



January 2022

FREEDOM OF INFORMATION ACT

Selected Agencies
Adapted to the
COVID-19 Pandemic
but Face Ongoing
Challenges and
Backlogs

GAO Highlights

Highlights of [GAO-22-105040](#), a report to congressional addressees

Why GAO Did This Study

FOIA, enacted into law more than 50 years ago, seeks to improve the public's access to government information and promote the principles of openness and accountability in government.

The CARES Act includes a provision for GAO to monitor and oversee the federal government's response to the COVID-19 pandemic. GAO also was asked to review how the pandemic affected FOIA processes and procedures. This report examines (1) how key measures of FOIA administration changed from fiscal years 2019 to 2020 and over time since fiscal year 2012; (2) how selected agencies adapted their FOIA operations during the pandemic; and (3) how selected agencies' backlog reduction plans aligned with standards for internal control and performance management practices.

GAO selected five agencies based on a variety of factors including the number of FOIA requests received, processed, and backlogged. GAO reviewed documents and interviewed officials from the selected agencies and the National Archives and Records Administration.

What GAO Recommends

GAO is making a total of four recommendations, with one each to DOL, DHS, USDA, and OIP. These include that OIP should evaluate the usefulness and burden of collected performance information, and identify ways reporting can inform current and emerging challenges. The agencies agreed with the recommendations.

View [GAO-22-105040](#). For more information, contact James R. McTigue, Jr. at (202) 512-6806 or mctiguej@gao.gov.

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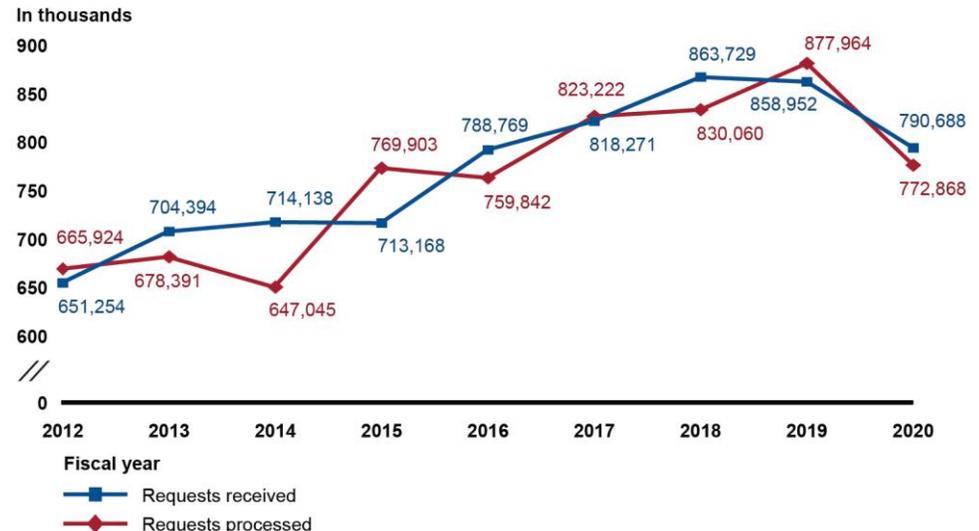
FREEDOM OF INFORMATION ACT

Selected Agencies Adapted to the COVID-19 Pandemic but Face Ongoing Challenges and Backlogs

What GAO Found

The COVID-19 pandemic affected some measures of Freedom of Information Act (FOIA) administration government-wide. For example, FOIA requests received declined government-wide by 8 percent in fiscal year 2020, the first year of the pandemic, compared to fiscal year 2019. Overall, agencies processed about 12 percent fewer requests during this same period. Other measures continued longer-term trends, such as increasing FOIA request backlogs.

FOIA Requests Received and Processed Government-wide, Fiscal Years 2012 through 2020



Source: GAO analysis of agency-reported Freedom of Information Act (FOIA) data on FOIA.gov. | GAO-22-105040

Four of the five selected agencies—the Departments of Agriculture (USDA), Homeland Security (DHS), and Labor (DOL), and the Environmental Protection Agency—initially faced pandemic-related challenges such as access to information technology networks and FOIA requests received by mail. FBI's use of a classified FOIA system meant that staff could not telework. Thus, they had to ensure workforce safety in the office.

All five agencies employed strategies and leading practices to maintain operations during the pandemic, including processing requests based on their complexity, increased communication with requesters, and interim releases. These agencies also continued long-term, non-pandemic related planning efforts, such as technology updates to FOIA systems and organizational changes.

Some of the agencies reviewed did not have key performance information in their backlog reduction plans. For example, USDA could better document planned actions and milestones and DOL may not have reliable backlog data. Additionally, DHS components with significant backlogs could develop plans. Such information could help, for example, ensure agencies sustain backlog reduction efforts. GAO found opportunities for the Office of Information Policy (OIP) to collect and publicly report additional data, such as the causes of FOIA litigation, which could help agencies address emerging challenges.

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Abbreviations

CBP	Customs and Border Protection
DHS	Department of Homeland Security
DOJ	Department of Justice
DOL	Department of Labor
EPA	Environmental Protection Agency
FBI	Federal Bureau of Investigation
FOIA	Freedom of Information Act
GPRA	Government Performance and Results Act of 1993
GPRAMA	GPRA Modernization Act of 2010
GSA	General Services Administration
ICE	Immigration and Customs Enforcement
NARA	National Archives and Records Administration
NPRC	National Personnel Records Center
OGIS	Office of Government Information Services
OIA	Department of Agriculture Office of Information Affairs
OIP	Office of Information Policy
OMB	Office of Management and Budget
OPM	Office of Personnel Management
USDA	U.S. Department of Agriculture

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January 26, 2022

Congressional Addressees

The Freedom of Information Act (FOIA), signed into law more than 50 years ago, is one of several laws that seeks to improve the public's access to government information and promote the principles of openness and accountability in government.¹ FOIA requires federal agencies to provide the public with access to certain government records.² Each year, individuals and entities file hundreds of thousands of FOIA requests for information on numerous topics that contribute to the understanding of government actions. These topics have included, among others, the disclosure of waste, fraud, and abuse; unsafe consumer products and harmful drugs; and more recently, agencies' responses to the Coronavirus Disease 2019 (COVID-19) pandemic. In recent years, we have reported on various aspects of federal agencies' efforts to implement FOIA.³

¹We recently reported on more of these federal efforts to increase government transparency. See GAO, *Federal Spending Transparency: Opportunities Exist to Further Improve the Information Available on USAspending.gov*, [GAO-22-104702](#) (Washington, D.C.: Nov. 8, 2021); and *Open Data: Agencies Need Guidance to Establish Comprehensive Data Inventories; Information on Their Progress is Limited*, [GAO-21-29](#) (Washington, D.C.: Oct. 8, 2020). The Open, Public, Electronic and Necessary Government Data Act, which is Title II of the Foundations for Evidence-Based Policymaking Act of 2018, Pub. L. No. 115-435, 132 Stat. 5534 (2019), the FOIA Improvement Act of 2016, Pub. L. No. 114-185, 130 Stat. 538 (2016), and the Digital Accountability and Transparency Act, Pub. L. No. 113-101, 128 Stat. 1146 (2014), among other efforts, have sought to improve the availability, transparency, and quality of federal data.

²5 U.S.C. § 552(a).

³For example, GAO, *Freedom of Information Act: Actions Needed to Improve Agency Compliance with Proactive Disclosure Requirements*, [GAO-21-254](#) (Washington, D.C.: Mar. 10, 2021); *Freedom of Information Act: Update on Federal Agencies' Use of Exemption Statutes*, [GAO-21-148](#) (Washington, D.C.: Jan. 12, 2021); *Freedom of Information Act: Federal Agencies' Recent Implementation Efforts*, [GAO-20-406R](#) (Washington, D.C.: Mar. 11, 2020); *Freedom of Information Act: Agencies Are Implementing Requirements, but Additional Actions Are Needed*, [GAO-18-365](#) (Washington, D.C.: June 25, 2018); *Freedom of Information Act: Litigation Costs for Justice and Agencies Could Not Be Fully Determined*, [GAO-16-667](#) (Washington, D.C.: Sept. 8, 2016); *Freedom of Information Act: Department of Labor Can Improve Management of Its Program*, [GAO-16-248](#) (Washington, D.C.: June 2, 2016); and *Freedom of Information Act: Additional Actions Can Strengthen Agency Efforts to Improve Management*, [GAO-12-828](#) (Washington, D.C.: July 31, 2012).

We recently reported that the COVID-19 pandemic significantly affected how federal employees performed their work as agencies adopted a maximum telework posture and only allowed on-site work for limited agency operations.⁴ In May 2020, the Office of Information Policy (OIP) in the Department of Justice (DOJ), which is responsible for encouraging and overseeing agency compliance with FOIA, published guidance encouraging agencies to focus on finding workable solutions to maximize the efficiency and effectiveness of FOIA administration during the pandemic.⁵ In the guidance, DOJ acknowledged that many agencies faced challenges due to the pandemic, such as staffing and technology limitations, but affirmed that FOIA's statutory response times continued to apply.

The CARES Act, passed in March 2020, included a provision for us to monitor and oversee the federal government's response to the COVID-19 pandemic.⁶ We were asked to review the impact of the COVID-19 pandemic on FOIA processes and procedures. This report examines:

- how key measures of FOIA administration, such as the number of requests received, processed, and backlogged, changed from fiscal years 2019 to 2020 and over time from fiscal years 2012 through 2020;
- how selected agencies adapted their FOIA operations during the COVID-19 pandemic; and
- the extent to which selected agencies' backlog reduction plans aligned with standards for internal control and performance management practices.

To address the first objective, we analyzed government-wide data on key measures of FOIA administration for fiscal years 2012 through 2020. We also selected a nongeneralizable sample of five agencies to provide additional FOIA information. We based our selection on a variety of factors, including number of FOIA requests received, processed, and backlogged and size of FOIA offices, among other criteria. In addition, we selected one component for each of the two largest agencies based on

⁴GAO, *COVID-19: Federal Agencies' Initial Reentry and Workplace Safety Planning*, [GAO-22-104295](#) (Washington, D.C.: Oct. 25, 2021).

⁵Department of Justice, Office of Information Policy, *Guidance for Agency FOIA Administration in Light of COVID-19 Impacts*, May 28, 2020.

⁶Pub. L. No. 116-136, § 19010, 134 Stat. 281, 579-81 (2020).

FOIA volume and backlog (Department of Homeland Security [DHS] and DOJ). Based on this, we selected the

- Department of Agriculture,
- DHS and Customs and Border Protection (CBP),
- DOJ and FBI,
- Department of Labor, and
- Environmental Protection Agency.

To assess data reliability, we reviewed relevant documentation on steps taken to ensure the consistency of data on FOIA.gov and interviewed DOJ officials. We found the data to be sufficiently reliable for reporting changes from fiscal years 2019 to 2020 and long-term trends from fiscal years 2012 through 2020.⁷

To address the second objective, we reviewed selected agencies' documents related to FOIA processing—including policies, procedures, guidance, and published reports—and interviewed agency officials about pandemic-related and other long-term challenges. We assessed changes to FOIA processing in response to the pandemic at selected agencies against criteria for FOIA statutory requirements and OIP guidance and best practices.

To address our third objective, we assessed selected agencies' documents related to backlog reduction plans and how selected agencies measured, tracked, and reported FOIA data—and in particular, data on request backlogs. We also interviewed officials at OIP; the Office of Government Information Services (OGIS) within the National Archives and Records Administration (NARA), which provides FOIA assistance to the public and reviews FOIA policies, procedures, and compliance of federal agencies; and selected agencies about backlog reduction activities and how they measured and assessed those activities. We compared this information with DOJ guidance, *Standards for Internal*

⁷We used fiscal year 2012 as the starting point for those analyses to be consistent with analyses presented in our prior work. GAO, *Freedom of Information Act: Update on Federal Agencies' Use of Exemption Statutes*, [GAO-21-148](#) (Washington, D.C.: Jan. 12, 2021); *Freedom of Information Act: Federal Agencies' Recent Implementation Efforts*, [GAO-20-406R](#) (Washington, D.C.: Mar. 11, 2020); and *Freedom of Information Act: Agencies Are Implementing Requirements, but Additional Actions Are Needed*, [GAO-18-365](#) (Washington, D.C.: June 25, 2018).

Control in the Federal Government, and key practices for addressing major management challenges from *Managing For Results: Agencies Need to Fully Identify and Report Major Management Challenges and Actions to Resolve them in their Agency Performance Plans* ([GAO-16-510](#)) to determine the extent to which selected agencies' plans aligned with these criteria.⁸ See appendix I for more details on our scope and methodology.

We conducted this performance audit from February 2021 to January 2022 in accordance with generally accepted government auditing standards. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives.

Background

FOIA, enacted into law more than 50 years ago and amended most recently by the FOIA Improvement Act of 2016, establishes a legal right of access to government records and information on the basis of the principles of openness and accountability in government.⁹

FOIA Oversight and Implementation

OIP, OGIS, and the Chief FOIA Officers Council each have roles supporting agency implementation of FOIA. Specifically:

- OIP is responsible for encouraging agencies' compliance with FOIA and overseeing their implementation of the act. OIP, among other things, issues policy guidance, promotes accountability by compiling and reviewing information on agency compliance, and provides training. OIP also offers counseling services to agencies on a broad range of FOIA-related subjects, including guidance on managing the effect of the pandemic.

⁸GAO, *Managing For Results: Agencies Need to Fully Identify and Report Major Management Challenges and Actions to Resolve Them in Their Agency Performance Plans*, [GAO-16-510](#) (Washington, D.C.: June 15, 2016); and *Standards for Internal Control in the Federal Government*, [GAO-14-704G](#) (Washington, D.C.: Sept. 2014).

⁹5 U.S.C. § 552.

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- OGIS's responsibilities include reviewing agencies' policies, procedures, and compliance with FOIA. OGIS also identifies procedures and methods to improve compliance.¹⁰
 - The Chief FOIA Officers Council is responsible for, among other things, developing recommendations for increasing FOIA compliance and efficiency. The council is co-chaired by the Directors of OIP and OGIS.¹¹

FOIA Reporting

Each year, FOIA requires federal departments and agencies to submit an *Annual FOIA Report* to the Attorney General and OGIS Director, and a *Chief FOIA Officer Report* to the Attorney General.¹² FOIA also authorizes the Attorney General to establish additional requirements for these agency reports.¹³

- The *Annual FOIA Report* contains detailed statistics including the numbers of requests processed and received, the size of the backlog of requests, and the time taken to process requests. DOJ provides guidance to agencies on proper tracking and detailed instructions for preparing the annual report data. In fiscal year 2020, 119 agencies submitted an *Annual FOIA Report*.
- In addition, DOJ also requires all agencies to provide quarterly reports of four key FOIA statistics:
 - the number of requests received during the reporting period,
 - the number of requests processed during the reporting period,
 - the number of requests in an agency's backlog at the end of the reporting period, and

¹⁰5 U.S.C. § 552(h)(2).

¹¹5 U.S.C. § 552(k)(5)(A).

¹²FOIA requires the Chief FOIA Officer of each agency to review and report to the Attorney General on the agency's performance in implementing FOIA, in accordance with guidance from the Attorney General. 5 U.S.C. § 552(j)(2)(D). For the purposes of FOIA, "agency" is defined as each authority of the United States government, whether or not it is within or subject to review by another agency, but excludes, among others, Congress, courts, territories or possessions, and the District of Columbia. 5 U.S.C. § 551(1).

¹³5 U.S.C. §§ 552(e)(5), (j)(2)(D).

-
- the progress being made to close each agency's 10 oldest pending FOIA requests from the prior fiscal year.¹⁴

According to DOJ guidance, the quarterly reports facilitate federal agencies and the public in identifying trends and assessing progress throughout the year.

In recent years, OIP's *Chief FOIA Officer Report* guidelines have required agencies receiving more than 50 FOIA requests to report on five key areas of FOIA administration, including a section on steps taken to improve timeliness in responding to requests and reducing backlog. OIP updates these guidelines every year, such as adding a new question on how agencies worked to mitigate the impact of the pandemic for the 2021 *Chief FOIA Officer Report*. Likewise, *The Summary of Agency Chief FOIA Officer Reports for 2021 and Assessment of Agency Progress in FOIA Administration with OIP Guidance for Further Improvement* assessed 27 high-volume agencies that received more than 1,000 requests and 42 medium-volume agencies that received between 50 to 1,000 requests.

DOJ makes the data from the *Annual FOIA Report* and quarterly reports available on FOIA.gov, a central, government-wide website launched in 2011. Since 2018, FOIA.gov has allowed members of the public to submit a FOIA request to an agency through the website or be directed to an agency's online submission form if that agency's FOIA system is not linked to FOIA.gov.

The FOIA Process

Agencies are generally required to respond to a FOIA request within 20 business days with a determination of the scope of the documents they will produce and the exemptions they will claim with respect to any withheld document. Agencies are then required to promptly provide the responsive documents, if any.

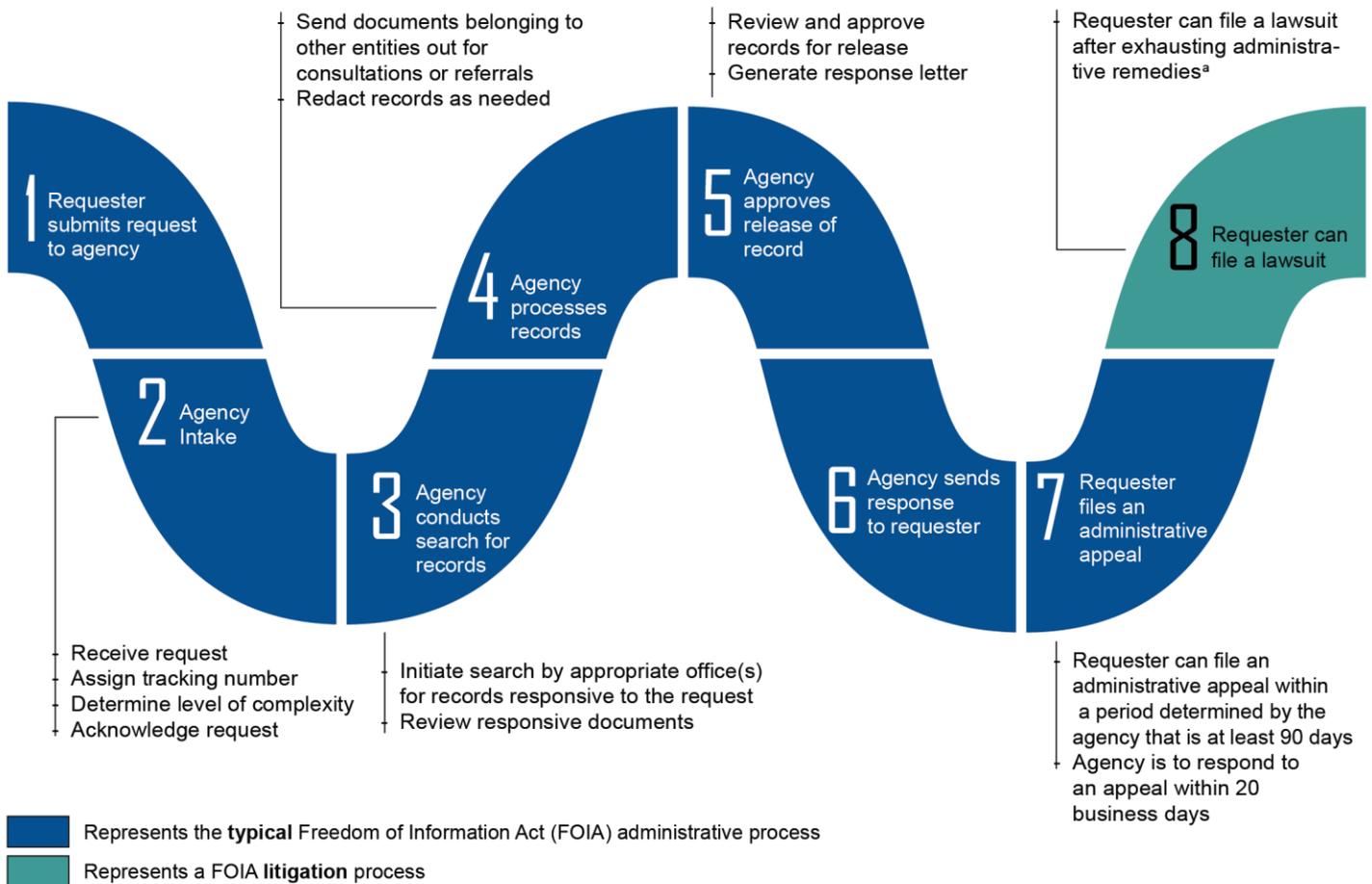
Once received, the request may go through multiple phases at an agency, which include assigning a tracking number, searching for responsive records, and releasing records (see fig. 1). In their *Annual FOIA Reports*, agencies are to account for the disposition of each

¹⁴Department of Justice Handbook for Agency Annual Freedom of Information Act Reports, October 7, 2021.

processed request as fully granted, partially granted and partially denied, or fully denied based on exemptions.¹⁵

¹⁵DOJ uses the disposition category of “partial grant/partial denial” when an agency provides the requester with some, but not all, of the information requested. This typically, but not always, means that an agency used exemptions in its response. The number of full denials reflects withholding all of the requested information based on a FOIA exemption list at 5 U.S.C. § 552(b). FOIA specifies nine exemptions agencies may cite to withhold information when responding to requests, which can be applied to portions of records or the entire record. These exemptions generally cover information related to (1) classified national defense or foreign policy; (2) internal agency personnel rules and practices; (3) certain nondisclosure provisions in other statutes; (4) trade secrets and commercial or financial information that is privileged or confidential; (5) interagency or intra-agency memorandums or letters; (6) personal privacy; (7) law enforcement; (8) the regulation or supervision of financial institutions; and (9) geological and geophysical information and data. DOJ also specifies nine disposition categories for which agencies may close requests for reasons other than exemptions, such as determining that they do not have responsive records or to close duplicate requests submitted from the same requester.

