U.S. Environmental Protection Agency
Freedom of Information Act Workgroup Report

Prepared for Robert Perciasepe, Deputy Administrator

June 10, 2011

Freedom of Information Act (FOIA) Workgroup Report

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I.   Executive Summary

Deputy Administrator Robert Perciasepe requested an examination of the Environmental Protection Agency's (EPA) administration of the Freedom of Information Act (FOIA) and Confidential Business Information (CBI) regulations and supporting processes to determine if changes are needed to increase openness, transparency and accountability.

A. The Workgroup's Charge

Responding to directives and guidance from President Obama, Attorney General Holder, and Administrator Jackson, the Deputy Administrator requested a workgroup be formed to develop options and recommendations to ensure that the Agency's administration of FOIA and related processes are effective, efficient and promote open government and transparency policies. Specifically, the Workgroup was charged to review:

- EPA's current regulations governing FOIA and CBI.

- EPA's current policies, procedures and practices to ensure that the Agency's administration of FOIA and handling of CBI are up to date, effective, coordinated and consistent.

- EPA's use of available tools, including new technology, to inform citizens in a timely manner about Agency operations.

The Deputy Administrator requested volunteers from across the Agency to serve on the FOIA Workgroup. Employees from six offices and five regions provided diverse subject matter expertise and work experience to Workgroup deliberations. (See Section II.A. Workgroup Leadership and Membership for the offices and regions that participated.) The Workgroup examined underlying processes and identified opportunities for improvement in each of the areas identified above.

B. Summary of FOIA Findings

In the FOIA program, the Workgroup found:

- Significant improvements in all areas of weakness identified in 2001 by a previous FOIA review (although some senior management accountability improvements have waned).

- Opportunities to build on successful actions that have strengthened FOIA administration. (For example, current FOIA regulations do not reflect administrative improvements taken since 2001 to comply with the Open Government Act of 2007 and improve the FOIA program).

- Policies and procedures need to be updated or created to promote transparency and proactive disclosure.

- An expanding volume of electronic documents are being searched and provided to requesters due to the proliferation of electronic mail (e-mail).

- Integrated processing tool sets are needed to efficiently manage FOIA processes.
- A one-size-fits-all training approach does not meet the diverse needs of EPA employees (from staff who rarely receive a FOIA request to staff who respond frequently or administer the program).

C. Summary of CBI Findings

In the CBI program, the Workgroup found:

- CBI regulations, published in 1976 and amended in 1978 and 1985, need to be updated and streamlined to promote greater efficiency in processing CBI claims.
- CBI guidance tools are needed to handle and evaluate confidentiality claims.
- A single organization to oversee CBI administration across the Agency would bring consistency to EPA's handling of CBI. (There is a need for Agency-wide policies and procedures and administration tools).

D. Report Organization

The report is organized into sections or subject areas where a series of findings are presented along with specific, actionable recommendations. Some recommendations include options to address an issue and the implications of each option are presented. The five sections are:

- Enhancing FOIA Processes
- Enhancing CBI Processes
- Leveraging Tools and Technology
- Improving Staff Training
- Establishing Greater Accountability

A consolidated listing of the 22 recommendations is included as Appendix A. The Appendix provides an at-a-glance view of each recommendation, along with an assessment of the recommendation's impact, effort necessary to implement, its benefit, the type of action and the lead office.

E. Next Steps

The Workgroup recognizes that additional work is required to prioritize and implement recommendations and developed Appendix A as a first step in the prioritization process. Decision-makers will find this tool helpful as it provides several approaches to prioritizing the recommendations (e.g., by impact, value, level of effort). During the implementation phase, the lead office will engage other offices, as necessary, to ensure successful implementation.

II.   Background and Approach

EPA has long embraced the spirit and intent of FOIA and related processes. A decade ago, the Agency reviewed its FOIA program, focusing on accountability, centralization, and revising procedures, policies and guidance. As a direct result of the review, EPA revised FOIA regulations and supporting policies/procedures, centralized key functions, acquired new FOIA technology and drastically reduced the backlog of FOIA requests by over 98% (from over 23,000 in 2001 to 329 in 2010).

Although EPA has built a strong FOIA program over the years and is recognized as a leader across the Federal government, recent legislative changes to FOIA, President Obama's 2009 memorandum on accountability and transparency and technological advances provide the foundation and opportunity to further strengthen and enhance EPA's FOIA and related programs.

Deputy Administrator Robert Perciasepe created the FOIA Workgroup in July 2010 and charged the members to examine FOIA and related processes. The Workgroup identified specific actions that position the Agency to be more agile and further support President Obama and Administrator Jackson's emphasis on openness, transparency and accountability with a special focus on proactive disclosure of information. These actions include bringing FOIA and CBI regulations and administrative policies and procedures up to date to reflect changes driven by legislation, the Administration and EPA. During their examinations, the Workgroup consulted with other EPA groups and other federal agencies involved in proactive disclosure and Open Government (OpenGov) activities. The Workgroup identified several opportunities to build on current successes and further advance the Agency's ability to ensure timely delivery of and access to environmental information.

To meet the Deputy Administrator's charge, the FOIA Workgroup focused on:

- Determining how best to improve regulations as well as administrative policy and procedures in support of the FOIA program and for handling CBI.

- Identifying tools and technologies to facilitate FOIA and CBI processes.

- Assessing the FOIA training and education needs of EPA's workforce.

- Establishing/reinforcing appropriate accountability for EPA managers and staff with FOIA and CBI responsibilities.

A. Workgroup Leadership and Membership

The FOIA Workgroup was co-led by the Office of Environmental Information (OEI) and Office of General Counsel (OGC) in recognition of the importance of information dissemination, technology and legal challenges. The Workgroup leadership includes:

- Co-Chair Deborah Williams, OEI
- Co-Chair Bob Friedrich (Retired October 2010), OGC
- Co-Chair Kevin Miller, OGC

The Deputy Administrator requested volunteers from across the Agency to serve on the Workgroup. Members represented the following offices and regions:

- Office of the Administrator (OA)
- Office of Administration and Resources Management (OARM)
- Office of Enforcement and Compliance Assurance (OECA)
- Office of Environmental Information (OEI)
- Office of General Counsel (OGC)
- Office of Solid Waste and Emergency Response (OSWER)
- Office of Chemical Safety and Pollution Prevention (OCSPP)
- Regions 1, 2, 3, 4, 8 and 9

B. Drivers of FOIA and Related Processes Evolution

In the past ten years, there have been several drivers behind improving and modernizing EPA's FOIA and CBI processes including:

- 2001 FOIA Task Force Report
- 2007 Open Government Act (OPA)
- 2008 Administrative Changes in EPA's FOIA Business Processes (No link available)
- 2009 Office of Inspector General (OIG) Report on FOIA
- January 21, 2009 Presidential Memorandum on FOIA
- March 10, 2009 Attorney General Memorandum on FOIA
- March 16, 2010 Presidential Chief of Staff Memorandum on FOIA
- April 23, 2009 EPA Administrator Jackson Memorandum on Transparency
- EPA's Open Government Plan, last updated June 25, 2010

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C. Approach to Present Findings and Recommendations

The Workgroup examined the efficiency of FOIA and CBI processes, practices and procedures, reviewing the status quo and evaluating current needs and impediments to effectiveness. The Workgroup also assessed cross-cutting issues such as tools and technology, training and accountability. In addition, the Workgroup considered the recent and anticipated actions of the Department of Justice (DOJ), the lead Federal agency for FOIA administration and guidance.

