



June 2018

FREEDOM OF INFORMATION ACT

Agencies Are
Implementing
Requirements, but
Additional Actions Are
Needed

GAO Highlights

Highlights of [GAO-18-365](#), a report to congressional requesters

Why GAO Did This Study

FOIA requires federal agencies to provide the public with access to government records and information based on the principles of openness and accountability in government. Each year, individuals and entities file hundreds of thousands of FOIA requests. In the last 9 fiscal years, federal agencies subject to FOIA have received about 6 million requests.

GAO was asked to review federal agencies' compliance with FOIA requirements. Our objectives, among others, were to (1) determine the extent to which agencies have implemented selected FOIA requirements; (2) describe the methods established by agencies to reduce backlogged requests and the effectiveness of those methods; and (3) identify any statutory exemptions that have been used by agencies as the basis for withholding (redacting) information from requesters.

To do so, GAO selected 18 agencies based on their size and other factors and assessed their policies against six FOIA requirements. GAO also reviewed the agencies' backlog reduction plans and developed a catalog of statutes that agencies have used to withhold information.

What GAO Recommends

GAO is making recommendations to 16 agencies to post records online, designate chief FOIA officers, update regulations, and develop plans to reduce backlogs. Nine agencies agreed with the recommendations, 1 both agreed and disagreed, 2 disagreed, and 4 neither agreed nor disagreed. GAO continues to believe the recommendations are valid.

View [GAO-18-365](#). For more information, contact David A. Powner at (202) 512-9286 or pownerd@gao.gov.

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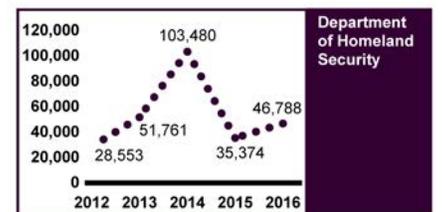
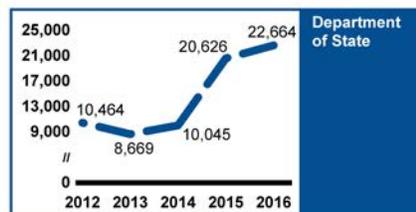
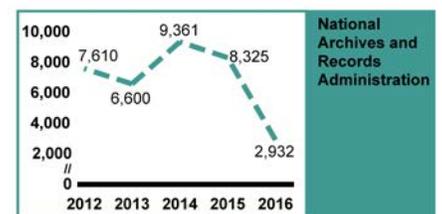
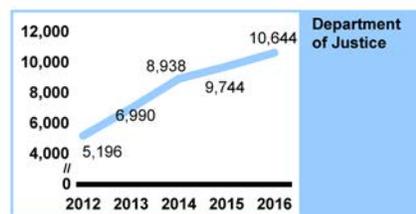
Agencies Are Implementing Requirements, but Additional Actions Are Needed

What GAO Found

All 18 selected agencies had implemented three of six Freedom of Information Act (FOIA) requirements reviewed. Specifically, all agencies had updated response letters to inform requesters of the right to seek assistance from FOIA public liaisons, implemented request tracking systems, and provided training to FOIA personnel. For the three additional requirements, 15 agencies had provided online access to government information, such as frequently requested records, 12 agencies had designated chief FOIA officers, and 12 agencies had published and updated their FOIA regulations on time to inform the public of their operations. Until these agencies address all of the requirements, they increase the risk that the public will lack information that ensures transparency and accountability in government operations.

The 18 selected agencies had backlogs of varying sizes, with 4 agencies having backlogs of 1,000 or more requests during fiscal years 2012 through 2016. These 4 agencies reported using best practices identified by the Department of Justice, such as routinely reviewing metrics, as well as other methods, to help reduce their backlogs. Nevertheless, these agencies' backlogs fluctuated over the 5-year period (see figure). The 4 agencies with the largest backlogs attributed challenges in reducing their backlogs to factors such as increases in the number and complexity of FOIA requests. However, these agencies lacked plans that described how they intend to implement best practices to reduce backlogs. Until agencies develop such plans, they will likely continue to struggle to reduce backlogs to a manageable level.

Number of Backlogged FOIA Requests for Selected Agencies, Fiscal Years 2012-2016



Source: GAO analysis of FOIA.gov data. | GAO-18-365

Agencies used various types of statutory exemptions to withhold information when processing FOIA requests during fiscal years 2010 to 2016. The majority of these fell into the following categories: personally identifiable information, national security, law enforcement and investigations, and confidential and commercial business information.

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Abbreviations

AIG	American International Group
DHS	Department of Homeland Security
DOI	Department of the Interior
EEOC	Equal Employment Opportunity Commission
FDIC	Federal Deposit Insurance Corporation
FOIA	Freedom of Information Act
FTC	Federal Trade Commission
GM	General Motors
Justice	Department of Justice
NARA	National Archives and Records Administration
NASA	National Aeronautics and Space Administration
NTSB	National Transportation Safety Board
OGIS	Office of Government Information Services
OIP	Office of Information Policy
OMB	Office of Management and Budget
State	Department of State
TARP	Troubled Asset Relief Program
Treasury	Department of Treasury
TVA	Tennessee Valley Authority

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June 25, 2018

Congressional Committees

The *Freedom of Information Act* (FOIA), which was enacted into law more than 50 years ago, requires federal agencies to provide the public with access to government records and information based on the principles of openness and accountability in government.¹ 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; conditions such as unsafe consumer products and harmful drugs; as well as information related to the government's assistance to corporations during the U.S. financial crisis of 2008. In the last 9 fiscal years, agencies subject to FOIA have reported receiving about 6 million requests.

Given the significance of FOIA, Congress has had a longstanding interest in the manner in which the act is being implemented, including the extent to which federal agencies respond to FOIA requests, the timeliness of the responses, and the number and nature of exemptions claimed by agencies in withholding requested information. Since 1978, we have issued a number of reports that have addressed various aspects of federal agencies' efforts to implement the act.²

At your request, we reviewed federal agencies' compliance with FOIA requirements, backlogs, use of exemptions, and FOIA requests related to the 2008 financial crisis. Our specific objectives were to (1) determine the extent to which agencies have implemented selected FOIA requirements; (2) describe the methods established by agencies to reduce backlogged requests and the effectiveness of those methods; (3) identify any

¹5 U.S.C. § 552.

²For example, GAO, *Freedom of Information Act: Litigation Costs for Justice and Agencies Could Not Be Fully Determined*, [GAO-16-667](#) (Washington, D.C.: Sept. 08, 2016); GAO, *Freedom of Information Act: Department of Labor Can Improve Management of Its Program*, [GAO-16-248](#) (Washington, D.C.: June 02, 2016); GAO, *Freedom of Information Act: Additional Actions Can Strengthen Agency Efforts to Improve Management*, [GAO-12-828](#) (Washington, D.C.: July 31, 2012); and GAO, *Report By The Comptroller General Of The United States: Government Field Offices Should Better Implement The Freedom Of Information Act*, LCD-78-120 (Washington, D.C.: July 25, 1978).

statutory (b)(3) exemptions that have been used by agencies as the basis for withholding (redacting) information;³ and (4) determine what FOIA requests, if any, agencies received and processed that related to entities that received government assistance amounting to 50 percent or more ownership by the federal government during the 2008 financial crisis.⁴

To address the first and second objectives, we reviewed the FOIA-related actions of a nonprobability sample of 18 federal agencies. We identified these agencies by considering: the number of FOIA requests received, the sizes of FOIA backlogs, and the average time for processing FOIA requests for fiscal years 2012 through 2016. We also chose the agencies to represent a range of sizes (by number of employees)—large (10,000 or more), medium (1,000 to 9,999), and small (999 or fewer). Table 1 lists the selected agencies by size.

Table 1: Agencies Selected for GAO’s Freedom of Information Act Study, by Size

Large agencies	Medium agencies	Small agencies
Department of Homeland Security	National Archives and Records Administration	National Transportation Safety Board
National Aeronautics and Space Administration	Federal Deposit Insurance Corporation	American Battle Monuments Commission
Department of Justice	Equal Employment Opportunity Commission	Pension Benefit Guaranty Corporation
Tennessee Valley Authority	Broadcasting Board of Governors	U.S. African Development Foundation
Department of State	U.S. Agency for International Development	Office of Management and Budget
Department of the Interior	Federal Trade Commission	Administrative Conference of the United States

Source: GAO analysis of data from the Office of Personnel Management. | GAO-18-365

Note: Large = 10,000 or more employees; medium = 1,000 to 9,999; small = 999 or fewer.

³For the purposes of this report, we define a statutory (b)(3) exemption as a federal statute that a federal agency has claimed, or could reasonably claim, as authority for withholding information when answering a FOIA request as permitted under exemption 3 of FOIA (5 U.S.C. § 552(b)(3)). We refer to this exemption as the statutory (b)(3) exemption.

⁴In October 2008, Congress passed the *Emergency Economic Stabilization Act*, which authorized the creation of the Troubled Asset Relief Program to, among other things, buy up to \$700 billion in troubled assets, such as mortgage-backed securities and any other financial instrument that the Secretary of the Treasury, in consultation with the chairman of the Federal Reserve Board, determined that purchasing would help to stabilize the financial system.

For the first objective, we reviewed six FOIA requirements outlined in the *FOIA Improvement Act of 2016* and the *OPEN Government Act of 2007*.⁵ These specific requirements call for agencies to (1) update response letters, (2) implement tracking systems, (3) provide FOIA training, (4), provide records online, (5) designate chief FOIA officers, and (6) update and publish timely and comprehensive regulations.

We then obtained and reviewed available documentation from the 18 selected agencies describing their decisions and actions related to the requirements. This documentation included policies pertaining to the processing and tracking of FOIA requests and appeals, the methods used to communicate with requesters, and any related training offered to personnel involved in processing FOIA requests. We compared the agencies' documentation to FOIA implementation guidance issued by the Department of Justice (Justice). We also interviewed relevant officials at each selected agency.

In addition, we interviewed officials of the Office of Management and Budget (OMB) and Justice's Office of Information Policy (OIP) to discuss the status of efforts to develop a government-wide FOIA request portal, as required by the 2016 amendments to FOIA. We also met with members of the Chief FOIA Officers Council, as well as officials in Justice's OIP and the National Archives and Records Administration's (NARA) Office of Government Information Services (OGIS) to determine what, if any, actions these agencies have taken to assist FOIA-reporting agencies with complying with the requirements of the 2016 amendments to FOIA. The findings related to our first objective are not generalizable to the 117 FOIA reporting agencies.

For the second objective, we first reviewed requirements for agencies to produce backlog reduction plans, as outlined in Justice's annual chief FOIA officer report guidance and OMB's Open Government Directive of 2009. We then determined whether agencies had developed such plans as required, by interviewing relevant agency personnel and reviewing

⁵*FOIA Improvement Act of 2016*, Pub. L. No. 114-185, 130 Stat. 538 (2016) (provisions codified at 5 U.S.C. § 552) and Pub. L. No. 110-175 (Dec. 31, 2007). According to the Department of Justice, the act addressed a range of procedural issues, including requirements that agencies establish a minimum of 90 days for requesters to file an administrative appeal and that agencies provide dispute resolution services at various times throughout the FOIA process. The act also codified the department's "foreseeable harm" standard, amended exemption 5, created a new Chief FOIA Officers Council, and added two new elements to agency annual FOIA reports.

existing plans. Further, we analyzed data on Justice's FOIA.gov website to identify any instances of a reported reduction in an agency's FOIA backlog when the agency had a backlog reduction plan in place.

To assess the reliability of the data we retrieved from FOIA.gov, we interviewed knowledgeable officials in Justice's OIP and electronically tested the data for outliers, missing values, and syntactical discrepancies. We found the data to be sufficiently reliable for the purposes of reporting agencies' total FOIA requests and FOIA backlogs in fiscal years 2012 through 2016

We also compared best practices for reducing backlogs, as identified by Justice's OIP, with each agency's procedures to determine the extent to which the practices were being used.⁶ In addition, we interviewed relevant officials at each selected agency to determine the reasons for any changes in the number of backlogged requests at the agency and what actions the agency was taking to reduce its backlog or implement reduction plans. The findings from our second objective are not generalizable to the 117 FOIA reporting agencies.

To address the third objective, determining the exemptions that have been used by agencies as the basis for withholding (redacting) information, we developed a catalog of (b)(3) statutes that agencies previously have used, or reasonably could have used, to withhold information in FOIA records under the (b)(3) exemption.⁷ To develop the catalog, we compiled a list of (b)(3) exemptions, along with the number of times each exemption was used by at least 1 of 117 agencies for which annual FOIA report data covering fiscal years 2010 through 2016 were

⁶Department of Justice, Office of Information Policy: *Guidance on Reducing Backlogs and Improving Timeliness*, (August 15, 2014) and *Best Practices Workshop*, (May 20, 2014).

⁷Agencies available on FOIA.gov include federal agencies and other entities subject to FOIA.

available on Justice's FOIA.gov website.⁸ We refined our list of agencies that used (b)(3) exemptions by standardizing the statutes' citations to ensure they consistently referred to existing U.S. Code sections.

Further, to create our catalog we (1) categorized each (b)(3) statute based on the general subject matter (2) identified the number of times each exemption was used by agencies, and (3) determined the date of the most recent legislative action for each statute to identify which statutes were subject to a 2009 amendment to the (b)(3) exemption. To assess the reliability of the data we retrieved from FOIA.gov, we electronically tested the data for outliers, missing values, and syntactical discrepancies. We also interviewed relevant agency officials at Justice to discuss their actions to ensure the consistency of the data presented in FOIA.gov on agencies' uses of FOIA (b)(3) exemptions. We found the data to be sufficiently reliable for the purposes of this objective.

For the fourth objective, we reviewed reports that discussed entities that received Troubled Asset Relief Program (TARP) assistance during the 2008 financial crisis, such as the Department of Treasury's (Treasury) *Monthly Reports to Congress* (dated October 2008 and November 2014),⁹ and relevant prior GAO reports.¹⁰ Our work focused on identifying

⁸Justice's website, called FOIA.gov, presents electronic versions of data from agencies annual FOIA reports that are required to be submitted to Justice and includes information such as what (b)(3) statutes are used by an agency. To identify what (b)(3) exemption statutes were used by agencies, in a readily available and aggregate form, we collected (b)(3) exemption statute data on FOIA.gov that spanned from fiscal year 2010 through fiscal year 2016. We chose these years because, in accordance with the OMB *Open Government Directive*, agencies began providing their annual FOIA reports in a uniform open format in 2010. Accordingly, FOIA.gov does not have all agency data prior to 2010. Therefore, our scope was limited to fiscal years 2010 to 2016, which consisted of 117 agencies that reported to Justice for at least 1 fiscal year during this time period. Fiscal year 2017 data were not yet available at the time of our review.

⁹Department of the Treasury, *Monthly Report to Congress* (October 2008); Department of Treasury, *Monthly Report to Congress* (November 2014). These reports provide a monthly overview of how Troubled Asset Relief Program (TARP) funds have been used, how much has been recovered, the latest cost estimates for TARP, the program's operating expenses, and other information on the program.

¹⁰For example, GAO, *Troubled Asset Relief Program: Government's Exposure to Ally Financial Lessens as Treasury's Ownership Share Declines*, [GAO-14-698](#) (Washington D.C., Aug. 05, 2014); GAO, *Troubled Asset Relief Program: Status of Treasury's Investments in General Motors and Ally Financial*, [GAO-14-6](#) (Washington D.C., Oct. 29, 2013); and GAO, *Troubled Asset Relief Program: Treasury Sees Some Returns as It Exits Programs and Continues to Fund Mortgage Programs*, [GAO-13-192](#) (Washington D.C., Jan. 07, 2013).

those entities in which Treasury held 50 percent or more of the entity's common stock and the dates during which Treasury held that stock. As a result of this review, we identified three corporations in which Treasury held 50 percent or more of the entities' common stock during certain periods between 2008 through 2014. These three corporations were the American International Group (AIG), General Motors (GM), and General Motors Acceptance Corporation (Ally).¹¹ We also interviewed cognizant agency officials at the Department of the Treasury.

In addition to Treasury, we identified three other agencies that received FOIA requests related to the identified entities—the Federal Deposit Insurance Corporation (FDIC), Federal Reserve Board, and the Office of the Comptroller of Currency and reviewed their handling of FOIA requests relating to AIG, Ally,¹² and GM during the calendar years that Treasury held 50 percent or more common stock (2008 through 2014). In this regard, we reviewed the requests to determine (1) the number of requests received, (2) the resolution of the requests, and (3) the length of time it took the agency to respond. Lastly, we interviewed relevant agency officials at each of the four selected agencies to better understand if and how FOIA requests were received and processed.

We conducted this performance audit from January 2017 to June 2018 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. A more detailed discussion of our objectives, scope, and methodology is provided in appendix I.

Background

The *Freedom of Information Act* establishes a legal right of access to government information on the basis of the principles of openness and accountability in government. Before FOIA's enactment in 1966,¹³ an individual seeking access to federal records faced the burden of

¹¹All three entities received funds under the *Emergency Economic Stabilization Act*. As a result, Treasury held 50 percent or more common stock in each corporation.

¹²From this point forward the General Motors Acceptance Corporation will be referred to as Ally.

¹³The law was enacted in 1966 and went into effect in 1967.

establishing a “need to know” before being granted the right to examine a federal record. FOIA established a “right to know” standard, under which an organization or person could receive access to information held by a federal agency without demonstrating a need or reason. The “right to know” standard shifted the burden of proof from the individual to a government agency and required the agency to provide proper justification when denying a request for access to a record.

Any person, defined broadly to include attorneys filing on behalf of an individual, corporations, or organizations, can file a FOIA request. For example, an attorney can request labor-related workers’ compensation files on behalf of his or her client, and a commercial requester, such as a data broker who files a request on behalf of another person, may request a copy of a government contract. In response, an agency is required to provide the relevant record(s) in any readily producible form or format specified by the requester, unless the record falls within a permitted exemption that provides limitations on the disclosure of information. Appendix II includes a table describing the nine specific exemptions that can be applied to withhold information that, for example, is classified, confidential commercial, privileged, privacy, or falls into one or several law enforcement categories.

FOIA Amendments and Guidance Call for Improvements in How Agencies Process Requests

Various amendments have been enacted and guidance issued to help improve agencies’ processing of FOIA requests, including:

- *The Electronic Freedom of Information Act Amendments of 1996* (e-FOIA amendments) strengthened the requirement that federal agencies respond to a request in a timely manner and reduce their backlogged requests.¹⁴ The amendments, among other things, made a number of procedural changes, including allowing a requester to limit the scope of a request so that it could be processed more quickly and requiring agencies to determine within 20 working days whether a

¹⁴*Electronic Freedom of Information Act Amendments of 1996*, Pub. L. No. 104-231 (Oct. 2, 1996).

request would be fulfilled. This was an increase from the previously established time frame of 10 business days.¹⁵

The amendments also authorized agencies to multi-track requests—that is, to process simple and complex requests concurrently on separate tracks to facilitate responding to a relatively simple request more quickly. In addition, the amendment encouraged online, public access to government information by requiring agencies to make specific types of records available in electronic form.

- *Executive Order 13392*, issued by the President in 2005, directed each agency to designate a senior official as its chief FOIA officer.¹⁶ This official was to be responsible for ensuring agency-wide compliance with the act by monitoring implementation throughout the agency and recommending changes in policies, practices, staffing, and funding, as needed. The chief FOIA officer was directed to review and report on the agency's performance in implementing FOIA to agency heads and to Justice in such times and formats established by the Attorney General. (These are referred to as chief FOIA officer reports.)
- *The OPEN Government Act*, which was enacted in 2007, made the 2005 executive order's requirement for agencies to have a chief FOIA officer a statutory requirement.¹⁷ It also required agencies to include additional statistics in their annual FOIA reports, such as more details on processing times and the agency's 10 oldest pending requests, appeals, and consultations.
- *The FOIA Improvement Act of 2016* addressed procedural issues, including requiring that agencies: (1) make records available in an electronic format if they have been requested three or more times; (2) notify requesters that they have a maximum of 90 days to file an administrative appeal, and (3) provide dispute resolution services at

¹⁵The 20-day time period to respond to a request may be extended to 30 days in certain circumstances. For example, the agency may notify the person making the request that the time limit cannot be met and provide the person with an opportunity to limit the scope of the request so that it may be processed within that time limit or an opportunity to arrange with the agency an alternative time frame for processing the request.

¹⁶The White House, *Improving Agency Disclosure of Information*, Executive Order 13392 (Washington, D.C.: Dec. 14, 2005).

¹⁷*Openness Promotes Effectiveness in our National Government Act of 2007*, Pub. L. No. 110-175 (Dec. 31, 2007).

various times throughout the FOIA process.¹⁸ This act also created more duties for chief FOIA officers, including requiring them to offer training to agency staff regarding FOIA responsibilities. The act also revised and added new obligations for OGIS, and created the Chief FOIA Officers Council to assist in compliance and efficiency. Further, the act required OMB, in consultation with Justice, to create a consolidated online FOIA request portal that allows the public to submit a request to any agency through a single website.

FOIA Authorizes Agencies to Use Other Federal Statutes to Withhold Information Prohibited from Disclosure

In responding to requests, FOIA authorizes agencies to utilize one of nine exemptions to withhold portions of records, or the entire record. Agencies may use an exemption when it has been determined that disclosure of the requested information would harm an interest related to certain protected areas. These nine exemptions (described in appendix II) can be applied by agencies to withhold various types of information, such as information concerning foreign relations, trade secrets, and matters of personal privacy.

One such exemption, the statutory (b)(3) exemption, specifically authorizes withholding information under FOIA on the basis of a law which:

- requires that matters be withheld from the public in such a manner as to leave no discretion on the issue; or
- establishes particular criteria for withholding or refers to particular types of matters to be withheld; and
- if enacted after October 28, 2009, specifically refers to section 552(b)(3) of title 5, United States Code.

To account for agencies use of the statutory (b)(3) exemptions, FOIA requires each agency to submit, in its annual report to Justice, a complete listing of all statutes that the agency relied on to withhold information under exemption (b)(3). The act also requires that the agency describe for each statute identified in its report (1) the number of occasions on which each statute was relied upon; (2) a description of whether a court has upheld the decision of the agency to withhold information under each such statute; and (3) a concise description of any information withheld.¹⁹

¹⁸ *FOIA Improvement Act of 2016*, Pub. L. No. 114-185, 130 Stat. 538 (2016) (provisions codified at 5 U.S.C. § 552).

¹⁹ 5 U.S.C. § 552(e)(1)(B)(ii).

Further, to provide an overall summary of the statutory (b)(3) exemptions used by agencies in a fiscal year, Justice produces consolidated annual reports that list the statutes used by agencies in conjunction with (b)(3).

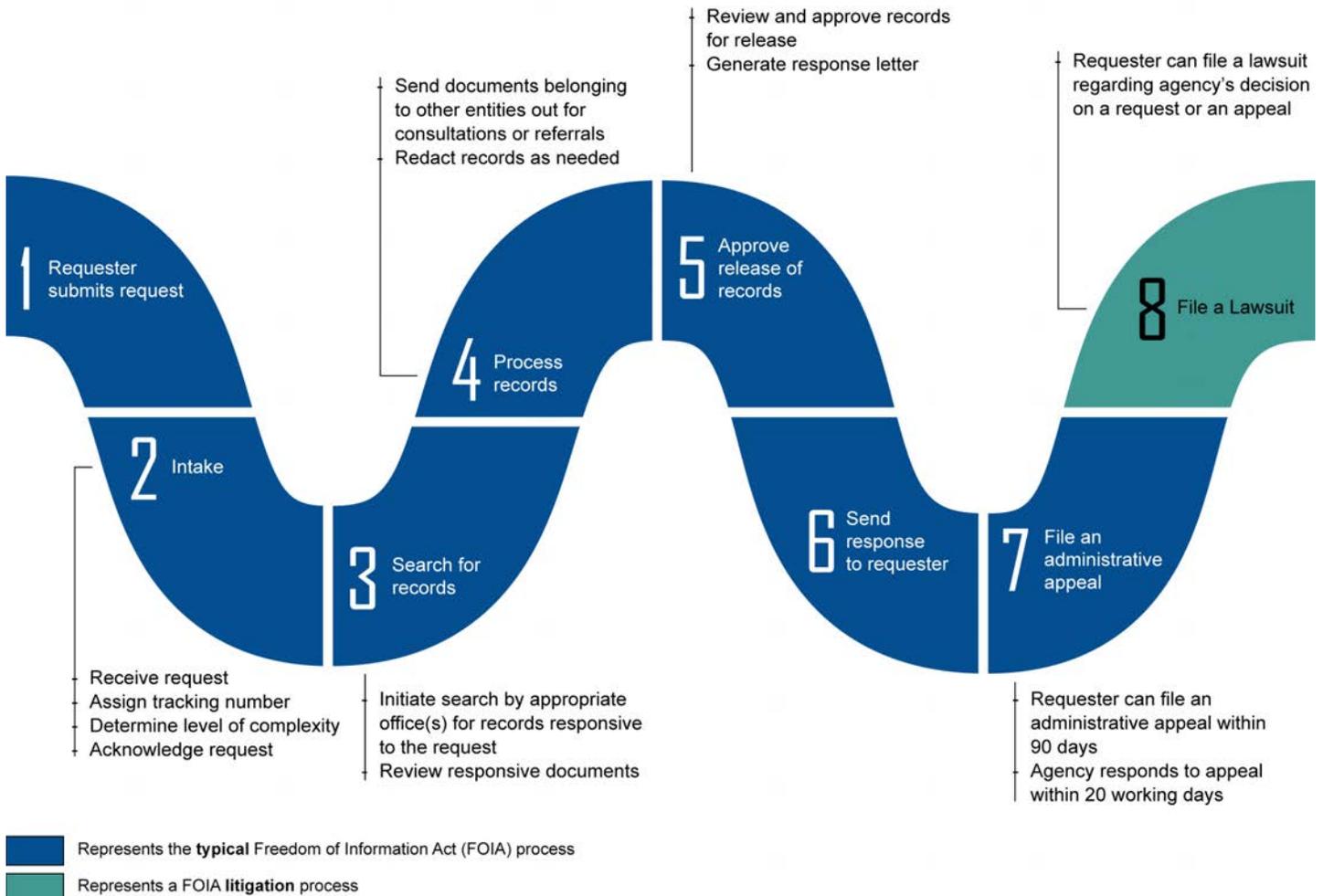
FOIA Request Process

As previously noted, agencies are generally required by the *e-FOIA amendments of 1996* to respond to a FOIA request within 20 working days. Once received, the request is to be processed through multiple phases, which include assigning a tracking number, searching for responsive records, and releasing the records response to the requester.

