

Making the Grade

Access to Information Scorecard 2015



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GOVERNMENT**

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TABLE OF CONTENTS

Executive Summary	1
Ensuring Timely Access to Government Information	5
Overall Agency Performance Scores	9
Disclosure Rules	14
FOIA Websites	21
Processing FOIA Requests	27
Making the Grade on Disclosing Public Information	38
Improving Performance	39
Appendix A: Methodology	44
Appendix A-1: Processing Requests	44
Appendix A-2: Disclosure Rules	55
Appendix A-3: Websites	61
Appendix A-4: Grading Scale	66
Appendix A-5: Changes to the Methodology	67
Appendix B: Score Tables	69
Table B-1: Scoring the Processing of Requests	69
Table B-2: Scoring Disclosure Rules	72
Table B-3: Scoring Websites	75

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. But implementation of the law since its passage in 1966 has been uneven and inconsistent across federal agencies.

This is the second year we have conducted a very detailed comparative analysis of the performance of the 15 federal agencies that consistently receive the most FOIA requests. Combined, these 15 agencies received over 90 percent of all information requests for each of last two years. We examined their performance in three key areas:

- The establishment of clear agency rules guiding the release of information and communication with those requesting information;
- The quality and “user-friendliness” of the agency’s FOIA website; and
- The timely, complete processing of requests for information.

An agency’s performance in actually processing requests and getting information out to the public quickly is the most important component of the overall composite score. The rules an agency develops to shape its disclosure practices and the user-friendliness of the agency’s website together accounted for less than half the overall score.¹

The results are once again disappointing. No agency achieved an exemplary total score (an overall A grade); only two agencies received Bs; three received C grades; eight received Ds; and two failed.

The low scores are not due to impossibly high standards. In each of the three performance areas, at least one agency earned an A, demonstrating that high scores are possible.

¹ The methodology and weighting changed somewhat from 2014, based on input we received and the need to make two corrections in the Disclosure Rules section. 2014’s data was re-analyzed using the new methods and weights, so every comparative number included in this year’s report reflects the new methodology.

Overall, Agency Disclosure Scores Are Low

The Department of Agriculture (USDA) was the top performer, with a B grade. The USDA had exceptional performance in processing and received a strong score for its disclosure rules, but it had a lackluster website. The Social Security Administration (SSA), the top performer last year, was in second place this year with a B- grade. The SSA again performed exceptionally well at processing FOIA requests but earned a middling score for its website and a failing score for agency FOIA handling rules.

The Department of Justice (DOJ), the Equal Employment Opportunity Commission (EEOC), and the National Archives and Records Administration (NARA) all received C grades overall. Each scored exceptionally well in establishing good disclosure policies or user-friendly websites but had much weaker scores in processing.

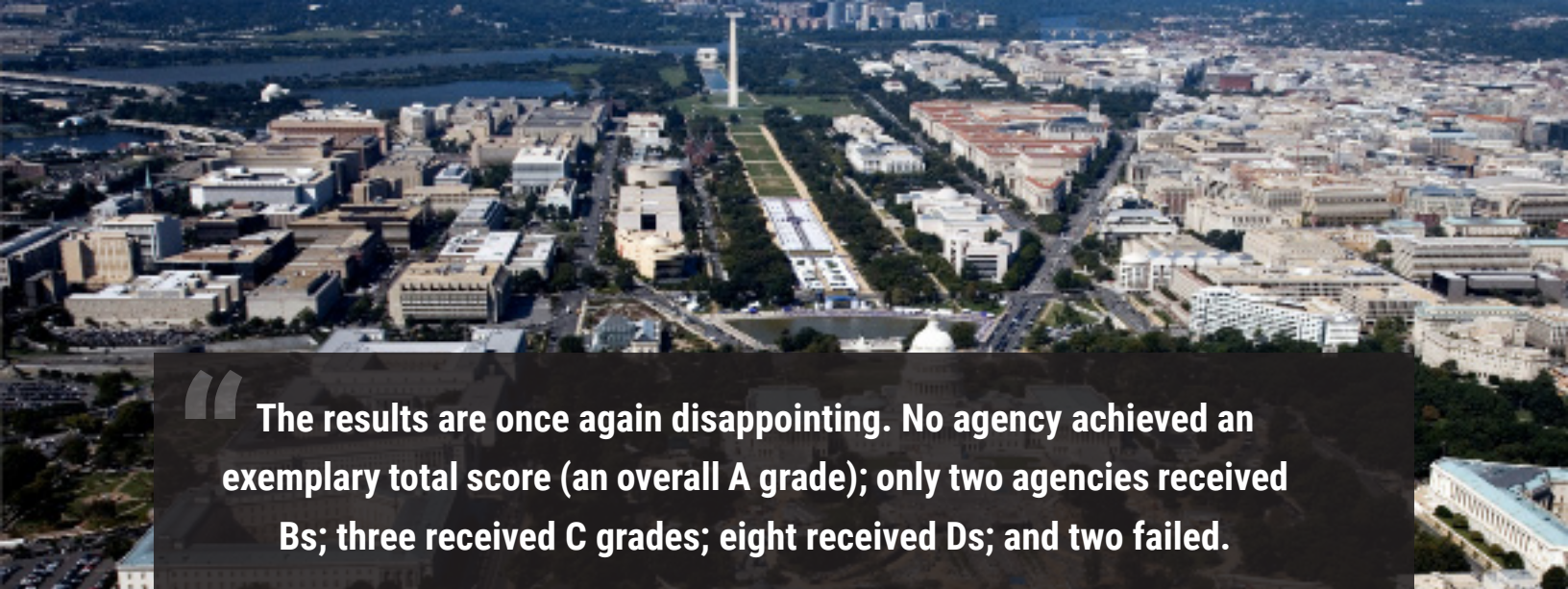
Ten of the 15 agencies earned less than 70 out of a possible 100 points. The Department of Homeland Security, the Department of Transportation, the Department of the Treasury, the Environmental Protection Agency, the Department of Labor, the Department of Veterans Affairs, the Department of Defense, and the Securities and Exchange Commission earned composite scores of 61 to 69 percent (D). The two lowest scoring agencies, the Department of Health and Human Services and the Department of State, received the only overall failing grades. The State Department continued to be the lowest scoring agency by far, processing only 17 percent of the FOIA requests it received in 2013.

Most Agencies Improved from Last Year, With Significant Enhancements in Websites, but Timely Processing Remains a Challenge

A majority of agencies showed at least small improvements over the scores from the previous year:² eight agencies improved their overall scores. For the Department of Homeland Security, the Department of Labor, and the Department of Agriculture, the increases were significant. The Department of Homeland Security and the Department of Agriculture earned much higher scores for their central FOIA websites; the Department of Agriculture also improved its processing performance significantly.

The scores of five agencies – the Equal Employment Opportunity Commission, the Department of Health and Human Services, the Securities and Exchange Commission, the Department of Justice, and the Environmental Protection Agency – fell marginally. The EPA and Department of Justice performed substantially worse at processing FOIA requests.

² After last year's scores were updated to reflect changes in grading methodology and some information that was missed on the first review.



“ **The results are once again disappointing. No agency achieved an exemplary total score (an overall A grade); only two agencies received Bs; three received C grades; eight received Ds; and two failed.** ”

Sustained Performance on Disclosure Requires Leadership, Resources, and an Agency-wide Commitment to Transparency

Although these scores are low, performance at most agencies is moving in the right direction. Every agency will need to develop its own unique plan for improvement, given the differences in content and staffing, but each can learn from the strong performers and the best practices identified in this report.

Establishing disclosure rules that support transparency: A surprising number of agencies have not updated their internal disclosure rules and policies since the 2007 amendments to FOIA. A central set of FOIA regulations, which the Obama administration is considering, would ensure more uniformity of processing and could improve performance if they include a presumption of openness and clear procedures for exemptions and appeals when a request for information has been denied.

Creating user-friendly interactive websites: Most federal agencies have been successfully integrating modern IT principles into their information management and disclosure practices. The few agencies that had not upgraded their websites can improve them relatively easily by updating their electronic reading rooms with good search features, establishing full online requester services, and posting complete contact information for their FOIA officers.

Processing requests quickly and disclosing greater information: Agencies can increase promptness and reduce backlogs by streamlining processing workflows, especially for simple requests, using proactive disclosure, and deploying information technology more effectively. However, some agencies may also need more personnel to deal with the caseload of requests they receive, and others may need better training of their staff on the appropriate use of exemptions. The appeals process in some agencies needs to be reformed.

Fulfilling the promise of full, timely public access to meaningful government information is an ongoing, complex process that requires leadership, commitment, and often a change in organizational culture.³ It is necessarily a team effort. Leadership needs to signal 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.

Proposed FOIA reform legislation would codify administration policies and could raise the bar on FOIA implementation. Expanding efforts by the Office of Government Information Services to measure agency FOIA compliance could provide agencies with new impetus to improve their performance.

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.

³ 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.foreffectivegov.org/obama-first-term-transparency-report>.

Ensuring Timely 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. An informed citizenry is a key component of a healthy democracy. And without detailed information about what government does, citizens can't hold their elected and appointed officials accountable for their actions.

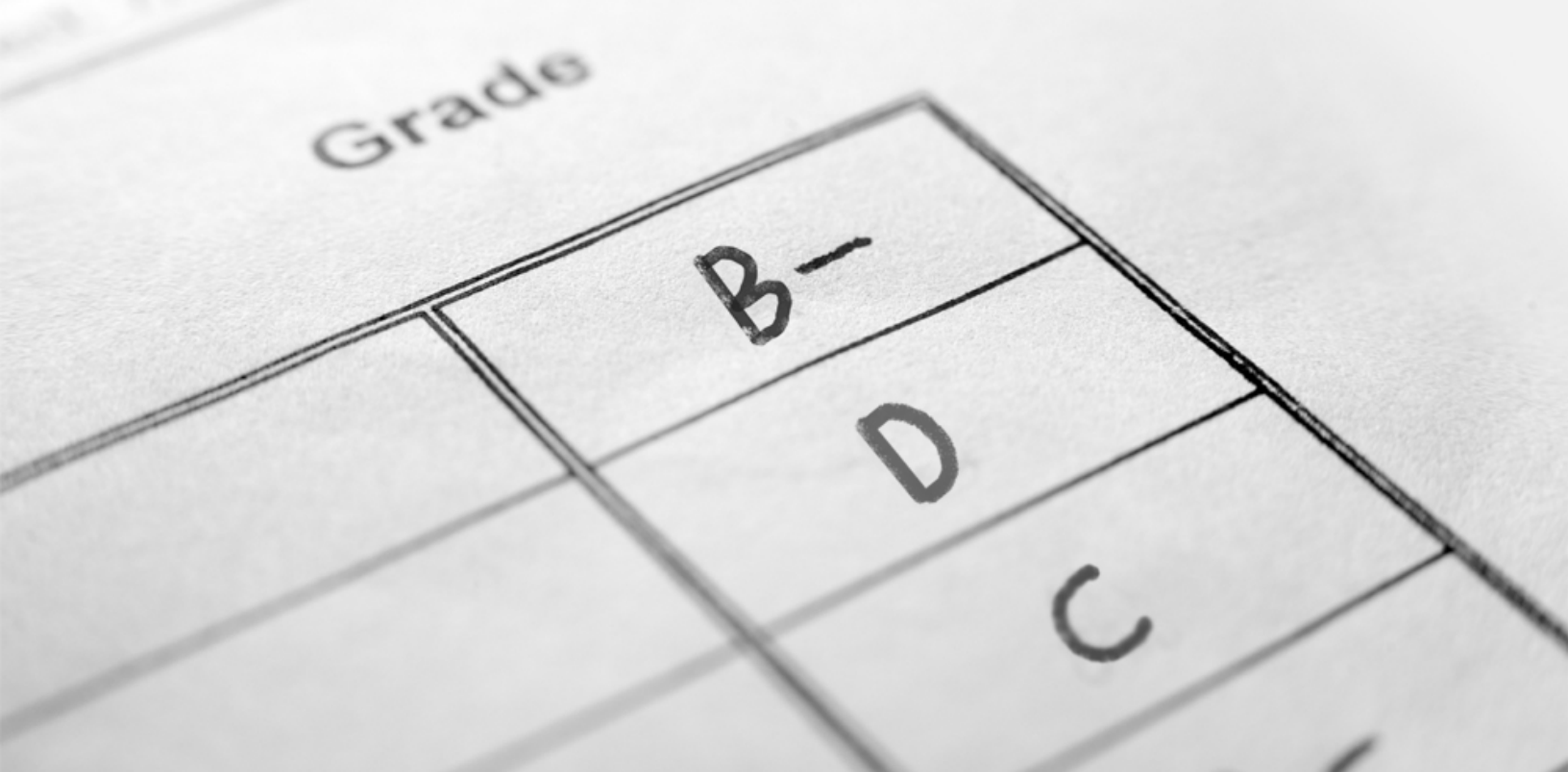
A building block of American democracy is the idea that citizens have a right to information about how their government works and what it does in their name.

