

Making the Grade:

Access to Information Scorecard 2014

Shows Key Agencies Still Struggling to Effectively Implement the Freedom of Information Act



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ACKNOWLEDGEMENTS

The authors thank the following people for their helpful feedback: Amy Bennett at OpenTheGovernment.org; Kevin Goldberg at Fletcher, Heald & Hildreth, P.L.C.; Nate Jones at the National Security Archive; Ginger McCall at the Sunlight Foundation; and Anne Weismann at Citizens for Responsibility and Ethics in Washington. These individuals are not responsible for this report's conclusions or for any errors it may contain.

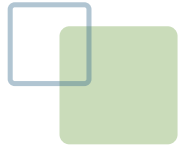
The authors also acknowledge previous work by the Office of Information Policy at the Department of Justice to assess agency Freedom of Information Act performance.

The Center for Effective Government's work on open government issues is made possible by the generous support of the Bauman Foundation, C.S. Fund, Ford Foundation, Open Society Foundations, Rockefeller Brothers Fund, Scherman Foundation, Stewart R. Mott Foundation, and the individuals and other organizations who contribute to our work.

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EXECUTIVE SUMMARY

A building block of American democracy is the idea that as citizens, we have a right to information about how our government works and what it does in our name. The Freedom of Information Act (FOIA) requires federal agencies to promptly respond to public requests for information unless disclosure of the requested information would harm a protected interest. Unfortunately, since its passage in 1966 and reform in 1974, federal agencies have failed to implement the law consistently, which can make it challenging for citizens to gain access to public information as the law guarantees.

This analysis evaluates the performance of the 15 federal agencies that received the greatest number of FOIA requests in fiscal year 2012. These agencies received over 90 percent of all information requests that year. We examined their performance in three key areas:

1. **Processing requests for information** (the rate of disclosure, the fullness of information provided, and timeliness of the response);
2. **Establishing rules for information access** (effectiveness of agency policy on withholding information and communicating with requesters); and
3. **Creating user-friendly websites** (facilitating the flow of information to citizens, online services, and up-to-date reading rooms).

The results are sobering. None of the 15 agencies earned exemplary scores (an overall A grade), and only eight earned “passing grades” (60 or more out of a possible 100 points). The low scores are not due to impossibly high expectations. In each of three performance areas, at least one agency earned an A, showing that excellence is possible. But the fact that no agency was able to demonstrate excellence across all three areas illustrates the difficulty agencies seem to be having in consistently combining all the elements of an effective disclosure policy.

Of the 15 federal agencies receiving over 90 percent of all Freedom of Information Act requests in 2012, only eight received passing grades.

Overall Performance

In developing overall scores, an agency's performance in actually getting information to the public is weighted most heavily. Half the overall score is based on an index of the agency's ability to process information requests in a timely fashion. In addition, the rules an agency develops to shape its disclosure practices and the user-friendliness of the agency's website determine the ease of citizen access to information; each of these areas accounts for a quarter of the overall grade an agency received.

The Social Security Administration (SSA) was the top performer, with a B grade. SSA performed exceptionally well at processing FOIA requests but earned relatively low scores for its rules and website. The Department of Justice (DOJ) scored second, based on strong grades for its rules and website, rather than the actual release of information – a perhaps surprising score given the department's mixed reputation on FOIA. The Environmental Protection Agency (EPA) came in third, also earning solid marks for its rules and websites, but a middling grade for processing requests. The Department of Agriculture (USDA) was fourth, with middling grades in each area. Only DOJ, EPA, and USDA received passing marks in all three areas examined.

The Departments of the Treasury, Transportation, and Health and Human Services, and the Securities and Exchange Commission received D or D- grades, failing at least one of the index elements.

Seven agencies received an overall failing grade: the Departments of Labor, Veterans Affairs, Defense, Homeland Security, and State, as well as the National Archives and Records Administration and Equal Employment Opportunity Commission. The State Department earned the lowest overall score of any agency, with a particularly low score for its request processing: a mere 17 percent.

Recommendations

Despite these disappointing scores, we are confident that successful FOIA implementation is possible. At least one agency has received an excellent score on every issue that was evaluated to create this scorecard. While every agency will need to develop its own unique plan for improvement, each can learn from the strong performers and the best practices identified in this report.

Processing requests: Agencies can increase promptness and reduce backlogs by streamlining processing workflows, using proactive disclosure, and deploying information technology more effectively. Others may need more personnel. Some agencies may need to train staff on disclosure to reduce the use of exemptions. The appeals process in some agencies should be reformed to ensure timely and objective reviews.

Establishing effective disclosure rules: Many agencies continue to struggle with outdated disclosure rules and policies; only two of the reviewed agencies have updated their regulations since the 2007 amendments to FOIA. FOIA rules need to be updated, either through individual agency action or through a central set of FOIA regulations, which the Obama administration is considering. These updates should include a presumption of openness and clear procedures for implementing the foreseeable harm standard. All agencies should allow requesters at least 60 days to file an appeal when a request for information has been denied.

Creating user-friendly interactive websites: Overall, agency performance on FOIA websites received the highest marks, indicating that federal agencies have been successfully integrating modern IT principles into their information management and disclosure practices. The several agencies that had low scores on this element could improve them by maintaining robust and updated electronic reading rooms with good search features, establishing full online requester services, and posting complete contact information for their FOIA officers.

Fulfilling the promise of full, timely public access to as much government information as possible is an ongoing, complex task that will require leadership, commitment, and organizational culture change.¹ It is necessarily a team effort. Agency leadership needs to communicate to all their staff that responding to citizen requests is an important part of their work. Employees need to see disclosure as an essential part of the job of any federal agency and a core democratic value. And the administration, Congress, and agency decision makers have to ensure agencies have the staff and resources they need to process requests in a timely manner.

The administration and Congress can also take additional steps to strengthen FOIA implementation. The recently established FOIA ombudsman could have more impact if it were given greater independence and resources. Legislation should codify the administration's important FOIA policies to ensure they are adopted across every agency and establish simple and fair submission, appeal, fee, and other procedures.

By identifying current best practices and solutions, as well as existing shortcomings, we hope to encourage public officials to continue to improve the policies and practices of their agencies to ensure the public's right to know is guaranteed.

¹ See Sean Moulton and Gavin Baker, *Delivering on Open Government: The Obama Administration's Unfinished Legacy*, Center for Effective Government, March 2013, available at <http://www.foiaeffectivgov.org/obama-first-term-transparency-report>.

ENSURING TIMELY PUBLIC ACCESS TO GOVERNMENT INFORMATION

A building block of American democracy is the idea that citizens have a right to information about how their government works and what it does in their name. Transparency allows Americans to hold public officials accountable for their actions and encourages active citizen engagement in our democracy.

These values were codified into law in 1966 with the passage of the Freedom of Information Act (FOIA). The law allows anyone to request information from government agencies and requires agencies to promptly provide that information unless disclosure would harm a specifically protected interest established by law, such as personal privacy. Over the years, millions of citizens have benefitted from the law's disclosure of information about the safety of consumer products, environmental health risks in their communities, public spending, and many other crucial topics.

While FOIA is a valuable tool for allowing the public access to information, agencies have struggled to implement the law consistently. This can make it challenging for citizens to actually use the power that the law provides them. FOIA requesters complain about long delays in receiving answers to their requests, inappropriate withholding of information, and unhelpful service by agencies. Despite recent efforts by the Obama administration and Congress to bring about improvements in FOIA implementation, consistent, effective performance remains elusive.

Building on previous efforts to assess FOIA performance,² this analysis dives deeply into the performance of the 15 federal agencies that together received over 90 percent of all the freedom of information requests in fiscal year 2012. By individually evaluating the performance of these major agencies, we are highlighting progress toward and continuing barriers to effective disclosure of public information in the executive branch of the federal government.

The Purpose of the Scorecard

This scorecard assesses 15 agencies in three key areas of FOIA implementation: their success at processing requests for public information, the strength of their disclosure rules, and the utility of their websites in helping people navigate the FOIA process. By doing so, the scorecard allows agencies and the public to compare the FOIA performance of these 15 agencies on crucial issues and to benchmark their performance for future comparison. The scorecard identifies strong performers that could provide a model to underperforming

² See Sean Moulton and Gavin Baker, *Freedom of Information Act Performance, 2012: Agencies Are Processing More Requests but Redacting More Often*, Center for Effective Government, March 2013, available at <http://www.foreffectivegov.org/fy2012-foia-analysis>.

agencies, and the report includes recommendations for how agencies, the administration, and Congress can support improved performance.

The Scores

The scorecard analyzes FOIA performance at the 15 federal agencies that received the greatest number of FOIA requests in fiscal year (FY) 2012; see the Overall Grades table on p. 7 for a complete list. Collectively, these 15 agencies account for 91 percent of all FOIA requests received in FY 2012 and have consistently received the most public information requests every year since FY 2009.

The scorecard evaluates agency FOIA performance across three categories:

Processing of public information requests: How effectively does the agency provide information to the public in response to FOIA requests? Using data available from agencies' annual FOIA reports, the processing score evaluates the outcomes of FOIA requests, including the timeliness of responses and how frequently the agency denies requests.

Effectiveness of disclosure rules: Has the agency adopted effective rules to facilitate FOIA requests and decisions that support transparency? Based on an original review of agency regulations compared to published best practices,³ the regulations score evaluates policies such as the agency's standards for withholding requested information and for communicating with requesters.

Creating user-friendly interactive FOIA websites: Does the agency's FOIA website provide good citizen service and effective access to disclosed information? Based on a review of agency FOIA websites, this score assesses whether requesters can check the status of their requests online and how frequently the agency posts released records on its website.

The scorecard awards points for meeting (and partial points for partially meeting) criteria in each section and converts these points to a numerical score. The three sub-scores are then combined⁴ into an overall percentage score with a corresponding letter grade provided for each agency, representing its overall performance.

³ Gavin Baker, *Best Practices for Agency Freedom of Information Act Regulations*, Center for Effective Government, December 2013, available at <http://www.foreffectivegov.org/foia-best-practices-guide>.

⁴ To reflect the relative importance of the three categories to the outcome of effective transparency through FOIA, the sub-scores are weighted in the overall score as follows: 50 percent processing, 25 percent regulations, and 25 percent websites.

Limitations

This analysis is the first known attempt to develop a broad “report card” reflecting an agency’s overall performance in implementing FOIA. While this scorecard covers a broad range of key FOIA issues, it does not purport to comprehensively evaluate every aspect of an agency’s FOIA activities. Different criteria could be selected to measure agencies’ FOIA processing, regulations, and websites. Processing data describe an agency’s actions in the aggregate and are not representative of each individual case. An agency’s written policy on disclosure may not fully reflect the policy choices built in to its guidance or training or the agency’s actual practice. And there are elements of FOIA that were not included – for example, FOIA litigation pending against an agency.

Some aspects of agency FOIA programs are not easily quantified, such as leadership and attitude. For example, the Environmental Protection Agency and National Archives and Records Administration were key partners in developing FOIAonline, a multi-agency portal for FOIA requests.⁵ While the agencies get points in the website section for participating in the portal, there are no points for the leadership and innovation the agencies demonstrated, even though the creation of FOIAonline fundamentally changed expectations for online requester services. By contrast, the Justice Department has been criticized for its approach to its government-wide role in FOIA,⁶ but the scorecard does not measure those elements.

Appendix A provides a full methodology, including the scoring and weighting for each question. Appendix B provides the complete score data for each agency.

⁵ See <https://foiaonline.regulations.gov/>.

⁶ See, e.g., National Security Archive, “Justice Department Repeats as Rosemary Award Winner For Worst Open Government Performance in 2012,” March 15, 2013, available at <http://www2.gwu.edu/~nsarchiv/news/20130315/>.

OVERALL AGENCY PERFORMANCE SCORES

Overall, our analysis shows that the majority of agencies examined struggled to establish effective FOIA programs. Out of the 15 agencies that received the most FOIA requests, only four received grades of over 75 percent. Four received scores of between 60 and 69 percent. Seven received failing grades (scores of under 60 percent), and the State Department accrued only 37 out of 100 points on our index of agency accessibility. No agency received close to the 90 percent score required for an A grade. These deficiencies erect barriers to citizens requesting information and limit the government information that is available to journalists, researchers, and voters.

While the overall scores are disappointing, on each of the report's three sub-scores, at least one agency earned an A.⁷ This demonstrates that excellent performance is possible in each area. The challenge is for each agency to establish and consistently engage in best known practices in every area.

Overall Grades	
Agency	Score
Top Performers	
Social Security Administration	83% (B)
Department of Justice	81% (B-)
Environmental Protection Agency	78% (C+)
Department of Agriculture	77% (C)
Middling Performers	
Department of Transportation	65% (D)
Securities and Exchange Commission	65% (D)
Department of the Treasury	64% (D)
Department of Health and Human Services	61% (D-)
Lowest Performers	
National Archives and Records Administration	59% (F)
Equal Employment Opportunity Commission	58% (F)
Department of Labor	56% (F)
Department of Veterans Affairs	53% (F)
Department of Defense	51% (F)
Department of Homeland Security	51% (F)
Department of State	37% (F)

On each of the report's three sub-scores, at least one agency earned over 90 percent (an A). The challenge is for agencies to establish and consistently engage in best practices in every area.

