



UNITED STATES DEPARTMENT *of* JUSTICE

Overview of the Freedom of Information Act, President Obama's FOIA Memorandum and Attorney General Holder's FOIA Guidelines

Achieving a New Era of Open Government



The Freedom of Information Act

July 4, 1966

President Lyndon Johnson signed into law the Freedom of Information Act (FOIA)



The Freedom of Information Act

FOIA provides any person with a right of access to federal agency records unless those records are protected from disclosure under the law



The Freedom of Information Act

United States Supreme Court:

“The basic purpose of [the Freedom of Information Act] is to ensure an informed citizenry, vital to the functioning of a democratic society, needed to check against corruption and to hold the governors accountable to the governed.”



The Freedom of Information Act

FOIA is often described as a means
for the public to know
“what their **Government is up to**”



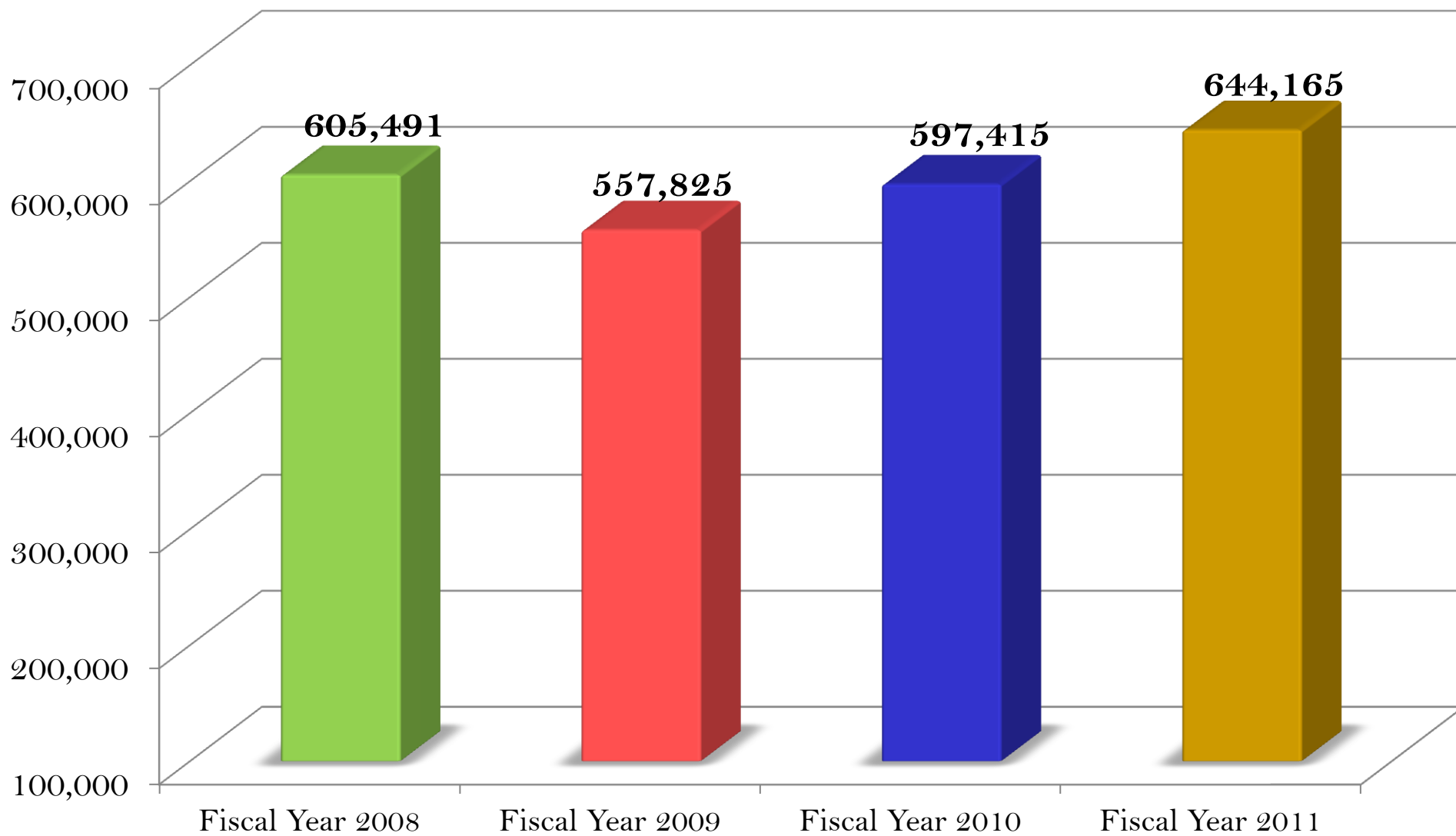
The Freedom of Information Act

- Freedom of Information laws are spreading around the world
- Sweden had first such law adopted in 1766



