To: 2018-2020 FOIA Advisory Committee
From: Time Volume Subcommittee of the 2018-2020 FOIA Advisory Committee
Date: May 31, 2020
Re: Time Volume Subcommittee Report & Recommendations to the
FOIA Advisory Committee

I.   Time Volume Subcommittee Methodology

In the process of developing recommendations, the Time Volume Subcommittee focused on the current statutory timeframes for responding to FOIA requests; the volume of requests received by federal agencies; improvements to reduce the number of requests that agencies receive; and improvements to reduce the amount of time it takes for agencies to respond. To explore these areas further and develop recommendations, the Committee: 1) tracked the progress of previous relevant FOIA Advisory Committee recommendations; 2) reviewed annual FOIA reports to track trends that may contribute to backlogs; 3) reviewed other countries' FOI laws to determine how those countries addressed issues of time and volume; and 4) surveyed agency and requester community members.

The Subcommittee submitted six recommendations to the full Committee for consideration. The recommendations requested that steps be taken to:

1. review technology and resources in light of increasing FOIA demands;
2. update FOIA websites and disclose standard operating procedures;
3. provide more FOIA training to staff in order to improve efficiency;
4. provide alternative dissemination mechanisms of records commonly requested;
5. modernize the dissemination of information requested outside of the FOIA; and
6. manage requester expectations via the agency FOIA webpage.

The Subcommittee drafted two surveys to gather information about the FOIA process: one for the requester community and one for agency personnel. The surveys were designed to better understand the root causes of delays in the processing of FOIA requests; factors that contribute to a large volume of FOIAs and backlogs at some agencies; and agency and requester views about how to improve the FOIA process. The American Society of Access Professionals and members of the Subcommittee distributed the survey to their networks.

There were 79 responses from the requester community to the requester survey. The survey was designed to elicit information about requester familiarity with agency response times and resources available on agency websites; approaches to filing FOIAs including consultation with the agency prior to filing; familiarity with agency record keeping; approaches to drafting FOIA requests; receptivity to narrowing requests after filing; tendency to litigate FOIAs; familiarity

with the FOIA process, and ways that the FOIA process could be improved. Subcommittee members distributed the survey to their networks. This FOIA Requester Survey and responses are attached to this report as Appendix A.

There were 110 responses from agency personnel to the agency survey. The survey was designed to elicit agency staff impressions regarding impediments to timely processing FOIA requests; frustrations with FOIA processing; common areas of confusion among requesters; areas of disagreement between agency officials and requesters; FOIA software; interactions with the Office of Government Information Services; adequacy of job training; predictions about the future of FOIA processing; and fixes that might improve the FOIA process. This FOIA Officer Survey and responses are attached to this report as Appendix B.

The surveys asked 14 questions of agency professionals and 12 questions of requesters. Committee members purposefully wrote open-ended survey questions. The responses were categorized and, using the survey software SurveyMonkey, coded. Because most of the questions were open-ended, some of the answers were placed into more than one explanatory category. For example, if a respondent answered that "money and time" were the biggest challenges of administering FOIA, the answer would be coded under both "fiscal resources" and "time." As a result, the percentages in the FOIA Officer Survey and FOIA Requester Survey do not add up to 100.

In addition to reviewing and taking into consideration responses to the FOIA surveys, Subcommittee members met regularly and conducted additional research to inform their recommendations. Survey results influenced recommendations on the need to review technology and resources considering increasing FOIA demands; update and disclose standard operating procedures; provide more FOIA training to staff in order to improve efficiency; and manage requester expectations via the agency FOIA webpage.

The Subcommittee's research on international issues provided a foundation for recommendations to provide alternative dissemination mechanisms of records commonly requested via the FOIA, and to modernize the dissemination of information requested outside of the FOIA process. Subcommittee members working on international issues interviewed prominent international FOIA professionals on the most effective FOIA statutes with respect to time and volume. From that, they developed a list of countries whose FOIA statutes they studied to see if the U.S. could adopt any of their practices in order to improve FOIA processing times.

When studying the international FOIA statutes, the Subcommittee members focused on the following questions:

1. How many FOIA requests does each government receive per year?

2. Which agencies receive these requests?
3. What is the country's total population?
4. What do these FOIA requests look like?
5. What impact does classification have on the FOIA request process?
6. What steps have been taken to improve time/volume issues?
7. Does the country have other statutes that divert requests for information outside of their FOIA law, thereby reducing the volume of requests that are made through the FOIA law?
8. What budgetary resources are devoted to public records processing and what is the current staffing?

What stood out to the Subcommittee members was that the United States had more FOIA requests per capita than any other country, and many those requests were made by individuals for their own information. The members then focused on U.S. agencies that had reduced the number of FOIA requests by making information available online through alternative means, such as secure online databases. Subcommittee members used these agencies as models for the recommendations to provide alternative dissemination mechanisms of records commonly requested via the FOIA, and to modernize the dissemination of information requested outside of the FOIA.

II.   Time Volume Subcommittee Recommendations

Time Volume Subcommittee Recommendation 1

"That the Archivist requests that agencies conduct a comprehensive review of their technological and staffing capabilities and requirements within two years to identify the resources needed to respond to their current FOIA needs and the anticipated FOIA demands of the future. Further recommend that the Archivist request that agencies apply the results of their comprehensive reviews to create agency-specific strategic plans that address expected increases in the number of FOIA requests received, as well as high-volume e-discovery style document reviews."

Goal: To ensure that agencies are able to reduce or eliminate their current FOIA backlogs, while keeping up with expected increases in the volume of FOIA requests to decrease the likelihood of developing backlogs in the future.

Rationale: The Time Volume Subcommittee, in conjunction with the Vision Subcommittee, surveyed agency FOIA personnel as well as the requester community to identify areas of concern. When requesters were asked to identify areas agencies could improve, 17.5% referenced improving efficiency. Agency FOIA professionals were even more specific. When

asked about the greatest impediment to processing FOIA requests in a timely manner, over 50% referenced resources in their responses. Another 5% referenced technology. In response to a question about their greatest frustrations with FOIA processing, nearly 24% of respondents referenced resources, and another 11% referenced technology.

Similarly, discussions with committee members who are Federal employees identified those areas as sources of frustration and areas for improvement. The survey questions were focused on the current challenges and frustrations faced by agency FOIA offices, and while it is imperative that agencies take steps to identify and address their current needs or shortfalls, if agency efforts only focus on current problems, agencies will not be prepared to handle increases in FOIA requests or in FOIA litigation.

A data-driven comprehensive review would gather information on the number of FOIA requests received and processed over previous years, track increases between each of the reviewed years (with particular attention paid to any increases identified as a result of predictable or periodic events like Presidential elections), and identify the average number of FOIA requests or pages the agency's FOIA analysts are able to process. Using that information, the agency should be able to predict with some accuracy the rate or volume of FOIA requests likely to increase in years to come, along with the number of FOIA analysts required to process those requests in each of those years.

