

# 2020-2022 Freedom of Information Act Advisory Committee Technology Subcommittee

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## **Recommendation No. 2022-TS1**

We recommend that the Archivist work with the Department of Justice’s Office of Information Policy to encourage agencies to post a minimum level of information to their websites beyond what is required by the Freedom of Information Act (FOIA), such as the hosting of FOIA reading rooms or electronic libraries.<sup>1</sup> In addition to these pre-existing requirements we recommend that agencies also include the following standardized elements, as delineated below:

1. Each agency website should link to their current FOIA regulations and include a FAQ section which provides this information in plain language.<sup>2</sup>
2. Link to a description of records maintained by the agency as well as a description of records that do not exist at the agency.
3. Link to agency records schedules.
4. Description of agency “Capstone” email policy, current list of Capstone officials, and agency’s email retention policy.<sup>3</sup>
5. Link to the electronic reading room.
6. FOIA request submission form (if requests can be made via a portal or online form). The agency should include guidance/tips on best way to frame their request, such as a reminder to provide as much information as the requester may have.
7. Explanation of FOIA’s nine exemptions (if not already included elsewhere).
8. Contact information for the FOIA Officer(s).
9. Contact information for the “FOIA Public Liaison.”
10. Average processing times for requests, including for “simple” and “complex” requests.<sup>4</sup>
11. Description of the types of requests that would be considered overly burdensome by the agency or not sufficiently specific.
12. Description of the administrative appeals process.

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<sup>1</sup> 5 USC 552(a)(2).

<sup>2</sup> <https://www.foiaadvisor.com/foia-regs>.

<sup>3</sup> <https://www.archives.gov/records-mgmt/email-management/capstone-training-and-resources.html>.

<sup>4</sup> The DOJ Handbook for Agency Annual FOIA Reports defines simple and complex requests as (1) a simple FOIA request is one than an agency using multi-track processing places in its fastest (non-expedited) track based on the low volume and/or simplicity of the records requested; and (2) a complex request is one that an agency using multi-track processing places in a slower track based on the high volume and/or complexity of the records requested. See Department of Justice Handbook for Agency Annual Freedom of Information Act Reports, Guidance for FOIA Professionals on Proper Tracking and Detailed Instructions for Preparing the Annual Report, October 7, 2021, page 22, see <https://www.justice.gov/oip/page/file/1438431/download>.

13. Accessible contact information for individuals with disabilities that they can use if they encounter inaccessible documents.
14. Best practices for writing your FOIA request, with examples.
15. A link to FOIA logs on the agency FOIA website.

The Frequently Asked Questions (FAQ) section should include the following<sup>5</sup>:

1. Instructions for obtaining the status of a request and requesting an estimated date of completion.
2. Training modules or graphics for requesters on how to craft a targeted FOIA request.<sup>6</sup>

We further recommend that agencies keep the user experience in mind when designing or updating their websites and meet any requirements set forth by the Federal Web Council.<sup>7</sup> Although we do not think that agency websites should be standardized, there should be certain information that is consistently found on agency FOIA websites.

### **Background and Justification**

The intent of this recommendation is to make agency websites more user-friendly and reduce the necessity for FOIA requests for records that have already been released. This recommendation is also intended to improve agency efficiency by allowing FOIA officers to focus their limited resources on records that have not already been made available to the public. We believe that these improvements will help streamline and improve the release of records under FOIA. Although some of these recommendations may have already been listed in other forms, such as the “Essential Elements of FOIA Webpages” contained in DOJ’s *FOIA Self-Assessment Toolkit*<sup>8</sup> or already incorporated as part of FOIA.gov, we reiterate them here to stress their importance to improving the FOIA process.

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<sup>5</sup> See FOIA.gov/FAQ.html for a representative FAQ page.

<sup>6</sup> Example of training videos <https://www.archives.gov/cui/training.html>.

<sup>7</sup> See <https://digital.gov/resources/federal-web-council/>

<sup>8</sup> <https://www.justice.gov/oip/foia-resources/foia-self-assessment-toolkit/download>.

