



Assessing Freedom of Information Act Compliance through the National Archives and Records Administration's 2021 Records Management Self-Assessment

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EXECUTIVE SUMMARY

Since 2016, the Office of Government Information Services (OGIS) has collaborated with the Chief Records Officer (CRO) for the U.S. Government at the National Archives and Records Administration (NARA) to gather government-wide information about Freedom of Information Act (FOIA) administration. Data collected through FOIA questions included in the CRO's 2021 Records Management Self-Assessment (RMSA) complement the observations we make as the FOIA Ombudsman, working to improve the FOIA process for all.

The 2021 RMSA — administered to agency records officers from January 10, 2022, to March 11, 2022 — is an annual agency self-assessment and reporting tool developed and managed by the CRO. The RMSA included four questions regarding FOIA administration. These questions were all repeated from the 2020 RMSA to track trends. Three of them pertained to the ongoing COVID-19 pandemic and its impacts on FOIA processing, and the fourth sought to examine the collaboration between Chief FOIA Officers and Agency Records Officers. Key results include:

- Over half of all respondents (51 percent) reported that the COVID-19 pandemic did not disrupt their agency's ability to respond to FOIA requests. Forty-five percent of agencies reported a disruption to their ability to respond to FOIA requests. A majority of respondents (78 percent) whose FOIA programs were disrupted reported that their agency's paper records were inaccessible due to office closures while just over half (51 percent) reported that agency staff were not available to search for records.

- A majority of respondents (73 percent) reported that their agencies worked directly with requesters to tailor their requests for most efficient processing during the COVID-19 pandemic. Fifty-five percent said that they included information about anticipated delays in requester communications, including acknowledgement letters; 54 percent assessed their technology to ensure the most efficient administration of FOIA; and 51 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 (56 percent) reported that the Agency Records Officer and the Chief FOIA Officer work together on information technology (IT) requirements that benefit both programs, which is 5 percentage points higher than the previous year's 51 percent. Additionally, exactly 50 percent reported this year that they work together to identify programs or offices most likely to have responsive records, a 6-percentage point increase over the previous year.

BACKGROUND

OGIS's partnership with the CRO to collect government-wide information related to FOIA compliance began with the 2016 RMSA. The CRO has issued the RMSA since 2009 to determine whether agencies are complying with statutory and regulatory records management requirements. 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 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 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) 2018, CY 2019, and CY 2020, the RMSA response rates were 98 percent, 96 percent, and 92 percent, respectively. In CY 2021 and CY 2022, the response rates rebounded to 98 percent and 96 percent, respectively.

The 2021 RMSA included four questions relating to FOIA, which were repeated from the 2020 RMSA to identify trends across FOIA programs during the pandemic. Three questions related directly to the COVID-19 pandemic's impact on FOIA operations. The remaining question covered FOIA and records management — specifically the relationship between Agency Records Officers and Chief FOIA Officers.

The 2021 RMSA received a total of 264 RMSA respondents from all Cabinet-level departments, departmental components and independent agencies answered the FOIA questions. Not all 264 respondents answered all four FOIA questions because some agencies chose to skip certain questions while respondents in the judicial branch are subject to the Federal Records Act but not to the FOIA. A complete list of the four 2021 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 records.