With regard to technological requirements, agencies will need to first determine what types of records are maintained within their current systems, whether any new systems are anticipated and the types of records those systems are likely to contain, and then identify what they will need to be able to process those records when they are requested under the FOIA.

For example, if an agency uses a system that creates or stores audio or video files, that agency's FOIA office should have the tools to redact and release those files as appropriate. An agency would also need to investigate how it conducts its searches, whether that search mechanism is likely to change in the near future, and anticipate how technology can be used to assist with searching and processing records. For example, e-discovery tools are helpful when attempting to review large volumes of records, and machine learning can assist with applying standardized redactions to commonly requested forms, exempt personally identifiable information, or to fields within spreadsheets. Agencies should evaluate whether their systems, records, and trends would benefit from the use of these technologies.

Time Volume Subcommittee Recommendation 2

"That the Archivist requests that DOJ/OIP collect information as part of each agency's Chief FOIA Officer (CFO) Report regarding 1) the Standard Operating Procedures (SOPs) for the processing of FOIA requests; and 2) the FOIA webpage. Potential topics to be covered include the frequency of updates to the SOP and FOIA webpage, types of agency resources available on the FOIA webpage, such as the SOP and FOIA manual, and information available on the FOIA webpage to assist requesters in understanding the FOIA process."

Goal: To ensure that agencies are creating up to date streamlined processes in the handling of FOIA cases in order to provide records to the requesters and decrease agencies' FOIA backlogs and that agencies are providing clear information to requesters regarding the FOIA process.

Rationale: The Time/Volume Subcommittee and the Vision Subcommittee conducted a survey of FOIA agency personnel and the requester community to identify FOIA challenges. In the survey, the requesters were asked "What are your biggest questions about the FOIA process?" The top three responses were:

- 31% identified the process;
- 27% identified accountability and transparency; and
- 15% identified the timeline.

Similarly, the FOIA agency personnel were asked to identify their perception of the areas of confusion among requesters. The top three responses were:

- 36% identified knowledge of the process;
- 22% identified overly broad requests; and
- 14% identified the scope of the requests.

Additionally, in the FOIA agency personnel survey, they were asked if they had a "magic wand to fix FOIA" what would they do. Their top four responses were:

- 20% fix internal processes;
- 17% allow more time process cases;
- 17% more automation; and
- 17% more funding.

The fact that 20% of FOIA agency personnel stated that fixing internal processes was their magic wand wish indicates that a review of an agency's FOIA process and an effort to document and

standardize procedures is something desired by agencies. Standardizing internal processes and creating guidance in the form of an SOP would benefit agencies by streamlining processes and potentially reducing backlogs. The requester community also would benefit by better understanding the agency process and receiving their records in less time.

This survey result suggests that agencies should conduct self-assessments and draft FOIA process procedures. When drafting an SOP, an agency should thoroughly review each step in the FOIA process. During this review, the agency can identify suitable approaches, ensure compliance with their FOIA regulations, obtain feedback from staff, and implement best practices. In addition to creating a standard FOIA process, the SOP will be a useful tool in training new employees.

To assist in developing and standardizing the SOP, agencies should consult the *2017 Department of Justice (DOJ) Office of Information Policy (OIP) FOIA Self-Assessment Toolkit.* The Toolkit was designed to provide "a resource for agencies to use when assessing their administration of the FOIA." With the toolkit, OIP intended agencies to "conduct self-assessments to review and improve their FOIA program." The Toolkit contains thirteen modules ranging from intake to FOIA reporting. The Toolkit is very useful to the agencies when they are creating and/or updating their SOP.

Module 13 of the Toolkit emphasizes the importance of sharing information on an agency's website: "Agency FOIA websites serve two important functions in the FOIA process: (1) FOIA websites provide valuable information to the public about the Agency, including the type of records maintained, FOIA contact information, instructions for making a FOIA request, and a copy of the Agency's FOIA regulations; and (2) FOIA websites contain proactively disclosed records."

In 2017 DOJ OIP issued guidance entitled *Agency FOIA Websites 2.0*, further illustrating the importance of informative and user friendly FOIA homepage. This guidance encourages agencies to update their FOIA homepages and cover the areas of proactive disclosure, instructions for submitting a FOIA request, and the administration of FOIA. After an agency creates an SOP, it should review it every two years and update it based on new law, best practices, and technology.

Providing clear information about the FOIA process to the requester community is one of the key components to alleviating conflicts and confusion among FOIA requesters. The best means for agencies to convey information about the FOIA process information is to post information such as an SOP on their FOIA homepage. The SOP will provide clarity and specific details to the requester community about an agency's FOIA process.

Time Volume Subcommittee Recommendation 3

"Request that OIP issue guidance requesting agencies to provide annual mandatory FOIA training to all agency employees, as well as provide FOIA training to all new agency employees and contractors onboarding with an agency, including program-specific training if applicable. Further, direct OGIS and request OIP to study agencies' current FOIA training requirements and content. [The study may include an evaluation of current agency requirements for mandatory training, onboarding and supplemental training, first-line supervisor training, and program-specific training for subject matter experts and technology professionals.] Further request that OGIS ask Congress to support this recommendation by providing [a line-item] appropriation for agency FOIA training costs."

Goal: This study of training requirements and development of best practices will increase transparency and efficiency in FOIA responses and reduce FOIA backlogs and processing times.

Rationale: There is no legally enforceable mandatory FOIA training requirement with which agencies must comply. The Chief FOIA Officer for each agency is required to "offer training to agency staff regarding their responsibilities under [the FOIA]." See 5 U.S.C. § 552(b)(2)(F).

While the FOIA itself provides no clear statement that FOIA training is mandatory, or standards for such training, the Department of Justice, Office of Information Policy issued a Memorandum to Agency General Counsels and Chief FOIA Offices of Executive Departments and Agencies on Freedom of Information Act Training on October 28, 2015. The Memorandum encouraged agencies to utilize OIP's training resources "to ensure that all of your employees have a proper understanding of the FOIA and the important role they play in implementing this law." (See OIP October 28, 2015 Memorandum.)

On March 19, 2009, the Attorney General issued a Memorandum for Heads of Executive Departments and Agencies on the Freedom of Information (FOIA) Act, which directed all Agency Chief FOIA Officers to "review all aspects of their agencies' FOIA administration… and report to the Department of Justice each year on the steps that have been taken to improve FOIA operations and facilitate information disclosure at their agencies." (See Attorney General's March 19, 2009 Memorandum at 3.)

OIP's 2015 Guidance for Further Improvement Based on 2015 Chief FOIA Officer Report Review and Assessment, stated that "[i]t is critical to any successful FOIA administration that the professionals responsible for implementing the law have adequate training resources available to them." See OIP 2015 Guidance. Additionally, OIP requested that all agencies implement annual FOIA training for FOIA professionals.