Figure 1: Simplified Overview of the Federal Government’s Freedom of Information Act Request and Appeal Process



Source: GAO analysis of simplified FOIA process. | GAO-22-105040

^aUnder FOIA, a requester must exhaust all administrative remedies prior to seeking judicial review of a federal agency’s decision. Such remedies include administrative appeals filed within a period determined by the agency that is not less than 90 days. However, agency failure to comply with statutory time limits is treated as an exhaustion of administrative remedies. When an agency fails to comply with the 20-day statutory time limit, the requester is considered to have exhausted administrative remedies and can seek judicial review. 5 U.S.C. §§ 552(a)(6)(A)-(C); *Calhoun v. FBI*, 546 F.App’x 487, 490 (5th Cir. 2013).

FOIA authorizes agencies to establish processes for responding to requests by establishing a system for multiple processing tracks, referred to as multitrack processing, based on the amount of work or time (or both) involved in processing requests. Using this authority, agencies may further define multitasking procedures through their FOIA regulation. For the *Annual FOIA Reports*, agencies are required to categorize all FOIA requests into only three processing tracks: simple, complex, and

expedited requests.¹⁶ DOJ defines simple requests as requiring relatively minimal review that agencies place in their fastest (nonexpedited) track based on, for example, the low volume and the simplicity of the records requested. Complex requests typically seek a high volume of material or require additional steps to process, such as the need to search for records in multiple locations.¹⁷

Agencies process requests in each track on a “first-in, first-out” basis. This is designed to facilitate more timely simple request processing and allow agencies to offer requesters the option of tailoring their request so that it fits within the simple track for faster processing.

Agencies may consider some FOIA requests as presenting “unusual circumstances,” defined in statute as

- the need to search for and collect records from field facilities or other establishments that are separate from the office processing the request;
- the need to search, collect, and examine a voluminous amount of separate and distinct records which are demanded in a single request; and
- the need for consultation with another agency having a substantial interest in the determination of the request, or among two or more components of an agency having substantial subject-matter interest.¹⁸

In “unusual circumstances,” the 20-working-day time limit may be extended by up to 10 days for a total of 30 working days by notifying the requester in writing, setting forth the unusual circumstances for an

¹⁶FOIA requires agencies to establish procedures in their regulations that provide for expedited processing of requests in certain cases when the person requesting the records demonstrates a compelling need and in other cases determined by the agency. The expedited processing regulations must also ensure that a determination of whether to provide expedited processing is made within 10 days.

¹⁷Factors that increase the complexity of a request include the volume of information involved, the number of offices that might have responsive documents, the extent to which the information is technical or difficult to understand, and the need to communicate with third parties, such as other agencies or owners of proprietary information.

¹⁸5 U.S.C. § 552(a)(6)(B)(iii).

extension and the date the agency expects to send its determination.¹⁹ FOIA allows a requester to challenge an agency’s final determination on a request through an administrative appeal or a lawsuit. Agencies generally have 20 business days to respond to an administrative appeal unless “unusual circumstances” apply.²⁰

Agencies may collect fees from FOIA requesters. Under FOIA, agencies are required to publish regulations specifying a schedule of fees applicable to processing requests and establishing procedures and guidelines for waivers or reductions in fees. Fees are generally calculated based on the direct costs of search, review, and duplication of records responsive to a request depending on the use of the records (commercial, non-commercial, or other).²¹

Proactive Disclosures

FOIA also requires agencies to proactively disclose certain records—making the records publicly available without waiting for specific requests.²² When agencies make proactive disclosures, they enhance transparency by ensuring that certain information about the operations and activities of the government is readily and efficiently made available

¹⁹ 5 U.S.C. § 552(a)(6)(B)(i). If the agency needs to extend the deadline beyond the additional 10 days, it must also provide the requester an opportunity to limit the scope of the request so that it may be processed within the time limit and offer the services of its FOIA Public Liaison and OGIS. 5 U.S.C. 552(a)(6)(B)(ii).

²⁰ 5 U.S.C. § 552(a)(6)(A)-(B).

²¹ 5 U.S.C. § 552(a)(4)(A). For non-commercial use, fees assessed also depend on the identity of the requester. For example, requesters who are news media do not pay for search time or document review and may be eligible for 100 pages of free duplication. Moreover, FOIA also limits agencies on when they can charge fees if the FOIA’s time limits are not met. Finally, the fees paid by requesters are not recouped by the agency or the agency’s FOIA office, but rather deposited into the Treasury of the United States. An agency cannot assess search fees for ‘commercial-use’ and ‘all other’ requesters or duplication fees for ‘news media, educational institutions, and non-commercial scientific institutions’ if it failed to comply with statutory time limits, unless one of the following exceptions apply: (1) “exceptional circumstances” for requests in litigation that excuses agency for the length of time provided by the court order, (2) “unusual circumstances” with timely written notice to the requester and agency processes the request within the 10 additional days, and (3) “unusual circumstances” with more than 5,000 pages necessary to respond to the request if the agency has provided timely written notice to the requester and has made at least three good-faith attempts to discuss how the requester could limit the scope of the request. 5 U.S.C. § 552(a)(4)(A)(viii).

²² 5 U.S.C. § 552(a)(2).

to all.²³ Additionally, publicly releasing records on a popular topic could reduce the number of FOIA requests for the same records an agency receives. The FOIA Improvement Act of 2016 added proactive disclosure obligations by specifically requiring, among other things, the posting of records that have been requested three or more times.²⁴ The act also created a new requirement for agencies to report on the number of proactive disclosures in their annual FOIA reports.²⁵

Backlog Reduction Efforts

Reducing the backlog of agencies' FOIA requests has been a long-standing issue. Over the last two decades, backlog reduction has been the subject of various executive orders, memorandums, and guidance documents. Key examples are described in appendix II.

We have reported that agencies can use performance information to guide efforts to address major management challenges, such as FOIA request backlogs.²⁶ The Government Performance and Results Act (GPRA) Modernization Act of 2010 (GPRAMA) provides tools that can help agencies resolve their major management challenges.²⁷ For example, under GPRAMA, agencies are required to identify their major management challenges that are government-wide or crosscutting in nature and plan for addressing them, including relevant performance goals, performance indicators (hereafter referred to as performance measures), and milestones.²⁸ We have concluded that agencies not covered under these requirements can benefit from using these

²³GAO, *Freedom of Information Act: Actions Needed to Improve Agency Compliance with Proactive Disclosure Requirements*, [GAO-21-254](#) (Washington, D.C.: Mar. 10, 2021).

²⁴FOIA Improvement Act of 2016, Pub. L. No. 114-185, § 2, 130 Stat. 538 (2016), *codified at* 5 U.S.C. § 552(a)(2)(D).

²⁵Pub. L. No. 114-185, 130 Stat. at 540, *codified at* 5 U.S.C. § 552(e)(1)(Q).

²⁶GAO, *Managing For Results: Agencies Need to Fully Identify and Report Major Management Challenges and Actions to Resolve Them in Their Agency Performance Plans*, [GAO-16-510](#) (Washington, D.C.: June 15, 2016).

²⁷The GPRA Modernization Act of 2010, Pub. L. No. 111-352, 124 Stat. 3866, 3868 (2011), *codified at* 31 U.S.C. § 1115(a)(6).

²⁸Major management challenges mean “programs or management functions, within or across agencies, that have greater vulnerability to waste, fraud, abuse, and mismanagement (such as issues identified by the Government Accountability Office as high risk or issues identified by an Inspector General) where a failure to perform well could seriously affect the ability of an agency or the Government to achieve its mission or goals.” 31 U.S.C. § 1115 (h)(5).

requirements as leading practices.²⁹ The performance information agencies are required to report under GPRAMA is described in figure 2 below.

Figure 2: Performance Plan Describing Major Management Challenges Required for Reporting by Executive Agencies under GPRA Modernization Act of 2010

Performance Information	Definition
Performance Goals	A target level of performance expressed as a tangible, measurable objective, against which actual achievement toward addressing the major management challenge can be compared
Performance Indicators	A particular value or characteristic used to measure output or outcome related to addressing the major management challenge
Planned Actions	Planned actions to address the major management challenge
Milestones	Scheduled events signifying the completion of a major deliverable or a set of related deliverables or a phase of work in the process of addressing the major management challenge
Agency Office or Official Responsible	An agency office or official responsible for resolving the major management challenge

Source: GAO analysis of GPRA Modernization Act of 2010 requirements. Pub. L. No. 111-352, 124 Stat. 3866 (2011). | GAO-22-105040

Federal Telework during the COVID-19 Pandemic

We recently found that prior to the COVID-19 pandemic, many federal agencies had established telework policies and information technology infrastructure, which allowed their FOIA programs to transition to remote operations during the pandemic.³⁰ We previously reported on telework as a tool that agencies can use to help accomplish their missions during

²⁹This can include the application of strategic planning requirements related to the development and implementation of results-oriented goals and meaningful performance measures in contexts where the requirements do not otherwise apply by law. GAO, *Office of Congressional Workplace Rights: Using Key Management Practices Would Help to Fully Implement Statutory Requirements*, [GAO-20-222](#) (Washington, D.C.: Dec. 30, 2019).

³⁰GAO, *COVID-19: Selected Agencies Overcame Technology Challenges to Support Telework but Need to Fully Assess Security Controls*, [GAO-21-583](#) (Washington, D.C.: Sept. 30, 2021).

periods of disruption, such as during severe weather events and major emergencies, including the current pandemic.³¹

The Office of Management and Budget (OMB) encouraged agencies to maximize the use of telework for employees to enable the workforce to remain safe while ensuring that government operations continue during the pandemic.³² OMB, the Office of Personnel Management (OPM), and the General Services Administration (GSA) also directed agencies to update their workplace safety plans in line with revised Centers for Disease Control and Prevention guidance and in preparation for the increased return of employees to the workplace. In this memorandum, they stated their expectation that many agencies will implement policies that support a “hybrid” work environment—a mix of telework and on-site work—where appropriate.³³

³¹Congress has encouraged federal agencies to expand staff participation in telework, most recently in 2010 by passing the Telework Enhancement Act of 2010. Pub. L. No. 111-292, 124 Stat. 3165 (2010). The act defines telework as a work flexibility arrangement under which an employee performs the duties and responsibilities of such employee’s position and other authorized activities from an approved worksite other than the location from which the employee would otherwise work. The act also requires executive agencies to establish telework policies, incorporate those policies into their respective continuity of operations plans, and provide interactive telework training to employees eligible to telework and managers of teleworkers. 5 U.S.C. §§ 6502-6504. GAO, *COVID-19: Federal Agencies’ Initial Reentry and Workplace Safety Planning*, [GAO-22-104295](#) (Washington, D.C.: Oct. 25, 2021), and *Federal Telework: Key Practice That Could Help Ensure the Success of Telework Programs*, [GAO-21-238T](#) (Washington, D.C.: Nov. 18, 2020).

³²Office of Management and Budget, *Federal Agency Operational Alignment to Slow the Spread of Coronavirus COVID-19*, Memorandum M-20-16 (Washington, D.C.: Mar. 17, 2020).

³³OMB, OPM, and GSA, *Integrating Planning for A Safe Increased Return of Federal Employees and Contractors to Physical Workplaces with Post-Reentry Personnel Policies and Work Environment*, Memorandum M-21-25 (Washington, D.C.: June 10, 2021).

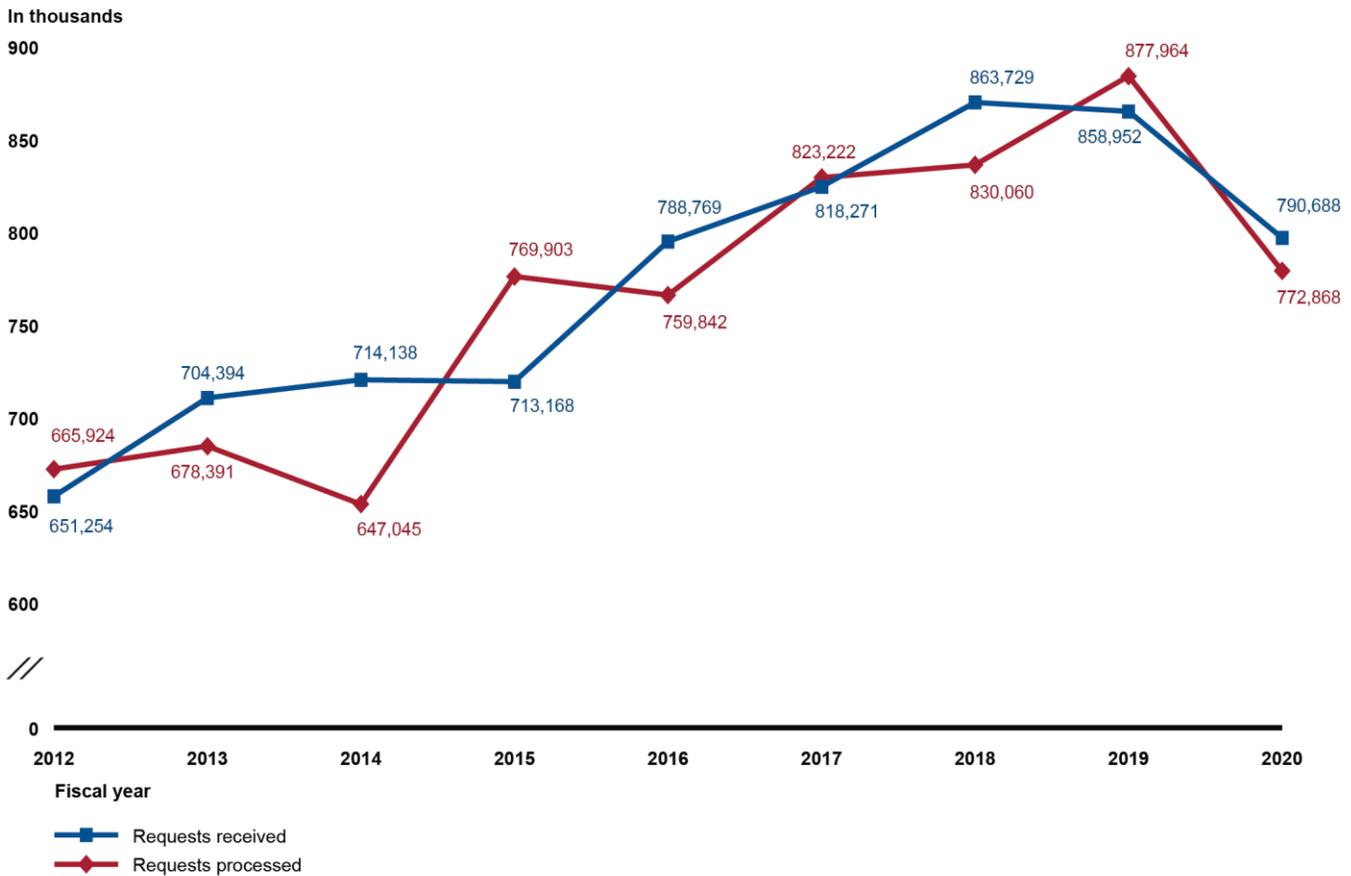
The Pandemic Affected Some Key Measures for FOIA Administration, while Other Measures Showed Continuation of Longer-Term Trends

FOIA Requests Received and Processed Declined in the First Year of the Pandemic

FOIA requests received declined government-wide by 8 percent in fiscal year 2020 (790,688) compared to fiscal year 2019 (858,952).³⁴ Prior to the pandemic, FOIA requests received and processed government-wide rose nearly every year, increasing by 32 percent from fiscal year 2012 to fiscal year 2019 (see fig. 3).

³⁴We later discuss challenges related to receiving requests by mail, so the number of requests received may not account for unlogged requests.

Figure 3: FOIA Requests Received and Processed Government-wide, Fiscal Years 2012 through 2020



Source: GAO analysis of agency-reported Freedom of Information Act (FOIA) data on FOIA.gov. | GAO-22-105040

Declines in FOIA requests during the pandemic were not uniform across agencies, as illustrated by the selected agencies in our review. For example, EPA officials told us that they experienced a decline in the volume of requests for records regarding possible enforcement or cleanup actions at specific property addresses often requested in connection with real estate transactions. They found this decline to be consistent with reports of slower activity in the real estate sector in the early months of the pandemic. Conversely, the FBI said it had received a high volume of requests in fiscal year 2019. Officials attributed this to an increase in public interest and media attention on its activities. Other

agencies in our review stated that the pandemic did not significantly change their respective request volume.³⁵

Government-wide, agencies also processed fewer FOIA requests in fiscal year 2020.³⁶ Agencies processed 12 percent fewer requests in fiscal year 2020 (772,868) than in fiscal year 2019, when requests processed reached a record high (877,964).³⁷ Prior to the pandemic, FOIA requests processed government-wide rose nearly every year, increasing by 32 percent from fiscal year 2012 through fiscal year 2019.

Selected agencies told us that the pandemic had a varied effect on their capacity to process requests. Officials at some agencies stated that they continued to meet their processing metrics or made processing improvements. Other agency officials stated that their agencies processed fewer requests due to their efforts to protect employees' safety and provide staff with work-life balance, among other reasons.

In addition, the Office of Government Information Services (OGIS) collected FOIA website notices showing that many agencies government-wide cited the inability to access mailed or faxed requests as causing potential delays in processing at the beginning of the pandemic.³⁸ For example, National Archives and Records Administration (NARA) officials stated that the National Personnel Records Center's closure largely accounted for the agency's 62 percent decrease in both the number of requests received and requests processed from fiscal year 2019 to 2020.

³⁵NARA officials stated that the National Personnel Records Center (NPRC) receives more than 60,000 FOIA requests annually and mostly by mail. They said the NPRC facility closure and reduced operations due to the pandemic resulted in a significant number of requests that did not get recorded as received in fiscal year 2020.

³⁶Agencies may vary in whether they include certain types of procedural denials such as "Records Not Reasonably Described" in processing data on simple, complex, and expedited requests. Therefore, total processed requests may not equal the sum of simple, complex, and expedited processed requests.

³⁷DOJ officials stated that FOIA statistics may have also been affected by a partial government shutdown in fiscal year 2019.

³⁸OGIS reported challenges to FOIA programs government-wide due to the pandemic, particularly for agencies not telework ready, agencies that work with largely paper-based records, or agencies that work with classified records or systems for processing records responsive to FOIA requests. See National Archives and Records Administration, Office of Government Information Services, *OGIS Issue Assessment: Follow-up on Agency Freedom of Information Act (FOIA) Website Communications on COVID-19* (Jan. 27, 2021).

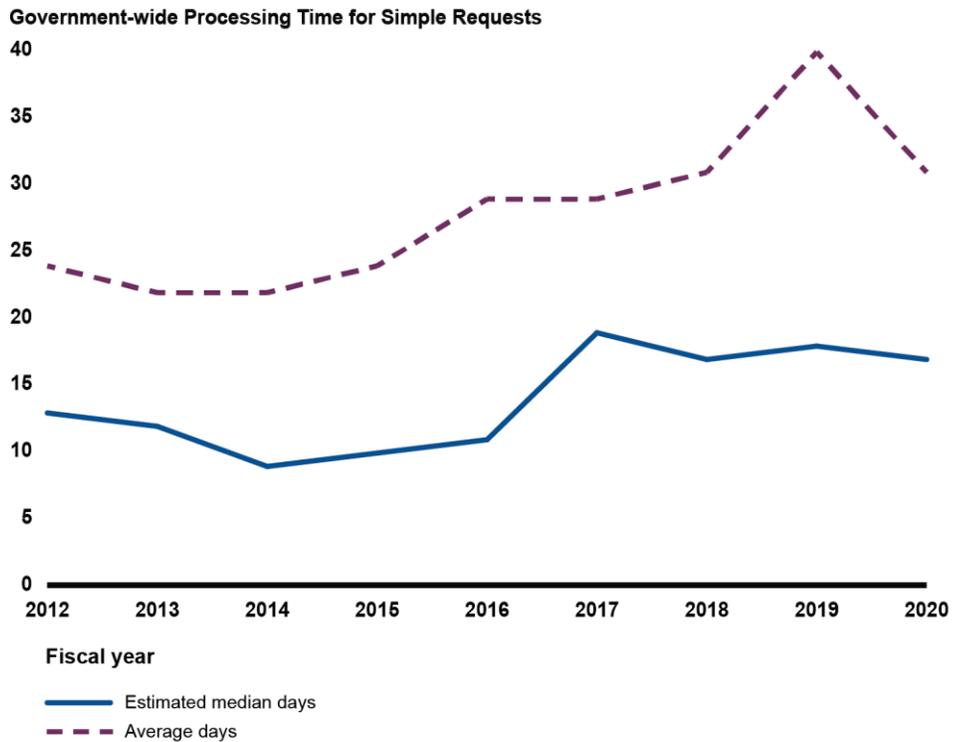
Many NARA Federal Records Centers remained closed and operated on an emergency-only basis, which officials said had a greater effect on some federal agencies that relied on these sites. As we will discuss later, we also found access to mailed requests and paper records contributed to initial challenges in FOIA processing.