## **Recommendation No. 2022-TS2**

We recommend that the Archivist of the United States establish an executive-branch working group within two years to determine recommended best practices for the release of records in native format, including metadata. This working group should address how these protocols should work vis-à-vis current practices under 5 USC 552(a)(3)(B) and align with NARA Bulletin 2015-04<sup>9</sup> and OIP's guidance on metadata and FOIA.<sup>10</sup>

As a starting point for the working group, our recommendation is that the following file elements should be released to all requesters, subject to other FOIA exemptions, and with the understanding that classified national security records may require special protocols:

1. Identifier [File Name]. The complete name of the computer file including its extension (if present).
2. Identifier [Record ID]. The unique identifier assigned by an agency or a records management system.
3. Title. The name given to the record.
4. Description. A narrative description of the content of the record, including abstracts for document-like objects or content descriptions for audio or video records.
5. Creator. The agent primarily responsible for the creation of the record.
6. Creation Date. The date that the file met the definition of a federal record.
7. Rights. Information about any rights or restrictions held in and over the record including access rights such as national security classification, or personally identifiable information, Privacy Act, or Freedom of Information Act, or usage rights relating to copyright or trademark.

## **Background and Justification**

We predict that metadata will emerge as a challenging issue for FOIA agencies in the near term as the requester community increasingly seeks metadata and federal agencies transition to a fully electronic environment per NARA Bulletin 2015-04. Complicating this matter further, most common software programs used by FOIA offices do not allow for the processing of metadata. Other agencies typically release documents in “flattened” PDFs with nothing in native format.

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<sup>9</sup> NARA Bulletin 2015-04 provides guidance to federal agencies for the minimum set of metadata elements that must accompany transfers of permanent electronic records to the National Archives. See <https://www.archives.gov/records-mgmt/bulletins/2015/2015-04.html>

<sup>10</sup> Using Metadata in FOIA Documents Posted Online to Lay the Foundation for Building a Government-Wide FOIA Library. See <https://www.justice.gov/oip/blog/using-metadata-foia-documents-posted-online-lay-foundation-building-government-wide-foia>.



### **Recommendation No. 2022-TS3**

We believe that the following two (2) recommendations from the 2016-2018 FOIA Advisory Committee should be implemented, with the following revisions, within a two-year period following the release of this Report:

1. Encourage OGIS to highlight the issues with proactive disclosure and Section 508 compliance in its report to Congress by recommending that legislation be enacted to clarify agency requirements under the Rehabilitation Act, especially as they relate to proactive posting of large numbers of records.
  
2. Proactively publish FOIA logs in the agency's electronic reading room (often referred to as FOIA Libraries) on an ongoing basis, at least quarterly, unless the agency receives 50 or less requests per year, in which case annually or semi-annually would be appropriate. To be most useful, agency FOIA logs should contain, at a minimum, each of the following fields in either Excel or CSV format, in preference to PDF:
  - a) Tracking number of the request.
  - b) Date of the request.
  - c) Name of the requester, provided it is not a first-party requester (i.e., someone asking for records on himself or herself) – to be most useful, the agency should publish the names of all third-party requesters; the agency should also alert requesters that they will publish the names of third-party requesters in their FOIA logs.
  - d) Organizational affiliation of the requester, if identified in the request.
  - e) Whether the request was processed under the Privacy Act as well.
  - f) Subject matter of the request.
  - g) Status of the request (pending, closed, etc.).
  - h) Fee category assigned to requester, if applicable (commercial, educational, news media, other).
  - i) Whether a fee waiver was requested.
  - j) If a fee waiver was requested, whether it was granted.

Additionally, we recommend that FOIA.gov, as well as commercial portals, allow for the full text searching of FOIA logs.

### **Background and Justification**

In line with the Charter for the FOIA Advisory Committee we advocate continued pursuit of technological solutions, within agencies, the requester community, and the tech community, to

address the proactive disclosures of government records and data.<sup>11</sup> Furthermore, we believe that the Archivist of the United States should establish an executive-branch working group to explore the use of new technologies that may aid in expanding proactive disclosures to benefit access to federal records. We believe that the second recommendation will benefit the requester community by allowing individuals easier access to identify and obtain previously released records and thus resulting in more cost-effective and faster releases by agencies.

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<sup>11</sup> FOIA Advisory Committee charter, under "Description of Duties": The FOIA Advisory Committee fosters dialogue between the Federal Government and the requester community, solicits public comments, and develops recommendations for improving FOIA administration and proactive disclosures. See, <https://www.archives.gov/ogis/foia-advisory-committee/2020-2022-term>