OIP guidance on the Chief FOIA Officer Reports for 2020 highlights this request by including specific questions relating to FOIA training at agencies. Agencies must report among other things:

> 3. Did your FOIA professionals or the personnel at your agency who have FOIA responsibilities attend any substantive FOIA training or conference during the reporting period such as that provided by the Department of Justice?
> 4. If yes, please provide a brief description of the type of training attended or conducted and the topics covered.
> 5. Provide an estimate of the percentage of your FOIA professionals and staff with FOIA responsibilities who attended substantive FOIA training during this reporting period.
> 6. OIP has directed agencies to "take steps to ensure that all of their FOIA professionals attend substantive FOIA training at least once throughout the year."
> If your response to the previous question is that less than 80% of your FOIA professionals attended training, please explain your agency's plan to ensure that all FOIA professionals receive or attend substantive FOIA training during the next reporting year.

See Content of 2020 Chief FOIA Officer Reports Survey Results.

The FOIA Advisory Committee conducted a survey of FOIA professionals and requester communities. The results of these surveys support the inclusion of this recommendation. Specifically, the relevant survey results include:

- FOIA Professional Community Survey:

  - Results: 46.73% of responding agency staff reported that they do not receive adequate FOIA training, 13.08% do not receive any training, 14.02% thought their training needed more subject matter, 9.35% needed more detail, 10.28% needed refresher training, 4.67% more on policy, 5.6% national training and 3.74% training ineffective.

  - Commentary: Key commentary on training included:

    - "I think there are great training opportunities once you are a FOIA professional as career development and for continuous training but entry level training is near non-existent. Individuals watch a video and are encouraged to ask their too busy supervisors for help. The result is that most analysts have long waiting curves and very divergent methods of doing what should be routine and standardized activities."

- ■ "More training needed on how to conduct an adequate search and in negotiating with requesters"
- ■ "[N]eed a yearly national training with all FOIA Officers. New FOIA Officers need an assigned mentor to walk them though issues instead of sending e-mails to the field."
- ■ "I feel I do not receive adequate training overall. Not enough FOIA training is available, and my agency has limited training dollars. My training is lacking in Exemptions 1 and 7, day-to-day techniques in managing a well-run FOIA program, conflict management/mediation, and substantive litigation training on how to write a defensible declaration (hands-on, not a lecture style like what's offered by OIP)."
- ■ "Most importantly have metrics which support appropriate staffing in the field and assure mandatory, annual, in-person FOIA training for all officers. Probably would consider pluses and minuses of making sure legal support and access for more complex issues is guaranteed for all field officers."

- ● FOIA Requester Community Survey:

  - ○ Results: 13.51% of responding FOIA requesters indicated their biggest questions about FOIA are related to staffing and training; 22.5% of responding FOIA requesters think agencies could improve their FOIA process through training and capacity.

  - ○ Commentary:

    - ▪ "Why agencies allow untrained, uninformed staff make decisions on search and redaction that are predictably ill-informed thus likely to generate appeals and litigation"
    - ▪ "Hire more folks. Train more folks. Give requesters more clarity on where their request is within the process. It'd be great if we had real-time access to most FOIA notes on our requests, since I frequently file for those anyway."
    - ▪ "Have more resources. For some, the problem is that agency officials view disclosure as antithetical to an agency's interests so the FOIA office's mission is to limit public access. That requires a change in leadership and attitudes towards the role of transparency."
    - ▪ "Order mandatory training for FOIA officers and agency FOIA attorneys with a focus on reducing delays, unwarranted redactions and other common

Time Volume Subcommittee Recommendation 4

"Recommend that the Archivist request that OGIS and OIP request that agencies identify common categories of documents requested frequently under the FOIA and/or Privacy Act by or on behalf of individuals seeking records about themselves, and seek to establish alternative processes for providing access to these documents to requesters in a more efficient manner than the FOIA."

Goal: This recommendation aims to ensure that the FOIA is primarily used to serve its original legislative intent of enhancing the transparency of government operations, while also meeting the needs of "first-person FOIA" requesters – individuals seeking information from the government about themselves.

Rationale: The Freedom of Information Act was originally intended as a measure to increase transparency of government operations by releasing information to the public, ultimately as a means of improving the public's ability to govern.[1] The legislative intent is clear from the signing statement delivered by President Lyndon B. Johnson, in which he noted: "a democracy works best when the people have all the information that the security of the nation will permit."[2] In recent years, the number of annual FOIA requests in the United States has ballooned to over 800,000, as has the cost of accommodating these requests – more than $545 million in FY 2018.[3] In many cases, government agencies tout these figures as signs of success in ensuring transparency in government, as well as indications of the high price of doing so.[4]

In fact, many government agencies have come to rely on the Freedom of Information Act and the administrative procedures specified within to address other needs for access to information by the public beyond the worthy goals of transparency and accountability originally envisaged by the Congress. There are numerous legitimate reasons why citizens (and non-citizens) require access to government information and records other than to hold the government accountable. Many FOIA requests do not in fact respond to a public need for transparency in government, but rather are requests by "individuals seeking records about themselves: for example, their own medical files, immigration records, or investigation files" – often known as "first-person" FOIA

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[1] Fred H. Cate, D. Annette Fields, James K. McBain "The Right to Privacy and the Public's Right to Know: The 'Central Purpose' of the Freedom of Information Act", Administrative Law Review 46:41 (1994), 42.

[2] "7/4/1966 Statement by the President Upon Signing the "Freedom of Information Act," https://catalog.archives.gov/id/84782677

[3] Amelia Brust, "2018 sees record number of FOIA requests, information seekers change", Federal News Network, Jun. 7, 2019, available at https://federalnewsnetwork.com/open-datatransparency/2019/06/2018-sees-recordnumber-of-foia-requests-information-seekers-change/.

[4] The White House, Office of the Press Secretary, "Fact Sheet: New Steps Toward Ensuring Openness and Transparency in Government", Jun. 30, 2016, available at https://obamawhitehouse.archives.gov/the-press-office/2016/06/30/fact-sheet-new-steps-toward-ensuringopenness-and-transparency.

requests.[5] The high number of FOIA requests therefore may say little about government transparency, and much more about the way in which government agencies interact with the public.

In our view, this overreliance on the FOIA has a number of negative effects. First, it distorts the public's understanding of the true impact of the FOIA and the real state of government transparency. Not only does it artificially inflate the number of requests made in the public interest, but it can also result in misleading statistics regarding the expediency of responses to FOIA requests.

Second, the FOIA provides a set of specific administrative deadlines that may be adequate for ensuring transparency of government operations, but that are inadequate for other cases. For instance, the FOIA requires a response from government agencies within 20 business days but does not require that records be turned over within this time frame. This standard may be insufficient for individuals who need these records for legal or medical reasons.