To best present Workgroup's findings and recommendations from this review, this report is organized as follows:

- Enhancing FOIA Processes
- Enhancing CBI Processes
- Leveraging Tools and Technologies
- Improving Staff Training
- Establishing Greater Accountability

III. Enhancing FOIA Processes

As previously noted, several years ago the Agency placed an emphasis on increasing accountability in the FOIA program and significantly reducing the FOIA backlog. The Agency's successful reduction of its FOIA backlog by 98 percent over the last 10 years, as well as other FOIA administration improvements, have contributed to EPA's recognition across the Federal government. The organization and administration of the current FOIA program is depicted in Figure 1.

Figure 1: FOIA Organization and Process
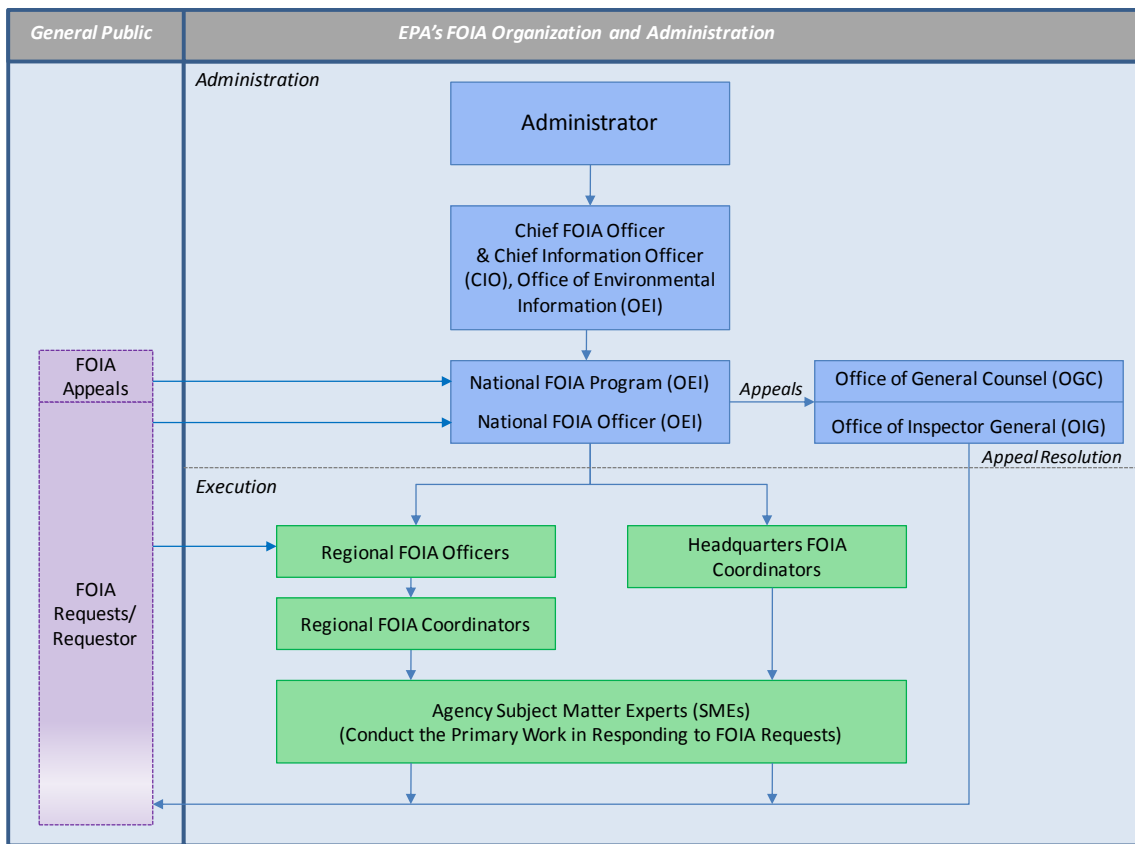
The Agency is now focusing on further strengthening the program, maintaining its low backlog numbers and increasing proactive disclosure of information to eliminate the need for the public to file a FOIA request and provide broader access to environmental information. To meet this goal, both regulatory and administrative changes are required.

Modifying the current regulations is a formal process and necessary to be compliant with statutory requirements; therefore, the findings and recommendations for FOIA regulations are addressed separately from the proposed administrative changes.

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A. FOIA Regulations

EPA's FOIA regulations, 40 CFR Part 2, Subpart A, were last updated in 2002 and need to be revised to comply with the 2007 Open Government Act, reflect EPA's business process changes and correct obsolete information.

Findings

Complying with the Open Government Act – Changes mandated in the Act are not reflected in EPA's FOIA regulations including:

- Re-definition of when the "20-day" clock begins (amends time limits and impacts when a request is "overdue").

- Revision of the definition of "media."

- New FOIA administration requirements.

Changing EPA Business Process – EPA's FOIA regulations do not reflect business process changes made in 2008. These changes were made to ensure consistency in the application of statutory criteria and assure the Agency meets statutory deadlines:

- Fee waiver and expedited processing decisions are now consolidated in the Headquarters FOIA Office. (FOIA regulations state that Regions can make these decisions for requests submitted directly to the Region; however, this practice is no longer authorized.)

- Addresses published in the regulations are outdated for offices that have since relocated.

Updating FOIA Fees – EPA's cost recovery component (the mechanism that allows the Federal government to be reimbursed for costs associated with responding to FOIA requests) is based on outdated information.

- EPA's fee structure is 8 years old. Employee salaries and other administrative costs have significantly increased since the fee structure was established.

- EPA's fee structure recovers only 2% of total costs to process requests (reported in EPA's FY 2010 Annual FOIA Report). EPA's recovery of fees under FOIA will never approximate actual costs since some costs are unbillable or not eligible for reimbursement (i.e., FOIA requests with processing costs under $14 or those granted fee waivers). While such processing costs are not charged to the requester, the Agency incurs the expense. The costs reported in the FOIA Annual Reports include billable and unbillable processing costs.

- Fee structures employed by other agencies use a wide variety of methods to assess costs and determine FOIA fees, and they recover from 0-3.5% of costs according to DOJ's Summary of Annual FOIA Reports for Fiscal Year 2009. These fee structures range from actual fully-loaded labor rates for each employee who spends any time working on a FOIA request to tiered categories of fixed hourly fees (e.g., clerical, professional or manager time). The methods may or may not include charges for computer time and other direct costs.

DOJ is the lead federal agency for FOIA administration and guidance and is expected to publish Government-wide proposed regulations in the second quarter of FY 2011. The Agency expects the regulations to address changes required by the Open Government Act.

Recommendation

No. 1: Revise EPA's FOIA regulations to 1) fully comply with the Open Government Act and DOJ regulations/guidance, 2) reflect changes in EPA's business processes and 3) update FOIA fee information.

EPA should begin the process of updating the Agency's FOIA regulations and use DOJ's regulations (once they are released) as a framework for addressing Open Government Act changes. (Note: The formal regulatory review process cannot begin until DOJ's regulations/guidance are published and addressed).

B. FOIA Administrative Policies and Procedures

The previous section presented FOIA improvements that must be implemented with regulatory changes to FOIA. This section presents findings and recommendations for FOIA that do not require changes to FOIA regulations. These improvements can be implemented by creating or updating administrative policies or procedures.

1. Standard Operating Procedures (SOPs)

   Findings

   - EPA's National FOIA Standard Operating Procedures (SOPs) were included in the FOIA Manual, last updated in 1992. Because the manual is outdated (due to the many statutory, policy and procedural changes since 1992), the intranet links to the obsolete FOIA Manual were removed.

