

**From:** [Message from the Administrator](#)  
**To:** [Message from the Administrator](#)  
**Subject:** The Freedom of Information Act (FOIA): An Important Tool for Promoting Transparency and Building Public Trust in Agency Actions  
**Date:** Tuesday, November 13, 2018 9:14:32 AM



Colleagues,

Throughout the history of the U.S. Environmental Protection Agency (EPA), Administrators have reaffirmed a commitment to transparency in our agency's operations. The Freedom of Information Act (FOIA) is an important tool for promoting transparency and building public trust in agency actions. I reaffirm the Agency's commitment to operating in an open and transparent manner, and I encourage all Agency employees to join me to help improve the Agency's FOIA response efforts. The success of our efforts at the EPA directly depends on the trust of the public we serve.

#### **Key Messages**

- **Transparency:** The EPA is committed to operating in an open and transparent manner. People have the right to access agency records, except where the information is protected from disclosure.
- **Timeliness:** The EPA will improve the timeliness of our FOIA responses.
- **Quality:** The EPA will improve the quality of our FOIA responses so that the public receives both clear communication about the FOIA process and appropriately redacted records.
- **Professionalism:** The EPA will bolster our training efforts and ensure that our FOIA professionals have the resources they need to help make the EPA a flagship example of transparent, efficient and effective government.

#### **General Principles**

Like all federal agencies, the EPA is subject to FOIA. FOIA encourages accountability through transparency, and pursuant to FOIA, any person has the right to access agency records, except where the information is protected from disclosure. The Agency is committed to conducting its business in an open and transparent manner. The Agency will work to ensure that its FOIA professionals have the support needed to satisfy FOIA's requirements in a timely and efficient manner. The EPA should also strive, when possible, to proactively provide the public with access to information that is likely to be requested under FOIA to better assist the public to participate and engage with the Agency.

Because the EPA is a public regulatory agency, staff may come into possession of information that may need to be protected from disclosure under FOIA, including confidential business information, trade secrets, deliberative information, or personal privacy information. Although the Agency's business is to be conducted in an open, accountable manner, we must also ensure that sensitive information entitled to special protection is handled with the utmost care and in full compliance with all applicable laws and regulations. The EPA's FOIA Regulations are available [here \(https://www.ecfr.gov\)](https://www.ecfr.gov).

#### **Important Steps Taken to Date**

The Agency has taken several steps recently to improve its FOIA program. The Agency's FY 2018-2022 EPA Strategic Plan sets one of its Strategic Goals as increasing transparency and public participation. Measures for meeting this goal include eliminating the backlog of pending FOIA requests and meeting the requisite deadlines for responding to FOIA requests. As part of this improvement effort, in April of 2018, the Agency created the National FOIA Office within the Office of General Counsel and soon thereafter delegated to the General Counsel the Chief FOIA Officer functions. These functions include FOIA regulations and policy, public liaison and data-reporting, training, and assisting offices Agency-wide that are responsible for FOIA. The General Counsel also oversees legal counseling, FOIA appeals, and FOIA litigation as well as the FOIA Expert Assistance Team (FEAT), which was created in 2014 and has been very successful at efficiently managing the Agency's most complex FOIA issues. Additional FOIA professionals are being hired to increase the services the National FOIA Office provides.

To enhance accountability, the Agency recently announced a reorganization of the Regional Counsel Offices to provide clear authority and reporting lines for FOIA offices in the regions. FOIA accountability language is also being added to FOIA manager performance agreements Agency-wide.

At the same time, the Agency also launched a significant effort to tackle the large volume of FOIA requests within the Administrator's Office. This initiative (known as the AO4 project) included:

1. Centralizing the FOIA process for four sub-offices,
2. Engaging the FEAT from OGC to provide critical project management, legal guidance, and training,
3. Standing up a "Tiger Team" of 12 staff dedicated to FOIA review and processing, and
4. Hiring additional FOIA professionals.

