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Description of document:	Defense Intelligence Agency (DIA) Records Regarding Freedom of Information Act (FOIA) Backlog 2017-2020
Requested date:	02-September-2015
Release date:	04-June-2021
Posted date:	20-September-2021
Source of document:	Defense Intelligence Agency ATTN: FAC2C (FOIA) 7400 Pentagon Washington, DC 20301-7400 Email: <a href="mailto:foia1@dodiis.mil">foia1@dodiis.mil</a> <a href="#">FOIA Request Form</a>

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## DEFENSE INTELLIGENCE AGENCY

WASHINGTON, D.C. 20340-5100



FAC-2C/FOIA

June 04, 2021

This responds to your Freedom of Information Act (FOIA) request, dated September 02, 2015 that you submitted to the Defense Intelligence Agency (DIA) for information requesting a copy of any and all DIA memos or reports concerning the status of the DIA FOIA backlog, and plans for addressing the backlog, and plans for processing the oldest pending requests, and records describing plans for how the backlog is going to be reduced. Requesting any records describing the degree of success in tackling the ten oldest pending DIA FOIA requests and FOIA appeals.

I apologize for the delay in responding to your request. DIA continues its efforts to eliminate the large backlog of pending FOIA requests. In order to properly respond, it was necessary to consult with another office within the agency.

A search of DIA's systems of records located (9) documents (75 pages) responsive to your request.

Upon review, I have determined that some portions of (7) documents (36 pages) must be withheld in part from disclosure pursuant to the FOIA. The withheld portions are exempt from release pursuant to Exemptions 3 and 6 of the FOIA, 5 U.S.C. § 552 (b)(3) and (b)(6). Exemption 3 applies to information specifically exempted by a statute establishing particular criteria for withholding. The applicable statutes are 10 U.S.C. § 424 and 50 U.S.C. § 3024(i). Statute 10 U.S.C. § 424 protects the identity of DIA employees, the organizational structure of the agency, and any function of DIA. Statute 50 U.S.C. § 3024(i) protects intelligence sources and methods. Exemption 6 applies to information which if released would constitute an unwarranted invasion of the personal privacy of other individuals.

Finally, I have determined that the remaining (2) documents (39 pages) are appropriate for release in full. DIA has not withheld any reasonably segregable non-exempt portions of the records.

If you are not satisfied with my response to your request, you may contact the DIA FOIA Requester Service Center, as well as our FOIA Public Liaison at 301-394-5587.

Additionally, you may contact the Office of Government Information Services (OGIS) at the National Archives and Records Administration to inquire about the FOIA mediation services they offer. You may contact OGIS by email at [ogis@nara.gov](mailto:ogis@nara.gov); telephone at 202-741-5770, toll

free at 1-877-684-6448 or facsimile at 202-741-5769; or you may mail them at the following address:

Office of Government Information Services  
National Archives and Records Administration  
8601 Adelphi Road-OGIS  
College Park, MD 20740-6001

You may also exercise your right to file an administrative appeal by writing to the address below and referring to case number FOIA-00515-2015. Your appeal must be postmarked no later than 90 days after the date of this letter.

Defense Intelligence Agency  
7400 Pentagon  
ATTN: FAC-2C (FOIA)  
Washington, D.C. 20301-7400

Sincerely,

(for)



Steven W. Tumiski  
Chief, Records Management and Information Services

(9) Enclosures

- Report INS-2018-001
- U/19-0100/CE
- Director's Read Aloud
- Initiatives and Cases Update
- DIA FOIA Backlog Reduction Improvement Plan (2017)
- Exec. Sum. FOIA Program and Backlog Status as of 20SEP2020
- Email – FY19 FOIA case results/backlog – FY20 challenge!
- DIA FOIA Backlog Reduction Improvement Plan
- DIA FOIA Backlog Reduction Improvement Plan FY19



**DEFENSE INTELLIGENCE AGENCY**

WASHINGTON, D.C. 20340-5100



FAC-2C

June 04, 2021

This responds to your Freedom of Information Act (FOIA) request, dated September 02, 2015 that you submitted to the Defense Intelligence Agency (DIA) for information requesting a copy of all requests by the DIA FOIA Office for increased resources to handle the longstanding FOIA request and administrative appeal backlogs.

I apologize for the delay in responding to your request. DIA continues its efforts to eliminate the large backlog of pending FOIA requests. In order to properly respond, it was necessary to consult with another office within the agency.

A search of DIA's systems of records located (9) documents (75 pages) responsive to your request.

Upon review, I have determined that some portions of (7) documents (36 pages) must be withheld in part from disclosure pursuant to the FOIA. The withheld portions are exempt from release pursuant to Exemptions 3 and 6 of the FOIA, 5 U.S.C. § 552 (b)(3) and (b)(6). Exemption 3 applies to information specifically exempted by a statute establishing particular criteria for withholding. The applicable statutes are 10 U.S.C. § 424 and 50 U.S.C. § 3024(i). Statute 10 U.S.C. § 424 protects the identity of DIA employees, the organizational structure of the agency, and any function of DIA. Statute 50 U.S.C. § 3024(i) protects intelligence sources and methods. Exemption 6 applies to information which if released would constitute an unwarranted invasion of the personal privacy of other individuals.

Finally, I have determined that the remaining (2) documents (39 pages) are appropriate for release in full. DIA has not withheld any reasonably segregable non-exempt portions of the records.

If you are not satisfied with my response to your request, you may contact the DIA FOIA Requester Service Center, as well as our FOIA Public Liaison at 301-394-5587.

Additionally, you may contact the Office of Government Information Services (OGIS) at the National Archives and Records Administration to inquire about the FOIA mediation services they offer. You may contact OGIS by email at [ogis@nara.gov](mailto:ogis@nara.gov); telephone at 202-741-5770, toll free at 1-877-684-6448 or facsimile at 202-741-5769; or you may mail them at the following address:


Office of Government Information Services  
National Archives and Records Administration  
8601 Adelphi Road-OGIS  
College Park, MD 20740-6001

You may also exercise your right to file an administrative appeal by writing to the address below and referring to case number FOIA-00160-2016. Your appeal must be postmarked no later than 90 days after the date of this letter.

Defense Intelligence Agency  
7400 Pentagon  
ATTN: FAC-2C (FOIA)  
Washington, D.C. 20301-7400

Sincerely,

(for)



Steven W. Tumiski  
Chief, Records Management and Information Services

(9) Enclosures

- Report INS-2018-001
- U/19-0100/CE
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- DIA FOIA Backlog Reduction Improvement Plan FY19



## DEFENSE INTELLIGENCE AGENCY

WASHINGTON, D.C. 20340-5100



U-19-0100/CE

FEB 27 2019

To: Office of the Inspector General of the Intelligence Community

Subject: Response to Recommendations Assessment of Intelligence Community Freedom of Information Act Programs

Reference: Assessment of IC Freedom of Information Act (FOIA) Programs, Report INS-2018-001, September 28, 2019

1. In response to the subject report, the Defense Intelligence Agency (DIA) has developed a plan that addresses the report's three recommendations to DIA for improving the Agency's Freedom of Information Act (FOIA) program:

- a. Recommendation 6: Complete and implement a formal FOIA case backlog reduction plan:
  - Adjust internal processes to enable greater focus on subject matter expert's and quality control reviews that historically have contributed to the DIA's backlog.
  - Strengthen DIA's cadre of FOIA officers by filling vacancies and leveraging available funding for contractor support.
  - Identify and enact available solutions to strengthen information governance across DIA and improve how DIA information is managed during its life cycle.
- b. Recommendation 7: Collaborate with the Office of the Director of National Intelligence (ODNI) to develop a FOIA consultation plan:
  - Continue collaboration with the Department of Defense (DoD) and ODNI FOIA offices to identify and enact common solutions that expedite coordination across the DoD and the Intelligence Community.
- c. Recommendation 9: Collaborate with the DoD chief FOIA officer to develop improvements in the annual reports process.
  - Apply greater emphasis toward the oversight of key program performance indicators to enhance program advocacy.

(b)(3)  
10 U.S.C 424

2. The DIA point of contact for this matter is Mr. Brian Jenkins, Office of Facilities & Services. [redacted]

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## Director's Read Ahead

(U) **Meeting Title/Subject:** DIA Freedom of Information Act (FOIA) Program Overview

(U) **Date, Time, and Location:** 22 July 2020, TBD.

(U) **Purpose of Meeting:** Inform Director, DIA, on the FOIA program's status and program improvement initiatives.

(U) **Decision(s) to be Made:** Not Applicable.

(U) **Expectation of DR:** Director will gain a more comprehensive understanding of DIA's FOIA program, its execution, associated challenges, and improvement initiatives.

(U) **Elements Present/Attendees** [redacted] Director, Mission Services, Mr. David McAuley, Deputy Director, Mission Services [redacted] Director, Office of Facilities and Services, [redacted] Deputy Director, Office of Facilities and Services, Mr. Brian Jenkins, Chief, Facilities Services Division, Mr. Steven Tumiski, Chief, Records Management and Information Services Branch [redacted] Office of the General Counsel.

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(U) **Bottom Line:** This discussion will inform the Director about DIA's FOIA program, its status, including numbers of requests backlogged and in litigation, execution, associated challenges, and improvement initiatives. The meeting request was predicated by the Director's interest in more information about the FOIA program due to an early May 2020 request for a four month stay in a FOIA litigation due to reduced FOIA processing capabilities in COVID-19 environment, which the court granted on 9 May.

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USC 424

(U) **Background:** COVID-19 has severely impacted the DIA FOIA program, especially in litigations. The FOIA office currently has minimal functionality, to include the public-facing FOIA Requester Service Center. DIA has carried a significant FOIA case backlog for at least four years, a circumstance ODNI cited in the 2018 IC IG's report on FOIA programs and is generally applicable to the entire IC. MS [redacted] implemented a FOIA Backlog Improvement Plan in FY2019 that identified short-, medium-, and long-term objectives to reduce the backlog. There has been considerable progress on most of the short- and mid-term objectives, but progress slowed due to COVID-19 personnel impacts and the relocation of the entire FOIA office from DLOC to MS2 during March 2020.

(U) **Main Issues:**

1. (U) **Executive Summary:** DIA backlog has exceeded the IC standard of no more than 1,000 FOIA cases since 2016 (the current backlog is 2,015 cases). Additionally, DIA is a Federal Court litigation defendant in 27 of these cases. DIA's FOIA backlog challenges

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and number of litigation cases are not unique; the situation is generally similar across the IC, as cited in the 2018 IC IG's report on FOIA programs.

2. (U) Contributing factors to the backlog include: (1) a lack of control over the number of FOIA requests that are received from the public or referred from other government agencies, (2) the complexity of FOIA requests (some cases requiring review of up to 100,000 pages that take years to complete), (3) a legacy of paper-based processing for all cases prior to changes initiated in FY2019 (and a continuing mandate to accept paper-based requests), (4) pre-FY2019 FOIA office internal business processes and personnel management inefficiencies resulting in each of the 24 current FOIA officers being responsible for an average of 84 cases, (5) complex, frequently multi-year, collaboration dependencies involving whole of government reviews of multiple respective agencies' source documents that are cited in DIA all-source products, (6) the majority of FOIA officers (b)(6) are high-risk under COVID-19 and therefore unable to access classified documents and process cases.
3. (U) In late 2018, new FOIA office leadership conducted an analysis of the branch's missions, business processes, and functions. This approach included one-on-one and group discussions with all FOIA officers and meetings with both internal DIA partners (such as DI and DO, who represent 80% of the internal FOIA review requirements) and external federal partners (such as DoD OSD, ODNI, CIA, National Archives and Records Administration, and DoJ) to collect data on the program and identify problems. Based on the analysis results, leadership developed a "FOIA Backlog Reduction Improvement Plan" in February 2019. Key initiatives included:
  - a. Establishing a FOIA Case Officer program: the former process was sequential, with various officers working a specific step in processing a case and then handing the case to another officer to work the next step, which was inefficient. The new approach meant a FOIA officer owned the entire life cycle of a case, from start to finish, providing continuity, expertise, and 'ownership' responsibility.
  - b. Embedding senior FOIA officers in DI and DO: DI and DO, who review 80% of the relevant FOIA request internal DIA documentation to determine declassification and recommended reasons for release or non-release, were frequently confused about how to conduct their FOIA reviews. The response was to embed one GG-14 senior FOIA officer, each, with both DI and DO headquarters staff, to provide advice on FOIA reviews.
  - c. Providing clear prioritization on FOIA case processing: in the past, there was no written guidance on prioritization of processing cases, frequently causing confusion for FOIA officers on which cases they should focus on first. FOIA leadership established the following priority: cases in litigation, cases receiving Congressional or other federal-level inquiries, 10 oldest cases (revolving), and then earliest cases received.

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(U) All three key initiatives initially showed measurable progress by 1<sup>st</sup> QTR FY2020. The case officer program resulted in the first-ever 100% inventory of cases and full distribution of case loads to all 24 FOIA officers, along with delivery of internally developed training on how to complete a FOIA case for each officer. The embed program increased DI and DO responsiveness rates to request for reviews from more than a week to no more than 2 days upon receipt (the reviews themselves can still take a couple of years, depending on number and length of relevant documents and the overall operational workload of the DIA officer working the review). Additionally, the embeds' guidance and training of DI and DO officers also resulted in reviews that were more complete and accurate than previous to the embeds, resulting in hundreds of hours of recovered personnel time for the FOIA office as a whole. Finally, prioritization enabled the completion of nearly 250 stagnant cases within a two-month surge period. However, as stated earlier, the COVID-19 impacts and the relocation from [REDACTED] resulted in slowing the progress of these initiatives in 2<sup>nd</sup> and 3<sup>rd</sup> QTR 2020, but resumption of full operations in Phase III of reconstitution will enable FOIA office to continue the trend of program improvement.

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4. (U) DIA Will Likely Soon Face Immutable Deadlines in FOIA Litigation: While judges in DIA's litigated FOIA cases have been relatively patient to date, they will begin to reinstate deadlines as the federal government reconstitutes. Already, some agencies FOIA offices are approaching normal operations. Because DIA's [REDACTED] it will be difficult to resume FOIA litigation processing so long as the Agency and most federal agencies are at reduced manning due to high risk employees remaining off-premises with no access to, in particular, classified or other required information. However, judges will not accept an indefinite suspension of FOIA litigation processing and have the power to impose sanctions and award attorneys' fees against the Agency if it misses deadlines. The FOIA office is currently in transparent, positive, and voluntary discussions with 2 of the 5 FOIA litigation officers regarding their situations and flexible, safe working environment enablers that may facilitate their voluntary return to DIA workspaces and access litigation materials in August 2020.
5. (U) POW-MIA Mandatory Declassification Review (MDR) Impacts: Prior to COVID-19, FAC-2C Declassification Services, which includes MDR, was working with the STONY BEACH program office and the Defense POW/MIA Accounting Agency (DPAA) on approximately 70 cases, reviewing and, where appropriate, declassifying records for release. [REDACTED] and have not been able to process POW-MIA related MDRs since mid-March due to the office relocation and COVID. FAC-2C is currently in transparent, positive, and voluntary discussions with 1 of the 3 MDR officers regarding their situation and flexible, safe working environment enablers that may facilitate their voluntary return to DIA workspaces and access POW-MIA related MDR materials in August 2020. The STONY BEACH

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program office has been informing DPAA of DIA's challenges; DPAA understands the situation, although there is recognition that, eventually, there must be progress in processing. There are no FOIA cases directly related to specific POW-MIA individuals' remains or related records.

6. (U) The 2018 ODNI IC IG report on the status of IC FOIA programs found that IC members were not making use of all available technology to support FOIA programs. In DIA, the elements with equities identified in FOIA requests may have to search up to 10 different DIA databases to look for documents potentially responsive to that FOIA request. There is no single software solution that collectively enables, either the FOIA office or DIA's record holders, to, respectively, seamlessly: (1) ingest FOIA requests, (2) task for internal or external document searches, (3) conduct document searches, (4) conduct document owner reviews for information release suitability, (5) conduct FOIA case processing, including redactions according to FOIA exemptions and quality peer reviews, (6) finally disseminate the response to the requestor or other entity (such as a partner agency). MS/ [ ] IQ, the FOIA office, and [ ] are currently working on developing a Microsoft O365 Azure-based software solution to enable integrated FOIA and records management processing. The concept is to leverage inherent Microsoft capabilities, tools, and business process improvement/automated workflow solutions that enable FOIA officers and DIA element records owners to conduct most aspects of case management without having to use multiple disconnected portal tools or databases -- in effect, a one-stop shop for FOIA case processing. This effort, begun in early FY2020, is still in a prototype requirements description stage and will require additional agency funding to develop further.

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(U) **DIA Organizational Equities:** For express purposes of this meeting, no outside organizational equities are involved. However, internally, FOIA significantly collaborates with the Office of General Counsel and the Office of Corporate Communications. FOIA impacts every element of DIA; externally FOIA impacts the entire federal government. MDR collaborates with STONY BEACH and DPAA.

(U) **Decisions to Make:** None. Information Only.

(U) **Intelligence Community Equities:** The Intelligence Community, both at the Office of Director of National Intelligence level and as separate agencies, conduct FOIA programs. DIA routinely interacts with multiple Intelligence Community and other government partners to conduct reviews of source documents to determine eligibility for information release. Most Intelligence Community and other government partners struggle with a FOIA case backlog, due to lack of sufficient resources to meet ever increasing public demands for information.

(U) **Briefer Biography:** Mr. Steven Tumiski (GG15), Chief, Records Management and Information Services (FAC-2C). (b)(6)

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**(U) Appendices:**

1. FOIA Process Flowchart
2. FOIA Case Processing Status Chart
3. DIA FOIA Branch Organization Chart

**(U) Attachments:** FOIA Litigations Current Status Sheet, 2018 ODNI IC IG Report on FOIA.

**(U) Document Prepared By:** Mr. Steven Tumiski and Mr. Brian Jenkins; Facilities Services  
Division

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Office of the General Counsel;

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(U) Appendix 2: FOIA Case Processing Status (as of 30 June 2020)



MS/

## FY20 FOIA CURRENT STATUS

Projecting as of June 30, 2020 (COVID & RELOCATION to MS2) RESIDUAL IMPACTS)

STARTING BACKLOG	# NEW CASES to date	# CLOSED CASES to date
1796	471*	252

FY20 CURRENT BACKLOG
2015*

FY20

As of February 05, 2020 (PRE-COVID & PRE-RELOCATION to MS2)

STARTING BACKLOG	# NEW CASES to date	# CLOSED CASES to date
1796	235	184

FY20 CURRENT BACKLOG
1850

FY19

STARTING BACKLOG	# NEW CASES Received	# CLOSED CASES During FY
1567	711	484

FY19 ENDING BACKLOG
1796

FY19 Average Request Processing Time
<b>SIMPLE: 9 days</b>
<b>COMPLEX: 729 days</b>

- As of 05FEB, [REDACTED] of FY20 newly received cases (184 of 235).
- For JAN2020, [REDACTED] of total newly received cases (64 of 46).

