



THE DEPARTMENT OF JUSTICE 2012 FREEDOM OF INFORMATION ACT LITIGATION AND COMPLIANCE REPORT

In accordance with 5 U.S.C. § 552(e)(6) (2006 & Supp. IV 2010), every year by April 1, the Attorney General submits to Congress a report detailing the Department of Justice's efforts to encourage agency compliance with the Freedom of Information Act (FOIA), as well as a listing of all FOIA litigation cases received and decided in the prior calendar year. For 2012, the Department submits the following report to Congress.

DESCRIPTION OF DEPARTMENT OF JUSTICE EFFORTS TO ENCOURAGE AGENCY COMPLIANCE WITH THE FREEDOM OF INFORMATION ACT

During 2012, the Department of Justice, through its Office of Information Policy (OIP), engaged in a wide range of activities to meet the Department's responsibility to encourage agency compliance with the FOIA throughout the Executive Branch. Significantly, OIP provided comprehensive guidance and training to all agencies concerning the application of the FOIA statute and the continued implementation of [President Obama's FOIA Memorandum](#) and [Attorney General Holder's FOIA Guidelines](#). See 74 Fed. Reg. 4683 (Jan. 21, 2009); 74 Fed. Reg. 51879 (Oct. 8, 2009). The President's and Attorney General's FOIA Memoranda call for federal agencies to administer the law with a presumption of openness in order to achieve an unprecedented level of transparency in the work of the Executive Branch. Also during 2012, OIP managed the submission of agencies' Fiscal Year 2012 Annual FOIA Reports and the third submission of the Chief FOIA Officer Reports required by the Attorney General's FOIA Guidelines. After the submission of the Chief FOIA Officer Reports, OIP prepared a

"In our democracy, the Freedom of Information Act (FOIA), which encourages accountability through transparency, is the most prominent expression of a profound national commitment to ensuring an open Government."

- President Barack Obama



comprehensive summary of the efforts made by agencies in complying with the Guidelines, and for the first time, assessed each of the ninety-nine agencies subject to the FOIA on these efforts. OIP also instituted a new quarterly reporting requirement for all agencies on four key FOIA statistics that are now displayed in one central location on FOIA.gov, the Department's governmentwide, comprehensive FOIA website. These are just a few examples of the many efforts OIP engaged in this past year to improve agencies' FOIA administration and to encourage compliance with the law. A full summary of OIP's efforts, as required by subsection (e)(6) of the FOIA, is set forth below.

A. Policy Guidance

The primary means by which the Department of Justice encourages compliance with the FOIA is through the issuance of policy guidance designed to ensure that the Act is being properly implemented across the government. During 2012, OIP continued to provide comprehensive guidance to federal agencies, addressing a range of issues related to the FOIA and the call for increased transparency set forth in the President's FOIA Memorandum and the Attorney General's FOIA Guidelines. This policy guidance was provided in writing and made available to agencies and the public alike in the "[OIP Guidance](#)" section of OIP's website. In addition to issuing guidance, during 2012 OIP worked directly with agencies and held multiple agencywide conferences to discuss the continued implementation of the Administration's FOIA Memoranda and related policy guidance.

OIP Guidance on Chief FOIA Officer Reports

On his first full day in office, January 21, 2009, President Obama signed the "[Presidential Memorandum for the Heads of Executive Departments and Agencies on the Freedom of Information Act](#)," which established a new policy for Executive Branch departments and agencies concerning disclosure and transparency. The President directed all agencies to administer the FOIA with a clear presumption in favor of disclosure, to resolve doubts in favor of openness, and to not withhold information based on "speculative or abstract fears." The President also called on agencies to ensure that requests are responded to with "a spirit of cooperation," that disclosures are timely, and that modern technology is used to make information available to the public even before a request is made. In closing, the President directed the Attorney General "to issue new guidelines governing the FOIA to the heads of executive departments and agencies, reaffirming the commitment to accountability and transparency."

During Sunshine Week on March 19, 2009, Attorney General Eric Holder issued new [FOIA Guidelines](#) that reinforced the President's call for the FOIA to be administered with the presumption of openness. The Guidelines also emphasize the necessity for agencies to create and maintain an effective system for responding to requests and direct agencies to not withhold records simply because a FOIA exemption may technically apply. The Attorney General encouraged agencies to make discretionary disclosures of information whenever possible. Where full disclosure of a record is not possible, the Attorney General stressed that agencies should consider whether a partial disclosure can be made. Finally, the FOIA Guidelines called



on agency Chief FOIA Officers to review their agencies' FOIA administration annually and to report to the Department of Justice on the steps taken to achieve improved transparency.

The Attorney General gave OIP the responsibility of providing guidance to agencies on the content of these Chief FOIA Officer Reports. That guidance, which OIP first issued in September 2009, and has expanded upon in each subsequent year, has consistently required agencies to address five distinct topics all tied to the key areas covered in the Attorney General's Guidelines. First, each agency has been required to describe the steps it has taken to apply the presumption of openness. Second, agencies have been required to describe the steps taken to ensure that they have an effective and efficient system in place to respond to requests. Third, agencies have had to describe their efforts to increase proactive disclosures. Fourth, agencies have been required to describe the steps taken to greater utilize technology in administering the FOIA. And finally, agencies have been required to provide information about any backlog of requests or appeals and the steps being taken to reduce these backlogs and improve timeliness.

Each year as agencies' implementation of the Guidelines has matured, OIP has modified the requirements for the Chief FOIA Officer Reports to build on the successes of the previous years. For example, with regard to applying the presumption of openness, OIP began by asking agencies to report on whether they had made any discretionary releases of information that otherwise could have been protected under the FOIA. After finding that there was a direct link between making discretionary releases and having a system in place to identify them, OIP issued guidance to agencies encouraging adoption of such a system. In 2012, ninety-seven of the ninety-nine agencies subject to the FOIA reported in their Chief FOIA Officer Reports that they had a system in place in their FOIA processing for considering discretionary releases.

On October 4, 2012, OIP once again issued new guidance to agencies on the content of their 2013 Chief FOIA Officer Reports. In this guidance, OIP expanded the reporting requirement on discretionary releases even further by, for the first time, asking agencies to provide a narrative description or examples of the types of information they released during the year as a matter of discretion. Building on prior years' reporting on whether agencies offer the ability for requesters to track their requests online, in 2013 OIP required agencies to provide additional information on the level of detail that these online tracking systems provide requesters. Finally, OIP also added the requirement that agencies report on the estimated number of cases in their backlog where a substantive, interim response was provided during the fiscal year. OIP had issued [guidance](#) to agencies encouraging this practice which provides for better customer service and can assist agencies in reducing their backlogs and responding to requests more promptly.