⁷ Agencies received individual scores for three sections: processing, regulations, and websites. Those sub-scores are combined into an overall score, weighted as 50 percent processing, 25 percent regulations, and 25 percent websites.

Top Performers

Agency	Processing Requests	Disclosure Rules	FOIA Websites	Total Score	Overall Grade
Social Security Administration	107%*	46%	70%	83%	B
Department of Justice	69%	92%	95%	81%	B-
Environmental Protection Agency	69%	88%	85%	78%	C+
Department of Agriculture	81%	79%	65%	77%	C

* The Social Security Administration's score is greater than 100 percent due to bonus points awarded.

Sterling performance by the Social Security Administration in its processing of FOIA requests helped it overcome lower scores in the other areas, including a very low score for regulations, to earn the top score of B overall (83 percent). Conversely, the Department of Justice (DOJ) received lower marks on processing, while A grades earned in establishing disclosure policies and websites brought up its overall grade to a B- (81 percent). DOJ's relatively high score may be a surprise to some, but on the measures evaluated in this scorecard, it outpaced most other agencies.

Following closely behind, the Environmental Protection Agency (EPA) earned a score of 78, and the Department of Agriculture (USDA) received a 77 percent. EPA earned respectable grades for its policies and websites but fell down in processing requests. In contrast, USDA performed well in processing and disclosure rules, but its website needs work. DOJ, EPA, and USDA were the only agencies to receive passing marks in all three areas.

Middling Performers

Agency	Processing Requests	Disclosure Rules	FOIA Websites	Total Score	Overall Grade
Securities and Exchange Commission	73%	58%	55%	65%	D
Department of Transportation	71%	67%	50%	65%	D
Department of the Treasury	67%	83%	40%	64%	D
Department of Health and Human Services	63%	38%	80%	61%	D-

Three agencies earned D's for their overall grades: the Securities and Exchange Commission (65 percent), the Department of Transportation (65 percent), and the Department of the Treasury (64 percent), while the Department of Health and Human Services received a D- (61 percent). While some of these agencies earned at least one strong sub-score, such as Treasury's 83 percent on disclosure rules, they each failed one or more sub-score, such as Treasury's 40 percent on websites. However, with fairly modest improvements, these agencies could advance to a C or B overall.

Lowest Performers

Agency	Processing Requests	Disclosure Rules	FOIA Websites	Total Score	Overall Grade
National Archives and Records Administration	48%	50%	90%	59%	F
Equal Employment Opportunity Commission	67%	33%	65%	58%	F
Department of Labor	38%	88%	60%	56%	F
Department of Veterans Affairs	44%	63%	60%	53%	F
Department of Defense	54%	38%	57%	51%	F
Department of Homeland Security	33%	79%	60%	51%	F
Department of State	17%	33%	80%	37%	F

Seven of the 15 agencies assessed earned failing grades. These agencies are the National Archives and Records Administration (NARA) (59 percent), the Equal Employment Opportunity Commission (EEOC) (58 percent), the Department of Labor (DOL) (56 percent), the Department of Veterans Affairs (VA) (53 percent), the Department of Defense (DOD) (51 percent), the Department of Homeland Security (DHS) (51 percent), and the Department of State (State) (37 percent).

However, several of the failing agencies – NARA, EEOC, and DOL – scored in the upper 50s, so, with modest changes, they are within striking distance of an overall passing grade. Yet each of these agencies earned an egregiously low score in one or more category, dragging down its overall grade. If these agencies directly address their weakest spots, they can earn a passing grade.

The challenge is greater for the lowest scoring agencies: VA, DOD, DHS, and the State Department. Given that the agencies at the bottom of the scorecard are involved with national security, one might think that these agencies are simply unable to disclose classified documents, and this is why their scores are so low. In fact, the actual rate of granting information requests represents only a few points of the processing score. These agencies had significant problems with timeliness in responding to requests and appeals and had large backlogs. While the State Department’s new website earned it a solid 80 percent on that sub-score, the department’s rock-bottom 17 percent score on processing is without comparison in the report. Significant attention is needed at these agencies to bring performance into line with other large agencies.

Our analysis shows that more than half of the federal agencies responsible for the vast majority of requests for public information are still struggling to implement effective FOIA practices. The following sections further explain what the summary scores represent and identify specific issues that require more agency attention and improvement.

THE ELEMENTS OF EFFECTIVE AGENCY PRACTICE

Processing Requests

The Freedom of Information Act was passed to ensure the public has timely access to government information, so an agency's capacity to disclose its information promptly and fully is the most important measure of its implementation of the law. Federal agencies that provide prompt responses, withhold information infrequently, and treat requests with care and respect are doing a good job of meeting FOIA's goals, even if their disclosure rules are fuzzy or their web services are poorly planned. And, by the same reasoning, if an agency has excellent web-based information and strong rules but fails to actually deliver information in a timely manner, it cannot be viewed as a high performer. For this reason, an agency's processing sub-score represents half its overall score.

An agency's processing score is based on 10 measures that relate to the timeliness of request processing, the size of request backlogs, the percentage of requests that were fully or partially granted, the speed with which appeals after a denial of information are dealt with, and the number of appeals granted. Each measure is worth up to four points, except the two measures on granting, which are worth up to eight points to reflect the importance of disclosure. The processing sub-score also awards a single bonus point for each measure when agencies made improvements to their processing performance from the previous year.

Scores: Processing Requests	
Agency	Score
Top Performers	
Social Security Administration	107%* (A+)
Department of Agriculture	81% (B-)
Middling Performers	
Securities and Exchange Commission	73% (C)
Department of Transportation	71% (C-)
Department of Justice	69% (D+)
Environmental Protection Agency	69% (D+)
Equal Employment Opportunity Commission	67% (D)
Department of the Treasury	67% (D)
Department of Health and Human Services	63% (D)
Lowest Performers	
Department of Defense	54% (F)
National Archives and Records Administration	48% (F)
Department of Veterans Affairs	44% (F)
Department of Labor	38% (F)
Department of Homeland Security	33% (F)
Department of State	17% (F)

* The Social Security Administration's score is greater than 100 percent due to bonus points awarded.

Context

Agencies face different challenges in processing information requests. Receiving large numbers of requests is a challenge all of the agencies examined face to some degree. But some agencies receive more complex requests than others, perhaps depending on the kinds of information that the agency holds. Agencies label the requests they receive as “simple” or “complex” and work to process the simple requests first. The percentage of “simple” requests varies from a low of 15 percent at the Treasury Department to nearly 100 percent at the Securities and Exchange Commission.⁸ These figures represent the agencies’ own assessment of the complexity of the requests they receive; there is no common definition.

While the agencies with a greater percentage of simple requests tended to have higher processing scores than agencies with a high proportion of complex requests, the relationship is far from determinative. Some agencies with a high proportion of simple requests scored poorly and two agencies with a high proportion of complex requests did relatively well.

Other factors may influence an agency’s processing of FOIA requests. Staffing may be an issue, but as Table 1 on the next page shows, the caseload of requests per reported staff is not a good predictor of processing performance.⁹ Additionally, the way an agency’s records are stored and organized may affect how quickly and effectively an agency can locate requested records – for instance, if paper records are located at far-flung facilities, processing a request may take longer.

While the complexity of requests, staff caseloads, and storage may create special challenges for some agencies, they should not become excuses for continuing poor performance. FOIA has been the law of the land for nearly 50 years.

Another consideration with agency processing figures is the number of requests denied for reasons other than exemptions. An agency can deny requests for administrative reasons: because it determined that the request was not reasonably described, the agency did not have the records, the requester failed to pay applicable fees, etc. This review does not evaluate those denials.

Some observers have speculated that certain agencies may utilize administrative denials to inflate their apparent processing figures. But agencies’ rates of such denials are broadly comparable: nine of these 15 agencies denied between 27 percent and 41 percent of their requests for administrative reasons. For instance, the Justice Department is within the typical range with 40 percent of its requests denied for administrative reasons. Additional information is needed to determine if these denials are the result of requester error or misuse by the agencies.

⁸ Agencies report processing data for requests in three categories: simple, complex, and expedited. Each agency assigns requests to the “simple” or “complex” track according to its own criteria. The median agency (the Justice Department) categorized 75 percent of requests as “simple.”

⁹ Agency staff data are self-reported and may be subject to greater variation in reporting methodology between agencies than is the case with request data.

Table 1. Freedom of Information Act Caseload by Agency, FY 2012

Agency	Requests Received in FY 2012	Percent of Requests Labeled Simple	Reported FOIA Staff (FTEs)	Case Load (Requests per reported staff)
Department of Homeland Security	190,589	38%	398	479
Department of Justice	69,456	75%	529	131
Department of Health and Human Services	68,467	83%	291	235
Department of Defense	66,078	63%	719	92
Social Security Administration	31,329	99%	77	407
Department of Veterans Affairs	24,423	47%	227	108
Department of Agriculture	22,175	92%	260	85
Equal Employment Opportunity Commission	18,726	92%	37	505
Department of Labor	18,560	48%	162	115
Department of State	18,521	38%	155	120
Department of the Treasury	16,610	15%	119	139
National Archives and Records Administration	13,345	88%	36	371
Securities and Exchange Commission	11,292	100%	37	307
Department of Transportation	10,946	75%	109	100
Environmental Protection Agency	9,689	46%	128	76

Results of the Analysis

Only two agencies – the Social Security Administration and the Department of Agriculture – received scores of more than 80 percent on processing. Most federal agencies are still struggling to meet the open government goals of FOIA.

Top Performers

Agency	Score
Social Security Administration	107% (A+)
Department of Agriculture	81% (B-)

The top performing agency was the Social Security Administration (SSA) with a 107 percent score and a very strong grade of A+. ¹⁰ With less than one percent of requests backlogged, the highest percentage of fully granted requests (93 percent), and an average response time under the mandated 20 business days (19), SSA achieved top-tier performance across nearly all processing measures. SSA’s 53 percent rate of granting on appeal also deserves mention as the highest of all 15 agencies. Overall, the agency has set a strong example to follow.

¹⁰ Scores greater than 100 percent are possible due to bonus points for improvement compared to the previous year. Without bonus points, SSA’s processing score would be 98 percent. See Appendix A for a complete methodology.

However, SSA has one of the highest rates of simple requests out of the 15 agencies; it categorized 99 percent of the requests it processed as “simple,” and of these requests that were fully processed, 90 percent were completed within the 20-day deadline.

The U.S. Department of Agriculture (USDA) scored an 81 percent for its generally strong performance. The agency closed 87 percent of processed requests within the mandated 20 days, which contributed to its having a backlog of only three percent. Additionally, the agency demonstrated a high rate of full granting (87 percent). About 92 percent of the requests USDA received were labeled “simple,” and 91 percent of its processed simple requests were completed with 20 days. However, USDA’s processing performance stumbled by having a slow appeal response time that far exceeds the statutory deadline of 20 days: its average time to respond to appeals was 227 days.

Middling Performers

Agency	Score
Securities and Exchange Commission	73% (C)
Department of Transportation	71% (C-)
Department of Justice	69% (D+)
Environmental Protection Agency	69% (D+)
Department of the Treasury	67% (D)
Equal Employment Opportunity Commission	67% (D)
Department of Health and Human Services	63% (D)

Two agencies, the Securities Exchange Commission and the Department of Transportation, received overall processing requests scores of 73 and 71 percent, respectively. Although the SEC reported that nearly all of its requests were “simple,” it managed to process only 80 percent of the completed requests within the required 20-day period. Only three-quarters of the requests to the Department of Transportation were classified as simple requests, and of these completed requests, only 72 percent were processed within 20 days. Both agencies were less likely to provide full requests than the top performing agencies (SEC 75 percent, DOT 65 percent). However, both agencies carried low or moderate backlogs (SEC two percent, DOT seven percent) and often responded within the mandated 10 days to requests for expedited processing (SEC 96 percent, DOT 90 percent).

The five agencies that received scores of 60 to 69 out of 100 typically had small to moderate backlogs but fell short in other areas. For instance, the Equal Employment Opportunity Commission (EEOC) and Treasury have very low rates of fully granted requests, four percent¹¹ and 59 percent, respectively, while the other agencies in this tier had between 65 percent and 85 percent full granting. HHS, DOJ, Treasury, and EPA missed points

¹¹ The extremely low rate of full disclosure may be due to privacy concerns that mandate redacting information about the individuals involved in EEOC cases.

because they rarely reverse decisions on appeal. The EPA and HHS also have very long delays in responding to appeals, which brought their scores down further. The cluster of agencies in this group demonstrates the loose connection between the character of the requests an agency receives and its performance: only 15 percent of the requests Treasury processed were simple; 92 percent of the requests the EEOC received were simple. When the agencies fully processed these requests, Treasury completed 89 percent of them in 20 days, and EEOC processed only 76 percent within the mandated time period. Less than half of EPA's requests were simple (46 percent), yet all of its processed simple requests were closed within the 20-day time period.