BL: We have what it takes to succeed in reducing our backlog!

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Withheld pursuant to exemption

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of the Freedom of Information and Privacy Act

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**Executive Summary - FOIA Program and Backlog Status as of 30SEP2020**

(U) **Bottom Line:** As illustrated by the attached slide (macro level) and the FY20 FOIA Annual Report submitted to DoD (micro level), DIA's FOIA program enters FY21 with a persistent backlog of 1884 requests.

FY20		STARTING BACKLOG	# NEW CASES to date	# CLOSED CASES to date	CURRENT BACKLOG	AVG. # DAYS PROCESSING SIMPLE	AVG. # DAYS PROCESSING COMPLEX
	FOIA & PA	1427	209	134	1502	7	539
	CONF/P	370	91	79	382		
	<b>totals</b>	<b>1796</b>	<b>300</b>	<b>213</b>	<b>1884</b>		
	APPEALS	41	2	5	38		
FY19		STARTING BACKLOG	# NEW CASES to date	# CLOSED CASES to date	CURRENT BACKLOG	AVG. # DAYS PROCESSING SIMPLE	AVG. # DAYS PROCESSING COMPLEX
	FOIA & PA	1283	484	340	1427	9	729
	CONF/P	286	227	144	369		
	<b>totals</b>	<b>1569</b>	<b>711</b>	<b>484</b>	<b>1796</b>		
	APPEALS	47	17	23	41		

Although the FY20 statistics are not positive, the numbers indirectly reflect progress and positive trends:

- In FY20, DIA closed 213 requests, which is 71% measured against the fiscal year's 300 newly received requests. This is an increase of 2% over FY19, where the results were 484 closures against 711 newly received requests, or a 68%.
- In FY20, DIA significantly reduced processing times, bringing complex cases' processing to 539 days (vs. 729 days in FY19) and simple cases' processing to 7 days (vs. 9 days in FY19).

This progress demonstrates that despite the following FY20 challenges:

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- Total office relocation from [REDACTED] (~DEC2019-MAR2020), which was planned and a known production impact;
- COVID-19 (~MAR-OCT2020), which was an unplanned detriment to production with ~75% of FOIA officers in the self-declared high-risk category and not able to work on-site in a SCIF, which is key to processing DIA's records that respond to FOIA requests;

the core mid-/long-term initiatives, outlined in the FY19 FOIA Backlog Reduction Plan and in execution throughout FY19 and FY20, are working.

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(U) **COVID-19 Impact, Recovery, and FY21 Objectives:** COVID-19 has severely impacted the DIA FOIA program, but as of mid-November 2020, 92% of FOIA officers have volunteered to waive their high-risk statuses, returning to on-site work at least 2 days per week in accordance with the FAC-2C Reconstitution Plan's Monday & Wednesday, Wednesday & Friday, and Tuesday & Thursday teams. As DIA's posture increases toward "New Normal", the number of days worked on-site vs. telework will steadily increase. Since approximately May 2020, DIA FOIA has operated consistently five days per week. Officers, when on-site and teleworking, are organized into four FOIA (general) teams and 1 FOIA (Litigation-specific) team, each comprised of four or five officers. The FOIA (general) teams focus on working to close newly received, backlogged, and, most importantly, FY21's identified "10 Oldest" category cases, which is an annual DoD/DoJ requirement. Teams leverage collaboration between typically more experienced FOIA officers, who may be teleworking, with on-site typically apprentice-level FOIA officers to process the requests, task internal elements, and move these cases toward closure. The FOIA (Litigation-specific) team focuses on working those cases in litigation in close collaboration with OGC. 100% of the litigation team has volunteered to return, and is, working on-site at least 2 days per week. FY21 objectives include:

- Close 100% of requests, measured against the fiscal year's newly received requests.
- Close all 10 of FY21's "10 Oldest" cases in each category (FOIA, Privacy Act, Consultations, Appeals).
- Maintain litigation production with no significant delays/impacts to OGC and U.S. Attorneys' Offices deadlines, actions, or objectives.
- Mitigate increasing the backlog with a definite trajectory toward reducing the backlog.
- Continue, using process improvements and digital workflow efficiencies, to decrease the average number of processing days.
- Leverage technology initiatives, such as installing FOIAxpress (DIA's current FOIA processing software) on NIPR, to increase teleworking effectiveness and production capacity for those parts of FOIA processing (e.g. FOIA Requester Service Center and public-facing inquiry services and in-take of emailed/already digitized newly received requests) that don't require direct access to classified materials/records.

(U) **FOIA Backlog Background:** DIA has carried a significant FOIA requests backlog (e.g. typically exceeding 1000 requests) for at least four years, a circumstance ODNI cited in the 2018 IC IG's report on FOIA programs that is generally applicable to the entire IC. MS [ ] implemented a FOIA Backlog Improvement Plan in FY19 that identified short-, medium-, and long-term objectives to reduce the backlog.

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(U) **Persistent FOIA Backlog Issues:**

- Lack of control over the number of FOIA requests received from the public or referred from other government agencies.

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- Complexity of FOIA requests (e.g. cases requiring review of thousands or tens of thousands of pages that take years to complete).
- Complex, frequently multi-year, collaboration dependencies involving whole of government reviews of multiple respective agencies' source documents cited in DIA all-source products.
- A legacy of paper-based processing, which involves all cases prior to changes initiated in FY19 and the advent of 100% lifecycle digitization in January 2020. There is also a continuing mandate to accept paper-based requests.
- Pre-FY19 FOIA office internal business processes and personnel management inefficiencies resulting in each of the 25 current FOIA officers being responsible for an average of 85 cases.

**(U) Highlights of DIA's FY19 (and continuously evolving) FOIA Backlog Reduction Plan:**

- Establishing FOIA "Case Officer" Lifecycle Ownership: The legacy process was sequential, with various officers working a specific step in processing a request and then handing the case to another officer to work the next step, which was inefficient. The new approach, begun in FY19, assigns FOIA officers "ownership" of cases for the entire lifecycle, from start to finish, which provides continuity, expertise, and direct responsibility for production.
- Revamping FOIA tasking in September 2020 to take advantage of DARTS, streamlining the workflows, eliminating complicated specialty software for processing, and providing clear, step-by-step instructions that tie the FOIA officer directly to the elements' action officers and approving officials, so collaboration increases and all parties work better to get the tasks closed quicker, increasing overall production and reducing processing times.
- Improving digital workflows/efforts to keep processing digital.
- Harness regular/timely reporting of statistics about requests and processing, driving management and team/individual officer insights toward effective actions and corrections toward production and organizational objectives.

**(U) Attachments:**

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1. Slide: FOIA Current Status - FY20 Annual Report Results (as of 30 SEP 2020)
2. DIA FY20 FOIA Annual Report (submitted to DoD)

**(U) Prepared By:** Mr. Steven Tumiski,

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# DEFENSE INTELLIGENCE AGENCY

FAC 2A

5 March 2019

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## INITIATIVES AND CASES UPDATE



## RATIONALE FOR CHANGE

- 2018 DIA WES report cited several issues that led to low-morale among the branch. These include:

- Poorly functioning IT equipment
- Poor guidance from leaders; lack of trust by leaders in the workforce; micromanagement
- Distrust among coworkers regarding professionalism and levels of effort at work
- Lack of recognition in the form of promotions, [REDACTED] (b)(3) 10 U.S.C. 424
- Poor personnel management under TMS

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U.S.C. 424

- [REDACTED] Organizational Facilitation conducted in July 2018 cited several issues:

- Toxic work environment
- Ineffective communications [REDACTED] (b)(3) 10 U.S.C. 424
- Perceptions of being neglected by [REDACTED] leadership
- Lack of branch cohesion; FOIA, Declassification, and Records Management team operating as independent entities
- Perceptions by Declassification and Records Management teams that FOIA team was more important than they were
- Lack of recognition for individual performance (awards, public acknowledgement, appraisals)



## MAJOR INITIATIVES STATUS– PEOPLE

### No Dependencies

- Consolidate personnel under three teams- Implemented January 28
- Develop and implement a Branch Certification Program and Onboarding Program for all assigned officers NLT April 1- Developing
- Complete recruiting of the existing two Vacancies NLT February 1- Submitted, awaiting OHR action
- Established branch teambuilding advisory group to conduct teambuilding and morale activities on February 5
- [redacted] has provided support to replace or repair many IT items to include CPUs and printers; additional support in-progress

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U.S.C. 424

### Dependencies

- Work with Chief of Staff Office to request DIA junior-grade employee (GG-11 and below) support to reduce 25-Year function backlog on a compensatory- or overtime basis NLT March 1- Delayed; branch developing hybrid COA, anticipate execution in 3<sup>rd</sup> QTR FY19
- Implement new contract vehicle to hire experienced FOIA analysts capable of serving as FOIA Case Officers if submitted UFR is approved; current contractor workforce not qualified to become Case Officers as they were hired to be administrative support only - Withdrawn



## MAJOR INITIATIVES STATUS - PROCESSES

### No Dependencies

- Implement the Case Officer approach to FOIA and Declassification services NLT January 28 – Implemented
- Complete the reviews of the 100+ backlog cases that require Quality Control Reviews NLT February 8 – In-progress, new completion date is March 8
- Form team January 28 to complete the ten oldest cases in all categories (FOIA, Appeals, Privacy Act, Consultations) NLT February 22 – In-progress, new completion date is March/April
- Refine data capturing to help increase visibility on the health of the program NLT February 8 -In-progress; data analytics officer appointed in February to begin developing new processes to analyze branch data
- Increase collaboration with DoD Chief FOIA Office and ODNI FOIA Office to identify solutions to FOIA challenges NLT March 1 - In-progress

### Dependencies

- Begin to embed FOIA Case Officers with DI and DO NLT April 1- In-progress, will meet with DI and DO FOIA officers and staff directors in March to discuss proposal with target implementation in April
- Reduce support to 25-Year Review, and IIR in order to redirect additional available officers to FOIA/Privacy Act programs NLT January 28 -Implemented
- Begin monthly IPRs with [redacted] and others (TBD) NLT April 1 -In-progress

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## MAJOR INITIATIVES STATUS - PROGRAMS

### No Dependencies

- Develop and initiate a plan to address legacy issues associated with IIR retention (helps us address the 24K cubic feet for records)  
NLT May 1- In-progress

### Dependencies

- Enact and lead an Information Governance council NLT August 1 to address major gaps impacting the storage, retrieval and disposition of all DIA records - Withdrawn; branch will participate in Chief Data Officer's Innovation Steering Group
- Work with [redacted] to implement the CAPSTONE email retention program NLT 3<sup>rd</sup> QTR, FY2019 – In-progress
- Work with [redacted] to find ways to automate processing tasks that currently require the use of FTE; implement solutions NLT FY2020 – In-progress
- Work with OCC to improve our relationships with the public through our NIPRnet web presence; implement solutions NLT April 1- In-progress
- Work with [redacted] to address the lingering issues with CHROME and CDIR; implement solutions NLT April 1- In-progress

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## FAC-2A

## 10 OLDEST CASES - FOIA

As of 28FEB2019

DIA Oldest	Request ID	Received Date	Status	FAC2 INTERNAL DETAILS
1	FOIA-2005-17050	11/29/2004	CLOSED 29NOV2018	CLOSED 29NOV2018
2	FOIA-2005-2668	5/3/2005	Referred to ARMY HQIC INSCOM 28SEP2018. Case Officer (lasted as of 28FEB2019, requesting review & return OGA APR2019. Expected closure: NLT 30SEP2019.	Internal and external coordination delays. Case involves multiple referrals & consultations involving multi-agencies' responses.
3	FOIA-00622-2005	7/15/2005	Final QC initiated 04FEB2019. Expected closure: NLT 08MAR2019	Internal and external coordination delays. Case involves multiple referrals & consultations involving multi-agencies' responses.
4	FOIA-00582-2005	8/6/2005	Final QC initiated 04FEB2019 but required further SME reviews SME reviews completed & Final QC re-initiated 26FEB2019. Expected closure: NLT 08MAR2019.	Internal coordination delays.
5	FOIA-00694-2005	3/8/2005	Referred to OGA (CIA). Case Officer (lasted as of 28FEB2019, requesting review involving at least 3 SMEs & return. Expected closure: NLT 30SEP2019.	Internal coordination delays. Delayed internal reviews revealed equities that required referral to OGA. OGA additionally had internal coordination issues/delays
6	FOIA-00691-2005	4/9/2005	Final QC initiated 24JAN2019 but returned for multiple OGA referrals and classification marking errors. Case out for transmittal on 27FEB2019. Expected closure: NLT 30SEP2019.	Internal and external coordination delays. Case involves multiple referrals & consultations involving multi-agencies' responses.
7	FOIA-00697-2005	4/10/2005	CLOSED 05FEB2019	CLOSED 05FEB2019
8	FOIA-00741-2005	4/17/2005	Referred to STAL. Case Officer (lasted as of 08FEB2019, requesting review & return. Expected closure: NLT 30SEP2019.	Internal and external coordination delays. Case involves multiple referrals & consultations involving multi-agencies' responses.
9	FOIA-00790-2005	5/13/2005	CLOSED 25FEB2019	CLOSED 25FEB2019
10	FOIA-00007-2005	10/31/2005	Processing. Case Officer (lasted, again, with requestor to narrow or re-define scope as of 27FEB2019. If requestor does not respond in 60 days, case will close NLT 30APR2019. Expected closure if response received: NLT 30SEP2019.	Internal and external coordination delays. Case is very broad and complex; requestor should narrow scope. Delayed internal coordination with requestor.

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of the Freedom of Information and Privacy Act



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**FAC-2A****10 OLDEST CASES - CONSULTATIONS**

As of 28FEB2019

CONSULTATIONS				
DIA Oldest	Request ID	Received Date	Status	FAC2 INTERNAL DETAILS
1	CONF-00112-2013	9/12/2013	Final QC initiated 28FEB2019. Expected closure: NLT 15MAR2019.	Internal and external coordination delays. Case involves multiple referrals & consultations involving multi-agencies' responses. Delayed internal address of determination for closure. (ready for signature 18DEC2018; returned for corrections 28FEB2019; corrections made 28FEB2019)
2	CONF-00104-2014	7/25/2014	Processing 10 documents as of 28FEB2019. Expected closure: NLT 01JUL2019.	Internal and external coordination delays. Case involves multiple referrals & consultations involving multi-agencies' responses.
3	CONF-00105-2014	7/25/2014	Returned to Case Officer for corrections (286 pages) as of 28FEB2019. Preparing for closure. Expected closure: NLT 15MAR2019.	Internal coordination delays. Delayed internal address of determination for closure.
4	CONF-00106-2014	7/25/2014	Processing 24 documents as of 28FEB2019. Expected closure: NLT 01JUL2019.	Internal and external coordination delays. Case involves multiple referrals & consultations involving multi-agencies' responses.
5	CONF-00110-2014	7/27/2014	Processing 12 documents as of 28FEB2019. Expected closure: NLT 01JUL2019.	Internal and external coordination delays. Case involves multiple referrals & consultations involving multi-agencies' responses.
6	CONF-00122-2014	8/19/2014	Processing 66 documents as of 28FEB2019. Expected closure: NLT 01JUL2019.	Internal and external coordination delays. Case involves multiple referrals & consultations involving multi-agencies' responses.
7	CONF-00005-2015	10/1/2014	CLOSED 27FEB2019	CLOSED 27FEB2019
8	CONF-00098-2015	10/3/2014	Processing 7 documents as of 28FEB2019. Expected closure: NLT 01JUL2019.	Internal and external coordination delays. Case involves multiple referrals & consultations involving multi-agencies' responses.
9	CONF-00014-2015	10/14/2014	Returned to Case Officer for corrections (9 documents) as of 28FEB2019. Expected closure: NLT 01JUL2019.	Internal and external coordination delays. Case involves multiple referrals & consultations involving multi-agencies' responses.
10	CONF-00024-2015	10/24/2014	Processing 433 pages as of 28FEB2019. Expected closure: NLT 01JUL2019.	Internal and external coordination delays. Case involves multiple referrals & consultations involving multi-agencies' responses.

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**FAC-2A****10 OLDEST CASES - APPEALS**

As of 28FEB2019

Appeals				
P/A Request	Request ID	Received Date	Status	FAC2 INTERNAL DETAILS
1	APP-00002-2012	5/2/2012	Referred to multiple OGCs; complex case. Case Officer based as of 27FEB2019, requesting review & return. Expected closure: TBD due to multiple referrals.	Internal and external coordination delays. Case involves multiple referrals & consultations involving multi-agencies' responses.
2	APP-00009-2013	10/3/2013	Processing. Final Appeal decision with DT-DCYC & CS as of 27FEB2019. Expected closure: NLT 30APR2019.	Internal and external coordination delays. Case involves multiple referrals & consultations involving multi-agencies' responses.
3	APP-00111-2013	9/15/2013	Appeal-OGC coordination as of 27FEB2019. Expected closure: NLT 31MAR2019.	Internal coordination delays. Delayed internal address of determination for closure. (with SIO since 02OCT2018)
4	APP-00097-2013	8/4/2013	Appeal-OGC coordination as of 27FEB2019. Expected closure: NLT 31MAR2019.	Internal coordination delays. Delayed internal address of determination for closure. (with SIO since 02OCT2018)
5	APP-00098-2013	7/30/2013	Appeal-OGC coordination as of 27FEB2019. Expected closure: NLT 31MAR2019.	Internal coordination delays. Delayed internal address of determination for closure. (with SIO since 20DEC2018)
6	APP-00006-2014	12/12/2013	Appeal-OGC coordination as of 27FEB2019. Expected closure: NLT 31MAR2019.	Internal coordination delays. Delayed internal address of determination for closure. (with SIO since 24JAN2019)
7	APP-00034-2014	1/7/2014	Appeal-OGC coordination as of 27FEB2019. Expected closure: NLT 31MAR2019.	Internal coordination delays. Delayed internal address of determination for closure. (with SIO since 08JAN2019)
8	APP-00017-2014	1/6/2014	SMU review faster overdue to OGC. Tasking follow-up as of 27FEB2019. Expected closure: 30APR2019.	Internal and external coordination delays. Case involves multiple referrals & consultations involving multi-agencies' responses.
9	APP-00018-2014	1/6/2014	Appeal-OGC coordination as of 27FEB2019. Expected closure: NLT 31MAR2019.	Internal coordination delays. Delayed internal address of determination for closure. (with SIO since 20DEC2018)
10	APP-00041-2014	4/21/2014	Referred to [redacted] Case Officer based as of 27FEB2019, requesting review & return. Expected closure: NLT 31MAR2019.	Internal and external coordination delays. Case involves multiple referrals & consultations involving multi-agencies' responses.