March 2012 marked the third year that agencies submitted to OIP their Chief FOIA Officer Reports describing the steps taken to improve their FOIA operations and facilitate information disclosure. All ninety-nine agency Chief FOIA Officer Reports were submitted to OIP for review in early 2012. OIP conducted a comprehensive review of all the Reports to ensure compliance with OIP's reporting guidelines and worked with the agencies to resolve any deficiencies in their Reports prior to clearing them for posting. As the Chief FOIA Officer Reports were being posted during Sunshine Week of 2012, OIP compiled and posted a list of [FOIA Success Stories](#) illustrating significant steps taken by the fifteen departments to increase



transparency. The fifteen departments are responsible for over 80% of the government' FOIA processing.

OIP Guidance on Annual FOIA Reports

In 2012, OIP also provided updated [guidance](#) to agencies on the reporting requirements for their Annual FOIA Reports. These requirements included both data elements required by the FOIA statute, as well as data that OIP determined would be useful to report, such as the numbers of backlogged requests and appeals. Additionally, on October 15, 2012, OIP hosted a refresher training session to discuss the reporting requirements for the Fiscal Year 2011 Annual FOIA Reports.

Agencies in 2012 continued to use the Annual FOIA Report tool developed by the Department to convert their Annual FOIA Reports into an "open" format as required by the [Open Government Directive](#). Significantly, for 2012, the Department upgraded its Annual FOIA Report tool to ensure compatibility with new software. By using the Department's Annual FOIA Report tool, agencies once again ensured that all Annual FOIA Reports are made available to the public in a uniform "open" format that allows for the data to easily be manipulated so that comparisons can be made across agencies. The tool also provides built-in math checks to assist agencies in compiling their data, thereby resulting in greater accuracy in the Annual FOIA Reports. The Department has received very positive feedback from agencies regarding the use of this tool and the accompanying guidance for preparing their Annual FOIA Reports. During 2012, the Department reviewed additional enhancements that could be made to the Annual Report tool to further ensure data quality and make it even easier for agencies to produce their Annual FOIA Reports for Fiscal Year 2013. The Department looks forward to providing an updated Annual FOIA Report tool with additional capabilities to agencies in 2013.

As was done with the Chief FOIA Officer Reports, OIP managed the submission of agency Annual FOIA Reports by first reviewing all ninety-nine agency Annual FOIA Reports in draft form, then working with the agencies to resolve any issues, and finally clearing the Reports for posting. As further discussed below, OIP then created and made available on its website a summary of the key statistics reported by agencies in their Annual FOIA Reports.

OIP Guidance for Further Improvement in Implementing the Attorney General's FOIA Guidelines

As noted above, in 2012 OIP conducted a detailed [assessment](#) of agencies' progress in improving transparency and implementing the Attorney General's FOIA Guidelines based on a review of their 2012 Chief FOIA Officer Reports and the data reported in their Fiscal Year 2011 Annual FOIA Reports. As a result of this review and assessment, on August 7, 2012, OIP issued [guidance](#) for all agencies to assist them in making additional improvements in the years ahead.

OIP's guidance first addressed the potential for agencies to utilize advanced technology to help with the core processing tasks involved in responding to a request such as improved document searches, streamlined consultation processes, and more efficient document review. OIP's assessment revealed that more than half of agencies are currently utilizing such technology



to improve their FOIA administration. Those agencies who have not yet explored these options were encouraged to assess the cost effectiveness as well as the benefits of more advanced technological tools that could be used to achieve greater efficiency in the core elements of FOIA processing, particularly improved document searches and review.

With regard to improving timeliness, agencies that currently do not offer multi-track processing, and which take longer than an average of twenty working days to respond to requests, were advised to consider establishing a multi-track system. A multi-track system provides a mechanism for the agency to process its "simple" requests in a different queue from its "complex" requests, which in turn can allow for improved timeliness for the "simple" track requests. Additionally, by establishing multiple processing tracks, agencies can more readily offer requesters the option of tailoring their requests so that they fit within the "simple" track and can be processed more quickly.

Finally, OIP reemphasized that each agency should make it a priority to close its ten oldest pending requests and appeals each year. As explained in the guidance, by closing these requests and appeals every year, the government overall will be able to reduce the age of its backlogs and eliminate those lingering requests that have remained pending for many years.

OIP Guidance on Closing the Ten Oldest Pending Requests and Consultations

As evident from above, OIP has established closing the ten oldest pending requests and appeals as a distinct backlog reduction goal designed to assist agencies in not only reducing the number of backlogged requests and appeals, but also the overall age of the government's backlogs. As a result, OIP has emphasized its importance on multiple occasions. On April 4, 2012, OIP issued [guidance](#) specifically focused on this topic, directing agencies to "renew their focus on their ten oldest requests and the steps that can be taken to ensure that every effort is made to close those requests by the end of the current fiscal year."

"By closing the ten oldest pending requests each year, agencies can make a real difference in improving FOIA administration."

- OIP Guidance: Closing the Ten Oldest Pending Requests and Consultations

OIP's guidance also instituted a new initiative that agencies close the ten oldest consultations that they received from other agencies every year. As noted in OIP's guidance, one reason that an agency might not be able to close its pending requests can be because it is waiting to hear back from another agency on a consultation. In this guidance, OIP advised that "[b]y closing their ten oldest consultations as early in the fiscal year as possible, agencies help place the other agencies and components relying upon their consultation responses in a better position to close their oldest pending requests." OIP emphasized that "[i]f all agencies and components take steps to close not only their ten oldest requests, but also their ten oldest consultations, this will go a long way towards eliminating the days when requests become caught in a cycle of delay."



Department of Justice and White House Memorandum on Closing Oldest Requests

Shortly after OIP issued its guidance on closing agencies' ten oldest pending requests and consultations, in June 2012, Acting Associate Attorney General Tony West teamed up with White House Counsel Kathryn Ruemmler to issue a [memorandum](#) to all agency Chief FOIA Officers and General Counsels requesting that they review their agency's oldest pending FOIA requests and take affirmative steps to resolve them.

OIP Guidance on Implementing the FOIA's Statutory Exclusions

During 2012, the Department examined past practices governing the implementation of the exclusion provisions contained in the FOIA to determine whether there were ways to bring greater accountability and transparency to their existence and use without compromising the important national security and law enforcement interests that are at stake. As a result of this review, the Department determined that there were a series of steps that agencies should take going forward that would achieve these goals. Accordingly, on September 14, 2012, OIP issued [guidance](#) to all agencies on the proper implementation of exclusions and new requirements instituted by the Department to bring greater awareness to the public about the existence and effect of these statutory provisions.