United States FOIA Statistics

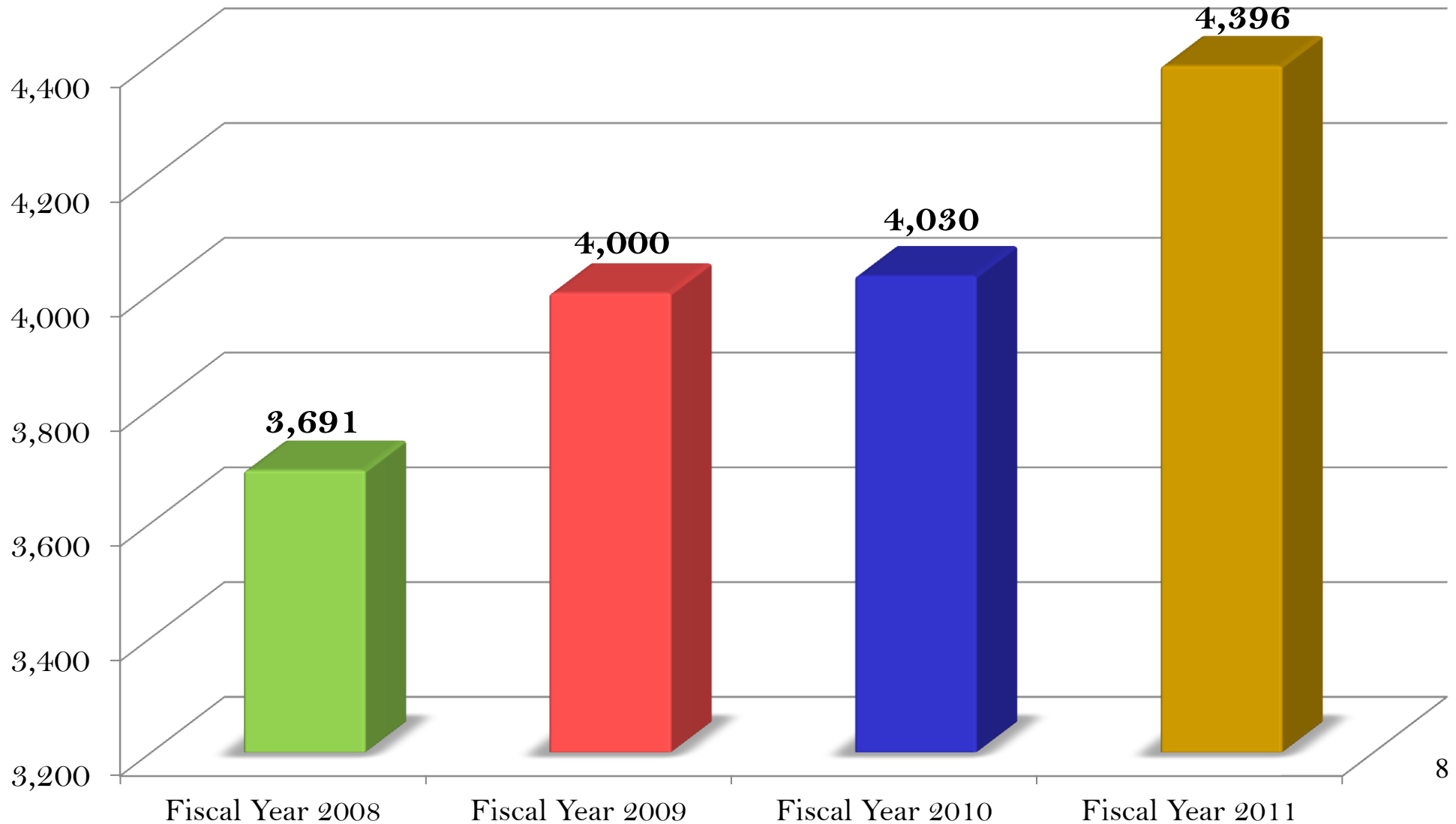
Total Number of Requests Received