Also, FOIA allows a requester to challenge an agency's final decision on a request through an administrative appeal or a lawsuit. Agencies generally have 20 working days to respond to an administrative appeal.

Figure 1 provides a simplified overview of the FOIA request and appeals process.

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-18-365

In a typical agency, as indicated, during the intake phase, a request is logged into the agency’s FOIA tracking system, and a tracking number is assigned. The request is then reviewed by FOIA staff to determine its scope and level of complexity.²⁰ The agency then sends a letter or email to the requester acknowledging receipt of the request, with a unique

²⁰Factors 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.

tracking number that the requester can use to check the status of the request.

Next, FOIA staff (noncustodian) begin the search to retrieve the responsive records.²¹ They conduct a search if the agency's records are centralized or route the request to the appropriate program office(s), or do both, as warranted. This step may include requesting that the custodian (owner) of the record search and review paper and electronic records from multiple locations and program offices.

Agency staff then process the responsive records, which includes determining whether a portion or all of any record should be withheld based on FOIA's exemptions.²² If a portion or all of any record is the responsibility of another agency, FOIA staff may consult with the other agency or may send ("refer") the document(s) to that other agency for processing. After processing and redaction, a request is reviewed for errors and to ensure quality. The documents are then released to the requester, either electronically or by regular mail.

FOIA Oversight and Implementation

Responsibility for the oversight of FOIA implementation is spread across several federal offices and other entities. These include Justice's OIP, NARA's OGIS, and the Chief FOIA Officers Council. These oversight offices and the council have taken steps to assist agencies to address the FOIA provisions.

Justice's OIP is responsible for encouraging agencies' compliance with FOIA and overseeing their implementation of the act. In this regard, the office, among other things, provides guidance, compiles information on FOIA compliance, provides FOIA training, and prepares annual summary reports on agencies' FOIA processing and litigation activities. The office also offers FOIA counseling services to government staff and the public.

- **Issuing guidance.** OIP has developed guidance, available on its website, to assist federal agencies by instructing them in how to

²¹ Noncustodians are FOIA personnel who are not considered the custodians (owners) of the records responsive to a FOIA request.

²² Some FOIA requests are closed before reaching this stage, for example, if no responsive documents can be found, if all responsive documents originated with another agency and were referred to that agency for processing, or if, after being notified of fees, the requester is unwilling to pay the estimated fees.

ensure timely determinations on requests, expedite the processing of requests, and reduce backlogs.²³ The guidance also informs agencies on what should be contained in their annual FOIA reports to Justice's Attorney General.

The office also has documented ways for federal agencies to address backlog requests. In March 2009 the Attorney General issued guidance and related policies to encourage agencies to reduce their backlogs of FOIA requests. In addition, in December 2009, OMB issued a memorandum on the *OPEN Government Act*, which called for a reduction in backlogs and the publishing of plans to reduce backlogs. Further, in August 2014 and December 2015, OIP held best practices workshops and issued guidance to agencies on reducing FOIA backlogs and improving timeliness of agencies' responses to FOIA requests. The OIP guidance instructed agencies to obtain leadership support, routinely review FOIA processing metrics, and set up staff training on FOIA.

- **Overseeing agencies' compliance.** OIP collects information on compliance with the act by reviewing agencies' annual FOIA reports and chief FOIA officer reports. These reports describe the number of FOIA requests received and processed in a fiscal year, as well as the total costs associated with processing and litigating requests.
- **Providing training.** OIP provides a full suite of FOIA training for agency FOIA professionals. This training gives instruction on all aspects of FOIA and is designed for all levels of professionals. For example, the office offers an annual training class that provides a basic overview of the act, as well as hands-on courses about the procedural requirements involved in processing a request from start to finish. In addition, it offers a seminar outlining successful litigation strategies for attorneys who handle FOIA cases. OIP also provides agencies customized training upon request.
- **Preparing annual reports.** Every year, OIP prepares three major reports for the public, the President, and/or Congress. The first report, *Summary of Annual FOIA Reports*, is a summary of the information contained in the annual FOIA reports that are prepared by each of the federal agencies subject to the FOIA. The report also provide a statistical breakdown of the government's overall FOIA administration. The second report, *Summary of Agency Chief FOIA Officer Reports*, is a summary of the annual chief FOIA officer reports and an

²³Department of Justice, *OIP Policy: Guidance on Ensuring Timely Determination on Requests for Expedited Processing*, (January 21, 2015).

assessment of agencies' progress in administering FOIA. This report summarizes government-wide efforts to improve FOIA in five key areas of FOIA administration, and it individually scores each agency on several milestones tied to these efforts. The third report, the *Justice FOIA Litigation and Compliance Report*, which is directed to Congress and the President, describes Justice's efforts to oversee and encourage government-wide compliance with FOIA, and includes a list of, and information about, FOIA matters in litigation.

NARA's OGIS was established by the *OPEN Government Act of 2007* as the federal FOIA ombudsman tasked with resolving federal FOIA disputes through mediation as a nonexclusive alternative to litigation. OGIS's responsibilities include reviewing agencies' policies, procedures, and compliance with the statute; identifying methods to improve compliance; and educating its stakeholders about the FOIA process.

The 2016 FOIA amendments required agencies to update response letters to FOIA requesters to include information concerning the roles of OGIS and agency's FOIA public liaisons. As such, OGIS and Justice worked together to develop a response letter template that includes the required language for agency letters. In addition, OGIS, charged with reviewing agency's compliance with FOIA, launched a FOIA compliance program in 2014. OGIS also developed a FOIA compliance self-assessment program, which is intended to help OGIS look for potential compliance issues across federal agencies.

The Chief FOIA Officers Council is co-chaired by the Director of OIP and the Director of OGIS. Council members include senior representatives from OMB, OIP, and OGIS, together with the chief FOIA officers of each agency, among others. The council's FOIA-related responsibilities include:

- developing recommendations for increasing FOIA compliance and efficiency;
- disseminating information about agency experiences, ideas, best practices, and innovative approaches;
- identifying, developing, and coordinating initiatives to increase transparency and compliance; and
- promoting the development and use of common performance measures for agency compliance.

Selected Agencies Collect and Maintain Records That Can Be Subject to FOIA Requests

The 18 agencies selected for our review are charged with a variety of operations that affect many aspects of federal service to the public. Thus, by the nature of their missions and operations, the agencies have responsibility for vast and varied amounts of information that can be subject to a FOIA request. For example, the Department of Homeland Security's (DHS) mission is to protect the American people and the United States homeland. As such, the department maintains information covering, among other things, immigration, border crossings, and law enforcement. As another example, the Department of the Interior's (DOI) mission includes protecting and managing the nation's natural resources and, thus, providing scientific information about those resources. Table 2 provides details on each of the 18 selected agencies' missions and the types of information they maintain.

Table 2: Selected Agencies' Missions and Types of Records Maintained

Agency	Mission	Examples of records maintained
Administrative Conference of the United States	Develop formal recommendations and innovative solutions that make the government work better.	Information about the agency, its projects, and its body of research and recommendations.
American Battle Monuments Commission	Honor the service of the armed forces by designing, constructing, maintaining and operating permanent American cemeteries, and establish, maintain, and approve designs of memorials, markers, and monuments where American armed forces have served beyond our borders.	Final opinions related to the acceptance of private memorials into the Memorial Trust Fund Program and approval of the construction of private memorials.
Broadcasting Board of Governors	Inform, engage, and connect people around the world in support of freedom and democracy.	Procurement actions, audience survey reports, and individual personnel and/or security files.
Department of Homeland Security	Safeguard the American people, the U.S. homeland, and U.S. values.	Information covering immigration, border crossings, law enforcement, natural disasters, and maritime accidents.
Department of the Interior	Protect and manage the nation's natural resources and culture heritage; provide scientific and other information about those resources; and honor its trust responsibilities or special commitments to American Indians, Alaska Natives, and affiliated island communities.	Records ranging from those outlining general personnel rules and practices to highly specific case files and research materials.
Department of Justice	Enforce the law and defend the interests of the U.S. according to the law; ensure public safety against threats foreign and domestic; provide federal leadership in preventing and controlling crime; seek just punishment for those guilty of unlawful behavior; and ensure fair and impartial administration of justice for all Americans.	Information related to matters formally or currently under investigation, cases received and initiated by the department, and investigative and intelligence files.

Agency	Mission	Examples of records maintained
Department of State	Advance the interests of the American people, their safety and economic prosperity, by leading America's foreign policy through diplomacy, advocacy, and assistance.	Records relating to the formulation and execution of U.S. foreign policy and the administration and operations of State and its missions abroad.
Equal Employment Opportunity Commission	Prevent and remedy unlawful employment discrimination and advance equal opportunity for all in the workplace.	Agency reports, policy and regulatory documents, investigative charge files, and appellate decisions.
Federal Deposit Insurance Corporation	Maintain stability and public confidence in the nation's financial system by insuring deposits, examining and supervising financial institutions for safety and soundness and consumer protection, making large and complex financial institutions resolvable, and managing receiverships.	Information related to assets obtained from failed financial institutions and claims data supporting the closure of failed financial institutions.
Federal Trade Commission	Protect consumers by preventing anticompetitive, deceptive, and unfair business practices, enhancing informed consumer choice and public understanding of the competitive process, and accomplishing this without unduly burdening legitimate business activity.	Consumer complaints, settlement agreements, competition/antitrust, and privacy assessments about companies and company officials.
National Aeronautics and Space Administration	Lead an innovative and sustainable program of exploration with commercial and international partners to enable human expansion across the solar system and bring new knowledge and opportunities back to earth. Support growth of the nation's economy in space and aeronautics, increase understanding of the universe and the nation's place in it, work with industry to improve America's aerospace technologies, and advance American leadership.	Current and former contracts with the space centers, technical reports, and information related to space accidents.
National Archives and Records Administration	Provide public access to federal government records in its custody and control.	Agency operational records and archival records received from other federal agencies including census records, federal prison records, immigration records, and presidential records.
National Transportation Safety Board	Make transportation safer by conducting independent accident investigations, advocating safety improvements, and deciding pilots' and mariners' certificate appeals.	Administrative investigation reports, documentation related to accident investigations, and final case decisions of the agency.
Office of Management and Budget	Assist the President in meeting his policy, budget, management, and regulatory objectives and to fulfill the agency's statutory responsibilities.	Information pertaining to matters issued, adopted, or promulgated by OMB, including the federal budget, OMB Circulars, and other policies and management documents.
Pension Benefit Guaranty Corporation	Enhance retirement security by preserving and encouraging the continuation of private pension plans and protecting the benefits of workers and retirees in traditional pension plans.	Opinion letters regarding the provisions of Title IV of the <i>Employment Retirement Income Security Act</i> and decisions of the appeal board that resolve specific disputes involving individual parties.

Agency	Mission	Examples of records maintained
Tennessee Valley Authority	Improve the quality of life in a seven-state region through the integrated management of the region's resources.	Policy statements adopted by the agency and final opinions rendered in the adjudication of administrative cases.
U.S. African Development Foundation	Support African-led development that grows community enterprises by providing seed capital and technical support.	Recent and active project grants and foreign assistance investments for federal programs.
U.S. Agency for International Development	Promote and demonstrate democratic values abroad, and advance a free, peaceful, and prosperous world. In support of America's foreign policy, the agency leads the U.S. Government's international development and disaster assistance through partnerships and investments that save lives, reduce poverty, strengthen democratic governance, and help people emerge from humanitarian crises and progress beyond assistance.	Records that document the implementation of various capital assistance projects.

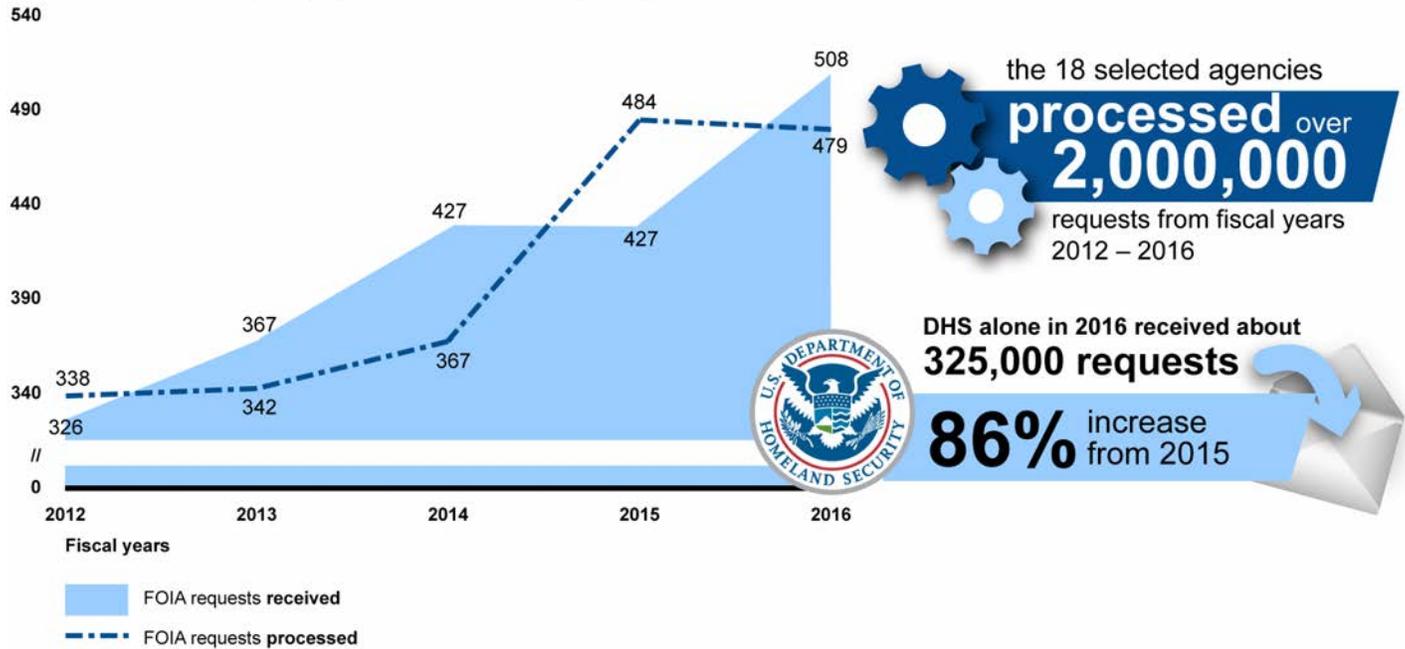
Source: GAO analysis of agency data. | GAO-18-365

The 18 selected agencies reported that they received and processed more than 2 million FOIA requests from fiscal years 2012 through 2016. Over this 5-year period, the number of reported requests received fluctuated among the agencies. In this regard, some agencies saw a continual rise in the number of requests, while other agencies experienced an increase or decrease from year to year. For example, from fiscal years 2012 through 2014, DHS saw an increase in the number of requests received (from 190,589 to 291,242), but in fiscal year 2015, saw the number of requests received decrease to 281,138. Subsequently, in fiscal year 2016, the department experienced an increase to 325,780 requests received.

In addition, from fiscal years 2012 through 2015, the reported numbers of requests processed by the selected agencies showed a relatively steady increase. However, in fiscal year 2016, the reported number of requests processed by these agencies declined. Further, figure 2 provides a comparison of the total number of requests received and processed in this 5-year period.

Figure 2: Freedom of Information Act Requests Received and Processed by 18 Selected Federal Agencies during Fiscal Years 2012-2016

Freedom of Information Act (FOIA) requests for the 18 selected agencies (in thousands)



Source: GAO analysis of FOIA.gov data from fiscal years 2012-2016. | GAO-18-365

Selected Agencies Implemented the Majority of FOIA Requirements Reviewed

Among other things, the *FOIA Improvement Act of 2016* and the *OPEN Government Act of 2007*²⁴ call for agencies to (1) update response letters, (2) implement tracking systems, (3) provide FOIA training, (4), provide records online, (5) designate chief FOIA officers, and (6) update and publish timely and comprehensive regulations. The 18 agencies that we included in our review had implemented the majority of the 6 selected FOIA requirements. Specifically,

- 18 agencies updated response letters,
- 16 agencies implemented tracking that was compliant with requirements for people with disabilities
- 18 agencies provided FOIA training for agency staff
- 15 agencies provided records online,
- 13 agencies designated chief FOIA officers, and
- 5 agencies published their updated FOIA regulations by the required due date, and 8 agencies did so after the due date.

Figure 3 summarizes the extent to which the 18 agencies implemented the selected FOIA requirements.

Beyond these selected agencies, Justice's OIP and OMB also had taken steps to develop a government-wide FOIA request portal that is intended to allow the public to submit a request to any agency from a single website.

²⁴*FOIA Improvement Act of 2016*, Pub. L. No. 114-185, 130 Stat. 538 (2016) (provisions codified at 5 U.S.C. § 552) and Pub. L. No. 110-175 (Dec. 31, 2007).

Figure 3: Extent to Which the 18 Agencies Implemented the Selected FOIA Requirements

	Update response letters	Implement tracking system	Provide FOIA training	Provide required records online	Designate chief FOIA officer at appropriate level	Update and publish timely and comprehensive regulations
Administrative Conference of the United States	●	●	●	●	●	●
American Battle Monuments Commission	●	●	●	●	○	○
Broadcasting Board of Governors	●	●	●	●	●	○
Department of Homeland Security	●	●	●	●	●	●
Department of Justice	●	●	●	●	●	●
Department of State	●	●	●	●	●	○
Department of the Interior	●	●	●	●	●	●
Equal Employment Opportunity Commission	●	●	●	●	○	●
Federal Deposit Insurance Corporation	●	●	●	●	●	●
Federal Trade Commission	●	●	●	●	○	●
National Aeronautics and Space Administration	●	●	●	●	●	○
National Archives and Records Administration	●	●	●	●	●	●
National Transportation Safety Board	●	●	●	●	●	●
Office of Management and Budget	●	●	●	●	○	○
Pension Benefit Guaranty Corporation	●	●	●	●	○	●
Tennessee Valley Authority	●	●	●	●	●	●
U.S. Agency for International Development	●	●	●	●	●	●
U.S. African Development Foundation	●	●	●	●	●	●
Total	18	16	18	15	13	5

● Implemented ● Partially implemented ○ Not implemented

Source: GAO analysis of selected agencies' FOIA compliance. | GAO-18-365

Selected Agencies Had Updated Their FOIA Response Letters

The 2016 amendments to FOIA required agencies to include specific information in their responses when making their determinations on requests. If part of a request is denied, for example, agencies must inform requesters that they may

- seek assistance from the FOIA public liaison of the agency or OGIS,
- file an appeal to an adverse determination within a period of time that is not less than 90 days after the date of such adverse determination; and
- seek dispute resolution services from the FOIA public liaison of the agency or OGIS.

Among the 18 selected agencies, all had updated their FOIA response letters to include this required information.

All Selected Agencies Had Implemented FOIA Tracking Systems and Most Were Compliant with Requirements for People with Disabilities

Various FOIA amendments and guidance call for agencies to use automated systems to improve the processing and management of requests. In particular, the *OPEN Government Act of 2007* amended FOIA to require that federal agencies establish a system to provide individualized tracking numbers for requests that will take longer than 10 days to process and establish telephone or Internet service to allow requesters to track the status of their requests.²⁵

Further, the President's January 2009 Freedom of Information Act memorandum instructed agencies to use modern technology to inform citizens about what is known and done by their government.²⁶ In addition, FOIA processing systems, like all automated information technology systems, are to comply with the requirements of Section 508 of the Rehabilitation Act of 1973 (Rehabilitation act (as amended)). This act requires federal agencies to make their electronic information accessible to people with disabilities.

Each of the 18 selected agencies had implemented a system that provides capabilities for tracking requests received and processed,

²⁵The *Openness Promotes Effectiveness in our National (OPEN) Government Act of 2007*, Pub. L. No. 110-175 (Dec. 31, 2007).

²⁶The White House, *Freedom of Information Act*, Presidential Memorandum (Jan. 21, 2009).

including an individualized number for tracking the status of a request. Specifically,

- Ten agencies used commercial automated systems, (DHS, EEOC, FDIC, FTC, Justice, NARA, NASA, NTSB, Pension Benefit Guaranty Corporation, and USAID).
- Three agencies developed their own agency systems (State, DOI, and TVA).
- Five agencies used Microsoft Excel or Word to track requests (Administrative Conference of the United States, American Battle Monuments Commission, Broadcasting Board of Governors, OMB, and U.S. African Development Foundation).

Further, all of the agencies had established telephone or Internet services to assist requesters in tracking the status of requests; and they used modern technology (e.g., mobile applications) to inform citizens about FOIA. For example, the commercial systems allow requesters to submit a request and track the status of that request online. In addition, DHS developed a mobile application that allows FOIA requesters to submit requests and check the status of existing requests.

However, while 16 agencies FOIA tracking systems were compliant with requirements of Section 508 of the Rehabilitation Act (as amended), two agencies—TVA and DOI—had systems that were not compliant. According to TVA officials, the agency does not have a 508 compliance certification. DOI officials stated that its FOIA system will undergo 508 compliance testing but did provide a date for completion of the testing. Having systems that are compliant with Section 508 of the Rehabilitation Act (as amended) is essential to ensure that the department's electronic information is accessible to all individuals, including those with disabilities.

Agencies' Chief FOIA Officers Have Offered FOIA Training

The 2016 FOIA amendments require agencies' chief FOIA officers to offer training to agency staff regarding their responsibilities under FOIA. In addition, Justice's OIP has advised every agency to make such training available to all of their FOIA staff at least once each year. The office has also encouraged agencies to take advantage of FOIA training opportunities available throughout the government.

The 18 selected agencies' chief FOIA officers offered FOIA training opportunities to staff in fiscal years 2016 and 2017. For example:

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- Twelve agencies provided training that gave an introduction and overview of FOIA (the American Battle Monuments Commission, Broadcasting Board of Governors, EEOC, Justice, FDIC, FTC, NARA, Pension Benefit Guaranty Corporation, State, TVA, U.S. African Development Foundation, and USAID).
 - Four agencies offered training for their agencies' online FOIA tracking and processing systems (DOI, EEOC, NTSB, and Pension Benefit Guaranty Corporation).
 - Five agencies provided training on responding to, handling, and processing FOIA requests (DHS, DOI, EEOC, Justice, and State).
 - Seven agencies offered training on understanding and applying the exemptions under FOIA (the Broadcasting Board of Governors, EEOC, FDIC, FTC, Justice, State, and U.S. African Development Foundation).
 - Four agencies offered training on the processing of costs and fees (EEOC, Justice, NASA and TVA).

The Majority of Selected Agencies Posted Required Records Online

Memorandums from both the President and the Attorney General in 2009 highlighted the importance of online disclosure of information and further directed agencies to make information available without a specific FOIA request.²⁷ Further, FOIA required online access to government information and required agencies to make information available to the public in electronic form for four categories:

- agency final opinions and orders,
- statements of policy,
- administrative staff manuals and staff instructions that affect the public, and
- frequently requested records.

While all 18 agencies that we reviewed posted records online, only 15 of them had posted all categories of information, as required by the FOIA. Specifically, 7 agencies—the American Battle Monuments Commission, the Pension Benefit Guaranty Corporation, and EEOC, FDIC, FTC, Justice, and State—had, as required, made records in all four categories

²⁷The Department of Justice, *The Freedom of Information Act*, Attorney General Memorandum (Mar. 19, 2009) and the White House, *Freedom of Information Act*, Presidential Memorandum (Jan. 21, 2009).

publicly available online. In addition, 5 agencies that were only required to publish online records in 3 categories—the Administrative Conference of the United States, Broadcasting Board of Governors, DHS, OMB, and USAID— had done so.²⁸ Further, 3 agencies that were only required to publish online records in two of the categories—U.S. African Development Foundation, NARA, and TVA—had done so. The remaining 3 agencies—DOI, NASA, and NTSB—had posted records online for three of four required categories.

