



DOJ Office of Information Policy Compliance Inquiries

**FOIA Advisory Counsel Meeting
PUBLIC COMMENT
by Robert Hammond**

PROPOSAL. DOJ Compliance Inquiries

(Seeking DOJ OIP Acceptance at June 10, 2021 Meeting)



DOJ's Office of Information Policy:

- provide each complainant an individualized Compliance Inquiry number at the time of complaint/inquiry receipt.
- report each Compliance Inquiry received in DOJ's annual Litigation & Compliance Report to the President and Congress.
- publicly post the raw data for Compliance Inquiries reported in DOJ's annual Litigation Compliance Report to Congress and the President from 2016 forward.
- apply the same standard for processing, timeliness, thoroughness, and reporting to Public Member Compliance Inquiries **as for Congressional Inquiries**.
 - For Congressional and Public Inquiries: **“we received and responded to #.”**
- To assure that Inquiries have been accepted, are being/have been worked, and that final dispositions of all matters addressed within the inquiries are timely issued and accurately reported to the President & Congress, then raw data posted publicly.
- DOJ OIP reports few Compliance Inquiries. Admin burden is minimal.

Recent Correspondences to OIP

“I am asking for your help.”

“I would like to work cooperatively with you and your staff to improve FOIA processes.”

“I have seen the body of work that your office produces and respect that you have a small staff juxtaposition with the scope of your responsibilities. You will never get more resources by under-reporting cases. OIP provides one of the few safeguards for private citizen FOIA requesters. To the extent that I can assist in lobbying for more resources and enlisting support from others, I am willing to do so, provide that you play everything straight up going forward.”



Recent Correspondences from OIP



“In determining which matters may **constitute** compliance inquiries, our office considers factors including, but not limited to, whether the matter concerns compliance with a specific requirement under the FOIA and whether OIP needs to gather additional information from an agency in order to resolve the concern.”

“Our office handles inquiries in the most efficient and effective manner, given our limited resources ...”

“It is our desire to assist you with your **FOIA concerns.**”

Inconsistent. Also, I cite “Compliance Inquiry” & specific violations.

OIP is now trying to help, it appears.

DOJ OIP Mission



The mission of the Office of Information Policy (OIP)

is to encourage and oversee agency compliance with the Freedom of Information Act (FOIA). The Freedom of Information Act (FOIA) requires the Attorney General of the United States to submit a report on or before March 1 of each calendar year to the Committee on Oversight and Government Reform of the House of Representatives, the Committee on the Judiciary of the Senate, and the President detailing the Department's efforts for the prior calendar year to encourage agency compliance with the law. 5 U.S.C. § 552(e)(6) (2016).

FOIA Compliance Inquiries



“As part of its oversight and guidance responsibilities, OIP reviews inquiries made by the public raising issues regarding agencies' compliance with the FOIA statute and the Attorney General's FOIA Guidelines. Compliance inquiries may be submitted in writing to OIP by mail or e-mail.

**Office of Information Policy (OIP)
U.S. Department of Justice
6th Floor
441 G St. N.W.
Washington, D.C. 20530
E-mail: OIP.ComplianceInquiry@usdoj.gov”**

Compliance Inquires 2016 to 2020



<u>Year</u>	<u>Congressional Inquiries</u>	<u>Public Inquiries</u>	<u>Total</u>
2020	5	17	22
2019	10	6	16
2018	10	6	16
2017	9	9	18
2016	9	9	<u>18</u>
		Total	90

(Minimal numbers. May be inaccurate. Best to admit and fix.)

Compelling Need

- Congressional inquiries get “responses.”
- 1 Compliance Inquiry to 1 case # needed.
- Hard to know what issues are being/have been worked. Confusing.
- Some Compliance Inquiries since 2017 appear not addressed or reported. Numbers may be “off.”
 - Note, DOJ reviews Annual FOIA Reports for accuracy before finalized.
- Explanation of what is a compliance inquiry for reporting is inconsistent.
- Past responses appear not to address all/most serious allegations.
- But DOJ responses (where done) are reflecting more effort. **Thx.**

Compliance Inquiries are one of the few safeguards for requesters.

Action Sought

DOJ OIP Accept my Proposal in the June 10, 2021 FOIA Advisory Committee Open Meeting:

DOJ's Office of Information Policy:

- provide each complainant an individualized Compliance Inquiry number at the time of complaint/inquiry receipt.
- report each Compliance Inquiry received in DOJ's annual Litigation Compliance Report to the President and Congress.
- publicly post the raw data for Compliance Inquiries reported in DOJ's annual Litigation & Compliance Report to Congress and the President from 2016 forward.
- apply the **same standard** for processing, timeliness, thoroughness, and reporting to Public Member Compliance Inquiries **as for Congressional Inquiries**
 - For Congressional and Public Inquiries: “we received and responded to #.”
- To assure that Inquiries have been accepted, are being/have been worked, and that final dispositions of all matters addressed within the inquiries are timely issued and accurately reported to the President & Congress, then raw data posted publicly.