These values were codified into law in 1966 with the passage of the Freedom of Information Act (FOIA). This law gives anyone a right 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; protecting the personal privacy rights of individuals is one such interest. 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, and public spending.

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

The Purpose of the Scorecard

This is the second year the Center for Effective Government has conducted an in-depth analysis of FOIA implementation for the 15 federal agencies that together received over 90 percent of all the freedom of information requests in 2012 and 2013 (the most recent years for which data is available). By continuing to evaluate the performance of these major agencies, we hope to identify progress toward, and ongoing challenges preventing, more effective disclosure of public information by the executive branch of the federal government.



This assessment examines the performance of 15 individual agencies in several 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. The scorecard identifies strong performers that could provide a model to underperforming agencies and provides recommendations for how agencies, the administration, and Congress can support improved performance.

The Scores

The scorecard analyzes FOIA performance at the same 15 federal agencies as evaluated in last year's report; see the Overall Grades table for a complete list. Collectively, these 15 agencies account for over 90 percent of all FOIA requests received in FY 2012 and FY 2013 and have consistently received the most public information requests every year since FY 2009.⁴

The scorecard evaluates agency FOIA performance across three categories:

Establishment 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

⁴ The 15 agencies received the highest number of FOIA requests from FY 2009 through FY 2012. In FY 2013, the Office of Personnel Management (OPM) received the 14th most FOIA requests. We choose to continue with the original 15 agencies as they have consistently been the top recipients of FOIA requests for several years. If OPM continues to receive an increasing number of FOIA requests, we may add them in future evaluations.

compared to published best practices,⁵ the regulations score evaluates policies such as the agency's standards for withholding requested information and for communicating with requesters.

Creating user-friendly, interactive, information-rich 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.

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 sub-score evaluates the outcomes of FOIA requests, including the timeliness of responses and how frequently the agency denies requests.

The scorecard awards points for meeting (and partial points for partially meeting) certain criteria in each section and converts these points to a numerical score. The three sub-scores are then combined into an overall percentage. In response to suggestions by colleagues in the open government community, we have modified the methodology and weighting somewhat and recalculated the scores from last year to reflect these changes. Thus, all year-to-year comparisons contained in this report reflect the new methodology.

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: 60 percent processing, 20 percent regulations, and 20 percent websites.⁶ The final score is assigned a corresponding letter grade to represent an agency's overall performance.

While the scores cover a broad range of key FOIA issues, as a quantitative evaluation, it is limited by the scope and quality of the FOIA data reported by agencies and what is observable in their disclosure rules and websites.

Processing data describe an agency's actions in the aggregate. 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 we made choices about what to include. For example, FOIA litigation pending against an agency is not included in our measures.

⁵ 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>.

⁶ The weighting in last year's evaluation was 50 percent processing, 25 percent disclosure rules, and 25 percent websites. Upon feedback from FOIA experts about the critical importance of performance in processing requests, we increased the weight for processing by 10 percent and removed 5 percent each from disclosure rules and websites.

Some aspects of agency disclosure practices 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. While the agencies get points in the website section for participating in the portal, we could not find an appropriate comparative measure by which to assess leadership, commitment, or innovation among agency personnel.

Appendix A provides a full methodology, including the rationale and weighting for each question.

Appendix B provides the full scoring data for each agency.

Overall Agency Performance Scores

Over Half of the 15 Agencies Received an Unsatisfactory Overall Score on Disclosure Practices

Almost 50 years after the passage of the Freedom of Information Act, our analysis shows that the majority of agencies receiving the most requests for public information are struggling to meet their obligations. Of the 15 agencies examined, only two received grades of over 80 percent. Three more received scores of between 70 and 79 percent. Ten received below satisfactory grades, with eight receiving scores between 60 and 69 percent and two agencies receiving failing grades. The State Department was the lowest performer, attaining only 37 out of 100 possible points on our index.

No agency received close to the 90 percent score required for an A grade.

While the overall scores are disappointing, multiple agencies earned A grades on one of the three performance areas that comprise the overall index.⁷ This demonstrates that excellent performance is possible in each area.

Overall Grades	
Agency	Score
Top Performers	
Department of Agriculture	85% (B)
Social Security Administration	82% (B-)
Middling Performers	
Department of Justice	73% (C)
Equal Employment Opportunity Commission	72% (C-)
National Archives and Records Administration	71% (C-)
Lowest Performers	
Department of Homeland Security	69% (D+)
Department of Transportation	68% (D+)
Department of the Treasury	68% (D+)
Environmental Protection Agency	67% (D)
Department of Veterans Affairs	64% (D)
Department of Labor	63% (D)
Department of Defense	61% (D-)
Securities and Exchange Commission	61% (D-)
Department of Health and Human Services	57% (F)
Department of State	37% (F)

⁷ Agencies received individual scores for three sections: processing, disclosure rules, and websites. Those sub-scores are combined into an overall score, weighted as 60 percent processing, 20 percent disclosure rules, and 20 percent websites.

Top Performers

	Processing Requests	Disclosure Rules	FOIA Websites	Total Score	Overall Grade
Department of Agriculture	94%	83%	60%	85%	B
Social Security Administration	98%	46%	70%	82%	B-

Strong performance by the Department of Agriculture in processing and its FOIA regulation made the agency the top performer this year. If it upgraded the website and maintained its strong processing practices, next year, it could be the first agency to receive an A grade. The Social Security Administration was a close second overall, also buoyed by strong processing, which helped it overcome lower scores in the other areas, including a very low score for regulations.

Middling Performers

	Processing Requests	Disclosure Rules	FOIA Websites	Total Score	Overall Grade
Department of Justice	55%	100%	100%	73%	C
Equal Employment Opportunity Commission	67%	96%	65%	72%	C-
National Archives and Records Administration	57%	100%*	85%	71%	C-

*With all bonus points counted, NARA scored a 150 for its FOIA regulation, but for purposes of the overall score, sub-sector scores are capped at 100.

Three agencies earned Cs for their overall grades: The Department of Justice (73 percent), the Equal Employment Opportunity Commission (72 percent), and the National Archives and Records Administration (71 percent). The Department of Justice earned scores of 100 for both its regulation and website but was dragged down by very poor processing. Each of the other agencies also had strong scores for regulations, but weaker scores for websites and processing. With stronger processing performance, each of these agencies could advance to a B or even an A grade next year.

Lowest Performers

	Processing Requests	Disclosure Rules	FOIA Websites	Total Score	Overall Grade
Department of Homeland Security	51%	92%	100%	69%	D+
Department of Transportation	63%	88%	65%	68%	D+
Department of the Treasury	65%	83%	60%	68%	D+
Environmental Protection Agency	52%	88%	90%	67%	D
Department of Veterans Affairs	51%	100%*	65%	64%	D
Department of Labor	49%	92%	75%	63%	D
Department of Defense	55%	42%	100%*	61%	D-
Securities and Exchange Commission	65%	63%	50%	61%	D-
Department of Health and Human Services	60%	38%	65%	57%	F
Department of State	23%	33%	80%	37%	F

*With all bonus points counted, VA scored 113 for its regulation and DOD scored 105 for its website, but for purposes of the overall score, sub-sector scores are capped at 100.

Ten of the 15 agencies assessed earned below satisfactory grades. Of those, eight earned Ds, including the Department of Homeland Security (DHS) (69 percent), Department of Transportation (DOT) (68 percent), Department of the Treasury (Treasury) (68 percent), the Environmental Protection Agency (EPA) (67 percent), the Department of Labor (63 percent), the Department of Veterans Affairs (64 percent), the Department of Defense (61 percent), and the Securities and Exchange Commission (61 percent).

Several of these low scoring agencies – DHS, DOT, Treasury, and EPA – were in the upper 60s, and with modest changes could move into the adequate range by improving their disclosure rules or websites. DHS and EPA, by contrast, can only improve their scores by improving their processing rates.

The Department of State score (37 percent) was particularly dismal. While its website is a bright spot for the agency (with a solid 80 percent on that sub-score), its 23 percent processing score is completely out of line with any other agency's performance.

A Majority Improved from the Previous Year, Some Significantly

Eight agencies posted a better overall score for 2013 performance than in 2012.⁸ Three of those agencies made significant improvements over last year's scores – the Department of Homeland Security (+15), the Department of Labor (+10), and the Department of Agriculture (+10). Both the Department of Homeland Security and the Department of Agriculture picked up much higher scores due to improved central FOIA websites.⁹ The Department of Agriculture's improved score is entirely based on much stronger processing of requests in 2013.

Table 1. Changes in Overall Performance by Agency, 2014 to 2015

Agency	2014 Overall Performance	2015 Overall Performance	Change
Department of Agriculture	75% (C)	85% (B)	+10
Social Security Administration	82% (B-)	82% (B-)	0
Department of Justice	81% (B-)	73% (C)	-8
Equal Employment Opportunity Commission	73% (C-)	72% (C-)	-1
National Archives and Records Administration	66% (D)	71% (C-)	+5
Department of Homeland Security	54% (F)	69% (D+)	+15
Department of Transportation	65% (D)	68% (D+)	+4
Department of the Treasury	64% (D)	68% (D+)	+4
Environmental Protection Agency	76% (C)	67% (D)	-9
Department of Veterans Affairs	59% (F)	64% (D)	+5
Department of Labor	54% (F)	63% (D)	+9
Department of Defense	54% (F)	61% (D-)	+7
Securities and Exchange Commission	67% (D)	61% (D-)	-6
Department of Health and Human Services	61% (D-)	57% (F)	-4
Department of State	37% (F)	37% (F)	0

Five agencies had lower scores this year, including the Equal Employment Opportunity Commission (-1), the Department of Health and Human Services (-4), the Securities and Exchange Commission (-6), the Department of Justice (-8), and the Environmental Protection Agency (-9). The EPA and Justice saw the biggest drops in their overall scores, driven entirely by poorer processing scores. Both

⁸ 2014's scores have been updated to reflect methodology changes, including six new processing criteria, revised scoring for some processing measures, and greater weighting given to the processing score. See the Methodology appendix for a full explanation of changes. The scores also include corrections to several agencies' rule scores for 2014.

⁹ In 2014, several agencies appeared to have limited central FOIA pages and instead provided more information on webpages for sub-components. Because of this, the agencies received website scores based on the FIOA information posted for the agency subcomponent that received the most requests. In 2015, all agencies appeared to have fuller information posted on central pages, so those pages were evaluated. See the website section for more information.

agencies had fairly strong disclosure policies and website scores both years, but each lost more than 10 points on their processing scores.

The following sections further explain what the summary scores represent and identify specific issues that require more agency attention and improvement.

Disclosure Rules

Each agency sets its own rules about how it will process freedom of information requests. These regulations guide decisions for agency staff and set expectations for requesters. Furthermore, FOIA regulations set a tone for the agency's approach to open government.

Disclosure rules determine whether the procedures an information seeker must follow will be simple or byzantine. They can streamline request processing or bog it down. They can encourage agency staff to release as much information as possible – or as little as possible.

Eleven Agencies Have Not Updated Their FOIA Policies Since 2007 FOIA Reforms

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.¹⁰ The law made several important changes, such as prohibiting agencies from charging certain fees if the agency misses processing deadlines. After eight years, agencies should have updated their regulations to reflect these new provisions.

Out of the 15 agencies reviewed in this scorecard, only four – NARA, DOT, EEOC, and the VA – have updated their regulations since the 2007 FOIA amendments.¹¹ This means that most of the agencies with the largest FOIA programs are operating with rules that are not up-to-date. The Department of Health and Human Services had the oldest regulation in the scorecard, which was more than 25 years old; not coincidentally, it also received one of the lowest scores for its FOIA rules.