   - In 2009, the Office of the Inspector General (OIG) released a review of EPA's FOIA program and recommended that the Assistant Administrator for OEI "create written standard operating procedures for all regional and program offices responsible for FOIA responses." Although some regions have region-specific SOPs posted on their intranet sites, there are no national SOPs that provide overarching guidance to all employees involved in the FOIA process.

   - As a result of the OIG recommendation, OEI organized a workgroup to establish national SOPs. These draft SOPs are being reviewed by this separate workgroup.

   Recommendations

   No. 2: Finalize national standard operating procedures (SOPs) to set minimum processing standards. Make SOPs available to Agency employees and communicate their availability.

   - Involve programs and regions in reviewing and finalizing the national FOIA SOPs.

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- Allow programs and regions to have their own SOPs as long as they complement and do not conflict with the national FOIA SOPs.

- Post national FOIA SOPs on the EPA intranet so they are available to all employees.

- Notify all employees when the new SOPs are available and provide training. (See Section VI. Improving Staff Training).

2. Discretionary Releases

Some FOIA exemptions are considered discretionary because an agency has the discretion to release or withhold the documents. In prior administrations, the presumption was to withhold all such documents. In recognition of openness, President Obama's Administration advises the release of these documents unless an agency can show "foreseeable harm."

Findings

- DOJ conducted workshops and published information on their website explaining the policy and recommended "best practices;" however, there is a great deal of uncertainty across the Federal FOIA community regarding how to apply the policy. In particular, determining when to allow discretionary releases of information when a valid FOIA exemption can be applied. Uncertainty can result in the inconsistent application of the "foreseeable harm" standard when deciding whether to withhold or release documents.

- EPA's National FOIA Office and OGC frequently assist employees seeking guidance on the meaning and application of FOIA policy and deciding what constitutes "foreseeable harm" (the subjective litmus test to decide if a discretionary release is appropriate). Without clear guidance, there can be inconsistencies across the Agency in implementation.

- Currently, two levels of review are required for discretionary releases only if the document is withheld. If the Agency decides to release a document subject to a discretionary release, no additional review is required.

- EPA does not have written guidance or formal reviews to balance openness and transparency against reasonably "foreseeable harm" to protect privileged internal communications [such as the deliberative process privilege, attorney-client privilege or attorney work-product privilege (Exemption 5), enforcement activities (Exemption 7) and records related solely to the internal personnel rules and practices of the Agency (Exemption 2)].

Recommendations

No. 3a: Develop guidance on applying the presumption of openness and identifying and articulating "foreseeable harm" when making decisions to release and withhold documents under FOIA's discretionary exemptions.

No. 3b: Require two levels of review of all documents that are released or withheld under a discretionary FOIA exemption.

3. Delegation 1-30

Delegation 1-30, issued in November 1983, gives Agency senior managers the authority to make initial decisions on withholding and releasing records under FOIA, waiving fee payments, and extending the date initial responses are due.

Findings

- These authorities may be re-delegated [with the caveat that initial FOIA request denials may not be re-delegated below the Division Director (or equivalent) level].

- Currently, any employee in the Agency can make a decision to release records, potentially posing a risk of inconsistency in Agency responses and information being released without senior management approval. As discussed in the previous section, the subjective decision to make a discretionary release when it is covered by a valid FOIA exemption requires the application of "foreseeable harm" considerations. (See Section II.B.2).

- Delegation 1-30 states that fee waiver decisions for the Agency can be made by various organizations, although these decisions are now made only by the Headquarters FOIA office.

Recommendations

No. 4: Modify Agency Delegation 1-30 to 1) reflect that all fee decisions are now made by the Headquarters FOIA office and 2) require programs and regions to issue formal re-delegation documentation to identify who (by title or position) has the authority to make initial FOIA decisions to release records within their organization.

4. Attorney Fees and Costs to FOIA Plaintiffs

FOIA requesters can take legal action if a request is not answered within the "20-day" time period. If legal action is taken, the attorney fees and costs associated with FOIA litigation are the responsibility of the Federal government. The responsible Federal agency to fund such activities has shifted.

Findings

- Prior to the Open Government Act of 2007, attorney fees and costs associated with FOIA litigation were paid from the Claims and Judgment Fund of the US Treasury. Costs are now the responsibility of each individual agency or department.

  – Because FOIA litigation attorney fees and costs must now be paid out of EPA's annual appropriations, the Office of the Chief Financial Officer (OCFO) is drafting a policy to determine how the liability or responsibility will be assessed for late or incomplete FOIA responses.

  – The OCFO policy is not final, but individual offices do not want to be held liable for potential legal costs associated with missing a FOIA response deadline.

- The changes and uncertainty regarding litigation costs are further complicated when a FOIA response must be coordinated across the Agency.

- Supporting OneEPA, EPA's initiative to act cohesively as a single unit and speak with one voice, the National FOIA Office designates a lead office when more than one office must supply information to satisfy a request to better ensure consistency and completeness in EPA responses.

- The lead office and contributing offices have begun to respond directly to the requester to avoid being late and potentially liable for litigation costs resulting in billing inaccuracies, no comprehensive review of responsive records and confusion for FOIA requesters expecting a single response from EPA.

- The unintended result of this litigation funding change in the Open Government Act has created certain challenges in some instances, such as a lack of accountability for a complete FOIA response, poor cooperation across offices, inconsistency in FOIA responses, billing errors and difficulty in responding as OneEPA to FOIA requesters.

Recommendations

> *No. 5: Finalize and implement the policy on FOIA litigation payments for attorney fees and other costs, balancing accountability with fairness and administrative simplicity.*

- The policy should encourage the Agency to respond to requesters as one Agency through a lead office to ensure consistency and response quality, which cannot be accomplished when offices respond independently.

- Having a lead office allows EPA to conduct business with the public in the spirit of OneEPA.

5. FOIA Administration

The Workgroup recognizes that offices have discretion in assigning the number and time commitment of staff resources throughout the organization to fully meet their office's FOIA responsibilities. The current FOIA response model across the Agency is primarily decentralized, which creates many challenges including:

- Inconsistency in responses to similar requests.

- Difficulty in managing and balancing the backlog of overdue requests across the Agency.

- Inability to respond with one voice and as OneEPA.

Findings

- Each office and region has a primary FOIA coordinator responsible for assigning, tracking and monitoring the overall administrative process of requests, with advice solicited as needed from OGC, the Regional Counsel's office and the National FOIA Officer.

- The substantive work to respond to FOIA requests is performed by subject matter experts (SMEs) across the Agency. The SME typically communicates directly with the FOIA requester to extend due dates, narrow the scope of the request, ask clarifying questions and resolve other issues. The SME may provide the response directly to the FOIA requester with no second level review.

- Region 4 and the Office of Pesticide Programs (OPP) use a centralized FOIA management model with a mid-level manager directly responsible for all FOIA responses within the region/office. Region 4 and OPP have dedicated staff who have become FOIA Specialists, perform all FOIA functions and do not have collateral responsibilities. A mid-level manager is directly accountable for ensuring the quality, timeliness, consistency and appropriateness of all FOIA responses. This model is well suited to organizations that process a high volume of requests, receive many highly complex requests and/or face a universe of requests that are large volume, highly complex and/or from requesters inclined to be litigious or adversarial.

- Region 7 is primarily decentralized but with a centralized final review process. The FOIA Officer reviews all responsive documents to address consistency issues and prepares the FOIA response letter to requesters.

- The FOIA Workgroup reviewed the merits of the centralized end-to-end model used by Region 4 and OPP's model. The Workgroup believes a centralized model is the most efficient approach to ensure consistency, timeliness and accountability, but recognizes centralization may not be practical for all organizations.

Recommendations

> *No. 6: Require EPA programs and regions to assess fully centralizing FOIA administration activities within their organization (if the function is not already centralized).*

Options for how this centralization review can be conducted as well as anticipated implications are presented below.

