



## **Assessing Freedom of Information Act Compliance through the 2020 National Archives and Records Administration's Records Management Self-Assessment**

Published September 28, 2021

### **EXECUTIVE SUMMARY**

Since 2016, the Office of Government Information Services (OGIS) has collaborated with the Office of the Chief Records Officer (CRO) for the U.S. Government to gather government-wide information about Freedom of Information Act (FOIA) administration. Data collected through FOIA questions included in the 2020 Records Management Self-Assessment (RMSA) complement the observations we make as the federal FOIA Ombudsman, working to improve the FOIA process for all.

The 2020 RMSA survey—administered to agency records officers from January 19, 2021, to March 19, 2021—included seven questions regarding FOIA administration. Key results highlighted in this report include:

- Nearly half of all respondents (49 percent) reported that the COVID-19 pandemic disrupted their agency's ability to respond to FOIA requests.
- A majority of respondents (80 percent) whose FOIA programs were disrupted reported that their agency's paper records were inaccessible due to office closures while nearly half (46 percent) reported that agency staff were not available to search for records.
- A majority of respondents (72 percent) reported that their agencies worked directly with requesters to tailor their requests for most efficient processing during the COVID-19 pandemic. Fifty-six percent said that they included information about anticipated delays in requester communications, including acknowledgement letters; 52 percent assessed their technology to ensure the most efficient administration of FOIA; and 50 percent reported that their agencies posted notices on their FOIA websites informing requesters

of the most efficient ways to make requests.

- A majority of respondents (72 percent) reported that their agencies use e-discovery tools to search for records when responding to FOIA and/or legal discovery. (*Relates to FOIA Advisory Committee Recommendations Nos. [2020-11](#) and [2020-13](#)*)
- Of the agencies that reported using e-discovery tools, a significant majority (91 percent) reported that their agencies use e-discovery tools for FOIA responses involving requests for email records. A majority reported that their agencies use such tools for lawsuit-related requests (69 percent), legal discovery or third-party subpoena requests (62 percent), managing legal holds (58 percent), and FOIA responses not involving requests for email records (54 percent).
- Of the respondents who reported that their agencies do not use e-discovery tools to search for records, roughly half reported that such tools are not available at their agencies.
- A majority of respondents (51 percent) reported that their Agency Records Officer and Chief FOIA Officer work together on information technology (IT) requirements that benefit both programs, and half (50 percent) reported that their training programs address the importance and relationship between FOIA and records management.

## BACKGROUND

OGIS's partnership with the [CRO](#) to collect government-wide information related to FOIA compliance began with the 2016 RMSA survey, an annual agency self-assessment and reporting tool developed and managed by the CRO to determine whether agencies are complying with statutory and regulatory records management requirements. The CRO has issued the [RMSA](#) since 2009. OGIS's FOIA questions fit naturally with the RMSA data collection because a strong records management program—which allows agencies to find responsive records—is essential to a successful FOIA program.

In working with the CRO, OGIS has leveraged investments by the National Archives and Records Administration (NARA) in survey technology and the CRO's expertise in collecting self-reported compliance information. The RMSA's high response rate in the last few years has helped OGIS better understand FOIA administration across the government, and complements the observations we make through our other activities, including providing dispute resolution and ombuds services to requesters and agencies, assessing FOIA compliance, and leading the [federal FOIA Advisory Committee](#) and the [Chief FOIA Officers Council](#). In Calendar Year (CY) 2017, CY 2018 and CY 2019, the RMSA response rates were 99 percent, 98 percent, and 96 percent, respectively. In CY 2020, the response rate was 92 percent, a drop likely attributable to the COVID-19 pandemic; in CY 2021, the response rate was 98 percent.

The 2020 RMSA included seven questions relating to FOIA. Three questions related to the COVID-19 pandemic impact on FOIA operations. Three questions addressed the use of electronic discovery (e-discovery) tools by FOIA and agency staff. One question covered FOIA and records management, specifically the relationship between Agency Records Officers and the Chief FOIA Officer.

The reporting period for the 2020 RMSA began January 19, 2021 and ended on March 19, 2021. A total of 266 RMSA respondents from all Cabinet-level departments, departmental components and independent agencies answered the FOIA questions. Not all 266 respondents answered all seven FOIA questions however.

A complete list of the seven 2020 RMSA questions, each of which is discussed in detail below, is available below in the [Methodology](#) section.