¹⁰ OPEN Government Act of 2007, Pub. L. 110-175, 121 Stat. 2524.

¹¹ Additional agencies have proposed updated revisions but have not yet finalized them.

Table 2. Many Agencies Have Outdated Freedom of Information Act Regulations

Agency	Regulation Last Amended*
National Archives and Records Administration	Sept. 22, 2014
Department of Transportation	March 25, 2014
Equal Employment Opportunity Commission	June 19, 2013
Department of Veterans Affairs	Aug. 11, 2011
OPEN Government Act of 2007 enacted	
Department of Labor	June 29, 2006
Department of Homeland Security	Jan. 1, 2005
Department of State	Nov. 3, 2004
Environmental Protection Agency	Nov. 5, 2002
Securities and Exchange Commission	Sept. 13, 2000
Department of Agriculture	July 28, 2000
Department of the Treasury	June 30, 2000
Department of Defense	Nov. 25, 1998
Department of Justice	June 1, 1998
Social Security Administration	Jan. 29, 1997
Electronic Freedom of Information Act Amendments of 1996 enacted	
Department of Health and Human Services	Nov. 23, 1988

* Excluding minor revisions such as address changes, etc.

In its Open Government National Action Plan, the Obama administration announced that it would research the feasibility of establishing a single set of government-wide FOIA disclosure regulations.¹² A common set of effective FOIA 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 when truly necessary. Congress has noted that FOIA “establishes a strong presumption in favor of disclosure.”¹³ President Obama’s FOIA memorandum likewise stated that the law “should be administered with a clear presumption: In the face of doubt, openness prevails.”¹⁴

¹² 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.

¹³ See *supra* note 10 (“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”).

¹⁴ Barack Obama, Presidential Memorandum, “Freedom of Information Act,” The White House, Jan. 21, 2009, available at http://www.whitehouse.gov/the_press_office/FreedomofInformationAct.

Former Attorney General Eric 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.”¹⁵ 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 the Treasury Department, earned partial credit for considering discretionary disclosures without specifying a foreseeable harm standard.

While Congress and the administration have emphasized the presumption of openness, our review of agency regulations suggests that many agencies have not fully committed to implementing it. The FOIA Improvement Act, which the Senate Judiciary Committee reported out on Feb. 9, 2015, would require agencies to implement a foreseeable harm standard.¹⁶

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

Eight of the 15 agencies reviewed in the scorecard provided at least 60 days for requesters to submit an appeal.¹⁷ (USDA and DOT received partial credit for providing 45 days.) The other agencies provided requesters insufficient time to prepare an appeal of an adverse agency decision.

¹⁵ 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>.

¹⁶ FOIA Improvement Act of 2015, S. 337, 114th Cong. § 2 (2015).

¹⁷ The SEC does not specify a time limit in its regulations, for which the scorecard also awarded credit.

Agencies should revise their regulations to ensure requesters have adequate time to prepare an appeal. The FOIA Improvement Act would provide a minimum of 90 days for requesters to appeal – a longer allowance than any of the agencies in the scorecard currently provide.¹⁸

Eleven Agencies Received Good Marks for Disclosure Rules, Four Failed

The Center for Effective Government has identified best practices for regulations that encourage timeliness, disclosure, and a requester-friendly approach to FOIA.¹⁹ This scorecard compares existing agency regulations against a set of 12 widely-adopted best practices. The score evaluates agency rules on request procedures, policies for withholding and disclosure, and communication with requesters.

Each of the 12 evaluated measures was worth two points, with one point available for partial credit. In addition, the scorecard awarded single bonus points if agency rules included each of 18 other best practices. Finally, the scorecard awarded a single bonus point to each agency that had updated its regulations since the enactment of the 2007 FOIA amendments.²⁰

Top Performers

The National Archives and Records Administration (NARA) earned the highest disclosure policy score with a strong A+. NARA was the only agency to receive full or partial credit on every core criterion. In addition, NARA earned the

Disclosure Rules	
Agency	Score
Top Performers	
National Archives and Records Administration	100%* (A+)
Department of Veterans Affairs	100%* (A+)
Department of Justice	100% (A+)
Equal Employment Opportunity Commission	96% (A)
Department of Homeland Security	92% (A-)
Department of Labor	92% (A-)
Middling Performers	
Department of Transportation	88% (B+)
Environmental Protection Agency	88% (B+)
Department of Agriculture	83% (B)
Department of the Treasury	83% (B)
Lowest Performers	
Securities and Exchange Commission	63% (D)
Social Security Administration	46% (F)
Department of Defense	42% (F)
Department of Health and Human Services	38% (F)
Department of State	33% (F)
* Scores for NARA & VA would have been 150 and 113, respectively, from bonus points, but were capped at 100.	

¹⁸ See *supra* note 16.

¹⁹ See *supra* note 5.

²⁰ See *supra* note 10.

largest number of bonus points, for 13 out of 18 criteria. NARA's recently updated rule sets a strong example for other agencies.

The Department of Justice (DOJ) also earned an A+ on its regulations score by receiving full credit for all but one of the core criteria.²¹ DOJ's rules do not provide for electronic submission of requests. DOJ and NARA, along with DOD, were the only agencies to receive full credit for having adopted a "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.

The Departments of Homeland Security (DHS), Labor (DOL), and Veterans Affairs (VA) also earned solid scores, with full credit for 10 of the 12 core criteria. These agencies were all missing a foreseeable harm standard for withholding. However, VA earned bonus points for six additional best practices and for an updated regulation, resulting in a higher total score.

The Equal Employment Opportunity Commission (EEOC) also received an A for its FOIA rules. EEOC missed several core criteria, including a foreseeable harm standard for withholding and adequate time limits to appeal. However, EEOC earned bonus points for eight of the 18 bonus criteria, more than any agency other than NARA, as well as for its updated regulation.

Notably, out of the four agencies that had updated their regulations since the last major FOIA amendment, three received A grades: NARA, VA, and EEOC. The fourth agency, the Transportation Department, received a B+.

Middling Performers

The Department of Transportation (DOT) and the Environmental Protection Agency (EPA) received B+ grades for their FOIA regulations. EPA received full or partial credit for 10 of the 12 core criteria, lacking a foreseeable harm standard for withholding and adequate time limits to appeal. DOT missed more of the core criteria, including a commitment to promptly acknowledge requests and a policy to preserve requested records; however, DOT received several more bonus points, including one for its updated regulation.

²¹ 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>.

The Departments of Agriculture (USDA) and the Treasury earned B grades for their FOIA rules. Each received full or partial credit for 9 of the 12 core criteria. Both agencies did not provide for electronic submission of requests or require businesses claiming confidentiality to proactively designate their claims.

Lowest Performers

The Securities and Exchange Commission (SEC) received a D for its FOIA rules. SEC and DOD were the only agencies that failed to streamline the process for notifying businesses that claim commercial confidentiality.

The Social Security Administration (SSA), as well as the Departments of Defense (DOD), Health and Human Services (HHS), and State received failing grades for their FOIA regulations. Not coincidentally, these agencies had some of the most outdated regulations in the scorecard.

The Social Security Administration's (SSA) regulation was missing several requester-friendly policies, including a commitment to promptly acknowledge requests, to seek clarification before denying inartful requests, and to provide adequate time limits to prepare appeals.

The Department of Defense (DOD) was the only agency not to receive any points for any of the criteria related to best practices for handling claims of confidential business information.

The Department of Health and Human Services (HHS) had the oldest regulation, which the agency has not updated since the Reagan administration. Because two major FOIA amendments have been enacted since HHS adopted its regulation – not to mention the technological advances that have occurred – the agency's rules are woefully outdated.

The State Department received the lowest score, a mere 33 percent. The State Department was the only agency in the scorecard whose rules do not require staff to notify requesters when processing is delayed, even though this is mandated by law.²²

²² 5 U.S.C. § 552(a)(6)(B)(i).

Two Agencies Improved Their Disclosure Rules Last Year

Only two agencies updated their FOIA regulations between 2014 and 2015²³ – the National Archives and Records Administration and the Department of Transportation. Both agencies benefited significantly from updating their FOIA regulations, gaining 100 and 21 points, respectively.²⁴

Table 3. Improved Freedom of Information Act Regulations

Agency	2014 Disclosure Rules Score (Updated)	2015 Disclosure Rules Score	Score Difference
National Archives and Records Administration	50%	100%	+50
Department of Transportation	67%	88%	+21

Other agencies: no change

23 Two other agencies – the Department of Defense and the Department of Justice – have proposed new FOIA regulations but have yet to finalize them.

24 Several of 2014's disclosure scores were updated or corrected. In 2014, older versions of agencies' FOIA regulations were assessed instead of their current rules. Because of this, the disclosure rule scores of both the Equal Employment Opportunity Commission and the Department of Veterans Affairs were updated to reflect the properties of the newer regulations. We also made minor revisions to several other agencies' scores to improve accuracy and consistency. 2014's scores for those agencies have been updated to include these points.

FOIA Websites

When looking for information, most Americans start their search online.²⁵ For many FOIA requesters, an agency website is their first stop – to learn how FOIA works, review previously disclosed information, and submit a request. Therefore, a helpful FOIA website is essential to making FOIA work effectively, and it can save staff time and labor by reducing the need to answer phone calls and letters.

Useful FOIA websites can provide several benefits for requesters and agencies alike. By proactively posting records online, agencies can make information more easily available and reduce duplicative requests. Online submission and tracking of requests and appeals are more convenient for requesters and can facilitate quicker processing. Providing informative advice and resources to those seeking information can help them tailor their requests to make information gathering easier and faster to process.

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 requesters 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 all the agencies offered a form of online submission for FOIA requests, only eight provided online request tracking. Only seven agencies allowed requesters to file administrative appeals online.

Agencies lacking full online services should consider joining FOIAonline or adding these functions to their websites. Those agencies that have already implemented online services may be able to share their solutions with the other agencies. Looking forward, the Obama administration has committed itself to creating a government-wide FOIA portal.²⁶

²⁵ Gavin Baker, “Fixes Early in FOIA Process Offer Greatest Potential for Impact,” *Center for Effective Government*, May 7, 2013, available at <http://foreffectivegov.org/fixes-early-foia-process-offer-greatest-potential-impact>.

²⁶ See *supra* note 12.

Electronic Reading Rooms

FOIA requires federal agencies to have electronic reading rooms, also called FOIA libraries, on the FOIA sections of their websites.²⁷ The intent of electronic reading rooms is to facilitate access to commonly requested 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 can boost an agency's reputation for openness.

However, many reading rooms were sparse on content, difficult to use, and disorganized. Only the State and Defense Departments offered a search function for the documents in their reading rooms. Several agencies apparently did not update their reading rooms on a regular basis.

Successful electronic reading rooms allow users to browse or search for information. Regular updates make timely information available to the public and reduce duplicative requests. Indicating when the agency last updated the reading room helps visitors understand how current the posted records are.

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.

Our 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. Most agencies posted full contact information for FOIA staff, but three agencies did not.

It is ironic that it is sometimes difficult to find this information, even though agencies are required by law to specifically designate an official to assist FOIA requesters.²⁸ Those agencies that lost points on these measures, however, should find the shortcoming easy to remedy.

²⁷ Electronic Freedom of Information Act Amendments of 1996, Pub. L. 104-231, § 4, 110 Stat. 3048, 3049, codified as amended at 5 U.S.C. § 552(a)(2)(E); *see also* E-Government Act of 2002, Pub. L. 107-347, § 207, 116 Stat. 2899, 2918.

²⁸ 5 U.S.C. § 552(k)(6), (l); *see also* Improving Agency Disclosure of Information, Exec. Order No. 13,392, 70 Fed. Reg. 75373 (Dec. 19, 2005).

Website Services Received High Scores, Most Improved Over Last Year

This scorecard measured agencies' online service options for information-seekers: does the agency FOIA site allow them to submit and track requests and appeals; provide resources to assist them, such as a copy of the agency's regulations and a requester guide; provide contact information for requesters needing assistance; and post disclosed records in a useful fashion?

There were 17 measures used to answer these questions, worth one point. If the agency allowed web submission of requests, provided web tracking of requests, and posted the agency's FOIA regulations online, it received two points. Bonus points were given if the agency participated in the multi-agency FOIAonline portal²⁹ or if the agency's reading room was updated within the past two months.

