s FOIA case files, analyses of applicable data and documents, interviews with agency officials, and a survey of agency FOIA professionals. We have developed the recommendations in this report based on the best knowledge available to our office, and we have discussed the recommendations in draft with those responsible for the program. We hope this report and our recommendations will assist USCIS in its continued efforts to fulfill its FOIA responsibilities. OGIS will follow up with appropriate individuals regarding the status of these recommendations in 120 business days.

**ALINA M. SEMO**

Director

## Executive Summary

### *What OGIS Found*

U.S. Citizenship and Immigration Services (USCIS), a component agency of the Department of Homeland Security (DHS), regularly receives and processes the largest volume of Freedom of Information Act (FOIA) requests government-wide. Each workday in Fiscal Year (FY) 2016, USCIS received an average of approximately 640 requests, and responded to an average of approximately 560 requests. The volume of requests that USCIS receives generally prevents the FOIA office from responding to requests within the law's 20-working-day time frame. As a result of the volume of requests it receives, coupled with its inability to respond in a timely fashion, USCIS regularly accounts for the largest agency share of the Federal government's FOIA backlog: between FY 2009 and FY 2016, USCIS accounted for an average of almost 20 percent of the Federal government's FOIA backlog.

The vast majority of USCIS's requests are for Alien Files (A-Files) or certain immigration records within A-Files. USCIS also receives requests for records related to the development and implementation of policies, contracts, and other information about the agency's actions. There are certain inherent challenges to processing A-Files, including that the records are paper-based and are frequently located off-site. Moreover, requesters may need to ask for the files multiple times for various immigration proceedings.

Between FY 2009 and FY 2016, USCIS accounted for an average of 19 percent of all requests processed across the government and an average of 4 percent of the government's total FOIA costs. The USCIS FOIA office has a staffing structure and established workflows both of which are designed to ensure that requests are handled as efficiently as possible and that complex requests are given extra attention. Over the last two years USCIS has used a Staffing Allocation Model to determine proper staffing levels and, as a result, 40 employees joined the FOIA staff. While the additional resources have allowed USCIS FOIA to make progress, the office is still not able to keep up with the current volume of requests and reduce the backlog.

USCIS' transition to a new FOIA tracking and processing system, which is currently under design and development, and should be in use by the end of FY 2018, can help USCIS improve its customer service and efficiency. In particular, anticipated features that will enable requesters to directly submit requests into the system and allow for the electronic delivery of requests will be useful. Given the volume of requests that USCIS processes, any additional enhancements to the system can also have a substantial effect. USCIS may be able to further improve its efficiency by investigating how FOIA processors can use technology to enable computer-assisted review of some records and to allow processors to easily access pages that have been processed and released in response to earlier FOIA requests.

USCIS communicates with requesters about delays in processing requests, and lets requesters know how they can qualify for a faster processing track. This practice encourages requesters to ask only for records that they need. USCIS may be able to further encourage requesters to narrow the scope of their requests by prominently displaying appropriate contact information on its online tracking page.

OGIS's primary findings are:

- strong management practices contribute to an efficient FOIA process;
- improvements to technology can further improve efficiency and customer service; and
- USCIS customer service supports an efficient FOIA process.

***What OGIS Recommends***

OGIS recommendations are that USCIS FOIA:

- continue to work with its leadership to ensure that the office has sufficient support to keep up with the current volume of requests and reduce its backlog;
- weigh the costs and benefits of producing machine readable digitized versions of A-Files that will enable the use of computer assisted review tools;
- explore how technology can be used to ensure that records do not need to be re-processed multiple times; and
- add appropriate contact information for USCIS FOIA to the online FOIA tracking page.

## **Introduction**

The Freedom of Information Act (FOIA) directs the Office of Government Information Services (OGIS) to review agency FOIA policies, procedures and compliance, and identify procedures and methods for improving compliance. *See* 5 U.S.C. § 552(h)(2). OGIS compliance assessments are independent and systematic evaluations of an agency's compliance with FOIA. The assessments 1) provide factual and analytical information; 2) review compliance with the law, regulation, and policy; and 3) share best practices. The assessments also include recommendations for improvement.

We conduct compliance assessments of individual agency FOIA programs by visiting agencies and reviewing a range of material including regulations, internal guidance for processing requests, agency initial request and appeal files, annual reports collected by DOJ, and Federal court litigation. Our mandate is to determine compliance with FOIA.<sup>1</sup>

OGIS's agency assessment program process involves five steps: 1) use last fiscal year's FOIA data as a starting point; 2) inventory FOIA program activity; 3) flag areas of potential noncompliance or risk; 4) consider outside factors that may contribute to noncompliance; and 5) report findings.

### **What We Reviewed**

This report is the result of direct review of initial request and appeal case files; a review of Department of Homeland Security (DHS) FOIA regulations, the agency's FOIA web page, and other written material such as USCIS's standard operating procedures, policies, and organizational chart, and Annual FOIA Reports; interviews with FOIA officials; a survey of FOIA professionals; and a review of agency FOIA litigation from 2009 to the present.

USCIS provided us with data about FOIA request and appeal files closed in Fiscal Year (FY) 2016. OGIS reviewed a random sample of 383 FOIA requests, which allowed us to generalize to the population of the 145,470 FOIA requests the program processed in FY 2016.<sup>2</sup>

### **Background**

USCIS oversees lawful immigration to the United States. USCIS FOIA operations are under the National Records Center, which is one of four divisions under the Immigration Records and Identity Services Directorate. In addition to FOIA, the National Records Center is responsible for managing and overseeing approximately 50 million files in its holdings, providing 24-hour access to information contained in A-Files and electronic systems, and supporting adjudication and enforcement of immigration actions.