Conclusion/Opinions/Thx

- Compliance Inquiries are one of the few safeguards for requesters.
- Congressional & Citizen Inquiries should be treated/reported the same way.
- There is a compelling need to properly resource, investigate, and accurately report Inquiries, including raw data.
- Case numbers should be assigned at the outset and given to the complainant.
- 1 Compliance Inquiry to 1 case # needed to ensure accuracy & avoid confusion.

I greatly appreciate DOJ OIP's consideration of my Proposal.

Thx



BACKUP



Curious “Report” Numbers



- Inconsistent standard & reporting for Congressional vs Public Inquiries.
- DOJ OIP deleted the word “**received**” from 2018 forward wrt Inquiries from the Public. (Congressional inquiries get responses.)
- DOJ’s 2017 Complaine Report states:

“In 2017, OIP **responded to** nine **congressional inquiries** pertaining to FOIA-related matters. OIP also **received** and looked into nine matters from members of the public who had concerns about how the FOIA was being administered at an agency...”

Curious “Report” Numbers

Example.

On 06/25/2018,

Sent FOIA request to DOJ (DOJ-2018-006245) seeking, for 2017 Report:

- Copies of the nine congressional inquiries received and responded to and the nine “received and looked into “matters **from members of the public.**”
- 2017 numbers appear inaccurate based on my records.
- Then, in 2018 & after DOJ deleted “received” wrt Public Inquiries.
 - Now states only “looked into [#] matters ... (sometimes involving multiple issues).” [**Changed why? Multiple issues or multiple distinct inquiries?**]
- DOJ initially classified 06/25/2018 request as “Simple” thru FY 2020.
 - Now states Complex; projected completion is October 29, 2021. [3+ yrs.]
- May show under reporting of inquiries from the Public (mine).



Example to Reconsider Cont.



Then ...

- On April 5, 2021,
DOJ combined **23 Inquiries** from January 1, 2020 to April 4, 2021 under a **single case, # CI 2020-0024.**
- Claimed (errantly) that OIP addressed my 12/24/2020 Compliance Inquiry two years earlier and before the matters at issue even existed.
- Did not address the most serious issues, including alleged inaccurate FOIA Reporting.
 - I noted 7 issues. OIP only addressed issue #7, failure to advise of OGIS rights.

[OIP resource limitation/allocation issues, rush to catch up?]

Example to Reconsider Cont.



WRT 12/4/2020 Inquiry, OIP STATED:

“December 4, 2020 & February 6, 2021

(reference Appeal DON-NAVY-2019-005596 [of Request DON-NAVY-2018-011839 / your Request DON-NAVY-2019-001207])

Within these emails, you explained that DON JAG **failed to advise you of your rights to seek dispute resolution from the Office of Government Information Services (OGIS)**. [Issue #7]

Please be advised that documentation in this office indicates that this matter was previously reviewed and resolved. Former Chief of Compliance Bobak Talebian, now Director of OIP, addressed each of the concerns you cited in your email via prior correspondence dating from between **July 2018 and October 2018**. Mr. Talebian also discussed these matters in a telephone call with you on **October 30, 2018**.

As such, please be advised that your email inquiries relating to this topic are now considered closed in this office.”

Example to Reconsider Cont.

But, my DOJ OIP Compliance Inquiry, 12/24/2020 cites 7 allegations:

1. Inaccurate determination letter dated November 30, 2020, but not sent until December 3, 2020, citing a response due within 20 days vice 20 working days and then falsely claiming that I failed to appeal in a timely manner.
2. Instances of apparent inaccurate FOIA reporting in annual FOIA reports.
 - a. DOJ reviews these reports before they are finalized.
3. Stating that my request was denied as “not perfected” vs the determination letter for DON-NAVY-2019-001207 stating that it was denied for “fee related reasons.”
 - a. Notwithstanding that I reduced the scope to comply with the fee estimate provided. [Also, FOIA raw data shows “perfected 11/1/2018.”]



Example to Reconsider Cont.



DOJ OIP Complaine Inquiry, 12/24/2020 Summary of Issues Continued

4. Errant citations. There is no 32 C.F.R. § 701.8(d)(1).
[“PART 701 - AVAILABILITY OF DEPARTMENT OF THE NAVY RECORDS AND PUBLICATION OF DEPARTMENT OF THE NAVY DOCUMENTS AFFECTING THE PUBLIC [RESERVED].”] See //ecfr.io/Title-32/Part-701.
5. Errant citations. There is no “DOD Manual 5400.7-R.” It was cancelled in 2017.
6. Inaccurate statement that, “Your underlying FOIA request, DON-NAVY-2018-011839, was submitted to the Office of the Chief of Naval Operations FOIA/Privacy Act Program Office, (hereinafter DNS-36 or IDA for Initial Denial Authority), on **November 13, 2018.**”
 - a. DON-NAVY-2018-011839 was submitted on **9/24/2018**). Apparent **50+day discrepancy**. [Dates matter.]
7. DON JAG failed to advise me of my rights to seek dispute resolution from OGIS.
[DOJ OIP resource limitation/allocation issue, rush to catch up?]