Request Processing Time Changed in the First Year of the Pandemic

Agencies government-wide took less time on average to process simple and expedited requests, while taking more time to process complex requests from fiscal years 2019 to 2020.³⁹ Specifically, average processing time improved government-wide for simple requests with a decrease in average days (39 to 30), while the estimated median number of days stayed about the same (17 to 16) from fiscal years 2019 to 2020 (see fig. 4).

³⁹Processing time for complex requests may not necessarily be directly comparable to processing time for simple requests within a single fiscal year because complex request data may include older requests processed in that year but received in a previous year. Thus, an increase in processing time for complex requests may instead reflect the agency closing a number of older requests from prior years.

Figure 4: Processing Time for Simple Requests Government-wide, Fiscal Years 2012 through 2020



Source: GAO analysis of agency-reported Freedom of Information Act (FOIA) data on FOIA.gov. | GAO-22-105040

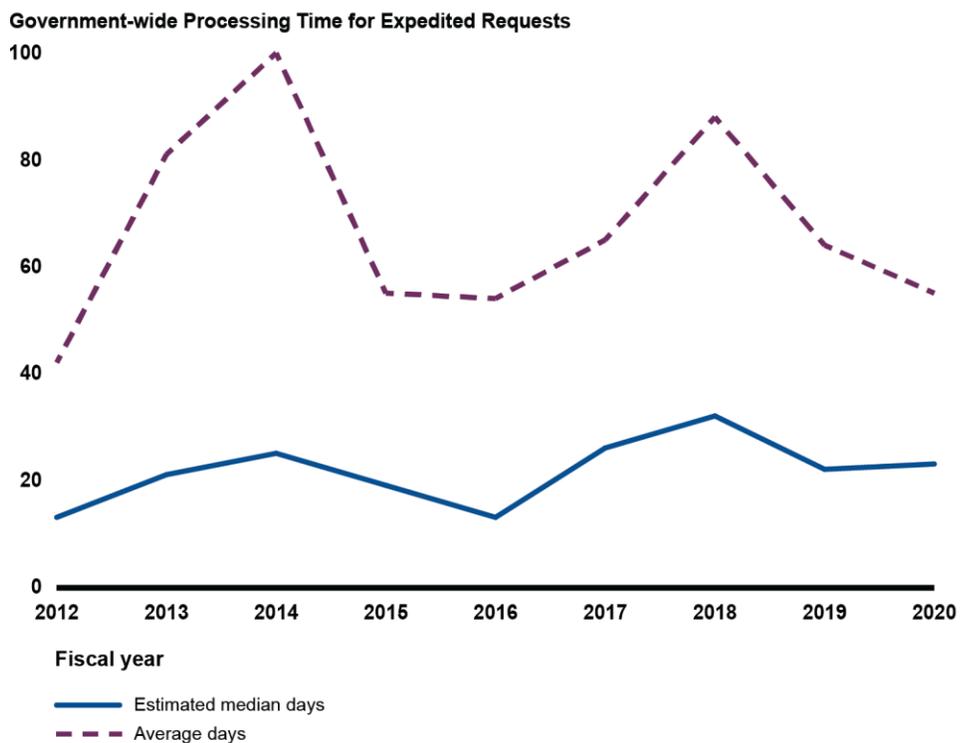
Notes: FOIA data provides means and medians for processing times at the agency level, as well as the number of requests per agency for each year. From this, we are able to calculate government-wide means each year. We also know from the agency level statistics that extreme values skew the processing times, i.e., the means are generally greater than the medians within each agency. In this situation, a median is a helpful measure of central tendency since it is not sensitive to extreme values. However, there are no government-wide data on individual requests and appeals that could be used to compute median processing times, and the median processing time government-wide cannot be directly calculated based on the agency medians. As an alternative, we estimate government-wide medians by weighting the agency-level medians by the numbers of requests/appeals processed by each agency. See appendix I for more information.

According to the Department of Justice (DOJ), the statutory time period for responding to a request does not begin until an agency receives a perfected request. DOJ defines a perfected request as a request for records which reasonably describes such records and is made in accordance with published rules stating the time, place, fees (if any) and procedures to be followed. Accordingly, agencies do not assign a track to unperfected requests that do not reasonably describe the records sought or are otherwise improperly made. Agencies may vary in the percentage of their unperfected requests that have not been labeled as simple, complex, or expedited. The numbers are still sufficiently reliable for the purposes of tracking government-wide year-over-year trends.

Likewise, from fiscal years 2019 to 2020, the average number of days to process an expedited request decreased (62 to 53), while the estimated median number of days stayed about the same (20 to 21). Both fiscal

years 2019 and 2020 reflected a decrease in processing time from an average of 86 days and estimated median of 30 days in fiscal year 2018 (see fig. 5).

Figure 5: Processing Time for Expedited Requests Government-wide, Fiscal Years 2012 through 2020



Source: GAO analysis of agency-reported Freedom of Information Act (FOIA) data on FOIA.gov. | GAO-22-105040

Notes: FOIA data provides means and medians for processing times at the agency level, as well as the number of requests per agency for each year. From this, we are able to calculate government-wide means each year. We also know from the agency level statistics that extreme values skew the processing times, i.e., the means are generally greater than the medians within each agency. In this situation, a median is a helpful measure of central tendency since it is not sensitive to extreme values. However, there are no government-wide data on individual requests and appeals that could be used to compute median processing times, and the median processing time government-wide cannot be directly calculated based on the agency medians. As an alternative, we estimate government-wide medians by weighting the agency-level medians by the numbers of requests/appeals processed by each agency. See appendix I for more information.

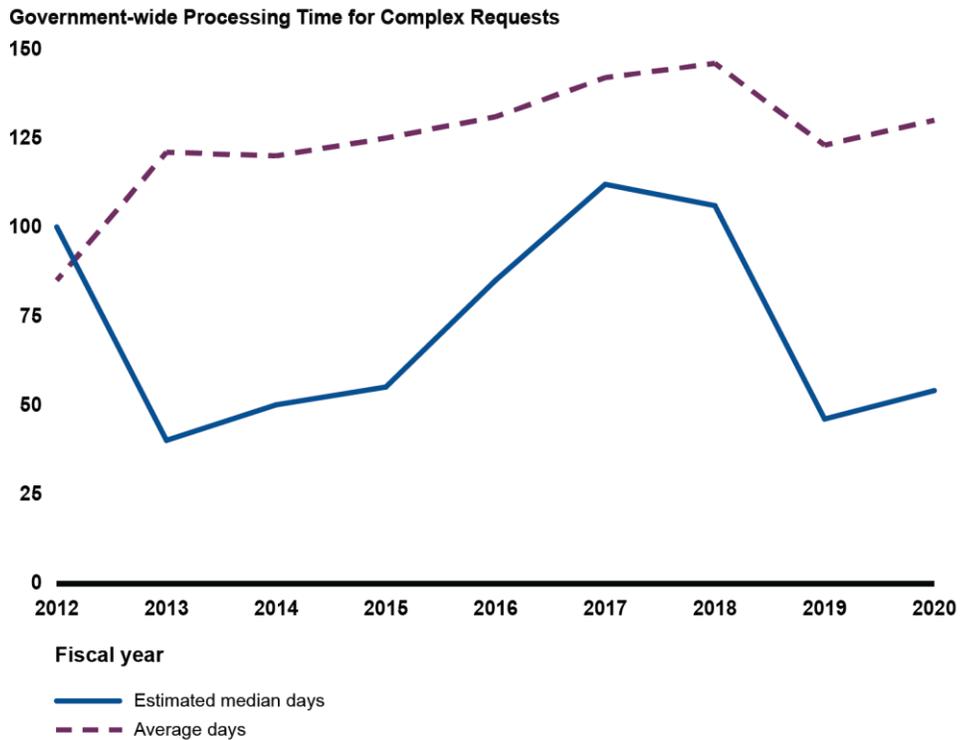
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The Office of Information Policy's (OIP) COVID-19 guidance stated agencies should strategically manage their FOIA programs, including the use of multitrack processing to prioritize requests that could be processed more efficiently while facing temporary limitations, such as an inability to access certain records, during the pandemic. Accordingly, we found some of the agencies in our review sought opportunities to process simpler cases. For example, FBI stated that it normally has a dedicated small case team to handle simple cases (internally defined as requests involving one to 50 pages), but distributed more of these cases across processing support units to mitigate reduced staffing levels during the pandemic and keep pace with the largest proportion of its requests.

In contrast to changes to simple and expedited request processing time, complex request processing time increased government-wide from fiscal years 2019 to 2020, from an average of 120 to 127 days and an estimated median of 43 to 51 days (see fig. 6).⁴⁰ However, both of these years showed a decrease from the higher numbers in fiscal years 2017 (average of 139, estimated median of 109) and 2018 (average of 143, estimated median of 103).

⁴⁰Complex request data may include older requests processed in that year but received in a previous year. Thus, an increase in processing time for complex requests may instead reflect the agency closing older requests from prior years.

Figure 6: Processing Time for Complex Requests Government-wide, Fiscal Years 2012 through 2020



Source: GAO analysis of agency-reported Freedom of Information Act (FOIA) data on FOIA.gov. | GAO-22-105040

Notes: FOIA data provides means and medians for processing times at the agency level, as well as the number of requests per agency for each year. From this, we are able to calculate government-wide means each year. We also know from the agency level statistics that extreme values skew the processing times, i.e., the means are generally greater than the medians within each agency. In this situation, a median is a helpful measure of central tendency since it is not sensitive to extreme values. However, there are no government-wide data on individual requests and appeals that could be used to compute median processing times, and the median processing time government-wide cannot be directly calculated based on the agency medians. As an alternative, we estimate government-wide medians by weighting the agency-level medians by the numbers of requests/appeals processed by each agency. See appendix I for more information.

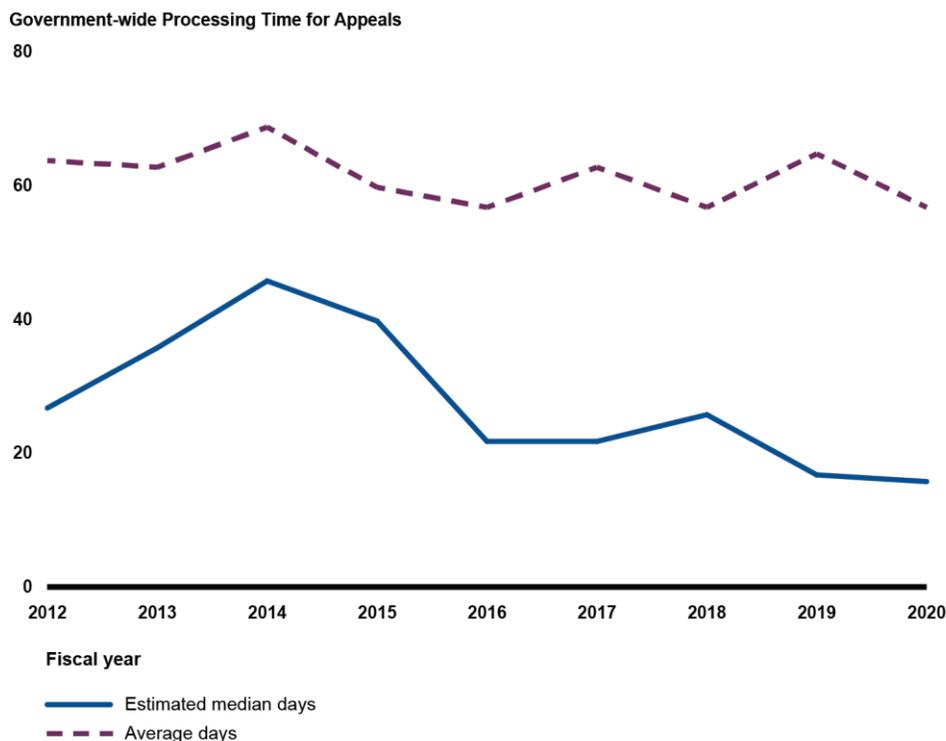
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Selected agency officials said it takes longer to process complex requests than in prior years because of a higher volume of complex requests received. They added that this trend began prior to the pandemic. DOJ

defines complex requests by the amount of work or time (or both) involved in processing. Such requests often have a high volume of records, complex searches, or multiple consultations. DOJ officials told us that not every complex request meets the statutory requirements for unusual circumstances.

Processing time for appeals also showed improvement as the average number of days decreased (63 to 55) and the estimated median stayed about the same from fiscal years 2019 to 2020 (15 to 14). Appeals processing time generally improved from the 67 average days and 44 estimated median days to process appeals in fiscal year 2014 (see fig. 7).

Figure 7: Processing Time for Appeals Government-wide, Fiscal Years 2012 through 2020



Source: GAO analysis of agency-reported Freedom of Information Act (FOIA) data on FOIA.gov. | GAO-22-105040

Note: FOIA data provides means and medians for processing times at the agency level, as well as the number of requests per agency for each year. From this, we are able to calculate government-wide means each year. We also know from the agency level statistics that extreme values skew the processing times, i.e., the means are generally greater than the medians within each agency. In this situation, a median is a helpful measure of central tendency since it is not sensitive to extreme values. However, there are no government-wide data on individual requests and appeals that could be used to compute median processing times, and the median processing time government-wide

cannot be directly calculated based on the agency medians. As an alternative, we estimate government-wide medians by weighting the agency-level medians by the numbers of requests/appeals processed by each agency. See appendix I for more information.

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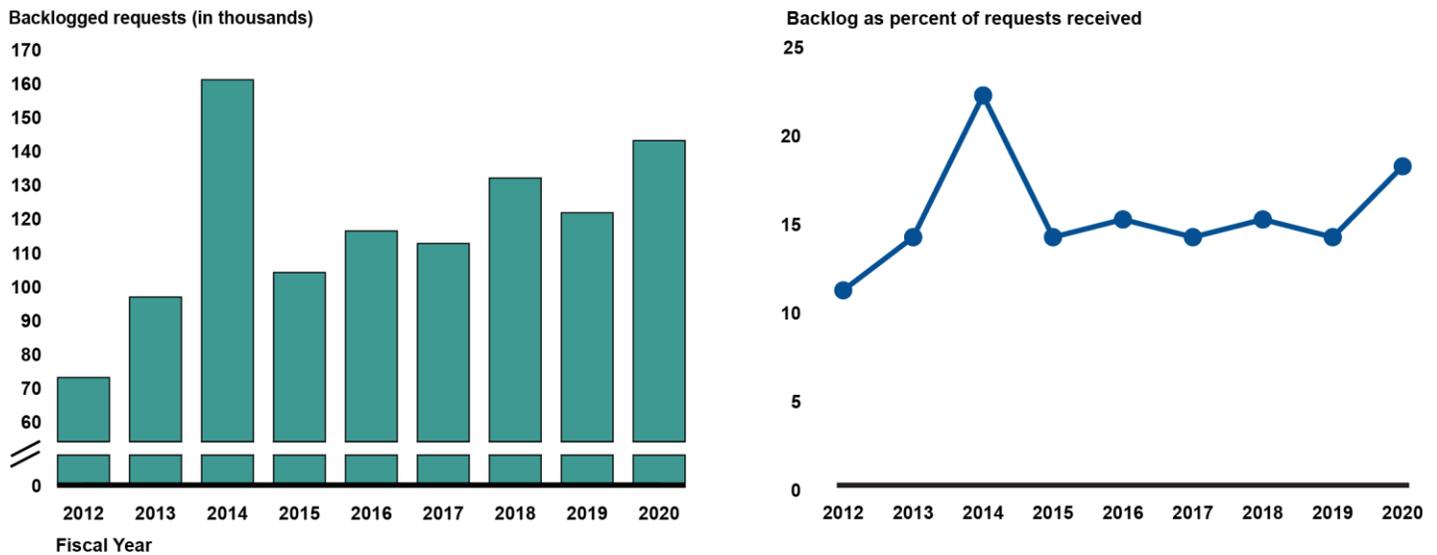
FOIA Request and Appeals Backlog, FOIA-Related Costs, and Fees Assessed Continued Longer-Term Government-wide Trends

Request and Appeals Backlog

FOIA request backlogs increased by 18 percent (from 120,436 to 141,762) from fiscal year 2019 to fiscal year 2020. Backlogged requests have been trending generally upwards since fiscal year 2016 (see fig. 8).⁴¹ From fiscal year 2012 to fiscal year 2020, backlogs increased by a total of 97 percent. While the number of backlogged requests increased, backlogged requests as a percent of total requests received ranged between 14 and 15 percent and remained relatively steady between fiscal years 2015 to 2019. Backlogged requests as a percent of total requests then rose slightly in fiscal year 2020 (18 percent). As requests increased government-wide, the backlog generally grew at a similar rate with the exception of fiscal year 2014. This shows the long-term and persistent nature of the challenge of reducing backlog.

⁴¹DOJ reported a 3-week government shutdown during which some agencies could not process requests in fiscal year 2014. The government-wide FOIA backlog rose 67 percent from fiscal year 2013.

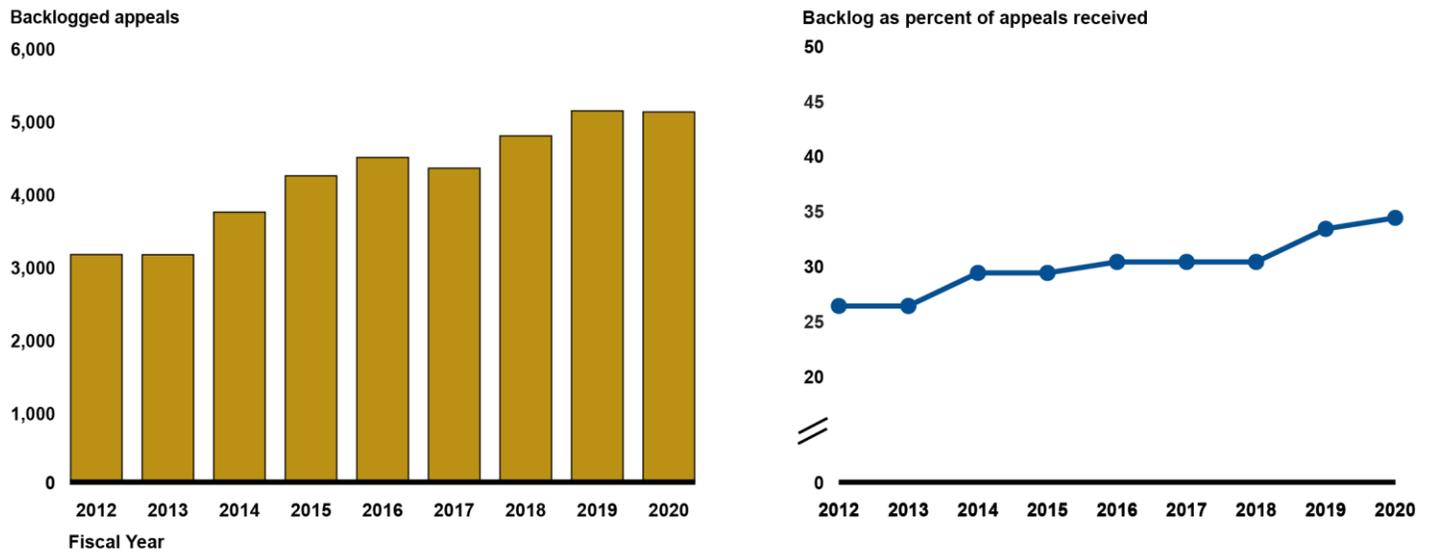
Figure 8: Request Backlogs Government-wide, Fiscal Years 2012 through 2020



Source: GAO analysis of agency-reported Freedom of Information Act (FOIA) data on FOIA.gov. | GAO-22-105040

From fiscal year 2012 through fiscal year 2020, the appeals backlog increased by 63 percent (see fig. 9). The *Chief FOIA Officer Report* has additional questions for agencies with backlogged requests and appeals, which includes asking about contributing factors if their backlog increased. As part of its annual assessment of agency compliance with FOIA, OIP grades certain metrics, such as whether backlogged requests and appeals decreased, stayed the same, or increased from the previous year. According to OIP, information provided by agencies in this report informs its guidance addressing the importance of various topics, such as strategically managing backlogs.

Figure 9: Backlogged Appeals as Percent of Appeals Received Government-wide, Fiscal Years 2012 through 2020



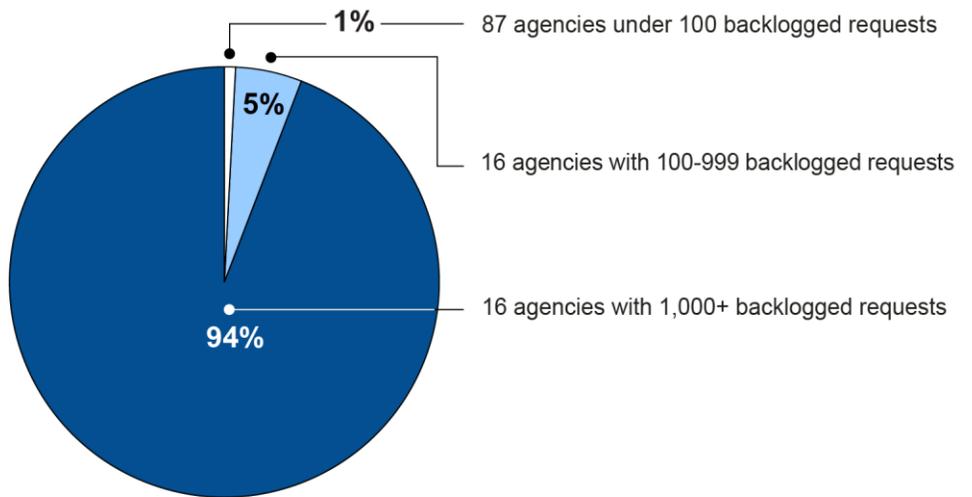
Source: GAO analysis of agency-reported Freedom of Information Act (FOIA) data on FOIA.gov. | GAO-22-105040

In fiscal year 2020, most federal agencies had fewer than 100 backlogged requests, but these 87 agencies represented only 1 percent of the total backlogged requests government-wide. The 16 agencies with backlogs of more than 1,000 requests (an increase of 3 agencies from fiscal year 2019) represented 94 percent of the total backlogged requests government-wide (see fig. 10).