FOIA Websites	
Agency	Score
Top Performers	
Department of Defense	100%* (A+)
Department of Homeland Security	100% (A+)
Department of Justice	100% (A+)
Environmental Protection Agency	90% (A-)
Middling Performers	
National Archives and Records Administration	85% (B)
Department of State	80% (B-)
Department of Labor	75% (C)
Social Security Administration	70% (C-)
Lowest Performers	
Department of Health and Human Services	65% (D)
Department of Transportation	65% (D)
Department of Veterans Affairs	65% (D)
Equal Employment Opportunity Commission	65% (D)
Department of Agriculture	60% (D-)
Department of the Treasury	60% (D-)
Securities and Exchange Commission	50% (F)
* Due to bonus points, the DOD scored 105 points.	

Top Performers

Four agencies received A grades for their FOIA websites.

The Department of Defense (DOD) earned the top score of 100 percent for its FOIA website. DOD received credit for every website criterion, the only agency in the scorecard to do so, as well as a bonus for participating in FOIAonline.³⁰ DOD's website was not always the most attractive or user-friendly, but the basic resources and functions were all there.

²⁹ See <https://foiaonline.regulations.gov/>.

³⁰ One DOD component, the Department of the Navy, participated in FOIAonline; other DOD components did not participate.

The Departments of Homeland Security (DHS) and Justice (DOJ) also received strong A+ scores. Both agencies lacked a function to search documents within their FOIA reading rooms, but they received bonus points for having recently updated their reading rooms. In addition, DHS lacked an explanation of how to file an appeal, but it received a bonus for participating in FOIAonline.³¹

The Environmental Protection Agency (EPA) earned a solid A- grade. While EPA's website met most scorecard criteria, the site lacked some key information, including the name of its FOIA official and a link to the Office of Government Information Services (OGIS). EPA's reading room also lacked a search function and the agency's request logs.³²

Middling Performers

Four agencies received B or C grades for their FOIA websites.

The National Archives and Records Administration (NARA) scored 85 percent for its FOIA website. NARA's reading room lacked a search function and did not list the date when the agency last updated the reading room. In addition, the scorecard docked points from NARA because its website did not link directly to the agency's FOIA regulations.

The Departments of Labor (DOL) and State both received 80 percent for their FOIA websites. The State Department lost points because it lacked most online services: its website allows requesters to submit a request but not to track its status online; neither submission nor tracking are supported for appeals. By contrast, DOL lost points for having a reading room without a search function or "last-updated" date posted.

The Social Security Administration (SSA) received 70 percent for its FOIA website. SSA lacked most online services, including online tracking and appeal submission, and its reading room lacked a search function or last-updated date.

Lowest Performers

Six agencies received D grades for their FOIA websites, and one agency received an F.

³¹ Two DHS components, U.S. Customs and Border Protection and U.S. Citizenship and Immigration Services, participated in FOIAonline; other DHS components did not participate.

³² While FOIAonline provides some information about requests received by the agency, it lacks a function to browse the request logs overall.

These agencies were missing several online FOIA services, as well as some informational resources. The Departments of Health and Human Services (HHS), Transportation (DOT), and the Treasury, as well as the Securities and Exchange Commission (SEC), lacked online tracking or appeal submission. The Department of Veterans Affairs (VA) lacked online tracking. The Department of Agriculture (USDA) and Equal Employment Opportunity Commission (EEOC) lacked online appeal submission or tracking.

The SEC was the sole agency to earn an F for its FOIA website. Besides failing to deliver online FOIA services, the SEC did not have a working link to the agency's FOIA regulations, nor did the agency point requesters to the resources available from the Office of Information Policy or the Office of Government Information Services.

Comparison to Last Year's Scores

Eight of the 15 agencies improved their website scores from last year. Several improved their headquarter pages significantly.³³ The Departments of Defense and Homeland Security made major improvements over the year, each picking up more than 40 points compared to last year, to each achieve a full 100 percent score.

³³ In 2014, five agencies appeared to have limited central FOIA pages and instead provided more information on webpages for subcomponents, so those agencies received website scores based on the webpage of the subcomponent that received the most requests. In 2015, all agencies appeared to have fuller information posted on central pages, so those pages were evaluated.

Table 4: Website Score Changes, 2014 to 2015

Agency	2014 Website Score	2015 Website Score	Websites Score Difference
Department of Defense*	57%	100%	+43
Department of Homeland Security*	60%	100%	+40
Department of Justice	95%	100%	+5
Environmental Protection Agency	85%	90%	+5
National Archives and Records Administration	90%	85%	-5
Department of Labor	60%	75%	+15
Department of State	80%	80%	0
Social Security Administration	70%	70%	0
Department of Health and Human Services*	80%	65%	-15
Department of Transportation*	50%	65%	+15
Department of Veterans Affairs	60%	65%	+5
Equal Employment Opportunity Commission	65%	65%	0
Department of Agriculture	65%	60%	-5
Department of the Treasury*	40%	60%	+20
Securities and Exchange Commission	55%	50%	-5

*Denotes agencies for which the 2014 website score was based on webpages of sub-component

Only four agencies had websites that scored lower than last year. The Department of Health and Human Services (HHS) had the largest website score drop, losing 15 points from last year. The agency was among those that have been using a decentralized approach to posting FOIA information. Unfortunately, its central site has not improved as much as several of the other agencies. The FOIA page on the main HHS website does not have electronic tracking of requests. However, the Center for Medicare and Medicaid Services' FOIA page, which was evaluated for HHS last year, does have online request tracking. Additionally, HHS's electronic reading room hasn't been updated in more than four months, losing the agency a bonus point it received last year for having a current date on its reading room. Several agencies lost points around reading rooms, including no longer having a "last-updated" date or having one that was months old.

Processing FOIA Requests

The Freedom of Information Act was passed to ensure the public has timely access to government information; an agency's capacity to disclose information promptly and fully is the most important measure of FOIA implementation. 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 60 percent of its overall score.

Volume and Complexity of Requests Effects FOIA Processing but Is Not Determinative of Performance

FOIA applies across the entire federal government: all agencies are equally bound to respond to requests in timely fashion, in a spirit of cooperation, and to disclose information unless exempted by law. But – as this section will show – request statistics show marked differences in agencies' processing performance. To better understand agencies' challenges in implementing the law, it may be helpful to consider some of the factors that may influence FOIA processing.

Request volume: Receiving large numbers of requests is a challenge all examined agencies face to some degree. Nevertheless, there is a dramatic difference between the 10,000 requests received by the Environmental Protection Agency and the 230,000 requests received by the Department of Homeland Security. A larger number of requests surely constitutes a greater burden of responsibility, but it may also create the opportunity for economies of scale.

Request complexity: Not every FOIA request is equally difficult to process. Agencies label the requests they receive as "simple" or "complex" and work to process the simple requests first. Those agencies with a high percentage of simple requests seem to have the best opportunity to achieve strong processing results, though other factors including staffing levels still come into play. The percentage of "simple" requests varies from a low of 18 percent at the Treasury Department to nearly 100 percent at the Securities and Exchange Commission.³⁴ Yet both agencies had about the same processing rate.

³⁴ 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 Department of Transportation) categorized 76 percent of requests as "simple."

Personnel, resources, & technology: Agencies expend varying levels of resources to employ FOIA staff and deploy technology that helps with FOIA processing. Additionally, differences in staff training, management, and accountability may affect performance. However, as Table 5 below shows, the caseload of requests per reported staff is clearly a factor, but by itself, it is not a good predictor of processing performance.³⁵

**Table 5. FOIA Caseloads, Staff, and Processing Scores
by Agency, FY 2013**

Agency	Requests Received in FY 2013	Percent of Requests Simple	FOIA Staff (FTEs)	Case Load (Requests per staff person)	Processing Scores
Social Security Administration	39,159	95%	60	653	98%
Department of Agriculture	22,580	93%	339	67	94%
Equal Employment Opportunity Commission	18,946	97%	39	487	67%
Department of the Treasury	15,040	18%	132	114	65%
Securities and Exchange Commission	12,275	100%	31	397	65%
Department of Transportation	10,552	76%	98	108	63%
Department of Health and Human Services	66,916	83%	299	224	60%
National Archives and Records Administration	12,243	84%	35	350	57%
Department of Defense	68,014	58%	698	97	55%
Department of Justice	70,081	77%	501	140	55%
Environmental Protection Agency	9,951	41%	114	87	52%
Department of Homeland Security	231,534	42%	604	384	51%
Department of Veterans Affairs	25,647	54%	175	147	51%
Department of Labor	18,755	43%	154	122	49%
Department of State	18,753	65%	157	119	23%

Type of records requested: The type of requests an agency receives may affect its responses. For instance, if an agency receives a large number of requests for records containing information created by other agencies, it may require frequent consultations with those agencies, which can

³⁵ 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.

be time-consuming. The National Archives and Records Administration has repeatedly noted its limited authority to declassify information and the need to consult with the originating agency for a declassification review that can significantly delay the response. Previously, the agency stated that the majority of its oldest pending requests were consultations and that approximately 2,000 other requests were also awaiting review by other agencies.³⁶

Agency policies & culture: Through its internal policies, an agency can adopt a stance either of secrecy or of transparency. While our Disclosure Rules section reflects some aspects of agency policy, there are other layers of policy not formalized in agency regulations, such as directives and guidance. In addition, agency leadership and culture – the attitudes of agency staff responsible for implementing FOIA – may shape how seriously an agency takes its responsibilities.

Record storage & retrieval: 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.

These factors may help *explain* agency performance, but we do not believe they should *excuse* poor performance. While some of these factors are not entirely within agency control, there is much that agencies can do to address these challenges. FOIA has been the law of the land for nearly 50 years: these challenges are not new, unanticipated, or insurmountable. Working together with the administration and Congress, agencies must find solutions to effectively meet their obligations to the public under FOIA.

Only Two Out of 15 Agencies Have High Scores for Processing Requests

An agency's processing score is based on 16 measures that relate to the timeliness and granting of requests, appeals, expedited processing, and fee waivers, as well as the rate of denials appealed as a measure of requester satisfaction. Each measure is worth two, four, or eight points to reflect their relative importance in the overall FOIA system. In addition, bonus points are awarded to agencies that improved their performance on a measure from the previous year. (See the Methodology appendix for full details.)

³⁶ National Archives and Records Administration, Annual Freedom of Information Report Fiscal Year 2012, <http://www.archives.gov/foia/reports/2012.pdf>.

Top Performers

The top performing agency was the Social Security Administration (SSA), with a 98 percent score and a strong grade of A+. With less than one percent of requests backlogged, the highest percentage of fully granted requests (97 percent), and an average response time under the mandated 20 business days (18 days), SSA achieved top-tier performance on almost every measure. SSA's 61 percent rate of granting on appeal also deserves mention as the highest of all 15 agencies. It has achieved these results with a very high caseload per worker (653), but it should be noted that 95 percent of its requests are "simple." Nonetheless, the agency has set a strong example to follow.

The U.S. Department of Agriculture (USDA) scored 93 percent for its strong performance. The agency closed 90 percent of processed requests within the mandated 20 days, the highest rate of any agency in the scorecard. Additionally, the department fully granted 88 percent of requests, one of the highest rates in the scorecard. However, USDA continued to struggle with timeliness on appeals, with 75 percent of its appeals cases backlogged. Over 90 percent of USDA's requests are simple, but it is likely the agency's increase in FOIA staff – 30 percent compared to last year – that made the biggest difference. This increased staff almost certainly helped USDA close so many requests quickly, and it drove the caseload per FOIA worker to the lowest of all agencies reviewed.

After these two agencies, processing performance scores fell precipitously. Five agencies received grades in the 60 percent range, six in the 50 percent range, one received a score of 49, and the State Department received a processing performance score of 23 out of a possible 100 points.