United States FOIA Statistics

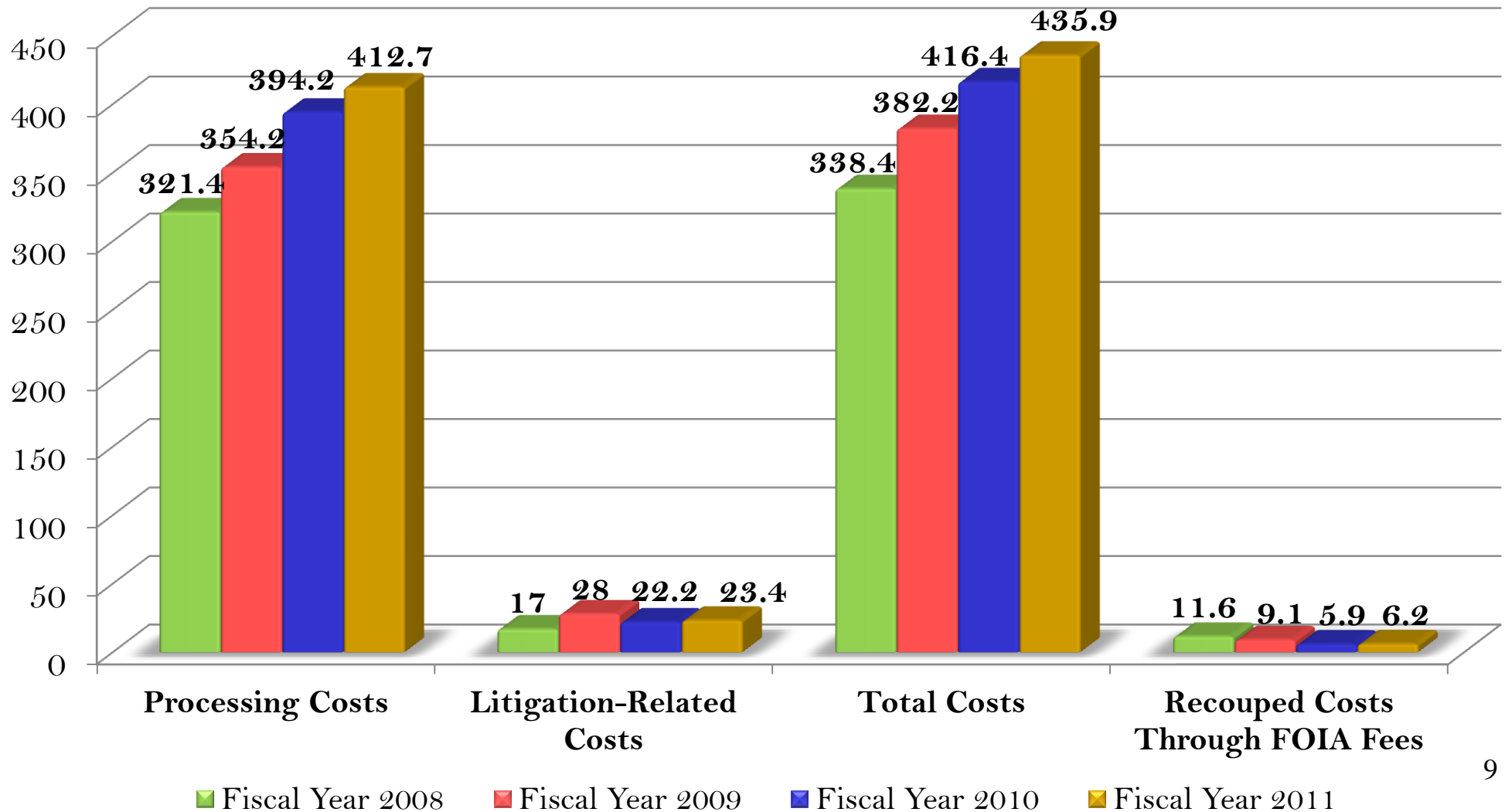
Number of "Full-Time FOIA Staff" Across the Government