OIP's guidance begins by providing an overview and history of the FOIA's exclusion provisions. As explained in the guidance, Congress added exclusions to the FOIA in 1986 to protect three narrow categories of particularly sensitive law enforcement records where even revealing the existence of the records could itself cause harm to law enforcement or national security interests. To take one example, the first exclusion protects against disclosure of a pending criminal law enforcement investigation when there is reason to believe that the target is unaware of the investigation and disclosure of its existence could reasonably be expected to interfere with enforcement proceedings. During this time, the records are not subject to the requirements of the FOIA.

OIP's guidance describes four new requirements for agencies to implement with regard to exclusions that, as indicated above, brings greater awareness to the public about their existence, incorporates additional accountability, and sheds greater light on agencies' use of these statutory provisions. Specifically, in accordance with OIP's guidance, agencies are to implement the following requirements:

- Agencies will consult with OIP prior to using an exclusion to ensure that the exclusion is warranted and that they are consistently applied,
- Agencies will publicly report each year on the number of times, if any, that an exclusion was used, bringing greater transparency to the use of exclusions,
- Agencies will include on their websites a brief description of the three exclusions to enhance public awareness of their existence, and
- Agency components that maintain criminal law enforcement records will include in all their response letters a notification that Congress excluded certain records from the requirements of the FOIA and that the agency's response addresses those records that are subject to the requirements of the FOIA.



As part of their 2012 Chief FOIA Officer Reports, agencies began reporting on their use of exclusions. For the first time ever, the public was apprised of the extent to which exclusions were used. That reporting showed that three out of the ninety-nine agencies subject to the FOIA used an exclusion during Fiscal Year 2011. For context, of the over 630,000 FOIA requests that the government processed in Fiscal Year 2011, exclusions were used in only 0.03% of the requests. Agencies were once again required to report on their use of exclusions in the 2013 Chief FOIA Officer Reports.

Because of this new reporting requirement, the public can now readily see the very limited number of times exclusions are used by agencies. Further, the individual notification requirement represents a fresh approach to the handling of exclusions by informing requesters of the existence of the statutory exclusions in general, without acknowledging the existence of any excluded records in response to a particular FOIA request. This new approach preserves the important law enforcement and national security interests that formed the basis for Congress' inclusion of exclusions in the FOIA over twenty-five years ago, while at the same time is in keeping with Attorney General Holder's commitment to open government.

B. Efforts to Promote Agency Accountability

The Department, through OIP, has engaged in a number of efforts to keep agencies accountable for their administration of the FOIA. During 2012, these efforts included publishing a summary and detailed assessment of agencies' progress based on the 2012 Chief FOIA Officer Reports, posting a detailed summary of agencies' Fiscal Year 2011 Annual FOIA Reports, meeting with agency Chief FOIA Officers, and instituting a new quarterly FOIA reporting requirement.

Summary of 2012 Chief FOIA Officer Reports and Assessment of Agency Progress in Implementing the President's and Attorney General's FOIA Memoranda

As discussed in the "Policy Guidance" section above, 2012 marked the third year in which agencies submitted their Chief FOIA Officer Reports to the Department of Justice. These reports detail each agency's efforts throughout the year in implementing the Attorney General's FOIA Guidelines. After reviewing all of the 2012 Chief FOIA Officer Reports for completeness and clearing them for posting, OIP undertook an extensive analysis of the reports to determine the government's overall progress in implementing the FOIA Guidelines and to identify any areas for improvement. As a result of this analysis, on August 7, 2012, OIP issued a comprehensive [Summary of Agency Chief FOIA Officer Reports for 2012 and Assessment of Agency Progress in Implementing the President's FOIA Memorandum and the Attorney General's FOIA Guidelines](#).

OIP's narrative summary of the Chief FOIA Officer Reports provides a wealth of examples from large and small agencies describing the various efforts made to implement each of the key areas addressed in the Attorney General's FOIA Guidelines. The summary also highlights those areas in which improvements could be made such as the closing of agencies' ten oldest pending requests.



In addition to the narrative summary, OIP for the second year created a detailed assessment of the efforts made by agencies in implementing the Attorney General's FOIA Guidelines and improving FOIA administration. Notably, in 2012, OIP expanded this assessment from just the fifteen Executive Departments to cover all ninety-nine agencies subject to the FOIA. In conducting this assessment, OIP identified and scored each of the ninety-nine agencies on nineteen milestones, such as improvements to efficiency and reductions in backlogs, which are all tied to the five key areas addressed in the Attorney General's FOIA Guidelines. Generally, agencies were given a score of green if they met the respective milestone, a score of yellow if partial progress had been made, and a score of red if the milestone had not been met. For the 2012 assessment, OIP changed several of the milestones used in 2011 to take into account the progress agencies had already made in implementing the FOIA Guidelines and to make the assessment progressively more challenging.

2012 Chief FOIA Officer Reports Assessment of Federal Departments and Agencies															U.S. Department of Justice Office of Information Policy			
Agency (Key Agencies in Blue)	Section I: Applying the Presumption of Openness			Section II: Effective Systems for Responding to Requests			Section III: Increasing Proactive Disclosures		Section IV: Utilization of Technology (Tech.)			Section V: Reducing Backlogs & Improving Timeliness in Responding to Requests (Req.) and Appeals (App.)						
	Conducted or Attended Training	Made & Has Process to Identify Discretionary Disclosures	High Release Rate for Requests Processed for Disclosure	Sufficient IT Support	FOIA Staff Works w/Open Gov Team	Taken Steps to Assess if there is Adequate Staffing	Added New Material to Website	Taken Steps to Make Website More Useful to Public	Offers Ability to Make FOIA Requests Electronically	Utilizing Advanced Tech. to Increase FOIA Efficiency	Processed Simple Req. in 20 Working Days or Less	Simple Track Y/N:	Avg. No. of Days	Decrease in backlogged Req./App.	Closed 10 Oldest Req./App.	Sets Goals & Monitors Progress of FOIA Case load		
ACUS	●	●	●	●	●	●	●	●	●	●	Y	1.6	●	●	●	●		
ABMC	●	●	●	●	●	●	●	●	●	●	N	10	●	●	●	●		
Amtrak	●	●	●	●	●	●	●	●	●	●	Y	30	●	●	●	●		
AFRH	●	●	●	●	●	●	●	●	●	●	Y	32	●	●	●	●		
FRB	●	●	●	●	●	●	●	●	●	●	Y	3	●	●	●	●		

2012 Chief FOIA Officer Report Assessment

The issuance of this comprehensive assessment was designed to promote greater accountability in implementing the Attorney General's FOIA Guidelines and improve the government's FOIA administration, while also showcasing some of the impressive progress made by agencies over the past year. The assessment illustrates the many areas where agencies have made real progress as well as those areas where further improvements can be made. For example, while sixty-six agencies either had no backlog of pending requests or were able to reduce an existing backlog, there were others whose backlogs increased. Similarly, while sixty-eight agencies closed all of their ten oldest pending requests, or had none pending to close, there were others who did not meet this milestone.