Processing Requests	
Agency	Score
Top Performers	
Social Security Administration	98% (A+)
Department of Agriculture	94% (A-)
Middling Performers	
Equal Employment Opportunity Commission	67% (D)
Department of the Treasury	65% (D)
Securities and Exchange Commission	65% (D)
Department of Transportation	63% (D)
Department of Health and Human Services	60% (D-)
Lowest Performers	
National Archives and Records Administration	57% (F)
Department of Defense	55% (F)
Department of Justice	55% (F)
Environmental Protection Agency	52% (F)
Department of Homeland Security	51% (F)
Department of Veterans Affairs	51% (F)
Department of Labor	49% (F)
Department of State	23% (F)

Middling Performers

EEOC, Treasury, SEC, and DOT all performed moderately well at timely request processing, but they had low rates of fully-granted requests. EEOC had the lowest rate of fully-granted requests of any agency at four percent. SEC also had one of the lowest rates of fully- or partially-granted requests out of the agencies in the scorecard. However, EEOC had one of the highest rates of combined disclosure (full and partial).³⁷

SEC and EEOC requests were almost all simple (100%, 97%), but both had very high caseloads for their FOIA staff, 487 and 397 cases per person, respectively. It would seem that the high case load prevented these agencies from effectively processing their relatively easy requests. The percentage of requests that were simple declined for HHS and DOT (83%, 76%) and plummeted for Treasury (18%), but each of these agencies had lower caseloads – between 108 and 224 per person – that apparently helped them somewhat counter the extra work from more complex requests.

HHS received moderate scores for both timely processing and granting of requests. About 84 percent of its requests were simple, and FOIA staff handled 224 cases per worker. However, the department appeared to have serious problems with its appeals process. HHS had the largest relative appeal backlog of any agency: in fact, the appeals pending decision at HHS outnumbered the appeals that the agency processed in the entire year.

Lowest Performers

The remaining eight agencies received failing grades on the processing section of the scorecard.

The National Archives and Records Administration's (NARA) performance was mixed. While the agency did modestly well at timely processing of simple requests (representing 84 percent of total requests), it did poorly when complex requests were factored in: NARA took 149 days on average to respond to requests, the second-highest of any agency. NARA also had the largest request backlog of any agency. Overall, most requests at NARA receive prompt attention, but a minority of cases take a very long time to process – perhaps because those complex requests require time-consuming information gathering from archival records.

³⁷ EEOC often must redact information from requested case files to protect the identities of individuals involved, resulting in a partial disclosures being very high for the agency.

The Departments of Defense (DOD), Justice (DOJ), Labor (DOL), and Veterans Affairs (VA), as well as the Environmental Protection Agency (EPA), all performed moderately well at timely request processing, although some of these agencies also had sizable backlogs. A majority of the FOIA requests to DOD, DOJ, and VA were simple requests (58%, 77%, and 53%, respectively), while the majority of requests to DOL and EPA were complex. Caseloads at these worst-performing agencies ranged from 384 at DHS to 87 at EPA. Several of these agencies did poorly at timely appeal processing. These agencies also had low or moderate rates of fully-granted requests, with the exception of EPA, which had the second-highest rate in the scorecard.

The Department of Homeland Security had the highest number of requests, a mid-level caseload for workers, and over half of the requests were complex. The heavy number of requests to DHS and their complexity probably contributed to its poor record. DHS was at the bottom of performance on several key measures. The agency closed only 37 percent of simple requests within the required 20 days. It also had the third-largest request backlog and the second-lowest rate of fully-granted requests. However, when partially-granted requests were included, its processing rate was high.

The State Department was a serious outlier. While 65 percent of its requests were simple, only eight percent were processed within the required 20 days. The State Department had the second-largest request backlog and the third-lowest rate of fully-granted requests. Only 51 percent of requests were granted in full or in part at the State Department. The agency also had the longest average processing time for appeals – 540 days, or roughly a year and a half – and the second-largest backlog of appeals.

Processing Scores Fell for Eight Out of 15 Agencies from the Previous Year

Most of the evaluated agencies – eight out of 15 – had poorer processing performance in FY 2013. The Environmental Protection Agency and the Department of Justice had the largest drops in their processing scores, losing 17 and 15 points, respectively. Three other agencies – the Securities Exchange Commission (-7), the National Archives and Records Administration (-7), and the Department of Transportation (-6) – also had scores that indicate a significant decline in processing performance this past year.

Four of the 15 agencies evaluated improved their processing scores from last year.³⁸ The Department of Agriculture's improvements were the most impressive, rising 18 points and contributing significantly to the agency becoming a top performer in this evaluation. The Department of Homeland Security and

³⁸ The Treasury Department's score did not change.

the Department of Labor also had considerable processing improvements, although both still failed to achieve a passing score.

Table 6: Processing Score Changes, 2012 to 2013
(latest years of available data)

Agency	2012 Processing (Updated)	2013 Processing	Processing Difference
Social Security Administration	98%	98%	0
Department of Agriculture	76%	94%	+18
Equal Employment Opportunity Commission	68%	67%	-1
Department of the Treasury	65%	65%	0
Securities and Exchange Commission	72%	65%	-7
Department of Transportation	69%	63%	-6
Department of Health and Human Services	62%	60%	-2
National Archives and Records Administration	64%	57%	-7
Department of Defense	57%	55%	-2
Department of Justice	69%	55%	-15
Environmental Protection Agency	69%	52%	-17
Department of Homeland Security	40%	51%	+11
Department of Veterans Affairs	44%	51%	+7
Department of Labor	39%	49%	+10
Department of State	23%	23%	0

Most Agencies Process Simple Requests Quickly, But Backlogs Grow Rapidly When They Fall Behind

The processing sub-score reveals some common trends among agencies and their implementation of FOIA. These notable areas include issues with timeliness and backlog reduction, granting and denials, and the appeals process.

Timeliness and Backlog Reduction

FOIA requires agencies to respond to requests within a statutory deadline (generally, within 20 business days). Compliance with these deadlines remains a challenge for most agencies. The

Department of Agriculture had the highest compliance rate, responding to 90 percent of requests within 20 days. But most agencies were more like the Equal Employment Opportunity Commission, which completed 73 percent of requests within the required timeframe. The State Department processed only seven percent of requests within 20 days, 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 the 15 agencies processed at least 70 percent of simple requests within 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 7. Change in Freedom of Information Act Backlogs, FY 2012 to FY 2013

Agency	Percentage of all requests responded to within 20 days	Percent of Requests Backlogged at End of FY 2012	Percent of Requests Backlogged at End of FY 2013	Backlog change, FY 2012 to FY 2013
Department of Agriculture	90%	3%	5%	2
Social Security Administration	81%	0%	0%	0
Securities and Exchange Commission	81%	2%	1%	-1
Department of Defense	76%	10%	10%	0
National Archives and Records Administration	76%	57%	54%	-3
Department of Labor	75%	4%	3%	-1
Department of Veteran Affairs	73%	3%	4%	1
Equal Employment Opportunity Commission	73%	1%	1%	0
Department of Health and Human Services	72%	8%	8%	-1
Department of the Treasury	71%	2%	3%	1
Department of Justice	67%	7%	10%	2

Department of Transportation	60%	7%	9%	2
Environmental Protection Agency	41%	5%	13%	8
Department of Homeland Security	33%	15%	22%	7
Department of State	7%	56%	46%	-10

Note: Backlog change is rounded.

The State Department and the National Archives and Records Administration achieved notable backlog reductions in FY 2013, with each agency reducing its backlog by more than 1,000 requests. DOL and HHS also reduced their backlogs. However, the Department of Homeland Security added 23,000 requests to its massive backlog, and EPA added 797 to its previous backlog of 468.

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 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.

Granting and Denying Requests

Public disclosure of information is the end goal of FOIA. Citizens should have access to public information unless clear and compelling reasons exist to withhold the information. President Obama instructed agencies to adopt a “presumption of openness.”³⁹ Despite this, denials are still common.

Federal agencies can respond to a request for information in one of three ways:

1. Full grant: Provide all the information requested;
2. Partial grant: Provide some of the information requested, but redact or withhold part of the information; or
3. Full denial: Deny the request entirely.

³⁹ See *supra* note 14.

There is considerable variation in full granting and denial rates, as Table 8 shows. For instance, the Social Security Administration fully granted 97 percent of requests, while the Labor Department fully granted only 25 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. Over the course of several years, starting back during the George W. Bush administration, a range of agencies have steadily reduced their full granting of information,⁴⁰ and the data do not readily indicate the reasons why.

Table 8. Information Granted under Freedom of Information Act Requests, FY 2013

Agency	Percent Fully Granted	Percent Partially Granted	Percent Fully Denied
Social Security Administration	97%	2%	1%
Environmental Protection Agency	88%	11%	1%
Department of Agriculture	88%	10%	2%
Department of Health and Human Services	84%	5%	12%
Department of Justice	75%	18%	7%
Securities and Exchange Commission	66%	12%	22%
Department of Transportation	66%	33%	1%
National Archives and Records Administration	57%	41%	3%
Department of the Treasury	56%	38%	5%
Department of Defense	54%	34%	12%
Department of Veterans Affairs	43%	33%	24%
Department of Labor	25%	62%	14%
Department of State	23%	28%	49%
Department of Homeland Security	13%	84%	3%
Equal Employment Opportunity Commission	4%	82%	14%

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.

⁴⁰ 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. 13, available at <http://www.foreffectivegov.org/fy2012-foia-analysis>.

Appeals Process

The FOIA statute establishes the right to appeal an agency's decision to withhold information or deny a request. Agencies must respond to appeals within 20 business days. In addition, agencies must decide whether to grant the appeal by 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. While FOIA requires a response to appeals within 20 days, only two agencies had an average response time within the deadline: the Equal Employment Opportunity Commission and the Treasury Department. Meanwhile, the State and Defense Departments took more than a year to settle the average appeal.

In terms of granting, a coin flip would have been more favorable to requesters than most agencies' appeal processes. Only three agencies decided even partially in the requester's favor at least half of the time: the Social Security Administration and the Transportation and Homeland Security Departments. Meanwhile, the Environmental Protection Agency decided in the requester's favor in none of its 184 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.

Furthermore, 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 in outcomes.

Making the Grade on Disclosing Public Information

Overall, the scores agencies received for the way they implemented the Freedom of Information Act were disappointing. Since these 15 agencies receive over 90 percent of all requests for information sent to the federal government, the fact that 10 agencies continue to receive less than a satisfactory grade suggests that many people who ask for government information will find the experience frustrating. While a majority of agencies, eight out of 15, scored better this year than last year, most of the gains were from improvements to their FOIA websites and disclosure rules. A majority of the agencies actually had lower scores for processing requests. This suggests the experience of requesting information may be better, but the lack of timely response in fulfilling requests continues to be a problem.

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 search 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.** Online request and tracking systems should free staff to 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, and it requires leadership at all levels of government recognizing the importance of open access to public 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 may be to improve agency websites and online tools. By simply adding more explanatory information or more frequently adding records to their online reading rooms, agencies may be able to help requesters more efficiently navigate the process and perhaps reduce the volume of incoming requests. 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.⁴¹ In fact, two evaluated agencies did publish updated regulations over the past year.

However, the key areas for improvement remain in the core tasks of processing FOIA requests. FOIA processing can be labor-intensive: collectively, these 15 agencies reported assigning the equivalent of more than 3,400 full-time staff to FOIA.⁴² They are responsible for every step of the FOIA process: communicating with requesters, retrieving records from program offices, and reviewing records and data 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. Streamlining processes to save time and improve communications between FOIA personnel and program staff may be necessary. Improved training of FOIA staff and modernized technology, such as software that allows electronic review, redaction, and release of documents, can also improve performance. More efficiently assigning requests to 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 suggestions from 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. The newly formed FOIA Advisory Committee could be a great resource for agencies, containing 10 non-governmental members with considerable FOIA

⁴¹ For recommendations, *see supra* note 5.

⁴² The agencies reported 3,437 full-time equivalents (FTEs) in FY 2013.

expertise from a broad selection of perspectives. Such experts and advocates can help agencies 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 resources to chart the best path forward.

Careful monitoring of progress can create incentives and accountability for performance. Better use of quarterly FOIA statistics to guide decisions on staffing, resources, and processing changes could make agencies more nimble in responding to changes in request patterns.⁴³ Some agencies have also made effective use of Inspector General reviews of aspects of FOIA implementation.⁴⁴

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**

Agencies can also look to their colleagues for ideas about how to improve implementation. 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. Again, the new FOIA Advisory Committee could become a helpful forum for agencies to share such experiences and lessons. Additionally, the Chief FOIA Officers Council proposed in FOIA reform legislation currently before Congress would be an excellent vehicle to assist in this area. Should it be passed into law, agencies struggling with particular processing problems would do well to raise them in this new setting.

43 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>.

44 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>; Securities and Exchange Commission Office of Inspector General, Report of Investigation: Case No. OIG-567, "Destruction of Records Related to Matters Under Inquiry and Incomplete Statements to the National Archives and Records Administration Regarding that Destruction by the Division of Enforcement," Oct. 5, 2011, available at <https://www.sec.gov/foia/docs/oig-567.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.