Third, in some cases, requiring the use of FOIA for first-person requests leads to a duplication of work processes.[6] In the case of immigration files, even when information is consolidated from multiple government agencies in the hands of one agency, requesters must sometimes file requests with each agency individually.[7] Moreover, because FOIA requests are often not met within an adequate response time, attorneys often file requests with multiple agencies to see which one responds the fastest.[8] All of this leads to delays and extra work that is inefficient and costly.

There are several ways in which access to information can be provided in a more efficient way than through FOIA. These include the following:

1. Facilitating proactive administrative discovery in agency proceedings (such as immigration proceedings) that often require a FOIA request;
2. Eliminating "request and return" scenarios that require petitioners to file a FOIA request for records that are in an agency's possession to demonstrate that they are eligible for a government benefit;
3. Making select records available to the public in online databases, such as the Veterans Benefits Management System;

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[5] Margaret B. Kwoka, "First-Person FOIA", Yale Law Journal 127:8 (2018), 2204," https://www.yalelawjournal.org/article/first-person-foia.
[6] Kwoka, "First Person FOIA", 2249-51.
[7] Kwoka, "First Person FOIA", 2250.
[8] Kwoka, "First Person FOIA", 2250.

4. Establishing other processes for requesting particular documents outside of the FOIA, as the FBI has done with its requests for criminal background checks.[9]

To meet the goals of this recommendation, agencies would do the following:

- Survey commonly requested categories of documents to see which count as "first-person" FOIA requests.
- Establish a set of procedures outside of the FOIA for requesters to access these types of documents.
- Ensure that these procedures guarantee access to the same amount of documentation, or more documentation, than is possible under the FOIA, and within a quicker time frame.

Time Volume Subcommittee Recommendation 5

A. "Recommend that the Archivist address agencies' need to provide for the dissemination of information outside of the FOIA and ensure that the programs that provide such information dissemination are robust.

B. In support of the National Archives and Records Administration's M-19-21 Memorandum which directs agencies to ensure that all Federal records are created, retained and managed in electronic formats, with appropriate metadata, by December 31, 2022, recommend that the Archivist address agencies' need to provide these records electronically, developing online databases where members of the public may access commonly requested types of documents that go to the heart of the agency's mission, and providing secure online databases where that information contains personally identifiable information or other sensitive information."

Goal: To allow members of the public seeking records that, by agency-specific statutes, should already be disseminated outside of the FOIA, to readily obtain those records online so that they do not resort, in the alternative, to submitting FOIA requests for these records.

Rationale:

A. *FOIA, Inc.*, 65 Duke Law Journal 1361, 1362 (2016), Margaret B. Kwoka ("By meeting information needs in a more efficient manner that is available equally to all, affirmative disclosure will enable federal agencies to reclaim public records from the private market and free up resources to better serve FOIA requests that advance its democratic purpose.").

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[9] On these four, see Kwoka, "First Person FOIA", 2255-2268.

B. At least two federal agencies, the U.S. Copyright Office, and the U.S. Consumer Product Safety Commission, are already providing this type of public disclosure:

   a. 17 U.S.C. § 707 requires the U.S. Copyright Office (Copyright Office) to maintain a public catalog of all copyright registrations, arguably the most sought after records that the Copyright Office maintains. The Copyright Office fulfills this statutory requirement by providing the records in an online database, https://cocatalog.loc.gov/cgi-bin/Pwebrecon.cgi?DB=local&PAGE=First. As a result, the Copyright Office receives very few FOIA requests for records. In FY18 they received 44 FOIA requests; in FY17, 43.

   b. At the U.S. Consumer Product Safety Commission, a 2008 amendment to the statute, 15 U.S.C. § 2055a, requires the agency to maintain a public database on the safety of consumer products "that is [] publicly available; []searchable; and [] accessible through the Internet website of the Commission." 15 U.S.C. § 2055a(a)(1). This database, Saferproducts.gov, allows members of the public to, *inter alia*, search consumer complaints on specific products, and review recall notices. The agency also provides national injury data online via its National Electronic Injury Surveillance System (NEISS) database, https://www.cpsc.gov/Research--Statistics/NEISS-Injury-Data. 15 U.S.C. § 2054. Accordingly, the number of FOIA requests at the agency is relatively low for an agency that "protects the public against unreasonable risks of injury associated with consumer products." 15 U.S.C. § 2051(b). In FY18, the Commission received 554 FOIA requests; in FY17, 664.

Time Volume Subcommittee Recommendation 6

"The Archivist recommends OGIS undertake an assessment of information agencies make publicly available on their website to facilitate the FOIA filing process. After the assessment, OGIS will recommend best practices. The assessment will examine how agencies describe the process for filing a FOIA request on their websites, the viability of agencies providing expected wait times for complex and simple requests, and the best contact information for an agency representative that can answer questions prior to the filing of the FOIA request."

Goal: The publicly available information provided by agencies will shorten the timeframe in which FOIA requests are processed by lessening the time requesters and agency officials devote to defining the scope of the request after a FOIA request is filed.

Rationale: There is an overarching need for streamlining the FOIA process. The number of FOIA requests filed annually across all agencies generally increased every year during the past decade, reaching a record 863,729 requests filed in FY 2018. Requests are expected to continue to increase in the foreseeable future.

Agency resources have largely remained stagnant during that time, leaving FOIA offices and officers feeling overburdened. In a survey of FOIA Officers conducted in conjunction with the American Society of Access Professionals (ASAP) in July 2019, more than half of all FOIA professionals who responded (50.91%) said that capacity is an issue. They are stretched thin and it will only get worse as requests continue to increase.

Despite other options for lessening the burden of FOIA that involves filing fewer requests, when requesters do file FOIAs, the process should be as efficient as possible. While many inside and outside of the government look to proactive disclosure as a means of "relieving stress" on the entire system, this in and of itself, is not a cure all. It is merely one tool in our arsenal. There will always be a need to file requests.

One way to ensure that requests are processed more quickly is to facilitate the filing of more simple rather than complex requests. Simple requests take less time to process than complex requests. According to the Summary of Annual FOIA Reports for Fiscal Year 2018 published by the Office of Information Policy, the average processing time for a "simple track" request in Fiscal Year 2018 was 25.52 days; by contrast more than 70% of complex requests took more than 20 days to process with more than 33% of all complex requests needing at least 100 days to process. In addition, the average processing time for simple requests has decreased in each of the past three fiscal years.

In addition to providing requesters with tools they need to file simple requests when possible, efforts must be made to ensure that all requests can be processed as swiftly and smoothly as possible. That is not happening now. Almost a quarter of the FOIA officers surveyed in July 2019 (21.50%) said that overly broad requests are common among requesters. In addition, 36.45% of those responding to the survey cited requesters' lack of knowledge of the FOIA process as a contributing factor.

The good news is that FOIA requesters appear to share these concerns and are willing to take steps to speed the FOIA process. A common theme among a similar survey of FOIA requesters conducted in the summer of 2019 indicated a willingness by requesters to modify their requests if given better tools to do so. A desire for increased interaction with agencies was a common theme, with 27.50% saying they desire increased communication with agencies and 11.25% saying improved transparency is key.