Lowest Performers

Agency	Score
Department of Defense	54% (F)
National Archives and Records Administration	48% (F)
Department of Veterans Affairs	44% (F)
Department of Labor	38% (F)
Department of Homeland Security	33% (F)
Department of State	17% (F)

Processing scores for the other six agencies drop dramatically. DOD comes closest to a passing grade, with moderate performance on most measures of timeliness but a low full-grant rate (58 percent), a very long delay in responding to appeals (256 days on average), and a very low rate of reversal on appeal (20 percent). Of the other failing agencies, the Departments of Labor and Veterans Affairs generally perform reasonably on most measures of timeliness but have low rates of granting information (87 percent and 80 percent fully or partially granted, respectively). NARA and DHS provide more information (98 percent and 99 percent fully or partially granted, respectively), but their average processing times are well over the legal limit (160 and 88 days, respectively).

NARA has the highest percentage of simple requests (88 percent), and when it processes these requests, it closes most (88 percent) promptly. Yet overall, its average response time exceeds 20 days, and the agency also has the largest percentage of backlogged requests. Therefore, most requests at NARA receive prompt attention, but a minority of cases take a very long time to process, suggesting its complex requests require time-consuming information gathering from archival records.

About 63 percent of DOD's requests are simple, and when it processes these, the great majority (94 percent) are completed within 20 days. While less than half of the requests to the Departments of Labor and Veterans Affairs are "simple," both do a decent job of closing their processed simple requests within the 20-day time period (73 percent and 86 percent, respectively, were processed promptly). Over 60 percent of requests to the State Department and the Department of Homeland Security were complex requests, yet both did an abysmal job

of responding to the simple requests they received within 20 days. DHS responded to only about a third of its processed simple requests within this time frame, and the State Department responded to less than one percent of processed simple requests within 20 days.

The State Department deserves special attention for its very low score. In addition to performing poorly on measures of timeliness, it did not do well on withholding (only 25 percent of requests fully granted). The one bright spot: the State Department's appeals process is one of the most favorable to requesters in reversing the agency's initial decision – if the requester is willing to wait more than a year, on average, for the appeal to be decided.

Processing Trends and Issues

Timeliness and Backlog Reduction

Access to public information is important, and sometimes the information sought has a shelf life – *i.e.*, the information becomes less useful with the passage of time. For instance, during the financial crisis of 2008, *Bloomberg News* filed a request seeking information about the Federal Reserve's emergency loans to troubled banks.¹² The records, which the Fed ultimately released in 2011, revealed that the Fed provided \$13 billion in undisclosed loans to companies including Bank of America, JPMorgan, and Citigroup. "The secret funding," *Bloomberg* reported, "helped preserve a broken status quo and enabled the biggest banks to grow even bigger." But until the records were released, members of Congress were not aware of the loans – and passed laws benefitting the banks in the meantime. Based on those records, Sen. Sherrod Brown (D-OH) commented, "There are lawmakers in both parties who would change their votes now."¹³

Recognizing this reality, FOIA includes a clear deadline (generally, 20 days) for an agency to respond to all requests and to appeals. Compliance with these deadlines remains a challenge for most agencies. At the top performer, the Social Security Administration, 89 percent of the requests processed received a response within 20 days. But most agencies were more like the Department of the Treasury, where 72 percent of processed requests were completed within the required timeframe. The State Department's processed requests were completed within 20 days only one percent of the time, which represents a serious pattern of failure to comply with the law's mandates.

While some agencies blame the high proportion of complex requests for their difficulty meeting deadlines, we should expect better response times for requests that agencies themselves characterize as "simple." In fact, 13 of

¹² Mark Pittman, "Bloomberg Sues Fed to Force Disclosure of Collateral," *Bloomberg*, Nov. 7, 2008, available at <http://www.bloomberg.com/apps/news?pid=newsarchive&sid=aKr.oY2YKc2g>.

¹³ Bob Ivry, Bradley Keoun, and Phil Kuntz, "Secret Fed Loans Gave Banks \$13 Billion Undisclosed to Congress," *Bloomberg*, Nov. 27, 2011, available at <http://www.bloomberg.com/news/2011-11-28/secret-fed-loans-undisclosed-to-congress-gave-banks-13-billion-in-income.html>.

the 15 agencies completed at least 70 percent of processed simple requests in the required 20-day time period. Only DHS and the State Department missed this mark with simple requests.

Failure to respond promptly to FOIA requests creates backlogs of overdue requests. Backlogs compound the challenge of timely responses, as agencies must keep up with new requests while also responding to old, overdue requests.

Table 2. Change in Freedom of Information Act Backlogs, FY 2011 to FY 2012

Agency	Percentage of all requests responded to within 20 days	Percent of requests backlogged at end of FY 2011	Percent of requests backlogged at end of FY 2012	Backlog change, FY 2011 to FY 2012
Social Security Administration	89%	0%	0%	*
Department of Agriculture	87%	3%	3%	+1
National Archives and Records Administration	81%	44%	57%	+13
Securities and Exchange Commission	80%	1%	2%	+1
Department of Veterans Affairs	76%	3%	3%	*
Equal Employment Opportunity Commission	76%	1%	1%	*
Department of Defense	75%	10%	10%	*
Department of the Treasury	72%	2%	2%	*
Department of Labor	70%	3%	4%	+1
Department of Health and Human Services	68%	10%	8%	-1
Department of Justice	66%	6%	7%	+1
Department of Transportation	62%	6%	7%	+1
Environmental Protection Agency	57%	3%	5%	+2
Department of Homeland Security	26%	24%	15%	-9
Department of State	1%	56%	56%	*

Note: All backlog change figures are rounded.

Scores show a mixed picture with regard to backlog reduction. Of the 15 agencies graded, eight reduced their backlog while seven saw their backlog of overdue FOIA requests grow. DHS, which entered the year with the largest backlog by far of the 15 agencies, showed what can be done: the agency reduced its backlog by 33 percent in FY 2012.¹⁴ Other agencies with notable backlogs included the State Department and the National Archives and Records Administration; both had backlogs equal to more than half the requests they received in FY 2012.

Timeliness in response and reduction in backlogs are perennial FOIA issues. Agencies can increase processing by improving proactive disclosure to reduce incoming requests and streamlining workflows to speed up

¹⁴ Despite the reductions, DHS continued to have one of the highest rates of backlogged requests.

communications between FOIA personnel and agency program staff or staff in other agencies. Applying more efficient technology, such as software that allows electronic review, redaction, and release of documents, could be helpful. Some agencies may need more personnel to process backlogs, using temporary assignments or contractors.

Some agencies may also benefit from improved use of multi-tracking procedures. Properly categorizing expedited, simple, and complex requests should ensure that expedited and simple requests are processed quickly while continuing to make progress on more complex requests. EPA showed effective use of multi-tracking: 100 percent of the simple requests it processed were completed within 20 days. DHS was less successful at utilizing the processing tracks: 40 percent of the simple requests it processed took more than 100 days.

Granting and Denying Requests

Public disclosure of information is the end goal of FOIA. While agencies can withhold information in particular circumstances, in a democracy, citizens should have access to public information unless clear and compelling reasons exist to withhold the information. President Obama's memo to agency heads in 2009 instructed them to adopt a "presumption of openness."¹⁵ Despite this, denials are still common.

Federal agencies can respond to a request for information in one of three ways: provide all the information requested (full disclosure); provide some of the information requested (partial granting: an agency provides some information but redacts or withholds other information); or deny the request entirely. There is considerable variation in full granting and denial rates, as Table 3 shows: USDA fully granted 87 percent of requests while the Labor Department fully granted only 24 percent of requests. The reasons for these differences are unclear. While security-related agencies do deny requests more often, they are not the only ones with high denial rates. Full granting of the information requested has been steadily declining over several years across a range of agencies,¹⁶ and the data do not readily indicate the reasons why.

¹⁵ Barack Obama, Presidential Memorandum, "Freedom of Information Act," The White House, Jan. 21, 2009, available at http://www.whitehouse.gov/the_press_office/FreedomofInformationAct.

¹⁶ See *supra* note 2, pp. 12-14.

Table 3. Information Granted under Freedom of Information Act Requests, FY 2012

Agency	% Fully Granted	% Partially Granted	% Fully Denied
Social Security Administration	93%	5%	2%
Department of Agriculture	87%	11%	2%
Environmental Protection Agency	87%	11%	2%
Department of Health and Human Services	85%	4%	11%
National Archives and Records Administration	76%	22%	2%
Department of Justice	75%	19%	6%
Securities and Exchange Commission	75%	10%	15%
Department of Transportation	65%	34%	1%
Department of the Treasury	59%	35%	7%
Department of Defense	58%	35%	7%
Department of Veterans Affairs	46%	34%	20%
Department of State	25%	31%	44%
Department of Labor	24%	63%	13%
Department of Homeland Security	15%	84%	1%
Equal Employment Opportunity Commission	4%	81%	15%

Note: Rows on this table may not total 100 percent due to rounding.

Agencies should review their regulations, guidance, and training to ensure they appropriately encourage the maximum disclosure of information. Discussions with FOIA personnel at agencies with particularly high granting rates could also uncover practices that help minimize the use of withholding exemptions.

Appeals Process

The FOIA statute establishes the right to appeal an agency’s decision to withhold information or deny a request. Appeals have a timeliness component (agencies are mandated to respond to an appeal in 20 business days) as well as a granting component (the process can result in releasing additional information or granting a “procedural benefit,” such as a fee waiver or expedited processing).

Scores suggest that the appeals process is a relatively neglected part of the law. Generally, less than two percent of requests are appealed.¹⁷ While FOIA requires a response to appeals within 20 days, the average appeal response time among these 15 agencies ranges from 16 to 472 days. Only the Equal Employment Opportunity Commission had an average appeal response time under 20 days. Meanwhile, at the State Department, an average appeal took more than a year to be settled.

¹⁷ At the median agency in this scorecard (the State Department), appeals are 1.4 percent of the requests processed.

In terms of granting, at eight of the 15 agencies, the agency reversed original decisions in favor of the information seeker less than 30 percent of the time – including two of the agencies that process the most appeals, DOJ and DOD. However, at SSA, the State Department, and DOT, an appeal resulted in the requester obtaining more information or reduced costs in more than half the appeals cases.

Reversal of agency decisions on appeal demonstrates that agencies are using the appeals process to maximize disclosure. In a spirit of cooperation, agencies can use discretion to seek common ground with requesters who appeal.

Agencies have a financial incentive to ensure their appeals process is robust and well-functioning because a denied appeal can result in the requester initiating expensive litigation against the agency. The relatively small number of appeals means that dedicating a bit of extra attention to the appeals process could result in noticeable changes to outcomes.

Disclosure Rules

Currently, each agency sets its own rules about how its staff will process freedom of information requests. In many agencies, these rules provide the most direct guidance in the day-to-day implementation of FOIA. Agency staff and those seeking information look to the agency's regulations to guide decision making and expectations. These regulations also set a tone for the agency's approach to FOIA and open government issues more generally.

Regulations determine whether the procedures an information seeker must follow will be simple or byzantine, and this can affect the timeliness of processing requests. In addition, regulations shape the agency's decisions about what kind of information will be disclosed or withheld.

In many aspects of FOIA administration, agencies have the discretion to adopt practices that are more supportive of openness than those mandated by law. Some agencies have already used their FOIA regulations to embrace innovative approaches to increasing transparency. All agencies can and should do more.

In December 2013, the Center for Effective Government published *Best Practices for Agency Freedom of Information Act Regulations*.¹⁸ This scorecard compares existing agency regulations against a set of 12 of the most widely-adopted best practices discussed in that report. The score evaluates agency rules on how staff communicate with requesters, policies for withholding and disclosure, and the process that those seeking information are required to go through to obtain materials.

Specifically, the scorecard evaluated 12 regulatory measures dealing with online disclosures, online services (electronic submissions), communicating with information seekers, the presumption of openness, preserving records, handling claims of confidential business information, and deadlines for appeal. Each measure is worth

Scores: Disclosure Rules	
Agency	Score
Top Performers	
Department of Justice	92% (A-)
Environmental Protection Agency	88% (B+)
Department of Labor	88% (B+)
Department of the Treasury	83% (B)
Department of Agriculture	79% (C+)
Department of Homeland Security	79% (C+)
Middling Performers	
Department of Transportation	67% (D+)
Department of Veterans Affairs	63% (D)
Lowest Performers	
Securities and Exchange Commission	58% (F)
National Archives and Records Administration	50% (F)
Social Security Administration	46% (F)
Department of Defense	38% (F)
Department of Health and Human Services	38% (F)
Department of State	33% (F)
Equal Employment Opportunity Commission	33% (F)

¹⁸ See *supra* note 3.

up to two points, with one point available for partial credit. An agency that had updated its regulations since the 2007 FOIA amendments were passed was awarded a single bonus point. Additional single bonus points were available if agency rules included other FOIA best regulatory practices, such as posting released records and providing a tracking number in an acknowledgment letter.

Overall, eight agencies passed the regulations section of the scorecard, while seven agencies failed.