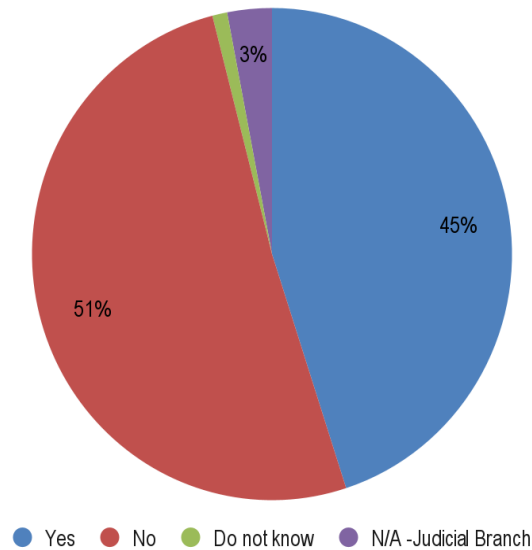
The results from the RMSA reflect what OGIS has observed during the pandemic: even with nearly two years to establish new work-from-home procedures, restrictions to onsite access continued to challenge agencies in their FOIA response times. OGIS has observed generally that agencies that were affected mainly due to a lack of telework readiness at the beginning of the pandemic have rebounded and are likely to continue to see improvements as their workforces become increasingly adept in operating in the virtual environment. Agencies affected because of a large quantity of paper records and agencies that work with classified records may take longer to regain their pre-COVID processing times and reduce their backlogs as they seek alternatives to mitigate the effects of the ongoing pandemic and eventually adapt to a post-pandemic environment.

Q51: Has the COVID-19 pandemic disrupted your agency's ability to respond to FOIA requests?

Of the 264 respondents who answered Question 51 “Has the COVID-19 pandemic disrupted your agency's ability to respond to FOIA requests?” — 45 percent answered “Yes;” 51 percent Answered “No;” 1 percent answered “Do not know;” and 3 percent were judicial branch agencies to which FOIA does not apply.

Figure 1: 2021 RMSA Responses to Question 51 “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 264.

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



In the previous year’s report, 49 percent of respondents said that the pandemic disrupted their agency’s ability to respond to FOIA requests. This year’s results show a 4-percentage point reduction indicating that some agencies acclimated to virtual or hybrid working environments. Furthermore, there has been a 3-percentage point increase in responding agencies that report no impact over 2021, when 48 percent of respondents answered “No.” These changes may seem modest, but they show that a growing number of agencies report being able to return to pre-pandemic levels of FOIA processing. The question is the same as it was in the previous year. Since it asks if there is any disruption over pre-pandemic levels, the answers are not nuanced enough to reflect the extent to which agencies may have rebounded since the first year of the pandemic. The subsequent question shows the persistence of obstacles that remain in returning to a pre-pandemic level of FOIA responsiveness.

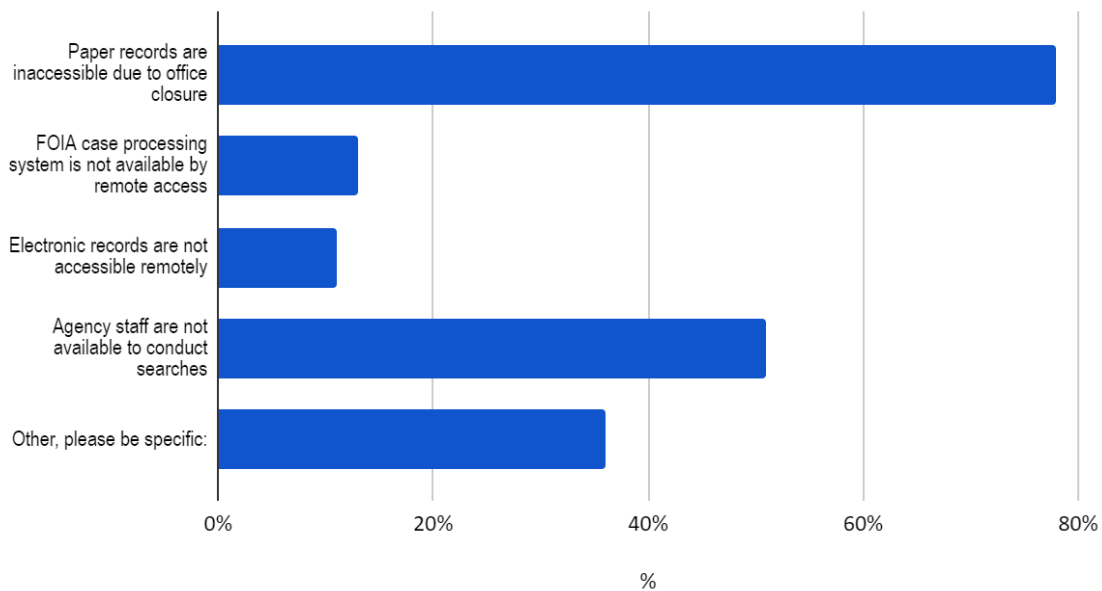
Q52: Which of the following explains why FOIA has been impacted?