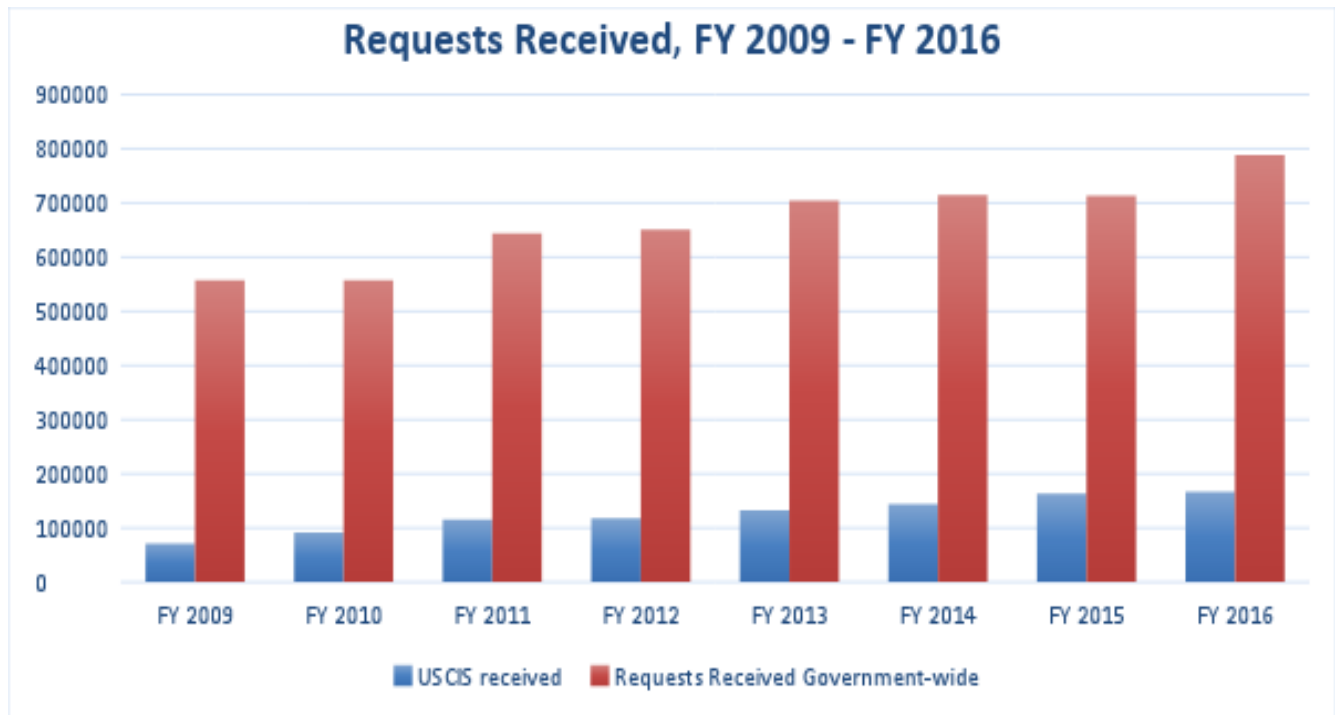
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<sup>1</sup> 5 U.S.C. §§ 552(h)(2)(A) and 552(h)(2)(B).

<sup>2</sup> See Scope and Methodology on page 22 of this report for details.

## Number of Requests and Backlog

Figure 1, Number of Requests Received<sup>3</sup>



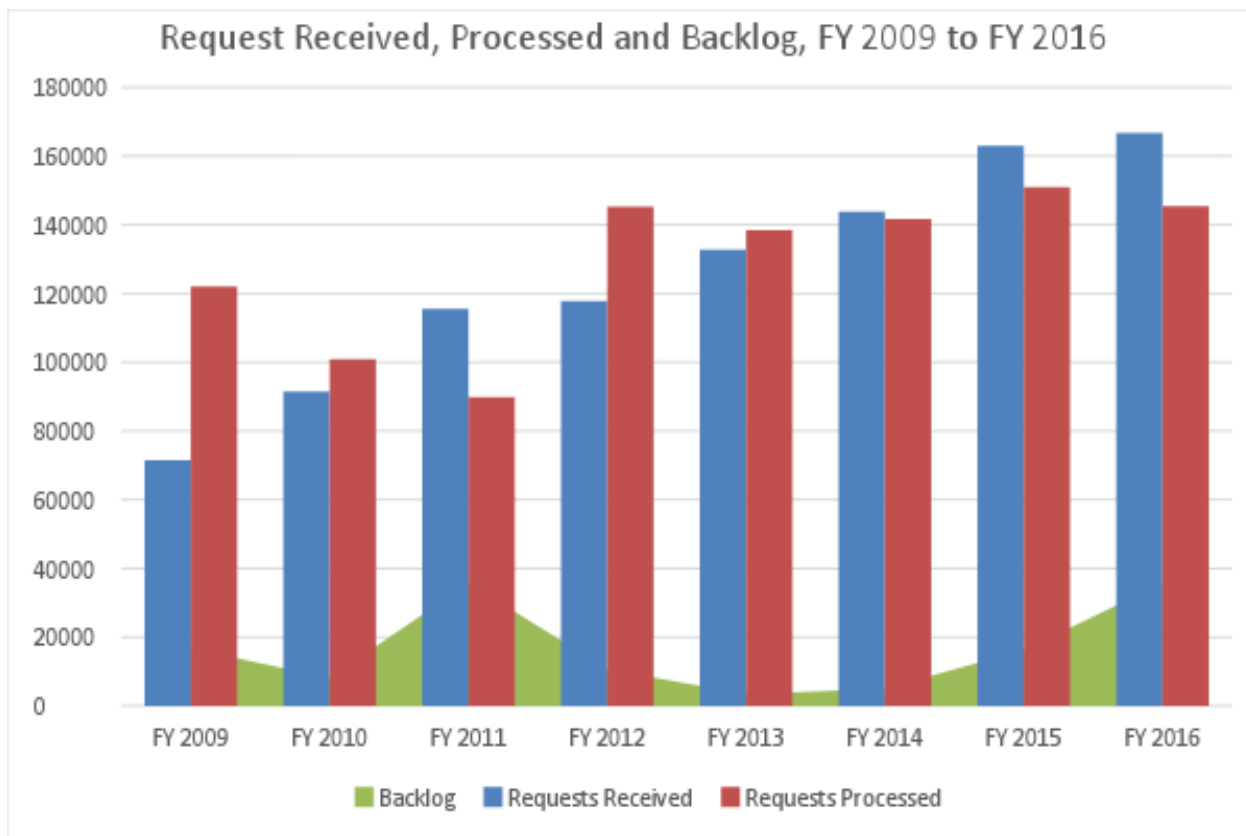
USCIS annually receives the largest volume of FOIA requests across the Federal Government. Between FY 2009 and FY 2016, USCIS received an average of about 19 percent of all FOIA requests received government-wide per fiscal year. While the number of requests received government-wide generally grew each fiscal year between FY 2009 and FY 2016, the growth in the number of requests received at USCIS was higher: the number of requests received government-wide grew by 41 percent between FY 2009 and FY 2016 while the number of requests received by USCIS over the same time period grew 133 percent. The most significant increases in the number of requests USCIS received occurred between FY 2009 and FY 2010, when the caseload grew 28 percent, and between FY 2010 and FY 2011, when the caseload grew 26 percent.

It is not clear what is driving the increase in requests that USCIS receives. According to USCIS FOIA leadership, the agency has not been able to find a correlation between the increase in FOIA requests and applications for immigration and citizenship benefits. While 99 percent of USCIS's requests are for A-Files or certain immigration records within A-Files, USCIS also receives complex requests for records

<sup>3</sup> Report on USCIS Requests FY 2009-FY 2016, last accessed November 2, 2017, [www.foia.gov](http://www.foia.gov); Summary of FOIA Annual Reports Fiscal Year 2010, last accessed December 15, 2017, <https://www.justice.gov/sites/default/files/oip/pages/attachments/2014/10/28/fy2010-ar-summary.pdf>; and Summary of FOIA Annual Reports Fiscal Year 2016, last accessed December 15, 2017, [https://www.justice.gov/oip/reports/fy\\_2016\\_annual\\_report\\_summary.pdf/download](https://www.justice.gov/oip/reports/fy_2016_annual_report_summary.pdf/download).

related to the development and implementation of policies, contracts, and other information about the agency’s actions.