Results of the Analysis

Top Performers

Agency	Score
Department of Justice	92% (A-)
Department of Labor	88% (B+)
Environmental Protection Agency	88% (B+)
Department of the Treasury	83% (B)
Department of Homeland Security	79% (C+)
Department of Agriculture	79% (C+)

With an A- (92 percent), the Department of Justice earned the top spot for its regulations score by meeting almost all of the scorecard criteria.¹⁹ The Department of Labor, Environmental Protection Agency, Department of the Treasury, Department of Homeland Security, and Department of Agriculture also had high scores. Other than USDA, all these agencies have adopted policies to prevent the destruction of requested records.

Out of this group, only DOJ adopts the “foreseeable harm standard” for withholding, which requires that agencies will only withhold requested information if they reasonably foresee that disclosure would harm an interest protected by law. USDA earns partial credit because its rule says staff should consider disclosing information that could technically be withheld under an exemption but does not need to be (known as “discretionary disclosure”).

Middling Performers

Agency	Score
Department of Transportation	67% (D)
Department of Veterans Affairs	63% (D)

¹⁹ However, DOJ recently proposed new FOIA regulations that have been criticized by the open government community as curtailing access. See Jennifer LaFleur, “Government Could Hide Existence of Records under FOIA Rule Proposal,” *ProPublica*, Oct. 24, 2011, available at <http://www.propublica.org/article/government-could-hide-existence-of-records-under-foia-rule-proposal>.

Two agencies (DOT and VA) achieved middling scores because they don't meet several of the regulatory best practices criteria. These agencies have adopted the most common best practices, such as notifying requesters when processing is delayed and preserving requested records. However, each fell short on other criteria. DOT does not provide adequate time for requesters to appeal an adverse decision. Both VA and DOT lost points for lacking a policy to contact a requester before denying a request as unreasonable.

Lowest Performers

Agency	Score
Securities and Exchange Commission	58% (F)
National Archives and Records Administration	50% (F)
Social Security Administration	46% (F)
Department of Defense	38% (F)
Department of Health and Human Services	38% (F)
Equal Employment Opportunity Commission	33% (F)
Department of State	33% (F)

The seven agencies that failed lacked most of the best regulatory practices we identified. The Securities and Exchange Commission is just a few points short of a passing grade because the agency does not have a rule saying it will promptly acknowledge having received a request. In fact, with the exception of DOD, all these agencies lack a policy to acknowledge requests as soon as practicable – a simple procedure that facilitates communication with the requester. The State Department has no regulation requiring staff to notify requesters when processing is delayed, even though this is required by law.²⁰

The Equal Employment Opportunity Commission's rock-bottom score, tied with the State Department, is somewhat surprising because EEOC is one of only two agencies in the assessment (along with VA) that has updated its regulations since FOIA was amended in 2007. EEOC has failed to incorporate the latest best practices in its just recently revised rules.

Disclosure Rule Trends and Issues

Outdated Regulations

When agency regulations are out of sync with the most current version of the FOIA statute, both citizens and agency staff may be frustrated. The latest major amendment to FOIA occurred in 2007, when Congress passed the Open Government Act.²¹ The law made several important changes, such as creating the Office of Government Information Services (OGIS) to serve as a FOIA ombudsman and prohibiting agencies from

²⁰ 5 U.S.C. § 552(a)(6)(B)(i).

²¹ OPEN Government Act of 2007, Pub. L. 110-175, 121 Stat. 2524.

charging certain fees if the agency misses processing deadlines. After seven years, agencies should have updated their regulations to reflect these new provisions.

Out of the 15 agencies reviewed in this scorecard, only two agencies, VA and EEOC, have updated their regulations since the 2007 FOIA amendments.²² This means that most of the agencies with the largest FOIA programs are operating with rules that are not up-to-date with the law.

In its Open Government National Action Plan, the Obama administration announced that it would research the feasibility of establishing a common set of government-wide FOIA regulations.²³ Such rules would reduce agency work, confusion, and make it easier for citizens to request information.

Presumption of Openness

For FOIA to work as intended, agencies must disclose requested information promptly and only withhold information when truly necessary. Congress has noted that FOIA “establishes a strong presumption in favor of disclosure.”²⁴ President Obama’s FOIA memorandum likewise stated that the law “should be administered with a clear presumption: In the face of doubt, openness prevails.”²⁵

Attorney General Holder’s FOIA guidelines explain how agencies should implement FOIA’s presumption of disclosure. The guidelines provide that “the Department of Justice will defend a denial of a FOIA request only if (1) the agency reasonably foresees that disclosure would harm an interest protected by one of the statutory exemptions, or (2) disclosure is prohibited by law.”²⁶ Applying this “foreseeable harm standard” helps to ensure that agencies do not withhold information improperly.

Out of the 15 agencies reviewed in the scorecard, only three – DOJ, DOD, and NARA – adopted the foreseeable harm standard for withholding in their regulations. Two additional agencies, USDA and VA, earned partial credit for considering discretionary disclosures without specifying a foreseeable harm standard.

While Congress and the administration have expounded on the importance of the presumption of openness, our review of agency regulations suggests that many agencies have not fully committed to implementing it.²⁷ All

²² Additional agencies have proposed updated revisions but have not yet finalized them.

²³ The White House, “The Open Government Partnership: Second Open Government National Action Plan for the United States of America,” Dec. 5, 2013, p. 3, available at http://www.whitehouse.gov/sites/default/files/docs/us_national_action_plan_6p.pdf.

²⁴ See *supra* note 19 (“the Freedom of Information Act establishes a ‘strong presumption in favor of disclosure’ as noted by the United States Supreme Court in *United States Department of State v. Ray* (502 U.S. 164 (1991)), a presumption that applies to all agencies governed by that Act”).

²⁵ See *supra* note 13.

²⁶ Eric Holder, “The Freedom of Information Act (FOIA),” Office of the Attorney General, March 19, 2009, available at <http://www.justice.gov/ag/foia-memo-march2009.pdf>.

²⁷ One possible reason for this is that previous administrations have not embraced the presumption of openness. While the attorneys general under the Carter and Clinton administrations issued memoranda embracing the presumption of openness, the Reagan and George W. Bush administrations did not. Because regulations outlast a presidential administration, agencies may be avoiding taking a position on the issue in order to prevent having to revise them when a new president takes office. While Congress made its intent clear in the OPEN Government Act that agencies *should* embrace the presumption of openness, as noted above, most agencies have not updated their regulations since that law was enacted.

agencies should incorporate the presumption of openness and clear procedures for implementing the foreseeable harm standard in their regulations.

Adequate Time Limits for Appeals

The administrative appeals process is an important element of oversight of the FOIA system and a useful opportunity for a FOIA requester to get a “second opinion.” Agencies should ensure that the appeals process is accessible to requesters and that appellate reviews are robust. Maintaining a meaningful and user-friendly appeals process can reduce disputes and may avoid litigation.

People denied while seeking information should have adequate time to gather all the facts relevant to their request and prepare any arguments they wish to make in the appeal. Providing a minimum of 60 days would allow adequate time for requesters to prepare and submit appeals.

Out of the 15 agencies reviewed in the scorecard, only seven agencies provided at least 60 days for requesters to submit an appeal.²⁸ (USDA received partial credit for providing 45 days.) The other agencies provided requesters less time to submit an appeal of an adverse agency decision. Agencies should revise their regulations to ensure requesters have adequate time to prepare an appeal. Alternatively, Congress or the administration could also establish a minimum time limit of 60 days.

²⁸ VA and SEC do not specify a time limit in their regulations and were awarded credit.

Websites and Online Services

In our modern digital age, most people get their information – including government information – online. For many FOIA requesters, the agency website is their first stop in learning how FOIA works in that agency, in reviewing already disclosed information, and in submitting a request.

Properly implemented online tools can revolutionize the FOIA process for an agency. Proactive posting of more information in easy-to-find and easy-to-use formats can reduce the number of requests agencies receive. Electronic submission of requests and electronic communications with requesters can speed up the process. Providing proper online advice and tutorials can provide immediate guidance to those seeking information and help avoid vague or improper requests that waste agency resources.

Scores: Quality of FOIA Website	
Agency	Score
Top Performers	
Department of Justice	95% (A)
National Archives and Records Administration	90% (A-)
Environmental Protection Agency	85% (B)
Department of State	80% (B-)
Department of Health and Human Services	80% (B-)
Middling Performers	
Social Security Administration	70% (C-)
Department of Agriculture	65% (D)
Equal Employment Opportunity Commission	65% (D)
Department of Homeland Security	60% (D-)
Department of Labor	60% (D-)
Department of Veterans Affairs	60% (D-)
Lowest Performers	
Department of Defense	57% (F)
Securities and Exchange Commission	55% (F)
Department of Transportation	50% (F)
Department of the Treasury	40% (F)

Properly implemented online tools can revolutionize the FOIA process for an agency. Proactive posting of more information in easy-to-find and easy-to-use formats can reduce the number of requests agencies receive.

The website scores measured whether agencies²⁹ offered online service options for information seekers to submit and track requests and appeals; provided resources to assist them, producing a copy of the agency's regulations and a requester guide; and effectively utilized reading rooms to regularly post disclosed records in a useful fashion so that users can help themselves to past disclosures instead of requesting already available information.

²⁹ For agencies with a decentralized FOIA process, the score evaluated the website of the agency component which received the majority of requests in FY 2012. These agencies are the Department of Homeland Security (U.S. Citizenship and Immigration Services), the Department of Health and Human Services (Centers for Medicare and Medicaid Services), the Department of the Treasury (Internal Revenue Service), and the Department of Transportation (Federal Aviation Administration). For the Department of Defense, no single component received the majority of requests, so the score evaluated the two largest components, the Departments of the Army and the Navy; the department score represents the weighted average of the two components, proportional to the number of requests received by each.

Specifically, the score included 17 measures dealing with online services, posting of agency contact information, posting of helpful information about the FOIA process, and electronic reading rooms. Each measure is worth one point, except for web submission of requests, web tracking of requests, and posting of the agency’s FOIA regulations, which were each worth two points. Additionally, agencies received a single bonus point for participating in the multi-agency FOIAonline portal and if the agency’s reading room was updated within the past two months.

This section generated the highest score (95) and the most A and B grades (five). Six agencies have been trying to adopt some good IT practices and earned mid-range scores, but four agencies failed to get passing grades.

Ten agencies do not offer full online services, such as allowing requesters to electronically submit and track FOIA requests and appeals. Electronic reading rooms, where agencies are required to post certain types of information released under FOIA, often severely lack content, organization, and regular updates. Neglect of small but useful details, such as providing full contact information for agency FOIA staff, undermines the usefulness of websites. Given the role that IT could play in improving performance and reducing costs to resource-poor agencies, this failure is short-sighted.

The scorecard measured elements of the website that provided information and resources to facilitate FOIA requests. The evaluation is from the perspective of a prospective user: did the website provide information and tools that would help a person seeking information from the agency get to said information as quickly and efficiently as possible?

Results of the Analysis

Top Performers

Agency	Score
Department of Justice	95% (A)
National Archives and Records Administration	90% (A-)
Environmental Protection Agency	85% (B)
Department of Health and Human Services (Center for Medicare and Medicaid Services)	80% (B-)
Department of State	80% (B-)

Five agencies achieved grades placing them in the top-performer tier, though only two agencies, the Department of Justice and the National Archives and Records Administration, received an A or A- grade. The DOJ’s FOIA website is an example of a solid site with thorough, yet uncomplicated features. The site includes online submission and

tracking for requests and appeals, full contact information, links to helpful resources, tutorials on the FOIA process, and a recently updated electronic reading room. NARA is close behind with an A- and provides full online services through FOIAonline, although these services may only be used by those requesting NARA operational records and not by those seeking archival records.

EPA earned a B, also providing full online services through FOIAonline. The top three agencies (DOJ, NARA, and EPA) are the only agencies that allow online appeal submission and tracking. But EPA loses some points for not including key information on its website, such as full contact information. The State Department and HHS provide most online services and information but lack some; for instance, neither agency provides online submission or tracking of appeals.

Middling Performers

Agency	Score
Social Security Administration	70% (C-)
Department of Agriculture	65% (D)
Equal Employment Opportunity Commission	65% (D)
Department of Veterans Affairs	60% (D-)
Department of Labor	60% (D-)
Department of Homeland Security (United States Citizenship and Immigration Services)	60% (D-)

Six agencies received scores of between 60 and 70 for their online FOIA services, placing them in the middling performers tier. These agencies missed many of the opportunities to leverage online tools to improve the FOIA process. The Social Security Administration has good website content and allows online submission of requests but is missing other online services. The VA provides no online service options for submitting or tracking requests or appeals through its website. All the agencies in this tier are missing some useful website content.

Lowest Performers

Agency	Score
Department of Defense (Army & Navy)	57% (F)
Securities and Exchange Commission	55% (F)
Department of Transportation (Federal Aviation Administration)	50% (F)
Department of the Treasury (Internal Revenue Service)	40% (F)

The bottom four agencies received failing grades because they consistently missed most of the website criteria. One common failing for these agencies was the weakness of their electronic reading rooms. All four agencies failed to point website visitors toward their electronic reading rooms as a useful resource for potential requesters, which could negate the need for a new information request.