In contrast, six agencies reported backlogs of more than 1,000 requests in fiscal year 2012.

Figure 10: Percentage of Total Backlogged Requests Government-wide by Number of Backlogged Requests for Fiscal Year 2020

FY 2020 Total backlogged requests government-wide

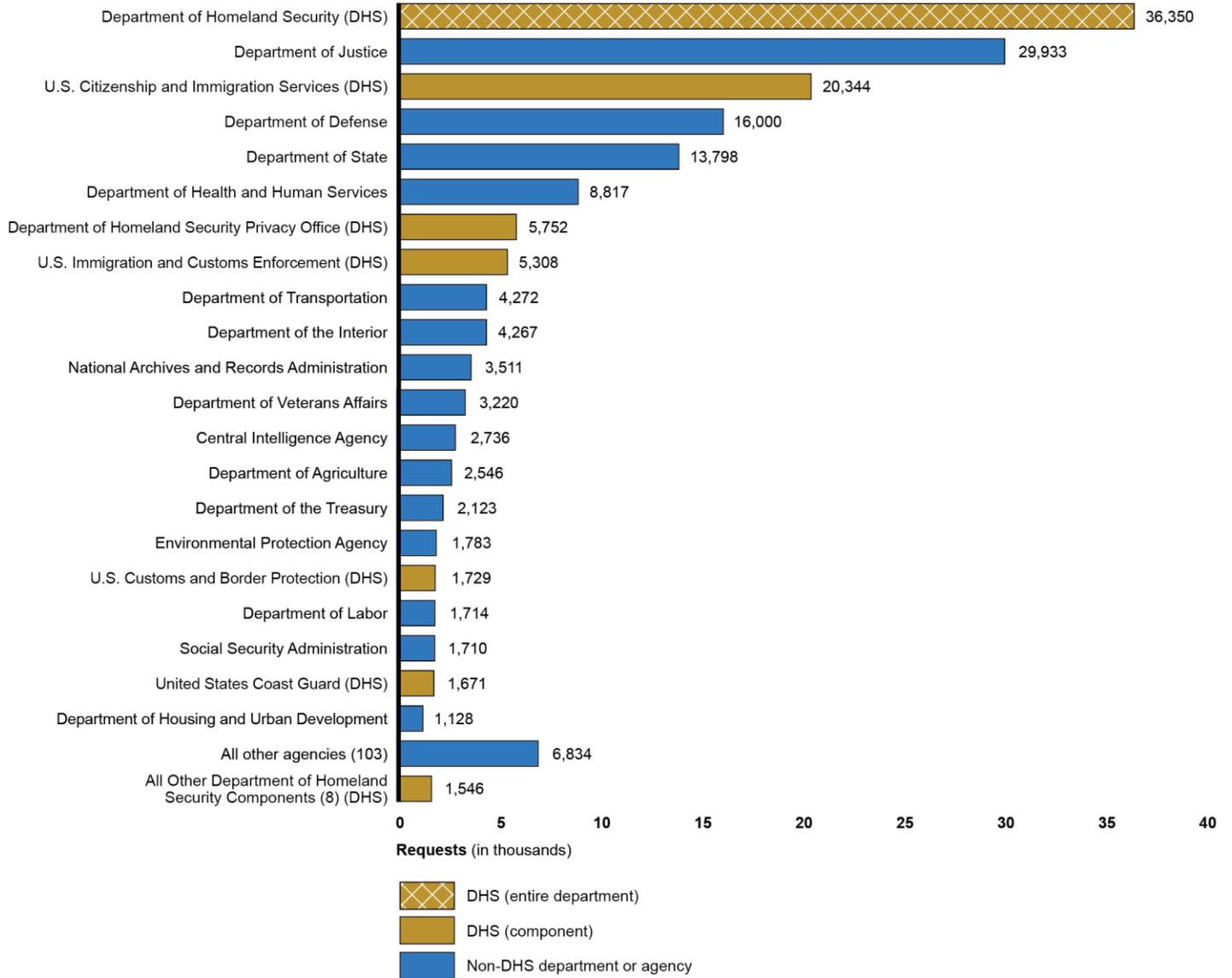


Source: GAO analysis of agency-reported Freedom of Information Act (FOIA) data on FOIA.gov. | GAO-22-105040

Further, the Department of Homeland Security (DHS)—which had more than 1,000 backlogged requests in fiscal year 2020—accounted for 26 percent of the total backlogged requests government-wide in fiscal year 2020. In fact, several DHS components had backlogs greater than some federal departments and independent agencies (see fig. 11).

Figure 11: Comparison of Backlogs for Department of Homeland Security Components and Other Federal Agencies, Fiscal Year 2020

Backlogged Freedom of Information Act (FOIA) Requests by Agency, Fiscal Year 2020

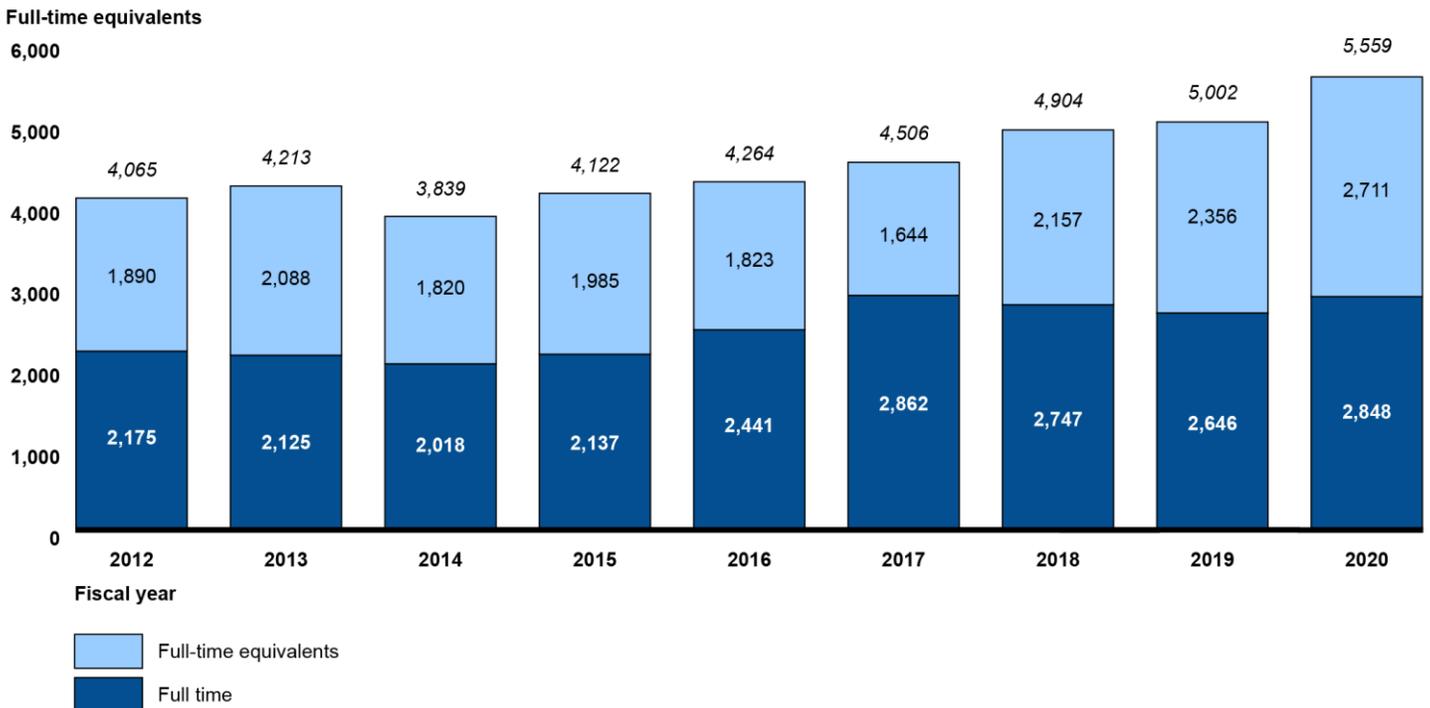


Source: GAO analysis of agency-reported Freedom of Information Act (FOIA) data on FOIA.gov. | GAO-22-105040

FOIA-Related Employees and Costs

In fiscal year 2020, agencies government-wide reported 5,559 FOIA employees and full-time equivalents, which has generally risen since fiscal year 2012 (see fig. 12). The total number of FOIA employees and full-time equivalents who agencies reported performing FOIA duties across the federal government grew by 557 (11 percent) from fiscal year 2019 to fiscal year 2020. From fiscal year 2012 through fiscal year 2020, the total number of employees and full-time equivalents increased by 1,494 (37 percent).

Figure 12: Reported FOIA Full-Time Equivalents Government-wide, Fiscal Year 2012 through 2020

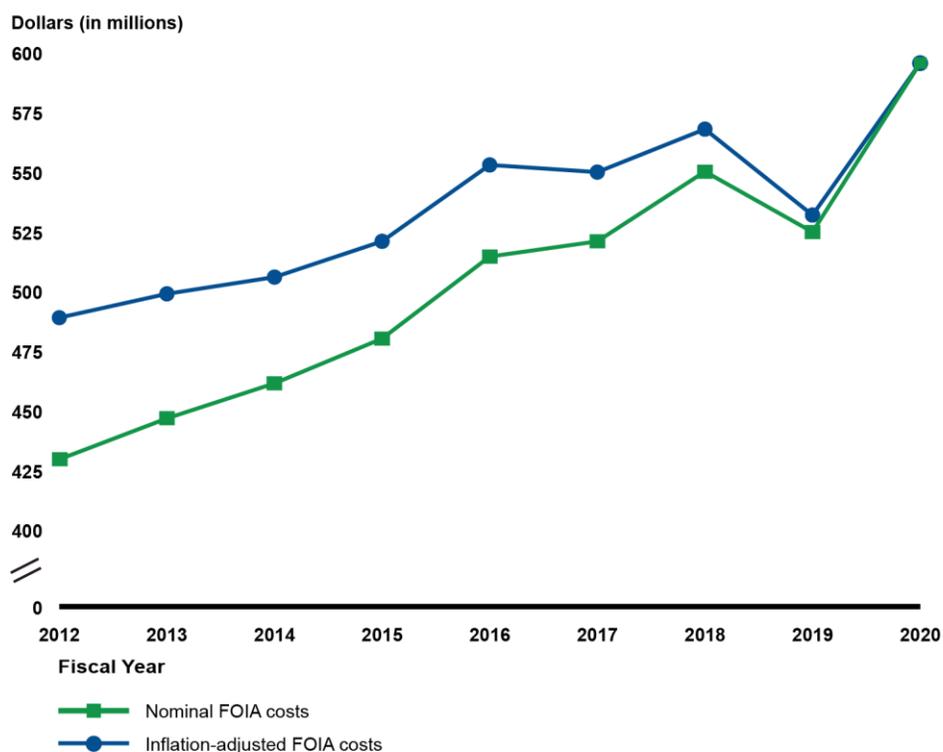


Source: GAO analysis of agency-reported Freedom of Information Act (FOIA) data on FOIA.gov. | GAO-22-105040

Government-wide FOIA costs have increased on both a nominal and inflation-adjusted basis in most years from fiscal year 2012 through fiscal year 2020. Total FOIA costs reflect a sum of request processing costs, including administrative appeals, and litigation-related costs. OIP guidance states that costs should include employee salaries, overhead, and any other related expenses. From fiscal years 2019 through 2020, the total nominal FOIA cost government-wide increased by 13 percent (12 percent adjusted for inflation, see fig. 13). From fiscal year 2012 through

fiscal year 2020, total cost increased 39 percent on a nominal basis (22 percent adjusted for inflation). Selected agency officials attributed increased costs to factors such as obtaining contractor support, technology investments and software licenses, or litigation.

Figure 13: Reported FOIA Costs Government-wide, Fiscal Year 2012 through 2020^a



Source: GAO analysis of agency-reported Freedom of Information Act (FOIA) data on FOIA.gov. | GAO-22-105040

^aTotal FOIA costs reflect the sum of agency-reported request processing costs and litigation-related costs.

FOIA Fees

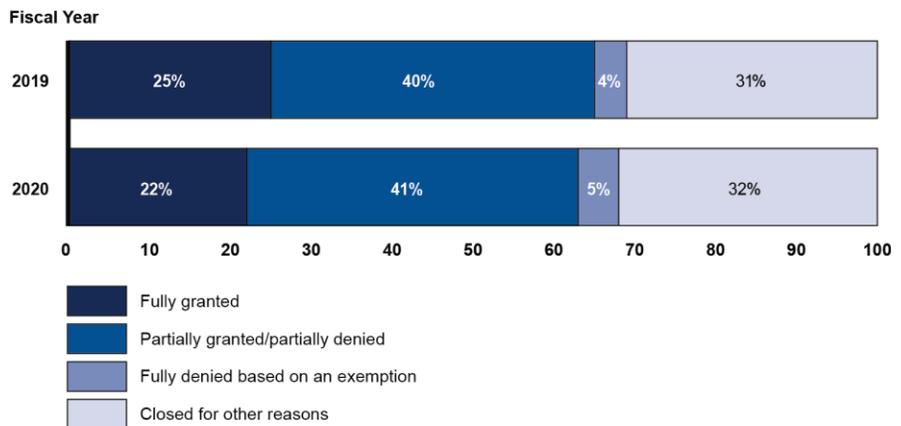
From fiscal years 2012 through 2020, FOIA fees collected by agencies government-wide have steadily decreased by a total of 56 percent, from a reported \$4,788,880 to \$2,113,456. Each of the selected agencies in our review collected less in FOIA fees in fiscal year 2020 compared to fiscal year 2019. Agencies in our review provided mixed responses, however, on whether and to what extent the pandemic affected fees. Some agencies cited pandemic-related issues such as the inability to provide paper records precluding them from charging and collecting fees to cover duplication costs or delays in processing checks sent through the mail.

Others pointed to legislative changes to FOIA, including the FOIA Improvement Act of 2016 that changed whether federal agencies can charge for search and duplication fees if response time is delayed.

Other FOIA Measures Showed No Significant Changes in the First Year of the Pandemic Compared with the Previous Year

Agencies government-wide reported that percentages for the disposition of FOIA requests in fiscal year 2020 remained about the same compared to fiscal year 2019 (see fig. 14). In January 2021, we reported that the percentage of partially granted and partially denied requests increased since fiscal year 2012.⁴²

Figure 14: Comparison of Request Disposition Government-wide, Fiscal Years 2019 and 2020

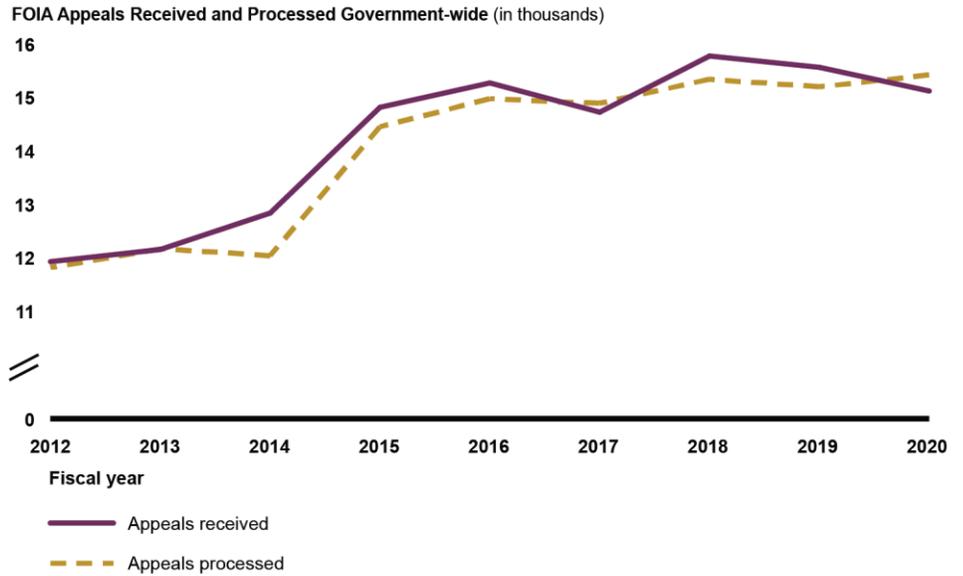


Source: GAO analysis of agency-reported Freedom of Information Act (FOIA) data on FOIA.gov. | GAO-22-105040

Agencies also reported little change in appeals-related metrics in fiscal year 2020 compared to fiscal year 2019. For example, in fiscal year 2020, agencies government-wide received 14,944 appeals (3 percent decrease from fiscal year 2019), processed 15,243 appeals (1 percent increase), and had 5,072 backlogged appeals (0 percent change). While the number of appeals received and processed rose between fiscal years 2012 through 2015, these numbers have remained relatively steady since fiscal year 2015 (see fig. 15).

⁴²GAO-21-148.

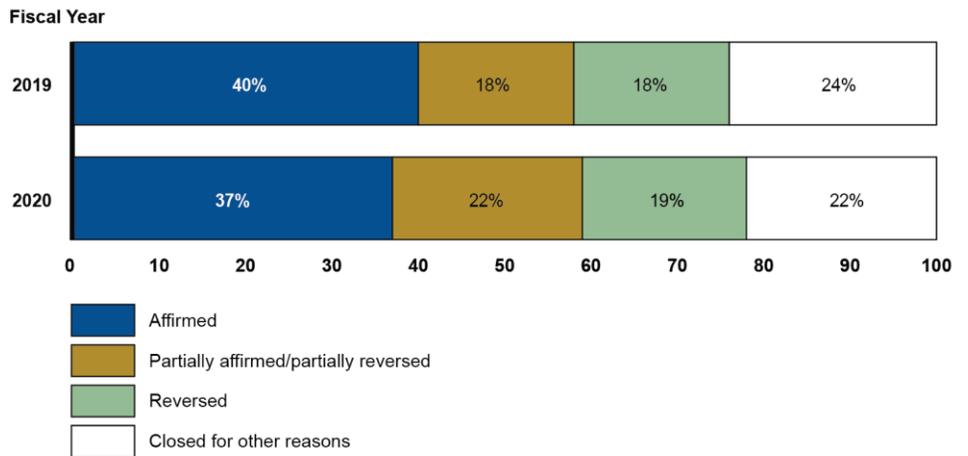
Figure 15: FOIA Appeals Received and Processed Government-wide, Fiscal Years 2012 through 2020



Source: GAO analysis of agency-reported Freedom of Information Act (FOIA) data on FOIA.gov. | GAO-22-105040

In addition, agencies government-wide reported similar percentages for appeal disposition from fiscal year 2019 to fiscal year 2020 (see fig. 16).

Figure 16: Comparison of Appeals Disposition Government-wide, Fiscal Years 2019 and 2020



Source: GAO analysis of agency-reported Freedom of Information Act (FOIA) data on FOIA.gov. | GAO-22-105040

Selected Agencies Effectively Addressed Pandemic-Related Challenges to FOIA Operations, but Long-Term Challenges Remain

Selected Agencies Took Steps to Resume Their Regular Operations within a Few Months despite Challenges

In the early months of the pandemic, which started in March 2020, four of the five selected agencies encountered temporary challenges preparing employees to work in the maximum telework environment, such as ensuring access to equipment at home or adjusting to virtual meetings. The Departments of Agriculture (USDA), Homeland Security (DHS), and Labor (DOL), and the Environmental Protection Agency (EPA) had telework policies and agreements in place prior to the pandemic that enabled their FOIA programs to maintain operations. The fifth agency, FBI, encountered different challenges because its FOIA processing must be performed on a classified system. This limited its ability to allow FOIA staff to telework. However, FBI officials stated they resumed limited on-site operations by the end of April 2020.

Common challenges agencies faced at the beginning of the pandemic, and the steps these agencies took to address them, included:

- **Access to information technology equipment and networks.** While telework ready, DHS and EPA described temporary challenges related to transitioning to maximum telework. For example, DHS officials stated management had to ensure that staff had the equipment at home to perform work as efficiently as in the office. The DHS telework policy enables components to provide technology and equipment for staff to participate in telework. EPA officials stated that moving all eligible staff to maximum telework initially strained information technology and network systems, but said the agency rapidly addressed the problem of interruptions in access posed by approximately 13,000 remote employees. EPA officials also said the agency deployed new software during the pandemic to improve the quality of virtual meetings.
- **FOIA requests by mail.** For example, DHS officials stated that some components that received a low volume of mailed requests had

volunteers go into the office or asked non-FOIA staff already required to be in the office to scan mail. They stated, however, that components that received higher volumes of mailed requests could not use this strategy. USDA officials also stated that generally FOIA offices had one staff member come into the office to review and scan mail and, if needed, mail out paper records to those requesters without email access. Some selected agencies told us that mail accumulated until some staff returned to the office a few months into the pandemic. The four selected agencies that maintained their operations through telework also encouraged requesters to submit requests electronically.