Figure 2, Requests Received, Processed and Backlog <sup>4</sup>



Overall, the number of requests USCIS processed grew by almost 20 percent between FY 2009 and FY 2016. During that time, USCIS reported processing more requests than it received in FY 2009, FY 2010, FY 2012 and FY 2013. In FY 2012, USCIS processed almost 27,500 more requests than it received.

USCIS’s backlog also regularly accounts for a substantial portion of the FOIA backlog government-wide. Between FY 2009 and FY 2016, USCIS accounted for an average of about 18 percent of the government-wide FOIA backlog. In FY 2011, USCIS’ backlog of 35,780 requests constituted nearly 43 percent of the government’s total backlog; however, in FY 2013 and FY 2014, USCIS’s backlog represented less than 4 percent of the government-wide backlog.

<sup>4</sup> Report on USCIS Requests FY 2009-FY 2016, last accessed November 2, 2017, [www.foia.gov](http://www.foia.gov).

### ***Challenges Associated with Processing A-Files***

An A-File, or Alien File, is the official Government record that contains information regarding non-citizens as they pass through the U.S. immigration and inspection process.<sup>5</sup> Although USCIS is the custodian of the A-File, many of the documents that are contained in an A-File can originate from several other DHS components and other agencies such as the State Department. USCIS has agreements in place to process certain records commonly found in A-Files that originate from the State Department, the Office of Biometric Identity Management (OBIM), and Customs and Border Protection (CBP). If USCIS does not have an agreement with an originating agency to process its records, the records are referred to the originating agency for processing after USCIS has completed its work on the request. In addition, according to USCIS FOIA leadership, 25 agencies refer USCIS-originated records to USCIS in the course of processing their own FOIA requests.

A-Files are paper-based and are often in use at one of the hundreds of USCIS field offices in the US or around the world. The need to locate and digitize the records before processing hinders USCIS's ability to respond to requests in a timely manner. According to the Associate Center Director, it takes about two weeks for most requests to be digitized and ready for processing in the system; she added that if an A-File is off-site, there may be an additional two-week delay in processing. The Associate Center Director explained that about 60 percent of the time, requested A-Files are located at the National Records Center, and that the remaining 40 percent of the time the file must be shipped to the FOIA office for processing. We were advised that there has been progress towards maintaining digital copies of some records that are included in A-Files, but that for the foreseeable future, A-Files will largely need to be digitized before they are reviewed and processed under FOIA.

A-Files might be requested multiple times by the person associated with the file or their lawyer. The Associate Center Director told us that the average A-file currently includes around 220 pages and that the largest A-File USCIS has processed was around 40,000 pages. Because new material can be added to the file at any time and USCIS currently cannot efficiently segregate material that has been previously processed from newer material, USCIS may end up processing the same record multiple times. The Associate Center Director informed us that, given their current processes and technology, it is easier to process all A-File records including those that may have been previously processed than it is to research prior releases and compare them to the current A-file.

### ***FOIA Program Administration***

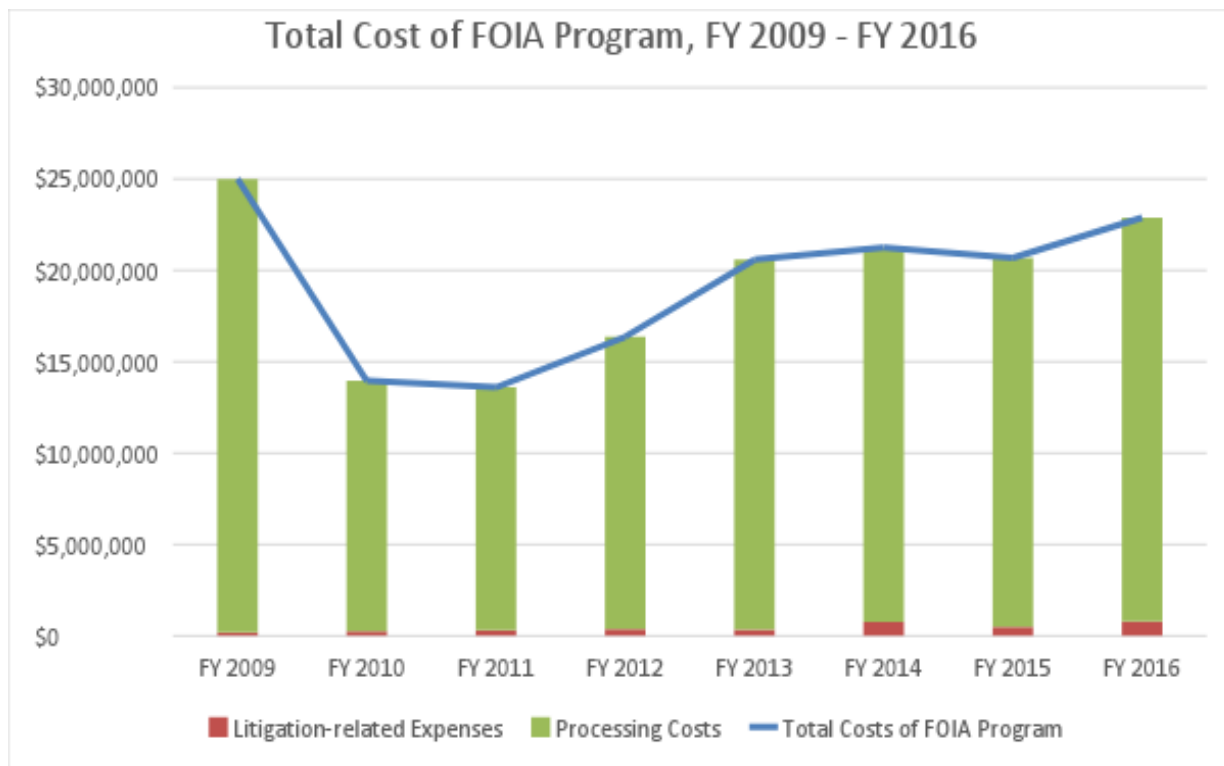
Between FY 2009 and FY 2016, USCIS reported that the FOIA program cost an average of slightly more than \$19 million per fiscal year. During this period, USCIS accounted for an average of 19 percent

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<sup>5</sup> The predecessor to USCIS, Immigration and Naturalization Service (INS), began issuing each non-citizen an Alien Registration number in 1940, and on April 1, 1944, began using this number to create individual case files, called Alien Files or A-Files. A-Files are identified by a non-citizen's unique personal identifier, or Alien Registration Number (A-number), accessed December 19, 2017, <https://www.uscis.gov/history-and-genealogy/genealogy/files-numbered-below-8-million> and <https://www.archives.gov/research/immigration/aliens>.

of all requests processed across the Federal government but only an average of 4 percent of the total cost of FOIA government-wide. Litigation-related costs accounted for an average of 2 percent of the total cost of the FOIA program from FY 2009 to FY 2016—ranging from 1 percent in FY 2009 to 4 percent in FY 2014.