Regarding why the three agencies did not post all of their four required categories of online records, DOI officials stated that the agency does not make publicly available all FOIA records that have been requested three or more times, as it does not have the time to post all such records that have been requested. NASA officials explained that, while the agency issues final opinions, it does not post them online. NTSB officials said they try to post information that is frequently requested, but they do not post the information on a consistent basis.

Making the four required categories of information available in electronic form is an important step in allowing the public to easily access to government documents. Until these agencies make all required categories of information available in electronic form, they cannot ensure that they are providing the required openness in government.

Most Agencies Designated a Senior Official as a Chief FOIA Officer

In 2005, the President issued an executive order that established the role of a chief FOIA officer.²⁹ In 2007, amendments to FOIA required each agency to designate a chief FOIA officer who shall be a senior official at the assistant secretary or equivalent level.

Of the 18 selected agencies, 13 agencies have chief FOIA officers who are senior officials at the assistant secretary or equivalent level. The assistant secretary level is comparable to senior executive level positions at levels III, IV, and V.³⁰ Specifically,

²⁸Not all agencies offer final opinions, or have staff manuals that are of interest to the public. In these circumstances, we determined this requirement not to be applicable to them.

²⁹The White House, *Improving Agency Disclosure of Information*, Executive Order 13392 (December 19, 2005).

³⁰5 U.S.C. § 5314-16.

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- State has designated its Assistant Secretary of Administration, Bureau of Administration;
 - DOI and NTSB had designated their Chief Information Officers;
 - Administrative Conference of the United States, Broadcasting Board of Governors, FDIC, NARA, and U.S. African Development Foundation have designated their general counsels;
 - Justice, NASA, TVA, and USAID designated their Associate Attorney General, Associate Administrator for Communications, the Vice President for Communications, and the Assistant Administrator for the Bureau of Management, respectively; and
 - DHS designated its Chief Privacy Officer.

However, 5 agencies—American Battle Monuments Commission, EEOC, Pension Benefit Guaranty Corporation, FTC, and OMB—do not have chief FOIA officers who are senior officials at the assistant secretary or equivalent level. According to officials from 4 of these agencies, the agencies all have chief FOIA officers and officials believed they had designated the appropriate officials. Officials at FTC acknowledged that the chief FOIA officer position is not designated at a level equivalent to an assistant secretary but a senior position within the agency. However, while there are chief FOIA officers at these agencies, until the chief FOIA officers are designated at the Assistant Secretary or equivalent level, they will lack assurance regarding the necessary authority to make decisions about agency practices, personnel, and funding.

Most Selected Agencies Updated Regulations as Required to Inform the Public of Their FOIA Operations

FOIA requires federal agencies to publish regulations in the *Federal Register* that inform the public of their FOIA operations.³¹ Specifically, in 2016, FOIA was amended to require agencies to update their regulations regarding their FOIA operations. To assist agencies in meeting this requirement, OIP created a FOIA regulation template. Among other things, OIP's guidance encouraged agencies to:

- describe their dispute resolution process,
- describe their administrative appeals process for response letters of denied requests,

³¹Published by NARA, the *Federal Register* is the federal government's official daily publication for rules, proposed rules, and notices of federal agencies and organization, as well as the executive orders and other presidential documents.

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- notify requesters that they have a minimum of 90 days to file an administrative appeal,
 - include a description of what happens when there are unusual circumstances, as well as restriction on agencies' abilities to charge certain fees when FOIA's times limits are not met;³² and
 - update the regulations in a timely manner (i.e., update regulations by 180 days after the enactment of the 2016 FOIA amendment).

Five agencies in our review—DHS, DOI, FDIC, FTC, and USAID—addressed all five requirements in updating their regulations. In addition, seven agencies addressed four of the five requirements: the Administrative Conference of the United States, EEOC, Justice, NARA, NTSB, Pension Benefit Guaranty Corporation, and TVA did not update their regulations in a timely manner.

Further, four agencies addressed three or fewer requirements (U.S. African Development Foundation, State, NASA, and Broadcasting Board of Governors) and two agencies (American Battle Monuments Commission and OMB) did not address any of the requirements. Figure 4 indicates the extent to which the 18 agencies had addressed the five selected requirements.

³²According to Justice guidance, an unusual circumstance is defined as, for example, an agency's need to search for, collect, and appropriately examine a voluminous amount of separate and distinct records which are demanded in a single request. An unusual circumstances fee may be charged if, among other things, a timely notice of unusual circumstances is provided to the requester and a response to the request is made within the 10 day extension.

Figure 4: Extent to Which Selected Agencies' Addressed 2016 Freedom of Information Act (FOIA) Requirements and Office of Information Policy's Guidance in Updating Their Regulations

	Described dispute resolution services	Described appeals process for denied requests	Notified requester of 90 days for appeal	Informed requester of unusual circumstance fees	Updated regulations in a timely manner
Administrative Conference of the United States	●	●	●	●	○
American Battle Monuments Commission	○	○	○	○	○
Broadcasting Board of Governors	○	●	○	○	○
Department of Homeland Security	●	●	●	●	●
Department of Justice	●	●	●	●	○
Department of State	●	●	○	●	○
Department of the Interior	●	●	●	●	●
Equal Employment Opportunity Commission	●	●	●	●	○
Federal Deposit Insurance Corporation	●	●	●	●	●
Federal Trade Commission	●	●	●	●	●
National Aeronautics and Space Administration	○	●	○	●	○
National Archives and Records Administration	●	●	●	●	○
National Transportation Safety Board	●	●	●	●	○
Office of Management and Budget	○	○	○	○	○
Pension Benefit Guaranty Corporation	●	●	●	●	○
Tennessee Valley Authority	●	●	●	●	○
U.S. Agency for International Development	●	●	●	●	●
U.S. African Development Foundation	●	●	●	○	○
Total	14	16	13	14	5

● Implemented ○ Not implemented

Source: GAO analysis of selected agencies' FOIA compliance. | GAO-18-365

Agencies that did not address all five requirements provided several explanations as to why their regulations were not updated as required:

- American Battle Monuments Commission officials stated that while they updated their draft regulation in August 2017, it is currently

unpublished due to internal reviews with the commission's General Counsel in preparation for submission to the Federal Register. No new posting date has been established. American Battle Monuments Commission last updated its regulation in February 26, 2003.

- State officials noted that their regulation was updated 2 months prior to the new regulation requirements but did not provide a specific reason for not reissuing their regulation. As such, they explained that they have a working group reviewing their regulation for updates, with no timeline identified. State last updated its regulation on April 6, 2016.
- NASA officials did not provide a reason for not updating their regulation as required. Officials did, however, state that their draft regulation is with NASA's Office of General Counsel for review. NASA last updated its regulations on August 11, 2017.
- Broadcasting Board of Governors officials did not provide a reason for not updating their regulation as required. Officials did, however, note that the agency is in the process of updating its regulation and anticipates it will complete this update by the end of 2018. The Broadcasting Board of Governors last updated its regulation on February 2, 2002.
- OMB officials did not provide a reason for not updating the agency's regulation as required. Officials did, however, state that due to a change in leadership they do not have a time frame for updating their regulation. OMB last updated its regulation on May 27, 1998.
- The chief FOIA officer at the U.S. African Development Foundation stated that, while the agency had updated and submitted its regulation to be published in December 2016, the regulation was unpublished due to an error that occurred with the acknowledgement needed to publish the regulation in the *Federal Register*. The regulation was subsequently published on February 3, 2017. The official further noted that when the agency responds to FOIA requests, it has not charged a fee for unusual circumstances, and, therefore, agency officials did not believe they had to disclose information regarding fees in their regulation.

Until these six agencies publish updated regulations that address the necessary requirements, as called for in FOIA and OIP guidance, they likely will be unable to provide the public with required regulatory and procedural information to ensure transparency and accountability in the government.

Justice and OMB Have Taken Steps to Develop an Online FOIA Request Portal

The 2016 FOIA amendments required OMB to work with Justice to build a consolidated online FOIA request portal. This portal is intended to allow the public to submit a request to any agency from a single website and include other tools to improve the public's access to the benefits of FOIA. Further, the act required OMB to establish standards for interoperability between the consolidated portal and agency FOIA systems. The 2016 FOIA amendments did not provide a time frame to develop the portal and standards.

With OMB's support, Justice has developed an online portal. In this regard, Justice's OIP officials stated that the National FOIA Portal provides the functionality required by FOIA, including the ability to make a request to any agency and the technical framework for interoperability. According to OIP officials, in partnership with OMB, OIP was able to identify a dedicated funding source to operate and maintain the portal to ensure its success in the long term, with major agencies sharing in the costs to operate, maintain, and fund any future enhancements designed to improve FOIA processes. The first iteration of the National FOIA Portal launched on Justice's FOIA.gov website on March 8, 2018.

Agencies Have Methods to Reduce Backlogged Requests, but Their Efforts Have Shown Mixed Results

The 18 selected agencies in our review had FOIA request backlogs of varying sizes, ranging from no backlogged requests at some agencies to 45,000 or more of requests at other agencies. Generally, the agencies with the largest backlogs had received the most requests. In an effort to aid agencies in reducing their backlogs, Justice's OIP identified key practices that agencies can use. However, while the agencies reported using these practices and other methods, few of them managed to reduce their backlogs during the period from fiscal year 2012 through 2016. In particular, of the four agencies with the largest backlogs, only one—NARA—reduced its backlog. Agencies attributed their inability to decrease backlogs to the increased number and complexity of requests, among other factors. However, agencies also lack comprehensive plans to implement practices on an ongoing basis.

Agencies Have FOIA Request Backlogs of Varying Sizes, and Most Increased from Fiscal Year 2012 through 2016

The selected agencies in our review varied considerably in the size of their FOIA request backlogs. Specifically, from fiscal year 2012 through 2016, of the 18 selected agencies

- 10 reported a backlog of 60 or fewer requests, and of these 10 agencies, 6 reported having no backlog in at least 1 year.
- 4 agencies had backlog numbers between 61 and 1,000 per year; and
- 4 agencies had backlogs of over 1,000 requests per year.

The four agencies with backlogs of more than 1,000 requests for each year we examined were Justice, NARA, State and DHS. Table 3 shows the number of requests and the number of backlogged request for the 18 selected agencies during the 5-year period.

Table 3: Selected Agencies' Freedom of Information Act (FOIA) Requests and Backlogs, Fiscal Years 2012-2016 (organized by the number of backlogged requests for fiscal year 2016, largest to smallest)

Agency		FY12	FY13	FY14	FY15	FY16
Department of Homeland Security	Requests	190,589	231,534	291,242	281,138	325,780
	Backlog	28,553	51,761	103,480	35,374	46,788
Department of State	Requests	18,521	18,753	19,696	24,837	27,961
	Backlog	10,464	8,669	10,045	20,626	22,664
Department of Justice	Requests	69,456	70,081	64,488	67,783	73,103
	Backlog	5,196	6,990	8,938	9,744	10,644
National Archives and Records Administration	Requests	13,345	12,243	22,237	22,555	49,966
	Backlog	7,610	6,600	9,361	8,325	2,932
Equal Employment Opportunity Commission	Requests	18,726	18,946	17,213	17,883	17,680
	Backlog	131	190	195	451	792
Department of the Interior	Requests	6,168	6,325	5,764	6,792	6,428
	Backlog	449	423	578	571	677
National Transportation Safety Board	Requests	294	466	589	566	471
	Backlog	62	147	288	679	602
U.S. Agency for International Development	Requests	267	372	373	330	377
	Backlog	201	233	265	301	318
Office of Management and Budget	Requests	191	222	152	198	154
	Backlog	6	41	27	42	60
Tennessee Valley Authority	Requests	188	162	165	198	212
	Backlog	12	10	9	11	13

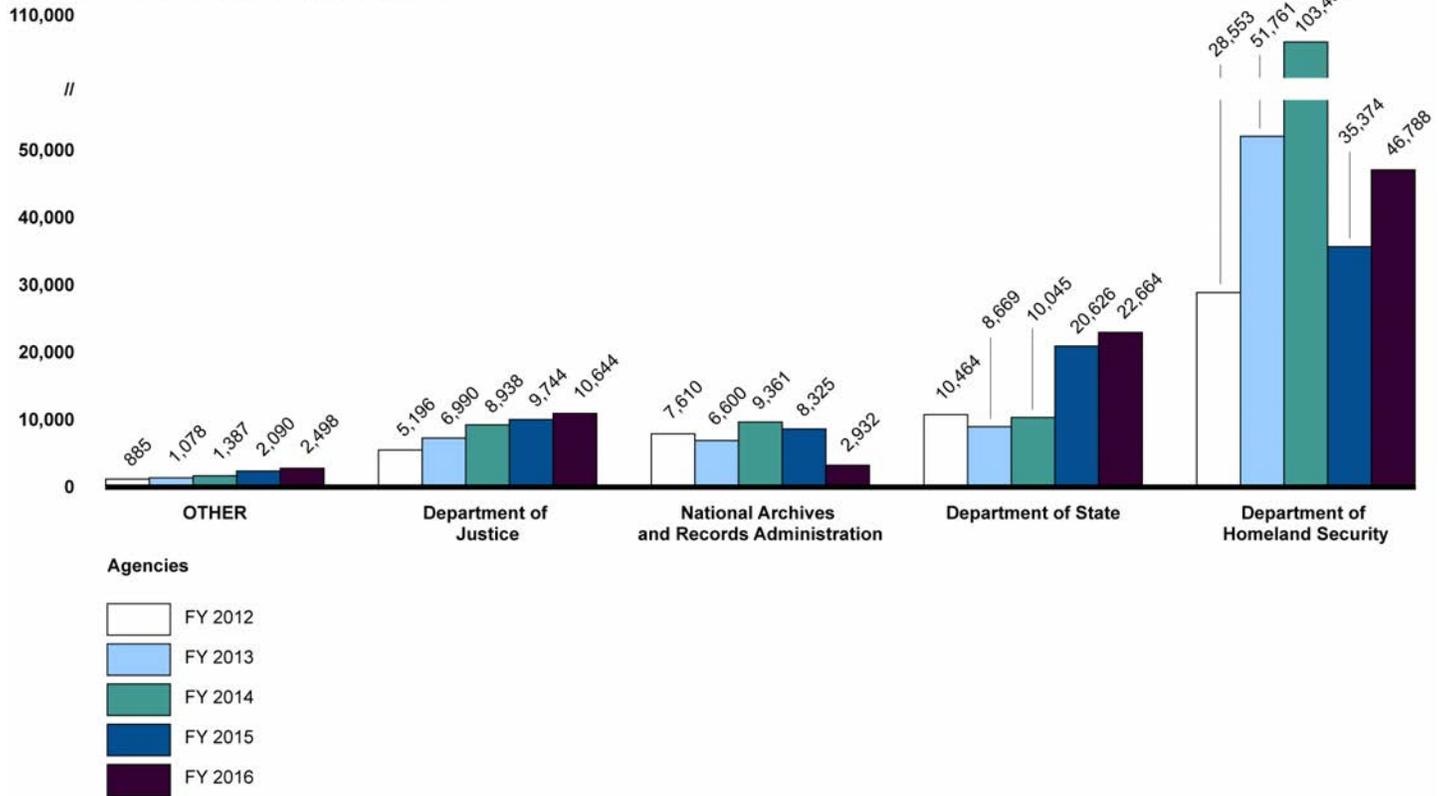
Agency		FY12	FY13	FY14	FY15	FY16
Federal Trade Commission	Requests	1,415	1,447	1,440	1,531	1,260
	Backlog	1	3	7	8	12
Broadcasting Board of Governors	Requests	40	58	138	45	54
	Backlog	0	11	7	4	12
National Aeronautics and Space Administration	Requests	886	873	792	923	834
	Backlog	22	11	11	10	8
Federal Deposit Insurance Corporation	Requests	931	732	647	630	465
	Backlog	0	0	0	13	4
Pension Benefit Guaranty Corporation	Requests	5,314	5,721	2,094	2,278	3,713
	Backlog	0	8	0	0	0
American Battle Monuments Commission	Requests	9	3	9	5	17
	Backlog	1	1	0	0	0
Administrative Conference of the United States	Requests	15	19	17	26	25
	Backlog	0	0	0	0	0
U.S. African Development Foundation	Requests	4	4	14	2	4
	Backlog	0	0	0	0	0
Total	Requests	326,359	367,961	427,070	427,720	508,504
	Backlog	52,708	75,098	133,211	76,159	85,526

Source: GAO analysis of agencies' data. | GAO-18-365

Over the 5-year period, 14 of the 18 selected agencies experienced an increase in their backlogs in at least 1 year. By contrast, 2 agencies (Administrative Conference of the United States and the U.S. African Development Foundation) reported no backlogs, and 3 agencies (American Battle Monument Commission, NASA and NARA) reported reducing their backlogs. Further, of the 4 agencies with the largest backlogs (DHS, State, Justice, and NARA) only NARA reported a backlog lower in fiscal year 2016 than in fiscal year 2012. Figure 5 shows the trends for the 4 agencies with the largest backlogs, compared with the rest of the 18 agencies.

Figure 5: Number of Backlogged Freedom of Information Act (FOIA) Requests for Selected Agencies, Fiscal Years 2012-2016

Number of backlogged requests by fiscal year (FY)



Source: GAO analysis of FOIA.gov data. | GAO-18-365

The 14 agencies included in the “other” category are Equal Employment Opportunity Commission, Department of the Interior, National Transportation Safety Board, U.S. Agency for International Development, Office of Management and Budget, Tennessee Valley Authority, Federal Trade Commission, Broadcasting Board of Governors, National Aeronautics and Space Administration, Federal Deposit Insurance Corporation, Pension Benefit Guaranty Corporation, American Battle Monuments Commission, Administrative Conference of the United States, and U. S. African Development Foundation.

In most cases, agencies with small or no backlogs (60 or fewer) also received relatively few requests. For example, the Administrative Conference of the United States and the U.S. African Development Foundation reported no backlogged requests during any year but also received fewer than 30 FOIA requests a year. The American Battle Monuments Commission also received fewer than 30 requests a year and only reported 1 backlogged request per year in 2 of the 5 years examined. However, the Pension Benefit Guaranty Corporation and FDIC received thousands of requests over the 5-year period, but maintained

zero backlogs in a majority of the years examined. PBGC received a total of 19,120 requests during the 5-year period and only reported a backlog of 8 requests during 1 year, fiscal year 2013. FDIC received a total of 3,405 requests during the 5-year period and reported a backlog of 13 requests in fiscal year 2015 and 4 in fiscal year 2016.

The four agencies with backlogs of 1,000 or more (Justice, NARA, State, and DHS) received significantly more requests each year. For example, NARA received between about 12,000 and 50,000 requests each year, while DHS received from about 190,000 to 325,000 requests. In addition, the number of requests NARA received in fiscal year 2016 was more than double the number received in fiscal year 2012. DHS received the most requests of any agency—a total of 1,320,283 FOIA requests over the 5-year period.

Agencies Identified a Variety of Methods to Reduce Backlogs, but Few Saw Reductions

The Attorney General's March 2009 memorandum called on agency chief FOIA officers to review all aspects of their agencies' FOIA administration and report to Justice on steps that have been taken to improve FOIA operations and disclosure. Subsequent Justice guidance required agencies to include in their chief FOIA officer reports information on their FOIA request backlogs, including whether the agency experienced a backlog of requests; whether that backlog decreased from the previous year; and, if not, reasons the backlog did not decrease. In addition, agencies that had more than 1,000 backlogged requests in a given year were required to describe their plans to reduce their backlogs. Beginning in calendar year 2015, these agencies were to describe how they implemented their plans from the previous year and whether that resulted in a backlog reduction.

In addition, Justice's OIP identified best practices for reducing FOIA backlogs. The office held a best practices workshop on reducing backlogs and improving timeliness. The office then issued guidance in August 2014 that highlighted key practices to improve the quality of a FOIA program. OIP identified the following methods in its best practices guidance.

- **Utilize resources effectively.** Agencies should allocate their resources effectively by using multi-track processing, making use of available technology, and shifting priorities and staff assignments to address needs and effectively manage workloads.
- **Routinely review metrics.** Agencies should regularly review their FOIA data and processes to identify challenges or barriers.

Additionally, agencies should identify trends to effectively allocate resources, set goals for staff, and ensure needs are addressed.

- **Emphasize staff training.** Agencies should ensure FOIA staff are properly trained so they can process requests more effectively and with more autonomy. Training and engagement of staff can also solidify the importance of the FOIA office's mission.
- **Obtain leadership support.** Agencies should ensure that senior management is involved in and supports the FOIA function in order to increase awareness and accountability, as well as make it easier to obtain necessary resources or personnel.

Agencies identified a variety of methods that they used to address their backlogs. These included both the practices identified by Justice, as well as additional methods.

Ten agencies maintained relatively small backlogs of 60 or fewer requests and were thus not required to develop plans for reducing backlogs. However, 2 of these 10 agencies, who both received significant numbers of requests, described various methods used to maintain a small backlog:

- PBGC officials credit their success to training, not only for FOIA staff, but all Incoming personnel, while also awarding staff for going above and beyond in facilitating FOIA processing. Pension Benefit Guaranty Corporation has incorporated all the best practices identified by OIP, including senior leadership involvement that supports FOIA initiatives and program goals, routine review of metrics to optimize workflows, effective utilization of resources and staff training.
- According to FDIC officials, their overall low backlog numbers are attributed to a trained and experienced FOIA staff, senior management involvement, and coordination among FDIC divisions. However, FDIC stated the reason for the increase in backlogs in fiscal year 2015 was due to increased complexity of requests.

The 4 agencies with backlogs greater than 60 but fewer than 1,000 (EEOC, DOI, NTSB, and USAID) reported using various methods to reduce their backlogs. However, all 4 showed an increase over the 5-year period.

- EEOC officials stated that they had adopted practices recommended by OIP, such as multi-track processing, reviewing workloads to ensure sufficient staff, and using temporary assignments to address needs. However, EEOC has seen a large increase in its backlog numbers, going from 131 in fiscal year 2012 to 792 in fiscal year 2016. EEOC

attributed the rise in backlogs to an increase in requests received, loss of staff, and the complex and voluminous nature of requests.

- DOI, according to agency officials, has also tried to incorporate reduction methods and best practices, including proactively releasing information that may be of interest to the public, thus avoiding the need for a FOIA request; enhanced training for its new online FOIA tracking and processing system; improved interoffice collaboration; production of monthly reports on backlogs and of weekly charts on incoming requests, to heighten awareness among leadership; and monitoring trends. Yet DOI has seen an increase in its backlog, from 449 in fiscal year 2012 to 677 in fiscal year 2016, an increase of 51 percent. DOI attributed the increase to the loss of FOIA personnel, an increase in the complexity of requests, an increase in FOIA-related litigation, an increase in incoming requests, and the fact that staff have additional duties.
- Officials at NTSB stated that the board utilized contractors and temporary staff assignments to augment staffing and address backlogs. Despite the effort, NTSB saw a large increase in backlogs, from 62 in fiscal year 2012 to 602 in fiscal year 2016. Officials stated that the reason for the increase was an increased complexity of requests, including requests for “any and all” documentation related to a specific subject, often involving hundreds to thousands of pages per request.
- According to USAID officials, the agency conducts and reviews inventories of its backlog and requests to remove duplicates and closed cases; groups and classifies requests by necessary actions and responsive offices; and initiates immediate action. In addition, USAID seeks to identify tools and solutions to streamline records for review and processing. However, its backlog numbers have continually increased, from 201 in fiscal year 2012 to 318 in fiscal year 2016. USAID attributes that increase to an increase in the number of requests, the loss of FOIA staff, an increased complexity and volume of requests, competing priorities, and world events that may drive surges in requests.

Of the four agencies with the largest backlogs, all reported taking steps that, in some cases, included best practices identified by OIP; however, only NARA successfully reduced its backlog by the end of the 5-year period.

- Justice officials noted that the department made efforts to reduce its backlog by incorporating best practices. Specifically, OIP worked with components within Justice through the Component Improvement

Initiative to identify causes contributing to a backlog and assist components in finding efficiencies and overcoming challenges. The chief FOIA officer continued to provide top-level support to reduction efforts by convening the department's FOIA Council to manage overall FOIA administration. In addition, many of the components created their own reduction plans, which included hiring staff, utilizing technology, and providing more training, requester outreach, and multitrack processing.

However, despite these efforts, the number of backlogs steadily increased during the 5-year period, from 5,196 in fiscal year 2012 to 10,644 in fiscal year 2016, an overall increase of 105 percent. Justice attributes the increase in backlogs to several challenges, including an increase in incoming requests and an increase in the complexity of those requests. Other challenges that Justice noted were staff shortages and turnover, reorganization of personnel roles, time to train incoming staff, and the ability to fill positions previously held by highly qualified professionals.

