

FIRST-PERSON FOIA

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THE
PEOPLE'S
RIGHT
TO KNOW

*Legal Access to
Public Records and Proceedings*

By HAROLD L. CROSS

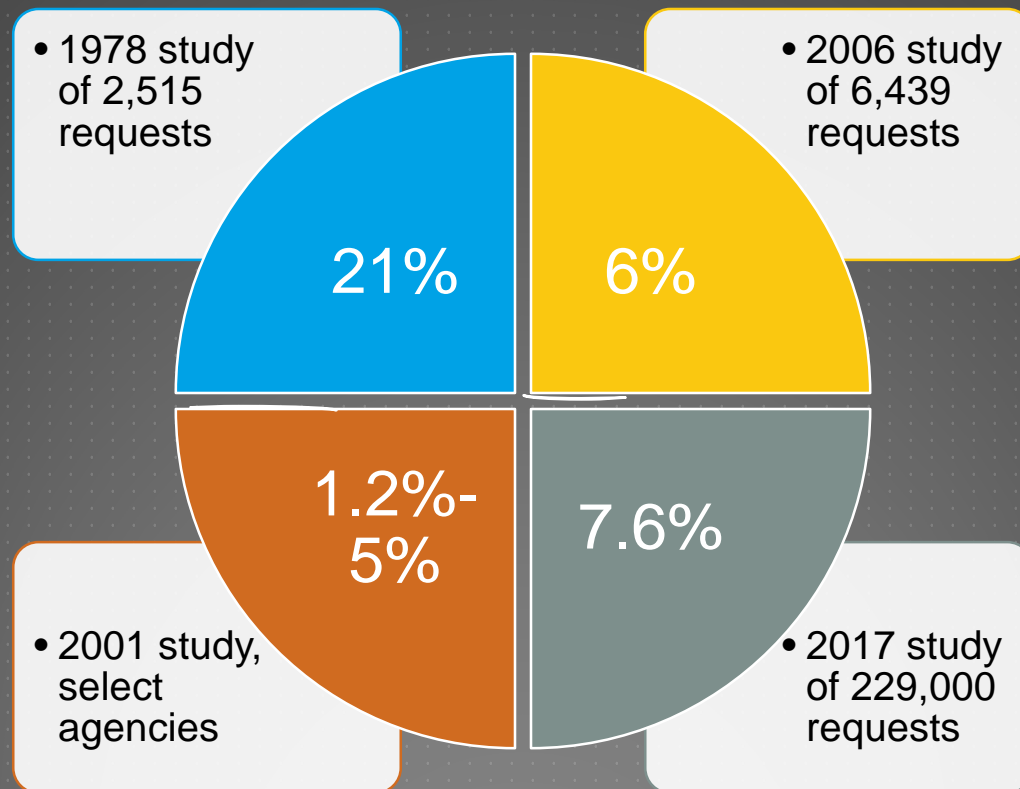
1953

COLUMBIA UNIVERSITY PRESS

Morningside Heights, New York

Congress should “legislate freedom of information for itself, the public, and the press.”

