



PROGRAM MATERIALS

Program #36124

August 27, 2026

Freedom of Information Act and Privacy Act

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Freedom of Information Act



August 27, 2026
By Wojciech Z. Kornacki, Esq.

Lecturer

Not Legal Advice / For Educational Purposes Only

Agenda

What are my rights under the FOIA and PA?

How do I properly redact and store controlled documents?

What can I do if someone else wants to obtain my sensitive information that I submitted to the U.S. Government?

How can I obtain information from the Federal Government under FOIA?



Sources

Freedom of Information Act, 5 U.S.C. § 552

FOIA Improvement Act of 2016 (Public Law No. 114-185)

Privacy Act, 5 U.S. Code § 552a

FAR 3.104-4, *Disclosure, protection, and marking of contractor bid or proposal information and source selection information*

Executive Orders 13392 & 14303

Congressional Research Service – FOIA Legislation

DOJ Annual FOIA Report

www.foia.gov

What are my rights under the FOIA?

Right to Request Record (but there are 9 exceptions)

Proactive Disclosure

Administrative Review

Judicial Review



What is FOIA?

Each agency, in accordance with published rules, shall make available for public inspection in an electronic format—

- (A) final opinions, including concurring and dissenting opinions, as well as orders, made in the adjudication of cases;
- (B) those statements of policy and interpretations which have been adopted by the agency and are not published in the Federal Register;
- (C) administrative staff manuals and instructions to staff that affect a member of the public;
- (D) copies of all records, regardless of form or format—
 - (i) that have been released to any person under paragraph (3); and
 - (ii)
 - (I) that because of the nature of their subject matter, the agency determines have become or are likely to become the subject of subsequent requests for substantially the same records; or
 - (II) that have been requested 3 or more times; and



What is FOIA?

...determine **within 20 days** (excepting Saturdays, Sundays, and legal public holidays) after the receipt of any such request whether to comply with such request and shall immediately notify the person making such request of—

(I) such determination and the reasons therefor;

(II) the right of such person to seek assistance from the FOIA Public Liaison of the agency; and

(III) in the case of an adverse determination—

(aa) the right of such person to appeal to the head of the agency, within a period determined by the head of the agency that is not less than **90 days after the date of such adverse determination**; and

(bb) the right of such person to seek dispute resolution services from the FOIA Public Liaison of the agency or the Office of Government Information Services; and



What is FOIA?

Exemptions:

- (1)(A) specifically authorized under criteria established by an Executive order to be kept secret in the interest of national defense or foreign policy and (B) are in fact properly classified pursuant to such Executive order;
- (2) related solely to the internal personnel rules and practices of an agency;
- (3) specifically exempted from disclosure by statute (other than section 552b of this title), if that statute—
 - (A)
 - (i) requires that the matters be withheld from the public in such a manner as to leave no discretion on the issue; or
 - (ii) establishes particular criteria for withholding or refers to particular types of matters to be withheld; and
 - (B) if enacted after the date of enactment of the OPEN FOIA Act of 2009 [enacted Oct. 28, 2009], specifically cites to this paragraph.
- (4) trade secrets and commercial or financial information obtained from a person and privileged or confidential;



What is FOIA?

Exemptions (continued):

- (5) **inter-agency or intra-agency memorandums** or letters that would not be available by law to a party other than an agency in litigation with the agency, provided that the deliberative process privilege shall not apply to records created 25 years or more before the date on which the records were requested;
- (6) **personnel and medical files** and similar files the disclosure of which would constitute a clearly unwarranted invasion of personal privacy;
- (7) records or information compiled for law enforcement purposes ... ,
- (8) contained in or related to examination, operating, or condition reports prepared by, on behalf of, or for the use of an agency responsible for the regulation or supervision of financial institutions; or
- (9) geological or geophysical information and data, including maps, concerning wells.



What is FOIA?

(1) “agency” as defined in section 551(1) of this title [5 USCS § 551(1)] includes any executive department, military department, Government corporation, Government controlled corporation, or other establishment in the executive branch of the Government (including the Executive Office of the President), or any independent regulatory agency; and

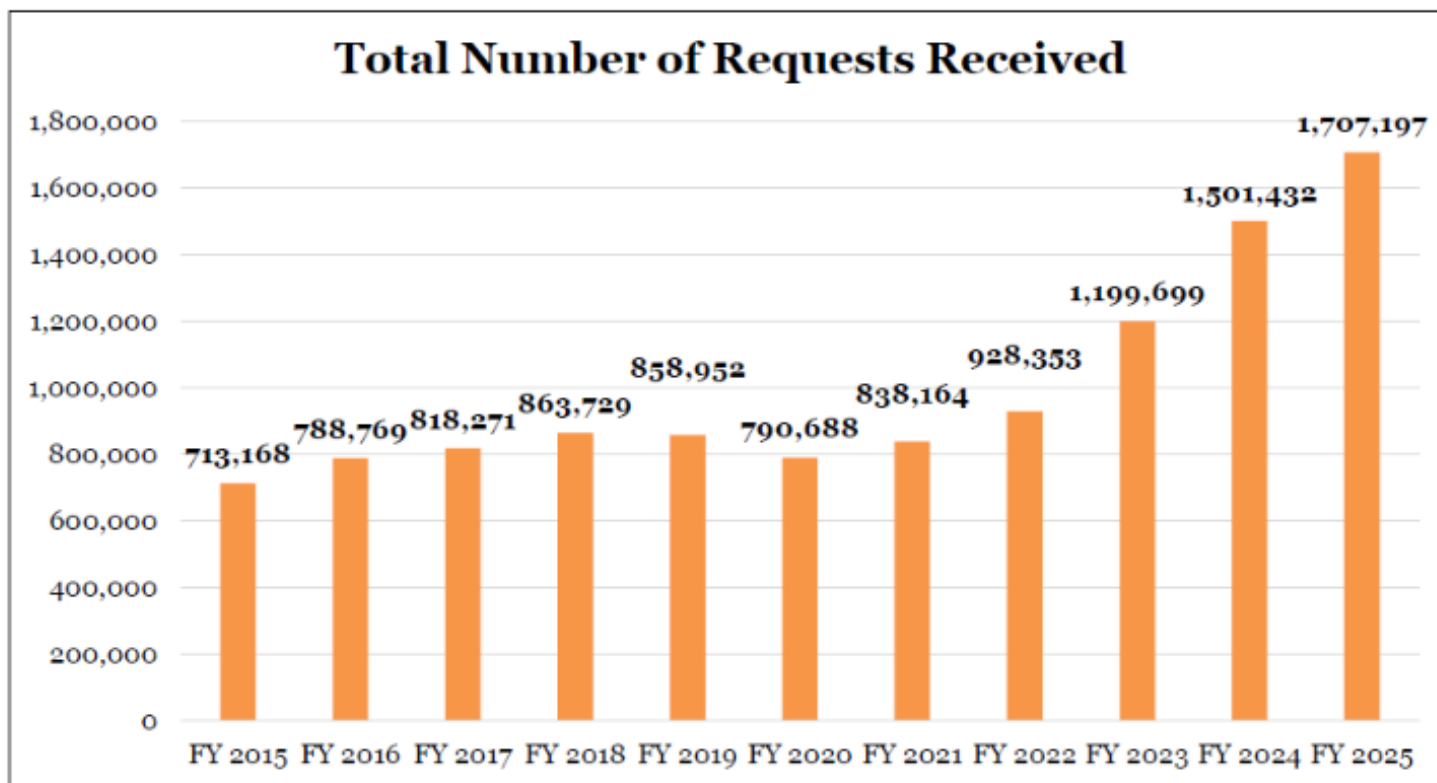
(2) “record” and any other term used in this section in reference to information includes—

(A) any information that would be an agency record subject to the requirements of this section when maintained by an agency in any format, including an electronic format; and

(B) any information described under subparagraph (A) that is maintained for an agency by an entity under Government contract, for the purposes of records management.

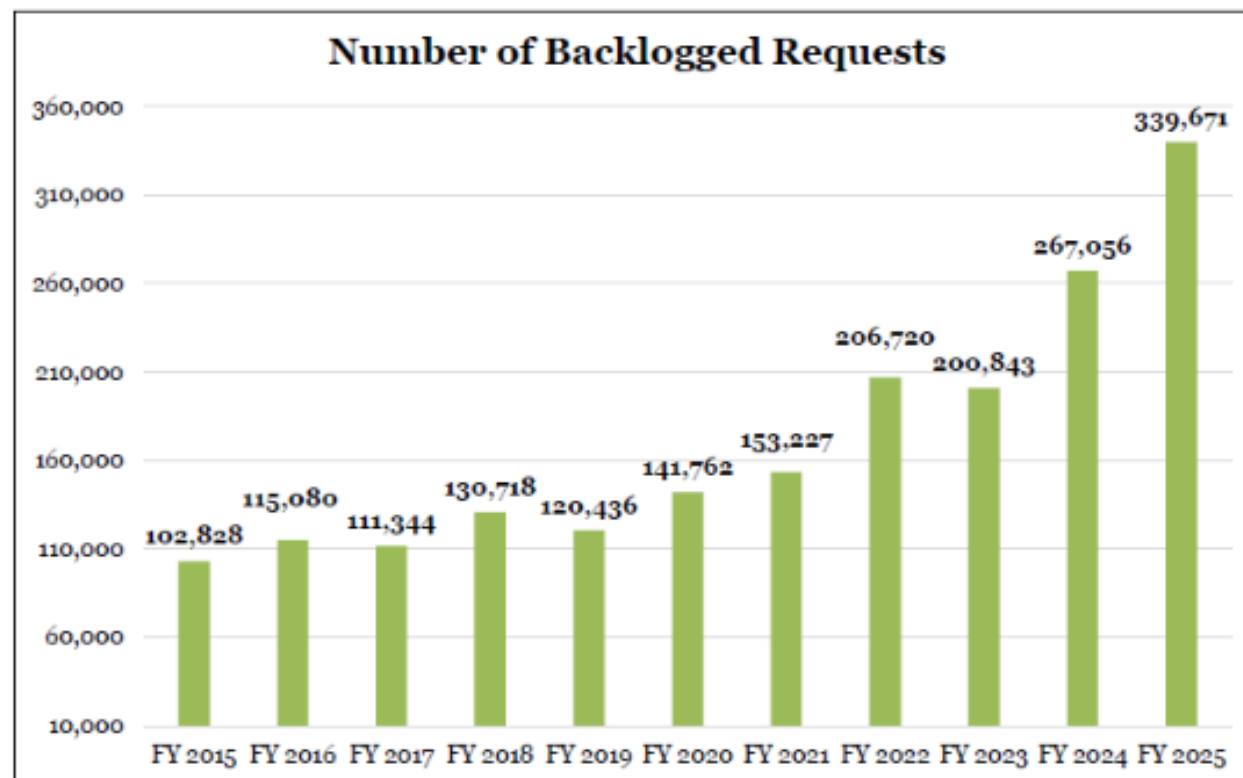
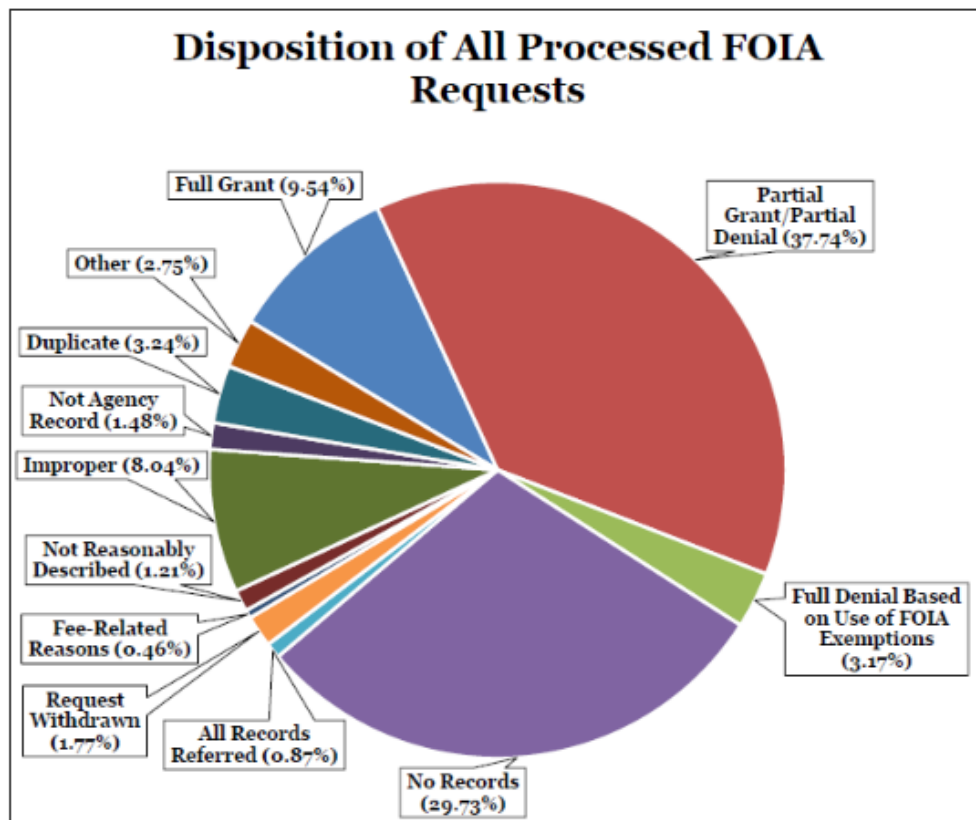


What is FOIA?



Total FOIA Staff: ~4823 (2025)

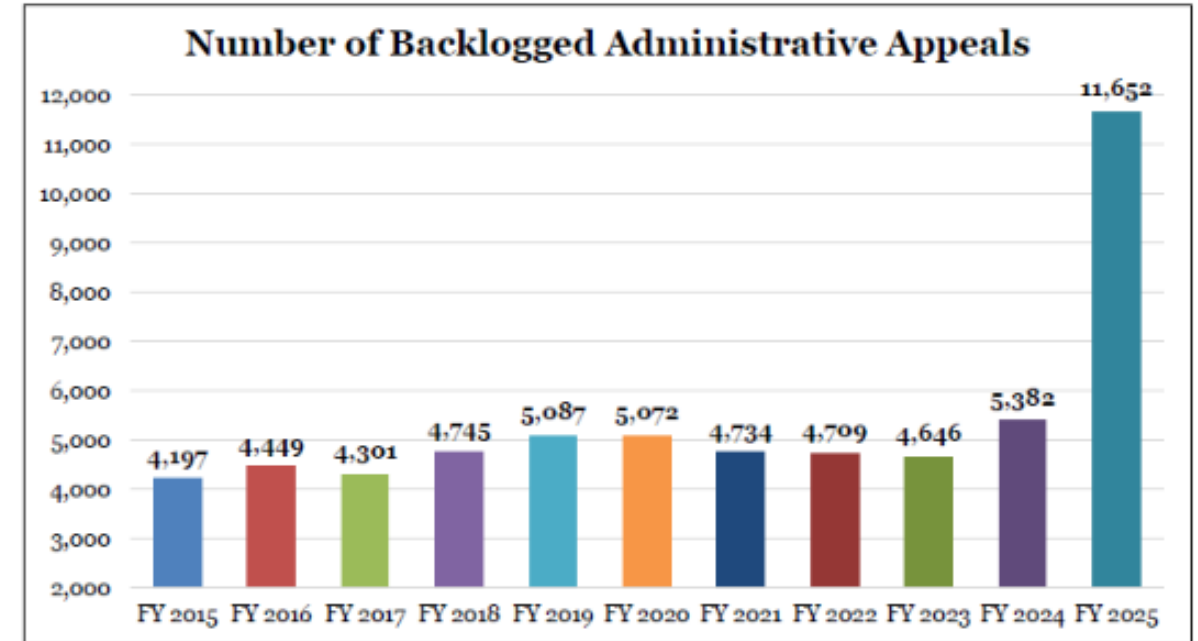
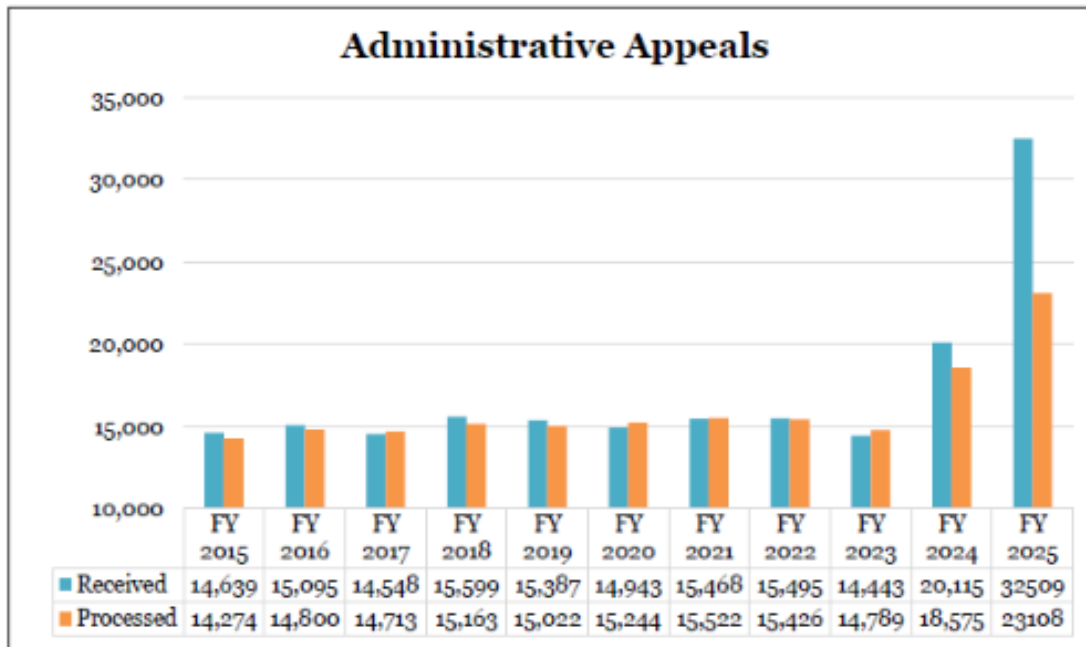
What is FOIA?



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What is FOIA?





What can I do if someone else wants to obtain my sensitive information that I submitted to the U.S. Government?

Avtel Servs. v. United States, 70 Fed. Cl. 173 (2005)

Facts: Contractor alleged that its competitor was awarded the contract because it obtained its trade secrets and competitive data through FOIA. It asked for injunctive relief.

Holding: Courts, however, should interfere with the government procurement process "only in extremely limited circumstances." Contractor failed to overcome the presumption that government officials acted in good faith. The court further concludes that the relative harm to the government and to the public interest caused by the delay that would result if injunctive relief were to issue substantially outweighs harm to the plaintiff.



What can I do if someone else wants to obtain my sensitive information that I submitted to the U.S. Government?

Honeywell Tech. Solutions, Inc. v. Dep't of the Air Force, 779 F. Supp. 2d 14 (2011)

Facts: Air Force received a FOIA request contacting contract information, statements of work, rates, modifications, etc. Air Force notified Contractor about the FOIA request. Contractor timely objected – competitive harm. Air Force denied relief. Contractor filed a ‘reverse FOIA’ lawsuit asking to enjoin the Air Force from disclosing certain information contained and related to a contract between two parties.

Holding: Exemption 4 – trade secrets. Contractor’s argument is clear – the release of the information would cause Contractor to lose competitive edge. Air Force is permanently enjoined from releasing the information



What is PA?

The Privacy Act of 1974, as amended, 5 U.S.C. § 552a, establishes a code of fair information practices that governs the **collection, maintenance, use, and dissemination of information** about individuals that is maintained in systems of records by federal agencies. A system of records is a group of records under the control of an agency from which information is retrieved by the name of the individual or by some identifier assigned to the individual.

The Act also provides individuals with a means by which to **seek access to and amendment of their records**, and sets forth various agency record-keeping requirements.



What is PA?

“individual” means a citizen of the United States or an alien lawfully admitted for permanent residence;

“maintain” includes maintain, collect, use, or disseminate;

“record” means any item, collection, or grouping of information about an individual that is maintained by an agency, including, but not limited to, his education, financial transactions, medical history, and criminal or employment history and that contains his name, or the identifying number, symbol, or other identifying particular assigned to the individual, such as a finger or voice print or a photograph;

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What is PA?

Agency rules.

- (1) establish procedures whereby an individual **can be notified in response** to his request if any system of records named by the individual contains a record pertaining to him;
- (2) define **reasonable times, places, and requirements for identifying an individual** who requests his record or information pertaining to him before the agency shall make the record or information available to the individual;
- (3) establish **procedures for the disclosure to an individual upon his request** of his record or information pertaining to him, including special procedure, if deemed necessary, for the disclosure to an individual of medical records, including psychological records, pertaining to him;
- (4) establish procedures for **reviewing a request from an individual concerning the amendment** of any record or information pertaining to the individual, for making a determination on the request, for an appeal within the agency of an initial adverse agency determination, and for whatever additional means may be necessary for each individual to be able to exercise fully his rights under this section; and
- (5) **establish fees to be charged**, if any, to any individual for making copies of his record, excluding the cost of any search for and review of the record.



What are exemptions under PA?

Exemptions:

- (1) subject to provisions of section 552(b)(1) of this title;
- (2) investigatory material compiled for law enforcement purposes, ...
- (3) maintained in connection with providing protective services to the President of the United States or other individuals pursuant to section 3056 of title 18;
- (4) required by statute to be maintained and used solely as statistical records;
- (5) investigatory material compiled solely for the purpose of determining suitability, eligibility, or qualifications for Federal civilian employment, military service, Federal contracts, or access to classified information, but only to the extent that the disclosure of such material would reveal the identity of a source who furnished information to the Government under an express promise that the identity of the source would be held in confidence, or, prior to the effective date of this section, under an implied promise that the identity of the source would be held in confidence;



What are exemptions under PA?