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.⁴⁵ 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 steps to improve government-wide implementation of FOIA, but consistent performance by agencies continues to elude them. In the final years of the Obama administration, stronger efforts are needed to push through entrenched resistance to FOIA changes.

The commitments contained in the Obama administration's second Open Government National Action Plan have been slow to produce significant changes in FOIA implementation but continue to offer some of the best opportunities to improve agency performance.⁴⁶ Creating a government-wide FOIA portal and common FOIA rules will 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 executive oversight of FOIA performance. For instance, OGIS's efforts to review agency compliance and performance offer an opportunity for fresh perspectives on the problems agencies face and their potential solutions. The administration should ensure that OGIS has sufficient resources to fully conduct these reviews and strongly encourage agencies to make changes based on the findings. Similarly, DOJ's Office of Information Policy can significantly raise the bar for expected performance in its annual assessment of agencies' FOIA implementation.⁴⁷

In addition, the White House should openly support legislative reform efforts and engage with congressional leaders to quickly enact strong improvements to FOIA. Many of the proposed reforms

⁴⁵ See *supra* note 12.

⁴⁶ *Id.* at 3-4.

⁴⁷ 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>.

seek to codify the administration's executive orders and policy advancements on FOIA⁴⁸ and to fix the problems that have emerged in the eight years since the last major FOIA amendments.

Other immediate 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;⁴⁹
- Provide OGIS, the FOIA ombudsman, with more independence and resources;⁵⁰
- Update the Office of Management and Budget's 27-year-old guidelines on FOIA fees to provide simpler and fairer fee procedures.⁵¹ The FOIA advisory committee has committed to examining fee issues, and their findings may lead to improvement in this area.

C. What Congress Can Do

Last year, Congress came very close to passing FOIA reform legislation but ran out of time. Both the House of Representatives and the Senate have moved quickly in this session to immediately re-introduce legislation.⁵² These legislative efforts represent a significant opportunity to raise the bar on FOIA implementation. Among the helpful reforms currently included in the legislation are:

- Establishing the foreseeable harm standard for withholding and a broader affirmative obligation to disclose information of interest to the public;⁵³
- Setting simple and fair procedures for fee assessments;
- Enhancing the authority and capacity of the Office of Government Information Services, including the authority to submit recommendations on FOIA directly to Congress and the president without a bureaucratic review.

Both chambers should coordinate to quickly move the FOIA reform legislation through Congress and to the president's desk for his signature.

48 See *supra* note 3, at 42.

49 See *supra* note 3, at 44.

50 *Id.*

51 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, 187, 52 F.R. 10012.

52 FOIA Improvement Act.

53 See *supra* note 3, at 42.

In addition to upgrading the legal framework for FOIA, there is much that Congress can do to improve FOIA implementation by the agencies. The continued shortcomings in FOIA performance identified in this report demonstrate an ongoing need for congressional oversight. 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.

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 sometimes be for agencies to fulfill these requests and submit to public scrutiny, citizen access to information is critical to a healthy democracy and to government of, by, and for the people.

Appendix A: Methodology

Appendix A-1: Processing Requests

An agency's processing score was based on 16 measures derived from its annual Freedom of Information Act (FOIA) report data for FY 2013.⁵⁴ The measures were:

Measure	Point Value	Possible Bonus Points
1. Percentage of requests fully granted	8	1
2. Percentage of requests fully or partially granted	8	1
3. Percentage of simple requests responded to within 20 days	4	1
4. Average days to respond to simple requests	4	1
5. Percentage of all requests responded to within 20 days	4	1
6. Average days to respond to all requests	4	1
7. Size of request backlog	4	1
8. Percentage of requests denied for fee-related reasons	2	0.5
9. Percentage of requests withdrawn	2	0.5
10. Percentage of requests for expedited processing adjudicated within 10 days*	2	0.5
11. Percentage of requests for expedited processing granted*	2	0.5
12. Percentage of requests for fee waivers granted	2	0.5
13. Average days to respond to appeals	2	0.5
14. Size of appeal backlog	2	0.5
15. Percentage of appeals reversed	2	0.5
16. Percentage of denials appealed	2	0.5

*The Social Security Administration reported that it did not receive any requests for expedited processing in FY 2013 and was not scored on this measure.

Each measure was worth either two, four, or eight points to reflect its relative importance in the overall FOIA system. In addition, bonus points were awarded to agencies that improved their performance on a measure from the previous year.⁵⁵

The points earned by the agency were totaled and divided by the base of 54 points to produce the agency's percentage processing score and corresponding letter grade.

⁵⁴ 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 *supra* note 41, at 24-25.

⁵⁵ For improvements of at least 0.1 percentage points from the agency's figures from its annual FOIA report for FY 2012.

Discussion of the Measures

Request Granting (Measures 1 and 2)

Agencies can respond to a request for information in one of three ways:

1. Full granting: provide all the information requested;
2. Partial granting: provide some of the information requested but redact or withhold other information based on exemptions; or
3. Full denial: Deny the request entirely based on exemptions.⁵⁶

Measures 1 and 2 addressed an agency's disclosure or withholding of information. These measures were worth up to eight points to reflect the importance of disclosure and to compensate for the limited number of available indicators on disclosure.

1. Percentage of requests fully granted

Measure 1 calculated the percentage of requests that were fully granted out of all processed requests. Scoring for Measure 1 was as follows:

Percentage of requests fully granted	Points awarded
>90%	8 points
85% – 90%	7 points
80% – 85%	6 points
75% – 80%	5 points
70% – 75%	4 points
65% – 70%	3 points
60% – 65%	2 points
50% – 60%	1 point
<50%	0 points

⁵⁶ Agencies can also deny requests for reasons other than exemptions, e.g. because the agency did not have the requested records, the requester failed to pay applicable fees, etc. These measures exclude such denials for reasons other than exemptions. *See supra* note 40, at 12.

2. Percentage of requests fully or partially granted

Measure 2 calculated the percentage of requests that were fully or partially granted out of all processed requests. Scoring for Measure 2 was as follows:

Percentage of requests fully or partially granted	Points awarded
>98%	8 points
96% – 98%	7 points
94% – 96%	6 points
92% – 94%	5 points
90% – 92%	4 points
88% – 90%	3 points
86% – 88%	2 points
84% – 86%	1 point
<84%	0 points

Request Processing Timeliness and Backlogs (Measures 3-7)

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.⁵⁷ Measures 3-7 addressed aspects of an agency's timeliness of request processing.

3. 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. The law sets standards for expedited processing of requests.⁵⁸ Each agency sets its own standards for defining requests as “simple” or “complex;” simple requests are generally considered to be easier and faster for agencies to process.⁵⁹ 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.⁶⁰

⁵⁷ 5 U.S.C. § 552(a)(6)(A), (B).

⁵⁸ 5 U.S.C. § 552(a)(6)(E).

⁵⁹ 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)”).

⁶⁰ See 5 U.S.C. § 552(e)(1)(G).

Measure 3 calculated the percentage of all processed simple requests that the agency responded to within 20 days. Scoring for Measure 3 was as follows:

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

4. 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.⁶¹ Measure 4 reported the average number of days for the agency to respond to processed simple requests. Scoring for Measure 4 was 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

5. Percentage of all requests responded to within 20 days

Measure 5 reported 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.⁶² Scoring for Measure 5 was as follows:

⁶¹ See 5 U.S.C. § 552(e)(1)(F).

⁶² Agencies also report the total number of processed requests, regardless of processing track. For DOL, DOT, SEC, USDA, and VA, the reported number of processed requests equaled the total number of processed simple, complex, and expedited requests. For the other agencies, these figures were not equal, representing over- or under-reporting. The greatest variance was at the Treasury Department, where 22 percent of processed requests were not reported in any track. At the agencies with over- or under-reporting, measures based on data from the processing tracks (Measures 3-6) may be less reliable.

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

6. Average days to respond to all requests

Measure 6 reported 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.⁶³ Scoring for Measure 6 was as follows:

Average days to respond to all requests	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

7. 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 7 calculated 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 7 was 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

⁶³ *Id.*

Denials for Reasons Other than Exemptions (Measures 8 and 9)

In addition to invoking FOIA's exemptions to deny a request, agencies can deny a request for other reasons: for instance, if the request does not reasonably describe the records it seeks, or if the agency does not possess the records sought. While such denials may seem to be administrative in nature, some requesters have raised concerns that agencies may sometimes abuse such responses. This scorecard looked at two such categories of responses, which may be particularly subject to abuse or poor practice.

8. Percentage of requests denied for fee-related reasons

Agencies can deny requests for fee-related reasons: for instance, because a requester fails to pay assessed FOIA fees or does not agree to pay estimated fees. If an agency inflates its fee estimates, charges unusually high rates, or unduly denies valid requests for fee waivers, it may result in a higher rate of requests denied for fee-related reasons.

Agencies report the number of requests that they deny and the reasons for such denials.⁶⁴ Measure 8 considered the percentage of requests that an agency denied for fee-related reasons. Scoring for Measure 8 was as follows:

Percentage of requests denied for fee-related reasons	Points awarded
<0.6%	2 points
0.6% – 1.2%	1 point
>1.2%	0 points

9. Percentage of requests withdrawn

Agencies can close a request if the requester withdraws it. If an agency makes the FOIA process especially difficult due to delays or other procedural barriers, it may result in a higher rate of requests withdrawn.

⁶⁴ See 5 U.S.C. § 552(e)(1)(A).

Agencies report the number of requests that they deny and the reasons for such denials.⁶⁵ Measure 9 considered the percentage of requests that an agency closed because the requester withdrew the request. Scoring for Measure 9 was as follows:

Percentage of requests withdrawn	Points awarded
<1%	2 points
1% – 2%	1 point
>2%	0 points

Procedural Benefits (Measure 10-12)

A FOIA requester may need to clear a number of procedural hurdles in order to receive the information they seek. The law recognizes that some requests have special urgency or importance and provides mechanisms for those requests to avoid those hurdles. Such procedural benefits include expedited processing and waiver or reduction of FOIA fees. How generous or stingy an agency is in granting such benefits can be seen as a reflection of its commitment to working with requesters in a spirit of cooperation.

10. 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.⁶⁶

Agencies report the number of requests for expedited processing adjudicated and the number adjudicated within 10 days.⁶⁷ Measure 10 calculated the percentage of requests for expedited processing that were adjudicated within 10 days. Scoring for Measure 10 was as follows:

Percentage of requests for expedited processing adjudicated within 10 days	Points awarded
>90%	2 points
80% – 90%	1 point
<80%	0 points

⁶⁵ *Id.*

⁶⁶ 5 U.S.C. § 552(a)(6)(E).

⁶⁷ See 5 U.S.C. § 552(e)(1)(L).

11. Percentage of requests for expedited processing granted

FOIA provides requesters with the opportunity to ask for expedited processing of their requests. The law requires agencies to expedite processing under certain circumstances, and agencies can also grant expedited handling in other instances.⁶⁸

Agencies report the number of requests for expedited processing that they granted and denied.⁶⁹ Measure 11 considered how frequently agencies granted such requests for expedited processing. Scoring for Measure 11 was as follows:

Percentage of requests for expedited processing granted	Points awarded
>30%	2 points
15% – 30%	1 point
<15%	0 points

12. Percentage of requests for fee waivers granted

FOIA provides requesters with the opportunity to ask for waiver or reduction of any processing fees applicable to their request. The law requires agencies to waive or reduce fees under certain circumstances,⁷⁰ and agencies can also waive or reduce fees in other instances.⁷¹

Agencies report the number of requests for fee waivers that they granted and denied.⁷² Measure 12 considered how frequently agencies granted such requests for fee waivers. Scoring for Measure 12 was as follows:

Percentage of requests for fee waivers granted	Points awarded
>75%	2 points
50% – 75%	1 point
<50%	0 points

⁶⁸ See *supra* note 66.

⁶⁹ See *supra* note 67.

⁷⁰ 5 U.S.C. § 552(a)(4)(A)(iii).

⁷¹ See *supra* note 5, at 37.

⁷² See 5 U.S.C. § 552(e)(1)(M).

Appeal Timeliness and Appeal Backlogs (Measures 13 and 14)

FOIA establishes the right to appeal an agency's adverse decision, i.e. to withhold information or deny a request.⁷³ Measures 13 and 14 addressed the timeliness of an agency's administrative appeal process.