Communication does not need to take the form of direct interaction with FOIA offices. Indeed, while there may be need for and benefits derived from direct interaction with FOIA offices, surveys indicated that simply providing useful tools to requesters would produce results. Requesters are willing to do research, with 95% of those surveyed saying they do some research prior to filing a request. They are willing to take steps to alleviate time-consuming communication with the agency after filing the request and to avoid lengthening the process through appeals and litigation. Most telling is that almost half of those surveyed (49%) are receptive to narrowing a request. In other words, providing clear instruction as to how the public can simplify their requests is likely to bear fruit.

While some agencies provide basic information on their websites, it is irregular, inconsistent, and often out of date. Though similar recommendations have been made in the past, the 2019 surveys indicate that much work is still to be done to meet agency and requester expectations for improving the FOIA process.

Though many agencies provide a basic overview of the filing process, agencies should consistently provide a straightforward and detailed step-by-step process for filing a FOIA request on their website. The information should include the requirements for a FOIA request, including a clear explanation of what constitutes a "record"; the response a requester should expect from an agency; the administrative appeal process; and links to relevant statutory and regulatory provisions governing the FOIA process.

The information provided on agency websites also should clearly define "simple" and "complex" requests so when possible, requesters can properly file a simple request to obtain the records they seek. Agencies also should describe requests that would be considered overly burdensome by the agency or not sufficiently specific and provide other tips for narrowing requests. In addition, agencies should include information, where possible, about where certain records are stored. This is particularly important for large agencies where requesters may not understand in which component agencies records are stored.

Providing clear and concise information on the agency website will inform and speed the FOIA process by lessening time-consuming correspondence between the requesters and agencies regarding the administrative steps involved in filing FOIAs and the need to narrow or further clarify the request.

Agencies also should provide estimated processing times for simple and complex requests so requesters understand the time it will take to process their requests. Though average processing times are provided in agencies' FOIA Annual Reports, a better understanding of "real time"

timeframes[10] for processing responses will help speed the process by lessening the time agencies spend responding to requesters inquiring about the status of their requests. Realistic processing timeframes also will help manage requester expectations and improve agency accountability regarding processing delays.

Finally, agencies should provide contact information for an agency representative who will be available to requesters preparing their FOIA requests for submission. Though agencies provide general contact information for FOIA officers in initial responses to requesters, there often is no contact person available to requesters who are crafting a FOIA request.

A person who can interact in a meaningful way with a requester prior to the submission of a FOIA request also will help avoid time-consuming correspondence between agencies and requesters that occurs after a request is submitted. The FOIA Advisory Committee recommended in 2018 that agencies adopt the best practice of proactively contacting requesters and working with requesters early on, when necessary, to clarify requests. This supplemental recommendation emphasizes the importance of assistance even earlier in the process to further delays in the FOIA adjudication process.

III.   Time Volume Subcommittee Members

Emily Creighton, American Immigration Council, Co-Chair
Bradley White, U.S. Department of Homeland Security, Co-Chair
Kevin M. Goldberg, Digital Media Association (DiMA)
Joan Kaminer, U.S. Environmental Protection Agency
Lizzette Katilius, U.S. Securities and Exchange Commission
Sarah Kotler, U.S. Department of Health and Human Services, Food and Drug Administration
Abioye Mosheim, U.S. Consumer Product Safety Commission
James R. Stocker, Trinity Washington University
Patricia Weth, National Labor Relations Board

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[10] *See e.g*., U.S. Citizenship and Immigration Services, "Check Status of Request," https://first.uscis.gov/#/check-status (providing average processing times for different "tracks" of FOIAs including simple, complex and those for noncitizens in removal proceedings).

Time Volume Subcommittee Report Appendix A

Time Volume Subcommittee Survey

FOIA Requester Survey and Responses

September 2019*

*The Subcommittee members purposefully wrote open-ended survey questions. The responses were categorized and, using the survey software SurveyMonkey, coded. Because most of the questions were open-ended, some of the answers were placed into more than one explanatory category. As a result, the percentages in the FOIA Requester Survey do not add up to 100.

FOIA Requester Survey Results

Background Info:
Date of Launch: 5/5/2019
Date closed: 9/15/2019
Number of respondents: 81

Question 1. What research do you perform before submitting an FOIA request (e.g. checking FOIA logs or agency website, calling FOIA Officer, Google search, etc).

Number of responses: 79
Key findings:

	% of answers	**Total Number of responses**
Google/Internet	75.95%	60
Ag. web./materials	50.63%	40
Checking FOIA logs	20.25%	16
FOIA Officer	13.92%	11
asking outside experts	13.92%	11
legal research	10.13%	8
n/a	8.86%	7
internal expertise	5.06%	4
FOIA Reading Rooms	3.80%	3

Word cloud

Q1 What research do you perform before submitting an FOIA request (e.g. checking FOIA logs or agency website, calling FOIA Officer, Google search, etc).

Question 2. How receptive are you to narrowing your FOIA request to get a faster response?

Number of responses: 81
Key findings:

	% of answers	Total Number of responses
Very	49.38%	40
depends	19.75%	16
somewhat	18.52%	15
no	4.94%	4
n/a	3.70%	3
adverse	3.70%	3

Word cloud

Q2 How receptive are you to narrowing your FOIA request to get a faster response?

want Often documents help Depends request try will specific documents
always response usually us agency Sometimes
requests know receptive depends
narrowing ask narrow request work records specific
generally Somewhat time Yes makes good

Question 3. What are your strategies for encouraging an agency response without appeal or litigation?

Number of responses: 80
Key findings:

	% of answers	Total Number of responses
be communicative	43.75%	35
n/a	21.25%	17
be collaborative	17.50%	14
be direct/clear	18.75%	15
be stern	12.50%	10
move up the chain	7.50%	6
go public w concerns	5%	4
be persistent	3.75%	3
document process	2.50%	2

Word cloud

Q3 What are your strategies for encouraging an agency response without appeal or litigation?

litigation first possible phone calls information OGIS Calling process response info email sometimes know law appeal search agency follow request lawyer will narrow FOIA officer phone FOIA agency contact ask Work strategies specific contacting conversation try see given

Question 4. What are your biggest questions about the FOIA process?

Number of responses: 74
Key findings:

	% of answers	Total Number of responses
process	31.08%	23
accountability/transp.	27.03%	20
timeline	14.86%	11
staffing / training	13.51%	10
communication methods	8.11%	6
n/a	8.11%	6
responsiveness	6.76%	5
the law	4.05%	3
cost	2.70%	2
efficiency	2.70%	2
more help from agency	1.35%	1
proactivity	1.35%	1

Word cloud

Q4 What are your biggest questions about the FOIA process?

review responsive even responses even released information redaction cases process uses records provide FOIA response agency take requests different time consequences documents None law litigation many often take long

Question 5. What are your primary motivations for litigating a FOIA request?