- NARA officials stated that one key step NARA took was to make corrections in its Performance Measurement and Reporting System. They noted that this system previously comingled backlogged requests with the number of pending FOIA requests, skewing the backlog numbers higher. The improvements included better accounting for pending and backlogged cases, distinguishing between simple and complex requests, and no longer counting as "open" cases that were closed within 20 days, but not until the beginning of the following fiscal year. In addition, officials also stated that the FOIA program offices have been successful at working with requesters to narrow the scope of requests.

NARA also stated that it was conducting an analysis of FOIA across the agency to identify any barriers in the process. Officials also identified other methods, including using multi-track processing, shifting priorities to address needs, improved communication with agencies, proactive disclosures, and the use of mediation services.

NARA has shown significant progress in reducing its backlog. In fiscal year 2012 it had a backlog of 7,610 requests, which spiked to 9,361 in fiscal year 2014. However, by fiscal year 2016, the number of backlogged requests had dropped to 2,932, even though the number of requests received more than doubled for that fiscal year. However, NARA did note challenges to reducing its backlog numbers, namely, the increase in the number of requests received.

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- State developed and implemented a plan to reduce its backlog in fiscal year 2016. The plan incorporated two best practices by focusing on identifying the extent of the backlog problem and developing ways to address the backlog with available resources. According to State officials, the effort was dedicated to improve how FOIA data were organized and reported. Expedited and litigation cases were top priorities, whereas in other cases a “first in, first out” method was employed.

Even with these efforts, however, State experienced a 117 percent increase in its backlog over the 5-year period. State’s backlog doubled from 10,045 in fiscal year 2014 to 22,664 in fiscal year 2016. Among the challenges to managing its backlog, State reported an increase in incoming requests, a high number of litigation cases, and competing priorities. Specifically, the number of incoming requests for State increase by 51 percent during the 5-year period. State has also reported that it has allocated 80 percent of its FOIA resources to meet court-ordered productions associated with litigation cases, resulting in fewer staff to work on processing routine requests. This included, among other efforts, a significant allocation of resources in fiscal year 2015 to meet court-imposed deadlines to process emails associated with the former Secretary of State, resulting in a surge of backlogs.

In 2017 State began an initiative to actively address its backlogs. The Secretary of State issued an agency-wide memorandum stating the department’s renewed efforts by committing more resources and workforce to backlog reduction. The memo states new processes are to be implemented for both the short- and long-term, and the FOIA office has plans to work with the various bureaus to outline the tasks, resources, and workforce necessary to ensure success and compliance. With renewed leadership support, State has reported significant progress in its backlog reduction efforts.

- DHS, in its chief FOIA officer reports, reported that it implemented several plans to reduce backlogs. The DHS Privacy Office, which is responsible for oversight of the department’s FOIA program, worked with components to help eliminate the backlog. The Privacy Office sent monthly emails to component FOIA officers on FOIA backlog statistics, convened management meetings, conducted oversight, and reviewed workloads. Leadership met weekly to discuss the oldest pending requests, appeals, and consultations, and determined needed steps to process those requests.

In addition, several other DHS components implemented actions to reduce backlogs. Customs and Border Protection hired and trained additional staff, encouraged requesters to file requests online,

established productivity goals, updated guidance, and utilized better technology. U.S. Citizenship and Immigration Services, National Protection and Programs Directorate, and Immigration and Customs Enforcement increased staffing or developed methods to better forecast future workloads ensure adequate staffing. Immigration and Customs Enforcement also implemented a commercial off-the-shelf web application, awarded a multimillion-dollar contract for backlog reduction, and detailed employees from various other offices to assist in the backlog reduction effort.

Due to efforts by the Privacy Office and other components, the backlog dropped 66 percent in fiscal year 2015, decreasing to 35,374. Yet, despite the continued efforts in fiscal year 2016, the backlog numbers increased again, to 46,788. DHS attributes the increases in backlogs to several factors, including an increase in the number of requests received, increased complexity and volume of responsive records for those requests, loss of staff and active litigation with demanding production schedules.

One reason the eight agencies with significant backlogs may be struggling to consistently reduce their backlogs is that they lack documented, comprehensive plans that would provide a more reliable, sustainable approach to addressing backlogs. In particular, they do not have documented plans that describe how they will implement best practices for reducing backlogs over time, including specifying how they will use metrics to assess the effectiveness of their backlog reduction efforts and ensure that senior leadership supports backlog reduction efforts, among other best practices identified by OIP.

While agencies with backlogs of 1,000 or more FOIA requests are required to describe backlog reduction efforts in their chief FOIA officer reports, these consist of a high-level narrative and do not include a specific discussion of how the agencies will implement best practices over time to reduce their backlog. In addition, agencies with backlogs of fewer than 1,000 requests are not required to report on backlog reduction efforts; however, the selected agencies in our review with backlogs in the hundreds still experienced an increase over the 5-year period.

Without a more consistent approach, agencies will continue to struggle to reduce their backlogs to a manageable level, particularly as the number and complexity of requests increase over time. As a result, their FOIA processing may not respond effectively to the needs of requesters and the public.

Various Types of Statutory Exemptions Exist and Many Have Been Used by Agencies

FOIA requires agencies to report annually to Justice on their use of statutory (b)(3) exemptions. This includes specifying which statutes they relied on to exempt information from disclosure and the number of times they did so.³³ To assist agencies in asserting and accounting for their use of these statutes, Justice instructs agencies to consult a running list of all the statutes that have been found to qualify as proper (b)(3) statutes by the courts.³⁴

However, agencies may also use a statute not included in the Justice list, because many statutes that appear to meet the requirements of (b)(3) have not been identified by a court as qualifying statutes. If the agency uses a (b)(3) statute that is not identified in the qualifying list, Justice guidance instructs the agency to include information about that statute in its annual report submission. Justice reviews the statute and provides advice to the agency, but does not make a determination on the appropriateness of using that statute under the (b)(3) exemption.

Based on data agencies reported to Justice,³⁵ during fiscal years 2010 to 2016, agencies claimed 237 statutes as the basis for withholding information. Of these statutes, 75 were included on Justice's list of qualifying statutes under the (b)(3) exemption (see appendix III for a list of these statutes). Further, we identified 140 additional statutes that were not identified in our 237 statutes claimed by agencies during fiscal years 2010 to 2016, but have similar provisions to other (b)(3) statutes authorizing an agency to withhold information from the public (see appendix IV for a list of these additional statutes).

We found that the 237 statutes cited as the basis for (b)(3) exemptions during the period from fiscal years 2010 to 2016 fell into 8 general categories of information. These categories were (1) personally identifying information, (2) national security, (3) commercial, (4) law enforcement and investigations, (5) internal agency, (6) financial

³³5 U.S.C. § 552(e)(1)(B)(ii).

³⁴This periodically updated list currently contains 78 statutes.

³⁵There were 117 agencies subject to FOIA for which Justice provided FOIA exemption related data through FOIA.gov for fiscal years 2010 to 2016. However, the number of agencies reporting to Justice varies year to year because, for example, agencies ceased to exist during our review period. As of fiscal year 2017, there were 116 agencies subject to FOIA that report FOIA exemption related data to Justice because, for example, the Recovery Accountability and Transparency Board ceased to exist in September of 2015.

regulation, (7) international affairs, and (8) environmental. Figure 6 identifies the eight categories and the number of agency-claimed (b)(3) statutes in each of the categories.

Figure 6: General Categories of (b)(3) Exemption Statutes Used by Agencies Subject to the Freedom of Information Act during Fiscal Years 2010-2016



Source: GAO analysis of FOIA.gov (b)(3) exemption statutes claimed by agencies subject to the *Freedom of Information Act*. | GAO-18-365

Of the 237 (b)(3) statutes cited by agencies, the majority—178—fell into 4 of the 8 categories:

- Forty-nine of these statutes related to withholding personally identifiable information including, for example, a statute related to withholding death certificate information provided to the Social Security Administration.³⁶
- Forty-five statutes related to the national security category. For example, one statute exempted files of foreign intelligence or counterintelligence operations of the National Security Agency.³⁷
- Forty-two statutes were in the law enforcement and investigations category, including a statute that exempts from disclosure information provided to Justice pursuant to civil investigative demands pertaining to antitrust investigations.³⁸
- Forty-two statutes fell into the commercial category. For example, one statute in this category related to withholding trade secrets and other confidential information related to consumer product safety.³⁹

The remaining 59 statutes were in four categories: internal agency functions and practices, financial regulation, international affairs, and environmental. The environmental category contained the fewest number of statutes and included, for example, a statute related to withholding certain air pollution analysis information.⁴⁰

As required by FOIA, agencies also reported the number of times they used each (b)(3) statute.⁴¹ In this regard, 33 FOIA-reporting agencies

³⁶42 U.S.C. § 405(r)(6).

³⁷50 U.S.C. § 3144.

³⁸15 U.S.C. § 1314(g).

³⁹15 U.S.C. § 2055.

⁴⁰42 U.S.C. § 7412(r)(7)(H)(iii).

⁴¹As noted previously, when accounting for the use of (b)(3) exemptions in a fiscal year, Justice's guidance states that for each request, the agency should report all (b)(3) exemption statutes relied upon in a request, but count each statute only once per request, regardless of the number of times it was applied in a single request. Our analysis was limited to numbers reported to Justice and obtained on FOIA.gov. As agencies may use a single statute multiple times in a request, the number of times an agency used any particular statute during our review period we reviewed is likely to be greater than what agencies report to Justice.

indicated that they had used 10 of the 237 (b)(3) statutes more than 200,000 times.⁴² Of these 10 most-commonly used statutes, the single most-used statute (8 U.S.C § 1202(f)) related to withholding records pertaining to the issuance or refusal of visas to enter the United States. It was used by 4 agencies over 58,000 times.⁴³

Further, of the 10 most-commonly used statutes, the statute used by the greatest number of agencies (26 U.S.C § 6103) related to the withholding of certain tax return information; it was used by 24 FOIA-reporting agencies about 30,000 times.⁴⁴ By contrast, some statutes were only used by a single agency. Specifically, the Department of Veterans Affairs used a statute related to withholding certain confidential veteran medical records (38 U.S.C. § 7332) more than 16,000 times. Similarly, EEOC used a statute related to employment discrimination on the basis of disability (42 U.S.C. § 12117) more than 10,000 times.

Table 4 shows the 10 most-used statutes under the (b)(3) exemption, the agency that used each one most frequently, and the number of times they were used by that agency for the period covering fiscal years 2010 through 2016.

⁴²These agencies were: Departments of Treasury, Homeland Security, Justice, Veterans Affairs, Energy, Defense, Transportation, Education, State, Agriculture, Labor, Housing and Urban Development, Interior, and Commerce, the Social Security and Small Business Administrations, the Federal Maritime, Securities and Exchange, Occupational Safety and Health Review, Equal Employment Opportunity, and Federal Communications Commissions, the Overseas Private Investment and Pension Benefit Guaranty Corporations, Offices of Personnel Management and Director of National Intelligence, the Federal Housing Finance, Central Intelligence Agency, and U.S. Trade and Development Agencies, U.S. Agency for International Development, National Archives and Records Administration, United States Postal Service, Council of the Inspectors General on Integrity and Efficiency, and the Privacy and Civil Liberties Oversight Board.

⁴³The four agencies that cited 8 U.S.C § 1202(f) were State, DHS, Justice, and NARA.

⁴⁴These agencies were: Departments of Treasury, Homeland Security, Justice, Veterans Affairs, Energy, Defense, Transportation, Education, State, Agriculture, Interior, and Commerce, the Social Security and Small Business Administrations, the Federal Maritime, Securities and Exchange and the Occupational Safety and Health Review Commissions, the Overseas Private Investment and Pension Benefit Guaranty Corporations, the Federal Housing Finance and U.S. Trade and Development Agencies, the U.S. Agency for International Development, National Archives and Records Administration, and the United States Postal Service.

Table 4: Ten Most-Used Freedom of Information Act (b)(3) Exemption Statutes, the Agencies That Used Them Most, and the Number of Times Agencies Reported Using Them for Fiscal Years 2010-2016

(b)(3) Statute	Type of information withheld	Total number of reported uses	Agency using the statute the most	Agency reported Number of times used
8 U.S.C. § 1202(f)	Records pertaining to the issuance or refusal of visas to enter the United States.	58,419	Department of State	58,411
26 U.S.C. § 6103	Tax return information.	30,160	Department of Treasury	17,250
49 U.S.C. § 114(r)	Air transportation security information.	26,344	Department of Homeland Security (DHS)	26,341
42 U.S.C. § 2000e-5(b)	Equal employment opportunity enforcement information.	20,167	Equal Employment Opportunity Commission (EEOC)	20,157
42 U.S.C. § 2000e-8(e)	Equal employment opportunity investigation information.	20,167	EEOC	20,157
50 U.S.C. § 3507	Information related to sources and methods of intelligence activities of the Office of the Director of National Intelligence and the Central Intelligence Agency.	19,535	Central Intelligence Agency	13,637
38 U.S.C. § 7332	Certain confidential veteran's medical records.	16,896	Department of Veterans Affairs	16,896
42 U.S.C. § 12117	Information relating to employment discrimination on the basis of disability.	10,708	EEOC	10,708
50 U.S.C. § 3605	Information related to sources and methods of intelligence activities and personnel of the National Security Agency.	10,528	Department of Defense	10,459
26 U.S.C. § 6105	Information about tax agreements with foreign governments.	9,291	DHS	8,240

Source: GAO analysis of FOIA.gov (b)(3) exemption statutes claimed by agencies subject to the Freedom of Information Act. | GAO-18-365

The *OPEN FOIA Act of 2009* Limitation on (b)(3) Exemptions Has Had an Uneven Impact on Subsequent Legislation

The *OPEN FOIA Act of 2009* amended FOIA to require that any federal statute subsequently enacted must specifically cite paragraph (b)(3) of FOIA to qualify as a (b)(3) exemption statute.⁴⁵ Prior to 2009, a federal statute qualified as a statutory (b)(3) exemption if it (1) required that the matters be withheld from the public in such a manner as to leave no discretion on the issue, or (2) established particular criteria for withholding or referred to particular types of matters to be withheld. According to statements by the sponsor of the legislation during the Senate debate, (b)(3) statutory exemptions should be clear and unambiguous, and vigorously debated by Congress before they are enacted into law.

In response to the amendment, in 2010, Justice released guidance to agencies stating that any statute enacted after 2009 must specifically cite to the (b)(3) exemption to qualify as a withholding statute under FOIA. Further, the guidance encouraged agencies to contact Justice with questions regarding the implementation of the amendment.

In our review of the 237 (b)(3) statutes claimed by agencies during fiscal years 2010 through 2016, 21 of these statutes were initially enacted and 82 were amended after 2009. Of the 21 statutes initially enacted after 2009, 9 cited (b)(3). Further, of the 82 statutes amended, 9 cited (b)(3).⁴⁶

While reflecting provisions of law authorizing or requiring the withholding of agency information from the public, the number of these statutes not having a reference to the (b)(3) exemption is evidence of the *OPEN FOIA Act's* uneven impact on the establishment of statutory FOIA exemptions.

⁴⁵Current Justice guidance states, "With the passage of the Open FOIA Act, all statutes enacted after 2009 that are intended by Congress to operate as Exemption 3 statutes must specifically cite to the Exemption." *Department of Justice Guide to the Freedom of Information Act: Exemption 3*, p. 54 (Aug 13, 2015).

⁴⁶Although the *OPEN FOIA Act of 2009* stated that the requirement to reference paragraph (b)(3) only applies to statutes "enacted after the date of enactment" of that act, our review included amendments to sections of a statute containing a FOIA exemption as they provided evidence of congressional reconsideration of that statute and any attention given to the requirement of the *OPEN FOIA Act*, as set forth in 5 U.S.C. § 552(b)(3)(B).

Agencies Received and Processed FOIA Requests for Information Related to the Trouble Asset Relief Program

As previously noted, FOIA requires federal agencies to provide the public with access to various types of information that can contribute to the understanding of government operations. One of these areas has related to the 2008 financial crisis, in which the *Emergency Economic Stabilization Act of 2008* played a significant role in stabilizing the federal financial system. The act initially authorized \$700 billion to assist financial institutions and markets, businesses, and homeowners through TARP, although that authorization was later reduced to \$475 billion.

Treasury, which was given authority under the act, established the Office of Financial Stability to carry out the program's activities. These activities included injecting capital into key financial institutions, implementing programs to address problems in the securitization markets, providing assistance to the automobile industry, and offering incentives for modifying residential mortgages. In addition, federal financial regulators—FDIC, the Federal Reserve Board, and the Office of the Comptroller of the Currency—each played a key role in regulating and monitoring financial institutions.

Following the law's enactment, in certain periods from 2008 through 2014,⁴⁷ three corporations—AIG, GM, and Ally—received federal financial assistance that amounted to 50 percent or more ownership by the federal government. The actions with regard to TARP subsequently led to the Treasury and the three financial regulatory agencies receiving FOIA requests for government records related to the three corporations. Specifically, the Federal Reserve Board, FDIC, the Office of the Comptroller of the Currency, and Treasury received 166 FOIA requests for information about these three corporations from September 2008 through January 2014.

The requests asked for various agency records related to the corporations, for example,

- records related to Treasury's stewardship and oversight of AIG and its subsidiaries;

⁴⁷Treasury held 50 percent or more of the common stock in the three corporations between 2008 and 2014: AIG (Sept. 2008 to Sept. 2012); Ally (Dec. 2009 to Jan. 2014); and GM (July 2009 to Nov. 2010).

- records related to the Federal Reserve Board and Ally specific to the individual submitting the FOIA request's review;
- records concerning GM's contract with the Stillwater Mining Company; and
- all communications between the Office of the Comptroller of the Currency and AIG from June 2007 through March 2009.

Of the 166 requests, 88 were processed as full grant, partial grant, or full denial; 34 were withdrawn by the requester; 24 were closed because the agency responded that it had no records regarding the requests; and 20 fell into other disposition categories.⁴⁸ Table 5 summarizes the disposition/resolution of the FOIA requests that each of the four federal agencies received relating to information on AIG, GM and Ally for certain periods from September 2008 to January 2014 (the time frame for which the government held 50 percent or more of the corporations' common stock), and the type of disposition used most often to close the requests.

Table 5: Freedom of Information Act Requests Received by Selected Federal Agencies in Certain Periods from 2008-2014, the Period in Which Three Corporations Received Benefits under the Troubled Asset Relief Program

Federal entity and corporation	Total number of requests received	Disposition type used most often for a request ^a (number of instances)	Processing time for requests (working days)
Treasury			
American International Group (AIG)	24	Partial grant/partial denial (13)	Shortest: 3 days Longest: 794 days
General Motors (GM)	21	Partial grant/partial denial (10)	Shortest: 1 day Longest: 459 days
General Motors Acceptance Corporation (Ally) ^b	5	Full denial (5)	Shortest: 16 days Longest: 459 days
Treasury total	50		
Federal Reserve Board			
AIG	60	Withdrawn (30)	Shortest: 8 days Longest: 484 days

⁴⁸According to the 2017 *Department of Justice Handbook for Agency Annual Freedom of Information Act Reports*, there are 11 dispositions that a request can be classified under, which include: (1) full grant; (2) partial grant/partial denial; (3) full denial based on exemptions; (4) no records; (5) all records referred to another component or agency; (6) request withdrawn; (7) fee-related reason; (8) records not reasonably described; (9) improper FOIA request for other reason; (10) not an agency record; and (11) duplicate request.

Federal entity and corporation	Total number of requests received	Disposition type used most often for a request ^a (number of instances)	Processing time for requests (working days)
GM	2	Full grant (1) Full denial (1)	Shortest: 26 days Longest: 31 days
Ally	29	Full grant (8)	Shortest: 2 days Longest: 150 days
Federal Reserve Board total	91		
Federal Deposit Insurance Corporation (FDIC)			
AIG	2	Not agency record (1) No record (1)	Shortest: 19 days Longest: 20 days
GM	0		
Ally	8	Full grant (2)	Shortest: 2 days Longest: 52 days
FDIC total	10		
Office of the Comptroller of the Currency			
AIG	2	Full denial (1) withdrawn (1)	Shortest: 13 days Longest: 34 days
GM	0		
Ally	13	No records (7)	Shortest: 6 days Longest: 110 days
Office of the Comptroller of the Currency total	15		
Total for all	166		

Source: GAO analysis of agencies' data. | GAO-18-365

^aAccording to Justice, agencies can resolve requests by full grant, partial grant/partial denial, full denial, not an agency record, no record, and request withdrawn, among other resolution types.

^bAlly was formerly known as General Motors Acceptance Corporation.

Conclusions

The 18 agencies we reviewed had fully implemented half of the six key FOIA requirements and the vast majority of agencies implemented two additional requirements. However, 5 agencies published and updated their FOIA regulations in a timely and comprehensive manner. Fully implementing FOIA requirements will better position agencies to provide the public with necessary access to government records and ensure openness in government.

Selected agencies varied considerably in the size of their backlogs. While 10 reported a backlog of 60 or fewer requests, 4 had backlogs of over 1,000 per year. Agencies identified a variety of methods that they used to

address their backlogs, including practices identified by Justice, as well as additional methods. However, the selected agencies varied in the success achieved for reducing their backlogs. This was due, in part, to a lack of plans that describes how the agencies will implement best practices for reducing backlogs over time. Until agencies develop plans to reduce backlogs, they will be limited in their ability to respond effectively to the needs of requesters and the public.

Recommendations for Executive Action

We are making a total of 24 recommendations to 16 agencies in our review. Specifically:

The Secretary of the American Battle Monuments Commission should designate a chief FOIA officer at the assistant secretary level or equivalent. (Recommendation 1)

The Secretary of the American Battle Monuments Commission should update and publish comprehensive FOIA regulations that include requirements established by law and Justice guidance. (Recommendation 2)

The Chief Executive Officer and Director of the Broadcasting Board of Governors should update and publish comprehensive FOIA regulations that include requirements established by law and Justice guidance. (Recommendation 3)

The Secretary of DHS should take steps to develop and document a plan that fully addresses best practices with regards to reduction of backlogged FOIA requests. (Recommendation 4)

The Secretary of DOI should ensure its FOIA tracking system is compliant with Section 508 requirements. (Recommendation 5)

The Secretary of DOI should provide frequently requested records online. (Recommendation 6)

The Secretary of DOI should take steps to develop and document a plan that fully addresses best practices with regards to reduction of backlogged FOIA requests. (Recommendation 7)

The Chair of EEOC should designate a chief FOIA officer at the assistant secretary level or equivalent. (Recommendation 8)

The Chair of EEOC should take steps to develop and document a plan that fully addresses best practices with regards to reduction of backlogged FOIA requests. (Recommendation 9)

The Chairman of the FTC should designate a chief FOIA officer at the assistant secretary level or equivalent. (Recommendation 10)

The Attorney General of the United States should take steps to develop and document a plan that fully addresses best practices with regards to reduction of backlogged FOIA requests. (Recommendation 11)

The Archivist of the United States should take steps to develop and document a plan that fully addresses best practices with regards to reduction of backlogged FOIA requests. (Recommendation 12)

The Administrator of NASA should update and publish comprehensive FOIA regulations that describe dispute resolution services, and notifies requesters of the 90 days for appeals. (Recommendation 13)

The Administrator of NASA should provide agency records of final opinions online. (Recommendation 14)

The Chairman of NTSB should provide frequently requested records online. (Recommendation 15)

The Chairman of NTSB should take steps to develop and document a plan that fully addresses best practices with regards to reduction of backlogged FOIA requests. (Recommendation 16)

The Director of OMB should update and publish comprehensive FOIA regulations that include requirements established by law and Justice guidance. (Recommendation 17)

The Director of OMB should designate a chief FOIA officer at the assistant secretary level or equivalent. (Recommendation 18)

The Director of Pension Benefit Guaranty Corporation should designate a chief FOIA officer at the assistant secretary level or equivalent. (Recommendation 19)

The Secretary of State should update and publish comprehensive FOIA regulations that describe dispute resolution services, and notifies requesters of the 90 days for appeals. (Recommendation 20)

The Secretary of State should take steps to develop and document a plan that fully addresses best practices with regards to reduction of backlogged FOIA requests. (Recommendation 21)

The President of TVA should ensure its FOIA tracking system is compliant with section 508 requirements. (Recommendation 22)

The Administrator of USAID should take steps to develop and document a plan that fully addresses best practices with regards to reduction of backlogged FOIA requests. (Recommendation 23)

The President of the U.S. African Development Foundation should update and publish comprehensive FOIA regulations that inform a requester of limited unusual circumstances fees. (Recommendation 24)

Agency Comments and Our Evaluation

We requested comments on a draft of this report from the 21 agencies included in our review. Of the 16 agencies to which we made recommendations, 9 agencies agreed with all of the recommendations directed to them; 1 agency agreed with two and disagreed with one recommendation; 2 agencies disagreed with all of the recommendations; and 4 agencies did not state whether they agreed or disagreed with our recommendations. In addition, 5 agencies to which we did not make recommendations stated that they had no comments on the report. Multiple agencies also provided technical comments, which we have incorporated, as appropriate.