United States FOIA Statistics

Approximate Cost of all FOIA Related Activities
(in millions of dollars)





The Freedom of Information Act

FOIA applies to the Executive
Branch of the federal government



The Freedom of Information Act

States have their own access laws
for state records



The Freedom of Information Act



Basic Structure

- Subsection (a) – The FOIA Disclosure Provisions
- Subsection (b) – The FOIA Exemptions
- Subsection (c) – The Law Enforcement Exclusions
- Subsection (d) – FOIA & Congressional Access
- Subsection (e) – FOIA Annual Report Req.



The Freedom of Information Act

FOIA requires certain automatic disclosures, including records that are frequently requested under the FOIA.



The Freedom of Information Act

FOIA provides a right to request federal agency records.



Time Limits for Responding to a Request

- Basic time period: twenty working days
- In “unusual circumstances,” time period may be extended by written notice



The Freedom of Information Act

FOIA provides for expedited processing of requests in certain instances



The Freedom of Information Act

FOIA provides for charging
of fees



The Freedom of Information Act

- FOIA establishes three categories of requesters and three types of fees
- Different fees are assessed based on requester category



The Freedom of Information Act

Adequacy of Search for FOIA Request

Reasonably calculated to uncover all relevant documents



Reviewing Records for Disclosure

Congress sought to create a workable balance between “right of the public to know and need of the government” to protect certain information.



New Era of Open Government

Congress included nine exemptions in the FOIA in order to protect certain information from disclosure.



New Era of Open Government

Exemptions protect interests such as national security, personal privacy, privileged communications, and law enforcement.



President Obama's Freedom of Information Act Memorandum

January 21, 2009



President Obama's FOIA Memorandum

“A democracy requires
accountability and accountability
requires transparency.”



President Obama's FOIA Memorandum

FOIA should be administered with a clear presumption: **“In the face of doubt, openness prevails.”**



President Obama's FOIA Memorandum

Information should not be kept confidential merely because:

- officials might be embarrassed,
- errors and failures might be revealed, or
- because of speculative or abstract fears



Attorney General Holder's Freedom of Information Act Guidelines

March 19, 2009



Attorney General Holder's FOIA Guidelines

The Attorney General's FOIA Guidelines were written to underscore our nation's **“fundamental commitment to open government.”**



New Era of Open Government

When applying FOIA exemptions under Attorney General Holder's FOIA Guidelines, agencies must consider whether they reasonably foresee that disclosure would harm an interest protected by one of the exemptions.



New Era of Open Government

In the absence of such harm, agencies are encouraged to make a disclosure of the information in keeping with the President's call for greater transparency.