The responses to Question 52, “Which of the following explains why FOIA has been impacted? (Choose all that apply),” illustrate how COVID-19 continued to cause disruptions to FOIA

processing in 2021 — two years into the pandemic. The majority of respondents said that paper records were inaccessible due to office closures (78 percent) and agency staff were not available to conduct searches (51 percent). Thirty-six percent volunteered a response under “Other, please be specific;” 13 percent said that their agency’s FOIA case processing system was not available by remote access; and 11 percent said that electronic records were not accessible remotely.

Figure 2: 2021 RMSA Responses to Question 52, “Which of the following explains why FOIA has been impacted? (Choose all that apply).” Note: The 118 respondents to this question are the same who answered yes to Question 51.

Percentage of respondents reporting each issue



These results are similar to 2020 experiences, which indicated persistent obstacles for agency FOIA programs. During the two years, the percentage of agencies reporting that paper records were inaccessible due to office closures declined 2 percentage points to 78 percent. The percentage of agencies reporting that agency staff were not available to conduct searches dropped from 51 percent to 46 percent during the two years.¹

As shown in **Table 1**, the comments of the 2021 RMSA respondents who answered, “Other, please be specific,” centered on three themes: the most widespread issue by far was the inability of staff to access records, followed by agency staffing, and the technology agencies use to respond to requests.

¹ Furthermore, 36 percent of respondents for 2020 volunteered a response under “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.

Table 1: Selected Data from 2021 RMSA “Other, please explain,” Responses to Question 52 “Which of the following explains why FOIA has been impacted? (Choose all that apply)”

Theme	Agency Comments
<p>Access Issues</p>	<ul style="list-style-type: none"> ● “Regulation [requires staff] to mail paper records or electronic records (on CDs), if that’s what the requester wants.” ● “Electronic records that are not stored to the server are inaccessible remotely.” ● “Delays in receiving requests sent by U.S. Mail or commercial carrier” ● “[Federal Records Centers] being closed because of COVID-19 pandemic create challenges in retrieving.”
<p>Personnel</p>	<ul style="list-style-type: none"> ● “Numerous subject matter experts were affected directly or indirectly by contraction of the virus and were unavailable to work.” ● “Training of new personnel has been negatively affected [in a virtual environment], making them less productive [by limiting learning and productivity curves].”
<p>Technology</p>	<ul style="list-style-type: none"> ● “Remote technology isn’t always able to handle the large quantity of records to sort and store for review.” ● “Staff [have] inferior technology and office set-ups at home” ● “Some large files are unable to be loaded and transferred without physical media”

Q53: Which of the following actions did your agency’s FOIA program take in response to the COVID-19 pandemic?

In response to Question 53, “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 (73 percent). Fifty-five percent reported including information about any anticipated delays in requester communications, including acknowledgment letters.

Fifty-one percent of respondents reported that their agencies posted a notice on the FOIA website informing requesters of the most efficient way to make a request; 45 percent posted a notice on the FOIA website informing requesters of any anticipated delays. Those results largely mirror the results of OGIS reviews of FOIA websites that showed that the number of FOIA websites that alerted requesters to delays and other pandemic effects on FOIA processing increased from 37 percent to 47 percent between May 2020 and October 2020.²

Forty-two percent responded that they used multitrack processing to further triage requests that could be processed more efficiently remotely; 23 percent responded that they posted additional proactive disclosures for high public interest topics related to the COVID-19 pandemic; 17 percent reported that they assessed technology to ensure most efficient administration of FOIA. Seventeen percent of respondents answered “other, please explain” in response to Question 53.