By assessing agencies on a wide variety of factors that all contribute to improving information disclosure, the public, as well as the agencies themselves, can readily see where agencies have excelled, and where further work can still be done, in improving the administration of the FOIA.

Summary of Agency Annual FOIA Reports and FOIA.gov

As noted above, each year agencies are required by law to submit an Annual FOIA Report to the Attorney General detailing a range of statistics regarding their agency's FOIA



activities, such as the numbers of requests processed and received, and the time taken to process them. In addition to issuing guidance to agencies on the content of these reports and reviewing them for completeness, OIP, in accordance with 5 U.S.C. § 552(e)(4), compiles and posts all agency Annual FOIA Reports on the [Reports](#) page of its website. For Fiscal Year 2011, ninety-nine reports were submitted and centrally posted on OIP's website.

During 2012, OIP also uploaded the data for agencies' Fiscal Year 2011 Annual FOIA Reports onto FOIA.gov, the Department's comprehensive, governmentwide FOIA website, so that it could be easily sorted and compared by agency and over time. In addition to many other features, FOIA.gov shines a light on agencies' administration of the FOIA by taking the detailed statistics contained in the Annual FOIA Reports and displaying them graphically. Moreover, the website contains various featured reports that highlight key measurements, such as the number of FOIA requests received by agencies with law enforcement and intelligence missions and the FOIA request backlogs at the three largest agencies.

Further, in order to provide a snapshot of government-wide FOIA activity, every year as part of its review of agencies' Annual FOIA Reports, OIP issues a detailed summary of the information contained in these reports for the given fiscal year. On September 6, 2012, OIP issued its [Summary of Annual FOIA Reports for Fiscal Year 2011](#), which discusses the numbers of requests received and processed by agencies, the disposition of those requests, and details concerning the time taken by agencies to respond. The summary also provides details about the numbers of consultations and administrative appeals received and processed, as well as data on backlogs of requests and appeals. Finally, the summary provides overall figures for the numbers of personnel working on FOIA and the costs to the government.

For the second year, OIP prepared this detailed summary of agency Annual FOIA Reports by utilizing [FOIA.gov](#), which has allowed for a more detailed analysis of statistics that were not readily available in past years. This yearly summary of agencies' Annual FOIA Reports is not only useful for agency personnel, but open government groups have also come to look forward to its issuance as well. The Summary provides both agencies and the public with an overall picture of FOIA processing governmentwide.

Through FOIA.gov and OIP's summary of the Annual FOIA Reports, the Department has shed an unprecedented amount of light on agencies' administration of the FOIA. By allowing the data from agency Annual FOIA Reports to more easily be compared across agencies and over time, the Department is ensuring that agencies are accountable for their FOIA administration and that the government is fully transparent concerning its FOIA responsibilities.

New Quarterly Reporting Requirement

In yet another effort to increase agency accountability, on December 4, 2012, OIP announced a [new quarterly FOIA reporting](#) requirement to begin in Fiscal Year 2013. As discussed in OIP's announcement, as more and more people have come to rely on FOIA.gov to track agencies' FOIA progress, the Department realized the benefits of providing certain FOIA data more frequently. Accordingly, OIP explained that further guidance would be issued in the upcoming months requiring agencies to report on four key FOIA statistics each quarter, thereby



allowing for a more real-time assessment of the flow of FOIA requests handled by the government throughout the year. The four key statistics include the numbers of requests received, processed, and in an agency's backlog for each quarter of the fiscal year, as well as the status of the agency's ten oldest pending requests. To assist agencies in providing this data, OIP advised that it would be providing a uniform template for all agencies to use and, for the first time, would be collecting the data from agencies through the use of an Applied Programming Interface (API). All of the data collected by the Department would then be displayed on FOIA.gov for both the public and agencies to view.

The quarterly reporting of these key FOIA statistics will not only provide the public with more timely access to important FOIA data, but will also assist agencies and agency components in actively assessing the state of their FOIA caseloads in order to take the appropriate measures to reduce backlogs and improve timelines.

Meetings with Chief FOIA Officers

In yet another effort to assist agencies in their administration of the FOIA and promote further accountability, in 2012 the Department's Acting Associate Attorney General met with the Chief FOIA Officers from those agencies that receive and process the overwhelming share of the government's FOIA requests to discuss the implementation of the Attorney General's FOIA Guidelines and other open government initiatives. The Director of OIP also individually met with many of these Chief FOIA Officers to discuss their agencies' FOIA administration in further detail, including their performance based on the most recent Annual and Chief FOIA Officer Reports. These meetings have become an invaluable opportunity for the Chief FOIA Officers to hear directly from the Department of Justice as we promote the goals of the President's and the Attorney General's directives and reinforce our joint commitment to openness and transparency.

C. Counseling and Consultations

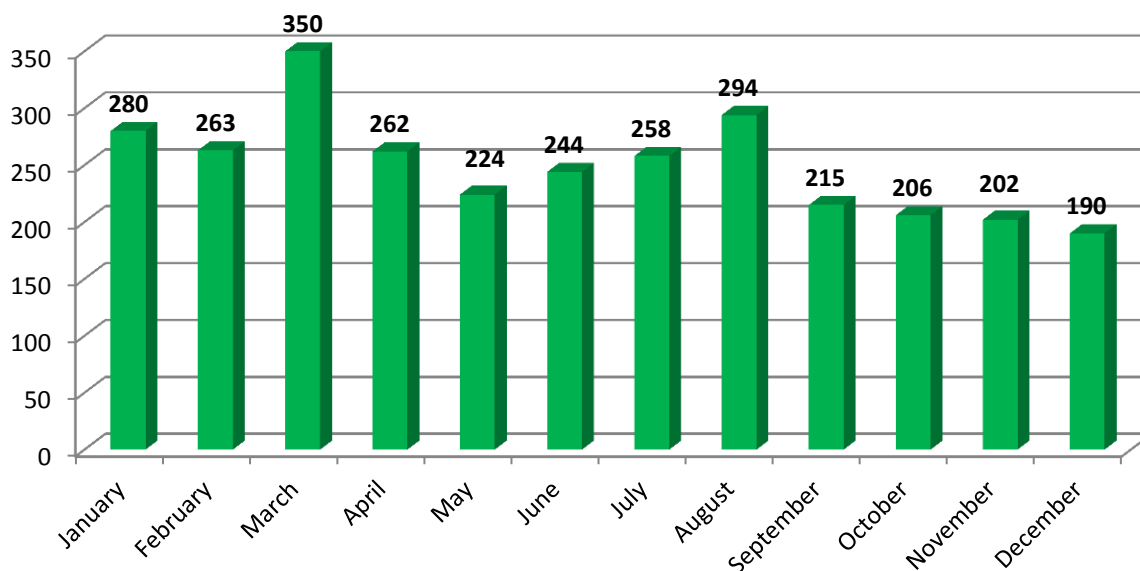
In addition to providing written policy guidance to agencies and conducting seminars on such guidance, OIP also provided direct, one-on-one counseling for agency personnel and other interested parties during 2012, as a further means of encouraging agency compliance with the FOIA. OIP's counseling activities were conducted largely over the telephone by experienced OIP attorneys known to FOIA personnel throughout the Executive Branch as "FOIA Counselors." Through this FOIA Counselor service, OIP provided information, advice, and policy guidance to FOIA personnel governmentwide, as well as to other persons with questions regarding the proper interpretation or implementation of the Act. OIP has established a special telephone line to facilitate its FOIA Counselor service -- (202) 514-3642 (514-FOIA) -- which it publicizes widely. While most of this counseling was conducted by telephone, other options were made available as well. The counseling services provided by OIP during the year are summarized below.