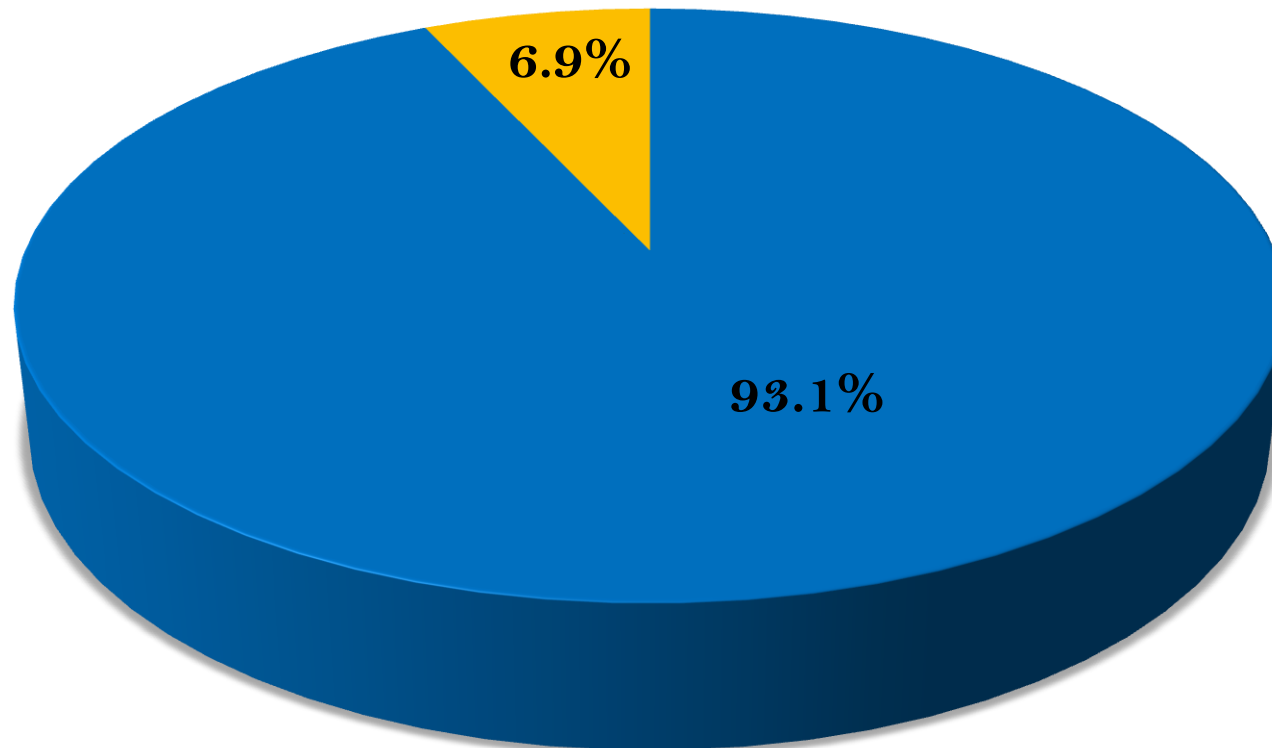
Attorney General Holder's FOIA Guidelines

The Attorney General “strongly encourage[s] agencies to make discretionary disclosures of information.”



United States FOIA Statistics

Disposition of Fiscal Year 2011 Requests Processed for Exemption Applicability



■ Release in Full or in Part

■ Denied in Full Based on FOIA Exemptions



Attorney General Holder's FOIA Guidelines

The Attorney General also comprehensively addresses a range of principles applicable to establishing an effective system for improving transparency.



Attorney General Holder's FOIA Guidelines

The Attorney General highlights the key roles played by both the agency Chief FOIA Officers and the FOIA professionals in each agency.



Attorney General Holder's FOIA Guidelines

Chief FOIA Officers:

- Senior official at Assistant Secretary or higher level
- agency-wide responsibility for “efficient and appropriate compliance” with FOIA



Attorney General Holder's FOIA Guidelines

Chief FOIA Officers:

- monitor compliance and keep agency head and Attorney General informed
- recommend “adjustments to agency practices, policies, personnel, and funding as may be necessary”
- report to the Attorney General on agency's performance



Attorney General Holder's FOIA Guidelines

Chief FOIA Officers designate
FOIA Public Liaisons



Attorney General Holder's FOIA Guidelines

FOIA Public Liaisons:

- serve as supervisory officials to whom requesters can raise concerns after initial response from FOIA Requester Service Center

- assist in:
 - reducing delays
 - increasing transparency and understanding of status of requests
 - resolving disputes



Working with Requesters

“Unnecessary bureaucratic hurdles have no place in the ‘new era of open Government’ that the President has proclaimed.”

Attorney General Holder
March 19, 2009



Proactive Releases

Agencies need to work
“proactively” to post information
online in advance of FOIA
requests

Example: FBI’s “vault”



Improving FOIA Administration

Utilize technology to improve
FOIA administration

DOJ FOIA Information Technology
Working Group



The Freedom of Information Act

All Three Branches of
Government Have Role in FOIA



The Freedom of Information Act

Congress:

- Enacted FOIA in 1966 after decade of debate
- Amended FOIA periodically over the years



The Freedom of Information Act

Legislative Amendments to the FOIA:

- 1974: narrowed law enforcement and national security amendments and broadened procedural provisions, such as requiring segregation
- 1976: narrowed Exemption 3
- 1978 and 1984: technical amendments
- 1986: broadened law enforcement protection and created new fee and fee waiver standards
- 1996: addressed electronic records and proactive disclosures