Table 2: 2021 RMSA Responses to Question 53, “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, updated May 28, 2020.)”

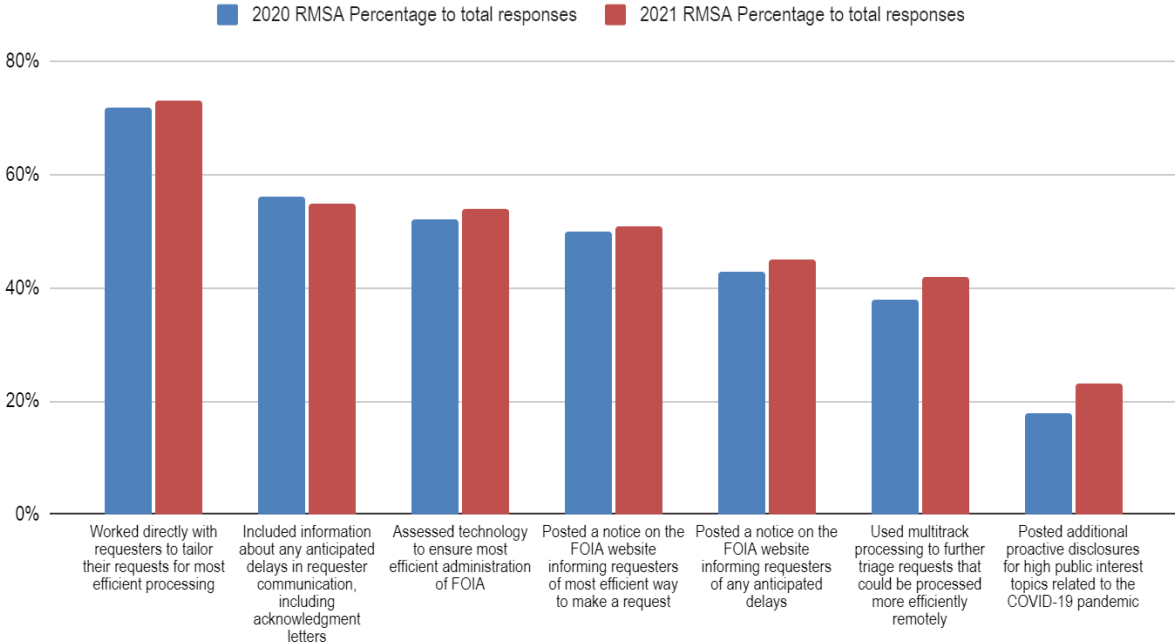
Answer Options	Percentage of responses to this question	Count per answer option
Worked directly with requesters to tailor their requests for most efficient processing	73%	189
Posted a notice on the FOIA website informing requesters of most efficient way to make a request	51%	132
Posted a notice on the FOIA website informing requesters of any anticipated delays	45%	117

²<https://www.archives.gov/ogis/foia-compliance-program/targeted-assessments/agency-website-comms-assessment-27-jan-2021>.

Included information about any anticipated delays in requester communication, including acknowledgment letters	55%	142
Used multitrack processing to further triage requests that could be processed more efficiently remotely	42%	110
Posted additional proactive disclosures for high public interest topics related to the COVID-19 pandemic	23%	59
Assessed technology to ensure most efficient administration of FOIA	54%	141
Other, please explain	17%	44
Not applicable, Judicial Branch Agency/FOIA does not apply	3%	9
Total responses to this question		260

The responses to the question about FOIA program responses to the COVID-19 pandemic track closely with those gathered in 2021.

Which of the following actions did your agency's FOIA program take in response to the COVID-19 pandemic?



As shown in **Table 3**, the “Other, please be specific” comments in the most recent RMSA focused on three particular themes: communication with requesters, staff coordination, and technology — specifically the transition to digital records.