## DISCUSSION OF RMSA RESULTS

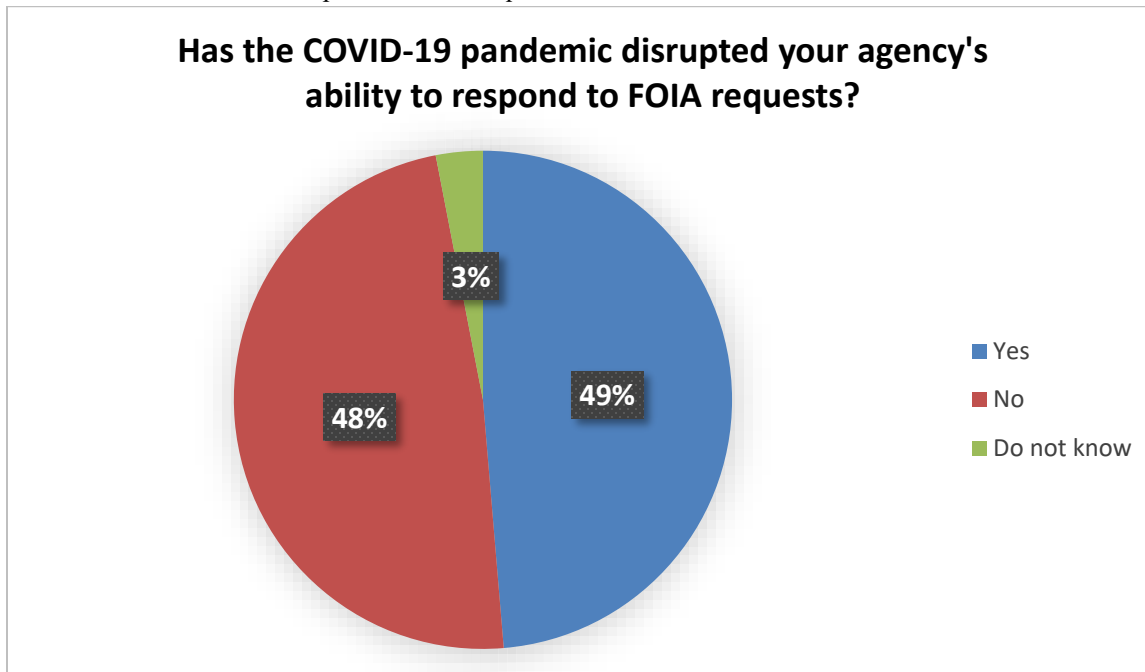
### COVID-19

On March 17, 2020, the Office of Personnel Management (OPM) ordered maximum telework flexibilities across the federal government in response to the COVID-19 pandemic. The move to a full-time work-from-home environment affected FOIA processing governmentwide, particularly at agencies that were not telework-ready, agencies that work with classified records and systems for processing records, and agencies with largely paper-based records.

Of the 263 respondents who answered Question 52 “Has the COVID-19 pandemic disrupted your agency's ability to respond to FOIA requests?”, 49 percent answered “Yes,” 48 percent answered “No,” and 3 percent answered “Do not know.”

**Figure 1: 2020 RMSA Responses to Question 52 “Has the COVID-19 pandemic disrupted your agency's ability to respond to FOIA requests?”**

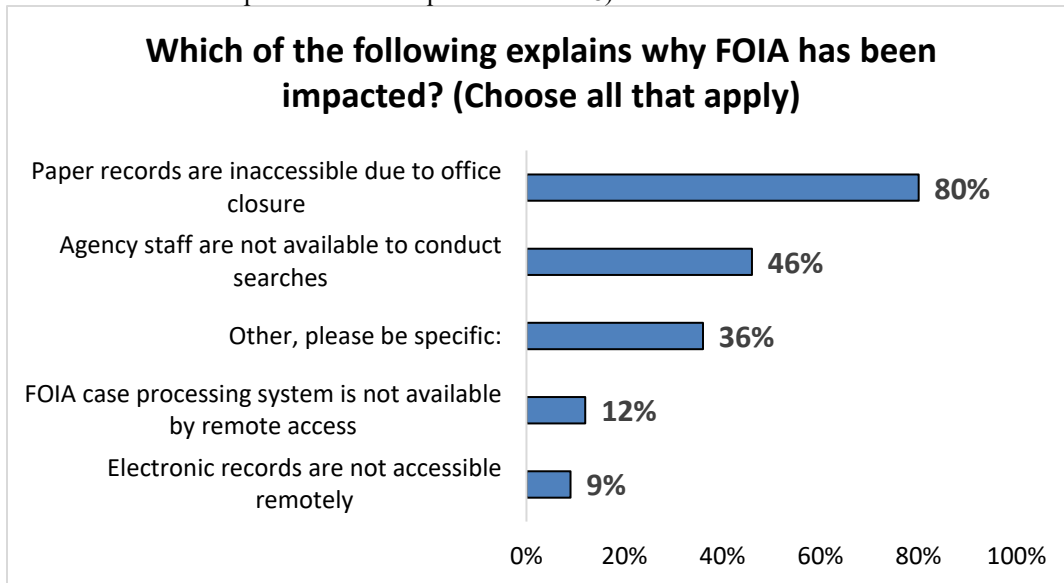
Note: The total number of respondents to this question was 263.



In response to Question 53, “Which of the following explains why FOIA has been impacted? (Choose all that apply),” the majority of respondents said that paper records were inaccessible due to office closures (80 percent) and agency staff were not available to conduct searches (46 percent). Thirty-six percent answered, “Other, please be specific;” 12 percent said that their agency’s FOIA case processing system was not available by remote access; and 9 percent said that electronic records were not accessible remotely.