The Freedom of Information Act

Legislative Amendments to the FOIA:

- 2002: precluded intelligence agencies from responding to requests made by foreign governments or international governmental organizations
- 2007: addressed procedural issues such as tolling, document marking, recovery of attorney fees, tracking requests, providing status updates and created new Office of Government Information Services (OGIS) within NARA
- 2009: substantively changed Exemption 3, which pertains to matters specifically exempted from release by statute ⁴⁶



The Freedom of Information Act

- Congress holds FOIA oversight hearings
- GAO conducts periodic audits of agencies



The Freedom of Information Act

Judicial Branch:

- Courts issue opinions in FOIA cases
- Out of approximately 600,000 requests each year, 280 go to litigation
- Under Attorney General Holder's FOIA Guidelines, agencies will now be defended "only if the agency reasonably foresees that disclosure would harm an interest protected by one of the statutory exemptions, or disclosure is prohibited by law."



The Freedom of Information Act

Supreme Court has decided over thirty FOIA cases:

- Forsham (agency records)
- Reporters Committee (privacy)
- Grolier (attorney work product privilege)
- Dow Jones (law enforcement threshold)
- Milner (internal personnel rules and procedures)



The Freedom of Information Act

Executive Branch:

- responsible for implementing FOIA
- ninety-nine agencies currently subject to the FOIA



*Role of the United States
Department of Justice
In FOIA Administration*

- Encouraging proper administration of FOIA
- Oversight of agency compliance



OIP encourages agencies
to properly administer the
FOIA in a variety of ways.



Responsibilities of the Department of Justice

Department of Justice prepares legal treatise analyzing court decisions interpreting the FOIA



*United States Department of Justice
Guide to the Freedom of Information Act*



Responsibilities of the Department of Justice

Department of Justice develops and issues FOIA policy guidance to all agencies

Home » Agencies » OIP » FOIA Guidance and Resources Printer Friendly

Office of Information Policy Home

About the Office

Meet the Director

FOIA Guidance and Resources

DOJ Guide to the FOIA

Court Decisions

Training

DOJ Reference Guide

DOJ FOIA Regulations

Key Dates and Reporting Requirements

Reports

Make a FOIA Request to DOJ

Find a FOIA Contact at DOJ

Submit and Track a Request

OIP FOIA

Contact the Office

Sobre la Oficina de Políticas de Información

FOIA GUIDANCE AND RESOURCES

[OIP Guidance](#) | [FOIA Counselor Service](#) | [FOIA Statute](#) | [Exemption 3 Statutes](#) | [FOIA Fee Guidelines](#)

OIP GUIDANCE

The FOIA is constantly evolving as court decisions, Presidential FOIA Memoranda, and new Attorney General FOIA Guidelines are issued, and as Congress passes statutory amendments to the law.

In keeping with its statutory authority to encourage agency compliance with the FOIA, the OIP regularly develops and issues policy guidance to all agencies on proper implementation of the FOIA.

In addition, guidance is issued on a wide range of legal and procedural issues involving the FOIA to improve administration of the law, to promote best practices, and to increase transparency.

2012 | 2011 | 2010 | 2009 | 2008 | [Archived Guidance](#)

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FOIA COUNSELOR SERVICE

OIP provides individualized advice to agency personnel and other interested parties regarding any FOIA-related issue. You may contact an OIP FOIA Counselor at (202) 514-FOIA (3642)

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TRAINING AND OUTREACH

NEXT EVENTS

June 6, 2012
Training: [FOIA Administrative Forum](#) (Washington, DC)

July 17-18, 2012
Training: [The Freedom of Information Act for Attorneys and Access Professionals](#) (Washington, DC)

For a full list of upcoming events, visit our [Key Dates](#) page.