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**FAC-2A**

As of 28FEB2019

**'QC TIGER TEAM' – 212 CLOSURES DUE 08MAR2019**

START # cases	CLOSURES	REMAINING
212	66	118

QC'd and OUT FOR CONSULTATION	QC'd and TASKED to DIA DIRECTORATES	QC'd and RETURNED for CORRECTIONS
10	3	15

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**FAC-2A**

## **FY19 BACKLOG**

As of 28FEB2019

<b>FY19 STARTING BACKLOG</b>	<b>FY19 # NEW CASES to date</b>	<b>FY19 # CLOSED CASES to date</b>
<b>1567</b>	<b>305</b>	<b>230</b>

<b>FY19 CURRENT BACKLOG</b>
<b>1642</b>

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**Defense Intelligence Agency  
Freedom of Information Act (FOIA)  
Backlog Reduction Improvement Plan  
July 2017**

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**1. Introduction:** The DoD Office of the Deputy Chief Management Officer memorandum dated May 1, 2017, requested a component improvement plan that corresponds to specific root causes of DIA's FOIA requests and consultations backlog by 10 July 2017. The letter set a milestone of a 5% reduction per year for five fiscal years (FY) for FOIA and consultation backlogs. Currently, the DIA FOIA Team processes three categories of requests: FOIA (information requests from the public), Privacy Act (PA) (requests for information from PA systems of record), and Appeals (challenging the Agency's response). Within FOIA and Privacy Act, there are consultations (referrals from other government agencies that have DIA equity in their documents). This team is also responsible for the handling of litigations concerning these requests which at the present is at its highest peak of actions.

**2. Challenge:** To meet the DoD 5% backlog reduction mandate. At the start of FY17, the backlog was FOIA/PA - 1,165; Appeals - 89; consultations - 240.

Prior to FY15, DIA had successfully met the DoD 10% mandate for five consecutive years. DIA has not met the backlog requirement due to budget constraints that resulted in a loss of contractor support from August 2014 through June 2016. Also, an increase of FOIA litigation actions required reallocation of manpower to support stringent court deadlines and as well as a focus to process old and complex cases in the backlog.

Since the re-introduction of FOIA contractors (9) in late FY16, total cases closed increased from "521" in June 2016 to "817" in June 2017.

**3. Objective:** To reach the DoD 5% mandate, DIA must close a net of 116 FOIA/PA and 18 appeal cases plus the total number of new requests received during this fiscal year. For consultations, DIA is on track to meet/exceed the DoD mandate which is currently at 23%.

**4. Assumptions:** Current manning, both government and contractor will not decrease. Based on previous years, DIA has experienced sudden spikes in FOIA requests and litigation actions based on current events. It is unlikely that the DoD 5% reduction mandate can be achieved in the next three months. A more realistic objective is to meet the mandate starting in FY18 from a fresh baseline.

**6. Plan of Action:**

a. Improve Subject Matter Expert (SME) Responsiveness to FOIA Taskers. The FOIA office will expand its outreach to principle DIA offices to identify impediments to SME reviews of FOIA taskers and determine methods to expedite SME reviews.

Implemented an upgraded version of FOIAXpress that will allow the FOIA office to better track FOIA tasker suspense dates and keep DIA directorates informed of overdue suspense. Expanded FOIA training will be provided to DIA SMEs, including access to the Department of Justice FOIA training course.

b. Internal FOIA Review Process. The FOIA office will prioritize review of cases awaiting signature to increase the case closure rate.

c. IT Support. The FOIA office will request accelerated lab testing and approval process for future upgrades of FOIAXpress. DIA has implemented the automated data review of email content and should experience a decrease of relevancy check processing time and providing FOIA analysts more time for case production.

d. Manpower. Facility Services Division will move two Army administrative billets to FOIA to increase administrative support.



# FOIA CURRENT STATUS – FY20 ANNUAL REPORT RESULTS

FY20		STARTING BACKLOG	# NEW CASES to date	# CLOSED CASES to date
	FOIA & PA	1427	209	134
	CONF/P	370	91	79
	<b>totals</b>	<b>1796</b>	<b>300</b>	<b>213</b>
	APPEALS	41	2	5

CURRENT BACKLOG
1502
382
<b>1884</b>
38

AVG. # DAYS PROCESSING SIMPLE	AVG. # DAYS PROCESSING COMPLEX
7	539

FY20		# of 10 OLDEST CLOSED
	FOIA	1
	PA	1
	CONF/P	4
	APPEALS	0

FY19		STARTING BACKLOG	# NEW CASES to date	# CLOSED CASES to date
	FOIA & PA	1283	484	340
	CONF/P	286	227	144
	<b>totals</b>	<b>1569</b>	<b>711</b>	<b>484</b>
	APPEALS	47	17	23

CURRENT BACKLOG
1427
369
<b>1796</b>
41

AVG. # DAYS PROCESSING SIMPLE	AVG. # DAYS PROCESSING COMPLEX
9	729

FY19		# of 10 OLDEST CLOSED
	FOIA	5
	PA	5
	CONF/P	5
	APPEALS	7

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From: Tumiski Steven W DIA FAC2A USA GOV  
 Sent: Tuesday, October 1, 2019 12:21 PM  
 To: [REDACTED] - All

USA GOV; Tumiski Steven W DIA FAC2A USA GOV  
 Subject: FY19 FOIA cases results and backlog ... FY20 challenge!

Importance: High

Classification: UNCLASSIFIED  
 =====

Hello, FAC2C Team,

This email applies mostly to officers working FOIA/PA Information Services, but is good information for ALL.

For team members not in FOIA, if you track your production, whether for required reporting or not, and want to share your success, let me know, and I'll distro it to ALL, too :)

For example, the IIR & Dissemination Services Team has consistently reported ahead-of-target timeliness for customer-service & reports availability for all of FY19!

Declassification Services? Records Management? Tell us your story!

Thanks to [REDACTED] for her very dedicated efforts in tracking and reporting our case statistics!

I'm an optimist; I see overall good results in these numbers, so thanks to ALL who worked your respective individual & team efforts to produce these results! Can we get better and reduce this backlog? Sure thing; we will continue to make progress and improve in FY20 :)

Here's my take on these stats:

- In a year of immense & disruptive change, we still managed to close more than 50% of total newly received cases (484 of 711).
- For FOIA/PA, we closed 70% of total newly received cases (340 of 484).
- For FOIA/PA Consults, we closed 63% of total newly received cases (144 of 227).
- For Appeals, we closed 135% of total newly received cases (23 of 17).

BI: We have what it takes to succeed in reducing our backlog!

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- With process improvements, simpler/faster ways of doing things,  
increased training & professional  
development investment, more case officers, ALL's pulling together  
as a Team & helping each other to  
solve case roadblocks, more officers able to do QC/peer reviews,  
etc. we will move closer to achieving  
100% parity across the board for closures vs. newly received cases...  
and then we will exceed production  
and reduce the overall backlog.

For FY20, let's get to closing at least 100% of # of cases newly  
received + at least 2% backlog reduction  
(that's just 36 extra cases on top of the 100% of cases newly  
received)! WE CAN DO IT! :)

#### FY19 FOIA/PA/Consults

Starting Backlog = 1,567  
Received = 711  
Amended Case Impact = +2  
Closed = 484  
Overall Ending Backlog = 1,796

#### FY19 FOIA/PA Only

Starting Backlog = 1,282  
Received = 484  
Amended Case Impact = +1  
Closed = 340  
Ending Backlog = 1,427  
5% Backlog Reduction = -11.3 %

#### FY19 FOIA/PA Consults Only

Starting Backlog = 285  
Received = 227  
Amended Case Impact = +1  
Closed = 144  
Ending Backlog = 369  
5% Backlog Reduction = -29.5%

#### FY19 Appeals

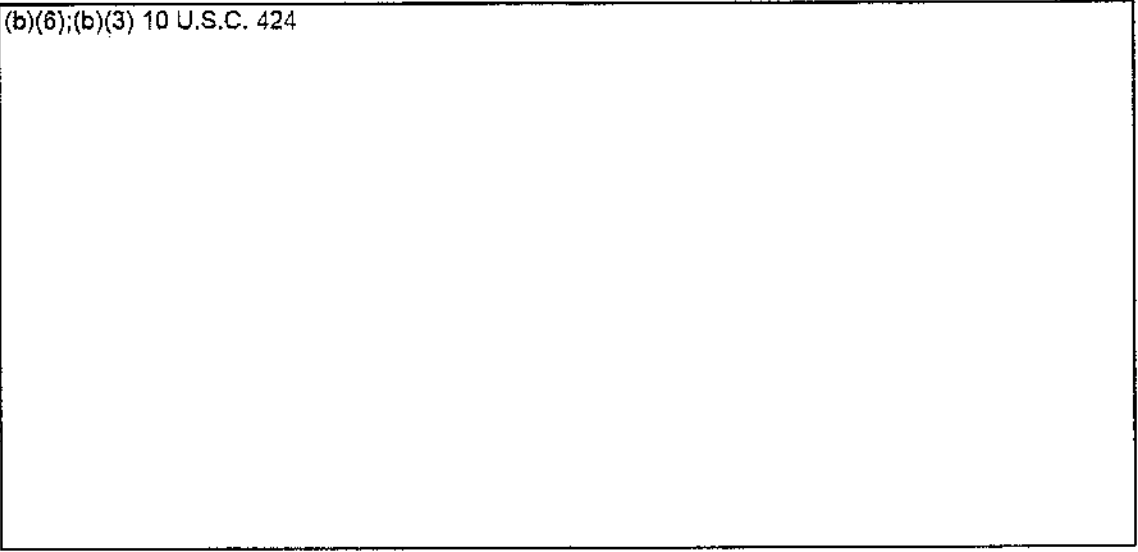
Starting Backlog = 47  
Received = 17  
Closed = 23  
Ending Backlog = 41  
10% Backlog Reduction = 13%

Thanks for all you ALL do!

Kind regards and V/R,  
Steve

Steven W. Tumisk

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OFFICE OF THE INSPECTOR GENERAL OF THE INTELLIGENCE COMMUNITY

Approved for Public Release  
ODNI/IMD 13 Nov 2018

# **(U) Assessment of IC Freedom of Information Act (FOIA) Programs**

**September 28, 2018**

**Report INS-2018-001**

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## (U) EXECUTIVE SUMMARY

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(U) *The Freedom of Information Act* (FOIA) is the primary means for the public to access federal executive branch records.<sup>1</sup> The Inspector General of the Intelligence Community (IC IG) Inspections & Evaluations Division (I&E) reviewed FOIA programs of the Central Intelligence Agency (CIA), Defense Intelligence Agency (DIA), National Geospatial-Intelligence Agency (NGA), National Reconnaissance Office (NRO), National Security Agency (NSA), and Office of the Director of National Intelligence (ODNI). We also reviewed ODNI's role as an IC-wide integrator. We initiated this assessment after determining that ODNI Information Management Division raised IC FOIA program concerns to the Executive Committee, its senior governance forum.

(U) I&E examined the effectiveness of the six IC elements' efforts to manage FOIA requests, with a focus on how programs prioritize, coordinate, and process requests to meet statutory requirements, including response timeliness and communications with requesters. We found that while CIA, DIA, and NSA receive more FOIA requests than ODNI, NGA, and NRO, all face similar challenges. Many common issues affecting these programs are outside the IC's control, such as increased volume and complexity of incoming requests, as well as demands from FOIA litigation. Internally, the IC's approach is inefficient. The programs are not supported by adequate technology, and there is a lack of structured processes for coordination of requests across agencies.

(U) We found that ODNI could do more to lead the collective IC FOIA enterprise. The statute gives responsibility to heads of departments and agencies to manage their own FOIA programs, so ODNI's IC-wide authority is limited. However, to date ODNI has not fully exercised its significant integration role, despite shared challenges. In particular, ODNI has not resolved persistent issues related to coordination of FOIA requests across IC elements. In addition, ODNI could improve planning of IC transparency initiated declassification reviews that have implications on FOIA programs across IC elements. In addition, ODNI has a responsibility to interact more with the key external governance organizations that publish guidance and make recommendations to Congress to increase their understanding of IC FOIA challenges.

(U) We also examined the conditions that contribute to inconsistent FOIA release determinations and the mechanisms to prevent inconsistent releases. We determined the IC has mechanisms in place to reduce the chance of inconsistent release decisions. Implementation of the recommendations in this report should mitigate the likelihood of inconsistent release decisions.

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<sup>1</sup> (U) 5 U.S.C. § 552, as amended.

## (U) INTRODUCTION

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(U) The Inspector General of the Intelligence Community (IC IG) reviewed *Freedom of Information Act* programs of the following six Intelligence Community (IC) elements: Central Intelligence Agency (CIA); Defense Intelligence Agency (DIA); National Geospatial-Intelligence Agency (NGA); National Reconnaissance Office (NRO); National Security Agency (NSA); and the Office of the Director of National Intelligence (ODNI), collectively, the IC elements. We also reviewed ODNI's role as an IC-wide integrator. In this report, references to "IC FOIA programs" relate only to the six elements within the scope of this assessment.

(U) The *Freedom of Information Act* (hereafter "FOIA" or "the Act") is the primary means for the public to access federal executive branch records.<sup>2</sup> The Act allows any person, broadly defined to include attorneys filing on behalf of an individual, corporation, or organization, to file a request for records. Any member of the public may request access to information held by federal agencies without showing a need or reason for seeking the information.<sup>3</sup> Agencies within the Executive Branch of the federal government, independent regulatory agencies, and some components within the Executive Office of the President are subject to the Act. It is one of the most important means for citizens to obtain information about government activities.

(U) The objectives of this assessment were to:

- (U) Assess the effectiveness of each IC element's efforts to manage FOIA requests;
- (U) Describe the conditions that contribute to inconsistent FOIA release decisions and identify IC elements' mechanisms to help prevent or lessen the likelihood of inconsistent releases; and
- (U) Describe the conditions that contribute to inconsistent FOIA release decisions across the IC and identify IC-wide mechanisms to help ensure or strengthen consistent release decisions.<sup>4</sup>

(U) Our assessment covered Fiscal Years (FY) 2016 and 2017. The assessment did not address IC elements' application of particular FOIA exemptions in specific cases. Instead, we examined FOIA processes aimed at providing timely responses to requests. We also reviewed IC element mechanisms to ensure that release determinations for the same information are consistent. We identified mechanisms for ensuring consistent responses to FOIA requests within each IC element and across IC elements. We did not examine processes related to Privacy Act (PA) requests. We did not interview members of the public who are FOIA requesters, primarily due to concerns about interfering with FOIA cases that are in the process of ongoing litigation. However, we did review publicly available information related to our objectives, some of which was from the websites of FOIA requesters.

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<sup>2</sup> (U) 5 U.S.C. § 552, as amended.

<sup>3</sup> (U) Requesters seeking a preferential FOIA fee category or expedited processing are asked to show a need or reason for seeking the records.

<sup>4</sup> (U) IC IG initially announced that objective 2 would focus on the effectiveness of each IC element's mechanisms to prevent inconsistent FOIA release determinations and objective 3 would assess the effectiveness of IC-wide mechanisms to ensure consistent FOIA release determinations across the IC. We revised objectives 2 and 3 when we learned through our field work that IC elements do not have the capability to identify all previous official releases that have occurred across the IC and that IC elements do not have their own measures of effectiveness related to consistent release determinations.



## **(U) METHODOLOGY**

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(U) To conduct this assessment, the IC IG interviewed officials from each of the six IC elements, including Chief FOIA Officers, FOIA Public Liaisons, FOIA professionals, transparency officers, and representatives from Offices of General Counsel. We also interviewed Department of Justice (DOJ) Office of Information Policy (OIP) and the National Archives and Records Administration (NARA) Office of Government Information Services (OGIS) officials. In addition, we spoke with Department of State (DOS) and Department of Homeland Security (DHS) FOIA officials. We reviewed IC element Office of Inspector General (OIG) reports on FOIA programs and discussed the status of recommendations with OIGs. We also reviewed each IC element's FOIA program annual reports and Chief FOIA Officer's report to OIP. We obtained a demonstration of the tools used to process FOIA requests.

(U) We asked IC element FOIA professionals to provide examples of what they considered inconsistent release determinations provided to FOIA requesters. Specifically, we requested examples of all documents programs had knowledge of that reflected an inconsistent FOIA release determination for the same information (e.g., information was withheld, same information was released). If programs were unable to locate the documents, but were aware of these instances, we asked that they provide a brief description. We also conducted open source research and if we uncovered examples of inconsistent release decisions, we discussed those examples with FOIA professionals in the IC FOIA programs.

(U) We conducted this assessment from February to September 2018 in accordance with the Council of the Inspectors General on Integrity and Efficiency 2012 Quality Standards for Inspection and Evaluation. We provided a draft of this report to each IC element. See Appendix 2 for official comments.

(U) This report includes 9 findings with 10 recommendations, 9 observations, and 1 commendable. Findings identify areas where we recommend action. Each finding has at least one recommendation the IC IG will monitor through completion. Observations are provided for situational awareness.

## **(U) ROLES AND RESPONSIBILITIES**

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### **(U) DEPARTMENT OF JUSTICE, OFFICE OF INFORMATION POLICY**

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(U) The OIP has government-wide statutory responsibility to encourage and oversee agency compliance with FOIA.<sup>5</sup> OIP develops and issues legal and policy guidance on FOIA implementation. All agencies are required to report to the Attorney General each year on their performance in implementing the FOIA and DOJ FOIA Guidelines.<sup>6, 7</sup> OIP establishes reporting requirements and assesses agency progress under FOIA. OIP also adjudicates administrative appeals of FOIA requests made to DOJ and handles the defense of certain FOIA litigation cases.<sup>8</sup>

### **(U) NATIONAL ARCHIVES AND RECORDS ADMINISTRATION OFFICE, OFFICE OF GOVERNMENT INFORMATION SERVICES**

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(U) The *OPEN Government Act of 2007* created OGIS to review FOIA policies and agency compliance as well as to recommend ways to improve FOIA.<sup>9</sup> The Act requires OGIS to mediate disputes between FOIA requesters and federal agencies, review policies and procedures of administrative agencies under FOIA, review agency compliance with FOIA, and identify procedures and methods for improving compliance, including through legislative and regulatory recommendations. In addition, OGIS provides administrative and logistical support for the FOIA Advisory Committee (FAC). The FAC advises on improvements to the administration of FOIA and makes recommendations to the Archivist of the United States.