The following 9 agencies agreed with our recommendations:

- In emails received from the American Battle Monuments Commission and the Broadcasting Board of Governors, the two agencies stated that they agreed with the recommendations in our report.
- In written comments, reprinted in appendix V, DHS stated that it concurred with our recommendations. Regarding the recommendation to designate a chief FOIA Officer, the department stated that it had delegated the full authority and responsibility of DHS's FOIA operations and programs to the chief privacy officer. The department asserted that its chief privacy officer is the equivalent of an assistant secretary, as required, because the official is appointed by the Secretary under 6 U.S.C § 142 without Senate confirmation in accordance with the Appointments Clause to the U.S. Constitution. Further, the department stated that the chief privacy officer position meets the senior executive service standard under 5 U.S.C §

3132(a)(2) and, accordingly, is comparable to a senior executive level position. Thus, the department believes it is already in compliance with the requirement to designate a chief FOIA officer at the assistant secretary level or equivalent.

For the reasons that it cited, DHS requested that GAO consider this recommendation to be resolved and closed. Based on our analysis of the additional information that the department provided to explain the senior executive level position of the chief privacy officer, we are in agreement with DHS regarding the position's equivalency to an assistant secretary within the department. Accordingly, we have removed this recommendation from our report.

Concerning the second recommendation, to develop and document a plan that fully addresses practices with regard to the reduction of backlogged requests, DHS stated that it plans to initiate a department-wide compliance assessment of FOIA operations to identify the components with the most significant backlog problems and the "root causes" for these problems. The department said it then intends to develop a proposed plan for backlog reduction.

- In written comments, reprinted in appendix VI, Justice stated that it agreed with our recommendation and will develop a plan to address its backlog of FOIA requests to the fullest extent possible. Justice added that, in fiscal year 2017, it was able to improve all of its processing times and close all 10 of the department's oldest requests, appeals, and consultations, thus, reducing the overall age of its backlog.
- In written comments, reprinted in appendix VII, NARA stated that it is currently working to develop and document a plan that is intended to fully address best practices to reduce its backlog of FOIA requests, as we recommended. The agency said it expects to complete its plan by the end of December 2018.
- In written comments, reprinted in appendix VIII, NASA said that it concurred with our two recommendations. With regard to the first recommendation, the agency stated that it is currently working to update its FOIA regulations, and that the revisions are to include the 90-day appeal rights, as well as describe requesters' rights to obtain dispute resolution services from NASA's FOIA public liaisons and OGIS.

With regard to the second recommendation, the agency stated that it is currently working to identify subject matter areas on which the department can reach final opinions as interpreted under FOIA. The agency added that, upon identification, it will begin posting final opinions online.

- In written comments, reprinted in appendix IX, State concurred with our two recommendations and, accordingly, noted that it is currently working to update its FOIA regulations and evaluate methods to improve its backlog reduction efforts.
- In written comments, reprinted in appendix X, USAID stated that it concurred with our recommendation and will develop a formal plan that delineates currently employed best practices to reduce its FOIA backlog.
- In comments provided via email, the United States African Development Foundation's General Counsel concurred with our recommendation. The foundation stated that it will take steps to update its FOIA regulations. This is to include, informing requesters about limited unusual circumstances fees, and publishing the updated regulation in the *Federal Register*.

One agency agreed with two recommendations, and disagreed with one other recommendation:

- In written comments, reprinted in appendix XI, DOI concurred with the recommendation to make its FOIA tracking system Section 508-compliant and stated that it is currently testing its system for compliance. The department also concurred with the recommendation that it provide frequently requested records online.

However, the department did not concur with our recommendation to develop and document a plan that fully addresses best practices for the reduction of backlogged FOIA requests. The department stated that, in Justice's OIP guidance, the creation of a formal backlog reduction plan only applies to agencies with more than 1,000 backlogged requests in a given year. The department said that DOI did not fall into this category and, therefore, was not required to develop such a plan.

Although DOI's existing backlog of FOA requests did not meet the threshold identified in Justice's guidance, the department,

nonetheless, experienced a 51 percent increase in backlogged FOIA requests from fiscal years 2012 to 2016. Thus, having a plan and practices for reducing backlogged requests could help the department ensure that its backlog remains manageable, and that DOI is effectively positioned to respond to the needs of requesters and the public. Accordingly, we believe that our recommendation to develop a plan that addresses best practices to reduce the backlog is still warranted.

In addition, 2 agencies disagreed with our recommendations:

- In written comments, reprinted in appendix XII, the Pension Benefit Guaranty Corporation disagreed with our recommendation that it designate a chief FOIA officer at the assistant secretary level or equivalent. The agency said it does not have assistant secretary positions. The agency added that it believes its current chief FOIA officer's position is equivalent to the assistant secretary level and that this official is an appropriate designee.

We disagree that the current chief FOIA officer's position is equivalent to the assistant secretary level. However, the Pension Benefit Guaranty Corporation's General Counsel position is at a level that is equivalent to an assistant secretary. As such, assigning the position to the General Counsel could help ensure that the chief FOIA officer has the necessary authority to make decisions about agency practices, personnel, and funding. As such, we believe our recommendation is still warranted.

- In written comments, reprinted in appendix XIII, TVA disagreed with our recommendation to ensure that its FOIA tracking system is compliant with Section 508 of the Rehabilitation Act. The agency stated that, based on the January 18, 2017, revised Section 508 standards, its current FOIA tracking system meets the standard related to having a user interface, but does not meet the criteria for accessibility of electronic content. The agency added that, the current single user of its system does not require accessibility accommodations; thus, it would be an undue burden for the agency to make the system comply with the Section 508 requirements.

While TVA's current FOIA system does not require accessibility accommodations and, in the agency's view, would be unduly burdensome to modify, as the agency undertakes further modernization of its IT systems and software, it should ensure that its

FOIA system is compliant with Section 508 requirements. Accordingly, we stand by our recommendation to the agency.

Further, 4 agencies did not state whether they agreed or disagreed with the report, although 2 of them offered other comments:

- In emails received from EEOC and NTSB, the agencies did not agree or disagree with the draft report. EEOC offered technical comments, which we incorporated, as appropriate, while NTSB said it had no comment.
- In written comments, reprinted in appendix XIV, FTC acknowledged that its chief FOIA officer is not at the assistant secretary level. FTC also noted that it is a small agency in which there are no position titles of assistant secretary-level or equivalent. Further, the agency stated that it believes its chief FOIA officer holds a sufficiently senior position (associate general counsel) with the necessary authority to fulfill the functions of the chief FOIA officer. Nevertheless, FTC stated that it would take our recommendation (to designate a chief FOIA officer at the assistant secretary level or equivalent) under advisement.

Although FTC is a small agency and does not have positions at the assistant secretary level, we disagree that the current chief FOIA officer's position is sufficiently senior to fulfill the functions required of this position. However, assigning the chief FOIA officer position to the General Counsel, or an equivalent level position, could help ensure that the chief FOIA officer will have the necessary authority to make decisions about the agency's practices, personnel, and funding for the implementation of FOIA. As such, we believe our recommendation is still warranted.

- In comments provided via email from its GAO liaison, OMB stated that it does not have a position in its organization with the specific title of assistant secretary. However, the agency noted that, on March 7, 2018, the OMB Director designated the OMB General Counsel to serve as the agency's chief FOIA officer. According to OMB, the chief FOIA officer reports to the Director. Based on the documentation received, we are in agreement with OMB that the position of General Counsel is equivalent to an assistant secretary within the department. Accordingly, we consider this recommendation to be closed.

The remaining 5 agencies to which we did not make recommendations stated that they did not have any comments on our report. These

agencies were: the Administrative Conference of the United States, FDIC, the Federal Reserve Board, OCC, and Treasury.

We are sending copies of this report to the Secretaries of the American Battle Monuments Commission, Homeland Security, Interior, State, and the Treasury; the Attorney General of the United States; the Archivist of the United States; the Comptroller of the Currency; Administrators of the National Aeronautics Space Administration and United States Agency for International Development; Board of Governors of the Federal Reserve System; Chairmen of the Administrative Conference of the United States, Equal Employment Opportunity Commission, Federal Deposit Insurance Corporation, and National Transportation Safety Board; Chief Executive Officer and Director of the Broadcasting Board of Governors; Directors of the Office of Management and Budget and Pension Benefit Guaranty Corporation; the Presidents of the Tennessee Valley Authority, and United States African Development Foundation, and the Acting General Counsel for the Federal Trade Commission. In addition, this report is available at no charge on the GAO website at <http://www.gao.gov>

If you or your staff have questions about this report, please contact me at (202) 512-9286 or pownerd@gao.gov. Contact points for our Offices of Congressional Relations and Public Affairs may be found on the last page of this report. Key contributors to this report are listed in appendix XV.



David Powner
Director, Information Technology Management Issues

List of Requesters

The Honorable Charles E. Grassley
Chairman
Committee on the Judiciary
United States Senate

The Honorable Patrick Leahy
United States Senate
The Honorable John Cornyn
United States Senate

The Honorable Trey Gowdy
Chairman
The Honorable Elijah E. Cummings
Ranking Member
Committee on Oversight and Government Reform
House of Representatives

The Honorable Darrell Issa
Chairman
Subcommittee on Courts, Intellectual Property, and the Internet
Committee on the Judiciary
House of Representatives

Appendix I: Objectives, Scope, and Methodology

Our objectives were to determine (1) determine the extent to which agencies have implemented selected Freedom of Information Act (FOIA) requirements; (2) describe the methods established by agencies to reduce backlogged requests and the effectiveness of those methods; (3) identify any statutory (b)(3) exemptions that have been used by agencies as the basis for withholding (redacting) information; and (4) determine what FOIA requests, if any, agencies received and processed that related to entities that received government assistance during the 2008 financial crisis.

To address the first and second objectives, we selected 18 agencies to review based on the number of FOIA requests received, the sizes of FOIA backlogs, and the average time of processing FOIA requests for fiscal years 2012 through 2016. We also chose the agencies to represent a range of sizes (by number of employees)—large (10,000 or more), medium (1,000 to 9,999), and small (999 or fewer). Large agencies selected were the Departments of Homeland Security, Justice, State, and the Interior; the National Aeronautics and Space Administration, and the Tennessee Valley Authority. Medium agencies were the National Archives and Records Administration, the Federal Deposit Insurance Corporation, the Equal Employment Opportunity Commission, the Broadcasting Board of Governors, the U.S. Agency for International Development, and the Federal Trade Commission. Small agencies were the National Transportation Safety Board, the American Battle Monuments Commission, the Pension Benefit Guaranty Corporation, the U.S. African Development Foundation, the Office of Management and Budget, and the Administrative Conference of the United States.

For our first objective, to determine the extent to which agencies had implemented FOIA requirements, we examined six FOIA requirements outlined in the *FOIA Improvement Act of 2016* and the *OPEN Government Act of 2007*.¹ These requirements were for agencies to (1) update response letters, (2) implement tracking systems, (3) provide FOIA training, (4), provide records online, (5) designate chief FOIA officers, and (6) update and publish timely and comprehensive regulations. For these six requirements, we reviewed (1) agencies' FOIA regulations to determine if they included updates from the 2016 FOIA amendments and 2007 *OPEN Government Act*, and if they were updated

¹ *FOIA Improvement Act of 2016*, Pub. L. No. 114-185, 130 Stat. 538 (2016) (provisions codified at 5 U.S.C. § 552) and Pub. L. No. 110-175 (Dec. 31, 2007).

by the required deadline; (2) agencies' FOIA systems to determine if the systems provided individualized tracking numbers for requests that will take longer than 10 days to process, if agencies' established telephone or Internet service to allow requesters to track the status of their requests; (3) if agencies' had designated a chief FOIA officer and what position they held within the agency; (4) if agencies chief FOIA officers provided annual FOIA training opportunities to agency staff; (5) if agencies had appropriately updated response letters in compliance with the 2016 FOIA amendments; and (6) if agencies were providing electronic documents publicly available online and posting frequently requested documents as required by the 2016 FOIA amendments. Since we selected a nonprobability sample of FOIA reporting agencies, the results of this analysis are not generalizable to all FOIA reporting agencies.

In addition, we also reviewed the requirement for the development of a government-wide FOIA request portal and met with Office of Management and Budget (OMB) officials, and Department of Justice (Justice) officials in the Office of Information Policy (OIP) to discuss the status of development. Further, we met the Chief FOIA Officers Council, OIP, and National Archives and Records Administration's (NARA) Office of Government Information Services (OGIS) to determine what, if any, actions they have taken to assist agencies with not violating the provisions of FOIA.

For our second objective, to determine the methods established by agencies to reduce backlogged requests and the effect of those methods, we reviewed agency documentation to evaluate if the selected agencies had developed methods for reducing backlogged FOIA requests. We identified requirements for agencies to produce backlog reduction plans and determined if agencies developed such plans as required. We analyzed agencies' FOIA.gov data to determine if there was a correlation between the presence of a backlog reduction plan and a reduction in backlog numbers. We compared a set of identified best practices for reducing backlogs with agency procedures to determine the extent to which the best practices are used. In addition, we interviewed agency officials to determine the reasons for changes in agency backlog numbers and what actions they are taking to reduce backlogs or implement reduction plans. The results of this analysis are not generalizable to all FOIA reporting agencies.

For our third objective, to identify statutory (b)(3) exemptions² that have been used by agencies as the basis for withholding information, we developed a catalog of (b)(3) statutes that agencies previously have used to withhold information in FOIA records.³ To do that, we retrieved all data on agency use of (b)(3) statutes that were readily accessible on Justice's FOIA.gov website.⁴ The data on FOIA.gov are for fiscal years 2008 to 2016; however, Justice acknowledged that data prior to 2010 were not available on FOIA.gov for all agencies. Therefore, we reviewed data for fiscal years 2010 to 2016. In total, there were 117 distinct agencies that provided annual report data for at least 1 fiscal year, and that were represented in fiscal years 2010 through 2016. We developed a catalog by extracting information from the aggregate of agency annual FOIA reports that report, among other things, usage of (b)(3) statute, including the statute's citation and the number of times the statute was used to withhold information in a fiscal year.⁵

To assess the reliability of the data we retrieved from FOIA.gov, we supplemented our analysis with interviews of FOIA officials in Justice's OIP on steps they have taken to ensure the consistency of data in FOIA.gov on agencies' use of (b)(3) statutes. Our analysis did not include assessing the reliability of (b)(3) statute data submitted by agencies—Justice guidance states it is the responsibility of each agency to ensure quality data in their reports. We also electronically tested the data by identifying outliers, missing values, and syntactical discrepancies. We found the data to be sufficiently reliable for purposes of our reporting objective.

To facilitate our analysis, we refined our catalog listing of agencies' use of (b)(3) statutes by developing a standardized statute notation assigned to each agency-used statute in our list. Specifically, our standardization of agency-used statutes consisted of removing any typographical errors,

²The (b)(3) exemption of FOIA (5 U.S.C § 552(b)(3)) allows an agency to withhold information when answering a FOIA request if that information is deemed prohibited from disclosure under another federal statute.

³Agencies available on FOIA.gov include federal agencies and other entities subject to FOIA.

⁴FOIA.gov presents data from agencies' annual FOIA reports that are required to be submitted to Justice and includes information such as what (b)(3) statutes are used by an agency.

⁵5 U.S.C. § 552(e)(5).

ensuring statutes were noted in a consistent U.S. Code format and referred to existing U.S. Code section,⁶ and verifying the existence of each statute through legal research, as well as standardizing any current notations of the statute such as those transferred within the U.S. Code by later legislation. If no current notation existed, then that statute was listed as is, such as “15 U.S.C. § 80a-30(c)”, which was used by an agency, and repealed during our review period. No replacement notation could be found.

For some U.S. Code statutes, we standardized statutes to an entire section or subsection to reference nondisclosure provisions that contain a description of the type of information withheld by that statute. Further, for some U.S. Code statutes that agencies used as a range of statutes, such as 7 U.S.C. §§ 7411-7425, we determined whether the range contained a single or multiple (b)(3) statute section(s) and developed a standardized statute for each (b)(3) section to assign the original agency statute. In some cases, where agencies used a smaller range of statutes, such as 21 U.S.C. §§ 1903-1905, we retained the notation and assigned a standardized version of the range to the original agency-used statute range. Additionally, for some U.S. Code statutes that agencies used that contained two (b)(3) statutes, such as 26 U.S.C. §§ 6103 and 6105, we developed a standardized statute for each (b)(3) section to assign the original agency statute.

For those agency-used statutes that could not be immediately standardized or seemed to be noted in error, we either assigned that statute to a related section (or sections) containing a nondisclosure provision, retained the notation and assigned a standardized version of the statute to the original agency-used statute, or removed that statute from our catalog. For example, an agency claimed 15 U.S.C. § 7301 as a (b)(3) statute; however, the statute was a purpose section and 15 U.S.C. § 7306 was the only related nondisclosure provision in that chapter or subchapter of the Code. Therefore, § 7301 was assigned to the standardized citation § 7306. Each standardized statute was counted as one single statute, regardless of the number of sections it represented, resulting in a total of 237 statutes.

⁶The format used was “title number-space-U.S.C.-space§-space-section number and subsection information.” For example, 5 U.S.C. § 552(b)(3).

Following our standardization exercise, we developed descriptions of each statute's subject matter. We also compared our standardized statutes list to Justice's list of qualified statutes to identify those statutes that qualified if a court has approved of the statute as being a (b)(3) statute. Next, we classified these statutes into 10 general categories based on their descriptions.

To determine usage of (b)(3) statutes by agencies, we calculated the number of times an agency used original agency-used statutes and assigned those numbers to its associated standardized statute in our catalog. In cases where an agency appeared to cite multiple statutes, such as 26 U.S.C. §§ 6103 and 6105, we counted the statutes separately if we determined they were different. For example, if an agency used 26 U.S.C. §§ 6103 and 6105 500 times during fiscal years 2010 to 2016, we would assign that number to each standardized statute in our catalog to ensure that 26 U.S.C. § 6103 and 26 U.S.C. § 6105 each received 500 as the number of times used. We compiled and sorted these data to obtain information on which agencies were using the statute, which agency used it the most, and the approximate number of times the statute was used by an agency.

To identify which statutes qualified as a (b)(3) exemption under the *OPEN FOIA Act of 2009*,⁷ we determined the date of the most recent legislative action for each standardized statute by identifying the dates of enactment and the most recent amendments of the statutes. We then identified those statutes enacted or amended after 2009 and we determined if they cited FOIA's paragraph (b)(3) by including a citation to 5 U.S.C. 552(b)(3) or "paragraph (b)(3) of section 552 of title 5, United States Code," or a similar citation that includes a reference to paragraph (b)(3).

To identify any additional statutes that the reviewed agencies did not claim during fiscal years 2010 to 2016, we developed another catalog of statutes that have similar provisions as other (b)(3) statutes that authorize an agency to withhold information from the public. Specifically, we utilized various sources to compile our list of statutes, including annual Justice reports on statutes determined by courts to constitute a (b)(3) statute, the

⁷Although the requirements of FOIA specify those (b)(3) exemption statutes that are enacted after the date of enactment of the *OPEN FOIA Act of 2009*, our review included amendments of (b)(3) exemptions statutes as it provided evidence of congressional reconsideration of the provisions of that statute and any attention given to the requirements set forth in 5 U.S.C § 552(b)(3)(B).

National Institute of Standards and Technology's *Guide for Mapping Types of Information and Information Systems to Security Categories*⁸, and two external nongovernmental organizations (American University Washington College of Law and ProPublica).⁹ In addition, we separately searched the U.S. Code for the keyword "552(b)(3)" using Lexis Nexis, to identify any additional statutes for our catalog. However, this additional catalog does not serve as a definitive or comprehensive list of (b)(3) statutes available for agencies to claim. Specifically, FOIA gives agencies broad discretion in deciding whether they can withhold information on the basis of a statute. For example, FOIA allows for agencies to assert a federal statute under the (b)(3) exemption if that statute establishes particular criteria or refers to particular types of matters to be withheld. Therefore, the statutes we identified may undercount the total number of exemptions available to agencies.

For our fourth objective, to determine the number and types of FOIA requests related to private corporations that received funds under the Troubled Asset Relief program (TARP), we reviewed the Department of Treasury's (Treasury) *Monthly Reports to Congress* (October 2008 and November 2014)¹⁰ and prior GAO reports relating to TARP.¹¹ We identified the corporations that received TARP funds and the federal agencies that received FOIA requests related to these corporations by reviewing Treasury's monthly reports for the time period in which Treasury held 50 percent or more common stock in corporations that were under the TARP agreement. We also reviewed prior GAO reports on TARP to verify the corporations and time period. In addition, we met with Treasury officials to verify the entities and time period.

The three corporations that received TARP funds were American International Group, General Motors, and Ally. The agencies that received

⁸National Institute of Standards and Technology, *Guide for Mapping Types of Information and Information Systems to Security Categories*, Special Publication 800-60 Volume I, Revision 1 (Gaithersburg, MD: August 2008).

⁹ProPublica is an independent, nonprofit newsroom that produces investigative journalism in the public interest.

¹⁰Department of Treasury: *Monthly Report to Congress* (October 2008); Department of Treasury: *Monthly Report to Congress* (November 2014).

¹¹[GAO-14-698](#); [GAO-14-6](#); [GAO-13-192](#); and GAO, *Troubled Asset Relief Program: Continued Stewardship Needed as Treasury Develops Strategies for Monitoring and Divesting Financial Interests in Chrysler and GM*, [GAO-10-151](#) (Washington D.C., Nov. 02, 2009).

FOIA requests about these corporations were Treasury, the Federal Deposit Insurance Corporation (FDIC), the Federal Reserve Board, and the Office of the Comptroller of the Currency. We met with these agencies to identify their involvement in providing assistance to companies related to TARP.

Next, we reviewed FOIA requests received by these four agencies during the period in which Treasury owned at least 50 percent or more common shares in the corporations. We reviewed the FOIA requests to determine the resolution of the request and the length of time it took the agency to respond. Lastly, we interviewed agency officials to better understand if and how FOIA requests were received and processed.

We conducted this performance audit from January 2017 through June 2018 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.

Appendix II: Freedom of Information Act Exemptions

The Freedom of Information Act (FOIA) prescribes nine specific categories of information that are exempt from disclosure. These exemptions are described in the table below.

Table 6: Information Exempt from Disclosure under the Freedom of Information Act (FOIA)

Exemption number	Matters that are exempt from FOIA
(1)	(A) Specifically authorized under criteria established by an Executive Order to be kept secret in the interest of national defense or foreign policy and (B) are in fact properly classified pursuant to the Executive Order.
(2)	Related solely to the internal personnel rules and practices of an agency.
(3)	Specifically exempted from disclosure by statute (other than section 552b of this title), provided that such statute: (A) requires that matters be withheld from the public in such a manner as to leave no discretion on the issue, or (B) establishes particular criteria for withholding or refers to particular types of matters to be withheld, and (C) if enacted after October 28, 2009, specifically refers to section 552(b)(3) of Title 5, United States Code.
(4)	Trade secrets and commercial or financial information obtained from a person and privileged or confidential.
(5)	Interagency or intra-agency memorandums or letters that would not be available by law to a party other than an agency in litigation with the agency.
(6)	Personnel and medical files and similar files the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.
(7)	Records or information compiled for law enforcement purposes, but only to the extent that the production of such law enforcement records or information:
(A)	could reasonably be expected to interfere with enforcement proceedings;
(B)	would deprive a person of a right to a fair trial or impartial adjudication;
(C)	could reasonably be expected to constitute an unwarranted invasion of personal privacy;
(D)	could reasonably be expected to disclose the identity of a confidential source, including a state, local, or foreign agency or authority or any private institution which furnished information on a confidential basis, and, in the case of a record or information compiled by a criminal law enforcement authority in the course of a criminal investigation or by an agency conducting a lawful national security intelligence investigation, information furnished by confidential source;
(E)	would disclose techniques and procedures for law enforcement investigations or prosecutions, or would disclose guidelines for law enforcement investigations or prosecutions if such disclosure could reasonably be expected to risk circumvention of the law; or
(F)	could reasonably be expected to endanger the life or physical safety of an individual.
(8)	Contained in or related to examination, operating, or condition of reports prepared by, on behalf of, or for the use of an agency responsible for the regulation of supervision of financial institutions.
(9)	Geological and geophysical information and data, including maps, concerning wells.