Option 1a: Conduct an Assessment of the Costs and Benefits to Fully Centralize FOIA Activities

Each organization not currently centralized should conduct an assessment of the quantifiable and non-quantifiable costs and benefits to centralize FOIA processes with dedicated staff or full-time equivalents (FTEs). If an organization determines that the costs to centralize do not justify the benefits, it must describe how the appropriate oversight of FOIA activities will be provided, including ensuring consistency in FOIA responses, identifying opportunities for proactive disclosure and plans to address any backlog of FOIA requests.

The results of this review will be submitted to the Agency's Chief Information Officer (CIO) and the Deputy Administrator.

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Option 1b: Assess FOIA Administration Activities, Identifying Opportunities to Centralize or Consolidate Resources or Processes to Improve Operational Efficiency

Each organization should assess its FOIA administration activities and identify opportunities to improve operational efficiency, including a review of resource or process consolidation and/or centralization. The review must describe deficiencies identified and plans to address them, disclose the number of FTEs that support FOIA activities, detail how the office will ensure consistency in FOIA responses, identify how opportunities for proactive disclosure will be identified and provide a plan to address any FOIA backlog.

The results of this review will be submitted to the Agency's CIO and the Deputy Administrator.

Option 2: Designate One or More Knowledgeable Individuals to Review FOIA Responses

Emulating the general concept of the Region 7 example, each organization should designate one or more individuals with the requisite knowledge, skills and abilities to review all FOIA responses in order to ensure consistency in responses and consistency in the application of discretionary exemptions (whether to withhold or release information). Centralizing these reviews will also help organizations identify opportunities for proactive disclosure.

Each office and region should clearly identify who within their organization will perform FOIA duties, identifying them by title, position and/or name. The duties should be reflected in their performance agreements to document this function. An organization may choose to have several trained individuals perform this function as a collateral duty.

Implications of Options 1a, 1b and 2

There is a significant level of effort required to conduct full program reviews for Options 1a and 1b and present a report to the CIO and Deputy Administrator. However, the review will clearly indicate where improvements are needed to address deficiencies in each office's FOIA administration activities. The FOIA Workgroup believes most organizations will prefer not to centralize FOIA operations due to reorganization and FTE reallocation concerns. Some offices and regions may not receive a sufficient number of FOIA requests to merit centralization, while other offices do and could benefit significantly. Each program and region has a primary FOIA Coordinator who may already perform this function within his/her organization. However, Agency FOIA Coordinators have competing administrative responsibilities and may require training to perform this function for their organization.

IV. Enhancing CBI Processes

The Workgroup found that the Agency's approach to managing CBI administration is similar to how FOIA activities were managed before implementing the 2001 FOIA Task Force's recommendations a decade ago. Those recommendations resulted in 1) establishing a unit in OEI to provide national FOIA administration oversight, 2) acquiring new technology for tracking and managing FOIA submissions and 3) holding senior leaders accountable for managing FOIA activities in their organization.

Currently, there is no organizational unit responsible for national oversight of CBI, including the development of procedures, policies, guidance and the acquisition of tools and technology needed to manage the lifecycle of Agency CBI submissions. The present approach contributes to processing delays and can lead to inconsistent treatment of CBI and confusion in identifying which procedures apply when multiple offices are involved. The FOIA Workgroup believes that establishing a national CBI program will result in significant improvements, address the majority of the findings and recommendations and be consistent with OneEPA.

Modifying the current regulations is a formal process and necessary to comply with statutory requirements; therefore, the findings and recommendations for CBI regulations are addressed separately from the proposed administrative changes.

A. CBI Regulations

EPA's CBI regulations (last amended in 1985) are outdated and unnecessarily complex. This section addresses how the regulations should be updated and streamlined to promote greater efficiency in handling CBI claims and responding to FOIA requests.

Findings

- Due to the workload demands of the substantiation process, EPA typically does not make determinations for CBI claims unless there is a pending FOIA request. Moreover, a confidentiality determination may not be necessary if a FOIA requester is satisfied with receiving the releasable information that was not claimed as confidential. Currently, automatic referrals to OGC or regional counsel are required to make confidentiality determinations on responsive records not released pursuant to Exemption 4 of FOIA[1]. This creates an unnecessary workload burden.

- Current CBI regulations do not reflect the courts' diverse treatment of voluntarily submitted information claimed as CBI.

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[1]Exemption 4 of the FOIA protects "trade secrets and commercial or financial information obtained from a person [that is] privileged or confidential from disclosure." 5 U.S.C. § 552(b) (4) (2006). Exemption 4 protects voluntary or mandatory submissions of trade secrets and commercial or financial information to the Government by safeguarding them from competitive disadvantages that could result from disclosure.

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- EPA does not uniformly require contractors/businesses to clearly identify CBI or make CBI claims upon submission of documents, including proposals. CBI claims are currently allowed after information is initially submitted to the Agency, creating an additional strain on FOIA backlogs.

- Businesses routinely submit information with a CBI claim and are not required to provide an up-front justification. Upon request, a business must submit its justifications in support of its confidentiality claim or waive its claim. Unless otherwise waived, information claimed as confidential is not disclosed until the Agency reviews the claim and issues a determination as to the confidentiality. This process imposes a large and potentially unnecessary workload on Agency program staff and legal resources to determine if the information can be released (resulting in increased backlogs).

Recommendations

> *No. 7: Revise EPA's regulations to conform with case law regarding diverse treatment of voluntary submissions of claimed CBI and promote greater efficiency in handling CBI claims.*

- Requiring businesses to a) clearly claim and substantiate CBI upon submission of documents/information or b) waive any CBI claims would promote efficiency and consistency. This restructuring would allow EPA to release more information without additional analysis and avoid the time-delay involved in requesting and reviewing additional information from the business.

- Recommended steps for the process to revise regulations:

  - Evaluate whether EPA's CBI regulations conform to existing standards articulated in court decisions, including the treatment of voluntary submissions of claimed CBI.

  - Survey other federal agencies' CBI regulations and identify model regulations as a framework for improving and streamlining EPA's CBI regulations.

  - Determine whether to add contract provisions or a regulation requiring contractors to identify and substantiate CBI at the time of submission or otherwise waive any claim of confidentiality.

  - Determine if regulations should be revised to require up-front CBI substantiation of claims and to establish procedural rules that would require the periodic reassertion of long-term CBI claims.

  - Determine whether to remove the rule that refers all denials under Exemption 4 to the appropriate legal office for a confidentiality determination.

  - Determine whether to establish a regulation providing that CBI claims will expire at the end of a set period of time after submission unless the submitter requests and provides justification for a longer designation period.

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B. CBI Administrative Policies and Procedures

The previous section presented CBI improvements that require regulatory changes. This section presents findings and recommendations that can be implemented by creating or updating administrative policies or procedures.

1. CBI Responsibility and Agency Policy

EPA has no single organization that provides national oversight for managing CBI and developing CBI regulations, policies and procedures.

Findings

- A wide diversity of procedures, processes and practices for managing CBI are used across the Agency varying from highly proscriptive guidance and policies in some offices to an absence of direction in others.

- EPA would benefit from having an organization that is responsible for establishing Agency-wide CBI standards to manage Agency CBI. This organization would be responsible for defining the levels of security appropriate to protect various classes and kinds of CBI and other sensitive documents, as well as developing, hosting and disseminating tools for use by Agency staff and submitters, when appropriate.