### **(U) CHIEF FOIA OFFICERS COUNCIL**

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(U) The *FOIA Improvement Act of 2016* established the Chief FOIA Officers Council, which is composed of all agency Chief FOIA Officers, the Directors of OIP and OGIS, and the Deputy Director for Management from the Office of Management and Budget.<sup>10</sup> The council is tasked with developing recommendations for increasing FOIA compliance and efficiency; disseminating information about agency experiences, ideas, best practices, and innovative approaches related to FOIA; identifying, developing, and coordinating initiatives to increase transparency and FOIA compliance; and promoting the development and use of common performance measures for agency compliance with FOIA.

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<sup>5</sup> (U) Office of Information Policy, *About the Office*, February 15, 2017.

<sup>6</sup> (U) 5 U.S.C. § 552 (e)(i).

<sup>7</sup> (U) Office of the Attorney General Memorandum for Heads of Executive Departments and Agencies, *Freedom of Information Act*, March 19, 2009.

<sup>8</sup> (U) Office of Information Policy, *Organization, Mission, and Functions Manual*, September 9, 2014.

<sup>9</sup> (U) *Openness Promotes Effectiveness in Our National Government Act of 2007* (The *OPEN Government Act of 2007*) Pub. L. 110-175 (December 31, 2007).

<sup>10</sup> (U) *The Freedom of Information Act Improvement Act of 2016*, Pub. L. 114-185 (June 30, 2016).

**(U) INTELLIGENCE COMMUNITY**

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(U) ODNI's Strategy and Engagement, Information and Data, Information Management Division (IMD) manages ODNI's FOIA program and has an IC-wide role in FOIA integration. IMD develops, implements, and manages programs that provide guidance for the IC's records, classification, declassification, public release, and FOIA officers.<sup>11</sup>

(U) Each of the IC elements responds individually to FOIA requests received by their element. Each Non-Department of Defense (DoD) IC element has its own Chief FOIA Officer. DIA, NGA, NRO, and NSA are both IC elements and Defense Intelligence Components.<sup>12</sup> As such, these IC elements are subject to both IC and DoD FOIA guidance. These elements do not have a Chief FOIA Officer, but instead a single DoD Chief FOIA Officer serves them all.

**(U) SIMPLIFIED OVERVIEW OF FOIA PROCESSING**

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(U) Requesters submit FOIA requests to agencies via email, mail, website, or electronic portals. When an agency receives a request, FOIA professionals generally log it into the agency's tracking system, assign a tracking number, and review the request for complexity. The agency sends acknowledgment of receipt to the requester. FOIA professionals then route the request to the appropriate record owner or subject matter expert (SME) to conduct a search for responsive records or conduct a search themselves. Next, FOIA professionals review the responsive records and determine whether the agency should withhold all or part of a record based on the Act's exemptions.

(U) The Act provides nine categories of information that are exempt from disclosure, such as information properly classified by Executive Order or personnel and medical files. See Appendix C for a list of the nine exemptions. FOIA professionals may consult with or refer records to other agencies when the records are the responsibility or contain the equities of another agency. After processing the records, applying appropriate FOIA exemptions, and redacting information accordingly, the agency releases the documents to the requester, or notifies the requester of the agency's inability to locate the requested records, or the agency's decision to withhold the requested records. The requester may then challenge an agency's final decision on a request through an administrative appeal or lawsuit. A requester has the right to file an administrative appeal and agencies have twenty working days to respond to an administrative appeal.

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<sup>11</sup> (U) ODNI Instruction 80.06 *The ODNI Information Management Program*, Rev 1, March 1, 2017.

<sup>12</sup> (U) DoD Directive 5143.01, Under Secretary of Defense for Intelligence (USD)(I)), Change 1 Effective April 22, 2015.

## (U) ASSESSMENT RESULTS

(U) In FYs 16 and 17, FOIA requesters submitted a total of 11,804 requests to the IC elements we reviewed. Each individual case may generate one document that is responsive to the request or entire repositories of documents that require review, or may necessitate an exhaustive search that yields no responsive documents. Total FOIA costs during this time for these IC elements was over \$51 million. Figure 1 illustrates the rise in FOIA costs since 2005. In FY17, these IC elements employed 164 FOIA professionals to process FOIA cases. IC elements collectively acknowledge that FOIA processes have not matured to keep pace with the increase in the complexity of requests. Factors that contribute to the complexity of a FOIA case include the volume of the information requiring review, the extent to which the information is technical or difficult to comprehend, the number of different offices that may have responsive documents, and the need to consult with other agencies. Although complexity of requests has grown, the IC elements' processes have not advanced to meet the demands. Further, ODNI has not taken a comprehensive strategic approach to address persistent FOIA challenges shared across the IC.

(U) Figure 1: The Rising Cost of FOIA

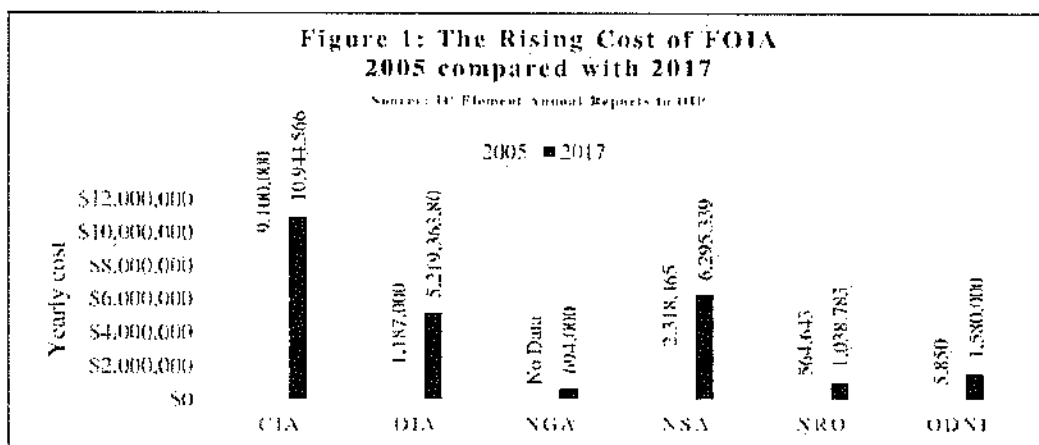


Figure 1 – Unclassified

**(U) Finding 1: ODNI has not fully exercised its leadership responsibility to foster integration and collaboration to improve IC execution of FOIA.**

(U) In its official mission and vision statements, ODNI identifies that a key component of its mission is to unify, meaning ODNI fully leverages the IC's diverse expertise by planning and acting together. However, with regard to the FOIA discipline, IC FOIA programs currently operate independently with minimal information sharing regarding FOIA management. While the statute gives each individual agency responsibility to manage its own program, the ODNI, because of its mission to integrate the IC, has a responsibility to address common IC FOIA issues. We assess that ODNI/IMD is in a unique position, and has an opportunity to influence the community in the interest of greater FOIA integration and collaboration. Throughout our review, FOIA professionals in all of the IC elements called for ODNI to do more to lead FOIA efforts in the IC. Specifically, FOIA professionals requested that ODNI establish more avenues for information sharing and provide guidance and a technical solution for consultations. Consultations occur when an agency coordinates with another organization that has

equities in the records being reviewed. Director, IMD, agreed that ODNI could assume more of a leadership role in the IC.

**(U) Finding 1.1: ODNI IMD did not implement the FOIA improvement plan briefed to the EXCOM in 2016.**

(U) In 2015, ODNI's Director, IMD, briefed ODNI's Executive Committee (EXCOM), its senior governance forum, that there was a burdensome and inefficient process for coordinating and responding within the IC to FOIA requests. The IC EXCOM then charged ODNI's IMD with leading a working group to develop an IC FOIA Improvement Plan. The working group, composed of FOIA and transparency professionals across the IC, explored challenges faced by IC elements. The resulting plan, briefed to the EXCOM in October 2016, featured recommendations to improve IC execution of FOIA as an enterprise. In the briefing, then-Director, IMD, said that if approved, IMD would begin to implement the recommendations and provide an annual update.

(U) The recommendations focused on four themes: rules of the road; connectivity and the use of technology; training/personnel; and templates.

- (U) Rules of the road highlighted that the IC FOIA community must find the balance between openness and protecting what really matters.
- (U) For technology, the working group agreed to continue to explore development of collaborative space, with each agency participating to help define rule sets. Agencies should update the collaborative space with points of contact and post their FOIA logs. The IC should have the capability to analyze the FOIA logs on the site to find similar requests. Agencies with an IC element should ensure that their FOIA office has access to at least one Joint Worldwide Intelligence Communications Systems (JWICS) terminal and secure communication system.<sup>13</sup>
- (U) For training, ODNI IMD agreed to create a training section on the site and make existing training available, as well as expand one of the IC FOIA Days into a substantive training session.<sup>14</sup>
- (U) Regarding templates for consistency, the group agreed the IC should implement a standard policy to address the minimum requirements for the referral or coordination of requests. The group also agreed to continue to develop templates.

(U) Although the IC elements agreed with the plan, ODNI disbanded the working group and did not implement the plan. IMD officials at the time of the briefing indicated the EXCOM agreed in principle with the recommendations; the EXCOM may not have given specific direction to move forward, but expected IMD to continue to work with the IC on the issues. The current Director IMD attributes the delay in pursuing improvements to uncertainty about EXCOM approval, conflicting priorities, and high personnel turnover within her organization. Without implementation of the plan, FOIA within the IC will remain disjointed and unable to make essential progress.

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<sup>13</sup> (U) JWICS is a network connecting IC members.

<sup>14</sup> (U) ODNI periodically hosts an IC FOIA Officers' Information Day with sessions for IC FOIA professionals that include inside and outside speakers.

**(U) Recommendation 1: For ODNI Director, IMD – Update, obtain EXCOM approval, and begin implementation of the recommendations of the 2016 FOIA Improvement Plan.**

(U) ODNI concurred with Recommendation 1.

**(U//FOUO) Finding 1.2: The IC is not making use of all available technology to support FOIA programs, and there is no consolidated IC-wide approach to technology application.**

(U) In 2009, the President issued a FOIA memorandum that states, “All agencies should use modern technology to inform citizens about what is known and done by their Government.”<sup>15</sup> OIP consistently requires agencies to include descriptions of the steps taken to greater utilize technology in their Chief FOIA Officer reports.

(U) The aforementioned 2016 FOIA Improvement Plan featured multiple connectivity and technology-related solutions, including use of IntelShare, IntelDocs and IC ITE Apps Mail-hosted tools to facilitate the referral and consultation process, develop a collaboration space, and provide all agencies with an IC element the JWICS connectivity and secure communications needed to enable effective FOIA referrals and consultations.

(U//~~FOUO~~) The DNI/USDI’s *Consolidated Intelligence Guidance (CIG): Fiscal Years 2020–2024* is “the first step of a multi-year transformational effort to re-set and strengthen intelligence capabilities.” The CIG is meant to “reinforce intelligence integration and unity of effort, ensuring the IC operates as an efficient and effective enterprise.”<sup>16</sup> Two of the CIG strategies have particular impact for leveraging technology on behalf of IC FOIA processes and procedures, “Augmenting Intelligence Using Machines” and “Modernization of Data Management and Infrastructure.” Both priorities set strategic outcomes and prescribe programmatic actions relevant to developing and sustaining enterprise-level improvements to IC FOIA activities.

(U) IC elements identified several common areas for applying technological solutions to their organizations’ FOIA processes. Most describe challenges from a lack of or an ad-hoc combination of systems and software applications that do not meet full requirements for effective FOIA functioning, including: enterprise search, de-duplication, document review, redaction, internal coordination, and inter-agency referral/consultation. Figure 2 shows the key areas where IC elements are pursuing new technology or updating technology to enhance FOIA programs.

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<sup>15</sup> (U) White House Memorandum for the Heads of Executive Departments and agencies, *Freedom of Information Act*, January 21, 2009.

<sup>16</sup> (U) The DNI/USDI’s *Consolidated Intelligence Guidance (CIG): Fiscal Years 2020–2024*.

(U) Figure 2: Technology to Support FOIA Programs

Areas of Effort or Interest: Technology Assistance to FOIA	CIA	DIA	NGA	NRO	NSA	ODNI
Case Management	●		●	●	●	●
Archive & Retrieval of Prior Releases	●			●	●	
Search	●	●	●	●	●	●
De-duplication	●	●	●	●	●	
Document Conversion/Preparation (e.g., text or PDF to OCR)	●			●	●	
Document review	●		●		●	●
Redaction	●	●	●	●	●	●
Internal coordination	●		●	●	●	
Inter-agency referral/consultation	●	●	●	●	●	●
Public access	●	●	●	●		●

Figure 2 *Unclassified*

(U) Challenges to more strategic application of technology are rooted in a range of circumstances. In some IC elements, the key FOIA-related business lines of records management, information systems technology, and disclosure/release reside in different offices, with little sustained focus on integrating their activities to enhance FOIA processing. At DIA and NGA, in particular, the end-of-year unfunded requirement process is the single source of funding for system improvements/upgrades to their FOIA programs.

(U) Within the IC elements, we characterize the execution of FOIA responsibilities as an industrial age process applied to a digital age challenge. The most profound outcome of this mismatch is inefficiency that affects ability to meet statutory deadlines. Challenges include duplication of effort as requests move between offices for review; multiple transformations of documents from soft-to-hard copy and back to soft; or re-entering redactions of information made on one system into records on another. These inefficiencies extend overall processing time and increase opportunities for human error and inconsistencies. Cumbersome data transfer and collaboration methods between IC elements further delay critical consultations and referrals. Without a strategic approach, the IC will continue to struggle to comply with statutory deadlines and the resulting litigation.

**(U) Recommendation 2: For ODNI Director, IMD – Revise the 2016 FOIA Improvement Plan to align the IT recommendation to appropriate IC strategic priorities (e.g., within the CIG; Fiscal Years 2020–2024, and other relevant strategic documents).**

(U) ODNI concurred with Recommendation 2.

**(U) Finding 1.3: ODNI's Difficult Issues Forum has not met since 2015 and there is no regular IC-wide group to address ongoing IC FOIA issues.**

(U) According to the Government Accountability Office, interagency groups are an effective mechanism to facilitate collaboration among agencies to address policy development, program implementation, and information sharing challenges.<sup>17</sup> The ODNI FOIA program sponsors an IC FOIA Officer's Information Day that as many as 120 officers attend. This event was previously held twice a year, but was only held once in 2017 and will be held only once in 2018. Until early 2015, the ODNI FOIA program also led the Difficult Issues Forum (DIF), a smaller IC-wide working group, as needed, to address common FOIA challenges. During our review, FOIA professionals spoke to the forum's value as a venue for FOIA programs to collaborate and address IC-specific issues. FOIA professionals agree there are FOIA issues unique to the IC that ODNI is better suited to address than OIP. One program said the forum maximized exposure to IC-wide challenges and work solutions, activities that had an impact on their ability to improve processes. Agenda topics included consultations, using technology, and narrowing the scope of requests. The DIF held its last meeting in early 2015. Some of the DIF members continued to meet for several months as part of the working group for FOIA improvement, but larger DIF meetings were not held. Chief of ODNI's FOIA program has not held the DIF since then because of the demands on ODNI's internal FOIA program. Without a collaborative forum, IC FOIA professionals miss the opportunity to address common FOIA challenges.

**(U) Recommendation 3: For ODNI Director, IMD – Reestablish the Difficult Issues Forum or another IC body for IC element FOIA programs to collaborate.**

(U) ODNI concurred with Recommendation 3.

**(U) Finding 1.4: ODNI has not engaged with OIP on IC-wide FOIA issues.**

(U) All of the IC FOIA programs interact with OIP, one of the two organizations with Government-wide FOIA responsibilities, but interaction has not been focused on strategic IC-wide issues. OIP provides government-wide FOIA guidance. IC FOIA programs look to OIP for FOIA best practices guidance and reach out to OIP for clarification on that guidance. IC FOIA professionals also incorporate OIP guidance into their programs. In FYs 2016 and 2017, IC FOIA programs submitted 16 inquiries to OIP's FOIA counselor service, which is available to answer questions from agencies on FOIA issues. Each of the IC FOIA programs, with the exception of NGA, requested assistance through the service. OIP addressed topics related to policy or compliance with the Act such as questions on procedural provisions and the exemptions.<sup>18</sup> Given OIP's substantial role in the government-wide FOIA enterprise, it is important for the IC to ensure OIP understands the IC's unique issues with regard to FOIA implementation.

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<sup>17</sup> (U) Government Accountability Office, *Managing for Results: Key Considerations for Implementing Collaborative Mechanisms*, September 27, 2012.

<sup>18</sup> (U) OIP provided IC IG with these general topic areas. Specific queries to OIP's Counselor Service are attorney-client privileged communications.



(U) OIP has provided training to IC elements and has participated in ODNI's Annual FOIA Information Days, but indicates it would welcome more interaction with ODNI. As of July 2018, ODNI/IMD leadership had not spoken with OIP on IC-wide issues, but recognized that more interaction could be valuable. OIP, as the government-wide FOIA interlocutor, could better assist IC FOIA programs and be more informed as it prepares government-wide guidance, if it gains a greater understanding of the IC from ODNI engagement. Therefore, ODNI/IMD leadership should initiate discussions with OIP.

**(U) Recommendation 4: For ODNI Director, IMD – Initiate discussions with OIP on IC-wide FOIA issues.**

(U) ODNI concurred with Recommendation 4.

**(U) Finding 1.5: ODNI has not had discussions with OGIS on strategic IC-wide FOIA issues, access concerns, or challenges with the Act.**

(U) One of ODNI's strategic goals for the IC is to integrate the collective capabilities, data, expertise, and insights of partners, consistent with law and policy. IC element FOIA programs work with OGIS when OGIS is mediating disputes with FOIA requesters. OGIS provides mediation as a non-exclusive alternative to litigation. Once a requester has gone to court, the requester cannot come to OGIS for mediation. Typically, OGIS will explain exemptions and help the requester through the FOIA process. OGIS also performs reviews of agency FOIA programs to determine compliance and conducts assessments of FOIA-specific issues. However, IC elements' systems of records notice do not allow OGIS access to IC FOIA files. For both its mediation and compliance roles, OGIS cannot review FOIA records without the individual requester's consent in each case OGIS has to review. Due to this lack of access, a sponsor introduced a bill in the House of Representatives in March 2018 that would allow OGIS access to agencies' FOIA records, but it has not advanced to a vote.<sup>19</sup>

(U) Between October 1, 2017 and May 1, 2018, nearly 200 FOIA requesters sought assistance from OGIS involving the six IC elements within the scope of this assessment. Sixty-six percent of these inquiries were general ombuds cases in which OGIS provided general assistance with the FOIA process. Thirty-three percent of the inquiries related to delays in responding to FOIA requests and denials of information under various FOIA exemptions, including "Glomar" responses.<sup>20</sup> The number of inquiries OGIS received from requesters during this time-period per IC FOIA program is as follows: CIA: 121, NSA: 42, DIA: 19, ODNI: 8, NRO: 2, NSA: 1.