Source: 5 U.S.C. § 552(b)(1) through (b)(9). | GAO-18-365

Appendix III: Catalog of (b)(3) Exemption Statutes Agencies Claimed during Fiscal Years 2010 through 2016

Table 7 describes 237 (b)(3) exemption statutes used by FOIA reporting agencies during fiscal years 2010 through 2016 and indicates whether that statute has been found by a court to qualify as a (b)(3) exemption. Specifically, the Department of Justice, in its oversight role, identified 78 statutes that courts have ruled qualify as a (b)(3) statute. During fiscal years 2010 through 2016, when responding to FOIA requests, agencies used 75 of these statutes as the basis for withholding information.¹

Table 7: (b)(3) Exemptions Statutes Used by an Agency for Fiscal Years 2010-2016

(b)(3) Exemption Statute	Type of Information Withheld	Date of most recent legislative change	Found to qualify in court
5 U.S.C. § 552 note (Pub. L. No. 103 – 236)	Sensor data relating to a foreign country collected during observation flights conducted in connection with the Open Skies Treaty.	1994	
5 U.S.C. § 552 note (Pub. L. No. 105 – 246)	Privacy, intelligence, national security, weapons, or foreign relations information in Nazi war criminal records.	1998	
5 U.S.C. § 552 note (Pub. L. No. 111 – 83)	Information about government employees deployed outside the United States, and photographs related to the treatment of individuals engaged, captured, or detained after September 11, 2001 in operations outside the United States.	2009	
5 U.S.C. § 552a ^a	Personally identifiable information collected and held by government agencies.	2014	
5 U.S.C. § 552b(c)	As an exception to open meeting requirements, records of agency meetings where disclosure is likely to involve matters that would be covered by any FOIA exemption (e.g. 5 U.S.C. § 552(b)(1)-(9)).	1995	
5 U.S.C. § 574	Communications made by a mediator or parties in agency alternative dispute resolution proceedings.	1996	
5 U.S.C. § 7114(b)(4)	Certain labor relations training, guidance, advice or counsel provided for management officials or supervisors.	1978	✓
5 U.S.C. § 7132(a)	Subpoenas that would disclose certain labor relations training, guidance, advice or counsel.	1978	✓
5 U.S.C. § 7301 note (Pub. L. No. 100 – 71)	Federal employee drug testing information.	1987	
5 U.S.C. App. 3 § 7(b)	Identity of employees who provided information to the Inspector General.	1978	
5 U.S.C. App. 4 § 105	Certain financial disclosure information contained in Ethics in Government Act reports.	2012	

¹ The three other (b)(3) statutes approved by a court are 22 U.S.C. § 3104(c), 34 U.S.C. § 12592(b)(3) (Transferred from 42 U.S.C § 14132(b)(3)), and 47 U.S.C. § 605(a). These statutes are identified in appendix IV, among our listing of statutes agencies did not claim during our review period.

**Appendix III: Catalog of (b)(3) Exemption
Statutes Agencies Claimed during Fiscal Years
2010 through 2016**

(b)(3) Exemption Statute	Type of Information Withheld	Date of most recent legislative change	Found to qualify in court
5 U.S.C. App. 4 § 107(a)	Certain financial disclosure information contained in Ethics in Government Act reports.	1989	✓
6 U.S.C. § 121(d)(11)	Intelligence sources and methods and law enforcement sensitive information.	2016	
6 U.S.C. § 133(a)	Voluntarily shared critical infrastructure information.	2012	
6 U.S.C. § 623(e)	Certain anti-terrorism information related to chemical facilities.	2014	
7 U.S.C. § 12(a)	Information relating to commodity exchange investigations by the Commodity Futures Trading Commission.	2010	✓
7 U.S.C. § 26(h)(2)	Information provided to the Commodity Futures Trading Commission, which could reveal the identity of a whistleblower.	2010	
7 U.S.C. § 136h ^a	Environmental pesticide control data that relates to trade secrets or commercial or financial information.	1991	
7 U.S.C. § 136i-1(b)	Pesticide record data that would reveal the identity of individual producers.	1991	✓
7 U.S.C. § 608d(2)	Confidential trade secret, commercial or financial information provided to the Department of Agriculture by parties to agricultural marketing agreements or orders.	1999	
7 U.S.C. § 608d(3)	Business records, including confidential, trade secret, commercial, or financial information, provided to the Department of Agriculture relating to the handling or importation of cranberries.	1999	
7 U.S.C. § 1502(c)	Individually identifiable information provided by an agricultural producer for crop insurance purposes.	2014	
7 U.S.C. § 2018(c)	Business records related to an applicant food store under the Supplemental Nutrition Assistance Program.	2014	✓
7 U.S.C. § 2020(e)(8)	Information of applicants of the Supplemental Nutrition Assistance Program.	2014	
7 U.S.C. § 2105(c)	Research and business records provided to the Department of Agriculture by individuals and entities involved in covered cotton research and marketing activities.	1966	
7 U.S.C. § 2276(a)	Information regarding certain agricultural products if it would allow identification of the individual reporting.	2002	✓
7 U.S.C. § 2619(c)	Business records from handlers and importers of potatoes.	1991	
7 U.S.C. § 7414(i)	Business records provided to the Department of Agriculture by producers, importers and others in the marketing chain of agricultural commodities.	1996	
7 U.S.C. § 8401(h)	Business records, security information and other information about biological agents and toxins whose disclosure would endanger animal or plant health or products	2002	
7 U.S.C. § 8791(b)	Information provided by an agricultural producer or owner of agricultural land concerning farming or conservation practices for Department of Agriculture programs and related geospatial information.	2008	✓

**Appendix III: Catalog of (b)(3) Exemption
Statutes Agencies Claimed during Fiscal Years
2010 through 2016**

(b)(3) Exemption Statute	Type of Information Withheld	Date of most recent legislative change	Found to qualify in court
8 U.S.C. § 1202(f)	Records pertaining to the issuance or refusal of visas to enter the United States.	2004	✓
10 U.S.C. § 128	Unclassified special nuclear materials information pertaining to security measures that could affect public health and safety or national security.	2016	
10 U.S.C. § 130(a)	Export limited Department of Defense technical data with military or space application.	2016	✓
10 U.S.C. § 130b(a)	Personally identifiable information pertaining to members of the armed forces assigned to sensitive or overseas units.	2002	✓
10 U.S.C. § 130c(a)	Sensitive information of foreign governments and international organizations maintained by the Department of Defense, Department of Homeland Security, or Department of Energy.	2002	✓
10 U.S.C. § 130d	Confidential business information and sensitive but unclassified information shared by the Department of Defense with State and local personnel under section 892 of the Homeland Security Act.	2006	
10 U.S.C. § 130e(a)	Department of Defense critical infrastructure information.	2016	
10 U.S.C. § 424(a)	Information pertaining to the organization, function, or personnel of the Defense Intelligence Agency, the National Reconnaissance Office, and the National Geospatial-Intelligence Agency.	2003	✓
10 U.S.C. § 455(b)	Department of Defense maps, charts, and geodetic products whose disclosure is restricted under international agreement or would jeopardize military or intelligence operations.	2003	
10 U.S.C. § 457(a)	Files of foreign intelligence or counterintelligence operations of the National Photographic Interpretation Center.	2014	
10 U.S.C. § 613a(a)	Proceedings of a defense personnel selection board.	2011	
10 U.S.C. § 1102	Department of Defense medical quality assurance records.	2011	✓
10 U.S.C. § 1506	Debriefing records of returned missing persons in Department of Defense personnel files.	2013	
10 U.S.C. § 2254a(a)	Sensitive information about military aircraft, units, or aircrews in military flight operations quality assurance files.	2011	
10 U.S.C. § 2305(g)	Defense contractor proposals.	2017	✓
10 U.S.C. § 2306a(d)	Exempt information relating to commercial items received by a Department of Defense contracting officer.	2017	
10 U.S.C. § 2371(i)	Information relating to proposals for defense research projects within five years of the proposal.	2017	
10 U.S.C. § 2485(h)	Department of Defense commissary operations information; the disclosure of which would not be in the best interest of the Department of Defense.	2016	
10 U.S.C. § 2640(h)	Safety-related information voluntarily provided to the Department of Defense by air carriers related to the charter air transportation of members of the armed forces.	1997	

**Appendix III: Catalog of (b)(3) Exemption
Statutes Agencies Claimed during Fiscal Years
2010 through 2016**

(b)(3) Exemption Statute	Type of Information Withheld	Date of most recent legislative change	Found to qualify in court
10 U.S.C. § 14104(a)	The proceedings of a defense personnel selection board.	2011	
12 U.S.C. § 248(s)(6)	Information concerning certain matters before the Federal Reserve Board or a Federal Reserve Bank.	2010	
12 U.S.C. § 3403	Restrictions on financial institutions on providing customer information to government authorities.	1988	
12 U.S.C. § 3413(h)(4)	Financial institution customer records, the disclosure of which could harm customer financial privacy.	2010	
13 U.S.C. § 8(b)	Individually identifiable information collected by the Bureau of the Census.	1976	✓
13 U.S.C. § 9(a)	Individually identifiable information collected by the Bureau of the Census.	1997	✓
13 U.S.C. § 301(g)	Shippers' export declarations.	2008	✓
15 U.S.C. § 18a(h)	Information filed with the Department of Justice or the Federal Trade Commission related to premerger notification and waiting periods.	2000	
15 U.S.C. § 46(f)	Trade secret, commercial, or financial information obtained by the Federal Trade Commission.	2012	✓
15 U.S.C. § 57b-2	Confidential investigative materials received by the Federal Trade Commission.	2012	✓
15 U.S.C. § 77f(e)	Information provided to the Securities and Exchange Commission for review of proposals for registration of securities by an emerging growth company.	2015	
15 U.S.C. § 78q(h)	Information provided to the Securities and Exchange Commission relating to the oversight of securities brokers and dealers.	2010	
15 U.S.C. § 78u-6(h)	Information provided to the Securities and Exchange Commission which could reveal the identity of a whistleblower.	2010	
15 U.S.C. § 78x	Confidential or privileged information obtained by the Securities and Exchange Commission.	2010	
15 U.S.C. § 80a-30(c) ^b	Information collected by the Securities and Exchange Commission from investment companies as well as underwriters, brokers, dealers, and investment advisers.	-	
15 U.S.C. § 80b-4(b)	Reports of investment advisers provided to the Securities and Exchange Commission.	2010	
15 U.S.C. § 80b-10(b)	Information related to Securities and Exchange Commission examinations or investigations of investment advisers.	2010	
15 U.S.C. § 638(j)(2)	Data generated by contractors who retained their rights in the data under the contract.	2017	
15 U.S.C. § 638(k)	Information in the Small Business Innovative Research (SBIR) and Small Business Technology Transfer (STTR) program evaluation database.	2017	
15 U.S.C. § 1314(g)	Information provided to the Department of Justice pursuant to civil investigative demands pertaining to antitrust investigations.	1976	✓

**Appendix III: Catalog of (b)(3) Exemption
Statutes Agencies Claimed during Fiscal Years
2010 through 2016**

(b)(3) Exemption Statute	Type of Information Withheld	Date of most recent legislative change	Found to qualify in court
15 U.S.C. § 1335a(b)(2)	Information provided to the Department of Health and Human Services related to cigarette ingredients to be treated as trade secret or commercial information subject to 5 U.S.C. § 552(b)(4).	1984	
15 U.S.C. § 2055 ^c	Trade secrets and other confidential information relating to consumer product safety.	2008	✓
15 U.S.C. § 2074(c)	Personal information in accident or investigation reports related to consumer product safety.	1972	
15 U.S.C. § 3710a(c)	Trade secrets, commercial or financial information relating to technological innovation under cooperative research and development agreements.	2010	✓
15 U.S.C. § 4305(d)	Anti-trust investigation information about cooperative research joint ventures.	2004	
15 U.S.C. § 4606(a)	Semiconductor related intellectual property, trade secrets, and technical data developed by Sematech maintained by the Department of Defense.	1987	
15 U.S.C. § 6801	Nonpublic personal information of customers of financial institutions.	2010	✓
15 U.S.C. § 7306	Certain voluntarily provided information relating to investigations of building failures.	2002	✓
16 U.S.C. § 470aaa-8	Information concerning the nature and location of paleontological resources.	2009	
16 U.S.C. § 470hh	Information concerning the nature and location of archaeological resources.	2014	✓
16 U.S.C. § 1387(d)	Proprietary information collected while monitoring incidental taking of marine mammals during commercial fishing operations.	1994	
16 U.S.C. § 1881a(b)	Confidential information relating to fishery management.	2007	
16 U.S.C. § 4304	Information concerning the location of significant caves.	1988	
17 U.S.C. §§ 106, 107 ^a	Certain materials accompanying applications to register copyright claims.	2002	
18 U.S.C. § 208(d)(1)	Certain personal financial information, relevant to conflict of interest determinations, consistent with confidentiality provisions of the Ethics in Government Act.	1994	✓
18 U.S.C. § 701	United States government employee identification card or other insignia.	1994	✓
18 U.S.C. § 798(a)	Classified information pertaining to a code, cryptographic system, or communication intelligence activity.	1996	✓
18 U.S.C. § 923 note (Pub L. No. 112-55, 111-117, 111-8, 110-161, 109-108, 108-447)	Records of public firearms sales maintained by the Bureau of Alcohol, Tobacco, Firearms and Explosives.	2011, 2009, 2009, 2007, 2005, 2004	✓
18 U.S.C. § 1461	Obscene materials or records concerning nonmailable matter.	1994	

**Appendix III: Catalog of (b)(3) Exemption
Statutes Agencies Claimed during Fiscal Years
2010 through 2016**

(b)(3) Exemption Statute	Type of Information Withheld	Date of most recent legislative change	Found to qualify in court
18 U.S.C. § 2251	Information that includes the visual depiction of the sexual exploitation of children.	2008	
18 U.S.C. § 2252	Visual depictions of minors engaging in sexually explicit conduct.	2012	
18 U.S.C. § 2252A	Images of child pornography.	2012	
18 U.S.C. §§ 2510-20 ^d	Wiretap requests and the contents of any wire, oral, or electronic communication obtained through wiretaps.	2015	✓
18 U.S.C. § 2722(a)	Personal information from a motor vehicle record.	1994	
18 U.S.C. § 3123(d)	Information concerning the existence of a pen register or a trap and trace device, or a court order authorizing or approving the installation of such device.	2001	✓
18 U.S.C. § 3153(c)	Information obtained in the course of pretrial services functions in relation to a particular accused.	1982	
18 U.S.C. § 3509(d)	Personal information concerning a child victim of, or witness to, a crime.	2009	✓
18 U.S.C. § 3521(b)	Information about a person in a witness relocation or protection program.	2006	✓
18 U.S.C. § 4208 ^e	Expert reports and opinions regarding prisoners up for parole.	2013	✓
18 U.S.C. § 5038	Information about juvenile records and juvenile delinquency proceedings.	1996	
18 U.S.C. App. Fed. R. Crim. P. 6(e)	Information relating to grand jury proceedings.	2004	✓
18 U.S.C. App. Fed. R. Crim. P. 32(e)	Probation office presentence reports prior to adjudication.	1996	✓
19 U.S.C. § 1332(g)	Confidential business information maintained by the International Trade Commission.	1988	
19 U.S.C. § 1337(n)	Confidential information submitted to the International Trade Commission.	2004	
19 U.S.C. § 1677f	Proprietary information submitted to the International Trade Commission.	2016	✓
19 U.S.C. § 2155(g)	Privileged or confidential trade secrets and commercial or financial information considered in trade negotiations.	2015	✓
19 U.S.C. § 2605(h),(i)	Privileged or confidential trade secrets, commercial or financial information submitted to the Cultural Property Advisory Committee.	1987	✓
20 U.S.C. § 959(c)(4)(B)	Personal information about individuals serving on National Endowment for the Arts advisory panels.	1990	
20 U.S.C. § 1099c-1(b)(8)	Higher education program review reports prior to the release of the final report.	2008	
20 U.S.C. § 1232g	Personally identifiable education records or information.	2013	
21 U.S.C. § 331(j)	Trade secrets relating to regulated food and drugs.	2016	✓

**Appendix III: Catalog of (b)(3) Exemption
Statutes Agencies Claimed during Fiscal Years
2010 through 2016**

(b)(3) Exemption Statute	Type of Information Withheld	Date of most recent legislative change	Found to qualify in court
21 U.S.C. § 350d(a)	Information about registered food manufacturing, processing, or handling facilities.	2011	
21 U.S.C. § 355	Personal and other sensitive information relating to the safety and effectiveness of drugs.	2017	
21 U.S.C. §§ 1903-1905	Information relating to the identification and sanctioning of significant foreign narcotics traffickers.	2016	
22 U.S.C. § 288a(c)	International organization records that are immune from search or disclosure.	1945	
22 U.S.C. § 1461-1a	Information prepared for dissemination abroad by the Department of State or the Broadcasting Board of Governors.	2013	✓
22 U.S.C. § 1461	Information prepared for dissemination abroad by the Department of State or the Broadcasting Board of Governors.	2013	✓
22 U.S.C. § 1644 note (Pub. L. No. 104-99; 104-91)	Records pertaining to claims regarding the German Democratic Republic considered by the Foreign Claims Settlement Commission.	1996	
22 U.S.C. § 2751	Technical data withheld according to regulations establishing lists or categories of technical data that may not be exported, under the Arms Export Control Act.	1981	
22 U.S.C. § 2778(e)	Information pertaining to the export and import of defense articles.	2014	✓
22 U.S.C. § 4004(a)	Foreign Service employee records.	1999	
23 U.S.C. § 403(e)	Identities of individuals included in any report of the National Highway Traffic Safety Administration relating to highway traffic accidents or their investigations.	2015	
23 U.S.C. § 403 note (Pub. L. No. 89 - 564)	Identities of individuals included in any report of the National Highway Traffic Safety Administration on research projects, demonstration projects or related activities.	1966	
25 U.S.C. § 1675(g)	Medical quality assurance records created by or for any Indian health program.	2010	
25 U.S.C. § 2103(c)	Information possessed by the Department of the Interior regarding Indian mineral resources.	1982	
26 U.S.C. § 6103	Tax return information.	2016	✓
26 U.S.C. § 6105	Information about tax agreements with foreign governments.	2002	✓
28 U.S.C. § 652(d)	Confidential dispute resolution communications in federal district courts.	1998	✓
29 U.S.C. § 666(f)	Advanced notice of Occupational Safety and Health Administration inspections.	1970	
29 U.S.C. § 1310(c)	Business records of retirement plans submitted to the Pension Benefit Guaranty Corporation.	2014	
29 U.S.C. § 1343(f)	Information reported to the Pension Benefit Guaranty Corporation relating to significant changes in employee retirement insurance plans.	2006	

**Appendix III: Catalog of (b)(3) Exemption
Statutes Agencies Claimed during Fiscal Years
2010 through 2016**

(b)(3) Exemption Statute	Type of Information Withheld	Date of most recent legislative change	Found to qualify in court
30 U.S.C. § 813(g)	Names of persons in mine safety complaints.	2006	
30 U.S.C. § 872(b)	Coal mine maps.	1969	
31 U.S.C. § 3729(c)	Information related to false claims proceedings.	2009	
31 U.S.C. § 3730	Complaints in civil actions for false claims.	2010	
31 U.S.C. § 3733(k)	Information provided under a civil investigative demand in a false claims investigation.	2009	
31 U.S.C. § 5311	Records and reports on monetary instruments transactions.	2001	
31 U.S.C. § 5318(g)(2)	Information about suspicious financial transactions relevant to a possible violation of law or regulation.	2014	
31 U.S.C. § 5319	Information pertaining to reportable financial transactions.	2011	✓
34 U.S.C. § 10231	Law enforcement research or statistical information.	2006	
35 U.S.C. § 122(a)	Patent applications and related information.	2012	✓
35 U.S.C. § 181 ^f	National security related patent information.	1999	
35 U.S.C. § 202(c)(5)	Information about government contractor use of patent rights.	2002	
35 U.S.C. § 205	Information pertaining to an invention in which the Federal Government owns or may own a right or interest.	2011	
35 U.S.C. § 209(f)	Plans of a licensee for development or marketing of a federally owned invention.	2011	
38 U.S.C. § 5701	Claims information filed with the Department of Veterans Affairs.	2017	✓
38 U.S.C. § 5705	Department of Veterans Affairs medical quality assurance program information.	1991	✓
38 U.S.C. § 7332	Certain confidential veteran's medical records.	2017	✓
38 U.S.C. § 7451(d)(5)	Information collected in Department of Veterans Affairs nurse and other health-care personnel wage surveys.	2017	
39 U.S.C. § 410(c) ^a	Personal, confidential commercial, and other sensitive postal related information.	2011	✓
39 U.S.C. § 412(a)	Mailing or other lists of the names or addresses of postal patrons or other persons.	1994	
41 U.S.C. § 2102(a) ^g	Contractor bid or procurement information.	2011	✓
41 U.S.C. § 2313	Procurement integrity information.	2014	
41 U.S.C. § 3505 ^g	Information used to determine the price of a government contract.	2011	
41 U.S.C. § 4702(b) ^g	Contractor proposals.	2011	✓
42 U.S.C. § 241(d)	Personally identifiable health research information.	2016	
42 U.S.C. § 242m(d)	Health statistical or epidemiological information.	1998	
42 U.S.C. § 247d-6b(d)	Location of strategic national stockpiles of drugs, vaccines, and other supplies.	2016	

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2010 through 2016**

(b)(3) Exemption Statute	Type of Information Withheld	Date of most recent legislative change	Found to qualify in court
42 U.S.C. § 262a(h)	Information about biological agents or toxins that may pose a severe threat to public health and safety.	2002	
42 U.S.C. § 290dd-2	Patient records relating to substance abuse treatment or prevention.	2002	
42 U.S.C. § 299c-3	Personally identifiable health research information.	2010	
42 U.S.C. § 300aa-12(d)(4)	Public health vaccine information.	1993	✓
42 U.S.C. § 300i-2(a)	Terrorist vulnerability assessments of water systems.	2002	
42 U.S.C. § 405(r)(6)	Death certificate information provided by states to the Social Security Administration.	2015	✓
42 U.S.C. § 653(l)	Information in the Federal Parent Locator Service.	2014	
42 U.S.C. § 1306c	Death Master File records.	2013	
42 U.S.C. § 1320c-9(a)	Healthcare quality improvement information.	2011	
42 U.S.C. § 1320d-6(a)	Unauthorized disclosure of individually identifiable health information under the Health Insurance Portability and Accountability Act.	2009	
42 U.S.C. § 1395bb(b)	Osteopathic accreditation information.	2008	
42 U.S.C. § 1396r-8 (b)(3)(D)	Drug manufacturing and price information.	2016	
42 U.S.C. § 2000e-5(b)	Equal employment opportunity enforcement information.	2009	✓
42 U.S.C. § 2000e-8(e)	Equal employment opportunity investigation information.	1972	✓
42 U.S.C. § 2000ff-6	Employment discrimination related information.	2008	
42 U.S.C. § 2000g-2(b)	Civil rights conciliation assistance information.	1964	
42 U.S.C. § 2162	Atomic energy and weapons Restricted Data.	2013	✓
42 U.S.C. § 2167	Atomic energy safeguards information.	1992	
42 U.S.C. § 2168(a)(1)	Atomic energy defense program information.	2013	
42 U.S.C. § 2286d(a)	Department of Energy nuclear facilities safety information.	2013	✓
42 U.S.C. § 3537a	Department of Housing and Urban Development grant selection process information.	1989	
42 U.S.C. § 3545(a)(5)	Emergency exception to the Department of Housing and Urban Development publication of information about assistance programs.	2008	
42 U.S.C. § 3610(d)	Information related to conciliation of disputes regarding unfair housing.	1988	✓
42 U.S.C. § 7256(g)(5)	Commercial information involved in Department of Energy contractor leases.	2013	
42 U.S.C. § 7412(r)(7)(H)(iii)	Air pollution analysis information.	1999	
42 U.S.C. § 11137(b)	Medical professional review information.	1987	
42 U.S.C. § 12117	Information relating to employment discrimination on the basis of disability.	1990	

**Appendix III: Catalog of (b)(3) Exemption
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2010 through 2016**

(b)(3) Exemption Statute	Type of Information Withheld	Date of most recent legislative change	Found to qualify in court
43 U.S.C. § 1352	Confidential oil and gas information.	1978	
44 U.S.C. § 3501 note (Pub. L. No. 107 – 347, Title V)	Confidential statistical information.	2002	
44 U.S.C. § 3555(f)(g)	Sensitive information security information.	2014	
45 U.S.C. § 362(d)	Personally identifiable Railroad Retirement Board employee information.	1988	✓
46 U.S.C. § 40306	Common carrier agreements and other shipping information filed with the Federal Maritime Commission.	2006	
46 U.S.C. § 40502(b)(1)	Service contracts or agreements filed with the Federal Maritime Commission.	2006	
46 U.S.C. § 70103(d)	Maritime transportation security plans and related information.	2010	
47 U.S.C. § 1426(d)	Information relating to the First Responder Network Authority.	2012	
49 U.S.C. § 114(r)	Air transportation security information.	2016	✓
49 U.S.C. § 1114	Information submitted to the National Transportation Safety Board.	2000	✓
49 U.S.C. § 1136(d)	Passenger lists of aircraft accidents.	1996	
49 U.S.C. § 20109(i)	Identity of railroad employee whistleblowers.	2008	
49 U.S.C. § 24301 note (Pub. L. No. 105-134)	Contractor proposals in the possession or control of Amtrak.	1997	
49 U.S.C. § 30183	National Highway Traffic Safety Administration information relating to any highway traffic accident.	2012	
49 U.S.C. § 30305(c)	National Driver Register information.	2015	
49 U.S.C. § 31105(h)	Identity of motor vehicle safety whistleblowers.	2007	
49 U.S.C. § 31143(b)	Identity of motor vehicle complainants.	1994	
49 U.S.C. § 40110(e)	Aviation program procurement proposals.	2012	
49 U.S.C. § 40115	Information harmful to United States international aviation negotiations.	1994	
49 U.S.C. § 40119(b)	Transportation security related information.	2012	✓
49 U.S.C. § 40123(a)	Voluntarily submitted aviation security information.	1996	
49 U.S.C. § 46102(c)	National security information in aviation security proceedings.	2001	
49 U.S.C. § 46311(a)	Information obtained by the Department of Transportation or the Federal Aviation Administration from aviation safety inspections of air carrier records.	2001	
49 U.S.C. § 60138	Pipeline security information.	2012	
50 U.S.C. § 1701 note (Pub. L. No. 99-93)	Iranian Claims Tribunal information.	1985	
50 U.S.C. § 1702(a)(1)	Certain information related to emergency seizure of foreign assets by the President of the United States.	2001	✓
50 U.S.C. § 1802(a)(3)	Electronic surveillance authorization certificate.	2010	