Number of responses: 79
Key findings:

	% of answers	Total Number of responses
inadequate results	51.90%	41
transparency	16.46%	13
delay	15.19%	12
n/a	13.92%	11
Unhelpful agency	8.86%	7
deterrence	7.59%	6
money	5.06%	4
outside pressure	2.53%	2
last resort	1.27%	1
not following protocol	1.27%	1
prevent harm	1.27%	1

Word cloud

Q5 What are your primary motivations for litigating a FOIA request?

court clear government want need know documents law request redactions records Speed agency FOIA information case obtain FOIA request litigate lawsuit public withheld

Question 6. In what ways do you think the agencies you generally work with could improve their FOIA process?

Number of responses: 80
Key findings:

	% of answers	Total Number of responses
communication	27.50%	22
training/+capacity	22.50%	18
be timely	21.25%	17
efficiency	17.50%	14
proactive publication	15%	12
more integrity	12.50%	10
transparency	11.25%	9
be more cooperative	6.25%	5
strike fees	3.75%	3
n/a	2.50%	2
clarity of response	2.50%	2

Word cloud

Q6 In what ways do you think the agencies you generally work with could improve their FOIA process?

phone every use deadlines FOIA request actually response search needs FOIA officers information online agency Train process requesters requests better FOIA communication requesters time slow staff receive records make documents cases resources communication Hire waiting

Question 7. In what ways do you think requesters could improve their approach to the FOIA process?

Some respondents misunderstood this question and thought it meant what could the FOIA processors do to improve.

Number of responses: 75
Key findings:

	% of answers	**Total Number of responses**
narrowing request	41.33%	31
patience/ collaboration	21.33%	16
advanced research	18.67%	14
n/a	14.67%	11
training	4%	3
litigate	4%	3
acting in good faith	2.67%	2
providing more info	1.33%	1
building relationships	1.33%	1

Word cloud

Q7 In what ways do you think requesters could improve their approach to the FOIA process?

filing see narrower educating information may making Also research ask FOIA idea agency documents requests possible requesters sure records submitting know specificity way specific narrow requests targeted willing think understand

Question 8. If you had a magic wand to "fix FOIA" what would you do with it?

Answers were challenging to categorize

Number of responses: 78
Key findings:

	% of answers	**Total Number of responses**
increased rec. access	28.21%	22
more staff/capacity	26.92%	21
accountability	24.36%	19
more timely	16.67%	13
better interfaces w ag.	10.26%	8
more transparency	5.13%	4
better doc form	3.85%	3
uniformity	3.85%	3
no cost	3.85%	3
decentralization	1.28%	1
n/a	1.28%	1
repeal	1.28%	1
increase fees	1.28%	1

Word cloud

Q8 If you had a magic wand to "fix FOIA" what would you do with it?

available state exemptions trained information Also law previous requesters office documents free staff increase FOIA resources Make required requests eliminate agency many records fee government produced FOIA officers worked FOIA offices limit processing public every require agencies

Question 9. What rate of processing (number of records or pages per month) do you consider reasonable?

Could not tag. A lot of people did not have answers, some people gave rates per hour, and some people just gave random number (presumably per month because of the question).

Q9 What rate of processing (number of records or pages per month) do you consider reasonable?

Question 10. Would information regarding an office's available resources/FOIA queues encourage you to either forego appeals/litigation in favor of narrowing a request?

Number of responses: 75
Key findings:

	% of answers	Total Number of responses
no	33.33%	25
yes	32%	24
depends	17.33%	13
n/a	5.33%	4
yes but	5.33%	4
should do it either way	4%	3
probably	1.33%	1

Word cloud

Q10 Would information regarding an office's available resources/FOIA queues encourage you to either forego appeals/litigation in favor of narrowing a request?

say available requesters litigation sure resources FOIA always litigate information records narrow request queues Yes good agencies narrowing need helpful requests appeals litigation resources maybe FOIA time still

Q11 Are you a member of the media?
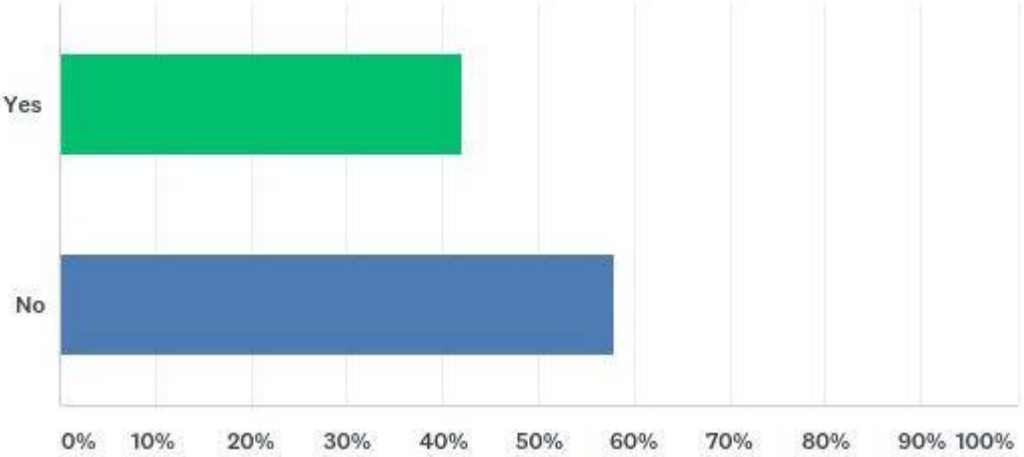
Q12 On average, what number of requests do you file per month?
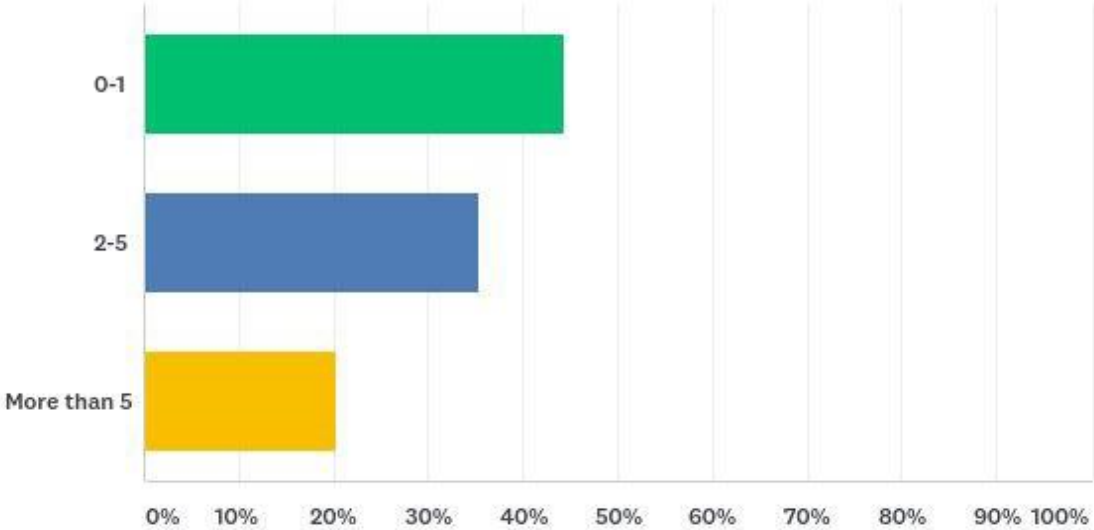
Time Volume Subcommittee Report Appendix B

Time Volume Subcommittee Survey

FOIA Officer Survey and Responses

September 2019*

*The Subcommittee members purposefully wrote open-ended survey questions. The responses were categorized and, using the survey software SurveyMonkey, coded. Because most of the questions were open-ended, some of the answers were placed into more than one explanatory category. As a result, the percentages in the FOIA Officer Survey do not add up to 100.