(U//~~FOUO~~) OGIS officials indicate they have limited visibility into the IC and do not have access to internal IC FOIA policies or procedures. OGIS believes it could help educate requesters if it had more information from the IC, but acknowledges it has yet to engage with the IC on this issue. ODNI's IMD leadership agrees that more communication with OGIS would better inform the public, but as of July 2018, they had not reached out to OGIS.

<sup>19</sup> (U) H.R. 5253 *Office of Government Information Services Empowerment Act of 2018*.

<sup>20</sup> (U) A Glomar response is one in which an agency refuses to confirm or deny the existence of responsive records.

(U) OGIS is responsible for recommending legislative and regulatory changes to Congress and the President to improve the administration of the FOIA. During our review, FOIA professionals highlighted the need for statutory change and debated the merits of possible amendments to the FOIA law.<sup>21</sup> IC FOIA professionals suggested OGIS consider the following when proposing changes to the law:

- (U) the effectiveness of the fee structure;
- (U) data that demonstrates the required response times are unattainable;
- (U) allowing response times to vary by additional request queues beyond simple and complex;
- (U) the uniqueness of the IC, given the volume of classified and highly sensitive records;
- (U) a limit to the number of requests an individual requester may submit in a given time period;
- (U) restricting record requests to those that are focused on an agency's mission so that requests for cafeteria menus, number of geese on facilities, and similar such requests are not accepted;
- (U) greater flexibility for the government to argue that some requests are arbitrary and capricious; and
- (U) the concern that commercial requesters who request records and sell them for profit are using the FOIA system for business purposes and, as a result, the Act may not be serving the public as intended.

(U) OGIS will continue to have partial knowledge of IC-unique FOIA issues and limited ability to inform and educate requesters on IC FOIA cases and processes until the IC collaborates with them more fully. Furthermore, without a full understanding of IC challenges with the statute and the potential impact to the IC of proposed changes, OGIS may not consider all IC equities when making recommendations to Congress.

**(U) Recommendation 5: For ODNI Director, IMD – Initiate discussions with OGIS regarding strategic IC-wide FOIA issues, access concerns, and the IC's perspective on the FOIA statute.**

(U) ODNI concurred with Recommendation 5.

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<sup>21</sup> (U) 5 U.S.C. § 552, as amended.

**(U) Finding 2: IC Element FOIA programs are pursuing initiatives to improve effectiveness but are not consistently meeting statutory response deadlines.**

(U) The Act requires that agencies reply to requesters within 20 working days of receipt of a perfected request with responsive documents unless there are unusual circumstances as defined by the Act.<sup>22 23</sup> A perfected request reasonably describes the records requested and is made in accordance with published rules. In “unusual circumstances,” as defined within the Act, the agency may extend the response time by written notice to the requester, setting forth the reasons for the extension and a date when the determination is expected.<sup>24 25</sup> The agency may provide the requester with an opportunity to limit the scope of the request or arrange with the agency an alternative timeframe for processing the request.

(U) Each IC FOIA program is pursuing initiatives to improve its ability to comply with the Act. However, all of the programs are not consistently meeting the 20-day response time requirement. Figure 3 illustrates the percentage of initial cases closed within 1–20 working days in FY17. In FY17, each IC FOIA program closed less than 60 percent of all initial cases within 20 working days. Only NSA and ODNI closed more than 50 percent of all initial cases, with NSA reporting 55 percent closure and ODNI reporting 59 percent closure.

(U) A number of factors contribute to the inability of IC FOIA programs to meet the response timeline. Factors include complexity of records requested, resource challenges, personnel turnover, the process for locating and processing records, consultations that involve extensive coordination with other agencies that have equities in the review, competing demands of litigation and other document declassification reviews, and inadequate information technology (IT).

(U) Some IC FOIA programs receive requests for large volumes of files or entire repositories of records. In addition, within the IC, certain classified documents require additional scrutiny and levels of review. Many IC FOIA programs also receive broad requests for “any and all” documents related to a topic, such as, “all agreements with foreign governments,” or “all communications” to or from a senator over a ten-year period. These kinds of broad requests add to the complexity of a request because it is more difficult for FOIA professionals to identify the correct office to search for potentially responsive material, and because searches for such requests may yield high volumes of potentially responsive records that must be reviewed.

(U//~~FOUO~~) Litigation demands are noteworthy. OGIS and OIP recognize that FOIA litigation cases can easily overtake a FOIA program by usurping resources available to address the rest of the workload. In both documentation and in interviews during this review, four of the six IC FOIA programs (CIA, DIA, NSA, and ODNI) report that litigation has a profound impact on their programs. All four describe litigation actions as disruptive to processing new requests and clearing existing backlogs because

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<sup>22</sup> (U) 5 U.S.C. § 552 (a)(6)(A)(i).

<sup>23</sup> (U) In 1996, pursuant to the *Electronic Freedom of Information Act Amendments of 1996*, Pub L. No 104-231 (October 2, 1996), Congress amended the Act to, among other things, increase the legal response period from ten working days to the current response period of twenty working days.

<sup>24</sup> (U) 5 U.S.C. § 552 (a)(6)(B)(i).

<sup>25</sup> (U) Unusual circumstances include the need to search for records from facilities separate from the office processing the request, the need to search for, collect, and examine a voluminous amount of separate and distinct records, or the need for consultation with another agency.

programs must redirect resources to address litigation related requirements. FOIA litigations have tremendous production deadlines; judges are giving disclosure orders and processing schedules that programs must meet. For example, programs may need to revisit all actions taken on a case and prepare declarations to explain how and why the program applied exemptions in a given response. One official described litigation so complex that it took a senior official a week to prepare one declaration. Many officials cited the concern that some requesters immediately seek litigation when the 20-day response window expires before programs have a chance to complete initial processing. NRO and NGA did not identify litigation as a significant impact on their FOIA programs.

(U) Figure 3: Percent of Initial Cases Closed in 1-20 days. (Source: IC elements annual reports to OIP).

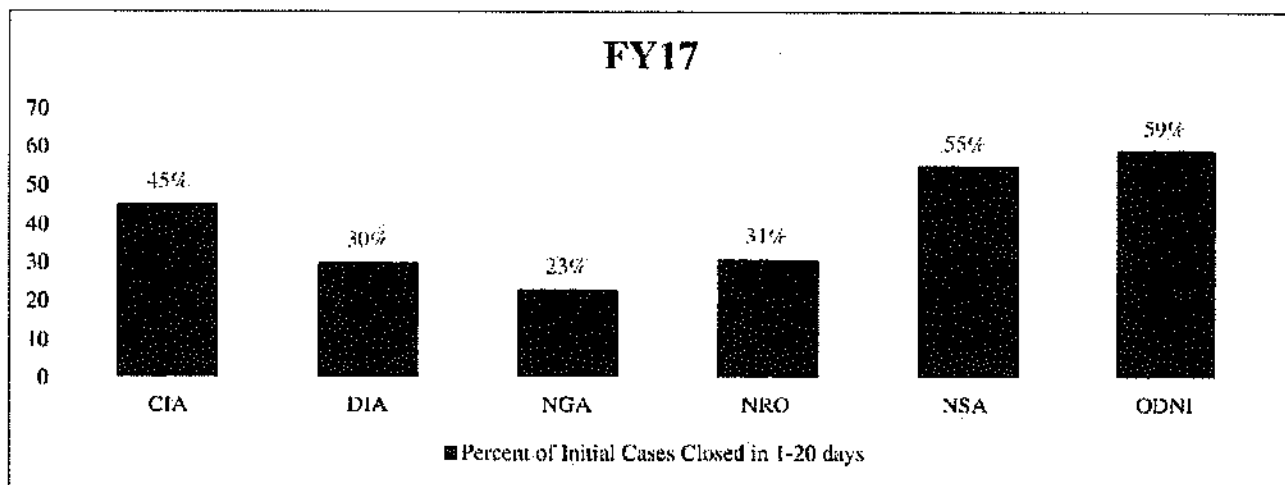


Figure 3 – Unclassified

**(U) Observation 2.1: Between FY16 and FY17 all IC Element FOIA programs reduced average processing times for simple requests, while changes in processing times for complex cases varied.**

(U) The 1996 amendment to the Act authorized agencies to multi-track requests. Multiple tracks allow an agency to process simple and complex requests concurrently on separate tracks to facilitate responding to relatively simple requests more quickly.<sup>26 27</sup> We found that IC FOIA programs are following multi-track processing, using primarily a first in, first out methodology for each queue. NSA's system includes six queues including one labeled "super easy," addressing requests that produce no records or that require minimal specialized review. NRO includes a queue for consultations with other agencies. 2017 OIP guidance states that agencies should focus on ensuring that their simple track requests are responded to within an average of twenty days.<sup>28</sup> Figure 4 illustrates FY16 and FY17 average processing times for simple and complex requests. All programs reported a decrease in processing times for simple requests between FY16 and FY17. For complex requests, CIA and DIA saw increases in processing times, while

<sup>26</sup> (U) *Electronic Freedom of Information Act Amendments of 1996*, PL 104-231.

<sup>27</sup> (U) A simple request is a request that an agency using multi-track processing places in its fastest (non-expedited) track based on the low volume and/or simplicity of the records requested. A complex request is one that an agency places in a slower track based on the high volume or complexity of the records requested.

<sup>28</sup> (U) OIP Guidance for Further Improvement Based on 2017 Chief FOIA Officer Report Review and Assessment (Updated June 15, 2017).

ODNI and NRO experienced decreased times. NSA's processing time for complex cases remained relatively the same over the two years.

(U) Figure 4: Average Days to Process Simple and Complex Requests (Source IC elements' annual reports to OIP).

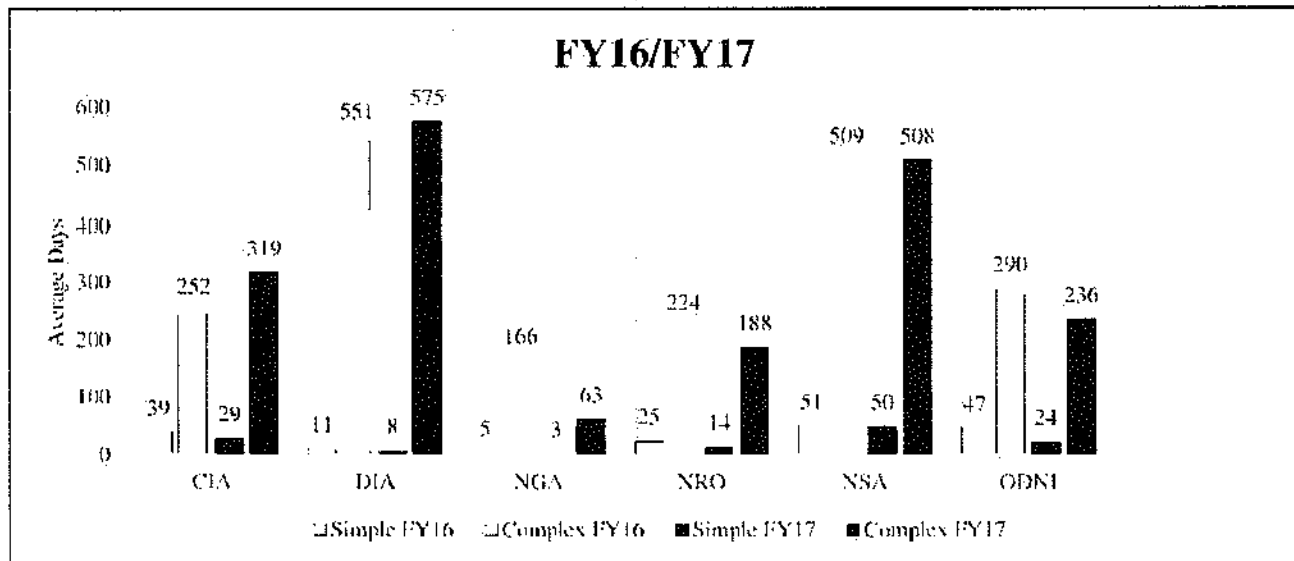


Figure 4 – Unclassified

(U) In addition to simple and complex requests, an agency may process requests on an expedited basis in cases in which the requester demonstrates a compelling need and in other cases determined by the agency. The Act requires agencies to determine within 10 calendar days whether a request meets the standards for expedited processing.<sup>29</sup> For FYs 16 and 17, not all IC FOIA programs reported expedited request determinations, but those that did made them in an average of less than 10 days. An agency that grants expedited processing must process the request “as soon as practicable.”<sup>30</sup> However, some expedited processing requests are taking over a year to complete. For example, in FY17, ODNI reported an average of 565 days to process expedited requests and NSA reported 937 days. Reasons for delays in responding to expedited requests are the same as those cited for delays in processing all other types of FOIA requests.

**(U) Observation 2.2: IC Element FOIA programs have focused efforts to close their oldest cases.**

(U) OIP advises that a critical element to improving timeliness is closing the oldest pending requests each year. OIP guidance states that agencies should focus on prioritizing their oldest requests to ensure that the age of pending requests continues to improve. It also states agencies that do not close their ten oldest cases should implement best practices such as actively tracking the status of the oldest requests.<sup>31</sup>

<sup>29</sup> (U) 5 U.S.C. § 552 (a)(6)(E)(ii).

<sup>30</sup> (U) 5 U.S.C. § 552 (a)(6)(E)(iii).

<sup>31</sup> (U) OIP Guidance, *Closing the Ten Oldest Pending Requests and Consultations*, August 21, 2014.

(U) We found that all of the IC FOIA programs placed priority emphasis on their ten oldest cases. NSA assigns senior reviewers to work the second level review of these cases. NGA assigns these cases to staff during weekly meetings based on caseload. CIA adds emphasis to their ten oldest cases and reviews them at a monthly panel. In FY17, ODNI assigned one FOIA professional to focus on its ten oldest cases. DIA refocuses staff on the ten oldest cases annually and meets monthly to discuss top ten case reduction efforts. NRO implemented a focused plan to close its ten oldest cases. NRO closed all of the ten oldest cases in FY16 that had been pending the prior FY. ODNI and DIA closed all of their ten oldest cases in FY17 that had been pending in FY16.

(U) Figure 5 illustrates the three oldest cases for each IC element. Across all six, the oldest cases are January 10, 2001, September 23, 2004, and February 16, 2007, respectively. The IC elements collectively acknowledge that these cases are normally the most complex, require more follow up, and involve the equities of numerous agencies. IC elements should continue to focus on their oldest cases.

(U) Figure 5: FY17 Three Oldest Requests by Months in Process (Source: IC elements' annual reports to OIP).

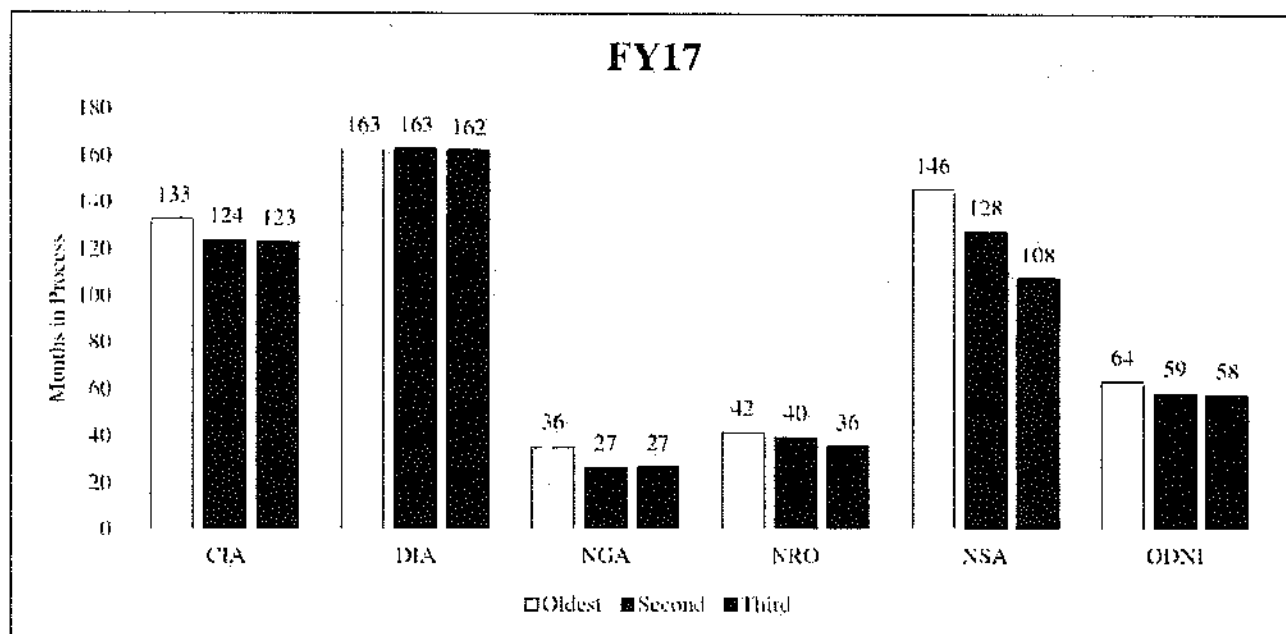


Figure 5 *Unclassified*

**(U) Finding 2.1: All IC FOIA programs report backlogs but not all have current backlog plans.**

(U) FOIA professionals consider a request part of the “backlog” when it has been at any agency longer than the statutory time-period of twenty working days, or if unusual circumstances are present, up to thirty days. In 2008, the Attorney General required that each agency that had not reduced its backlog over the last two years prepare a backlog reduction plan.<sup>32</sup> In subsequent guidance, OIP identified a change to

<sup>32</sup> (U) OIP Guidance, *Guidance on Preparing Backlog Reduction Plans*, updated August 22, 2014.

that requirement and indicated that only agencies with more than 1,000 backlogged requests in a year were required to describe their plans to reduce their backlogs.<sup>33</sup>

(U//~~FOUO~~) Each of the IC elements has backlogs. CIA, NSA, and DIA received the most requests and have higher backlogs (over 1000 cases). ODNI, NRO, and NGA received fewer requests and have smaller backlogs. IC FOIA programs attribute their inability to reduce backlog to increases in request volume and complexity as well as litigation demands. There was also concern among some FOIA professionals that programs worked special declassification review projects without the benefit of additional resources and redirected focus away from processing routine FOIA requests, ultimately adding to backlogs. Figure 6 illustrates processed and pending requests.