**Appendix III: Catalog of (b)(3) Exemption
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2010 through 2016**

(b)(3) Exemption Statute	Type of Information Withheld	Date of most recent legislative change	Found to qualify in court
50 U.S.C. § 1806(b)	Foreign intelligence electronic surveillance information.	2015	
50 U.S.C. § 3024(i)(1) ⁹	Intelligence sources and methods information.	2017	✓
50 U.S.C. § 3024(m)(1)	Confidentiality of identities of Office of the Director of National Intelligence personnel.	2014	
50 U.S.C. § 3121 ⁹	Identities of United States undercover intelligence officers, agents, informants, and sources.	2010	
50 U.S.C. § 3141(a) ⁹	Files of foreign intelligence or counterintelligence operations of the Central Intelligence Agency.	2010	✓
50 U.S.C. § 3142 ⁹	Files of foreign intelligence or counterintelligence operations of the National Geospatial-Intelligence Agency.	2006	
50 U.S.C. § 3143(a) ⁹	Files of foreign intelligence or counterintelligence operations of the National Reconnaissance Office.	2006	✓
50 U.S.C. § 3144 ⁹	Files of foreign intelligence or counterintelligence operations of the National Security Agency.	2004	
50 U.S.C. § 3161 note (Pub. L. No. 102-190)	Information concerning unaccounted for United States personnel of the Cold War, Korean conflict, and Vietnam era.	2006	
50 U.S.C. § 3507 ⁹	Information related to sources and methods of intelligence activities of the Office of the Director of National Intelligence and the Central Intelligence Agency.	2010	✓
50 U.S.C. § 3605 ⁹	Information related to sources and methods of intelligence activities and personnel of the National Security Agency.	1959	✓
50 U.S.C. § 4565(c) ⁹	National security information relating to mergers and acquisitions.	2007	
50 U.S.C. § 4614(c) ⁹	National security export control information.	2004	✓
51 U.S.C. § 50916	Restricted commercial space launch activities information.	2010	
52 U.S.C. § 30109(a)(4),(12) ⁹	Federal election campaign information.	2013	✓
54 U.S.C. § 100707 ⁹	Information concerning the nature and location of endangered, threatened, rare, or commercially valuable National Park System sites or resources.	2014	✓
54 U.S.C. § 307103	Sensitive information about historic resources or properties.	2014	
Convention on Nuclear Safety (1994), Article 27, S. Treaty Doc. 104-6 (1995).	Personal, commercial confidential and national security information.	1999	
Legal Services Corporation Appropriations Act, Pub. L. 104-134, § 509(i)	Information relating to the Legal Services Corporation, including client services.	1996	
Pub. L. No. 113-235, Sec. 716 & 717 (Consolidated Appropriations Act, 2015)	Federal employee address and non-public information (e.g. mailing, telephone, or email lists).	2014	

**Appendix III: Catalog of (b)(3) Exemption
Statutes Agencies Claimed during Fiscal Years
2010 through 2016**

(b)(3) Exemption Statute	Type of Information Withheld	Date of most recent legislative change	Found to qualify in court
Treaty with Hong Kong on criminal matters (1996), S. TREATY DOC. NO. 105-3 (1997).	Information deemed confidential under a criminal extraditions treaty.	1997	
Treaty with Israel on criminal matters, Art. 7 & 9, S. TREATY DOC. NO. 105-40 (1998). Ratified Oct. 21, 1998.	Information deemed confidential under a mutual assistance in criminal investigations treaty.	1998	
Treaty with the European Union on criminal matters, Art. 10, S. TREATY DOC. NO. 109-13 (2006). Ratified Sept. 23, 2008.	Information deemed confidential under a mutual assistance in criminal investigations treaty.	2008	
Treaty with the Russian Federation on criminal matters, S. TREATY DOC. NO. 106-22, Articles 7, 9 & 13 (2000). Ratified Dec. 19, 2001.	Information deemed confidential under a mutual assistance in criminal investigations treaty.	2001	
Treaty with the Swiss Confederation on criminal matters, May 25, 1973, Art. 5, S. Treaty 94 – 17 (1976). Ratified June 21, 1976.	Information deemed confidential under a mutual assistance in criminal investigations treaty.	1976	
United Nations Convention Against Illicit Traffic in Narcotic Drugs and Psychotropic Substances, S. TREATY DOC. NO. 101-4. Ratified Nov. 22, 1989.	Information deemed confidential under a treaty for enforcement of laws related to illicit drug trafficking.	1989	

Source: GAO analysis of FOIA.gov data from fiscal years 2010-2016. | GAO-18-365

Note: A checkmark indicates that the (b)(3) statute was identified within Justice's list of 78 statutes that are currently in effect and that courts have found to qualify as statutes under the (b)(3) exemption.

^a Justice states this statute is not a valid (b)(3) statute.

^b This statute was repealed by Pub. L. No. 111-257 on 10/5/10.

^c For this statute, the criteria for nondisclosure is made by references to other statutes.

^d Agencies used this range of statutes, but only 18 U.S.C. §§ 2511, 2517, and 2518 contain non-disclosure provisions. Each of these statutes has been amended at various times, most recently in 2015.

^e Repealed by Pub. L. No. 98-473 (1984,) but the provisions were extended in 18 U.S.C. § 3551 note.

^f Agencies claimed the range of 35 U.S.C. §§ 181-188, however the only (b)(3) provision in the range is 35 U.S.C. § 181.

^g The citation identifies the current form of a statute claimed by an agency that was subsequently given a new citation through a transfer, codification, or reenactment. Thus, the claimed statute no longer exists in the form originally cited, but does exist in the form of the current citation.

Appendix IV: Catalog of Statutes Authorizing the Withholding of Information but Not Used by Agencies under the (b)(3) Exemption during Fiscal Years 2010 through 2016

Table 8 identifies 140 additional statutes outside of our agency used catalog that we did not identify as used by agencies during our fiscal year 2010 through 2016 review period. These statutes have similar provisions to other (b)(3) exemption statutes, authorizing an agency to withhold information from the public.

Table 8: Statutes that Authorize an Agency to Withhold Information from the Public That Were Not Identified as (b)(3) Exemption Statutes Used by Agencies during Fiscal Years 2010-2016

Statute	Type of information withheld
2 U.S.C. § 621 note (Pub. L. No. 101-508)	Information of government sponsored enterprise financial risk provided to the Treasury Department.
5 U.S.C. § 552 note (Pub. L. No. 106 – 567)	Privacy, intelligence, national security, weapons, or foreign relations information in Japanese Imperial Government records between 1931 and 1948.
5 U.S.C. § 552 note (Pub. L. No. 108 – 7)	Law enforcement records relating to arson or explosives incidents or the tracing of a firearm.
5 U.S.C. § 552 note (Pub. L. No. 108 – 375)	National security related land remote sensing information.
5 U.S.C. § 1213(h)	Office of Special Counsel disclosure of the identity of a whistleblower.
6 U.S.C. § 121 note (Pub. L. No. 109-295)	Security precautions for chemical facilities. Note: Repealed by Pub. L. No. 113-254 on 12/18/14.
6 U.S.C. § 488a(h)(1)	Records of sale and transfer of ammonium nitrate.
6 U.S.C. § 1504(d)(3)	Cyber threat indicators and defensive measures shared with the government.
7 U.S.C. § 136e(d)	Reports of pesticide information.
7 U.S.C. § 472	Information on cotton grades and staple length.
7 U.S.C. § 499f	Identity of persons reporting violations of perishable agricultural commodities rules.
7 U.S.C. § 608d note (Pub. L. No. 103-11, Pub. L. No. 102-341, Pub. L. No. 102-142, Pub. L. No. 101-506, Pub. L. No. 101-161, Pub. L. No. 100-460)	Information provided to the Department of Agriculture by handlers of products covered by agricultural marketing agreements.
7 U.S.C. § 1373	Information about corn, wheat, cotton, or rice for setting and adjusting quotas.
7 U.S.C. § 1636	Transactions relating to meat packing contracts.
7 U.S.C. § 1637b(c)(2)(B)	Information on the dairy product industry.
7 U.S.C. § 2157(a)	Trade secrets relating to animals in research facilities.
7 U.S.C. § 2279-1(d)	Identity of participants in programs for socially disadvantaged farmers and ranchers.
7 U.S.C. § 2426	Information of applications for plant variety protection.
7 U.S.C. § 4504(k)	Business records relating to dairy promotion programs.
7 U.S.C. § 4534(c)	Dairy research information obtained by the Department of Agriculture.

**Appendix IV: Catalog of Statutes Authorizing
the Withholding of Information but Not Used by
Agencies under the (b)(3) Exemption during
Fiscal Years 2010 through 2016**

Statute	Type of information withheld
7 U.S.C. § 4608(g)	Business records relating to honey bees.
7 U.S.C. § 4810(b)	Records of transactions involving pig or pork products.
7 U.S.C. § 4908(c)	Business records relating to the handling and importing of watermelons.
7 U.S.C. § 5712(a)	Information on exports of wheat, flour, feed grains, oil seeds, cotton, port, beef and other crops.
7 U.S.C. § 6804(j)	Business records of fresh cut flowers and greens.
7 U.S.C. § 7484(i)(3)	Popcorn production information obtained by the Popcorn Board.
8 U.S.C. § 1160(b)(6)	Application information for aliens lawfully admitted for temporary residence status.
8 U.S.C. § 1182(n)(2)(G)(ii)	The identity of a person who provided the Department of Labor information about an employer's immigrant practices.
8 U.S.C. § 1255a(c)(5)	Application information for persons admitted for lawful residence status.
8 U.S.C. § 1304(b)	Immigration registration and fingerprint information.
8 U.S.C. § 1367(a)(2)	Information relating to an alien who receives relief for certain special circumstances, including being a victim of trafficking or other criminal activity.
10 U.S.C. § 113 note (Pub. L. No. 114-328)	Information of transportation companies provided to the Secretary of Defense.
10 U.S.C. § 1587(c)	Identity of whistleblowers in the Department of Defense.
10 U.S.C. § 2254(b)	Department of Defense reports of aircraft accident investigations.
10 U.S.C. § 2501 note (Pub. L. No. 108-136)	Information on military dependence on foreign supply.
10 U.S.C. § 2507(d)	Information used to make reports on capabilities and needs of the National Technology and Industrial Base.
10 U.S.C. § 14108	Recommendations of military promotion boards.
12 U.S.C. § 1811 note (Pub. L. No. 101-73)	Information of government sponsored enterprise financial risk provided to the Treasury Department.
12 U.S.C. § 1828(t)(2)	Records of banks required to be submitted to the Securities and Exchange Commission.
12 U.S.C. § 1828b	Information collected by banking regulators to assist in antitrust investigations.
12 U.S.C. § 1831m-1(a)(2)(B)	Safety and soundness information of financial institutions being used in pending civil or criminal enforcement actions.
12 U.S.C. § 2906	Examination information of an insured depository institution.
12 U.S.C. § 3413(k)(3)	Customer financial information provided by a financial institution.
12 U.S.C. § 4522	Orders of the director of the Federal Housing Finance Agency that would harm the financial health of the regulated entity, if publicly known.
12 U.S.C. § 4546	Proprietary information of the Government National Mortgage Association and the Federal National Mortgage Association.

**Appendix IV: Catalog of Statutes Authorizing
the Withholding of Information but Not Used by
Agencies under the (b)(3) Exemption during
Fiscal Years 2010 through 2016**

Statute	Type of information withheld
12 U.S.C. § 4586	Orders of the director of the Federal Housing Finance Agency that would harm the financial health of the regulated entity if publicly known.
12 U.S.C. § 4639	Orders of the director of the Federal Housing Finance Agency that would harm the financial health of the regulated entity if publicly known.
12 U.S.C. § 5468(g)	Records of financial market utilities used to determine if systemically important.
12 U.S.C. § 5512(c)(8)	Personal consumer information provided to the Consumer Financial Protection Bureau.
13 U.S.C. § 214	Census data.
15 U.S.C. § 78dd-1(e)(2)	Attorney General opinions on prohibited foreign trade practices by securities issuers.
15 U.S.C. § 78dd-2(f)(2)	Attorney General opinions on prohibited foreign trade practices by domestic concerns.
15 U.S.C. § 78m(f)(3)	Information about securities that the Securities and Exchange Commission determines should not be disclosed.
15 U.S.C. § 78o-5(b)(2)(F)	Financial or operations information of government securities broker or dealers.
15 U.S.C. § 176a	Statistical information provided to the Bureau of Foreign and Domestic Commerce.
15 U.S.C. § 278k(j)(1)	Business and trade secrets information of manufacturing extension centers and their clients.
15 U.S.C. § 796(d)	Energy information collected by Federal Energy Administrator.
15 U.S.C. § 2055a(c)(2)(C)(ii)	Trade secrets submitted in reports to the Consumer Product Safety Commission.
15 U.S.C. § 2077	Chronic hazard information on consumer products held by chronic hazard advisory panels of the Consumer Product Safety Commission.
15 U.S.C. § 4019(a)	Information relating to the review of export trading certificates.
15 U.S.C. § 6201	Antitrust investigative materials held by the Department of Justice and the Federal Trade Commission.
15 U.S.C. § 7215(b)(5)(A)	Records of inspections of registered public accounting firms.
16 U.S.C. § 824o-1(d)(1)	Information regarding critical electric infrastructure.
16 U.S.C. § 973j(b)	Reports submitted by tuna fishing licensees.
16 U.S.C. § 1504(d)(3)	Cybersecurity information indicating potential cyber threats or defensive measures.
16 U.S.C. § 3844(b)(1)	Personal information relating to the Department of Agriculture natural resources conservation programs.
17 U.S.C. § 1003	Importation records of digital audio recording devices and media held by the Copyright Office.
18 U.S.C. § 504	Unauthorized illustrations or reproductions of stamps, currency, obligations or other United States securities.

**Appendix IV: Catalog of Statutes Authorizing
the Withholding of Information but Not Used by
Agencies under the (b)(3) Exemption during
Fiscal Years 2010 through 2016**

Statute	Type of information withheld
18 U.S.C. § 1030(a)(3)	Records that require accessing systems that would be illegal to access by the agency.
18 U.S.C. § 1426(h)	Unauthorized reproduction of naturalization or citizenship papers.
18 U.S.C. § 1917	Information that might improve or injure an individual's chances in a civil service examination.
19 U.S.C. § 1333(h)	Information relating to violations of protective orders issued by the U.S. International Trade Commission.
19 U.S.C. § 1431(c)(2)	Vessel manifest information that is likely to pose a threat of personal injury or property damage if disclosed.
20 U.S.C. § 1078(c)(9)(J)	Financial soundness information of federal student loan guaranty agencies.
21 U.S.C. § 353(e)(2)(D)	Trade secrets of drug wholesale distributors.
21 U.S.C. § 360j(c)	Confidential trade secret information relating to medical devices.
21 U.S.C. § 379(b)	Information relating to drugs obtained from a foreign government agency.
21 U.S.C. § 830	Records of transactions involving regulated chemicals.
21 U.S.C. § 842	Records of transactions involving regulated chemicals.
21 U.S.C. § 1908(i)	Information about the activities, records, or proceedings of the Judicial Review Commission on Foreign Asset Control.
22 U.S.C. § 2356(a)(2)	Technical information of a patent made confidential by owner.
22 U.S.C. § 3104(c) ^a	Business records, including that permitting identification of the provider, relating to international investment and trade.
22 U.S.C. § 3144(b)	Information of businesses engaging in foreign direct investment.
22 U.S.C. § 3929(f)(2)	Identity of informants to the Inspector General of the State Department.
22 U.S.C. § 4833	Proceedings and evidence of Accountability Review Boards of the State Department.
22 U.S.C. § 6744(a)	Business information of chemical producers.
22 U.S.C. § 8131	Information collected while processing requests for complementary access by the international atomic energy inspectors.
25 U.S.C. § 2716(a)	Confidential information received by the National Indian Gaming Commission relating to its regulation and oversight of gaming on Indian lands.
26 U.S.C. § 4424	Gambling taxpayer information.
26 U.S.C. § 6109(f)	Employer Identification Numbers collected or maintained by the Department of Agriculture.
26 U.S.C. § 6109(g)	Employer Identification Numbers collected or maintained by the Department of Agriculture or the Federal Crop Insurance Corporation.
26 U.S.C. § 7213(a)(1)	Unauthorized disclosure of tax return information.
26 U.S.C. § 7602(c)	Information about third party sources of information about tax liability if disclosure would jeopardize tax collection or may involve reprisal against any person.

**Appendix IV: Catalog of Statutes Authorizing
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Statute	Type of information withheld
28 U.S.C. § 592(e)	Information provided to a court related to the appointment or activities of an independent counsel.
29 U.S.C. § 664	Trade secrets encountered in Department of Labor investigations.
29 U.S.C. § 2008	Results of polygraphs performed by intelligence agencies and the Federal Bureau of Investigation.
30 U.S.C. § 1262(b)	Trade secrets of coal exploration activities.
33 U.S.C. § 555a	Petroleum product information for tax purposes.
33 U.S.C. § 1318(b) ^p	Trade secrets of effluents producers.
33 U.S.C. § 1513(b) ^p	Trade secrets of deep-water ports.
33 U.S.C. § 2313(b)	Trade secrets or commercial or financial information relating to a collaborative research project with the United States Army Corps of Engineers.
34 U.S.C. § 12391(b)	Results of tests for sexually transmitted diseases.
34 U.S.C. § 12592(b)(3) ^a	Deoxyribonucleic acid samples and profiles collected during law enforcement investigations.
38 U.S.C. § 5319(c)	The identity and address of financial institutional customers to carry out veterans' benefits programs.
39 U.S.C. § 3016(d)	Information obtained by subpoena issued by the Postmaster General during an investigation.
41 U.S.C. § 3704(d)	Debriefing materials not to be disclosed to an unsuccessful offeror.
42 U.S.C. § 247d-7e(e)	Vulnerabilities of public health defenses against biological, chemical, nuclear, or radiological threats.
42 U.S.C. § 289g-1(d)	Audit information of compliance with human fetal tissue research regulations.
42 U.S.C. § 300aa-25(c)	Personally identifiable vaccine records.
42 U.S.C. § 300j-4(d)(1) ^b	Trade secrets of public water systems.
42 U.S.C. § 300jj-52(d)(2)(B)	Information obtained by the National Coordinator for Health Information Technology relating to possible information blocking.
42 U.S.C. § 1320a-7n(b)(1)	Algorithms used to identify waste, fraud, and abuse in Medicare, Medicaid, and the Children's Health Insurance Program.
42 U.S.C. § 1320b-11(g)	Identity and other information of blood donors.
42 U.S.C. § 1395m-1(a)(11)	Names of clinical diagnostic laboratories and payors for laboratory tests.
42 U.S.C. § 1395w-4(q)(12)(A)(iv)	Feedback provided to Merit-based Incentive Payment System eligible professionals by the Department of Health and Human Services.
42 U.S.C. § 1758(b)(6)	Application information for free or reduced price school meals.
42 U.S.C. § 2181(e)	Nuclear or atomic information in patent applications.
42 U.S.C. § 2274	Communication of restricted data.
42 U.S.C. § 4912(b)(1) ^b	Records collected by the Environmental Protection Agency that are trade secrets of manufacturers.
42 U.S.C. § 7414(c) ^b	Trade secrets of emissions producers.

**Appendix IV: Catalog of Statutes Authorizing
the Withholding of Information but Not Used by
Agencies under the (b)(3) Exemption during
Fiscal Years 2010 through 2016**

Statute	Type of information withheld
42 U.S.C. § 9122(b) ^p	Records collected by the National Oceanic and Atmospheric Administration of ocean thermal energy conversion facilities.
42 U.S.C. § 9660(b)(8)	Trade secrets of technologies used for hazard substance research, development, and training.
42 U.S.C. § 10806(a)	Mental health records of patients.
45 U.S.C. § 1204(b) ^p	Proprietary business and other information held by the Department of Transportation of Alaskan rail properties.
46 U.S.C. § 4309(b)	Trade secrets reported by a recreational vessel manufacturer.
47 U.S.C. § 605(a) ^a	Unauthorized disclosure of wire or radio communications.
49 U.S.C. § 505(a)	Contents of contracts between motor carriers and shippers provided to the Department of Transportation.
49 U.S.C. § 16103	Information obtained from pipeline carriers.
49 U.S.C. § 20118(a)	Information reported to the Secretary of Transportation under a railroad safety risk reduction program.
49 U.S.C. § 30172(f)(3)	Identities of whistleblowers providing information to the Secretary of Transportation.
49 U.S.C. § 44703(i)(9)	Personnel records of pilots collected by the Federal Aviation Administration.
49 U.S.C. § 44735(a)	Reports of safety information submitted to the Federal Aviation Administration.
50 U.S.C. § 1701	Information vital to national interest in declared national states of emergency.
50 U.S.C. § 1861(d)	Business records in the Federal Bureau of Investigation's possession that are obtained in the course of foreign intelligence and terrorism investigations.
50 U.S.C. § 2672(c)	Defense atomic energy restricted or formerly restricted data that might be inadvertently released during automatic declassification.
50 U.S.C. § 3146	Reports provided to the Office of the Director of National Intelligence from elements of the intelligence community with exempted operational files.
50 U.S.C. § 3162	Request for financial records in connection with a terrorism or counterintelligence investigation.
50 U.S.C. § 3517(e)(3)	Identity of informants to the Inspector General of the Central Intelligence Agency.
50 U.S.C. § 4555(d)	National security information relating to investigations and studies of the United States industrial base.
50 U.S.C. § 4560(f)	Confidential information whose disclosure would aid any other person in commodity speculation.

Source: GAO analysis of the United States Code. | GAO-18-365

^a Justice stated that 22 U.S.C. § 3104(c), 34 U.S.C. § 12592(b)(3) (transferred from 42 U.S.C. § 14132(b)(3)), and 47 U.S.C. § 605(a) have been identified by courts as qualifying statutes under the (b)(3) exemption.

^b Criteria for nondisclosure is made by references to other statutes.

Appendix V: Comments from the Department of Homeland Security

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



**Homeland
Security**

April 18, 2018

David Powner
Director, Information Technology Management Issues
U.S. Government Accountability Office
441 G Street, NW
Washington, DC 20548

Re: Management's Response to Draft Report GAO-18-365, "FREEDOM OF INFORMATION ACT: Agencies Are Implementing Requirements, but Additional Actions Are Needed"

Dear Mr. Powner:

Thank you for the opportunity to review and comment on the draft report. The U.S. Department of Homeland Security (DHS) 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' efforts to implement new requirements of the "Freedom of Information Act (FOIA) Improvement Act of 2016," including revising our response letters, providing records online, and publishing updated FOIA regulations. DHS consistently receives the largest number of FOIA requests of any federal department or agency, receiving almost 40 percent of all requests within the Federal Government. During fiscal year (FY) 2017, DHS received 366,036 requests, a 12 percent increase from FY 2016. Notably, the FY 2017 numbers represented the largest amount of requests received by an agency during one year.

It is also important to note that during FY 2017, DHS:

- Released more than 32 million pages of records in response to FOIA requests;
- Released an additional 126,000 pages through the appeals process; and
- Released 133,000 pages in response to FOIA litigation.

The Department also decreased its overall backlog by six percent from 46,788 in FY 2016 to 44,117 in FY 2017. In addition, DHS was able to decrease the age of requests pending by continuing to focus on closing out older backlogged cases. Specifically, during FY 2017, DHS decreased the number of cases backlogged for more than 100 days by 17 percent and the number of cases backlogged more than 200 days by 12 percent compared to FY 2016.

In conjunction with the Department's increased productivity, DHS was also able to decrease the processing cost per case and increase production by FOIA employees. For example, DHS' total cost of processing FOIA requests, including litigation costs, was more than \$56 million during FY 2017. The average cost of processing a FOIA request in the Department during FY 2017 was approximately \$154 per request, significantly below the average FY 2016 cost of \$184. DHS

remains committed to building upon all of these improvements and addressing any other FOIA-related challenges that may arise.

The draft report contained 25 recommendations, two that were for DHS and with which the Department concurs. Attached for our detailed response to these recommendation. Technical comments were previously provided under separate cover.

