TRANSFORMING THE CITIZEN EXPERIENCE THROUGH INNOVATION
Steps to Reduce A FOIA Request Backlog

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Backlog Reduction

Why *Even* Worry?

1. Annual FOIA Report statistics
2. Limitation on charging certain fees
3. Disappointing the public
4. Threat of litigation for inability to respond within time limit
5. Possible attorney fee awards (budget issue)
6. Required by law
Backlog Reduction

1. Increase personnel resources
   - Utilize your Public Liaison & Chief FOIA Officer (responsibilities under 5 U.S.C. § 552(j)(3)(D) include reviewing “the timely processing of requests”)
   - Explain that litigation will require an even greater increase of FOIA personnel resources
2. Communicate, preferably by telephone, with your requesters

- 5 U.S.C. § 552(a)(4)(vii)(II)(C) (advising requesters how they “could effectively limit the scope of the request in accordance with paragraph (a)(6)(B)(ii)"

- May result in being placed in more advantageous queue
Backlog Reduction

2. Communicate, preferably by telephone, with you requesters (cont’d)

• “The Court will not fault the plaintiff here for failing to limit or modify his request when the government could not even be bothered to satisfy its relatively simple obligations under § 552(a)(6)(B)(ii)” Eakin v. DOD, No. 5:16-972 (W. Tex. Aug. 2, 2017) (280,000 files)
Backlog Reduction

3. Enhance computerized resources
   – Consider AINS’s Advanced Document Review (ADR) if your agency frequently has large volume requests containing duplicate or near-duplicate records, especially email
   – Check your agency’s **Capstone** storage
   – Remember to document all contacts with requesters – your records may be important if litigation results
Backlog Reduction

4. When appropriate, consider “still interested” inquiry
   -- 7/2/15 OIP Guidance on this point
   -- 5/11/16 OGIS Guidance on this point

5. Take advantage of training programs for individual employees at OIP/DOJ, ASAP, Graduate School USA, as well as those for your FOIA office or all FOIA personnel in your agency
Backlog Reduction

6. Explain decentralization if appropriate;
   • Estimate volume; need for consultations; need to use EO 12,600 for Exemption 4 issues

7. Narrow a request through negotiation or explaining how records are maintained and can be provided
Backlog Reduction

8. Focus on options, such as date range, fee cut-off, single firm records, single incidents, etc., rather than “any and all records relating to…”

9. First party requests require authorization if received from someone other than the individual (generally must be original signature & designation)

10. Use your agency FOI Public Liaison, and OGIS
Backlog Reduction

11. Send partial responses

12. Demonstrates requester contact, initiation of FOI processes, provide “simple” records

13. Assists in agency defense if litigation results from non-response

14. Provide requesters with direct contact information, not just web address or toll free #; follow-up with requesters who received partials
15. Recognize that some requesters (and some judges) can’t be satisfied, or litigate because they don’t like the response
   – See *Seavy v. DOJ*, No. 15-1301 (D.D.C. July 20, 2017) (no compromise on request seeking 110,000 pages)