13. Average days to respond to appeals

FOIA requires an agency to respond to an appeal within 20 days, absent unusual circumstances.⁷⁴ Agencies report the average number of days for the agency to respond to an administrative appeal.⁷⁵

Measure 13 reported the average number of days for the agency to respond to administrative appeals. Scoring for Measure 13 was as follows:

Average days to respond to appeals	Points awards
<40 days	2 points
40 – 80 days	1 point
>80 days	0 points

14. Size of appeal backlog

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

Agencies report the number of backlogged appeals pending response at the end of the fiscal year. Measure 14 calculated the size of the agency's appeal backlog as a ratio of the number of backlogged appeals to the number of appeals received in the fiscal year. Scoring for Measure 14 was as follows:

Size of appeal backlog	Points awarded
<20% of appeals received	2 points
20% – 40%	1 point
>40%	0 points

⁷³ 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”).

⁷⁴ 5 U.S.C. § 552(a)(6)(A), (B).

⁷⁵ See 5 U.S.C. § 552(e)(1)(I).

Appeal Granting (Measure 15)

15. Percentage of appeals reversed

An agency can respond to an administrative appeal in one of three ways:

1. Fully affirm its initial decision;
2. Partially affirm and partially reverse its initial decision: grant the requester some, but not all, of the subject of the appeal; or
3. Fully reverse its initial decision in favor of the requester's appeal.⁷⁶

Fully or partially reversals on appeal can result in releasing additional information or granting a procedural benefit, such as a fee waiver or expedited processing.

Measure 15 calculated the percentage of appeals that were fully or partially reversed. Scoring for Measure 15 was as follows:

Percentage of appeals reversed	Points awarded
>45%	2 points
35% – 45%	1 point
<35%	0 points

Requester Satisfaction (Measure 16)

16. Percentage of denials appealed

Statistics can indicate how frequently an agency took a particular action, but they do not reveal the merits of the agency's decision. Furthermore, even if a decision is sound, if the agency poorly explains its decision, the requester may be confused or dissatisfied. When requesters disagree with an agency's decision or are unmoved by its rationale, they are more likely to appeal the decision.

⁷⁶ Agencies can also close appeals for other reasons, *e.g.* because the request was mooted by litigation. This measure excludes closures for other reasons.

Measure 16 assessed the percentage of denied requests in which the requester appealed the denial.⁷⁷

Scoring for Measure 16 was as follows:

Percentage of denials appealed	Points awarded
<1.5%	2 points
1.5% – 3%	1 point
>3%	0 points

⁷⁷ This measure was calculated based on denials for any reason (exemption or non-exemption). This figure does not include denials of requests for procedural benefits, form and format requests, constructive denials, etc.

Appendix A-2: Disclosure Rules

An agency's FOIA rules score was based on 12 measures of the agency's adoption of regulatory best practices.⁷⁸ The 12 measures, drawn from the Center for Effective Government's *Best Practices for Agency Freedom of Information Act Regulations*,⁷⁹ were:

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)⁸⁰
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)

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

The scorecard awarded a single bonus point if an agency had updated its regulations since the 2007 FOIA amendments were enacted. Additional single bonus points were available if agency rules included one or more of 18 other FOIA best regulatory practices.⁸¹

⁷⁸ The disclosure 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.

⁷⁹ See *supra* note 5.

⁸⁰ An agency could score up to two points total for meeting either of these criteria.

⁸¹ 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.

The points earned by the agency were 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.⁸² Measure 1 evaluated whether an agency's FOIA rule required 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 checked whether an agency's rules provided 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 assessed whether an agency had 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 is a vitally important aspect of FOIA administration. If the agency is unclear as to any aspect of the request, the best approach is to contact the requester to seek clarification. Measure 4 considered whether an agency had 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.⁸³ 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

⁸² Electronic Freedom of Information Act Amendments § 4, codified as amended at 5 U.S.C. § 552(a)(2)(E).

⁸³ 5 U.S.C. § 552(a)(3)(A).

the scope of his or her request. Measure 4 also appraised whether an agency had 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 treated them as a single measure; an agency could 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 evaluated whether an agency had 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.⁸⁴ Measure 6 checked whether an agency had 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.”⁸⁵ President Obama’s FOIA memorandum likewise stated that the law “should be administered with a clear presumption: In the face of doubt, openness prevails.”⁸⁶ 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 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.”⁸⁷ Measure 7 evaluated whether an agency’s FOIA rule adopted a presumption of disclosure and the foreseeable harm standard for withholding.

⁸⁴ 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”).

⁸⁵ See *supra* note 13.

⁸⁶ See *supra* note 14.

⁸⁷ See *supra* note 15.

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.⁸⁸ The National Archives and Records Administration provides a government-wide schedule for how long agencies must maintain records related to FOIA requests.⁸⁹ Measure 8 assessed whether an agency included 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.⁹⁰ Agencies have adopted procedures to notify submitters of information about requests for that information and to allow submitters to object to its disclosure.⁹¹

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 considered whether an agency's rule required submitters to designate claimed confidential business information at the time of submission or within 30 days thereafter.

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 evaluated whether an agency's

88 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").

89 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>.

90 5 U.S.C. § 552(b)(4).

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

rule allowed 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 assessed whether an agency's rule required 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.⁹² 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 considered whether an agency's rule provided 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)
9. Provide a tracking number in all acknowledgement letters (Best Practice #11)

⁹² 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").

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)

Appendix A-3: Websites

An agency's FOIA website score was based on 17 measures of the content and interactive services available. The researchers reviewed websites in January and February 2015. The measures were:

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

Each measure was worth one point, except for measures #1, #2, and #8, which were 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 portal⁹³ and if the agency's reading room was updated within the past two months.

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

For agencies that utilize a decentralized approach to FOIA, the scorecard reviewed the department headquarters' FOIA website. The scorecard awarded the FOIAonline bonus if at least one significant component of the department participated.

⁹³ See <https://foiaonline.regulations.gov/>.

Discussion of the Measures

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

1. Web Submission of Requests

Measure 1 checked whether an agency provided an e-mail address or 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 was double-weighted to reflect the important benefits of online request submission.

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.”⁹⁴ Measure 2 assessed whether an agency’s website provided 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 inquiries maximizes the agency’s resources for processing while still keeping information seekers well-informed about their request. This measure was double-weighted to reflect the important benefits of online status tracking.

3. Web Submission of Appeals

Measure 3 evaluated whether an agency provided an e-mail address or 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 considered whether an agency’s website provided 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 inquiries maximizes the agency’s resources for processing while still keeping information seekers well-informed about their appeal.

⁹⁴ OPEN Government Act, at § 7, codified as amended at 5 U.S.C. § 552(a)(7)(A).

Contact Information (Measures 5 – 7)

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

Measures 5, 6, and 7 evaluated whether an agency's FOIA website provided 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.

Help (Measures 8 -10)

8. Agency FOIA Regulations

Measure 8 checked whether an agency's FOIA website included 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 was double-weighted to reflect the utility of FOIA rules in assisting a FOIA requester.

9. Link to the Office of Information Policy

Measure 9 assessed whether an agency's FOIA website included 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 assessed whether an agency's FOIA website included 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 evaluated whether an agency's website included tutorial information for the public on how to make a FOIA request. Filing a formal FOIA request can be confusing. The use of tutorials to guide information seekers through the process step by step makes it easier to navigate and should result in clearer information requests for the agency to process.

12. Appeal

Measure 12 checked whether an agency's website included information for FOIA requesters describing how to make an appeal. Because there are some differences between making an initial request and an appeal, it is helpful to explain how requesters can appeal the agency's decision.

13. FOIA Process

Measure 13 considered whether an agency's website included information addressed to FOIA requesters explaining the FOIA process. Processing a FOIA request can be a multi-step process that often lasts several weeks or longer. Tutorials can assist information seekers in understanding what to expect and what their options are.

Reading Room (Measures 14 – 17)

14. Included in the FOIA Process

Measure 14 assessed whether an agency's FOIA website suggested that requesters review the reading room prior to submitting a new request. If requesters can find the information they seek on the agency website, it may be more convenient for the requester and can prevent the agency from processing an unnecessary request.

15. Last Update Listed

Measure 15 evaluated 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 assessed whether an agency's online reading room provided a search function to query the contents of the reading room. Because the quantity of records available in a reading room can be voluminous, a search function is essential to helping the public find the information they seek.

17. FOIA Logs

Measure 17 checked whether an agency's FOIA website or online reading room provided 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 what may have 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.

Appendix A-4: 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-
<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 A-5: Changes to the Methodology

There were several changes to the methodology for the 2015 edition of this scorecard.⁹⁵

Processing Requests

This edition of the scorecard instituted several new measures as part of the Processing score and also revised the scoring and weighting of certain measures.

The 2015 scorecard added six measures to better reflect the breadth of issues in FOIA administration:

- Percentage of requests denied for fee-related reasons (Measure 8)
- Percentage of requests withdrawn (Measure 9)
- Percentage of requests for expedited processing granted (Measure 11)
- Percentage of requests for fee waivers granted (Measure 12)
- Size of appeal backlog (Measure 14)
- Percentage of denials appealed (Measure 16)

The measures were also re-numbered from 2014.

In addition, while each Processing measure in the 2014 scorecard was worth either four or eight points, Measures 8-16 in this addition are worth two points. This lower weighting allowed the scorecard to consider additional measures that are important but of lesser significance to the overall FOIA system. The improvement bonuses for these questions were also worth half a point each in this edition of the scorecard, whereas the bonus for each measure in 2014 was a full point.

Finally, the 2015 scorecard revised the scoring for Measures 1 (Percentage of requests fully granted) and 2 (Percentage of requests fully or partially granted) to an 8-step gradient rather than four steps.

Disclosure Rules

There were no changes to the methodology for the Disclosure Rules score.

⁹⁵ Gavin Baker and Sean Moulton, *Making the Grade: Access to Information Scorecard 2014 Shows Key Agencies Still Struggling to Effectively Implement the Freedom of Information Act*, Center for Effective Government, March 2014, available at <http://www.foreffectivegov.org/access-to-information-scorecard-2014>.

Due to the increasing number of updated regulations earning a large number of bonus points, the researchers anticipate converting some bonus points to scored measures in a future edition of the scorecard.

Websites

The 2015 scorecard took a different approach to the Websites score for agencies that utilize a decentralized approach to FOIA.

In the 2014 scorecard, the researchers judged whether such agencies primarily provided online information and services through their component sub-agencies' FOIA websites or through the main department website. For five agencies, the 2014 scorecard evaluated the website of the agency component that received the majority of requests in FY 2012. These agencies were:

- Department of Homeland Security (evaluated component: 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)
- Department of Defense (weighted average of the Departments of the Army and the Navy)

However, the 2015 scorecard instead evaluated the department headquarters' FOIA websites for these agencies' scores.