(U) Figure 6: FY16/17 Requests Processed and Pending (Source IC elements' annual reports to OIP).

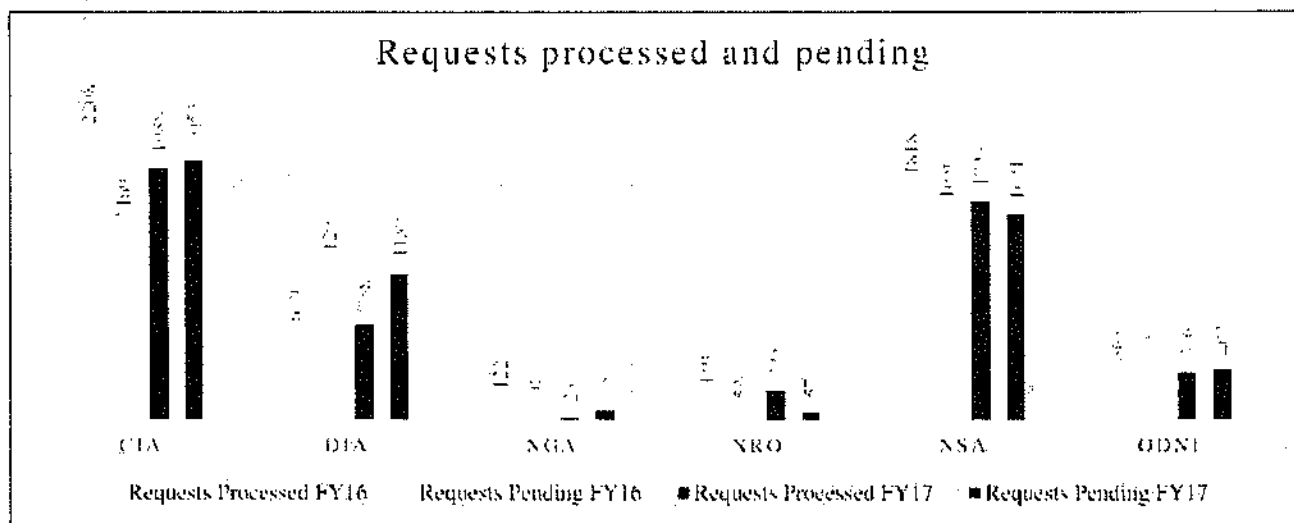


Figure 6 – Unclassified

(U//~~FOUO~~) Although all of the IC FOIA programs are undertaking efforts to reduce backlogs, four of the six IC elements had increases in backlogs between FY16 and FY17. Figure 7 illustrates backlogs. In FYs 16 and 17, CIA, NSA, and DIA had backlogs that exceeded 1000 requests and therefore were required to have backlog reduction plans, but only CIA and NSA had a backlog plan. CIA's plan streamlines levels of review for simple tasks and cases and implements improvements to workflows and coordination with other offices and agencies. NSA's plan outlines personnel increases, process improvement initiatives, and plans to create additional queues. NSA also plans to update website information and has identified IT requirements that would improve FOIA processing efficiency. NSA reports that significant increases in requests following the 2013 unauthorized disclosures had a substantial impact on their program.

(U//~~FOUO~~) DIA's FOIA Chief meets with staff monthly to monitor progress on backlog cases. DIA does not have a current backlog reduction plan, however. It is considering updating a legacy plan, but provided no period for the update. DIA advises that one reason for its backlog is that it is still recovering from a loss of contractors in 2015. Without a recent comprehensive plan to address backlog, DIA is unlikely to see sustained progress with backlog reduction.

<sup>33</sup> (U) OIP Guidance, *Guidelines for 2015 Chief FOIA Officer Reports*, updated December 11, 2014.

(U) Figure 7: FY16/17 Backlog Request Data (IC elements' annual reports to OIP).

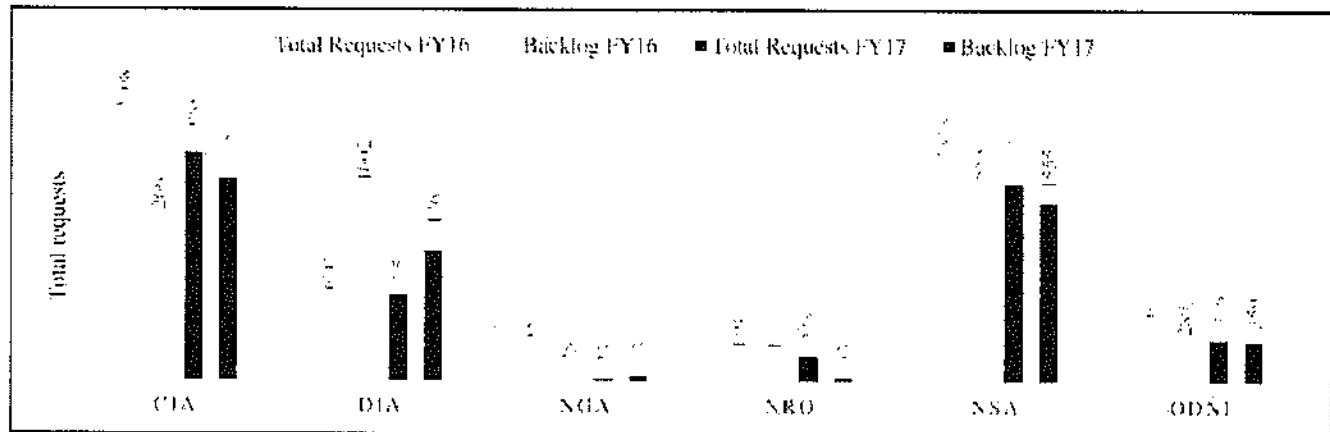


Figure 7 Unclassified

(U) **Recommendation 6: For DIA – Complete and begin implementation of a formal backlog plan.**<sup>34</sup>

(U) DIA concurred with Recommendation 6.

(U) **Finding 2.2: Consultations are a significant cause of processing delays and the IC does not have an established process or guidance for consultations.**

(U//FOUO) The Act states that programs should conduct consultations with other agencies with all practicable speed. When a program locates responsive records, it should determine whether another agency has a substantial interest in the records and consult with the other agency. In these consultations, a FOIA program responding to a request first forwards a record to another agency or component within the same agency for its review. Once the agency in receipt finishes its review, it responds back to the agency that forwarded it, who then responds to the requester. Within the IC, it is common to process requests with records involving joint reports or other documents that contain information originating from or of interest to several agencies. For example, intelligence assessments may rely on more than one source of intelligence and often include sources originating from multiple agencies and containing multiple equities. OIP identifies CIA as one of the three agencies that account for nearly 70 percent of all consultations processed government-wide with CIA processing 14 percent or 819 consultations in FY17.<sup>35</sup>

(U) We found that consultations take extensive time to complete and can cause significant delays in overall processing. There are a number of contributing factors to consultation lags within the IC. Several agencies that have IC components, including DHS and DOS, do not have JWICS terminals in their FOIA offices. As a result, there is no easy method to transfer documents from one agency to another due to system incompatibility. FOIA professionals often print documents, scan them, and upload to a different

<sup>34</sup> (U) IC IG initially addressed this recommendation to, "DIA, Chief FOIA and Declassification Services Branch." DIA's official concurrence requested this recommendation be addressed to "DIA," and provided IC IG with a point of contact for action related to this recommendation.

<sup>35</sup> (U) OIP Summary of Annual FOIA Reports for Fiscal Year 2017, undated.



system or send via postal mail. For those that use email, file size of the records is an issue and can result in programs sending multiple emails to transmit one case. Further, programs do not always follow up to check on the status of consultations and in some instances, the receiving organization is unable to locate the case, requiring the process to restart. Programs that have success closing consultations report regular and persistent follow up. Figure 8 provides FY17 consultations data.

(U) Figure 8: FY16/17 Consultations Received/Processed, and Pending (IC elements' annual reports to OIP).

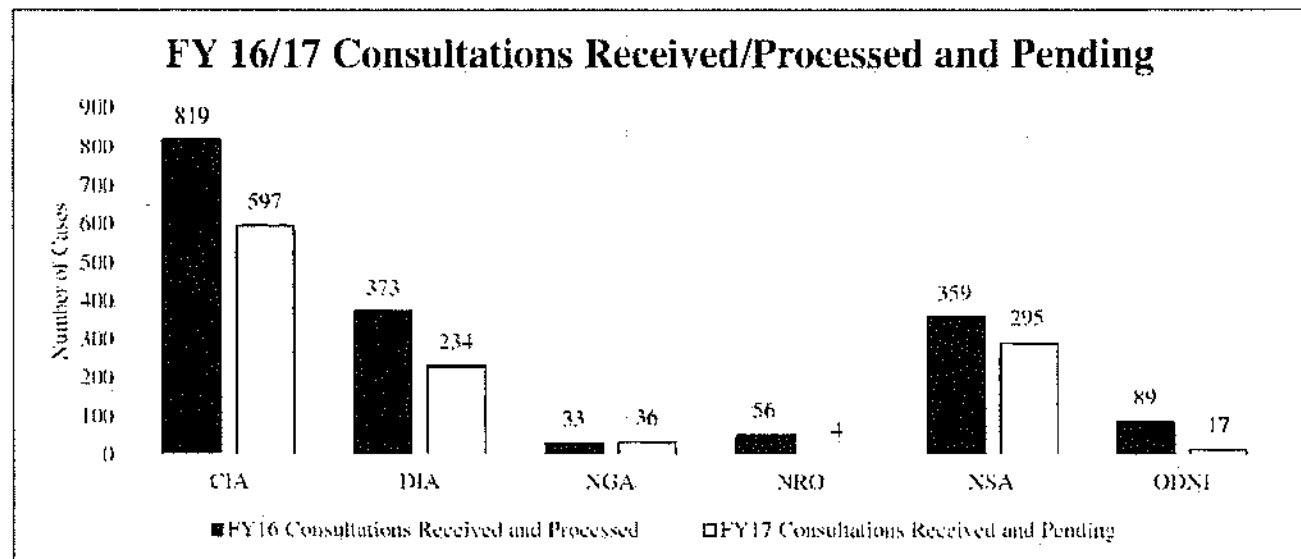


Figure 8 – Unclassified

(U//~~FOUO~~) OIP guidance states that when agencies routinely locate the same or similar types of documents or information that originated with another agency, or when agencies find that they routinely receive for consultation or referral the same type of record or information from another agency, they should look for ways to collaborate to see if they can adopt standard processing procedures to reduce the number of referrals or consultations that need to be made.<sup>36</sup> We found that a few agreements exist between some IC FOIA programs that describe how to handle each other's information or provide authority to make decisions. These agreements, if implemented properly, result in efficiencies because the program processing the case is empowered to make redactions and does not need to create a referral memorandum to the other organization. IC FOIA programs' greatest concern with these agreements is that the parties will go beyond their agreed upon authority to redact specific information, make a mistake, or inadvertently release classified or sensitive information.

(U) Apart from these unilateral agreements, the IC lacks guidance for consultations and there is no consistent approach. The aforementioned 2016 FOIA Improvement Plan includes one recommendation that called for agencies to include specific language in the memos used during the referral and consultation process. Agencies were to include language that explains how they plan to treat the document, and when possible which other agencies are consulted. During our review, we found that the IC has not implemented this recommendation or issued any guidance for consultations because ODNI

<sup>36</sup> (U) OIP Guidance, *Referral, Consultations, and Coordination: Procedures for Processing Records When Another Agency or Entity Has an Interest in Them*, August 15, 2014.

IMD leadership focused on its own FOIA program and not the working group recommendations. FOIA professionals agree that IC-wide guidance for consultations would help address areas of common concern across the IC and provide visibility into cross-IC cases. Several officials acknowledged that the Act gives authority for management of FOIA programs to heads of departments and agencies and as a result, ODNI is not likely to issue a formal policy document, such as an Intelligence Community Directive. However, the Director, IMD agreed that in its integrator role, ODNI has the authority to prepare guidance specific to common IC FOIA issues. The IMD website indicates IMD's role is to provide "light guidance" to ensure consistent information management practices across the IC. In the absence of guidance, IC programs are likely to continue to follow existing burdensome and inconsistent consultation processes.

**(U) Recommendation 7: For ODNI Director, IMD – In coordination with the CIA Chief FOIA Officer; the DNI Chief FOIA Officer; the DIA Chief FOIA and Declassification Services Branch; NGA Branch Chief, Declassification/FOIA/Privacy Act Branch; NRO Chief Information Review and Release Group; NSA Chief FOIA Privacy Act Division; and the DoD Chief FOIA Officer, develop IC guidance to address consultations.**

(U) ODNI concurred with Recommendation 7.

**(U) Finding 2.3: Chief FOIA Officers are reviewing programs annually but have not made recommendations for improvements to IC FOIA programs to the heads of their agencies.**

(U) The *FOIA Improvement Act of 2016* requires that the Chief FOIA Officer of each agency review, not less frequently than annually, all aspects of FOIA administration by the agency, including: agency regulations, disclosure of records required under paragraphs (a)(2) [proactive disclosure provision] and (a)(8) [foreseeable harm standard], assessment of fees and determination of eligibility for fee waivers, the timely processing of requests, and the use of exemptions and dispute resolution services with the assistance of OGIS or the FOIA Public Liaison.<sup>37</sup> The Act also requires that the Chief FOIA Officer recommend to the head of the agency such adjustments to agency practices, policies, personnel, and funding as may be necessary to improve its implementation of the Act.<sup>38</sup>

~~(U//FOUO)~~ IC FOIA programs reported that their Chief FOIA Officers are not performing comprehensive reviews of their programs. Each of the IC elements are reviewing their programs annually and submitting a Chief FOIA Officer report to the Attorney General as required. However, the involvement of the Chief FOIA Officers in these reviews is limited. In addition, we could not find evidence that the Chief FOIA Officers had made any recommendations to their agency heads for improvements to IC FOIA programs in FYs 16 or 17. CIA's Chief FOIA Officer reviews CIA's annual report and provides guidance but does not conduct a formal review of their program and/or processes. CIA advises that the Director, Agency Data Office, fulfills those functions on a daily basis in his management and oversight of all information management programs to include FOIA, and keeps the Chief FOIA Officer informed as appropriate. DoD includes DoD IC element data in their annual Chief FOIA Officer report to the Attorney General and in their annual report for the Secretary of Defense. The most recent DoD Chief FOIA Officer report to the Secretary of Defense, dated January 17, 2018, addressed, among other items, the FOIA processing backlog and specifically mentioned DIA's backlog. However, the report covered the entire DoD and while it identified areas for improvement for the

<sup>37</sup> (U) 5 U.S.C. § 552 (a)(8)(j)(3), as amended by Public Law 114-185 – June 30, 2016, *FOIA Improvement Act of 2016*.

<sup>38</sup> (U) 5 U.S.C. § 552 (a)(8)(j)(2)(C), as amended by Public Law 114-185 – June 30, 2016, *FOIA Improvement Act of 2016*.

Department, it did not speak to any improvements specific to DIA, NGA, NRO, or NSA. In addition, while the annual reports and Secretary of Defense reports are available for DoD IC FOIA programs to review, there is no formal feedback process to provide the four DoD IC FOIA programs with review findings and recommendations for improvement.

(U//~~FOUO~~) Further, DoD IC element FOIA programs do not consider the annual data gathering by the DoD Chief FOIA Officer to constitute a review. DIA, NGA, NRO, and NSA FOIA programs all reported regular communication with the Directorate for Oversight and Compliance, Office of the Chief Management Officer (CMO) of the DoD, Office of the Secretary of Defense, but each acknowledged that CMO had not conducted formal program reviews. The Directorate of Oversight and Compliance assists the CMO in the fulfillment of Agency Chief FOIA Officer statutory responsibilities and considers both the DoD Annual FOIA report to the Attorney General and the DoD Chief FOIA Officer's report to meet statutory requirements of review of the DoD FOIA program. ODNI's Chief FOIA Officer (ODNI's Chief Operating Officer) is new to her role and stated that once she has greater familiarity with the ODNI FOIA program, she plans to review the programmatic effectiveness of ODNI's program. However, as of June 2018, the ODNI Chief FOIA Officer had not conducted reviews of the ODNI FOIA program.

(U//~~FOUO~~) Comprehensive FOIA program reviews provide Chief FOIA Officers an opportunity to identify areas for FOIA program improvement and develop recommendations for increasing FOIA compliance and efficiencies. Data in the Chief FOIA Officer reports covering 2016 and 2017 illustrate how the FOIA programs struggle to keep pace with the growth of FOIA. Chief FOIA Officers, due to their senior placement within each organization, are uniquely positioned to have visibility into the complexity of the FOIA enterprise. Although Chief FOIA Officers are overseeing their programs' progress with meeting statutory requirements through annual reviews and reporting, it was not evident that they are advocating for their FOIA programs to their agency head.

**(U) Recommendation 8: For CIA and ODNI Chief FOIA Officers – Actively participate in the annual review of your FOIA program and make recommendations, as necessary, for improvements to the FOIA program to D/CIA and DNI, respectively.**

(U) CIA and ODNI concurred with Recommendation 8.

**(U) Recommendation 9: For DIA, NGA Branch Chief, Declassification/FOIA/Privacy Act Branch, NRO Chief Information Review and Release Group, and NSA Chief FOIA Privacy Act Division – Contact the DoD Chief FOIA Officer to collaborate on how best to conduct the annual review and establish a feedback mechanism to ensure your program receives results of annual reviews.<sup>39</sup>**

(U) DIA, NGA, NRO, and NSA concurred with Recommendation 9.

**(U) Finding 3: IC Element FOIA programs have various approaches to communicating with requesters but could further increase transparency.**

(U) Improving communication and working cooperatively with FOIA requesters are essential parts of implementing an efficient and effective FOIA system. The Act outlines procedures for an agency to

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<sup>39</sup> (U) IC IG initially addressed this recommendation to, "DIA, Chief FOIA and Declassification Services Branch." DIA's official concurrence requested this recommendation be addressed to "DIA," and provided IC IG with a point of contact for action related to this recommendation.

discuss with requesters ways of tailoring large requests to improve responsiveness, recognizing that FOIA works best when agencies and requesters work together. In addition, according to OIP guidance, establishing good communication with FOIA requesters is an “essential element to ensuring that each agency’s FOIA process is working in accordance with the President’s and Attorney General’s directives.”<sup>40</sup> Additional OIP guidance states that agency FOIA offices “must be ready to assist the public in understanding all aspects of the FOIA and how it works at their agency” and “should be able to assist members of the public” by:

- (U) identifying sources of information that are already posted and available, thereby potentially obviating the need to make a FOIA request in the first instance;
- (U) informing potential requesters about the types of records maintained by the agency (or agency component) and providing suggestions for formulating requests; and
- (U) describing the agency’s various processing tracks and providing the average processing times.<sup>41</sup>

(U) Proactively communicating with requesters may help avoid lawsuits. According to an OGIS official, personal contact is important and may prevent litigation. One IC official provided an example where engagement with the requester prevented a litigation action. We determined that all of the IC FOIA programs are communicating with requesters, but could make greater use of their websites to further share information.