- **Paper records.** For example, EPA's National FOIA Office developed template letters and provided training to staff on giving notice to requesters affected by its inability to search for paper records. DOL issued a bulletin in April 2020 for FOIA coordinators to inform requesters about inaccessible records and options for fulfilling requests. USDA officials also stated that they encouraged staff to contact requesters about accepting electronic records within the scope of their requests and providing the option of receiving paper records later. DHS officials cited activities such as logging requests sent through the mail and scanning files responsive to requests for teleworking staff as part of a workforce management challenge caused by the pandemic.
- **Process Improvements.** For example, DOL implemented electronic signatures that facilitated its ability to finalize FOIA letters. USDA officials told us that their legal sufficiency reviews for administrative FOIA appeals became an entirely electronic process once OMB mandated telework for federal employees. Several agencies stated that these process improvements would strengthen administrative efficiency as they continue to rely on electronic documents and communication during the pandemic.

FBI had some unique challenges given its dual law enforcement and intelligence mission. For example, FBI had to ensure workforce safety in a physical office setting rather than being able to rely on telework. FBI's staff handles a large volume of sensitive and classified records maintained within a classified information technology system. As a result, all FOIA processing had to be performed on site. FBI's FOIA and Privacy Act program temporarily suspended operations with staff placed on administrative leave early in the pandemic. It then resumed in-person operations with limited staffing at varying levels until resuming full staffing in April 2021.

Although the selected agencies said they effectively managed challenges related to the pandemic to maintain their FOIA operations, their experience was not necessarily representative of all federal agencies. Office of Government Information Services (OGIS) officials told us that some federal agencies had more difficulty managing these challenges or encountered additional challenges. Further, OGIS's January 2021 published assessment of agency website communications stated that 81 percent of FOIA programs receiving more than 10,000 FOIA requests in fiscal year 2019 alerted requesters about pandemic-related delays.⁴³

Selected Agencies Employed Existing Strategies and Leading Practices to Maintain Operations during the Pandemic

OIP's guidance includes strategies and leading practices agencies can use to implement FOIA. We found the selected agencies used the following strategies and leading practices to maintain operations during the pandemic:

- **Multitrack processing.** All five selected agencies divided requests into three or more tracks for processing prior to the pandemic, which OIP guidance recommends for agencies to achieve greater efficiency by avoiding a scenario where a single complex request delays the responses for many simple requests.⁴⁴ USDA, DHS and FBI officials also stated that they used performance information such as monthly reports or real-time dashboards on the number of requests received by component and processing time to make decisions on prioritizing types of requests for multitrack processing, to identify opportunities for improvement, or to allocate resources.
- **Increased communication with requesters.** All selected agencies posted notices on their websites describing the effects of the pandemic on FOIA operations. These notices generally alerted requesters to potential delays in receiving requests by mail or other limitations related to processing. The FBI took additional steps and implemented specialized teams that aligned personnel with certain types of requests to develop expertise as a strategy to improve the number of requests processed, processing time, and backlog. In particular, FBI used specialized staff to contact requesters and provide additional assistance in narrowing the scope of their requests. FBI stated that its efforts resulted in approximately 540 requesters reducing complex requests into smaller track requests by narrowing

⁴³National Archives and Records Administration, Office of Government Information Services, *OGIS Issue Assessment: Follow-up on Agency Freedom of Information Act (FOIA) Website Communications on COVID-19* (Jan. 27, 2021).

⁴⁴Department of Justice, *OIP Guidance: Processing Reminders for the Last Quarter of Fiscal Year 2017* (July 20, 2017).

the scope of their requests in fiscal year 2020. This helped FBI reduce associated request processing times.

- **Regular engagement with management.** Officials at all selected agencies held regular meetings with management and took other steps to provide updates on progress, ensure accountability, and obtain leadership support for making decisions about priorities and resources. For example:
 - EPA discussed progress towards its strategic goal of eliminating the backlog at quarterly performance reviews with agency senior leadership and reported on this metric monthly. FBI officials stated they held both monthly and weekly meetings with management that provided information on issues such as the effect of reduced processing capabilities during the pandemic on pending litigation. DHS officials told us that the DHS Chief FOIA Officer sets the strategic agenda and uses the DHS FOIA Council for its activities, including developing goals and performance measures. The council, comprised of component FOIA officers and other members, met quarterly.
 - DOL's Deputy Secretary and Chief FOIA Officer issued a memorandum in January 2020 to agency heads addressing the department's backlog. DOL officials stated that their leadership held regular meetings to address the backlog, hear the concerns of agency components regarding the support needed to promote efficiencies in FOIA processing, and provide direction concerning new initiatives.
- **Routine review of processing metrics.** For example, DHS produces a monthly report to analyze FOIA production and trends. The DHS Privacy Office stated it used this information to ask components about increases in backlog and offer assistance when necessary. USDA developed a FOIA dashboard that officials said is continuously updated with progress on backlog and processing time per request. This helped focus management attention on which offices needed to improve performance. USDA officials told us that productivity metrics such as the number of pages reviewed, number of consultations required, or age of cases improved in part due to increased morale of staff as a result of greater consideration of work-life balance during the pandemic.
- **Interim releases.** OIP's COVID-19 guidance encouraged agencies to provide interim releases as another opportunity to communicate with requesters, such as asking whether the requester would like to revise or narrow the scope of the request based on the initial information

received. All five selected agencies noted the helpfulness of such interim releases that sometimes fully satisfied a requester's information needs, causing them to close their requests, or potentially reduced litigation when requests could not be fulfilled within statutory timeframes.

- **Proactive disclosures.** OIP's COVID-19 guidance reiterated proactive disclosures as a practice to provide the public with efficient access to information. OIP's guidance stated that agencies significantly affected by processing limitations due to the pandemic could consider other ways to maximize efficiency, such as focusing on proactive disclosures. For example, FBI officials said their electronic library has more than 8,000 documents and other media available. FBI also told us that it closed 666 requests in fiscal year 2019 and 503 requests in fiscal year 2020 by directing the requester to information already posted online.

Selected Agencies Made Technology and Organizational Changes to Address Long-Term, Non-Pandemic Related Challenges

Technology Updates

Selected agencies continued long-term information technology modernization efforts to improve their FOIA operations. According to the FOIA Advisory Committee, technology remains an ongoing challenge. The committee is considering potential solutions and best practices for processing FOIA requests and meeting the needs of FOIA requesters.⁴⁵ In addition, agencies we reviewed implemented various technology upgrades to improve FOIA processing. For example:

- FBI has been developing upgrades to its document processing system. FBI officials told us these enhancements may help reduce

⁴⁵The National Archives and Records Administration (NARA) established the FOIA Advisory Committee in 2014 to foster dialog between the Administration and the requester community, solicit public comments, and develop consensus recommendations for improving FOIA administration and proactive disclosures. During the 2020 through 2022 term, the committee established a Technology Subcommittee to examine the functionality and operation of technology-driven solutions. The Chief FOIA Officers Council also has a Technology Committee that studies the utilization and deployment of technology in FOIA programs.

backlog. FBI's backlog reduction plan also includes a long-term goal of a procurement strategy for its next generation processing system.

- DHS's *Departmental Freedom of Information Act (FOIA) Backlog Reduction Plan: 2020-2023* included a goal to improve FOIA information technology infrastructure and described the business case for a department-wide FOIA processing solution. The plan envisions a consolidated, interoperable solution to eliminate duplicate processing systems across the department.⁴⁶ DHS officials stated this solution also would create efficiencies for staff in an all-telework environment and improve management flexibility to address, for example, an influx of requests at a component agency or streamline reporting processes.

In DHS's 2021 *Chief Freedom of Information Act Officer Report*, the Privacy Office reported the launch of the DHS FOIA Public Access Link. This web portal enables requesters to create accounts to submit and track requests, as well as download released records. DHS officials said that this portal also allows requesters to submit requests through FOIA.gov. However, the lack of interoperability between systems requires some components to find their own solutions for accepting requests through FOIA.gov. While the Public Access Link eliminates some administrative steps, DHS officials stated they must still review all requests submitted through FOIA.gov to identify all FOIA requests, determine duplicates, and perform other quality checks.

- DOL reported that, beginning in January 2019, the Deputy Secretary of Labor instituted a Departmental FOIA Modernization Initiative to promote more effective, efficient, and improved FOIA operations. As part of this initiative, DOL began planning to implement a new case management system before the pandemic. DOL officials stated they moved forward with the launch during the pandemic from August through October 2020. DOL stated that the new system is specifically

⁴⁶We previously made a recommendation to DHS to determine the viability of re-establishing the service-level agreement between components to eliminate the duplicate processing of FOIA requests for immigration files, which was closed after DHS established such an agreement for fiscal year 2020 and renewed it for fiscal year 2021. See GAO, *Freedom of Information Act: DHS Should Take Steps to Improve Cost Reporting and Eliminate Duplicate Processing*, [GAO-15-82](#) (Washington, D.C.: Nov. 19, 2014). The DHS Backlog Reduction Plan takes this a step further with its goal to eliminate duplication by reducing the number of systems used to process FOIA requests.

Organizational Changes
Organizational Changes

configured to meet OGIS best practices and comply with DOJ reporting requirements.⁴⁷

EPA, USDA, and DHS made organizational changes to improve long-term FOIA implementation. Specifically:

- According to EPA officials, since at least 2014, the agency has been implementing an agency-wide Lean Management focus to promote continuous improvement.⁴⁸ EPA officials stated that their actions to address significant increases in FOIA requests received in fiscal years 2017 and 2018 relied on Lean Management tools and included organizational changes. EPA officials told us that they used Lean Management methods to analyze expedited processing and reduce average time during fiscal year 2021 by 63 percent, and also adjudicated 76 percent of requests for expedited processing within 10 calendar days, up from 42 percent in fiscal year 2020.

EPA also moved the FOIA program from the Office of Environmental Information to the Office of General Counsel and merged it with the FOIA Expert Assistance Team to form the National FOIA Office. As part of these changes, EPA identified areas to improve FOIA processing. For example, in 2019, EPA's National FOIA Office restructured internal processing steps to centralize the initial intake review of all FOIA requests. According to EPA officials, this enabled increased speed and efficiency for the intake review and assignment process.

- In 2019, USDA realigned its FOIA functions under its General Counsel as the Office of Information Affairs. USDA officials stated that prior to the realignment, personnel in staff offices processed requests as an additional duty. They said having full-time staff process these requests allows for faster processing and reduced backlog. USDA

⁴⁷We previously reported that OGIS, in conjunction with the Department of Commerce and EPA, identified 12 capabilities of an automated system considered as best practices for FOIA processing. We also recommended that DOL establish a time frame for implementing, and take actions to fully implement, recommended best practice capabilities for enhanced processing of requests in the department's FOIA system and online portal. GAO-16-248.

⁴⁸We recently reported that since 2014 EPA has used Lean Management principles and tools as a means to promote continuous improvement. Other Lean Management principles include customer focus, leadership, partnering, and information architecture. For more information, see GAO, *Chemical Assessments: Annual EPA Survey Inconsistent with Leading Practices in Program Management*, [GAO-21-156](#) (Washington, D.C.: Dec. 18, 2020).

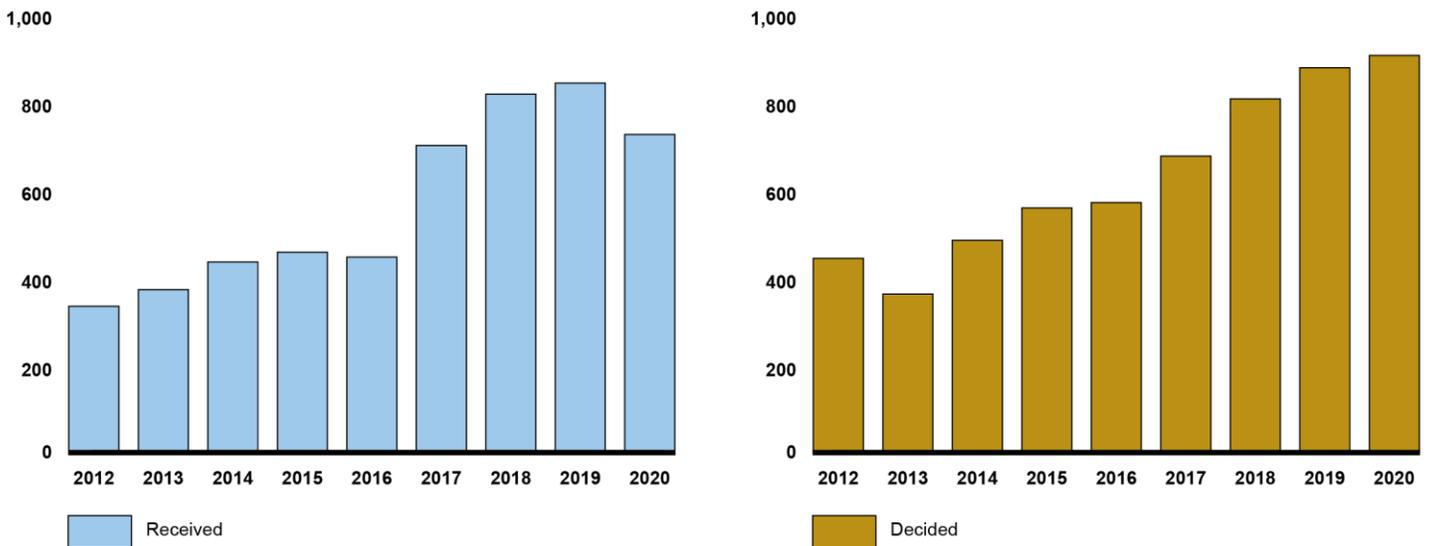
officials also stated that the realignment reduced the number of FOIA offices, which improved coordination for multi-component requests.

- DHS officials stated that the Privacy Office sought to consolidate or enter into processing agreements with smaller FOIA Offices within headquarters to improve efficiencies in FOIA processing. For example, the Privacy Office agreed to absorb the Office of Operations Coordination’s and the Office of Biometric Identity Management’s respective FOIA programs. DHS reported that since the Privacy Office now processes requests for most headquarters offices, this centralization has helped improve the consistency of FOIA operations.

Selected Agencies Cited Litigation as a Growing Challenge to Their FOIA Programs

All five selected agencies cited a general increase in litigation as a current or emerging challenge prior to the pandemic. Overall, in the *Department of Justice Freedom of Information Act Litigation and Compliance Report*, DOJ annually reported on the FOIA litigation cases received in federal district courts, which increased by 117 percent (333 to 724) from 2012 to 2020, and cases decided, which increased by 105 percent (442 to 904) during the same time period (see fig. 17).

Figure 17: FOIA Litigation Cases Received and Decided in Federal District Courts, 2012 through 2020



Source: GAO analysis of the Department of Justice Freedom of Information Act Litigation and Compliance Reports. | GAO-22-105040

Our selected agencies stated that FOIA litigation affects the resources available for processing FOIA requests and administrative appeals. Further, they said litigation can negatively impact a FOIA program office’s

ability to process nonlitigation FOIA requests in a timely manner by requiring them to prioritize work on responses in litigation. This can result in an increase in backlogged requests if an office has insufficient staff to process both litigation and nonlitigation requests. Agency officials told us they had to assign more FOIA staff to meet court deadlines, which resulted in less staff available for timely response to queued requests. For example:

- DHS officials reported having to reassign staff to its Litigation and Appeals team on a long-term or permanent basis. DHS told us that the proportion of FOIA staff on the Litigation and Appeals team increased from 13 percent in fiscal year 2018 to 21 percent in fiscal year 2021.
- FBI officials stated that they prioritized litigation processing when resuming operations with limited staffing at the end of April 2020. FBI officials also told us that, in March 2021, 32 percent of their FOIA and Privacy Act processing staff was devoted to litigation, which represented 1 percent of all pending requests.

Several of the agencies reviewed cited litigation as a contributing cause of increasing backlogs. In its 2021 *Chief FOIA Officer Report*, DOL reported a significant increase in litigation over the past 2 years that shifted resources away from addressing its backlog. Selected agencies also stated requests that involve litigation tend to be complex requests. This can involve reviewing thousands of pages of records, multiple locations for records, or coordination between components or other federal agencies. Additionally, USDA officials stated litigation could delay the processing of initial requests and administrative appeals for its FOIA components with smaller teams. Analysts on these teams may need to balance the processing of initial requests and administrative appeals while also assisting with the preparation of legal pleadings and the production of records in response to FOIA lawsuits.

Finally, OGIS officials, as well as some of our selected agencies, raised concerns about requesters' ability to sue under FOIA after the 20-day statutory deadline has passed.⁴⁹ While agencies have used strategies that may have helped avoid litigation, such as negotiating extended deadlines with requesters or providing interim releases, these actions did not always preclude their agency from being sued. Officials at selected

⁴⁹See figure 1 for a simplified overview of the federal government's Freedom of Information Act request and appeal process.

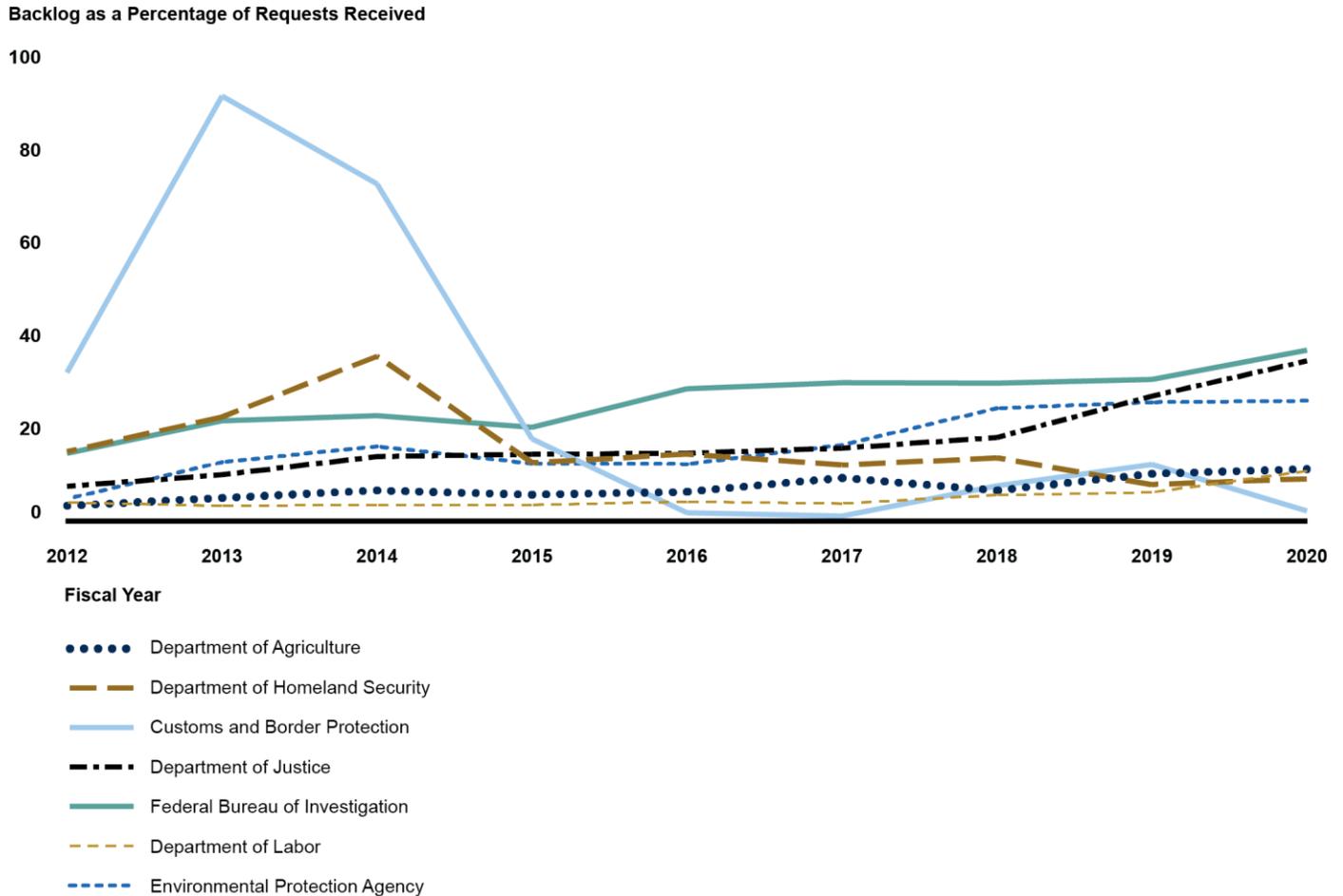
agencies that collect data attributed the majority of their FOIA litigation to complaints that the agency did not respond to requests within statutory time frames, which can be particularly challenging for complex requests.

Selected Agencies Could Address FOIA Request Backlogs with Improvements to Backlog Reduction Plans

Selected Agencies Identified New and Ongoing Challenges to Reducing FOIA Backlogs

As discussed previously, FOIA request backlogs have been trending generally upward since fiscal year 2015 and have increased by 97 percent from fiscal year 2012 to fiscal year 2020. Among our selected agencies, we found that backlog as a percentage of requests received rose between fiscal years 2012 and 2020 for USDA, DOJ, FBI, DOL, and EPA (see fig. 18). At DHS, backlogged requests have declined due, in part, to recent temporary backlog surge efforts at Customs and Border Protection and other components. For more information on processing times at selected agencies, see appendix III.