Exemptions:

(6) testing or examination material used solely to determine individual qualifications for appointment or promotion in the Federal service the disclosure of which would compromise the objectivity or fairness of the testing or examination process; or

(7) evaluation material used to determine potential for promotion in the armed services, but only to the extent that the disclosure of such material would reveal the identity of a source who furnished information to the Government under an express promise that the identity of the source would be held in confidence, or, prior to the effective date of this section, under an implied promise that the identity of the source would be held in confidence.



What are my rights under PA?

(g) Civil remedies.

(1) Whenever any agency—

(A) makes a determination under subsection (d)(3) of this section not to amend an individual's record in accordance with his request, or fails to make such review in conformity with that subsection;

(B) refuses to comply with an individual request under subsection (d)(1) of this section;

(C) fails to maintain any record concerning any individual with such accuracy, relevance, timeliness, and completeness as is necessary to assure fairness in any determination relating to the qualifications, character, rights, or opportunities of, or benefits to the individual that may be made on the basis of such record, and consequently a determination is made which is adverse to the individual; or

(D) fails to comply with any other provision of this section, or any rule promulgated thereunder, in such a way as to have an adverse effect on an individual,

the individual may bring a civil action against the agency, and the district courts of the United States shall have jurisdiction in the matters under the provisions of this subsection.



What are my rights under PA?

Reuber v. United States, 829 F.2d 133 (1987)

Facts: Contractor received a letter of reprimand from employer that the U.S. Government maintained in its records. The letter stated that the contractor mishandled data, was careless, and other forms of misconduct. The contractor decided to file a lawsuit to get rid of the letter. The agency offered to destroy the letter but this was not enough for contractor. Contractor also wanted a declaration that the letter was defamatory.

Holding: Document destruction is the ultimate remedy under the Privacy Act.



FAR Bid Protection

4.401 Receipt and safeguarding of bids.

(a) All bids (including modifications) received before the time set for the opening of bids **shall be kept secure**. Except as provided in paragraph (b) of this section, the bids shall not be opened or viewed, and shall remain in a locked bid box, a safe, or in a secured, restricted-access electronic bid box. If an invitation for bids is cancelled, bids shall be returned to the bidders. Necessary precautions shall be taken to ensure the security of the bid box or safe. **Before bid opening, information concerning the identity and number of bids received shall be made available only to Government employees**. Such disclosure shall be only on a "**need to know**" basis. When bid samples are submitted, they shall be handled with sufficient care to prevent disclosure of characteristics before bid opening.

(b) **Envelopes marked as bids** but not identifying the bidder or the solicitation may be opened solely for the purpose of identification, and then only by an official designated for this purpose. If a sealed bid is opened by mistake (e.g., **because it is not marked as being a bid**), the envelope shall be signed by the opener, whose position shall also be written thereon, and delivered to the designated official. This official shall immediately write on the envelope (1) an explanation of the opening, (2) the date and time opened, and (3) the invitation for bids number, and shall sign the envelope. The official shall then immediately reseal the envelope.



Proper Markings

'Source Selection Information'

Examples of Source Selection Information:

cost or pricing data;
indirect costs and direct labor rates;
proprietary information about manufacturing
processes, operations or techniques; and
information marked by the contractor
as "**contractor bid or proposal information.**"
bid prices;
proposed costs or prices from bidders;
source selection and technical evaluation plans;

'Contractor bid or proposal information'

technical evaluations, cost or price
evaluations, competitive range
determinations, rankings of bids, reports of
source selection panels; and
other information marked as "**source
selection**" based on a determination that its
disclosure would jeopardize the procurement.



Proper Markings

‘This document and all exhibits are considered strictly confidential and not releasable through FOIA without prior notification and redaction.’

‘Proprietary/ Restricted Use’

Social Security numbers,
names of minor children,
dates of birth and,
financial account numbers

How do I properly redact and store controlled documents?

Redactions By Hand

Executive Order 14303 of May 23, 2025 Restoring Gold Standard Science
By the authority vested in me as President by the Constitution and the laws of the United States of America, including section 7301 of title 5, United States Code, it is hereby ordered: Section 1. Policy and Purpose. Over the last 5 years, confidence that scientists act in the best interests of the public has fallen significantly. A majority of researchers in science, technology, engineering, and mathematics believe science is facing a reproducibility crisis. The falsification of data by leading researchers has led to high-profile retractions of federally funded research. Unfortunately, the Federal Government has contributed to this loss of trust.

Section 1. Policy and Purpose. Over the last 5 years, confidence that scientists act in the best interests of the public has fallen significantly. A majority of researchers in science, technology, engineering, and

How do I properly redact and store controlled documents?

Redactions In MS Word

Executive Order 14303 of May 23, 2025 Restoring Gold Standard Science
By the authority vested in me as President by the Constitution and the laws of the United States of America, including section 7301 of title 5, United States Code, it is hereby ordered: [REDACTED]
[REDACTED]. A majority of researchers in science, technology, engineering, and mathematics believe science is facing a reproducibility crisis. The falsification of data by leading researchers has led to high-profile retractions of federally funded research. Unfortunately, the Federal Government has contributed to this loss of trust.

including section 7301 of title 5, United States Code, it is hereby ordered:
Section 1. Policy and Purpose. Over the last 5 years, confidence that scientists act in the best interests of the public has fallen significantly. A majority of researchers in science, technology, engineering, and mathematics

How do I properly redact and store controlled documents?

Redactions in Adobe

Executive Order 14303 of May 23, 2025 Restoring Gold Standard Science

By the authority vested in me as President by the Constitution and the laws of the United States of America, including section 7301 of title 5, United States Code, it is hereby ordered: [REDACTED]

[REDACTED]. A majority of researchers in science, technology, engineering, and mathematics believe science is facing a reproducibility crisis. The falsification of data by leading researchers has led to high-profile retractions of federally funded research. Unfortunately, the Federal Government has contributed to this loss of trust.

including section 7301 of title 5, United States Code, it is hereby ordered: Section 1. Policy and Purpose. Over the last 5 years, confidence that scientists act in the best interests of the public has fallen significantly. A majority of researchers in science, technology, engineering, and mathematics

 Redact a PDF

Apply



Best Redactions Practices

Print + Use Black Marker or White Out + Print Again + Scan + Check

Redact Protected Information + Take a Screen Shot

Double Check of Manipulation

Check for Metadata

Check for Comments, Other Notes

Use MS Notepad / MS Find & Replace

Train Employees & Create Policies

Laws of America, including section 7301 of title 5, United States Code, it is hereby ordered:

[redacted] A majority of researchers in science, technology, engineering, and mathematics

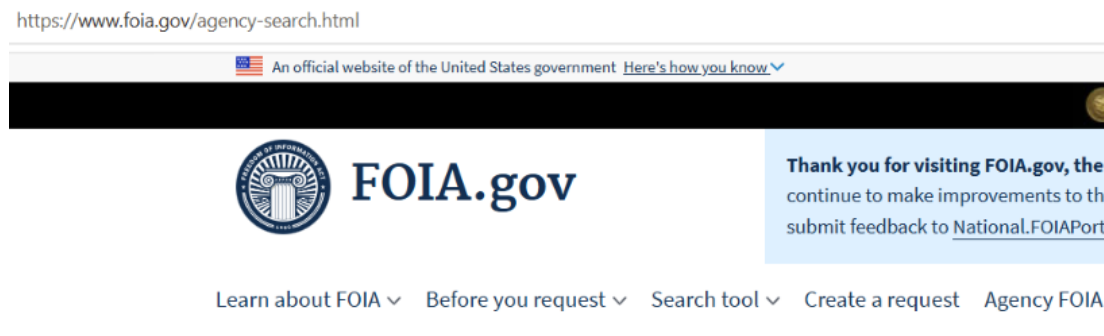
by the authority vested in me as President by the Constitution and the laws of the United States of America, including section 7301 of title 5, United States Code, it is hereby ordered: [redacted]

[redacted] A majority of researchers in science, technology, engineering, and mathematics believe science is facing a



How can I obtain information from the Federal Government under FOIA?

<https://www.foia.gov/>



Search for an agency

It's important that you identify the correct agency for your request. There are over 100 agencies and each is responsible for handling its own FOIA requests. You can start your request, learn more about an agency, or see an agency's contact information using the search bar below.

Search an agency name or keyword

438 results

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How To File A FOIA Request

Department of Defense >

Defense Health Agency

Agency mission

The Defense Health Agency (DHA) is a joint, integrated Combat Support Agency that enables the Army, Navy, and Air Force medical services to provide a medically ready force and ready medical force to Combatant Commands in both peacetime and wartime.

[FOIA Reference Guide](#)

[FOIA Regulations](#)

Contact



Selma Bajramovic, FOIA Officer

703-275-6017

dha.foia@health.mil



FOIA Requester Service Center

703-275-6017

Average processing time for 2025



97 working days for simple requests

304 working days for complex requests

The records or information you're looking for may already be public.



Visit the agency's [website](#) to learn more.

To see what's been made available, you can visit an agency's [FOIA library](#).

**Continue the FOIA request
process**

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How To File A FOIA Request

Before you start your request, here are a few tips for writing your request.

The description of the records you are requesting is important. The scope of your request can impact how quickly an agency can respond to your request. Your description should:

- Be as clear and specific as possible
- Include date ranges, if applicable
- Provide enough detail so that the agency can determine which records are being requested and locate them with a reasonable amount of effort.

[Start FOIA request](#)

All documents records, files, and materials related to contract no.####, between 1 January 2022 and 31 December 2023. The contract was awarded on Fort XXXXX. The contracting officer was XXXXX.

How To File A FOIA Request

Contact Information

The description of the records you are requesting is important. The scope of your request can impact how quickly an agency can respond to your request. Your description should be as clear and specific as possible and must give agency FOIA personnel enough detail so that they are able to reasonably determine exactly which records are being requested and where to locate them.

Your request

Required

A brief and clear description of the information you'd like to receive. Please be as specific as possible. *This field has a maximum length of 10,000 characters.*

All documents records, files, and materials related to contract no.####, between 1 January 2022 and 31 December 2023. The contract was awarded on Fort XXXXX. The contracting officer was XXXXX.

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How To File A FOIA Request

Step 3 of 7

Additional information

If you are submitting a request for records on yourself (a “first-party” request), use this tool to upload any required documentation to verify your identity. You can also use this tool to upload any documents that provide context for your request or that could help FOIA personnel process your FOIA request.

Upload additional documentation

If you are seeking records about yourself, additional documentation is required to verify your identity. 32 C.F.R. § 286.5(c).

No file chosen

[Return to top ↑](#)

(c) Requesters must provide contact information, such as a telephone number, email address, and/or mailing address, to assist the DoD Component in communicating and providing released records.

Fees

Most FOIA requests do not involve any fees. However, if an agency informs you that there are fees associated with your request, you may request a fee waiver ☐ under the standard provided in the FOIA. You may request a fee waiver at any time during the processing of your request. The agency will grant a fee waiver when disclosure of the requested information is in the public interest because it is likely to contribute significantly to public understanding of the operations and activities of the government and is not primarily in the commercial interest of the requester. Requests for fee waivers from individuals who are seeking records pertaining to themselves usually do not meet this standard. Additionally, a requester's inability to pay fees is not a legal basis for granting a fee waiver. When making a request for a fee waiver you must explain how your request meets the standard described above.

What type of requester are you?

Please select the category that best fits you. This information helps FOIA personnel determine what fees, if any, may be applicable.

Fee waiver

How To File A FOIA Request

Fee waiver justification

Leave this blank if you are not requesting a fee waiver. When making a request for a fee waiver you must explain how your request meets the fee waiver standard described above. *This field has a maximum length of 10,000 characters.*

The amount of money you're willing to pay in fees, if any

There is no initial fee required to submit a FOIA request, but the FOIA does allow people requesting records to be charged certain types of fees in some instances.

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How To File A FOIA Request

Expedited processing

No

Justification for expedited processing

Leave this blank if you are not requesting expedited processing. When making a request for expedited processing you must explain how your request meets one of the expedition standards described above. This agency has additional standards for expedited processing detailed at 32 C.F.R. § 286.8(e). This field has a maximum length of 10,000 characters.

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Step 7 of 7

Review and submit

Please review the information you entered above before submitting to an agency. You should hear from the agency within the coming weeks. If you don't hear from the agency, please reach out using the contact information provided to you on this site.

☐ I'm not a robot 

[Submit request](#)



Additional Courses:



September 28, 2026
12:00 p.m. ET

**Artificial Intelligence in Federal Contracting:
Risks, Obligations, and Opportunities**

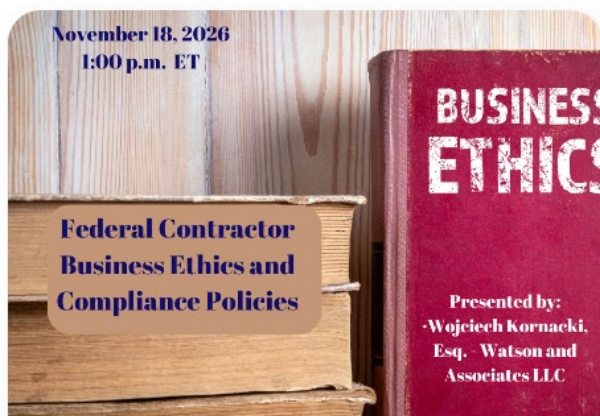
🕒 2026-09-28



October 29, 2026
12:00 p.m. ET

**Federal Contractor Rights in Intellectual
Property**

🕒 2026-10-29

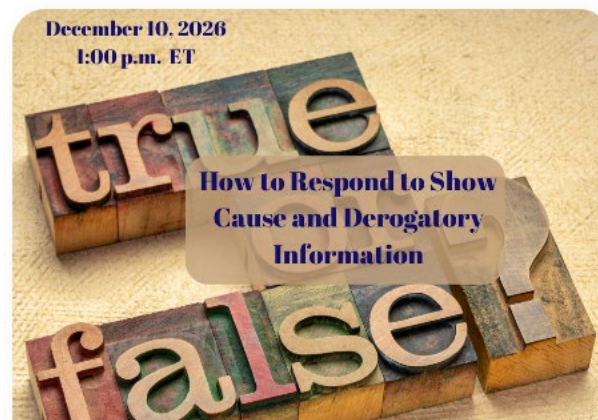


November 18, 2026
1:00 p.m. ET

**Federal Contractor
Business Ethics and
Compliance Policies**

Presented by:
Wojciech Kornacki,
Esq. - Watson and
Associates LLC

🕒 2026-11-18



December 10, 2026
1:00 p.m. ET

**How to Respond to Show
Cause and Derogatory
Information**

🕒 2026-12-10

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Thank you!



Wojciech Kornacki
Government Contract and Compliance Counsel,
Of Counsel
kornackiw@theodorewatson.com | 202.640-3023



Presidential Documents

Title 3—

Executive Order 13392 of December 14, 2005

The President

Improving Agency Disclosure of Information

By the authority vested in me as President by the Constitution and the laws of the United States of America, and to ensure appropriate agency disclosure of information, and consistent with the goals of section 552 of title 5, United States Code, it is hereby ordered as follows:

Section 1. *Policy.*

(a) The effective functioning of our constitutional democracy depends upon the participation in public life of a citizenry that is well informed. For nearly four decades, the Freedom of Information Act (FOIA) has provided an important means through which the public can obtain information regarding the activities of Federal agencies. Under the FOIA, the public can obtain records from any Federal agency, subject to the exemptions enacted by the Congress to protect information that must be held in confidence for the Government to function effectively or for other purposes.

(b) FOIA requesters are seeking a service from the Federal Government and should be treated as such. Accordingly, in responding to a FOIA request, agencies shall respond courteously and appropriately. Moreover, agencies shall provide FOIA requesters, and the public in general, with citizen-centered ways to learn about the FOIA process, about agency records that are publicly available (e.g., on the agency's website), and about the status of a person's FOIA request and appropriate information about the agency's response.

(c) Agency FOIA operations shall be both results-oriented and produce results. Accordingly, agencies shall process requests under the FOIA in an efficient and appropriate manner and achieve tangible, measurable improvements in FOIA processing. When an agency's FOIA program does not produce such results, it should be reformed, consistent with available resources appropriated by the Congress and applicable law, to increase efficiency and better reflect the policy goals and objectives of this order.

(d) A citizen-centered and results-oriented approach will improve service and performance, thereby strengthening compliance with the FOIA, and will help avoid disputes and related litigation.

Sec. 2. *Agency Chief FOIA Officers.*

(a) *Designation.* The head of each agency shall designate within 30 days of the date of this order a senior official of such agency (at the Assistant Secretary or equivalent level), to serve as the Chief FOIA Officer of that agency. The head of the agency shall promptly notify the Director of the Office of Management and Budget (OMB Director) and the Attorney General of such designation and of any changes thereafter in such designation.

(b) *General Duties.* The Chief FOIA Officer of each agency shall, subject to the authority of the head of the agency:

(i) have agency-wide responsibility for efficient and appropriate compliance with the FOIA;

(ii) monitor FOIA implementation throughout the agency, including through the use of meetings with the public to the extent deemed appropriate by the agency's Chief FOIA Officer, and keep the head of the agency, the chief legal officer of the agency, and the Attorney General appropriately informed of the agency's performance in implementing the FOIA, including the extent to which the agency meets the milestones

in the agency's plan under section 3(b) of this order and training and reporting standards established consistent with applicable law and this order;

(iii) recommend to the head of the agency such adjustments to agency practices, policies, personnel, and funding as may be necessary to carry out the policy set forth in section 1 of this order;

(iv) review and report, through the head of the agency, at such times and in such formats as the Attorney General may direct, on the agency's performance in implementing the FOIA; and

(v) facilitate public understanding of the purposes of the FOIA's statutory exemptions by including concise descriptions of the exemptions in both the agency's FOIA handbook issued under section 552(g) of title 5, United States Code, and the agency's annual FOIA report, and by providing an overview, where appropriate, of certain general categories of agency records to which those exemptions apply.

(c) *FOIA Requester Service Center and FOIA Public Liaisons.* In order to ensure appropriate communication with FOIA requesters:

(i) Each agency shall establish one or more FOIA Requester Service Centers (Center), as appropriate, which shall serve as the first place that a FOIA requester can contact to seek information concerning the status of the person's FOIA request and appropriate information about the agency's FOIA response. The Center shall include appropriate staff to receive and respond to inquiries from FOIA requesters;

(ii) The agency Chief FOIA Officer shall designate one or more agency officials, as appropriate, as FOIA Public Liaisons, who may serve in the Center or who may serve in a separate office. FOIA Public Liaisons shall serve as supervisory officials to whom a FOIA requester can raise concerns about the service the FOIA requester has received from the Center, following an initial response from the Center staff. FOIA Public Liaisons shall seek to ensure a service-oriented response to FOIA requests and FOIA-related inquiries. For example, the FOIA Public Liaison shall assist, as appropriate, in reducing delays, increasing transparency and understanding of the status of requests, and resolving disputes. FOIA Public Liaisons shall report to the agency Chief FOIA Officer on their activities and shall perform their duties consistent with applicable law and agency regulations;

(iii) In addition to the services to FOIA requesters provided by the Center and FOIA Public Liaisons, the agency Chief FOIA Officer shall also consider what other FOIA-related assistance to the public should appropriately be provided by the agency;

(iv) In establishing the Centers and designating FOIA Public Liaisons, the agency shall use, as appropriate, existing agency staff and resources. A Center shall have appropriate staff to receive and respond to inquiries from FOIA requesters;

(v) As determined by the agency Chief FOIA Officer, in consultation with the FOIA Public Liaisons, each agency shall post appropriate information about its Center or Centers on the agency's website, including contact information for its FOIA Public Liaisons. In the case of an agency without a website, the agency shall publish the information on the Firstgov.gov website or, in the case of any agency with neither a website nor the capability to post on the Firstgov.gov website, in the **Federal Register**; and

(vi) The agency Chief FOIA Officer shall ensure that the agency has in place a method (or methods), including through the use of the Center, to receive and respond promptly and appropriately to inquiries from FOIA requesters about the status of their requests. The Chief FOIA Officer shall

also consider, in consultation with the FOIA Public Liaisons, as appropriate, whether the agency's implementation of other means (such as tracking numbers for requests, or an agency telephone or Internet hotline) would be appropriate for responding to status inquiries.

Sec. 3. Review, Plan, and Report.

(a) *Review.* Each agency's Chief FOIA Officer shall conduct a review of the agency's FOIA operations to determine whether agency practices are consistent with the policies set forth in section 1 of this order. In conducting this review, the Chief FOIA Officer shall:

(i) evaluate, with reference to numerical and statistical benchmarks where appropriate, the agency's administration of the FOIA, including the agency's expenditure of resources on FOIA compliance and the extent to which, if any, requests for records have not been responded to within the statutory time limit (backlog);

(ii) review the processes and practices by which the agency assists and informs the public regarding the FOIA process;

(iii) examine the agency's:

(A) use of information technology in responding to FOIA requests, including without limitation the tracking of FOIA requests and communication with requesters;

(B) practices with respect to requests for expedited processing; and

(C) implementation of multi-track processing if used by such agency;

(iv) review the agency's policies and practices relating to the availability of public information through websites and other means, including the use of websites to make available the records described in section 552(a)(2) of title 5, United States Code; and

(v) identify ways to eliminate or reduce its FOIA backlog, consistent with available resources and taking into consideration the volume and complexity of the FOIA requests pending with the agency.

(b) *Plan.*

(i) Each agency's Chief FOIA Officer shall develop, in consultation as appropriate with the staff of the agency (including the FOIA Public Liaisons), the Attorney General, and the OMB Director, an agency-specific plan to ensure that the agency's administration of the FOIA is in accordance with applicable law and the policies set forth in section 1 of this order. The plan, which shall be submitted to the head of the agency for approval, shall address the agency's implementation of the FOIA during fiscal years 2006 and 2007.

(ii) The plan shall include specific activities that the agency will implement to eliminate or reduce the agency's FOIA backlog, including (as applicable) changes that will make the processing of FOIA requests more streamlined and effective, as well as increased reliance on the dissemination of records that can be made available to the public through a website or other means that do not require the public to make a request for the records under the FOIA.

(iii) The plan shall also include activities to increase public awareness of FOIA processing, including as appropriate, expanded use of the agency's Center and its FOIA Public Liaisons.