Recommendations

> *No. 8: Create a new CBI organizational unit or assign CBI oversight responsibility to an existing organizational unit. The organization would be responsible for establishing Agency-wide CBI policy and security standards for handling and processing CBI claims.*

- The Workgroup believes OEI is the appropriate organization to perform this function.

- The implementation of this recommendation will require reorganization if a new office or branch is established. If the function is placed in an existing unit, reorganization may not be required. However, either approach requires that the unit be staffed with the expertise needed to perform the requisite functions. Programs that currently manage large collections of CBI have developed policies, procedures and other program requirements for managing these documents and may not support this recommendation.

- A consistent Agency-wide CBI process would make it easier for offices to work together more seamlessly without having processing delays by one office having to recertify its employees to handle CBI from another office.

2. CBI Class Determinations

Class determinations indicate that certain types of business information with shared characteristics are or are not entitled to confidential treatment. The Agency would still need to issue a determination on any CBI, but the determination could rely on the class determination instead of more lengthy review of the substantiation claims and case-by-case analysis. A class determination may support a determination that information does not

qualify for confidential treatment, but it does not eliminate the advance notice requirement to an affected business before information is released.

Findings

- Making individual determinations regarding each CBI claim is a lengthy and sometimes costly process.

- Making class determinations provides predictability to businesses and the public and reduces the burden on EPA of making repetitive individual determinations. A class determination may also reduce the burden of an affected business, which may otherwise be required to submit information, in support of a confidentiality claim.

- Class determinations could help expedite the review of a larger number of claims if the Agency creates more applicable class determinations.

Recommendations

> ***No. 9: Develop Agency procedures to facilitate and expand use of class determinations for more efficient CBI claims processing.***

The new CBI organizational unit should work with programs and regions to determine if there are common classes of information suitable for class determination treatment and identify the necessary evidence to support such a determination.

3. CBI Guidance Tools for Agency Employees and the Public

CBI tools are needed by Agency employees to facilitate their understanding of the Agency's framework for handling and evaluating CBI claims and for performing these tasks.

Findings

- EPA has no tools that provide step-by-step guidance on the Agency's CBI confidentiality determination process. Appropriate tools can take the form of web forms, automated decision trees and flow charts, procedures, guidance documents, etc.

- Tools could allow businesses to explain why their information qualifies as confidential through an electronic portal on a question-by-question basis. Such tools could aid in the review process because the affected business would be forced to indicate its response to each question rather than submitting summary statements. These tools could facilitate industry's understanding of the criteria and review processes used by the Agency to validate CBI claims and reduce the number of claims found to be without merit.

- CBI tools could provide an opportunity to delegate final confidentiality determinations to offices other than regional counsel and OGC since they would likely shorten the learning curve and expertise needed to evaluate CBI submissions. These tools would better ensure consistency in the evaluation of claims and resulting final determinations.

- CBI tools would demonstrate how the Agency evaluates CBI claims and implements legal holdings, promoting transparency in the decision-making process.

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Recommendations

> *No. 10: Develop CBI tools to assist Agency staff in efficiently and consistently processing CBI claims and to assist submitters in asserting and substantiating valid claims of confidentiality.*

4. CBI Repository

A central CBI repository would serve as a resource an employee could consult to see if there are prior decisions for similar types of information and/or companies submitting claims.

Findings

- Final confidentiality determinations are made by regional counsels or the OGC. Any Agency program can issue a "clearly not entitled" determination on a CBI claim.

- Employees making CBI determinations do not have a central repository to consult for prior decisions and may not know if the same business has already had a CBI determination made by another office for similar information. They also cannot easily see how similar claims for other companies were resolved.

- There is a need to ensure consistent treatment for CBI claims from the same business for similar information and/or similar claims of CBI from other businesses since these determinations can be made in multiple programs and regions.

Recommendations

> *No. 11: Establish a central repository for CBI confidentiality determinations and "clearly not entitled" determinations.*

V.   Leveraging Tools and Technologies

The Open Government Act promotes the use of technology to achieve more efficient disclosure of information to the public by electronic means. The Workgroup found many opportunities to leverage tools and technologies to potentially improve both FOIA and CBI administration and processing.

A. Technology to Improve FOIA and CBI Processing

An integrated tool set can improve FOIA request management from end-to-end including 1) search and collection, 2) review and redaction, 3) production to the requester and 4) proactive release to the public.

Findings

- Proliferation in the use of e-mail and word processing software to conduct official business has greatly expanded the volume of electronic documents.

- Many FOIA requesters ask for large volumes of electronic documents. Many of these documents reside on employees' desktops and are frequently e-mail messages or attachments to e-mail messages.

- To process and disclose information to the public in a timely manner, software is needed that can handle redaction, identify responsive records in the e-mail system, identify duplicate responsive records, manage electronic repositories and facilitate large document production activities.

- Tools are needed to efficiently manage CBI submissions. (See recommendation #10).

Recommendations

> *No. 12: Invest in technology to achieve more efficient FOIA and CBI processing.*

The Workgroup did not investigate the types of technologies that are available to address the findings but is aware that OEI purchased *Encase,* a solution which allows back-end searches across large repositories, and *Equivio,* which is used in the National Docket Center to identify duplicate and near-duplicate comments and accelerate the processing of these submissions from the public. *Encase* should be evaluated to determine whether it could be used for searches across the Agency's e-mail system when responsive records may reside in multiple locations. In addition, redaction software, such as *Adobe Pro*, is being used by other offices. All of these technologies should be evaluated during implementation efforts to assess their ability to improve FOIA and CBI processing.

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B. FOIA Repository

The Agency does not have an electronic or manual way for the public to review or read previous FOIA requests.

Findings

- Some FOIA requests are duplicative or similar to previous FOIA requests. The Agency's FOIA management and tracking system does not easily identify duplicate requests or store responsive records, which are sent directly to requesters from across the Agency. The system stores the incoming request, the Agency's response letter and related correspondence.

- Allowing the public access to the records released in response to a FOIA request will elevate the Agency's level of transparency, support its disclosure policies, reduce administrative processing costs and likely reduce the overall number of new requests.

Recommendations

No. 13: Establish a repository of records released under FOIA that can be searched by the public before they submit a FOIA request.[2]

C. CBI Portal

The Agency can and does accept electronic CBI; however, there is not a single point of entry to EPA for CBI submissions.

Findings

- Electronic CBI submission would greatly increase the efficiency and enable consistency checks for CBI substantiation and determination.

- EPA's Central Data Exchange (CDX) is a secure portal that currently handles electronic CBI submissions.

- The CIO policy transmittal, 11-022, enforces the use of CDX for all data transmittals between stakeholders and EPA. This solution could be expanded Agency-wide for CBI.

Recommendations

No. 14a: Use available technology to improve the Agency's receipt of CBI by reusing a secure electronic portal enterprise infrastructure, such as the Central Data Exchange (CDX).

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[2] The National FOIA Program is exploring the feasibility of whether a government-wide web portal that 1) re-uses existing e-government infrastructure, 2) provides a single website for the public to submit FOIA requests and 3) is used by all federal agencies to manage FOIA administration activities that would be more efficient and more cost effective than federal agencies creating their own repositories and operating their own FOIA tracking systems. Records released under FOIA by all federal agencies would be accessible to the public through this portal.

CDX provides the capability for submitters to access their data through web services. CDX enables EPA and participating program offices to work with stakeholders to enable streamlined, electronic submission of data via the Internet.

> **No. 14b: Purchase or develop tools that allow the electronic transfer of CBI internally and externally.**

D. Proactive Dissemination

The White House, Attorney General and EPA Administrator are actively promoting transparency and proactive dissemination of information to the public. The Agency lacks a unified process to identify, review and proactively release information to the public. There is a unified process to publish the information once it is identified.