OIP provided FOIA Counselor guidance to agencies on a broad range of FOIA-related subjects, including guidance pertaining to the continued implementation of the President's FOIA Memorandum and the Attorney General's FOIA Guidelines. Most of the FOIA Counselor calls received by OIP involve issues regarding proposed agency responses to initial FOIA requests or administrative appeals, but many are more general anticipatory inquiries regarding agency



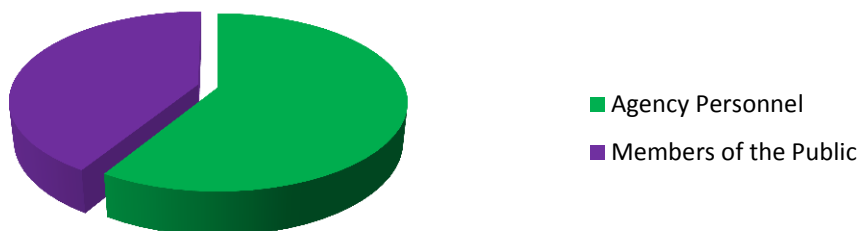
responsibilities and administrative practices under the Act. The Department of Justice specifies that all agencies intending to deny FOIA requests raising novel issues should consult with OIP to the extent practicable. See 28 C.F.R. § 0.23a(b) (2012). OIP has found that such consultations are very valuable in ensuring agency compliance with the Act. Nearly 3,000 requests for guidance were received by OIP through its FOIA Counselor service during 2012.

Calls to the FOIA Counselor by Month in 2012



Approximately forty percent of these calls were from members of the public. Often these individuals contact OIP with questions about how to make a FOIA request or locate a particular document.

Estimated Breakdown of Callers to the FOIA Counselors in 2012



Sometimes a determination is made that a FOIA Counselor inquiry requires more extensive discussion and analysis by OIP attorneys, including supervisory attorneys. On such occasions, OIP often convenes a meeting or teleconference between agency representatives and

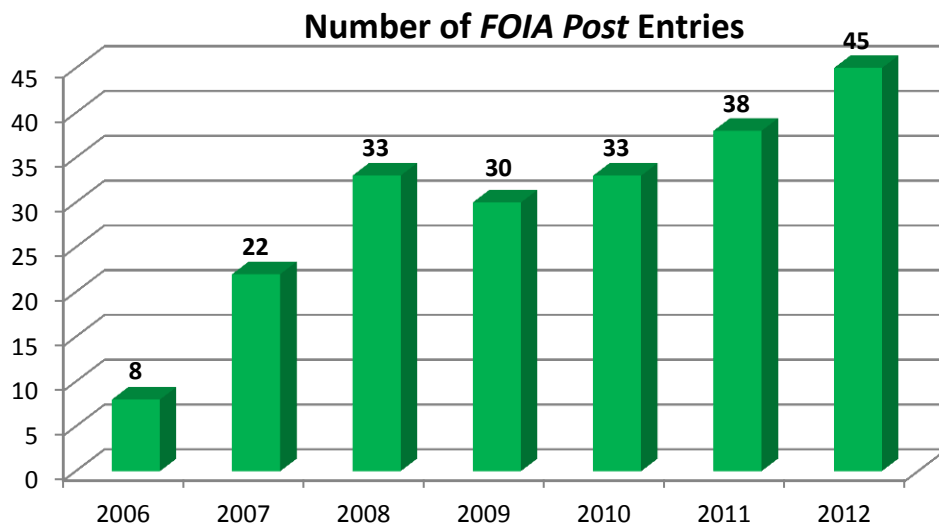


senior OIP staff to thoroughly discuss and resolve all factual, legal, and policy issues related to the matter. OIP conducted similar discussions within the Department of Justice as well.

An additional counseling service provided by OIP pertains to FOIA matters in litigation, where advice and guidance are provided at the request of the Department's litigating divisions. This service involves OIP review of issues and proposed litigation positions in a case from both legal and policy standpoints. Further, OIP is consulted in all instances in which the Department of Justice must decide whether to pursue a FOIA or FOIA-related issue on appeal. OIP is regularly consulted on all FOIA cases, as well as all FOIA-related issues, that are handled by the Office of the Solicitor General.

D. Disseminating Information through *FOIA Post*

In 2012, the Department of Justice enhanced its popular [*FOIA Post*](#), an online and cost-efficient replacement for OIP's longtime [*FOIA Update*](#) newsletter, by converting it into a blog. As the Department's first-ever [*FOIA blog*](#), the new, improved [*FOIA Post*](#) allows for quick transmittal of the most up-to-date FOIA news and information to both the public and government personnel. In establishing this blog, the Department also added a distinct search feature that allows users to use key terms to search through all of OIP's blog posts for any information that is of particular interest. Similar full-text search tools are also provided for the archived articles issued through the original version of [*FOIA Post*](#) and [*FOIA Update*](#).



The new [*FOIA Post*](#) is one of the primary means by which OIP disseminated information concerning the FOIA to government personnel in 2012. [*FOIA Post*](#) continued to make use of links to reference documents and other sources of information and served as an example of the Act's emphasis on the disclosure of agency information to the public in a user-friendly format through use of the internet. As described above, all the various OIP guidance articles issued in 2012 were disseminated to agencies – and made available to the public – on [*FOIA Post*](#). OIP also used [*FOIA Post*](#) to announce several FOIA Requester Roundtables, the issuance of the



abovementioned summaries and assessment of agencies' FOIA administration, meetings with the FOIA Technology Working Group, OIP's joining of Twitter, the instituting of the new quarterly FOIA reporting requirement, and other relevant FOIA news. All training programs and FOIA conferences were likewise publicized on [FOIA Post](#).