(iv) The plan shall also include, taking appropriate account of the resources available to the agency and the mission of the agency, concrete milestones, with specific timetables and outcomes to be achieved, by which the head of the agency, after consultation with the OMB Director, shall measure and evaluate the agency's success in the implementation of the plan.

(c) *Agency Reports to the Attorney General and OMB Director.*

(i) The head of each agency shall submit a report, no later than 6 months from the date of this order, to the Attorney General and the OMB Director that summarizes the results of the review under section 3(a) of this order and encloses a copy of the agency's plan under section 3(b) of this order.

The agency shall publish a copy of the agency's report on the agency's website or, in the case of an agency without a website, on the Firstgov.gov website, or, in the case of any agency with neither a website nor the capability to publish on the Firstgov.gov website, in the **Federal Register**.

(ii) The head of each agency shall include in the agency's annual FOIA reports for fiscal years 2006 and 2007 a report on the agency's development and implementation of its plan under section 3(b) of this order and on the agency's performance in meeting the milestones set forth in that plan, consistent with any related guidelines the Attorney General may issue under section 552(e) of title 5, United States Code.

(iii) If the agency does not meet a milestone in its plan, the head of the agency shall:

(A) identify this deficiency in the annual FOIA report to the Attorney General;

(B) explain in the annual report the reasons for the agency's failure to meet the milestone;

(C) outline in the annual report the steps that the agency has already taken, and will be taking, to address the deficiency; and

(D) report this deficiency to the President's Management Council.

Sec. 4. Attorney General.

(a) *Report.* The Attorney General, using the reports submitted by the agencies under subsection 3(c)(i) of this order and the information submitted by agencies in their annual FOIA reports for fiscal year 2005, shall submit to the President, no later than 10 months from the date of this order, a report on agency FOIA implementation. The Attorney General shall consult the OMB Director in the preparation of the report and shall include in the report appropriate recommendations on administrative or other agency actions for continued agency dissemination and release of public information. The Attorney General shall thereafter submit two further annual reports, by June 1, 2007, and June 1, 2008, that provide the President with an update on the agencies' implementation of the FOIA and of their plans under section 3(b) of this order.

(b) *Guidance.* The Attorney General shall issue such instructions and guidance to the heads of departments and agencies as may be appropriate to implement sections 3(b) and 3(c) of this order.

Sec. 5. OMB Director. The OMB Director may issue such instructions to the heads of agencies as are necessary to implement this order, other than sections 3(b) and 3(c) of this order.

Sec. 6. Definitions. As used in this order:

(a) the term "agency" has the same meaning as the term "agency" under section 552(f)(1) of title 5, United States Code; and

(b) the term "record" has the same meaning as the term "record" under section 552(f)(2) of title 5, United States Code.

Sec. 7. General Provisions.

(a) The agency reviews under section 3(a) of this order and agency plans under section 3(b) of this order shall be conducted and developed in accordance with applicable law and applicable guidance issued by the President, the Attorney General, and the OMB Director, including the laws and guidance regarding information technology and the dissemination of information.

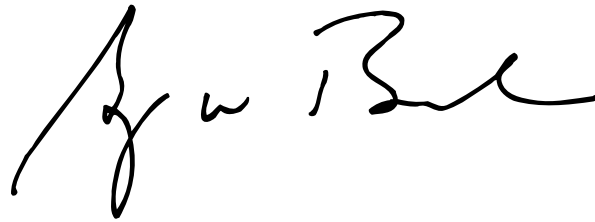
(b) This order:

(i) shall be implemented in a manner consistent with applicable law and subject to the availability of appropriations;

(ii) shall not be construed to impair or otherwise affect the functions of the OMB Director relating to budget, legislative, or administrative proposals; and

(iii) is intended only to improve the internal management of the executive branch and is not intended to, and does not, create any right or benefit,

substantive or procedural, enforceable at law or in equity by a party against the United States, its departments, agencies, instrumentalities, or entities, its officers or employees, or any other person.

A handwritten signature in black ink, appearing to read "G. W. Bush". The signature is fluid and cursive, with the first name "G" being particularly large and stylized.

THE WHITE HOUSE,
December 14, 2005.

[FR Doc. 05-24255
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Freedom of Information Act Legislation in the 114th Congress: Issue Summary and Side-by-Side Analysis

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Summary

Both the House and Senate are currently considering legislation that would make substantive changes to the Freedom of Information Act (FOIA). FOIA was originally enacted in 1966 and has been amended numerous times since—most recently in 2009. FOIA provides the public with a presumptive right to access agency records, limited by nine exemptions that allow agencies to withhold certain types or categories of records.

The legislation under consideration in the 114th Congress, S. 337 and H.R. 653, is largely based on bills from the 113th Congress, S. 2520 and H.R. 1211. Both of the bills in the current Congress seek to amend a number of provisions of FOIA for the purpose of increasing public access—including improving electronic accessibility of agency records, clarifying the right to request information related to intra- and inter-agency memoranda or letters, standardizing the use of search and duplication fees by agencies, and requiring agencies to notify requestors of dispute resolution processes for requests that have been denied. Both bills would also create a Chief FOIA Officers Council, responsible for informing government-wide FOIA administrators of best practices, and would establish new FOIA-related oversight responsibilities and reporting requirements.

In addition, both the House and Senate legislation would establish a statutory “presumption of openness,” whereby information may only be withheld if it harms an interest protected by a statutory exemption or if disclosure is prohibited by law. This presumption of openness would codify the principles outlined in the current Administration’s guidance on FOIA.

While these bills address a number of similar topics, often in similar ways, there are substantive differences between them. For instance, S. 337 provides a timetable for the assessment of fees if an agency fails to comply with a statutory FOIA request response deadline. Conversely, H.R. 653 would authorize applicable federal inspectors general to review agencies’ FOIA compliance and recommend the agency head take potential adverse actions against improper or negligent execution of the law. In addition, H.R. 653 includes new language seeking to narrow the exemption that provides for agencies’ withholding of intra- or inter-agency records. A summary of provisions in both bills, a side-by-side comparison of these provisions, and analysis of selected provisions is provided in this report.

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Background

The Freedom of Information Act (FOIA), originally enacted in 1966, provides the public presumed access to federal government information (5 U.S.C. §552). This access is available to any person, regardless of citizenship, and does not require justification on the part of the requestor. This presumptive right to access is limited only when the requested information falls within the scope of nine statutory exemptions, which are established by law:

1. Information properly classified for national defense or foreign policy purposes as secret under criteria established by an executive order;
2. Information relating solely to agency internal personnel rules and practices;
3. Data specifically exempted from disclosure by a statute other than FOIA if that statute
 - a. requires that the data be withheld from the public in such a manner as to leave no discretion on the issue;
 - b. establishes particular criteria for withholding information or refers to particular types of matters to be withheld; or
 - c. specifically cites to this exemption (if the statute is enacted after October 28, 2009, the date of enactment of the OPEN FOIA Act of 2009);¹
4. Trade secrets and commercial or financial information obtained from a person that is privileged or confidential;
5. Inter- or intra-agency memoranda or letters that would not be available by law except to an agency in litigation;
6. Personnel, medical, or similar files, the disclosure of which would constitute an unwarranted invasion of personal privacy;
7. Certain kinds of records compiled for law enforcement purposes;
8. Certain information relating to the regulation of financial institutions; and
9. Geological and geophysical information and data.

These exemptions are intended to prevent the disclosure of certain types of records, with examples including those related to law enforcement proceedings, personally identifiable information, or records pertaining to national security.² FOIA has been subsequently amended multiple times, most recently by the OPEN FOIA Act of 2009 (P.L. 111-83).³

In March of 2009, Attorney General Eric Holder distributed a memorandum related to FOIA to the heads of all executive departments and agencies. The memorandum built upon a previous

¹ P.L. 111-83; 123 Stat. 2142.

² More information on the history and current issues surrounding FOIA can be found in CRS Report R41933, *The Freedom of Information Act (FOIA): Background, Legislation, and Policy Issues*, by Wendy Ginsberg.

³ In addition to amendments that directly alter the language in 5 U.S.C. §552, numerous additional statutes exempt specific records from disclosure. These statutory exemptions are incorporated into the FOIA framework through 5 U.S.C. §552(b)(3).

memorandum from President Obama, which stated that FOIA “should be administered with a clear presumption: In the face of doubt, openness prevails.”⁴ To reinforce this point, the memorandum from the Attorney General instructed agencies to preemptively disclose information prior to a public request, partially disclose information in the event that some aspect of a record must be withheld, and not withhold information simply because it falls within the strict legal parameters of an exemption.⁵ Further, the memorandum stated that

The Department of Justice will defend a denial of a FOIA request only if (1) the agency reasonably foresees that disclosure would harm an interest protected by one of the statutory exemptions, or (2) the disclosure is prohibited by law.

The new policy established by this memorandum is often referred to as “the presumption of openness.” This guidance from the Obama Administration departed from the previous Administration’s position on FOIA implementation, in which the Department of Justice stated that it would defend any decision to withhold information under a FOIA exemption if the decision had a “sound legal basis” and did not “present an unwarranted risk of adverse impact on the ability of other agencies to protect other important records.”⁶

In recent years, some Members of Congress have expressed interest in further amending FOIA to address both the presumption of openness and other issues, especially the electronic accessibility of agency records. During the 113th and 114th Congresses, legislation to amend FOIA was considered in both the House and the Senate. In both chambers, the currently proposed FOIA amendments address many of the same issues, often with similar language. The bills, however, also contain substantive differences. This report provides an overview of two FOIA bills in the 114th Congress, S. 337 and H.R. 653, and provides analysis of certain FOIA-related provisions within each.

Comparison of Legislation in the 114th Congress

Senator John Cornyn introduced the FOIA Improvement Act of 2015 (S. 337) on February 2, 2015, and the Judiciary Committee reported the bill on February 9, 2015. This legislation was primarily built on nearly identical legislation from the 113th Congress (S. 2520), which is discussed in greater detail below. In the House, Representative Darrell E. Issa introduced the FOIA Act (H.R. 653) on February 2, 2015, which was referred to the Committee on Oversight and Government Reform. This bill is based in large part on H.R. 1211, proposed in the 113th Congress. Both S. 337 and H.R. 653 address many of the same topics, with important similarities and differences in their approaches. **Table 1** below provides a side-by-side comparison of these two bills. The substantive components of the legislation have been grouped into four categories:

⁴ Executive Office of the President, “Memorandum For the Heads of Executive Departments and Agencies,” 74 *Federal Register* 4683, January 26, 2009.

⁵ Department of Justice, Office of the Attorney General, *Memorandum For Heads of Executive Departments and Agencies: The Freedom of Information Act (FOIA)*, Washington, DC, March 19, 2009, at <http://www.justice.gov/sites/default/files/ag/legacy/2009/06/24/foia-memo-march2009.pdf>.

⁶ Department of Justice, Office of the Attorney General, *Memorandum For Heads of Federal Departments and Agencies: The Freedom of Information Act*, Washington, DC, October 12, 2001, at <http://www.justice.gov/archive/oip/011012.htm>.

1. **Presumption of Openness:** Provisions related to the overall standards by which agencies make determinations regarding the withholding or disclosure of information.
2. **FOIA Administration and Exemption Use:** Provisions that would alter the process or policy by which agencies administer FOIA, manage appeals, or disclose records.
3. **Oversight and Reporting:** Provisions regarding the role of oversight entities, including Congress and the Government Accountability Office (GAO), and new reporting requirements put in place by the legislation.
4. **New Roles and Responsibilities:** Provisions amending or clarifying the functions of the Office of Government Information Services (OGIS), a component of the National Archives and Records Administration (NARA), or the Chief FOIA Officer designated at each agency.

Table I. Side-by-Side Comparison of Legislation in the 114th Congress

	S. 337, FOIA Improvement Act of 2015	H.R. 653, The FOIA Act
	Introduced by Senator John Cornyn on Feb. 2, 2015	Introduced by Representative Darrell E. Issa on Feb. 2, 2015
<i>I. Presumption of Openness</i>		
Standard for Disclosure	Would establish a standard whereby information is only withheld if the agency foresees that disclosure would harm an interest protected by an exemption or the disclosure is prohibited by law. Would require agencies to consider the partial disclosure of information when possible and explicitly prohibits withholding information simply as a technical matter or because it would embarrass the agency. §2(l)(D)	Would establish a standard whereby information is only withheld if the agency foresees that disclosure would harm an interest protected by an exemption or the disclosure is prohibited by law. §2(b)(2)
Preemptive Disclosure ^a	- Would require agencies to make available records that have been requested three or more times. §2(l)(A)(ii) - Would require all applicable agencies to establish procedures for identifying records of general interest and making them available. §4	- Would require agencies to make available records that have been requested three or more times. §2(a)(1)(A) - Would require all applicable agencies to establish procedures for identifying records of general interest and making them available. §2(e) - Would require agencies to release records wherein the release is determined to be in the public interest or increase understanding of government operations and activities. For these records, this legislation would also require agencies to redact or segregate information to make these records available even when the whole document cannot be released. §2(e)

S. 337, FOIA Improvement Act of 2015		H.R. 653, The FOIA Act
<i>II. FOIA Administration and Exemption Use</i>		
Electronic Access to Records	- Would require agencies to make records and FOIA guidance available for public inspection in an electronic format. §2(1)(A)(i); §2(1)(A)(iii); §2(4); §4 - Would require agencies to make their annual FOIA reports, and any raw statistical data used for those reports, electronically accessible and available in a searchable format. §2(3)(B) - Would require the Attorney General (AG) to make the annual report FOIA submitted to Congress, as well as any raw statistical data used for the report electronically accessible and available in a searchable format. §2(3)(D) - Would direct the Office of Management and Budget (OMB) to establish, in consultation with the AG, a consolidated online request portal for information requests governmentwide. This centralized portal is not intended to limit or replace agency-specific portals, and the Director of OMB would be responsible for establishing interoperability among these platforms. §2(7)	- Would require agencies to make records and FOIA guidance available for public inspection in an electronic format. §2(a)(1)(A); §2(a)(2); §2(e) - Would require agencies to make their annual FOIA reports, and any raw statistical data used for those reports, electronically accessible and available in a searchable format. §2(g)(2) - Would require the Attorney General (AG) to make the annual FOIA report submitted to Congress, as well as any raw statistical data used for the report electronically accessible and available in a searchable format. §2(g)(4) - Would direct the Office of Management and Budget (OMB) to establish, in consultation with the AG, a consolidated online request portal for information requests governmentwide. This centralized portal is not intended to limit or replace agency-specific portals, and the Director of OMB would be responsible for establishing interoperability among these platforms. §2(a)(3) - Would require agencies to assign a tracking number to all requests and establish an automated system that would allow requestors to check the status of their request. Under current law, tracking numbers are only assigned to requests that will take longer than 10 days to process. §2(a)(1)(B) - Would require the Director of the Office of Information Policy (OIP)^b at DOJ to make the annual report to Congress on categories of information for disclosure available in an electronic, publicly accessible, format. §2(f)
Fees ^c	Would prohibit agencies from assessing search or duplication fees if they have failed to comply with a statutory deadline and no unusual circumstances apply. If unusual circumstances do apply, and the agency has provided a timely written notice to the requestor, the deadline is excused for an additional 10 days. Beyond that 10-day period, no fees would be permitted to be assessed for unusual circumstances.^d §2(1)(B)	Would prohibit agencies from assessing search or duplication fees if they have failed to comply with a statutory deadline for a FOIA response and did not submit a written notice to the requestor justifying the fees assessed. The statutory deadline currently includes a provision for unusual circumstances.^d §2(h)
Use of Exemption 5	Would prohibit an agency from applying exemption 5 of FOIA (5 U.S.C.	Would prohibit an agency from applying exemption 5 of FOIA (5 U.S.C.

	S. 337, FOIA Improvement Act of 2015	H.R. 653, The FOIA Act
	§552(b)(5)) to any record that is more than 25 years old. This exemption prevents the disclosure of intra- and inter-agency memoranda or letters, and is commonly referred to as the “deliberative process exemption.” §2(2)	§552(b)(5)) to any record that is more than 25 years old. This exemption prevents the disclosure of intra- and inter-agency memoranda or letters, and is commonly referred to as the “deliberative process exemption.” §2(b)(1)(B)
Dispute Resolution	Would require agencies to notify requestors of the right to seek assistance from the FOIA Public Liaison for the responding agency and the right of a requestor to seek dispute resolution services from either the liaison of the responding agency or the Office of Government Information Services (OGIS). The deadline for requestors to appeal the FOIA response from an agency would be set by the agency and cannot be fewer than 90 days following the determination. §2(1)(C)	- Would prevent the withholding of “records that embody the working law, effective policy, or the final decision of the agency.” §2(b)(1)(A) - Would require agencies to notify requestors of the right to seek assistance from the FOIA Public Liaison for the responding agency and the right of a requestor to seek dispute resolution services from either the liaison of the responding agency or the Office of Government Information Services (OGIS). The deadline for requestors to appeal the FOIA response from an agency would be set by the agency and cannot be fewer than 90 days following the determination. §2(d)
III. Oversight and Reporting		
Oversight Activities	- Would update committee notification requirements and submission timelines for annual FOIA reports to Congress. §2(3)(C) - Would require the Government Accountability Office (GAO) to conduct audits of individual agencies’ FOIA practices, catalog the use of Exemption 3 and Exemption 5, complete a study of efforts to reduce backlogs of FOIA requests, and submit all of these documents to the appropriate committees of jurisdiction for FOIA oversight. §2(6)	- Would update committee notification requirements and submission timelines for annual FOIA reports to Congress. §2(g)(3) - Would require the Government Accountability Office (GAO) to conduct audits of individual agencies’ FOIA practices, catalog the use of Exemption 3, and review and prepare a report on FOIA requests by agencies pertaining to entities that received assistance under Title I of the Emergency Economic Stabilization Act of 2008 (12 U.S.C. §5211 et seq.). §2(6) - Would authorize applicable federal inspectors general to review agency compliance with FOIA, make recommendations to their respective agency heads, and recommend adverse action to the agency head if needed. §3
Reporting Requirements	- Would make OGIS a recipient (along with DOJ) of annual agency FOIA reports. Adds new requirements to these reports, including (1) information on the number of times records were withheld related to criminal investigations, and (2) the number of records made publicly available in a searchable format. §2(3)(A) - Would require all agencies to review existing regulations related to FOIA and issue new regulations that reflect	Would make OGIS a recipient (along with DOJ) of annual agency FOIA reports. Adds new requirements to these reports, including (1) information on the number of times records were withheld related to criminal investigations, (2) the number of times the agency engaged in dispute resolution with OGIS assistance, (3) the number of records made publicly available in a searchable format, and (4) the number of times the agency assessed a search or duplication fee, while failing to

S. 337, FOIA Improvement Act of 2015	H.R. 653, The FOIA Act
amendments made to the law. These regulations must include procedures for engaging in dispute resolution and working with OGIS. §3	comply with the time limits. §2(g)(1) • Would require all agencies to review existing regulations related to FOIA and issue new regulations that reflect amendments made to the law. These regulations must include procedures for engaging in dispute resolution and working with OGIS. §2(k) • Would require OIP, in consultation with the Director of OGIS, to submit a report to the appropriate committees of jurisdiction for FOIA oversight regarding categories of records that would be appropriate for proactive disclosure. §2(f)
IV. New Roles and Responsibilities	
Chief FOIA Officers Council^e	• Defines the role of the Chief FOIA Officer at each agency to include responsibility for serving as the liaison between the agency, OGIS, and OIP, as well as responsibilities for training agency staff on FOIA roles. The Chief FOIA Officer would also be responsible for completing an annual compliance determination that would review agency regulations, fee assessments, use of exemptions, dispute resolution services with OGIS, and the timeliness of FOIA responses. §2(6) • Would establish a Chief FOIA Officers Council, to be comprised of the Chief FOIA Officers of each agency, as well as senior officials from OMB, DOJ and OGIS. This Council would be co-chaired by the Director of OIP and the Director of OGIS. The roles of this Council would include developing recommendations, disseminating information about agency practices, identifying initiatives to increase transparency, and promoting performance measures to ensure compliance for the administration of FOIA. §2(6)
Office of Government Information Services	• Would establish a Director as the head of OGIS. §2(5)(A) • Would require OGIS to submit an annual report outlining their oversight of agency FOIA practices, legislative policy recommendations, advisory opinions, and usage of dispute resolution services. This report would be submitted to the appropriate committees of jurisdiction for FOIA oversight. Also would require OGIS to hold an open and public meeting on these reports once per year. §2(5)

S. 337, FOIA Improvement Act of 2015	H.R. 653, The FOIA Act
• Would provide OGIS with the authority to submit reports, as well as any other information deemed appropriate, directly to Congress, without review or approval from any other entity, including DOJ and OMB. §2(5)	• Would provide OGIS with the authority to submit reports, as well as any other information deemed appropriate, directly to Congress, without review or approval from any other entity, including DOJ and OMB. §2(c)(2) • Would require the Director of OMB to consult with the Director of OGIS before promulgating rules establishing a uniform schedule of FOIA fees for all agencies. §2(c)(1)

Source: CRS analysis of S. 337 and H.R. 653.

Notes: Both S. 337 and H.R. 653 include provisions stating that no additional funds are authorized to carry out the requirements of the legislation.