Figure 18: FOIA Request Backlogs as a Percentage of Requests Received for Selected Agencies, Fiscal Years 2012 through 2020



Source: GAO analysis of agency-reported Freedom of Information Act (FOIA) data on FOIA.gov. | GAO-22-105040

The selected agencies identified one or more of the following new or ongoing challenges to reducing their backlogs: increasing complexity of requests, technology-related issues, staffing limitations, and increasing litigation. We discussed challenges related to increasing litigation earlier in this report and address the remaining issues below.

Increasing Complexity of Requests

Several of our selected agencies have processed rising numbers of complex requests and identified this as a contributing factor to their backlogs. Between fiscal years 2012 and 2020, the number of complex requests processed rose for every agency except EPA, while the share of

complex requests processed rose at three of the five agencies (see table 1 below). For example, USDA officials said that the complexity of the requests they received increased; many of these requests required consultations with other federal agencies and took more time to review and process. FBI officials also cited growth in complex requests that have multiple parts or national security sensitivities.

Table 1: Selected Agencies' Complex Requests Processed in Fiscal Years (FY) 2012 and 2020

Selected Agency	FY 2012 Complex Requests Processed	FY 2012 Complex Requests Processed as Share of Total Processed	FY 2020 Complex Requests Processed	FY 2020 Complex Requests Processed as Share of Total Processed	Percent change, FY 2012 through 2020
Department of Agriculture	1,696	7.8%	2,190	9.5%	29
Department of Homeland Security	111,811	58.8%	184,957	50.8%	65
Department of Justice	9,738	16.0%	13,837	19.2%	42
Department of Labor	9,872	51.3%	10,639	68.0%	8
Environmental Protection Agency	4,135	49.2%	1,528	21.3%	-63

Source: GAO analysis of agency-reported Freedom of Information Act (FOIA) data on FOIA.gov. | GAO-22-105040

Technology Challenges

Selected agencies cited technology-related issues as challenges to reducing their backlogs. For example, FBI officials stated that their system for processing FOIA requests needs an upgrade, and accordingly, made improving its FOIA IT systems one of its backlog reduction goals. Similarly, DHS also identified a need to update its department-wide FOIA processing system, and included it as part of its backlog reduction plan.

In fiscal year 2020, DOL discovered 685 FOIA requests that had not been counted during its move from its prior system to a new one. Officials said these requests date back to fiscal year 2006. DOL attributed this to (1) data entry and coding errors, and (2) difficulties processing increasingly complex requests, which often involved multiple duplicate records the prior system could not easily manage. These errors contributed to DOL's increased backlog, which rose from 991 in fiscal year 2019 to 1,714 in fiscal year 2020. DOL officials reported recurring discrepancies between internal FOIA offices about requests received, processed, and backlogged compared to information posted on FOIA.gov and DOL's website, going back to 2012 and continuing through the second quarter of fiscal year 2021. DOL attributed this to data entry errors.

Standards for Internal Control in the Federal Government states that management should externally communicate the necessary quality information to achieve the entity's objectives.⁵⁰ We also previously reported that performance information should be sufficiently complete, accurate, and consistent to document performance and support decisions on how best to manage programs.

DOL officials told us they have adjusted their approach to training to respond to technology-related issues. For example, agency officials told us they trained employees on the new processing system through training videos, providing documents with frequently asked questions on migrating information, and establishing "rules of behavior" for working in the new system. Since DOL was in the first year of implementing the system, officials told us training for employees on using the new system is ongoing. As a result, we were unable to determine if these trainings would resolve the persistent data quality issues. Without quality information, DOL lacks the information to not only monitor its progress in reducing its FOIA backlog, but also accurately represent its FOIA activity to the public, and make strategic decisions for managing its overall FOIA program.

Staffing-Related Limitations

Our selected agencies also cited staffing-related issues as limitations to addressing their backlogs. For example, USDA officials stated that the department lost staff to other agencies in part due to a 2018 agency policy that limited telework options. Officials said that it took time to hire and train new employees, which contributed to slower FOIA processing times in 2019 and 2020. FBI stated in its backlog reduction plan that current staffing levels of its FOIA program cannot keep pace with incoming demand and backlog reduction efforts, which were exacerbated by an increase in litigation workload.

⁵⁰GAO, *Standards for Internal Control in the Federal Government*, [GAO-14-704G](#) (Washington, D.C.: Sept. 2014).

Selected Agencies’
Backlog Reduction Plans
Varied in the Extent to
Which They Met
Requirements and
Performance Management
Practices

Agencies are asked to have a backlog reduction plan if they have more than 1,000 requests in the previous year, according to DOJ guidance.⁵¹ In addition, the guidance states that agencies should focus on closing their 10 oldest backlogged requests and describe how they intend to close those requests (see fig. 19 for examples of actions agencies reported they took to address their backlogs). Office of Information Policy (OIP) officials confirmed that this requirement is current, although agencies are no longer required to report separate backlog reduction plans outside of their *Chief FOIA Officer Report*.

⁵¹DOJ’s guidance for agency *Chief FOIA Officer Reports* states that, as part of their reports, agencies with a backlog of more than 1,000 requests in the previous fiscal year should explain their plans to reduce backlogs in the next fiscal year. Agencies are also asked to detail how the agency developed and plans to execute their plan. Department of Justice, Office of Information Policy, *Guidelines for 2021 Chief FOIA Officer Reports* (Sept. 24, 2020); and *OIP Guidance for Further Improvement Based on 2019 Chief FOIA Officer Reports* (January 22, 2020).

Figure 19: Examples of Selected Agencies' Actions to Reduce Freedom of Information Act (FOIA) Request Backlogs

Agency	Example Backlog Reduction Activity
 Department of Homeland Security (DHS)	DHS published a 3-year backlog reduction plan describing a comprehensive strategy for addressing the root causes of the backlog.
 Customs and Border Protection (CBP)	CBP utilized contract staff, authorized restricted overtime, assigned staff to work on the most prevalent requests, and assigned non-FOIA professionals to temporary duty to supplement the FOIA analyst workforce.
 Department of Justice (DOJ)	DOJ's Office of Information Policy worked with DOJ components to identify areas of improvement related to backlogs through the Component Improvement Initiative.
 Federal Bureau of Investigation (FBI)	FBI focuses processing resources relative to its multitracked queue size system, so that more resources are dedicated to those queues receiving the most requests.
 Environmental Protection Agency (EPA)	EPA used Lean Management principles to continuously review and improve EPA's FOIA response processing for example by conducting Lean Management improvement events around FOIA processing and deploying visual management tools.
 Department of Agriculture (USDA)	USDA tracked progress via a dashboard shared between the Office of Information Affairs and senior leaders in the Office of the Secretary. Senior leaders of those components not realizing quarterly metrics were asked to work with their FOIA teams to ensure closure of backlogged requests.
 Department of Labor (DOL)	DOL conducted assessments of components' FOIA processing activities to monitor component FOIA backlog and internal processes.

Source: GAO analysis of agency Freedom of Information Act (FOIA) documentation. | GAO-22-105040

We have previously reported that agencies can address major management challenges with the performance management practices required under GPRAMA.⁵² These challenges may include FOIA backlogs. As such, we compared our selected agencies' backlog reduction plans to the requirements described above as well as *Standards for Internal Control in the Federal Government*. Our assessment is shown in figure 20.

⁵²GAO-20-222 and GAO-16-510.

Figure 20: Summary of Our Assessment of Selected Agencies' FOIA Backlog Reduction Plans

Selected Agency	Rating				
	Performance Goals	Performance Measures	Planned Actions	Milestones	Responsible Office/Official
Department of Agriculture	●	●	◐	○	●
Department of Homeland Security	●	●	●	●	●
Customs and Border Protection	●	●	◐	○	●
Department of Justice	See Table Note				
Federal Bureau of Investigation	●	●	●	●	●
Department of Labor	●	◐	●	●	●
Environmental Protection Agency	●	●	●	●	●

● Generally met ◐ Partially Met ○ Not met

Source: GAO analysis of agency Freedom of Information Act (FOIA) documentation. | GAO-22-105040

Legend: ● – Generally met, ◐ - Partially Met, ○ – Not met

Note: For the purposes of our analysis, we are excluding the Department of Justice (DOJ). DOJ's FOIA program is decentralized, with 31 separate FOIA offices handling requests under Office of Information Policy oversight. Many DOJ components develop their own backlog reduction plans, such as FBI.

Performance Goals

Our selected agencies had performance goals for reducing their FOIA request backlogs. As stated above, a performance goal is a target level of performance expressed as a tangible, measurable objective, against which actual achievement can be compared. For example, DHS's backlog reduction plan established five backlog reduction goals, including reducing high-volume component backlogs by 10 percent and low-volume component backlogs by 15 percent annually. EPA officials stated that the agency's draft fiscal year 2022-2026 strategic plan sets a goal to eliminate EPA's FOIA backlog by the end of the fiscal year 2026. DOL officials cited the OMB's Open Government Directive instructing agencies to plan a backlog reduction of at least 10 percent per year as their backlog reduction goal.

Performance Measures

Each of our selected agencies had performance measures—specifically the number or percent of FOIA requests in backlog—that they used to track their progress in meeting their backlog reduction goals. However, although DOL has performance measures, as previously discussed, it

may not have reliable data to track its backlog. As stated above, performance measures are particular values or characteristics used to measure output or outcome.

Planned Actions

As described previously, all but one of the agencies in our review documented the planned actions they are taking to reduce their backlog. Additionally, while Customs and Border Protection (CBP) documented some actions, we found it unclear whether they are sufficient to result in sustained backlog reduction at CBP. As stated above, planned actions are actions intended to address particular major management challenges.

CBP identified a number of actions it planned to take in fiscal year 2021, including using Privacy Office and contract employees to assist with processing requests. We found that while CBP has reduced its backlog temporarily as a result of surge efforts described to us by officials, its backlog rose when the efforts ended. DOJ does not require component-level backlog reduction plans. DHS components are generally responsible for their own FOIA program operations with some oversight from the Privacy Office. However, we have previously reported that agencies should document comprehensive backlog reduction plans to effectively respond to the needs of requesters and the public.⁵³ Thus, although a component may not be required to develop a backlog reduction plan, such plans could help ensure that backlogs remain manageable.

While USDA provided examples of written assessments of its FOIA administration, we found that more emphasis could be placed on planned activities for further backlog reduction. An official stated they have ongoing conversations with components and reviews of real-time performance data, but these plans are not documented. However, the USDA official added that the agency's FOIA program lacks a direct funding source and obtains funding from inter-agency agreements, which limits its ability to make longer-term plans.

Standards for Internal Control in the Federal Government states that documentation provides a means to retain organizational knowledge and mitigate the risk of having that knowledge limited to a few personnel, as well as a means to communicate that knowledge as needed to external parties. By better documenting its backlog reduction efforts, USDA could

⁵³GAO, *Freedom of Information Act: Agencies Are Implementing Requirements, but Additional Actions Are Needed*, [GAO-18-365](#) (Washington, D.C.: June 25, 2018).

ensure continuity in its efforts and demonstrate how such efforts contributed to meeting backlog reduction performance goals.

Milestones

DHS, EPA, DOL, and FBI established milestones for when they expected to complete key events in reducing their respective backlogs. For example, EPA charts progress toward backlog reduction monthly and quarterly to monitor whether it is on track to meet its strategic goal of eliminating the backlog. As stated above, milestones are scheduled events signifying the completion of a major deliverable or a set of related deliverables or a phase of work.

However, other selected agencies either had not established milestones for their backlog reduction efforts or had not documented them. For example, within DHS, CBP officials pointed to their ability to maintain operations during the pandemic and significant reduction in their backlog as an example of progress toward backlog reduction. It was unclear that they had interim milestones established or documented progress toward annual goals. USDA tracks the department's and components' progress toward meeting end-of-year backlog reduction goals in real time. However, progress is not documented against milestones.

Responsible Office/Officials

All of our selected agencies had appointed officials and established offices to manage FOIA processing and backlog reduction activities. As stated above, agencies should identify an agency official responsible for resolving the challenge. FOIA requires that each agency designate a Chief FOIA Officer who is a senior official at the Assistant Secretary or equivalent level responsible for efficient and appropriate compliance with FOIA, as well as recommending to the head of the agency such adjustments to agency practices, policies, personnel, and funding as may be necessary to improve its implementation.⁵⁴ In addition, our selected agencies each established offices to support FOIA activities.

⁵⁴ 5 U.S.C. § 552(j)(1)-(2).

Data Reporting Requirements Do Not Always Capture Information Agencies Need to Manage Their FOIA Programs

OIP annually updates guidance to agencies for submitting their *Annual FOIA Reports* and *Chief FOIA Officer Reports*.⁵⁵ OIP uses these reports to assess agency compliance with FOIA. Agency officials at DHS stated that the reporting requirements created incentives for agencies to pay attention to key statistics, including the backlog. A USDA official stated that the requirements provided opportunities to discuss shared issues among agencies. FBI officials stated that the reporting requirements helped ensure agencies collected data they found useful for informing the requester community about agency FOIA operations. DOL and EPA officials did not express a view on the usefulness of the reporting requirements.

However, officials from all five of the agencies told us that the reporting requirements can take significant time and resources to compile. We have previously reported that agencies should ensure that performance information is used, not simply collected and reported as a compliance exercise.⁵⁶

We found potential opportunities to streamline or reduce reporting requirements. OIP requires agencies to report data on, for example, backlogged requests for both the current and previous fiscal year in each annual report. This information is duplicative of what is reported in annual reports or previously reported in annual reports from prior years. As stated above, reporting duplicative data is an administrative burden for agencies.

We also found two areas where data could help agencies address emerging challenges: (1) the causes of FOIA litigation, and (2) requests involving unusual circumstances.

- **Litigation Causes.** As discussed previously, FOIA litigation is increasing, which can contribute to slower request processing and

⁵⁵OIP publishes a handbook for agencies to use in reporting FOIA data for their *Annual FOIA Reports*. This handbook covers guidance for processing requests and appeals throughout the fiscal year, as well as guidance and instructions for preparing the *Annual FOIA Report*. Additionally, OIP issues guidance to agencies for the *Chief FOIA Officer Report* that asks agencies to provide an overall picture of their activities, organized by five key topical areas with data and examples. The five key topical areas are applying the presumption of openness, ensuring an effective system for responding to requests, increasing proactive disclosures, utilizing technology, and reducing backlogs.

⁵⁶GAO, *Government Performance: GPR Modernization Act Provides Opportunities to Help Address Fiscal, Performance, and Management Challenges*, [GAO-11-466T](#) (Washington, D.C.: Mar. 16, 2011).

increasing backlogs. The *Annual FOIA Report* requires agencies to report on the sum of all costs expended on litigation, but not other key information about emerging issues such as the number of FOIA litigation cases filed as the result of the agency not responding to a request within statutory deadlines. Such information is important to understand the extent to which this challenge affects agencies' ability to effectively implement FOIA. More information on litigation, such as the complexity of the request tied to litigation or how long a request remained backlogged before a requester filed a lawsuit, may help agencies manage this emerging issue. Officials at OGIS, DHS, and FBI also suggested that reporting information related to litigation would be useful.

- **Unusual Circumstances.** According to OIP officials, agencies must track when they claim unusual circumstances in order to count requests beyond the statutory time period, ordinarily 20 working days that may be extended up to 10 additional working days (30 days), and therefore backlogged. However, neither the *Annual FOIA Report* nor the *Chief Officer Report* publicly document the number of times agencies invoke unusual circumstances.⁵⁷ Officials at USDA and EPA confirmed they did not independently track the total number of requests claiming unusual circumstances. OGIS officials told us that 30 days is an unrealistic time frame for processing complex requests when there are unusual circumstances. More information on FOIA requests that meet the conditions for unusual circumstances, such as how many and the reasons why, would help agencies and requesters understand the effect of FOIA's time limits on backlogs.

Standards for Internal Control in the Federal Government states that management should use quality information to achieve the entity's objectives. In particular, information should be used to evaluate the entity's performance in achieving key objectives and addressing risks. Further, we have previously stated that agencies like OIP need to consider the differing information needs of various users to ensure that performance information will be both useful and used in decision-making.⁵⁸ A more holistic reassessment of the reporting requirements could help align the work required from agencies to collect the information

⁵⁷OIP officials told us that the number of requests citing unusual circumstances may be determined in the raw data submitted by agencies for the *Annual FOIA Report*. However, we did not always find the raw data available for each of our selected agencies or for all years for this review.

⁵⁸[GAO-11-466T](#).

along with its usefulness in managing performance and addressing challenges such as request backlogs.

Conclusions

The COVID-19 pandemic has had various effects on key metrics for FOIA administration. In general, we found that the selected agencies in our review managed the effects of the pandemic quickly and effectively after facing initial challenges. However, increasing FOIA request backlogs remain a persistent challenge. Other challenges also have emerged that may affect the efficiency of FOIA processing, such as FOIA litigation and the increasing complexity of requests. Together, these challenges may limit agencies' ability to respond to the needs of requesters and the public, which is critical for an open and transparent government.

Individual agencies we reviewed have taken some and could take additional steps to address various deficiencies. DOL identified errors leading to inaccurate reporting of FOIA data, which officials attributed to their prior FOIA processing system. DOL has taken steps to train employees on the new system and strengthen controls. These efforts are ongoing. However, we were unable to determine if these trainings would resolve persistent data quality issues at DOL. Without ensuring the quality of data in the system, DOL may not have information needed to address its FOIA backlog and effectively manage its FOIA program.

DHS developed a broad backlog reduction plan that includes a number of goals for addressing the department's persistent backlog. However, individual DHS components have significant backlogs that contribute to the department's backlog. Documenting a backlog reduction plan that includes key performance information—including performance goals, measures, milestones, and planned actions for backlog reduction—could help ensure sustained backlog reduction at both the component and department level.

USDA's FOIA program included a number of elements important to addressing its backlog, including backlog reduction goals, real-time performance tracking, and dedicated senior leadership. However, USDA could better document key elements of its backlog reduction efforts, such as planned actions to address the backlog and milestones for assessing progress. Documenting these actions and milestones could better ensure that USDA makes data-driven decisions for allocating resources and assessing progress toward backlog reduction efforts.

Agencies regularly report a number of data points related to their FOIA processing and operations to OIP. While some of our selected agencies

found these requirements useful for managing their performance, they also noted that collecting and reporting data used significant time and resources. Additionally, we identified information that OIP did not require agencies to report on, but affected our selected agencies' ability to effectively manage their FOIA programs, such as data on causes of FOIA litigation and use of the "unusual circumstances" designation. By reassessing the reporting process, OIP could help align the workload required for agencies to meet the reporting requirements and ensure they have the information they need to meet their responsibilities under FOIA.

Recommendations for Executive Action

We are making four recommendations: one each to DOL, DHS, USDA, and OIP.

- The Chief FOIA Officer of the Department of Labor should address risks to sustained backlog reduction efforts by identifying training and other needs to resolve data quality issues as part of its regular oversight of component FOIA programs. (Recommendation 1)
- The Chief Privacy Officer of the Department of Homeland Security, as the department's Chief FOIA Officer, should work with agency components to develop backlog reduction plans that specify goals and measures for reducing the FOIA backlog, provide specific milestones for backlog reduction efforts, and identify planned actions to reduce backlog. (Recommendation 2)
- The Chief FOIA Officer of the Department of Agriculture should better document agency backlog reduction efforts, including its milestones and planned actions for reducing its FOIA backlog, and address challenges and risks to departmental backlog reduction efforts. (Recommendation 3)
- The Director of the Office of Information Policy should evaluate the usefulness and burden of performance information collected, and identify ways reporting can inform current and emerging FOIA challenges and risks, such as the number of requests for which unusual circumstances apply or the effect of litigation on overall FOIA request processing and backlog. (Recommendation 4)

Agency Comments and Our Evaluation

We provided a draft of this report to CBP, DOJ, DOL, DHS, EPA, FBI, NARA, and USDA.

DOJ's Office of Information Policy provided written comments, which are reproduced in appendix VI, and technical comments, which we incorporated as appropriate. In its written comments, DOJ agreed with our recommendation stating that they will continue to seek ways to

reduce reporting burden on agencies and collect metrics necessary for effective FOIA administration. However, DOJ wrote that some examples we included as potential opportunities to streamline reporting requirements, such as removing comparison data, would not meaningfully reduce agency reporting burden and there were costs to updating the *Annual FOIA Report* metrics. We suggest that DOJ explore whether the FOIA.gov Annual Report tool could automate the comparison metric by obtaining the data from other required sections of the current and previous year's report. DOJ also may identify other opportunities by evaluating the usefulness of metrics for the varying users of the data. This could help reduce agencies' burden or mitigate the burden from new requests for data on emerging challenges.

DOL provided written comments, which are reproduced in appendix VII. In its written comments, DOL agreed with our recommendation stating that it was in line with DOL's continuing plans to improve FOIA processing.

