

October 26, 2021

## Freedom of Information Act Requests in FY2020: By the Numbers

The Freedom of Information Act (FOIA; 5 U.S.C. §552) establishes a presumption that agency records in the possession of the executive branch and departments of the federal government are accessible to the public. Under FOIA, the burden of proof to access government information shifted from a requester’s “need to know” to a “right to know” doctrine, where the federal government has to show a need to keep the information secret (H.Rept. 109-226). Government-wide information on the administration of FOIA is provided by the Department of Justice (DOJ) at <http://www.foia.gov>.

This In Focus provides and discusses information from agencies on the volume of FOIA requests during FY2020 and FY2019 that were received, processed, and backlogged.

### About the Data

Data in this In Focus were drawn from [FOIA.gov](http://www.foia.gov). Please note the site’s data are self-reported from federal agencies. Additionally, the number of agencies that participate and submit data may vary from year to year. Thus, CRS cannot certify all agencies are included in this data set. More information is available on data collection and reporting from the DOJ, Office of Information Policy, at <https://www.justice.gov/oip/guidance-agency-foia-administration-light-covid-19-impacts>.

### FOIA in FY2020

During FY2020, the COVID-19 pandemic affected the processing and release of information in response to FOIA requests. For example,

- requests related to the pandemic were prioritized and expedited, which may have delayed responses to other requests;
- changes to staffing schedules may have disrupted employees’ availability to participate in the coordinated efforts needed to comply with some requests; and
- remote work may have resulted in employees being unable to locate and access responsive information to comply with requests when that information was only available in physical formats.

For more information on the effects of the COVID-19 pandemic on FOIA processing, please see CRS Report R46292, *Freedom of Information Act (FOIA) Processing Changes Due to COVID-19: In Brief*, by Kathleen E. Marchsteiner and Meghan M. Stuessy.

### Requests Received

Government-wide, agencies reported that the number of FOIA requests submitted in FY2020 fell 7.95% from the previous year (790,688 requests in FY2020 from 858,952 in FY2019).

In both FY2020 and FY2019, the Department of Homeland Security (DHS) and DOJ reported receiving the most and second most FOIA requests of any agency. In FY2020, the Department of Defense reported the third most requests. The National Archives and Records Administration reported the third most requests in FY2019.

Within DHS and DOJ, the U.S. Citizenship and Immigration Services at DHS and the Executive Office for Immigration Review at DOJ led their departments in the number of requests received in FY2019 and FY2020.

### Requests Processed

Under 5 U.S.C. §552(a)(6), upon receipt of a FOIA request, each agency is to determine, in most cases within 20 business days, whether it will comply with such a request and notify the requester of the agency’s determination. After the initial notification, the time it takes to process a FOIA request depends on the nature and scope of the material requested. A simple FOIA request is one that an agency anticipates will involve a small volume of material or which will be able to be processed relatively quickly. Complex requests typically seek a high volume of material or require additional steps to process, such as the need to search for records in multiple locations.

FOIA requests can be expedited in cases where the requester demonstrates a “compelling need” for the information (5 U.S.C. §552(a)(6)(E)). Whereas agencies are expected to initially respond to most FOIA requests within 20 days, agencies must determine within 10 days whether they will grant expedited processing.

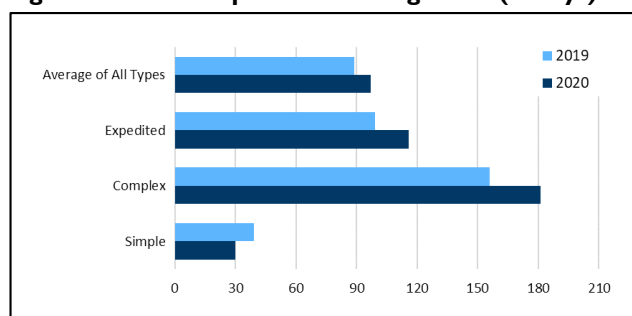
### Processed Requests

Processing a FOIA request involves locating and transmitting relevant information to requesters, and sometimes requires a variety of employees or offices to respond.