- a. Guidance from the Department of Justice related to Frequently Requested Records states that the existing statutory standard in 5 U.S.C. §552(a)(2)(D) is “sometimes referred to as establishing a ‘rule’ of three requests- the first one, plus at least two more.” Department of Justice, Office of Information Policy, *FOIA Counselor Q&A: “Frequently Requested Records”*, September 27, 2002, at <http://www.justice.gov/oip/blog/foia-post-2003-foia-counselor-qa-frequently-requested-records>.
- b. According to the website for the Office of Information Policy, the office “is responsible for encouraging agency compliance with the Freedom of Information Act (FOIA) and for ensuring that the President’s FOIA Memorandum and the Attorney General’s FOIA Guidelines are fully implemented across the government.” More information on OIP can be found at <http://www.justice.gov/oip>.
- c. The decision to assess fees under FOIA can include factors such as the intent of the request (commercial or non-commercial), the possible applicability of a fee waiver, or the nature of the requestor (educational scientific institutions or representative of the news media). Additional information about fee assessments can be found in the Department of Justice, *Guide to the Freedom of Information Act: Fees and Fee Waivers*, at <http://www.justice.gov/sites/default/files/oip/legacy/2014/07/23/fees-feewaivers.pdf>.
- d. 5 U.S.C. §552 (a)(6)(B)(iii) states that “‘Unusual circumstances’ means, but only to the extent reasonably necessary to the proper processing of the particular requests- (I) the need to search for and collect the requested records from field facilities or other establishments that are separate from the office processing the request; (II) the need to search for, collect, and appropriately examine a voluminous amount of separate and distinct records which are demanded in a single request; or (III) the need for consultation, which shall be conducted with all practicable speed, with another agency having a substantial interest in the determination of the request or among two or more components of the agency having substantial subject-matter interest therein.”
- e. Both S. 337 and H.R. 653 include administrative provisions related to the operations of the Chief FOIA Officers Council, including administrative functions and meeting and notice requirements, that are not included in this summary.

While the legislation proposed in both the House and Senate seeks to address many of the same aspects of FOIA—often through very similar language—there are substantive differences between the bills. For example, while H.R. 653 would authorize inspectors general to review agencies’ FOIA compliance and potentially recommend adverse action, the Senate bill does not. Furthermore, the House legislation would limit the scope of Exemption 5, preventing the withholding of “records that embody the working law, effective policy, or the final decision of the agency.” Additionally, the language in S. 337 would place more requirements on agencies that would seek to impose search or duplication fees on a requestor after missing a statutory deadline—including a 10-day extension and a notice requirement. In the House legislation, agencies could apply these fees after a deadline is missed as long as the requestor is notified of an appropriate justification.

In other respects, the two bills seek to address certain FOIA-related issues in very similar ways. Both adopt the same structure to establish Chief FOIA Officers Council, including the assignment of the Director of OIP and the Director of OGIS as co-chairs, for example. Moreover, both include provisions throughout the legislation that would require records, reports, supporting data, and guidance be published in an electronic format that is publicly accessible. Also, both bills would require agencies to provide public notification of dispute resolution services to requestors who have had their requests denied. Finally, both S. 337 and H.R. 653 seek to codify the “presumption of openness” established by the Department of Justice in March of 2009.

Analysis of Selected Policy Implications

Presidential Discretion

The amendments to FOIA outlined above present a number of distinct issues or questions for FOIA moving forward. Both S. 337 and H.R. 653 seek to make a number of changes to the role of the Administration in FOIA implementation. Both bills, for example, would codify the current standard for information disclosure set in place by the Obama Administration—or the “presumption of openness.” While this codification should not affect current agency practices, it may limit the discretion available to future Presidents to make changes in the overall level of openness provided under FOIA. For instance, as noted earlier in this report, the previous DOJ standard during the Bush Administration did not include language addressing partial disclosures or recommending discretionary release of information where an exemption could technically be applied.⁷

Additionally, both the House and Senate legislation would provide the OGIS the authority to report directly to Congress and provide legislative recommendations without review, comment, or approval from other executive branch agencies—including the National Archives and Records Administration, the Department of Justice, or the Office of Management and Budget. This direct reporting mechanism, which is included in statute for certain independent agencies, may arguably limit presidential authority over agency recommendations.⁸

The Use of Exemption 5 and the Privacy Act

The proposed amendments to Exemption 5 would appear to affect active federal records more than inactive federal records.⁹ Both of the bills under consideration in the 114th Congress would prohibit an agency from applying Exemption 5 of FOIA to any record that is more than 25 years

⁷ The text of this memorandum can be found at <http://www.justice.gov/archive/oip/011012.htm>.

⁸ A list of bypass provisions in place in the executive branch can be found in documents from the Office of Management and Budget collected by Public Citizen. These documents can be found at <http://www.citizen.org/litigation/briefs/FOIAGovtSec/articles.cfm?ID=19293>. For a discussion of the effect of these provisions on agency independence, see CRS Report R43562, *Administrative Law Primer: Statutory Definitions of “Agency” and Characteristics of Agency Independence*, by Jared P. Cole and Daniel T. Shedd. As stated in this report, an “exemption from OMB legislative clearance requirements arguably may provide an agency with greater independence from the President by allowing the agency to express its own view on a certain policy or program without the President’s input.” p. 5.

⁹ Active federal records are those that are necessary to conduct agency business. See National Archives and Records Administration, “Transferring Records to a Federal Records Center,” at <http://www.archives.gov/frc/records-transfer.html>.

old. Pursuant to NARA's current regulations, after 30 years inactive agency records are to be disposed of or, if they have permanent value, transferred to NARA for permanent preservation. Agency records that are provided to NARA for permanent preservation can no longer be withheld from the public pursuant to FOIA's exemptions. Under current law, therefore, all inactive agency records are to be made available without exemption to the public after 30 years—five years later than either S. 337 or H.R. 653 would require. S. 337 and H.R. 653, however, appear to also apply to active federal records. The volume and substance of active federal records that are currently withheld pursuant to Exemption 5 of FOIA is unclear.

The House bill goes further than the Senate bill, limiting an agency's ability to apply Exemption 5 in cases where records "employ the working law, effective policy, or the final decision of the agency."¹⁰ In these cases, it appears that Exemption 5 could likely no longer be applied to records in cases where a final agency interpretation of law or determination of policy is made. Such action could make many federal records available to the public years prior to when they otherwise might have been released—making executive branch agency decision making and deliberations more transparent and publicly accessible. The provision, however, could also make federal employees involved in these deliberations wary of speaking candidly about concerns or alternative options. If a federal employee understands that deliberative records could be released as soon as a policy determination is made, he or she may be fearful of expressing unpopular opinions or potential outcomes that could prompt public attention or anger.

Creation of an Interagency Management Council

Both pieces of legislation would establish a Chief FOIA Officers Council, comprised entirely of federal employees and headed by the Directors of DOJ's Office of Information Policy and OGIS. This council would be similar to others established by law. For example, the Office of Executive Councils at the General Services Administration lists five interagency management councils:

- the Chief Acquisition Officers Council (CAOC),
- the Chief Financial Officers Council (CFOC),
- the Chief Information Officers Council (CIOOC),
- the Performance Improvement Council (PIC), and
- the President's Management Council (PMC) and President's Management Advisory Board (PMAB).¹¹

All of these councils, as well as the potential Chief FOIA Officers Council that would be established by these bills, are restricted solely to federal employees. Currently, however, a FOIA Advisory Committee comprised of both federal and private members is focused on many of the issues that would be under the purview of the Chief FOIA Officers Council established by these bills.¹² These councils could be complementary, or could at times appear duplicative. The

¹⁰ H.R. 653 §2(b)(1)(B).

¹¹ A complete description of each of these councils can be found at the website for the Office of Executive Councils within GSA, at <http://www.gsa.gov/portal/category/101095>.

¹² The FOIA Advisory Committee "is established in accordance with the NAP and the directive in the Freedom of Information Act, 5 U.S.C. §552(h)(1)(C), that the Office of Government Information Services (OGIS) "recommend policy changes ... to improve" the Freedom of Information Act (FOIA) administration." More information on this committee can be found at <https://ogis.archives.gov/foia-advisory-committee.htm>.

Director of OIP and the Director of OGIS would sit on both the committee and the council. These two officials, therefore, could play a role in ensuring a unique role for each entity.

Assessment of Search and Duplication Fees

Fourth, both S. 337 and H.R. 653 could create barriers to agencies seeking to charge search and duplication fees beyond a certain statutory timeline. Agency administration of fees has been a subject of considerable debate in recent years, receiving attention from the FOIA Advisory Committee, which established a Fees Subcommittee to address the issue. During a meeting on December 3, 2014, this subcommittee reviewed fees assessed by other countries for comparable requests and considered the possibility of eliminating FOIA fees for all but commercial requestors. In addition, this group discussed the impact of such a change on the small number of requestors that account for a large percentage of agency requests, referred to as “vexatious” requestors. While both S. 337 and H.R. 653 address fee assessments for requests in which an agency has missed a deadline, they do not exempt entire classes of requestors from fees or provide any mechanism for managing “vexatious” requestors.¹³

Action in the 113th Congress

The legislation currently being considered by the 114th Congress is based in substantial part on bills that were advanced in the 113th Congress. In the Senate, the FOIA Improvement Act of 2014 (S. 2520) was introduced by Senator Leahy on June 24, 2014. This legislation was reported by the Judiciary Committee on November 20, 2014, and passed the Senate by Unanimous Consent on December 8, 2014. This legislation was nearly identical to the FOIA Improvement Act of 2015, introduced in the 114th Congress.

In the House, the FOIA Act (H.R. 1211) was introduced by Representative Darrell Issa on March 15, 2013. Also in March of 2013, the House Oversight and Government Reform Committee held a hearing entitled, “Addressing Transparency in the Federal Bureaucracy: Moving Toward a More Open Government.” During this hearing, Members expressed their support for the “presumption of openness” established by the President and asked questions of those who provided testimony on many of the issues that were addressed by the FOIA Act, including a single portal for FOIA requests government-wide and a more independent role for OGIS in FOIA implementation.¹⁴ The FOIA Act was reported by the House Oversight and Government Reform Committee on July 16, 2013, and passed the full House unanimously on February 25, 2014, by a vote of 410-0.

This legislation differed from H.R. 653 in two substantive ways. First, H.R. 1211 did not include any provisions altering the use of Exemption 5. Second, Section 3 of H.R. 1211 would have required OMB to establish a three-year pilot program to review the centralized portal for requests.

¹³ The minutes of the Fees Subcommittee for the meeting held on December 3, 2014, suggest that many other nations define “vexatious” or “extreme” requestors in different ways and have differing approaches for identifying and managing these requestors under their respective access laws. Overall, these types of requestors are those that request records at an unreasonable level. Additional information related to the activities of the Fees Subcommittee can be found at <https://ogis.archives.gov/Assets/foia-fees-committee-status-2015-01-27-revised.pdf>.

¹⁴ U.S. Congress, House Committee on Oversight and Government Reform, *Addressing Transparency in the Federal Bureaucracy: Moving Toward a More Open Government*, 113th Cong., 1st sess., March 13, 2013, HRG-2013-CGR-0007 (Washington: GPO, 2013).

This review would have required OMB to select agencies with differing levels of FOIA request traffic, assess the benefits of the centralized portal, and provide a report to Congress on the success of the pilot. The legislation currently being considered by the 114th Congress includes the creation of a consolidated portal, but no pilot program for review. In regard to both the use of Exemption 5 and the consolidated portal, H.R. 653 is closer to its Senate counterpart than H.R. 1211 was during the 113th Congress.

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U.S. Department of
JUSTICE

2025 Annual FOIA Report Summary



July 1, 2026

Office of Information Policy

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Introduction

The Freedom of Information Act (FOIA) requires agencies, each year, to submit to the Attorney General a report covering the prior fiscal year that includes details regarding the agency's administration of the FOIA. [5 U.S.C. § 552\(e\)\(1\) \(2024\)](#). In Fiscal Year 2025, 117 agencies were subject to the FOIA, and one of the ways agencies are held accountable for their administration of the FOIA is through the Annual FOIA Reports.¹ This Summary provides an overview of government-wide FOIA data as reported in agencies' Fiscal Year (FY) 2025 Annual FOIA Reports.

Based on the FY 2025 data, we observed a continuing trend in the administration of the FOIA with record high numbers of requests received and processed. In FY 2025, the government as a whole received approximately 14% more requests (+205,765) and processed approximately 10% more requests (+135,790) than in FY 2024.

Agencies also showed improvement in several other areas. For example, 91% of all requests for expedited processing were adjudicated within the statutory deadline of ten calendar days. The government also continued to make a significant amount of information available proactively, with FOIA Offices posting 115% more (a)(2) proactive disclosures compared to FY 2024.

All data used to compile this Summary is available to view and download in .csv format on [FOIA.gov](#). Complete sets of the FOIA.gov data, both government-wide and by agency, are available on the [Data Set Downloads](#) page.

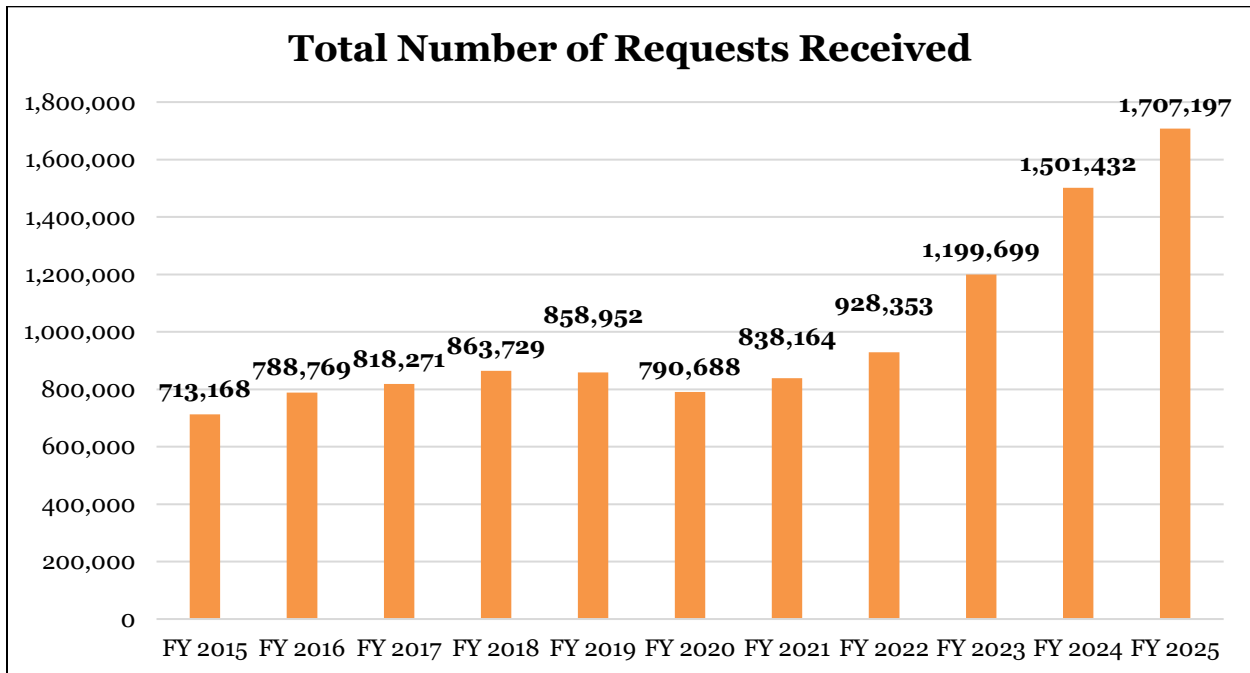
¹ For additional information about the information covered in the Annual FOIA Report, see the [Department of Justice Annual FOIA Report Handbook](#).

FOIA Requests

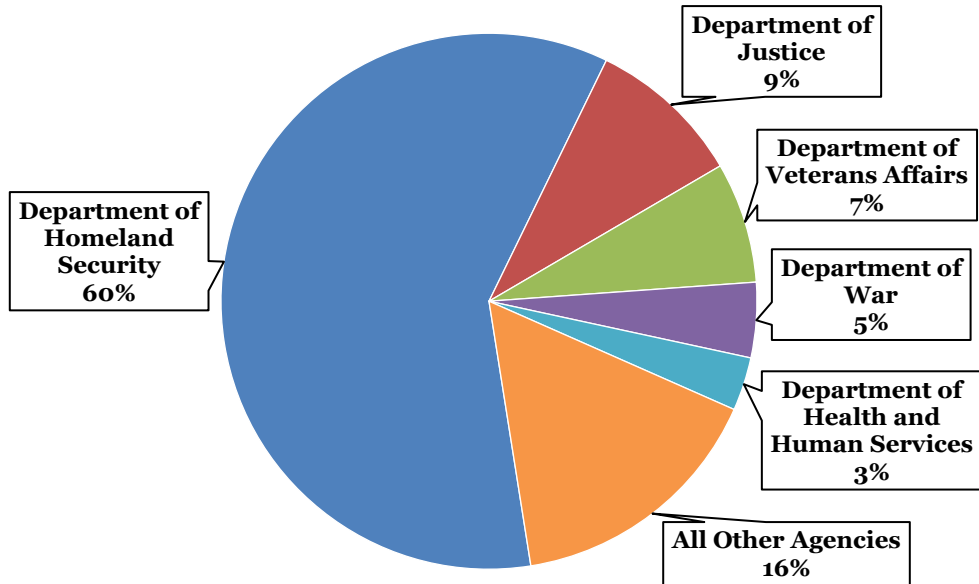
Number of Requests Received

In FY 2025, 117 federal agencies were subject to the FOIA. The federal government overall received a record high of 1,707,197 FOIA requests. This is a 13.7% increase from the number of requests received in FY 2024 (+205,765). As illustrated in the pie chart below, five agencies collectively received the vast majority (84%) of all FOIA requests government-wide: the Department of Homeland Security (DHS), Department of Justice (DOJ), Department of Veterans Affairs (VA), Department of War (DOW), and Department of Health and Human Services (HHS).

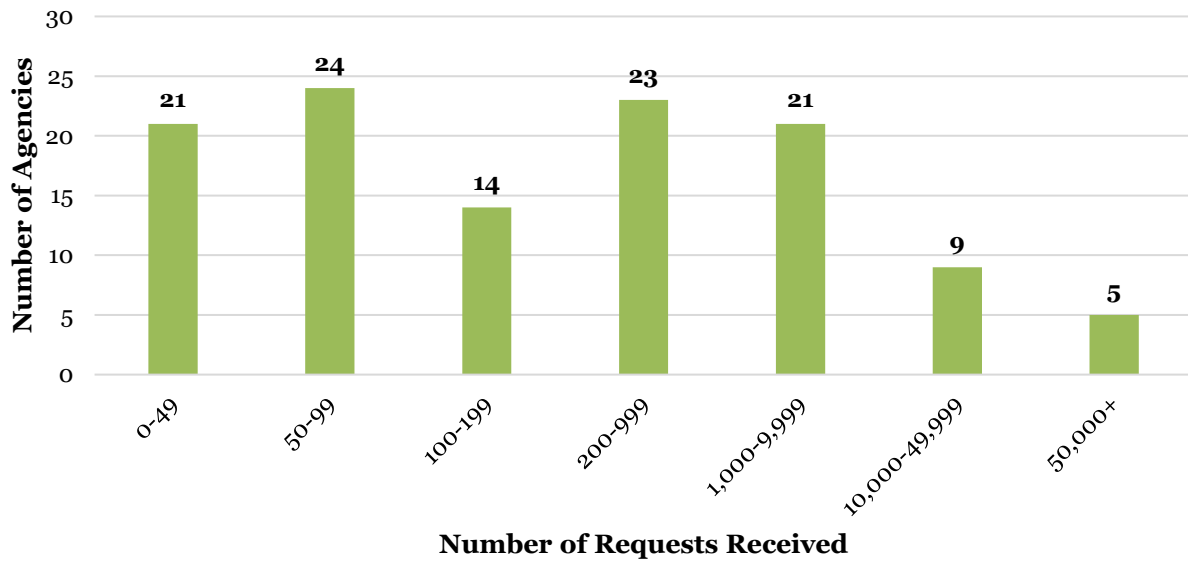
About 56% of agencies received more requests in FY 2025 than in FY 2024. Twenty-one agencies received at least 30% more requests than they received in FY 2024. Roughly half of the Department-level agencies received at least 15% more requests than in FY 2024. VA (+18,710), DOJ (+27,216 requests), and DHS (+107,961) saw the largest numerical increases in requests received in comparison to FY 2024.