**Figure 2: 2020 RMSA Responses to Question 53, “Which of the following explains why FOIA has been impacted? (Choose all that apply).”**

(Note: The total number of respondents to this question was 128)



As shown in **Table 1**, the comments of the RMSA respondents who answered, “Other, please be specific,” centered on four themes: the ability of staff to access records, agency staffing, resources, and the technology agencies use to respond to requests.

**Table 1: Selected Data from 2020 RMSA “Other, please explain,” Responses to Question 53 “Which of the following explains why FOIA has been impacted? (Choose all that apply)”**

Theme	Agency Comments
<b>Access Issues</b>	<ul style="list-style-type: none"> <li>• “Access to paper records stored in the Federal Records Centers has been not available for FOIA responses.”</li> <li>• “Classified FOIA cases have been impacted due to limited access to physical spaces and frequently require coordination with other offices facing the same access restrictions.”</li> <li>• “Delay[s] in mailing hard copy responses to FOIA requests due to remote working.”</li> <li>• “Electronic records that are not stored to the server are inaccessible remotely.”</li> </ul>
<b>Personnel</b>	<ul style="list-style-type: none"> <li>• “Coordinating in-person records searches [is] much more difficult and require[s] more time and coordination to obtain access.”</li> <li>• “[Agency] receives a large volume of requests for [program office] records in the physical mail; lack of staff in the office limited our ability to log in these requests.”</li> <li>• “Many requests for [program office] records require staff to be in the office to scan.”</li> </ul>
<b>Resources</b>	<ul style="list-style-type: none"> <li>• “Agency staff resources for conducting searches are more limited.”</li> </ul>
<b>Technology</b>	<ul style="list-style-type: none"> <li>• “Computer issues slow processing down; training of new personnel has been negatively affected, making them less productive.”</li> <li>• “COVID-19 slowed down the process of transitioning to [a new FOIA system for tracking and processing requests].”</li> <li>• “Inability to receive and process FOIA payments.”</li> <li>• “Large response files that we cannot email.”</li> </ul>

In response to Question 54, “Which of the following actions did your agency's FOIA program take in response to the COVID-19 pandemic? (Choose all that apply),” the majority of respondents reported that their agencies worked directly with requesters to tailor their request for more efficient processing (72 percent). Fifty-six percent reported including information about any anticipated delays in requester communications, including acknowledgment letters. Half of all respondents reported that their agencies posted a notice on the FOIA website informing requesters of the most efficient way to make a request, and 43 percent posted a notice on the FOIA website informing requesters of any anticipated delays. Twenty percent of respondents answered “other, please explain” in response to Question 54.

**Table 2: 2020 RMSA Responses to Question 54, “Which of the following actions did your agency's FOIA program take in response to the COVID-19 pandemic? (Choose all that apply) (DOJ, Guidance for Agency FOIA Administration in Light of COVID-19 Impacts, <https://www.justice.gov/oip/guidance-agency-foia-administration-light-covid-19-impacts>, updated May 28, 2020.)”**

Answer Options	Count per answer option	Percent to total responses
Worked directly with requesters to tailor their requests for most efficient processing	187	72%
Included information about any anticipated delays in requester communication, including acknowledgment letters	146	56%
Assessed technology to ensure most efficient administration of FOIA	135	52%
Posted a notice on the FOIA website informing requesters of most efficient way to make a request	130	50%
Posted a notice on the FOIA website informing requesters of any anticipated delays	113	43%
Used multitrack processing to further triage requests that could be processed more efficiently remotely	100	38%
Other, please explain	51	20%
Posted additional proactive disclosures for high public interest topics related to the COVID-19 pandemic	48	18%
Total number of responses to this question	261	

As shown in **Table 3**, the “Other, please be specific” comments focused on four particular themes: access, communication with requesters, process, and the technology agencies use to respond to requests.

**Table 3: Selected Data from 2020 RMSA “Other, please explain,” Responses to Question 54 “Which of the following actions did your agency’s FOIA program take in response to the COVID-19 pandemic? (Choose all that apply) (DOJ, Guidance for Agency FOIA Administration in Light of COVID-19 Impacts, <https://www.justice.gov/oip/guidance-agency-foia-administration-light-covid-19-impacts>, updated May 28, 2020.)”**