Findings

- Posting information to EPA's website is a standardized way to proactively release information that has evolved and improved; however, employees do not necessarily know the process and points of contact within their office.

- Some offices and regions do an excellent job of proactively disseminating information to the public, in particular via EPA's website and Regulations.gov. Other organizations have room for improvement.

- Senior managers have not consistently examined business processes to identify and incorporate disclosure opportunities into workflows (e.g., raw data, scientific reports, documents of general public interest, etc.).

- The OneEPA Web project, led by the Office of External Affairs and Environmental Education and OEI, is establishing new processes that will unify how EPA releases information. The processes will include a new governance structure to guide proactive identification of information the public seeks and how to publish it online via epa.gov, social media websites and other means.

Recommendations

> **No. 15a: Require Programs and Regions to review (or create) a process to identify and post information proactively. These reviews should include identifying whether they require more guidance, tools and/or knowledgeable staff.**
>
> **Offices should report their initial findings to the CIO and provide periodic updates (frequency to be determined) on the types of information proactively released.**
>
> **No. 15b: The National FOIA Program should coordinate with the Agency's Web Council to ensure there is a unified and comprehensive review process to identify, review and proactively release information that may be of interest to the public. Once approved, widely disseminate the process throughout the Agency including e-mail notification, training and any other methods the Web Council deems appropriate.**

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No. 15c: Require programs and regions to identify Agency staff with the delegated authority to approve the release of Agency information on the EPA website by name or position and distribute the information to all employees within their organizations. Establish appropriate accountability in performance standards.

Actions taken under this recommendation should conform to efforts underway to improve EPA's website under the OneEPA Web project.

VI. Improving Staff Training

Attorney General Holder noted that "FOIA is everyone's responsibility." While all employees have a responsibility to comply with FOIA requirements, their education and training needs differ according to their roles and the frequency that they support FOIA activities.

A comprehensive FOIA training program should address all employee roles including:

- FOIA administration and tracking – FOIA Coordinators and FOIA Officers across the Agency's headquarters and regional offices help administer the FOIA program, track requests, make assignments and respond to FOIA inquiries.

- FOIA responses – Subject matter experts across the Agency commonly develop the detailed response to most FOIA requests, so most staff require basic FOIA knowledge.

- FOIA management – Agency managers need to have a basic knowledge of FOIA to include understanding the exemption categories and importance of making timely and consistent responses.

- Legal staff – OGC and Regional Counsel attorneys provide legal support to the FOIA program.

A. FOIA Training and Education

Many employees do not require formal training, but they need FOIA education. They also require easy access to guidance, procedures and other tools, as needed. Employees who support FOIA administration activities as a critical part of their duties require more formal training and more extensive knowledge of FOIA requirements.

Findings

- Not all employees have a basic understanding of FOIA requirements (both government-wide and Agency policies) and the importance of timely response.

- Recent and pending shifts in the FOIA program need to be more fully communicated to Agency staff and in particular the Agency's FOIA community.

- OEI's National FOIA Office and OGC conduct FOIA training at EPA office locations and conferences and provide guidance in regular teleconferences and meetings, but there is a need for more formalized training targeting specific roles and responsibilities of employees who may become involved in the FOIA process.

- There is no formal training requirement for employees assigned to perform FOIA duties to ensure that they are adequately trained or knowledgeable.

- Highly trained and skilled FOIA staff are needed to ensure that the Agency can meet its FOIA responsibilities and support open government.

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- New employees, employees new to FOIA responsibilities and staff who just need a refresher do not have a single place to go (a "one-stop shopping" location) for training and materials. They must wait for a scheduled course or conference.

- A one-size-fits-all training approach does not meet the diverse needs of EPA employees (from staff who rarely receive a FOIA request to staff who respond frequently or administer the program).

- Finally, some employees need education, awareness and access to resources that will assist them with preparing a FOIA response, rather than formal training.

Recommendations

No. 16a: Establish and develop FOIA training requirements that include tailored training for various levels of FOIA professionals.

The training requirements may include one, several or all of the following five recommendations.

No. 16b: Establish mandatory annual Agency-wide FOIA training requirements for all employees, similar to the training required for ethics and security.

No. 16c: Develop a National FOIA continuing education requirement for FOIA Officers, FOIA Coordinators and FOIA contacts in programs and regions. Include flexibility to address Headquarters and Region-specific policies, procedures and topics.

No. 16d: Establish a mandatory annual training requirement for all FOIA Officers and FOIA Coordinators designed to focus on specific areas of need as identified by the National FOIA Office, such as the recent need to focus on adequate searches, proactive disclosures, consistency, deadlines and coordination among Regions and Headquarters.

No. 16e: Provide training via the national "one-stop shopping" training portal currently under development. Ensure FOIA training is easy to access and available to employees from alternative work sites. Identify other resources such as seminars, workshops, etc., and make the list of resources available on the FOIA website.

Materials and resources should be downloadable and/or links that include (but not be limited to) points of contact, policies, guidance, statutes, regulations, SOPs, frequently asked questions with answers, response template and decision trees to guide responders.

B. Federal and Non-Governmental Training Resources

EPA recognizes other FOIA training resources exist that can supplement EPA's FOIA training offerings.

Findings

- The Office of Information Policy (OIP) at DOJ is responsible for encouraging agency compliance with FOIA requirements. OIP develops and provides guidance to agencies on questions relating to application of FOIA and regularly conducts a variety of training programs for FOIA personnel across the government, including specialized agency programs.

- The Open Government Act created an Office of Governmental Information Services (OGIS) within the National Archives and Records Administration. OGIS has developed guides and tip sheets for FOIA requesters and agencies and offers training to federal public liaisons and other FOIA staff.

- Several private organizations also offer FOIA training and conferences.

Recommendations

> *No. 17: In evaluating EPA's training needs and developing a training program, EPA should consider external training programs and resources that are already developed. Specifically, EPA should review training available from DOJ and OGIS, as well as those offered by private organizations.*

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VII. Establishing Greater Accountability

The 2001 FOIA Task Force identified accountability as one of three problem areas to address in their report to the Administrator and concluded that the lack of senior management involvement was a major factor in the Agency's FOIA performance. The Task Force found FOIA processing was given low priority, clearly delineated accountability was lacking, and FOIA was commonly assigned to new employees or treated as "simple" administrative work. EPA's highly decentralized operations also contributed to backlogs, inconsistencies in responses and litigation.

Accountability at the senior management level significantly increased after the recommendations from the 2001 FOIA Task Force were implemented; however, that accountability has waned over the ensuing years. The 2010 FOIA Workgroup recognizes that the work of the 2001 Task Force yielded significant improvements and strong results, yet the Workgroup found that management accountability has re-emerged as a weakness. Agency senior managers must remain committed to ensuring that their organizations comply with FOIA requirements, manage their FOIA FTEs, reduce their backlogs and support the Administration's transparency policies.

A. Critical Job Element for All Agency Managers

Proactively providing information subject to FOIA and meeting the spirit of the President, Attorney General and EPA Administrator's emphasis on Open Government and transparency needs to be emphasized and elevated across the Agency among managers and supervisors.

Findings

- The Workgroup determined that accountability and focus on FOIA have waned since the recommendations from the 2001 FOIA Task Force were implemented.

- There is currently no accountability measure in the performance management system for FOIA compliance or to track if the Agency met its FOIA goals.

- Incorporating FOIA responsibilities into the performance agreements of Agency managers and supervisors ensures that FOIA responsibility is given appropriate attention at all management levels.