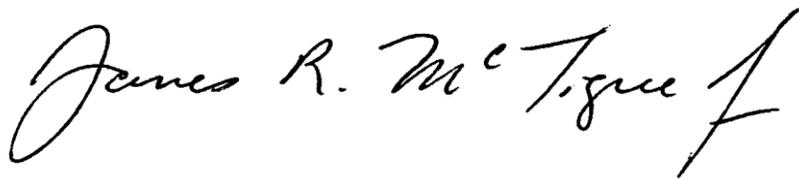
DHS provided written comments, which are reproduced in appendix V, and technical comments, which we incorporated as appropriate. In its written comments, DHS agreed with our recommendation stating that the DHS Privacy Office will direct components to develop backlog reduction plans in fiscal year 2022 for implementation beginning in fiscal year 2023.

The USDA Director for the Office of Information Affairs provided oral comments and examples of recent FOIA program assessments via email. USDA intends to use these assessments and others to develop a more refined backlog reduction plan. We reviewed the assessments and agreed that they could support agency backlog reduction efforts. USDA stated that it concurred with our recommendation via email.

EPA provided written comments, which are reproduced in appendix VIII. NARA provided written comments, which are reproduced in appendix IX, and technical comments, which we incorporated as appropriate. FBI also provided technical comments, which we incorporated as appropriate.

We are sending copies to the appropriate congressional committees, the Attorney General of the United States, the Secretary of Agriculture, the Secretary of Homeland Security, the Secretary of Labor, the Administrator of the Environmental Protection Agency, and the Archivist of the United States. In addition, the report will be available at no charge on the GAO website at <http://www.gao.gov>.

If you or your staffs have any questions about this report, please contact me at (202) 512-6806 or mctiguej@gao.gov. Contact points for our Offices of Congressional Relations and Public Affairs may be found on the last page of this report. GAO staff members who made key contributions to this report are listed in appendix X.

A handwritten signature in black ink that reads "James R. McTigue, Jr." The signature is written in a cursive style with a large, stylized initial 'J'.

James R. McTigue, Jr.
Director, Strategic Issues

List of Addressees

The Honorable Patrick Leahy
Chairman
The Honorable Richard Shelby
Vice Chairman
Committee on Appropriations
United States Senate

The Honorable Ron Wyden
Chairman
The Honorable Mike Crapo
Ranking Member
Committee on Finance
United States Senate

The Honorable Patty Murray
Chair
The Honorable Richard Burr
Ranking Member
Committee on Health, Education, Labor, and Pensions
United States Senate

The Honorable Gary C. Peters
Chairman
The Honorable Rob Portman
Ranking Member
Committee on Homeland Security and Governmental Affairs
United States Senate

The Honorable Dick Durbin
Chair
The Honorable Chuck Grassley
Ranking Member
Committee on the Judiciary
United States Senate

The Honorable Rosa L. DeLauro
Chair
The Honorable Kay Granger
Ranking Member
Committee on Appropriations
House of Representatives

The Honorable Frank Pallone, Jr.
Chairman
The Honorable Cathy McMorris Rodgers
Republican Leader
Committee on Energy and Commerce
House of Representatives

The Honorable Bennie G. Thompson
Chairman
The Honorable John Katko
Ranking Member
Committee on Homeland Security
House of Representatives

The Honorable Carolyn B. Maloney
Chairwoman
The Honorable James Comer
Ranking Member
Committee on Oversight and Reform
House of Representatives

The Honorable Richard E. Neal
Chairman
The Honorable Kevin Brady
Republican Leader
Committee on Ways and Means
House of Representatives

The Honorable John Cornyn
United States Senate

Appendix I: Objectives, Scope, and Methodology

Our objectives were to assess (1) how key measures of Freedom of Information Act (FOIA) administration have changed during the Coronavirus Disease 2019 (COVID-19) pandemic from fiscal years 2019 through 2020 and over time from fiscal years 2012 through 2020; (2) the extent to which selected agencies adapted their operations to meet FOIA requirements during the pandemic; and (3) the extent to which selected agencies' backlog reduction plans align with FOIA requirements, internal controls, and leading practices for performance management.

To address our first objective, we analyzed the changes in key FOIA measures government-wide from fiscal years 2019 to 2020 related to:

- the number of FOIA requests received and processed;
- the number of backlogged FOIA requests and appeals;
- the disposition of processed FOIA requests and appeals;
- the processing time for FOIA requests and appeals;
- FOIA fees assessed; and
- FOIA staffing and costs.

For context, we also analyzed FOIA data for long-term trends from fiscal years 2012 through 2020. We used fiscal year 2012 as the starting point for those analyses to be consistent with analyses presented in our prior work.¹ We retrieved aggregated data from the required annual and quarterly reports filed with the Department of Justice (DOJ) and available on DOJ's FOIA.gov website. The number of distinct agencies captured in the data fluctuated between 99 (fiscal year 2012) and 119 (fiscal year 2020). We also reviewed DOJ guidance and DOJ's Office of Information Policy (OIP) reports, and interviewed relevant OIP officials about changes in the data attributable to the pandemic.

To address all three objectives, we selected a nongeneralizable sample of five agencies for review based on agency-reported statistics on FOIA.gov including the number of FOIA requests received and processed and changes in the number of backlogged requests and appeals. After applying these criteria, we narrowed our list of agencies with the largest

¹GAO, *Freedom of Information Act: Update on Federal Agencies' Use of Exemption Statutes*, [GAO-21-148](#) (Washington, D.C.: Jan. 12, 2021); *Freedom of Information Act: Federal Agencies' Recent Implementation Efforts*, [GAO-20-406R](#) (Washington, D.C.: Mar. 11, 2020); and *Freedom of Information Act: Agencies Are Implementing Requirements, but Additional Actions Are Needed*, [GAO-18-365](#) (Washington, D.C.: June 25, 2018).

number of requests processed between fiscal year 2019 and 2020, the largest number of backlogged requests and appeals in those same years, and the largest percentage changes in backlogged requests. From the resulting lists, we selected agencies that would provide variety in terms of the size of the FOIA office and the type of agency (e.g., agencies in the intelligence community, which face additional challenges in processing FOIA requests). We also selected one component for each of the two largest agencies using similar criteria. Based on this analysis, we selected:

- Department of Agriculture,
- Department of Homeland Security and Customs and Border Protection,
- DOJ and FBI,
- Department of Labor, and
- Environmental Protection Agency.

In addition, we analyzed the changes in key FOIA measures for the same time periods at the five selected agencies using the data from FOIA.gov. We also interviewed relevant officials from these agencies about changes in their data attributable to the pandemic.

FOIA data provides means and medians for processing times at the agency level, as well as the number of requests per agency for each year. From this, we are able to calculate government-wide means each year: the government-wide mean is equal to the weighted sum of the agency means, where weights are the relative numbers of requests. We also know from the agency level statistics that extreme values skew the processing times, i.e., the means are generally greater than the medians. Specifically, across all fiscal years, for simple requests, 88 percent of agencies' means are greater than or equal to the medians, with 7 percent equal; for complex requests, 72 percent of means are greater than or equal to the medians, with 19 percent equal; for expedited requests, 91 percent of means are greater than or equal to the medians, with 42 percent equal; and for appeals, 90 percent of means are greater than or equal to the medians, with 42 percent equal. In such a situation, a median is a helpful measure of central tendency since it is not sensitive to extreme values. However, there are no government-wide data on individual requests and appeals that could be used to compute median processing times, and the median processing time government-wide cannot be directly calculated based on the agency medians. As an

alternative, we estimate government-wide medians by weighting the agency-level medians by the numbers of requests/appeals processed by each agency. These numbers should be understood as estimates only and are not necessarily equal to the government-wide median.

To assess data reliability, we reviewed relevant documentation on steps taken to ensure the consistency of data on FOIA.gov and interviewed DOJ officials. We electronically tested the data by identifying outliers and missing values, as well as correcting obvious inconsistencies, such as variations in agency name. From selected agency officials, we learned that agencies may use a variety of methods to estimate and report data on FOIA staffing and costs. While these estimates provide reliable information about overall trends government-wide, this may limit the certain uses of these data.² Overall, we found the data to be sufficiently reliable for purposes of our reporting objectives.

For our second objective, we assessed the extent to which selected agencies faced challenges and adapted their FOIA operations to meet statutory requirements during the COVID-19 pandemic. We reviewed information from the selected agencies to determine how their FOIA operations had responded to the pandemic, as well as guidance and best practices for agencies issued by OIP. We evaluated selected agencies' documentation of standard operating procedures, policies, or guidance describing changes to FOIA processing after the onset of the pandemic. We also reviewed selected agencies' published reports to DOJ describing the challenges posed by the pandemic and their responses. Finally, we obtained written responses or interviewed selected agency officials regarding pandemic-related and other long-term challenges to their FOIA processing operations. Based on the responses from the selected agencies, we analyzed DOJ-published data on litigation from 2012 to 2020.

For our third objective, we evaluated the extent to which selected agencies' backlog reduction plans aligned with FOIA requirements, *Standards for Internal Control in the Federal Government*, and leading

²For example, we previously reported that FOIA litigation costs could not be fully determined in cases where the plaintiff prevailed because not all federal agencies track their costs for individual lawsuits. GAO, *Freedom of Information Act: Litigation Costs For Justice and Agencies Could Not Be Fully Determined*, [GAO-16-667](#) (Washington, D.C.: Sept. 8, 2016).

practices for performance management.³ We reviewed agencies' documentation related to their backlog reduction plans as well as strategic plans and other supporting documentation. We also reviewed the FOIA data collected by the selected agencies and their performance goals and measures for managing their FOIA programs. We assessed agencies' plans and activities against key practices for addressing major management challenges in our 2016 report, *Managing For Results: Agencies Need to Fully Identify and Report Major Management Challenges and Actions to Resolve them in their Agency Performance Plans* (GAO-16-510).⁴ We interviewed selected agency officials to determine steps agencies had taken to reduce FOIA backlogs, including officials at OIP and the Office of Government Information Services at the National Archives and Records Administration, to provide context on agencies' backlog reduction activities and planning efforts. Finally, we reviewed OIP guidance and published best practices on backlog reduction. For the purposes of our analysis, we did not directly assess DOJ, which has a decentralized FOIA program consisting of 31 separate FOIA offices handling requests under OIP oversight. DOJ components are responsible for managing their own FOIA programs, including backlog reduction activities.

To assess the reliability of selected agencies' internal FOIA data, we analyzed the data for potential issues and interviewed agency officials. Specifically, we reviewed monthly or quarterly data provided by selected agencies on FOIA processing and backlogs and compared it with FOIA.gov data to identify any inconsistencies or errors. We also interviewed or obtained written responses from knowledgeable officials at the selected agencies about how they collect and report data, systems used, and how they correct any issues. Based on the information provided by selected agencies, we found the data sufficiently reliable for the purposes of describing selected agencies' efforts for backlog reduction and the growth of litigation.

We conducted this performance audit from February 2021 to January 2022 in accordance with generally accepted government auditing standards. Those standards require that we plan and perform the audit to

³GAO, *Standards for Internal Control in the Federal Government*, GAO-14-704G (Washington, D.C.: Sept. 2014).

⁴GAO, *Managing For Results: Agencies Need to Fully Identify and Report Major Management Challenges and Actions to Resolve Them in Their Agency Performance Plans*, GAO-16-510 (Washington, D.C.: June 15, 2016).

**Appendix I: Objectives, Scope, and
Methodology**

obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives.

Appendix II: Key Examples of Backlog Reduction Initiatives and Guidance

Freedom of Information Act (FOIA) request backlogs have been a long-standing issue, becoming the subject of various executive orders, memorandums, and guidance documents. Key examples of these documents that called for agencies to make progress in backlog reduction and develop plans include:

Executive Order 13392 (2005).¹ The executive order requires agencies to identify ways to eliminate or reduce their FOIA backlogs, consistent with available resources, and consider the volume and complexity of their pending FOIA requests. Agencies are to develop a plan which, among other things, would include specific activities for eliminating or reducing the agency's FOIA backlog.

Attorney General's Report to the President Pursuant to Executive Order 13,392, Entitled "Improving Agency Disclosure of Information" (2008).² As part of its report to the President on the implementation of Executive Order 13392, the Department of Justice (DOJ) recommended that any agency which has a backlog of requests and which has not made progress in backlog reduction over the last 2 years should develop a plan to reduce its backlog. DOJ also recommended that agencies consider whether appropriate staffing and agency support is being given to FOIA activities.

Guidance on Preparing Backlog Reduction Plans (2008).³ The Office of Information and Privacy issued guidance on preparing the backlog reduction plans recommended in the Attorney General's 2008 report. The guidance states that agencies which had a backlog in the previous fiscal year (fiscal year 2007) that was higher than its backlog at the end of fiscal year 2005 should prepare a plan. The plan should focus on how the agency would reduce the number and age of backlogged requests each year, focusing on reducing the overall number of backlogged requests and, at a minimum, the age of the 10 oldest backlogged requests. The Office of Information and Privacy's guidance also states that plans should consider whether appropriate staffing and agency support is being given to FOIA activities and include specific activities to eliminate or reduce the

¹Exec. Order No. 13392, *Improving Agency Disclosure of Information*, 70 Fed. Reg. 75373, § 3(a)-(b) (Dec. 14, 2005).

²Department of Justice, *Attorney General's Report to the President Pursuant to Executive Order 13,392, Entitled "Improving Agency Disclosure of Information"* (May 30, 2008).

³Department of Justice, Office of Information and Privacy, *Guidance on Preparing Backlog Reduction Plans* (June 27, 2008).

agency's FOIA backlog, including changes that will make the processing of FOIA requests more streamlined and effective. Finally, the guidance states agencies are to increase their reliance on releasing records in a manner that did not require the public to make a request for the records under the FOIA.

Open Government Directive (2009).⁴ The Office of Management and Budget (OMB) issued the Open Government Directive in response to the President's Memorandum on Transparency and Open Government, also issued in 2009.⁵ As part of the directive, OMB requires agencies with significant pending backlogs of outstanding FOIA requests to reduce their backlogs by 10 percent each year.

Guidance on Reducing Backlogs and Improving Timeliness (2014).⁶ The Office of Information Policy (OIP) held a best practices workshop on reducing backlogs and improving timeliness, then issued guidance highlighting four methods: (1) utilizing resources effectively, (2) routinely reviewing metrics, (3) emphasizing staff training, and (4) obtaining leadership support.

Cross-Agency Priority Goal on FOIA (2016). In 2016, the administration established a cross-agency priority goal to "promote greater openness and timeliness throughout the Federal Government by improving FOIA processes and enhancing the requester experience." We have previously reported cross-agency priority goals are intended to cover areas where increased collaboration between multiple federal agencies is needed to improve progress towards shared, complex policy or management objectives.⁷

⁴Office of Management and Budget, *Open Government Directive*, OMB Memorandum M-10-06 (Washington, D.C.: Dec. 8, 2009).

⁵ Memorandum on *Transparency and Open Government*, 74 Fed. Reg. 4685 (Jan. 21, 2009).

⁶Department of Justice, Office of Information Policy, *Reducing Backlogs and Improving Timeliness* (Aug. 15, 2014).

⁷For more information about Cross-Agency Priority Goals, see: GAO, *Government Performance Management: Key Considerations for Implementing Cross-Agency Priority Goals and Progress Addressing GAO Recommendations*, [GAO-21-104704](#) (Washington, D.C.: Sept. 28, 2021); and *Managing for Results: OMB Improved Implementation of Cross-Agency Priority Goals, But Could Be More Transparent About Measuring Progress*, [GAO-16-509](#) (Washington, D.C.: May 20, 2016).

Guidelines for *Chief FOIA Officer Reports* (annual).⁸ Each year, OIP issues guidance to agencies for completing their *Chief FOIA Officer Reports*. As part of this guidance, OIP asks agencies with more than 1,000 backlogged requests in the previous fiscal year whether they implemented a backlog reduction plan and, if so, to describe their efforts and whether they achieved success. If agencies have a backlog of more than 1,000 requests for the current reporting year, OIP also asks about plans for reducing their backlog in the upcoming year. Further, OIP issues annual guidance for further improvement based on reviewing and assessing agencies' reports, which often highlight efforts to reduce backlogs.

⁸Department of Justice, Office of Information Policy, *Guidelines for the 2022 Chief FOIA Officer Reports* (Sept. 30, 2021).

Appendix III: Average and Median Number of Days to Process Simple, Complex, and Expedited Requests

General note: According to the Department of Justice, the statutory time period for responding to a request does not begin until an agency receives a perfected request.¹ We have flagged cases where more than 10 percent of requests were unperfected, and therefore not labeled as simple, complex, or expedited.

Figure 21: Average and Median Number of Days to Process Simple, Complex, and Expedited Requests and Appeals at the Department of Agriculture, Fiscal Years 2012-2020

Department of Agriculture

Fiscal Year	Average days for simple requests	Median days for simple requests	Average days for complex requests	Median days for complex requests	Average days for expedited requests	Median days for expedited requests	Average days for appeals	Median days for appeals
2012	33	16	76	25	35	13	227	44
2013	16	14	43	19	16	11	145	108
2014	16	1	83	21	52	26	242	84
2015	11	20	51	24	49	11	198	79
2016	7	1	73	24	83	13	184	78
2017	11	1	88	25	27	19	345	210
2018	12	1	84	22	19	1	352	235
2019	22	1	154	45	115	15	491	388
2020	28	1	168	40	106	8	650	661

- Decreased number of days for processing requests
- Increased number of days for processing requests
- Same number of days for processing requests

Source: GAO analysis of agency-reported Freedom of Information Act (FOIA) data on FOIA.gov. | GAO-22-105040

¹DOJ defines a perfected request as a request for records which reasonably describes such records and is made in accordance with published rules stating the time, place, fees (if any) and procedures to be followed. Accordingly, agencies do not assign a track to unperfected requests that do not reasonably describe the records sought or are otherwise improperly made.

Appendix III: Average and Median Number of Days to Process Simple, Complex, and Expedited Requests

Figure 22: Average and Median Number of Days to Process Simple, Complex, and Expedited Requests and Appeals at the Department of Homeland Security, Fiscal Years 2012-2020

Department of Homeland Security

Fiscal Year	Average days for simple requests	Median days for simple requests	Average days for complex requests	Median days for complex requests	Average days for expedited requests	Median days for expedited requests	Average days for appeals	Median days for appeals
2012	72	44	99	98	60	22	47	23
2013	37	11	93	38	44	21	133	30
2014	20	8	112	48	103	24	112	41
2015	25	9	108	52	35	14	19	11
2016	33	10	73	82	27	11	22	13
2017	39	29	94	112	48	26	26	9
2018	27	16	80	103	62	24	27	12
2019	33	17	66	43	61	20	28	11
2020	34	16	74	51	104	26	28	11

- Decreased number of days for processing requests
- Increased number of days for processing requests
- Same number of days for processing requests

Source: GAO analysis of agency-reported Freedom of Information Act (FOIA) data on FOIA.gov. | GAO-22-105040

Appendix III: Average and Median Number of Days to Process Simple, Complex, and Expedited Requests

Figure 23: Average and Median Number of Days to Process Simple, Complex, and Expedited Requests and Appeals at Customs and Border Protection, Fiscal Years 2012-2020

Customs & Border Protection

Fiscal Year	Average days for simple requests	Median days for simple requests	Average days for complex requests	Median days for complex requests	Average days for expedited requests	Median days for expedited requests	Average days for appeals	Median days for appeals
2012	107	118	84	88	1	1	18	13
2013	142	129	95	67	38	23	17	12
2014	7 ^a	5 ^a	263 ^a	277 ^a	43 ^a	4 ^a	10 ^a	3 ^a
2015	6	2	238	236	82	33	10	4
2016	20	15	122	97	13	8	19	9
2017	37	32	111	75	36	29	13	5
2018	43	33	129	36	73	60	17	7
2019	53	36	107	27	80	43	13	7
2020	50	27	162	46	179	84	13	7

- Decreased number of days for processing requests
- Increased number of days for processing requests
- Same number of days for processing requests

Source: GAO analysis of agency-reported Freedom of Information Act (FOIA) data on FOIA.gov. | GAO-22-105040

^aMore than 10 percent of requests for this agency for this year were not labeled as simple, complex, or expedited and therefore are not reflected in this measure.

Appendix III: Average and Median Number of Days to Process Simple, Complex, and Expedited Requests

Figure 24: Average and Median Number of Days to Process Simple, Complex, and Expedited Requests and Appeals at the Department of Justice, Fiscal Years 2012-2020

Department of Justice

Fiscal Year	Average days for simple requests	Median days for simple requests	Average days for complex requests	Median days for complex requests	Average days for expedited requests	Median days for expedited requests	Average days for appeals	Median days for appeals
2012	19	12	100	43	190	148	78	71
2013	22	12	116	64	143	31	81	68
2014	32	16	137	87	155	51	68	54
2015	30	16	174	99	110	53	62	48
2016	29	17	188	92	146	65	53	38
2017	28	20	167	83	129	60	48	34
2018	31	24	172	64	138	106	50	34
2019	50	33	215	100	259	233	72	50
2020	64	33	228	78	68	16	63	39

- Decreased number of days for processing requests
- Increased number of days for processing requests
- Same number of days for processing requests

Source: GAO analysis of agency-reported Freedom of Information Act (FOIA) data on FOIA.gov. | GAO-22-105040

Appendix III: Average and Median Number of Days to Process Simple, Complex, and Expedited Requests

Figure 25: Average and Median Number of Days to Process Simple, Complex, and Expedited Requests and Appeals at the Federal Bureau of Investigation, Fiscal Years 2012-2020

Federal Bureau of Investigation

Fiscal Year	Average days for simple requests	Median days for simple requests	Average days for complex requests	Median days for complex requests	Average days for expedited requests	Median days for expedited requests	Average days for appeals	Median days for appeals
2012	28	8	182	141	237	236	N/A ^a	N/A ^a
2013	44	17	232	207	104	82	N/A ^a	N/A ^a
2014	44	15	211	187	246	223	N/A ^a	N/A ^a
2015	29	10	327	185	89	45	N/A ^a	N/A ^a
2016	32	13	252	190	155	87	N/A ^a	N/A ^a
2017	33	9	209	180	86	27	N/A ^a	N/A ^a
2018	26	9	220	121	91	60	N/A ^a	N/A ^a
2019	24	8	250	144	226	234	N/A ^a	N/A ^a
2020	16	6	286	135	158	123	N/A ^a	N/A ^a

- Decreased number of days for processing requests
- Increased number of days for processing requests
- Same number of days for processing requests

Source: GAO analysis of agency-reported Freedom of Information Act (FOIA) data on FOIA.gov. | GAO-22-105040

^aThe Office of Information Policy reviews administrative appeals for Department of Justice components.