Figure 3, Cost of FOIA Program<sup>6</sup>

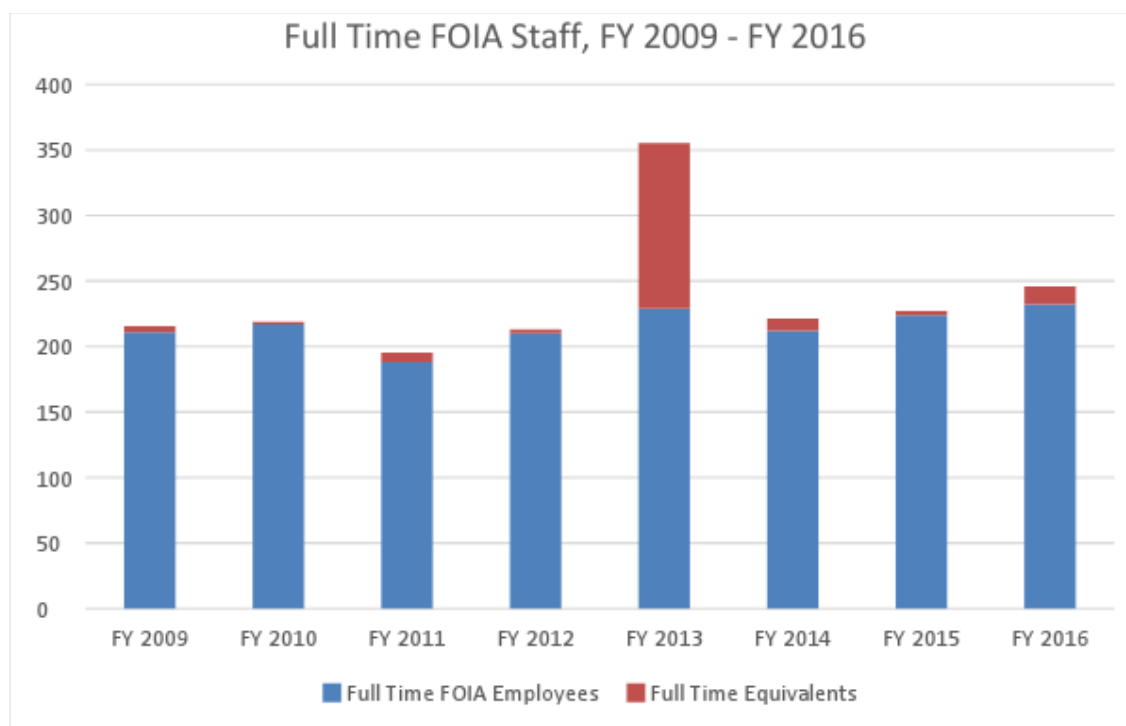


As the regular top recipient and processor of requests government-wide, USCIS has a substantial FOIA staff when compared to other FOIA programs across the government. USCIS reports that the full-time FOIA staff averaged about 237 employees between FY 2009 and FY 2016; the full-time staff size ranged from a low of 195.35 employees in FY 2011 to 355.45 employees in FY 2013. The 355.45 employees reported in FY 2013 included a substantial number of employees who had FOIA as a collateral duty: the number of full time equivalent (FTE) FOIA employees reported in FY 2013 (126.45) is comparable to staffing levels in other fiscal years.

<sup>6</sup> Report on USCIS Requests FY 2009-FY 2016, last accessed November 2, 2017, [www.foia.gov](http://www.foia.gov).



Figure 4, Full Time FOIA Staff<sup>7</sup>



### *Staffing Structure*

USCIS’s management structure is tailored to handle the volume and range of requests the agency receives and processes. The Associate Center Director oversees the FOIA program, which consists of three divisions. The Chief of FOIA Operations oversees teams that are primarily responsible for digitizing and uploading documents for processing, creating cases in the agency’s tracking system, processing requests for A-Files and certain immigration records within A-Files, approving final responses, and sending responses. The Chief of FOIA Quality Assurance and Customer Service oversees teams that primarily manage USCIS’s FOIA email in-boxes and respond to inquiries, develop training, compile the Annual FOIA Reports, process administrative appeals from petitioners and visa applicants whose petitions or applications are denied or revoked, and update the agency’s FOIA webpage. The Deputy Associate Center Director oversees the third division of teams that are responsible for processing non-A-File requests (the Significant Interest Group), responding to requests for genealogical materials, and supporting the mission. USCIS FOIA processors generally are in the occupational job series 0306 Government Information Specialists (GIS).

The Associate Center Director is a GS–15, and the Division Chiefs and Deputy Associate Center Directors are GS–14s. Under FOIA Operations, there are:

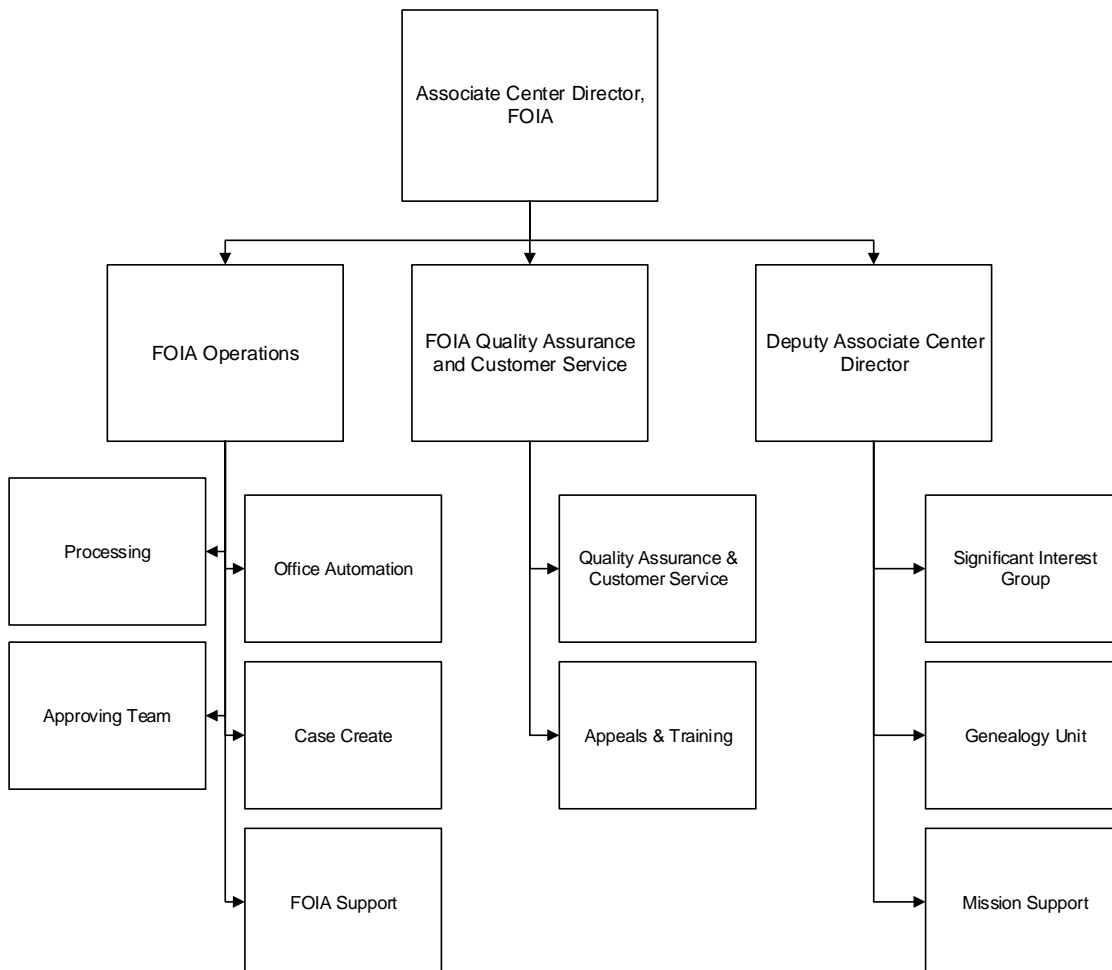
<sup>7</sup> Report on USCIS Requests FY 2009-FY 2016, last accessed November 2, 2017, [www.foia.gov](http://www.foia.gov).

- three supervisory GS–13 employees who are primarily second-line managers for processors and approvers;
- six supervisory GS–12 employees who are front-line managers for processing teams;
- GS–9 and GS–11 processing team employees;
- one supervisory GS–13 employee;
- two supervisory GS–12 employees and six supervisory GS–11 employees who manage processing support such as creating cases and sending out responses; and
- GS–5 to GS–9 processing support employees.

The Quality Assurance and Customer Service Division includes two supervisory GS–13 employees, and team members who range from GS-7/9 to GS-12.

The Deputy Associate Center Director oversees two supervisory GS–13 employees who range from GS–5 to GS–12.

Figure 5, USCIS FOIA Structure



## **USCIS FOIA Process**

### ***Request Receipt***

The USCIS FOIA program is centralized. A FOIA Operations Division team manages requests which come in via email, U.S. mail or fax. The team is responsible for locating and obtaining responsive A-Files or specific immigration records, scanning the records, and creating cases in USCIS FOIA tracking and processing system.<sup>8</sup> Requests for non-A-File materials are routed directly to the Significant Interest Group, which is responsible for alerting the DHS Privacy Office of any significant request receipts or releases in accordance with DHS policy.

### ***Initial Processing and Approving***

USCIS uses multi-track processing, and divides FOIA requests into two general types: requests for A-Files and requests for non-A-File records. Requests for A-Files are placed in one of three tracks: Track 1 is for requests that seek a specific document such as a naturalization certificate, a Form 1-130 (an immigrant petition to allow an immediate relative to come to the U.S.) or some other document in the A-File; Track 2 is for requests seeking the entire A-File; and Track 3 is for requests from someone who has a pending appearance before an immigration judge.

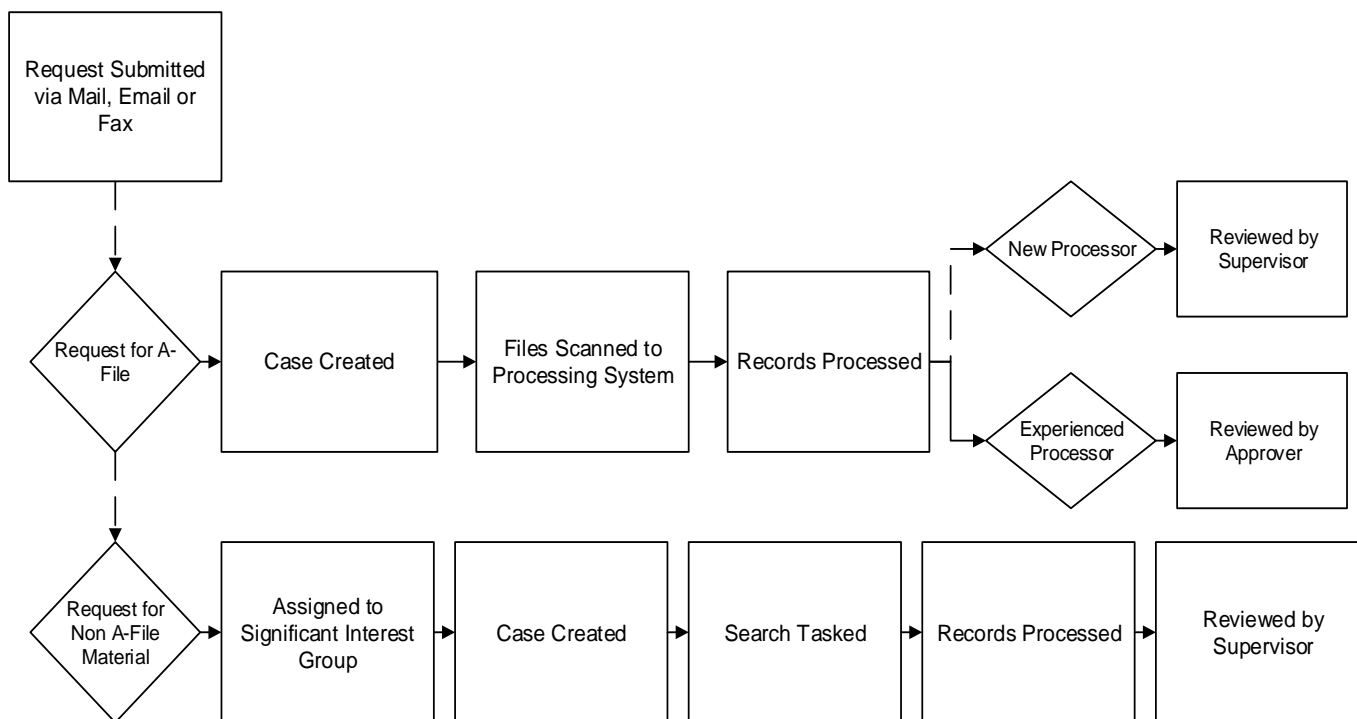
Requests for non-A-File records are placed in one of two tracks: Track 1 is for relatively simple requests and Track 2 is for requests where the processing time is affected by the sensitivity and volume of records as well as the extent of the review process.