FOIA LIBRARY

FOIA.GOV



Responsibilities of the Department of Justice

Department of Justice provides FOIA training to all agencies

Home » Agencies » OIP » FOIA Resources » Training Printer Friendly

Office of Information Policy Home

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Finding a FOIA Contact at DOJ

OIP FOIA

Contact the Office

TRAINING ✉

OIP regularly conducts training sessions throughout the year on all aspects of the FOIA and on a wide variety of FOIA related topics. Here you will find descriptions and dates of various training seminars, meetings, and events offered by OIP, including **yearly training** offered in connection with the Office of Legal Education, **specialized training sessions**, as well as **public training events, meetings, and town halls**. Additionally, **training materials** such as slide presentations and handouts accompanying OIP's most popular programs are provided below. Feel free to **contact OIP** if your agency is interested in specialized FOIA training.

YEARLY TRAINING COURSES OFFERED BY OIP AND OLE

The Freedom of Information Act for Attorneys and Access Professionals

This two-day program is designed for attorneys, FOIA specialists, and other FOIA professionals with limited previous experience working with the FOIA who are now or soon will be working extensively with the Act. This program provides an overview of the FOIA including a discussion of the **President's FOIA Memorandum** and the **Attorney General's FOIA Guidelines**. This course also provides specialized workshops on the various FOIA exemptions and on procedural issues, as well as a discussion on proactive disclosures and the FOIA fee and fee waiver requirements.

December 5-6, 2011 (Washington, DC)
 February 28-29, 2012 (Washington, DC)
 May 8-9, 2012 (Washington, DC)
 July 17-18, 2012 (Washington, DC)
 August 14-15, 2012 (Seattle, WA)

Advanced Freedom of Information Act Seminar

This seminar is designed for FOIA professionals and legal advisors of all

GENERAL INFORMATION
OFFICE OF
INFORMATION POLICY

LEADERSHIP

Melanie Ann Pustay
Director

CONTACT

Office of Information Policy
(202) 514-FOIA (3642)

FOIA LIBRARY

FOIA.GOV

TRAINING AND OUTREACH

NEXT EVENTS



Responsibilities of the Department of Justice

FOIA Counselor Service
(202) 514-FOIA

Office of Information Policy's Website:
<http://www.justice.gov/oip/>



Understanding the FOIA

Sources for Guidance in Applying the FOIA

- Statute itself
- Judicial Opinions
- OIP Guidance
- Agency Regulations
- President Obama's FOIA Memorandum of January 21, 2009
- Attorney General Holder's FOIA Guidelines



The Department of Justice
has oversight of agency
FOIA compliance.



Agency Accountability

Chief FOIA Officer Reports

Chief FOIA Officers report each year to the Department of Justice on the steps “taken to improve FOIA operations and facilitate information disclosure at their agencies.”



Agency Accountability

Annual FOIA Reports

Agencies file each year with the Department of Justice an Annual FOIA Report with detailed statistics on numbers and disposition of FOIA requests, time to process, costs incurred.



Department of Justice compiles
assessment of agency performance.



Dept.	Section I: Applying the Presumption of Openness				Section II: Effective Systems for Responding to Requests		Section III: Increasing Proactive Disclosures (PDs)			Section IV: Utilization of Technology (Tech.)			Section V: Reducing Backlogs & Improving Timeliness in Responding to Requests (Req.) and Appeals (App.)					
	Conducted or Attended Training	Modified Internal Guidance	Increase in Full/Partial Disclosures		Sufficient IT Support	Steps Taken to Assess if there is Adequate Staffing	Added New Material to Website	Has System to Routinely Identify PDs	Uses Social Media	Tech. Use Increased, or is at 100%, for Receipt (R), Tracking (T) & Processing (P):			Satisfied with or Taking Steps to Improve Tech. for Annual Report Prep.	Decrease or Increase in Backlogged Req./App.		Closed 10 Oldest Rep./App.	CFO Involved	
			R	T						P								
USDA	●	●	●	●	●	●	●	●	●	●	●	●	●	●	●	●	●	●
DOD	●	●	●	●	●	●	●	●	●	●	●	●	●	●	●	●	●	●
HHS	●	●	●	●	●	●	●	●	●	●	●	●	●	●	●	●	●	●
DHS	●	●	●	●	●	●	●	●	●	●	●	●	●	●	●	●	●	●
HUD	●	●	●	●	●	●	●	●	●	●	●	●	●	●	●	●	●	●
DOI	●	●	●	●	●	●	●	●	●	●	●	●	●	●	●	●	●	●
DOJ	●	●	●	●	●	●	●	●	●	●	●	●	●	●	●	●	●	●
State	●	●	●	●	●	●	●	●	●	●	●	●	●	●	●	●	●	●
Treasury	●	●	●	●	●	●	●	●	●	●	●	●	●	●	●	●	●	●
DOT	●	●	●	●	●	●	●	●	●	●	●	●	●	●	●	●	●	●
VA	●	●	●	●	●	●	●	●	●	●	●	●	●	●	●	●	●	●



FOIA.Gov

Department of Justice website
containing governmentwide FOIA
statistics and information.