Summaries of Court Decisions

In addition to substantive and procedural policy guidance, OIP provides agencies and the public with [detailed summaries](#) of every FOIA case decided in the United States, at both the district court and appellate levels. These summaries are made available on [FOIA Post](#). On June 7, 2012, OIP [announced](#) through [FOIA Post](#) that it would begin posting its summaries of the courts decisions on a weekly basis, rather than each month, to provide agency FOIA professionals and interested members of the public more timely access to this information on significant FOIA decisions.

For every court decision in its summaries, OIP highlighted each FOIA exemption and procedural or litigation-related issue that was discussed in the opinion. Because court decisions play such an important part in the interpretation of the FOIA and its proper administration, OIP provides these summaries to help ensure that all FOIA professionals have ready and current access to the most recently decided court opinions. OIP ensures that these summaries are easy to review and cross-reference. All of the summaries are compiled in one central location in the "[Court Decisions](#)" section of OIP's website, where they are sortable by topic so that agencies and the public can review FOIA case law quickly and comprehensively.

Sunshine Week Activities

Finally, [FOIA Post](#) was used to announce activities held to commemorate Sunshine Week 2012. To mark the third anniversary of the Attorney General's FOIA Guidelines, the Department held a celebration on March 12, 2012, the first day of Sunshine Week. At the celebration, the Attorney General [highlighted](#) a number of the accomplishments achieved by the Department of Justice over the past year and addressed additional transparency initiatives moving forward. Joining the Attorney General during this celebration were the Acting Associate Attorney General and the Director of OIP. Additionally, at the Department's invitation, representatives from the Social Security Administration, Federal Communications Commission, Nuclear Regulatory Commission and Department of Interior also shared their respective agency's success stories over the past year.

"This commitment – and the unprecedented efforts that we've launched to fulfill it – underscores the sacred bond of trust that must always exist between the government and all those we are privileged to serve."

- Attorney General Eric Holder

E. Use of Social Media

In an effort to reach a wider audience and disseminate important FOIA information as soon as practical, during 2012 OIP further expanded the Department's social media presence by



joining [Twitter](#). Through [Twitter](#), OIP has been able to immediately notify interested parties of the Office's activities and the most recent FOIA news. In [announcing the use of Twitter](#) through [FOIA Post](#), OIP noted that "[a]s agencies and offices continue to proactively disclose information online, it is important that the public be made aware of such releases [and that] . . . [s]ocial media offers government offices an efficient way to notify the public of proactive disclosures." OIP also noted that "by utilizing social media, agencies can rapidly convey information to a broad audience, in a timely fashion, keeping with the FOIA's goal of letting the public know what their government is doing."

F. Providing Additional FOIA Reference Materials

In addition to utilizing [FOIA Post](#) to timely disseminate policy guidance and other useful information concerning the FOIA, OIP also creates or makes additional FOIA reference materials available for agencies to use.

Department of Justice Guide to the Freedom of Information Act

The preeminent reference document created by OIP is the [United States Department of Justice Guide to the Freedom of Information Act](#). This publication is a legal treatise on the FOIA and is widely relied on by government personnel as well as members of the public. The [Guide to the FOIA](#) contains an extensive discussion of the case law interpreting the FOIA's procedural requirements, its exemptions and exclusions, as well as litigation-related issues. The [Guide](#) also reflects the President's and Attorney General's Memoranda on the FOIA as well as all the changes made to the FOIA by the OPEN Government Act of 2007. During 2012, OIP worked on revising and issuing the 2013 edition of the [Guide to the FOIA](#) which will reflect recent changes in FOIA law. Building on OIP's commitment of promoting the use of technology with the FOIA, OIP began its transition to a 100% [web-based Guide](#), which provides enhanced search capabilities and direct links to source material. Significantly, this new "living document" will allow OIP to update the [Guide](#) with significant new developments in the FOIA as they occur, without having to wait for a new edition to be published.

Throughout 2012, OIP distributed copies of the 2009 edition of the [Guide to the FOIA](#) to federal agency personnel and other interested parties. OIP also facilitated the wide distribution of the [Guide](#) within the Executive Branch and made it available without cost through the Department of Justice's FOIA training programs. The [Guide to the FOIA](#) was also made available to agencies and to the public through the Government Printing Office. Additionally, to afford electronic access and keyword-search capabilities, OIP continued to maintain a digital copy of the [Guide to the FOIA](#) on the Department's website and in the "[OIP Guidance](#)" section of OIP's website.

Resources on Exemption 3 Statutes

OIP has established an independent section dedicated to Exemption 3 of the FOIA on the [FOIA Resources](#) page of its website. This section is designed to offer resources that will assist agencies in properly processing FOIA requests and aid requesters in understanding the scope of [Exemption 3](#). In 2012, OIP added to this section of its website a chart of all the statutes reported



in agencies' [Fiscal Year 2011 Annual FOIA Reports](#) as used by them in conjunction with Exemption 3. To further assist agencies in properly processing requests and in preparing their Annual FOIA Reports, in 2012 OIP also continued to update its chart of all [the statutes that courts have found to qualify as Exemption 3 statutes](#) under the FOIA. This chart, which includes a description of the material covered by the various statutes and the corresponding case citations, is also posted on the FOIA Resources page of OIP's website.

Centralized Access to all Agency Annual FOIA Reports

Agencies are required to compile and submit to the Attorney General an Annual FOIA Report each year in accordance with 5 U.S.C. § 552(e)(1). In 2012, for the sixth year in a row, OIP completed and posted the [Department's Annual FOIA Report](#) well in advance of the statutory deadline. By completing and publicly posting the [Department's Annual FOIA Report](#) early, OIP continues to serve as an example to other agencies.

As mentioned above, as part of its governmentwide guidance responsibilities, every year OIP reviews each agency's Annual FOIA Report prior to it being posted. Once they are finalized, OIP makes all of the agency Annual FOIA Reports promptly available on its central electronic site. In 2012, OIP continued this practice of reviewing all agencies' Annual FOIA Reports prior to their being posted. This review was conducted in accordance with a [2002 GAO report](#) which encouraged such discretionary OIP review activities and found that they "have resulted in improvements to both the quality of agencies' annual reports and on-line availability of information." A [follow-up GAO study](#) published in 2004 likewise found improvements in agencies' annual reporting due to OIP's governmentwide review efforts.

In accordance with another provision of the FOIA, 5 U.S.C. § 552(e)(4), the Department of Justice in 2012 maintained "[a single electronic access point](#)" for the consolidated availability of the Annual FOIA Reports of all federal agencies. In 2012, OIP posted all agency Annual FOIA Reports in a human-readable and uniform "open" format on its centralized Annual FOIA Report website.