Federal agencies reported that they processed 772,869 FOIA requests in FY2020, a decrease from 877,964 processed requests in FY2019. In FY2020, on average (mean), simple requests were processed in 30 days (down from 39 days in FY2019) and complex requests took 181 days (up from 156 days in FY2019); see **Figure 1**. Expedited requests were processed, on average, in 116 days (17 more days than in FY2019). In total, it took an average

of 97 days for agencies to process all kinds of FOIA requests in FY2020, including simple, complex, and expedited. This reflects an 8-day increase from FY2019, where all kinds of FOIA requests were processed, on average, in 89 days.

**Figure 1. FOIA Request Processing Time (in days)**



**Source:** Agency FOIA data on FOIA.gov, and CRS calculations.

**Notes:** Processing time is the average (mean) number of days. This average includes all days except weekends and legal public holidays. For more information on the counting method, see Department of Justice, Office of Information Policy, at <https://www.justice.gov/oip/guidance-agency-foia-administration-light-covid-19-impacts>.

### Backlogged Requests

Requests that have not received an initial agency response according to the statutory limits are considered “backlogged” requests (Section 3 of Executive Order 13392). In FY2019, federal agencies reported 120,436 backlogged requests and 5,087 backlogged appeals. In FY2020, agencies reported 141,762 backlogged requests, and 5,072 backlogged appeals.

DHS and DOJ reported the highest number of backlogged requests; however, these agencies also received the largest number of requests government-wide in the period examined.

### Use of Exemptions

Under 5 U.S.C. §552(b), nine categories of information are exempt from disclosure. An agency may only withhold information if (1) the agency reasonably foresees that disclosure would harm an interest protected by one of the statutory exemptions or (2) the disclosure is prohibited by law (see also, Attorney General Holder’s Memorandum for Heads of Executive Departments and Agencies Concerning the Freedom of Information Act, 74 *Federal Register* 51879 (October 8, 2009)).

In FY2020, Exemption 6, which protects certain personal information in personnel, medical, and similar files, was the most utilized exemption; see **Table 1**. Exemption 7(C), which protects certain personal information in law enforcement records, was the most utilized exemption in FY2019.

Another common type of exemption invoked in both fiscal years was Exemption 7(E), which applies to techniques, procedures, and guidelines pertaining to law enforcement investigations or prosecutions.

**Table 1. FOIA Exemption Use in FY2020 and FY2019**

	2020	2019
Exemption 1	3,263	4,165
Exemption 2	1,352	1,439
Exemption 3	64,254	71,765
Exemption 4	12,650	13,234
Exemption 5	59,057	73,706
Exemption 6	250,292	267,071
Exemption 7(A)	9,831	10,637
Exemption 7(B)	9,831	1,013
Exemption 7(C)	235,983	267,137
Exemption 7(D)	5,166	7,031
Exemption 7(E)	210,751	248,562
Exemption 7(F)	2,689	2,964
Exemption 8	188	200
Exemption 9	20	71

**Source:** Agency FOIA data on FOIA.gov.

For more information on the applicability and definitions of exemptions, see CRS Report R46238, *The Freedom of Information Act (FOIA): A Legal Overview*, by Daniel J. Sheffner.

### Appealed Requests

Requesters may make an administrative appeal to the agency if they are unsatisfied with an agency’s response to their FOIA request (either with the content provided or with the rejection of their request). If the parties cannot resolve their dispute, the requester may call upon the assistance of the FOIA Ombudsman at the Office of Government Information Services within the National Archives and Records Administration to mediate the appeal. At the start of FY2020, federal agencies had 6,079 appeals pending (up from 5,611 in FY2019). Over the course of the fiscal year, they received 14,943 appeals (down from 15,387 in FY2019) and processed 15,244 (up from 15,022 in FY2019).

### Issues for Congress

Congress may consider policies that would improve the timeliness and comprehensiveness of FOIA responses. The National Archives and Records Administration’s FOIA Advisory Committee has suggested introducing FOIA measurements into employee performance reviews, centralizing FOIA request processing, or contracting support staff to assist with surges.

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