**(U) Observation 3.1: IC FOIA programs are proactively engaging with requesters by telephone, email, or letter.**

(U) During our review, we found that all of the IC FOIA programs are communicating with FOIA requesters by telephone, email, or letter to acknowledge FOIA requests, clarify, and properly scope requests, thereby increasing the quality of the documents disseminated to requesters, and to relay anticipated response times. Of the IC elements reviewed, NRO appeared to have the most proactive relationship with its requesters. NRO’s FOIA program reported that it acknowledges requester inquiries within 24 business hours, and provides the requester with a case number (if applicable) and hotline number. IC elements reported that engaging regularly with requesters has improved their FOIA request processing timelines. NGA’s FOIA program provided an example of such engagement citing a case in which a requester initially asked for all records NGA possessed on Syria for the entirety of 2017. However, through negotiation with the requester, the FOIA staff was able to narrow the scope to months, thus facilitating a faster response.

(U) In one CIA example, in FY 2017, FOIA professionals had several discussions with an academic who requested all records on a specific political party in a specific country for a 16-year period. After FOIA professionals discussed his specific interest, the requester agreed to revise his request to documents about official corruption within the country’s government, and documents about seven companies that were involved in those activities during the 16-year period. Through these negotiations, CIA was able to tailor

<sup>40</sup> (U) OIP Guidance, *The Importance of Good Communication with FOIA Requesters*, August 21, 2014.

<sup>41</sup> (U) OIP Guidance, *The Importance of Quality Requester Services: Roles and Responsibilities of FOIA Requester Service Centers and FOIA Public Liaisons*, June 12, 2018.

the request to what the academic was actually interested in and identify specific search parameters to locate the appropriate responsive material.

(U) Similarly, ODNI's Civil Liberties, Privacy & Transparency (CLPT) office reported that they spoke with a FOIA requester who initially requested "all documents" related to a particular topic, or "a conversation." By engaging in discussions with the requester, CLPT was able to provide the requester what he needed without FOIA processing. A reduced, well-defined scope can result in faster response times, but FOIA requesters are not always willing to adjust the scope of requests. IC elements should continue to engage with requesters.

**(U) Observation 3.2: IC Element FOIA programs are not routinely providing information to the public about the types of records they maintain on their website in part due to national security restrictions.**

(U) Many requesters lack knowledge of the types of records the IC maintains. According to the OGIS, both IC FOIA programs and requesters could benefit if IC elements educate requesters on their missions. FOIA Advisory Committee (FAC) discussions note that if requesters knew the types of records agencies had, they could make more informed requests, rather than "any and all" requests, but many times they do not know what they should be asking for, because they do not know what records exist and how they are maintained. Education of requesters plays an important role in reducing inadequate searches, and more informed requests allow the agencies to conduct adequate searches. The 2016-2018 FAC, in its Final Report, for example, recommended that agencies disclose all unclassified reports agencies provided to Congress, with any necessary privacy redactions and all unclassified testimony submitted to Congress, making reports that are already the subject of many requests proactively available.<sup>42</sup> In addition, the FAC recommended posting an agency's organization chart and a directory listing contact information for all offices to ensure that the public can identify and contact federal offices for assistance.

(U//~~FOUO~~) IC elements face challenges that other US government agencies may not in determining what information to post on their public websites due to the classified and sensitive nature of the intelligence mission. Classification guides typically do not specifically stipulate what aspects of an IC element's mission may be shared with the public. IC elements are permitted by statute to withhold from the public information such as intelligence sources and methods, and information pertaining to agency employees, specifically: the organization, functions, names, official titles, salaries, or numbers of personnel employed. Therefore, if IC FOIA programs decide to share more on their websites, they must consider national security limitations.

**(U) Observation 3.3: NGA has posted few frequently requested documents to its public website.**

(U) The *FOIA Improvement Act of 2016* requires agencies make available for public inspection in an electronic format, records that have been requested three or more times. OIP guidance states that FOIA websites "should include a link to the FOIA Library (formerly called electronic reading rooms)" and that an agency's FOIA website and Reading Room can be a vital resource for users to find information that is

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<sup>42</sup> (U) *Report to the Archivist of the United States, Freedom of Information Act Federal Advisory Committee, Final Report and Recommendations 2016-2018 Committee Term*, April 17, 2018.

already publicly available.<sup>43</sup> OIP's 2017 guidance on proactive disclosures provides additional information and guidance on the content of FOIA Libraries.<sup>44</sup> In its 2017 DoD Chief FOIA Officer Report, NGA reported experiencing technical issues with the FOIA Library and that its system administration team was coordinating with technical support to improve functionalities. Several officials noted that NGA complies with the requirement to post records that have been requested three or more times, but that NGA does not often receive requests for the same document. All of the IC electronic FOIA Libraries we reviewed contained several released records, with the exception of NGA. A spot-check of NGA's FOIA webpage (<https://www.nga.mil/About/Pages/FOIA.aspx>) in July 2018 revealed that NGA has a FOIA Library, but the Library contains only one FOIA document and three annual reports. NGA reported in August 2018 that it is planning to post more documents.

**(U) Observation 3.4: The IC FOIA programs are proactively disclosing information to the public, but implementation challenges exist to routine posting of FOIA released documents to websites.**

(U) The IC Principles of Transparency Implementation Plan states that the IC should follow the practice of publishing FOIA released information on its public websites.<sup>45</sup> Further, 2017 OIP guidance states that agencies should, as a matter of discretion, be routinely posting material that is of interest to the public.<sup>46</sup> IC FOIA professionals and transparency officials recognize the importance of proactive releases to inform the public. Members of the public post FOIA released documents on their blogs and websites and provide narratives about intelligence activities that often lack context and reflect an incomplete or erroneous understanding of the IC. Although not required by law, when the IC proactively releases documents on their IC websites, it is an opportunity for the government to provide context to information and share the official story with the public. IC FOIA programs continue to pursue proactive disclosures but have identified several factors that limit full implementation including litigation workload, a lack of funding, personnel shortfalls, technical issues, and dependencies on other components responsible for management of the website. IC FOIA programs should continue to work to post items of interest to the public.

**(U) Observation 3.5: Some IC FOIA programs have implemented the Release to One, Release to All draft policy.**

(U) In July 2015, OIP launched a pilot program with the participation of seven volunteer agencies that sought to assess the viability of a FOIA policy that would entail the routine online posting of records processed for release under FOIA.<sup>47</sup> The draft policy, "Release to One, Release to All," would result in access by all citizens to information released under FOIA, not just those making a request.<sup>48</sup> The pilot

<sup>43</sup> (U) OIP Guidance, *Agency FOIA Websites 2.0*, November 30, 2017.

<sup>44</sup> (U) OIP Guidance, *Proactive Disclosure of Non-Exempt Agency Information: Making Information Available Without the Need to File a FOIA Request*, January 17, 2017.

<sup>45</sup> (U) *The Implementation Plan for the Principles of Intelligence Transparency*, October 27, 2015.

<sup>46</sup> (U) OIP Guidance, *Proactive Disclosure of Non-Exempt Agency Information: Making Information Available Without the Need to File a FOIA Request*, January 11, 2017.

<sup>47</sup> (U) OIP Proactive Disclosure Pilot Assessment, June 2016.

<sup>48</sup> (U) 24 C.F.R. Part 50, Request for Public Comment on Draft "Release to One, Release to All" Presumption, December 9, 2016.

identified metrics regarding the time and resources associated with implementing this policy. ODNI participated in the pilot and has continued to post all documents released under their FOIA program.

(U) During our review, IC FOIA programs reported a correlation between release of FOIA records to the public at large via website posting, and the subsequent influx of FOIA requests related to the same topic. However, the OIP pilot drew no conclusion as to whether the routine posting of FOIA processed records would result in an increase in requests. OIP has solicited input from and engaged with the public and other stakeholders on the draft policy, and is currently evaluating how to move forward in consultation with the Chief FOIA Officer Council. OIP acknowledges the resource implications of any new requirement to post additional records online.

(U) We found that several IC FOIA programs are releasing to the larger public records that they have released through FOIA processing. Figure 9 provides the status of IC FOIA program's implementation of proactive disclosure of records released under FOIA.

(U) Figure 9: Implementation of proactive disclosure of records released under FOIA.

IC Element	Status	Description of Implementation
CIA	Partial	During our review, CIA indicates they intend to post records with priority given to frequently requested records.
DIA	Full	Posts all releases on a monthly basis. Working with Public Affairs to market information placed on FOIA website.
NGA	Partial	Considering whether to incorporate this practice into policy. Will re-evaluate when their website has been reconstructed.
NRO	Full	Posts all releases on a quarterly basis, but in FY17 noted they had a break in posting records when funding was not available.
NSA	Partial	Reports proactive releases during 2017 but notes NSA's website was recently reorganized and they are working to establish an office presence on the website.
ODNI	Full	Since August 2015 has posted all FOIA responses. During this review, indicated they post all releases within two weeks, but have not had many records to post lately because not many initial FOIA cases have been completed due to focus on litigation.

Figure 9 Unclassified

**(U) Observation 3.6: IC FOIA programs could more effectively use their websites to educate the public by providing a description of their various FOIA processing tracks and average response times.**

(U) Processing time varies depending on whether the FOIA request is a simple request, a complex request, or a request requiring expedited processing. Processing times also vary depending on the FOIA program officers' workload and other factors. While DIA provides requesters with a queue number for their request in correspondence, a review of the six IC element FOIA websites as of July 2018 revealed that none is currently providing information to the public about average processing times. Providing requesters with more visibility into FOIA processes and processing times can help manage requester expectations. Therefore, IC FOIA programs should consider providing a description of their processing tracks and average response times on their websites.

**(U) Commendable 1: NRO conducted a survey of its FOIA requesters to solicit feedback.**

(U) NRO recently conducted an online survey of its frequent requester community in order to better assess and understand satisfaction with FOIA processes and response letters. The survey included a section in which requesters provided input on the type of information that is most desired under the agency's proactive release program. While IC elements have various initiatives through transparency and historical declassification programs to seek public input, NRO was the only program we found that had a survey to seek input on the FOIA program. Surveying FOIA requesters can be an effective method for soliciting customer feedback on agency FOIA processes and requester document needs. IC FOIA programs should consider conducting a survey of their requesters.

**(U) Finding 3.1: The IC has not strategically evaluated the effect of IC initiated proactive review and release initiatives on FOIA programs.**

(U) The ODNI CLPT focuses on high-priority intelligence and national security initiatives to help the IC protect civil liberties and privacy as it pursues its intelligence objectives. CLPT also has a mission to ensure the IC provides appropriate transparency to the public. In 2014, CLPT led the Intelligence Transparency Working Group (ITWG) that identified a need for guidance on how offices such as FOIA, general counsel, civil liberties and privacy, public affairs, and information management should interact to integrate transparency within and across the IC. On April 4, 2016, then DNI Clapper formalized the transition of the ITWG into a permanent IC Transparency Council (ITC) with his signature on the Council Charter. IC FOIA professionals have varying levels of interaction with transparency, historical program, and declassification review officials. Recently, the IC has undertaken a number of historical declassification and transparency efforts to release information to the public. The IC delivered records on topics related to the John F. Kennedy assassination, the Vietnam War TET offensive, the White House directed review on Argentina, and Section 702 of the Foreign Intelligence Surveillance Act, among others.<sup>49</sup>

(U) In some IC elements, FOIA programs must shift resources away from FOIA processing to search for records or perform document reviews in support of these efforts, resulting in longer processing times for FOIA cases. We found that FOIA professionals were not always knowledgeable about recent transparency or historical review efforts and officials leading these efforts were not aware of the impact on FOIA programs. Further, in some cases, FOIA professionals were processing FOIA cases and making redactions of information when they learned the same information had just been officially released by a proactive declassification review. Knowledge of the other information review and release effort could have informed the FOIA program's approach in the FOIA processing. Although CLPT has provided informal guidance and shared best practices through the ITC, the IC has not developed formal written guidance to address integration between these offices. In the absence of formal written guidance, there is a risk that these declassification reviews may not be properly coordinated and will continue to require redirection of FOIA program resources without adequate planning.

**(U) Recommendation 10: For ODNI's CLPT Officer, in coordination with ODNI/IMD, IC FOIA programs, and appropriate information management professionals – Develop overarching written**


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<sup>49</sup> (U) Section 702 refers to the *FISA Amendments Act* that prescribes procedures for targeting certain persons outside the U.S. other than U.S. persons.



**guidance that specifies roles, responsibilities, and processes for coordinating IC-wide transparency initiated declassification review and release projects.**

(U) ODNI concurred with Recommendation 10.

**(U//~~FOUO~~) Finding 4: The IC has mechanisms in place to reduce the likelihood of inconsistent FOIA release determinations.**

(U//~~FOUO~~) The aforementioned 2015 initial briefing to the EXCOM on FOIA challenges spoke of inadequate insight into how other agencies are responding to the same or similar requests. In the briefing, the former Director, IMD noted this lack of insight has sometimes led to the same information processed differently or inconsistently redacted across agencies. The briefing highlighted the need for overarching guidance for releasable information when FOIA requests have equities originating in or across multiple agencies.

(U) For purposes of this assessment, we defined an inconsistent FOIA release determination as a decision to withhold information when in the past a decision had been made to officially release the same information or vice versa. As noted in the introduction and methodology sections of this report, IC IG asked IC elements for examples of inconsistent FOIA release determinations and performed open source research to locate examples; however, we did not address IC elements' application of particular FOIA exemptions in specific cases. We determined in some cases what appears to be an inconsistent release is actually the proper application of an IC element's statutory authority that allows one IC element to withhold information that another IC element may release such as an employee's official email address. Further, events may have transpired since the original release decision, such as a subsequent declassification of the same or similar information, which may legitimately result in a different decision on the same information upon a later review.

(U//~~FOUO~~) None of the IC FOIA program officials nor the current Director, IMD identified inconsistencies as a prevalent problem. In addition, our open source research did not yield information to suggest that inconsistencies were a significant issue. Further, we found IC FOIA programs practice a number of approaches to reduce the chance that inconsistent release decisions occur. Although there is no data available to perform a statistical analysis to measure occurrence of inconsistent decisions as a percentage of overall releases, several officials cite the large volume of pages released and the relatively small number of errors discovered. Nonetheless, we identified examples of different decisions on the same information. In April 2016, at ODNI's FOIA Officers' Information Day, a speaker, who was a frequent FOIA requester, provided examples of requesting information at separate times where the same documents were redacted differently. CIA shared a couple of examples in which there was a denial of information by a Glomar decision in one case and not in another for the same information. NSA reported a similar case in which DoD released a document containing NSA's information that should have been a Glomar decision, but NSA learned of it after the release. We also found an instance where redaction actions applied by multiple IC elements were not de-conflicted prior to release. NRO acknowledged a case in which they redacted a few words that had been previously released. In some cases, requesters brought these inconsistencies to the IC's attention and they were corrected.

(U) Factors that contribute to inconsistent FOIA release determinations include:

- (U//~~FOUO~~) Failure to conduct consultations with all organizations that have equities in the information being reviewed;
- (U//~~FOUO~~) No visibility across IC FOIA programs regarding requests for the same or similar information;
- (U//~~FOUO~~) Human error, primarily related to the volume of pages being reviewed and the manual nature of the review process;
- (U//~~FOUO~~) Inadequate research or limited search capability to determine if the information being reviewed was previously officially released; and
- (U//~~FOUO~~) A time gap between when the IC or other agencies officially release information and classification guides FOIA professionals use are updated to reflect a new classification or declassification decision.

**(U) Observation 4.1: ODNI's 2016 FOIA Improvement Plan includes recommendations that should mitigate the chances inconsistent FOIA release determinations occur.**

(U//~~FOUO~~) Although IC FOIA programs practice a number of approaches to reduce the chance that inconsistent release decisions occur, there are opportunities to improve these efforts. IC FOIA programs use a two or more person review of documents prior to release and employ senior reviewers. To be successful in minimizing inconsistencies, reviewers need expertise and longevity in their positions. IC FOIA programs also conduct research to locate previously released documents, but several identified inadequate enterprise wide systems to perform these searches. Several IC FOIA programs employ redaction software that uses code to identify words, but there is no common redaction software for the IC.

(U//~~FOUO~~) IC FOIA programs offer equities recognition training to reduce the chance that programs will mistakenly make a decision on information that belongs to another organization, which may be inconsistent with past decisions. We found this training raises FOIA professionals' awareness of organizational specific sensitivities to prevent inappropriate release of classified information. Several IC elements and the ODNI have hosted equities recognition sessions, but IC professionals believe the IC should sponsor more of this training.

(U//~~FOUO~~) In addition, when FOIA requesters submit requests for the same or similar information to multiple organizations, requesters are not required to notify each organization of the other's requests and the IC does not have a mechanism or IT tool that records FOIA requests received across the IC. As a result, the potential exists that IC FOIA programs could make different decisions on the same information if these requests are not properly coordinated through the consultation process. However, if ODNI implements Recommendation 1 of this report to execute its 2016 FOIA Improvement Plan, which is focused on greater collaboration, consultations, guidance, a collaborative site, and training, the IC should have a stronger framework to reduce inconsistent release determinations.