Recommendations

> *No. 18: The National FOIA Office should work with the Office of Human Resources (OHR) to develop FOIA critical job elements for all Agency managers.*

This action highlights the importance the Agency places on FOIA activities by clearly setting expected performance levels for managers and supervisors.

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B. Critical Job Elements for FOIA Professionals

FOIA professionals across the Agency have similar responsibilities, but their critical job elements may not address their FOIA duties.

Findings

- The National FOIA Program is responsible for developing regulations, policies, procedures, training and tools for the Agency. The National FOIA Program does not provide FOIA performance input or feedback to managers of FOIA professionals (i.e., FOIA Officers and FOIA Coordinators).

- The lack of feedback and the opportunity to discuss the support provided, especially when the support is insufficient, can contribute to ineffective FOIA processing, FOIA backlogs, knowledge deficiencies, poor customer service and a lax attitude regarding the performance of FOIA duties. There is no real accountability or corrective measures for poor performance.

- Staff across the Agency assigned FOIA responsibilities should have a similar set of core job elements related to their FOIA duties.

Recommendations

> *No. 19a: The National FOIA Officer should work with OHR to develop critical job elements for FOIA Officers and FOIA Coordinators.*
>
> *No. 19b: The National FOIA Officer should be consulted by managers for input regarding the performance of employees with standards that have National FOIA Program implications.*

There are two options for how the National FOIA Officer can be involved in the performance rating of FOIA Officers and FOIA Coordinators:

- **Option 1:** The National FOIA Officer provides input to the manager of the FOIA professional on the critical elements developed under recommendation 19a.

- **Option 2:** The National FOIA Officer rates the performance of FOIA Officers and FOIA Coordinators on the critical elements developed under recommendation 19a.

C. FOIA-Specific Knowledge, Skills and Abilities (KSAs)

Some employees in critical positions do not possess the knowledge, experience and communication skills to successfully fulfill their duties.

Findings

- There are no standard knowledge, skills and abilities to properly define the duties and responsibilities of regional FOIA Officers, FOIA Coordinators and others with FOIA responsibilities.

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- Without KSAs, managers have difficulty determining the appropriate training staff need before being assigned FOIA responsibilities, as well as the training required on an annual basis.

- Adequate resources are lacking in programs and regions to manage complex FOIA issues and ensure compliance with the letter and spirit of FOIA.

Recommendations

No. 20a: The National FOIA Program should consult with OHR to identify a baseline set of knowledge, skills and abilities (KSAs) for FOIA Officers and FOIA Coordinators based on their required duties.

No. 20b: At the end of each FY, require Deputy Assistant Administrators (DAAs) and Deputy Regional Administrators (DRAs) to report the number of hours of FOIA-related training taken by their FOIA Officer and primary FOIA Coordinator (submit information to the EPA CIO).

It is anticipated that attendance at monthly meetings with the National FOIA Officer would count toward the training requirements. The monthly meetings will include a knowledge and skills enhancement section.

D. FOIA Status and Overdue Reports to Senior Leadership

The National FOIA Program sends a monthly report to regional FOIA Officers and program FOIA Coordinators with the status of FOIA requests for each program and region, including the number of overdue FOIA requests. (Overdue is defined as no initial response sent within the "20-day" time period and no formal extension of time or alternative due date was agreed to with the requester).

Findings

- Failure to respond to FOIA requests in a timely manner exposes the Agency to litigation, including potential legal fees and unfavorable publicity.

- This monthly report may not be reaching the appropriate Agency senior managers, and managers may need more frequent reporting, including information on the number of pending, but not overdue, FOIA requests.

- The Workgroup believes that providing senior managers with information on pending and overdue FOIA requests will also assist them in identifying good candidates for proactive disclosure.

- DAAs and DRAs should address FOIA requests with the same high priority given to controlled correspondence and Congressional inquiries.

- Offices should be held to the same degree of accountability for late FOIA responses as for late controlled Congressional correspondences.

Recommendations

> **No. 21a: Establish and provide reports of overdue and pending FOIA requests to DAAs and DRAs.**
>
> **No. 21b: DAAs and DRAs should review the list of overdue FOIA requests and commit resources to reduce the backlog each fiscal year.**

- Repurpose the current monthly FOIA report and provide it to the DAAs and DRAs.

- Create a bi-weekly report to identify all requests assigned to the organization that are pending, but not overdue, as well as those that are overdue.

This approach commits the Agency to reducing its backlog by focusing on closing out old requests and responding to new ones in a timely fashion.

E. FOIA Search Certifications

A FOIA search certification documents the activities used by the Agency to search for responsive records.

Findings

- There is no FOIA certification form to document the process the Agency uses to search for records that are responsive to a FOIA request.

- Proper records and documentation are critical for all FOIA requests.

Recommendation

> **No. 22: Require certifications when conducting searches for FOIA responsive records using a template developed by the National FOIA Program.**

- The certification form will provide appropriate documentation that the Agency adequately searched for responsive records and holds the employee responsible for the search accountability.

- The certification can ensure that the Agency conducted a reasonable search for responsive records if an administrative appeal is filed or if the FOIA request results in litigation.

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VIII. Next Steps

The Workgroup recognizes that additional work is required to prioritize and implement recommendations. During the implementation phase, the lead office responsible for a specific recommendation may engage other offices as necessary or establish project specific work groups.

Please refer to Appendix A, which concisely presents the 22 recommendations along with the Workgroup's assessment of the recommendation's impact, effort necessary for implementation, its value, the type of action required (regulation or procedure, assessment, acquire or develop, or training), and the lead office. Decision-makers will find this tool helpful as it provides several approaches to prioritizing the recommendations.

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Appendix A: List of Recommendations

No.	Recommendation	Impact[1]	Effort[2]	Implementation Estimate (in Months) — Timeframe	Accountability	Competency	Consistency	Proactive Disclosure	Productivity	Transparency	Regulation or Procedure	Assessment	Acquire or Develop	Training	OEI	OGC	Other
					Benefit						Type of Action				Lead Office		
Enhancing FOIA Processes																	
1	Revise EPA's FOIA regulations to 1) fully comply with the Open Government Act and DOJ regulations/guidance, 2) reflect changes in EPA's business processes, and 3) update FOIA fee information.	High	High	<12	●				●		●				●	●	
2	Finalize national standard operating procedures (SOPs) to set minimum processing standards. Make SOPs available to Agency employees and communicate their availability.	High	Low	<12		●	●	●	●		●				●		

[1] Impact = Extent to which recommendation will positively influence the FOIA program
[2] Effort = Complexity, cost, time, and/or FTE commitment

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No.	Recommendation	Impact[1]	Effort[2]	Implementation Estimate (in Months) Timeframe	Accountability	Competency	Consistency	Proactive Disclosure	Productivity	Transparency	Regulation or Procedure	Assessment	Acquire or Develop	Training	OEI	OGC	Other
					Benefit						**Type of Action**				**Lead Office**		
3a	Develop guidance on applying the presumption of openness and identifying and articulating "foreseeable harm" when making decisions to release and withhold documents under FOIA's discretionary exemptions.	Low	Low	<12		●	●	●		●	●				●	●	
3b	Require two levels of review of all documents that are released or withheld under a discretionary FOIA exemption.	Low	Med	<12	●	●	●	●		●	●				●	●	
4	Modify Agency Delegation 1-30 to 1) reflect that all fee decisions are now made by the Headquarters FOIA office and 2) require programs and regions to issue formal re-delegation documentation to identify who (by title or position) has the authority to make initial FOIA decisions to release records within their organization.	Medium	Low	<24	●		●				●				●		
5	Finalize and implement the policy on FOIA litigation payments for attorney fees and other costs, balancing accountability with fairness and administrative simplicity.	Medium	Low	<12	●		●				●						OCFO