Theme	Agency Comments
<b>Access Issues</b>	<ul style="list-style-type: none"> <li>● “COVID only impacted our ability to obtain paper records.”</li> <li>● “If paper records are responsive, but inaccessible due to the pandemic, we notify the requester that the portion of the request that involves paper records cannot be completed until the office is open again.”</li> </ul>
<b>Communication</b>	<ul style="list-style-type: none"> <li>● “Contacted requesters directly to clarify, streamline, and narrow their FOIA requests.”</li> <li>● “Discussed delays with requesters.”</li> <li>● “Edited invoice template to reflect [agency] only accepts electronic payment for fees incurred during the processing of a FOIA request.”</li> <li>● “Encouraged requesters to use e-mail and pay via online portal.”</li> <li>● “Requesters were directed to the notice on [the agency’s] FOIA website regarding any impact on FOIA processing due to COVID-19.”</li> <li>● “[The agency’s] FOIA program has provided guidance to some individual FOIA requesters to withdraw [their request] and to [submit] a new request post COVID-19, if possible ...”</li> </ul>
<b>Process</b>	<ul style="list-style-type: none"> <li>● “Leveraged an existing external mailroom process for sending responses to consumers to also mail responses to FOIA requesters without internet access, thus minimizing agency staff exposure and allowing for continued response to requesters when [agency’s] Headquarters was closed.”</li> <li>● “[The agency] routinely triages and works with requesters to narrow the scope of searches, and that practice has continued through the pandemic, and the agency has not experienced a greater backlog or lead time on FOIA during the pandemic.”</li> <li>● “[The agency] made adjustments to how we handle requests for certified documents for court purposes. Due to COVID we made this an electronic procedure only with productions of records and appropriate seals in an electronic format acceptable by the court. The production of these documents is faster and more streamlined. We also reduced fees associated with producing these documents.”</li> </ul>
<b>Technology</b>	<ul style="list-style-type: none"> <li>● “[The agency]” implemented a more robust electronic delivery system for responsive records.”</li> <li>● “Moved from hardcopy responses to mostly electronic responses to the requester via email or either secured mailings.”</li> <li>● “Use of new technology such as electronic fax, [a collaboration platform], and became 95% digital in operation.”</li> </ul>

**Observations:**

- The COVID-19 pandemic forced maximum telework across the government and challenged agencies and FOIA programs in unexpected ways. The 2020 RMSA responses demonstrate the ways that agencies adapted their communication strategies, work processes and technology to keep staff safe while continuing to respond to requests.

- While we recognize that there is no one-size-fits-all approach to administering FOIA, agencies that reported that they effectively managed their FOIA process, resources and technology, and communicated with requesters were more likely to report that the pandemic did not disrupt their ability to respond to FOIA requests.
- Agency responses to the 2020 RMSA survey offer insight into the challenges agencies face as they transition to fully electronic recordkeeping per Office of Management and Budget (OMB)/NARA Memorandum M-19-21, Transition to Electronic Records, and manage their FOIA programs during a pandemic.<sup>1</sup>

### **E-Discovery Tools**

E-discovery is the process of identifying, locating, preserving, collecting, preparing, reviewing, and producing electronically stored information (ESI) in the context of the legal process.<sup>2</sup> Federal agencies use e-discovery software to meet legal requirements by facilitating the collection of agency records for such purposes as internal investigations and complaints, civil and criminal litigation discovery requests, and responding to FOIA and Privacy Act requests. This includes facilitating the review, redaction and production of ESI such as emails, computer files, and databases.

A total of 266 respondents answered the 2020 RMSA question on their agency's use of e-discovery tools to search for records when responding to FOIA and/or legal discovery. The majority of respondents—72 percent—said that their agencies use e-discovery tools to conduct searches of ESI. Twenty-four percent of the respondents indicated that their agencies do not use e-discovery tools to conduct searches and 4 percent answered that they did not know whether their agency uses such tools.

---

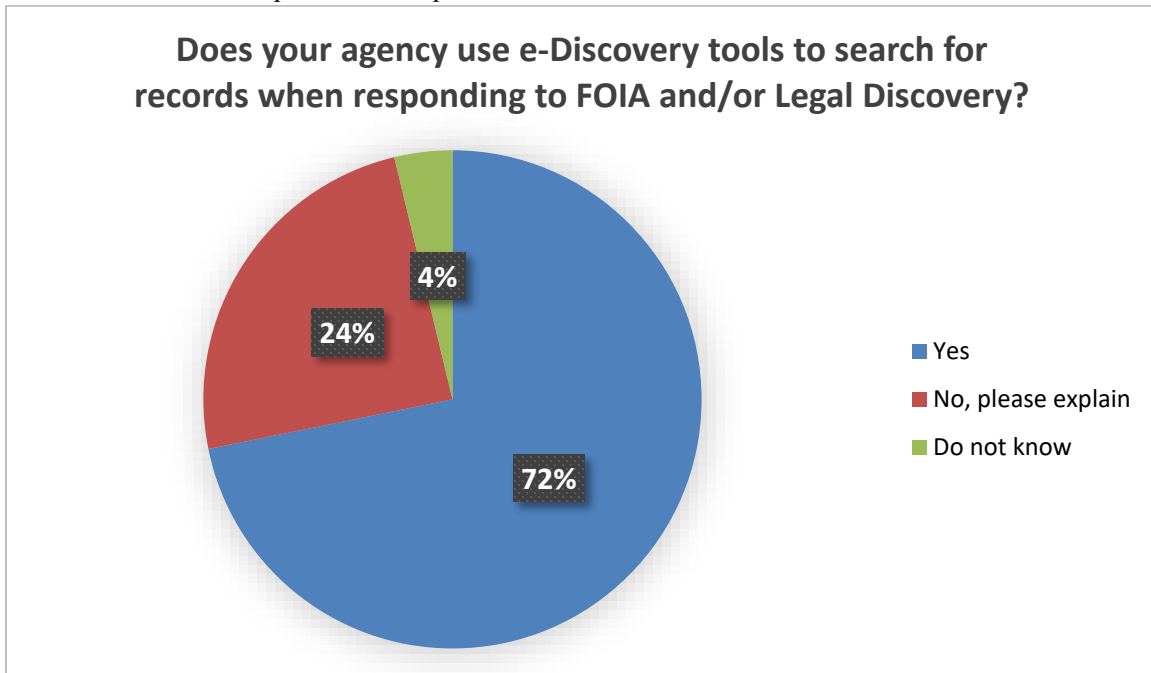
<sup>1</sup> See OMB/NARA Memorandum M-19-21, "[Transition to Electronic Records](#)," dated June 28, 2019.