All final responses to requests processed by the Significant Interest Group are reviewed before release by the supervisory GS-13 Team Lead. The process for reviewing A-Files prior to release depends in part on whether the processor is a new employee. Final responses prepared by all new employees are reviewed by their Team Lead until the processor achieves an 85-percent accuracy rate, at which time final responses are reviewed by the Approvers Team. The Approvers Team checks for specific issues, and spot checks the release package. According to the Lead of the Approvers Team, the team typically approves 400 to 500 FOIA responses per day, and that approval process turnaround time is generally 48 hours.

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<sup>8</sup> USCIS A-Files, along with applications for citizenship, asylum, and refugee status, which may become A-Files after they are adjudicated, are barcoded. When a FOIA processor conducts a records search, the results generally include a room number, shelf number and box number where the record is located at the National Records Center or at a Federal Records Center operated by the National Archives and Records Administration (NARA).

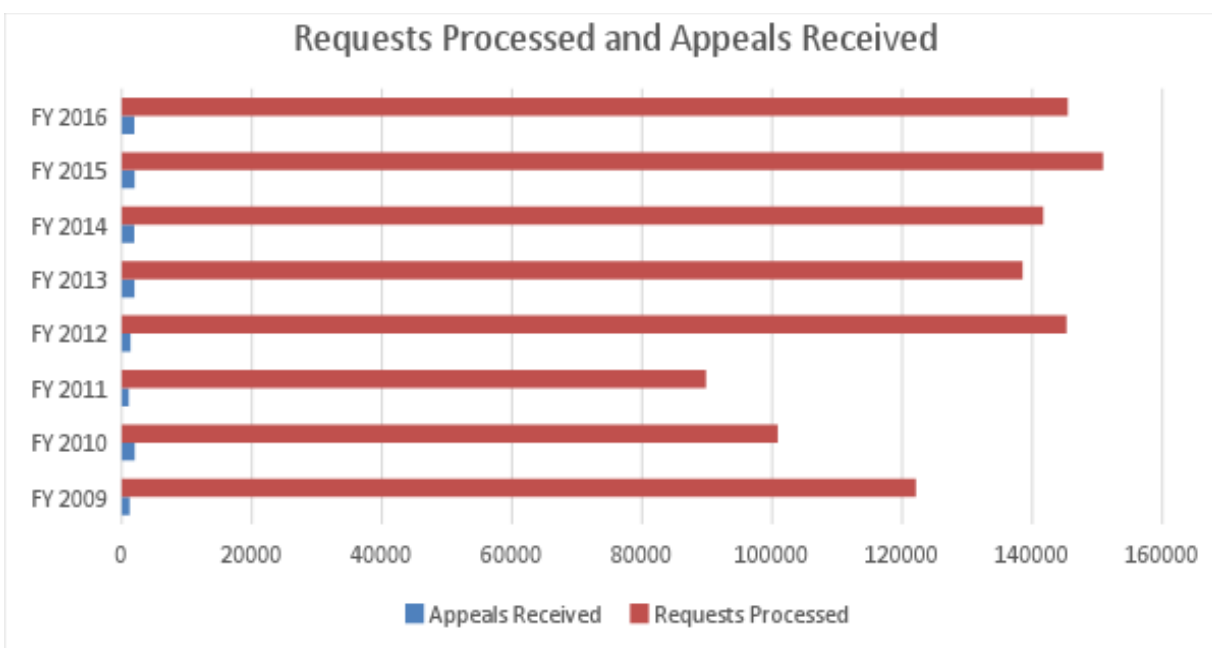
Figure 6, USCIS FOIA Process



***FOIA Appeals and Litigation***

The USCIS Office of Chief Counsel reviews appeals of USCIS’s initial FOIA responses. At the time of our review, there were two attorneys in the Office of the Chief Counsel—one in Lee’s Summit, MO, and one in Washington, DC—who review and sign decisions on administrative appeals. USCIS’s administrative appeals are primarily processed by two GS-12 employees, both of whom have extensive experience processing initial decisions. Although USCIS’s appeals processors are not attorneys, they have support from a paralegal who conducts legal research on complex matters. According to the paralegal, research is necessary to respond to only about one-fifth of the appeals filed.

Figure 7, USCIS Appeals<sup>9</sup>



Between FY 2009 and FY 2016, the number of USCIS FOIA appeals received have averaged less than 1.5 percent of the number of requests processed each fiscal year. In FY 2009, USCIS reported having 2,010 appeals pending at the end of the fiscal year. In FY 2010, USCIS reported processing almost double the number of appeals processed (3,924) as received (2,004), ending the year with fewer than 100 administrative appeals pending. Between FY 2012 and FY 2016, USCIS reported processing roughly the same number of appeals processed each year. In FY 2016, USCIS reported having 45 administrative appeals pending at the end of the reporting period.

Between FY 2009 and FY 2016, an average of about 66 percent of appeals resulted in the requests being either fully or partially remanded for further processing; during that same time, USCIS affirmed an average of almost 25 percent of initial responses.

If an appeal is remanded, USCIS appeals staff processes the request as necessary. The paralegal told us that a letter is sent to the initial processor's supervisor any time an appeal results in a remand, and that the appeals staff will follow up with an initial processor's supervisor if the remand involves notable mistakes. According to the paralegal, a significant portion of the requests that are remanded are sent back for additional processing because the volume of requests USCIS receives limits the ability of initial processing staff to take some steps that are time-intensive; for example, he said that he has noticed that initial processing staff does not always take the time to segregate exempt from non-exempt information as fully as the appeals staff.

<sup>9</sup> Report on USCIS Requests FY 2009-FY 2016, last accessed November 2, 2017, [www.foia.gov](http://www.foia.gov).

We reviewed USCIS FOIA litigation from January 2009 through FY 2017 and found that that approximately 44 percent of plaintiffs cited USCIS's lack of response as a reason for suing. Moreover, approximately 41 percent of plaintiffs cited withholding or failure to disclose as a reason for suing the agency.<sup>10</sup>

### **Finding 1: Strong Management Practices Contribute to Efficient FOIA Process**

*USCIS has an efficient FOIA process in place but is not able to respond within the 20-working-day statutory response period imposed by the statute. USCIS maintains a sizable backlog in large part because of the volume of requests that the FOIA program receives. OGIS recommends that USCIS continue to work with USCIS's leaders to ensure that the FOIA program has sufficient staffing to respond to requests and reduce its backlog.*

#### **Staffing Levels**

As previously discussed, USCIS regularly receives and processes the largest volume of FOIA requests government-wide. While 99 percent of these requests are first-party requests for immigration-related material in A-Files, USCIS also receives complex requests related to certain program activities and policies. To handle the volume and range of complexity of these requests, USCIS has a process that ensures first-party requests are processed and sent in an efficient manner, and that complex requests are handled by more experienced staff. Between FY 2009 to FY 2016, USCIS accounted for an average of 19 percent of all requests processed across the government but only an average of four percent of the total cost of FOIA across the government.