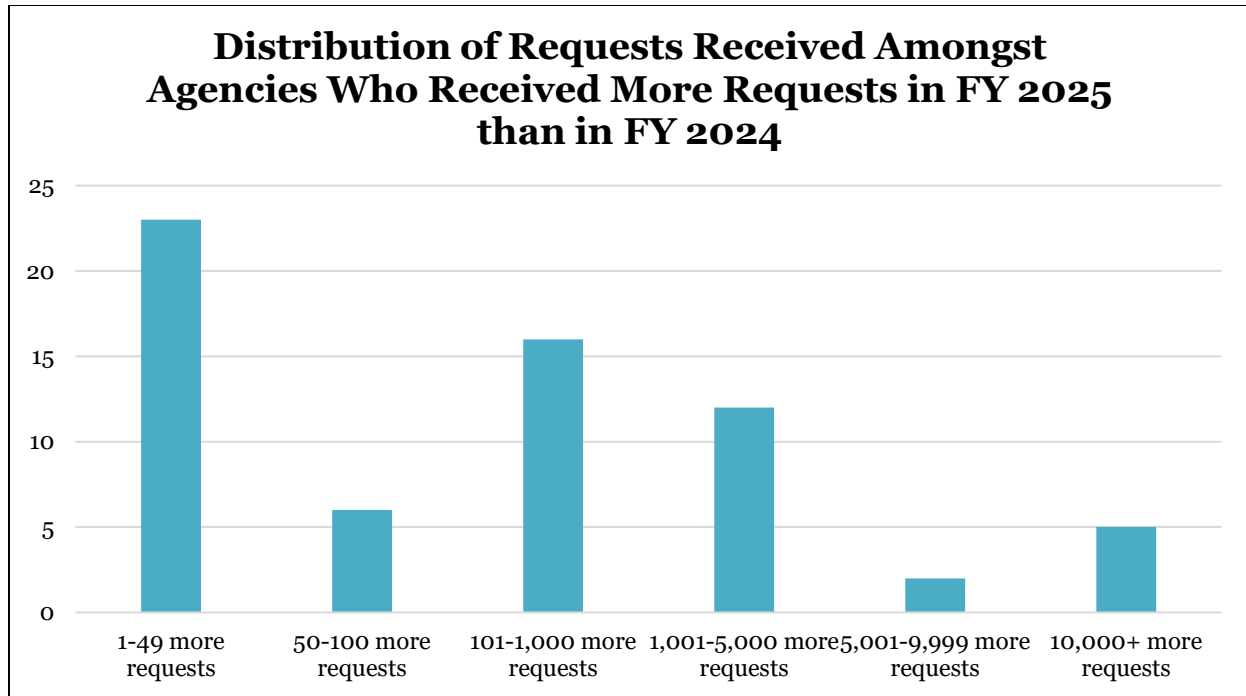


Top 5 Agencies in Requests Received



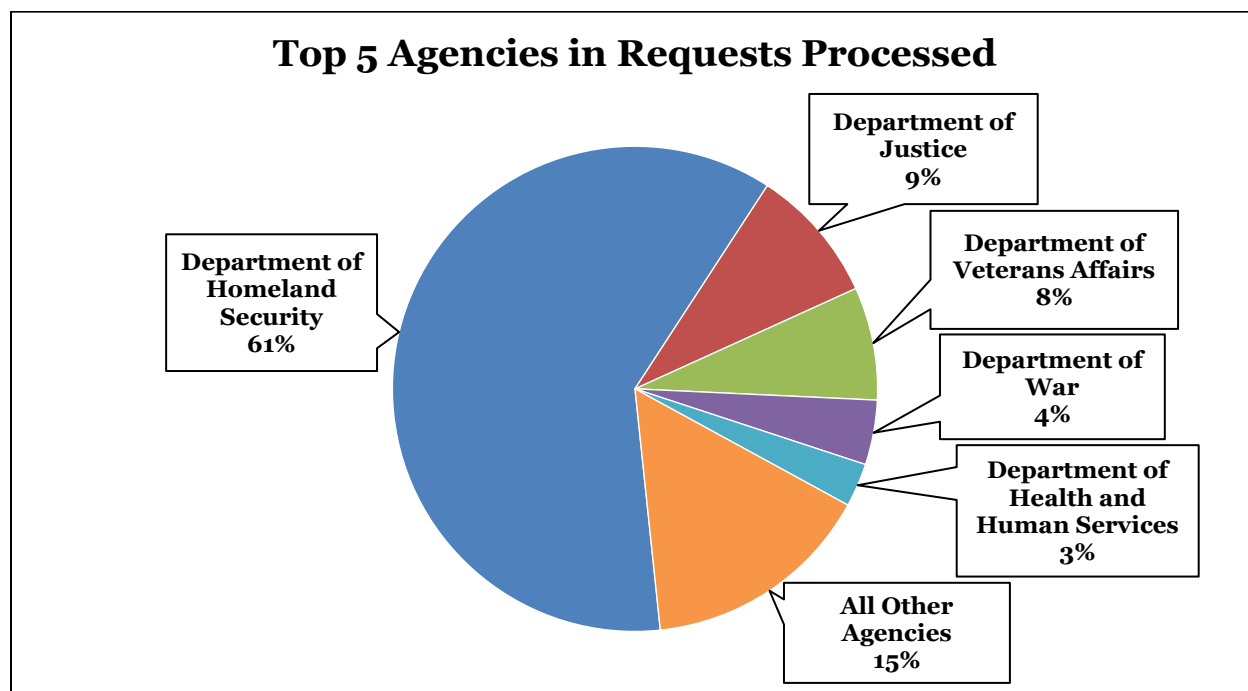
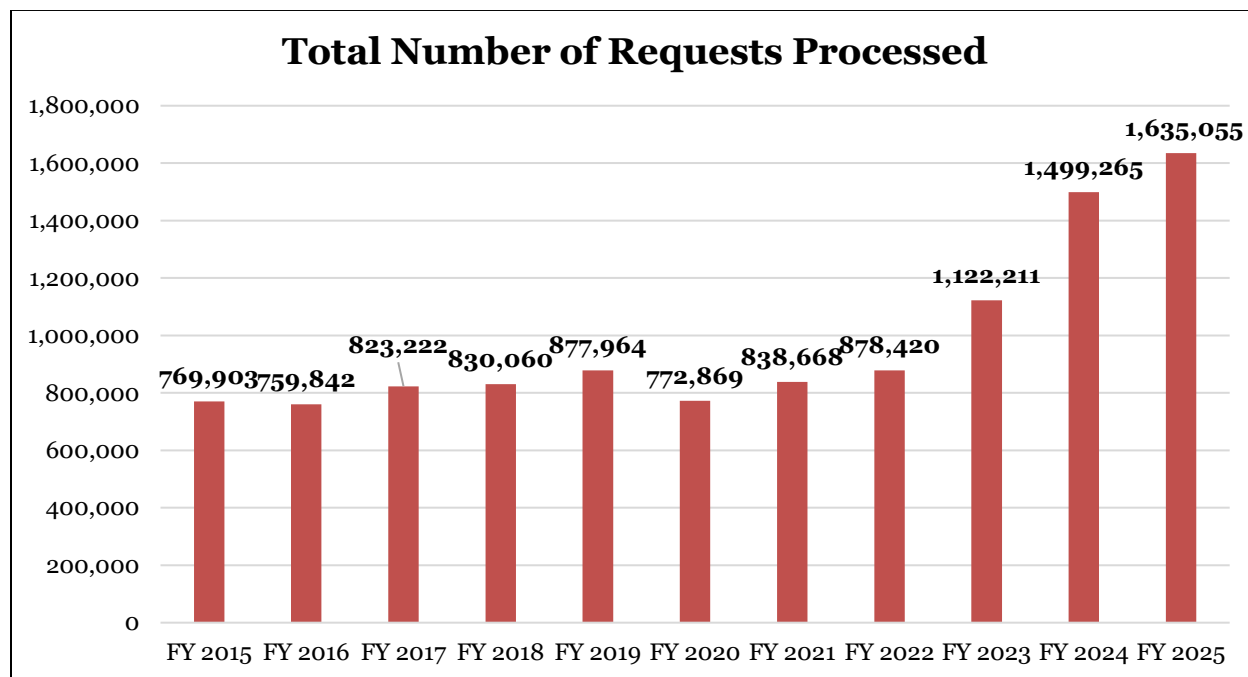
Distribution of Requests Received

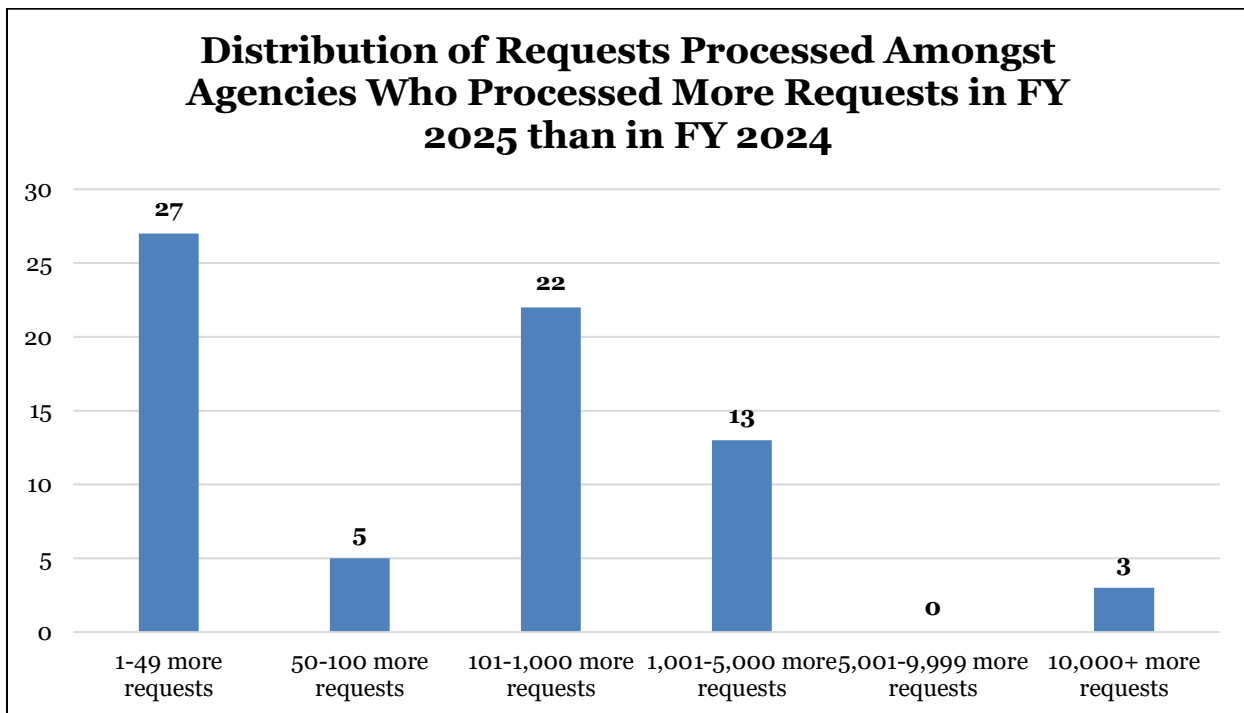
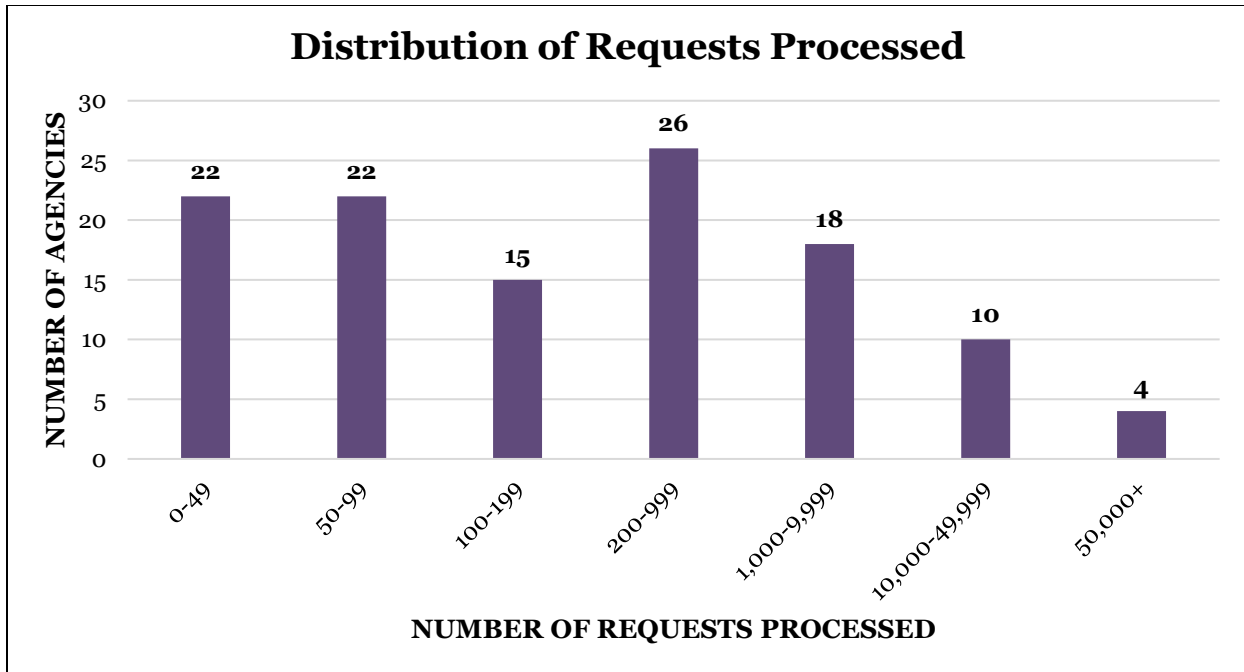




Number of Requests Processed

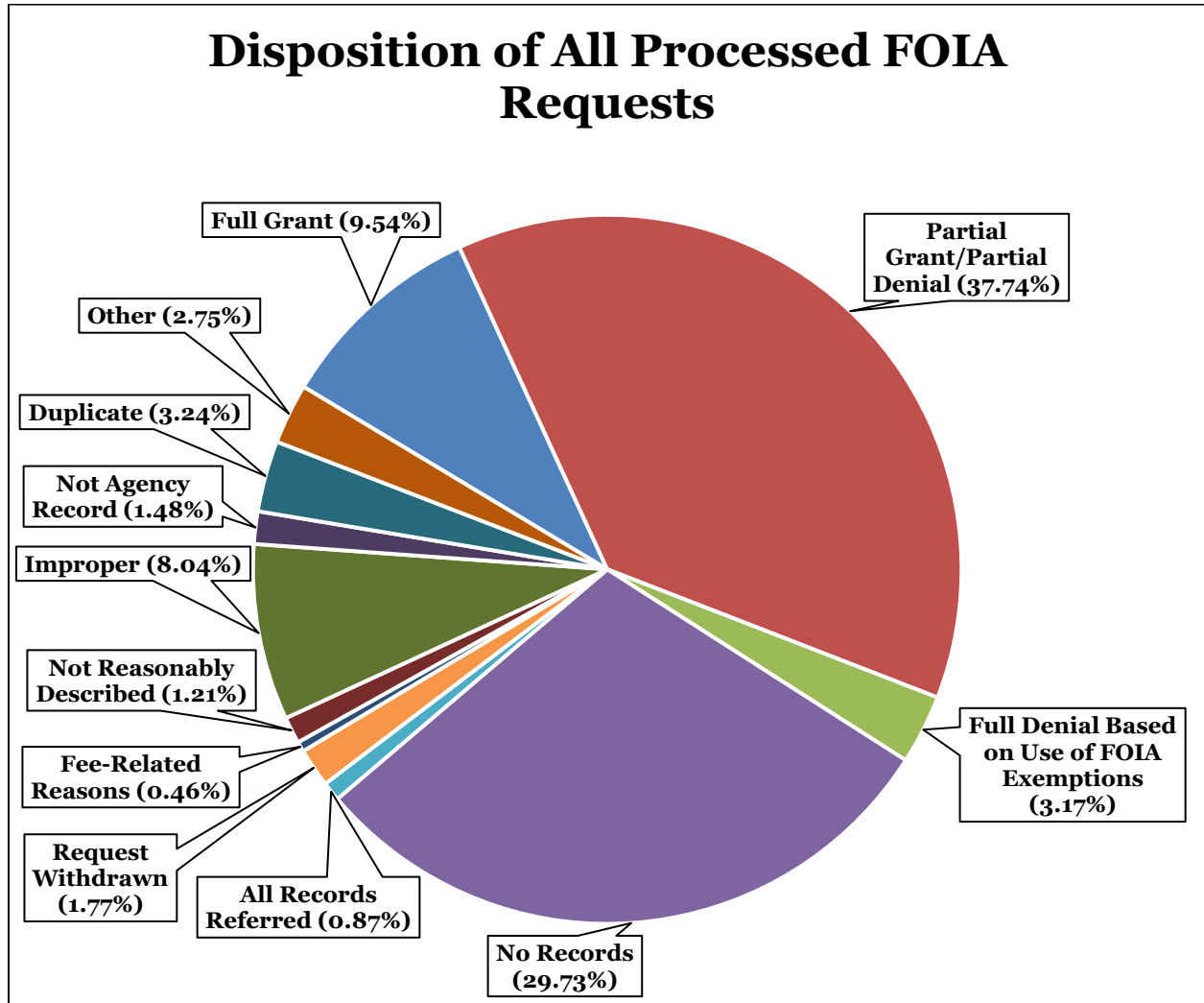
Collectively, the government processed 1,635,055 requests in FY 2025, which is an increase of nearly 9% from FY 2024. The same five agencies that received the most FOIA requests also processed the vast majority (85%) of FOIA requests government-wide. Sixty percent of agencies processed more requests in FY 2025 than in FY 2024 (70 agencies). Two agencies processed over 10,000 more requests than they did in the previous fiscal year. DOW (+12,779 requests) and DHS (+100,053) saw the largest increase in requests processed in comparison to FY 2024.





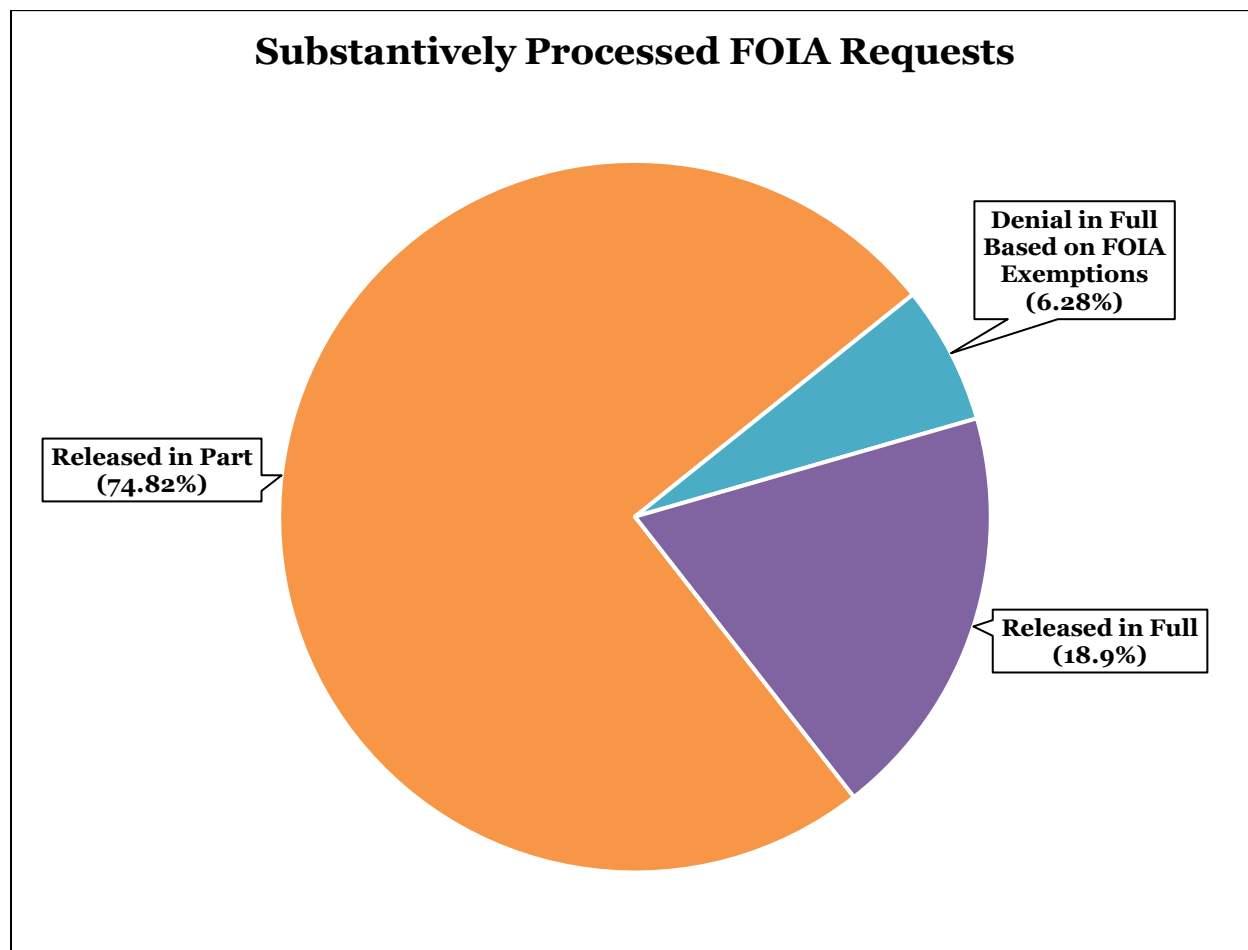
Disposition of Requests

Of the 1,635,055 requests processed by agencies, 50.44% (824,767 requests) were closed after being substantively processed, with decisions made to release or withhold information based upon the FOIA's exemptions. The remaining requests processed by agencies during FY 2025, 49.56% (810,290), were closed for procedural or administrative reasons.



Requests Processed for Exemption Applicability

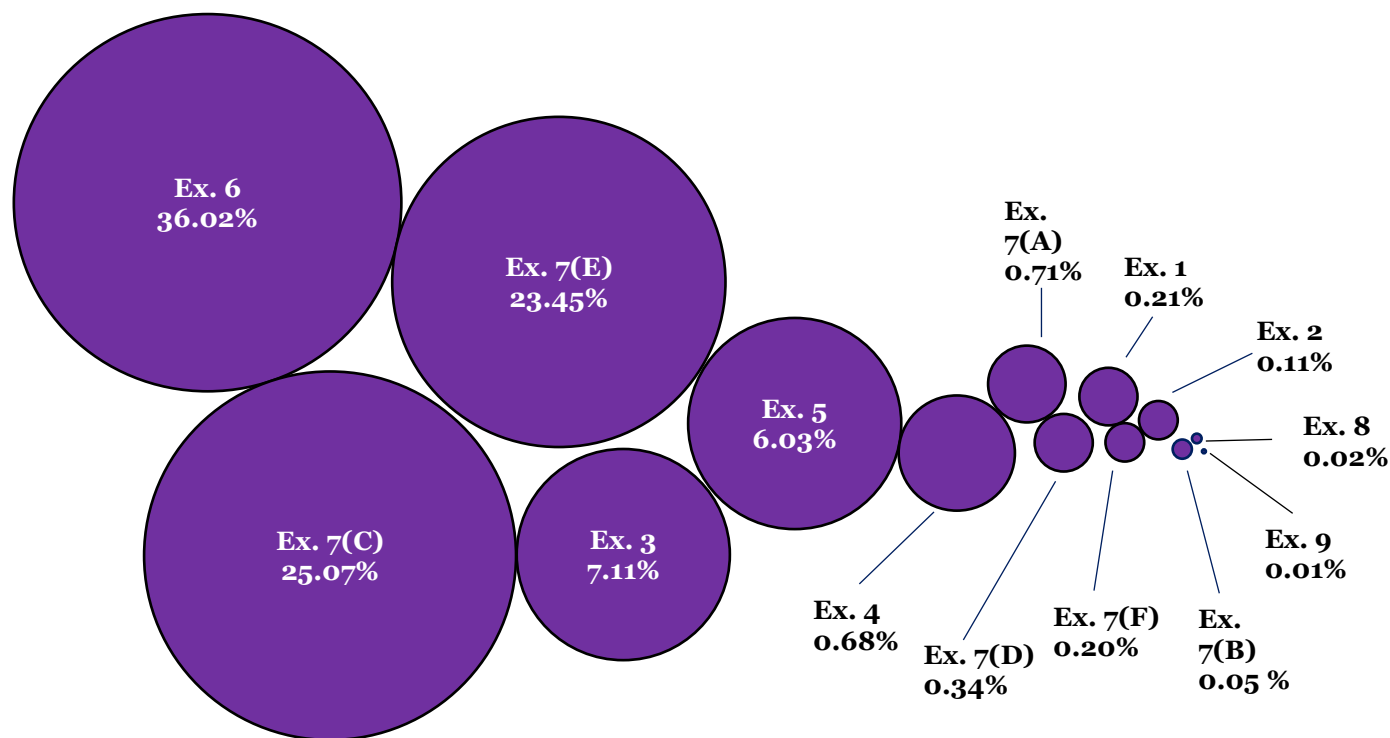
As noted above, of the 1,635,055 requests processed by agencies, 50.44% (824,767 requests) were closed after being substantively processed, with decisions made to release or withhold information based upon the FOIA's exemptions. Of the 824,767 requests that were processed for exemption applicability in FY 2025, 93.72% (772,999 requests) resulted in either a full or partial release of records. Of those requests, as illustrated below, 18.9% were full disclosures, 74.82% were partial disclosures, and 6.28% were full denials based on exemptions.