<sup>2</sup> The Sedona Conference Glossary: eDiscovery & Digital Information Management, Fifth Edition, 21 SEDONA CONF. J. 263 (2020) at 303.



**Figure 3: 2020 RMSA Responses to Question 49, “Does your agency use e-Discovery tools to search for records when responding to FOIA and/or Legal Discovery?”**

Note: The total number of responses to this question was 266.



One hundred eighty-nine respondents answered the question about the purposes for which their agencies use e-discovery tools. Ninety-one percent of the respondents said that their agencies use e-discovery tools for FOIA responses involving requests for email records. Sixty-nine percent reported that their agencies use e-discovery tools for lawsuit-related requests. Sixty-two percent said that they use e-discovery tools to respond to legal discovery, including third-party subpoena requests. Fifty-eight percent said that their agencies use e-discovery tools to manage legal holds while 54 percent use them for FOIA responses not involving requests for email records.<sup>3</sup> Nearly half of the respondents said that their agencies use e-discovery tools congressional requests (49 percent). Respondents also reported that their agencies use e-discovery tools to de-duplicate records in response to requests (45 percent), internal research for or by staff (44 percent), and knowledge management (17 percent).

---

<sup>3</sup> A legal hold is "[a] communication issued as a result of current or reasonably anticipated litigation, audit, government investigation, or other such matter that suspends the normal disposition or processing of records." *See id* at 330.

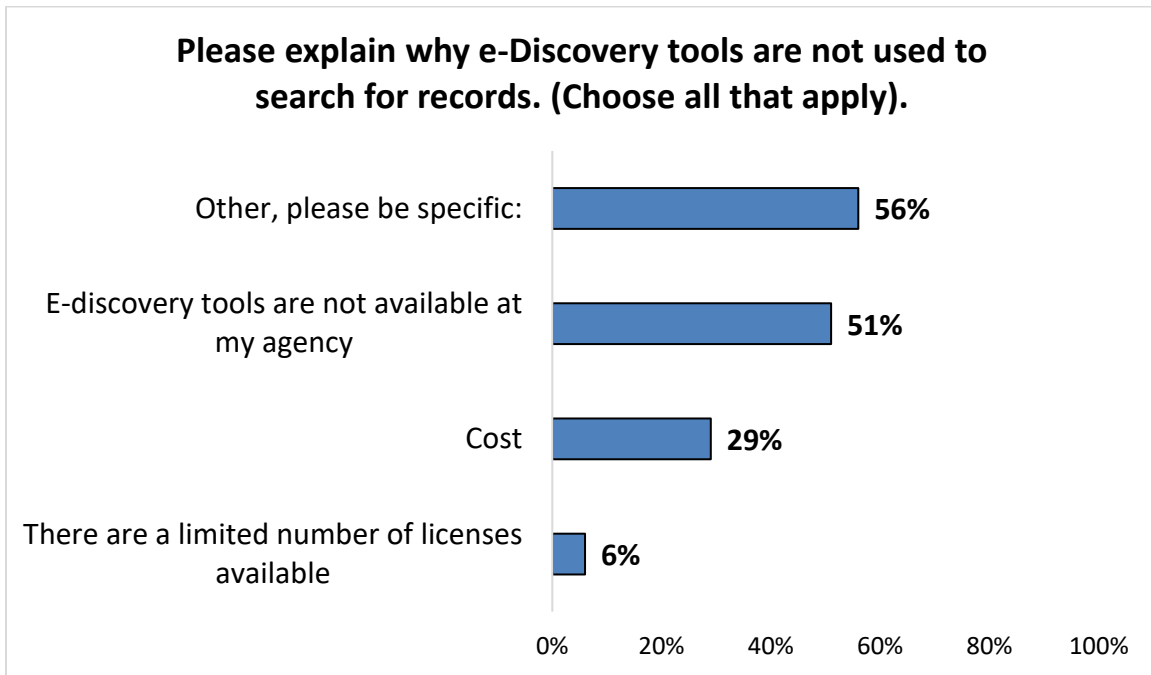
**Table 4: 2020 RMSA Responses to Question 50, “For what purposes are e-Discovery tools used? (Choose all that apply)?”**