According to the Associate Center Director, the USCIS FOIA program has added about 40 positions over the last two years as a result of the Staffing Allocation Model USCIS uses to determine proper staffing levels.<sup>11</sup> According to responses to our survey of the USCIS FOIA staff, about half have worked at USCIS for fewer than five years and about 30 percent of the staff have worked at USCIS for more than 10 years. However, USCIS FOIA is still not able to keep up with the current volume of requests. In FY 2016, USCIS received an average of 639 FOIA requests each workday, and was able to process an average of 557 requests per workday. We recommend that USCIS FOIA continue to work with its leadership to determine the proper staffing level that will allow the FOIA office to keep up with the daily workload and reduce the component's backlog.

#### **Training and Recruiting Talent**

One of the purposes of the Quality Assurance and Customer Service Team is to identify issues in USCIS FOIA

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<sup>10</sup> See Appendix for list of FOIA cases filed against USCIS from January 2009 through the end of FY 2016 (September 30, 2016).

<sup>11</sup> Some of these positions were added in FY 2017, which was not part of the scope of our review. The 40 positions should appear in FY 2016 and FY 2017 Annual FOIA Reports.

processing and address these issues through proper training and support. During our interviews, it was suggested that moving the Approver Team into Quality Assurance and Customer Service Team would shorten the feedback loop and raise awareness of issues sooner. We encourage USCIS FOIA to continue to explore how to make its organizational structure as effective as possible.

USCIS FOIA has made progress in developing training packages that are tailored to the needs of people who create cases and processors. About 70 percent of the respondents to our survey of USCIS FOIA staff report that they are “confident” or “very confident” that they know the correct legal procedures for how to properly process a FOIA request; less than 10 percent of respondents reported that they are “not confident” that they know the correct legal procedures. The USCIS FOIA training package also includes a component of cross-training that improves employees’ understanding of the overall process. Supervisors provide feedback to new processors in 30-day increments for a total of 90 days; this feedback feeds into the USCIS 180-day assessment of a new employee. Prior to the creation of the training packages, the head of the Quality Assurance and Customer Service Team told us, USCIS relied primarily on feedback from supervisors to ensure that staff are properly trained. According to the head of the Quality Assurance and Customer Service Team, the training was developed in part to support the creation of a new GS 9/11 career ladder; this has been helpful in training interns brought in through the Pathways Program, a developmental internship and job program designed to attract students and recent graduates to careers in Federal service.

According to the Associate Center Director, USCIS used the Pathways Program to identify and hire employees who quickly begin contributing to the work. She also said that in order to fill the 40 new positions added to the staff over the last two years, the USCIS FOIA program supervisors attended job fairs at local colleges and consulted career counselors.

### **Management Controls**

USCIS relies on a system of first-line and second-line supervisors to oversee its processes. USCIS does not use performance metrics for its FOIA processors. First-line supervisors work with processors to ensure that requests continue to move through the system, and USCIS prominently displays regularly updated statistics that let the staff know the volume of requests that are received and closed.

USCIS’s robust telework program enables FOIA processors to work from home up to four days per week. According to the Associate Center Director, the telework program both addresses the National Records Center’s space constraints and has improved staff morale. She added that shortly after the telework program was introduced in 2012 as a pilot program, USCIS noted an increase in the productivity of processors. USCIS uses technology that allows processors and front-line supervisors to see each other and share screens while they are working in separate locations.

USCIS’s workflow encourages requesters to make requests that are as narrow as possible. As previously discussed, USCIS retains its fastest track (Track 3) for requests from individuals who can show that they have a scheduled appearance before an immigration judge. USCIS also informs requesters that they can qualify for a faster track (Track 1) by limiting a request to only certain records located within the A-File. Requests for an entire A-File are placed in the slower track (Track 2).

## **Recommendation**

Recommendation 1: We recommend that the USCIS FOIA program continue to work with the component's leadership to ensure that the FOIA office is sufficiently staffed to keep up with its current volume of work and reduce the FOIA backlog.

### **Finding 2: Improvements to Technology Can Further Improve Efficiency, Customer Service**

*USCIS's current FOIA tracking and processing system is outdated and a replacement system is under development. Several features and functionalities of the system under development can further improve efficiency and customer service. We recommend that USCIS FOIA continue to explore how technology can be used to improve efficiency.*

#### **Tracking and Processing System**

USCIS is in the process of replacing its current FOIA processing and tracking system, FOIA/PA Information Processing System (FIPS), which it began using in 1999. The replacement system, FOIA Immigration Records System (FIRST), is currently under design and development. USCIS expects FIRST to be delivered during FY 2018.

According to the Associate Center Director, FIRST will include new features and functions that will improve customer service and efficiency, including an interface that will allow requesters to submit online requests and a feature that will allow USCIS FOIA processors to send responses electronically.

Currently requesters can submit requests to USCIS electronically via email. These emails are then printed out and the information is manually entered into FIPS. According to the Associate Center Director, FIRST should reduce manual entry by allowing requesters to submit requests directly into the system, potentially reducing USCIS's administrative burden. FIRST could also improve USCIS FOIA customer service by providing requesters with an automatic acknowledgement that the request is received or a tracking number for the request.

Using FIPS, USCIS sends FOIA responses and records via compact disc (CD). Final response letters are printed out, and the letter and CD are sent to the requester via U.S. mail. This process sometimes creates a lag between when a request is listed as "closed" on USCIS's online FOIA tracking webpage and when the requester receives the responses. Delivering responsive records electronically will help ensure that requesters receive records in a more timely fashion.

Given the volume of requests that USCIS processes, relatively small tweaks to the FOIA processing and tracking system may allow processors to work more efficiently with substantial results. As FIRST is designed and developed, we encourage USCIS FOIA to continue to ensure that the contractors consult with processors and others who will rely on the system to do their jobs.

Another issue with FIPS is that the system is not interoperable with the FOIA tracking systems used by other offices that process immigration-related records. In 2014, the Government Accountability Office



(GAO) observed duplication of work in processing requests for A-Files because of the steps necessary to transfer the files between USCIS and ICE, and ICE's need to manually re-enter information about the request into its own FOIA tracking and processing system. To eliminate the duplication of work, USCIS provides ICE with access to its servers so that ICE can download referrals directly into its FOIA tracking and processing system. As FIRST is designed and developed, we encourage USCIS to keep ICE apprised of its progress and strive to make the referral process as efficient as possible.

### **Scan Quality and Computer-Assisted Review**

According to the Associate Center Director, USCIS receives relatively high-quality scans of A-Files. However, the digitized files are not machine readable; this means that USCIS cannot use scripting tools that automatically mark information located at a particular spot on a record or other advanced computer-assisted review tools. Other components of DHS that process immigration-related records have substantially increased their productivity using these kinds of technologies.<sup>12</sup> We recommend that USCIS FOIA evaluate the costs and benefits of making digitized A-Files machine readable and using these computer-assisted review tools.