So far, this effort has yielded significant results and continues to make deep inroads into the Administrator's Office's backlog. I want to thank all who helped with these efforts and with prior backlog reduction initiatives in the program and regional offices. All Agency components should continue to tackle their FOIA backlog. I am directing the National FOIA Office to circulate monthly a report of the FOIA request backlog across EPA.

In addition, last fall, the EPA hosted a multi-day conference for over 180 of the Agency's FOIA professionals. The conference was the first of its kind in more than a decade. The training agenda tracked the life cycle of a FOIA and addressed legal issues encountered at all stages of FOIA processing. Last fall's conference represents the first of a two-phased training program. The second phase, described below, involves specialized FOIA training for supervisors.

In February 2018, the Agency also held a multi-day Lean event focused on FOIA. That event resulted in two pilot projects that the National FOIA Office has led in conjunction with the Office of Continuous Improvement (OCI) to identify bottlenecks and help streamline the FOIA

response process.

#### Moving Forward to Improve the FOIA Process

The Agency's leadership intends to continue to take steps to improve its FOIA process this year. In addition, I encourage organizations responsible for FOIA to undertake their own projects to improve FOIA processing. These should include centralization of FOIA review and management functions in the organization, adding tracking identification numbers to all documents released through FOIA, hiring additional staff, and providing supplemental training using existing resources.

To meet the transparency and public participation Strategic Goal, the EPA must work to ensure that it is not only providing responses to FOIA requests in a timely manner, but also that those responses are of the highest quality. Programs and regions should continue implementing current EPA FOIA policy and procedures to help reduce errors in their responses. For instance, all organizations should continue to have at least two knowledgeable individuals, including one manager, review all documents before they are released to the public to improve accuracy and consistency in release determinations. See Freedom of Information Act Policy, [CIO 2157.1](#) (September 20, 2014) (available at [https://intranet.epa.gov/foia/docs/FOIA-Policy-August2014-09-30FINAL\(with-electronic-signature\).pdf](https://intranet.epa.gov/foia/docs/FOIA-Policy-August2014-09-30FINAL(with-electronic-signature).pdf)).

Further, the Agency should continue FOIA training for all staff. To that end, the Office of General Counsel is planning the second phase of the training program mentioned above. This second phase of the training program will include a training directed at supervisors, including Division Directors or the equivalent, responsible under the Agency's FOIA Policy for the review of FOIA responses. These training efforts and continued annual training of our FOIA professionals will help ensure that the Agency is responding effectively and efficiently to FOIA requests and utilizing fully available technological resources. Questions about whether FOIA exemptions apply to certain information or other questions about FOIA processing should be directed to the Office of General Counsel.

#### Federal Records Act Requirements

For the Agency to have an effective FOIA program, the Agency must also ensure that it has a robust Federal Records program. The Federal Records Act provides the foundation for transparency at the EPA. Under the Federal Records Act, employees must create and maintain records that document the persons, places, things, or matters dealt with by the agency and which facilitate action by agency officials and their successors in office. Proper records management protects the financial, legal, and other rights of the EPA and of persons directly affected by the EPA's actions, and permits adequate oversight of the Agency's work by Congress and the public. All employees must take care to document the formulation and execution of basic policies and decisions, and the taking of necessary actions. It is particularly important that all employees understand that the Federal Records Act requirements apply to oral communications. All substantive decisions and commitments reached orally should be documented. You can learn more about the Federal Records Act at <http://intranet.epa.gov/records/>. Should you have any questions about your Federal Records Act obligations, you should contact the Records Help Desk by calling 202-566-1494 or emailing [records@epa.gov](mailto:records@epa.gov).

#### Conclusion

The Agency is facing an unprecedented volume of FOIA requests. Despite this enormous challenge, the EPA is committed to conducting its business in an open and transparent manner and will continue to take steps to improve the efficacy and efficiency of its FOIA process. I look forward to working with all of you to make the EPA a flagship example of transparent, efficient, and effective government.

Andrew Wheeler  
Acting Administrator