Table 3: Selected Data from 2021 RMSA “Other, please explain,” Responses to Question 53 “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
Communication	<ul style="list-style-type: none"> ● “Provide requesters with status updates and assistance with their requests through emailed communications with our FOIA Public Liaison. We also encourage requesters to submit their requests electronically directly to FOIAonline.” ● “Provides the email address for any agency we are forwarding a FOIA request to on a requester’s behalf. The [agency] also informed requesters of the closure of Federal Records Centers and related constraints in accessing hard-copies of records when applicable.” ● “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.”
Staff coordination	<ul style="list-style-type: none"> ● “Worked with our building services/mail team to monitor FOIA requests submitted by mail.” ● “Utilized an existing process for printing and mailing documents [...] alleviat[ing] the need for FOIA team members to physically go in.” ● “Use [a] contractor to send mail to requesters who do not have an email address.”
Technology	<ul style="list-style-type: none"> ● “Developed an electronic records retrieval process for requesters” ● “Encouraged requesters to use e-mail and pay via online portal.” ● “Leveraged fully remote processing and case management capabilities, including pre-existing investments in personnel equipment and FOIA programs fully capable of remote work” ● “Made adjustments to how it handles requests for certified documents for court purposes[making] this an electronic procedure only [which] is faster and more streamlined. [...] Reduced fees associated with producing these documents.” ● “Implement[ed] an electronic filing system for FOIA administrative files [which] replaced our paper filing system”

Observations on the continuing impact of COVID-19

- The COVID-19 pandemic forced maximum telework across the government and agencies have demonstrated resilience in adapting their FOIA programs to the new environment. The 2021 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.
- The trends between the 2020 and 2021 reports appear to indicate that staff resourcefulness has been the main driver of improvements to the administration of FOIA over the past year.
- Agency responses to the 2021 RMSA offer insight into how much progress has been made toward a transition to fully electronic recordkeeping per Office of Management and Budget (OMB)/NARA Memorandum M-19-21, *Transition to Electronic Records*,³ as well as the challenges agencies continue to face in this transition.

Agency Records Officers and Chief FOIA Officers

Q54. Which of the following describes the working relationship between the Agency Records Officer and the Chief FOIA Officer? (Choose all that apply)

The fourth FOIA question in the 2021 RMSA (Q54) 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.⁴ There were two significant changes between the 2020 and 20221 results. First, in the 2021 RMSA, 56 percent of respondents reported that Agency Records Officer and Chief FOIA Officer work together on information technology (IT) requirements that benefit both programs, which is 5 percentage points higher than last year's 51 percent. Second, exactly half reported in 2021 that the Records Officer and Chief FOIA Officer work together to identify programs or offices most likely to have responsive records, a 6-percentage point increase over 2020's response of 44 percent.

Other findings in the 2021 RMSA include: 49 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

³ See OMB/NARA Memorandum M-19-21, "*Transition to Electronic Records*," dated June 28, 2019.

⁴ Agency Records Officers are senior officials within each agency whose responsibilities include oversight of records management. Chief FOIA Officers are senior officials within each agency whose responsibilities include "efficient and appropriate compliance" with FOIA and recommending FOIA improvements to the head of the agency.

other's staff (48 percent), work together on high-profile or complex FOIA requests (47 percent), and identify programs or offices most likely to have responsive records (50 percent). Thirty-eight percent said that the ARO and CFO coordinate search terms to identify responsive records, 14 percent said "Other, please explain," and five percent answered, "None of the above." The final two options covered two reasons why the relationship between ARO and CFO was not applicable: Agency Records Officer and the Chief FOIA Officer are the same person (3%), and another three percent responded "Judicial Branch Agency/FOIA does not apply."