### **Re-Processing Records**

As previously discussed, one of the challenges of processing A-Files is that new material can be periodically added to the A-File and that an A-File might be requested several times by a requester and/or their lawyer. Because USCIS does not have an efficient way to determine what records have already been processed, the FOIA office might process the same record multiple times. We recommend that USCIS FOIA explore technologies that will allow the FOIA office to mark a record as processed and enable the FOIA processor to easily access the previously processed version of the record.

### **Recommendations**

Recommendation 2: We recommend that USCIS weigh the costs and benefits of producing machine-readable digitized versions of A-Files that would enable FOIA processors to use of computer-assisted review tools.

Recommendation 3: To ensure that USCIS FOIA does not have to process a record multiple times, we recommend that the office explore technologies to mark records as processed and enable the FOIA processor to easily access the previously processed version of that record.

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<sup>12</sup> National Archives and Records Administration, Office of Government Information Services, "Good Management Practices in Place; Clear Communication and Increased Technology Use Needed," <https://www.archives.gov/files/ogis/assets/cbp-foia-compliance-report.pdf> (accessed December 6, 2017) and National Archives and Records Administration, Office of Government Information Services, "Strong Management, Innovative Use of Technology, and Suggested Improvements to Customer Service," <https://www.archives.gov/files/ogis/assets/ice-foia-compliance-assessment-report.pdf> (accessed December 6, 2017)

### **Finding 3: Customer Service Supports Efficient FOIA Process**

*USCIS communicates with requesters about possible delays in responding to a request, and encourages requesters to narrow the scope of a request to qualify for a faster moving track. This type of communication supports an efficient process by ensuring that USCIS is not unnecessarily processing records that are not of immediate use to the requester.*

#### **Communication with Requesters**

USCIS provides requesters with information regarding a possible delay in processing requests for A-Files in its acknowledgement letters. The acknowledgement letter informs requesters who have been placed in Track 2 that they might be able to qualify for the faster processing track, Track 1, by narrowing the scope to specific documents from the A-File. This communication with requesters helps ensure that requesters have a realistic expectation about USCIS's ability to respond to their request in a timely fashion, and that to the extent possible USCIS does not process records for which the requester does not have an immediate need.

In our review of USCIS FOIA case files, we note that in agency response letters, the agency generally provides requesters with the types of information withheld under each exemption. We have observed that such a practice helps requesters better understand the agency's process.

#### **USCIS FOIA Website and Customer Service**

FOIA requesters with questions are directed to the USCIS National Customer Service Unit (1-800-375-5283). The staff at the USCIS National Customer Service Unit have a script for answering simple FOIA questions; questions that cannot be answered using the script are referred to the FOIA Public Liaison. The Associate Center Director said that USCIS previously maintained a phone number dedicated to FOIA requesters but that the vast number of calls to the number were not about FOIA issues. The FOIA Public Liaison, who is a part of the Quality Assurance and Customer Service Team, estimates that she receives approximately four phone calls per day.

USCIS has two dedicated email inboxes for FOIA requesters. One inbox is reserved for new requests, and the other inbox is intended for general questions about the FOIA process or inquiries about a particular FOIA request. The Quality Assurance and Customer Service Team manages the inbox. The FOIA Public Liaison estimates that the inbox for inquiries receives four to five messages per day; she said that most of the inquiries are about the status of a request.

The USCIS FOIA website includes a page that allows requesters to track the status of their requests. The tracking webpage is updated daily, and includes statistics regarding the average processing time for each track. The tracking page does not include any contact information for the FOIA office. We recommend that USCIS add appropriate contact information, including the email address of the inbox reserved for inquiries about existing requests, to the online tracking page so that it is easier for requesters to narrow the scope of requests and potentially qualify for a faster processing track.

## **Still Interested Letters**

In response to a survey of the USCIS FOIA staff, almost 60 percent of respondents reported that USCIS always provides requesters with at least 30 working days to respond to a “still interested” letter prior to administratively closing the case; the remaining 40 percent of respondents reported that they are not sure of the USCIS FOIA program’s practice. Although USCIS has used “still interested” letters in the past, according to the Associate Center Director, it no longer uses them.

## **Recommendations**

Recommendation 4: We recommend that USCIS add appropriate contact information to its online request tracking page to make it easier for requesters to narrow the scope of their request and potentially qualify for a faster processing track.

## **Checklist of OGIS Recommendations for USCIS'S FOIA Program Management**

### **Management**

- Continue to work with the component's leadership to ensure that the FOIA office is sufficiently staffed to keep up with its current volume of work and reduce the FOIA backlog.

### **Technology**

- Weigh the costs and benefits of producing machine readable digitized versions of A-Files that will enable the use of computer assisted review tools.
- Explore technologies that will mark records as processed and enable the FOIA processor to easily access the previously-processed version of the record.

### **Communication**

- Add appropriate contact information for USCIS FOIA to the online FOIA tracking page.

### **Scope and methodology**<sup>13</sup>

OGIS Compliance Team Lead Kirsten Mitchell and Compliance Team member Amy Bennett conducted the assessment of the USCIS FOIA program. This report is the result of their first-hand review of USCIS' FOIA request files, including eight cases on appeal which were remanded for further processing; analysis of applicable data and documents including DHS FOIA regulations, USCIS's FOIA website and other written material; interviews with USCIS FOIA officials; and a survey of USCIS FOIA staff. On September 21 and 22, 2017, we interviewed the National Records Center Director, the National Records Center Associate Director, the National Records Center Deputy Associate Director, the Chief of FOIA Operations, the Chief of FOIA Quality Assurance and Customer Service, the paralegal supporting FOIA appeals, the Supervisor of the Significant Interest Group, and all of the USCIS FOIA first-line and second-line supervisors. Before our visit, USCIS provided us with spreadsheets of its FOIA cases closed in FY 2016. We chose a statistically significant sample of 383 initial request files.<sup>14</sup> USCIS provided us with access to its FOIA processing and tracking system. We finished our review of the case files on or about October 6, 2017. Our findings are founded on OGIS's Elements of an Effective FOIA Program which are based on

- the FOIA statute;
- Office of Management and Budget Guidelines for Fees;
- Presidential Memoranda;
- Attorney General Memoranda;
- Guidance from the DOJ's Office of Information Policy, including DOJ's Guide to the Freedom of Information Act; and
- Inconsistencies and non-compliance observed during OGIS's mediation services for cases involving USCIS.

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<sup>13</sup> Please direct questions to OGIS at [ogis@nara.gov](mailto:ogis@nara.gov) or 202-741-5770.

<sup>14</sup> A statistically significant random sample of USCIS' FY 2016 FOIA cases allowed us to generalize to the entire population of the agency's FY 2016 cases.