No.	Recommendation	Impact[1]	Effort[2]	Implementation Estimate (in Months) Timeframe	Accountability	Competency	Consistency	Proactive Disclosure	Productivity	Transparency	Regulation or Procedure	Assessment	Acquire or Develop	Training	OEI	OGC	Other
						Benefit						Type of Action				Lead Office	
6	Require EPA programs and regions to assess fully centralizing FOIA administration activities within their organization (if the function is not already centralized).	High	High	<24	●	●	●		●			●					ALL
Enhancing CBI Processes																	
7	Revise EPA's regulations to conform with case law regarding diverse treatment of voluntary submissions of claimed CBI and promote greater efficiency in handling CBI claims.	High	High	<24					●		●				●	●	
8	Create a new CBI organizational unit or assign CBI oversight responsibility to an existing organizational unit. The organization would be responsible for establishing Agency-wide CBI policy and security standards for handling and processing CBI claims.	High	High	<24	●	●	●		●			●			●		
9	Develop Agency procedures to facilitate and expand use of class determinations for more efficient CBI claims processing.	Medium	Medium	>24		●	●		●		●					●	

No.	Recommendation	Impact[1]	Effort[2]	Implementation Estimate (in Months) Timeframe	Benefit						Type of Action				Lead Office		
					Accountability	Competency	Consistency	Proactive Disclosure	Productivity	Transparency	Regulation or Procedure	Assessment	Acquire or Develop	Training	OEI	OGC	Other
10	Develop CBI tools to assist Agency staff in efficiently and consistently processing CBI claims and to assist submitters in asserting and substantiating valid claims of confidentiality.	Medium	High	>24	●	●		●	●				●			●	
11	Establish a central repository for CBI confidentiality determinations and "clearly not entitled" determinations.	Medium	Medium	>24		●			●				●		●		
Leveraging Tools and Technology																	
12	Invest in technology to achieve more efficient FOIA and CBI processing.	High	Medium	<24		●			●				●		●		
13	Establish a repository of records released under FOIA that can be searched by the public before they submit a FOIA request.	High	Medium	<12			●	●	●	●			●		●		
14a	Use available technology to improve the Agency's receipt of CBI by reusing a secure electronic portal enterprise infrastructure, such as the Central Data Exchange (CDX).	Medium	Medium	<24					●				●				OCSPP
14b	Purchase or develop tools that allow the electronic transfer of CBI internally and externally.	Medium	Medium	>24					●				●				OCSPP

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No.	Recommendation	Impact[1]	Effort[2]	Implementation Estimate (in Months) Timeframe	Accountability	Competency	Consistency	Proactive Disclosure	Productivity	Transparency	Regulation or Procedure	Assessment	Acquire or Develop	Training	OEI	OGC	Other
							Benefit					Type of Action				Lead Office	
15a	Require Programs and Regions to review (or create) a process to identify and post information proactively. These reviews should include identifying whether they require more guidance, tools and/or knowledgeable staff.	Medium	Medium	<12			●	●	●	●		●			●		ALL
15b	The National FOIA Program should coordinate with the Agency's Web Council to ensure there is a unified and comprehensive review process to identify, review and proactively release information that may be of interest to the public. Once approved, widely disseminate the process throughout the Agency including e-mail notification, training and any other methods the Web Council deems appropriate.	Medium	Medium	<12			●	●	●	●		●			●		
15c	Require programs and regions to identify Agency staff with the delegated authority to approve the release of Agency information on the EPA website by name or position and distribute the information to all employees within their organizations. Establish appropriate accountability in performance standards.	Medium	Low	<12	●		●	●	●	●		●					ALL

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No.	Recommendation	Impact[1]	Effort[2]	Implementation Estimate (in Months) Timeframe	Accountability	Competency	Consistency	Proactive Disclosure	Productivity	Transparency	Regulation or Procedure	Assessment	Acquire or Develop	Training	OEI	OGC	Other
					Benefit						Type of Action				Lead Office		
Improving Staff Training																	
16a	Establish and develop FOIA training requirements that include tailored training for various levels of FOIA professionals.	High	High	<24		●	●		●					●	●	●	
16b	Establish mandatory annual Agency-wide FOIA training requirements for all employees, similar to the training required for ethics and security.	High	Medium	<24	●	●	●		●					●	●	●	
16c	Develop a National FOIA continuing education requirement for FOIA Officers, FOIA Coordinators and FOIA contacts in programs and regions. Include flexibility to address Headquarters and Region-specific policies, procedures, and topics.	High	Medium	<12	●	●	●		●					●	●	●	

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							Benefit					Type of Action			Lead Office		
16d	Establish a mandatory annual training requirement for all FOIA Officers and FOIA Coordinators designed to focus on specific areas of need as identified by the National FOIA Office, such as the recent need to focus on adequate searches, proactive disclosures, consistency, deadlines and coordination among Regions and Headquarters.	High	Medium	<12	●	●	●		●					●	●	●	
16e	Provide training via the national "one-stop shopping" training portal currently under development. Ensure FOIA training is easy to access and available to employees from alternative work sites. Identify other resources such as seminars, workshops, etc., and make the list of resources available on the FOIA website.	Medium	Low	<24		●			●					●	●		

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| No. | Recommendation | Impact[1] | Effort[2] | Implementation Estimate (in Months) Timeframe | Benefit | | | | | | Type of Action | | | | Lead Office | | |
					Accountability	Competency	Consistency	Proactive Disclosure	Productivity	Transparency	Regulation or Procedure	Assessment	Acquire or Develop	Training	OEI	OGC	Other
17	In evaluating EPA's training needs and developing a training program, EPA should consider external training programs and resources that are already developed. Specifically, EPA should review training available from DOJ and OGIS, as well as those offered by private organizations.	Low	Medium	<12		●			●					●	●		
	Establish Greater Accountability																
18	The National FOIA Office should work with the Office of Human Resources (OHR) to develop FOIA critical job elements for all Agency managers.	High	Medium	<24	●	●	●						●		●		
19a	The National FOIA Officer should work with OHR to develop critical job elements for FOIA Officers and FOIA Coordinators.	High	Medium	<24	●	●	●						●		●		
19b	The National FOIA Officer should be consulted by managers for input regarding the performance of employees with standards that have National FOIA Program implications.	High	Medium	<24	●	●	●						●		●		

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No.	Recommendation	Impact[1]	Effort[2]	Implementation Estimate (in Months) Timeframe	Accountability	Competency	Consistency	Proactive Disclosure	Productivity	Transparency	Regulation or Procedure	Assessment	Acquire or Develop	Training	OEI	OGC	Other
					Benefit						Type of Action				Lead Office		
20a	The National FOIA Program should consult with OHR to identify a baseline set of knowledge, skills and abilities (KSAs) for FOIA Officers and FOIA Coordinators based on their required duties.	High	Medium	<24	●	●	●		●				●		●		
20b	At the end of each FY, require Deputy Assistant Administrators (DAAs) and Deputy Regional Administrators (DRAs) to report the number of hours of FOIA-related training taken by their FOIA Officer and primary FOIA Coordinator (submit information to the EPA CIO).	Medium	Low	<24	●	●	●		●				●		●		
21a	Establish and provide reports of overdue and pending FOIA requests to DAAs and DRAs.	High	Low	<12	●							●			●		
21b	DAAs and DRAs should review the list of overdue FOIA requests and commit resources to reduce the backlog each fiscal year.	High	Low	<12	●							●					ALL
22	Require certifications when conducting searches for FOIA responsive records using a template developed by the National FOIA Program.	High	Low	<12	●		●		●		●				●		