FOIA.Gov

➤ Learn

➤ Measure

➤ Find



FOIA.Gov



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News Glossary FAQs en Español Feedback FOIA Contacts

Home Data Reports Find Learn



What is FOIA?

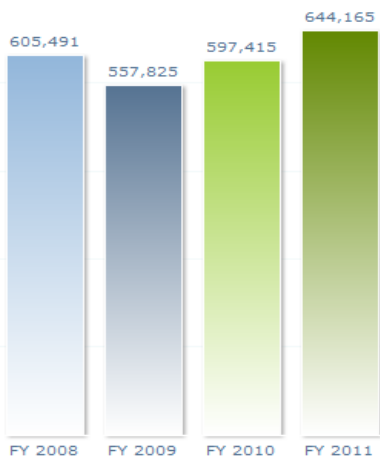
The Freedom of Information Act (FOIA) is a law that gives you the right to access information from the federal government. It is often described as the law that keeps citizens in the know about their government.

LEARN ABOUT FOIA

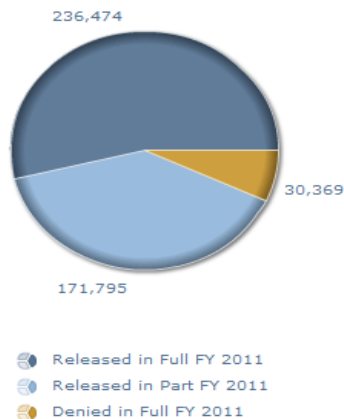
EXPLORE FOIA DATA

FOIA DATA AT A GLANCE - FY 2008 through FY 2011

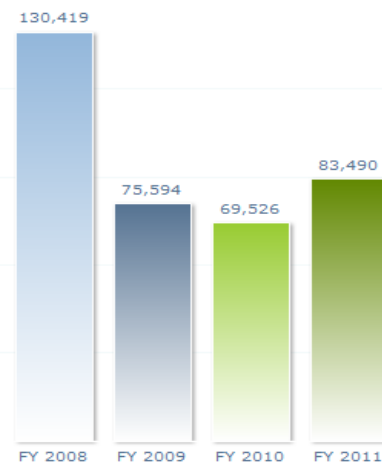
Requests Received



Disposition of Requests



Backlog



What Do These Charts Mean?



FOIA.Gov

- Contains educational material on the FOIA
- Videos on frequently asked questions
- FOIA Spotlights
- Agency contact information



FOIA.Gov

Home

Data

Reports

Find

Learn

MAKE A REQUEST

What is FOIA?

How to Make a FOIA Request

Where to Make a FOIA Request

Open Government

Frequently Asked Questions

FOIA en Español

Department of Justice

Office of the Attorney General

FOIA Contact: To make a FOIA request to Office of the Attorney General please send request to:

Carmen L. Mallon

Chief of Staff, Office of Information Policy

Suite 11050

1425 New York Avenue, NW

Washington, DC 20530-0001

(202) 514-3642 (Telephone)

(202) 514-1009 (Fax)

DOJ.OIP.Initial.Requests@usdoj.gov (Request via Email)

FOIA Requester Service Center: Phone: (202) 616-5459

FOIA Public Liaison: Laurie A. Day, Phone: (202) 514-3642

Website: <http://www.justice.gov/ag/foia.htm>

Online Request Form: <http://www.justice.gov/oip/oip-request.html>

Print Selected Office Print All Offices



Chief FOIA Officer: Tony West, Acting Associate Attorney General

What do these FOIA terms mean?



The Freedom of Information Act

Forty-six years ago, the FOIA was signed into law

Today it is a vital part of our democracy