Use of Exemptions

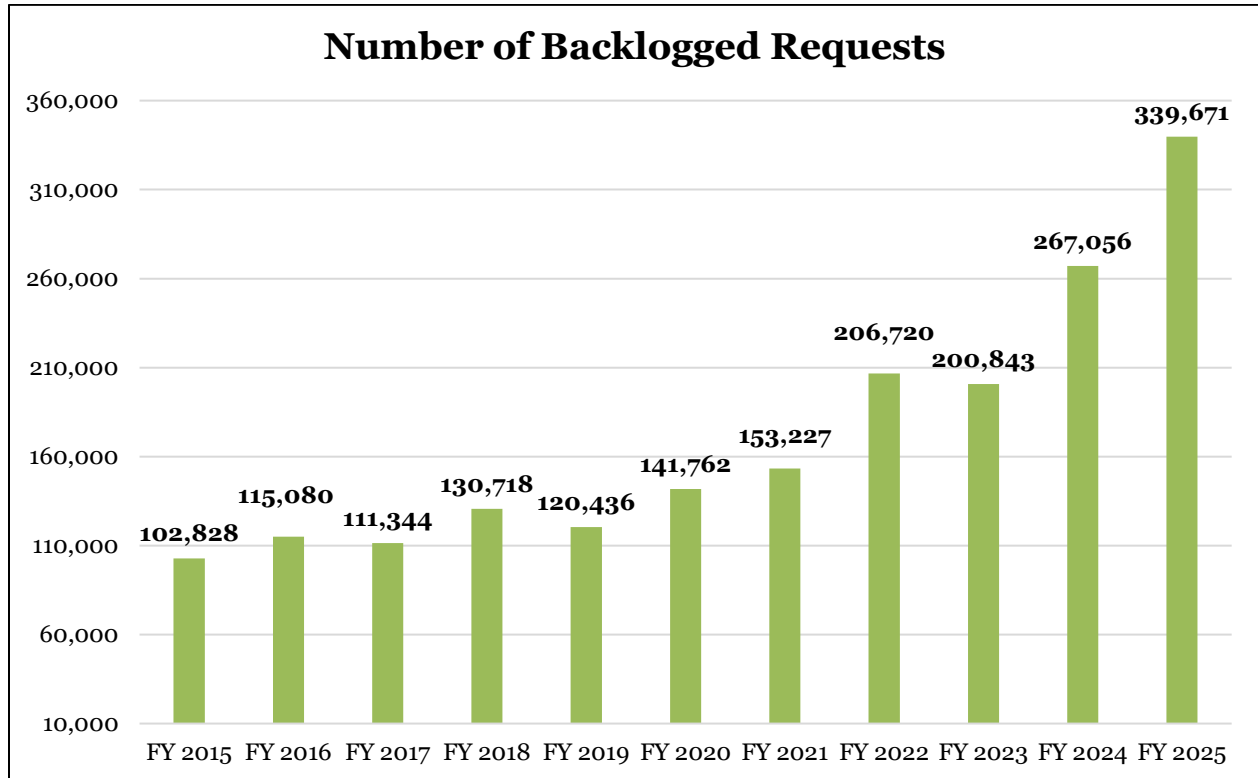
The FOIA includes nine exemptions from disclosure that protect important interests such as national security, personal privacy, and certain law enforcement interests. As has been the case for many years, the FOIA's privacy exemptions – Exemption 6 (36.02%), which protects information that, if disclosed, would invade another individual's personal privacy, and Exemption 7(C) (25.07%), which protects information compiled for law enforcement purposes that could reasonably be expected to constitute an unwarranted invasion of personal privacy – were the most cited FOIA exemptions in FY 2025. A little more than 60% of the exemptions cited by agencies were those two exemptions (61.09%). Exemption 7(E) (23.45%), which protects law enforcement techniques, procedures, and guidelines, was the third-most cited exemption.

Total Exemption Usage



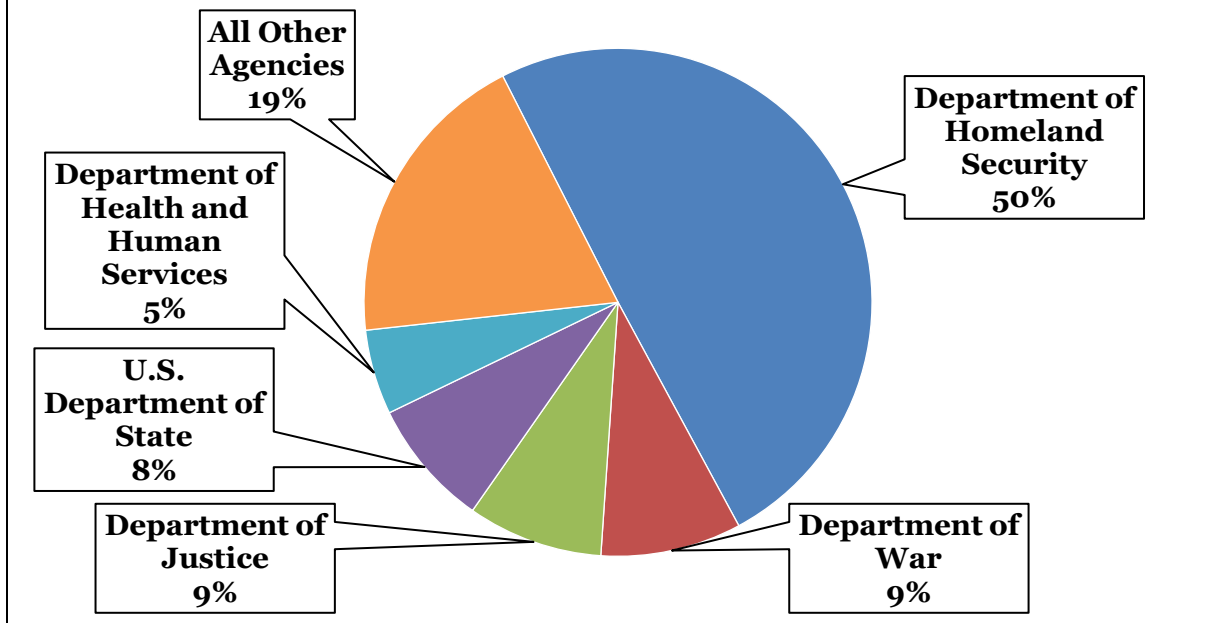
Backlogged Requests

The total number of backlogged requests across the government at the end of FY 2025 was 339,671, which is a 27% increase from the number of backlogged requests reported at the end of FY 2024.²

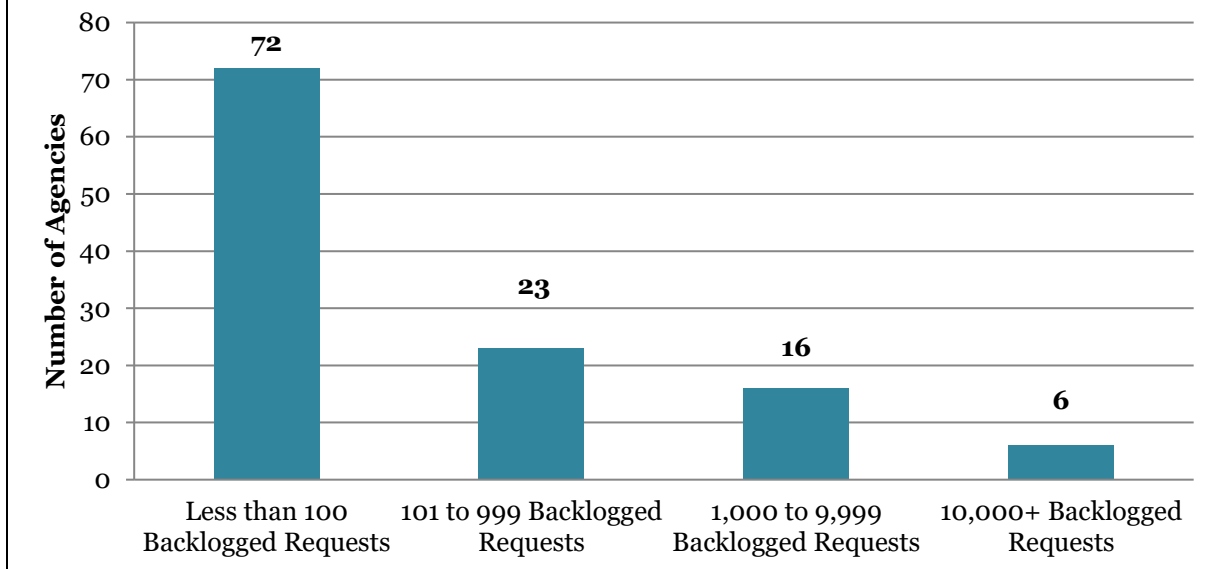


² A request is reported as “backlogged” when it has been pending at an agency longer than the statutory time period of twenty working-days or, if unusual circumstances are present, up to thirty working-days.

Top 5 Agency Backlogs



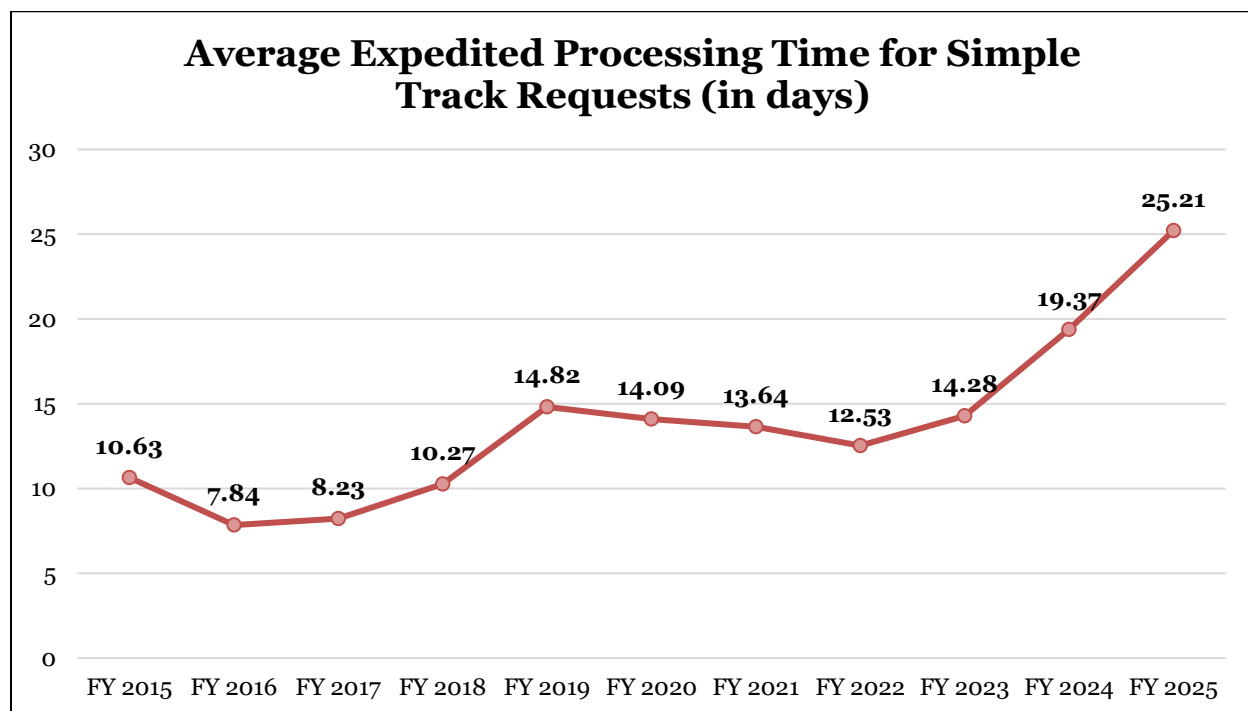
Distribution of Backlogged Requests



Requests for Expedited Processing

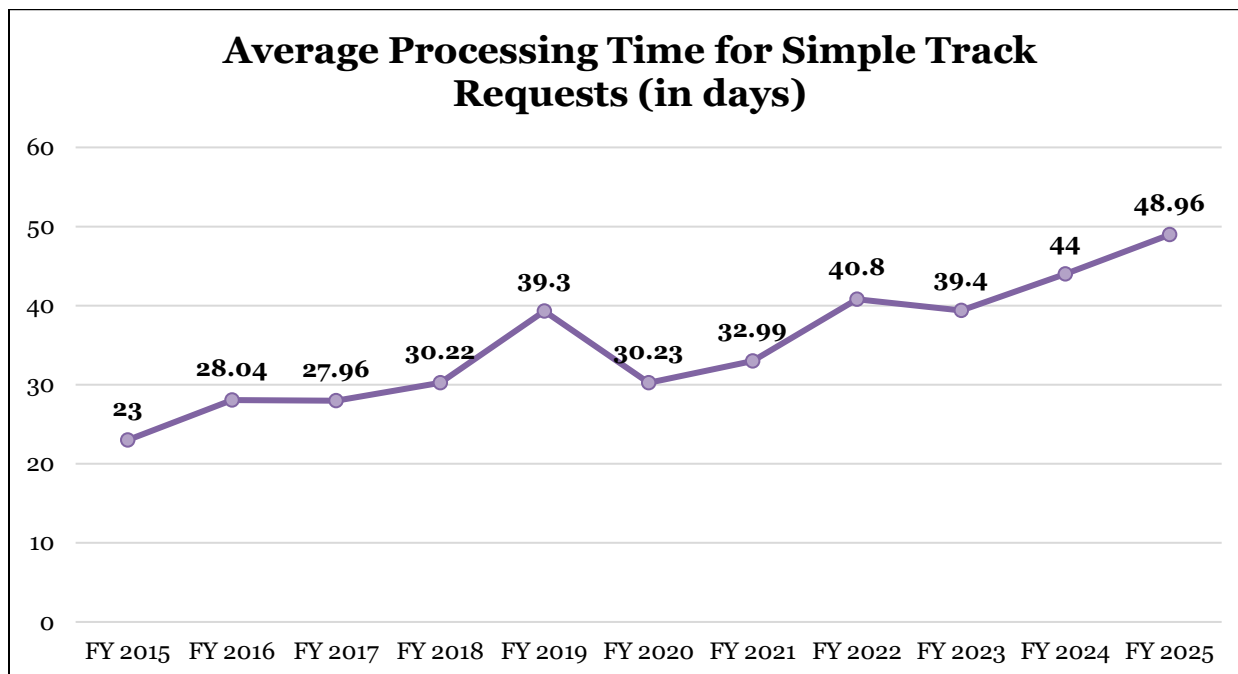
In FY 2025, the government overall determined whether to grant or deny 77,737 requests for expedited processing. This is an 11% increase (+7,537) from the total number of expedited processing determinations made during FY 2024 (70,200).

The average number of days to adjudicate requests for expedited processing increased across the government. Agencies averaged 25.21 days to adjudicate requests for expedited processing, a more than five-day increase from FY 2024. In total, agencies adjudicated 91% (71,103) of all requests for expedited processing during FY 2025 within ten calendar days.



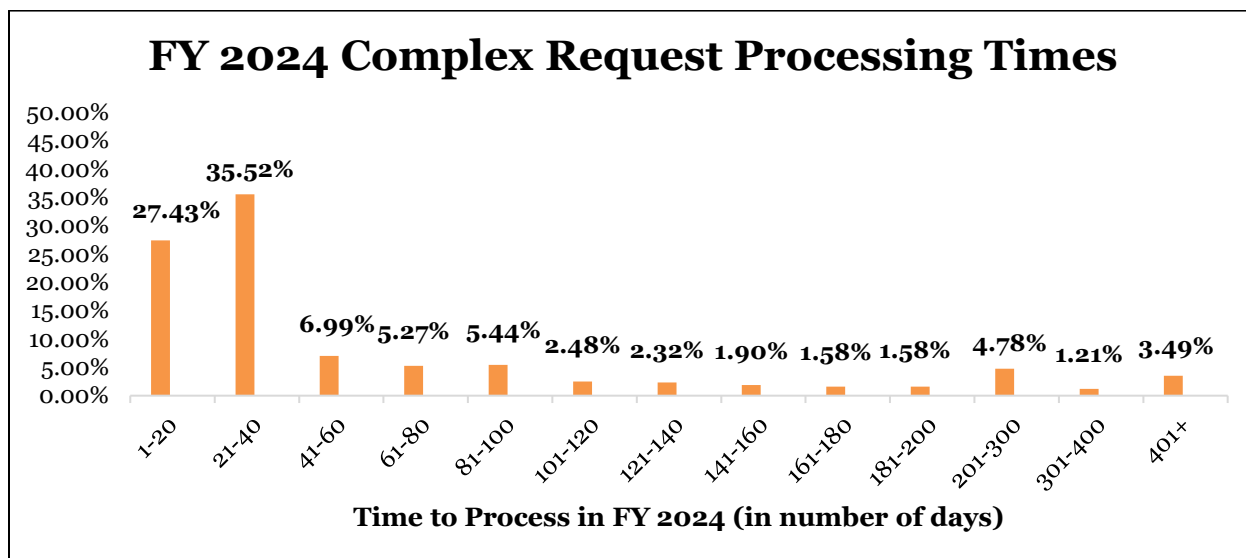
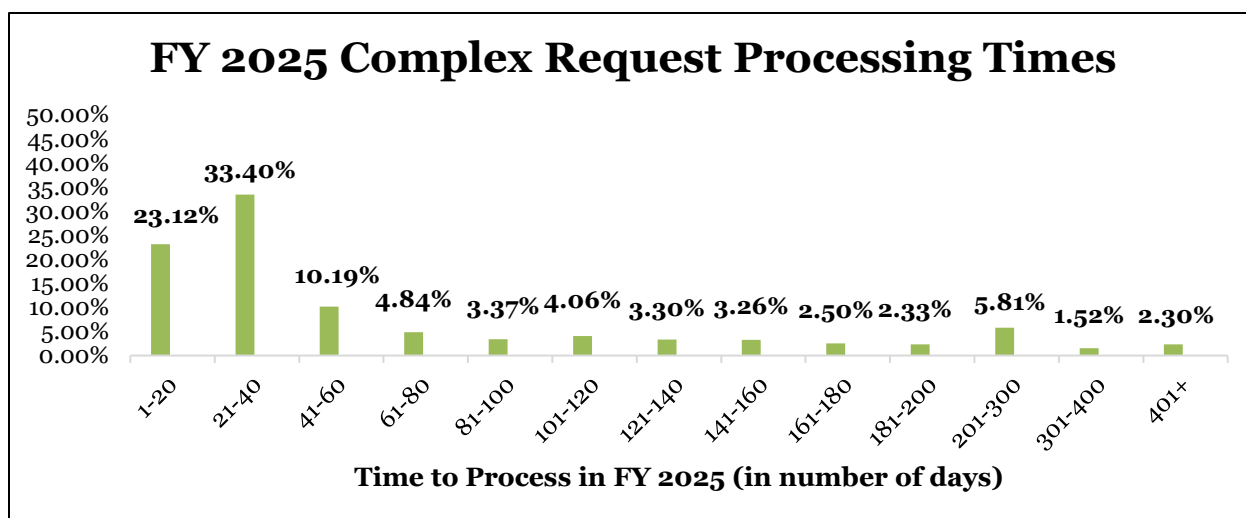
Average Processing Time for Simple Requests

The average processing time for simple track requests for agencies that reported data in this field in their FY 2025 Annual FOIA Report was 48.96 days. This is an increase of almost 5 days from the FY 2024 average of 44 days. Fifty-eight agencies, including four departments – Homeland Security, Housing and Urban Development, Justice, and State – reported processing their simple track requests within an average of twenty days or less. Seventeen agencies, including Agriculture, Commerce, Labor, Treasury, and Veterans Affairs, reported processing these requests between an average of 20.01 days and 30 days.