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. For the 2021 RMSA, we are encouraged that over half (51 percent) of respondent agency FOIA programs reported being unaffected by the COVID-19 pandemic and that 73 percent of respondent agencies reported working directly with requesters to tailor their requests for most efficient processing. We are hopeful that the gradual ebbing of the pandemic coupled with 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. The lessons that agencies learned in response to the pandemic and the work they did to increase resilience has positioned them to continue to advance the efforts of OGIS, the Chief FOIA Officers Council, and the FOIA Advisory Committee in working toward a FOIA process that works for all.

METHODOLOGY

The CRO's office opened the 2021 RMSA on January 10, 2022, with a response deadline of March 11, 2022. The CRO's office conducts the RMSA via an online survey tool that creates a unique link used to submit responses. Ninety-six percent of agencies that received the 2021 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 their 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 264 agencies responded to the RMSA, but not all respondents answered the FOIA questions. 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 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 2021 RMSA report is one of three reports required by the CRO, the results of which are included in the Federal Agency Records Management Annual Report to Congress, published on NARA’s website on the CRO’s [RMSA web page](#).

Questions 51-54 pertained to FOIA.

List of Statistical Results from 2021 RMSA FOIA questions

The following questions are related to access to records under the Freedom of Information Act		
<i>Agencies are required to have a Freedom of Information Act (FOIA) program (5 U.S.C. 552). The ability to find records is essential for a successful FOIA program. The following questions related to your agency’s FOIA program may require consultation with your agency’s FOIA Officer. Please note that FOIA does not apply to Judicial Branch Agencies, as well as a few others. If FOIA does not apply to your agency, please do not skip these questions. Select the ‘Not applicable’ response provided.</i>		
Q51. Has the COVID-19 pandemic disrupted your agency's ability to respond to FOIA requests?		
Answer Option	%	Count
Yes	45%	119
No	51%	135
Do not know	1%	3
Not applicable, Judicial Branch Agency/FOIA does not apply	3%	7
Total responses to this question		264
Q52. Which of the following explains why FOIA has been impacted? (Choose all that apply)		
Answer Option	%	Count
Paper records are inaccessible due to office closure	78%	92

FOIA case processing system is not available by remote access	13%	15
Electronic records are not accessible remotely	11%	13
Agency staff are not available to conduct searches	51%	60
Other, please be specific:	36%	42
Total responses to this question		118

Q53. Which of the following actions did your agency's FOIA program take in response to the COVID-19 pandemic? (Choose all that apply) (“Guidance for Agency FOIA Administration in Light of COVID-19 Impacts,” DOJ, updated May 28, 2020, <https://www.justice.gov/oip/guidance-agency-foia-administration-light-covid-19-impacts>),

Answer Option	%	Count
Worked directly with requesters to tailor their requests for most efficient processing	73%	189
Posted a notice on the FOIA website informing requesters of most efficient way to make a request	51%	132
Posted a notice on the FOIA website informing requesters of any anticipated delays	45%	117
Included information about any anticipated delays in requester communication, including acknowledgment letters	55%	142
Used multitrack processing to further triage requests that could be processed more efficiently remotely	42%	110
Posted additional proactive disclosures for high public interest topics related to the COVID-19 pandemic	23%	59
Assessed technology to ensure most efficient administration of FOIA	54%	141
Other, please explain	17%	44
Not applicable, Judicial Branch Agency/FOIA does not apply	3%	9
Total responses to this question		260

Q54. Which of the following describes the working relationship between the Agency Records Officer and the Chief FOIA Officer? (Choose all that apply)

Answer Option	%	Count
Work together on Information Technology (IT) requirements that benefit both programs	56%	148
Coordinate search terms to identify responsive records	38%	99
Identify programs or offices most likely to have responsive records	50%	131
Work together on high-profile or complex FOIA requests	47%	124
Provide training on records management and FOIA to each other's staff	48%	127
Training programs include the importance and relationship between FOIA and records management	49%	128
Other, please explain	14%	38
None of the above	5%	14
Not applicable, Agency Records Officer and the Chief FOIA Officer are the same person	3%	9
Not applicable, Judicial Branch Agency/FOIA does not apply	3%	7
Total responses to this question		263