Proactive Disclosures

In keeping with the Attorney General's focus on increasing proactive disclosures, OIP proactively posted a variety of information concerning the FOIA that is useful to both agencies and the public alike on its website. In 2012, OIP continued to update the "[FOIA Resources](#)" section of its website with the [Exemption 3](#) charts discussed above and [digitized copies of the legislative histories of the various amendments to the FOIA](#), as well as Congressional Source Books containing additional legislative material on the Act. Under the "[Court Decisions](#)" section of OIP's website, OIP regularly posted summaries of the new FOIA decisions issued by the federal courts. Significantly, in June 2012, OIP began posting these summaries on a weekly, rather than monthly, basis to allow FOIA professionals and members of the public access to this information even quicker. OIP also continued to update the "[Training](#)" section of its website to notify agency personnel and the public of upcoming FOIA training opportunities and Requester Roundtables. The "[Key Dates and Reporting Requirements](#)" section was also updated throughout [2012 with a calendar of key FOIA events](#), including training sessions, workshops,



and conferences, as well as key deadlines for federal agencies. The calendar is presented both chronologically, by month, and topically.

OIP continued to update its "[FOIA Library](#)" in 2012 by posting FOIA-processed documents such as up-to-date FOIA Logs, the Attorney General's Calendar, the Deputy Attorney General's [Memorandum for U.S. Attorneys Concerning Guidance Regarding the Ogden Memo in Jurisdictions Seeking to Authorize Marijuana for Medical Use](#) and the [Draft Department of Justice White Paper: Lawfulness of a Lethal Operation Directed Against a U.S. Citizen Who Is a Senior Operational Leader of Al-Qa'ida or An Associated Force](#). OIP also proactively posted certain operational documents that are of public interest such as a [Memorandum from the Acting Associate Attorney General and the Counsel to the President to Agency General Counsels and Chief FOIA Officers of Executive Departments and Agencies regarding the Freedom of Information Act](#) and the Attorney General's [Memorandum for all Department of Justice Employees Concerning Election Year Sensitivities](#).

"The President's memorandum instructs agencies to 'use modern technology to inform citizens what is known and done by their Government.' Accordingly, agencies should readily and systematically post information online in advance of any public request."

- Attorney General Eric Holder

As noted above, for additional reference purposes, OIP continued during 2012 to make available on its website all issues of the [original FOIA Post](#), as well as OIP's former newsletter, [FOIA Update](#), in a digital and keyword searchable format.

FOIA Reference Guide

OIP also continued to maintain on the Department's FOIA website an electronic copy of its [Department of Justice Freedom of Information Act Reference Guide](#), which provides the public with information about how to make a request to the Department, describes how the FOIA process works, and contains descriptions of each of the Department's components and the type of records they maintain.

G. Outreach

FOIA Technology Working Group and the Digital-FOIA Pilot Program

During 2012, OIP twice convened the FOIA Technology Working Group to explore the use of technology in improving agencies' FOIA administration. The Technology Working Group serves as a forum for agency personnel to both discuss the application of technological and digital tools to various aspects of FOIA administration and to share best practices in the use of such technologies. In the first of these meetings held in January, the Group discussed the use of advanced technology in FOIA and previewed a variety of ways that technology tools and applications could assist agencies in many aspects of FOIA processing, from facilitating document search and review to creation of shared platforms where multiple offices can view and



comment on a document simultaneously. In the second meeting held in June, the Group discussed the formation of a subcommittee to explore the standardization of agency online FOIA request forms.

As a result of discussions with the Technology Working Group, and as part of the Department of Justice's Open Government Plan version 2.0, in 2012 OIP partnered with the Department's Civil Division on a digital-FOIA pilot program to assess the impact of, and review the business case for, leveraging certain existing technologies to process records responsive to FOIA requests. One of the most common delays in the processing of FOIA requests across the government is the time spent by FOIA personnel searching for, de-duplicating, and conducting initial responsiveness review on records, much of which has traditionally been done manually. By automating these core processing tasks, there is great potential for agencies to substantially improve the efficiency of their FOIA administration.

FOIA.gov

With well over a million visitors since it was launched in 2011, FOIA.gov continues to revolutionize the way in which FOIA data and information is made available to the public. While it was initially a project undertaken by the Department in response to a strong interest by open government groups to have a "dashboard" that illustrates statistics collected from agencies' Annual FOIA Reports, the Department almost immediately began to expand its capabilities and has continued to add new features every year.

As described above, FOIA.gov takes the detailed statistics contained in agency Annual FOIA Reports and displays them graphically. The website allows users to search and sort the data



in any way they want, so that comparisons can be made between agencies and over time. In 2012, the Department added the data from agencies' Fiscal Year 2011 Annual FOIA Reports so that they too can now be sorted and compared. New charts and graphs showed the evolution of key FOIA statistics over the past four fiscal years. During 2012, OIP and the Department also worked on redesigning the "[Reports](#)" page of the website to feature Snapshot Reports of Annual FOIA Report data and the new Quarterly Report data that agencies are now required to provide. FOIA.gov was also updated throughout 2012 with recent FOIA news and spotlights on the new releases agencies have made that are likely to be of interest to public.

FOIA.gov also serves as an educational resource for the public by providing useful information about how the FOIA works, where to make requests, and what to expect through the FOIA process. Explanatory videos are embedded into the website and the site contains a section addressing frequently asked questions as well as a glossary of FOIA terms. The website also provides updated contact information for each agency, including their Chief FOIA Officer and all their FOIA Requester Service Centers and FOIA Public Liaisons. The Department launched yet another feature on FOIA.gov in 2012 by adding hyperlinks to over 100 agency online request forms, including OIP's online portal which allows the public to make and track the status of their requests and administrative appeals. With this added feature, when a requester is on the site and



decides to make a request to an agency with an online request-making capability, he or she may do so directly from FOIA.gov with just a couple "clicks."

In addition to these resources, FOIA.gov offers users a "[Find](#)" feature that allows the public to enter search terms to locate information on any topic across all federal government websites. The search feature captures not just those records posted in agency FOIA Libraries, but also records posted anywhere on an agency's website. This more expansive search capability is particularly significant given the steady stream of information that agencies are proactively making available on their websites. [FOIA.gov's "Find"](#) feature provides an easy way for potential FOIA requesters to first see what information is already available on a topic. This might preclude the need to even make a request in the first instance, or might allow for a more targeted request to be made.

Finally, in keeping with the Department's commitment to making government more transparent and accessible, FOIA.gov was expanded to offer select content in English and Spanish. Individuals with limited English proficiency can now access the [Spanish translations](#) for the "What is a FOIA?" and "Learn" sections of FOIA.gov.

H. Training, Public Presentations, and Briefings

As yet another method for encouraging compliance with the FOIA, OIP held a variety of training programs throughout the year. These programs included continued training on the President's and Attorney General's FOIA Memoranda. During 2012, OIP furnished speakers and workshop instructors for seminars, conferences, individual agency training sessions, and similar programs conducted to promote the proper administration of the FOIA within the Executive Branch. Additionally, OIP conducted presentations aimed at fostering a greater understanding of the Act's administration outside the Executive Branch. This included developing a greater international understanding of the FOIA.