FOIA Officer Survey

Background Info:
Date of Launch: 5/12/2019
Date closed: 9/22/2019
Number of respondents: 111

Question 1. What is the single greatest impediment within your agency's control to processing FOIA requests on time?
Number of responses: 110
Key findings:

	% of answers	Total Number of responses
Capacity	50.91%	56
Inefficient System	34.55%	38
Staff Performance	10%	11
Document Volume	10.91%	12
Training	5.45%	6
Technology	5.45%	6
Complexity	4.55%	5
Custodian Responsiveness	4.55%	5
Overly broad requests	4.55%	5
Political Interference	0.91%	1

Word cloud

Q1 What is the single greatest impediment within your agency's control to processing FOIA requests on time?

volume email enough complexity agency volume records search Adequate
Lack offices resources work requests timely staff
process review lack resources FOIA technology records receiving
documents FOIA Office time personnel

Question 2. In one sentence, identify your most common frustration with FOIA processing.
Number of responses: 110
Key findings:

	% of answers	Total Number of responses
Inefficient System	36.36%	40
Capacity	23.64%	26
Document Volume	14.55%	16
Technology	11.82%	13
Overly broad requests	10.91%	12
Custodian Responsiveness	9.09%	10
Training	8.18%	9
Staff Performance	6.36%	7
Political Interference	4.55%	5
Complexity	1.82%	2

Word cloud

Q2 In one sentence, identify your most common frustration with FOIA processing.

staff lack staffing requesters issue review resources
documents understanding FOIA offices
requests using process many records time
Lack voluminous need amount search

Question 3. Can you identify any common areas of confusion among requesters?
Number of responses: 107
Key findings:

	% of answers	Total Number of responses
Knowledge of the Process	36.45%	39
Overly Broad Requests	21.50%	23
Scope of Response	14.02%	15
Purpose of FOIA	13.08%	14
Availability of Records	9.35%	10
Costs	9.35%	10
efficient communication	4.67%	5
Belligerence	1.87%	2
Unnecessary Requests	1.87%	2

Word cloud

Q3 Can you identify any common areas of confusion among requesters?

know broad responses seem office email many Believing ask may documents Fees process confused requesters often FOIA work request specific records public agency FOIA free think days understand also search received time people make everything system must information

Question 4. What is the single greatest impediment within your agency's control to processing FOIA requests on time?
Number of responses: 105
Key findings:

	% of answers	Total Number of responses
Time Constraints	42.86%	45
FOIA Requirements	21.90%	23
Query Definitions	13.33%	14
Availability of documents	6.67%	7
Knowledge of Process	0.95%	1

Word cloud

Q4 Can you identify any common areas of disagreement between you and requesters regarding the processing of a FOIA request?

often amount time takes long Definition None Expedited processing FOIA exemption
agency use requester will request review
records takes processing deadline time scope requests
understanding need Disagreement reasonable searches respond
emails information
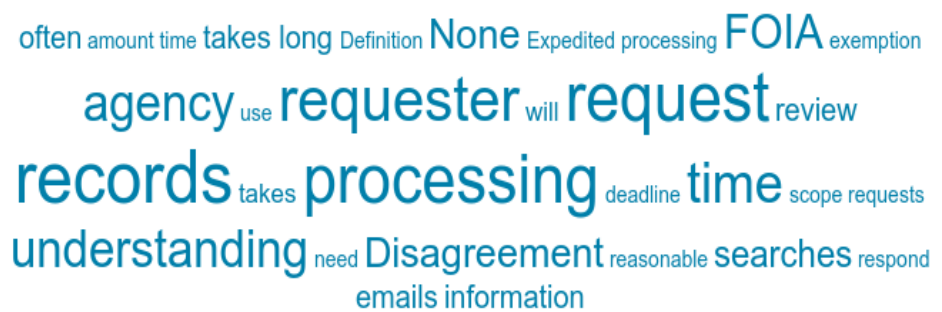
Question 5. Do you think your FOIA tracking software is useful? Why or why not?

Number of responses: 108
Key findings:

	% of answers	Total Number of responses
additional functionality	24.07%	26
tracking	12.04%	13
glitches/inaccuracy	9.26%	10
good functionalities	6.48%	7
under utilized	6.48%	7
better training or IT Sup	5.56%	6
good database	5.56%	6
not intuitive	5.56%	6
redundancy	1.85%	2

	% of answers	Total Number of responses
yes	10.19%	75
no	19.44%	11
No opinion	69.44%	11

Word Cloud

Q5 Do you think your FOIA tracking software is useful? Why or why not?

much currently needs keep track requests fixes system cumbersome
better However tracking FOIA process useful search
Yes records software time use used FOIAXpress FOIA
extent FOIAonline allows agency manage process still works

Question 6. Do you think your FOIA document review software is useful? Why or why not?

Number of responses: 110
Key findings:

	% of answers	Total Number of responses
improves efficiency	17.27%	19
additional functionality	10%	11
good functionalities	10.91%	12
training/IT sup	7.27%	8
better search	6.36%	7
not intuitive	5.45%	6
glitches/inaccuracy	4.55%	5
better doc manipulation	3.64%	4
under utilized	2.73%	3

	% of answers	Total Number of responses
yes	55.45%	61
No opinion	36.36%	40
no	9.09%	10

Word cloud

Q6 Do you think your FOIA document review software is useful? Why or why not?

processing records Yes Relativity Never used tool use Adobe Pro redaction redact need using Adobe better searching use Relativity Yes review software useful N review however software currently use FOIA review redacting easy use FOIAXpress documents

Q7 Have you ever interacted directly with the Office of Government Information Services?
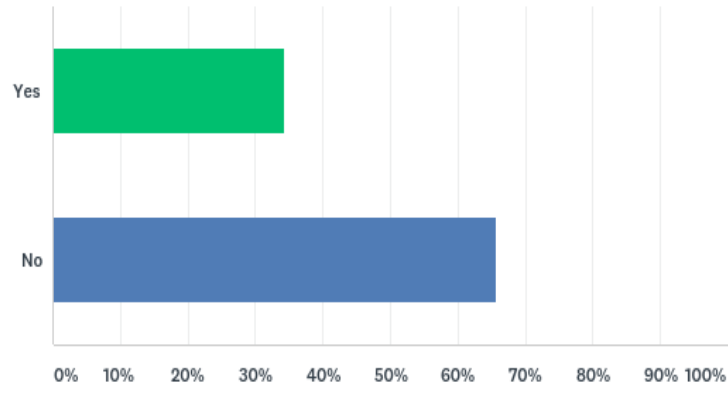
Question 8. Were your interactions with the Office of Government Information Services helpful? Why or why not?