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	1 Bonus Point	0	1	2	1	2	1	4	1	3	0
Average days to respond to simple requests	4	1 Bonus Point	2	1	3	0	3	1	4	1	4	1
Percentage of all requests responded to within 20 days	4	1 Bonus Point	0	1	1	1	2	1	2	1	3	0
Average days to respond to all requests	4	1 Bonus Point	1	1	3	0	2	1	3	1	4	1
Size of request backlog	4	1 Bonus Point	0	0	1	0	2	1	1	0	4	0
Average days to respond to appeals	2	1 Bonus Point	0	0	0	0	0	0	0	0	2	0
Percentage of requests for expedited processing adjudicated within 10 days	2	1 Bonus Point	2	0.5	2	0.5	0	0	2	0.5	N/A*	N/A
Percentage of requests fully granted	8	1 Bonus Point	0	0	5	1	6	0	1	0	8	1
Percentage of requests fully or partially granted	8	1 Bonus Point	7	0	5	0	3	0	3	0	8	1
Percentage of requests for fee waivers granted	2	0.5 Bonus Point	0	0	0	0	2	0.5	1	0	0	0
Percentage of appeals reversed	2	0.5 Bonus Point	2	0.5	0	0	0	0.5	0	0.5	2	0.5
Size of appeal backlog	2	0.5 Bonus Point	2	0.5	2	0	0	0	0	0.5	2	0
Percentage of requests for expedited processing granted	2	0.5 Bonus Point	0	0.5	0	0.5	0	0.5	1	0	N/A*	N/A
Percentage of denials appealed	2	0.5 Bonus Point	1	0	0	0.5	2	0	1	0.5	0	0
Percentage of requests denied for fee-related reasons	2	0.5 Bonus Point	2	0	0	0	1	0.5	0	0.5	2	0.5
Percentage of requests withdrawn	2	0.5 Bonus Point	2	0.5	1	0	0	0.5	0	0	2	0
TOTAL POINTS	54	(+10)	27.5		29.5		32.5		29.5		49	
PERCENTAGE			51%		55%		60%		55%		98%	
LETTER GRADE			F		F		D-		F		A+	

*SSA had no expedited requests in FY12

	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	1 Bonus Point	3	0	4	1	2	0	2	1	0	1
Average days to respond to simple requests	4	1 Bonus Point	4	0	4	1	4	1	3	1	0	0
Percentage of all requests responded to within 20 days	4	1 Bonus Point	2	0	4	1	2	0	2	1	0	1
Average days to respond to all requests	4	1 Bonus Point	3	0	4	1	4	1	3	1	0	1
Size of request backlog	4	1 Bonus Point	3	0	3	0	4	0	3	1	0	1
Average days to respond to appeals	2	1 Bonus Point	0	0.5	0	0.5	2	0	0	0.5	0	0
Percentage of requests for expedited processing adjudicated within 10 days	2	1 Bonus Point	1	0.5	2	0.5	1	0	0	0.5	1	0.5
Percentage of requests fully granted	8	1 Bonus Point	0	0	7	1	0	0	0	1	0	0
Percentage of requests fully or partially granted	8	1 Bonus Point	0	0	7	0	2	1	2	0	0	0
Percentage of requests for fee waivers granted	2	0.5 Bonus Point	1	0.5	2	0.5	1	0	0	0.5	1	0.5
Percentage of appeals reversed	2	0.5 Bonus Point	0	0	2	0.5	2	0.5	1	0	0	0
Size of appeal backlog	2	0.5 Bonus Point	0	0.5	0	0.5	2	0	1	0	0	0.5
Percentage of requests for expedited processing granted	2	0.5 Bonus Point	2	0.5	0	0	1	0	1	0	0	0
Percentage of denials appealed	2	0.5 Bonus Point	1	0	0	0	1	0.5	1	0	1	0.5
Percentage of requests denied for fee-related reasons	2	0.5 Bonus Point	2	0.5	2	0.5	2	0	0	0	2	0.5
Percentage of requests withdrawn	2	0.5 Bonus Point	2	0.5	1	0.5	2	0	0	0	1	0
TOTAL POINTS	54	(+10)	27.5		50.5		36		26.5		12.5	
PERCENTAGE			51%		94%		67%		49%		23%	
LETTER GRADE			F		A		D		F		F	

	Max. Points		Treasury		NARA		SEC		DOT		EPA	
	Score	Improvement	Score	Improvement	Score	Improvement	Score	Improvement	Score	Improvement	Score	Improvement
Percentage of simple requests responded to within 20 days	4	1 Bonus Point	2	0	3	0	3	1	2	0	4	0
Average days to respond to simple requests	4	1 Bonus Point	4	1	1	1	4	0	3	0	3	0
Percentage of all requests responded to within 20 days	4	1 Bonus Point	2	0	2	0	3	1	1	0	0	0
Average days to respond to all requests	4	1 Bonus Point	3	1	0	1	4	0	3	0	2	0
Size of request backlog	4	1 Bonus Point	4	0	0	1	4	1	2	0	0	0
Average days to respond to appeals	2	1 Bonus Point	2	0.5	2	0	1	0	0	0.5	1	0.5
Percentage of requests for expedited processing adjudicated within 10 days	2	1 Bonus Point	0	0	1	0.5	2	0	2	0.5	0	0
Percentage of requests fully granted	8	1 Bonus Point	1	0	1	0	3	0	3	1	7	1
Percentage of requests fully or partially granted	8	1 Bonus Point	6	1	7	0	0	0	8	0	8	1
Percentage of requests for fee waivers granted	2	0.5 Bonus Point	1	0.5	0	0	0	0.5	1	0.5	0	0
Percentage of appeals reversed	2	0.5 Bonus Point	0	0	0	0.5	0	0	2	0.5	0	0
Size of appeal backlog	2	0.5 Bonus Point	2	0.5	2	0	2	0.5	1	0	0	0
Percentage of requests for expedited processing granted	2	0.5 Bonus Point	2	0	2	0	0	0	1	0	0	0
Percentage of denials appealed	2	0.5 Bonus Point	0	0	2	0	1	0	1	0.5	0	0
Percentage of requests denied for fee-related reasons	2	0.5 Bonus Point	1	0.5	2	0	2	0	0	0.5	0	0
Percentage of requests withdrawn	2	0.5 Bonus Point	0	0	2	0	2	0	0	0	0	0.5
TOTAL POINTS	54	(+10)	35		31		35		34		28	
PERCENTAGE			65%		57%		65%		63%		52%	
LETTER GRADE			D		F		D		D-		F	

Table B-2: Scoring Disclosure Rules

Agency	Max.	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	Bonus	0	0	0	0	0	1	0	1	0	0	0	1	0	1	0
I. Expand online disclosures																
1. Establish categories of records that can be disclosed regularly (to be posted online)	Bonus	0	0	0	0	0	0	0	1	0	0	0	0	0	0	0
2. Proactively identify and disclose additional records of interest to the public	Bonus	0	0	0	0	0	0	0	0	0	0	0	1	0	0	0
3. Post records released in response to FOIA requests	Bonus	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
4. Publish logs of FOIA requests received by agency	Bonus	0	0	0	0	0	0	0	0	0	0	0	1	0	0	0
5. Publish online indexes of disclosed records	2	2	2	0	0	2	0	2	0	2	0	2	2	1	2	2
II. Use the Internet to respond to requests more efficiently																
6. Provide a website and/or e-mail address for submitting requests	2	0	0	0	0	1	2	0	2	2	0	0	2	2	2	2
7. Provide a website and/or e-mail address for submitting appeals	Bonus	0	0	0	0	0	1	0	1	1	0	0	1	0	1	0
8. Provide online status updates	Bonus	0	0	0	0	0	0	0	1	0	0	0	0	0	0	0
9. Communicate with requesters by e-mail where appropriate	Bonus	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
III. Acknowledge and track requests promptly																
10. Acknowledge requests as soon as practicable	2	2	2	0	1	0	2	0	2	0	0	2	1	0	0	2
11. Provide a tracking number in all acknowledgement letters	Bonus	1	1	0	0	0	1	0	1	0	0	0	1	0	0	1
12. Promptly reroute requests to the appropriate agency FOIA office and notify requesters	Bonus	0	0	0	1	0	1	1	1	0	0	1	1	0	1	0

Agency	Max.	DHS	DOJ	HHS	DOD	SSA	VA	USDA	EEOC	DOL	State	Treasury	NARA	SEC	DOT	EPA
IV. Clearly and proactively communicate with requesters																
13. Seek clarification as necessary	2*	0	0	2	0	0	0	0	0	0	0	0	2	0	0	0
14. Contact the requester before denying a request as unreasonable	2*	2	2	0	0	0	2	2	1	2	0	2	0	2	2	2
15. Provide estimated time to complete the request and opportunities to reformulate	Bonus	1	1	0	1	0	1	1	1	1	0	1	1	1	1	1
16. Use plain language in all communications with requesters	Bonus	0	0	0	0	0	0	0	0	0	0	0	1	0	0	0
17. Notify requesters when referring requests	2	2	2	2	0	2	2	2	2	2	0	2	1	0	2	2
18. Notify requesters when processing is delayed	2	2	2	2	2	2	2	2	2	2	0	2	2	2	2	2
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	0	1	0	0	0	1	2	0	0	0
20. Release records on a rolling basis	Bonus	0	0	0	0	0	0	0	0	0	0	0	1	1	0	0
21. Prevent the destruction of requested records	2	2	2	0	1	0	2	2	0	2	0	2	2	0	0	2
22. Confirm the status of classified records	Not Graded	1	1	0	1	0	0	0	0	0	0	1	0	0	0	0
VI. Limit and streamline confidential business information claims																
23. Require submitters to proactively designate claimed confidential business information	2	2	2	0	0	0	2	0	1	2	2	0	2	1	0	1
24. Streamline notice of request to submitters	2	2	2	2	0	2	2	2	2	2	2	2	2	0	2	2
25. Require prompt objections to disclosure	Bonus	0	0	1	0	1	0	0	0	0	0	1	0	1	0	0
26. Require substantiation for claims of confidential business information	2	2	2	0	0	0	2	2	2	2	2	2	2	2	2	2

* Best Practices 13 and 14 represent different approaches to a similar challenge and were treated as a single measure, with a maximum of two points total.

Agency	Max.	DHS	DOJ	HHS	DOD	SSA	VA	USDA	EEOC	DOL	State	Treasury	NARA	SEC	DOT	EPA
VII. Clarify fees and waiver procedures																
27. Adopt a reasonable threshold for minimum fee charges	Bonus	0	0	0	0	1	1	1	0	0	0	0	1	0	0	0
28. Provide discretion to waive more fees	Bonus	0	0	0	0	0	0	1	0	0	0	0	1	0	0	0
29. Comply with the statutory prohibition against fees for requesters exceeding time limits	Bonus	0	0	0	0	0	0	0	1	0	0	0	1	0	1	0
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	2	2	1	0
31. Provide Information about the agency's FOIA public liaison	Bonus	0	0	0	0	0	1	0	0	0	0	0	1	0	1	0
32. Notify requesters about dispute resolution services from the Office of Government Information Services	Bonus	0	0	0	0	0	0	0	1	0	0	0	1	0	0	0
Total Points	24 (+19)	22	24	9	10	11	27	20	23	22	8	20	36	15	21	21
Percentage		92%	100%	38%	42%	46%	113%	83%	96%	92%	33%	83%	150%	63%	88%	88%
Letter Grade		A-	A+	F	F	F	A+	B	A	A-	F	B	A+	D-	B	B

Table B-3: Scoring Websites

Agency	DHS	DOJ	HHS	DOD	SSA	VA	USDA	EEOC	DOL	State	Treasury	NARA	SEC	DOT	EPA
Requester Interaction / Self-Service															
Web submission of requests	2	2	2	2	2	2	2	2	2	2	2	2	2	2	2
Web status tracking of requests	2	2	0	2	0	0	2	2	2	0	0	2	0	0	2
Web submission of appeals	1	1	0	1	0	1	0	0	1	0	0	1	0	0	1
Web status tracking of appeals	1	1	0	1	0	0	0	0	0	0	0	1	0	0	1
FOIAonline participation (Bonus)	1	0	0	1	0	0	0	0	0	0	0	1	0	0	1
Contact Information															
Name	1	1	1	1	1	1	1	1	1	1	1	1	1	1	0
Phone Number	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	0	0	1	1	1	1
Help															
Agency FOIA regulations	2	2	2	2	2	2	2	2	2	2	2	0	0	2	2
Link to OIP	1	1	1	1	1	1	1	0	1	1	1	1	0	1	1
Link to OGIS	1	1	0	1	1	1	0	0	0	1	0	1	0	1	0
Tutorials (How-To)															
Request	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1
Appeal	0	1	1	1	1	1	0	1	1	1	1	1	0	1	1
FOIA Process	1	1	1	1	1	1	0	1	1	1	1	1	1	1	1
Reading Room															
Included in FOIA Process	1	1	1	1	1	0	1	0	1	1	0	1	0	1	1
Last Update Listed	1	1	1	1	0	0	0	0	0	1	1	0	1	0	1
Recently Updated (Bonus)	1	1	0	0	0	0	0	0	0	1	0	0	1	0	1
Search Function	0	0	0	1	0	0	0	0	0	1	0	0	0	0	0
FOIA Logs	1	1	0	1	1	0	0	1	0	1	1	1	1	0	0
TOTAL POINTS	20	20	13	21	14	13	12	13	15	16	12	17	10	13	18
MAX POINTS	20	20	20	20	20	20	20	20	20	20	20	20	20	20	20
PERCENTAGE	100%	100%	65%	105%	70%	65%	60%	65%	75%	80%	60%	85%	50%	65%	90%
GRADE	A+	A+	D	A+	C-	D	D-	D	C	B-	D-	B	F	D	A-



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