In conjunction with the Department of Justice's National Advocacy Center, OIP conducted numerous FOIA-training programs in 2012, which ranged from half-day introductory sessions for non-FOIA personnel to advanced programs for highly experienced FOIA personnel. OIP's basic two-day training course entitled "The Freedom of Information Act for Attorneys and Access Professionals" was conducted four times and the course entitled "Introduction to the FOIA" was conducted once.

For those agency personnel who already have experience working with the FOIA, in 2012 OIP held an "Advanced Freedom of Information Act Seminar." This seminar provides advanced instruction on selected substantive and procedural topics under the FOIA, including up-to-date policy guidance.

OIP also conducted a "FOIA Litigation Seminar." The seminar, designed for agency attorneys and FOIA personnel, focused on the issues that arise when FOIA requests become the subject of litigation. Notably, the course provided guidance on successful litigation strategy and addressed "Open America" stays and the preparation of [Vaughn](#) indices and declarations.



OIP expanded its training programs in the summer of 2012 with the launching of its Director's Lecture Series. The Director's Lecture Series is designed to provide an opportunity for FOIA professionals to interact directly with the Director of OIP on a range of FOIA topics. In 2012, the Director's Lecture Series included three specialized training sessions: "Focusing on FOIA Fundamentals," "Achieving FOIA Goals," and "Tracking Agency Progress to Implement the FOIA Guidelines."

Recognizing that travel requirements may limit the ability of FOIA personnel to attend training sessions, OIP launched yet another training initiative in 2012, offering video conference training sessions open to all federal employees, with priority given to those outside of the Washington, D.C. area. This use of technology to conduct training is a cost-effective means of reaching a wider audience of federal FOIA professionals.

Also in 2012, OIP teamed with the Office of Government Information Services (OGIS) to hold three training sessions on dispute resolution and customer service skills for FOIA professionals. These training sessions emphasized the value of effective communication with requesters and gave an overview of the communication techniques utilized by dispute resolution specialists.

Twenty-seven professional staff members from OIP gave a total of 283 training presentations during the year, including several training sessions designed to meet the specific FOIA-training needs of individual agencies. Such individualized training sessions were conducted for the Department of Homeland Security, Department of Defense, Central Intelligence Agency, Department of Labor, Department of Energy, Department of Transportation, Environmental Protection Agency, General Services Administration, Department of State, Department of Health and Human Services, and the Office of the Director of National Intelligence. In addition, OIP provided training for components of the Department of Justice. In 2012, approximately 1,600 individuals were trained by OIP sponsored training alone.

Furthermore, OIP continued to reach out to the requester community and members of the public. In 2012, OIP professionals gave training presentations at seminars hosted by the American Society for Access Professionals, an association which includes members of the FOIA requester community. Additionally, OIP hosted four Requester Roundtable events which were open to any interested members of the FOIA community. These events continue to serve as a unique opportunity for the requester community and OIP's FOIA professionals to engage in a dialogue and share ideas for improving FOIA administration.

During 2012, the Director of OIP gave a total of seventy-two presentations at a variety of FOIA-training programs and other forums. In addition to the training programs described above, the Director met with a number of representatives from foreign countries interested in learning about the American experience with open government, particularly in light of the Administration's new FOIA Memoranda.



I. Legislative and Regulatory Proposals

During 2012, OIP reviewed numerous draft or preliminary legislative proposals relating to the FOIA or to information policy more generally. As a result of this review, OIP made recommendations in many instances, most frequently in connection with the technical sufficiency of proposed statutory nondisclosure provisions intended to serve as Exemption 3 statutes under the Act. OIP likewise identified issues and suggested revisions to language contained in proposed FOIA regulations submitted by agencies.

J. Congressional and Compliance Inquiries

In 2012, OIP responded to nineteen congressional inquiries pertaining to FOIA-related matters. OIP also handled nineteen matters from members of the public who had concerns about how the FOIA was being administered at an agency. In response to these compliance inquiries, OIP discussed the issues with the agency involved and, whenever appropriate, made recommendations on the steps needed to address the concern.

LISTS OF FOIA LITIGATION CASES RECEIVED AND DECIDED DURING 2012

In accordance with 5 U.S.C § 552(e)(6), the Department of Justice attaches to this report two separate lists of FOIA litigation cases for 2012. For the first time, these lists will also be posted on OIP's website in a "open" format so that the public may manipulate and sort through the data in accordance with their particular interests.

List of Cases Received in 2012

As required by the statute, the first list contains all of the cases filed as FOIA claims in federal district court during 2012. This information is derived directly from the federal courts' docketing systems through the Public Access to Court Electronic Records ([PACER](#)). According to PACER, in 2012, 333 cases were filed in the federal district courts as FOIA claims. It is important to note, however, that not all claims that are originally filed as FOIA claims remain as such on the court's docket. In many instances a court will determine after a case is filed that the lawsuit does not actually pertain to an agency action under the FOIA. During 2012, OIP observed over fifty cases in which the courts dismissed claims because they were actually not FOIA actions. This can happen, for example, when a requester attempts to file a lawsuit against a state agency or public organization that is not subject to the FOIA.

As a point of reference, during Fiscal Year 2012 the government overall received 651,254 FOIA requests. In comparison to the number of lawsuits filed during Calendar Year 2012, this only amounts to 0.05% of the requests agencies reported receiving in Fiscal Year 2012.



List of Decisions Rendered in 2012

The second list attached to this report contains all of the FOIA cases in which a decision was rendered by the federal courts in 2012. The list was compiled through the [Summary of Court Decisions](#) issued by OIP on a weekly basis and a survey of PACER. The list is organized alphabetically, and as required by Section (e)(6) of the FOIA, contains a description of the disposition in each case, the exemptions (if any) involved, and any costs, fees or penalties.

The list does not include cases that were dismissed as non-FOIA claims (e.g. a case brought against a state agency) or "reverse" FOIA lawsuits, which are actions brought under the Administrative Procedure Act. They do include cases involving the National Labor Relations Board, the Securities and Exchange Commission, the Equal Employment Opportunity Commission, the Tennessee Valley Authority, and the National Railroad Passenger Corporation, all of which, by statutory authority or agreement with the Attorney General, handle FOIA cases in which they are the defendant. Finally, it should be noted that this list of cases may include cases which were listed in previous reports. For example, a case initially decided in 2011, but appealed and affirmed in 2012, would be found on the lists of cases in which a decision was rendered for both 2011 and 2012.

Report on any Notification to the Special Counsel

During 2012, the United States courts made no written findings pursuant to 5 U.S.C. § 552(a)(4)(F)(i). Accordingly, no notification to the Special Counsel was necessary.