Again, thank you for the opportunity to review and comment on the 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, CIA, CFE
Director
Departmental GAO-OIG Liaison Office

Attachment

**Attachment: Management Response to Recommendations
Contained in GAO 18-365**

GAO recommended that the Secretary of DHS:

Recommendation 1: Designate a chief FOIA Officer at the assistant secretary level or equivalent. (Recommendation 4)

Response: Concur. In accordance with 5 U.S.C. § 552(j)(1), “Each agency shall designate a Chief FOIA Officer who shall be a senior official of such agency (at the Assistant Secretary or equivalent level).” DHS Delegation Number 13001, “Delegation to the Chief Privacy Officer,” dated August 29, 2011, delegates the full authority and responsibility of the Department’s FOIA operations and programs to the Chief Privacy Officer (CPO). Further, DHS Directive Number 262-11, “Freedom of Information Act Compliance,” dated April 17, 2017, designates the CPO to serve as the Chief FOIA Officer. The CPO for the Department is appointed by the Secretary under 6 U.S.C. § 142 without Senate confirmation in accordance with the Appointments Clause to the U.S. Constitution. The CPO serves as a senior official in the Department reporting to the Secretary and exercising significant government authority. The CPO meets the senior executive service standard under 5 U.S.C. § 3132(a)(2) and is classified above the GS-15 level. Accordingly, the CPO is comparable to a senior executive level position at executive schedule levels III, IV, or V. The CPO is similar to many assistant secretary positions in DHS and across the government. Thus, the Department is already in compliance with the requirement to designate a Chief FOIA Officer at the assistant secretary level or equivalent. We request that GAO consider this recommendation resolved and closed.

Recommendation 2: Take steps to develop and document a plan that fully addresses best practices with regards to reduction of backlogged requests. (Recommendation 5)

Response: Concur. The DHS Deputy Chief FOIA Officer will initiate a Department-wide compliance assessment of FOIA operations no later than May 31, 2018, to identify the Components with the most significant backlog problems and “root causes” for these problems, then develop a proposed plan for backlog reduction, which includes “best practices,” for presentation to the Secretary of Homeland Security. Specifically, by December 31, 2018, the Deputy will have completed visiting components and interviewing FOIA Officers and staff to better understand challenges Component FOIA Service Centers are experiencing. The Deputy will then develop the proposed plan for presentation to the Secretary. ECD: June 29, 2019.

Appendix VI: Comments from the Department of Justice



U.S. Department of Justice
Office of Information Policy
Suite 11050
1425 New York Avenue, NW
Washington, DC 20530-0001

Telephone: (202) 514-3642

MAY - 8 2018

Mr. David Powner
Director
Information Technology Management Issues
Government Accountability Office
Washington, D.C. 20548

Dear Mr. Powner:

Thank you for the opportunity to review and comment on the draft Government Accountability Office (GAO) report entitled, "Freedom of Information Act: Agencies Are Implementing Requirements, but Additional Actions Are Needed." As you know, and as is reflected in your report, the Department takes very seriously its responsibility of overseeing and encouraging governmentwide compliance with the FOIA. The Department has undertaken a range of efforts throughout the years to improve not only our own FOIA administration, but to assist agencies in improving their administration of the law as well. The Department appreciates GAO's work in conducting this review and looks forward to continuing to work with agencies to collectively improve the government's FOIA administration.

The draft GAO report contains one recommendation for Executive Action by the Department of Justice, which is that the Attorney General "take steps to develop and document a plan that fully addresses best practices with regard to reduction of backlogged FOIA requests." The Department agrees with GAO's recommendation and will develop a plan to address its backlog to the fullest extent possible within available resources. Improving timeliness has long been an area of focus for the Department and we are proud to report that in Fiscal Year 2017 the Department was able to improve all of its processing times, and for the tenth consecutive year, close all ten of its oldest requests, appeals and consultations, thereby reducing the overall age of our backlog. In this upcoming year, we will reexamine our efforts and work with the Department's components on developing a new plan for tackling the backlog.

If you have any questions regarding this response, you or your staff may contact me at (202) 514-3642.

Sincerely,

A handwritten signature in black ink that reads "Melanie Ann Pustay".

Melanie Ann Pustay
Director

Appendix VII: Comments from the National Archives and Records Administration



ARCHIVIST *of the*
UNITED STATES

DAVID S. FERRIERO
T: 202.357.5900
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david.ferriero@nara.gov

12 April 2018

David A. Powner
Director, Information Technology Management Issues
United States Government Accountability Office
441 G Street, NW
Washington, DC 20548

Dear Mr. Powner:

Thank you for the opportunity to comment on the draft report, *Freedom of Information Act: Agencies Are Implementing Requirements, but Additional Actions Are Needed (GAO-18-365)*. My staff has separately provided you with comments and suggested revisions to the text of the draft report.

You have recommended that NARA "take steps to develop and document a plan that fully addresses best practices with regards to reduction of backlogged FOIA requests." NARA's Chief FOIA Officer is currently working on such a plan in response to a NARA Office of Inspector General audit of NARA's FOIA program, which we plan to complete by December 31, 2018. We will share that plan with you as well.

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

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WASHINGTON, DC 20408-0001
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Appendix VIII: Comments from the National Aeronautics and Space Administration

National Aeronautics and Space Administration
Headquarters
Washington, DC 20546-0001



April 12, 2018

Reply to Attn of: Office of Communications

David A. Powner
Director
Information Technology Management Issues
United States Government Accountability Office
Washington, DC 20548

Dear Mr. Powner:

The National Aeronautics and Space Administration (NASA) appreciates the opportunity to review and comment on the Government Accountability Office (GAO) draft report entitled, "Freedom of Information Act: Agencies Are Implementing Requirements, but Additional Actions Are Needed" (GAO-18-365) dated March 12, 2018.

In the draft report, GAO makes two recommendations to the NASA Administrator intended to improve the Agency's compliance with Freedom of Information Act (FOIA) requirements. Specifically, GAO recommends the following:

Recommendation 1: The Administrator of NASA should update and publish comprehensive FOIA regulations that describe dispute resolution services, and notifies requesters of the 90 days for appeals.

Management's Response: NASA concurs with this recommendation and is currently working on updating its regulations to incorporate certain changes brought as the result of the amendments to the FOIA under the FOIA Improvement Act of 2016. The revisions will also include the 90 days appeal rights as well as describing requesters' rights to obtain dispute resolution services from NASA's FOIA public liaisons and the Office of Government Information Services (OGIS).

Estimated Completion Date: NASA estimates to have its final regulations published by September 30, 2018. This time period is required to accommodate the Office of Management and Budget's (OMB) intra/inter-agency review process.

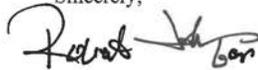
Recommendation 2: The Administrator of NASA should provide agency records of final opinions online.

Management's Response: NASA concurs with this recommendation and is currently working to identify the subject-matter areas in which the agency may reach final opinions as interpreted under the FOIA.

Estimated Completion Date: NASA estimates that it will identify the subject-matter areas in which the agency may reach final opinions by June 30, 2018. Upon identification, NASA will begin posting future final opinions online as required under the FOIA.

Once again, thank you for the opportunity to comment on the subject draft report. If you have any questions or require additional information, please contact Patrice Williams on (202) 358-1729.

Sincerely,



Jen Rae Wang
Associate Administrator for Communications

Appendix IX: Comments from the Department of State



United States Department of State

Comptroller

Washington, D.C. 20520

APR 12 2018

Charles M. Johnson, Jr.
Managing Director
International Affairs and Trade
Government Accountability Office
441 G Street, N.W.
Washington, D.C. 20548-0001

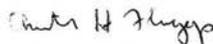
Dear Mr. Johnson:

We appreciate the opportunity to review your draft report, "FREEDOM OF INFORMATION ACT: Agencies Are Implementing Requirements, but Additional Actions Are Needed" GAO Job Code 101411.

The enclosed Department of State comments are provided for incorporation with this letter as an appendix to the final report.

If you have any questions concerning this response, please contact Eric Stein, Director, Office Director, Office of Global Information Services, Information Programs and Services, Bureau of Administration at (202) 663-2190.

Sincerely,


Christopher H. Flagg

Enclosure:
As stated

cc: GAO – David A. Powner
A – Nicole Nason
State/OIG - Norman Brown

Department of State Response to GAO Draft Report

**FREEDOM OF INFORMATION ACT: Agencies Are Implementing
Requirements, but Additional Actions Are Needed**

(GAO-18-365, GAO engagement code 101411)

Thank you for the opportunity to comment on your draft report, "*Freedom of Information Act: Agencies Are Implementing Requirements, but Additional Actions Are Needed.*"

Recommendation 21: The Secretary of State should update and publish comprehensive FOIA regulations that describe dispute resolution services, and notifies requesters of the 90 days for appeals.

Recommendation 22: The Secretary of State should take steps to develop and document a plan that fully addresses best practices with regard to reduction of backlogged FOIA requests.

The Department concurs with both of the report's recommendations that the Department update its FOIA regulations and that it develop and document a plan to reduce its backlog of FOIA requests that addresses best practices in this area.

The Department has already begun to undertake appropriate action, including establishing a working group focused on updating the Department's FOIA regulations. Likewise, between 2017 and 2018 the Department undertook a comprehensive backlog reduction effort that has been successful in reducing its FOIA request backlog. The Department continues to evaluate methods to improve its backlog reduction efforts.

Appendix X: Comments from the U.S. Agency for International Development



APR 17 2018

David A. Powner
Director, Information Technology Management Issues
United States Government Accountability Office
441 G Street, N.W.
Washington, D.C. 20548

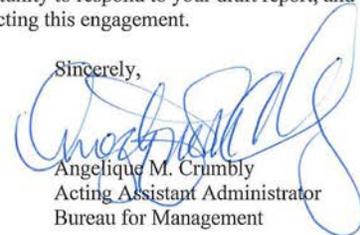
Re: FREEDOM OF INFORMATION ACT: Agencies Are Implementing Requirements, but Additional Actions Are Needed (GAO-18-365)

Dear Mr. Powner:

I am pleased to provide the United States Agency for International Development's (USAID) formal response to the draft report produced by the United States Government Accountability Office (GAO) entitled, "*FREEDOM OF INFORMATION ACT: Agencies Are Implementing Requirements, but Additional Actions Are Needed*" (GAO-18-365).

I am transmitting this letter and the enclosed USAID comments for incorporation as an appendix to the final report. Thank you for the opportunity to respond to your draft report, and for the courtesies extended by your staff while conducting this engagement.

Sincerely,

A handwritten signature in blue ink, appearing to read "Angelique M. Crumbly".

Angelique M. Crumbly
Acting Assistant Administrator
Bureau for Management

Enclosure: a/s

**COMMENTS BY THE UNITED STATES AGENCY FOR INTERNATIONAL
DEVELOPMENT (USAID) ON THE U.S. Government Accountability Office (GAO)
DRAFT REPORT – FREEDOM OF INFORMATION ACT (FOIA): Agencies Are
Implementing Requirements, but Additional Actions are Needed (GAO-18-365)**

USAID would like to thank the GAO for sharing its report, and for offering the opportunity to provide comments on it.

This draft report has one recommendation for USAID, as shown on page 49:

Recommendation: The Administrator of USAID should take steps to develop and document a plan that fully addresses best practices with regards to the reduction of backlogged FOIA requests.

Response: USAID agrees with the recommendation, and will develop a formal plan that delineates currently employed best practices, as well as additional planned actions, to reduce its FOIA backlog, to include the following key areas of success:

Obtaining Leadership Support

- The USAID Administrator will issue Agency-wide notices to remind the workforce of its responsibility pursuant to the FOIA;
- The USAID Chief FOIA Officer will strengthen oversight of the USAID FOIA program, by recommending adjustments to budgetary and human-resource allocations;
- The USAID Administrator will enforce the policy directive (Automated Directives System Chapter 507) that requires senior leaders of each Bureau and Independent Office (B/IO) to designate one FOIA Liaison Officer who is responsible for coordinating the search and collection of potentially responsive records, in addition to obtaining subsequent recommendations for release; and
- The USAID Administrator will hold the Agency’s workforce accountable for the identification, review, and reasonable organization of responsive records.

Routinely Reviewing Processing Metrics

- The USAID Chief FOIA Officer will do the following: Continue to monitor the status of pending search actions; collaborate and consult with B/IOs and Missions, to identify any potential harm in the disclosure of records, and ensure the application of the “foreseeable-harm” standard; and
- Continue to organize requests by multi-track to facilitate efficient processing.

Using Resources Effectively

- The USAID Chief FOIA Officer will do the following: Continue to evaluate FOIA staff and employ a surge capacity, as necessary, to address any fluctuations in the number of FOIA professionals and the complexity and volume of work;
- Continue to assess tools and resources for FOIA processing, and identify new technologies that will reduce search and processing times to increase efficiencies;

- Continue to operate the FOIA database for tracking and processing in a cloud-hosting environment to provide for more timely system upgrades that contribute to complete and more reliable processing and reporting, as well as improve the system's functionality and decrease disruptions; and
- Compile a comprehensive list of all Agency databases to facilitate the ease of searching.

Staff Training and Engagement

- The USAID Chief FOIA Officer will do the following: Ensure FOIA professionals participate in relevant training;
- Mandate Records and Information Management Training for all FOIA Liaison Officers (FLO);
- Improve internal collaborations across the Agency; and
- Improve external communications throughout the Federal Government and the FOIA requester community.

Increasing Proactive Disclosures

- The USAID Chief FOIA Officer will do the following: Continue to identify frequently requested records, and post them to the USAID eFOIA Library; and
- Explore the possibility of having business submitters identify confidential commercial and financial information that could cause substantial competitive harm when submitting proprietary information, to reduce processing time and increase proactive disclosures. This would facilitate more timely release determinations regarding acquisition and assistance records (such as cost and technical proposals, final awards, modifications, and quarterly and annual reports) in advance of a FOIA request, while allowing USAID to continue to comply with the submitter notification requirement of Executive Order 12600.

Communicating Effectively

- The USAID Chief FOIA Officer will do the following: Continue to communicate the clear fee structure for requester types;
- Continue consistent communications practices and status tracking with internal and external stakeholders; and
- Continue adjudicating fee waiver requests.

Finally, USAID would like to request that the GAO update the text in Table 2: "Selected Agencies' Missions and Types of Records Maintained" to reflect the revised Mission Statement that the Agency recently adopted. The new USAID Mission Statement is as follows: "On behalf of the American people, we promote and demonstrate democratic values abroad, and advance a free, peaceful, and prosperous world. In support of America's foreign policy, the U.S. Agency for International Development leads the U.S. Government's international development and disaster assistance through partnerships and investments that save lives, reduce poverty, strengthen democratic governance, and help people emerge from humanitarian crises and progress beyond assistance."

**Appendix X: Comments from the U.S. Agency
for International Development**

CLEARANCE PAGE for USAID Comments on GAO Draft Report entitled "FREEDOM OF INFORMATION ACT: Agencies Are Implementing Requirements, but Additional Actions are Needed" (GAO-18-365)

GC:RDupuy	<u>clear</u>	Date: 4/03/2018
CoS:WSteiger	<u>clear</u>	Date: 4/17/2018
A-GAO Liaison: TYoungblood	<u>clear</u>	Date: 4/04/2018
Dep CFO (Overseas): MBrady	<u>info</u>	Date: 3/29/2018
LPA/CL: JLeffler	<u>clear</u>	Date:
M/MS/OD: THand	<u>clear</u>	Date: 3/29/2018
M/MPBP: RBuckley	<u>clear</u>	Date: 4/04/2018
A-AA/M: ACrumbly	<u>clear</u>	Date: 4/04/2018

cc:

Marsha Baxter, Special Assistant, USAID Chief of Staff
AID.ES Tasker Mail List for Uploading to ACTS
Veronica Ndum, Analyst, M/CFO

Original Drafter:

AAO: Lynn P. Winston, FOIA Public Liaison, M/MS/IRD

Appendix XI: Comments from the Department of the Interior



United States Department of the Interior

OFFICE OF THE SECRETARY
Washington, DC 20240

APR 16 2018

Mr. David Powner
Director, Information Technology Management Issues
U.S. Government Accountability Office
441 G Street, NW
Washington, DC 20548

Dear Mr. Powner:

Thank you for providing the Department of the Interior (Department) the opportunity to review and comment on the draft Government Accountability Office (GAO) report entitled, *Freedom of Information Act: Agencies Are Implementing Requirements, but Additional Actions Are Needed* (GAO-18-365). We appreciate GAO's review of Federal agencies' compliance with Freedom of Information Act (FOIA) requirements.

The Department concurs with recommendation 6 which states that the Department's FOIA tracking system must be compliant with Section 508 of the Rehabilitation Act (Section 508). The Department takes Section 508 very seriously and commenced Section 508 compliance testing of the FOIA tracking system in February 2018 prior to GAO's March 5, 2018 inquiry. While preliminary results are very positive, any instances of Section 508 non-compliance will be immediately remediated. The Department will share results with GAO upon the conclusion of testing on or before July 1, 2018. To that end, please update page 21 of the report to note that the Department began testing in February 2018 and plans to complete Section 508 testing by July 1, 2018.

The Department concurs with recommendation 7.

The Department continues to implement best practices for processing FOIA requests and, therefore, does not concur with recommendation 8. The Department of Justice Office of Information Policy guidance requiring creation of a formal backlog reduction plan applies only to those agencies with more than 1,000 backlogged requests in a given year. The Department, as noted on Page 33 of the report, did not fall under this category and, therefore, is not required to create such a plan.

**Appendix XI: Comments from the Department
of the Interior**

Enclosed are some technical comments for your consideration when finalizing the report.

If you have any questions or need additional information, please contact Ms. Cindy Cafaro, the Departmental FOIA Officer at (202) 208-5342.

Sincerely,



Scott J. Cameron
Principal Deputy Assistant Secretary
for Policy, Management and Budget
Exercising the Authority of the
Assistant Secretary for Policy,
Management and Budget

Enclosure

Appendix XII: Comments from the Pension Benefit Guaranty Corporation



Office of the Director

April 12, 2018

Mr. David Powner
Director, Information Technology Management Issues
Government Accountability Office
441 G Street NW
Washington, DC 20548

Re: Draft FOIA Compliance Report (GAO-18-365)/Engagement 101411

Dear Mr. Powner:

I am responding to your email dated March 12, 2018, concerning GAO's draft report titled, Freedom of Information Act: Agencies Are Implementing Requirements but Additional Actions Are Needed (GAO-18-365). In that report, GAO recommended that I designate a Chief FOIA Officer at the Assistant Secretary level or equivalent. I believe PBGC's current designated Chief FOIA Officer is equivalent to the Assistant Secretary level.

Page 23 of the draft report indicates that the Assistant Secretary level is comparable to Senior Executive Service (SES) positions at salary levels, III, IV, and V. As you may know, the PBGC does not have Assistant Secretary or SES positions and instead employs executives classified at the Senior Level (SL) who are the equivalent of officials in the SES. Currently, Philip Hertz is a department director and has served as PBGC's Chief FOIA Officer since January 5, 2006. Mr. Hertz is an SL official who is currently paid above the levels outlined as an Assistant Secretary/SES equivalent in GAO's draft report. As such, PBGC's designated Chief FOIA Officer is the equivalent to the Assistant Secretary level, and an appropriate designee for this position.

I hope this information is helpful in making a determination to dismiss this draft recommendation. If you or members of your staff have any questions, please feel free to contact Philip Hertz, PBGC's Chief FOIA Officer, at (202)326-4000, ext. 3055, or hertz.philip@pbgc.gov.

Sincerely,

A handwritten signature in blue ink that reads "W. Thomas Reeder".

W. Thomas Reeder
Director

Enclosure

Appendix XIII: Comments from the Tennessee Valley Authority



Tennessee Valley Authority, 400 West Summit Hill Drive, Knoxville, Tennessee 37902-1401

April 12, 2018

Mr. David Powner
United States Government Accountability Office
441 G Street NW
Washington, DC 20548

Dear Mr. Powner:

Thank you for the opportunity to provide the Tennessee Valley Authority's (TVA) comments on the Government Accountability Office (GAO) draft report entitled *Freedom of Information Act: Agencies Are Implementing Requirements but Additional Actions Are Needed* (GAO-18-365). The draft report includes a recommendation that the President of TVA ensure its Freedom of Information Act (FOIA) tracking system is compliant with Section 508 of the Rehabilitation Act (Section 508).

We have carefully reviewed Section 508 requirements and their applicability to TVA's current FOIA tracking system. The subject TVA FOIA system is an internal, one-user program that is utilized for the sole purpose of tracking the status of FOIA requests. Section 508 Standards, as revised January 18, 2017, establish the following applicability parameters:

- Electronic Content – electronic content that is not public facing shall conform to the accessibility requirements when such content constitutes official business and is communicated by an agency through one or more of the following: an emergency notification; an initial or final decision adjudicating an administrative claim or proceeding; an internal or external program or policy announcement; a notice of benefits, program eligibility, employment opportunity, or personnel action; a formal acknowledgement of receipt; a survey questionnaire; a template or form; educational or training materials; or intranet content designed as a web page. (Section E205.3)
- Hardware – components that are hardware and transmit information or have a user interface (Section E206.1)
- Software – components that are software and transmit information or have a user interface (Section E207.1)

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**Appendix XIII: Comments from the Tennessee
Valley Authority**

Mr. David A. Powner
Page 2
April 12, 2018

Based on the Section 508 standards, we have determined that TVA's current FOIA tracking system does not meet the criteria for accessibility of electronic content nor does it transmit information. While the system does utilize a user interface, modifying a single-user system to comply with section 508 standards would be an undue burden to the agency. The current user of the system does not require accessibility accommodations. However, should the system's use change, TVA will reassess the Section 508 requirements.

We appreciate the opportunity to provide comments on the draft report. If you have questions or need additional information you may contact me at (865) 632-7435 or by email to jjbrewer@tva.gov.

Sincerely,



Janet J. Brewer
TVA Chief FOIA Officer
Senior Vice President
Chief Communications & Marketing Officer

Appendix XIV: Comments from the Federal Trade Commission



Office of the General Counsel

David C. Shonka
Acting General Counsel

Direct Dial
(202) 326-2436

UNITED STATES OF AMERICA
FEDERAL TRADE COMMISSION
WASHINGTON, D.C. 20580

March 30, 2018

Mr. David Powner
Director
Information Technology Management Issues
U.S. Government Accountability Office
441 G Street, N.W.
Washington, D.C. 20548

Dear Mr. Powner:

On March 12, 2018, the Government Accountability Office ("GAO") forwarded to the Federal Trade Commission ("FTC" or "Commission") for review and comment a draft of a GAO report, entitled FREEDOM OF INFORMATION ACT: Agencies Are Implementing Requirements, but Additional Actions Are Needed (GAO-18-365) ("draft report"). The draft report recommends that the Acting General Counsel of the FTC designate a Chief Freedom of Information Act Officer at the assistant secretary or equivalent level (Recommendation 11 at page 48 of the draft report).

The FTC appreciates GAO's careful and thorough assessment of the Commission's Freedom of Information Act ("FOIA") policies, procedures, practices, and organizational structure. The basis for GAO's recommendation is that the Chief FOIA Officer needs to be senior enough to have the "necessary authority to make decisions about agency practices, funding and personnel." (page 24 of the draft report).

The FTC is a small, independent federal agency with a budgeted staff of 1,140. According to our Chief Human Capital Officer, there are no position titles of an "assistant secretary level or equivalent" at the FTC as are found in cabinet-level Departments. Our Chief FOIA Officer is an Associate General Counsel who reports directly to the Acting General Counsel. The Acting General Counsel is a Senior Executive Service employee.

Even though the FTC's chief FOIA officer is not at the assistant secretary level, the FTC's FOIA works efficiently and is meeting all of the other variables you evaluated. The FTC uses an electronic system to track requests received and processed, provides training to both its FOIA staff as well as staff throughout the Agency including providing staff with an understanding of FOIA exemptions, and posts all four categories of information (agency final

opinions and orders, statements of policy, administrative staff manuals of interest to the public, and frequently requested records) online. We appreciate that your draft report is complimentary and recognizes the FTC's FOIA Office is meeting all but one FOIA government-wide requirement. I will take your recommendation under advisement, however, I note that the Associate General Counsel in this Agency is sufficiently senior and has the necessary authority to fulfill the functions of Chief FOIA Officer.

Sincerely,



David C. Shonka
Acting General Counsel

Appendix XV: GAO Contact and Staff Acknowledgments

GAO Contact

David A. Powner, (202) 512-9286 or pownerd@gao.gov

Staff Acknowledgments

In addition to the contact named above, Anjalique Lawrence (assistant director), Lori Martinez (analyst in charge), Gerard Aflague, Melina Asencio, David Blanding, Kami Brown, Christopher Businsky, Caitlin Cusati, Haley Dunn, Elena Epps, Rebecca Eyler, Nancy Glover, James Andrew Howard, Saida Hussain, Robert Letzler, Lee McCracken, Carlo Mozo, Brian Palmer, David Plocher, Di'Mond Spencer, Sukhjoot Singh, Henry Sutanto, and Priscilla Smith made key contributions to this report.

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