**(U) APPENDIX A: ACRONYMS LIST**

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<b>CIA</b>	Central Intelligence Agency
<b>CIG</b>	Consolidated Intelligence Guidance
<b>CLPT</b>	Civil Liberties, Privacy and Transparency
<b>DHS</b>	Department of Homeland Security
<b>DIA</b>	Defense Intelligence Agency
<b>DIF</b>	Difficult Issues Forum
<b>DoD</b>	Department of Defense
<b>DOJ</b>	Department of Justice
<b>DOS</b>	Department of State
<b>E.O.</b>	Executive Order
<b>EXCOM</b>	Executive Committee
<b>FAC</b>	FOIA Advisory Council
<b>FOIA</b>	Freedom of Information Act
<b>FY</b>	Fiscal Year
<b>IC</b>	Intelligence Community
<b>IC IG</b>	Intelligence Community Inspector General
<b>I&amp;E</b>	Inspections and Evaluations Division
<b>IMD</b>	Information Management Division
<b>IT</b>	Information Technology
<b>ITWG</b>	Intelligence Transparency Working Group
<b>JWICS</b>	Joint Worldwide Intelligence Communications System
<b>NARA</b>	National Archives and Records Administration
<b>NGA</b>	National Geospatial-Intelligence Agency
<b>NRO</b>	National Reconnaissance Office
<b>NSA</b>	National Security Agency
<b>ODNI</b>	Office of the Director of National Intelligence
<b>OGC</b>	Office of General Counsel

**(U) APPENDIX A: ACRONYMS LIST CONTINUED**

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<b>OGIS</b>	Office of Government Information Services
<b>OIG</b>	Office of Inspector General
<b>OIP</b>	Office of Information Policy
<b>PA</b>	Privacy Act
<b>SME</b>	Subject Matter Expert
<b>USDI</b>	Under Secretary of Defense for Intelligence

**(U) APPENDIX B: COMMENTS**

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(U) ODNI concurred with Recommendations 1, 2, 3, 4, 5, 7, 8, 9, and 10. DIA concurred with Recommendation 6. CIA concurred with Recommendation 8. DIA, NGA, NRO, NSA concurred with Recommendation 9.

**(U) CIA Comments**

(U) CIA concurred with no comment.

**(U) DIA Comments**

(U) DIA concurred with no comment.

**(U) NGA Comments**

(U) NGA concurred with no comment.

**(U) NRO Comments**

(U) NRO concurred with no comment.

**(U) NSA Comments**

(U) NSA concurred with no comment.

**(U) ODNI Comments**

(U//~~FOUO~~) The Office of the Director of National Intelligence (ODNI) appreciates the opportunity to comment on the draft IC IG assessment. ODNI recognizes the need for improved FOIA processing and coordination within the IC, as well as its unique role in supporting such progress. ODNI will endeavor to implement the recommendations provided by the assessment in a manner that respects and adheres to ODNI's authorities, and as can be realistically achieved with the available resources. ODNI also recognizes that implementation of the IC IG recommendations may take time.

(U//~~FOUO~~) As such, ODNI concurs with the ICIG assessment with the following comments/recommendations:

- (U//~~FOUO~~) Recommended changes to references to Intelligence Transparency Working Group – The Intelligence Transparency Working Group (ITWG) was formalized into the Intelligence Transparency Council by a charter signed by then-DNI Clapper in April of 2016 and posted publicly. Accordingly, suggest, in the first paragraph under Finding 3.1, add a new sentence after the existing third sentence, as follows: "On April 4, 2016, then DNI Clapper formalized the transition of the ITWG into a permanent IC Transparency Council (ITC) with his signature on the Council Charter." In the second paragraph, replace "ITWG" with "ITC." (CLPT).

**(U) IC IG made this change prior to publication.**

- (U//~~FOUO~~) Adjust Updated Recommendation 1 to add EXCOM approval of the updated plan – Once ODNI updates the FOIA Improvement Plan, approval by the EXCOM would be necessary to elicit IC-wide commitment, and to enable IMD to implement the updated plan in successful collaboration with the IC elements.

**(U) IC IG made this change prior to publication.**

## **(U) APPENDIX C: SUMMARY OF FOIA EXEMPTIONS**

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(U) This appendix provides a summary of the FOIA exemptions. For the full statutory language, see 5 U.S.C. § 552 (b).

- (b)(1) Records are currently and properly classified in the interest of national security.
- (b)(2) Records that relate solely to the internal rules and practices of an agency.
- (b)(3) Records that are protected by another law that specifically exempts the information from public release.
- (b)(4) Trade secrets and commercial or financial information obtained from an individual or business which would cause substantial competitive harm to the submitter if disclosed.
- (b)(5) Inter-agency or intra-agency documents which would not be available by law to a party in litigation with the agency (e.g., records protected by the deliberative process, attorney-client or attorney-work product privileges).
- (b)(6) Records which if released would result in a clearly unwarranted invasion of personal privacy.
- (b)(7) Investigatory records or information compiled for law enforcement purposes.
- (b)(8) Records used by agencies responsible for the regulation or supervision of financial institutions.
- (b)(9) Records containing geological and geophysical information regarding wells.

**(U) APPENDIX D: SUMMARY OF RECOMMENDATIONS**

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**(U) Recommendation 1:** For ODNI Director, IMD – Update, obtain EXCOM approval, and begin implementation of the recommendations of the 2016 FOIA Improvement Plan.

**(U) Recommendation 2:** For ODNI Director, IMD – Revise the 2016 FOIA Improvement Plan to align the IT recommendation to the appropriate IC strategic priorities (e.g., within the *CIG: Fiscal Year 2020 2024* and other relevant strategic documents).

**(U) Recommendation 3:** For ODNI Director, IMD – Reestablish the Difficult Issues Forum or another IC body for IC element FOIA programs to collaborate.

**(U) Recommendation 4:** For ODNI Director, IMD – Initiate discussions with OIP on IC-wide FOIA issues.

**(U) Recommendation 5:** For ODNI Director, IMD – Initiate discussions with OGIS regarding strategic IC-wide FOIA issues, access concerns, and the IC's perspective on the FOIA statute.

**(U) Recommendation 6:** For DIA – Complete and begin implementation of a formal backlog plan.<sup>50</sup>

**(U) Recommendation 7:** For ODNI Director IMD – In coordination with the CIA Chief FOIA Officer, the DNI Chief FOIA Officer, the DIA, Chief FOIA and Declassification Services Branch, NGA Branch Chief, Declassification/FOIA/Privacy Act Branch, NRO Chief Information Review and Release Group, NSA Chief FOIA Privacy Act Division, and the DoD Chief FOIA Officer develop IC guidance to address consultations.

**(U) Recommendation 8:** For CIA and ODNI Chief FOIA Officers – Actively participate in the annual review of your FOIA program and make recommendations, as necessary, for improvements to the FOIA program to D/CIA and DNI, respectively.

**(U) Recommendation 9:** For DIA, NGA Branch Chief, Declassification/FOIA/Privacy Act Branch, NRO Chief Information Review and Release Group, and NSA Chief FOIA Privacy Act Division Contact the DoD Chief FOIA Officer to collaborate on how best to conduct the annual review and establish a feedback mechanism to ensure your program receives results of annual reviews.

**(U) Recommendation 10:** For ODNI's CLPT Officer – In coordination with ODNI/IMD, IC FOIA programs, and appropriate information management officials – Develop overarching written guidance that specifies roles, responsibilities and processes for coordinating IC-wide transparency initiated declassification review and release projects.

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<sup>50</sup> (U) IC IG initially addressed recommendations 6 and 9 to, "DIA, Chief FOIA and Declassification Services Branch." DIA's official concurrence requested this recommendation be addressed to "DIA," and provided IC IG with a point of contact for action related to this recommendation.

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**Defense Intelligence Agency  
Freedom of Information Act  
Backlog Reduction Improvement Plan**

**1. Challenge:**

- a. The Defense Intelligence Agency (DIA)/ Freedom of Information Act (FOIA) must address recommendations identified by the Office of the Inspector General of the Intelligence Community (OIG IC) Inspections & Evaluations Division. These included the need to: 1.) develop a plan to reduce DIA's FOIA backlog (Recommendation 6); 2.) collaborate with the Office of the Director of National Intelligence (ODNI) to develop a FOIA consultations plan (consultations are information contained in documents owned by external agencies that must be reviewed by them) (Recommendation 7); and 3.) collaborate with the Department of Defense (DoD) Chief FOIA Officer to develop improvements in the annual reports process (Recommendation 9).

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- b. DIA's starting backlog at the beginning of FY19 is 1282 requests. Mission Services (MS)/ [redacted] anticipates, based upon historical data, that DIA will receive approximately 791 new requests by the end of FY19.
- c. Achieving a 1% reduction over a 12-month period based upon current data would require DIA to close an estimated 804 requests. The following chart provides additional data reflecting the quantity of cases that must be closed to achieve targeted reductions between 1 & 5 percent.

DoD Mandate 5% (FOIA/PA only)	5%	4% Scenario	3% Scenario	2% Scenario	1% Scenario
Starting FY19 Backlog	1282	1282	1282	1282	1282
Expected FY19 NEW	791	791	791	791	791
TOTAL FY19 Requests (Backlog + NEW)	2073	2073	2073	2073	2073
TOTAL FY19 to CLOSE to meet target %	855	842	829	817	804
Expected FY19 CLOSED Requests (based upon current resources)	463	463	463	463	463
Expected FY19 CLOSURES SHORTFALL	-392	-379	-366	-354	-341

- d. DIA cannot achieve a 1% reduction with its current staffing level of 40 officers, which includes nine contractors funded through an Unforeseen Requirement (UFR) request. On average, based upon a number of dynamic factors associated with reviewing volumes of pages of classified documents, DIA's FOIA officers can close approximately fifteen cases annually. The following chart provides examples how committing additional FOIA officers to DIA's program can reduce the backlog of cases.

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	5% Scenario	4% Scenario	3% Scenario	2% Scenario	1% Scenario
Projected case closure shortfall for FY19	392	379	366	354	341
Additional FTE required to achieve targeted reductions * based upon FY18 actuals)	27*	26*	25*	24*	23*
Anticipated funding required (assuming contractors)	\$5.4M	\$5.2M	\$5M	\$4.8M	\$4.6M
Projected case closure (assuming resource plus-ups) over a 12 month period	855	842	829	817	804

## 2. Background:

- a. The OIG IC Inspections & Evaluations Division examined the effectiveness of DIA's FOIA program along with programs belonging to five other IC elements. This examination focused on how programs prioritize, coordinate, and process requests to meet statutory requirements, including response timeliness and communications with requesters. Results from this examination validated that each agency faced similar challenges in achieving a backlog reduction.
- b. The report recognized common challenges beyond the IC's control, including the increased volume and complexity of incoming requests and the additional demands of FOIA litigation. The report also recognized that the IC's approach to FOIA was inefficient. Contributing factors included the absence of adequate technologies and structured processes for coordination of requests across agencies, as well as gaps involving declassification reviews that have implications on FOIA programs across IC elements.
- c. DIA/OIG also conducted a review of DIA's FOIA program on February 22, 2017. Its review concluded DIA had a sound foundation for an effective FOIA program, and that policies and practices were effective at mitigating the risk of inadvertent disclosure of classified information while remaining responsive to FOIA requests. However, the DIA/OIG found DIA/FOIA's program lacked defined objectives, goals and metrics focused on assessing effectiveness, performance and responsiveness. It also noted a lack of guidance on roles and responsibilities for directorate and office personnel involved in processing FOIA requests. MS/ [redacted] responded to these observations by clarifying roles and responsibilities through a revised DIA policy, promulgating training for FOIA officers who conduct reviews for directorates and special offices, and applying available performance data to monitor responsiveness to DoD performance targets. Lastly, DIA/OIG recognized that any improvements to DIA's FOIA program consider other dependencies associated with records management and disposition, data asset management and classification management.
- d. MS/ [redacted] concurs with both DIA and the OIG IC findings. However, MS/ [redacted] also recognizes additional dependencies within DIA's program that contribute to the agency's FOIA backlog. These include the absence of an information governance process that

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makes it possible to efficiently and accurately manage and retrieve permanent records subject to FOIA requests, and reliance on UFR requests (\$2.8M) for the augmentation of additional contract FOIA officers to meet the increased demand for DIA records.

- e. MS/ [ ] handles three categories of requests: FOIA (information requests from the public), Privacy Act (requests for information from privacy act systems of record), and Appeals (challenges by the public to the Agency's response). MS/ [ ] also must respond to Consultations (referrals containing records from other government agencies that have DIA equity) and to cases that are before the court in litigation.

- f. MS/ [ ] must adhere to the following metrics consistent with current mandates:

- 1) Provide requestors a response within 20 workdays.
- 2) Reduce FOIA backlog by a 10% target established by the Department of Justice. DoD, however, accepts a 5% reduction because of the challenges unique to the handling of national security information.
- 3) Close ten of the oldest cases in each request category (FOIA, Privacy Act and Agency Consultations).
- 4) Respond to FOIA litigation.

- g. MS/ [ ] did not meet these mandates during FY17 and FY18 because of the challenges already mentioned. Furthermore, MS/ [ ] had to divert many resources during FY18 to prepare the agency's response for requests by the National Security Council (NSC) to release available records relating to the JFK, Argentina and Tet offensive. MS/ [ ] anticipates DIA will receive similar requests in the future as the NSC seeks to release more information to the public.

- h. MS/ [ ] approach to responding to the public's request for information relies heavily upon subject matter experts (SME) across the agency to review responsive documents for release. Once completed, MS/ [ ] officers complete a methodical review of the documents to ensure that any information withheld from release comports with one of the nine FOIA exemptions. This review serves as DIA's last line of defense to safeguard sensitive or classified information that should be protected under a FOIA exemption.

**3. Assumptions:**

- a. Maintaining status quo in the current FOIA program requires DIA to continue accepting risk. This risk could affect DIA's reputation as an agency committed to the principles of openness and accountability, and potentially expose it to future claims of attorney fees through FOIA litigation actions.
- b. Current staffing levels, which assumes funding for a \$2.8M UFR request will be approved during FY19, only buys DIA what it has today. While some adjustments to

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internal processes may create some new efficiencies, achieving any measurable reduction during FY19 will require an infusion of officers who have the right knowledge and skills, as well as a commitment by directorates and special offices to apply additional priority towards SME reviews.

- c. Maintaining a backlog reduction beyond FY19 will also require DIA to establish a compressive strategy that takes on a whole-of-agency approach because of the complex issues that must be resolved. These complex issues are expected to require an additional commitment of resources that cannot be forecasted at this time.
- d. While achieving a reduction is important, DIA cannot ignore DoD and Department of Justice targets for closing the ten oldest cases in each of the four categories (FOIA, Appeals, Privacy Act, and Consultations requests), or responding to any requests associated with NSC's initiative to release additional data or litigation. See enclosure 1.

4. Plan of Action

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a. Short-Range:

- 1) MS [ ] will adjust internal FOIA processes no later than February 11, 2019, to enable additional focus towards SME and quality control reviews that historically contributed to the backlog. This will be informed through the results from a leadership offsite held during the week of 10 December. This responds to OIG IC recommendations 6, 7 and 9.
- 2) MS [ ] will seek to embed a FOIA officer within the Directorate for Operations (DO) and the Directorate for Analysis (DI) no later than April 1, 2019, to assist DO and DI officers with processing FOIA review requests more efficiently. This responds to the OIG IC recommendations 6 and 7.
- 3) MS [ ] will research and enact available options to surge additional support for the FOIA program to address the immediate backlog. This responds to OIG IC recommendations 6.
- 4) MS [ ] will begin to share the results of its monthly assessment of FOIA operations with the Director, DIA Office of Oversight and Compliance in his role as the Agency's senior transparency officer and senior privacy and civil liberties officer. MS [ ] currently sends monthly FOIA status updates to the Strategic Planning, Policy, and Performance Management Office for the Director's Dashboard. This responds to OIG IC recommendations 6 and 9.
- 5) MS [ ] will continue to collaborate with DoD Chief FOIA Officer on a phased initiative to standardize DoD-wide FOIA case management processes that can help the Department reduce backlog, improve visibility, accountability and timeliness of FOIA Case management. In addition, both will collaborate on how to improve the annual review process in the future. This responds to OIG IC recommendation 9.

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b. Long-Range:

- 1) MS/ [ ] will form an Information Governance Council (IGC) to build and enact a strategy that positions DIA/FOIA to better handle any new surge in requests by the public. The IGC's primary deliverable will be an annual report to the Chief of Staff at the beginning of each calendar year. This addresses OIG IC recommendations 6, 7 and 9. At a minimum, the IGC will seek to:
  - a) Strengthen information governance across the enterprise, including automatically capturing all email of agency senior leaders at the moment of its origination, and placing it in DIA's searchable electronic records management system. This is linked to the NARA's capstone email retention policy.
  - b) Establish a way-forward to deal with the 24K cubic feet of records stored at the Washington National Records Center.
  - c) Identify new functional requirements for the existing FOIA case processing system that will be added as funding and time permit to improve efficiency and speed.
  - d) Strengthen DIA's cadre of officers supporting FOIA processing to overcome skill gaps, and staffing gaps associated with workforce attrition.
  - e) Improve funding to a mission area to maximize flexibility in responding to increased demands by the public for DIA information.
- 2) MS/ [ ] will also continue to partner with the DoD Chief FOIA Officer to find ways to incorporate any promising best practices. This includes working with DoD FOIA Program office to identify common FOIA challenges within the department and develop solutions that will improve DoD FOIA program processes and outcomes. This initiative addresses OIG IC recommendations 6, 7 and 9.

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Enclosure 1: Ten Oldest FOIA/Appeals/Privacy Act/Consultation Cases with Statuses

	FOIA	Received	Status
1	0110-2005	11/19/04	Closed 29 November
2	0281-2005	3/3/05	Awaiting consultation from Other Government Agency (OGA)
3	0622-2005	7/12/05	Awaiting QC
4	0682-2005	8/6/05	Awaiting QC
5	0684-2005	8/8/05	Awaiting consultation response from OGA
6	0693-2005	8/9/05	Assigned to analyst
7	0697-2005	8/10/05	Awaiting QC
8	0741-2005	8/17/05	Assigned to analyst
9	0790-2005	9/13/05	Re-sent to DO for review
10	0007-2006	10/5/05	Awaiting response from requestor to a FOIA office request for more information. Letter sent in October

	Appeals	Received	Status
1	APP-0082-2012	5/2/12	Assigned to analyst
2	APP-0009-2013	10/3/12	Tasked for review
3	APP-0111-2013	4/15/13	Appeal SSS Coord
4	APP-0087-2013	6/4/13	Appeal SSS Coord
5	APP-0098-2013	7/30/13	Ready for work
6	APP-0006-2014	11/12/13	Ready for work
7	APP-0014-2014	1/2/14	Ready for work
8	APP-0017-2014	1/6/14	Tasked for review
9	APP-0018-2014	1/6/14	Ready for work
10	APP-0041-2014	4/22/14	Ready for work

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	Consultations	Received	Status
1	CONF-0112-2013	9/12/13	Awaiting OGA response
2	CONF-0104-2014	7/25/14	Ready for work
3	CONF-0105-2014	7/25/14	Turned in signature
4	CONF-0106-2014	7/25/14	Ready for work
5	CONF-0110-2014	7/31/14	Ready for work
6	CONF-0122-2014	8/19/14	Ready for work
7	CONF-0005-2015	10/1/14	Turned in signature
8	CONF-0008-2015	10/3/14	Read for work
9	CONF-0014-2015	10/14/14	Assigned to analyst
10	CONF-0224-2015	10/24/14	Assigned to analyst

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**Enclosure 2: FOIA Process Chart**