Web Services Trends and Issues

Online Services

Providing the public with the ability to electronically file and track requests and appeals should be a basic part of every FOIA site. Online forms allow agencies to assist and guide people who are requesting information to ensure sufficient information is provided for staff to efficiently process the request. Offering online tracking information also reduces the time and resources needed to communicate basic status updates and estimated time of completion.

Many agencies failed to provide full online services. While most agencies offer a form of online submission for FOIA requests, a majority still have no online tracking available. Only three agencies allow for filing or tracking administrative appeals through their websites.

Given that several agencies have implemented full online services, there are various models available for those agencies which haven't yet done so. Agencies lacking full online services should consider joining FOIAonline or deploying appropriate open source or off-the-shelf technology. The Obama administration has committed itself to creating a government-wide FOIA portal.³⁰

Electronic Reading Rooms

Federal agencies are required to have electronic reading rooms (also called FOIA libraries) on the FOIA sections of their websites.³¹ The intent of electronic reading rooms is to facilitate access to commonly requested, previously released documents. Proactive posting of information has the potential to avoid requests entirely by providing people with information before they ask for it. A robust, organized, and regularly updated electronic reading room can save resources by avoiding processing duplicative requests and boost an agency's reputation for openness.

However, many reading rooms are sparse on content, difficult to use, and disorganized; some even lack a search function. Several agencies appear to neglect updating the information in their reading rooms on a regular basis, negating the usefulness of the reading room to citizens and to agency staff.

³⁰ See *supra* note 21.

³¹ E-Government Act of 2002, Pub. L. 107-347, 116 Stat. 2899, 2918.

The most successful electronic reading rooms provide clear organization and structure, allowing users to navigate content easily, whether browsing or searching for specific information. Records are well-organized by topic. Regular updates allow an agency's electronic reading room to be a helpful resource to the public and can reduce the request load. The inclusion of posting dates for individual documents or the date when documents in the reading room were last updated helps visitors understand how current the posted records are.

Many reading rooms are sparse on content, difficult to use, and disorganized; some even lack a search function. Several agencies appear to neglect updating the information in their reading rooms on a regular basis, negating the usefulness of the reading room to citizens and to agency staff.

Contact Information

Requesters need to be able to contact an actual human being within an agency who can assist with questions and concerns. Requesters sometimes feel lost in the agency bureaucracy and need individual assistance. The review looked at whether an agency listed a name, phone number, and e-mail address for a FOIA contact person for the agency. Such a simple step signals that the agency is open and ready to communicate about FOIA. Ten agencies posted full contact information for FOIA staff; five agencies did not. The irony of failing to provide contact information for the person who is supposed to help the agency make information more available and accessible to the public is rather astonishing – and quite easy to remedy. Posting the complete contact details for the agency's FOIA Public Liaison³² prominently on the FOIA website should address this issue.

³² Each agency is required by Executive Order 13392 and the OPEN Government Act of 2007 to designate a FOIA Public Liaison to assist requesters with the FOIA process.

MAKING THE GRADE ON ACCESS TO INFORMATION

Overall, the scores agencies received on their implementation of the Freedom of Information Act are disappointing. Since these 15 agencies receive over 90 percent of all requests for information sent to the federal government, the fact that 11 agencies received less than a C suggests that many people who ask for government information may find the experience frustrating.

Establishing an effective system for promptly responding to requests for public information is a complex undertaking. Unlike commercial transactions such as online shopping, even simple requests for government-held information typically involve human judgment about the detail and breadth of information being requested, whether the information violates any protected interests, etc. Moreover, the requesters may have only a partial or incorrect understanding of the information the agency actually holds. Complex requests can require staff to go through multiple information sources, and historical requests can require investigation of paper files. Implementing FOIA is not an easy task.

Nonetheless, FOIA has been the law of the land for almost 50 years, and every practice we have incorporated as a standard in this scorecard has already been put into practice by at least one federal agency. The keys to effective implementation are to (1) align rules, policies, staff decision making, and processing operations with the goal of open government; and (2) use new information management technologies to smartly and efficiently bolster agency open government practices. For instance, online request and tracking systems should free staff to actually find and release information; posting all previous requests in easy-to-search reading rooms should reduce duplicative requests.

But in a resource-constrained environment, agencies will have to determine what kinds of investments best move their work forward *while* meeting their responsibilities to make public information available to the American people. Realizing the promise of FOIA requires a team effort, and it requires leadership at all levels of government recognizing the importance of open access to government information and consistently emphasizing its importance to effective democratic governance.

Improving Performance

A. What Agencies Can Do

The fastest way to improve how agencies release public information is to improve agency websites and online tools. This has the potential for immediate as well as long-term payoffs. By contrast, it takes longer to fix outdated regulations. Formal rulemaking can be a slow process, but within a year, an agency should be able to update its rules.³³

Improving FOIA implementation may require new resources. FOIA processing can be labor-intensive: collectively, these 15 agencies reported assigning the equivalent of more than 3,000 full-time staff to FOIA.³⁴ They are responsible for every step of the FOIA process: communicating with requesters, retrieving records from program offices, and reviewing files to identify the information required to respond. If an agency does not have enough trained staff, its response times could suffer or it might inappropriately withhold information.

But establishing an effective system to respond to public information requests is about much more than staffing levels. Agencies may benefit from streamlining processes to save time and improve communications between FOIA personnel and program staff. Improved training of FOIA staff and modernized technology, such as software that allows electronic review, redaction, and release of documents, can also improve performance. Better managing requests in the three processing streams – expedited, simple, and complex – could increase responsiveness on the first two tracks while continuing to make progress on more difficult requests.

The process also needs to solicit the knowledge and perspectives of information seekers. Viewing information requesters and the open government community as a resource rather than an adversary can help an agency better prioritize and plan for improvements. By consulting with users and advocates, agencies can better understand how their current practices help or hinder access to information and receive valuable feedback on their efforts. But each agency will need to assess its best opportunities and consider its unique organizational strengths and resource needs to chart the best path forward.

Ideas for Soliciting Input from Information Seekers

- Host a roundtable for users to share their views and ask questions about agency practices
- Ask for comments on the agency's FOIA regulations or policies on the agency website
- Solicit ideas for initiatives to include in the agency's open government plan
- Invite users to beta test new features on the agency's FOIA website
- Send those who file a FOIA request a feedback survey at the end of processing to ask about their experience

³³ For recommendations, see *supra* note 3.

³⁴ The agencies reported 3,283 full-time equivalents (FTEs) in FY 2012.

Careful monitoring of progress can create incentives and accountability for performance. The new requirements for quarterly reporting of FOIA statistics may offer a place to start.³⁵ Some agencies have also made effective use of Inspector General reviews of aspects of FOIA implementation.³⁶

Agencies can also look to their colleagues for ideas about how to improve. As previously noted, there are agencies that excel on each standard used to calculate this report's scores. Agencies struggling with an area can contact an agency that led the scoring and learn from its methods.

Additionally, agencies can avail themselves of other governmental resources for FOIA improvement. The Justice Department's Office of Information Policy (OIP) and the FOIA ombudsman, the Office of Government Information Services (OGIS) within the National Archives and Records Administration, offer guidance, best practices, and consultation with agencies. The administration has also committed to developing additional tools to improve agency FOIA processes as part of its Open Government National Action Plan.³⁷ As these tools are put in place, they could become important vehicles for sharing learning and ratcheting up performance standards among agencies.

B. What the White House Can Do

The administration has taken several steps in recent years to improve government-wide implementation of FOIA. Continuing this progress can encourage agencies to make further improvements.

The commitments contained in the Obama administration's second Open Government National Action Plan offer opportunities to improve agency performance.³⁸ Creating a government-wide FOIA portal and common FOIA rules can immediately improve two areas of performance identified in this report. The FOIA Advisory Committee can provide a venue to bring together the best ideas from inside and outside government to develop FOIA solutions. Providing FOIA training for federal agency staff can also help bolster a culture of openness across government.

The administration can also strengthen its oversight of FOIA performance, which would encourage further improvements by agencies. For instance, DOJ's Office of Information Policy can continue to revise and

35 See Melanie Ann Pustay, "New Quarterly FOIA Reporting Beginning January 2013," *The FOIA Post*, Dec. 4, 2012, available at <http://blogs.justice.gov/oip/archives/952>.

36 See, e.g., Treasury Inspector General for Tax Administration, "Fiscal Year 2013 Statutory Review of Compliance With the Freedom of Information Act," Sept. 20, 2013, available at <http://www.treasury.gov/tigta/auditreports/2013reports/201330109fr.html>; Environmental Protection Agency Office of Inspector General, Report No. 09-P-0127, "EPA Has Improved Its Response to Freedom of Information Act Requests But Further Improvement Is Needed," March 25, 2009, available at <http://www.epa.gov/oig/reports/2009/20090325-09-P-0127.pdf>; Department of State Office of Inspector General, Report Number ISP-I-12-54, "Inspection of the Bureau of Administration, Global Information Services, Office of Information Programs and Services," September 2012, available at <http://oig.state.gov/documents/organization/199774.pdf>; Department of Homeland Security Office of Inspector General, "The DHS Privacy Office Implementation of the Freedom of Information Act," March 2011, available at http://www.oig.dhs.gov/assets/Mgmt/OIG_11-67_Mar11.pdf.

37 See *supra* note 21.

38 *Id.* at 3-4.

strengthen its assessments of agencies' FOIA implementation.³⁹ Similarly, OGIS can continue efforts to develop a methodology to review agency FOIA policies and compliance.⁴⁰

Other new steps the administration could take to support improved agency FOIA implementation include:

- Align the Justice Department's FOIA litigation stance with President Obama's transparency principles in order to encourage improved processing and dispute resolution;⁴¹
- Provide OGIS, the FOIA ombudsman, with more independence and resources;⁴²
- Update the Office of Management and Budget's 27-year-old guidelines on FOIA fees⁴³ to provide simpler and fairer fee procedures.

Finally, the White House needs to engage in discussions for reform legislation with Congress. President Obama could leave a strong FOIA legacy by working with Congress to codify the administration's executive orders and policy advancements on FOIA⁴⁴ and to fix the problems that have emerged in the six years since the last major FOIA amendments.

C. What Congress Can Do

The shortcomings identified in this report demonstrate the need for continued congressional oversight of FOIA. Additional hearings by the committees of jurisdiction, reports by committee staff, and studies by the Government Accountability Office (GAO) could help discover solutions for strengthening FOIA implementation. For instance, GAO could investigate how agency practices lead to such disparate implementation of FOIA provisions, such as appeal reversal rates.

Congress should also advance legislation to codify the administration's more important FOIA policies and address common problems. Reforms could include:⁴⁵

- Establishing the foreseeable harm standard for withholding and a broader affirmative obligation to disclose information of interest to the public;⁴⁶
- Setting simple and fair procedures for fee assessments;

39 See Gavin Baker, "Justice Department Raises the Standards for the Freedom of Information Act, One Step at a Time," Center for Effective Government, Sept. 24, 2013, available at <http://www.foreffectivegov.org/justice-department-raises-standards-freedom-information-act-one-step-time>

40 See Gavin Baker, "Freedom of Information Act Ombudsman Not Yet at Full Force, Report Finds," Center for Effective Government, Sept. 26, 2013, available at <http://www.foreffectivegov.org/blog/freedom-information-act-ombudsman-not-yet-full-force-report-finds>.

41 See *supra* note 1, at 44.

42 *Id.*

43 Office of Management and Budget, "The Freedom of Information Reform Act of 1986; Uniform Freedom of Information Act Fee Schedule and Guidelines," notice, March 27, 1987, 52 F.R. 10012.

44 See *supra* note 1, at 42.

45 The FOIA Oversight and Improvement Act, H.R. 1211 in the 113th Congress, would address some of these issues.

46 See *supra* note 1, at 42.

- Enhancing the authority and capacity of OGIS, including the authority to submit recommendations on FOIA directly to Congress and the president without a bureaucratic review.

Conclusion

The Freedom of Information Act represents the codification of one of our founding principles – that a democratic government is answerable to the people. The passage of the Freedom of Information Act almost 50 years ago and repeated efforts to strengthen the law demonstrate our ongoing commitment to the idea that ordinary people have a right to know about what their government does and to ensure that its actions reflect our national values and priorities. As uncomfortable as it may be at times for agencies to receive such scrutiny, public access to information is critical to a healthy democracy and to government of, by, and for the people.

APPENDIX A. METHODOLOGY

Processing Requests

An agency's processing score is based on 10 measures derived from its annual Freedom of Information Act (FOIA) report data for FY 2012.⁴⁷ The ten measures are:

1. Percentage of simple requests responded to within 20 days
2. Average days to respond to simple requests
3. Percentage of all requests responded to within 20 days
4. Average days to respond to all requests
5. Size of request backlog
6. Average days to respond to appeals
7. Percentage of requests for expedited processing adjudicated within 10 days⁴⁸
8. Percentage of requests fully granted
9. Percentage of requests fully or partially granted
10. Percentage of appeals reversed

Each measure is worth up to four points, except measures #8 and #9 on granting, which are double-weighted and are worth up to eight points each, for a total of 48 points.

A single bonus point is awarded for each measure when agencies made improvements to that measure from the previous year.⁴⁹

The points earned by the agency are totaled and divided by the base of 48 points to produce the agency's percentage processing score and corresponding letter grade.