Answer Options	Count per answer option	Percentage to total responses
FOIA responses involving requests for email records	172	91%
Lawsuit-related requests	130	69%
Legal discovery or third-party subpoena requests	118	62%
Managing legal holds	109	58%
FOIA responses NOT involving requests for email records	102	54%
Congressional requests	93	49%
De-duplication of records in responding to requests	85	45%
Internal research for or by staff	83	44%
Knowledge management	33	17%
Total number of responses to this question	189	

Of the 63 respondents whose agencies do not use e-discovery tools to search for records, 51 percent said that e-discovery tools are not available at their agencies, 29 percent cited the cost of e-discovery tools, and 6 percent said that there are a limited number of licenses available.

**Figure 4: 2020 RMSA Responses to Question 51, “Please explain why e-Discovery tools are not used to search for records. (Choose all that apply).”**

Note: The total number of survey responses to this question was 63.



Respondents who answered “other, please be specific,” (56 percent) cited the following as reasons why their agencies do not use e-discovery tools to search for records.

- Agency does not need to use e-discovery tools
  - due to limited resources, agency does not have e-discovery tools;
  - due to size of agency and the number of requests received per year, the agency cannot justify the cost;
  - staff are able to conduct searches without e-discovery tools.
- Agency expects a new system this year.
- Agency is currently working on obtaining e-discovery tools.
- E-discovery tools are solely used by the agency’s Office of General Counsel.
- E-discovery tools process has not been created yet.

The 2018-2020 term of the FOIA Advisory Committee recommended that the Office of Information Policy (OIP) at the Department of Justice provide guidance to agencies on the use of e-discovery tools to assist their searches of electronic records in response to FOIA requests. To better understand the e-discovery landscape throughout the federal government and inform OIP’s future guidance, OGIS used the 2020 RMSA to ask agencies about their use of e-discovery tools when searching for records to respond to FOIA requests and/or legal discovery and, if applicable, why agencies do not use e-discovery tools to search for records.

## Observations:

- A significant majority of agencies that receive more than 50 FOIA requests annually use e-discovery tools to search for records when responding to FOIA and/or legal discovery. More work across the disciplines of FOIA, records management and technology is necessary.

To that end, in 2020, the Chief FOIA Officers Council's [Technology Committee](#) established seven interagency working groups to examine how agencies are using various tools to process FOIA requests and provide best practices and recommendations on leveraging technology to improve the FOIA process for all stakeholders. In addition, the 2020-2022 term of the FOIA Advisory Committee established a [Technology Subcommittee](#) "to prepare baseline standards and best practice recommendations to ensure that federal agencies have up-to-date access and impartial information on the functionality and operation of technology-driven solutions to ensure that the selection and implementation of new FOIA tools meet current and future needs of federal agencies and the requester community."

- While e-discovery tools typically require a significant investment of resources, these tools may already be in use at agencies' General Counsel offices, and FOIA offices may be able to leverage existing resources and licenses within their agencies to use these tools to process FOIA requests more efficiently.
- Smaller agencies, agencies that receive few FOIA requests per year and agencies that do not yet have a large volume of electronic records may not desire or need e-discovery software to assist in conducting FOIA searches and in processing and responding to FOIA requests.

### **Chief FOIA Officers and Agency Records Officers**

The final FOIA question in the 2020 RMSA survey asked respondents to describe the working relationship between the Agency Records Officer (ARO) and Chief FOIA Officer (CFO) at their agency by choosing all of the statements that applied. A majority of respondents (51 percent) reported that their ARO and CFO work together on IT requirements that benefit both programs, and 50 percent reported that their training programs address the importance and relationship between FOIA and records management. Respondents also reported that the ARO and CFO provide training on records management and FOIA to each other's staff (46 percent), work together on high-profile or complex FOIA requests (45 percent), and identify programs or offices most likely to have responsive records (44 percent). Thirty-five percent said that the ARO and

CFO coordinate search terms to identify responsive records, 20 percent said “Other, please explain,” and 7 percent answered, “None of the above.”

**Table 5: 2020 RMSA Responses to Question 55, “Which of the following describes the working relationship between the Agency Records Officer and the Chief FOIA Officer? (Choose all that apply).”**

<b>Answer Options</b>	<b>Count per answer option</b>	<b>Percentage to total responses</b>
Work together on Information Technology (IT) requirements that benefit both programs	135	51%
Training programs include the importance and relationship between FOIA and records management	131	50%
Provide training on records management and FOIA to each other's staff	122	46%
Work together on high-profile or complex FOIA requests	119	45%
Identify programs or offices most likely to have responsive records	115	44%
Coordinate search terms to identify responsive records	93	35%
Other, please explain	54	20%
None of the above	18	7%
Total number of responses to this question	264	

**Table 6: Selected Data from 2020 RMSA “Other, please explain,” Responses to Question 55, “Which of the following describes the working relationship between the Agency Records Officer and the Chief FOIA Officer? (Choose all that apply).”**