Time to Process Complex Requests

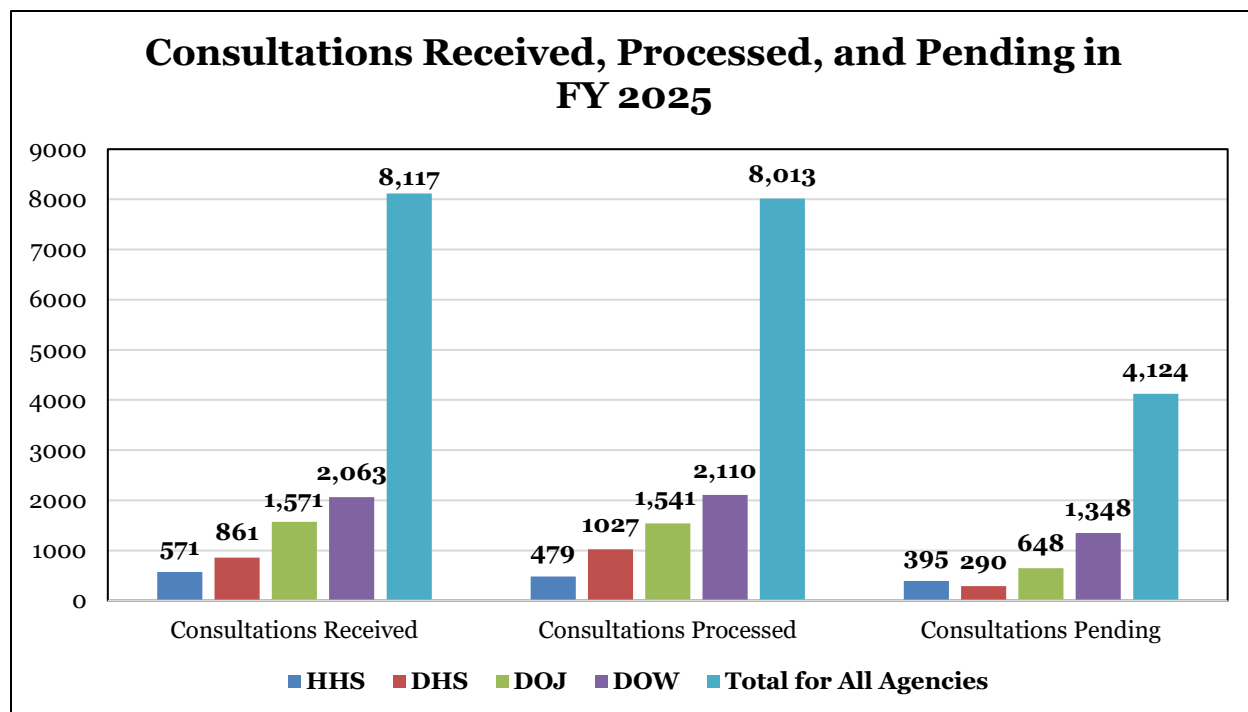
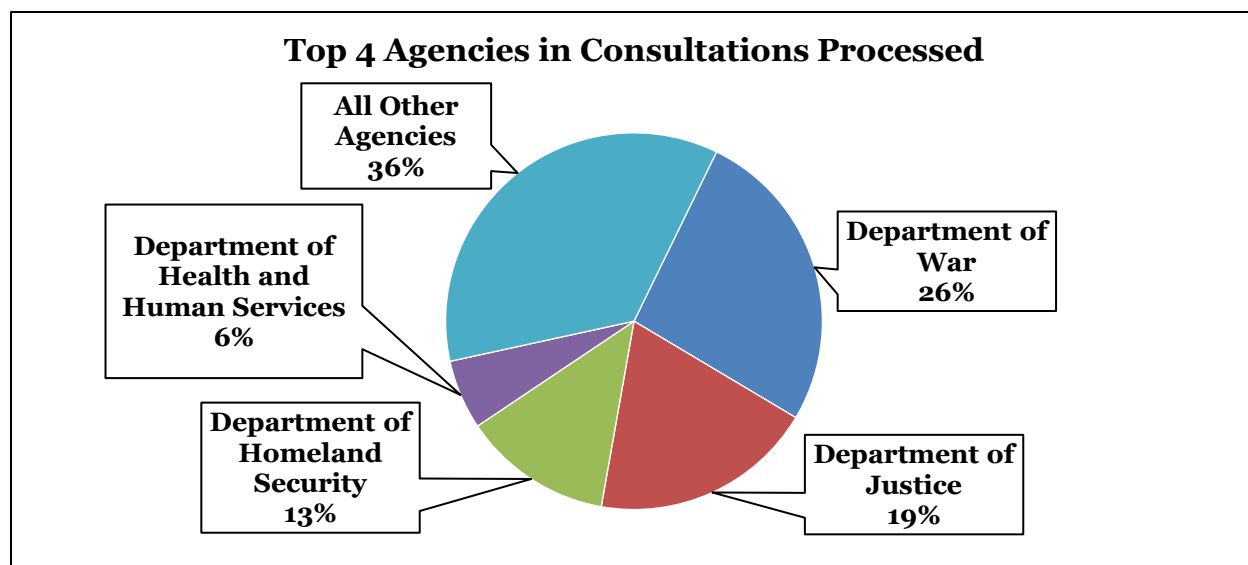
Complex requests typically seek a high volume of material or require additional steps to process, such as the need to search for records in multiple locations or conduct multiple consultations. Complex requests often take longer to process than more targeted “simple” requests. The percentage of complex requests processed in fewer than 20 days decreased in FY 2025, but the majority of complex requests were processed in less than 40 days. In FY 2025, there was an 14.85% increase in processed complex requests (+108,637). A total of 74.92% of complex requests were processed in 100 days or less.



Consultations on FOIA Requests

Consultations Received, Processed, and Pending

During FY 2025, eighty-two agencies received documents on consultation from another agency. Agencies in receipt of such consultations are asked to provide their views on the disclosability of records that are being processed by another agency. A total of 8,117 consultations were received by agencies in FY 2025, with DOW, DOJ, DHS, and HHS receiving and processing the majority of consultations (62.41% received and 64.36% processed). The number of consultations pending overall slightly increased from 4,100 at the end of FY 2024 to 4,124 at the end of FY 2025.

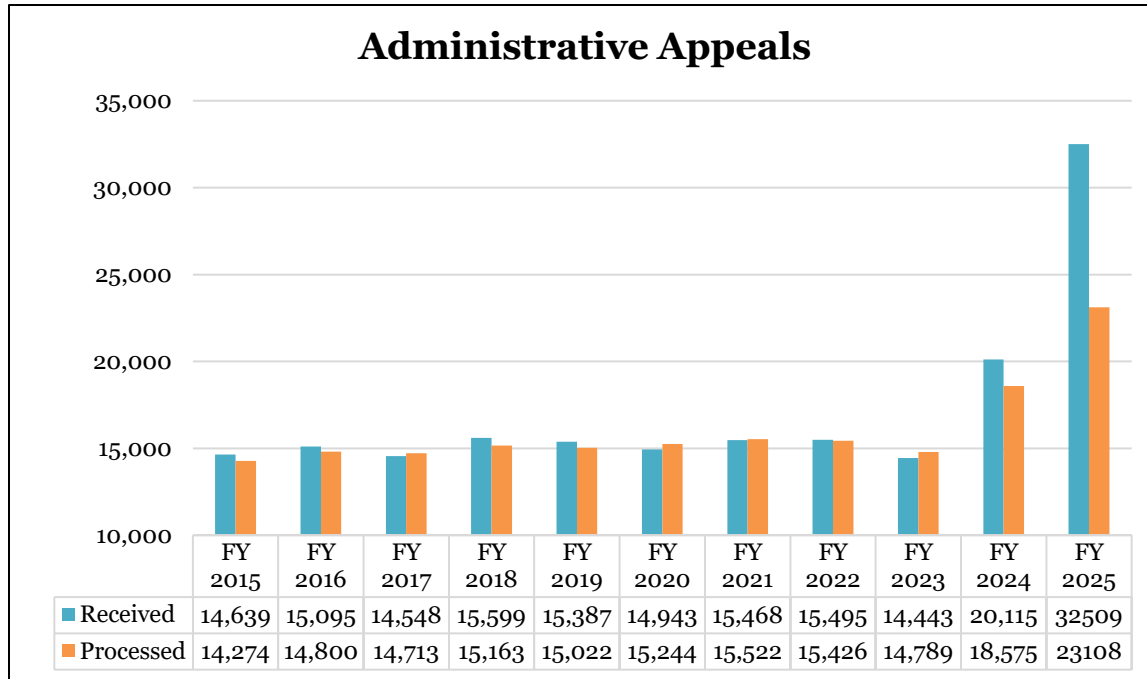


Administrative Appeals

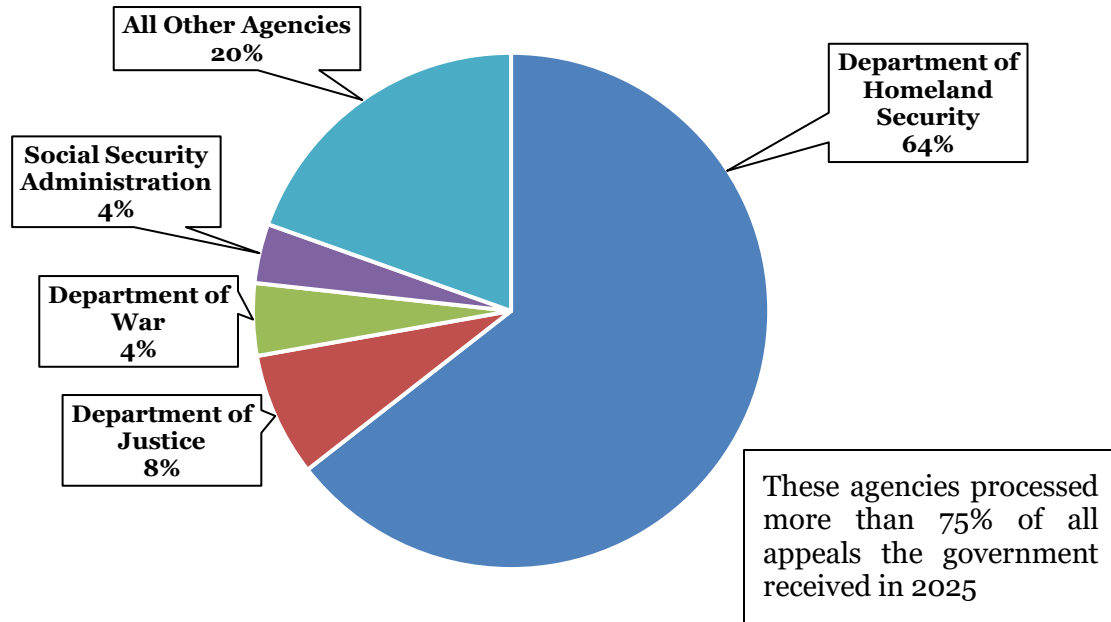
Number of Administrative Appeals Received and Processed

In FY 2025, the government overall received 32,059 appeals, which is a 59.38% increase from the 20,115 appeals received in FY 2024. Forty-one agencies received no appeals during the fiscal year.

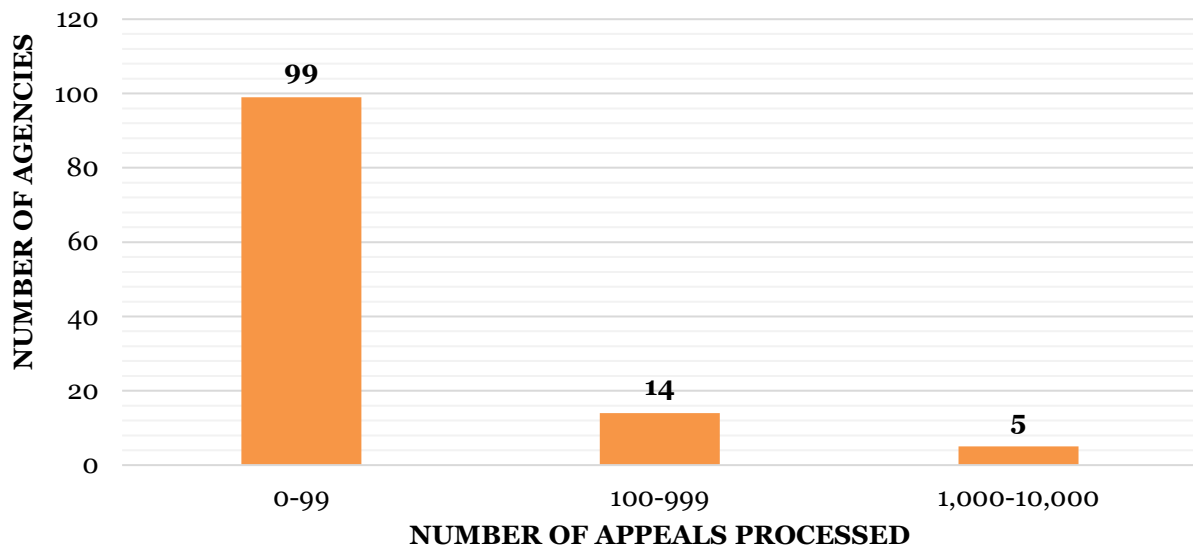
The government overall processed 23,108 appeals during FY 2025. This is a 24.40% increase from the 18,575 appeals processed during FY 2024. The four agencies that received the most appeals also processed the most appeals: DHS (20,664 received, 12,707 processed), DOJ (2,484 received, 2,586 processed), DOW (1,452 received, 1,352 processed), and the Social Security Administration (SSA) (1,193 received, 1,161 processed). These four agencies together processed 77.1% of the total number of appeals processed by the entire government in FY 2025.



Top 4 Agencies in Appeals Received

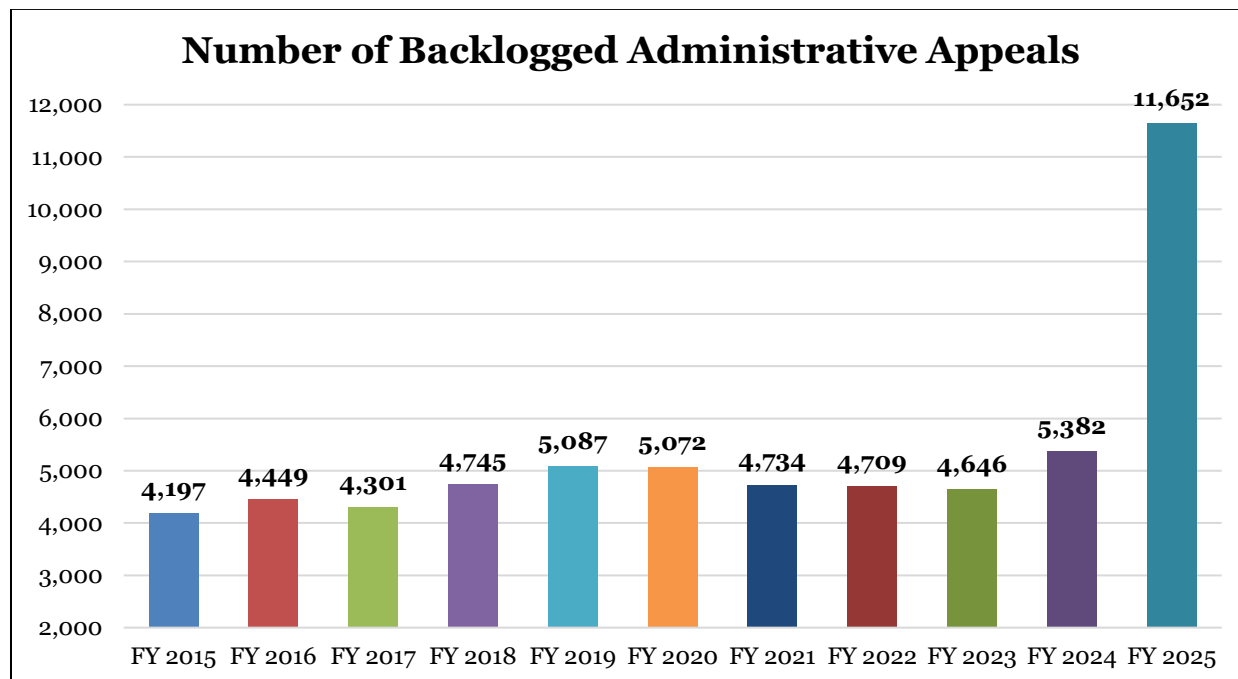


Distribution of Appeals Processed

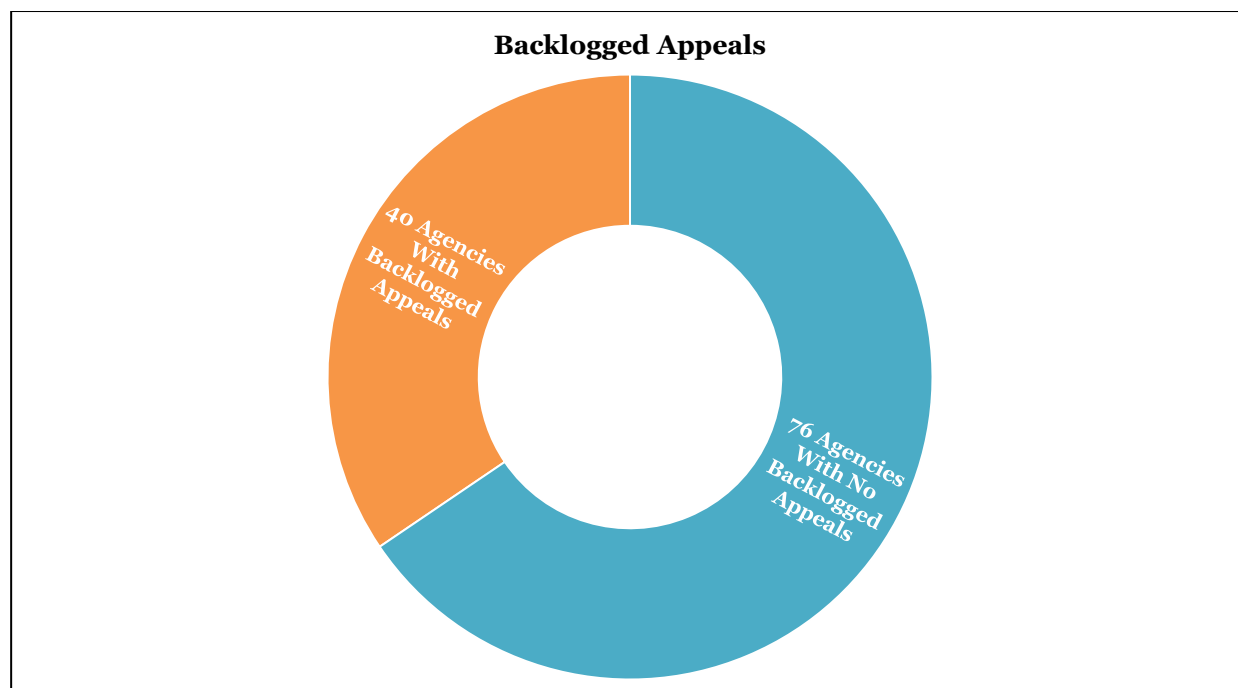


Backlogged Administrative Appeals

The overall backlog of administrative appeals at the end of FY 2025 was 11,652, which is an increase of 6,270 appeals governmentwide (116.5%) as compared to FY 2024.

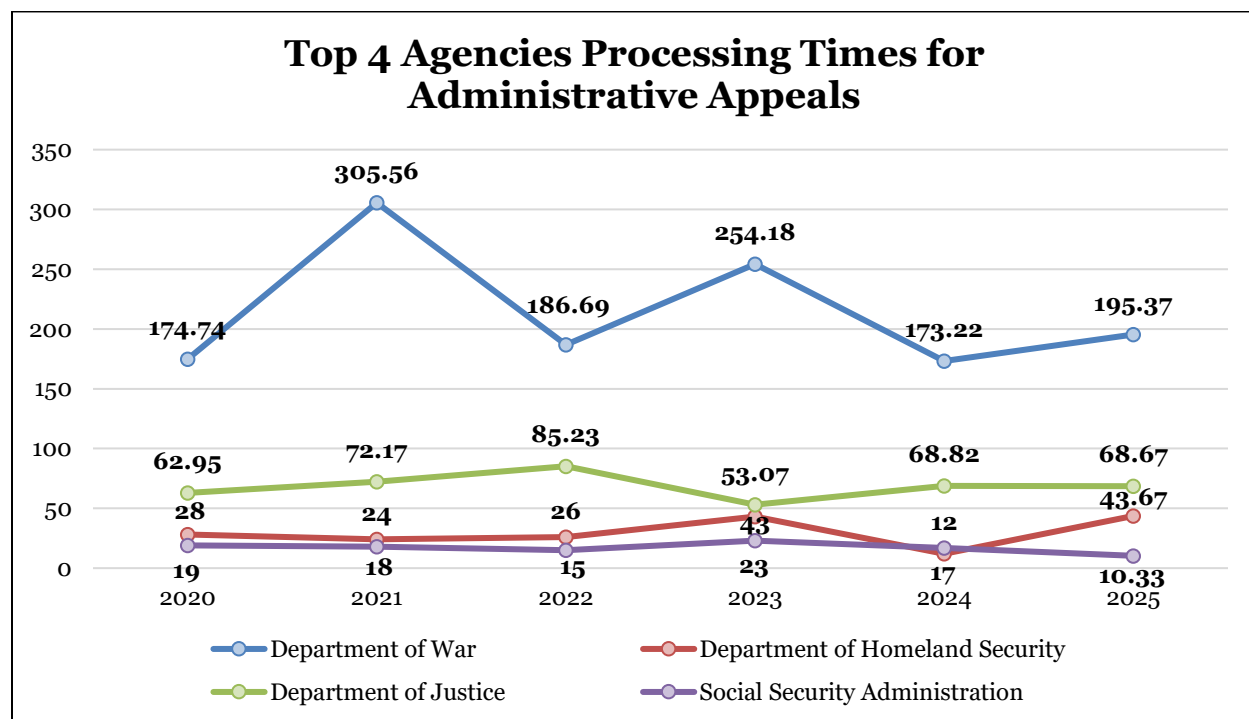


Seventy-six of the 117 agencies subject to the FOIA ended FY 2025 with no pending appeals in their backlog.