⁴⁷ As published on FOIA.gov. For background on the preparation of these data, see *Department of Justice Handbook for Agency Annual Freedom of Information Act Reports*, Oct. 29, 2013, available at <http://www.justice.gov/oip/docs/doj-handbook-for-agency-annual-freedom-of-information-act-reports.pdf>. For a discussion of the limitations of these data, see Sean Moulton and Gavin Baker, *Freedom of Information Act Performance, 2012: Agencies Are Processing More Requests but Redacting More Often*, Center for Effective Government, March 2013, p. 24-25, available at <http://www.foreffectivegov.org/fy2012-foia-analysis>.

⁴⁸ The Social Security Administration reported that it did not receive any requests for expedited processing in FY 2012 and was not scored on this measure.

⁴⁹ For improvements of at least 0.1% from the agency's figures from its annual FOIA report for FY 2011.

Discussion of the Measures

Timeliness of Request Processing and Request Backlogs (Measures 1-5)

Timely responses are critical to the effectiveness of the Freedom of Information Act. Untimely responses are less useful; therefore, delay undermines transparency. FOIA requires an agency to respond to a request within 20 days, absent unusual circumstances.⁵⁰ Measures 1-5 address aspects of an agency’s timeliness of request processing.

1. Percentage of simple requests responded to within 20 days

Agencies label the requests they receive as “simple,” “complex,” or “expedited” and manage each type of request in a separate processing track. While the law sets standards for expedited processing of requests,⁵¹ agencies set their own standards for defining requests as “simple” or “complex”; there is no common definition, though simple requests are generally considered to be easier and faster for agencies to process.⁵² For each of the three processing tracks, agencies report the number of requests to which the agency has responded within 20 days, and in more than 20 days.⁵³

Measure 1 calculates the percentage of all processed simple requests that the agency responded to within 20 days. Scoring for Measure 1 is as follows:

Percentage of simple requests responded to within 20 days	Points awarded
90% - 100%	4 points
80% - 90%	3 points
70% - 80%	2 points
60% - 70%	1 point
<60%	0 points

⁵⁰ 5 U.S.C. § 552(a)(6)(A), (B).

⁵¹ 5 U.S.C. § 552(a)(6)(E).

⁵² See 5 U.S.C. § 552(a)(6)(D)(i) (providing that assignment of a request to a simple or complex processing track shall be “based on the amount of work or time (or both)”).

⁵³ See 5 U.S.C. § 552(e)(1)(G).

2. Average days to respond to simple requests

For each of the three processing tracks, agencies report the average number of days the agency took to respond to a request.⁵⁴ Measure 2 reports the average number of days for the agency to respond to processed simple requests. Scoring for Measure 2 is as follows:

Average days to respond to simple requests	Points awarded
<20 days	4 points
20 - 30 days	3 points
30 - 40 days	2 points
40 - 50 days	1 point
> 50 days	0 points

3. Percentage of all requests responded to within 20 days

Measure 3 calculates the percentage of all processed requests that the agency responded to within 20 days, by calculating a weighted average of the figures for each of the three processing tracks according to the number of requests reported processed in each track.⁵⁵ Scoring for Measure 3 is as follows:

Percentage of all requests responded to within 20 days	Points awarded
90% - 100%	4 points
80% - 90%	3 points
70% - 80%	2 points
60% - 70%	1 point
<60%	0 points

⁵⁴ See 5 U.S.C. § 552(e)(1)(F).

⁵⁵ Agencies also report the total number of processed requests, regardless of processing track. For DOT, SEC, SSA, USDA, and VA, the total number of processed requests equals the number of processed simple, complex, plus expedited requests. For the other agencies, these figures are not equal, representing over- or under-reporting. The greatest variance is at the State Department, where 48 percent of processed requests are not reported in any track. At the agencies with over- and under-reporting, measures based on data from the processing tracks (Measures 1-4) may be less reliable.

4. Average days to respond to all requests

Measure 4 assesses the average number of days for the agency to respond to all processed requests by calculating a weighted average of the figures for each of the three processing tracks according to the number of requests reported processed in each track.⁵⁶ Scoring for Measure 4 is as follows:

Average days to respond to all requests	Points awarded
<20 days	4 points
20 - 30 days	3 points
30 - 40 days	2 points
40 - 50 days	1 point
> 50 days	0 points

5. Size of request backlog

Failure to respond promptly to FOIA requests creates backlogs of overdue requests. When an agency fails to respond to a request by the legal deadline, the request is backlogged.

Agencies report the number of backlogged requests pending response at the end of the fiscal year. Measure 5 calculates the size of the agency's backlog as a ratio of the number of backlogged requests to the number of requests received in the fiscal year. Scoring for Measure 5 is as follows:

Size of request backlog	Points awarded
<3% of requests received	4 points
3% - 6%	3 points
6% - 9%	2 points
9% - 12%	1 point
> 12%	0 points

Expedited Processing (Measure 7)

7. Percentage of requests for expedited processing adjudicated within 10 days

FOIA provides requesters with the opportunity to ask for expedited processing of their requests. Agencies are required to adjudicate requests for expedited processing (*i.e.*, to decide whether to grant expedited processing) within 10 days.⁵⁷ Measure 7 addresses an agency's timeliness in adjudicating requests for expedited processing.

⁵⁶ See *id.*

⁵⁷ See 5 U.S.C. § 552(a)(6)(E).

Agencies report the number of requests for expedited processing adjudicated and the number adjudicated within 10 days.⁵⁸ Measure 7 calculates the percentage of requests for expedited processing that were adjudicated within 10 days. Scoring for Measure 7 is as follows:

Percentage of requests for expedited processing adjudicated within 10 days	Points awarded
95% - 100%	4 points
90% - 95%	3 points
85% - 90%	2 points
80% - 85%	1 point
<80%	0 points

Granting (Measures 8 and 9)

Agencies can respond to a request for information in one of three ways: provide all the information requested (full granting); provide some of the information requested (partial granting: an agency provides some information but redacts or withholds other information); or deny the request entirely based on exemptions (full denial).⁵⁹ Measures 8 and 9 address an agency’s disclosure or withholding of information. These measures are double-weighted to reflect the importance of disclosure and to compensate for the limited number of data indicators on disclosure.

8. Percentage of requests fully granted

Measure 8 calculates the percentage of requests that were fully granted out of all processed requests. Scoring for Measure 8 is as follows:

Percentage of requests fully granted	Points awarded
90% - 100%	4 points
80% - 90%	3 points
70% - 80%	2 points
60% - 70%	1 point
<60%	0 points

⁵⁸ See 5 U.S.C. § 552(e)(1)(L).

⁵⁹ An agency can also deny requests for administrative reasons: because it determined that the request was not reasonably described, the agency did not have the records, the requester failed to pay applicable fees, etc. These measures exclude such denials for reasons other than exemptions. See Sean Moulton and Gavin Baker, *Freedom of Information Act Performance, 2012: Agencies Are Processing More Requests but Redacting More Often*, Center for Effective Government, March 2013, p. 12, available at <http://www.foreffectivegov.org/fy2012-foia-analysis>.

9. Percentage of requests fully or partially granted

Measure 8 calculates the percentage of requests that were fully or partially granted out of all processed requests. Scoring for Measure 9 is as follows:

Percentage of requests fully or partially granted	Points awarded
95% - 100%	4 points
90% - 95%	3 points
85% - 90%	2 points
80% - 85%	1 point
<80%	0 points

Appeals (Measures 6 and 10)

FOIA establishes the right to appeal an agency's adverse decision, *i.e.* to withhold information or deny a request.⁶⁰ Measures 6 and 10 address an agency's administrative appeal process.

6. Average days to respond to appeals

FOIA requires an agency to respond to an appeal within 20 days, absent unusual circumstances.⁶¹ Agencies report the average number of days for the agency to respond to an administrative appeal.⁶² Measure 6 assesses the average number of days for the agency to respond to administrative appeals. Scoring for Measure 6 is as follows:

Average days to respond to appeals	Points awarded
<20 days	4 points
20 - 40 days	3 points
40 - 60 days	2 points
60 - 80 days	1 point
> 80 days	0 points

10. Percentage of appeals reversed

An agency can respond to an administrative appeal in one of three ways: fully affirm its initial decision; partially affirm and partially reverse its initial decision (granting the requester some, but not all, of the subject of the

⁶⁰ 5 U.S.C. § 552(a)(6)(A)(i) (requiring an agency to notify a person making a request "of the right of such person to appeal to the head of the agency any adverse determination").

⁶¹ 5 U.S.C. § 552(a)(6)(A), (B).

⁶² See 5 U.S.C. § 552(e)(1)(I).

appeal); or completely reverse its initial decision in favor of the requester’s appeal.⁶³ Fully or partially reversing on appeal can result in releasing additional information or granting a procedural benefit, such as a fee waiver or expedited processing.

Measure 10 calculates the percentage of appeals that were completely or partially reversed out of appeals that were affirmed, partially affirmed, or completely reversed. Scoring for Measure 10 is as follows:

Percentage of appeals reversed	Points awarded
50% - 100%	4 points
45% - 50%	3 points
40% - 45%	2 points
35% - 40%	1 point
<35%	0 points

Disclosure Rules

An agency’s disclosure rules score is based on 12 measures of the agency’s adoption of regulatory best practices.⁶⁴ The 12 measures, drawn from the Center for Effective Government’s *Best Practices for Agency Freedom of Information Act Regulations*,⁶⁵ are:

1. Publish online indexes of disclosed records (Best Practice #5)
2. Provide a website and/or e-mail address for submitting requests (Best Practice #6)
3. Acknowledge requests as soon as practicable (Best Practice #10)
4. Seek clarification as necessary / Contact the requester before denying a request as unreasonable (Best Practices #13 & 14)⁶⁶
5. Notify requesters when referring requests (Best Practice #17)
6. Notify requesters when processing is delayed (Best Practice #18)
7. Adopt a foreseeable harm standard for withholding (Best Practice #19)
8. Prevent the destruction of requested records (Best Practice #21)
9. Require submitters to proactively designate claimed confidential business information (Best Practice #23)
10. Streamline notice of request to submitters (Best Practice #24)
11. Require substantiation for claims of confidential business information (Best Practice #26)
12. Provide adequate time limits for requesters to submit appeals (Best Practice #30)

⁶³ Agencies can also close appeals for other reasons, e.g. because the request was mooted by litigation. This measure excludes such closures for other reasons.

⁶⁴ The rules score solely evaluated the adoption of best practices into the agency’s department-level final regulations, not proposed regulations, component regulations, or agency policy, guidance, or training not published in the Code of Federal Regulations.

⁶⁵ See Gavin Baker, *Best Practices for Agency Freedom of Information Act Regulations*, Center for Effective Government, December 2013, available at <http://www.foreffectivegov.org/foia-best-practices-guide>.

⁶⁶ An agency can score up to two points total for meeting either of these criteria.

Each measure is worth up to two points, for a total of 24 points. An agency that has partially adopted the best practice receives one point.

An agency that had updated its regulations since the 2007 FOIA amendments were passed was awarded a single bonus point. Additional single bonus points were available if agency rules included one or more of 19 other FOIA best regulatory practices.⁶⁷

The points earned by the agency are totaled and divided by a base score of 24 to produce the agency's percentage rules score and corresponding letter grade.

Discussion of the Measures

1. Publish online indexes of disclosed records (Best Practice #5)

The E-FOIA Act required agencies to publish indexes of records that they have made available for public inspection.⁶⁸ Measure 1 evaluates whether an agency's FOIA rule requires it to publish such indexes on the agency website.

2. Provide a website and/or e-mail address for submitting requests (Best Practice #6)

Allowing requesters to submit their requests by e-mail or on the agency website may be faster, cheaper, and more convenient for requesters and agency FOIA staff. Measure 2 checks whether an agency's rules provide an e-mail address or website where the public can submit FOIA requests.

3. Acknowledge requests as soon as practicable (Best Practice #10)

Promptly acknowledging requests assures requesters that their request has been properly received. Measure 3 assesses whether an agency has adopted a provision in its FOIA rule to provide an acknowledgment letter to each requester as soon as possible.

4. Seek clarification as necessary / Contact the requester before denying a request as unreasonable (Best Practices #13 & #14)

An agency's interpretation of the particular scope of a FOIA request, and its determinations regarding exactly which information falls within it, are vitally important aspects of FOIA administration. Therefore, if the agency is

⁶⁷ Bonus points were potentially available for Best Practices 1, 2, 3, 4, 7, 8, 9, 11, 12, 15, 16, 20, 25, 27, 28, 29, 31, and 32.

⁶⁸ Electronic Freedom of Information Act Amendments of 1996, Pub. L. 104-231, 110 Stat. 3049, codified as amended at 5 U.S.C. § 552(a)(2)(E).

unclear as to any aspect of the request, the best approach is to contact the requester to seek clarification. Measure 4 considers whether an agency has adopted a rule to communicate with the requester if it has any uncertainty regarding an aspect of the request.