Theme	Agency Comments
FOIA	<ul style="list-style-type: none"> <li>● “[Agency] FOIA Officer generally makes direct contact to program offices, individual employees, and to the [agency] Records Repository to respond to requests.”</li> <li>● “The [agency] Records Officer is sometimes consulted regarding records location and assists with retrieving records from the FRC [Federal Records Center] when necessary.”</li> <li>● “The [agency] is a micro agency. Generally, responsive records are under the purview of a single employee or very few employees. Complex coordination structures are unnecessary.”</li> <li>● “We work together when needed on specific FOIA requests.”</li> <li>● “Work together to identify any delays with retrieving records.”</li> </ul>
Frequency	<ul style="list-style-type: none"> <li>● “A collaborative working relationship exists between the [agency’s] Records Management Office and the FOIA [program] and communications about initiatives extend to the Agency Records Officer and Chief FOIA Officer when necessary.”</li> <li>● “As necessary, work together on high-profile or complex requests”</li> <li>● “Collaborate often as part of same branch.”</li> <li>● “[Agency’s] FOIA program is designed to run without need of input from the Agency Records Officer as the scope of our routine FOIA requests are very specific and limited. FOIA officers as well as those assigned collateral FOIA duties work with the Records [Liaison].”</li> <li>● “We communicate often and provide feedback on initiatives like agency scanning initiatives, maintenance of electronic files and related matters. Our relationship has always been and continues to be robust, positive, and inclusive.”</li> <li>● “The Records and FOIA Officers work hand in hand as needed. They keep each other abreast of policy and process changes and assist one another as required.”</li> <li>● “The Agency Records Officer and the Chief FOIA Officer collaborate on FOIA matters when necessary.”</li> </ul>
Management/ Organization	<ul style="list-style-type: none"> <li>● “CFO located at [Department level agency].”</li> <li>● “The Agency Records Officer and Chief FOIA Officer are the same person.”</li> <li>● “The Agency Records Officer and Chief FOIA Officer duties at [the agency] are contained in one position, manager of the Information Governance organization.”</li> <li>● “It is the same person at our tiny agency.”</li> <li>● “The [agency] records officer is also the [C]hief FOIA [O]fficer.”</li> <li>● “[The Agency Records Officer and the Chief FOIA Officer] are one and the same.”</li> <li>● “[Agency] is so small that the Agency Records Officer is the Chief FOIA Officer.”</li> <li>● “One person serves in both roles.”</li> <li>● “Same person.”</li> <li>● “The Agency Records Officer is located in the Office of the Chief Information Officer (OCIO).”</li> <li>● “The Agency Records Officer supervises the Chief FOIA Officer.”</li> <li>● “The ARO does not work directly with the Chief FOIA Officer; this effort is coordinated through [program office] FOIA Coordinator.”</li> <li>● “The Administrative Officer performs all activities, these considerations are always accounted for.”</li> </ul>
Records Management	<ul style="list-style-type: none"> <li>● “Certification of records”</li> <li>● “Coordinate on required retention schedules”</li> <li>● “Coordinate on respective program policy refinements and guidance”</li> </ul>

Theme	Agency Comments
	<ul style="list-style-type: none"> <li>• “Coordinate with the Agency Records Officer on disposition schedules as needed and Notices of Eligibility for Destruction.”</li> <li>• “We work together on other issues but not specific to FOIA.”</li> <li>• “Work together to mutually support the needs of the records management and FOIA programs.”</li> </ul>
<b>Training</b>	<ul style="list-style-type: none"> <li>• "In-person training in 2020 was suspended after March because of COVID. Since then, training has been done remotely with individual commands as needed.”</li> <li>• “Prior to the pandemic, provided FOIA training to the record managers.”</li> <li>• “The [agency] expects that it will provide a records management training in calendar year 2021.”</li> <li>• “Training for records management is provided to all staff annually.”</li> </ul>
<b>Technology</b>	<ul style="list-style-type: none"> <li>• “Much collaboration has occurred to stand up a new [FOIA request tracking, processing and management software] program to track and process requests across the agency. The teams have worked together to ensure that the proposed software program meets the applicable standards and can be integrated ....”</li> </ul>

**Observations:**

- OGIS has long recognized the importance of strong records management as a solid foundation for an efficient and compliant FOIA program and smoother FOIA process.
- While the placement of FOIA and records management programs within agency organizational structures varies, records management and FOIA staff should work together to procure and deploy IT systems that will help agencies to carry out their missions and comply with the FOIA.

**CONCLUSION**

OGIS’s participation in the CRO’s annual RMSA helps us fulfill our statutory mission to “identify procedures and methods for improving compliance” under FOIA. We are hopeful that agency efforts to implement OMB/NARA Memorandum M-19-21, which encourages agencies to fully transition to electronic records management systems, will improve FOIA administration throughout the federal government.

