

TRANSFORMING THE CITIZEN EXPERIENCE THROUGH INNOVATION



Steps to Reduce A FOIA Request Backlog

Richard Huff

Retired Co-Director,
DOJ Office of Information & Privacy

Fred Sadler

Retired FOI Officer, FDA/HHS
Sadler Consulting

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



Backlog Reduction

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

Backlog Reduction

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)