Number of responses: 36
Key findings:

	% of answers	Total Number of responses
well informed	33.33%	12
good trainings	13.89%	5
efficient	8.33%	3
timely	5.56%	2
not informed	5.56%	2
not insightful	2.78%	1
pleasant	2.78%	1
inefficient	2.78%	1
unclear	2.78%	1

	% of answers	Total Number of responses
yes	75%	27
no	25%	9

Word cloud

Q8 Were your interactions with the Office of Government Information Services helpful? Why or why not?

able Office training agreeing helpful request Yes case OGIS provide requester

Question 9. How often do you directly discuss your job responsibilities, pressures, etc. with your agency's Chief FOIA Officer? Do you find these interactions useful?

Number of responses: 105
Key findings:

	% of answers	Total Number of responses
useful	23.81%	25
no communication chain	13.33%	14
not useful	9.52%	10
not responsive	6.67%	7
receptive to feedback	3.81%	4
they lack capacity	2.86%	3
Lack of competency	1.90%	2
not aware of them	0.95%	1

	% of answers	Total Number of responses
never	40%	42
rarely	27.62%	29
frequently	23.81%	25
no opinion	5.71%	6

Word cloud

Q9 How often do you directly discuss your job responsibilities, pressures, etc. with your agency's Chief FOIA Officer? Do you find these interactions useful?

agency years interactions monthly conference calls opportunity issues
monthly agency Chief FOIA discuss times useful weekly
Never FOIA Officer yes office Chief FOIA Officer
come often interactions useful Rarely discussions meetings N helpful

Question 10. Do you feel you receive adequate training to do your job overall? Where do you think your training is lacking?

Number of responses: 107
Key findings:

	% of answers	Total Number of responses
more subject matter	14.02%	15
do not receive training	13.08%	14
refresher training	10.28%	11
more detail	9.35%	10
more on policy	4.67%	5
national training	5.61%	6
training ineffective	3.74%	4
more daily support	2.80%	3
too compressed	0.93%	1

	% of answers	Total Number of responses
yes	48.60%	52
no	46.73%	50
no opinion	0.93%	1

Word cloud

Q10 Do you feel you receive adequate training to do your job overall? Where do you think your training is lacking?

years VHA FOIA Office think national training lacking feel agency adequate training Yes FOIA Officers training processing need lack good much FOIA Yes receive adequate receive adequate training overall helpful

Question 11. If you were to imagine your office's FOIA process five years in the future, on its current trajectory, how would you describe it versus how it currently stands? Are requests handled more or less quickly? Has the backlog changed?

Number of responses: 105
Key findings:

	% of answers	Total Number of responses
efficient	24.76%	26
lack of capacity	22.86%	24
automated	19.05%	20
inefficient	19.05%	20
increased requests	7.62%	8
increased capacity	4.76%	5
better requests	1.90%	2
more public info	0.95%	1

	% of answers	Total Number of responses
poorly	34.29%	36
neutral	23.81%	25
well	22.86%	24
great	9.52%	10

Word cloud

Q11 If you were to imagine your office's FOIA process five years in the future, on its current trajectory, how would you describe it versus how it currently stands? Are requests handled more or less quickly? Has the backlog changed?

believe review less worse training receive less quickly use backlog will staff technology think decreasing quickly backlog will grow increase need agency imagine better time process improve requests technology backlog reduced will much FOIA handled quickly staff will likely change search due administration resources expect records say backlog increase email Requests handled quickly significantly probably continues

Question 12. If you were to imagine your office's FOIA process five years in the future, on its current trajectory, how would you describe it versus how it currently stands? Are requests handled more or less quickly? Has the backlog changed?

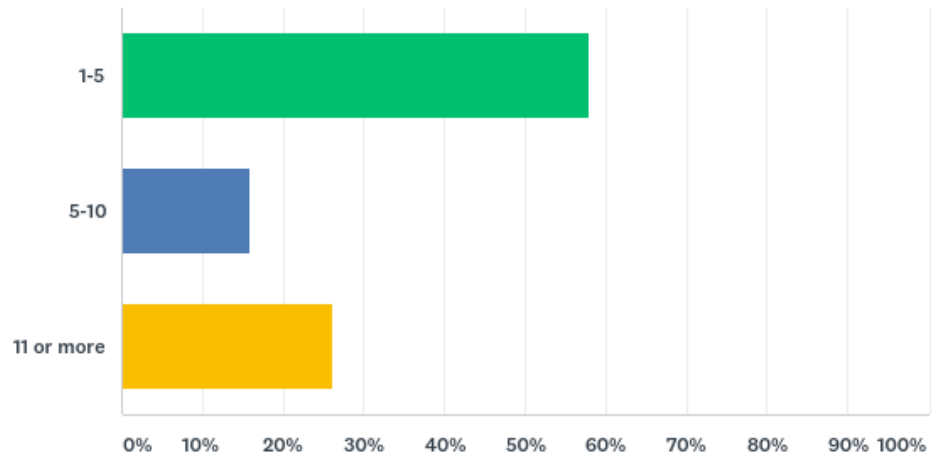**Number of responses**: 105
Key findings:

	% of answers	Total Number of responses
fix internal process	20.19%	21
allow more time	17.31%	18
more automation	17.31%	18
more funding	17.31%	18
more support - nat	13.46%	14
limit scope	10.58%	11
better definitions	7.69%	8
educate requesters	4.81%	5
raise fees	4.81%	5
no opinion	4.81%	5
broaden scope	2.88%	3
limit requests	2.88%	3
eliminate fees	0.96%	1
protection	0.96%	1

Word cloud

Q12 If you had a magic wand to "fix FOIA" what would you do with it?

VISN National Eliminate resources law offices reduce Give dedicated fees revise documents program training help funding know time difficult requests requesters streamline requests Require agency realistic FOIA statute process use make response time records technology staff need change better review AI limit include centralized understand days rid charge Increase support provide

Q13 How many people work in your FOIA office?

Category	Percentage
1-5	~58%
5-10	~16%
11 or more	~26%

Q14 How long have you been with your current Agency?

Category	Percentage
less than 5 years	~30%
5-10 years	~26%
more than 10 years	~44%