Similarly, FOIA requires agencies to process any request that “reasonably describes” the records sought by the requester.⁶⁹ Agencies can deny requests that do not reasonably describe the records sought. Some requesters have complained that agencies are sometimes unduly stringent in enforcing this provision, which may be due to misunderstanding the request or a poorly worded request. In such instances, a simple phone call from the agency can offer a requester the opportunity to clarify the scope of his or her request. Measure 4 also appraises whether an agency has adopted a rule to contact the requester to seek clarification before denying a request for not reasonably describing the records sought.

Because Best Practices 13 and 14 represent different approaches to a similar challenge, the scorecard treats them as a single measure; an agency can earn up to two points total for meeting either criterion.

5. Notify requesters when referring requests (Best Practice #17)

When searching for records requested under FOIA, it is not uncommon for an agency to locate a responsive document that originated outside of the agency. Measure 5 evaluates whether an agency has a provision within its FOIA rule to notify a requester when it refers responsibility for responding to a request to another agency.

6. Notify requesters when processing is delayed (Best Practice #18)

FOIA requires agencies to notify requesters when processing will be delayed.⁷⁰ Measure 6 checks whether an agency has language within its FOIA rule to notify a requester when processing will be delayed.

7. Adopt a foreseeable harm standard for withholding (Best Practice #19)

Congress has noted that FOIA “establishes a strong presumption in favor of disclosure.”⁷¹ President Obama’s FOIA memorandum likewise stated that the law “should be administered with a clear presumption: In the face of doubt, openness prevails.”⁷² Attorney General Holder’s FOIA guidelines explain how agencies should implement FOIA’s presumption of disclosure, providing that “the Department of Justice will defend a denial of a FOIA

⁶⁹ 5 U.S.C. § 552(a)(3)(A).

⁷⁰ 5 U.S.C. § 552(a)(6)(B)(i) (providing that, in unusual circumstances, the time limits for processing a request “may be extended by written notice to the person making such request setting forth the unusual circumstances for such extension and the date on which a determination is expected to be dispatched”).

⁷¹ See OPEN Government Act of 2007, Pub. L. 110-175, 121 Stat. 2524 (“the Freedom of Information Act establishes a ‘strong presumption in favor of disclosure’ as noted by the United States Supreme Court in *United States Department of State v. Ray* (502 U.S. 164 (1991)), a presumption that applies to all agencies governed by that Act”).

⁷² See Barack Obama, Presidential Memorandum, “Freedom of Information Act,” The White House, Jan. 21, 2009, available at http://www.whitehouse.gov/the_press_office/FreedomofInformationAct.

request only if (1) the agency reasonably foresees that disclosure would harm an interest protected by one of the statutory exemptions, or (2) disclosure is prohibited by law.⁷³ Measure 7 evaluates whether an agency's FOIA rule adopts a presumption of disclosure and the foreseeable harm standard for withholding.

8. Prevent the destruction of requested records (Best Practice #21)

Records management regulations require agencies to prevent the destruction of records subject to a FOIA request.⁷⁴ The National Archives and Records Administration provides a government-wide schedule for how long agencies must maintain records related to FOIA requests.⁷⁵ Measure 8 assesses whether an agency includes in its FOIA rule a requirement to maintain records that are the subject of a FOIA request and to preserve correspondence pertaining to FOIA requests.

9. Require submitters to proactively designate claimed confidential business information (Best Practice #23)

FOIA includes an exemption allowing agencies to withhold requested records that include trade secrets or confidential business information.⁷⁶ Agencies have adopted procedures to notify submitters of information about requests for that information and to allow submitters to object to its disclosure.⁷⁷

Many FOIA requesters have raised concerns about overly broad claims of confidential business information restricting access to important information that is properly public. Additionally, the procedures that many agencies have instituted to notify submitters about requests for submitted information are lengthy or open-ended and may contribute to delays in FOIA processing.

Having submitters designate information that could be exempt under Exemption 4 can help ensure that agencies do not inadvertently release exempt information. However, to be effective, submitters must make their designations in a timely fashion and narrowly target designations to information likely to be exempt. Measure 9 considers whether an agency's rule requires submitters to designate claimed confidential business information at the time of submission or within 30 days thereafter.

73 Eric Holder, "The Freedom of Information Act (FOIA)," Office of the Attorney General, March 19, 2009, p. 2, available at <http://www.justice.gov/ag/foia-memo-march2009.pdf>.

74 36 C.F.R. § 1230.10 ("The heads of Federal agencies must: Prevent the unlawful or accidental removal, defacing, alteration, or destruction of records ... Take adequate measures to inform all employees and contractors of the provisions of the law relating to unauthorized destruction, removal, alteration or defacement of records ... Implement and disseminate policies and procedures to ensure that records are protected against unlawful or accidental removal, defacing, alteration and destruction"); 36 C.F.R. § 1230.3(b) (defining "unlawful or accidental destruction" to include "disposal of a record subject to a FOIA request").

75 National Archives and Records Administration, General Records Schedules, Transmittal No. 22, "General Records Schedule 14: Information Services Records," April 2010, available at <http://www.archives.gov/records-mgmt/grs/grs14.html>.

76 5 U.S.C. § 552(b)(4).

77 See Predisclosure Notification Procedures for Confidential Commercial Information, Exec. Order No. 12,600, 52 Fed. Reg. 23781 (June 23, 1987).

10. Streamline notice of request to submitters (Best Practice #24)

An agency generally notifies submitters of information when it receives a request for information that the submitter might claim is confidential business information. Because these notifications take time, they should only be undertaken if necessary. Measure 10 evaluates whether an agency's rule allows it to proceed without notification to the submitter when such notification would be unnecessary.

11. Require substantiation for claims of confidential business information (Best Practice #26)

Under FOIA, agencies are required to release any requested information that is not validly covered under the law's specific exemptions. Requiring submitters to explain in detail their grounds for objecting to disclosure, including why they believe the information to be exempt from disclosure, can help agencies effectively and promptly determine whether requested information must be withheld or released. Measure 11 assesses whether an agency's rule requires a submitter who wishes to object to disclosure to provide a detailed written statement that specifies the grounds for withholding the information under FOIA's exemptions.

12. Provide adequate time limits for requesters to submit appeals (Best Practice #30)

FOIA establishes the right to appeal an agency's adverse decision, i.e. to withhold information or deny a request.⁷⁸ Short appeal deadlines may not provide enough time for a requester to gather all the facts relevant to the request and prepare any arguments they wish to make in the appeal. Measure 12 considers whether an agency's rule provides at least 60 days for a requester to submit an appeal. An agency receives partial credit if its rule provides at least 45 days to submit an appeal.

Bonus Measures

The bonus measures were:

1. Regulations have been updated since the enactment of the OPEN Government Act of 2007
2. Establish categories of records to be disclosed regularly (Best Practice #1)
3. Proactively identify and disclose additional records of interest to the public (Best Practice #2)
4. Post records released in response to FOIA requests (Best Practice #3)
5. Publish logs of FOIA requests received by the agency (Best Practice #4)
6. Provide a website and/or e-mail address for submitting appeals (Best Practice #7)
7. Provide automated status updates online (Best Practice #8)
8. Communicate with requesters by e-mail where appropriate (Best Practice #9)

⁷⁸ 5 U.S.C. § 552(a)(6)(A)(i) (requiring an agency to notify a person making a request "of the right of such person to appeal to the head of the agency any adverse determination").

9. Provide a tracking number in all acknowledgement letters (Best Practice #11)
10. Promptly reroute requests to the appropriate agency FOIA office and notify requesters (Best Practice #12)
11. Provide estimated time to complete the request and opportunities to reformulate (Best Practice #15)
12. Use plain language in all communications with requesters (Best Practice #16)
13. Release records on a rolling basis (Best Practice #20)
14. Require prompt objections to disclosure (Best Practice #25)
15. Adopt a reasonable threshold for minimum fee charges (Best Practice #27)
16. Provide discretion to waive more fees (Best Practice #28)
17. Comply with the statutory prohibition against fees for requests exceeding time limits (Best Practice #29)
18. Provide information about the agency's FOIA Public Liaison (Best Practice #31)
19. Notify requesters about dispute resolution services from the Office of Government Information Services (Best Practice #32)

Websites and Online Services

An agency's FOIA website score is based on 17 measures of the content and interactive services available.

Websites were reviewed in October and November 2013.⁷⁹ The measures are:

1. Web submission of requests
2. Web status tracking of requests
3. Web submission of appeals
4. Web status tracking of appeals
5. Contact information: Name
6. Contact information: Phone number
7. Contact information: E-mail
8. Agency FOIA Regulations
9. Link to the Office of Information Policy
10. Link to the Office of Government Information Services
11. Tutorials: Request
12. Tutorials: Appeal
13. Tutorials: FOIA Process
14. Reading room: Included in the FOIA process
15. Reading room: Last update listed
16. Reading room: Search function
17. Reading room: FOIA logs

⁷⁹ Since the study period included the federal government shutdown period of Oct. 1-16, websites were reviewed again after government services resumed.

Each measure is worth one point, except measures #1, #2, and #8, which are double-weighted and are worth two points each, for a total of 20 points.

An agency received a single bonus point each if the agency participated in the multi-agency FOIAonline portal⁸⁰ and if the agency's reading room was updated within the past two months.

The points earned by the agency are totaled and divided by the base of 20 points to produce the agency's percentage website score and corresponding letter grade.

Some agencies utilize a decentralized approach to FOIA and primarily provide online information and services through its component sub-agencies' FOIA websites rather than through the main department website. For agencies with a decentralized FOIA process, the score evaluated the website of the agency component that received the majority of requests in FY 2012. These agencies are:

- Department of Homeland Security (U.S. Citizenship and Immigration Services)
- Department of Health and Human Services (Centers for Medicare and Medicaid Services)
- Department of the Treasury (Internal Revenue Service)
- Department of Transportation (Federal Aviation Administration)

For the Department of Defense, no single component received the majority of requests, so the score evaluated the two largest components, the Departments of the Army and the Navy; the department score represents the weighted average of the two components, proportional to the number of requests received by each.

Discussion of the Measures

Requester Interaction/Self-Service (Measures 1-4)

1. Web Submission of Requests

Measure 1 checks whether an agency provides an interactive form for submitting requests through its website or the multi-agency portal FOIAonline. Electronic submissions should generally be easier and faster for both information seekers and agency personnel and as such should be encouraged. This measure is double-weighted to reflect the important benefits of online request submission.

⁸⁰ See <https://foiaonline.regulations.gov/>.

2. Web Status Tracking of Requests

The OPEN Government Act of 2007 required agencies to “establish a telephone line or Internet service that provides information about the status of a request to the person making the request.”⁸¹ Measure 2 assesses whether an agency’s website provides a mechanism to track the status of a submitted FOIA request, including through FOIAonline. Being able to electronically track the status of a request without diverting agency personnel to respond to such inquires maximizes the agency’s resources for processing while still keeping information seekers well-informed about their request. This measure is double-weighted to reflect the important benefits of online status tracking.

3. Web Submission of Appeals

Measure 3 evaluates whether an agency provides an interactive form for submitting FOIA appeals through its website or FOIAonline. Electronic submissions should generally be easier and faster for both information seekers and agency personnel and as such should be encouraged.

4. Web Status Tracking of Appeals

Measure 4 considers whether an agency’s website provides a mechanism to track the status of a submitted FOIA appeal, including through FOIAonline. Being able to electronically track the status of an appeal without diverting agency personnel to respond to such inquires maximizes the agency’s resources for processing while still keeping information seekers well-informed about their appeal.

Contact Information (Measures 5-7)

5. Name, 6. Phone Number, 7. E-mail

Measures 5, 6, and 7 evaluate whether an agency’s FOIA website provides the name of a contact person (such as the FOIA Public Liaison), phone number, and e-mail address, respectively, to enable FOIA requesters to contact the agency’s FOIA staff. Different requesters may prefer different means of contact, so agencies should provide each aspect of contact information to maximize people’s choice in communicating with the agency. Therefore, each contact information aspect was worth a separate point.

⁸¹ OPEN Government Act of 2007, Pub. L. 110-175, 121 Stat. 2527, codified as amended at 5 U.S.C. § 552(a)(7)(A).

Help (Measures 8-10)

8. Agency FOIA Regulations

Measure 8 checks whether an agency's FOIA website includes the text of, or a link to, its FOIA rules. An agency's FOIA rule is its official position on how the FOIA process works. As such, the rule is critical information to provide to all potential information seekers. This measure is double-weighted to reflect the utility of FOIA rules in assisting a FOIA requester.

9. Link to the Office of Information Policy

Measure 9 assesses whether an agency's FOIA website includes a link to the Justice Department's Office of Information Policy, which provides information helpful to FOIA requesters. Providing additional resources beyond the agency's own materials that may be useful to information seekers should be a basic web service.

10. Link to the Office of Government Information Services

Measure 10 assesses whether an agency's FOIA website includes a link to the Office of Government Information Services in the National Archives and Records Administration, which provides information helpful to FOIA requesters.

Tutorials (How-To) (Measures 11-13)

11. Request

Measure 11 evaluates whether an agency's website includes tutorial information for the public on how to make a FOIA request. Though basically a simple process, filing a formal FOIA request may be daunting to some information seekers. The use of tutorials to people through the process makes it easier to navigate and should result in clearer information requests for the agency to process.