Appendix III: Average and Median Number of Days to Process Simple, Complex, and Expedited Requests

Figure 26: Average and Median Number of Days to Process Simple, Complex, and Expedited Requests and Appeals at the Department of Labor, Fiscal Years 2012-2020

Department of Labor

Fiscal Year	Average days for simple requests	Median days for simple requests	Average days for complex requests	Median days for complex requests	Average days for expedited requests	Median days for expedited requests	Average days for appeals	Median days for appeals
2012	48	8	55	12	140	140	123	44
2013	20	8	29	11	40	40	87	34
2014	23	6	34	12	26	26	131	41
2015	26	7	33	11	45	45	175	66
2016	21	7	24	10	34	34	261	164
2017	28	7	31	10	21	21	355	252
2018	24	7	28	12	43	43	461	518
2019	30	9	55	13	45	45	328	137
2020	36	9	53	17	19	19	378	282

- Decreased number of days for processing requests
- Increased number of days for processing requests
- Same number of days for processing requests

Source: GAO analysis of agency-reported Freedom of Information Act (FOIA) data on FOIA.gov. | GAO-22-105040

Appendix III: Average and Median Number of Days to Process Simple, Complex, and Expedited Requests

Figure 27: Average and Median Number of Days to Process Simple, Complex, and Expedited Requests and Appeals at the Environmental Protection Agency, Fiscal Years 2012-2020

Environmental Protection Agency

Fiscal Year	Average days for simple requests	Median days for simple requests	Average days for complex requests	Median days for complex requests	Average days for expedited requests	Median days for expedited requests	Average days for appeals	Median days for appeals
2012	17	15	46	30	111	71	231	29
2013	27	15	56	34	119	30	69	36
2014	13	15	79	33	265	35	67	34
2015	12	13	76	39	155	27	180	55
2016	18	15	152	46	126	25	271	56
2017	18	14	173	57	87	22	228	40
2018	36	16	149	35	337	361	210	73
2019	49	16	118	44	542	493	257	107
2020	71	14	220	67	515	685	183	20

- Decreased number of days for processing requests
- Increased number of days for processing requests
- Same number of days for processing requests

Source: GAO analysis of agency-reported Freedom of Information Act (FOIA) data on FOIA.gov. | GAO-22-105040

Appendix IV: Key Measures of Freedom of Information Act Processing for the Chief Financial Officers Act Agencies

Figure 28: Key Measures of Freedom of Information Act Processing for the Chief Financial Officers Act Agencies for Fiscal Year 2020

Chief Financial Officers Act Agencies	Requests Received	Percent of Total Requests Received Government-wide	Requests Processed	Change in Requests Processed from Fiscal Year 2019 to 2020	Backlogged Requests	Change in Backlogged Requests from Fiscal Year 2019 to 2020
Department of Homeland Security	397,671	50%	392,623	↓ -9%	36,350	↑ 16%
Department of Justice	86,729	11%	84,442	↓ -5%	29,933	↑ 17%
Department of Defense	54,023	7%	50,006	↓ -8%	16,000	↑ 21%
Department of Health and Human Services	36,825	5%	35,669	↑ 5%	8,817	↑ 14%
Department of Agriculture	22,810	3%	23,103	↓ -11%	2,546	↓ -6%
Department of Veterans Affairs	19,053	2%	19,323	↓ -19%	3,220	↑ 22%
Department of Labor	15,820	2%	15,645	↓ -4%	1,714	↑ 73%
Department of Transportation	14,632	2%	15,433	↑ 6%	4,272	↑ 19%
Department of the Treasury	11,916	2%	11,260	↓ -6%	2,123	↑ 42%
Social Security Administration	9,688	1%	8,143	↓ -46%	1,710	↑ 1,843%
Department of State	9,019	1%	7,041	↑ 8%	13,798	↑ 24%
Office of Personnel Management	8,123	1%	8,140	↓ -22%	200	↓ -13%
Environmental Protection Agency	6,891	1%	7,665	↓ -20%	1,783	↓ -22%
Department of the Interior	5,977	1%	5,906	↓ -13%	4,267	↑ 4%
Small Business Administration	4,529	1%	3,020	↑ 227%	366	N/A ^a
Department of Commerce	2,017	Less than 1%	2,108	↑ 5%	629	↓ -13%
Department of Education	2,384	Less than 1%	2,537	↑ 7%	859	↓ -6%
Department of Energy	1,453	Less than 1%	1,416	↓ -25%	554	↑ 12%
Department of Housing and Urban Development	2,038	Less than 1%	1,834	↓ -9%	1,128	↑ 21%
General Services Administration	1,352	Less than 1%	1,429	↑ 5%	355	↑ 6%
National Aeronautics and Space Administration	841	Less than 1%	833	↑ 4%	39	↑ 39%
National Science Foundation	259	Less than 1%	209	↓ -22%	342	↑ 14%
Nuclear Regulatory Commission	289	Less than 1%	288	↓ -44%	81	↑ 23%
U.S. Agency for International Development	427	Less than 1%	299	↓ -2%	372	↑ 56%

Source: GAO analysis of agency-reported Freedom of Information Act (FOIA) data on FOIA.gov. | GAO-22-105040

^aIn fiscal year 2019, the Small Business Administration had no backlogged requests.

Appendix V: Comments from the Department of Homeland Security

U.S. Department of Homeland Security
Washington, DC 20528



**Homeland
Security**

December 23, 2021

James R. McTigue, Jr.
Director, Strategic Issues
U.S. Government Accountability Office
441 G Street, NW
Washington, DC 20548

Re: Management Response to Draft Report GAO-22-105040, "FREEDOM OF INFORMATION ACT: Selected Agencies Adapted to the COVID-19 Pandemic but Face Ongoing Challenges and Backlogs"

Dear Mr. McTigue:

Thank you for the opportunity to comment on this draft report. The U.S. Department of Homeland Security (DHS or the Department) appreciates the U.S. Government Accountability Office's (GAO) work in planning and conducting its review and issuing this report.

The Department is pleased to note GAO's positive recognition of DHS's efforts to analyze Freedom of Information Act (FOIA) production and trends to reduce the backlog as well as efforts to help improve the consistency of FOIA operations. For example, the draft report acknowledged DHS backlog reduction goals, including reducing high volume component backlogs by 10 percent and low-volume component backlogs by 15 percent annually.

The Department is committed to fulfilling its FOIA vision of embracing modern workforce and information management techniques, leveraging technology, enhancing our systems, and rebuilding our processes to create a modern, mature, and sustainable FOIA program. These efforts will allow DHS to focus increased attention on mission-critical operations while at the same time: 1) Improving Service to the Public; 2) Improving Service to the Department; 3) Improving the FOIA Information Technology Infrastructure; 4) Improving FOIA Workforce Engagement; and 5) Strengthening the FOIA Policy and Regulatory Environment.

**Appendix V: Comments from the Department
of Homeland Security**

The draft report contained four recommendations, including one for DHS with which the Department concurs. Attached find our detailed response to the recommendation. DHS previously submitted technical comments addressing several accuracy, contextual, and other issues for GAO's consideration.

Again, thank you for the opportunity to review and comment on this draft report. Please feel free to contact me if you have any questions. We look forward to working with you again in the future.

Sincerely,

JIM H
CRUMPACKER

 Digitally signed by JIM H
CRUMPACKER
Date: 2021.12.23 10:34:25 -05'00'

JIM H. CRUMPACKER, CIA, CFE
Director
Departmental GAO-OIG Liaison Office

Attachment

**Attachment: Management Response to Recommendation
Contained in GAO-22-105040**

GAO recommended that the Chief Privacy Officer:

Recommendation 2: Work with DHS components to develop backlog reduction plans that specify goals and measures for reducing the FOIA backlog, provide specific milestones for backlog reduction efforts, and identify planned actions to reduce backlog.

Response: Concur. Given the current Department practice that each Component manages its own backlog, subject to the Chief FOIA Officer's oversight, the DHS Privacy Office (PRIV) will direct Components to develop backlog reduction plans that specify goals and measures for reducing each Component's FOIA backlog, as appropriate, in coordination with the DHS Chief Privacy Officer, who also serves as the Department's Chief FOIA Officer. PRIV anticipates each Component will provide a backlog reduction plan to the Chief FOIA Officer by June 30 2022, for implementation beginning in FY 2023. Estimated Completion Date: October 31, 2022.

Appendix VI: Comments from the Department of Justice



U.S. Department of Justice
Office of Information Policy
Sixth Floor
441 G Street, NW
Washington, DC 20530-0001

Telephone: (202) 514-3642

December 30, 2021

Mr. James R. McTigue, Jr.
Director, Strategic Issues
Government Accountability Office
Washington, D.C. 20548

Dear Mr. McTigue:

Thank you for the opportunity to review and comment on the draft Government Accountability Office (GAO) report titled "Freedom of Information Act: Selected Agencies Adapted to the COVID-19 Pandemic but Face Ongoing Challenges and Backlogs." I appreciate GAO's thoughtful review of agency FOIA programs during the challenging years of the pandemic. In its report, GAO provides one recommendation for OIP which states as follows:

"The Director of the Office of Information Policy should evaluate the usefulness and burden of performance information collected, and identify ways reporting can inform current and emerging FOIA challenges and risks, such as the number of requests for which unusual circumstances apply or the effect of litigation on overall FOIA request processing and backlog."

I agree with GAO's overall recommendation. OIP is always looking for ways to both reduce reporting burden on agencies and make sure that the metrics collected provide the most value for effective FOIA administration and public transparency. However, as noted in our technical comments, we respectfully disagree with some of the examples GAO provides for streamlining the reports. For example, we do not believe removing the comparison data, which includes only three data points from the prior year's report, would reduce any meaningful burden on agencies. Conversely, there are costs associated with updating the Annual FOIA Report metrics and including these specific metrics provides easy comparison of some of the most sought after FOIA data.

**Appendix VI: Comments from the Department
of Justice**

-2-

Thank you again for the opportunity to review the draft report and for all your time and work on this engagement. If you have any questions regarding this response, you or your staff may contact me at (202) 514-3642.

Sincerely,



Bobak Talebian
Director

Appendix VII: Comments from the Department of Labor

U. S. Department of Labor

Solicitor of Labor
Washington, D.C. 20210



James R. McTigue, Jr.
Director, Strategic Issues
U.S. Government Accountability Office
441 G Street, NW
Washington, DC 20548

Dear Mr. McTigue:

Thank you for the opportunity to comment on the Government Accountability Office's (GAO) draft report, *Freedom of Information Act – Selected Agencies Adapted to the COVID-19 Pandemic but Face Ongoing Challenges and Backlogs* (GAO-22-105040). The following comments are submitted on behalf of the Department of Labor.

GAO's draft report recommends that the Chief FOIA Officer of the Department of Labor "address risks to sustained backlog reduction efforts by identifying training and other needs to resolve data quality issues as part of its regular oversight of component FOIA programs." (Recommendation 1.) DOL agrees with the spirit of the recommendation, which is in line with DOL's continuing plans to improve FOIA processing.

As GAO acknowledges in its report, DOL has long recognized the need to leverage technology to promote more robust and accurate FOIA data. On October 1, 2020, as part of its ongoing FOIA Modernization Initiative and in line with known data challenges, the Department deployed a new FOIA tracking system, FOIAXpress, after a year of planning and training to adapt FOIAXpress to the DOL FOIA structure. FOIAXpress contains all of the functionality recommended in a prior GAO evaluation of the DOL FOIA Program.¹ Shortly after the launch of FOIAXpress, the Department wrote scripts to migrate data from the legacy FOIA data system to FOIAXpress. The migration allowed DOL uncover every FOIA request pending in the legacy system without a fully documented disposition, positioning DOL to take appropriate action and ensuring that any request submitted would be fully acknowledged and processed. As FY2021 is the first full year in which DOL has used FOIAXpress for tracking and reporting purposes, DOL is already situated to address GAO's concerns about the ability to collect and provide more accurate FOIA data.

DOL will take additional steps to address GAO's recommendation.

The DOL Chief FOIA Officer will continue to promote the efficient and effective management of the Department's FOIA program through efforts of the Department's central FOIA office, the Office of Information Services (OIS) within the Office of the Solicitor. This will include through direct communications to the DOL FOIA community stressing the need for consistent usage of the new FOIA tracking system in order to realize its potential for providing more reliable data than the Department's prior FOIA system. The Chief FOIA Officer will also continue to encourage attention to backlog reduction. The Department of Justice has emphasized the importance of improving timeliness in responding to FOIA

¹ Freedom of Information Act: Department of Labor Can Improve Management of Its Program, GAO-16-248 (June 2016).

**Appendix VII: Comments from the Department
of Labor**

requests. In FY2021, DOL was able to close all ten of the ten oldest FOIA requests reported from the prior fiscal year, exceeding the Office of Management and Budget's mandate of at least a 10% overall reduction in FOIA backlog per year and DOL's internal processing measures for an overall reduction of backlogged requests by 20%. DOL will continue its efforts to advance DOL's existing FOIA improvement initiatives, including its standing performance and process measures related to timely FOIA processing and backlog reduction.

The Chief FOIA Officer will also establish a formal FOIA backlog reduction plan based on the 2020 guidelines for the Chief FOIA Officer Report. The plan will include more robust reporting intervals on backlog status, similar to those articulated as part of the first iteration of the Departmental FOIA Modernization Initiative. DOL will also implement additional quality controls on data input and reporting. DOL, through OIS, intends to conduct quarterly reviews of data in the Departmental FOIA tracking system to identify and address any anomalies in data, based on comparisons of performance with prior reporting intervals. To further address GAO's specific concerns, DOL will also ensure that data entered manually to the varying reporting portals, including on FOIA.gov and the Department's own FOIA webpage, have more levels of quality control to factor out the three instances of data variance that GAO identified during its evaluation.

Now that FOIAXpress has been implemented, the Chief FOIA Officer will also direct OIS to resume administrative agency reviews for each of the Department's free standing FOIA components to determine if there are issues that prevent agencies from timely processing incoming FOIA requests and how they might effectively allocate resources to address FOIA requests that are backlogged. This administrative review will focus on our oldest backlogged FOIA requests.

Because data quality starts with the work of FOIA processors across the Department, DOL will also encourage the use of self-paced training videos that allow FOIAXpress users to practice consistent system usage in specific aspects of the system. DOL will continue to monitor input from system users and requests for assistance submitted to the IT helpdesk in order to identify training needs and to develop new training offerings as necessary or appropriate. In addition, the Department plans to host a comprehensive FOIA training conference in FY2022 that will have sessions specifically dedicated to system usage, including the use of built-in FOIA reports and specialized queries within FOIAXpress that will allow agency components to self-audit the data that they enter into the system.

DOL appreciates the opportunity to respond to GAO's draft report and the recommendation specifically addressed to the Department's FOIA program.

Sincerely,

Seema Nanda  Digitally signed by Seema Nanda
Date: 2022.01.04 14:21:51 -05'00'
Seema Nanda
Solicitor of Labor and Chief FOIA Officer

Appendix VIII: Comments from the Environmental Protection Agency



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
Washington, D.C. 20460

OFFICE OF
GENERAL COUNSEL

December 29, 2021

Mr. James R. McTigue, Jr.
Director
Strategic Issues
U.S. Government Accountability Office
Washington, D.C. 20548

Dear Mr. McTigue:

Thank you for the opportunity to review and comment on GAO's draft report, "*Freedom of Information Act: Selected Agencies Adapted to the COVID-19 Pandemic but Face Ongoing Challenges and Backlogs*," GAO-22-105040. The purpose of this letter is to provide the Environmental Protection Agency's response to the draft report's findings, conclusions, and recommendation(s). The EPA agrees with the GAO's findings and conclusions, and generally takes no position with respect to the recommendations for further action by other agencies.

The draft report analyzed government-wide data on key measures of FOIA administration for fiscal years 2012 through 2020 and additional FOIA information provided by five selected agencies to examine the impact of the COVID-19 pandemic on FOIA administration and the extent to which selected agencies backlog reduction plans aligned with standards for internal control and performance management practices. The draft report observes a decline in FOIA requests received and processed in FY 2020, the first year of the pandemic, compared to FY 2019. The draft report also finds that four of the five selected agencies, including EPA, initially faced pandemic-related challenges, and that all five agencies employed strategies and leading practices to maintain operations during the pandemic. The draft report does not identify conclusions or recommendations specific to EPA regarding opportunities for additional action for EPA's administration of its FOIA program.

We appreciate GAO's recognition of EPA's organizational changes and use of lean management methods to improve EPA's FOIA program including improvements made during the pandemic. For example, GAO highlights that, in FY 2021, EPA was able to reduce the average time to issue decisions on applications for expedited FOIA processing by 63 percent and adjudicated 76 percent of such applications within 10 calendar days, up from 42 percent in FY 2020.

EPA also reduced its FOIA request backlog as reported in its Annual FOIA Report by 280 requests, or 16 percent, in FY 2021. This extraordinary result builds on reductions in prior years: EPA reduced its backlog of FOIA requests by more than 1,250 requests over three fiscal years 2019 to 2021. EPA's draft Strategic Plan now sets a goal to eliminate the backlog by the end of FY 2026. In addition, by applying lean management methods, EPA eliminated the administrative appeals backlog in FY 2021 and reduced its average appeal response time from 256.93 days in FY 2019 to 17.78 days in FY 2021, a 93 percent reduction.

**Appendix VIII: Comments from the
Environmental Protection Agency**

Mr. James R. McTigue, Jr.
December 29, 2021
Page 2 of 2

Again, thank you for the opportunity to help increase understanding of the ongoing challenges agencies face in implementing the FOIA, particularly during the COVID-19 pandemic. If you have any questions regarding EPA's response or you need further information, please contact Nicole Rementer of the National FOIA Office at 202-564-3692 or rementer.nicole@epa.gov.

Respectfully submitted,



Digitally signed by
TIMOTHY EPP
Date: 2021.12.29
10:12:36 -0500

Timothy R. Epp
Associate General Counsel
National FOIA Office

cc: Shea Bader
Assistant Director
U.S. Government Accountability Office

Giny Cheong
Analyst-in-Charge
U.S. Government Accountability Office

Susan Perkins
Agency GAO Liaison
U.S. Environmental Protection Agency, Office of the Chief Financial Officer

Michael Benton
U.S. Environmental Protection Agency, Office of the Administrator

Brian Hope
U.S. Environmental Protection Agency, Office of the Administrator

Kristien Knapp
U.S. Environmental Protection Agency, Office of the Administrator

Stuart Miles-McLean
U.S. Environmental Protection Agency, Office of the Administrator

Shanquenetta Anderson
U.S. Environmental Protection Agency, Office of General Counsel

Daniel Conrad
U.S. Environmental Protection Agency, Office of General Counsel

Appendix IX: Comments from the National Archives and Records Administration



Archivist of the
United States

6 January 2022

Mr. James R. McTigue, Jr.
Director, Strategic Issues
United States Government Accountability Office
441 G Street, NW
Washington, DC 20548

Dear Mr. McTigue:

Thank you for the opportunity to comment on the draft report, *Freedom of Information Act: Selected Agencies Adapted to the COVID-19 Pandemic but Face Ongoing Challenges and Backlogs* (GAO-22-105040).

I appreciate your referencing the work of the Office of Government Information Services (OGIS) in reporting on how the pandemic challenged FOIA programs government-wide, particularly those agencies that work with largely paper-based records and those agencies that work with classified records or systems for processing records responsive to FOIA requests.

If you have any questions regarding this memo, please contact Kimm Richards, NARA's Audit Liaison at 301-837-1668 or via email at kimm.richards@nara.gov.

Sincerely,

DAVID S. FERRIERO
Archivist of the United States

DAVID S. FERRIERO · T: 202.357.5900 · F: 202.357.5901 · david.ferriero@nara.gov
National Archives and Records Administration · 700 Pennsylvania Avenue, NW · Washington, DC 20408 · www.archives.gov

Appendix X: GAO Contact and Staff Acknowledgments

GAO Contact

James R. McTigue, Jr. (202) 512-6806, mctiguej@gao.gov

Staff Acknowledgments

In addition to the contact named above, Shea Bader (Assistant Director), Giny Cheong (Analyst-in-Charge), Michael Bechetti, Robert Gebhart, Amalia Konstas, Samantha Lalisan, Andrew Lobel, Meredith Moles, Paras Sharma, Jessica Thomas, and Walter Vance made key contributions to this report.

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Stephen J. Sanford, Managing Director, spel@gao.gov, (202) 512-4707
U.S. Government Accountability Office, 441 G Street NW, Room 7814,
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