Finally, we hope answers to questions regarding agency use of e-discovery tools to search for electronic records in response to FOIA requests will inform OIP guidance on the use of e-discovery tools to respond to FOIA requests and will assist OGIS, the Chief FOIA Officers Council, and the FOIA Advisory Committee in working to improve the FOIA process so that it works for all.

## METHODOLOGY

The CRO’s office opened the 2020 RMSA on January 19, 2021, with a response deadline of March 19, 2021. The CRO’s office conducts the RMSA via an online survey tool that creates a unique link used to submit survey responses. Ninety-eight percent of agencies that received the 2020 RMSA link completed the assessment in accordance with NARA’s responsibility to report on the state of federal records management. Each year, Federal agencies are required to conduct an RMSA and submit the findings to NARA. The goal of the self-assessments is to determine whether Federal agencies are compliant with statutory and regulatory records management requirements.

A total of 266 respondents answered the FOIA questions included in the survey, though not all respondents answered every FOIA question. The respondents included records officers at all Cabinet-level departments, departmental components, and independent agencies. Seven non-executive branch agencies that are not subject to FOIA voluntarily took part in the assessment. CRO instructed agency Records Managers to consult with their agency FOIA Officers to answer the FOIA-related questions. (Percentages are rounded up and may not equal 100 percent.)

The full 2020 RMSA report and survey results will be included in the Federal Agency Records Management Annual Report, published on the CRO’s [RMSA web page](#).

Questions 49-55 pertained to FOIA.

**Q49. Does your agency use e-Discovery tools to search for records when responding to FOIA and/or Legal Discovery?**

Answer Options	Count per answer option	Percent to total responses
Yes	191	72%
No, please explain	65	24%
Do not know	10	4%
Total number of responses to this question	266	100%



**Q50. For what purposes are e-Discovery tools used? (Choose all that apply)**

<b>Answer Options</b>	<b>Count per answer option</b>	<b>Percent to total responses</b>
Congressional requests	93	49%
De-duplication of records in responding to requests	85	45%
FOIA responses NOT involving requests for email records	102	54%
FOIA responses involving requests for email records	172	91%
Internal research for or by staff	83	44%
Knowledge management	33	17%
Lawsuit-related requests	130	69%
Legal discovery or third-party subpoena requests	118	62%
Managing legal holds	109	58%
Total number of responses to this question	189	

**Q51. Please explain why e-Discovery tools are not used to search for records. (Choose all that apply)**

<b>Answer Options</b>	<b>Count per answer option</b>	<b>Percent to total responses</b>
Cost	18	29%
E-discovery tools are not available at my agency	32	51%
Other, please be specific	35	56%
There are a limited number of licenses available	4	6%
Total number of respondents	63	

**Q52. Has the COVID-19 pandemic disrupted your agency's ability to respond to FOIA requests?**

Answer Options	Count per answer option	Percent to total responses
Yes	128	49%
No	127	48%
Do not know	8	3%
Total number of responses to this question	263	100%

**Q53. Which of the following explains why FOIA has been impacted? (Choose all that apply)**

Answer Options	Count per answer option	Percent to total responses
Agency staff are not available to conduct searches	59	46%
Electronic records are not accessible remotely	11	9%
FOIA case processing system is not available by remote access	15	12%
Other, please be specific:	46	36%
Paper records are inaccessible due to office closure	103	80%
Total number of responses to this question	128	

**Q54. Which of the following actions did your agency's FOIA program take in response to the COVID-19 pandemic? (Choose all that apply) (DOJ, Guidance for Agency FOIA Administration in Light of COVID-19 Impacts, <https://www.justice.gov/oip/guidance-agency-foia-administration-light-covid-19-impacts>, updated May 28, 2020.)**

Answer Options	Count per answer option	Percent to total responses
Worked directly with requesters to tailor their requests for most efficient processing	187	72%
Posted a notice on the FOIA website informing requesters of most efficient way to make a request	130	50%
Posted a notice on the FOIA website informing requesters of any anticipated delays	113	43%

Answer Options	Count per answer option	Percent to total responses
Included information about any anticipated delays in requester communication, including acknowledgment letters	146	56%
Used multitrack processing to further triage requests that could be processed more efficiently remotely	100	38%
Posted additional proactive disclosures for high public interest topics related to the COVID-19 pandemic	48	18%
Assessed technology to ensure most efficient administration of FOIA	135	52%
Other, please explain	51	20%
Total number of responses to this question	261	

**Q55. Which of the following describes the working relationship between the Agency Records Officer and the Chief FOIA Officer? (Choose all that apply)**

Answer Options	Count per answer option	Percent to total responses
Work together on high-profile or complex FOIA requests	119	45%
Work together on Information Technology (IT) requirements that benefit both programs	135	51%
Training programs include the importance and relationship between FOIA and records management	131	50%
Provide training on records management and FOIA to each other's staff	122	46%
Other, please explain	54	20%
None of the above	18	7%
Identify programs or offices most likely to have responsive records	115	44%
Coordinate search terms to identify responsive records	93	35%
Total number of responses to this question	264	