12. Appeal

Measure 12 checks whether an agency's website includes information for FOIA requesters describing how to make an appeal. With the legal term appeal attached to it, this process is likely more daunting to many information seekers than filing a request. Yet it is actually a fairly simple matter. The use of tutorials to guide people through the process makes it easier to navigate and should result in clearer appeals for the agency to process.

13. FOIA Process

Measure 13 considers whether an agency's website includes information addressed to FOIA requesters explaining the FOIA process. Tutorials explaining the activities that agencies must engage in to consider and respond to requests and appeals assist information seekers in better understanding the complexity of the process.

Reading Room (Measures 14-17)

14. Included in the FOIA Process

Measure 14 assesses whether an agency's FOIA website directs requesters to review the reading room in order to access previously released information. Such instructions can provide information seekers with immediate results and prevent wasting of agency resources on processing an unnecessary request.

15. Last Update Listed

Measure 15 evaluates whether an agency's online reading room listed the date when it was last updated. If it isn't clear how recently a reading room was updated, information seekers do not know if it is a useful resource to review before filing a request.

16. Search Function

Measure 16 assess whether an agency's online reading room provided a search function to query the contents of the reading room. As more information is provided through a reading room, it becomes more difficult to easily locate specifically sought records. A search function is essential to keeping a reading room useful.

17. FOIA Logs

Measure 17 checks whether an agency's FOIA website or online reading room provides logs of FOIA requests received by the agency. FOIA logs are standard documents kept by agencies and are useful to potential information seekers to better understand what records have been requested and potentially what has been released in response. As such, the logs should be posted in reading rooms.

Bonus Points

FOIAonline Participation

An agency received a single bonus point if it participated in the multi-agency FOIAonline portal.

Reading Room Updated Recently

An agency received a single bonus point if it had updated or posted additional documents to its reading room within the last two months.

Grading Scale

Minimum Score	Grade
98%	A+
93%	A
90%	A-
88%	B+
83%	B
80%	B-
78%	C+
73%	C
70%	C-
68%	D+
63%	D
60%	D-
Below 60%	F

Scores are rounded, so 92.5 rounds to 93, which qualifies for an A, whereas 92.4 rounds to 92, which qualifies for an A-.

APPENDIX B. SCORES

Table B-1: Scoring the Processing of Requests

Table B-2: Scoring Disclosure Rules

Table B-3: Scoring Websites and Online Services

Table B-1: Scoring the Processing of Requests

	Max. Points		DHS		DOJ		HHS		DOD		SSA	
	Score	Improvement	Score	Improvement	Score	Improvement	Score	Improvement	Score	Improvement	Score	Improvement
Percentage of simple requests responded to within 20 days	4	Bonus	0	0	2	1	2	1	4	1	4	0
Average days to respond to simple requests	4	Bonus	0	0	4	1	2	1	4	1	4	1
Percentage of all requests responded to within 20 days	4	Bonus	0	0	1	1	1	0	2	0	4	0
Average days to respond to all requests	4	Bonus	0	0	3	1	2	1	4	1	4	0
Size of request backlog	4	Bonus	0	1	2	0	2	1	1	1	4	1
Average days to respond to appeals	4	Bonus	2	1	1	1	0	1	0	0	3	1
Percentage of requests for expedited processing adjudicated within 10 days	4	Bonus	1	0	3	0	2	1	3	0	N/A*	N/A*
Percentage of requests fully granted	8	Bonus	0	0	4	0	6	1	0	0	8	0
Percentage of requests fully or partially granted	8	Bonus	8	0	8	0	4	1	6	0	8	0
Percentage of appeals reversed	4	Bonus	3	0	0	0	0	1	0	0	4	0
TOTAL POINTS	48 (+10)		16	33%	33	69%	30	63%	26	54%	47	107%
PERCENTAGE AND LETTER GRADE				F		D+		D		F		A+
	Max. Points		VA		USDA		EEOC		DOL		STATE	
	Score	Improvement	Score	Improvement	Score	Improvement	Score	Improvement	Score	Improvement	Score	Improvement
Percentage of simple requests responded to within 20 days	4	Bonus	3	0	4	1	2	0	2	0	0	0
Average days to respond to simple requests	4	Bonus	4	0	2	0	4	0	1	0	0	12
Percentage of all requests responded to within 20 days	4	Bonus	2	0	3	1	2	0	2	1	0	0
Average days to respond to all requests	4	Bonus	4	0	3	0	4	0	2	1	0	0
Size of request backlog	4	Bonus	4	1	3	0	4	1	3	0	0	0
Average days to respond to appeals	4	Bonus	0	0	0	0	4	1	0	0	0	1
Percentage of requests for expedited processing adjudicated within 10 days	4	Bonus	0	0	4	0	2	0	0	0	0	1
Percentage of requests fully granted	8	Bonus	0	1	6	0	0	0	0	0	0	1
Percentage of requests fully or partially granted	8	Bonus	2	0	8	1	4	1	4	0	0	0
Percentage of appeals reversed	4	Bonus	0	0	2	1	2	1	1	1	4	0
TOTAL POINTS	48 (+10)		21	44%	39	81%	32	67%	18	38%	8	17%
PERCENTAGE AND LETTER GRADE				F		B-		D		F		F

Table B-2: Scoring Disclosure Rules

Agency	Max. Points	DHS	DOJ	HHS	DOD	SSA	VA	USDA	EEOC	DOL	State	Treasury	NARA	SEC	DOT	EPA
Regulations have been updated after the 2007 OPEN Government Act																
I. Expand Online Disclosures	Bonus	-	-	-	-	-	1	-	1	-	-	-	-	-	-	-
1. Establish categories of records that can be disclosed regularly (to be posted online)	Bonus	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-
2. Proactively identify and disclose additional records of interest to the public	Bonus	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-
3. Post records released in response to FOIA requests	Bonus	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-
4. Publish logs of FOIA request received by agency	Bonus	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-
5. Publish online indexes of disclosed records	2	0	2	0	0	2	0	2	0	2	0	2	2	0	0	2
II. Use the Internet to respond to request more efficiently																
6. Provide a website and/or email address for submitting requests	2	0	0	0	0	1	0	0	0	2	0	0	2	2	2	2
7. Provide a website and/or email address for submitting appeals	Bonus	-	-	-	-	-	-	-	-	1	-	-	1	-	-	-
8. Provide online status updates	Bonus	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-
9. Communicate with requesters by email where appropriate	Bonus	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-
III. Acknowledge and track requests promptly																
10. Acknowledge requests as soon as practicable	2	2	2	0	1	0	0	0	0	0	0	2	0	0	2	2
11. Provide a tracking number in all acknowledgement letters	Bonus	1	-	-	-	-	-	-	-	-	-	-	-	-	-	1
12. Promptly reroute requests to the appropriate agency FOIA office and notify requesters	Bonus	-	-	-	1	-	-	1	-	-	-	1	-	-	-	-
IV. Clearly and proactively communicate with requesters																
13. Seek clarification as necessary	2*	0	0	2	0	0	0	0	0	0	0	0	0	0	2	0
14. Contact the requester before denying a request as unreasonable	2*	2	2	0	0	0	0	2	1	2	0	2	0	2	0	2
15. Provide estimated time to complete the request and opportunities to reformulate request and requesters	Bonus	-	-	-	-	-	-	-	-	-	-	1	-	1	-	1
16. Use plain language in all communications with requesters	Bonus	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-
17. Notify requesters when referring requests	2	2	2	2	0	2	0	2	0	2	0	2	2	0	2	2
18. Notify requesters of processing delays	2	2	2	2	2	2	2	2	2	2	0	2	2	2	2	2

Agency	Max. Points	DHS	DOJ	HHS	DOD	SSA	VA	USDA	EEOC	DOL	State	Treasury	NARA	SEC	DOT	EPA
V. Apply the presumption of disclosure and prevent the destruction of records																
19. Adopt a foreseeable harm standard for withholding	2	0	2	0	2	0	1	1	0	0	0	0	2	0	0	0
20. Release records on a rolling basis	Bonus	-	-	-	-	-	-	-	-	-	-	1	-	1	-	-
21. Prevent the destruction of requested records	2	2	2	0	1	0	2	2	0	2	0	2	0	0	2	2
22. Confirm the status of classified records	Not graded [^]	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-
VI. Limit and streamline confidential business information claims																
23. Require submitters to proactively designate claimed confidential business information	2	2	2	0	0	0	1	0	0	2	2	0	0	1	0	1
24. Streamline notice of request to submitters	2	2	2	2	0	2	2	2	2	2	2	2	0	0	2	2
25. Require prompt objections to disclosure	Bonus	-	-	1	-	1	1	-	-	-	-	1	1	1	-	-
26. Require substantiation for claims of confidential business information	2	2	2	0	0	0	2	2	2	2	2	2	0	2	2	2
VII. Clarify fees and waiver procedures																
27. Adopt a reasonable threshold for minimum fee charges	Bonus	-	-	-	-	1	-	1	-	-	-	-	-	-	-	-
28. Provide discretion to waive more fees	Bonus	-	-	-	-	-	1	1	-	-	-	-	-	-	-	-
29. Comply with the statutory prohibition against fees for requesters exceeding time limits	Bonus	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-
VIII. Improve administrative appeals and dispute resolution																
30. Provide adequate time limits for requesters to submit appeals	2	2	2	0	2	0	2	1	0	2	2	0	0	2	0	0
31. Provide information about the agency's FOIA Public Liaison	Bonus	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-
32. Notify requesters about dispute resolution services from the Office of Government Information Services	Bonus	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-
TOTAL POINTS	24 (+19)	19	22	9	9	11	15	19	8	21	8	20	12	14	16	21
PERCENTAGE AND LETTER GRADE		79% C+	92% A-	38% F	38% F	46% F	63% D	79% C+	33% F	88% B+	33% F	83% B	50% F	58% F	67% D	88% B+

Notes: Agency order is determined by the number of requests received, from largest to smallest.

* Criteria 13 and 14 represent two different approaches. Agencies can score up to two points in one criteria or the other.

[^] This criteria was not graded because not all agencies handle classified information.

Table B-3: Scoring Websites and Online Services

Agency	Max. Points	DHS	DOJ	HHS	DOD	SSA	VA	USDA	EEOC	DOL	State	Treasury	NARA	SEC	DOT	EPA
Requesters Interaction / Self Service																
Web submission of requests	2	0	2	2	2	2	0	2	2	0	2	0	2	2	2	2
Web status tracking of requests	2	2	2	2	0	0	0	2	2	2	0	0	2	0	0	2
Web submission of appeals	1	0	1	0	0	0	0	0	0	0	0	0	1	0	0	1
Web status tracking of appeals	1	0	1	0	0	0	0	0	0	0	0	0	1	0	0	1
<i>FOIAonline participation</i>	Bonus	-	-	-	-	-	-	-	-	-	-	-	1	-	-	1
Contact Information																
Name	1	0	1	1	1	1	1	1	1	1	1	1	1	1	1	0
Phone	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1
Email	1	1	1	1	1	1	1	1	1	1	0	0	1	1	0	0
Help																
Agency FOIA regulations	2	0	2	2	2	2	2	2	2	2	2	2	2	2	2	2
Link to Office of Information Policy	1	0	1	1	0.7	1	1	1	0	0	1	0	1	0	0	1
Link to Office of Govt Information Services	1	1	1	0	0	1	0	0	0	0	1	0	1	0	0	0
Tutorials (How-To)																
Request	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1
Appeal	1	1	1	1	0.7	1	1	0	1	1	1	1	1	0	0	1
FOIA process	1	1	1	1	1	1	1	0	1	1	1	1	1	1	0	1
Reading Room																
Included in FOIA process	1	1	1	1	0.3	1	0	1	0	0	1	0	0	0	0	0
Last update listed	1	1	1	1	0	0	1	1	0	1	1	1	1	1	1	1
<i>Updated/recently</i>	Bonus	1	-	1	-	-	-	-	-	1	1	-	-	1	-	1
Search function	1	0	0	0	0.7	1	1	0	1	0	1	0	0	0	1	1
FOIA logs	1	1	1	0	0	1	0	0	0	0	1	0	0	0	0	0
TOTAL POINTS	20 (+2)	12	19	16	11.4	14	12	13	13	12	16	8	18	11	10	17
PERCENTAGE AND LETTER GRADE		60% D-	95% A	80% B-	57% F	70% C-	60% C	65% D	65% D	60% C	80% B-	40% F	90% B-	55% F	50% F	85% B

Notes: The Department of Homeland Security was represented by its component that processes the majority of FOIA requests, United States Citizenship and Immigration Services. The Department of Health and Human Services was represented by its component that processes the majority of FOIA requests, the Centers for Medicare and Medicaid Services. The Department of Defense was represented by its components that process the majority of FOIA requests, the Department of the Army and the Department of the Navy, weighted proportionally to the number of FOIA requests they received.

The Department of the Treasury was represented by its component that processes the majority of FOIA requests, the Internal Revenue Service. The Department of Transportation was represented by its component that processes the majority of FOIA requests, the Federal Aviation Administration.



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