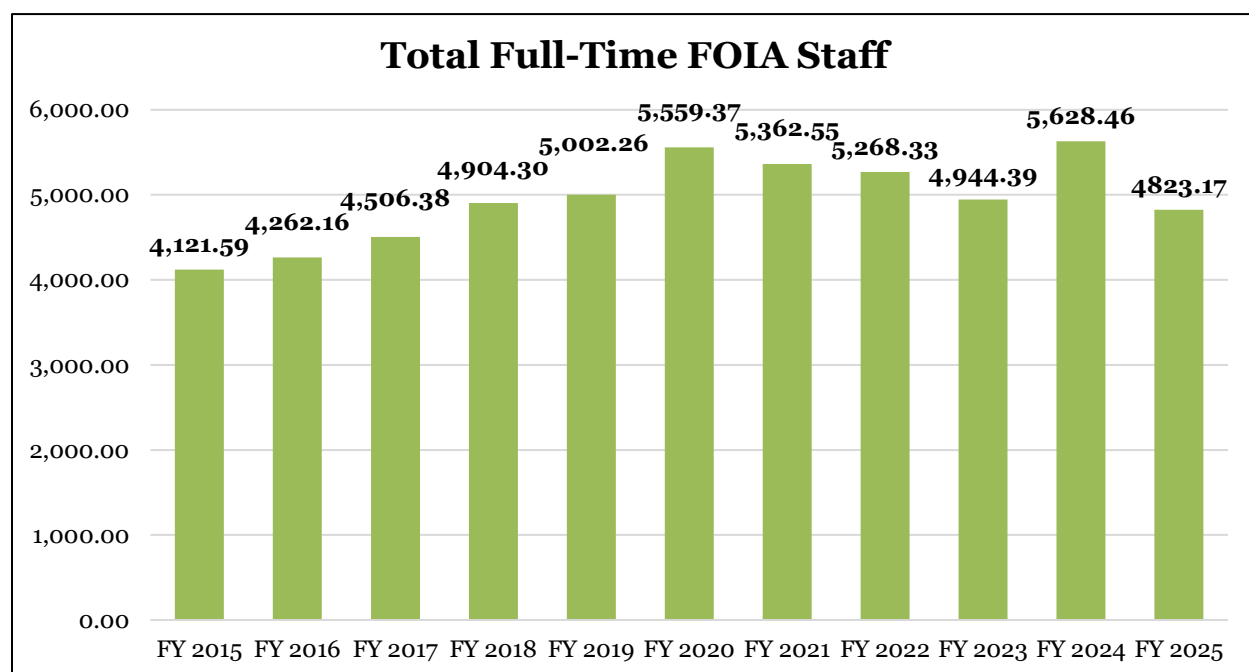
Processing Time for Administrative Appeals

The average processing time for adjudicating appeals for those agencies that reported processing appeals in their FY 2025 Annual FOIA Report is 93.76 days. This is a decrease of 3.15 days from the average of 96.91 days reported in FY 2024. The average processing times for the agencies that processed the most appeals were 43.67 days (DHS), 68.67 days (DOJ), 195.37 days (DOW), and 10.33 days (SSA).

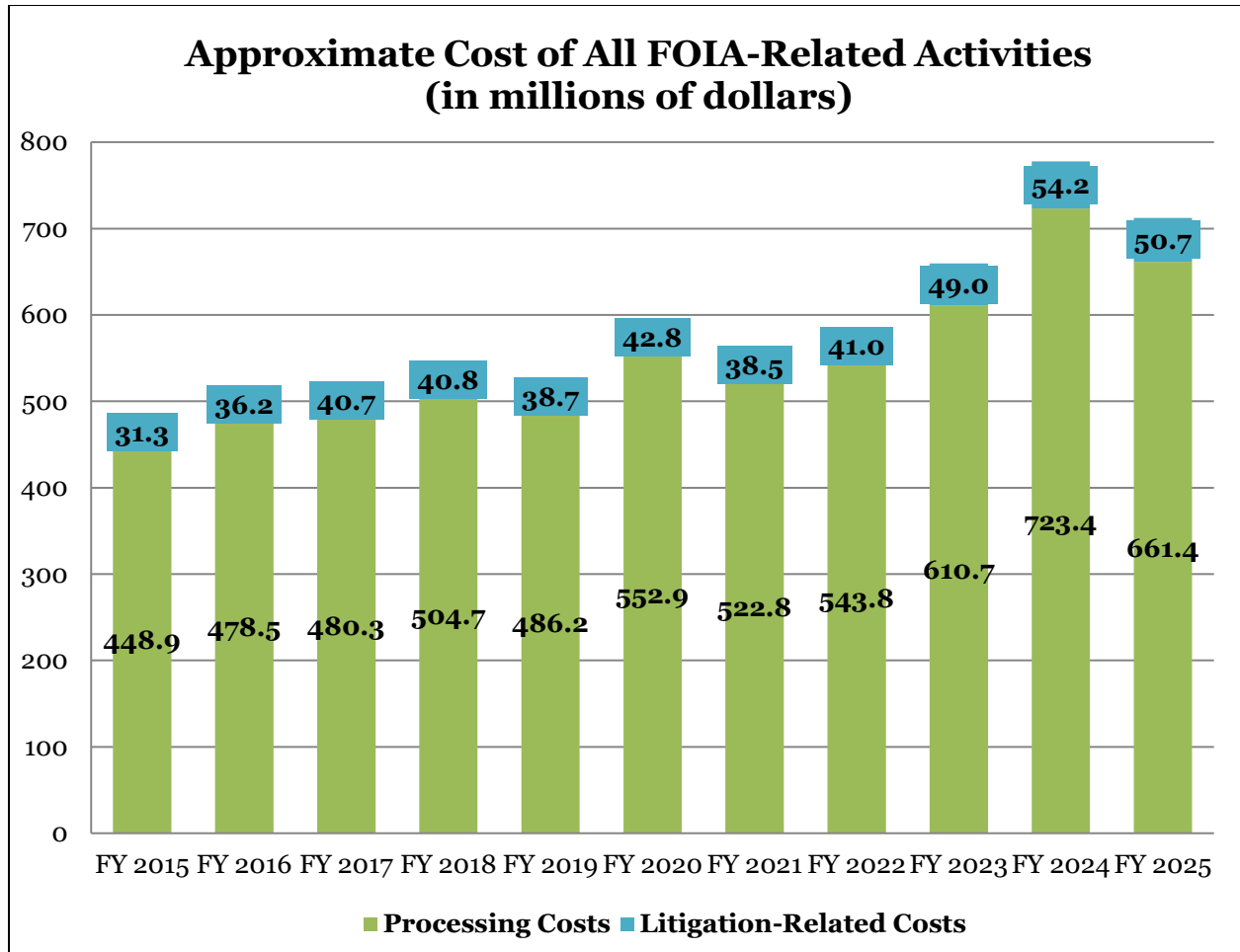


Staffing Levels & Costs

During FY 2025, 4823.17 “full-time FOIA staff” were devoted to the administration of the FOIA throughout the government.³ The total estimated cost of all FOIA-related activities across the government was \$661,394,858.43. Of this total, 92.33% (\$610,670,216.34) of total costs were attributed to the administrative processing of requests and appeals by agencies. 7.67% (\$50,724,642.09) was reported to have been spent on litigation-related activities. By the end of the fiscal year, agencies reported collecting a total of \$2,511,193.04 in FOIA fees. The FOIA fees collected in FY 2025 are approximately 0.38% of the total estimated cost of the government’s FOIA-related activities.



³ This includes both full-time FOIA professionals and the cumulative percentages of the time spent on FOIA by personnel who work on FOIA as a part of their duties.



Exclusions

There are three categories of law enforcement and national security records not subject to the requirements of the FOIA. The provisions protecting these categories of records are known as exclusions. During FY 2025, exclusions were invoked 75 times by four agencies: DOJ (34); the Securities and Exchange Commission (SEC) (33); DHS (7); and DOW (1). This is a 40% decrease in exclusion use as compared to FY 2024 (125 total uses). When compared to the 824,767 requests reviewed by the government this past fiscal year for exemption applicability, exclusions were used in response to 0.015% of requests processed for disclosure.

Proactive Disclosures

Subsection (a)(2) of the FOIA requires agencies to proactively make available to the public non-exempt information from certain categories of records without waiting for a specific request to be received. These categories are:

1. Final agency opinions and orders rendered in the adjudication of cases,
2. Specific policy statements that are not published in the Federal Register,
3. Administrative staff manuals and instructions to staff that affect a member of the public, and
4. Records that have become or are likely to become the subject of subsequent requests or those records that have been requested three or more times – commonly referred to as frequently requested records.

Agency program offices typically publish the first three categories of records while agency FOIA offices are more directly involved in identifying and posting the final category of records. Approximately 253,302,092 records that qualified as subsection (a)(2) records were posted online during FY 2025. This is a 0.78% increase in proactive disclosures over FY 2024. The vast majority of (a)(2) disclosures (249,124,382) were made available by agency program offices outside of the FOIA office. The National Archives and Records Administration, the Department of Commerce, and the Federal Communications Commission reported the highest numbers of (a)(2) records posted by program offices, comprising 99.57% of all program office postings. The FOIA offices across the government reported posting 4,177,710 subsection (a)(2) records online. This is a 115% increase in postings compared to FY 2024 (1,945,022 postings). Among the FOIA offices, the Environmental Protection Agency reported posting the highest number of proactive disclosures (3,236,002) followed by the Department of Labor (405,406) and the Department of State (183,988).

The numbers of subsection (a)(2) postings can vary based on the opportunities each agency may have to post the four required categories of proactive disclosures in a given year. For example, not all agencies adjudicate cases that would result in the agency having records that would fall into the first category above. Other agencies, particularly smaller ones, may also not have new records every year that fall into the other categories, such as frequently requested records. As noted above, the number of requests received by agencies varies significantly, with 21 agencies receiving less than 50 requests during FY 2025.

*2025 Annual FOIA Report Summary
United States Department of Justice*

Furthermore, agencies may proactively disclose other information even if they did not have any (a)(2) disclosures in a given fiscal year, and those postings would not be counted in this section of an agency's Annual FOIA Report.

During FY 2025, 25 agencies reported zero (a)(2) proactive disclosures. All of these agencies explained to OIP that they did not have any (a)(2) disclosures because, for example, they process primarily first-party requests, did not have frequently requested records during the reporting period, or did not have any updates to policies or other documents required to be disclosed pursuant to (a)(2).

Presidential Documents

Executive Order 14303 of May 23, 2025

Restoring Gold Standard Science

By the authority vested in me as President by the Constitution and the laws of the United States of America, including section 7301 of title 5, United States Code, it is hereby ordered:

Section 1. *Policy and Purpose.* Over the last 5 years, confidence that scientists act in the best interests of the public has fallen significantly. A majority of researchers in science, technology, engineering, and mathematics believe science is facing a reproducibility crisis. The falsification of data by leading researchers has led to high-profile retractions of federally funded research.

Unfortunately, the Federal Government has contributed to this loss of trust. In several notable cases, executive departments and agencies (agencies) have used or promoted scientific information in a highly misleading manner. For example, under the prior Administration, the Centers for Disease Control and Prevention issued COVID–19 guidance on reopening schools that incorporated edits by the American Federation of Teachers and was understood to discourage in-person learning. This guidance’s restrictive and burdensome reopening conditions led many schools to remain at least partially closed, resulting in substantial negative effects on educational outcomes—even though the best available scientific evidence showed that children were unlikely to transmit or suffer serious illness or death from the virus, and that opening schools with reasonable mitigation measures would have only minor effects on transmission.

The National Marine Fisheries Service justified a biological opinion by adopting an admitted “worst-case scenario” projection of the North Atlantic right whale population that it believed was “very likely” wrong. The agency’s proposed actions could have destroyed the historic Maine lobster fishery. The D.C. Circuit Court of Appeals subsequently overturned that opinion because the agency’s decision to seek out the worst-case scenario skewed its approach to the evidence.

Similarly, agencies have used Representative Concentration Pathway (RCP) scenario 8.5 to assess the potential effects of climate change in a “higher” warming scenario. RCP 8.5 is a worst-case scenario based on highly unlikely assumptions like end-of-century coal use exceeding estimates of recoverable coal reserves. Scientists have warned that presenting RCP 8.5 as a likely outcome is misleading.

Actions taken by the prior Administration further politicized science, for example, by encouraging agencies to incorporate diversity, equity, and inclusion considerations into all aspects of science planning, execution, and communication. Scientific integrity in the production and use of science by the Federal Government is critical to maintaining the trust of the American people and ensuring confidence in government decisions informed by science.

My Administration is committed to restoring a gold standard for science to ensure that federally funded research is transparent, rigorous, and impactful, and that Federal decisions are informed by the most credible, reliable, and impartial scientific evidence available. We must restore the American people’s faith in the scientific enterprise and institutions that create and apply scientific knowledge in service of the public good. Reproducibility, rigor, and unbiased peer review must be maintained. This order restores the scientific integrity policies of my first Administration and ensures

that agencies practice data transparency, acknowledge relevant scientific uncertainties, are transparent about the assumptions and likelihood of scenarios used, approach scientific findings objectively, and communicate scientific data accurately. Agency use of Gold Standard Science, as set forth in this order, will spur innovation, translate discovery to success, and ensure continued American strength and global leadership in technology.

Sec. 2. Definitions. For the purposes of this order:

(a) “Employee” has the meaning given that term in 5 U.S.C. 2105.

(b) “Scientific information” means factual inputs, data, models, analyses, technical information, or scientific assessments related to such disciplines as the behavioral and social sciences, public health and medical sciences, life and earth sciences, engineering, physical sciences, or probability and statistics. This includes any communication or representation of knowledge such as facts or data, in any medium or form, including textual, numerical, graphic, cartographic, narrative, or audiovisual forms.

(c) “Scientific misconduct” means fabrication, falsification, or plagiarism in proposing, performing, reviewing, or reporting the results of scientific research, but does not include honest error or differences of opinion. For the purposes of this definition:

(i) “fabrication” is making up data or results and recording or reporting them;

(ii) “falsification” is manipulating research materials, equipment, or processes, or changing or omitting data or results such that the research is not accurately represented in the research record; and

(iii) “plagiarism” is the appropriation of another person’s ideas, processes, results, or words without giving appropriate credit.

(d) “Senior appointee” means an individual appointed by the President (or an individual performing the functions and duties of an individual appointed by the President) or a non-career member of the Senior Executive Service.

(e) “Weight of scientific evidence” means an approach to scientific evaluation in which each piece of relevant information is considered based on its quality and relevance, and then transparently integrated with other relevant information to inform the scientific evaluation prior to making a judgment about the scientific evaluation. Quality and relevance determinations, at a minimum, should include consideration of study design, fitness for purpose, replicability, peer review, and transparency and reliability of data.

Sec. 3. Restoring Gold Standard Science. (a) Within 30 days of the date of this order, the Director of the Office of Science and Technology Policy (OSTP Director) shall, in consultation with the heads of relevant agencies, issue guidance for agencies on implementation of “Gold Standard Science” in the conduct and management of their respective scientific activities. For the purposes of this order, Gold Standard Science means science conducted in a manner that is:

(i) reproducible;

(ii) transparent;

(iii) communicative of error and uncertainty;

(iv) collaborative and interdisciplinary;

(v) skeptical of its findings and assumptions;

(vi) structured for falsifiability of hypotheses;

(vii) subject to unbiased peer review;

(viii) accepting of negative results as positive outcomes; and

(ix) without conflicts of interest.

(b) Upon publication of the guidance prescribed in subsection (a), each agency head, as necessary and appropriate and in consultation with the

Director of the Office of Management and Budget (OMB Director) and the OSTP Director, shall promptly update applicable agency policies governing the production and use of scientific information, including scientific integrity policies, to implement the OSTP Director's guidance on Gold Standard Science and ensure that agency scientific activities are conducted in accordance with this order.

(c) Each agency head shall, to the extent practicable, incorporate the OSTP Director's guidance on Gold Standard Science and the requirements of this order into the processes by which their agency conducts, manages, interprets, communicates, and uses scientific or technological information prior to the finalization of the updated policies under this section.

(d) Within 60 days of the publication of the guidance prescribed in section 3(a), agency heads shall report to the OSTP Director on the actions taken to implement Gold Standard Science at their agency.

Sec. 4. *Improving the Use, Interpretation, and Communication of Scientific Data.* No later than 30 days after the date of this order, agency heads and employees shall adhere to the following rules governing the use, interpretation, and communication of scientific data, unless otherwise provided by law:

(a) Employees shall not engage in scientific misconduct nor knowingly rely on information resulting from scientific misconduct.

(b) Except as prohibited by law, and consistent with relevant policies that protect national security or sensitive personal or confidential business information, agency heads shall in a timely manner and, to the extent practicable and within the agency's authority:

(i) subject to paragraph (ii), make publicly available the following information within the agency's possession:

(A) the data, analyses, and conclusions associated with scientific and technological information produced or used by the agency that the agency reasonably assesses will have a clear and substantial effect on important public policies or important private sector decisions (influential scientific information), including data cited in peer-reviewed literature; and

(B) the models and analyses (including, as applicable, the source code for such models) the agency used to generate such influential scientific information. Employees may not invoke exemption 5 to the Freedom of Information Act (5 U.S.C. 552(b)(5)) to prevent disclosure of such models unless authorized in writing to do so by the agency head following prior notice to the OSTP Director.

(ii) risk models used to guide agency enforcement actions or select enforcement targets are not information that must be disclosed under this subsection.

(c) When using scientific information in agency decision-making, employees shall transparently acknowledge and document uncertainties, including how uncertainty propagates throughout any models used in the analysis.

(d) Where employees produce or use scientific information to inform policy or legal determinations they must use science that comports with the legal standards applicable to those determinations, including when agencies evaluate the realistic or reasonably foreseeable effects of an action.

(e) Employees shall be transparent about the likelihood of the assumptions and scenarios used. Highly unlikely and overly precautionary assumptions and scenarios should only be relied upon in agency decision-making where required by law or otherwise pertinent to the agency's action.

(f) When scientific or technological information is used to inform agency evaluations and subsequent decision-making, employees shall apply a "weight of scientific evidence" approach.

(g) Employees' communication of scientific information shall be consistent with the results of the relevant analysis and evaluation and, to the extent

that uncertainty is present, the degree of uncertainty should be communicated. Communications involving a scientific model or information derived from a scientific model should include reference to any material assumptions that inform the model's outputs.

(h) Once the guidance on Gold Standard Science is established and promulgated pursuant to section 3 of this order, it shall, among other things, form the basis for employees' evaluation of all scientific and technological information called for in this order except where otherwise required by law.

Sec. 5. *Interim Scientific Integrity Policies.* (a) Until the issuance of updated agency scientific integrity policies pursuant to section 3 of this order, and except where required by law:

(i) scientific integrity policies in each agency shall be governed by the scientific integrity policies that existed within the executive branch on January 19, 2021, except that in the event of a conflict between such policies and the policies and requirements of this order, the policies and requirements of this order control; and

(ii) agency heads shall take all necessary actions to reevaluate and, where necessary, revise or rescind scientific integrity policies or procedures, or amendments to such policies or procedures, issued between January 20, 2021, and January 20, 2025.

(iii) each agency head shall promptly revoke any organizational or operational changes, designations, or documents that were issued or enacted pursuant to the Presidential Memorandum of January 27, 2021 (Restoring Trust in Government Through Scientific Integrity and Evidence-Based Policymaking), which was revoked pursuant to Executive Order 14154 and shall conduct applicable agency operations in the manner and revert applicable agency organization to the same form as would have existed in the absence of such changes, designations, or documents.

(b) In updating applicable scientific integrity policies pursuant to section 3 of this order, agencies should ensure they:

(i) encourage the open exchange of ideas;

(ii) provide for consideration of different or dissenting viewpoints; and

(iii) protect employees from efforts to prevent or deter consideration of alternative scientific opinions.

(c) Agencies, unless prohibited by law, shall review agency actions taken between January 20, 2021, and January 20, 2025, including regulations, guidance documents, policies, and scientific evaluations and take all appropriate steps, consistent with law, to ensure alignment with the policies and requirements of this order.

Sec. 6. *Scope and Applicability.* (a) The policies and rules set forth in this order apply to all employees involved in the generation, use, interpretation, or communication of scientific information, regardless of job classification, and to all agency decision-making, except where precluded by law.

(b) Agency heads and employees shall, to the extent practicable and consistent with applicable law, require agency contractors to adhere to these policies and rules as though they were agency employees.

(c) The policies and rules set forth in this order govern the use of science that informs agency decisions but they are not applicable to non-scientific aspects of agency decision-making.

Sec. 7. *Enforcement and Oversight.* (a) Each agency head shall establish internal processes to evaluate alleged violations of the requirements of this order and other applicable agency policies governing the generation, use, interpretation, and communication of scientific information. Such processes shall be the responsibility, and administered under the direction, of a senior appointee designated by the agency head and shall provide for taking appropriate measures to correct scientific information in response to violations, consistent with the requirements and procedures of section 515 of the statute

commonly known as the Information Quality Act, Public Law 106–554, appendix C (114 Stat. 2763A–153). The designated senior appointee may also forward potential violations to the relevant human resources officials for discipline to the extent the potential violation also violates applicable agency policies and procedures. The designated senior appointee may consult appropriate officials with scientific expertise when establishing such processes.

(b) The processes created under this section are, unless otherwise required by applicable law, the sole and exclusive means of evaluating and, as applicable, addressing alleged violations of this order and other agency policies governing the use, interpretation, and communication of scientific information.

Sec. 8. *Waivers.* (a) An agency head may request in writing that the OMB Director, in consultation with the OSTP Director, waive any of the requirements of this order for good cause shown. Such request must explain how the requested waiver is consistent with the policies and purposes of this order.

(b) Notwithstanding any other provision of this order, the policies and requirements of this order shall apply to agency actions that pertain to foreign or military affairs, or to a national security or homeland security function of the United States, only to the extent that the applicable agency head, in his or her sole and exclusive discretion, determines they should apply.

Sec. 9. *General Provisions.* (a) Nothing in this order shall be construed to impair or otherwise affect:

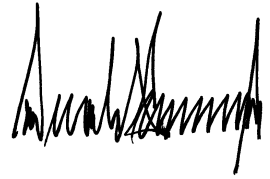
(i) the authority granted by law to an executive department or agency, or the head thereof; or

(ii) the functions of the Director of the Office of Management and Budget relating to budgetary, administrative, or legislative proposals.

(b) This order shall be implemented consistent with applicable law and subject to the availability of appropriations.

(c) This order is not intended to, and does not, create any right or benefit, substantive or procedural, enforceable at law or in equity by any party against the United States, its departments, agencies, or entities, its officers, employees, or agents, or any other person.

(d) The Office of Management and Budget shall provide funding for publication of this order in the *Federal Register*.

A handwritten signature in black ink, appearing to be "Donald Trump", located in the upper right quadrant of the page.

THE WHITE HOUSE,
May 23, 2025.

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