



# United States Department of the Interior

OFFICE OF THE SECRETARY

Washington, DC 20240

## Memorandum

To: Assistant Secretaries  
Heads of Bureaus and Offices  
Bureau/Office FOIA Officers

From: Cindy Cafaro  
Departmental FOIA Officer

FEB 28 2019

Subject: Updated Awareness Process for Freedom of Information Act Productions

For more than 6 years, the Department of the Interior (Department) leadership and the Solicitor's Office (SOL) were made aware of impending Freedom of Information Act (FOIA) responses on a case-by-case basis. This allowed the Department's leadership and SOL to efficiently respond to queries and legal ramifications arising from FOIA responses. Given the unprecedented number of incoming FOIA requests<sup>1</sup> and increased FOIA litigation the Department has faced in the past few years,<sup>2</sup> we formalized the awareness process on May 24, 2018 to ensure it was consistent and effective. We are now updating this process, clarifying it, and making it more efficient.<sup>3</sup>

The Department will continue to process FOIA requests as usual, including: directing searches for responsive records;<sup>4</sup> searching for and providing responsive records;<sup>5</sup> processing responsive records;<sup>6</sup> and reviewing proposed responses.<sup>7</sup> After these steps are completed, the awareness process is now as follows:

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<sup>1</sup> In Fiscal Year (FY) 2016, the Department received 6,428 FOIA requests; in FY 2017, 8,005 FOIA requests; and in FY 2018, 8,402 FOIA requests. Some Bureaus have particularly large increases in FOIA requests. For example, in FY 2016, the Office of the Secretary (OS) received 512 FOIA requests; in FY 2017, 1,226 FOIA requests; and in FY 2018, 1,597 FOIA requests. For more information, see the Department's [FOIA Annual Reports](#).

<sup>2</sup> For example, at the close of FY 2018, the Department had a total of 129 active FOIA cases in litigation (39 in OS alone) compared to a total of just 6 cases in litigation at the close of FY 2015 and a total of 30 cases in litigation at the end of FY 2016.

<sup>3</sup> Please note that this process, in its entirety, still does not apply to the Office of Inspector General's (OIG) FOIA personnel or processes. Other Bureaus should continue, however, to consult with OIG as they normally would for any documents that originated with or contain reference to OIG business, including OIG investigations, audits, or inspections. See [43 C.F.R. § 2.13](#) (outlining the consultation and referral process).

<sup>4</sup> See [383 DM 15 § 15.6.H](#) (outlining the responsibilities of the office and/or employee that will be making a final decision on a particular FOIA request).

<sup>5</sup> See [383 DM 15 § 15.6.L](#) (outlining the responsibilities of all employees of the Department to respond promptly and accurately to FOIA-related requests).

<sup>6</sup> See [5 U.S.C. §§ 552\(a\)\(8\) & \(b\)](#) (outlining FOIA exemptions and foreseeable harm); [43 C.F.R. § 2.13\(b\)](#); see also [383 DM 15 § 15.6.H](#); and the Department's [Foreseeable Harm Standard Memorandum](#).

<sup>7</sup> See [43 C.F.R. § 2.23\(c\)](#) (requiring Bureaus to consult with SOL before withholding a record in full or in part).

- 1) FOIA personnel search responsive calendars, emails, and attachments to emails for the names and/or email addresses of:
  - a. Current Department employees who are Presidentially Appointed, Senate Confirmed (PAS), Non-Career Senior Executive (NCSE), and/or Schedule C employees; and/or
  - b. Former Department employees who left the Department within the last 3 months and were PAS, NCSE, and/or Schedule C employees.
  
- 2) If such names and/or email addresses are identified:
  - a. FOIA personnel notify their Bureau contact for awareness reviews (hereinafter, the “reviewer”) and provide him/her:
    - i. Access to the full set of responsive records<sup>8</sup> in the same format and with the same withholdings that have been approved by SOL (so he/she will see the records exactly as the FOIA requester will); and
    - ii. A list of the PAS, NCSE and/or Schedule C employees whose names and/or email addresses are identified in the set of responsive records.
  - b. FOIA personnel simultaneously notify a SOL attorney. When applicable, this will be the attorney who reviewed the proposed redactions and/or is handling related FOIA litigation, otherwise the FOIA personnel will contact the SOL Division or Region he/she would contact to review proposed redactions.
  - c. The reviewer and SOL attorney have 3 *workdays* to review the responsive records.<sup>9</sup>
    - i. The reviewer ordinarily reviews the requests according to their order of receipt within their processing track.
    - ii. If the reviewer needs a reasonable amount of additional time to review the responsive records, he/she must inform the FOIA personnel within 3 workdays.
    - iii. If the reviewer does not reply to the FOIA personnel within 3 workdays, *his/her silence will be taken as an affirmation that he/she has concluded his/her review.*
  
- 3) FOIA personnel will then respond to the FOIA requester in accordance with their usual response process.

As you know, FOIA is a statutory requirement, and full and timely compliance with FOIA obligations is a responsibility of every Department employee.<sup>10</sup> The awareness process discussed above does not change the Department’s statutory or, when applicable, litigation deadlines and must be conducted within those existing deadlines.

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<sup>8</sup> This is true even if the identified PAS, NCSE, and/or Schedule C employees are not in the same Bureau as the FOIA personnel and the reviewer.

<sup>9</sup> The reviewer and/or SOL attorney may follow up as necessary to understand the basis of the proposed production.

<sup>10</sup> See [Secretary’s Order 3371](#), The Department of the Interior Freedom of Information Act Program (November 20, 2018).

If you need assistance with a particular FOIA request, please contact your Bureau FOIA Officer using the information found at <https://www.doi.gov/foia/contacts>. If you have general FOIA questions, please contact me at (202) 208-5342 or [cindy\\_cafaro@ios.doi.gov](mailto:cindy_cafaro@ios.doi.gov).

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