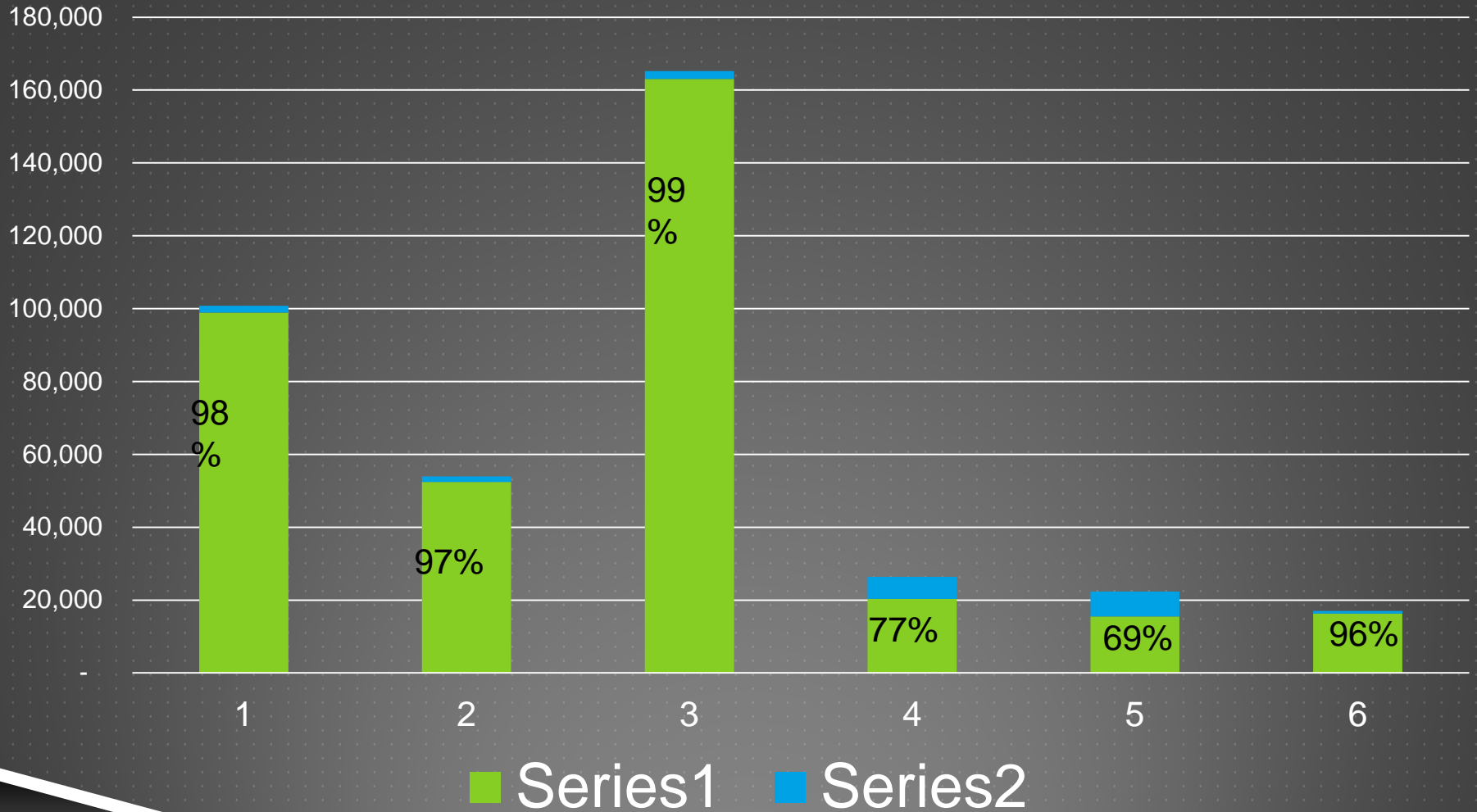
NEWS MEDIA REQUESTERS



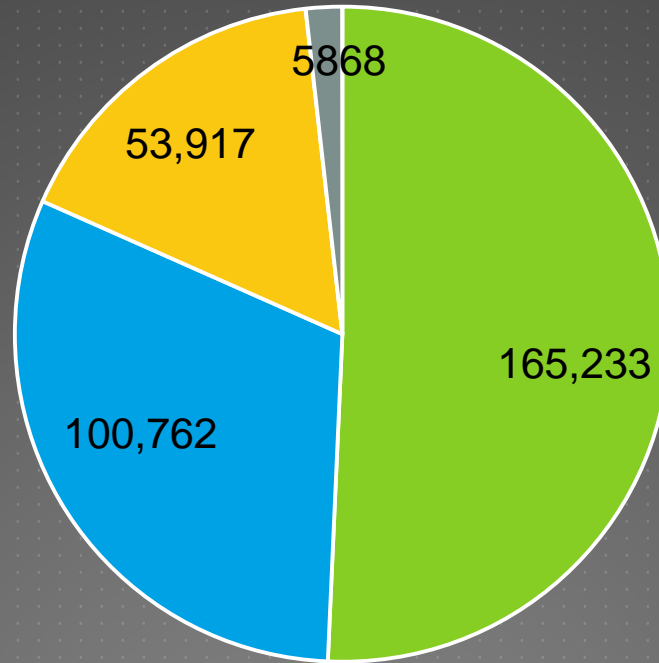
AGENCY CASE STUDIES

- ▶ Department of Homeland Security
 - ▶ U.S. Citizenship and Immigration Services
 - ▶ Immigration and Customs Enforcement
 - ▶ Customs and Border Protection
 - ▶ Department of Veterans Affairs
 - ▶ Veterans Health Administration
 - ▶ Social Security Administration
 - ▶ Equal Employment Opportunity Commission
 - ▶ Other agencies
- 

FIRST-PERSON REQUESTS (FY 2015)



DHS REQUESTS (FY 2015)



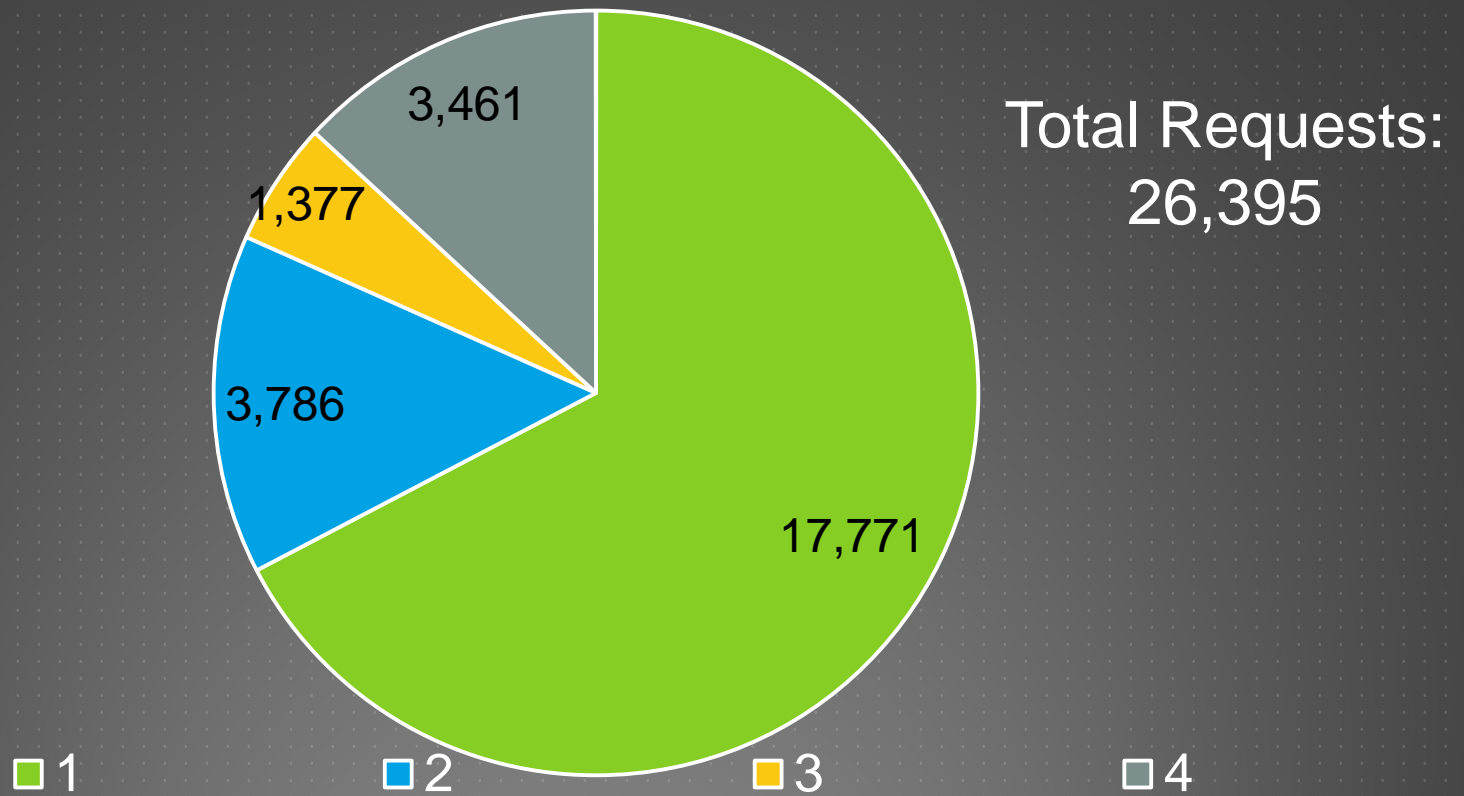
Total Requests:
281,138

■ 1 ■ 2 ■ 3 ■ 4

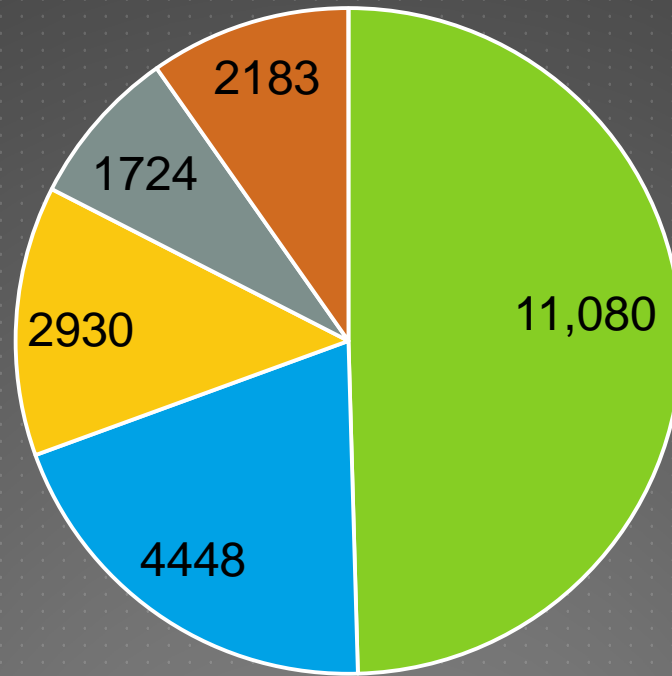
FOIA AND IMMIGRATION

- ▶ Discovery in removal proceedings
- ▶ Applications for immigration benefits, such as new visas or naturalization
 - ▶ Verification of immigration and criminal history to avoid risk and ensure consistency
 - ▶ Obtain a record required to be submitted with the application

VHA REQUESTS (FY 2015)



SSA REQUESTS (FY 2015)



Total Requests:
22,365

1

2

3

4

5

EEOC REQUESTS

- ▶ FY 2015 Total: 17,025
- ▶ 95% of requests for “charge file”
- ▶ Charge file contains:
 - ▶ Respondent’s Position Statement
 - ▶ Exhibits attached to the Position Statement
 - ▶ Investigator’s notes

THE FIRST-PERSON FOIA MISMATCH



THE FIRST-PERSON FOIA MISMATCH

Due Process Failures

"[T]here's been times where guys have been removed and then a FOIA result comes back and my strategy would have been different."

"They got a notice of right to sue and they want to file a lawsuit and then basically I won't consider it unless I can review the EEOC's file."

"[L]awyers can't afford to take the time and energy to litigate [FOIA] issues."

"How in God's name are we supposed to substantively respond to something that we've only gotten a percentage of?"

THE FIRST-PERSON FOIA MISMATCH



ALTERNATIVE REGIMES

● Administrative Discovery

● Eliminate Request and Return

● Affirmative Disclosure

● Specialized Procedures

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